



117 (2 cases)

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

Date of Decision: 05.02.2025

1. CRM-M-14979-2012 (O&M)

HARBINDER SINGHPetitioner(s)

VERSUS

STATE OF PUNJABRespondent(s)

2. CRR-1513-2012 (O&M)

HARBINDER SINGHPetitioner(s)

VERSUS

STATE OF PUNJABRespondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

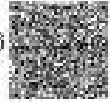
Present: Ms. Ishima Randhawa, Advocate
for the petitioner(s).

Mr. Amandeep Singh, DAG, Punjab.

SANJAY VASHISTH, J. (Oral)

1. By this common order, two matters i.e. CRM-M-14979-2012 (O&M) & CRR-1513-2012 (O&M) are being disposed of.

2. On the basis of the complaint moved by complainant Dalbir Singh, against his real brother - Harbinder Singh and others, case FIR No.118 of 31.10.1996 was registered at Police Station Goindwal Sahib, District Amritsar, for committing offence under Sections 420, 468, 471, 506, 379, 380 and 34 of IPC. However, after submitting final report under



Section 173 Cr.P.C., only accused Harbinder Singh (petitioner herein in both cases), was charge-sheeted.

3. The dispute is that, both the brothers i.e. complainant and Harbinder Singh, were partners in M/s Gobindpuri Paper and Board Mills and after closure of the mill, some contract was executed between the two brothers and the assets, including the machines which were shared according to the shares of the partners. However, a criminal case was got registered by the complainant by raising allegation that one power of attorney has been forged and machineries were also stolen by the accused.

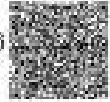
4. During the pendency of the trial, complainant had filed one application under Section 311 Cr.P.C. for summoning of Advocate namely Satnam Singh by taking plea that he is well versed with the history of the case, and one Branch Manager, Punjab Financial Corporation, who prepared inventory of stolen machinery, when he took over the unit from the accused Harbinder Singh.

5. The said application had been dismissed by the learned trial Court/JMIC Tarn Taran vide its order dated 07.10.2008 and for reference, the order is reproduced hereunder:-

‘Present: APP for the State.

Accused on bail with Sh. G.S. Sandhu, Adv.

Heard on the application u/s 311 Cr.P.C. It has mainly been alleged that advocate Satnam Singh and Manager, Punjab Financial Corporation are the material witnesses in the present case in as much Advocate 'Satnam Singh being well versed with the present case wants to depose as a witness and the Branch Manager, Punjab Financial Corporation prepared an inventory of stolen machinery when he took over



the unit from Harbinder Singh as such the record is material and essential for the decision of this case.

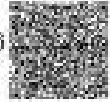
In reply, it has been contended that the case is already fixed for the evidence of accused in defence and the same of Satnam Singh, Advocate had not been mentioned in the list of witnesses and in last had been mentioned in the column No.2 of the report of 173 Cr.P.C. and an application u/s 319 Cr.P.C. to summon him as a accused has been declined by this Court and the revision filed against the same is also dismissed. Even the Branch Manager of Punjab Financial Corporation was never joined the investigation and there is no mention of any evidence having been collected as such keeping in view the fact that the evidence of prosecution was closed by order, the present application is not maintainable.

During the course of arguments, the learned APP for the state assisted by the complainant in person, argued in line with the averments of the application.

The Counsel for the accused, apart from arguing in line with the averments in the reply, also relied upon the decision in the matter of Hari Singh vs. State of Haryana (2002) (2) RCR (Criminal) 317).

I have gone through the contents of the file and given a thoughtful consideration to the submissions made by the Id. APP for the state and the Counsel for the accused.

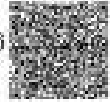
Perusal of file reveals that Satnam Singh who the prosecution wants to examine as a witness had been mentioned in the column no.2 of the report u/s 173 Cr.P.C. and an application was moved for summoning him as an accused. It is not a case of prosecution that he has since turned and approver Accordingly, in view of the fact that the police has never recorded his statement and also in view of the fact that the prosecution never examined the Branch Manager, Punjab Financial Corporation, there are no grounds to summon any



of the witness. I also find favour with the judgment in the matter of Hari Singh (Supra). Accordingly I find no merits in the present application and the same is hereby dismissed. Now to come up on 21.10.08 for DWs.'

