

Before Sandeep Moudgil, J.

GURMIT SINGH — *Petitioner*

versus

STATE OF PUNJAB — *Respondent*

CRR No. 1979 of 2014

August 25, 2022

Code of Criminal Procedure, 1973—S.299(1) Indian Evidence Act, 1872—S.406—Evidence led by prosecution during absence of accused can be used against absconding person when he appears before Court—Petitioner surrendered and subsequently acquitted—Appeal preferred by State against acquittal of petitioner allowed—challenged—Held, evidence of prosecution witnesses not required to be recorded in presence of petitioner if prosecution is relying upon already produced evidence considering which, co-accused have already been acquitted—Trying the petitioner again on same set of allegation and prosecution evidence is nothing but abuse of process of law and wastage of court time—Petition allowed.

Held, that if an accused person has absconded, and that there is no immediate prospect of his arrest, the trial Court may commit for trial such person for the offence complained of in his absence and examine the witnesses produced on behalf of the prosecution, deposition and evidence so recorded may be given in evidence against him. In the present case, co-accused Fauja Singh and Karnail Singh were acquitted on the basis of evidence led by the prosecution. The petitioner being co-accused was framed with similar charges under Section 406 IPC and the evidence led by the prosecution were also same and inseparable. In such circumstances, it would be an exercise in futility to direct to try the petitioner on same set of allegations and prosecution evidence. Moreso, the observation made by learned appellate court is directly in teeth of Section 299(1)CrPC.

(Para 10)

Inderjit Sharma, Advocate, *for the petitioner.*

Shubham Kaushik, A.A.G., Punjab.

SANDEEPMOUDGIL, J.(ORAL)

(1) The present criminal revision petition is directed against the judgment dated 20.05.2014 passed by learned Additional Sessions

Judge, Gurdaspur, vide which the judgment dated 28.03.2011 passed by learned Additional Chief Judicial Magistrate, Gurdaspur, acquitting the petitioner, has been set aside and the matter is remanded back to the trial court to decide the case afresh on the charges framed against the petitioner.

(2) Prosecution case is that on 09.03.1998 an application from Assistant Manager (D) FCI, FSD, Gurdaspur-II was received by SSP Office, Gurdaspur, regarding the misappropriation of paddy of the FCI by M/s Fauja Singh & Sons Rice Mills, Bhattian, Gurdaspur, on the accusations that the FCI had executed an agreement on 02.11.1994 with M/s Fauja Singh & Sons Rice Mills to store paddy for the crop year 1994-95 in their mill premises and accordingly 3393=2204-53-000 paddy super fine and 441=283-70-000 qtls .paddy common was stored in their mill premises for milling the same into conventional rice at the yield rate of 68% for common and 66½ % on superfine at milling rate of Rs.9 per qtl.

(3) M/s Fauja Singh & Sons Rice Mills delivered 1512=1435-62-400 qtls rice superfine and 00 qtls. Rice common against the total paddy stored in his mill premises. M/s Fauja Singh & Sons Rice Mills (in short, 'the rice mill') has misappropriated 1-16-400=2 m/s qtls. paddy superfine and 283-700-000 qtls = 441 m/s qtls paddy common and has committed breach of agreement. As per agreement the party is liable to pay shortage of paddy at 1 ½ times the economic cost of paddy. After adjusting the amount deposited by the party towards gunnie sand paddy and also amount payable towards milling charges/stitching charges, an amount of Rs.1,06,539-34 is to be recovered from the rice mill. As such a criminal case was registered bearing Criminal Case No.252 of 1998 wherein, vide order dated 09.07.2007 accused Fauja Singh and Karnail Singh were acquitted of the charges under Section 406 IPC. However, since the present petitioner, who was declared PO on 07.07.2005, had surrendered before the lower court on 25.11.2010 and thereafter supplementary challan was presented against him, the trial court vide order dated 28.03.2011 acquitted the present petitioner also of the charges framed against him under Section 406 IPC. The said order of the trial court dated 28.03.2011 was, however, challenged by the State in appeal which has been allowed by the learned Additional Sessions Judge, Gurdaspur, vide order dated 20.05.2014 and the case of the petitioner was remanded back to decide the same afresh. Aggrieved against the order of the learned Additional Sessions Judge, Gurdaspur, the petitioner has filed the present criminal revision petition.

