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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-3844-2015

Date of Decision:- October 11, 2017

Subhash Bhatia and another

....Petitioners

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Madan Lal Saini, Advocate,
for the petitioners.

Mr. A.S.Sandhu, Addl. A.G. Punjab.

Mr. Ramneek Vasudeva, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J.

Present petition under Section 482 of Code of Criminal Procedure [for short, "**the Code**"] is for quashing of impugned order dated 18.11.2014 (Annexure P/3) passed by learned Sessions Judge, SBS Nagar vide which order dated 24.09.2014 (Annexure P/2) passed by learned Sub Divisional Judicial Magistrate, Balachaur passed in favour of the petitioners, which effects the rights and liabilities of the petitioners and accrued some rights in their favour, has been set-aside. The revision petition filed by complainant – Surinder Kumar has been allowed without issuance of any notice and impleading the petitioners as party and also

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for quashing of order dated 9.12.2014 (Annexure P/3) passed by learned Sub Divisional Judicial Magistrate, Balachaur, whereby petitioners, namely, Subhash Bhatia and Sharanjit Bhatia, were summoned to face trial under Sections 120-B, 406, 465, 467, 468, 471 IPC.

2. Facts relevant for the purpose of decision of this case; that Surinder Kumar, respondent herein had made a complaint to the police that he had gone to Jeevan Pal and showed his interest in going abroad with him, who in turn introduced the complainant with present petitioner No.1, Subhash Bhatia. Said Subhash Bhatia told that both his sons namely, Charanjit Bhatia alias Goldy and Sharanjit Bhatia were in the business of sending people abroad and on introduction, both of them revealed to the complainant that they were running business under the name and style of "P.R.G. Education Service" at Chandigarh and had already sent a number of persons abroad. On this assurance, complainant – Surinder Kumar handed over Rs.20,000/- and his passport to Subhash Bhatia, Charanjit Bhatia and Sharanjit Bhatia on 28.04.2008 in the presence of Jeevan Pal. On 25.6.2008, he paid Rs.1.00 Lakh to all these three persons and also on 18.7.2008, he gave another sum of Rs.70,000/- and Rs.30,000/- each on 8.9.2008 and 20.9.2008; Rs. 60.000/- on 9.12.2008 and Rs.1.00 lakh on 24.09.2009, total Rs.4,10,000/- in all. On 5.5.2009, Charanjit Bhatia asked the complainant to come to Chandigarh for boarding to New Zealand flight on 6.5.2009. The complainant along with six other persons reached Bombay where Charanjit demanded another sum of Rs.1.00 lakh each from them

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and when they all refused, all of them were abandoned in their hotel by Charanjit Bhatia and on 10.5.2009, they returned to their respective houses. Thereafter, they contacted the present petitioners, namely Subhash Bhatia and Sharanjit Bhatia as also Charanjit Bhatia, but they refused to return their money and instead started threatening him.

3. During the trial of the case, 9 witnesses were examined and at that stage, application under Section 319 of the Code was filed by the complainant that Subhash Bhatia and Sharanjit Bhatia are also accused and they be also summoned to face trial as accused, but learned trial Magistrate dismissed the said application vide order dated 24.09.2014 (Annexure P/2) by recording the observation that the same was just to delay the proceedings of the case. The said order was challenged by way of revision petition before the Court of Sessions and learned Sessions Judge, SBS Nagar, accepted the revision petition and set-aside order passed by learned Magistrate vide order dated 18.11.2014 (Annexure P/3) and directions were issued to the trial Magistrate to pass fresh order in view of judgment of Hon`ble Supreme Court in **Dharam Pal Vs. State of Haryana, 2013 AIR (SC) (Crl.) 1957** and **Hardip Singh Vs. State of Punjab, Criminal Appeal No. 1750 of 2008, decided on 10.1.2014.**

4. Learned Magistrate, on the basis of said order, Annexure P/3, passed order dated 9.12.2014 (Annexure P/4) that Subhash Bhatia, Charanjit and Sharanjit were named by complainant – Surinder Kumar as PW-9 and there are specific allegations against them and ordered to summon them as accused to face trial under Sections 120-B, 406, 465,

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467, 468, 471 IPC.

5. Learned counsel for the petitioners has challenged the order passed by learned Sessions Judge, dated 18.11.2014 (Annexure P/3) mainly on the ground that the order was passed by learned Sessions Judge without issuing notice to the present petitioners although, valuable rights had already accrued in favour of the petitioners as application under Section 319 Cr. P.C. was earlier dismissed by learned Magistrate vide order, Annexure P/2. On this point, reliance was placed upon the judgment from Hon`ble Supreme Court in **Mohit alias Sonu and another Vs. State of U.P. and another, 2013(3) R.C.R. (Criminal) 673.** Reliance was also placed upon three judgments of Co-ordinate Benches of this Court in **Sunil Israni and others Vs. Kanak Israni, Crl. Misc. No.M-33913 of 2011, decided on 24.07.2013; Nirmal Singh Vs. State of Haryana and another, Crl.Misc. No. CRM-M-24590-2014, decided on 17.07.2015; and Mangal Singh and others Vs. State of Haryana and another, Crl.Misc. No. 31936 of 2011, decided on 4.7.2013.**

6. Learned counsel for the petitioners also contended that while filing the present petition before this Court, a revision petition was pending before this Sessions Court, which was later on withdrawn.

7. While arguing on these points, learned State counsel as well as learned counsel for respondent No.2 contended that the application under Section 319 of the Code was erroneously dismissed by learned Magistrate and learned Sessions Judge, SBS Nagar while exercising powers vested in him, passed the order that learned Magistrate may proceed with the

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matter and pass an order afresh after considering the entire material.

