

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

**CRA-D-152-DB of 2018 (O&M)**

Date of Decision: 28.05.2019

Lakhbir Singh and another .....Appellants

Versus

State of Punjab .....Respondent

**CRA-S-552-SB of 2018**

Ajit Singh .....Appellant

Versus

State of Punjab .....Respondent

**CRM-A-715-MA of 2018/CRA-AD-8042 of 2018**

Ajit Singh .....Applicant

Versus

State of Punjab and others .....Respondents

***CORAM :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY  
HON'BLE MR. JUSTICE SUDHIR MITTAL***

Present:- Mr. Vinod Ghai, Sr. Advocate  
with Ms. Kanika Ahuja, Advocate  
for the appellants in **CRA-D-152-DB of 2018.**

Mrs. Rupinder K. Thind, Advocate  
for the appellants in **CRA-S-552-SB of 2018** and  
**CRM-A-715-MA of 2018/CRA-AD-8042 of 2018** and  
for the complainant in **CRA-D-152-DB of 2018.**

Mr. H.S. Sullar, D.A.G., Punjab.

\*\*\*\*\*

**DAYA CHAUDHARY, J.**

***CRM No.26578 of 2018 in CRA-D-152-DB of 2018*** was listed

for hearing today but on joint request of learned counsel for the parties,

***CRA-D-152-DB of 2018, CRA-S-552-SB of 2018 and CRM-A-715-MA of***

**2018/CRA-AD-8042 of 2018** have been taken up for hearing for final disposal today itself as same question of law and facts are involved in all the appeals.

**CRA-D-152-DB of 2018** has been filed by accused-appellants, namely, Lakhbir Singh and Anoop Singh, who faced trial before the Additional Sessions Judge, Amritsar and convicted for the commission of offences punishable under Sections 302/325 read with Section 34 IPC and Section 27 of the Arms Act and sentenced as mentioned in the judgment of the trial Court. Accused- Gurdeep Singh, Jagbir Singh, Shubhwinder Singh, Shamsher Singh, Buta Singh, Fauja Singh alias Joga alias Narinder Singh, Gurmit Singh, Dilbagh Singh, Resham Singh, Bhupinder Singh alias Sonu and Mandeep Singh also faced trial but were acquitted of the charges framed against them.

**CRA-S-552-SB of 2018** has been filed by complainant-Ajit Singh as he was convicted in the cross version for offence punishable under Sections 323/427 of the IPC and sentenced to undergo for a period of one year with fine.

**CRM-A-715-MA of 2018** has been filed by complainant-Ajit Singh under Section 378(4) of Cr.P.C for special leave to appeal against the judgment dated 15/17.01.2018, whereby, accused-respondents, namely, Gurdeep Singh, Jagbir Singh, Shubhwinder Singh, Shamsher Singh, Buta Singh, Fauja Singh alias Joga alias Narinder Singh, Gurmit Singh, Dilbagh Singh, Resham Singh, Bhupinder Singh alias Sonu and Mandeep Singh have been acquitted of the charges framed against them. Accused-Joginder Singh died during pendency of the case before the trial Court and proceedings qua him stood abated.

an important question of law has arisen before this Court as to whether in a case of version and cross version, the same judgment can be passed.

Learned senior counsel for the appellants, by relying upon the judgments of Hon'ble the Apex Court in cases ***Mitthulal and another vs State of M.P 1975 AIR (SC) 149*** and ***NathiLal and others vs State of U.P and another 1990 (sup) SCC 145*** submits that separate judgments are required to be passed by the trial Court in case of version and cross-version, whereas, single judgment has been passed, which is not permissible under law.

Mrs. Rupinder K. Thind, learned counsel for the appellant in cross-version case, submits that the judgment is not required to be set aside unless there is failure of justice. It is not a case of intermixing of the discussions as the facts and the legal propositions have been mentioned separately and separate conclusions have been drawn. She also submits that there is no confusion and it cannot be said to be a single judgment as not only the facts have been recorded separately but the evidence has also been appreciated separately.

Mrs. Rupinder K. Thind, learned counsel for the appellant in ***CRA-S-552-SB of 2018*** has relied upon the judgments of Hon'ble the Apex Court in cases ***State of Madhya Pradesh vs Bhooraji 2001(4) RCR (Criminal) 40*** as well as ***State by Police Inspector vs. T. Venkatesh Murthy 2004(4) RCR (Criminal) 388*** in support of her arguments and submits that in case of any omission or illegality in procedure of trial which does not affect the core of the case is not a ground to order *de novo* trial and it should be the last resort and only when it becomes indispensable and it cannot be said to be a case of failure of justice. She submits that in the

present case as well, the evidence in both the cases has been recorded and appreciated separately. There is no intermixing of the evidence and virtually two judgments have been passed.

