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

CRM-M-33465-2016 (O&M)

Date of decision: - 28.8.2017

Shyam Sunder and another

.....Petitioners

versus

State of Haryana and another

.....Respondents

CORAM: - HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: - Mr. Manoj Kumar Tanwar, Advocate for the petitioners.

Mr. Naveen Kaushik, Addl.AG, Haryana.

Mr. J.P.Sharma, Advocate for respondent-No. 2/complainant.

ARVIND SINGH SANGWAN, J (ORAL)

Prayer in the present petition is for setting aside the order dated 5.9.2016 (Annexure P-2) passed by the Additional Sessions Judge, Narnaul, vide which order passed by the trial Court dated 10.6.2016 (Annexure P-1), dismissing the application under Section 319 Cr. P.C. filed by respondent No. 2/complainant was set aside and it was directed that the trial Court will decide the application under Section 319 Cr. P.C. afresh after decision of the application filed under Section 216 Cr. P.C. pending before the trial Court..

Learned counsel for the petitioners submits that prosecution has moved an application under Section 319 Cr. P.C at a stage when two prosecution witnesses have already been examined and the petitioners namely, Shyam Sunder and Yogesh were sought to be summoned as an additional accused. The said application was dismissed by the trial Court with the observation that from the evidence brought on record, there are only vague allegations against the proposed accused persons and such allegations cannot be termed as evidence pointing

towards involvement of these persons in commission of offence as the police during the investigation has found the petitioners to be innocent persons.

It is further submitted on behalf of the petitioners that firstly, the respondent No. 2/complainant while filing the revision petition has not impleaded the petitioners as respondents and only the accused persons who are already facing the trial were arrayed as contesting respondents No. 1 to 7, as is evident from the memo of parties of the impugned order dated 5.9.2016, and, therefore, the revisional Court before passing the impugned order dated 5.9.2016, especially setting aside the order of the trial Court dated 10.6.2016, never issued any summons to the petitioners or afforded any opportunity of hearing to them. In support, learned counsel for the petitioner has relied upon judgment of Hon'ble Supreme Court in Mohit vs. State of U.P., 2013(3) RCR (4) 673, where it has been held that while deciding a revision considering legality and propriety of an order passed under Section 319 Cr. P.C., the revisional should give notice and opportunity of hearing to a person in whose favour a right has accrued.

In support thereof, learned counsel for the petitioners submits that while deciding the application under Section 319 Cr. P.C, an opportunity should be granted to a person who is sought to be impleaded as additional accused. He further submits that the Additional Sessions Judge, while setting aside the order dated 10.6.2017, has not reversed the findings recorded by the trial Court that the evidence brought on record is not sufficient to summon the petitioners.

A perusal of the evidence would show that only vague allegations are levelled against the petitioners and therefore, without reversing the findings on the merits of the case, order passed by the trial Court dated 10.6.2017 has been wrongly set aside.

On the other hand, learned State counsel, on instructions from H.C. Amit Kumar, assisted by learned counsel for respondent No. 2/complainant submit that in fact, revisional Court has only directed the trial Court to first decide the application filed under Section 216 Cr. P.C.; thereafter decided the application under Section 319 Cr. P.C. afresh and therefore, no prejudice will be caused to the petitioners.

After hearing learned counsel for the parties, I am of the opinion that the aforesaid impugned order dated 5.9.2016 is not sustainable. Firstly, petitioners were neither arrayed as respondents nor they were afforded any opportunity of hearing before passing of the impugned order in view of the judgment in Mohit's case (supra) and also in view of the fact that while setting aside the order dated 10.6.2016, the findings recorded by the trial Court, on merits, have not been set aside.

In view of above, present petition is allowed. The case is remitted back to the Court of Additional Sessions Judge, Narnaul for deciding the revision afresh in accordance with law after affording opportunity to the petitioner.

Parties through their counsel are therefore, directed to appear before the trial Court on 11.9.2016.

Allowed in the above terms.

Nothing observed herein shall have a bearing on the merits of the case.

(ARVIND SINGH SANGWAN)
JUDGE

28.8.2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No