

**Sr. No.238
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**CRM No. M-21369 of 2013
Date of Decision: 29.10.2015**

Shailesh Sharma

...Petitioner

Vs.

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

Present: Mr. Sunil Chadha, Senior Advocate with
Ms. Swati Verma, Advocate,
for the petitioner.

Ms. Anmol Grewal, AAG, Punjab.

Mr. J.S.Bhatti, Advocate,
for respondent No.2.

RAMESHWAR SINGH MALIK, J.

Feeling aggrieved against the impugned order dated 26.02.2013 (Annexure P-5), passed by the learned Judicial Magistrate Ist Class, Ludhiana, whereby application moved by respondent No.2 at Annexure P-4, for the production of documents, was allowed without granting any opportunity of being heard to the petitioner, he has approached this Court by way of instant petition filed under Section 482 Cr.P.C., for setting aside the impugned order.

Notice of motion was issued and pursuant thereto reply was filed on behalf of the respondent-State.

Learned senior counsel for the petitioner submits that the impugned order is patently illegal for the reason that it was admittedly passed without granting an opportunity of being heard to the petitioner. He further submits that if the petitioner would not comply with the said order, adverse would be drawn against him. Learned senior counsel for the petitioner would next contend that once the impugned order was likely to cause serious prejudice to the petitioner, it was least expected from the learned trial Court to grant an opportunity of being heard to the petitioner before passing the impugned order. He makes a limited prayer that let the petitioner be granted an opportunity of filing reply to the application of respondent No.2 at Annexure P-4 and then the appropriate order may be passed after granting an opportunity of hearing to both the parties. He prays for allowing the present petition.

On the other hand, learned counsel for the State as well as learned counsel for the complainant submit that the learned trial Court was well justified on facts as well as in law by passing the impugned order and the same deserves to be upheld. They further submit that no prejudice has been caused to the petitioner, while passing the impugned order because the application was moved in his presence and the impugned order was also passed in the presence of the petitioner. They pray for dismissal of the present petition.

Having heard the learned counsel for the parties and going through the record of the case, this Court is of the considered opinion that since the impugned order has been found to have been

passed in glaring violation of basic principle of natural justice, the same cannot be upheld and the instant petition deserves to be accepted, for the following more than one reasons.

It is the cardinal principle of law that nobody should be condemned unheard. An order which entails the civil consequences and has been passed without granting an opportunity of being heard to the person against whom the order is passed, such an order would be a nullity. It is so said because it is the basic principle of natural justice that everybody must be granted due opportunity to put up his case so as to defend himself.

Such a valuable right cannot be under estimated or ignored even by the administrative authorities, much less by the courts of law. However, since the learned trial Court has misdirected itself, while not granting an opportunity to the petitioner to file his reply to the application (Annexure P-4), before passing the impugned order, it has resulted in miscarriage of justice and the same cannot be sustained.

The argument raised by the learned counsel for the respondents is only noted to be rejected. Even if the application (Annexure P-4) was moved by respondent No.2 in the presence of the petitioner and the impugned order was also passed in the presence of the petitioner, would not make the impugned order legal, because admittedly no opportunity was granted to the petitioner to file his reply to the application (Annexure P-4). Had the learned trial Court granted an opportunity to the petitioner to file his reply to the application (Annexure P-4), petitioner might have satisfied the

learned trial Court that the documents which were being sought to be produced through the petitioner, at the instance of respondent No.2, were not even relevant for the just decision of the case.

However, no such opportunity was granted to the petitioner, taking away his valuable right of defence and thereby causing a serious prejudice to him. Further, if the petitioner would not comply with the impugned order, adverse inference would be likely to be drawn against him. Having said that, this Court feels no hesitation to conclude that the learned trial Court has exceeded its jurisdiction, while passing the impugned order and same cannot be sustained, for this reason also.

No other argument was raised.

In view of what has been discussed hereinabove, impugned order dated 26.02.2013 (Annexure P-5) is hereby, quashed. Learned trial Court is directed to grant an opportunity to the petitioner to file his reply to the application (Annexure P-4). Thereafter, learned trial Court shall grant an opportunity of being heard to both the parties before passing a fresh order, in accordance with law.

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

29.10.2015

vandana

**(RAMESHWAR SINGH MALIK)
JUDGE**