

Crl. Misc. No. M-7303 of 2014

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Misc. No. M-7303 of 2014

Date of decision: 30.04.2015

Sh. Raj Singh Gehlot

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers 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 ?

Present: - Mr. Vikas Arora, Advocate, for the petitioner.

Mr. Anil Mehta, DAG, Haryana.

Mr. Ashwani Talwar, Advocate, for respondent No.2.

PARAMJEET SINGH, J. (ORAL)

Instant petition under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 10.12.2013 (Annexure P-1) passed by learned Additional Sessions Judge, Gurgaon, whereby revision petition filed by respondent No.2 against the order of learned Judicial Magistrate Ist Class, Gurgaon, has been allowed without notice to the petitioner.

It is not necessary to set out the facts in detail. Suffice it to say that respondent No.2 filed a complaint under Section 190 read with Section 156(3) of the Code of Criminal Procedure for lodging FIR under Sections 420/406/443/445/447/448/323/506 IPC against the petitioner. After recording of the preliminary evidence and inquiry under Section 202 Cr.P.C. complaint was dismissed vide order dated 22.07.2008.

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Against the dismissal of complaint respondent No.2 preferred revision petition before the Additional Sessions Judge, Gurgaon, which was allowed vide order dated 04.12.2009 and case was sent back to the learned Magistrate for further inquiry and disposal by passing a speaking order. Learned Judicial Magistrate Ist Class, Gurgaon, dismissed the complaint by passing speaking order dated 14.11.2011. Aggrieved against the order dated 14.11.2011, respondent No.2 preferred revision petition before the Additional Sessions Judge, Gurgaon, which has been allowed and order passed by learned Magistrate has been set aside. Hence, this petition.

I have heard learned counsel for the parties and perused the record.

Petitioner was not summoned as an accused in the complaint filed by respondent No.2, rather the same was dismissed. Learned Additional Sessions Judge committed an error in allowing the criminal revision filed by the complainant without any notice to the petitioner. As per the plain language of Section 401(2) Cr.P.C. petitioner was required to be heard before allowing the criminal revision wherein the order of learned Magistrate, dismissing the complaint was challenged, by respondent No.2, as no order could be made to the prejudice of the petitioner unless he has had an opportunity of being heard. Hon'ble Supreme Court in ***Bal Manohar Jalan v. Sunil Paswan and another, 2014(9) SCC 640*** has held that a person 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.

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In view of above, petition is allowed. Impugned order dated 10.12.2013 (Annexure P-1) passed by learned Additional Sessions Judge, Gurgaon is set aside and the case is remitted back to learned Additional Sessions Judge, Gurgaon for passing fresh order after hearing the parties. Parties through their counsel are directed to appear before the learned Additional Sessions Judge, Gurgaon on 8.6.2015.

(Paramjeet Singh)
Judge

April 30, 2015
R.S.