

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

CRR No.1985 of 2016

Date of Decision: 30-08-2022.

Kamaldeep Singh

...Revisionist-petitioner

Versus

State of Haryana & another

....Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Sandeep Verma, Advocate,
for the revisionist-petitioner.

Mr. Apoorv Garg, DAG, Haryana,
for respondent No.1-State.

Mr. Ishan Cooner, Advocate, for
Mr. J.S.Cooner, Advocate,
for respondent No.2.

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MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment handed down by learned Additional Sessions Judge, Ambala (for short 'the Appellate Court') on 11.04.2016 in the Criminal Appeal No.82 of 2015, as preferred by the informant-injured-respondent No.2 (here-in-after to be referred as 'respondent No.2') whereby the said appeal has been allowed and the judgment dated 27.08.2014 passed by learned Judicial Magistrate Ist Class, Naraingarh (for short 'the trial Court') regarding the acquittal of the revisionist-petitioner-accused (here-in-after to be referred as 'the petitioner') in the criminal case arisen out of the FIR bearing No.140 dated 08.12.2012 registered at Police Station Shahzadpur, under Sections 279,

337 and 338 IPC, has been set aside and the trial Court has been directed to examine all the remaining prosecution witnesses as per the list and to proceed further in the case in accordance with law, the petitioner has filed this revision petition.

2. Shorn and short of unnecessary details, the facts culminating in the filing of the present revision petition, are that the above-said criminal case was registered against the petitioner with the allegations that he had driven his Car bearing Registration No.CH01-AF-8233 on the public road in a rash and negligent manner and had, thereby, caused an accident resulting into the injuries, simple as well as grievous, on the person of respondent No.2. Further investigations were carried out and on the completion thereof, the Final Police Report/Challan was presented against the petitioner before the competent Court. He was charge-sheeted on 01.07.2013 under the afore-mentioned provisions and he pleaded not guilty to the same and claimed trial. To substantiate its allegations against the petitioner, the prosecution examined two witnesses namely ASI Subash Chand as PW-1 and ASI Jai Gopal as PW-2. Then, the trial Court recorded the statement of the petitioner under Section 313 Cr.PC wherein he pleaded innocence and after hearing learned State counsel as well as learned defence counsel, the trial Court acquitted the petitioner in the said case vide its judgment dated 27.08.2014.

3. Feeling dissatisfied with the above-said judgment, respondent No.2 filed an appeal to lay challenge to the same wherein the impugned judgment dated 11.04.2016 has been passed by the Appellate Court. It is also pertinent to mention here that along-with the said appeal, respondent

No.2 moved an application for seeking condonation of the delay in filing the appeal which has also been allowed vide the impugned judgment.

4. I have heard learned counsel for the petitioner as well as learned State counsel and learned counsel appearing for respondent No.2 in the instant revision petition and have also perused the file carefully.

5. Learned counsel for the petitioner has contended that respondent No.2 filed the afore-said appeal after the delay of 397 days, without advancing any cogent and plausible reason for the same in the above-referred application but the Appellate Court has erroneously allowed this application and moreover, the prosecuting agency had been granted sufficient opportunities to examine its witnesses in the Court but it had failed to do so and in these circumstances, the trial Court had rightly recorded the acquittal of the petitioner and therefore, the impugned judgment passed by the Appellate Court, is not legally sustainable and deserves to be set aside.

6. However, learned State counsel as well as learned counsel appearing for respondent No.2 have argued that the said judgment dated 27.08.2014 had been passed by the trial Court in the absence of respondent No.2 and he came to know about the acquittal of the petitioner later-on and then, he immediately preferred the said appeal in the Appellate Court and thus, the afore-said delay on his (respondent No.2-injured's) part cannot be termed to be inordinate at all and therefore, the same has rightly been condoned by the Appellate Court. They have also argued that the trial Court proceeded to pass the above-said judgment without even procuring the presence of the material prosecution witnesses, including respondent

No.2 and examining them and it being so, it is explicit that the Appellate Court has correctly remanded the case to the trial Court with the aforementioned directions and hence, the present revision petition be dismissed.

7. As regards the contention qua the above-said delay in filing the appeal, it is pertinent to point it out here that in Para No.5 of the impugned judgment, the Appellate Court has specifically mentioned that the petitioner was charge-sheeted on 01.07.2013 and then, the case was adjourned to 28.09.2013 for recording the prosecution evidence but on that day, the request of injured Dharam Pal, i.e respondent No.2, was received and he was exempted from appearing in the Court on the said date and the summons issued to the prosecution witnesses for 16.11.2013, had not been received back and on 22.02.2014 also, the situation remained the same and on 05.04.2016, the bailable warrants of three prosecution witnesses were reported to have been received back executed through some other persons and on 24.05.2014, the presence of two prosecution witnesses namely Satish Kumar and Sukhdarshan was ordered to be secured for 26.07.2014 through non-bailable warrants but however, the file had been taken up a day earlier, i.e on 25.07.2014 and the case was adjourned to 27.08.2014 for the same purpose and on that day, neither the presence of any witness was secured nor the prosecution evidence was closed by the State counsel and the case had, rather, been wrongly shown to be pending for the defence evidence and the final judgment had been passed.

8. From the afore-discussed facts and circumstances, it becomes crystal clear that after 28.09.2013, respondent No.2-injured had never been served the summons to appear before the trial Court for making his

depositions in the case and the judgment dated 27.08.2014 had been passed by the trial Court in his absence. In such circumstances, the condonation of the above-said delay on his part in filing the appeal, has rightly been condoned by the Appellate Court.

9. In view of the facts and circumstances as discussed in the preceding paragraphs, it also becomes quite explicit that the trial Court had decided the case without resorting to the legal procedure as prescribed for conducting and concluding the trial proceedings as it proceeded to record the statement of the petitioner under Section 313 Cr.PC and to pass the judgment qua his acquittal, without the closure of the prosecution evidence and that too, at the stage when the injured and other material witnesses had not been examined by it and even the non-bailable warrants had also been issued against some of the prosecution witnesses for the said day.

10. As a sequel to the fore-going discussion, it follows that the impugned judgment passed by the Appellate Court does not suffer from any illegality, infirmity, perversity or irregularity so as to call for any interference by this Court. Resultantly, the revision petition in hand, being *sans* any merit, is hereby dismissed.

11. The parties, through their respective counsel, are directed to appear before the concerned trial Court on 15.09.2022.

30th August, 2022
seema

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes