

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-13575-2024
Reserved on: 01.08.2024
Pronounced on: 30.08.2024

Harvinder Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Abhay Gupta, Advocate
for the petitioner.

Mr. Sukhdev Singh, A.A.G., Punjab
Ms. Swati Batra, D.A.G., Punjab and
Mr. Gurpartap S. Bhullar, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
160	12.04.1975	Khanna, District Ludhiana	353, 386, 342, 506 r/w 34 IPC

1. The petitioner, now a septuagenarian aged 78, is seeking to quash the above-captioned FIR, which was registered against him in 1975 when he was just 29.

2. The FIR in question was registered based on the application made by one Lajpat Rai Bailiff of Sub Judge Samrala, Punjab. He alleged that on 09.04.1975, he had gone to execute the warrant of possession at Khanna in the case of Ashok Kumar v. Surinder Kumar and others. When he and the decree-holder and witnesses reached the decretal shop, the defendant's servant, Manohar Lal, was present and made aware of the Court's order. Despite waiting for sufficient time for the judgment debtor, none reached the shop, and on this, he, along with Harbans Singh, Bishna, and Gian Chand, started vacating the shop by taking articles out of it, and they started preparing a memo of the same. When they had taken out only three articles,

then at that time, Amarjit Singh, Harbans Singh, Varinder Bhandari, and Harvinder (the petitioner) entered the shop and assaulted him. Amarjit Singh snatched the warrant of possession and pushed him out of the shop. The accused persons then dragged him inside a room and told him that they would not allow him to let go and also threatened to kill him. They also asked him to prepare a memo as per their direction. Only then would they let him go. Subsequently, the applicant saved himself by preparing a memo as directed by the accused, and on that, they returned the warrants to him and released him but did not hand over a copy of the memo.

3. Since the allegations disclosed the commission of a cognizable offense, an FIR was registered, and an investigation commenced, finally concluding in filing a police report under Section 173 CrPC. The police report reveals that the applicant, Lajpat Rai Bailiff, had made an application to the Sub Judge against Amarjit Singh, Harbans Singh, Varinder Bhandari, and Harvinder. The same was forwarded to the Police Station by the concerned Court, based on which FIR was registered as per the direction of the concerned Court. ASI Harbhajan Singh and Hawaldar Charan Singh conducted the preliminary investigation. During the investigation, Amarjit Singh took the plea of alibi, and to corroborate his stand, one Chaman Lal of Municipal Council, Khanna, gave an affidavit which pointed out that Amarjit Singh was not present at the spot. The Investigator relied upon it and did not prosecute Amarjit Singh in the final report (Challan) filed under Section 173 CrPC.

4. The trial Court took cognizance of the offense and summoned the accused. However, the trial Court also summoned Amarjit Singh as one of the mischief mongers.

5. However, Amarjit challenged his summoning before the Sessions Court by filing a criminal revision petition, and the Additional Sessions Judge at Ludhiana, vide order dated 08.12.1977, stayed the summoning order.

6. Petitioner has annexed one subsequent order of trial Court, which is

dated 14.03.1980, passed by JMIC, Samrala, and it reads as follows (P-4): -

“One accused Amarjit who is stated to be the real mischief and who was shown in column no 2 was summoned by this court but the order of his summoning was suspended by the Ld. Additional Sessions Judge, Ludhiana on 08.12.77. Since then no order has been received regarding the fate of that revision preferred by Amarjit Singh. The APP also could not trace any final order in that revision. In the circumstances of the case, when the court has given a reference in its order dated 29.10.77 that Amarjit is the real culprit from the evidence in the challan, it will not be proper to proceed with the case against the present accused without waiting for the result of revision filed by Amarjit Singh. The presence of the accused is exempted and file be consigned to record room and it shall be called as and when the order of the revision preferred by Amarjit Singh is received.”

7. The petitioner’s counsel states that they do not have any other subsequent order of the Additional Sessions Judge Ludhiana or the Sessions Court Ludhiana.

8. The petitioner’s grievance is that the trial against him was adjourned sine die but not finally closed; it did not result in discharge or acquittal, it appears that there would be no chance of it in his lifetime.

9. The petitioner’s predicament is that he does not have complete documents, and whatever he claims to have had was supplied to this Court and its copy to the State. He states that he had applied for copies of the documents but did not get them because the record was unavailable. In the quashing petition, the petitioner placed on record a copy of the FIR, a copy of the regular bail application, a copy of the challan, a copy of the order passed by JMIC, Samrala, a copy of HC Amarjeet Singh's statement, a copy of the order passed by the Additional Sessions Judge, Ludhiana, a copy of the application, and a copy of the reply of the copying Branch, Ludhiana.

10. After that, the matter has never been called again, and FIR has also not been closed, its fate awaiting the file from the Sessions Judge, which did not come. The file could not travel from Ludhiana to Samrala for 49 years,

with an average speed of one-sixth of the adorable sloth's speed¹, and the distance of Samrala was roughly 44 km from Ludhiana.

