

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-24590 of 2014.
Decided on:-July 17, 2015.

Nirmal Singh.Petitioner.

Versus

State of Haryana and anotherRespondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. Whether to be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Kamal Joshi, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Mr. H.S. Dhingra, Advocate
for respondent No.2.

HARI PAL VERMA, J.

The petitioner has filed the present petition under Section 482 Cr.PC for quashing the order dated 30.1.2014 (Annexure P-5) passed by learned Additional Sessions Judge, Panchkula whereby the trial Court was directed to proceed against the petitioner under Section 319 Cr.P.C.

The trial Court vide order dated 30.11.2013 (Annexure P-4) had dismissed the application dated 11.11.2011 moved by the complainant,

namely, Om Parkash for summoning the accused Nirmal Singh.

Briefly stated the respondent No.2-complainant Om Parkash has stated in his application that he has been examined in this case as PW1 and he has disclosed the name of two accused, namely, Kuldeep Singh and Nirmal Singh sons of Sawan Singh who had unlawfully entered into his house on 2.8.2007 and gave beating to him as well as threatened to kill him. He has stated that though accused Kuldeep Singh has been charge-sheeted by the police but his brother Nirmal Singh has not been arrayed as an accused. Therefore, the complainant has moved the application for summoning the accused Nirmal Singh in the case.

Learned Judicial Magistrate, Kalka had dismissed the said application vide order dated 30.11.2013 with an observation that the prosecution has not led any evidence which may suggest that accused Nirmal Singh had committed an offence on 2.8.2007 when the complainant was beaten by accused Kuldeep Singh.

Against the order dated 30.11.2013 whereby the application under Section 319 Cr.PC was dismissed by the trial Court, the complainant filed a revision petition and the learned Additional Sessions Judge, Panchkula vide order dated 30.1.2014 allowed the revision petition by setting aside the order dated 30.11.2013 passed by the trial Court.

I have heard learned counsel for the parties and have gone through the paper book.

Learned counsel for the petitioner has argued that summoning of the petitioner as an additional accused to face trial is against law as the revisional Court has not given any opportunity of hearing to the petitioner. No notice of the said revision petition was issued to him. He contends that in a case of revision against dismissal of application under Section 319 Cr.PC, the notice is required to be issued to the proposed accused. However, in the case in hand, no such notice was issued to the petitioner by the learned revisional Court and, therefore, the order dated 30.1.2014 is legally not sustainable. On the strength of a judgment rendered by the Hon'ble Apex Court in ***Mohit alias Sonu and another Versus State of U.P. and another 2013(3) RCR (Criminal) 673***, learned counsel for the petitioner contends that the impugned order passed by the revisional Court is contrary to law.

The relevant paragraphs No.28 and 29 of the judgment in ***Mohit alias Sonu and another's case (supra)*** are being reproduced as below:

“28. The second question that needs consideration is as to whether the High Court exercising its revisional jurisdiction or inherent jurisdiction under Section 482 Cr.P.C., while considering the legality and propriety of the order passed under Section 319 of Cr.P.C. Code is required to give notice and opportunity of hearing to the person in whose favour some right accrued by virtue of order passed by the trial court. In other words, whether it would be justified for the High Court to entertain a petition under Section 482 of Cr.P.C. and pass order to the prejudice of the accused or other person (the appellants herein) without giving notice and opportunity of

hearing to them.

29. Indisputably, a valuable right accrued to the appellants by reason of the order passed by the Sessions Court refusing to issue summons on the ground that no prima facie case has been made out on the basis of evidence brought on record. As discussed hereinabove, when the Sessions Court order has been challenged, then it was incumbent upon the revisional court to give notice and opportunity of hearing as contemplated under sub-section (2) of Section 401 of Cr.P.C. In our considered opinion, there is no reason why the same principle should not be applied in a case where such orders are challenged in the High Court under Section 482 of Cr.P.C.

Similarly, this Court in ***Criminal Revision No.3765 of 2014 decided on 20.4.2015*** titled ***Sarab Dayal Singh and another Versus State of Punjab and another*** has held that as the impugned order has been passed by the learned Additional Sessions Judge without affording the opportunity to the petitioners, in view of the law laid down in ***Mohit alias Sonu and another's case (supra)***, the impugned order cannot sustain in the eyes of law.

Learned counsel for respondent No.2 has failed to persuade this Court as to whether any such notice was given to the petitioner by the revisional Court.

In view of the above, the present petition is allowed, the impugned order dated 30.1.2014 (Annexure P-5) is set aside and the matter

is remanded back to learned Additional Sessions Judge, Panchkula to decide the revision petition afresh after affording an opportunity of being heard to the petitioner/aggrieved party.

July 17, 2015
'Yag Dutt'

(HARI PAL VERMA)
JUDGE