

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-24983-2019

Reserved on : 10.4.2023

Date of Decision: 17.4.2023

Parmod Kumar

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Atul Goyal, Advocate,
for the petitioner.

Mr. C.L.Pawar, Addl. AG, Punjab.

KARAMJIT SINGH, J.

Present petition has been filed by petitioner/accused-Parmod Kumar seeking quashing of order dated 1.4.2019 (Annexure P-9) passed by the Court of Judicial Magistrate, 1st Class, Payal, District Ludhiana whereby the application filed by the prosecution for placing on record the report of FSL has been allowed in criminal case having FIR No.84 dated 10.11.2015 under Section 61 of Punjab Excise Act, Police Station Maloud, Police District Khanna.

Brief facts of the case are that the police recovered 10 cartons of Imperial Blue Whisky (total 120 bottles) and 10 cartons of Dollar Rum (total 120 bottles) from the car belonging to the petitioner but at the time of the said recovery, the petitioner and his co-accused fled away from the spot and the accused persons were having no permit or licence to possess the said liquor. Resultantly, FIR No.84 dated 10.11.2015 under Section 61 of Punjab Excise Act was registered against the petitioner and his accomplice.

After completion of investigation, the police presented challan and thereafter, charges were framed and then the trial commenced. One another criminal case having FIR No.71 dated 6.10.2016 under Section 61 of Punjab Excise Act at Police Station Maloud, Police District Khanna registered against one Dalbara Singh was also pending in the same Court of Judicial Magistrate, 1st Class, Payal. The report of FSL pertaining to FIR No.84 dated 10.11.2015 was presented but the same was placed on record of criminal case having FIR No.71 dated 6.10.2016 whereas the report of FSL pertaining to FIR No.71 dated 6.10.2016 was placed on the judicial file of case having FIR No.84 dated 10.11.2015. When the prosecution came to know about the same, an application was filed by learned APP with request to transpose the report of FSL pertaining to FIR No.84 dated 10.11.2015 which was inadvertently filed in criminal case having FIR No.71 dated 6.10.2016. Said application was contested by the accused who filed written reply. However, after hearing both the parties, the said application was allowed by the learned trial Court in the following terms : -

“Accordingly, the application in hand is hereby allowed. Ahlmad of the court is directed to take from record the report of chemical examiner qua FIR bearing no.71 of 2016 from this file and place the same in file titled as “State vs. Dalbara Singh” and copy of this order be also placed in other file. Further the Ahlmad is directed to give noting in red ink on the report of FSL qua this order and report its compliance.”

Being aggrieved, the petitioner/accused has filed the present petition under Section 482 of Cr.P.C.

Counsel for the petitioner has contended that in the instant case, report of FSL (Annexure P-6) which is relating to FIR No.71 of 2016

was filed in criminal case of the petitioner having FIR No.84 of 2015 while the report of FSL (Annexure P-4) relating to FIR No.84 of 2015 was filed in criminal case having FIR No.71 of 2016 and thereafter, in criminal case of the petitioner having FIR No.84 of 2015, the prosecution witnesses were examined and PW1 HC Surjit Singh and PW4 HC Jasmail Singh proved the said report of FSL (Annexure P-6) as Ex.PC and at that time, no objection was raised by the prosecution when the said report of FSL was admitted in evidence. Counsel for the petitioner has further submitted that in the meantime, report of FSL (Annexure P-4) relating to FIR No.84 of 2015 was admitted and exhibited in criminal case having FIR No.71 of 2016. He has further contended that later on, the prosecution moved an application to transpose report of FSL filed in criminal case having FIR No.71 of 2016 to the judicial file of criminal case having FIR No.84 of 2015. He has further submitted that there is no provisions under the criminal law to de-exhibit report of FSL (Annexure P-4) which is already admitted in evidence in a criminal case having FIR No.71 of 2016 and to transpose the same to the judicial file of criminal case having FIR No.84 of 2015. He has further submitted that the prosecution could not be allowed to fill up the *lacuna* by moving application in question. He has further argued that if the prosecution is allowed to transpose the report of FSL (Annexure P-4) to the judicial file of criminal case having FIR No.84 of 2015, it is going to prejudice the petitioner. He has further contended that the impugned order being palpably illegal and wrong, is liable to be set aside.

Present petition is resisted by the State counsel who submits that report of Chemical Examiner relating to FIR No.84 of 2015 was tendered in criminal case having FIR No.71 of 2016 due to inadvertence and

in order to set right the said mistake, the trial Court rightly allowed the application moved by the prosecution in this regard and that there is no illegality in the impugned order.

I have considered the submissions made by the counsel for the parties.

Admittedly, the petitioner and his co-accused are facing trial in criminal case having FIR No.84 dated 10.11.2015 under Section 61 of Punjab Excise Act at Police Station Maloud and the said trial is pending in the Court of Judicial Magistrate, 1st Class, Payala. Another criminal case having FIR No.71 dated 6.10.2016 registered in Police Station Maloud against one Dalbara Singh is also pending in the same trial Court. The report of Chemical Examiner (Annexure P-4) relating to FIR NO.84 of 2015 was tendered and exhibited in criminal case having FIR No.71 of 2016 due to oversight while the report of Chemical Examiner (Annexure P-6) relating to FIR No.71 of 2016 was produced and exhibited in criminal case having FIR No.84 of 2015 due to inadvertence. In order to set right the record, the prosecution filed an application to transpose the report of Chemical Examiner (Annexure P-4) to the judicial file of Criminal case having FIR No.84 of 2015 wherein the petitioner is facing trial. The said application was allowed by the learned trial Court vide impugned order (Annexure P-9).

I have gone through the aforesaid impugned order and in my opinion, there is no illegality or perversity in the said order passed by the learned trial Court and reasons for the same are as follows : -

A Court cannot be a silent spectator while presiding over a trial. The Court is the sole repository of justice and a duty is cast upon it to conduct fair trial. It is for the Court to see that neither the prosecution nor

the accused play truancy with the criminal trial or corrode the sanctity of the proceedings.

Further, in **Rajendra Prasad v. The Narcotic Cell through its Officer-in Charge, Delhi**, 1999 (3) RCR (Criminal) 440, Hon'ble Apex Court observed as follows : -

“8. Lacuna in the prosecution must be understood as the inherent weakness or a latest wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.”

Since the Courts are here to assure fair trial, further the report of Chemical Examiner (Annexure P-4) is admissible under Section 293 of Cr.P.C. and furthermore, the said document is necessary for just decision of the case, the trial Court rightly allowed the prosecution to rectify the mistake as has been discussed above, while passing the impugned order.

Consequently, the present petition is hereby dismissed being devoid of merits.

(KARAMJIT SINGH)
JUDGE

April 17, 2023
Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No