

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

CRM-M No.5648 of 2016

Date of Decision: February 16, 2016

Jagdish and others

.... Petitioners

vs.

Som Prabha and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Jainainder Saini, Advocate for the petitioners.

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh J.(Oral)

The grouse of learned counsel for the petitioners is that the learned Judicial Magistrate 1st Class, Hisar vide order dated 13.10.2014 (Annexure "P-5), dismissed the application filed under Section 340 Cr.P.C. by the private respondents and refused them to file the complaint. The appeal was filed under Section 341 Cr.P.C. by the said applicants (respondents herein) against the said order. Without issuing notice to the opposite party (present petitioners), the same was allowed by learned Addl. Sessions Judge, Hisar on 29.07.2015 (Annexure P-7), wherein the order dated 13.10.2014 (Annexure P-5) was set aside and the trial court was directed to get the criminal complaint lodged through the court official.

I have heard learned counsel for the petitioners and have also carefully gone through the case file.

The short plea of learned counsel for the petitioners is that the appeal filed under Section 341 Cr.P.C. cannot be allowed without issuing notice to the respondents.

A perusal of the judgment of learned Addl. Sessions Judge, Hisar shows that no notice was issued to the present petitioners. Therefore, the said order is in violation of the mandate of Section 341 Cr.P.C.

Section 341 Cr.P.C. provides as under:

“(1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, making of the complaint which such former Court might have made under section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision.

It is clear that when an appeal is filed under Section 341 Cr.P.C., the same cannot be decided without issuing notice to the opposite party. The present appeal has been decided without issuing notice to the respondents. Therefore, the order dated 29.07.2015

(Annexure P-7) being in violation of the procedure laid down under Section 341 Cr.P.C., is hereby set aside. The matter is remanded to the learned Addl. Sessions Judge, Hisar with a direction to issue notice to the opposite party and then after hearing both the parties, pass appropriate order.

Accordingly, the present petition stands allowed.

February 16, 2016
sarita

(KULDIP SINGH)
JUDGE