

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

CRR No.164 of 2024 (O&M)
Date of decision : 29.01.2024

Palwinder Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. H.S. Dhindsa, Advocate for the petitioner.

PANKAJ JAIN, J. (ORAL)

Challenge is to the judgment dated 28th of November, 2023 passed by Additional Session Judge, Ludhiana affirming the order of conviction dated 10th of April, 2019 passed by Judicial Magistrate 1st Class, Ludhiana in case FIR No.12 dated 24th of January, 2013 registered for the offences punishable under Sections 304-A, 279 and 427 of the Indian Penal Code, at Police Station Sarabha Nagar, Ludhiana.

2. As per the case of the prosecution FIR came into being on the statement made by complainant Inder Pal Singh alleging that on the fateful day i.e. on 24th of January, 2013 he along with his friend Bhupinder Singh was going from Ludhiana to Mullanpur. His nephew Harjot Singh (hereinafter referred to as 'the deceased') was going to his college on his motor-cycle at village Jhande. At about 9.30 AM a bus on a high speed came from the side of Ludhiana without blowing horn and struck against the motor-cycle of deceased. As a result thereof, the deceased fell on the road

and got crushed under the tyres of the bus. Deceased died on the spot. Driver of the offending bus fled away from the spot along with bus.

3. On 25th of January, 2013 one Bhupinder Singh alias Bhindi appeared before the concerned police authorities and stated that he is the owner of mini bus, involved in the alleged accident. He also disclosed that Palwinder Singh (petitioner) was driving the said bus at the time of accident. On 26th of January, 2013 he produced the petitioner. The petitioner was arrested. After completion of investigation, challan stands presented against the petitioner. Thereafter, prosecution examined complainant PW-1 Inder Pal Singh and Bhupinder Singh as PW2. During trial an application under Section 319 Cr.P.C. was moved for summoning Pargat Singh as additional accused. The same was allowed. Charge-sheet was filed against the petitioner as well as respondent No.2 *qua* offences punishable under Sections 279, 304-A and 423 IPC and they were put to trial.

4. Trial Court after appreciating the evidence on record came to the conclusion that the prosecution has proved its case beyond reasonable doubt. Accident was caused on account of contributory negligence of both the drivers of the buses involved in the accident and thus, convicted the petitioner and respondent No.2 for offences punishable under Section 279, 304-A IPC as under:

Under Section	Imprisonment R.I.	Fine	In default of payment of Fine R.I.
279 IPC	Six months	Rs.1000/-	15 days.
304-A IPC	Two years	Rs.7000/-	2 months

5. The petitioner and respondent No.2 preferred appeal before the lower Appellate Court. The learned Appellate Court found that the judgment and order of sentence passed by the learned Trial Court does not suffer from any legal infirmity and consequently, dismissed the appeal.

6. The petitioner herein is one of the accused. Counsel for the petitioner contends that both the Courts below erred in passing the impugned judgments as the prosecution has failed to prove the involvement of the mini bus driven by the petitioner. Initially name of the petitioner did not figure in the FIR. Petitioner was not arrested from the spot. He has argued that there is no convincing evidence adduced by the prosecution to prove that there was either rashness or negligence on the part of the accused while driving the bus and the evidence given by the witnesses, attributing high speed, as a reason for the accident, would not tantamount negligence or rashness. It is also pointed out that evidence of the complainant/eye-witnesses is not satisfactory. Initially he disclosed about only one bus but later on role of respondent No.2 came into picture. He submits that in the award passed by MACT, Ludhiana dated 23rd of May, 2017, it was observed that both buses, one driven by petitioner and the other by respondent No.2 were guilty of contributory negligence. He further refers to the claim petition Annexure P-4, to contend that from the perusal thereof, it is discernible that actually the bus driven by respondent No.2 was at fault. He thus submits that shifting the burden of contributory negligence towards the petitioner as well as upon mini bus on the spot of accident, is a glaring error of law. He contends

that both the judgments are based on conjectures and surmises and are liable to be set aside.

