

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-6323 of 2016

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Date of decision:8.9.2016

Kanwar Pal

.....Petitioner

v.

Pritam Singh

.....Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Ms. Aarti, Advocate for Mr. Rajiv Kataria, Advocate for the petitioner.

Mr. S.N. Sharma, Advocate for Mr. G.B. Galhotra, Advocate for the complainant-respondent.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of the order dated 29.3.2008 (Annexure-P.5) passed by learned Additional Sessions Judge (Ad hoc) Fast Track Court, Ambala, whereby the revision petition filed by the respondent/complainant against the order dated 25.10.2007 (Annexure-P.4) passed by learned Judicial Magistrate Ist Class, Ambala, was allowed and further all subsequent proceedings, which have been initiated by learned trial Court on the basis of order dated 29.3.2008 may also be quashed.

Notice of motion has been issued in this case.

Mr. S.N. Sharma, learned Advocate appearing for Mr. G.B.

Galhotra, learned Advocate has put in appearance on behalf of the complainant-respondent and contested this petition.

I have heard learned counsel for the petitioner and learned counsel for the respondent and have gone through the record.

From the record, I find that the learned Judicial Magistrate Ist Class, Ambala, vide order dated 25.10.2007, dismissed the complaint filed by Pritam Singh (respondent) against Kanwar Pal and Smt. Kirna Devi for the offences under Sections 406 and 420 IPC read with Section 120-B IPC and the accused were not summoned. The learned Additional Sessions Judge (Ad hoc), Fast Track Court, Ambala, vide order dated 29.3.2008 in the revision petition filed by the complainant accepted the revision petition. The revision petition was partly allowed and the order passed by the learned trial Court dated 25.10.2007 was modified to the extent that accused No.1 Kanwar Pal is liable to be summoned for the offence under Section 406 IPC, but the complainant has failed to make out any case against accused No.2, namely, Smt. Kirna Devi. Therefore, the findings of the learned trial Court dismissing the complaint qua Smt. Kirna Devi was upheld. A perusal of the order passed by the learned Additional Sessions Judge shows that no notice to the respondent was given in the revision petition and without giving any opportunity to the respondent, the order passed by the learned JMJC was set aside qua Kanwar Pal-accused. Section 401 (2) Cr.P.C. provides that no order under this Section shall be made to the prejudice of the accused or other person unless he has an opportunity of being heard either personally or by pleader in his own defence. Section 399 Cr.P.C. states that where any

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proceeding by way of revision is commenced before the Sessions Judge under sub-section (1) the provisions of sub-sections (2), (3), (4) and (5) of Section 401 Cr.P.C. shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be constructed as references to the Sessions Judge which means that the Sessions Judge also exercising the power under Section 399 Cr.P.C. have to comply with the provisions of sub-section (2) of Section 401 Cr.P.C. and have to give the opportunity of being heard to the accused before passing any order which may prejudice the accused. Therefore, the order dated 29.3.2008 passed by the learned Additional Sessions Judge is illegal, against the law and the same is set aside.

Therefore, finding merit in the present petition, the same is allowed. The matter is remanded back to the learned Sessions Judge, Ambala to decide the revision petition filed by the complainant after giving opportunity of being heard to the respondents/accused in that revision petition. The learned Sessions Judge will decide the revision petition as per law.

The parties are directed to appear before the Sessions Judge, Ambala on 6.10.2016.

September 8, 2016.

(Inderjit Singh)
Judge

hsp

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