

225

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-165-2017 (O&M)
DECIDED ON: 01.05.2023

JAGDISH SINGH BRAR

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANR

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Gurcharan Dass, Advocate
for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

Mr. Malkeet Singh Balianwali, Advocate
for respondent No.2.

VIKRAM AGGARWAL, J (ORAL)

1. The challenge in the present revision petition is to the order dated 03.10.2016, passed by the Additional Sessions Judge, Ludhiana, vide which the revision petition filed by respondent No.2-complainant against the order dated 24.09.2012 (Annexure P-5) passed by Judicial Magistrate First Class, Ludhiana, was set aside and the case was remanded to the trial Court to decide the matter afresh without deciding the application for condonation of delay and without issuing any notice to the petitioner.

2. The facts, in brief, are that FIR No.170 dated 28.09.2004 was registered under Sections 452, 427, 506, 148, 149 IPC at Police Station Saraba Nagar, Ludhiana on a complaint submitted by respondent No.2-complainant. The present petitioner was an accused in the said FIR. After investigation, the investigating agency submitted an untraced report dated 07.10.2006 under Section 173 of the Code of Criminal Procedure (for short Cr.P.C.). This untraced report was opposed by respondent No.2 and it was initially sent for re-inquiry. After re-inquiry, again an untraced report/cancellation report dated 25.01.2011 was submitted (Annexure P-3). However, the respondent No.2-complainant filed a

protest petition dated 09.06.2012 (Annexure P-4) which was dismissed by the trial Court vide order dated 24.09.2012 (Annexure P-5). Respondent No.2-complainant preferred a revision petition on 21.01.2014, which was allowed by way of the impugned order. No application for condonation of delay was initially filed but it was filed at a subsequent stage. A reply was also filed by the State but no reference to the same was made in the impugned order nor was it dealt with.

3. I have heard learned counsel for the parties.

4. Learned counsel for the petitioner submits that the impugned order is not sustainable. It has been submitted that the revision petition filed by respondent No.2-complainant was barred by limitation. It has also been submitted that an application for condonation of delay was filed at a belated stage but the same was also not taken into consideration and the revision petition was allowed. It has been submitted that no notice of the revision petition was ever served upon the present petitioner. Learned counsel submits that the impugned order is, therefore, not sustainable and deserves to be set aside.

5. On the other hand, learned counsel representing respondent No.2-complainant has opposed the prayer made by learned counsel for the petitioner stating that the impugned order does not suffer from any illegality. Learned counsel very fairly submits that the trial Court did not decide the application for condonation of delay. He, therefore, prays that the matter be remanded to the Revisional Court for a fresh decision in accordance with law.

6. I have considered the submissions made by learned counsel for the parties. The revision petition was filed by respondent No.2-complainant on 22.01.2014. This of course was done after having initially filed a petition under Section 482 Cr.P.C. before this Court, which was subsequently disposed of with liberty to the petitioner to file a revision petition before the Court of Sessions. Admittedly, no notice was issued to the petitioner despite he having been impleaded as respondent No.2 in the revision petition which is clear from the memo of parties of the said petition which is on record as Annexure P-7. Still

further, the orders of the Revisional Court which have been reproduced in the present revision petition show that after the matter remain pending, the Additional Public Prosecutor brought to the notice of Revisional Court on 18.04.2015 that the revision was time barred. An application for condonation of delay was filed under Section 5 of the Limitation Act on 27.08.2015 and reply to the same was filed by the prosecution on 09.12.2015. Thereafter, the matter remain pending for arguments and the orders show that the application for condonation of delay was never decided and straightaway on 03.10.2016, arguments were heard and the revision petition was allowed. In the considered opinion of this Court, the order is not sustainable for two reasons. Firstly, the issue of delay was never decided. It is settled law that in the first instance, the issue of delay was to be decided and only if the delay was condoned, the matter could have been heard on merits. Still further, no notice was issued to the present petitioner who was respondent No.2 in the revision petition which is also violative of the provisions of Sections 399 and 401 Cr.P.C. especially when an order was passed against the present petitioner.

In view of the afore-mentioned facts and circumstances and in view of the very fair concession of learned counsel for respondent No.2-complainant, the present revision petition is allowed. The order dated 03.10.2016 passed by Additional Sessions Judge, Ludhiana is set aside. Parties are directed to appear before the Sessions Judge, Ludhiana on 15.05.2023. The Sessions Judge, Ludhiana may hear the revision petition himself or may assign it to any other Court of competent jurisdiction and the matter shall thereafter be decided in accordance with law.

01.05.2023
Prince Chawla

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No