7. I have heard counsel for the parties and have gone through records of the case.

8. Law w.r.t. exercise of revisional jurisdiction of this Court already stands settled by the Apex Court in **Raj Kumar vs. State of H.P., (2008) 11 SCC 76** whereby it has been held that:

“7. In **Duli Chand v. Delhi Administration, (AIR 1975 Supreme Court 1960)**, the scope of invoking jurisdiction of the High Court in criminal revision was examined and it was held in a case involving vehicular accident as follows :

"The question whether the accused was guilty of negligence in driving the bus and death of the deceased was caused due to negligent driving is a question of fact which depends for its determination on appreciation of the evidence. While the Magistrate, and the Additional Sessions Judge arrived on assessment of the evidence at a concurrent finding of fact that the death of the deceased was caused by negligent driving of bus by the accused and the High Court even though justified in refusing to re-appreciate the evidence reviewed the same in order to justify itself that there was evidence in support of the finding and that the finding was not perverse, came to the conclusion that the evidence established the death of the deceased was caused by the negligent driving of the bus by the accused, the Supreme Court on an appeal under Article 136 refused to interfere."

8. In **State of Orissa v. Nakula Sahu and Ors., (AIR 1979 Supreme Court 663)** it was held that the High Court should not have interfered with the concurrent findings recorded by the Trial Court and the Sessions Judge in exercise of revisional jurisdiction when there was no error of fact or law arrived at by the Trial Court or the Sessions Judge. In **State of Kerala v. Puttamana Illath**

Jathavedan Namboodiri, 1999(1) RCR (Criminal) 808 : (1999(2) SCC 452) it was held that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate Court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

9. We find that the trial Court and the Revisional Court have analysed the evidence in detail to come to the conclusion about the guilt of the accused. There is no manifest error in the conclusions or in analyzing the evidence. That being so, the High Court was justified in law in not exercising revisional jurisdiction.”

9. Further, Apex Court in **State Rep. By The Drugs Inspector vs. Manimaran (2019) 13 SCC 670** held as under :

“15.....When there is concurrent findings by the courts below, the High Court ought not to have interfered with the same in exercise of its revisional jurisdiction. The revisional jurisdiction of the High Court is different from the appellate jurisdiction. The High court will not normally interfere with the concurrent findings of fact, unless the findings of fact arrived at by the courts below is perverse or that the court has ignored the material evidence while arriving at that finding. As held in **State of Kerala v. Puttumana Illath Jathavedan Namboodiri (1999) 2 SCC 452**, ordinarily it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions court in appeal. When the courts below recorded the concurrent findings of fact, in our view, the High Court was not right in interfering

with the concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained.”

10. Admittedly, the petitioner and respondent No.2 were racing with each other so as to pick up the passengers first from the other. It shows that the duo were at high speed, aiming to be the first one. Meaning thereby that the buses were driven in ‘rash’ and ‘negligent’ manner. In tearing hurry the driver of mini bus i.e. the petitioner herein, negligently overtook the bike of the young boy, and rammed into it. The boy fell down. The other speeding bus chasing the bus of petitioner, instead of braking crushed the deceased Harjot Singh under the tyres. As a result thereof, a young boy who was just 22 years of age lost his life leaving behind his aged parents. Offence *qua* negligence in driving cannot be ignored and the persons guilty of such reckless driving with no concern for anybody's life, should not be allowed to go scot-free.

11. In view of above, this Court is of the opinion that counsel for the petitioner has not been able to point out any glaring error of law that can persuade this Court to exercise revisional jurisdiction to upset the findings recorded by the Courts below. The Courts below have rightly appreciated the entire evidence and found the petitioner guilty.

12. Consequently, the present revision is dismissed.

January 29, 2024
Dpr

(Pankaj Jain)
Judge

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