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2024.PHHC.086989



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-36186-2019
Date of decision: 13.05.2024

SURJEET KUMAR AND OTHERS

....Petitioners

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr.B,S.Mamli, Advocate
for the petitioners.

Mr. Bhupender Singh, DAG, Haryana.

KULDEEP TIWARI, J.(Oral)

1. Through the instant petition, preferred under Section 482 Cr.P.C., the petitioner seeks modification of the order dated 23.08.2016, (wrongly mentioned as 22.08.2016), (Annexure P-1), whereby, the application for refund of case property, i.e. an amount of Rs.3,70,290/-, was declined, and further the order dated 14.05.2019, passed by the learned Additional Sessions Judge, Fatehabad, whereby, the statutory revision as preferred by the petitioner, against the order (*supra*), was also dismissed.

2. On perusal of the record, it transpires that all the petitioners faced the trial in case FIR No.570, dated 20.11.2012, registered under Sections 3 and 13/3/67 of the Public Gambling Act, 1867, at Police

Station City, Fatehabad. In that case, a raid was conducted by the police, and all the petitioners were arrested while playing gambling, and a cash amount of Rs.3,70,290/- was recovered from the petitioners alongwith cards.

3. The petitioners were put to trial and finally the trial court concerned, while extending the benefit of doubt, acquitted all the petitioners vide judgment of acquittal dated 29.04.2016. Thereupon, the petitioners filed, an application under Section 452 of the Cr.P.C. for refund of the case property. The Magistrate concerned, dismissed the said application on the ground that while recording the statement under Section 313 Cr.P.C., on dated 16.01.2014, before the learned trial court concerned, the present petitioners denied the factum of recovery effected from him. The statement suffered by the present petitioners under Section 313 Cr.P.C., also was one of the reasons for the petitioners to earn acquittal. Therefore, the Magistrate concerned, proceeded to dismiss the instant application vide impugned order dated 23.08.2016.

4. Having aggrieved the petitioners preferred a statutory revision, in which they remained unsuccessful, and learned revisional court vide judgment dated 15.05.2019, has dismissed the revision petition.

5. The dismissal of above two verdicts propelled the present petitioners to approach this Court by filing the instant petition.

6. Learned counsel for the petitioners submits that in fact both the courts below erred, in fact while declining the application, while wrongly reading the statement made under Section 313 Cr.P.C.

7. He further submits that no specific question was put to them, that whether, the recovered money belongs to them, and utilised in the gambling act or not. The only query put to them, whether the amount has been recovered from them or not, to which they answered negative. Therefore, by any stretch of imagination this cannot be considered that they denied that the recovered money does not belong to the petitioners.

8. This Court has considered the argument submitted by learned counsel for the petitioner, but this Court is unable to accept the same, as the statement suffered by the petitioner(s) under Section 313 Cr.P.C., in order to earn acquittal, they had denied that the recovered amount has any connection with them.

9. Once in the statement recorded under Section 313 Cr.P.C., the petitioners have specifically denied, and even during the pendency of the trial, they never filed any application for seeking supardari of the said amount, to be their own amount. This court can safely conclude that this amount does not belong to them, rather the petitioners after earning the benefit of acquittal, now are trying to change their stand, which is not permissible and therefore, this Court does not find any merit in the instant petition.

10. Consquently, both the orders of the courts below (*supra*), are hereby affirmed, and the instant petition is ordered to be **dismissed**.

May 13, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether Reportable.	:	Yes
Whether speaking/reasoned.	:	Yes