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

CRR-1538-2024

Reserved on: 28.08.2024

Pronounced: 04.09.2024

Manohar Singh and others

..... Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Amit Arora, Advocate, for the petitioners.

Rajesh Bhardwaj, J.

1. The petitioners have approached this Court by way of filing the present revision petition impugning the order dated 22.07.2024 passed by learned Additional Sessions Judge, Tarn Taran setting aside the judgment of acquittal dated 03.07.2019 passed by learned JMIC, Tarn Taran and remanding the case to learned trial Court for retrial.

2. Succinctly, the facts of the case are that Ranjit Singh son of Gurnam Singh lodged the FIR No.47, dated 26.03.2015 under Sections 452/382/326/324/323/427/148/149/201 IPC at Police Station Sarhali, wherein, he alleged that he was doing work of agriculture and running a petrol pump under the name and style of M/s Raja Ram Ji Kishan Seva Kender at village Dhotian. On 25.03.2015, at about 09:20 p.m. his brother Dilbagh Singh and salesman Ram Nath were present at the petrol pump. When his brother Dilbgh Singh was settling the account with salesman Ram Nath, in the meantime, Manohar Singh armed with *kirpan*, Balbir Kaur armed with *dang*, Gurjant Singh armed with *dattar*, Harpreet Singh armed with *kirpan*, Lovepreet Singh @ Kaka armed with *dang*, came to his petrol pump and broke the glasses of petrol pump and forcibly entered the office.



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They attacked his brother Dilbagh Singh with their respective weapons and inflicted injuries on his person. They also snatched Rs.1,57,000/- from the salesman Ram Nath and a gun 12 bore lying in the office and issued in the name of the complainant and 32 bore pistol issued in the name of his brother Dilbagh Singh from them. The complainant was informed telephonically by salesman Ram Nath about the incident. On hearing the same, he rushed to the petrol pump and finding his brother Dilbagh Singh injured, he took him to Civil Hospital, Tarn Taran for his treatment, where Doctors referred him to Guru Nanak Dev Hospital, Amritsar. Motive for the occurrence was stated to be that the complainant purchased the land for petrol pump from Manohar Singh, but Manohar Singh started demanding the rates of the land at market rate, to which the complainant denied. Hence, the accused in connivance with each other committed the offence as alleged and thus, request was made to take legal action against all the accused. On the registration of the FIR, the investigation commenced and on conclusion of the same, challan was presented before the trial Court. Learned trial Court framed the charges and commenced with the examination of the witnesses. The prosecution in all examined 10 witnesses, however, as the prosecution failed to conclude its evidence, the trial Court closed the prosecution evidence vide order dated 29.05.2019. Learned trial Court observed that out of 10 prosecution witnesses examined by the prosecution, 03 witnesses, namely, Ranjit Singh, Dilbagh Singh and Ram Nath were private witnesses, whereas, rest of the witnesses were official witnesses. Ranjit Singh and Dilbagh Singh initially appeared before the Court as PW-11 and PW-8, respectively, but they did not return to face the cross-



examination. Hence, their incomplete deposition could not be read into evidence against the accused. Third private witness salesman Ram Nath did not step into the witness box during the trial. Out of the total accused, Lovepreet Singh @ Kaka and Harpreet Singh being juvenile were tried by the Principal Juvenile Justice Board, Tarn Taran and acquitted of the offence regarding which notice was served upon them vide order dated 03.07.2019. On appreciation of the evidence, learned trial Court also acquitted the petitioners-accused vide its order dated 03.07.2019. Aggrieved by the same, the State assailed the order dated 03.07.2019 passed by learned JMJC by way of filing appeal under Section 378 Cr.P.C. before learned Additional Sessions Judge, Tarn Taran. Learned Appellate Court on hearing both the sides, found the procedural irregularity in the trial conducted and thus, set aside the acquittal by remanding the case for retrial vide its impugned order dated 22.07.2024. Hence, aggrieved by the same, the petitioners are before this court by way of filing the present revision petition.

