

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(214)

CRR No. 1297 of 2021

Date of Decision : 07.02.2022

Karnail Singh

...Petitioner

Versus

State of Punjab

...Respondent

(Through Video Conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Preetwinder Singh Dhaliwal, Advocate for the petitioner.

Mr. Sandeep Singh Deol, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

The present revision petition has been filed for setting-aside the judgment of the lower Appellate Court dated 28.01.2020 passed in Criminal Appeal No. 80 of 2015 by which, a de-novo trial has been ordered.

Learned counsel for the petitioner argues that once the trial Court has already passed an order on the basis of the evidence recorded granting the concession of probation after convicting him, the lower Appellate Court while considering the appeal filed by the petitioner against the said conviction and order of sentence dated 01.10.2015 of the trial Court should have passed appropriate orders as to whether conviction or the sentence as the case may be, imposed upon the petitioner is justified in the facts and circumstances of the case rather than remanding the case to the

trial Court for de-novo trial. Learned counsel for the petitioner further argues that in case, the lower Appellate Court was of the view that certain aspects have not been taken into consideration by the trial Court, the said Court should have applied its mind and passed appropriate order on the appeal rather than directing the trial Court to undertake the trial again hence, the order dated 28.01.2020 passed by the lower Appellate Court may kindly be set-aside with a direction to the lower Appellate Court to pass appropriate order on the appeal of the petitioner as required under the law keeping in view the evidence already on record.

Learned State counsel submits that the petitioner was convicted of the offences under Sections 420 and 511 IPC and was sentenced and granted the benefit of probation by the trial Court vide order dated 01.10.2015 and the lower Appellate Court was required to pass appropriate orders on the appeal filed by the petitioner on the said conviction and order of sentence. Learned State counsel submits that once, the lower Appellate Court was of the view that certain evidence has not been taken into consideration by the trial Court while convicting the petitioner and passing an order of sentence, the Court below had power to direct the trial Court to undertake the trial afresh on the basis of evidence already recorded, hence no grievance can be raised by the petitioner.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the present case, petitioner was convicted and sentenced by the trial Court vide order dated 01.10.2015 and was released on probation.

The order of conviction as well as sentence was challenged by the petitioner

before the lower Appellate Court and the lower Appellate Court while passing order dated 28.01.2020, remanded the case back to the trial Court for a fresh decision on the ground that certain evidence on record was not taken into consideration. Once, the matter was pending in appeal before the lower Appellate Court, in case the lower Appellate Court was of the view that certain evidence has not been taken into consideration, the lower Appellate Court was within its jurisdiction to pass appropriate order on the merits of the case, by following due process as envisaged under the law. The remanding of the case by the lower Appellate Court, keeping in view the facts and circumstances of this case, will not only consume time but is also not required for.

Keeping in view the facts and circumstances of this case, the impugned order dated 28.01.2020 passed by the lower Appellate Court on the appeal preferred by the petitioner is set-aside with a direction to the lower Appellate Court that appropriate order on merits of the case be passed on the appeal preferred by the petitioner after hearing the parties by following due process as envisaged under the law.

Revision petition is allowed in above terms.

February 07, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

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