

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-7019-2016

Date of decision: 12.03.2019

Gurbax Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. KS Sidhu, Advocate for the petitioner.

Mr. Harpreet Multani, AAG, Punjab.

RAMENDRA JAIN, J. (ORAL)

Pursuant to the order dated 10.12.2018, learned counsel for the petitioner has produced coloured photocopy of receipt dated 17.12.2018, qua deposit of Rs.1,00,000/-, with the learned Chief Judicial Magistrate, Jalandhar. The same is taken on record. Be tagged at the appropriate place.

Through this petition under Section 482 Cr.P.C., prayer has been made for quashing impugned judgment dated 08.02.2016 (Annexure P-5) of the Ist Appellate Court, whereby it accepting the application of prosecution under Section 391 Cr.P.C. (Annexure P-3), remanded the case to the trial Court, for recording statements of two prosecution witnesses, namely; PW-1 Gurinder Singh and PW-4 ASI Narinder Ralh, afresh and thereafter, further re-record the statement of accused under Section 313 Cr.P.C., before deciding the case on merits.

Briefly, on the complaint of respondent No. 2-Gurinder Singh, the petitioner was booked and tried in case FIR No. 127 dated 29.06.2008, under Sections 324 and 326 IPC, Police Station Goraya, on the allegations that in the early morning of 24.06.2008, the petitioner and his son Navjot Singh, had caused injuries to respondent No. 2-complainant with spade, when he requested them to stop over flow of water of their fields into his fields damaging his crops.

After holding trial, vide judgment of conviction and order of sentence dated 13.02.2015 (Annexure P-1) the petitioner was held guilty under Section 326/34 IPC and sentenced to undergo rigorous imprisonment for two years and pay a fine of Rs.5000/-. In default thereof, further undergo rigorous imprisonment for 7 days.

Being aggrieved, the petitioner preferred appeal against his conviction. During its pendency, respondent No. 2-complainant moved application under Section 391 Cr.P.C. (Annexure P-3) for further cross-examination of two witnesses, namely; PW-1 Gurinder Singh and PW-4 ASI Narinder Ralh, which was allowed by the Ist Appellate Court vide impugned order (Annexure P-5). Resultantly, the case was remanded to the trial Court to record their statements afresh and further re-record the statement of accused under Section 313 Cr.P.C., before deciding the case on merits.

Learned counsel for the petitioner *inter alia* contends that the Ist Appellate Court, failed to appreciate that application of respondent No. 2-complainant under Section 319 Cr.P.C., to summon son of the petitioner, namely; Navjot Singh, as additional accused was dismissed by

the trial Court vide order dated 09.07.2010, which attained finality up to this Court. Respondent No. 2-complainant is a vigilant litigant. He did not ever file any application under Section 311 Cr.P.C. for recalling of any of the prosecution witnesses, during trial. Respondent No. 2-complainant even did not offer himself for cross-examination, besides PW-4 ASI Narinder Ralh, despite availing 37 effective opportunities by the prosecution, including 9 last ones.

On the other hand, learned State counsel vehemently opposed the above submissions of learned counsel for the petitioner.

Having given thoughtful consideration to the rival submissions, this Court finds the instant petition merits acceptance, for the reasons to follow:

Respondent No. 2 was got served notice of this petition through ASI Charanjit Singh, so as to afford him an opportunity of hearing. He was also orally informed in the presence of Sarpanch of village, but he refused to come present. Therefore, it can safely be inferred that respondent No. 2 is not interested in pursuing the instant litigation.

As discussed above, the petitioner has been convicted and sentenced by the trial Court, under Section 326/34 IPC for a period of two years. Respondent No. 2 has not filed any counter appeal for enhancement of his sentence. Therefore, remanding the case by the Appellate Court, to the trial Court to record statements of aforesaid two prosecution witnesses afresh, would completely be a futile exercise, inasmuch as, conviction of the petitioner would remain unchanged.

In view of the discussion made above, the impugned judgment dated 08.02.2016 (Annexure P-5) of the Ist Appellate Court, is set aside. The Appellate Court is directed to decide the appeal on merits afresh, while considering the *bona fides* and good gesture of the petitioner of his depositing Rs.1,00,000/- before the Chief Judicial Magistrate, Jalandhar, as compensation for onwards payment of the same to respondent No. 2, in case, he wishes to accept and withdraw the same.

Disposed of.

March 12, 2019
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(RAMENDRA JAIN)
JUDGE

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