

CRR-4138-2017 (O&M)

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

**CRR-4138-2017 (O&M).
Decided on: March 12, 2020.**

Virakat Kuti Ashram through Swami Swatantranand

.. Petitioner

VERSUS

Mohinder Singh

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Petitioner in person with
 Mr.Karan Singla, Advocate, Legal-Aid-Counsel
 for the petitioner.**

**Mr.Arn timer Sood, Advocate,
for the respondent.**

JASGURPREET SINGH PURI, J.

The present revision petition has been filed challenging the order passed by the learned Additional Sessions Judge, Hoshiarpur, dated 2.5.2017, whereby the order passed by the learned trial Court dated 30.3.2017, was set aside and the learned trial Court was directed to pass orders afresh after taking into consideration the observations made by the appellate Court earlier vide order dated 2.11.2015.

In the present case, an application was moved before the learned trial Court under Section 306 of the Code of Criminal Procedure by the complainant- petitioner for tendering pardon to one of the accused – accomplice Bhola Nath Kapoor on the ground that since the complainant – petitioner is suffering from various ailments and is unable to bring sufficient evidence to prove the guilt with regard to execution of the sale deed and that since accused Bhola Nath Kapoor has already made his intentions clear that now he wanted to confess his guilt by becoming an approver and to record the necessary statement in that regard. Said application was contested by co-accused namely Mohinder Singh on the ground that the said application which was filed under Section 306 Cr.P.C. by petitioner – complainant, was not maintainable keeping in view the fact that earlier also similar application was filed by the co-accused Bhola Nath Kapur who himself wanted to become an approver for tendering pardon which was earlier allowed by the learned trial Court but the said order was set aside in revision by the learned Additional Sessions Judge, Hoshiarpur and therefore, ultimately said similar application filed by Bhola Nath Kapoor stood dismissed.

Against this order of learned Additional Sessions Judge, Hoshiarpur, a revision petition was also preferred in the High Court which , however, was dismissed in default.

The learned Chief Judicial Magistrate, Hoshiarpur, vide order dated 30.3.2017, allowed the application and observed that the accused Bhola Nath Kapoor was a competent witness and therefore, can be

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allowed to become an approver.

This order was challenged by filing a revision petition before the Court of learned Additional Sessions Judge, Hoshiarpur, who after hearing the parties allowed the revision and set aside the orders passed by the learned trial Court and directed the trial Court to pass the order afresh after taking into consideration the earlier observations made by the said revisional Court in the order dated 2.11.2015 which had ultimately attained finality.

Learned counsel for the petitioner who is a legal aid counsel, accompanied by the petitioner in person, has submitted that the learned trial Court had correctly allowed the application under Section 306 Cr.P.C. because in order to arrive at just conclusion of the case in case one of the accused who is a competent witness becomes an approver then there is no legal bar with regard to the same. He has further submitted that the order passed by the learned revisional Court is erroneous and therefore, has prayed that the impugned order passed by the learned Additional Sessions Judge, Hoshiarur, dated 2.5.2017, be set aside and order dated 30.3.2017 passed by the learned Chief Judicial Magistrate, be restored.

Per contra, learned counsel for the respondent has argued that the present revision petition is not maintainable particularly in view of the fact that the present case is a second revision petition and therefore, it was not maintainable. He has submitted that the application which was filed by the petitioner-complainant and has been allowed by the learned trial Court was not maintainable at the threshold in view of the fact that the

earlier application filed by accused Bhola Nath Kapoor, for tendering pardon to him was ultimately dismissed in Revisional Court and had attained finality till the High Court and therefore, second application even if it is filed on behalf of the complainant would not be maintainable because the subject matter with regard to the question as to whether the provisions of Section 306 Cr.P.C. for tendering the pardon to accused should be invoked or not has already been decided by the Court and has attained finality and is binding upon the parties. He has further submitted that there was no change of circumstances on the basis of which application could have been entertained by the learned Chief Judicial Magistrate, and that it was only because of the infighting between respondent and the complainant that said application has been filed and therefore, the learned trial Court has erroneously allowed the application which mistake was set right by the learned Revisional Court by setting aside the order of the learned Chief Judicial Magistrate, Hoshiarpur.

I have heard the learned counsel for the parties and have also perused the record.

The application which was filed by the petitioner – complainant before the learned Chief Judicial Magistrate, Hoshiarpur, was allowed vide order dated 30.3.2017, on the ground that the present application could be allowed by not considering the application which was earlier moved on behalf of co-accused in view of the fact that the present application was filed by the complainant himself and therefore, it was within the power of the trial Court to consider, at any stage, as to whether

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the pardon has to be tendered or not. When this order dated 30.3.2017 was challenged before the learned revisional Court, the revisional Court categorically relied upon the earlier order which was passed on the basis of an application filed by Bhola Nath Kapoor and reproduced the order in its order dated 2.5.2017 by observing that when on the earlier application of Bhola Nath Kapoor, a detailed order has been passed, then the learned trial Court should have considered the aspects mentioned in the earlier order dated 2.11.2015 and could not have just ignored the same by observing that the earlier application was moved on behalf of accused Bhola Nath Kapoor and not by the complainant. The learned revisional Court in the order dated 2.5.2017, has ultimately observed that since earlier order dated 2.11.2015, was not considered by the learned trial Court, therefore, it has only directed the learned trial Court to pass the orders afresh. The operative part of the order passed by the learned Additional Sessions Judge, dated 2.5.2017, is reproduced as under: -

“As a sequel to my above discussion, the impugned order dated 30.3.20-17, passed by the learned trial Court is set aside and learned trial Court is directed to pass order afresh, after taking into consideration the observations made by this Court earlier, in the order dated 02.11.2015. Copy of the order be sent to the learned trial Court and Revision Petition file be consigned to the record room.”

A perusal of the aforesaid conclusions drawn by the learned Additional Sessions Judge, Hoshiarpur, shows that said Court has

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only remanded the case back to the learned trial Court for passing the order afresh by taking into consideration the earlier order passed on 2.11.2015 and therefore, under these circumstances, no prejudice would be caused to the petitioner in case fresh orders are passed by considering the earlier order dated 2.11.2015.

Considering the totality of the circumstances, I am of the considered opinion that no interference is called for in the present case as the learned Additional Sessions Judge, Hoshiarpur, has only remanded the matter back for passing the order afresh by taking into consideration the observations made by the Court earlier in the order dated 2.11.2015 and therefore, the present petition is devoid of any merits and consequently, the same is hereby dismissed.

Records of the case be sent back to the learned trial Court forthwith.

March 12, 2020.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

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