

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

CRM No.M-35745 of 2016 (O&M)

Date of Decision: March 29, 2017

Amar Singh and others

...Petitioners

VERSUS

Ashok Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Daldeep Singh, Advocate,
for the petitioners.

Mr.R.S.Mamli, Advocate
for the respondent.

INDERJIT SINGH, J.

The petitioners have filed this petition under Section 482 Cr.P.C. against respondent Ashok Kumar for quashing the criminal complaint No.61-1/RBT dated 19.11.2009 titled as Ashok Kumar vs. Amar Singh and others, and for setting aside the order dated 16.03.2016 passed by learned Addl. Sessions Judge, Ambala, directing learned trial Court to issue process of summoning the petitioners.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

The short point in the present case is that complainant Ashok

Kumar filed a complaint against the petitioners under Sections 323, 324, 325, 326, 148, 149, 448, 452 and 506 IPC. Learned JMIC, Ambala, vide order dated 15.10.2013 dismissed the complaint and did not summon the accused. Aggrieved from this order, a revision was filed by Ashok Kumar against the petitioners before the Court of Session. Learned Addl. Sessions Judge, Ambala, vide order dated 16.03.2016, without issuing notice to the respondents (present petitioners) set aside the order dated 15.10.2013 passed by learned Magistrate and directed learned trial Court to issue process to summon the accused-respondents. Aggrieved from the order dated 16.03.2016 present petition has been filed.

From the record, I find that learned Addl. Sessions Judge, Ambala, has passed the order dated 16.03.2016 without issuing the notice to the respondents-present petitioners and set aside order dated 15.10.2013 passed by learned JMIC, Ambala. It is settled law that no adverse order can be passed without issuing notice to the respondent by the revisional Court as provided under Section 401 (2) Cr.P.C., which provides as under:-

“(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.”

Furthermore, Section 399 (2) Cr.P.C., provides as under:-

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under subsection (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said subsections to the High Court shall be construed as references to the Sessions Judge.

In view of the provisions as discussed above, learned Addl.

deciding the revision and before passing the adverse order against the respondents in that case and now petitioners in this case.

In view of the above discussion, I find that the order dated 16.03.2016 passed by learned Addl. Sessions Judge, Ambala, without issuing notice to the respondents is not as per law and the same is set aside. The matter is remanded back to the Court of Session for deciding the revision as per law after hearing the respondents in that case. The parties are directed to appear before learned revisional Court on 27.04.2017.

The present petition stands allowed accordingly.

March 29, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No