

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

CRM-M-1943-2016 (O&M)
Reserved On : 19.09.2022
Date of Decision: 22.09.2022

Major Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Atul Goyal, Advocate, for the petitioner.

Mr. IPS Sabharwal, DAG, Punjab.

Mr. Rajinder Goyal, Advocate, for respondent No.2.

HARNARESH SINGH GILL, J.

Challenge in the present petition is to the order dated 21.11.2015 (P.6) passed by the Judicial Magistrate, Ist Class, Ropar, whereby an application under Section 311 Cr.P.C. for re-examination of witness Bahadur Singh, was dismissed.

During the trial of FIR No.85 dated 16.05.2013 registered under Sections 279, 338, 427 IPC and Section 304-A IPC added later on, at Police Station, Chamkaur Sahib, District Ropar, on account of death of deceased-Jaswant Singh, in a motor vehicular accident, the prosecution examined PW-1 Bahadur Singh and was cross-examined on 20.7.2015. Subsequently, the prosecution had moved the application under Section 311 Cr.P.C., for re-examination of the said witness, on the ground that on the aforesaid date, the said witness had turned hostile and deposed in total contradiction of not only the

version recorded in his examination-in-chief as also his deposition before the Motor Accident Claims Tribunal, Ropar. The said application was contested by the accused.

The learned trial Court, vide order impugned herein dismissed the said application holding that the witness cannot be called for re-examination, even if he had made contradiction depositions. Reliance was placed upon the judgment of the Hon'ble Apex Court in Hanuman Ram Vs. State of Rajasthan, 2008(4) RCR (Criminal) 823.

Learned counsel for the petitioner would vehemently contend that the learned trial Court has misinterpreted the judgment of the Hon'ble Apex Court in Hanuman Ram's case (supra); that the said judgment would rather support the case of the petitioner; that the petitioner being the real brother of the deceased would fall under the definition of victim as contained in Section 2(wa) Cr.P.C.; that it is settled law that a witness can always be confronted with the earlier statement and not vice-versa; that the instant case is covered by the Full Bench dictum of this Court in M/s Tata Steel Ltd. Vs. M/s Atma Tube Product Ltd. and others, 2013(2) RCR (Criminal) 1005, wherein while defining the provisions relating to the victim, it has been held that for the purpose of filing of an appeal or engaging an Advocate, any class of legal heirs, would fall under the definition of victim; that the petitioner being the real brother of the victim, cannot be said to not have suffered any injury, as such connotation must encompass not only the victim in the natural and ordinary course, but also the kith and kin of the victim.

Reliance is also placed upon the judgment of the Full Bench judgment of the Delhi High Court in Ram Phal Vs. Sate and others, 2015(3)RCR (Criminal) 295 and the judgment of the Hon'ble Apex Court in Satya Pal Singh Vs. State of M.P. and others, Law Finder Id # 713352.

It is further argued that the deposition of witness Bahadur Singh, before the MACT, Ropar, is part of the Court proceedings and had been recorded at prior point of time and, therefore, no prejudice of any kind would be caused to the accused, if said witness is confronted with his said deposition.

On the other hand, learned counsel for respondent No.2 would submit that the petitioner being brother of the deceased would fall within the definition of Class-II heir and hence not covered by the definition of Section 2(wa) Cr.P.C.; that when Bahadur Singh, had been examined on 20.7.2015, the prosecution ought to have confronted the statement made by said witness before the MACT, Ropar, as admittedly, the said statement was made on 14.03.2014 i.e. a prior point of time.

Reliance is placed upon the judgment of the Division Bench of Andhra Pradesh High Court in D.Sudhakar Vs. Panapu Sreenivasulu @ Evone Water Sreenivasulu and others, 2012(20) RCR (Criminal) 884, to contend that when the Class-I, legal heirs of deceased, are available, the petitioner cannot be permitted to pursue the proceedings on behalf of the deceased. Still further, reliance is also placed upon M/s Tata Steel Ltd.'s case (supra) and Hanuman Ram's case (supra).

He further submits that even if the relief sought for by the petitioner is granted, the same would not lead to the conviction of the accused. Still further, it is argued that the proceedings before the Civil Court, are adjudicated upon on the basis of preponderance of evidence, whereas in the criminal proceedings, the prosecution has to prove the guilt on the part of the accused beyond the shadow of a doubt.

I have heard the learned counsel for the parties and have also gone through the case file.

The issue is whether the petitioner being the brother of deceased-Jaswant Singh, can plead the cause before the criminal Court.

Section 2(wa) Cr.P.C., which defines the victim, would read as under:-

“2 [(wa) “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir.”

Admittedly, petitioner, being brother of the deceased is Class-II legal heir. A perusal of the aforesaid provisions would show that victim includes his or her legal heir as well. The classification of the legal heir has not been done so as to say that only Class-I heirs would be entitled to pursue and plead the cause.

Learned counsel for the petitioner and respondent No.2 have heavily relied upon the judgments in M/s Tata Steel Ltd.'s case (supra) and Hanumaan Ram's case (supra).

