

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-3142-2010
Reserved on: 20.11.2023
Pronounced on: 05.12.2023

Harbans SinghPetitioner

Vs.

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Abhishek Kaushik, Advocate
for the petitioner.

Mr. Shiva Khurmi, AAG, Punjab.

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
27	21.05.2003	Vigilance Bureau, Ludhiana	420, 409, 406, 467, 468, 471, 465, 120-B IPC and 13(1)(c)(d), 13(2) of P.C. Act, 1988

1. Aggrieved by the order dated 30.09.2010/08.10.2010, passed by Special Judge Ludhiana, vide which charges were framed against the petitioner for an offence punishable under the Sections mentioned above, the petitioner had come up before this Court by filing the present petition in November 2010.

2. Petitioner’s case is that he was initially not arraigned as an accused in the above captioned FIR because he was a Mining Officer at the time of grants of contract to 9 contractors of Gurnam Mineral of Mining Department, who had lifted sand from the land of Gram Panchayat however later on through a supplementary challan, he was arraigned as an accused. Vide order dated 30.01.2013, a Coordinate Bench of this Court had admitted the present revision petition and stayed the further proceedings before the trial Court. Vide order dated 25.04.2023, the Coordinate Bench of this Court modified the order dated 25.04.2023 and directed the trial Court to proceed with the matter but restrained from passing the final order. When this matter was listed on 05.09.2023, this Court also extended the interim order dated 25.04.2023.

3. In a nutshell, initially, prosecution was launched against 23 accused. Later, a

supplementary challan under Section 173(8) CrPC was filed against the petitioner. The trial in respect of the earlier 23 accused continued, and all of them were acquitted; however, because the petitioner had come up before this Court, the trial did not conclude in his matter as there was a stay on further proceedings before the trial Court.

4. In Paras 50 & 51 of the order passed by the trial court discusses the framing of charges qua the petitioner-Harbans Singh.

5. I have heard the counsel for the parties, read the entire order, and reviewed the record.

6. Counsel for the petitioner submits that main accused has already been acquitted, initially there was nothing against petitioner and he was shown as witness and while filing police report after further investigation no sanction was taken. Trial Court fails to appreciate all these facts and framed charges by ignoring all these points and prayed for quashing of proceedings against him. He also prayed for quashing of order on the point of delay and also prayed for grant of some benefit as given to other accused i.e. acquittal from charges and refer copy of the judgment dated 14.08.2015 passed by Special Judge Ludhiana in C.Case No.7-A dated 16.10.2006, Registration No.PC/33310/2013, in the case of other co-accused as Annexure P-20.

7. It remains undisputed that initially, the petitioner was not named as accused, but his name was shown in the list of witnesses. Subsequently, a challan was filed, in which the petitioner was shifted from the list of witnesses to the accused. While filing the first report, it was clarified that further investigation against Harbans Singh, the Mining Officer, and others would continue. It remains undisputed that the investigation was not closed qua him at the time of police report filed against other accused.

8. In a nutshell, the prosecution's case was that royalty was received in violation of the terms and conditions of the agreement, and since the petitioner was a Mining Officer, he could not be absolved of the allegations. Regarding the absence of sanction, the trial Court had observed that since the petitioner had retired on 30.06.2004 from the Industrial Department, no sanction for prosecuting him was required and had launched prosecution by charge-sheeting him.

9. Thus, the order vide, in which the charges were framed against the petitioner, was on two counts. Firstly, regarding violation of the terms and conditions of the agreement relating to royalty, to which the prosecution had collected sufficient evidence

during investigation and as such, this Court, while exercising revisionary jurisdiction, cannot interfere when the prosecution has enough material against him, which can be proved by adducing evidence before the trial Court and as concerned for further investigation, there is no illegality as per law.

10. As concerned for the other arguments, a perusal of the judgment mentioned above reveals that it is a final judgment after appreciating the evidence, considering the statements of witnesses, statement of accused persons u/s 313 CrPC. and after hearing the parties. Since the petitioner was not tried in said case, such a benefit cannot be extended to him because the prosecution still needs to adduce the evidence against him. Regarding the delay in the trial as argued by petitioner's counsel, the petitioner himself had delayed the trial by coming to this Court, filing the present petition, and then not insisting for early hearing, which is evident from order sheets, wherein there is not a single order in which the petitioner had insisted for early hearing of the present revision petition. Be that as it may, indeed, when a revision petition challenging the charges is pending for so long, the accused is likely to be prejudiced because the trial is delayed, but delay in the trial cannot be a ground for quashing the charges itself.

11. Regarding the second point that the prosecution was launched without obtaining sanction and because the petitioner had retired, the trial Court had exceeded its role. It remains undisputed that the petitioner was discharging his official functions at the relevant time, and the government's authority authorized him to do so. Simply because the petitioner has retired from his services, it would not imply that no sanction might not be required. At least the investigator should approach the concerned department about their intent before launch of prosecution; it is for the department to say that sanction to prosecute petitioner, is not required because the petitioner has retired. The appropriate authority (employer) should state whether sanction to prosecute petitioner is required or not. In the absence of the employer's consent, it is not proper to prosecute petitioner and absence of sanction might severely prejudice the petitioner, who was discharging his official duty.

12. Given above, the order dated 30.09.2010 passed by the Special Judge, Ludhiana, to the extent of sanction, as mentioned in para 51 of such order, is quashed and set aside. The matter is remanded back to the trial court, with direction to pass afresh order within six months from the date of order by affording opportunity to the State to seek necessary sanction or answer from the concerned authority. It is clarified that observations made hereinabove shall not be in any way binding on the Sessions Court; if the sanction is not granted or employer say no sanction is required and in the opinion of

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the trial Court, no sanction is required to prosecute a retired employer, the trial Court may proceed further. This Court's finding and reasoning are only to the extent and for the reason that the employee was discharging his official duties and the prosecution was launched by keeping the employer at bay. Prosecution is permitted to seek the opinion of the concerned competent authority i.e. employer of petitioner, about the sanction. The State will take steps for sanction, and the process must be completed within four months from today. In case it is not done, in that case, trial Court shall pass a fresh order qua sanction whether the same is required or not after affording opportunity to both the parties.

13. It is clarified that since the consideration of sanction is the primary and fundamental step in case the trial Court decides the point of sanction against the prosecution, then the observations made on merits above in this order shall render infructuous automatically, and the petitioner shall be deemed to have been discharged.

14. Regarding the argument that since the co-accused have been acquitted, as such the petitioner is also entitled to acquittal on the grounds of parity, calls for no interference. As already discussed, the co-accused were acquitted after holding a complete trial, and the petitioner is also entitled to acquittal if the trial Court finds no evidence.

15. Petition stands disposed of with above said observations. Pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

05.12.2023
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Whether speaking/reasoned: Yes
Whether reportable: **No.**