

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

**Crl. Misc. No.M-9211 of 2017 (O&M)
Date of Decision: November 16, 2019**

Gurmit Kaur and others

.....PETITIONERS.

VERSUS

State of Punjab and another

....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. G.K.Maam , Advocate
for the petitioners.

Mr. Rakeshinder Singh Sidhu, A.A.G, Punjab.

Mr. Sonpreet S. Brar, Advocate
for respondent No. 2.

SURINDER GUPTA, J.(Oral)

Heard.

Gurnam Singh son of Swaran Singh, Gurmit Kaur wife of Gurnam Singh, Kala Singh son of Swaran Singh, Jaswinder Kaur wife of Gurnam Singh, Kulwinder Kaur wife of Gurnam Singh, Satwant Singh son of Gurnam Singh, Abdul Alam (proclaimed offender), Kirpal Singh, ASI, Dina Nagar faced trial in a complaint filed by respondent No. 2-Joginder Singh. The trial ended in conviction of Gurnam Singh for the offences punishable under Sections 326 and 323 of Indian Penal Code and acquittal of remaining accused except those who have died or were declared proclaimed offender.

Before proceedings further, it will be relevant to take a note of

submission of learned counsel for the petitioner that Jaswinder Kaur and Kulwinder Kaur have been wrongly mentioned as wife of Gurnam Singh while infact they are daughters of Gurnam Singh. Memo of parties be amended accordingly.

Not satisfied with judgment of trial Court, Gurnam Singh filed an appeal against the judgment of his conviction, which was heard and decided by learned Additional Sessions Judge, Gurdaspur. The appeal was disposed of vide judgment dated 10.01.2017 in following terms:

“As a sequel to my findings above, appeal filed by appellant/accused succeeds and is hereby allowed. Impugned judgment and order of sentence passed by ld. Trial Court is set aside and matter is remanded back to Successor Court of learned Chief Judicial Magistrate, Gurdaspur to decide the present case afresh along with cross case after giving two clear opportunities to appellant/accused to adduce any further defence evidence, if so desired. As the matter is an old one and pertains to the year 2002, learned Trial Court is directed to decide the same expeditiously and preferably before 31.3.2017 as most of the evidence has already been led. Record of Trial Court be sent back to the court of Ld. CJM, Gurdaspur well before the date fixed with a copy of this judgment for necessary compliance. Parties are directed to appear before learned Chief Judicial Magistrate, Gurdaspur on 30.1.2017 at 10 A.M. sharp.”

As per order of the learned Appellate Court, the case was taken up for defence evidence by learned trial Court, wherein an objection was raised by counsel for the complainant-Joginder Singh that vide order dated 10.01.2017, the judgment and order of sentence dated 05.10.2013 was set aside, as such all the accused be summoned again to face trial.

Learned trial Court vide order dated 20.02.2017, ordered summoning of remaining accused namely Gurmit Kaur, Jaswinder Kaur, Kulwinder Kaur and Kirpal Singh, who had earlier been acquitted.

Learned counsel for the petitioners submits that acquittal of the petitioners was never challenged before any Court and had attained finality. They were not party before the Appellate Court or were called and heard, before setting aside the judgment of conviction of Gurnam Singh. The appellant before the Additional Sessions Judge, Gurdaspur, was Gurnam Singh only whose appeal was accepted with specific directions to him to appear before the trial Court, lead defence evidence and trial Court was directed to decide the case afresh. As such, there was no reason for the trial Court to summon the petitioners, who had already been acquitted in this case.

Learned counsel for the respondent while referring to the observations of learned Appellate Court in paras No. 17, 18 and 21 has argued that the reason for remand of the case by the Appellate Court was that the complaint filed by Joginder Singh and cross-case bearing FIR No. 37 dated 16.04.2002, registered at Police Station Dhariwal be finally decided by the same Court. Earlier these two cases were decided by the different Courts and Appellate Court was of the view that while deciding the cases separately, the Court was not in a position to see the version of other party in the cross-case. Once the judgment has been set aside and the case has been remanded it was required to be decided afresh against all the accused named and summoned in the complaint.

It is not disputed that there were two separate criminal cases,

one filed by Joginder Singh and another pertaining to FIR No. 37 dated 16.04.2002 registered at Police Station Dhariwal on the statement of Gurnam Singh. The complaint case was decided vide judgment dated 05.10.2013 by the then Chief Judicial Magistrate, Gurdaspur while the State case was decided by Judicial Magistrate Ist Class, Gurdaspur vide judgment dated 06.02.2013.

In the complaint, filed by Joginder Singh, only Gurnam Singh was held guilty, convicted and sentenced. The acquittal of other accused in that case was never challenged by the complainant before the Court of appeal. Gurnam Singh had filed appeal challenging his conviction which was decided by Additional Sessions Judge, Gurdaspur vide judgment dated 10.01.2017. The case was remanded to the trial Court to decide the same afresh with direction to the trial Court to give two clear opportunities to appellant/accused (Gurnam Singh) to adduce further evidence. It is clear from the perusal of the order contained in para 24 reproduced as above that the appeal of Gurnam Singh was allowed and judgment of his conviction was set aside. Learned trial Court was directed to give two opportunities to Gurnam Singh to lead defence evidence and then to decide the case again. The judgment of learned Additional Sessions Judge, Gurdaspur does not utter even a single word about the accused acquitted by the trial Court or say that they be also summoned again to face trial. Even otherwise, no such order could be passed by the Appellate Court in their absence. The judgment was set aside qua Gurnam Singh only and not of acquittal of other accused.

Now a question which arises for consideration is as to whether

the accused whose acquittal has attained finality and was not challenged by the complainant can be recalled to face trial, merely because the conviction of other co-accused has been set aside? Whatever, may be the reason for learned Appellate Court to set aside the conviction of Gurnam Singh and accepting his appeal, the accused, who were acquitted were neither party to that appeal nor heard and learned Appellate Court has not passed any order for their summoning while sending the case back to the trial Court. The tone and tenor of language of the judgment indicates that the learned trial Court simply wanted trial Court to ascertain as to whether the case of complainant against convict Gurnam Singh has any substance in view of the cross-version case.

Learned trial Court has committed grave error while summoning the petitioners, against whose acquittal no appeal was filed, with the observations that judgment of trial Court has been set aside by the Appellate Court, without taking note of the fact that the learned Appellate Court has accepted the appeal of Gurnam Singh and has set aside the judgment qua him and not against the persons, who were acquitted.

As a sequel of above my discussions, I find merits in this petition. The same is accepted and order dated 20.02.2017 of learned trial Court summoning the petitioners to face trial is set aside.

November 16, 2019
Jyoti-II

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No