

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-11377-2012 (O&M)

Date of decision:25.8.2015

Laxmi Chand and others

...Petitioners

Versus

Jai Parkash and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Ashwani Gaur, Advocate for the petitioners.

Mr.Navin Gupta, Advocate for respondent No.1.

RAMESHWAR SINGH MALIK, J. (Oral)

Present petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), at the hands of accused, is directed against the impugned summoning order dated 9.11.2011 (Annexure P-5) and protest petition dated 7.5.2010 (Annexure P-1) in criminal case No.49/10, whereby protest petition of the complainant-respondent No.1 was allowed, summoning the petitioners to face the criminal trial, altogether ignoring the earlier order dated 6.6.2011 (Annexure P-2) passed by the learned Sessions Judge, Sonapat, dismissing the application of the prosecution under Section 319 Cr.P.C. and order dated 16.12.2011 (Annexure P-3) passed by this Court, whereby Criminal Revision No. 1588 of 2011 (Jai Parkash v. State of Haryana and others) was disposed of, as withdrawn.

Notice of motion was issued and further proceedings before the learned trial Court were stayed vide order dated 23.4.2012, passed by this Court. However, no reply has been filed either on behalf of the respondent-

complainant or on behalf of the State, despite having availed numerous opportunities.

Learned counsel for the petitioners submits that the impugned order is an order without jurisdiction. There is not even a passing reference of the order dated 6.6.2011 (Annexure P-2) passed by the learned Sessions Judge, Sonapat, whereby application of the prosecution under Section 319 Cr.P.C. was dismissed by a detailed order. He also submits that the complainant-respondent No.1 seems to have concealed a material fact from the notice of the learned Magistrate, at the time of passing of the impugned order, while withholding the material fact from the notice of the learned Magistrate that Crl. Revision No. 1588 of 2011 filed by him before this Court, has been disposed of, as withdrawn vide order dated 16.12.2011 (Annexure P-3). He refers to the judgment of conviction dated 18.10.2011 (Annexure P-4), whereby co-accused Pardeep has been convicted and sentenced vide order of sentence dated 19.10.2011. He submits that since the trial itself had been concluded, there was no scope of passing the impugned order, at the hands of the learned Judicial Magistrate 1st Class, Sonapat. Learned counsel for the petitioners places reliance on a judgment of the Hon'ble Supreme Court in **Jile Singh v. State of U.P. And another 2012 (3) SCC 383**. He prays for quashing the protest petition/complaint (Annexure P-1) filed by the complainant-respondent No.1, the impugned summoning order dated 9.11.2011 (Annexure P-5) as well as the subsequent criminal proceedings arising therefrom.

On the other hand, learned counsel for complainant-respondent No.1 submits that the present petition is bereft of merit and the same is liable to be dismissed. He further submits that the complainant has

exercised his valuable right by filing the protest petition (Annexure P-1). It was none of his faults if the said protest petition was not decided by the learned court of competent jurisdiction, at the appropriate time before conclusion of the criminal trial. He next contended that the dismissal of the application of the prosecution under Section 319 Cr.P.C. vide order dated 6.6.2011 (Annexure P-2) and also the order dated 16.12.2011 (Annexure P-3) passed by this Court, would not disentitle the complainant to press his protest petition. In support of his contentions, learned counsel for the complainant-respondent No.1 places reliance on the following judgments:-

- 1. Ranjit Singh v. State of Punjab 1998 (4) RCR (Crl.) 552 (SC);**
- 2. Rajendra Kumar Sitaram Pande and others v. Uttam and another (1999) 3 SCC 134 (SC);**
- 3. Kishori Singh and others v. State of Bihar and another (2004) 13 SCC 11 (SC);**
- 4. Om Kumar Dhankar v. State of Haryana and another (2012) 11 SCC 252 (SC);**
- 5. Jile Singh v. State of U.P. And another 2012 (3) SCC 383 (SC);**
- 6. Dharam Pal & Ors. v. State of Haryana and respondents (Crl. Appeal No.148 of 2003), decided on 18.7.2013; and (SC)**
- 7. Paramjit Singh v. State of Punjab 1998 (4) RCR (Crl.) 556; (P&H)**

He prays for dismissal of the present petition.

Supporting the contentions raised by the learned counsel for the

complainant, learned counsel for the State also seeks dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, the instant one has been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C., for the following more than one reasons.

