

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 748 of 2011 (O&M)
Date of decision : January 13, 2015

Ragbir,

..... Petitioner

v.

Risal Singh and others,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Govind Chauhan, Advocate
for the petitioner.

Mr. Yashpal, Advocate
for respondents No.1 to 5.

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

Ajay Tewari, J (Oral)

This petition has been filed challenging the order dated 11.2.2011 passed by the revisional Court vide which the revision petition filed by the accused/respondents against the order dated 13.8.2010 passed by the JMIC, Karnal has been allowed.

The plea taken by the revisional Court is that while summoning the accused persons, the Magistrate acted illegally because no statement of the complainant on solemn affirmation was obtained before sending the complaint for investigation under Section 202 of the Cr.P.C.

Counsel for the petitioner has raised two grounds of attack. As

per him, after the summons were issued, the complainant filed an application for setting aside that order on the same ground, which was rejected by the trial Court. In the revision, the accused did not challenge the order directing issuance of summons but only challenged the order refusing to recall the summons. As per him, once the main order was not challenged, no benefit could have accrued to the accused by filing the revision petition.

The second argument is that in any case if no prejudice is caused to the accused, such an order could not have been interfered with in revision. For this proposition, he has relied upon Api Samal and others vs Bisi Mallik, 1953 AIR (Orissa) 83, wherein while relying upon a Full Bench decision of Patna High Court in *Bharat Kishore Lal v Judhistir Modak*, 10 Pat LT 779, it was held as follow :-

“..... The criminal law was set in motion by the complainant, on presentation of a complaint in writing setting out the facts against the accused. This was sent to the Police Officer for enquiry, and report under Section 202 and not for investigation and stating of a case against the accused. The mistake committed by the Magistrate, however, is that he did not examine the complainant on oath when the complaint was presented before him. It is said that this omission constitutes an illegality which would vitiate the trial. On this point, however, the learned counsel for the petitioners was not able to cite any authority in support of this argument. On the other hand, there is a Full Bench decision of the Patna High Court reported in *Bharat Kishore Lal v Judhistir Modak*, 10 Pat LT 779 which lays down that the omission to examine the complainant on solemn affirmation is only irregularity and does not vitiate the trial. I am, therefore, satisfied that in this case cognizance was taken under Section 190, sub-sections (1), Clause (a) and that the Magistrate acted under a wrong impression when he noted that he was taking cognizance under Section 190 (1)(b). I am also satisfied that the non-examination of the complainant has not in any way vitiated the trial.”

In both the cases, it was held that such an action by the

Magistrate is a mere irregularity in the absence of any prejudice caused to the accused.

Counsel for the respondents is not in a position to show what prejudice, if any, has been caused to his clients nor has he cited any contrary judgment to the one cited above.

In the circumstances, this petition is allowed, the order dated 11.2.2011 is set aside, and the order dated 13.8.2010 is upheld. Parties, through their counsel, are directed to appear before the trial Court on 13.2.2015.

January 13, 2015
'kk'

(AJAY TEWARI)
JUDGE