3. Learned counsel for the petitioners has vehemently contended that the petitioners were rightly acquitted by learned trial Court after the appreciation of the evidence led before it. He has submitted that complainant -Ranjit Singh and his brother Dilbagh Singh, who appeared before the trial Court as PW-11 and PW-8, respectively, deposed only in examination-in-chief, but they did not turn up for their cross-examination and hence, their deposition could not be read in evidence. He submits that on the very same day, both these witnesses had appeared as witnesses in the trial pending before learned Principal Juvenile Justice Board and both the



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children in conflict with law, facing trial stood acquitted as the prosecution failed to prove the case beyond reasonable doubt. It is submitted that the prosecution was granted sufficient opportunities by the trial Court for concluding its evidence, however, the same was not concluded and hence, the trial Court had rightly closed the prosecution evidence. Thus, on the overall appreciation of the evidence, the trial Court finding the prosecution case not having been proved beyond reasonable doubt, rightly acquitted the petitioners. However, in the appeal filed by the State, learned Appellate Court has totally misread the evidence on record and the law settled. He submits that learned Appellate Court had illegally set aside the well-reasoned order passed by learned trial court and thus, had fallen in error in remanding the case for retrial. He has placed reliance on the judgment of Hon'ble Supreme Court in Ukhe Kolhe vs. State of Maharashtra, 1963 AIR (Supreme Court) 1531 and Nasib Singh vs. The State of Punjab and others, 2021(4) RCR (Criminal) 438. He has submitted that as per law settled by Hon'ble Supreme Court, retrial could be directed only in exceptional circumstances. It is further submitted that the prosecution was granted ample opportunities by the trial Court to conclude its evidence, however, private witnesses intentionally did not appear before it for their cross-examination and thus, the prosecution evidence was rightly closed. He has submitted that the prosecution has never assailed the order passed by the trial Court closing its evidence. He further submits that no such exceptional circumstances had arisen in the present case for the retrial as held by Hon'ble Supreme Court in the aforesaid cases, thus, the impugned order being unsustainable in the eyes of law deserves to be set aside.



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4. Heard.

5. After hearing learned counsel for the petitioner and perusing the record, it is apparent that the case of the prosecution is based on FIR lodged by the complainant, namely, Ranjit Singh. Brother of the complainant was injured by the accused, who was shifted to the Hospital and on the basis of the medical examination, offence under Section 326 IPC was added in the FIR. Besides this, on the basis of the allegation of trespass offence under Section 382 IPC was also added. On completion of the investigation, the challan was presented and charges were framed. Out of 10 prosecution witnesses cited, 03 witnesses were the private witnesses and rest were official witnesses. All the official witnesses duly appeared before the trial Court. Private witnesses, namely, Ranjit Singh- complainant, Dilbagh Singh- injured, appeared as PW-11 and PW-8, respectively. However, these witnesses did not appear for their cross-examination. Third private witness, salesman Ram Nath did not step into the witness box. Resultantly, the trial Court acquitted the petitioner from their charges vide order dated 03.07.2019. As is evident from the record, on 22.10.2018, an application was filed under Section 216/217 Cr.P.C. for amendment of the charges and the same was allowed on 26.11.2018. Thereafter, State had filed an application under Section 311 Cr.P.C. which was allowed on 09.04.2019 and thereafter, two opportunities were granted to the State for conducting the prosecution witnesses and then on 25.05.2019, the prosecution evidence was closed. PW-8 Dilbagh Singh, injured-cum-eye witness, PW-11 Ranjit Singh, complainant, were bound down for their cross-examination, however, from the record, it is found that coercive



procedure for procuring their presence was not adopted by the trial Court as was available to it under Section 87 Cr.P.C. and Section 71 Cr.P.C. Thus, it is evident that the trial Court acquitted the accused as material witnesses did not appear for their cross-examination and thus, their deposition could not be read in evidence. Had these witnesses appeared for their cross-examination, then on scrutiny of the complete evidence, trial Court could have passed the verdict on the appreciation of the evidence in accordance with law.

6. Hon'ble Supreme Court in Nasib Singh's case (supra) has observed in para Nos.21, 22 and 28, which are as under:-

“21. The scope of the power of the Appellate Court to direct a re-trial has come up before this Court for interpretation in several decisions. The judgment of a Constitution Bench in *Ukha Kolhe v. State of Maharashtra (1964) 1 SCR 926* has dealt with the issue extensively. In that case, the appellant was tried before the Judicial Magistrate for the offence of rash and negligent driving while under the influence of liquor thereby causing the death of one person and injuries to four others and for offences under the Motor Vehicles Act. The Trial Judge held that the evidence was not sufficient to prove that the appellant was driving the motor vehicle at the time of the mishap and acquitted him of the offences under the Motor Vehicles Act and the Penal Code. But he held that the evidence established that the appellant had consumed illicit liquor and committed an offence punishable under Section 66(b) of the Bombay Prohibition Act. The appellant was convicted and sentenced to imprisonment for three months and was directed to pay fine. On appeal, the Sessions Court set aside the order of the trial court and ordered a retrial on the ground that a "fair and full trial" had not taken place. The revision was summarily



dismissed by the High Court which led to the appeal to this Court. Justice J.C. Shah, speaking for the Constitution Bench observed:

