

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-23049-2016 (O&M)
Date of decision : 15.01.2024

TARSEM KUMAR

... Petitioner

Versus

STATE OF PUNJAB & ANOTHER

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. R.S. Rangpuri, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr. Tejeshwar Singh, Advocate
for respondent No.2.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing/setting of the order dated 13.06.2016 (Annexure P-5) passed by the CJM, Sri Muktsar Sahib vide which the application filed by the petitioner not to start a *de novo* Trial has been rejected, in a Trial arising out of FIR No.166 dated 01.07.2005 under Sections 406/420 IPC at Police Station City Muktsar.

2. The brief facts of the case are that FIR No.166 dated 01.07.2005 under Sections 406/420 IPC, Police Station City, Sri Muktsar Sahib was registered on the basis of a complaint moved by the Manager Pungrain to the S.S.P. Sri Muktsar Sahib as per which the proprietor of M/s Taj Industries, Sri Muktsar namely, Tarsem Kumar (petitioner) had misappropriated paddy amounting to Rs.31,89,147/-.

3. Pursuant to the registration of the FIR, the investigation was concluded and a report under Section 173(2) Cr.P.C. came to be presented

against the petitioner. Based on the said report, charges came to be framed under Sections 420 and 406 IPC by the Chief Judicial Magistrate, Sri Muktsar vide order dated 11.05.2006.

4. The petitioner/accused preferred a revision petition against the aforementioned order of framing of charges. It may be pertinent to mention here that one Shri R.L. Jagga, Advocate represented the petitioner. The complainant remained unrepresented. The Court of Additional Sessions Judge, (Ad hoc) Fast Track Court, Sri Muktsar Sahib vide order dated 12.12.2006 set aside the charge under Section 420 IPC but held that the facts of the case also attracted the offence under Section 409 IPC.

5. The petitioner filed a quashing petition under Section 482 Cr.P.C. bearing No.CRM-M-49205-2007. The said petition was ordered to be dismissed as withdrawn on 09.12.2011 with the liberty to the petitioner to raise all arguments available to him before the Trial Court at the appropriate stage.

6. Meanwhile, neither the State nor the accused disclosed to the Trial Court that the charge had been ordered to be amended vide order dated 12.12.2006. Therefore, the Trial proceeded on the basis of the order framing charges under Section 406/420 IPC. Ultimately, the petitioner was acquitted by the Court of Chief Judicial Magistrate, Sri Muktsar Sahib vide judgment dated 06.03.2014. It would be relevant to mention here that the complainant was unrepresented whereas the petitioner was represented by the same counsel.

7. It was at this stage that the complainant filed an appeal against the judgment of acquittal before the Court of Sessions Judge, Sri Muktsar Sahib. At that stage, it was brought to the notice of the Appellate Court that originally the charge had been framed under Section 406/420 IPC vide

order dated 11.05.2006. Subsequently, on a revision petition preferred by the petitioner/accused, the charge had been ordered to be amended inasmuch as Section 420 IPC was deleted and Section 409 IPC was ordered to be added vide order dated 12.12.2006.

While narrating the sequences of events, the Sessions Judge, Sri Muktsar Sahib came to the conclusion that it had not been brought to the notice of the Trial Court by either the State or the accused that the charges had been ordered to be amended. Therefore, the appeal was partly accepted with the observations that the judgment of the Trial Court was to be set aside and reversed with the directions that the Trial Court would proceed against the accused as per directions of the Additional Sessions Judge, (Ad Hoc), Fast Track Court, Sri Muktsar Sahib dated 12.12.2006. A further direction was issued to dispose of the case expeditiously, preferably within a period of 04 months from the first date of hearing. The relevant extract of the said remand order dated 06.05.2016 (Annexure P-1) is reproduced below:-

“12.In these circumstances, it is made out that the learned Chief Judicial Magistrate, Sri Muktsar Sahib, framed charge for offences under Sections 420 and 406 of IPC against the accused vide order dated 11.05.2006, which order was challenged by the accused in revision before the Court of Shri P.P. Singh, the then learned Additional Sessions Judge (Adhoc), Fast Track Court, Sri Muktsar Sahib, and vide order dated 12.12.2006, the charge for offence under Section 420 of IPC was set aside and charge under Section 406 of IPC was held to be valid, whereas, it has been directed by the learned Additional Sessions Judge (Adhoc), Fast Track Court, Sri Muktsar Sahib that provisions of Section 409 of

IPC were also attracted in this case and learned Chief Judicial Magistrate was directed to proceed further in the matter. After taking into consideration direction made by the learned Addl. Sessions Judge (Adhoc), Fast Track Court, Sri Muktsar Sahib, in order dated 12.12.2006 and the criminal miscellaneous against the said order having already dismissed as withdrawn by the Hon'ble High Court of Punjab and Haryana, Chandigarh vide order dated 09.12.2011, which means that order of learned Addl. Sessions Judge (Adhoc), Fast Track Court, Sri Muktsar Sahib remained intact and it was the duty of the learned Chief Judicial Magistrate to proceed as per the order of the learned Addl. Sessions Judge (Adhoc), Fast Track Court, Sri Muktsar Sahib, it has never been complied with and learned Chief Judicial Magistrate, Sri Muktsar Sahib has proceeded as per his own order passed for framing of charge dated 11.5.2006 and ultimately accused was ordered to be acquitted. Since Section 420 of IPC was ordered to be set aside by the learned Addl. Sessions Judge (Adhoc), Fast Track Court, Sri Muktsar Sahib and it has been observed that Section 409 of IPC is attracted, which has not been taken into consideration, which shows that only on this score the judgment passed by the learned trial Court is liable to be set aside. Resultantly, the appeal is partly accepted with the observation that the judgment of the learned trial Court is set aside and reversed with the direction that the learned trial Court will proceed against the accused as per direction of learned Addl. Sessions Judge (Adhoc), Fast Track Court, Sri Muktsar Sahib, on 12.12.2006. As the case is quite old, the learned

