

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

CRM-M No.36338 of 2016

Date of decision: 11th September, 2017

Mohan Lal

... Petitioner

Versus

Joginder Pal & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Amandeep S. Gill, Advocate for the petitioner.

None for the respondents.

FATEH DEEP SINGH, J.

A criminal complaint was moved by the present petitioner complainant Mohan Lal against Joginder Pal, Surinder Pal, Kuldeep Chand all brothers accused and one Jiwan Jassi, on the grounds that the complainant was cheated on account of purchase of plot by him from the accused side. It is consequent thereupon after the complainant led preliminary evidence, the Court of learned Judicial Magistrate 1st Class, Jalandhar summoned the accused through orders dated 03.06.2014 under Sections 452/323/427/506/34 IPC but due to inadvertence, as is contended, in fact Section 452 IPC stood missed out. The complainant moved application for correction of the summoning order (Annexure P9) and the Court after receiving reply, through orders dated 19.08.2016 (Annexure P12) dismissed the application. The relevant part of the said order under assail is reproduced as follows:

“5. This Court is of the considered view that the present application for correction of summoning order dated 03.06.2015 filed by the applicant is not maintainable. As this Court has no powers to review its own order. The present application filed by the applicant seems to be filed just to delay the proceedings of the present case. No ground is made out to allow the above said application. As such, the present application having no merits in it stands dismissed. Now to come up on 26.09.2016 for pre-charge evidence of complainant.”

It is reflected from the above said order that the Court has held that it has no power to review its own order.

In what was argued before this Court and is undisputedly there in the records, the summoning order dated 03.06.2014 (Annexure P9), which is the basis of this application and impugned orders, is reproduced by way of para No.5 of the said order, which is as follows:

“5. After hearing the submissions of learned counsel for the complainant and from the perusal of the complaint and attended documents thereto, this Court is of considered view that there are sufficient grounds to proceed against the accused under Section 452, 323, 427, 506, 34 Indian Penal Code. Let the accused be summoned to face trial under Sections 323, 427, 506, 34 IPC accordingly, subject to filing of copy of complaint, list of witness and PF etc. by the complainant for 12.06.2014.”

From a perusal of the same, it stands adequately reflected that the Court had formed an opinion on the perusal of the complaint and attending documents that there were sufficient grounds to proceed against

the accused under Sections 452, 323, 427, 506, 34 IPC and at the time of effective orders that let the accused be summoned to face trial, has instead written sections 323, 427, 506, 34 IPC and failed to mention therein Section 452 of the IPC. Thus, to the mind of this Court, it is a pure typographical and clerical error due to inadvertence and it is for such rectification of errors in judgment or final orders, the legislature in its wisdom has enacted Section 362 Cr.P.C. to enable the Court to correct the clerical or arithmetical error. Thus, being a pure typographical and clerical error, needs to be rectified. This Court refrains from expressing its opinion that the petitioner ought to have approached the learned Sessions Judge by way of revision under Sections 497/499 Cr.P.C. against such an order instead of coming up to this Court under Section 482 Cr.P.C. but considering the great injustice that has been caused and being an exceptional circumstance, to put an end to further harassment of the petitioner for such a simple error on the part of the Court necessitates intervention by this Court in exercising its inherent powers under Section 482 Cr.P.C. thereby allowing the present petition and setting aside the order in assail (Annexure P12). The trial Court is directed to do the needful expeditiously in accordance with law.

The petition stands disposed off in those terms.

(FATEH DEEP SINGH)
JUDGE

September 11, 2017

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No