8. Learned counsel for the complainant-respondent no.2 mainly contended that the facts of the case in hand as well as facts of **Mohit alias Sonu's case (supra)** are quite at variance because in the cited case, the application under Section 319 of the Code was dismissed by the Revisional Court and thereafter, they were ordered to be summoned by the High Court, whereas, in the present case, learned Sessions Judge has not accepted the application in toto, rather passed the order remanding the matter to learned Magistrate to consider the matter and pass fresh order. As such, no valuable right had accrued to the present petitioners by dismissal of application under Section 319 of the Code and there was no question of issuance of any notice to the petitioners by learned Sessions Judge while ordering for remand of the matter.

9. Learned counsel for the respondents placed reliance upon the judgment from Hon`ble Supreme Court in **Hardeep Singh Vs. State of Punjab and others, 2008(4) R.C.R. (Criminal) 947**, wherein Hon`ble Apex Court was seized of similar controversy and observed that the accused at pre-process stage has no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not.

10. Learned counsel for the respondents also contended that the petitioners have misused the process of law as they had challenged the order passed by learned Magistrate before the Court of Sessions on 9.12.2014 and simultaneously filed the present petition before this court

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challenging the same order and as such, the petitioners are not entitled to any relief under Section 482 of the Code which deals with inherent powers of this Court. So, the present petition be dismissed.

11. Having considered the above facts and view taken by Hon`ble Apex Court in **Mohit alias Sonu's case (supra)** and Hon`ble Co-ordinate Benches of this Court in **Sunil Israni, Nirmal Singh, and Mangal Singhs' cases (supra)**, relied upon by learned counsel for the petitioners, this Court is of the considered view that there is no ambiguity on the point that application under Section 319 of the Code for summoning of both the petitiones as additional accused was dismissed by learned Magistrate and revisional Court remanded the matter back to learned Magistrate for passing fresh order. At that stage, no order was passed by learned Sessions Judge directing the present petitioners to face trial. Only, matter was remanded back to learned Magistrate to pass a fresh order. Subsequently, the order was passed by learned Magistrate dated 9.12.2004 (Annexure P/4), whereby the petitioners were directed to face trial as an additional accused. The petitioners have challenged both these orders by invoking provisions of Section 482 of the Code It is settled law that provisions of Section 482 of the Code can be invoked only if there is no alternative remedy available as per law. Such a view was taken by Hon`ble Apex Court in **Madhu Limaye Vs. State of Maharashtra (1997) 4 SCC 551** was of the view that it is well settled that the inherent powers under Section 482 of the Code can be exercised only when no other remedy is available to the litigant and not where a specific remedy is

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provided by the statute. Further, the power being an extraordinary one, has to be exercised sparingly and if these considerations are kept in mind, there will be no inconsistency between Sections 482 and 397(2) of the Code. However, in the present case, since orders were passed by learned Magistrate on 9.12.2014, equally efficacious remedy under the law was available to the petitioners so as to challenge the said order by way of filing revision petition. More so, the petitioners in this case, have challenged the said order by invoking revisional jurisdiction simultaneously, which is totally misuse of the process of law. For ready reference, para No. 12 of the present petition itself is extracted below:-

“12. That the petitioners has also filed revision against the order passed by SDJM dated 9.12.2014 in the Court of Id. Sessions Judge.”

12. On this account only, the petitioners are not entitled to any relief on a petition under Section 482 of the Code

13. Now, coming to the point - whether the petitioners had a right to be heard at the time of passing of order by learned Sessions Judge, SBS Nagar, whereby the matter in controversy was remanded back to learned Magistrate, it is not in dispute that learned Sessions Judge had not passed any order for summoning of present petitioners as additional accused. Rather, it was done by learned Magistrate only. As such, the facts of the present case are distinguishable from the facts of cases cited by learned counsel for the petitioners.

14. As per view taken by Hon`ble Apex Court in **Hardeep Singh's case (supra)**, it is settled law that at the stage of issuing summons or

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process, the Court has to see whether there is *prima facie* case against the person sought to be summoned or against whom process is sought to be issued. At this stage, there is no question of giving an opportunity of hearing to such person. The entire scheme of the Code is that an accused does not come into picture at all till process is issued. Such a view as taken by Hon`ble Supreme Court in **Nagavva Vs. Veeranna, (1976) 3 SCC 736**, wherein Hon`ble Apex Court observed as under :-

“..... the accused at pre-process stage has no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not. It may, therefore, be said that till summons or process is issued against the accused, he has no right of audience....”

14. Since reliance was placed by learned counsel for the petitioners on the judgment of Hon`ble Apex Court in **Mohit alias Sonu's case (supra)**, but the facts of the case in hand are entirely different because in this case, first of all, no order for summoning the accused was passed by learned Sessions Judge while exercising the revisional powers under Section 397 of the Code, but the order was passed by learned Magistrate. More so, in the cited case, Hon`ble Apex Court was dealing with the matter where application was dismissed by the Court of Session also and the application was accepted by the High Court and Hon`ble Apex Court while deciding the said controversy also dealt with the issue of opportunity of hearing being given while exercising revisional jurisdiction by the Court of Session under Section 397 of the Code and the High Court under Section 401 of the Code, but the facts of the case in hand are certainly distinguishable in this regard as well.

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15. In view of the above, there is no merit in the present petition and the same stands dismissed. However, in view of the above, the petitioners may avail their remedy under the law by filing appropriate application in the revision petition withdrawn by them, if so advised, challenging the order dated 9.12.2014 (Annexure P/4).

October 11, 2017
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(SHEKHER DHAWAN)
JUDGE

Speaking/Reasoned	Yes
Reportable	Yes