6. After completion of trial, accused Harbinder Singh was acquitted for the charges against which he was charged vide judgment dated 19.01.2009 and the relevant finding is recorded in para 12, 13 and 14, same is reproduced hereunder:-

'12. The accused in the present case has been charged under section 419/420/468/467/379/471 of I.P.C. In so far as, the case pertains to the offence under section 379 of I.P.C. framed against the accused. There is admission of the part of the complainant that he alongwith the accused were partners in the mill and thereafter on the dissolution of the firm, the mill was given on contract basis to the accused. However, there is nothing on record to suggest that the accounts were rendered and shares regarding the property i.e. which property, including assets and liability would fall to the share which partner had been determined and the matter had been settled. Accordingly the ownership of the property both immoveable and moveable vested in both the partners i.e. complainant and accused and since the same was also in the possession of the accused, the property could never have been subject matter of the theft, so as to attract the mischief offence under section 379 of I.P.C. against the accused. If at all the accused had sold of the property in excess of his share, the remedy thereof lies by filing suit for rendition of accounts between partners and the recovery proceedings if any would accordingly follow, after determination of rights of the partners. Accordingly,



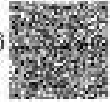
the offence under section 379 of I.P.C. is not proved against the accused.

13. As regard the offence under section 420, 468 and 471 of I.P.C. is concerned, all contention of the accused could be founded only if the prosecution had proved on record the fact that the accused has forged a particular document which has been further put to use by the accused after the same had been compared with the admitted signatures of the complainant, to suggest that signatures have there appear on documents marked 'C' or not do of the complainant. In fact the prosecution has not even exhibited this document as substantive piece of evidence. Accordingly ingredients of section 420 of I.P.C. is not proved against the accused. Further mischievous section 468, 471 of I.P.C. would be attracted only if prosecution has proved on record the forgery of the Power of Attorney as alleged and that the same was used as genuine document before any authority, as such, the prosecution has also failed to prove ingredients under section 468, 471 of I.P.C., so as to warrant the conviction of the accused under the aforesaid sections.

14. As such, in view of the discussion, it would be safe to arrive at a conclusion that the prosecution has failed to prove the guilt of the accused beyond a shadow or reasonable doubt and the accused is hereby acquitted of the charges framed against him. His bail bonds and surety bonds are discharged. File be consigned to the record room.'

7. It is only thereafter, that the order dated 07.10.2008 was assailed by the complainant before the Revisional Court (learned ASJ, Tarn Taran) by instituting the same on 20.01.2009.

8. Here, it is relevant to notice that immediately after acquittal of

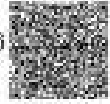


were not assailed by the complainant to the next Court uptill 10.10.2011, when he chose to file Criminal Appeal No.10 of 2011.

9. While dealing with the proceedings of appeal against acquittal as well as the criminal revision petition against the order dated 07.10.2008, the Revisional Court vide order dated 06.04.2012 noticed the fact that mill had been closed in the year 1995 and the proceedings under Section 145 Cr.P.C. had also been initiated by the Sub-Divisional Magistrate/Executive Magistrate. Court also noticed that the allegation against the accused that before closure of the mill, it had been taken over by accused Harbans Singh on contract and the machines installed therein were also sold out. However, without observing anything on merit that how the statement of Satnam Singh or the Branch Manager, Punjab Financial Corporation would be relevant, learned Revisional Court allowed the revision petition, which had been filed after recording the finding of acquittal qua the accused by the trial Court.