Admittedly, it is a case of version and cross version. After recording the evidence in both the cases, single judgment has been passed by the trial Court, whereas, for fair trial in case of version and cross version, it is required that the trial of the case is to be completed one after the another. After recording of evidence in one case, the trial Court must hear the arguments and reserve the judgment. Thereafter, the trial Court should proceed to hear the cross version and after recording all the evidence, it must hear the arguments and reserve the judgment in that case as well. Thereafter, the trial Court was required to dispose of both the cases by passing two separate judgments. While deciding each case, the trial Court is required to rely upon the evidence recorded in that particular case. It is also necessary that the evidence recorded in the cross case cannot be looked into in the other case so that he may not be influenced by whatever has been argued in the cross case. Meaning thereby, each case is required to be decided on the basis of evidence which has been recorded in that particular case without being influenced in any manner by the evidence or the arguments raised in the cross case. It is also necessary that the judgments are required to be pronounced by the same Court one after the other.

This issue was before Hon'ble the Apex Court in ***NathiLal's*** case (supra), wherein there was a case of version and cross version and were decided by the same judgment. The relevant para Nos.2 and 3 are reproduced as under :-

*“2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the*

*same learned Judge must try both the cross case one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment is that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other.*

*3. We allow this appeal partly to the aforesaid extent and direct the learned Judge to proceed with the police case and the cross case instituted by the respondent-complainant by way of a private complaint and hold the trial in both the matters in the light of the directions given hereinabove. Learned Judge will accord priority to these cross cases and dispose of both the cases expeditiously.”*

In another judgment of Hon’ble the Apex Court in case ***State of M.P. vs Mishrilal (Dead) and others 2003(3) RCR (Criminal) 287***, two FIRs relating to same incident were recorded and challan was presented in both the cases. It was held in that case that the Judge must try both the cases one after the other and after recording evidence and hearing the arguments, the judgment should be reserved. It was also held that the Court should proceed to record evidence and hear the arguments in second case. It was further held that the same Judge must dispose of the matters by two separate

judgments. The cross cases were directed to be tried together by the same Court to avoid conflicting judgment relating the same incident. In said judgment, the judgment of Hon'ble the Apex Court in **Nathilal's** case (supra) was relied. The relevant portion of said judgment i.e para No.8, is reproduced as under :-

*“8. In the instant case, it is undisputed, that the investigating officer submitted the challan on the basis of the complaint lodged by the accused Mishrilal in respect of the same incident. It would have been just fair and proper to decide both the cases together by the same court in view of the guidelines devised by this Court in Nathilal's case (supra). The cross-cases should be tried together by the same court irrespective of the nature of the offence involved. The rationale behind this is to avoid the conflicting judgments over the same incident because if cross cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments. In the instant case, the investigating officer submitted the challan against both the parties. Both the complaints cannot be said to be right. Either of them must be false. In such a situation, legal obligation is cast upon the investigating officer to make an endeavour to find out the truth and to cull out the truth from the falsehood. Unfortunately, the investigating officer has failed to discharge the obligation, resulting in grave miscarriage of justice.”*

**In case Sudhir vs State of M.P. 2001(1) RCR (Criminal) 743**

where same controversy was there, Hon'ble the Apex Court in para No.9 has held as under :-

*“9. It is a salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same Court by pronouncing judgments on the same day.*

*Such two different versions of the same incident resulting in two criminal cases are compendiously called “case and counter case” by some High Court and “cross cases” by some other High Courts. Way back in nineteen hundred and twenties a Division Bench of the Madras High Court (Waller and Cornish, JJ.) made a suggestion (In Re GoriparthiKrishtamma, 1929 Madras Weekly Notes 881) that “a case and counter cases arising out of the same affair should always, if practicable, be tried by the same Court, and each party would represent themselves as having been the innocent victims of the aggression of the other.”*

In **Mithulal’s** case (supra)for the cross-case, the Supreme Court has held at page 151 (of AIR) : (at p.238 of CrI. LJ), para 4, as under:-

*“....This was clearly impermissible to the High Court. It is difficult to comprehend as to how the High Court could decide the appeal before it by taking into account evidence recorded in another case, even though it might be what is loosely called a cross-case. It is elementary that each case must be decided on the evidence recorded in it and evidence recorded in another case cannot be taken into account in arriving at the decision. Even in civil cases this cannot be done unless the parties are agreed that the evidence in one case may be treated as evidence in the other. Much more so in criminal cases would this be impermissible. It is doubtful whether the evidence in the other, even with the consent of the accused. But here there was clearly no consent of the appellants to treat the evidence recorded in the cross-case against them. The High Court was, therefore, clearly in error in taking into consideration the evidence recorded in the cross-case against Ganpat and Rajdhar. The High Court ought to have decided the appeal before it only on the basis of the evidence recorded in the*

*present case and ought not have allowed itself to be influenced by the evidence recorded in the cross-case against Ganpat and Rajdhar. It is regrettable that the High Court should have fallen into such an obvious error. The judgment of the High Court must, therefore, be set aside and we must proceed to consider whether, on the evidence recorded in the present case without looking into the evidence recorded in the other cross-case --the conviction and sentence recorded against the appellants can be sustained.”*

After going through the judgments and the arguments raised by learned counsel for the parties, it is apparent that the evidence recorded in both the cases has been discussed in separate paras but not one by one. The parameters as laid down in **Nathilal's** case (supra) by Hon'ble the Apex Court that the procedure which is to be adopted in case of version and cross version have not been followed. The trial is to be conducted one after the other and after recording of evidence in one case and on hearing the arguments in that case, the judgment is required to be reserved. Thereafter, the trial Court is to proceed to hear the cross case and after the recording of evidence in that case, he is required to hear the arguments but reserve the judgment in that case also. Thereafter, the same Judge is to dispose of the matters by two separate judgments.

