

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-18932 of 2015

.....

Date of decision:17.12.2015

Fakir Chand

.....Petitioner

v.

State of Haryana and another

.....Respondents

....

Present: Mr. I.S. Pabla, Advocate for the petitioner.

Mr. Brijesh Sharma, Assistant Advocate General, Haryana for
the respondent-State.

Mr. R.S. Pandher, Advocate for complainant-respondent No.2.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying
for quashing of criminal complaint No.545-1 dated 24.11.2012 (Annexure-
P.1), order dated 11.11.2014 (Annexure-P3) passed by learned Additional
Sessions Judge, Yamuna Nagar at Jagadhri and the order dated 21.2.2015
(Annexure-P.4) passed by learned Judicial Magistrate Ist Class, Jagadhri.

Notice of motion has been issued in this case.

Mr. Brijesh Sharma, learned Assistant Advocate General,
Haryana has put in appearance on behalf of respondent-State and Mr. R.S.
Pandher, learned Advocate has appeared for the complainant-respondent
No.2 and contested this petition.

I have heard learned counsel for the petitioner as well as learned Assistant Advocate General, Haryana and learned counsel for the complainant-respondent No.2 and have gone through the record.

At the time of arguments, learned counsel for the petitioner has given-up the relief regarding quashing of the complaint at this stage and asked for the liberty to raise all points before the Courts below. The relief regarding quashing of the complaint is dismissed as withdrawn at this stage with liberty to raise all points before the Courts below.

As regards the relief of setting aside the orders dated 11.11.2014 (Annexures-P.3) passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri and order dated 21.2.2015 (Annexure-P.4) passed by the learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, I find that a complaint was filed by Ram Kumar-complainant against Fakir Chand etc. accused (petitioner herein) for the offences under Sections 323, 452, 506 and 34 IPC.

The learned Judicial Magistrate Ist Class on the basis of preliminary evidence dismissed the complaint and has not summoned the accused.

Against this order, complainant-Ram Kumar went in the revision before the Sessions Court, Yamuna Nagar at Jagadhri and the learned Additional Sessions Judge vide judgment dated 11.11.2014 (Annexure-P.3) accepted the revision petition and Fakir Chand was summoned for 12.5.2015 to face trial for alleged offences under Sections 323, 452 and 506 IPC.

At the time of arguments, learned counsel for the present

petitioner-Fakir Chand argued that no notice has been given by the learned Additional Sessions Judge to the petitioner while passing the impugned order (Annexure-P.3) and the learned Additional Sessions Judge set aside the order passed by the learned Judicial Magistrate Ist Class dated 30.1.2014 and revision petition was allowed partly qua the present petitioner-Fakir Chand only and the matter was remitted back to the learned trial Court with the direction to consider the complaint and to pass appropriate order. These facts have not been contested by learned counsel for private respondent No.2.

Learned counsel for the petitioner relied upon the law laid down by the Hon'ble Supreme Court in Bal Manohar Jalan v. Sunil Paswan and another, (2014) 9 SCC 640, in which it was held that case was instituted against five accused, however, cognizance was taken against only one accused and other four were discharged from the charges. Protest-cum-complaint petition filed by complainant was rejected. In the revision petition, the High Court passed order directing the Court below to proceed treating the protest petition as complaint. The impugned order was passed without issuing any notice to the concerned accused. Accused-appellant mentioned in the FIR cannot be deprived of the right of hearing before the revisional Court on the face of express provision of Section 401(2) Cr.P.C. The matter was sent back for reconsideration after hearing both the parties in accordance with law.

The learned counsel for the petitioner further placed reliance on the judgment of Hon'ble Supreme Court in Manharibhai Muljibhai Kakadia

and another v. Shaileshbhai Mohanbhai Patel and others, 2012 (4) R.C.R. (Cr.) 689, in which it was held that criminal complainant was filed before Magistrate. The Magistrate had taken cognizance and dismissed the complaint under Section 203 Cr.P.C. Revision petition against the dismissal of the complaint before Sessions Court or High Court, a person accused of in the complaint has a right to be heard in revision petition. I have gone through the law laid down in these judgments, which fully applies to the facts of the present case.

As no notice was given to the present petitioner, who was accused in the case before passing the order dated 11.11.2014 (Annexure-P.3) by the learned Additional Sessions Judge, therefore, the same is not as per law and is set aside. As the order dated 21.2.2015 (Annexure-P.4) passed by the learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri has been passed in consequence of the order dated 11.11.2014 passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, therefore, this order is also set aside being based on illegal order passed by the learned Additional Sessions Judge.

Therefore, from the above, finding merit in the present petition, the same is allowed qua setting aside the order dated 11.11.2014 (Annexure-P.3) passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri.

The matter is remitted back to learned Additional Sessions Judge, Yamuna Nagar at Jagadhri with a direction to dispose of the revision petition as per law after giving notice to the complainant and the concerned

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accused.

December 17, 2015.

(Inderjit Singh)
Judge

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