

253

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

CRR No.2002 of 2014 (O&M)

Date of decision: August 04, 2016

Avtar Singh and others

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Karambir Singh Kahlon, Advocate
for the petitioners.

Mr. K.S. Sidhu, AAG Punjab.

Mr. Amit Gupta, Advocate for
Mr. Vipin Mahajan, Advocate
for respondent No.2.

A.B. CHAUDHARI, J (Oral)

CRM No.19896 of 2014

Heard.

Application is allowed for the reasons stated therein. Delay of
153 days in filing the revision petition is condoned.

CRR No.2002 of 2014

What is challenged in the present revision petition is impugned
order dated 18.11.2013 in Criminal Revision No.8 of 2013 passed by the
Additional Sessions Judge, Gurdaspur, at the behest of the present three
revision petitions who were sought to be prosecuted before the Judicial
Magistrate Ist Class, Bathala.

Learned counsel for the petitioners has contended that a
perusal of the impugned revisional order itself shows that none of the
present petitioners were even made party to that revision petition but an

order adverse to the interest of the petitioners for summoning them as accused in exercise of power under Sections 319 of Code of Criminal Procedure, 1973 (for short Cr. P.C.), was made, obviously without issuing notice or hearing them. He thus, submits that these revisional petitioners were eventually declared Proclaimed Offender and therefore, the impugned revisional order is clearly without exercise of jurisdiction and is illegal. Thus, he pray for addition of revision petitioners to the revision petition for fresh hearing thereof.

Per contra, learned counsel for the complainant submits that the petitioners were declared Proclaimed Offender and therefore, the revision petition at their behest should not be heard.

I have perused the impugned revisional order so also the memo of revision before the Sessions Court in Criminal Revision No.8 of 2013.

A perusal of the array of the parties therein shows the name of revisionist as Varinder Kumar and the name of respondent sole as State of Punjab. In other words, none of the present revision petitioners were made party to the revision petition. However, the revisional Court made the following operative order in Para-4 thereof which reads thus:-

“4. In view of above discussion, the revision is allowed and the impugned order under revision is set aside. The learned trial Court is directed to summon accused Avtar Singh, Binder and Raju alias Raj Singh to face trial along with other accused under Sections 452, 326, 323, 427, 148, 149 IPC. Parties are directed to appear before the learned trial Court on 21.12.2013. Trial Court file be returned. The file of this Court be consigned to the record room.”

The above Para-4 clearly shows that the revision petitioners were asked to appear pursuant to the summoning order under Section 319

Cr. P.C., though, they were not even made party to the revision petition. It is well settled legal position that before making an order under Section 319 Cr. P.C., particularly in revisional jurisdiction, it is necessary to hear the proposed accused persons.

In that view of the matter, I think there is a grave error made by the learned revisional Court in making the impugned order against the revision petitioners. In so far as the aspect of Proclaimed Offender is concerned, I find that the offences alleged were under Sections 452, 326, 323, 427, 148, 149 IPC. Having recorded a finding that the impugned order is *per se* illegal and cannot stand based on judicial scrutiny, the consequent declaration of the revisional petitioners as Proclaimed Offenders must also fall on the ground.

In that view of the matter, I make the following order:-

ORDER

- (i) CRR No.2002 of 2014 is partly allowed;
- (ii) The Impugned order dated 18.11.2013 is quashed and set aside. The proceedings of criminal revision are remitted to the revisional Court for fresh hearing and disposal after array of the revisional petitioners as party respondents to the revision petition. Revision Petition No.8 of 2013 shall be heard fresh by the Sessions Court;
- (iii) Consequentially, order regarding Proclaimed Offender in respect of revision petitioners are quashed and set aside.

(A.B. CHAUDHARI)
JUDGE

August 04, 2016

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No