

CRM-M-32461-2015 (O&M)

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In the High Court of Punjab and Haryana at Chandigarh.

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Date of Decision:22.09.2015

Dharam Singh

...Petitioner

Versus

Suraj Bhan and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Mukesh Rao, Advocate,
for the petitioner.

SABINA, J.

Petitioner has filed this petition challenging the order dated 07.05.2015, passed by the Court of Revision, whereby, issuance of notice to respondent No.1 was dispensed with.

Learned counsel for the petitioner has submitted that the petitioner had filed a revision petition challenging the order passed by the trial Court on an application under Section 319 of Criminal Procedure Code, 1973 ('Cr.P.C.' for short). At the instance of the petitioner, FIR No.51, dated 03.08.2012, under Sections 447 and 506 of Indian Penal Code, 1860, was registered at Police Station Jatusana. During the pendency of trial, prosecution moved an application for

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summoning Assistant Sub Inspector Suraj Bhan as an additional accused. The said application vide order dated 15.11.2014 was dismissed qua respondent No.1 but was partly allowed and it was ordered that accused Shekhar be summoned to face the trial as an additional accused. Aggrieved against the order passed by the trial Court, whereby, the application under Section 319 Cr.P.C was dismissed qua respondent No.1, petitioner approached the Court of Revision. The Court of Revision had erred while passing the impugned order, whereby, it was ordered that there was no need to issue notice to respondent No.1 as he had not been ordered to be summoned by the trial Court. In this regard, learned counsel for the petitioner has submitted that in fact notice was required to be issued to respondent No.1 by the Court of Revision. Learned counsel for the petitioner has placed reliance on the decision of Apex Court in **Mohit @ Sonu and another Vs. State of U.P. And another,** wherein, it was held as under:-

“ 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

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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 Criminal Procedure Code. 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.

The same question came up for consideration before different High Courts some of which we would like to refer hereinbelow. In the case of **Sayeed Bhagat and others v. State of Andhra Pradesh, 1999 Cr1. L.J. 4040**, a Bench of the Patna High Court noticed the facts of the case where an application was filed in a criminal case under Section 319 of Criminal Procedure Code to summon the remaining accused persons who were named by the witnesses. The Magistrate refused the said prayer mainly for want of sufficient evidence. The said order was challenged in revision by the complainant. The revisional court set aside the order of the Magistrate without hearing the petitioners against whom prayer was made for issuance of summons. When the matter came up before the High Court, the Bench held as under:-

“8. In the instant case also though the

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jurisdiction of the Court to summon a person under Section 319 of the Criminal Procedure Code cannot be questioned, the revisional Court, in my view should have heard the petitioners before passing the impugned order because the same has prejudiced them.”

The case of the petitioner is squarely covered by the decision given by the ***Apex Court in Mohit @ Sonu's case (supra)***, The Court of Revision was required to issue notice to respondent No.1 before deciding the revision petition.

In these circumstances, the impugned order dated 07.05.2015, whereby the Court of revision had ordered that there was no need to issue notice to respondent No.1 is set aside. The Court of revision is directed to issue notice to respondent No.1 before deciding the revision petition.

Petition stands disposed of, accordingly.

September 22, 2015
kapil

(SABINA)
JUDGE