

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-4164-2015

Date of Decision: February 9, 2016

Satbir Singh Khatkar and others

...Petitioners

Versus

Satish Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Sartej Singh Narula, Advocate,
for the petitioners.

Mr. Satish Kumar,
respondent-in-person.

- | | | |
|----|--|------------|
| 1. | <i>Whether Reporters of local papers may be allowed to see the judgment?</i> | YES |
| 2. | <i>To be referred to the Reporters or not?</i> | YES |
| 3. | <i>Whether the judgment should be reported in the Digest?</i> | YES |

NARESH KUMAR SANGHI, J. (Oral)

Present criminal revision petition has been filed by Satbir Singh Khatkar, Ravinder Tomar and Badri Parshad, challenging the order dated 5.8.2015, passed by learned Additional Sessions Judge, Kaithal, whereby the revision filed by the respondent/complainant, Satish Kumar, was allowed and the matter was remitted to learned Chief Judicial Magistrate, Kaithal, for reconsideration on the aspect of summoning, keeping in view the observations of the said Court.

Notice of the petition was issued to the respondent, Satish Kumar, who has appeared in person to argue the case. Satish Kumar was offered by this Court to have the assistance of a lawyer at the State expenses, but he submitted that he wanted to argue the case in person.

I have heard Mr. Sartej Singh Narula, learned counsel for the petitioners and the respondent/complainant, Satish Kumar, in person.

The only submission of Mr. Narula is that learned Court of Session could not have observed that *prima facie* enough evidence to summon the respondents for commission of offences punishable under Sections 120-B, 193, 195-A, 468 and 471, IPC, was made out. To elaborate his submission, he has submitted that by such observation, learned Chief Judicial Magistrate is bound to be influenced and he (Chief Judicial Magistrate) has to pass the summoning order. He further submits that the very purpose of remitting the case to learned Chief Judicial Magistrate for reconsideration on the aspect of summoning, would be frustrated. In support of his contention, he has referred to Section 398, Cr.P.C., in which it has clearly been mentioned that the revisional Court can order for further inquiry into any complaint which has been dismissed under

Section 203 or sub-section (4) of Section 204, Cr.P.C. To buttress his submissions, learned counsel has placed reliance on the judgments delivered in the cases of **Jai Prakash Pathak and others v. Surendra Gendley and another**, (2009) 1 Crimes 380 (Chhattisgarh)(Bilaspur Bench), and **Harun Khan v. Mahesh Chand**, (1997) 2 Crimes 301 (MP).

In the above said case law it has been held that the only order that can be made by the revisional Court under Section 398, Cr.P.C., is for further inquiry.

This Court finds that learned Additional Sessions Judge, Kaithal, though remitted the matter to learned Chief Judicial Magistrate, Kaithal, to reconsider on the aspect of summoning, but he observed that the said reconsideration would be in view of the observations made by the said Court.

In para No. 11 of the impugned order, learned revisional Court has held that *prima facie* enough evidence to summon the respondents for commission of the offences punishable under Sections 120-B, 193, 195-A, 468 and 471, IPC, is made out. If that observation is to be followed, then indirectly it is an order to learned Chief Judicial Magistrate, Kaithal, to summon the petitioners, which would be against the spirit of Section 398, Cr.P.C.

In view of totality of the facts and circumstances of the case, the direction of learned Additional Sessions Judge, Kaithal, to learned Chief Judicial Magistrate, Kaithal, to reconsider on the aspect of summoning, is upheld. However, it is directed that learned Chief Judicial Magistrate, Kaithal, shall independently scan the material available on record without being influenced by the observations of learned revisional Court, i.e. Additional Sessions Judge, Kaithal.

The case before learned Chief Judicial Magistrate, Kaithal, is stated to be fixed for 26.4.2016, therefore, no further direction for appearance of the parties to the *lis* is passed by this Court.

The present revision petition stands disposed of in the above terms.

A copy of this order be sent to learned Chief Judicial Magistrate, Kaithal, immediately.

(NARESH KUMAR SANGHI)
JUDGE

February 9, 2016
Pk Kapoor