

Crl. Rev. No. 3970 of 2017 (O&M)

-/-

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

**Crl. Rev. No. 3970 of 2017 (O&M)
Date of decision : 10.05.2018**

Surinder Mohan Behal and another

.....Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Argued by: Mr. Sangram Singh, Advocate
for the petitioners.

Mr. Arun Kumar, AAG, Haryana.

Mr. Ankit Rana, Advocate
for the complainant.

ANITA CHAUDHRY, J.

The petitioners have impugned the judgment dated 15.09.2017, vide which the Additional Sessions Judge, Yamuna Nagar remanded the case back to the trial Court for passing afresh judgment on the basis of the evidence already led.

The backdrop is necessary. Complainant Shobha Bahal lodged a complaint against her husband Vivek Bahal her father-in-law, Surinder Mohan Bahal, mother-in-law and Aruna Bahal & others. The FIR was registered under Section 406, 498-A IPC. Challan was submitted only against the husband, the father-in-law and the mother-in-law whereas the sister-in-law's name was kept in column no.2. Charge was framed against the accused on 05.11.2007. The prosecution witnesses were examined and

Crl. Rev. No. 3970 of 2017 (O&M)

-2-

the statement under Section 313 Cr.P.C. was recorded of the accused who were charged. The trial Court convicted the accused but instead of giving the name of the mother-in-law, the name of the complainant was mentioned in the heading of the judgment and even in the concluding paragraph. The Magistrate pronounced the sentence on 27.03.2014 mentioned one of the convicts as Shobha Bahal. She in fact was the complainant. Noticing the mistake which indeed was a clerical one, an application was promptly moved by the complainant seeking correction in the name of the accused. The Magistrate without even bothering to see the charges and the statement of the accused recorded under Section 313 Cr.P.C. referred to the challan where the police had blundered and had named Shobha Bahal as one of the accused who in fact was the complainant. The Court rejected the application on 22.04.2014. An appeal was preferred by the in-laws and they also took an objection in para 24 of the appeal that the trial Court had named the complainant as wife of Surinder Mohan and she had been convicted instead of Aruna Bahal and therefore, entire judgment was liable to be set aside. The Additional Sessions Judge set aside the judgment and passed the following order:-

“Be that as it may, the fact remains that the impugned judgment of conviction and the impugned order of sentence are suffering from patent illegality and irregularity wherein a wrong person, not other than the complainant, has been held guilty and convicted vide judgment dated 24.3.2014 and has also been awarded sentence vide order dated 27.3.2014 whereas no judgment or order has been passed against the

Crl. Rev. No. 3970 of 2017 (O&M)

-3-

person who has actually been arraigned as accused and thus, in order to get the error/mistake rectified and to meet the ends of justice, the solitary option left with this Court, being appellate Court, is to remand the case back to the learned trial Court for passing of fresh judgment/verdict, in accordance with law on the basis of the evidence/material already available on the file of this case as all the proceedings of trial were done in the presence of accused Surinder Mohan Bahal and Aruna Bahal, who were facing trial before the learned trial Court.”

The above would show that the Additional Sessions Judge remanded the case back to the trial Court for passing a fresh judgment on the basis of the evidence and material already on record noticing the fact that the charge had been correctly framed and the statement recorded under Section 313 Cr.P.C. was of the accused.

The present revision has been filed by the accused aggrieved with the order. They have also referred to the fact that the Appellate Court during the hearing had asked the complainant if she wanted any compensation and in case the accused did not pay then he would uphold the order. The accused approached the Sessions Judge seeking transfer of the case. That application was dismissed.

I have heard counsel of both the sides.

Counsel for the petitioners contends that the Additional Sessions Judge had no power to remand the case back to the Magistrate and he could only dismiss the appeal or reverse the finding as detailed in Section

Crl. Rev. No. 3970 of 2017 (O&M)

-4-

386 Cr.P.C. The counsel however admits that the name of the complainant was shown as an accused on the title page and even where the sentence order had been passed. It was stated that the police had made a mistake when they submitted the challan and had shown Shobha Bahal as one of the accused though she was the complainant. The counsel submits that the case could not be remanded for rewriting a judgment which is illegal and inconsistent and the appeal ought to have been decided on merits. Reliance was placed upon *Pratul Chaudhary and others Vs. The State* 1979 CriLJ 103, *Santoo Ram Vs. State of another* 1970 AII. LJ 1359, *Md. Bashir Ahmad Vs. State* 1961 AIR (Patna) 252, *Inderbhan Ahuja & others Vs. State of Rajasthan* 2008(27) RCR (Criminal) 468, *Shobhit Aggarwal Vs. State of Rajasthan through P.P. And anr.* 2017(3) Cri.L.R. 1401, *Dina Nath Mishra Vs. State of U.P.* 1988(2) Crimes 688, *Ashok Kumar Vs. State* 1990(1) RCR (Criminal) 165, *Amrik Singh & ors. Vs. The State of Punjab* 1983(1) RCR (Criminal) 445, *Mohinder Singh & ors. Vs. State of Punjab and anr.* 1985(1) RCR (Criminal), *Municipal Committee, Amritsar Vs. Shri Labhu Ram and others* 1970 CriLJ 553, *Kaur Singh Vs. State of Punjab* 1993(3) RCR (Criminal) 415, *Jitendra Nath Bose Vs. State* 1991 CriLJ 922 and *Yash Pal Vs. State of Punjab* 1989(1) RCR (Criminal) 463.

