

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Crl. Misc. No. M- 3651 of 2016(O&M)
Date of Decision:-15.11.2016

Ripudaman and others ..Petitioners
Versus

Surender ...Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr.Ankur Lal, Advocate for the petitioners.

Mr.Sanjay Vashist, Advocate for the respondent.

HARI PAL VERMA J.(Oral)

Prayer made in the instant petition filed under Section 482 Cr.P.C. is for setting aside the impugned order dated 15.01.2016 (Annexure P-2) passed by learned Addl. Sessions Judge, Bhiwani, whereby learned Revisionary Court has set aside the order dated 21.05.2014 (Annexure P-1) passed by learned Chief Judicial Magistrate, Bhiwani and has directed the learned Magistrate/trial Court to pass the summoning order afresh after hearing the arguments of the complainant and after going through the evidence led by the complainant in the case file.

Learned counsel for the petitioners submits that the order dated 15.01.2016 passed by learned Addl. Sessions Judge, Bhiwani, tantamounts to mandatory direction to the learned Magistrate to issue summoning of the petitioner-accused, which is contrary to the law.

Mr.Sanjay Vashist, Advocate has put in appearance on behalf of the respondent and filed his Power of Attorney in Court today, which is taken on record. He submits that the order dated 15.01.2016 nowhere suggests that the learned Magistrate has ordered to issue summoning without hearing the arguments of the complainant or considering the evidence led by him. Learned Magistrate is required to consider the evidence as on record.

I have heard learned counsel for the parties.

Conclusive part of the order dated 15.01.2016 passed by learned Addl. Sessions Judge, Bhiwani, reads as under:-

XXX	XXX	XXX	XXX	XXX
XXX	XXX	XXX	XXX	XXX

*“10. In the light of the above, this Court has reached at the conclusion that the order passed by the learned trial Court cannot be allowed to stand and the same is accordingly set aside and the instant revision petition is accepted with the direction to the learned trial Court **to pass the summoning order afresh** after hearing the arguments of the complainant and after going through the evidence led by the complainant on the case file. The revisionist through his counsel is directed to appear before learned trial Court on 19.01.2016 for further proceedings. It is made clear that there is no need for the accused to appear before the learned trial Court.Learned Magistrate is directed to take the case on day-to-day basis as the case pertains to the year 2012. Trial Court record alongwith a copy of this order be sent back to the Court concerned well in time. File of revision petition be consigned to the records after due compliance.”*

Perusal of the aforesaid order dated 15.01.2016 shows that this order was not happily worded. In order to issue summoning, it is incumbent upon the learned Magistrate to go through the evidence led by the complainant and it is only after considering the evidence on record and hearing the arguments of the parties, learned Magistrate will form an opinion as recourse to summoning of an accused.

In the case in hand, the Revisionary Court has set aside the order passed by the trial Court and has directed the trial Court to pass fresh order of summoning after hearing the arguments of the complainant and going through the evidence led by the complainant on the case file.

Therefore, this Court finds that though the order dated 15.01.2016 passed by the Addl. Sessions Judge, Bhiwani was not happily worded, but at the same time, it cannot be said that the Revisionary Court has directed the trial Court to issue summoning mandatorily.

Thus, order dated 15.01.2016 (Annexure P-2) passed by learned Addl. Sessions Judge, Bhiwani, does not require any interference, but certainly require clarification to the aforesaid extent.

Accordingly, instant petition is disposed with the observation that learned Magistrate shall pass a fresh order and summoning would be issued only if there is some evidence against the petitioners and shall not pass a mechanical order.

(HARI PAL VERMA)
JUDGE

15.11.2016

Anjal

Whether speaking/reasoned?

Yes

Whether reportable?

Yes/No