

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

CRM-M-18710-2015

Date of decision: 08.11.2016

Jyoti Bhatia

...Petitioner

Versus

Mamta Arora and others

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Piyush Kant Jain, Advocate,
for the petitioner.

Mr. Om Pal Sharma, Advocate, for respondent No.1.

None for the respondent Nos. 2 to 7.

Ritu Bahri, J.

Challenge is to the order dated 27.02.2015 (Annexure P-3) passed by the Additional Sessions Judge, Ludhiana, whereby revision filed by Mamta Arora-complainant (respondent No.1 herein) against the order dated 14.11.2014 passed by the Judicial Magistrate Ist Class, Ludhiana has been partly allowed qua the present petitioner.

Initially, Criminal Complaint No.168 dated 14.08.2013, titled as Mamta Arora Vs. Mrs. Sheela Kumari and others, under Sections 420, 467, 468, 471, 506, 120-B IPC, filed by Mamta Arora had been dismissed by the trial Court vide order dated 14.11.2014. Feeling aggrieved, she filed a revision petition before the Additional Sessions Judge, Ludhiana, which has been partly allowed vide order dated 27.02.2015 (Annexure P-3) qua the present petitioner and the trial Court has been directed to appreciate the evidence adduced by the complainant again.

Advocate, was appointed as amicus curiae to represent the present petitioner before the Additional Sessions Judge, Ludhiana.

Vide order dated 29.06.2015 passed by this Court, the petitioner was directed to place on record concerned report of the process server in compliance of the order dated 04.02.2015, whereby notice was issued to the petitioner. Pursuant to the said order, petitioner filed CRM-28811-2015 for placing on record copy of the 'service report' on the summons dated 16.02.2015. A perusal of this report shows that the present petitioner was duly served at House No.4373/2, Narinder Nagar, whereas correct address of the petitioner in the revision petition before the Additional Sessions Judge, Ludhiana as well as this Court is/was 4375/2, Narinder Nagar, Ludhiana. Meaning thereby, the service of petitioner was effected at a wrong address and the impugned order has been passed without serving the petitioner on the correct address. Hence, the petitioner was not afforded an opportunity of hearing by the Additional Sessions Judge, Ludhiana.

The question for consideration would be as to “whether appointment of amicus curiae to represent the petitioner in the revision petition would be a sufficient compliance of the provisions contained in Sections 398 and 401 Cr.P.C.”

This issue had come up for consideration before the Hon'ble Supreme Court in **Manharibhai Muljibhai Kakadia and another Vs. Shaileshbhai Mohanbhai Patel and others**, 2012 (4) RCR (Criminal) 689. The said judgment has been followed by this Court in **Hansa Singh Vs. Jaswinder Singh**, CRR-1787-2010 (decided on 16.01.2015), wherein it has been observed that in case the petitioner is not afforded an opportunity of hearing by learned Additional Sessions Judge, it would amount to non-

compliance of the provisions contained in Section 398 and 401 Cr.P.C.

In the present case also, the petitioner was not afforded adequate opportunity to represent herself in the revision petition filed by respondent No.1 before the Additional Sessions Judge, Ludhiana and the impugned order has been passed without serving the petitioner on the correct address. Thus, the same is liable to be set aside.

Resultantly, the impugned order dated 27.02.2015 (Annexure P-3) is set aside and the matter is remanded back to the Additional Sessions Judge, Ludhiana, for deciding the criminal revision filed by respondent No.1-Mamta Arora afresh after affording an opportunity of hearing to the present petitioner (Jyoti Bhatia) in accordance with law.

Petition stands allowed accordingly.

08.11.2016
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No