A bare combined reading of the impugned protest petition (Annexure P-1), order dated 6.6.2011 (Annexure P-2) passed by the learned Sessions Judge, Sonapat, dismissing the application of the prosecution under Section 319 Cr.P.C., order dated 16.12.2011 (Annexure P-3) passed by this Court in Crl. Revision No. 1588 of 2011 (Jai Parkash v. State of Haryana and others), disposing of the criminal revision petition of complainant-respondent No.1, as withdrawn against the above-said order dated 6.6.2011, judgment of conviction dated 18.10.2011 and order of sentence dated 19.10.2011 (Annexure P-4) as well as the impugned order dated 9.11.2011 (Annexure P-5) passed by the learned JMJC Sonapat, would make it crystal clear that the impugned order is an order without jurisdiction. It is so said because the learned Magistrate had become *functus officio* after conclusion of the trial, vide judgment of conviction dated 18.10.2011 (Annexure P-4). Having said that, this Court feels no hesitation to conclude that the learned Magistrate was no more having any jurisdiction under Section 190 Cr.P.C. and the impugned order cannot be sustained.

It is also a matter of record that the learned Magistrate has not made even a passing reference of the order dated 6.6.2011 (Annexure P-2) passed by the learned Sessions Judge, Sonapat, whereby application of the prosecution, seeking to summon the present petitioners as additional accused to face the criminal trial, had been dismissed by the detailed order. Similarly, the order dated 16.12.2011 passed by this Court (Annexure P-3), whereby criminal revision petition No. 1588 of 2011 filed by the complainant-respondent No.1 was disposed of, as withdrawn, nowhere finds mentioned in the impugned order. Again, another material fact about conclusion of the trial vide above-said judgment of conviction dated 18.10.2011 (Annexure P-4) also does not find mentioned in the impugned order. All these facts were intentionally withheld by the complainant-respondent from the notice of the learned Magistrate. Had these facts been brought to the notice of the learned Magistrate, there was no scope of passing the impugned order. Thus, impugned order is patently illegal, besides being an order without jurisdiction and the same cannot be sustained, for this reason also.

During the course of hearing, when a pointed question was put to the learned counsel for the complainant-respondent No.1, as to why the above-said material facts were not brought to the notice of the learned Magistrate, he had no answer and rightly so, it being a matter of record. So far as the judgments relied upon by the learned counsel for complainant-respondent No.1 are concerned, there is no dispute about the law laid down therein. However, after careful perusal of the cited judgments, none of them has been found of any help to complainant-respondent No.1, being

distinguishable on facts. Similar is the position regarding the judgment relied upon by the learned counsel for the petitioner.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533.

So far as the peculiar facts and circumstances of the present case are concerned, it is also a matter of record that FIR No. 34 of 2009 was registered against four accused. Petitioners were parents-in-law and brother-in-law of the deceased and they were declared innocent by the investigating agency. While filing police report under Section 173 (2) Cr.P.C. petitioners were put in column No. 2. The complainant filed his protest petition but for the reasons best known to him, he did not press the same.

An application under Section 319 Cr.P.C. came to be moved by the prosecution, for summoning the present petitioners as additional accused and the same was dismissed with a detailed order dated 6.6.2011 (Annexure P-2), passed by the learned Sessions Judge, Sonapat. The complainant felt aggrieved and challenged the said order dated 6.6.2011 (Annexure P-2) before this Court by way of Criminal Revision No.1588 of 2011, which was disposed of as withdrawn by this Court vide order dated 16.12.2011 (Annexure P-3). Thus, the order dated 6.6.2011 (Annexure P-2) became final in favour of the petitioners.

Thereafter, the trial itself was concluded against Pardeep, husband of the deceased, vide judgment of conviction dated 18.10.2011

(Annexure P-4) and he was sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.10,000/- for commission of an offence under Section 304-B IPC vide order of sentence dated 19.10.2011. The impugned order dated 9.11.2011 (Annexure P-5) came to be passed by the learned Magistrate after conclusion of the trial and that too without making even a passing reference to all the above-said material facts, including passing of the order under Section 319 Cr.P.C., disposing of the criminal revision petition of the complainant by this Court as well as the conclusion of the trial. Under these circumstances, it can be safely concluded that the learned Magistrate passed the impugned order, which on the face of it, is an order without jurisdiction and the same cannot be sustained, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noticed above, coupled with the reasons aforementioned, this Court is of the considered view that it is just and expedient to quash the protest petition (Annexure P-1), the impugned order dated 9.11.2011 (Annexure P-5) as well as the subsequent criminal proceedings, so as to prevent the misuse of process of the Court any further and also to secure the ends of justice.

Consequently, the impugned protest petition (Annexure P-1), impugned summoning order dated 9.11.2011 (Annexure P-5) as well as the subsequent criminal proceedings are hereby quashed.

Resultantly, with the above-said observations made, the present petition stands allowed, however, with no order as to costs.

25.8.2015

mks

MUKESH KUMAR SALUJA
2015.09.09 11:18
I attest to the accuracy and
authenticity of this document.

(RAMESHWAR SINGH MALIK)
JUDGE