11. Deeply frustrated by the deadlock, the petitioner wants this Court to exercise its inherent jurisdiction to close the pending proceedings before the FIR's golden jubilee.

12. Feeling embarrassed about being badly outpaced by the sloth, the petitioner got fed up and came up before this Court under Section 482 CrPC in March 2024, when BNSS was dormant. Since the petition was filed before 30th June 2024, it must be dealt with under CrPC, not its new Avatar BNSS.

13. Petitioner submits that the trial has been pending since 1975 not because of the petitioner's fault but because the trial Court disagreed with non-arraigning Amarjit Singh as accused and, as such, vide order dated 29.10.1977 summoned him as an additional accused. Amarjit Singh was aggrieved, and he challenged the summoning order by filing a revision petition before the Additional Sessions Judge, which suspended the summoning order vide order dated 08.12.1977. Since the Sessions Judge, Ludhiana, had suspended the summoning order, the trial Court did not proceed with the trial for the reason that he could not have segregated the trial of other accused from Amarjit Singh and waited for the outcome of the decision and as such, consigned the file to the record room with the observation that as and when the record of revision petition is received, the file would be taken up again. After waiting for five decades, the petitioner's patience has run out and he has given up.

14. Petitioner seeks quashing because the record is unavailable before the Sessions Court or the trial Court. He has annexed the copy of the application asking for the record returned to him with the observations that the record is unavailable. It would be appropriate to refer to the order dated 14.05.2024 passed by JMIC, Khanna, which is now the concerned court for the said record, which reads as follows:-

¹ <https://www.worldwildlife.org/stories/why-are-sloths-slow-and-six-other-sloth-facts>

“An application to direct the record keeper of record room to provide the complete record related to the above mentioned FIR regarding CRM-M No.13575 of 2024 pending in the Hon’ble Punjab and Haryana High Court, Chandigarh filed by the prosecution through APP for the State.

Report of concerned ahlmad and concerned record clerk called in this regard. Report of concerned record clerk received whereby it is mentioned that the record which is lying in judicial Record Room, Khanna is from August 2014 and report of concerned ahlmad received whereby it is mentioned that there is no record pertaining to the abovesaid FIR. Accordingly, in view of the reports, the present application in hand stands disposed off. File be consigned to the record room, after due compliance.”

15. When this Court had issued notice to the State why the FIR, order of summons and further proceedings should not be quashed, the State also woke up from their usual slumber. The DySP filed a reply in which they opposed quashing FIR and other proceedings but admitted that they had no documents. Petitioner has applied for a complete record in 2008 vide Annexure P-7; however, vide order dated 02.01.2008, the record could not be provided to him due to the reasons mentioned in Annexure P-8, which reads as follows: -

“Record of this file of year 1980 and prior to 1985. Record room was under the control of DC, Ludhiana. The building of old judicial record room was in dilapidated condition. During the rainy season due to leakage of the roof more then 80% of old record have been spoiled in the year 2003 as per the direction of the Ld. District and Sessions Judge, Ludhiana, the inventory of old record which was recovered in good condition have been prepared. Those registers also checked but entry of this file is not found. File has been damaged in the old judicial record room.”

16. On 16.05.2024, State counsel informed the Court that they do not have any record of 1975. On this, the Court again sought directions on whether the record was available. After that, when the matter was taken up

on 12.07.2024, the State Counsel could not state anything about the record's production and did not dispute that the record was not available to the police department. Counsel for the petitioner submits that whatever documents are available to him, he has already annexed them. On this, State counsel submits that once the petitioner has annexed the record on his own, as such, the said record would be undisputed as far as the petitioner is concerned, and they would ascertain whether the record brought on record is prima facie sufficient to arrive at a finding of conviction or not and consequently, this Court asked the DySP to file an affidavit in this regard. The DySP had filed an affidavit dated 19.07.2024 in which they did not annex any other document available, but their stand is that the petitioner has neither been discharged nor acquitted. Thus, FIR cannot be quashed. The petitioner has filed a counter dated 01.08.2024 to the DySP's affidavit. It has been mentioned that 49 years have passed since the FIR was registered, and the petitioner submits that the complainant and other accused have expired. He is the sole surviving sufferer who is also suffering from his old age ailments and cannot further tolerate the agony of a pending FIR on his head. Even otherwise, the application made by Lajpat Rai Bailiff was not substantive evidence but had to be proved during the trial, a stage which did not arrive. The other document summarizes the police investigation recorded under Section 173 CrPC, which can only be used to contradict the police officials and is not substantive evidence. Thus, even if the documents annexed with the petition by the petitioner are taken as gospel truth, no evidence can take the case any further.

17. It has been the consistent view of several High Courts that reconstruction should be ordered when records are destroyed by fire or because of natural or unnatural calamities. In *Empress v. Khimat Singh*, 1889 AWN 55, the view taken was that the provisions of Section 423(1) of the Criminal Procedure Code, 1898 (corresponds to Section 385 of the Code of Criminal Procedure, 1898) made it obligatory for the court to obtain and examine the record at the time of the hearing. When it was impossible to do so, the only available course was a direction for reconstruction. The view

was reiterated over six decades in Sevugaperumal AIR 1943 MAD 391 (2).

