

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

**CRR NO. 1702 OF 2002 (O&M)  
DECIDED ON : 30.01.2015**

**Yashpal and another**

**...Petitioners**

**versus**

**State of Punjab and others**

**...Respondents**

**AND**

**CRM NO. M-38677 OF 2002 (O&M)**

**Ram Pal @ Toni**

**...Petitioner**

**versus**

**State of Punjab**

**...Respondent**

**CORAM : HON'BLE MR. JUSTICE K. C. PURI**

Present : Mr. R. S. Bains,, Advocate,  
for the petitioners.

Mr. Gurinderjit Singh, DAG, Punjab.

Mr. Satbir Rathore, Advocate,  
for respondents No.3 and 4.

**K. C. PURI, J. (ORAL)**

Vide this common order, I intend to dispose of two petitions bearing **CRR No. 1702 of 2002** titled as, "**Yashpal and another vs State of Punjab and others**" and **CRM No. M-38677 of 2002** titled as, "**Ram Pal @ Toni vs State of Punjab**", as the same have arisen out of the similar occurrence.

Yashpal and Veena Rani have preferred CRR No. 1702 of 2002 whereas Ram Pal @ Toni has preferred separate petition No. 38677 of 2002 for setting aside the order dated 19.07.2002 passed by Additional Sessions Judge, Hoshiarpur and the order dated 06.08.2002 passed by JMIC, Dasuya.

Briefly stated, FIR No. 8 dated 18.03.1994 under Sections 419/420/468/471 of the Indian Penal Code Police Station Talwara, District Hoshiarpur, was registered against ten persons mentioned as under :-

- 1) Ram Pal @ Toni s/o Sohan Lal;
- 2) Asha Rani w/o Sat Pal;
- 3) Veena Rani w/o Yashpal;
- 4) Sat Pal s/o Ram Kishan;
- 5) Yash Pal s/o Ram Kishan;
- 6) Surinder Kumar s/o Kaka Ram;
- 7) Ram Kishan s/o Thunia Ram;
- 8) Shankar Dass s/o Ram Dass;
- 9) Raj Kumar s/o Jagdish Mitter and
- 10) Inder Singh s/o Sahib Singh.

The facts as gathered from the record are that Teja Singh (complainant) made written complaint in which he has mentioned that accused Inder Singh introduced the complainant and his brother Fauja Singh and told them that some oustees of the Pong Dam have been allotted land in Rajisthan and they are to dispose of their land at cheap rates. So, Inder Singh convinced the complainant and his brother Fauja Singh to buy the said land.

On the assurance of Inder Singh, an agreement was executed

between one Chuni Lal s/o Tara Singh and the complainant and his brother Fauja Singh. On the same day, said Chuni Lal also executed one General Power of Attorney in favour of complainant and his brother Fauja Singh, vide which the possession of land was symbolically delivered to the complainant and his brother Fauja Singh. Later on, the complainant and his brother Fauja Singh came to know that neither the person with whom the agreement was made is in existence nor the land shown in the agreement belong to said Chuni Lal. Thereafter, the complainant moved written complaint to DSP Mukerian and on the basis of investigation, the FIR in question was registered against the above mentioned ten persons. On completion of investigation, challan against the accused was presented in Court.

On presentation of challan, copies of same were supplied to the accused free of costs as envisaged under Section 207 Cr.P.C.

Charge under Sections 419/465/467/468/471 IPC was framed against all the accused to which they pleaded not guilty and claimed trial.

In order to bring home the guilt of accused, the prosecution examined Teja Singh (complainant) as PW-1, Khushal Singh as PW-2, Ajay Kumar (deed-writer) as PW-3, Rattan Chand as PW-4, ASI Roshan Lal as PW-5, Rajiv Pal as PW-6 and closed the evidence.

Thereafter statements of all the accused were

recorded under Section 313 Cr.P.C wherein all the incriminating evidence was put to them, to which they denied and pleaded false implication.

They were called upon to lead defence but they have not examined even a single witness in their defence.

