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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-4396-2017 (O&M)
Date of Decision: 04.10.2018

Sukhpal **...Petitioner**

Versus

State of Haryana and others **....Respondents**

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Sushil Jain, Advocate
for the petitioner.

Mr. Yashwinder Singh, DAG, Haryana.

Mr. Atul Pratap Dhankar, Advocate
for respondent Nos. 2 to 9.

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RAMENDRA JAIN, J. (ORAL)

Through this petition, challenge has been laid to the judgment dated 16.10.2017 passed by the learned Sessions Judge, Sonepat setting aside the judgment of conviction dated 22.05.2014 and order of sentence dated 26.05.2014 of the trial Court.

Briefly, respondents No. 2 to 9 along with their co-accused Randhir and Mahabir, impleaded as respondents No. 9 and 10 in the connected petition i.e. CRM-M-4438-2017, were booked vide FIR No. 291 dated 01.10.2006 under Sections 148, 323, 324, 326 and 506 read with Section 149 of IPC, registered at Police Station Ganaur. During investigation, respondents No. 9 and 10 in the connected petition, were found innocent. Therefore, final report under Section 173 (2) Cr.P.C.

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was filed against respondents No. 2 to 9, who were charge-sheeted accordingly.

During trial, upon the application of the prosecution under Section 319 Cr. P.C. aforesaid respondents No. 9 and 10, namely Randhir and Mahabir, were summoned as additional co-accused to face trial. After holding trial, the trial Court convicted respondents No. 2 to 9 under Sections 148, 323, 324, 325 and 506 read with Section 34 of IPC and acquitted under Section 326 IPC, vide judgment of conviction dated 22.05.2014 and they were ordered to undergo maximum rigorous imprisonment of two and a half years vide order of sentence dated 26.05.2014. However, accused No. 9 and 10, Randhir and Mahabir were acquitted of all charges framed against them.

Being dissatisfied, respondents No. 2 to 9 and complainant approached the First Appellate Court by way of their respective appeals.

First Appellate Court, while dismissing the appeal of the complainant and relying upon the appeal of accused Nos. 2 to 9, remanded the case to the trial Court with direction to re-examine all the prosecution witnesses by giving opportunity to the accused to cross-examine them before recording their statements afresh under Section 313 Cr.P.C. followed by defence evidence and then to pass a fresh judgment in accordance with law.

The only grouse of the petitioner is that the impugned order of First Appellate Court has made the trial *de novo*. First Appellate Court was only concerned about not affording any opportunity to the

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accused to cross-examine the witnesses who were examined after summoning of additional accused. Therefore, at the most, the trial Court ought to have given opportunity to the accused for cross-examination of the witnesses recorded after summoning of the additional accused under Section 319 Cr.P.C.

Having given anxious consideration to the submissions made by both the sides and considering the facts and circumstances of the case, the impugned direction of the First Appellate Court to the trial Court for re-examination of the prosecution witnesses is set aside/modified to the effect that the trial Court shall afford an opportunity to the accused to cross-examine all the prosecution witnesses whose statements were recorded, afresh after summoning of additional accused.

The trial Court is directed to dispose of the matter at the earliest, if possible, by taking the case on day to day basis.

Disposed of with the above directions and observations.

4th October, 2018 **[RAMENDRA JAIN]**
shabha **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*

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