

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

CRM-M-46694-2019 (O&M)

Date of decision : 07.11.2019

Bawa Singh and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.D. Sharma, Advocate for the petitioners.

Mr. Hittan Nehra, Additional Advocate General, Punjab.

ANIL KSHETARPAL, J. (ORAL)

Challenge is to the order passed by the learned Court of Sessions accepting the revision and remitting the matter back to the Court of Magistrate to reconsider and re-appreciate the evidence and material on the file. The Court of Sessions, while passing the order has observed as under:-

“First of all, it is observed by the trial court that earlier the FIR registered at the instance of revisionist for the same occurrence was canceled by way of a cancellation report and that such cancellation report was accepted by the court. Such observation of the trial court is misconceived in view of the fact that as per order dated 25.08.2014 lying attached with the trial court file passed by Miss. Sharryl Sohi, Judicial Magistrate Ist Class, Amritsar, after the complainant disagreed with the said cancellation report, the trial court had taken cognizance of the matter under section 190(1)(a) Cr.PC and had treated the cancellation report coupled with the statement of revisionist as a complaint and the revisionist was directed to lead preliminary evidence.

Secondly, the order under revision is further questionable on the ground that it has been observed by the trial court in the impugned order that there is a contradiction in the statement of revisionist and the MLR regarding the fact that he was conscious at the time of visit of police at the place of occurrence. It is further observed by the trial court that there is contradiction in the MLR of revisionist Exhibit CW3/1 and report of Medical Board which was constituted after such MLR of the revisionist. Such observation of the trial court is also misconceived in view of the fact that so far as the contradiction in the medico legal report Exhibit CW3/1 and report of Medical Board is concerned, the said report of Medical Board is not yet proved on file and the same is not an exhibited document. Unless the same is proved on file as per law, no reliance should have been placed by the trial court on such report much less to contradict the proved MLR of revisionist Exhibit CW3/1 which has been proved by examining Dr. Jasbir Singh CW3 through his substantive statement in court. So far as the observations of the trial court regarding there being contradiction in the statement of revisionist that he was unconscious after receipt of injury with that of the remarks given in the MLR regarding his being conscious at the time of his visit in the hospital is concerned, such contradiction in itself is not exclusively sufficient to outrightly discard the other ocular and medical evidence adduced by the revisionist during preliminary as well as pre charge evidence. It is also relevant to note here in the sequence of this discussion that in his pre charge evidence, the revisionist has examined himself as CW1 and has supported and corroborated his allegations regarding receipt of injuries at the hands of respondent. The receipt of injury is also corroborated by Dr. Jasbir Singh CW3 who has proved

on record the medico legal report of the revisionist as CW3/1 as well as his opinion regarding nature of injury No.1 to be grievous. The respondents have been discharged in view of the report of Board of Doctors which has opined the receipt of injuries by the revisionist with friendly hands but unless such report of Board of Doctors is proved by the respondents as per law, the same cannot be taken note of. There is no other valid reason recorded by the trial court so as to justify that the evidence so led by the revisionist would not result in conviction if remained unrebutted. Hence, the order under revision is liable to be interfered with by this court through revisional jurisdiction on such counts.”

Learned counsel for the petitioners, although made sincere attempt, however, failed to draw attention of the Court to any perversity or substantive error in the order passed.

On careful reading of the order, which has been extracted above, it has been found that the learned Court of Sessions has given more than one reason to reverse the order of the Magistrate while remitting the case back to the Magistrate with direction to reconsider and re-appreciate the evidence and material on file.

In view thereof, there is no ground to interfere in exercise of powers under Section 482 Cr.P.C.

Accordingly, the present petition is dismissed.

07.11.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No