

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(221)

CRR-147-2022

Date of decision: - 15.03.2022

Sewak Singh

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Keshav Pratap Singh, Advocate,
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

The challenge in the present revision petition is to the impugned order dated 15.12.2021, passed by learned Additional Sessions Judge, Sirsa, vide which, the application filed by the petitioner under Section 167(2) Cr.P.C. has been dismissed.

Perusal of the impugned order would show that it was the admitted case between the parties that FSL report had not been annexed along with the report under Section 173 Cr.P.C. and on the basis of the said admitted fact, the learned Additional Sessions Judge, Sirsa, decided the matter, vide judgment dated 15.12.2021.

On 03.03.2022, when the matter came up for hearing before this Court, on the arguments raised by learned State counsel, the

following order was passed: -

"CRM-4501-2022

The present application has been filed under Section 482 Cr.P.C. for placing on record the judgments as Annexure P-3.

For the reasons mentioned in the application, same is allowed subject to all just exceptions and Annexure P-3 is taken on record.

Main Case

Learned State counsel, on instructions from SI Ram Niwas, has pointed out that in the present case, although, it has been the stand of all the parties that the report under Section 173 Cr.P.C. did not contain the FSL report but as per his latest instructions, there is one FSL report dated 30.06.2021 which was received in the Office of the DSP, Sirsa on 22.07.2021 and was appended with the report under Section 173 Cr.P.C. on 11.11.2021 and the same was duly indexed and attached alongwith the said report at page No. 271 to 273. He prays for a short adjournment to file an affidavit of S.P. Concerned with respect to the said aspect.

Adjourned to 15.03.2022.

Affidavit be filed on or before the next date of hearing.

Learned State counsel is also directed to get 3 copies of the challan for perusal of the Court as well as for the counsel for the petitioner."

Perusal of the above order would show that the stand of the respondent-State now is that the FSL report has been prepared on 30.06.2021 and was received in the office of DSP, Sirsa on 22.07.2021 and was a part of the report under Section 173 Cr.P.C. at page 271 to 273.

Learned counsel for the petitioner has vehemently argued that a perusal of the zimini orders would show that it was noticed that the FSL report was not a part of the challan. It is further submitted that in the challan which has been shown today in the Court, although the FSL report is stated to be from page 271 to 273, but there is some overwriting on the said page numbers. Learned counsel for the petitioner has further

referred to para 4 of the impugned order to highlight the fact that learned PP had submitted that the FSL report is not the part of the challan/report under Section 173 Cr.P.C. and the said fact, therefore, cannot be disputed.

Learned State counsel has referred to the status report by way of affidavit of the Superintendent of Police, Sirsa, dated 10.03.2022, filed on behalf of the respondent-State, which was called for vide order dated 03.03.2022 and it is submitted that as per their stand, the FSL report was filed along with the challan/report under Section 173 Cr.P.C.

This Court has heard learned counsel for the parties and has perused the paper-book.

From the above-said facts, it is apparent that the facts which stood undisputed before the Additional Sessions Judge, Sirsa are now being disputed by the respondent-State.

In view of the above, it would be appropriate that the impugned order dated 15.12.2021 is set aside and the matter is remanded back to the learned Additional Sessions Judge, Sirsa, to pass a fresh order after considering all the above-said aspects.

It would be open to the petitioner to contend that the said report was not a part of the challan and to refer all the documents/zimini orders in this regard.

It would also be open to the respondent-State to show that the FSL report was a part of the report under Section 173 Cr.P.C.

The Additional Sessions Judge, Sirsa would, after coming to the conclusion with respect to the above-said disputed question of facts, adjudicate the matter in accordance with law.

Learned counsel for the parties will bring to the notice of the Additional Sessions Judge, Sirsa, the order passed by this Court on the next date of hearing.

Present revision petition is allowed in above terms.

March 15, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	No