

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1836-2019

Date of Decision: 23.01.2020

Ranjit Singh

.....Petitioner

Versus

M/s Babu Ram Janak Raj through its Prop. and another

.....Respondents

Present: Mr. Inderjit Sharma, Advocate, for the petitioner.

Mr. Akshit Aggarwal, Advocate, for respondent No.1.

Mr. Dhruv Dayal, Sr. DAG, Punjab.

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Harnaresh Singh Gill, J.

Challenge in the present petition is to the judgment dated 7.2.2019 passed by the learned Additional Sessions Judge, Bathinda, whereby while dismissing the appeal filed by the petitioner, the judgment of conviction and order of sentence dated 25.09.2018 passed by the learned Judicial Magistrate, 1st Class, Talwandi Sabo, was upheld.

The short point, which has been raised for consideration in the present petition stands noticed in detail by this Court in its order dated 20.08.2019, which would read as under:-

“Learned counsel for the petitioner submits that the appeal of the petitioner has been decided on merits but in his absence. Although the appeal was filed through counsel, however, even the counsel had chosen not to appear at the time of arguments. Although it is recorded

in the judgment of the Appellate Court that the non-bailable warrants were issued against the petitioner; to ensure his presence before the Court at the time of hearing of the appeal, however, no such warrants were ever served or executed upon the petitioner. Therefore, the appeal of the petitioner has been wrongly decided on merits in absence of the petitioner as well as his counsel. In support of his submissions, learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court rendered on 23.07.2019 in Criminal Appeal No. 1106 of 2019 – Shankar Vs. State of Maharashtra.

Notice of motion.

On the asking of the Court, Shri K.S. Aulkah, DAG, Punjab, who is present in Court, accepts notice on behalf of the State.

Learned counsel for the petitioner is directed to hand over a copy of the petition to the opposite counsel during the course of the day.

Since the concerned police official had failed to execute even the non-bailable warrants against the petitioner, who was stated to be down with the Jaundice at the relevant time, it is further ordered that State shall file an affidavit disclosing as to who was the responsible person for non-execution of the above said non-bailable warrants issued by the Court against the petitioner.

Adjourned to 13.11.2019.”

Today, learned counsel appearing for the petitioner, while reiterating the aforesaid contention and his reliance upon the aforesaid judgment of the Hon'ble Apex Court, has argued that once the impugned judgment has been passed by the learned Appellate Court without hearing the petitioner or his counsel, the same is liable to be set aside and the petitioner is required to be afforded an opportunity of hearing before deciding the appeal on merits.

Learned counsel appearing for the respondents do not dispute the aforesaid factual and legal position.

The Hon'ble Apex Court in Shankar Vs. State of Maharashtra, 2019(3) RCR (Criminal) 948, while setting aside the judgment passed by the High Court, has held that when an appeal against conviction is preferred by the accused, the appeal can only be disposed of on merits after hearing the appellant or his counsel and that in the event neither is available, then the Court is required to appoint an Amicus Curiae or a legal aid counsel for and on behalf of the accused. It was held 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 L 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.”

In view of the above, the present revision is allowed. The impugned judgment is set aside and the matter is remanded back to the learned Additional Sessions Judge, Bathinda, for decision afresh after hearing the petitioner or his counsel.

As the petitioner is in custody, the sentence imposed upon him is suspended. He shall be released on bail on his furnishing adequate bail/surety bonds to the satisfaction of the learned Appellate Court.

Parties, through their counsel, are directed to appear before the learned Appellate Court on 17.02.2020, whereupon, the learned Appellate Court shall proceed with the matter in accordance with law.

(HARNARESH SINGH GILL)
JUDGE

23.01.2020
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No