

RSA-2314 of 1993

2024:PHHC:035721

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

RSA-2314 of 1993

Date of decision: 12.03.2024

The State of Punjab and others

.....Appellants

Versus

Amar Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Rajesh Sehgal, Addl. A.G., Punjab,
for the appellant.

Ms. Ramneeq Kaur, Advocate,
for the respondent.

NAMIT KUMAR, J.

1. This regular second appeal is directed against the judgment and decree dated 28.08.1992 passed by the Court of learned Sub Judge, Ist Class, Gurdaspur, whereby suit for declaration filed by the plaintiff-respondent was decreed as well as against the judgment and decree dated 27.04.1993 passed by the Court of learned District Judge, Gurdaspur, whereby appeal filed by the defendants-appellants against the judgment and decree dated 28.08.1992, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Shorn of unnecessary details, brief facts of the case are that plaintiff, who was posted in CIA Staff, Gurdaspur, along with CIA Staff and other officials was proceeded to

Constable Sharif Masih. On the way, 12 bottles of illicit liquor were recovered from the possession of one Pawan Kumar son of Kharaiti Lal and on the basis of *ruqa* sent by plaintiff, FIR No.98/89 under Section 61-1-14 of the Excise Act was registered against him. After leaving the bottles at the house of Balkar Singh, Head Constable, police party proceeded in mini bus to Gurdaspur. The driver, who was drunk, lost control over the vehicle. As a result of which the vehicle met with an accident causing damage to the Government vehicle. Consequently, Deputy Inspector General of Police, Border Range, Amritsar, vide order dated 30.10.1989 ordered to recover amount of Rs.10,750/- from the plaintiff and Constable Sharif Masih in equal shares. Plaintiff filed suit for declaration that order dated 30.10.1989 was illegal, ultravires, unlawful, against the principles of natural justice and the rules. The suit was decreed by the trial Court vide judgment and decree dated 28.08.1992 declaring the order dated 30.10.1989 illegal, restraining the defendants from making any recovery from the plaintiff. Defendants were also directed to repay the amount if deduction from the salary of the plaintiff-respondent was made. Aggrieved against the judgment and decree dated 28.08.1992 of the trial Court, defendants preferred appeal, which has been dismissed by the lower appellate Court vide judgment and decree dated 27.04.1993.

3. Learned State counsel contended that both the Courts below erred in law in holding that order dated 30.10.1989 was passed without following the procedure laid down in Rule 16 of the Punjab Police Rules. The recovery of the amount was only for the repair of the

vehicle damaged for which procedure is provided in Rule 5.4, which has been duly followed and complied with. He further contended that the Courts below have not rightly interpreted Rules 5.4 and 6.22 of the Punjab Police Rules. He further contended that the judgments of both the Courts below are based on conjectures and surmises, therefore, same are liable to be set aside.

4. *Per contra*, learned counsel for the respondent supported the judgments of both the Courts below. He contended that for no fault on the part of the respondent, recovery was imposed upon him by the appellants vide order dated 30.10.1989, which has rightly been declared illegal by both the Courts below.

5. I have heard learned counsel for the parties and perused the record.

6. Perusal of the record shows that penalty of Rs.10,750/- (Rs.5,000/- upon the plaintiff-respondent) was imposed without holding any departmental enquiry, without giving any show-cause notice to the plaintiff and without giving any opportunity of hearing to the plaintiff. It is settled law that no one should be condemned unheard. It is further clear from the record that respondent did not cause any loss to the vehicle. He was sitting in the vehicle driven by Sharif Masih. Thus, the order of recovery was passed without following the due procedure as required under the law. The plea raised by the appellants-defendants with regard to pendency of appeal filed by the respondent-plaintiff cannot be countenanced with. However, none of the parties has placed on record the outcome of the said appeal.

RSA-2314 of 1993

2024:PHHC:035721

7. Moreover, Section 102 CPC provides that no second appeal shall lie from any decree, when the subject-matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees. Present appeal is pending since 1993 and no stay has been granted by this Court against the impugned judgments and decrees of the Courts below. Thus, impugned judgments/decrees must have been executed by this time and even otherwise, in view of Section 102 CPC, the present appeal is not maintainable.

8 Learned counsel for the appellants has failed to show that the concurrent findings recorded by the Courts below are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

9. No question of law, muchless substantial question of law arises for consideration in the present appeal. No other point has been urged.

10. In view of the above, present appeal is disposed of accordingly.

11. Pending application(s), if any, stand disposed of accordingly.

(NAMIT KUMAR)
JUDGE

12.03.2024
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No