Learned counsel for the petitioner places heavy reliance upon para No. 64 of the judgment in M/s Tata Steel Ltd.'s case (supra), which reads as under:-

“(64). The right to 'engage an advocate' given to a 'victim' draws parity from the right to fair trial guaranteed to an accused and is essentially meant to enable the Court to have the viewpoint of a 'victim' who remained discounted for years and to whom the Legislature unambiguously intends to provide a presence and appearance before the Court. Since the very object of this right is to give restricted participation in trial to the 'victim' and assist the Court to arrive at a just conclusion, it is not necessary nor the Code perceives so that only that 'legal heir' who has preferential entitlement to succeed to the property of an intestate, alone shall be competent to engage such advocate. The 'right to appeal' under proviso to Section 372 at the best enables the Appellate Court to call for the records, re-appraise the evidence and determine - (i) whether acquittal of the accused is justified? Or (ii) whether the accused has been rightly convicted for a lesser offence? Or (iii) whether the compensation determined under Section 357 is inadequate? Such an exercise, in our humble opinion, can be undertaken by the appellate court on presentation of appeal by any 'legal heir' irrespective of his proximity with the deceased under the personal law. Any narrow construction would defeat the very legislative object behind insertion of Section 2(wa) and proviso to Section 372 of the Code and re-introduce the mischief which the Legislature has intended to remove.”

Emphasis is also placed on the answer of Question A as contained in para No.139 of M/s Tata Steel Ltd.'s case (supra). The said part would read as under:-

“Question - (A) (i) The expression "victim" as defined in Section 2(wa) includes all categories of his/her legal heirs for the purpose of engaging an advocate under Section 24(8) or to prefer an appeal under proviso to Section 372 of the Code.

(ii) However, legal heirs comprising only the wife, husband, parent and child of a deceased victim are entitled to payment of compensation under Section 357(1)(c) of the Code. Similarly, only those dependents of a deceased victim who have suffered loss or injury as a result of the crime and require rehabilitation, are eligible to seek compensation as per the Scheme formulated under Section 357-A of the Code.”

It is, accordingly, submitted that it is not a case, wherein the petitioner is deriving any momentary benefit or compensation on account of death of his brother-Jaswant Singh. Thus, the petitioner's case would be covered by the law laid down by the Full Bench of this Court in Clause (i) above.

Learned counsel for respondent No.2 also heavily relies upon the judgment in M/s Tata Steel Ltd.'s case (supra), especially para Nos. 61 and 62, which would read as under:-

“(61). Having held that the Legislature has not linked or preconditioned the admissibility of compensation to the next kin of a victim under Section 357 or Section 357-A with the personal law of such victim, we revert back to the second part of the definition of "victim"

under Section 2(wa) of the Code which includes his/her guardian or legal heir within the expression "victim", with special reference to the right to 'engage an advocate' under Section 24(8) or the 'right to appeal' under proviso to Section 372 of the Code.

(62). The Legislature while specifying four categories of the next of kin of the deceased victim, has purposefully couched the language of Section 357(1)(c) in a manner which leaves no grey area for the Court firstly to determine the status of the claimant as a 'legal heir' and then the order of succession amongst different categories of heirs. Similarly, the Legislature did not deem it necessary to use the expression "victim" in Section 357, while in Section 357A, it has shrunk the otherwise widened circumference of the word "victim" by imposing the riders like 'dependent' or his/her requirement for 'rehabilitation'.

The heavy reliance of the counsel for respondent No.2 is also upon the Division Bench judgment of the D. Sudhakar's case (supra), he pointed refers to para Nos. 19 to 21, which would read as under:-

“19. Whereas in the present case, parties are Hindus and the law of heritance applicable to them is the Hindu Succession Act. Section 8 of the Hindu Succession Act sets out the general rules of succession in case of a male Hindu dying intestate, the property would devolve first up on the heirs specified in Class - I of the schedule and secondly, if there is no heir of Class - I, then up on the heirs specified in Class - II of the schedule; thirdly if there is no heir of any of the classes, then up on

the agnates of the deceased and lastly if there are no agnates, then up on the cognates of the deceased. Section 9 of the Hindu Succession Act provides the order of succession amongst heirs in the schedule. Those in Class - I take simultaneously and to the exclusion of all other heirs, there in the first entry in Class - II are preferred to those in the second entry. Section 12 prescribes the order of succession amongst agnates and cognates.

20. In view of the provisions of Sections 8 and 9 of the Hindu Succession Act, the appellant being a Class - II heir would not inherit anything from his deceased brother, as he is survived by his wife. Thus, the appellant is not entitled to the property of the victim under the applicable law of inheritance. Though the appellant falls in one of the category of heirs as per the Hindu Succession Act, but the Legislature deliberately used the word "legal heir", which strictly means a person who is entitled to the property of the victim under the applicable law of inheritance i.e. Hindu Succession Act. Hence, we are of the considered opinion that when it is the intention of the Legislature to give right of appeal to the legal heir, the appellant will not fall within the definition of "legal heir" and he is not entitled to prefer an appeal to this Court under Section 372 Cr.P.C. against acquittal of the accused.

