



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.CRR-1952-2022 (O&M)

Mukhtiar Singh

....Appellant

Versus

State of Punjab and others

..Respondents

2.CRR-2109-2022 (O&M)

Ajit Singh and another

....Appellants

Versus

State of Punjab

..Respondents

Date of decision: 19.07.2024

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. K.S.Boparai, Advocate for the
petitioner in CRR-1952-2022 and
for complainant in CRR-2109-2022

Ms. Shubreet Kaur, Advocate for
respondent no.2 and 3 in CRR-1952-2022 and
for the petitioners in CRR-2109-2022

Mr. Kanav Singla, AAG, Punjab

ANIL KSHETARPAL, J (Oral)

1. With the consent of the learned counsel representing the parties, two connected criminal revision petitions i.e CRR-1952-2022 and CRR-2109-2022 shall stand disposed of by this common order.



2. In both these revision petitions the challenge is to the order passed by the Additional Sessions Judge remitting the matter back to the trial court for deciding afresh after permitting the accused to lead additional evidence and granted two opportunities to the prosecution as well as the accused to conclude their evidence.

3. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

4. On the information given by the petitioner in CRR-1952-2022, an FIR was registered against the petitioners in CRR-2109-2022. The police, on completion of the investigation, filed report under Section 173 Cr.P.C. The trial court ordered acquittal of the accused by judgment dated 27.10.2009. However, the First Appellate Court remitted the matter back to the trial court vide order dated 10.11.2014. In the second round, the trial court convicted the accused and sentenced them as under:-

Sr.No.	Under Section	Sentence
1.	468 IPC	To undergo simple imprisonment for a period of three years and to pay fine of Rs.500/- each and in default of payment of fine, to further undergo simple imprisonment for one month.
2.	471 IPC	To undergo simple imprisonment for a period of two years and to pay fine of Rs.500/- each and in default of payment of fine, to further undergo simple imprisonment for one month.

5. This time, convicts filed the first appeal in which an application for permission to lead additional evidence was also filed.



The Additional District Judge has recorded the following reasons to set aside the order passed by the Judicial Magistrate First Class, Ludhiana:-

i) The trial court did not appreciate the evidence properly and placed reliance on inquiry report of Superintendent of Police (Operation) and certain documents, which were not proved.

ii) the trial court recorded certain findings, although there was no allegation or averment in the complaint.

iii) the trial court does not discuss all the facts

iv) It is not proved as to when Harjit Kaur received notice of cancellation of power of attorney.

6. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

7. Learned counsel representing the first informant submits that the First Appellate Court has erred in remitting the matter back to the trial court. He submits that the accused was granted as many as 25 opportunities to lead their evidence in the trial court and there was no occasion for the First Appellate Court to allow filing of additional evidence. Ms. Shubreet Kaur, learned counsel representing the convicts/accused submits that the First Appellate Court has erred in remitting the matter back to the trial court as the accused have already faced prosecution for a period of more than 2 decades. She submits that in substance the dispute is of civil nature, which has been given the colour of a criminal case. She further submits that the prosecution could not be given opportunity to fill in the lacuna.



8. Learned counsel representing the State submits that he has no objection if the impugned judgment of the First Appellate Court is set aside and the case is remitted back to the First Appellate Court for fresh decision.

9. This Court has considered the submissions made by the learned counsel representing the parties.

10. In the opinion of this Court, in a criminal case, the appellate court should not ordinarily remit the matter back to the lower court for fresh decision unless it becomes inevitable. Speedy trial is one of the basic right of an accused. In this case, the accused have already faced criminal prosecution for a period spanning more than 2 decades. The offence alleged to be committed is triable by a Magistrate. In the first round, the accused were acquitted. However, the First Appellate Court remitted the matter back in the first round. In the second round, they were convicted. Now once again the matter has been sent back to the trial court for deciding the matter afresh.

11. As far as the argument of the learned counsel representing the petitioner in CRR-1952-2022 to the effect that the accused have been granted 25 opportunities to lead their defence evidence, hence, they should not be granted opportunity to lead additional evidence is concerned. This Court does not find any substance in the argument of the learned counsel representing the petitioner as the courts are required to grant fair opportunity to the accused to prove their defence. In this case, the appellate court has found that the accused have not been given proper opportunity. In any case, the First Appellate Court has exercised



discretion in the facts of the case and this Court does not find it appropriate to interfere with the same.

12. With respect to the reasons recorded by the First Appellate Court, it may be noticed that the First Appellate Court is entitled to re-appreciate the entire evidence and pass appropriate judgment. While allowing the additional evidence, the court can permit the parties to lead evidence or seek report from the trial court in this respect. However, the reasons recorded by the trial court are amenable to correction by the First Appellate Court. It was not necessary for the First Appellate Court to remit the matter back to the trial court.

13. The Madras High Court in **T.Vennila Vs Thanganel alias Kumar and others 2003 Cri LJ 4049** while interpreting Section 391 of the Criminal Procedure Code, 1973, has observed as follows:-

“A reading of Section 391 makes it abundantly clear that when an application is brought before the Appellate Court for adducing fresh evidence, the Appellate Court if it thinks that additional evidence is necessary, shall record its reasons and may either take such evidence itself or direct it to be taken by a Magistrate and such evidence shall be taken before the Pleader or the accused as the case may be and while taking such evidence, the Court shall adhere to Chapter XXIII of the Code which relates to the mode of taking and recording the evidence in enquiries and trials thereby meaning that the other side has a right to cross examine the witnesses in relation to the materials brought in evidence afresh but however this Section does not authorise the Appellate Judge to set aside the conviction and sentence and remand the case back to the trial Judge for recording evidence.”

Thus, it is significant to note here that the First Appellate Court has erred in setting aside the conviction and sentence and remanding the case back



to the trial Judge for recording evidence. Moreover, the Appellate Court has plenary powers for revaluating and reappraising the evidence and even to take additional evidence on record.

14. In this case, the First Appellate Court rather than remanding the matter back was expected to take additional evidence on record and decide the appeal on merits

15. With respect to the submission that the prosecution cannot be granted opportunity, this Court does not wish to express any opinion while leaving the First Appellate Court to take final opinion in accordance with law. Consequently, the impugned order passed by the Additional Sessions Judge on 01.02.2022 is set aside only to the limited extent. The order remitting the matter back to the trial court was not appropriate. Hence, to that limited extent, it is set aside. The parties through their counsels are directed to appear before the Additional District Judge on 20.08.2024. Needless to observe that the Additional District Judge will decide the case uninfluenced by the observations made by this Court. The First Appellate Court is requested to make sincere endeavour for expeditious disposal of the case, preferably, within a period of six months, from the date the parties enter appearance.

16. Disposed of.

17. All the pending miscellaneous applications, if any, are also disposed of.

19.07.2024
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(ANIL KSHETARPAL)
JUDGE

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