

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

**CRR No.3916 of 2014 (O&M)
Decided on: 08.02.2018**

Gurdeep Singh and another

....Petitioners

Versus

Daljit Singh and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Rajesh Punj, Advocate
for the petitioners.

Mr. Manuj Nagrath, Advocate
for respondent No.1.

Mr. Rahul Rathore, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this revision petition is for setting-aside the order dated 29.09.2014 passed by the Additional Sessions Judge, Ludhiana vide which, while allowing the revision filed by the respondent/complainant, the judgment of acquittal dated 03.08.2013 was set-aside and the matter was remanded back to the trial Court with a direction to afford sufficient opportunity to the prosecution as well as to the accused to examine, re-examine or cross-examine any witness and thereafter dispose of the case along with cross case, in accordance with law.

Brief facts of the case are that on the statement of Daljit Singh – complainant (respondent No.1 herein), FIR No.343 dated 13.12.2007 under Sections 323, 341 read with Section 34 of the Indian Penal Code (in short 'IPC') at Police Station Payal, Ludhiana was

registered. A cross-version was also registered on the complaint lodged by the petitioner/complainant. As per the version given in the FIR, the complainant was going from his house to his tubewell in the fields and the petitioner along with others armed with sticks surrounded the complainant and caused him injuries. Thereafter, the aforesaid FIR was got registered by the complainant.

Thereafter, the trial Court framed the charges under Sections 323, 341 read with Section 34 IPC. In the prosecution evidence, the prosecution examined PW1 – Daljit Singh, however, his cross-examination was deferred on the request made by counsel for the accused/petitioner and later on, could not be concluded. PW2 – Dharamjit Singh and PW3 – Sonu turned hostile and later on, the evidence of the prosecution was closed by Court order on 03.08.2013. After recording, the statement under Section 313 of the Code of Criminal Procedure (in short 'Cr.P.C.'), the trial Court, holding that the prosecution has failed to examine the other witnesses and complainant has failed to turn up to face the cross-examination, both the other two eye-witnesses have turned hostile, acquitted the petitioners/accused from the charges framed against them by giving benefit of doubt vide judgment dated 03.08.2013. The Lower Appellate Court vide impugned judgment dated 29.09.2014 allowed the appeal by passing the following order:-

“13. After going through the rival contentions, beside perusing the trial Court record, the important legal point which emanated during the arguments was that the cross-case qua the same FIR was pendign and next date of the same is 13.10.2014, in which appellant Daljit Singh is

accused. Ld. counsel for the appellant, produced the photocopy of the challan and stated at bar that only one witness has been examined by the prosecution in cross-case. Even the counsel for the respondents has not denied the same. On this aspect, Hon'ble Apex Court in Shir vs State of M.P. AIR 2001 SC 826, has laid down the procedure for dealing with the cross cases and has held "the practical reasons for adopting a procedure that such cross cases shall be tried by the same Court, can be summarised thus : (I) it staves off the danger of an accused being convicted before his whole case is before the Court, (ii) It deters conflicting judgments being delivered upon similar facts: (iii) In reality the case and the counter case are, to all intents and purposes, different or conflicting versions of one incident." However, it is always desirable, in the interests of justice, that counter cases arising out of the same incident should be tried together and judgments in both the cases should be delivered by the same Judge one after the other. Needless to say that each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case.

14. *Moreover, the argument of the ld. counsel for the respondent sans merit that every case has to be decided on its own merit. When the investigation has been done in both case together, then in order to achieve the ends of justice, it should have been decided simultaneously. The pendency of the cross case is also reflected in the body of the police report under Section 173 of Cr.P.C. Ld. Counsel for the respondents himself relied upon 2004(1) CCC 810 Bombay, wherein Hon'ble Bombay High Court held in Para 8 "..... It is true as laid down by the Apex Court, each case must be decided on the basis of*

evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or the arguments urged in cross-case. But what is required is that both the judgments must be pronounced by the same Judge. That is fair procedure to be adopted in the matter when there are cross cases.” The case, in aforesaid judgment was remanded back. The other cases referred by the respondents pertains to appreciation of evidence but in the instant case in hand the proposition is different as such same is not acceptable to facts of the present case.

15. *Even otherwise, in 2003(2) RCR (Criminal) 287 titled as State of M.P. vs Mishrilal (dead) and others (surpa), Hon'ble Apex Court held in Para 8 “.....The cross-cases should be tried together by the same Court irrespective of the nature of the offence involved.” Moreover, reverting to the facts of the case, the summons annexed with the lower court record, reveals that it were never issued to the Dr. S.P. Singh, Medical Officer, Civil Hospital Payal, and Kulwinder Singh another eye-witness, whereas summons issued to SI Balkar Singh I.O., of the case, issued for his evidence on 06.02.2013 were received with the report that “he could not be met as he was not present at home” and thereafter, again summons for his appearance was issued on 23.07.2013 for 26.07.2013 which was received with the report that “He has retired and settled at Shanti Vihar Maqsudan, Jalandhar and hence could not be served due to short time.” Thereafter evidence of prosecution was closed by order. Furthermore, perusal of record shows that after Daljit Singh, testified in Court, his presence was not procured by adopting coercive methods though he was served throughailable warrants.*

