

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

Criminal Misc. No. M- 17430 of 2015

Date of Decision:-04.02.2016

Shamir Singh @ Shambhu and others

..Petitioners

Versus

State of Punjab and another

...Respondents

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

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

Present:- Mr. Namit Khurana, Advocate for
Mr. Neeraj Madan, Advocate for the
petitioner(s).

Mr. R. S. Nain, AAG, Punjab,

Mr. Sushma Chopra, Advocate
for respondent No.2.

HARI PAL VERMA J.(Oral)

Prayer made in the present petition filed under Section 482 Cr.P.C. is for quashing of order dated 06.02.2015 (Annexure P-1) passed by the learned Addl. Sessions Judge, Fazilka, whereby, the revision petition filed by the complainant/respondent No.2- Hansa Singh against the order dated 07.03.2014 (Annexure P-2) passed in a complaint case No.971 dated 23.04.2011/30.04.2013 titled as "Hansa Singh Vs. Chiman Singh and others" under Sections 452, 326, 324, 323, 148 and 149 IPC, Police Station, Sadar, Fazilka, was allowed.

Respondent No.2/complainant, namely, Hansa Singh had filed revision petition under Section 397 Cr.P.C. against the

order dated 07.03.2014 passed by Court of Judicial Magistrate, Ist Class, Fazilka, vide which the learned Magistrate has declined the prayer to summon the petitioners.

Learned counsel appearing for the petitioners contends that the revision petition filed by the complainant-respondent No.2 was allowed without issuing any notice to the petitioners and learned Addl. Sessions Judge, Fazilka has straightway passed the order to summon them to face trial, which is violative of the provisions contained in Sections 397 and 401 of the Code of Criminal Procedure. He further prays that impugned order dated 06.02.2015 passed by the learned Addl. Sessions Judge, Fazilka, be set aside and Revisionary Court be directed to pass order afresh after giving an opportunity of hearing to the petitioners.

Heard.

Hon'ble Apex Court in **Manharibhai Muljibhai Kakadia and another Vs. Shaileshbhai Mohanbhai Patel and others**, (2012) 10 SCC 517 has held that a person accused of in the complaint has a right to be heard in the revision petition. If, however, the revisional Court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in complaint to have committed crime have, however, no right to participate in the proceedings nor they are entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. The facts of this judgment fully apply to the present case. In view of the law laid down by the Hon'ble Supreme Court

though the accused has no right of hearing of any sort before the Magistrate till the matter is considered by the Magistrate, but in the revisional Court a person accused of in the complaint has a right to be heard.

Taking into consideration the judgment of Hon'ble Apex Court in **Manharibhai Muljibhai Kakadia's case(supra)**, the present petition is allowed. Impugned order dated 06.02.2015 (Annexure P-1) passed by Addl. Sessions Judge, Fazilka, is set aside and the matter is remitted to the Revisionary Court to decide the matter afresh in accordance with law after affording opportunity of being heard to the accused-petitioners.

The parties are directed to appear before the Revisionary Court on 19.02.2016.

04.02.2016
Anjal

(HARI PAL VERMA)
JUDGE