

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

**CRM No.M-8620 of 2016
Date of Decision: March 10, 2016**

M/s Zee Media Corporation Limited Petitioner

vs.

The State of Haryana and another Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. R.S. Cheema, Sr. Advocate with
Mr. A.S. Cheema, Advocate for the petitioner.

- 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)

In this petition filed under Section 482 Cr. P.C., the petitioner has challenged the order dated 19.02.2016 (Annexure P-4) passed by learned Addl. Sessions Judge, Yamunanagar at Jagdhri upholding the order dated 26.10.2015 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Yamunanagar at Jagadhri.

Briefly stated, the petitioner was a accused in a criminal complaint No.855 of 2013 dated 24.12.2010 titled as "Dr. Rupinder Singh vs Zee News Channel and others" filed under Sections 499 and 500 IPC.

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

The short question raised before this Court is that vide order dated 01.10.2015, after the appearance of the accused, the learned Magistrate fixed the case for pre-charge evidence of the complainant. Later on, vide order dated 26.10.2015, the learned

Magistrate recorded that inadvertently, the case was fixed for pre-charge evidence of the complainant. He accordingly rectified the mistake and adjourned the case for notice of accusation.

The relevant portion of the order dated 01.10.2015 is reproduced as under:

“Since Mr. Pankaj Choudhary has appeared in representative capacity as per Section 305 Cr.P.C. and in view of the judgment of the Hon'ble Punjab and Haryana High Court in Daw Agro Science India Ltd. Vs. Central Bureau of Investigation (CM no.25244 of 2012), he is not required to furnish the bail bonds. Now to come up on 26.10.2015 for pre-charge evidence of complainant.”

The order dated 26.10.2015 passed by learned Magistrate is reproduced as under:

“Adjournment requested by Ld. counsel for the complainant. Inadvertently, the case was fixed for pre-charge evidence of complainant. The mistake stands rectified. Now to come up on 06.11.2015 for notice of acquisition.”

Admittedly the case under Sections 499 and 500 IPC is tried as a summon case. As per Section 259 Cr.P.C., the Court has the power to convert the summons cases into warrant cases. Section 259 Cr.P.C. reproduced as under:

259. Power of Court to convert summons-cases into warrant cases -

When in the course of the trial of a summons-case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interests of justice, the

offence should be tried in accordance with the procedure for the trial of warrant cases, such Magistrate may proceed to re-hear the case in the manner provided by this Code for the trial of warrant-cases and may recall any witness who may have been examined.”

It goes to show that for converting a summon case into a warrant case, the learned Magistrate has to record that it is in the interest of justice that offence should be tried in accordance with the procedure for trial of warrant case.

In this case, no reason was given by the learned Magistrate nor it was ordered that the summon case is ordered to be tried as warrant case. Therefore, merely recording it as fixed for pre-charge evidence is apparently a clerical mistake, which was rectified on the next date of hearing.

Learned counsel for the petitioner has further argued that under Section 362 Cr.P.C, only the clerical error in the judgment or the order disposing of the case can be rectified and that Magistrate has no power to rectify the same.

From the abovenoted discussion, I come to the conclusion that the order dated 01.10.2015 fixing the case for pre-charge evidence of the complainant was in fact was due to clerical error as no specific order was passed for converting the summon case into the warrant case as per Section 259 Cr.P.C. Therefore, the said order fixing the case for pre-charge evidence of the complainant is not in accordance with law.

In view of the fact that this Court has the powers under Section 482 Cr.P.C., the order dated 01.10.2015 passed by the learned Magistrate is rectified and is ordered that present case be tried as summon case as ordered by the learned Magistrate.

Accordingly, the present petition stands dismissed.

March 10, 2016
sarita

(KULDIP SINGH)
JUDGE