

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-18133 of 2015

.....

Date of decision:22.1.2016

Nirmal Singh and another

.....Petitioners

v.

Guravtar Singh

.....Respondent

....

**Coram : Hon'ble Mr. Justice Inderjit Singh**

.....

Present: Mr. Vikas Gupta, Advocate for the petitioners.

Mr. P.B.S. Goraya, Advocate for the respondent.

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**Inderjit Singh, J.**

This petition has been filed under Section 482 Cr.P.C. for quashing of the impugned order dated 27.4.2015 (Annexure-P.4) passed by the learned Additional Sessions Judge, Tam Taran, vide which the criminal revision petition filed by the respondent-Guravtar Singh against the impugned order dated 4.12.2013 (Annexure-P3) passed by learned Sub Divisional Judicial Magistrate, Patti, in complaint bearing No.78 dated 25.7.2012 (Annexure-P.2) titled “Guravtar Singh v. Nirmal Singh and another”, has been wrongly and erroneously allowed and the order dated 4.12.2013 has been set aside.

Notice of motion has been issued in this case.

Mr. P.B.S. Goraya, learned Advocate has put in appearance on

behalf of the respondent and contested this petition.

At the time of arguments, learned counsel for the petitioners argued only on one point that while deciding the revision petition vide order Annexure-P.4, no notice was given to the petitioners by the learned Additional Sessions Judge, Tarn Taran.

A perusal of the order, which is Annexure-P.4, shows that where the presence of the Advocate for the revisionist has been marked, it is written that service of respondents is not required, which means that while deciding the revision petition filed by Guravtar Singh-revisionist (respondent herein) against Nirmal Singh and Daljit Kaur-respondents (petitioners herein) against the order dated 4.12.2013 passed by the learned Sub Divisional Judicial Magistrate, Patti, whereby complaint for summoning accused No.1 and to face trial for the offences under Sections 326, 323, 324 and 34 IPC was dismissed, no notice was issued to the present petitioner. A perusal of the impugned order passed by the revisional Court shows that the order dated 4.12.2013 passed by the learned Sub Divisional Judicial Magistrate, Patti, was set aside and the lower Court was directed to reconsider the evidence and pass appropriate order. It is clear from this order that no notice to the respondents (petitioners herein) has been given by the learned Additional Sessions Judge, Tarn Taran.

Learned counsel for the petitioners placed reliance on the judgment of Hon'ble Supreme Court in Manharibhai Muljibhai Kakadia and another v. Shaileshbhai Mohanbhai Patel and others, 2012(4) R.C.R. (Cr.) 689, in which the Hon'ble Supreme Court has held that a person accused of

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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 and no order can be passed against him without giving notice to him.

Therefore, as no notice was given to the present petitioners by the revisional Court, therefore, the order dated 27.4.2015 (Annexure-P.4) passed by the learned Additional Sessions Judge, Tarn Taran, is not as per law and is set aside. The matter is remanded back to the Court of learned Additional Sessions Judge, Tarn Taran, to decide the revision petition after giving notice and opportunity of hearing to the present petitioners.

The parties in the present case are directed to appear before the revisional Court i.e. learned Additional Sessions Judge, Tarn Tarn, on 23.2.2016 and the revisional Court will decide the revision petition as per law.

January 22, 2016.  
\*hsp\*

**(Inderjit Singh)**  
**Judge**