

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

**CRR-2784-2016 (O&M)**

**Date of decision: February 12, 2018**

**Ram Kanwar and others**

**....Petitioners**

**Versus**

**State of Haryana and another**

**....Respondents**

**CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI**

Present: Mr. Ashwani Bakshi, Advocate  
for the petitioners.

Mr. Raj Kumar Makkad, DAG, Haryana  
for respondent No.1-State.

Mr. D.K. Tuteja, Advocate  
for respondent No.2.

**RAJ SHEKHAR ATTRI, J.(ORAL)**

This is a revision petition filed by all the accused assailing judgment dated 5<sup>th</sup> July, 2016 passed by learned Additional Sessions Judge, Rohtak vide which application under Section 391 Code of Criminal Procedure (for short 'the Code') was allowed and case was remanded with a direction to record additional evidence and thereby up set the judgment of acquittal passed by learned Magistrate.

The facts of the case lies in narrow compass. Petitioners were facing trial for the offence under Section 325 read with Section 34 of Indian Penal Code. Learned trial Magistrate closed the prosecution evidence and acquitted the petitioners of the charges framed against them. Therefore, the complainant/respondent Inderjeet preferred criminal appeal before Sessions Court, Rohtak which was allowed and thereby order of acquittal dated 12.02.2015 has been *set aside* and the case was remanded to the trial

Magistrate with a direction to give sufficient opportunity to the prosecution witnesses and decide the case afresh on merits.

I have heard learned counsel for the parties and have gone through the record.

Learned counsel for the petitioners has submitted that order of acquittal cannot be disturbed lightly; and in exceptional circumstances. To substantiate this plea, he has placed reliance upon the judgment of the Hon'ble Supreme Court in case *K.K. Bhardwaj Vs. Union of India, 2000(4) RCR(Criminal) 653* wherein it has been observed that as per Section 309(1) of Code of Criminal Procedure, 1973 and as per Article 21 of Constitution of India, a magistrate is empowered to close prosecution evidence when prosecution is unable to produce its witnesses inspite of repeated opportunities.

Learned counsel for the complainant as well as learned State counsel has submitted that impugned order passed by learned Additional Sessions Judge is speaking one and well reasoned whereas the trial court not only violated the principle of natural justice but made incorrect observations with regard to presence of the witnesses.

This court has given its thoughtful consideration to the rival contentions. Various interlocutory orders of trial court have been placed on record which transpires that witnesses remained present but learned Magistrate failed to record their evidence on 20.12.2011 i.e. the first date for recording evidence but on that day the accused, namely, Ram Kanwar, Ishwar, Ashok and Krishan were absent, therefore, their bail bonds were cancelled and surety bonds forfeited to the State. On next date of hearing, accused appeared and it was ordered that prosecution witnesses be

summoned for 08.08.2012 but on 08.08.2012, it has been observed that only Sub Inspector Ram Karan and EHC Sh. Bhagwan were present and examined as PW-1 and PW-2 and no other witness was present. Surprisingly, under the same order two witnesses namely, Inderjeet and Bharamjeet, have been shown present and they signed the order-sheet in order to put their presence. These witnesses were also present on 12.10.2012 but they were not examined without any reason. Similarly, in order dated 14.02.2013, it is mentioned that no prosecution witness is present and bailable warrants were issued against them. Astonishingly, this order-sheet has been signed by four witnesses namely, Ram Kanwar, Ishwar, Ashok and Krishan but no reason has been assigned why their names are not mentioned in the order and why they have not been examined. Similarly, in order dated 21.05.2013, it is mentioned that two prosecution witnesses present and thus have been examined, except them no other witness is present but this order sheet also signed by four witnesses but their names are not mentioned in the order. Similarly, is the position with regard to the orders dated 13.08.2013, 08.11.2013, 11.03.2014, 20.05.2014, 04.09.2014 and 13.11.2014 which transpire that witnesses were present but trial court did not mark their presence or fail to record the evidence without any cogent reason. Thus, the prosecution has not been given adequate opportunity by learned trial magistrate.

According to Section 386 of the Code, appellate court has ample power to order re-trial. Thus, provision reads as follows:-

- (a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

- (b) xxx
- (c) xxx
- (d) xxx
- (e) xxx

However, this court is of view that there were exceptional circumstances before the trial court which compelled to remand the case for adducing prosecution evidence. However, the facts in case *K.K. Bhardwaj's case* (supra) are distinguishable. There is no dispute with regard to powers of criminal court to order for closing prosecution evidence but in the case in hand the trial court acted in an unfair and improper manner by not recording the evidence of witnesses. Firstly, by not recording the evidence of the witnesses; secondly, not marking the proper presence of the witnesses who were present on the particular date rather those were shown absent and thirdly, trial court failed to procure the presence of the witnesses which earlier appeared but returned unexamined.

To the mind of this court, the impugned order passed by learned Additional Sessions Judge, Rohtak does not suffer from any infirmity, illegality or irregularity and the same does not call for any interference. As such, this petition being devoid of merits stands dismissed.

**(RAJ SHEKHAR ATTRI)**  
**JUDGE**

**February 12, 2018**  
*m. sharma*

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