

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.1443 of 2016

Date of Decision:26.02.2018

A.P. Sodhi

.....Petitioner

Vs

State of Haryana

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Animesh Sharma, Advocate
for the petitioner.

Ms. Neelam Kashyap, D.A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this crl. Revision petition against the judgment dated 24.02.2016 passed by the Sessions Judge, Rewari vide which judgment passed by the trial Court was set aside and case was remanded to the trial Court for retrial.

[2]. Petitioner was prosecuted in case bearing FIR No.13 dated 01.03.2016 registered under Sections 420/467/468/471/120B IPC at Police Station State Vigilance Bureau, Gurgaon with the allegations that the written complaint was moved by State Vigilance Bureau, Gurgaon that Om Parkash son of Suraj

Bhan resident of village Jainabad, District Rewari has obtained a job of Gardener in Forest Department, Rohtak by submitting forged handicap certificate. Similarly accused Om Parkash son of Kanwar Singh has obtained the job of Gardener in the said Department by submitting forged handicap certificate showing himself to be 85% disabled and forged school leaving certificate. Co-accused Naresh Kumar has also submitted the forged handicap certificate allegedly issued by the Civil Hospital, Rewari showing him to be 80% disabled, however no such certificate was issued by the Civil Hospital, Rewari. During investigation, it was found that the petitioner has issued forged certificate dated 13.04.1998 to Om Parkash son of Suraj Bhan mentioning him to be 80% disabled. The said Om Parkash was not the resident of District Panchkula, nor he was 80% disabled. The allegation against the petitioner was that he in collusion with Om Parkash son of Suraj Bhan has prepared the forged certificate.

[3]. Learned counsel for the petitioner submitted that the alleged complicity of the petitioner was only with regard to Om Parkash son of Suraj Bhan and not *qua* Om Parkash son of Kanwar Singh. Om Parkash was the resident of village Jainabad, District Rewari and he failed to get any disability certificate from Rewari. He contacted the petitioner, who was

Medical Officer in CHC, Kalka on 13.04.1998.

[4]. Leaned counsel further submitted that the lower Appellate Court recorded the findings that investigation and trial of the case were concluded in a slipshod fashion. The petitioner has issued medical certificate for the hearing impairment. Medical certificate was exhibited as PW-7/B. The said certificate was issued for the purpose of scholarship. Audiogram chart was prepared by Dr. Nidhi Bhargav in which address of Maheshpur, Panchkula was mentioned. The patient was advised for audiogram test vide OPD slip Ex.PW-17/B. Dr. Nidhi Bhargav has not been examined by the prosecution. OPD slip, audiogram and the certificate have been proved by Sanjeev Booch PW-17, wherein in his cross-examination, he admitted that medical certificate and disability certificate are distinct certificates. Certificate Ex.PW-7/B is a medical certificate of audiogram test conducted by Dr. Nidhi Bhargav.

[5]. The departmental enquiry was initiated against the petitioner on the same allegations that while posted as SMO, Incharge, CHC, Kalka from 24.02.1971 to 06.07.2000, the petitioner had issued the medical certificate for hearing impairment on 13.04.1998 to Om Parkash son of Suraj Bhan. In the enquiry it was found that the alleged certificate dated 13.04.1998 given to Om Parkash was not produced by any

witness including the Presiding Officer. The certificate issued by the petitioner was the medical certificate for the hearing impairment. The format of the certificate was prescribed by Ministry of Welfare, Govt. of India. The certificate which was issued by the petitioner was not found to be the disability certificate for which different format has been prescribed by the competent authority. The certificate issued by the petitioner was found to be on different format which was prescribed by the Ministry of Welfare, Govt. of India for disability certificate. On the basis of another certificate issued by the petitioner, he was exonerated in the departmental inquiry. *Qua* the address of Om Parkash, District Panchkula on the certificate it was found that the Doctor has to note the address as told by the patient. The petitioner kept the address given in report of audiogram produced by the patient on 13.04.1998. The audiogram report was prepared by Dr. Nidhi Bhargav in which address of Maheshpur, District Panchkula was mentioned. No *mala fide* on the part of the petitioner was found. The departmental enquiry against the petitioner was filed.

[6]. Learned counsel further submitted that despite finding inherent defect in the judgment of conviction and order of sentence passed by the trial Court, the Court of Sessions should have accepted the appeal in *toto*, rather to remand the

same for retrial.

