

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No. M-29359 of 2015
DECIDED ON : AUGUST 24, 2016

JASWINDER SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Sudhir Sharma, Advocate,
for the petitioner

Mr. A.S. Sidhu, AAG, Haryana.

Mr. Darshan Singh Malwai, Advocate
for respondent No. 2.

JASPAL SINGH, J. (ORAL)

By virtue of this petition preferred under Section 482 Cr.P.C., petitioner has sought the quashing of order dated July 17, 2015 passed by learned Additional Sessions Judge, Sangrur whereby, the order dated May 08, 2015 passed by learned Judicial Magistrate Ist Class, Sangrur vide which an application under Section 319 Cr.P.C. moved by the complainant to summon the petitioner was dismissed, has been set aside and petitioner was ordered to be summoned to face trial alongwith his co-accused Sher Singh.

2. Briefly stated the facts giving rise to the instant *lis* are that an application under Section 319 Cr.P.C. was moved by the complainant to summon the petitioner to stand trial as an additional accused. Learned trial

Court vide order dated May 08, 2015 dismissed the said application. The said order was challenged by way of revision by private respondents without arraying/impleading the petitioner/applicant and learned Additional Sessions Judge after hearing the revisionist set aside the order dated May 08, 2015 vide impugned order dated July 17, 2015 (Annexure P-6). Aggrieved against the said order, petitioner preferred the instant petition.

3. Having heard learned counsel for the parties and bestowing due consideration to the legal proposition, this Court is of the considered view that impugned order (Annexure P-6) is not sustainable in the eyes of law and deserves to be set aside. The revisional court has committed a grave error while ignoring provisions contained under Section 399(2) as well as Section 401(2) Cr.P.C.

4. Here it would be pertinent to mention that an application under Section 319 Cr.P.C. was not instituted by the State. Rather, it was instituted by the petitioners. Private respondents while filing revision petition before revisional court neither impleaded the petitioner as one of the respondents nor issued any notice to the applicant/petitioner who had moved an application under Section 319 Cr.P.C. Meaning thereby, petitioner was not afforded an opportunity of being heard before passing the impugned order and acceptance of revision petition, who can be termed to be really an aggrieved person. In fact, the criminal revision petition could not be adjudicated upon without affording an opportunity to the petitioner who instituted an application under Section 319 Cr.P.C. Sub Section 2 of Section 401 Cr.P.C. comes into the play, in the given circumstances which reads as under:

“401 *High Court's powers of revision:-*

(1) XX X X X X

(2) *No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.”*

5. A glance at the afore-said provision transpires that no order under this section can be made to the prejudice of an aggrieved person unless he has been given an opportunity of being heard. In this regard we can also take support from the observation made by Hon'ble Apex Court in para 46 of judgment captioned as **Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel; (2012) 10 SCC 517**; which reads as under:

“46. The legal position is fairly well settled that in the proceedings under Section 202 Cr.P.C. the accused/suspect is not entitled to be heard on the question whether the process should be issued against him or not. As a matter of law, up to the stage of issuance of process, the accused cannot claim any right of hearing. Parliament being alive to the legal position that the accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process under Section 204, yet in Section 401 (2) Cr.P.C. provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence.”

6. Admittedly, no opportunity of being heard has been afforded by revisional court before passing the impugned order. Thus, in view of settled proposition of law as mentioned above, the impugned order is not sustainable in the eyes of law.

7. In the light of above narrated facts, impugned order dated July 17,

2015 passed by learned Additional Sessions Judge, Sangrur is set aside by way of acceptance of instant petition. The matter is remanded to the revisional court/Additional Sessions Judge, Sangrur with a direction to implead applicant/petitioner as one of respondents and then to decide the revision afresh, that too, after affording an ample opportunity of being heard to him. Since the matter is old one, revisional court is directed to make it convenient to dispose of the revision petition expeditiously but not later than six months from the date of receipt of certified copy of this order. Parties through their counsel are also directed to appear before revisional court on October 05, 2016. In case the record has been requisitioned the same be returned to the court concerned.

AUGUST 24, 2016
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(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned Yes/No

Whether Reportable Yes/No