Chief Judicial Magistrate Sri Muktsar is directed to dispose of the case expeditiously, preferably within a period of four months from the first date of hearing. The parties are directed to appear before the learned Chief Judicial Magistrate, Sri Muktsar Sahib on 19.05.2016 at 9:30AM sharp. The record of learned Trial Court be sent back alongwith a copy of this judgment. The appeal file be consigned to record room after due compilation.

*Pronounced in the open Court
06.05.2016*

*Sd/-
(Kishore Kumar)
Sessions Judge,
Sri Muktsar Sahib”*

8. The petitioner filed a Criminal Revision bearing CRR-2078-2016 against the above-said order dated 06.05.2016 before this Court. On 01.06.2016, only notice of motion was issued but no stay was granted.

9. Meanwhile, the petitioner filed an application before the Trial Court praying that “*the case may kindly be not proceeded with denovo trial and the same may kindly be decided on the evidence already on the file*”. The copy of the application dated 04.06.2016 is annexed as Annexure P-3 to the present petition.

A reply was filed to the said application.

10. The Trial Court dismissed the said application vide order dated 13.06.2016 (Annexure P-5). The relevant extract of the said order is as under:-

“After going through the aforesaid provisions, it is apparent that when the court alter the charges, the court shall allow the prosecutor as well as accused to recall and re-examine the witnesses. There is no express directions to the prosecutor to move a separate

application to that effect. Therefore, keeping in view of the aforesaid provisions, I am of the view that the court is required to re-call all the witnesses mentioned in the list of the witnesses. Application is found to be devoid of any merit and same is hereby dismissed. Now, file be put for evidence of the prosecutor for 01.07.2016. PWs mentioned at Sr. No.1 to 4 be summoned for the said date.

Sd/-

(Vishesh)

CJM-13.06.2016”

11. The petitioner filed the instant petition against the order dated 13.06.2016 without disclosing the fact that he had already filed a revision petition bearing CRR-2078-2016 in which case only notice of motion had been issued but stay had not been granted. Meanwhile, in the present petition, on 02.08.2016 notice of motion was issued and the proceedings were ordered to be stayed.

12. The revision petition bearing CRR-2078-2016 was dismissed by this Court vide judgment dated 25.04.2023.

13. The learned counsel for the petitioner contends that the impugned order dated 13.06.2016 (Annexure P-5) was liable to be set aside as no *de novo* Trial could be conducted when both the offences under Sections 406 and 409 IPC related to the misappropriation of property, Section 409 IPC only being an aggravated form of Section 406 IPC. Once the evidence had already been led, it could not be led again pursuant to the alteration of charges as that would amount to the filling up of a lacuna in the evidence. There was no direction in the remand order to hold a *de novo* Trial or to invite fresh evidence regarding misappropriation of property. In fact, the very ingredients of Sections

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406 and 409 IPC were missing. Section 217 Cr.P.C. also could not be resorted to as the present case was one of a remand and not of an existing Trial in progress. He, therefore, contends that the impugned order was liable to be set aside.

14. On the other hand, the learned State counsel and the counsel for respondent No.2 contend that the petition is devoid of merit. The remand order dated 06.05.2016 had been challenged vide CRR-2078-2016 and the said petition had been dismissed by this Court vide order dated 25.04.2023. The order of this Court remains unchallenged. As per the remand order, the Trial was to proceed as per the directions of the ADJ (Ad Hoc), Fast Track Court, Sri Muktsar Sahib dated 12.12.2006 wherein Section 409 IPC was ordered to be added. Once the proceedings were to continue from the stage of framing of charges the evidence was certainly required to be recorded once again in terms of Section 217 Cr.P.C. In fact, no prejudice would be caused to the petitioner/accused as he would have opportunity to cross-examine the witnesses once again. They, therefore, contend that there was no merit in the present petition and the same was liable to be dismissed.

15. I have heard the learned counsel for the parties.

16. Before proceeding further in the matter, it would be apposite to refer to Section 217 Cr.P.C., which reads as under:-

*217. Recall of witnesses when charge altered.-
Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed.*

(a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be

recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;
(b) also to call any further witness whom the Court may think to be material.

17. After going through the aforementioned Section, it is apparent that when the Court alters charges, the prosecutor as well as accused are allowed to recall and re-examine witnesses. Other material witnesses can also be examined, if so required. The question of a judgment being pronounced on the evidence already available on the file does not arise. In fact, the Court is required to recall all the witnesses mentioned in the list of witnesses and no separate application is required for the said purpose. No prejudice would be caused to the petitioner/accused since he would have the opportunity to cross-examine the witnesses in accordance with law.

18. In view of the above discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

19. As the FIR was registered on 01.07.2005, the Trial Court is directed to conclude the Trial within a period of three months from the next date fixed before it.

(JASJIT SINGH BEDI)
JUDGE

15.01.2024
 JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No