

123.

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

CRM-M-34037-2017

Date of decision:14.09.2017.

BHAJAN LAL AND ORS.

... Petitioners

Versus

BHARPUR SINGH

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Sukhdeep Parmar, Advocate,
for the petitioners.

HARI PAL VERMA, J. (Oral)

Aggrieved against the order dated 02.08.2017 passed by learned Additional Sessions Judge, Hoshiarpur, whereby a revision petition filed by the respondent-complainant, namely, Bharpur Singh against the order dated 01.12.2016 passed by learned Judicial Magistrate Ist Class, Hoshiarpur, whereby the respondents-accused were not summoned under Sections 294 and 295-A IPC, the petitioners-accused have filed the present petition under Section 482 Cr.P.C.

Vide order dated 02.08.2017 passed by learned Additional Sessions Judge, Hoshiarpur, while accepting the revision petition filed by the respondent-complainant, has set aside the order dated 01.12.2016 and remanded back the case to learned Magistrate to decide afresh with an observation that the petitioners-accused required to be

summoned under Sections 294 and 295-A IPC in addition to Sections 323, 295 read with Section 34 IPC.

As directed by learned Additional Sessions Judge, Hoshiarpur, vide order dated 02.08.2017, learned Judicial Magistrate Ist Class, Hoshiarpur, passed a fresh order on 22.08.2017 and held that the petitioners-accused are liable to be summoned under Sections 323, 294, 295, 295-A read with Section 34 IPC.

Learned counsel for the petitioners has challenged the order dated 02.08.2017 passed by learned Additional Sessions Judge whereby the revision petition filed by the respondent-complainant was accepted, for the reason that it is on the basis of the order dated 02.08.2017, learned Magistrate has summoned the petitioners. Otherwise, there was no material with the trial Court to summon them. He states that as required under Section 196 (1) of Cr.P.C. in order to launch prosecution against the petitioners, sanction of competent authority is required. No such sanction was neither sought nor granted by the competent authority.

Having heard learned counsel for the petitioners, this Court finds that the order dated 22.08.2017 passed by learned Magistrate is subject to a revision petition under Section 397 Cr.P.C. and, therefore, the remedy is available to the petitioners, but same has not been availed before approaching this Court.

Faced with this situation, learned counsel for the petitioners states that he may be permitted to withdraw the present petition at this

stage, however with liberty to challenge the order dated 22.08.2017 passed by learned Magistrate summoning the petitioners for offence under Sections 323, 294, 295, 295-A read with Section 34 IPC. However, he submits that the revisionary court may be directed to deal with the plea of the petitioners that the very complaint filed by the respondent-complainant was not maintainable in the absence of sanction for prosecution, as enshrined under Section 196(1) Cr.P.C.

Dismissed as withdrawn with liberty aforesaid.

It is made clear that in case such like revision petition is filed against the order dated 22.08.2017, the learned revisionary court shall deal with the plea of the petitioners regarding sanction for prosecution as provided under Section 196(1) Cr.P.C. and the order on the revision petition shall be passed without any prejudice to the earlier order passed by learned Additional Sessions Judge, Hoshiarpur, dated 02.08.2017. In case, petitioner prefers revision petition before learned Sessions Judge or other competent court, within a period of one month from today, the limitation shall not come in the way of petitioner, in such revision petition.

(HARI PAL VERMA)
JUDGE

14.09.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No