[7]. Learned counsel by relying upon **Zahira Habibulla H Sheikh and anr. vs. State of Gujarat and others, AIR 2004 SC 346; Mohd. Hussain @ Julfikar Ali vs. State (Govt. of NCT), Delhi, AIR 2012 SC 3860; Satyajit Banerjee and others vs. State of West Bengal and others, AIR 2005 SC 4161; Ramanlal Rathi vs. The State, AIR 1951, Cal. 305; Navnitbhai Harmanbhai Patel vs. State of Gujarat and others, 2016 SCC Online Guj. 71; CRR Nos.1223 and 1226 of 2015** titled '**Malkit Singh vs. Punjab National Bank and others' decided on 04.11.2015; Akalu Ahir and others vs. Ramdeo Ram, AIR 1973 SC 2145; Lokesh Kumar Jain vs. State of Rajasthan, 2013 (11) SCC 130; Radheshyam Kejriwal Vs. State of West Bengal and another, 2011 (3) SCC 581 and Ajay Kumar Ghoshal etc. vs. State of Bihar & Anr., 2017(1) R.C.R. (Criminal) 106** contended that re-trial under Section 386 Cr.P.C in the facts and circumstances of the case cannot be ordered. No straitjacket formula of universal and invariable application can be formulated. Such power can only be exercised in exceptional cases where the Court finds defect of procedure or manifest error of law resulting in flagrant miscarriage of justice. Lower Appellate Court cannot direct the trial Court to hold the *de novo* trial in routine.

[8]. The re-trial can only be ordered in the circumstances which existed in a case like **Best Bakery case (Gujarat riots case)**. The said case was an extraordinary case in which the Court was convinced that the entire prosecution machinery was trying to shield the accused i.e. the rioters. The entire trial was found to be a farce. The witnesses were terrified and intimidated to keep them away from the Court. It was in those extraordinary circumstances that the Court not only directed a *de novo* trial in the case, but also made further directions for appointment of the new prosecutor with due consultation of the victims. The law laid down in **Best Bakery case** in the aforesaid extraordinary circumstances cannot be applied to all cases against the established principles of criminal jurisprudence. Direction for re-trial should not be made in routine where acquittal of accused for want of adequate or reliable evidence is recorded.

[9]. The Appellate Court hearing the appeal from the judgment of conviction has power to order the re-trial of the accused in terms of Section 386 Cr.P.C. Even though, such power exists, but the same should not be exercised in routine manner. *De novo* trial or re-trial of the accused should be ordered by the Appellate Court in exceptional and rare of rarest cases, when in the opinion of the Court such course becomes indispensable to avert failure of justice. Such a power cannot be

exercised to allow the prosecution to improve upon its case or fill up the lacuna. Re-trial is not a second trial, rather it is continuation of the same trial and same prosecution. The guiding factor for re-trial must always be read in the context of demand of justice. Satisfaction of the Court should be of such nature that the irregularity has occasioned in failure of justice.

[10]. The seriousness of the case is no ground for ordering re-trial. The lacuna in the prosecution case if leaves the Court in doubt, then benefit of such doubt should go to the accused. Re-trial can only be ordered when the original trial has not been conducted satisfactorily for particular reasons, for example, if evidence has been wrongly rejected which should have been admitted, or admitted when it should have been rejected, or the Court had refused to hear certain witnesses who should have been heard.

[11]. In the instant case, no such extraordinary circumstance existed to order re-trial of the case. The certificate issued by the petitioner was apparently a medical certificate which was issued for the purposes of scholarship, that too after receipt of audiogram chart and audiogram report carrying Panchkula address of the petitioner. Dr. Nidhi Bhargav has not been examined by the prosecution. In a detailed departmental enquiry, the alleged misconduct on the part of the Doctor was

negated with reference to material on record.

[12]. In view of material on record, I find that the requirement of Section 386(6) Cr.P.C is not attracted so as to order re-trial of the case. The lacuna left by the prosecution must be credited in favour of the accused.

[13]. For the reasons recorded hereinabove and in view of precedents cited on the point in issue, I deem it appropriate to quash the impugned order dated 24.02.2016 passed by the Sessions Judge, Rewari to the extent of remanding the case to the trial Court for re-trial. The findings to the extent of setting aside the judgment/order of the trial Court on merits are upheld.

[14]. This criminal revision is disposed of accordingly.

February 26, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No