On the other hand, the submission is that after the Additional Sessions Judge noticed that the complainant had been convicted it rightly remanded the matter for rectifying the mistake/error committed by the trial Court. It was urged that the Magistrate had made a mistake when it dismissed the application filed for correction and there is a provision in the Criminal Procedure Code which allows the Court to correct the clerical mistakes which appear in the judgment and this was a clerical mistake and

Crl. Rev. No. 3970 of 2017 (O&M)

-5-

the trial Court could have remedied it in the first instance as the charges were framed against the mother-in-law and the Court failed to peruse the record to find how the mistake had occurred and had wrongly dismissed the application. It was urged that in the appeal filed by the accused, the accused had taken a ground that there was a mistake in the judgment and after the remand the trial Court has heard the parties and has recorded a conviction and the petitioners have already preferred an appeal and it is pending before the First Appellate Court and this petition has been rendered infructuous.

The petitioners were to place on record the copy of the challan, the copy of the order vide which charge was framed, the copy of the appeal filed by them as well as the copy of the application filed under Section 362 Cr.P.C. seeking correction of the name. All the documents have now been placed on record.

On perusal of the documents it is found that it is indeed atypical situation where an error on the part of the trial Court has led to this situation. Had the Magistrate paid more attention and had gone through the record, the correction could have been made then and the parties would not have been in this state. It has led to loss of time not only for the parties but the Court.

In the challan the police had wrongly named the complainant as one of the accused but charge was framed against the husband, mother-in-law and father-in-law. The then Judicial Magistrate, Yamuna Nagar while convicting the accused wrongly referred Shobha Bahal as an accused and the fact is that the complainant has been convicted instead of the mother-in-law. The mistake was in the heading of the judgment as well as in the order of sentence. The complainant immediately filed an application seeking

Crl. Rev. No. 3970 of 2017 (O&M)

-6-

correction but the Magistrate before whom the file was put up, perhaps in a hurry failed to notice that his predecessor Court had convicted the complainant instead of the mother-in-law. In appeal filed by the mother-in-law and the father-in-law and they took up a ground that the name of the complainant had been mentioned in the title page as well as in the conviction order and the complainant had been shown to be the wife of Surinder Mohan whereas he (Surinder Mohan) was the father-in-law and therefore, the judgment was liable to be set aside. There was indeed a mistake and it had to be rectified. The petitioners' contention is that the matter could not be remanded as the power of remand is not provided in any Section in the Criminal Procedure Code. In other words, the contention is that remand or further trial is not contemplated by Section 386 Cr.P.C.

An order of retrial wipes out from the record the earlier proceedings and exposes the accused to another trial and it can give the prosecutor an opportunity to rectify the infirmities. There was no occasion in the circumstances of the case to order a retrial or a fresh trial as the charge had been correctly framed against the accused. The names of the accused were correctly shown even in the statement recorded under Section 313 Cr.P.C. The mistake only arose at the time of writing the judgment and the appellate Court had the jurisdiction which was sufficiently wide to authorise retrial from the point at which the error or illegality in the trial had been committed.

The Full Bench of this Court in [Dara Singh vs. The State](#), AIR 1952 Punjab 214 and the Assam High Court in [Nirmal Prasad Barua vs. The State](#), AIR 1952 Assam 2 and a single Judge of the Patna High Court in

Crl. Rev. No. 3970 of 2017 (O&M)

-7-

[Pannalal Kedia vs. Nebi Singh](#), 1968 Cri LJ 1524, hold that retrial does not necessarily mean fresh trial and when retrial is ordered it does not mean there is to be a *de novo* trial from the very beginning and it depends on the facts and circumstances of the case as from what stage retrial could be ordered to be conducted. K. [Chinnaswamy vs. State of A.P.](#), AIR 1962 SC 1788 is an authority for the position that trial Court can be directed to rehear the case on the evidence already on record.

Again in Mahendra Pratap Singh Vs. Sarju Singh AIR 1968 SC 707, Mariyam Vs. State of Kerala, 1961 CrLJ 97 and Kunjan Sivan Vs. State of Kerala, 1969 Ker LT 602, it was held that the expression "retrial" used in [Section 423\(1\)\(a\)](#) of the Code (1898 Code) includes limited or partial retrial, from the stage at which the error or illegality crept in and/or it can be restricted even to hearing and appreciation of evidence already on record.

In my view what the first Appellate Court intended was to send the file back to the trial Court to rehear the case on the basis of the evidence already led, which was perfectly in order and the accused could not have been made to undergo the ordeal of *de novo* trial. An order for limited retrial was the only remedy in the peculiar set of the facts. The order cannot and should not be set aside only because the First Appellate Court had used the word "remand" in the order. There was nothing illegal in the order passed by the appellate Court. The accused abided by the "remand order" and participated in the trial before the trial Court and the trial Court recorded a judgment of conviction and that judgment has also been challenged and the matter is pending before the First Appellate Court. There

Crl. Rev. No. 3970 of 2017 (O&M)

-8-

are no grounds to interfere.

The petition is dismissed.

10.05.2018
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No