

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

**CRM-M-39154-2016
Date of decision :30.08.2017**

Shri Guru Singh Sabha

..... Petitioner

Versus

Rajinder Singh and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Sushil Bhardwaj, Advocate
for respondents No.1 and 2.

H.S. MADAAN, J. (Oral)

This petition under Section 482 Cr.P.C. praying for quashing of order dated 08.01.2016 framing charge for offence under Section 406 only against the accused whereas omitting to do so as regards offence under Section 420 IPC has been filed by Shri Guru Singh Sabha, Nilokheri District Karnal – complainant in the case titled as Shri Guru Singh Sabha vs. Rajinder Singh and another pending in the Court of Judicial Magistrate Ist Class, Karnal.

The grouse of the petitioner is that a complaint under Sections 419, 420, 406 and 379 IPC has been filed by it against Rajinder Singh and

Balbir Singh Aatish in the Court of Judicial Magistrate Ist Class, Karnal.

After the preliminary evidence was recorded, the Court vide order dated 23.10.2013 had summoned both the accused to face trial for offences under Sections 406 and 420 IPC, whereas declining to summon such accused for offences under Sections 419 and 379 IPC. Both the accused had put in appearance, it is stated that the evidence led by the complainant for the purpose of summoning was treated as evidence for the purpose of framing charge. Thereafter the Court had framed charge for offence under Section 406 IPC against the accused. The complainant felt aggrieved by that order and moved an application that charge under Section 420 IPC be also framed but as such application was declined, feeling aggrieved, he has filed the present petition.

Notice of the petition was given to the respondent who has put in appearance through their counsel.

I have heard learned counsel for the parties, besides, going through the record.

A perusal of order dated 08.01.2016 goes to show the non-application of mind on the part of the trial Magistrate. On the top of the order presence of "*APP for the State*" has been marked instead of marking presence of "*counsel for the complainant*". In the first line, it is mentioned that from the "*report under Section 173 Cr.P.C. and other accompanying documents*", a prima facie case punishable under Section 406 IPC is made out against the accused, which is contrary to the factual position since it was not a "*police challan*" case but a case of "*private complaint*". Nothing has been mentioned that no offence under Section 420 IPC was made out and no reason has been given for the same, therefore, this order is not sustainable

and is accordingly set aside by way of acceptance of the petition.

The trial Court is directed to hear learned counsel for both the parties and to pass fresh order after hearing them by giving reasons for arriving at the conclusion and then to proceed further with the trial.

The exercise be completed within a period of 15 days on receipt of this order in the Court.

30.08.2017
Gaurav Sorot

(H.S. MADAAN)
JUDGE

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**