

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.M-12351 of 2016
Date of decision: April 08, 2016.

Budh Singh

... **Petitioner**

v.

Gurdeep Singh and another

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. Rajinder Kumar Singla, Advocate for the petitioner.

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

Kuldip Singh, J. (Oral):

The petitioner seeks the quashing of the order dated 29.3.2016 passed by learned Additional Sessions Judge, Fatehabad.

I have heard Learned Counsel for the petitioner.

Learned Counsel for the petitioner contends that the accused were convicted by the lower court. Since the lower court was of the view that some severe sentence of more than three years is required to be passed, therefore, the matter was referred to the Chief Judicial Magistrate for passing appropriate sentence. Before the Chief Judicial Magistrate, two applications, i.e., one for re-hearing of the matter and the other for leading additional evidence in defence, were moved. The application for re-hearing was dismissed and the other application for adducing additional defence evidence was allowed by the Chief Judicial Magistrate. In revision filed before learned Additional Sessions Judge, Fatehabad, learned Additional Sessions Judge, Fatehabad passed the following order:-

“However, the impugned order passed by the learned CJM vide which she permitted the respondent – accused to lead additional evidence in defence without giving an opportunity to prosecution-complainant to recall and examine any witness who has already given evidence in the case if they want to do so and otherwise if the said request is permissible and whether they want to lead any further evidence, if necessary and thereafter permit the accused to lead additional defence evidence as sought by him. So the impugned order passed by the learned CJM is set aside and she is directed to pass a fresh order in accordance with law. The present revision is accordingly partly allowed.”

The Chief Judicial Magistrate has been directed to pass fresh order in accordance with law after setting aside the impugned order regarding additional evidence.

Plea of the petitioner is that such application for additional evidence is not maintainable before the Chief Judicial Magistrate. Apprehension of Learned Counsel for the petitioner is that since the first appellate court has expressed its opinion, therefore, it will influence the Chief Judicial Magistrate and therefore if an adverse order is passed, the petitioner will have to file another revision before the Sessions Court which will result in considerable delay in disposal of the matter.

After considering the averments of Learned Counsel for the petitioner, I am of the view that the petitioner shall be at liberty to raise all the pleas before the Chief Judicial Magistrate including the plea that the said application is not maintainable and the Chief Judicial Magistrate will

consider the same without being influenced by any of the observations made by learned Additional Sessions Judge. So far as the plea is concerned that in case of adverse order the petitioner will have to again approach the revisional court, it is observed that the process of law has to be followed and appropriate court has to be approached.

Accordingly, the impugned order is upheld with the above noted observations.

Disposed of.

April 08, 2016.
kadyan

[Kuldip Singh]
Judge