In the present case, the evidence recorded in the cross-version has been looked into. In the cross version and vice versa, it is the requirement of law that each case is required to be decided on the basis of evidence which has been placed on record of the case and without being influenced by the evidence of other case. In both the cases, the judgments are required to be reserved and thereafter pronounced by the trial Court one after the other. Meaning thereby, the procedure has not been followed as

only one judgment has been passed in version and cross version. Sections 462 and 465 of the Cr.P.C are relevant which are reproduced as under :-

***“462. PROCEEDINGS IN WRONG PLACE:***

*No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.*

***“465. FINDING OR SENTENCE WHEN REVERSIBLE BY REASON OF ERROR, OMISSION OR IRREGULARITY:***

*(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.*

*(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.”*

Section 465 of the Code falls within Chapter XXXV under the caption “Irregular Proceedings”. The chapter consists of seven sections starting with Section 460 containing a catalogue of irregularities which the legislature thought not enough to axe down concluded proceedings in trials

or enquiries. Section 461 of the Code contains another catalogue of irregularities which in the legislative perception would render the entire proceedings null and void. It is pertinent to point out that among the former catalogue contains the instance of a Magistrate, who is not empowered to take cognizance of offence, taking cognizance erroneously and in good faith. The provision says that the proceedings adopted in such a case, though based on such erroneous order, “shall not be set aside merely on the ground of his not being so empowered.”

It is useful to refer to Section 462 of the Code which says that even proceedings conducted in a wrong sessions division are not liable to be set at naught merely on that ground. However an exception is provided in that Section that if the court is satisfied that proceedings conducted erroneously in a wrong sessions division “has in fact occasioned a failure of justice” it is open to the higher court to interfere. While it is provided that all the instances enumerated in Section 461 would render the proceedings void, no other proceedings would get vitiated *ipso facto* merely on the ground that the proceedings were erroneous. The court of appeal or revision has to examine specifically whether such erroneous steps had in fact occasioned failure of justice. Then alone the proceedings can be set aside. Thus the entire purport of the provisions subsumed in Chapter XXXV is to save the proceedings linked with such erroneous steps, unless the error is of such a nature that it had occasioned failure of justice.

We have to examine Section 465(1) of the Code in the above context. It is extracted below :

“ Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a court of

appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that court, a failure of justice has in fact been occasioned thereby.”

A reading of the section makes it clear that the error, omission or irregularity in the proceedings held before or during the trial or in any enquiry were reckoned by the legislature as possible occurrence in criminal courts. Yet the legislature disfavoured axing down the proceedings or to direct repetition of the whole proceedings afresh. Hence, the legislature imposed a prohibition that unless such error, omission or irregularity has occasioned “a failure of justice” the superior court shall not quash the proceedings merely on the ground of such error, omission or irregularity.

On perusal of Section 465(1) of the Cr.P.C., it is clear that the error, omission or irregularity in the proceedings held before or during the trial or in any enquiry were reckoned by the legislature as possible occurrence in criminal courts. No doubt, the legislature has imposed a prohibition that unless such error, omission or irregularity has occasioned “a failure of justice” the superior court is not to quash the proceedings merely on the ground of such error, omission or irregularity unless failure of justice is there. No such failure of justice has been pointed out. However, it is a case of illegality and irregularities, which require to be corrected.

In view of ratio of judgments as discussed above, there cannot be a common judgment delivered in two or more cases. In the present case, the trial Court has not followed the required procedure which cannot be said

to be legal. The trial Court has recorded the evidence in one case and substituted the same in other case. The trial Court has delivered a common judgment by considering the evidence in common in case of version and cross version.

In view of facts and observations as made hereinabove, we remit the judgment of conviction dated 15.01.2018 and order of sentence dated 17.01.2018 passed by the Additional Sessions Judge, Amritsar to the trial Court with a direction to rewrite the judgment of version and thereafter of cross version case and judgment of acquittal in view of observations as made above as well as ratio of judgment in *Nathilal's* case (supra). The record of the trial Court is also sent back. The appellants are directed to be present before the trial Court as and when required. The appellants are directed to be released on interim bail by suspending their sentences during pendency of the proceedings before the trial Court on their furnishing fresh adequate bail/surety bonds to the satisfaction of the trial Court.

A copy of this judgment be sent to all District and Sessions Judges of Punjab, Haryana and U.T. Chandigarh for reference and compliance in their working.

**(DAYA CHAUDHARY)**  
**JUDGE**

**(SUDHIR MITTAL)**  
**JUDGE**

28.05.2019  
**gurpreet**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No