18. Volume IV, Chapter 19 Part A of Punjab and Haryana High Court Rules² provide for the record's reconstruction when lost. However, the record cannot be constructed in this case because the people who have already expired and entered eternal rest cannot be brought back to life. This Court does not want to shorten the life of the sole surviving party by further continuing the proceedings.

19. The heaps of paper files are a source of food for various insects and

² Vol. 4, Chapter 19 Part A of Punjab and Haryana High Court Rules deals with the lost record in the following terms:

5. A report should be made to the High Court through the District and Sessions Judge whenever any judicial records or file or correspondence is found to have been seriously damaged, tampered with, destroyed lost or mislaid. Every effort should be made to replace missing or damaged papers from all available sources.

RECONSTRUCTION

21. Whenever a report regarding loss/damage of the judicial record/document is received, it be entered in a register maintained for the purpose. Proforma of the register shall be as per the annexed format Annexure 'B'. Thereafter notice be issued to parties to the proceedings and their Advocates, requiring them to furnish copies of the lost/damaged record, if the same are in their possession.

22. Officers should make prompt and sincere efforts to get the record reconstructed from all available sources/resources and fix the responsibility of the officials at fault within a fixed time frame, i.e. within 6 months and in case the lost/damaged documents are not reconstructed within fixed time limit, the reasons for non-reconstruction thereof should be intimated to this Court.

23. Quarterly progress of all the cases where documents have been lost or damaged should be sent to this Court in a consolidated form in the prescribed proforma enclosed as Annexure 'C' specifically indicating the changes occurred during the course of the last quarter.

24. It is a matter of experience that some of the Officers are not paying proper attention towards reconstruction of lost/damaged judicial record and years are taken for completion of the process of reconstruction and for fixation of the responsibility of the defaulting officials. Thereafter, reports are received that it is not possible to reconstruct the documents.

There can be no case where reconstruction of the document to some extent is not possible. It seems that officers are not properly aware about the process of reconstruction of the documents, so the files are kept pending for reconstruction proceedings for years together. The process of reconstruction of the documents can be speeded up by following a set procedure for reconstruction of the documents.

PROCEDURE FOR RECONSTRUCTION OF DOCUMENTS

25. Loss report will be entered in register maintained for the purpose and notice be issued to parties to the proceedings and their Advocates to furnish copies of lost or damaged record, if the same are in their possession. On the stipulated date, their statement(s) should be recorded and copies of the lost/damaged record be got produced from the parties/counsel. Opposite Party/Parties or his/their counsel should verify the correctness of the record produced by the other party, so that the same be not disputed at later stage of proceedings. If parties/counsel fail to produce copies of the lost/damaged record due to non availability of copy or for any other reason, efforts should be made to reconstruct the lost/damaged record with the help of other record, which may include :

(a) In case the lost/damaged record is a statement recorded in the Court or order/judgment of the Court, then a copy of the same can be taken out from the hard- disk of the Computer used by Judgment Writer/Steno or from his shorthand copy.

(b) Peshi Register

(c) Disposal Register

(d) Cause Lists

(e) Record maintained by copyist

(f) Record of Higher Courts or any other Court or Forum, where copies of record have been filed.

(g) If record is a statement and double record is maintained, then from that record.

(h) Statements can be reconstructed by summoning witnesses again.

(i) If record is a copy of some public record, then by getting copy from original or copy of public record.

(j) In case record relates to some other institution such as private banks, company, society etc., then from the record of that institution.

(k) If copies of record have been filed by the parties before other authorities e.g. in case of complaints etc. before Higher Courts, Human Rights Commission, CBI and other authorities, then from that record.

(l) History Sheets of the cases prepared for submission to the Higher Authorities.

FIXATION OF RESPONSIBILITY.

26. xxx

housing for fungi, and it would be unusual if the paper is not destroyed by molds, eaten by termites, mixed with others, misplaced, stolen, spoilt in floods, or reduced to ashes. However, now the technology has found a solution in digitization of the documents and depriving the insects and fungi of their food.

20. The initial delay probably ended all hopes of petitioner, and the failure to decide in a reasonable time indeed extinguished all the hopes for justice reminding us the adage “justice delayed is justice denied”.

21. Given this, the sole option left with this Court is to close this petition, with liberty reserved to the State to revive, by filing an application placing the reconstructed record till the petitioner survives.

22. In the entirety of facts and circumstances peculiar to this case and coupled with the legal position, there is no justification at all to continue the FIR, summoning order, and further proceedings. Given the above, the same is quashed and set aside.

Petition disposed of in terms above. All pending applications, if any, stand closed.

(ANOOP CHITKARA)
JUDGE

30.08.2024
Jyoti Sharma

Whether speaking/reasoned : Yes
Whether reportable : Yes.