The learned trial court, after appreciating the evidence on record, acquitted accused Veena, Ram Pal and Yashpal against all the charges and convicted accused Ram Kishan under Sections 419/465/467/468/471 IPC, accused Inder Singh (since died), Surinder Kumar, Raj Kumar, Shankar Dass under Sections 465/467/468/471 IPC and sentenced them as under :-

Accused Shankar Dass :-

Accused Shankar Dass was released on probation of good conduct subject to furnishing probation bonds for a sum of Rs.7000/- for a period of one year with one surety of life amount.

Accused Ram Kishan was sentenced to undergo rigorous imprisonment for a period of one year under Section 419 IPC; Accused Ram Kishan, Surinder Kumar and Raj Kumar were sentenced to undergo rigorous imprisonment for a period of one year for an offence punishable under Section 465 IPC; further they were sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.500/- each for an offence punishable under Section 467 IPC and in default of payment of fine, to further undergo simple imprisonment for a period of two months; they were further sentenced to undergo

rigorous imprisonment for a period of two years and to pay fine of Rs.500/- each and in default of payment of fine, to further undergo simple imprisonment for a period of two months; they were further sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.500/- each and in default of payment of fine, to undergo simple imprisonment for a period of two months. However, all the sentences were ordered to run concurrently.

Feeling dissatisfied with the above said judgment of conviction and order of sentence dated 09.11.2000, the accused Ram Kishan preferred Appeal No. 105 of 2001, Raj Kumar preferred Appeal No. 58 of 2000/2001, Surinder Kumar preferred Appeal No. 95 of 2000/2001. However, Shri A. S. Narula, Additional Sessions Judge, Hoshiarpur, vide his judgment dated 19.07.2002, remanded all the cases for fresh decision observing therein that appellants Ram Kishan, Raj Kumar and Surinder Kumar have not been convicted under Sections 465/467/468 and 471 read with Section 120-B IPC.

The learned trial court, after receipt of those cases passed the order dated 06.08.2002 which reads as under :-

“Accused Shankar Dass is also recorded to have been died as recorded by co-accused Raj Kumar vide his separate statement, in view of which, death report of accused Shankar Dass be called from the police station concerned. Accused Raj Pal, Reena Kumar, Jaspal be

summoned for 12.08.2002 through Halka DSP.”

The said order is the grievance ventilated in both the petitions.

Learned counsel for the petitioners have submitted that present petitioners have been acquitted vide judgment dated 09.11.2000 passed by JMIC, Dasuya. The State has not preferred any appeal against the said judgment of acquittal and only convicted accused Ram Kishan, Raj Kumar and Surinder Kumar who have preferred separate appeals. The case was remanded qua them only but the learned trial court has wrongly summoned the present petitioners as accused. Moreover, no judgment of remission can be passed without hearing the petitioners.

Learned State counsel has submitted that the present petitioners have been summoned correctly but has conceded the factual position mentioned above and has stated at the bar that State has not filed any appeal.

I have heard learned counsel for the parties and have gone through the records of case.

Admittedly, the present petitioners have been acquitted by the trial court vide judgment dated 09.11.2000. The State has not preferred any appeal against the said judgment. The present petitioners were not made party by the appellants who preferred three separate appeals against their conviction.

The case has been remanded by Additional Sessions Judge, Hoshiarpur. The order of acquittal passed against the present petitioners has not been set aside by any competent court. Even the appeal has not been preferred by the state. In these circumstances, the learned trial court has committed illegality by summoning them as an accused. So, the trial court has not applied its mind while summoning them as an accused. The summoning of a person as an accused who has already been acquitted, without setting aside the order of acquittal is bad in the eyes of law. Consequently, both the petitions stand accepted. The impugned order stands set-aside qua the petitioners only. However, it is made clear that so far as accused Ram Kishan, Raj Kumar and Surinder Kumar are concerned, they have not challenged the order dated 19.07.2002 in respect of remand of the case to the trial court, so the trial court shall proceed against them in accordance with law.

Both the petitions stand disposed of accordingly.

A copy of judgment be sent to the trial court for strict compliance.

**JANUARY 30, 2015**  
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**(K. C. PURI)**  
**JUDGE**