16. *Therefore in the light of dictums of Hon'ble Apex Court in Sudhir vs State of M.P. (supra) and State of*

M.P. vs Mishrilal (supra), coupled with totality of facts, the criminal appeal is allowed and judgment dated 03.08.2013 is hereby set-aside. The case is remanded back to the trial Court with a direction to afford sufficient opportunity to the prosecution as well as to the accused to examine, re-examine or cross-examine any witness, and thereafter, the trial Court shall dispose off the same strictly in accordance with law keeping in view the cross-case. In any event, the trial Court shall expedite the disposal of the case. Both the parties are directed to appear before the Successor Court of Sh. Gurbir Singh, Judicial Magistrate Ist Class, Ludhiana on 06.10.2014. The lower Court record be sent back. File be consigned to the record room.”

Counsel for the petitioners has submitted that he do not challenge the proposition of law that the version and cross-version need to be decided together by the same Court, however, has assailed the finding of the Lower Appellate Court in remanding the case back to the trial Court by allowing the complainant to lead further evidence. It is further submitted by counsel for the petitioners that statement of PW1 – Daljit Singh, in examination-in-chief was recorded on 10.07.2012 and on the request of the defence counsel, he was bound down for 01.10.2012 for cross-examination and thereafter, on various dates he never appeared for completing his cross-examination. It is further submitted that two Pws i.e. PW2 – Dharamjit Singh and PW 3 – Sonu have not supported the prosecution version and, therefore, the trial Court has rightly discharged the petitioners. It is also submitted on behalf of the petitioners that the evidence of the complainant was closed by the Court order in view of the fact that the prosecution has

failed to examine all the witnesses despite availing number of opportunities. It is also submitted that the observation made in the impugned order of remand that it will be open for the prosecution to examine, re-examine or further cross-examination of the witnesses would tantamounts to *de novo* trial is not legally permissible as it amounts to exercise of power under Section 311 Cr.P.C. without there being any such prayer.

Counsel for the State as well as counsel for the respondent/complainant have submitted that the FIR and the cross-version were being tried together and therefore, decision of the cross-version separately was legally not maintainable. In support of this argument, counsel for the respondent/complainant has relied upon the judgment passed by the Hon'ble Supreme Court "***State of M.P. vs Mishrilal (Dead) and others***", 2003(3) RCR (Criminal) 287 to contend that in case of a version and cross-version of FIRs, the Judge must try both the cases one after the other and after hearing the arguments in one case, the Judge must reserve the judgment and in similar manner, the argument be heard in the second case and the Judge must dispose of the matter by two separate judgments in order to avoid conflicting judgments over the same incidents.

Counsel for the respondent/complainant has also relied upon the judgment "***Sudhir vs State of M.P.***" 2001(1) RCR (Criminal) 743 wherein similar view has been taken by the Hon'ble Supreme Court.

It is further submitted on behalf of the respondents that the complainant is 90 years old man and is appearing in the cross-case and,

therefore, there was no occasion for the complainant not to appear for completing the cross-examination. Counsel for the respondents has further argued that a perusal of the record show that statement of three more witnesses namely Dr. S.P. Singh, Medical Officer, Civil Hospital, Payal, Kulwinder Singh another eye-witness and the Investigating Officer SI Balkar Singh could not be recorded because summons were never issued to Dr. S.P. Singh and Kulwinder Singh by the trial Court and on the summons of SI Balkar Singh, Investigating Officer, there was a report that he was not served and thereafter, there was another report that he could not be served at his official residence as he is residing at Jalandhar since he has retired. It is, thus, submitted that the trial Court without effecting the service of summons on the aforesaid three witnesses has closed the evidence of the prosecution and has not adopted the procedure of issuing summons/warrants to these persons for procuring their presence.

After hearing counsel for the parties, I find no merit in the present revision petition as admittedly, the cross-version in the FIR is still pending and is at the stage of recording the prosecution evidence and the next date of hearing is 16.02.2018 as stated by counsel for the State. It is not disputed by counsel for the petitioners that summons were never issued to Dr. S.P. Singh, Medical Officer and another eye-witness Kulwinder Singh. So far as the Investigating Officer SI Balkar Singh is concerned he was also not served as twice the report on the summons was that he could not be served as he has settled in Jalandhar after his retirement, therefore, in view of the judgments i.e. ***State of M.P.'s case (surpa)*** and ***Sudhir's case (supra)*** passed by the Hon'ble

Supreme Court, the trial Court was required to decide the version and cross-version cases in the FIR together on the same day.

However, it is clarified that the directions given by the Lower Appellate Court vide impugned order dated 29.09.2014 that after the remand, the prosecution and the accused has a right to examine, re-examine or cross-examine any witness cannot be given a matter of right with regard to the witnesses which have already been recorded. Therefore, it is clarified that no right to re-examine, cross-examine is given qua the witnesses whose statement is already recorded and is complete and the complainant – Daljit Singh will be afforded one opportunity to complete his cross-examination whereas the trial Court will grant only two effective opportunities to the prosecution for recording the evidence of Dr. S.P. Singh, Kulwinder Singh and SI Balkar Singh.

With the aforesaid modification, the present revision petition is dismissed.

08.02.2018
yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No