"11. An order for retrial of a criminal case is made in exceptional cases, and not unless the appellate **court is satisfied** that the Court trying the proceeding had no jurisdiction to try it or that the trial was vitiated by serious illegalities or irregularities or on account of misconception of the nature of the proceedings and on that account in substance there had been no real trial or that the Prosecutor or an accused was, for reasons over which he had no control, prevented from leading or tendering evidence material to the charge, and in the interests of justice the appellate court deems it appropriate, having regard to the circumstances of the case, that the accused should be put on his trial again. An order of re-trial wipes out from the record the earlier proceeding, and exposes the person accused to another trial which affords the prosecutor an opportunity to rectify the infirmities disclosed in the earlier trial, and will not ordinarily be countenanced when it is made merely to enable the prosecutor to lead evidence which he could but has not cared to lead either on account of insufficient appreciation of the nature of the case or for other reasons. [..]"

22. The above extract emphasizes that a retrial would not be ordered unless the Appellate **Court is satisfied** that:

- (i) The court trying the proceeding had no jurisdiction;
- (ii) The trial was vitiated by serious illegalities and irregularities or on account of a misconception of the nature of the proceedings as a result of which no real trial was conducted; or
- (iii) The prosecutor or an accused was for reasons beyond their control prevented from leading or tendering evidence material to the charge and that in the interest of justice, the Appellate Court considers it appropriate to order a retrial.**

Another feature which emerges from the above decision is that an order of retrial wipes out from the record the earlier proceeding and exposes the present accused to another trial. It is for that reason that the court has affirmed the principle that a retrial cannot be ordered merely on the ground that the



prosecution did not produce proper evidence and did not know how prove their case.

28. The principles that emerge from the decisions of this Court on retrial can be formulated as under:

- (i) The Appellate Court may direct a retrial only in 'exceptional' circumstances to avert a miscarriage of justice;
- (ii) Mere lapses in the investigation are not sufficient to warrant a direction for re-trial. Only if the lapses are so grave so as to prejudice the rights of the parties, can a retrial be directed;
- (iii) A determination of whether a 'shoddy' investigation/trial has prejudiced the party, must be based on the facts of each case pursuant to a thorough reading of the evidence;
- (iv) It is not sufficient if the accused/prosecution makes a facial argument that there has been a miscarriage of justice warranting a retrial. It is incumbent on the Appellant Court directing a retrial to provide a reasoned order on the nature of the miscarriage of justice caused with reference to the evidence and investigatory process;
- (v) If a matter is directed for re-trial, the evidence and record of the previous trial is completely wiped out; and
- (vi) The following are some instances, not intended to be exhaustive, of when the Court could order a retrial on the ground of miscarriage of justice :
 - a) The trial court has proceeded with the trial in the absence of jurisdiction;
 - b) The trial has been vitiated by an illegality or irregularity based on a misconception of the nature of the proceedings; and
 - c) The prosecutor has been disabled or prevented from adducing evidence as regards the nature of the charge, resulting in the trial being rendered a farce, sham or charade.**

7. Thus, it has been held by Hon'be Supreme Court that where the prosecutor has been prevented from adducing evidence as regards the nature of the charges, the trial is farce and thus, it constitutes a ground for the retrial. It has been held that if the Appellate Court is satisfied that the prosecutor for the reasons beyond their control prevented from leading or tendering the evidence regarding material charges then in the interest of



justice the retrial can be ordered. On applying the ratio of the law laid down to the present case, it is apparent that the material witnesses though appeared for the examination-in-chief, however, they did not turn up for their cross-examination. The trial Court without resorting to the coercive method for summoning of witnesses, closed the evidence of the prosecution. This resulted in giving benefit to the accused, where material witnesses were prevented from being examined by closing the evidence of the prosecution. Thus acquittal of the petitioners on the basis of the benefit of doubt in the facts and circumstances of the case has resulted in miscarriage of justice.

8. Hon’ble Supreme Court held that every case would depend on its own facts and circumstances and no straight jacket formula can be formulated. Weighing the overall facts and circumstances of the case on the anvil of the law settled, this Court upholds the view taken by learned Appellate Court, finding no infirmity in the impugned order dated 22.07.2024. Resultantly, the trial Court would proceed with the trial with the examination of the witnesses afresh as per the directions already given by learned Appellate Court in the impugned order dated 22.07.2024. Thus, the present revision petition is hereby dismissed.

04.09.2024
sharmila

Whether Speaking/Reasoned :
Whether Reportable :

(RAJESH BHARDWAJ)
JUDGE

Yes/No
Yes/No