

CRR No.1045 of 2020 (O&M)
Date of Decision : 04.09.2020

M/s Punjab Service Center and others

...Petitioners

Versus

Pardeep Jain and another

....Respondents

Coram : Hon'ble Mr. Justice B.S. WaliaPresent : Mr. Sunny Singla, Advocate for the petitioners.
Mr. Rishav Jain, Advocate for respondent No.1/complainant.
*****B.S. Walia, J. (VC)**

1. Case is being taken up for hearing through Video Conferencing due to the outbreak of Covid-19 pandemic.
2. Challenge in the petition is to judgment dated 15.02.2020, passed by the learned Additional Sessions Judge, Sangrur, dismissing the appeal filed by the petitioners against the judgment of conviction and order of sentence dated 04.05.2018, passed by the learned Judicial Magistrate, First Class, Malerkotla.
3. Learned counsel for the petitioners contends that petitioner Nos.2 & 3 filed an appeal against judgment of conviction and order of sentence dated 04.05.2018, passed by the learned Judicial Magistrate, First Class, Malerkotla, but the same was dismissed by the learned Additional Sessions Judge, Sangrur in the absence of petitioner Nos.2 & 3 as well as their counsel.
4. Learned counsel for the petitioners contends that even the non bailable warrants issued against petitioner Nos.2 & 3 were not served / executed, therefore, the appeal was wrongly dismissed by the learned

learned Additional District Judge by deciding the same on merits in the absence of petitioner Nos.2 & 3, as well as their counsel. Reliance is placed on the decision of Hon'ble the Supreme Court in 'ShankarversusState of Maharashtra', 2019(3) RCR (Crl.) 948.

6. Learned counsel for the petitioners contends that once the impugned judgment was passed by the learned Appellate Court, without hearing petitioner Nos.2 & 3 or their counsel, the same is liable to be set aside and the matter remanded to the learned Appellate Court to afford an opportunity of hearing to petitioner Nos.2 & 3 before deciding the appeal.

7. Learned counsel for respondent No.1/complainant has not disputed the aforementioned factual, as well as legal position.

8. Hon'ble the Supreme Court in 'Shankar's case (supra), set aside the judgment, passed by the High Court by holding that when an appeal against conviction is preferred by the accused, the appeal could be disposed of on merits only, after hearing the appellant or his counsel and that in the event of the appellant or his counsel not being available, the Court was required to appoint an *Amicus Curiae* or a Legal Aid Counsel on behalf of the accused. Relevant extract of the same is reproduced as under:-

“When the accused has preferred the appeal against the conviction, the appeal can be disposed of on merits only after hearing the appellant or his counsel. When there was no representation for the appellant, in our considered view, the High Court ought not to have disposed of the case on merits. It was held in 2005 (11) SCC 185 titled Mangat Singh v. State of Punjab that where the advocate for the appellant is absent on the date of hearing, the Court shall either appoint an amicus curiae and then decide the appeal. Once the

appeal against the conviction is admitted, it is the duty of the Appellate Court either to appoint an advocate as amicus curiae or to nominate a counsel through Legal Services Authority and hear the matter on merits and then dispose of the appeal. When the appellant was not represented by the advocate, in our view, the High Court ought not to have decided the matter on merits and the impugned order is liable to be set aside and the matter is remitted back to the High Court. The High Court shall restore the Criminal Appeal No.296 of 2014 and afford sufficient opportunity to the appellant and proceed with the matter in accordance with law. In case, if the appellant is still not represented, we request the High Court to nominate a counsel for the appellant through the Legal Services Authority and proceed with the matter. Since the appellant is said to have undergone more than twelve years of imprisonment and since the Criminal Appeal No.296/2014 is remitted back to the High Court, the sentence of imprisonment imposed upon the appellant is ordered to be suspended and the appellant is ordered to be released on the condition that he should execute bail bond for a sum of Rs.10,000/- with two sureties for a like sum each to the satisfaction of the committal Court. The High Court shall proceed with the Criminal Appeal in accordance with law.”

9. Since neither the petitioner appellants nor their counsel was present nor was any Amicus Curie or Legal Aid Counsel appointed to represent the petitioners as per the decision of Hon’ble the Supreme Court in Shankar’s case (Supra), the revision petition is allowed. Impugned judgment dated 15.02.2020, passed by the learned Additional Sessions

Sessions Judge, Sangrur to pass a fresh decision after hearing petitioner Nos.2 & 3 / their counsel.

10. In the meantime, amount of Rs.1,00,000/- deposited by petitioner Nos.2 & 3 pursuant to the order of this Court dated 31.07.2020 is directed to be transmitted to the Court of the learned Additional Sessions Judge, Sangrur. The amount in question be placed by the learned Additional Sessions Judge, Sangrur in in a nationalized bank in FDR bearing maximum rate of interest. Question as to whether the said amount is to be paid to respondent No.1/complainant or is to be returned to the petitioners would be subject to the outcome of the appeal.

11. Parties through their counsel are directed to appear before the learned Appellate Court concerned on **17.09.2020** whereupon the learned Appellate Court shall proceed to decide the matter, in accordance with law, as expeditiously as possible.

(B.S. Walia)
Judge

September 04, 2020

'Rajneesh-Amit'

<i>Whether speaking/ reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>