

113

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-53132-2021

Date of decision:21.12.2021

JARNAIL SINGH AND OTHERS

...Petitioners

Versus

GULAB SINGH AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Rakesh Nagpal, Advocate
for the petitioners.

Mr. Tanuj Sharma, AAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. The accused-petitioners herein, through a verdict of acquittal pronounced on 08.02.2018, by the learned Judicial Magistrate Ist Class, Tohana became acquitted of the charges drawn against them, under Sections 323, 325, 341, 506, 148, 149 of the IPC. The complainant became aggrieved of the verdict of acquittal, and, challenged it through casting appeal No. CRA-68-2018 before the learned Sessions Judge, Fatehabad.

2. The learned Appellate Court, through an order made on 11.05.2018, after his perusing the report of the Ahlmad concerned, that despite summons being issued, upon the accused-petitioners, for 11.05.2018, yet theirs not causing theirs respective personal appearances before him, nor appearance being caused through their authorized counsel. Therefore, he proceeded to cause their summoning through issuance of bailable warrants, in a sum of Rs.50,000/- with one surety in the like amount. On 17.08.2018 the bailable warrants, as became ordered to be issued, upon, the accused-petitioners, through the order made on 11.05.2018, were reported by the Ahlmad concerned, to be not personally served

upon each of the accused. Consequently, the learned Sessions Judge, concerned ordered for the summoning of the accused-petitioners, through fresh bailable warrants, in a sum of Rs.20,000/- with one surety in the like amount, and, the afore bailable warrants were made returnable on 09.10.2018. On 09.10.2018 the accused-petitioners, alongwith their respective counsels recorded their personal appearances, before the learned Sessions Judge, Fatehabad. On the afore date, the learned Sessions Judge, directed that the accused-petitioners furnish their personal bonds in a sum of Rs.50,000/- with one surety in the like amount, and, also directed, that since the afore furnishing of personal and surety bonds by each of the accused-petitioners, in a sum of Rs.50,000/-, became furnished before him, hence he proceeded to accept them. The learned counsel appearing for the accused-petitioners states, at the bar, that when the matter was listed for arguments before the learned Sessions Judge, Fatehabad, on 30.11.2021, and, since on the afore date, though the counsels engaged by the accused-petitioners were not present, and, also the accused-petitioner, did not record their respective personal appearances, before the learned Appellate Court concerned. Therefore the personal surety bonds as became furnished by each of the accused-petitioners became ordered to be cancelled, and, their bail bonds were forfeited to the State of Haryana. A reading of the order made on 30.11.2021, also unfolds that thereafter, the learned Sessions Judge concerned, proceeded to issue warrants of arrest against the accused-petitioners, and, they were made returnable on 18.02.2022. In addition, he proceeded to order for drawing of proceedings under Section 446 of the Cr.P.C. against accused-petitioners, as well as against their respective sureties.

3. The effect of the verdict of acquittal pronounced, upon, the accused-petitioners carries the requisite legal effects, appertaining to

exoneration of their guilt with respect to the charged offences, and, the afore exoneration lasts uptill the learned Appellate Court proceeds, to annul the verdict of acquittal pronounced, upon, the accused-petitioners.

4. The appeal preferred by the complainant against the verdict of acquittal pronounced by the learned Magistrate concerned, upon each of the accused-petitioners, obviously for the afore stated reasons, did not entail theirs being enlarged on bail, and, also rather the learned Appellate Court concerned, was to ensure their respective personal appearance through personal service of the relevant process, upon them, or to ensure their appearances through their respective authorized counsels.

5. Though, the afore process became initially validly re-coursed by the learned Sessions Judge concerned. However, after a valid representation, on their behalf, being caused through their respectively engaged counsels, there was no further necessity of the accused-petitioners, to, in the appellate proceedings, as arose from a verdict of acquittal being pronounced vis-a-vis them, by the learned Magistrate concerned, rather record their respective personal appearances, on 30.11.2021, before the learned Magistrate concerned. The engaging of the counsels, by each of the accused-petitioners, became sufficient representation on their behalf, and, if the learned Sessions Judge concerned, had made in accordance with law, a verdict of conviction, after setting aside the verdict of acquittal pronounced, upon each of the accused-petitioners, he could thereafter, proceed to enforce the verdict of conviction pronounced, upon, the accused-petitioners, through his ensuring that they be validly summoned, for making their respective personal appearances before him, for theirs being heard on the quantum of sentence, and, if at the afore stage also they did not make their respective personal appearances before him, he could

upon hearing the counsel concerned, upon the quantum of sentence, could thereafter, proceed to impose the requisite sentence, upon each of the accused-petitioners, and also could proceed to enforce the validly drawn sentence, upon, each of the accused-petitioners, through his issuing committal warrants against the accused-petitioners.

6. Therefore, and, reiteratedly for merely at a stage when the criminal appeal (supra) was listed for hearing, and, when the accused-petitioners were represented by their respective authorized counsels, who however did not appear, and, obviously, when the stage (supra), was not the stage for the learned Sessions Judge concerned, to pronounce a lawful verdict of conviction nor there was any consequent necessity for the accused, being heard on the quantum of sentence. Therefore, for absence of counsel engaged by the accused-petitioners, before the learned Appellate Court, the accused-petitioners could not be faced with any adverse consequence. However, the learned Sessions Judge concerned, has proceeded to, in a hot haste, and, slipshod manner, and, also with his remaining oblivious to all the afore, has made the impugned order. Consequently, the impugned order is ridden with the deepest infirmity, and, reiteratedly when even the absence of counsels engaged by the accused-petitioners, rather could become remedied through the Court, issuing notices upon them, rather than the learned Court concerned, issuing warrants of arrest against each of the accused-petitioner. Therefore, the issuing of warrants of arrest (supra) on each of the accused-petitioners, has not only breached the procedural laws concerned, but also has breached the personal liberty of the accused-petitioners, in respect of whom a verdict of acquittal, has been pronounced by the learned Magistrate concerned.

7. Therefore, the present petition is allowed. The impugned order directing the summoning of the accused-petitioners through ordering of warrants of arrest returnable for 18.02.2022 is quashed, and, set aside. Moreover, the opening of proceedings against the accused-petitioners through his re-coursing the mandate of Section 446 Cr.P.C., is, also quashed and set aside, as each of the accused-petitioners were earlier represented by validly engaged counsels.

8. The accused-petitioners are also directed to record their respective personal appearances or through counsel, on the date already fixed.

9. Dasti copy.

(SURESHWAR THAKUR)
JUDGE

21.12.2021

ithlesh

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