

119.

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

CRM-M-35616-2013

Date of decision:29.09.2017.

BHARPAI & ORS

... Petitioners

Versus

VIJAY SINGH & ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Sanjay Vashisht, Advocate,
for the petitioners.

Mr. Akshay Jindal, Advocate,
for respondent No.1.

Mr. Sandeep Vashisht, DAG, Haryana,
for respondent No.2.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing the order dated 04.02.2010 passed by learned Additional Sessions Judge, Panipat, whereby the revision petition filed by the respondent-complainant against the order dated 10.04.2009 passed by learned Judicial Magistrate Ist Class, Panipat, dismissing the complaint, was allowed. Learned Additional Sessions Judge, while acting as a revisionary court, had directed the complainant to appear before the trial Court on 10.02.2010 and the trial Court was further directed to conduct the proceedings in accordance with law.

Mr. Sanjay Vashisht, learned counsel for the petitioners states that in view of law laid down by the Apex Court in **Mohit alias Sonu and another Versus State of U.P. and another-2013(3) R.C.R. (Criminal) 673**, the revisionary court cannot allow the revision without issuing any notice to the aggrieved party i.e. the petitioner-accused. He has referred to paragraphs No.28 and 29 of the said judgment to contend that since a valuable right has occurred to the petitioner, it was incumbent upon the revisionary court to issue notice to the petitioner before passing any adverse order. Paragraphs No.28 and 29 of the said judgment read as under:-

“28. The second question that needs consideration is as to whether the High Court exercising its revisional jurisdiction or inherent jurisdiction under Section 482 Cr.P.C., while considering the legality and propriety of the order passed under Section 319 of Cr.P.C. Code is required to give notice and opportunity of hearing to the person in whose favour some right accrued by virtue of order passed by the trial court. In other words, whether it would be justified for the High Court to entertain a petition under Section 482 Cr.P.C. and pass order to the prejudice of the accused or other person (the appellants herein) without giving notice and opportunity of hearing to them.

29. Indisputably, a valuable right accrued to the appellants by reason of the order passed by the Sessions Court refusing to issue summons on the ground that no *prima facie* case has been made out on the basis of evidence brought on record. As discussed hereinabove, when the Sessions Court order has been challenged, then it was incumbent upon the revisional court to give notice and opportunity of hearing as contemplated under sub-section (2) of Section 401 of Cr.P.C. In our considered opinion, there is no reason why the same principle should not be applied in a case where such orders are challenged in the High Court under Section 482 Cr.P.C.”

He has argued that the impugned order passed by learned Additional

cannot sustain before the scrutiny of law. It was obligatory on the part of the revisionary court to issue notice before setting aside the order passed by learned Magistrate. While referring Section 401 Cr.P.C. he has argued that by not issuing notice to the petitioners, the revisionary court has negated the very provision of revision. The present petition was filed on 21.10.2013 and this Court vide order dated 23.10.2013 had stayed the impugned order dated 04.02.2010. Therefore, the proceeding, if any, conducted after the passing of the order dated 04.02.2010 has no legal sanctity in the eyes of law.

On the other hand, Mr. Akshay Jindal, learned counsel for the respondent No.1, has argued that there is no dispute that the impugned order was passed by the learned Additional Sessions Judge on 04.02.2010. The revisionary court, while setting aside the order dated 10.04.2009 dismissing the complaint by learned Magistrate, has observed that prima facie case against the accused has been made out for commission of offence punishable under Sections 148, 452, 323, 504 and 506 read with Section 149 IPC. Accordingly, the petitioners-accused were ordered to be summoned to face trial. Thus, learned Additional Sessions Judge had remanded the case back to the trial Court to issue fresh process. He has argued that as per the direction by the learned Additional Sessions Judge vide order dated 04.02.2010, the complainant through his counsel was directed to appear before the trial Court on 10.02.2010 and thereafter, the process of summoning was issued. He further states that even before approaching this Court, the

accused had approached the trial Court and sought bail, on 27.07.2010. As many as four accused had sought bail, whereas on 29.10.2010 i.e. six other accused had sought bail from the court. Thereafter the charges in the case were framed and as on 09.10.2013, the complainant's evidence was already closed. It is only after the conclusion of the evidence, the petitioners have approached this Court on 21.10.2013 through the instant petition impugning the order dated 04.02.2010 passed by learned Additional Sessions Judge. Therefore, from the very conduct of the petitioners, the present petition impugning the order dated 04.02.2010 passed by learned Additional Sessions Judge, is liable to be dismissed. Petitioners filed the present petition on 21.10.2013 whereas learned Additional Sessions Judge has passed the order on 04.02.2010. Petitioners have waited for trial and despite having knowledge of the status of trial suddenly decided to approach this Court through the instant petition.

I have heard learned counsel for the parties.

This court does not dispute the judgment passed in **Mohit alias Sonu's case** (supra) and when there is a specific remedy provided by way of appeal or revision, the parties are entitled to avail such remedy. However, considering the fact that the impugned order was passed on 04.02.2010 whereby learned Additional Sessions Judge had remanded the case to the trial Court to try it afresh, and it is whereafter the process of summoning the petitioners was issued by the trial Court to which the petitioners have decided to participate the proceedings.

Pursuant to aforesaid order, the petitioners appeared before the trial Court and sought bail on 27.07.2010 and 29.10.2010 and it is thereafter, the charges were framed and the evidence was closed on 09.10.2013. The present petition was filed on 21.10.2013, though the order was passed by the learned Additional Sessions Judge on 04.02.2010 and evidence of the complainant was closed on 09.10.2013, but no such evidence or proceedings have been placed on record along with the present petition. It is only after the closure of evidence, the petitioners have filed this petition. The plea that when this Court had stayed the very impugned order dated 04.02.2010, the proceedings before the trial Court is of no help, cannot be accepted, particularly when at the time, the present petition was filed, much proceedings had already been concluded including that the evidence of the complainant was closed and it is after assessing/ascertaining the fact that there is some evidence against the petitioners, it seems that the petitioners opted to file the present petition. Therefore, the judgment in **Mohit alias Sonu's case** (supra) is not attracted in the facts and circumstances of the present case.

In view of above, this Court finds no merit in the present petition and it is accordingly, dismissed.

(HARI PAL VERMA)
JUDGE

29.09.2017

sanjeev

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No