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

Sr. No.124

**CRM No.M-3252 of 2016**
**DECIDED ON:** *April 11, 2016*

**RAM MEHAR**

**..PETITIONER**

**VERSUS**

**STATE OF HARYANA AND ANOTHER**

**...RESPONDENTS**

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

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

Present: Mr. Babbar Khan, Advocate, for the petitioner.

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**JASPAL SINGH, J**

Aggrieved against the order dated November 30, 2015 (Annexure P-3) passed by learned Additional Sessions Judge, Bhiwani, whereby he has accepted the revision petition and set aside the order dated July 30, 2012 (Annexure P-2), passed by learned Judicial Magistrate Ist Class, Charkhi Dadri, in Criminal Case No. 346-1 dated November 25, 2008 titled as “State vs. Sanjeev @ Guddu and others”, bearing FIR No. 188, dated June 17, 2008 under Sections 406 & 420 IPC, Police Station Sadar Dadri, whereby learned trial court has summoned the respondent-accused No.2 as additional accused under Section 319 Cr.P.C.

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The contention of the learned counsel for the petitioner is that the petitioner Ram Mehar got registered the FIR No. 188, dated June 17, 2008, under Sections 406 & 420 IPC, Police Station Sadar, Dadri alleging therein that he had got a truck financed from Tata Finance Company and deposited three installments towards the financial assistance availed by him. On June 05, 2007, he sold away the truck to the respondent-accused Krishan Kumar on the assurance that he would deposit the remaining installments of the loan amount. Accordingly, he executed an agreement but the respondent-accused Krishan Kumar did not honour the terms and conditions of the agreement and failed to deposit the remaining installments. Even he did not return the truck despite various requests. However, later on he sold the truck in question to some other person. The finance company on account of default of the payments of his installments, issued notices to the complainant and his guarantor to sell their properties in order to recover the loan amount. On receipt of notice he approached the Krishan Kumar but he extended threats to his life. Consequently, he lodged a complaint to the police against Krishan Kumar-accused on the basis of which the aforesaid FIR was registered. During the course of enquiry Krishan Kumar, disclosed that he has sold away the truck to one Ramesh son of Balbir Singh R/o Sanjarwas, who further sold the truck to Sanjeev Kumar @ Guddu son of Rattan Singh resident of village Bhagvi. Sanjeev Kumar @ Guddu was arrested by the police on August 24, 2008, whereas Ramesh s/o Balbir Singh had since expired. Accordingly, proceedings against him were dropped.

During the investigation of the case, the Krishan Kumar was

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declared innocent by the investigating agency and the report under Section 173 Cr.P.C. was submitted only against Sanjeev Kumar @ Guddu. Dissatisfied with the shoddy investigation of the case, the petitioner-complainant filed a criminal complaint on December 19, 2008 against the respondent-accused. Subsequently, in contemplation of Section 210 Cr. P.C., the complaint case and the state case were clubbed together vide order dated February 9, 2010 and Sanjeev Kumar @ Guddu were charge sheeted to face the trial under Sections 420 and 406 IPC. Subsequent thereto, on January 9, 2012, the petitioner moved an application under Section 319 Cr.P.C. through the Public Prosecutor for summoning of respondent Krishan Kumar as an additional accused, which was allowed by trial court vide order dated July 30, 2012, but the said order was set aside by the learned Additional Sessions Judge vide impugned order dated November 30, 2015. Aggrieved against the said order, the petitioner-complainant has approached this Court through the instant petition.

The contention of the learned counsel for the petitioner is that the order passed by the lower appellate court dated November 30, 2015 is illegal and unsustainable in the eyes of law, as the same is outcome of the non-application of the judicial mind to the incriminating material/evidence on record justifying the summoning of respondent No. 2.

The learned revisional court has failed to carefully consider the facts and circumstances of the case in totality which unerringly reflect upon the commission of offence by the respondent No.2, who has cheated the petitioner-complainant by not depositing the installments of the truck as per the terms and conditions of the agreement and by subsequently selling the

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same with dishonest intention.

The order passed by the trial court dated July 30, 2012 has been set aside by the revisional court that at the time of the selling of the truck in question, the petitioner did not obtain no objection certificate as the truck in question stood financed from the Tata Finance Company. The failure of the petitioner to obtain no objection certificate from the financier would not in any manner exonerate the respondent No.2 from his illegal acts and the criminal liability especially in the circumstances, that the respondent No.2 purchased the truck from the petitioner thereafter committed default in making the payments as agreed and then sold away the same to third person for valuable consideration with dishonest intention. In fact, the complainant is a victim. He has not only suffered loss of the truck but also suffered pecuniary loss.

Moreover, at the stage of summoning of a person as an additional accused under Section 319 Cr.P.C., appellate Court has not meticulously examined the evidence, as to whether the same is cogent, trustworthy and sufficient enough to hold the accused guilty of the offence and rather than he is liable for conviction. Since, there is sufficient evidence available on file which can be said to be more than a prima facie case against respondent No.2, he was rightly summoned by learned trial court and the order passed by the revisional court being against the settled canons of law is liable to be set aside.

After bestowing due consideration to the aforesaid submissions and scrutinizing the impugned orders, this Court is of the considered view that there is no illegality or infirmity in the impugned order passed by

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learned appellate/revisional court.

In fact, the petitioner himself is at guilt who was fully knowing that he was not competent and authorised to sell the truck which was already lying hypothecated of the Tata Finance Company, sold away the truck to Krishan Kumar for a valuable consideration. The truck in question was only as a trustee with the petitioner after its hypothecation with the Tata Finance Company. Rather, it can be said that the petitioner had dishonest intention not only to cheat and fraud the finance company but the respondent No.2 also. The petitioner is a wrongdoer and such a person cannot take advantage for his wrongdoing.

Moreover, if the respondent No.2 has committed any default in repayment of the loan amount, it can only be a termed violation of civil rights and the petitioner can have recourse to other remedies available to him under the civil law. The respondent No.2 cannot be fastened with any criminal liability. Thus, setting aside of summoning order passed by the trial court dated July 30, 2012 is legally and factually justified.

In the light of what has been discussed above, this Court does not find any merit in the instant petition, as such the same stands dismissed.

**April 11, 2016** **(JASPAL SINGH)**
*Ankur* **JUDGE**