21. The second issue that falls for our consideration is that the incident has taken place on 07.12.2007 and the amendment to Section 372 Cr.P.C. has come into force w.e.f. 31.12.2009, where the victim can prefer an appeal against acquittal. This issue will not hold us for long, in view of the fact that the Apex Court in National Commission for Women v. State of Delhi, has already held that the amendment is not applicable to cases where the incident has taken place prior to amendment. Therefore, even on this count, the appellant fails, and as such, the appeal is liable to be dismissed as not maintainable.”

After going through the judgment of the Full Bench of this Court in M/s Tata Steel Ltd.’s case (supra), it is clear that the term victim as contained in Section 2(wa) has been defined in para No. 139 of the said judgment (while answering the questions framed). I find force in the argument raised by the counsel for the petitioner that the petitioner is only pursuing the cause of death of his brother in the criminal Court so as to prove the guilt on the part of the accused. Except that the petitioner has no role. Of course, so far as the inheritance of the property and entitlement of the compensation is concerned, the petitioner cannot claim the same as in the presence of the Ist Class legal heirs, he would have no right. The heavy reliance of the counsel for respondent No.2 in M/s Tata Steel Ltd.’case (supra), befits

the said connotation of inheritance and entitlement to the compensation.

Though counsel for both the parties have relied upon Hanuman Ram's case (supra), yet a perusal of the said judgment would clearly show that a witness can be confronted with his previous examination. In the said case, the Hon'ble Apex Court, while referring to its previous judgment in Mishrilal and others Vs. State of M.P. & Others, (2005)10 SCC 701, has held as under:-

“10. Mishrilal and others Vs. State of M.P. & Others, this Court observed, inter-alia, as follows:-

“5. The learned Counsel for the appellants seriously attacked the evidence of PW 2 Mokam Singh. This witness was examined by the Sessions Judge on 6.2.1991 and cross-examined on the same day by the defence counsel. Thereafter, it seems, that on behalf of the accused persons an application was filed and PW 2 Mokam Singh was recalled. PW-2 was again examined and cross-examined on 31.7.1991. It may be noted that some of the persons who were allegedly involved in this incident were minors and their case was tried by the Juvenile Court. PW 2 Mokam Singh was also examined as a witness in the case before the Juvenile court. In the Juvenile Court, he gave evidence to the

effect that he was not aware of the persons who had attacked him and on hearing the voice of the assailants, he assumed that they were some Banjaras. Upon recalling, PW-2 Mokam Singh was confronted with the evidence he had given later before the Juvenile Court on the basis of which the accused persons were acquitted of the charge under Section 307 IPC for having made an attempt on the life of this witness.

6. In our opinion, the procedure adopted by the Sessions Judge was not strictly in accordance with law. Once the witness was examined in-chief and cross-examined fully, such witness should not have been recalled and re-examined to deny the evidence he had already given before the court, even though that witness had given an inconsistent statement before any other court or forum subsequently. A witness could be confronted only with a previous statement made by him. At the time of examination of PW 2 Mokam Singh on 6.2.1991, there was no such previous statement and the defence counsel did not confront him with any statement alleged to have been made previously. This witness must have given some other version before the Juvenile Court for extraneous reasons and he should not have been given a

further opportunity at a later stage to completely efface the evidence already given by him under oath. The courts have to follow the procedures strictly and cannot allow a witness to escape the legal action for giving false evidence before the court on mere explanation that he had given it under the pressure of the police or some other reason. Whenever the witness speaks falsehood in the court, and it is proved satisfactorily, the court should take a serious action against such witnesses.”

11. The factual scenario in Mishri Lal's case has great similarity with the facts of the present case. The High Court's view for accepting the prayer in terms of Section 311 of the Code does not have any legal foundation.....”

A perusal of para No.5 of the judgment in Mishrilal's case (supra) would make it clear that PW2-Mokam Singh, had been examined before the Juvenile Court, at a later point of time than his examination in the Sessions Court. It was under these circumstances, the Hon'ble Apex Court, held that he could not have been recalled to confront him with his later deposition before some other Court.

In the present case, the witness had been examined before MACT, Ropar on 14.03.2014. He was cross-examined before the trial Court on 20.7.2015, when he was declared

hostile. The petitioner through APP moved the application under Section 311 Cr.P.C. in 2015 itself, to confront such witness with his testimony made before the MACT. From the said factual position, it is apparent that the witness is sought to be confronted with the previous statement and not with the subsequent statement. Hence the judgment in Hanuman Ram's case (supra), rather supports the case of the petitioner.

The matter can be looked from another angle. It is settled law that the criminal prosecution can be put into motion by anyone, as the offence is considered not in persona but in rem i.e. against the whole society. Bahadur Singh is the complainant in this case and on his statement, the FIR had been registered. Thus, at a stage, when the complainant has resiled from his statement, application moved by the brother of the victim cannot be said to have no locus.

In view of the above, the present petition is allowed. The impugned order dated 21.11.2015 (P.6) passed by the Judicial Magistrate, Ist Class, Ropar, is set aside.

22.09.2022
ds

(HARNARESH SINGH GILL)
JUDGE

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