10. Operative part of findings recorded in paragraph No.9 in its order dated 06.04.2012, is reproduced hereunder:-

‘The accused was challenged for committing the theft of machinery articles lying in the premises of Gobindpuri Papers and Board Mills, Goindwal Sahib that the complainant Dalbir Singh had started in partnership with his brother Harbinder Singh accused. It was alleged that the mill was closed in the year 1995 and Section 145 Cr.P.C. were enforced by the SDM and during that period, Harbinder Singh removed the eucalyptus trees from there. It was also alleged that before closure of the mill, it was taken by the Harbinder Singh on contract and he also sold the machines installed therein. It is on account of those reasons that an application under Section



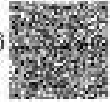
311 Cr.P.C. was filed by the State to examine Satnam Singh, Advocate and Branch Manager, Punjab Financial Corporation who prepared the inventory before taking over the unit. The evidence of the said witnesses in order to prove the removal of machinery as well as trees is therefore essential to effectively adjudicate the matter. As a result, revision is allowed. Trial court file be sent back immediately and revision file be consigned to the Record Room'

11. While allowing the application under Section 311 Cr.P.C., as a consequence, the judgment of acquittal was also set aside in appeal and the case was remanded back to the trial Court for **retrial** by examining the said witnesses and to decide the case afresh, vide its order dated 06.04.2012.

12. Hence, the petitioner has assailed the order dated 06.04.2012 passed by the Revision Court in the application under Section 311 Cr.P.C. and the judgment of setting aside the acquittal and remanding the case back to trial Court, has been assailed by way of CRR-1513-2012.

13. While dealing with the circumstances under which the proceedings have been conducted before the Revisional Court, this Court is amazed to notice that the complainant has lapsed twice i.e.; once when order dated 07.10.2008, vide which the application under Section 311 Cr.P.C. was dismissed, was never assailed by him uptill the time of acquittal of the accused by the trial Court i.e. for a period of 03 months and 10 days.

Secondly, only after being acquitted, vide judgment dated 19.01.2009, the revision petition has been filed by the complainant next



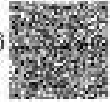
day on 20.01.2009, in all likelihood after realizing the mistake of not challenging the order vide which the application was dismissed.

14. The findings of acquittal recorded by the trial Court are based upon the evidence and material placed before it. Therefore, the findings of acquittal appears to be sufficient for acquittal by giving benefit of doubt.

15. It was either for the prosecution agency or for the complainant to act during the proceedings before the trial Court and lead sufficient and admissible evidence in support of the charges, ensuring that sufficient evidence is led to secure the conviction of the accused.

16. While dealing with the appeal, Court of learned ASJ also did not point out any glaring error in the finding recorded by trial Court. Therefore, issuing a direction to conduct a retrial after a belated period is not appropriate, as by that time much water had flown.

17. The accused, who had already been awarded with the judgment of acquittal, should not be subjected to retrial, especially, after a long prosecution putting him for retrial and obviously after disclosing of the complete defence before the trial Court. This would prejudice the right of the accused and would not be fair in the judicial propriety also to extend so much concession to the complainant/prosecution for ensuring the conviction of the proposed accused. Clearly, it will amount to fill up of the lacuna by the complainant/prosecution agency, which is not in spirit of law as enshrined under Section 311 Cr.P.C. Wherever it is found to be used for the purpose of the filling up of lacuna by either side, such a prayer is to be rejected by the concerned Court, as per law.



18. On the other hand, learned State counsel submits that *prima facie* case was made out under Sections 420, 468, 467, 379, 471 of IPC and charge sheet was served upon him, to which, he pleaded not guilty and claimed trial. Further, to prove its case, prosecution examined complainant – Dalbir Singh as PW1, Baljit Kaur as PW2 and thereafter, closed the prosecution evidence. Accused was examined under Section 313 Cr.P.C., and on putting the entire incriminating evidence appearing against him, he pleaded his false implication in the present case. However, accused did not lead any defence evidence.

Thus, learned State counsel submits that there is no illegality or infirmity in the orders impugned herein and prays for dismissal of present petitions.

19. With the observations recorded here-above, I find that the order dated 06.04.2012 vide which the application under Section 311 Cr.P.C. has been entertained and allowed and resultant remand order in Criminal Appeal No.10 of 2011 are worth to be set aside.

20. Both the petitions are allowed.

Photocopy of this order be placed on the file of connected case.

(SANJAY VASHISTH)
JUDGE

February 05, 2025
Sangeeta

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