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

CRR-1052-2021

Date of decision: 29.11.2021

AJMER SINGH

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. K.S. Dhaliwal, Advocate
for the petitioner.

Mr. Pradeep Prakash Chahar, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. The learned trial Magistrate through a verdict drawn on 01.07.2016, upon CIS No.758 of 2013 hence acquitted the accused with respect to the charges drawn against them, under, Sections 420/406/465/468/120-B of the IPC. The afore verdict of acquittal, was put to a challenge, by the aggrieved informant-complainant, before the learned Sessions Judge, Panipat. The latter through a verdict made, on Criminal Appeal No.70 of 2021, proceeded to, after noticing certain purported errors, and, faultlines, in the appreciation, of incriminating evidence, hence, by the learned Magistrate concerned, though purportedly revealing the inculpatory role of the accused concerned, in the offences (supra), and, after allowing the appeal, rather make an order of remand to the learned trial Magistrate.

2. The afore made order of remand by the learned Sessions Judge concerned, is challenged by the aggrieved therefrom accused, through the institution of the instant criminal revision petition.

3. This Court would have proceeded to validate the challenge made before this Court, to the verdict drawn by the learned Sessions Judge, Panipat, in case it fell within the contours of the statutory provisions hence engrafted in Clause A of Section 386 of the Cr.P.C., provisions whereof stand extracted hereinafter:

“386. After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may

1. in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

2. in an appeal from a conviction

1. reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

3. alter the finding, maintaining the sentence, or

4. with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

5. in an appeal for enhancement of sentence

1. reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

6. alter the finding maintaining the sentence, or

7. with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

8. in an appeal from any other order, alter or reverse

such order;

9. make any amendment or any consequential or incidental order that may be just or proper;

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement;

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

4. A reading of the impugned verdict reveals, that though, the learned Sessions Judge, Panipat did hold jurisdiction to reverse the order of acquittal pronounced upon the accused, yet there is a further per-emptory statutory injunction cast upon him, to thereafter, direct the learned trial Magistrate, to hold a further inquiry, and/or for the accused being retried or committed for trial, as the case may be or find him guilty and pass sentence on him, according to law. In so far as the jurisdiction vested in the Appellate Court to, in an appeal cast before him against a verdict of acquittal, as made by the learned Magistrate concerned, to hence reverse the verdict of acquittal, and, thereafter, to make an order of remand to the learned Magistrate concerned, the afore jurisdiction is with an obvious limitation, inasmuch as, the afore order of remand being valid, only upon, an evident necessity, arising for hence the making of a direction, for the holding of a further inquiry, or for the accused being retried or committed for trial. Reiteratedly an order of remand hence for a further inquiry being made, obviously becomes necessitated, upon evident existence of errors both deep and pervasive, rather directly impinging upon the assumption of erroneous cognizance hence by the learned Magistrate concerned, and, may also

appertain to concomitant assumption of erroneous besides flawed jurisdictions, upon any inquiry or trial as becomes attempted to be entered into the offences concerned. Moreover, there may be also an occasion where the learned first Appellate Court, after reversing the order of acquittal, made upon, the accused by the learned trial Magistrate concerned, may proceed to make an order, for his being retried in case, illustratively where the prosecution witnesses concerned, were evidently impersonated or one of the prosecution witnesses or more of them, despite being dead at the relevant time, rather were impersonated, and, hence dubious testifications became recorded. In addition, the relevant verdict of acquittal may also constrain the learned first Appellate Court, to make an order of remand, upon, the learned trial Magistrate concerned, in case the order of committal, as made by the learned trial Magistrate concerned, to the learned Sessions Court concerned, is in its entirety completely defective, and, is vitiated.

5. However, in the afore statutory provision, the coinage “find him guilty, and, pass sentence on him, in accordance with law”, also occurs, thereupon the coinage supra, is also to be interpreted. The obvious connotation to be meted thereto, is that it is segregable, and is independent from the prior thereto statutory coinages, and, confers jurisdiction, upon the learned first Appellate Court, to declare the accused guilty, and, thereafter impose sentence upon him, in accordance with law. Necessarily hence, it does not validate nor protect the impugned order, as passed by the learned Sessions Judge concerned, who rather after discussing the purported inculpatory evidence, existing against the accused, which however in his view rather became not appreciated by the learned trial Judge, rather erroneously proceeded to, yet make an order of remand, upon, the learned

trial Magistrate concerned.

6. Therefore, the appropriate course available for adoption, by the learned Sessions Judge concerned, was to bear in mind the afore purported inculpatory pieces of evidence, if of credible worth, if any, and to hence, maybe in accordance with law, hence pronounce, after reversing the verdict of acquittal as passed, upon the accused, by the learned trial Magistrate concerned, rather a verdict of conviction, upon the accused, and, thereafter, to maybe impose consequent therewith sentence(s) upon them. However, than adopting the afore valid mode, the learned Sessions Judge concerned, has made an illegal order of remand, and, the same is liable to be quashed and set aside.

7. Consequently, the revision petition is allowed, and, the impugned order is quashed and set aside. The learned Sessions Judge, concerned, is directed to after hearing the accused, and, the learned public prosecutor afresh, and, after appreciating the entire evidence in a fair and wholesome manner, remaining completely oblivious, to the purportedly incriminating evidence existing against the accused, as mentioned in the impugned order, to pass a fresh verdict in accordance with law, upon criminal appeal No.70 of 2021, within six months hereafter.

8. Disposed of.

(SURESHWAR THAKUR)
JUDGE

29.11.2021

Ithlesh

Whether speaking/reasoned:-

Yes

Whether reportable:-

Yes