

**235 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Neutral Citation No. 2023:PHHC:042512
CRR-2357-2016 (O&M)
Date of Decision: March 22, 2023**

Pardeep Kumar and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Vishal Garg Narwana, Advocate for the petitioners.
Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J.(Oral)

This revision is directed against the judgment dated 10.05.2016 passed by learned Additional Sessions Judge, Patiala, in the criminal appeal No.24 of 2015, whereby case has been remanded back to the Trial Court with the direction that entire incriminating circumstances appearing in the prosecution evidence be put to the accused in statement under Section 313 Cr.P.C. and to grant opportunity to the accused to produce the defence evidence and then decide the matter.

2. It emerges that in criminal complaint No.42 of 2011 filed by respondent No.2-Gurmail Kaur, the four petitioners were convicted by learned Trial Court vide judgment dated 27.02.2015 under Sections 341, 506 and 365/511 of IPC. Vide a separate order, all the petitioners-accused were sentenced to varying sentences. Against the judgment of conviction and order of sentence, appeal was preferred by the accused-petitioners. Learned Additional Sessions Judge, Patiala, noticed irregularity on the part of the Trial Court inasmuch as incriminating circumstances appearing against the accused-petitioners had not been confronted to them under Section 313 Cr.P.C. It was observed that statements of the accused-petitioners were recorded by the Magistrate in perfunctory manner by not putting incriminating evidence appearing against them.

3. After observing so, the appeal was allowed. The judgment of conviction and order of sentence passed by the Trial Court were set aside. The case was remanded back to the Trial Court with a direction that entire incriminating circumstances appearing in the prosecution evidence against the accused-petitioners be put to them so that they can give proper explanation of those circumstances. Thereafter, opportunity was to be granted to the accused-petitioners in case they wanted to lead defence evidence.

4. Against the aforesaid order, this revision is filed. It is contended by learned counsel for the petitioners that entire evidence was before learned First Appellate Court and it should have given the findings against the judgment of conviction and order of sentence passed by the Trial Court instead of remanding the case back to the Trial Court.

5. After hearing learned counsel, I find no merit in the revision.

6. Section 386 of the Code of Criminal Procedure provides about the powers of the Appellate Court. As per Section 386(b) Cr.P.C., in an appeal from a conviction, the Appellate Court has a power to reverse the findings; and sentence and acquit or discharge the accused-petitioners; or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial. Besides this, Clause (e) of Section 386 Cr.P.C. also empowers the Appellate Court to make any amendment or any consequential or incidental order that may be just or proper.

Neutral Citation No. 2023:PHHC:042512
CRR-2357-2016 (O&M)

7. In this case, it is not disputed by the counsel for the accused-petitioners that in view of Section 386 Cr.P.C., the Appellate Court has the power to remand the matter to the Court of Magistrate for properly recording the statements of the accused-petitioners under Section 313 Cr.P.C. Once it is so, the impugned order cannot be faulted.

8. Accused-petitioners are being given opportunity not only to explain the incriminating circumstances appearing against them in the evidence produced by the complainant-respondent No.2, but will further get opportunity to produce defence evidence, if they want to do so.

9. Finding no illegality or infirmity in the impugned order, the present revision is hereby dismissed.

March 22, 2023

sarita

(DEEPAK GUPTA)
JUDGE

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