

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-470 of 2021
Date of Decision: 23.08.2021

Saurabh
Petitioner
Versus
State of Haryana
Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. I. S. Pabla, Advocate for the petitioner.
Ms. Dimple Jain, AAG, Haryana.

AVNEESH JHINGAN, J (Oral):

The matter is taken up for hearing through video conference due to COVID-19 situation.

This criminal revision is filed being aggrieved of statement recorded on 25.2.2021 of petitioner-Saurabh pleading guilty. Vide order of even date, the petitioner was sentenced to undergo as under:

Section	Imprisonment	Fine	In default
379-B IPC	RI 10 years	Rs.25,000/-	3 years
392 IPC	RI 10 years	Rs.10,000/-	3 years
411 IPC	RI 3 years	-	-
201 IPC	RI 2 years	Rs.5,000/-	6 months

All the sentences were ordered to run concurrently.

Heard learned counsel for the parties at some length and perused the record.

Learned counsel for the petitioner argues that as per the order

dated 25.02.2021, the petitioner was represented by Mr. O. K. Kaushik, Advocate whereas he was never authorised by the petitioner.

Record of the lower court was summoned. From the record, it is forth coming that in the Vakalatnama filed by Mr. O.K. Kaushik, Advocate only Sanjeet had signed and not the petitioner. From this, it is clear that the petitioner was not being represented by Mr. O. K.Kaushik, Advocate on the date when his statement was recorded.

Further the contention raised is that petitioner was working as a courier boy and was not able to understand the question posed by the Court.

The statement of Saurabh recorded on 25.2.2021 is quoted below:

“Qus: Have you heard and understand the contents of the charge?”

Ans: Yes, Sir.

Qus: Do you want to plead guilty and claim trial?

Ans: I plead guilty and do not claim trial.”

In the statement, the second question is not happily worded. It states *Do you want to plead guilty and claim trial*. The form of the question fortifies the contention raised by learned counsel for the petitioner.

The Supreme Court in ***Main Pal Vs. State of Haryana 2010(10)SCC 130*** held:-

9. *The following principles relating to sections 212, 215 and 464 of the Code, relevant to this case, become evident from the said enunciations:*

(i) The object of framing a charge is to enable an accused to have a clear idea of what he is being tried for

and of the essential facts that he has to meet. The charge must also contain the particulars of date, time, place and person against whom the offence was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(ii) The accused is entitled to know with certainty and accuracy, the exact nature of the charge against him, and unless he has such knowledge, his defence will be prejudiced. Where an accused is charged with having committed offence against one person but on the evidence led, he is convicted for committing offence against another person, without a charge being framed in respect of it, the accused will be prejudiced, resulting in a failure of justice. But there will be no prejudice or failure of justice where there was an error in the charge and the accused was aware of the error. Such knowledge can be inferred from the defence, that is, if the defence of the accused showed that he was defending himself against the real and actual charge and not the erroneous charge.

(iii) In judging a question of prejudice, as of guilt, the courts must act with a broad vision and look to the substance and not to the technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself.

The Supreme Court in ***Darbara Singh Vs. State of Punjab***
2012(10)SCC 476 held:-

13. *In Sanichar Sahni V. State of Bihar AIR 2010 SC 3786, this Court dealt with the aforementioned issue elaborately, and upon consideration of a large number of earlier judgments, held as under:*

“Therefore,..... unless the convict is able to establish that defect in framing the charges has caused real prejudice to him and that he was not informed as to what was the real case against him and that he could not defend himself properly, no interference is required on mere technicalities. Conviction order in fact is to be tested on the touchstone of prejudice theory.”

14. *The defect in framing of the charges must be so serious that it cannot be covered under Sections 464/465 Cr.P.C., which provide that, an order of sentence or conviction shall not be deemed to be invalid only on the ground that no charge was framed, or that there was some irregularity or omission or misjoinder of charges, unless the court comes to the conclusion that there was also, as a consequence, a failure of justice. In determining whether any error, omission or irregularity in framing the relevant charges, has led to a failure of justice, the court must have regard to whether an objection could have been raised at an earlier stage, during the proceedings or not. While judging the question of prejudice or guilt, the court must bear in mind that every accused has a right to a fair trial, where he is aware of what he is being tried for and where the facts sought to be established against him, are explained to him fairly and clearly, and further, where he is given a full and fair chance to defend himself against the said charge(s).*

15. The 'failure of justice' is an extremely pliable or facile expression, which can be made to fit into any situation in any case. The court must endeavour to find the truth. There would be 'failure of justice'; not only by unjust conviction, but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and also safeguarded, but they should not be over emphasised to the extent of forgetting that the victims also have rights.

In the present case, the petitioner is sentenced on the basis of his pleading guilty. The petitioner was not represented by an Advocate as is apparent from record. Though the presence is wrongly recorded in the order.

Not only this, the question posed for pleading guilty is framed in a manner to convey that on pleading guilty, accused can claim trial. The answer is not doubt specific but the contention raised that petitioner was not clear of question posed is supported by formation of the query.

After considering the facts and perusing the record, impugned judgment and order are set aside qua the petitioner. The matter is remitted back to Additional Sessions Judge, Jhajjar to proceed with the trial qua the petitioner from stage it was on 25.02.2021.

The revision petition is allowed.

[AVNEESH JHINGAN]
JUDGE

23rd August, 2021
mk

1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No