(4) Learned counsel for the petitioner contends that the judgment passed by the trial court is based on law and evidence. Learned appellate Court has ignored the provisions of Section 299(1) of Cr.P.C. which reads asunder:-

299. Record of evidence in absence of accused.

(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try, or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(5) A perusal of the above amply clarifies that the evidence lead by the prosecution during the absence of the accused, when he was not likely to be arrested in near future, can be used against the said absconding person when he appears before the trial court. It is further contended that the evidence of the prosecution witnesses is not required to be recorded in the presence of petitioner if the prosecution is relying upon the already produced evidence co-accused Fauja Singh and Karnail Singh during trial who were charged under the same provision i.e. Section 406 IPC. Therefore, the observation of the learned appellate Court that the trial court has not followed the procedure prescribed in law is based on conjectures and surmises. Reliance is placed on the decision of the Hon'ble Supreme Court in Central *Bureau of Investigation versus Abu Salem Ansari & Anr.*¹ as well as decision of the Delhi High Court in *Ram Singh Batra versus CBI & Ors.*²

(6) Further the contention of learned counsel for the petitioner is that since all the accused were charge-sheeted under Section 406 IPC and the evidence led by the prosecution was also same and inseparable, therefore, to try the petitioner again on the same set of allegation and prosecution evidence is nothing abuse of process of law and wastage of

¹2012 (7) RCR (CrI.) 738

²2013 (6) RCR (CrI.) 851

court time.

(7) Learned State counsel, on the other hand, has not been able to controvert the law cited by the petitioner but has maintained the order passed by learned appellate court.

(8) I have heard learned counsel for the parties and gone through the case file.

(9) The moot point which weighed in the mind of the learned appellate court is that the trial court has failed to follow the procedure laid down in the Code of Criminal Procedure in as much as the learned trial court has recorded the statement of the petitioner that he does not want to cross-examine the witnesses of the prosecution already examined and went on to decide the case. Learned appellate court opined that since no examination-in-chief of any prosecution witness was recorded in the presence of accused/petitioner Gurmit Singh, there was no scope available with the trial court to record the statement of the petitioner regarding non-cross examination of the prosecution witnesses.

(10) I do not find merit in the observation made by learned appellate court for the reason that Section 299(1) unambiguously provides that if an accused person has absconded, and that there is no immediate prospect of his arrest, the trial Court may commit for trial such person for the offence complained of in his absence and examine the witnesses produced on behalf of the prosecution, deposition and evidence so recorded may be given in evidence against him. In the present case, co-accused Fauja Singh and Karnail Singh were acquitted on the basis of evidence led by the prosecution. The petitioner being co-accused was framed with similar charges under Section 406 IPC and the evidence led by the prosecution were also same and inseparable. In such circumstances, it would be an exercise in futility to direct to try the petitioner on same set of allegations and prosecution evidence. Moreso, the observation made by learned appellate court is directly in teeth of Section 299 (1) Cr.P.C.

(11) On merits, learned trial court has returned a finding that the prosecution has brought nothing on record to prove entrustment of the fine paddy and common paddy to the petitioner and other accused persons except an agreement Ex.PA executed between the parties. Learned trial court has rightly observed that when the entrustment itself has not been proved against the petitioner, no question of misappropriation of paddy for the commission of offence punishable

under Section 406 IPC is made out. Moreover, Ex.PW3/F shows the balance remained 'nil' against the accused persons.

(12) Accordingly, this petition is allowed and the judgment of the learned appellate Court dated 20.05.2014 is hereby set aside and the order/judgment passed by the learned trial court is upheld.

Dr. Sumati Jund