

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

112

CRR-3213-2019(O&M)

Date of Order:02.12.2019

MAYANK @ RINKU

..Petitioner

Versus

STATE OF HARYANA AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Pardhyuman Yadav, Advocate, for
Mr. P.K.Chugh, Advocate, for the petitioner.

ANIL KSHETARPAL, J(Oral)

An interesting issue has come up for interpretation in the context of Section 325 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code')

Section 325 of the Code lays down procedure to be followed by a Magistrate, if he is of the opinion, after hearing the evidence for the prosecution and the accused, that the accused is/are guilty of the crime, and he/she/they ought to receive a punishment different in kind from, or more severe than, what such Magistrate is empowered to inflict. Sub-section 3 of Section 325 of the Code empowers the Chief Judicial Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already deposed in the Court and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit in accordance with Section 325 of the Code which is extracted as under:-

325. Procedure when Magistrate cannot pass sentence sufficiently severe.-

(1) Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than,

that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate.

(2) *When more accused than one are being tried together, and the Magistrate considers it necessary to proceed under sub- section (1), in regard to any of such accused, he shall forward all the accused, who are in his opinion guilty, to the Chief Judicial Magistrate.*

(3) *The Chief Judicial Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law.*

This aspect can be examined/analysed from different angles.

'The Code', although, does not define the word 'judgment', however, judgment is of conviction or acquittal. Judgment is a verdict by the Court.

On careful reading of sub-Section (1) of Section 325 of the Code and phraseology used in the different sub-sections, it is apparent that the word used by the Legislature is the “opinion” and not the “judgment”. On careful reading of sub-section (3) of Section 325 of the Code, it is explicit that the Chief Judicial Magistrate is competent to examine the parties and examine any witness who has already given evidence in the case and may call for and take any further evidence. Thus, the Chief Judicial Magistrate to whom the matter has been referred by the Magistrate is competent to form its final opinion and thereupon pass a judgment.

Let us examine this aspect from another angle.

'The Code' does not envisage the power of passing two final judgments in a case. If two judgments are passed, it will create a anomalous situation. The Magistrate would obviously pass a judgment of conviction.

Such judgment of conviction would be appealable. Question is “whether the

intention of legislature was to create such situation”. The answer to the question has to be in negative. The final judgment of conviction in such case can only be passed by the Chief Judicial Magistrate, who is competent to inflict the appropriate sentence.

Let's examine this provision from another angle.

The harmonious interpretation of various provisions of the Statutes is the requirement of law. The court must always take purposive interpretation so as to arrive at a correct conclusion. The intention behind making a provision under Section 325 Cr.P.C is to enable the Magistrate, who has formed an opinion after hearing the evidence for the prosecution and the accused that the accused is/are guilty but he/they ought to receive a punishment which he is not competent to award, to refer to the Court of Chief Judicial Magistrate. That being the situation, if the interpretation as suggested by learned counsel for the petitioner is accepted, the Chief Judicial Magistrate would only be entitled to pass an order of sentence or punishment. In that situation, it would not be possible for the Court to give effect to the intention behind sub-section (3) of Section 325 of the Code. In fact, Section 325(3) of the Code shall be rendered otiose.

Still further sub-section (3) of Section 325 Cr.P.C. does not restrict the powers of the Chief Judicial Magistrate, who is superior to the referring Magistrate. Although, he does not have powers of an appellate Court but he certainly has power to pass independent judgment, not bound by the opinion of the referring Magistrate. Further no appeal against forming an opinion under Section (1) of Section 325 Cr.P.C. had been provided.

This matter can further be examined from another angle.

If the Chief Judicial Magistrate after hearing the evidence of the prosecution and the accused led before him and the evidence already led by the prosecution and the accused, before referring the matter to Magistrate, forms an opinion that the case is required to be exclusively tried by the court of Sessions, he shall, thereafter, entitled to refer the case to the Court of Sessions as provided under Section 323 of the Code of Criminal Procedure. Therefore, obviously, the correct interpretation should be that under sub-section (1) of Section 325, a Magistrate is to only record an opinion and the final judgment is required to be passed by the Chief Judicial Magistrate to whom the proceedings are submitted by the Magistrate. Therefore, there is no error in the order passed.

In view thereof, the Magistrate is only required to form an opinion, record the same in the form of a short order and then refer the matter to the Chief Judicial Magistrate. Even if, a final opinion has been recorded in the form of a judgment, the same shall not be binding on the Chief Judicial Magistrate and considered as an opinion. The Chief Judicial Magistrate shall be required to pass a final judgment independently and if he comes to a conclusion on appreciation of evidence that a judgment of conviction is required to be passed he shall pass the same while awarding appropriate sentence.

Now facts of this case.

On conclusion of the trial pursuant to a criminal case registered vide FIR No.325 dated 02.08.2014, under Sections 420 /406/ 419/ 467/ 468/471/120-B IPC at Police Station City, Rohtak, learned Judicial Magistrate Ist Class passed a judgment dated 09.03.2017, and thereafter, referred the matter to the learned Chief Judicial Magistrate, Rohtak under

Section 325 for hearing arguments on quantum of sentence and to pass order thereon. The learned Chief Judicial Magistrate after hearing arguments on quantum of sentence only, sentenced the convicts as under:-

<i>Sections</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>Imprisonment in default</i>
406 IPC	SI for 3 years	No fine	
420 IPC	SI for 3 years	Rs.1000/- each	One month
467 IPC	SI for 3 years	Rs.1000/- each	One month
468 IPC	SI for 3 years	Rs.1000/- each	One month
471 IPC	SI for 3 years	Rs.1000/- each	One month

In default of payment of fine, they shall further undergo simple imprisonment for a period of one month each for the commission of offences punishable under sections 420, 467, 468, 471 IPC. All the sentences shall run concurrently.

Three appeals were preferred, one by Nisha, the convict, second by State of Haryana and the third Criminal Revision by State Bank of India. The Court of Sessions has held that the learned Chief Judicial Magistrate was required to pass the judgment on appreciation of evidence and the judgment passed by Judicial Magistrate Ist Class dated 09.03.2017 shall be considered as his opinion only. Thus, the Court of Sessions has rightly held that the procedure followed by the learned Chief Judicial Magistrate under Section 325 (3) Cr.P.C. was not correct.

In view thereof, there is no reason to interfere.

Dismissed.

December 02, 2019
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(ANIL KSHETARPAL)
JUDGE

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