

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

CRR-463-2018

Date of decision:- 27.2.2018

Jaswinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sameer Sachdeva, Advocate
for the petitioner.

Mr.Saurav Khurana, AAG, Punjab.

H.S. MADAAN, J.

This revision petition is directed against the judgment dated 3.11.2017 passed by Sub Divisional Judicial Magistrate, Nihal Singh Wala vide which while acquitting accused of the charge, a direction has been issued to the department for initiating proceedings against petitioner Jaswinder Singh, presently working as Superintendent of Police (Assistant Commandant), 5 Commando Battalion, Camp at Bathinda, District Bathinda and other police officials.

Briefly stated, facts of the case are that Rajesh Sharma and

Harpreet Singh @ Giani were booked in FIR No.89 dated 27.9.2012 for offences under Sections 420, 482, 483, 485 IPC and Sections 103 and 104 of Trade Mark Act, 1999, Police Station Nihal Singh Wala; that they were sent up to face trial on the allegations that on 26.9.2012 when SI Jaswinder Singh along with other police officials was present at Madheke Chowk, Nihal Singh Wala in connection with patrolling, he received a secret information that Rajesh Sharma, residing at Pakhowala Road, Ludhiana near village Phulla Wala in Chabbra Colony used to supply duplicate cement of different brands in different cities and also used duplicate bags of different cement companies for that purpose; that in addition to that he was printing and publishing a newspaper under the name and style of "Punjab Ki Shakti" and on that day, he was coming with duplicate cement loaded in a truck bearing registration No.PB04D-9896 from Pakho Kanchia side going towards Moga and Rajesh Sharma would be following the truck in his Mahindra SUV; that finding the information reliable, the police party laid a *NAKA* at Himmatpura bus stand at about 10:00 p.m.; that the truck in question with cement bags and Mahindra SUV having accused Rajesh Sharma as occupant were intercepted. The case was investigated. During investigation, Jaswinder Singh Gharu, DSP Nihal Singh Wala had taken into possession the truck in question and on 28.9.2012, he had arrested accused Rajesh Sharma, who was released on bail by this Court. After completion of investigation, challan was prepared and filed in the Court.

The trial against the accused proceeded and the trial Court vide impugned judgment acquitted the accused of the charge framed

against them finding that when the truck in question was already lying parked at Police Station Nihal Singh Wala on 25.9.2012 and was released on *superdari* on 30.7.2013, as had transpired during the trial then the version of the prosecution that truck had been taken into possession on 26.9.2012 at about 10:00 p.m. stands shattered. It was further observed that SI Jaswinder Singh in active connivance with the then DSP Jaswinder Singh Gharu and other police officials to save their skins since the accused did not concede their illegal demand of bribe had told the police officials that they would approach this Court against atrocities of the police. The trial Court while saying so has referred to cross-examination of petitioner Jaswinder Singh, who was the Investigating Officer of the case besides other prosecution witnesses and depositions of the witnesses examined in defence by the accused. Paras No.44 and 45 of the judgment are relevant and are reproduced as under for ready reference:

No explanation was given by the police much less by Jaswinder Singh Gharu the then DSP, Nihal Singh Wala as to why the prosecuting agency choose to file challan on 29.08.2013, before this court, despite the fact that he had admitted in his evidence that he had conducted the investigation of this case and he was well aware of the fact that this truck with its consignment was already taken in police custody on 25.09.2013. The prosecuting agency through him had approximately one year at their disposal and despite having being aware of the true facts of the case, he choose to recommend for filling of the challan before the

court, rather than recommending departmental action against the erring officials and further recommending filling of cancellation report.

From the above said discussion the belief of this Court stands strengthen in the submissions put forth by the learned defence counsel that all these police officials involved in the present case were demanding bribe from the accused and the accused did not buzz to and consequently they were falsely implicated in the present case. The entire version of the prosecution is nothing, but a bundle of lies and this FIR and the consequential proceedings carried out by the investigating agency is nothing but total misuse and abuse of the process of law and the power vested by law in these police officials. These police officials/officers have no sanctity for law as they still tried to affirm their false story even on oath before this Court, which was totally shattered by the learned defence.

In the concluding para No.52, the trial Court has observed as follows:

In the light of the law as laid down in Shyam Sunder (supra), Kishan Bahi (supra) and Prem Chand (supra) and the direction's issued by the Hon'ble Supreme Court, this Court finds that SI Jaswinder Singh No.39/Moga, ASI Sukhmander Singh No.20/Moga, Jaswinder Singh Gharu, present SP(Headquarter), Faridkot, are the erring police officials in

the present case and they have falsely lodged the present FIR and carried out the other consequential proceedings against the accused, despite being well aware about the truth of the present case. They choose to put the life and liberty of the accused to jeopardy by involving them in this case. As such, copy of this judgment be forwarded to learned DGP, Punjab and learned SSP, Moga and SSP, Faridkot for initiating departmental proceedings against these erring police officials under intimation to this Court. In case these erring officials are not posted in their Districts, the copy of this judgment be accordingly forwarded to the concerned SSP within whose jurisdiction/District these officials are posted.

Such observations left the petitioner aggrieved and he has filed the present revision petition, notice of which was issued to the respondent – State, which put in appearance through counsel.

Learned State counsel has filed reply to the petition.

After hearing learned counsel for the revisionist and learned State counsel and going through the record, I do not find any illegality or infirmity with the impugned order especially regarding issuance of directions to the concerned department for initiating proceedings against erring police officials including the present petitioner.

It is well settled law that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in

the matter is possible, no inference with such judgment is to be done.

Finding no merits in the petition, the same stands dismissed.

27.2.2018

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No