

227 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43294-2013(O&M)
Date of decision: 08.09.2017

Sheetal Kaur and another

...Petitioners

Versus

Surinder Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

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

Mr. S.S.Gill, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of complaint No.30, dated 09.08.2008 (Annexure P-1); summoning the order dated 17.09.2013 (Annexure P-2); the order dated 20.04.2011 (Annexure P-3) and 01.08.2013 (Annexure P-4) vide which the Court of Session, while setting aside the earlier order dated 21.07.2009 (Annexure P-5), dismissing the complaint, the matter was remanded back to the trial Court for deciding afresh and also to quash the order dated 01.08.2013 (Annexure P-4) vide which the permission was granted to respondent-complainant (Surinder Kumar) to pursue the complaint originally filed by Gurbax Singh as a legal representative.

Brief facts of the case as set up by the petitioners are that a criminal complaint titled as “Gurbax Singh Vs. Raminder Kaur and others” was initially filed at original criminal Complaint No. 30, dated 09.08.2008, for offences under Sections 452, 506 read with 120-B IPC. After recording the statement of the complainant, the complaint was dismissed by the trial Court vide order dated 21.07.2009 (Annexure P-5). This order was challenged by the complainant-Gurbax Singh by way of filing a revision before the Sessions Court and the same was allowed vide order dated 20.04.2011 (Annexure P-3)

and the matter was remitted back to the trial Court for deciding the case afresh.

Thereafter, Gurbax Singh died on 05.02.2013 and respondent-Surinder Kumar filed an application for impleading as a legal representative of Gurbax Singh and the same was allowed vide order dated 01.08.2013 (Annexure P-4). Later on, the trial Court summoned the petitioners vide order dated 17.09.2013. Thus, the petitioners have filed a present petition for challenging the aforesaid orders.

In pursuance to the notice of motion, reply has been filed and the parties have been heard.

At the very outset, counsel for the petitioners submitted that when the complaint was dismissed by the trial Court vide order dated 21.07.2009, Gurbax Singh had filed a revision petition before the Additional Sessions Judge, Patiala which was allowed without even issuing notice to the petitioners/other accused persons. Since this order had set aside the order of the trial Court dated 21.07.2009 (Annexure P-5). Therefore, this order passed by the Additional Sessions Judge by adversely effecting the rights of the petitioners, it was incumbent upon the Court of Session to issue notice by affording an opportunity to avail the opportunities before passing the said order. A perusal of the order shows that the revision petition was allowed only after hearing counsel for the complainant and therefore, no opportunity of hearing was afforded to the petitioners.

Learned counsel for the petitioners, in support, has relied upon a judgment rendered by the Hon'ble Apex Court in ***Mohit alias Sonu and another v. State of U.P. and another 2013(3) RCR (Criminal) 673***, wherein, it has been held that while entertaining an appeal/revision by the Court of Session, against an order vide which some right has accrued in favour of person by virtue of such order passed by the trial Court, Court is required to

give notice and opportunity of hearing to the person concerned.

It is also contended on behalf of the petitioner that while allowing the application for substituting respondent-Surinder Kumar as a legal representative in place of Gurbax Singh, the trial Court has not applied its mind as the natural legal heirs of Gurbax Singh were not given any notice and were not heard before passing such order. It is submitted on behalf of the petitioner that even while passing the summoning order dated 17.09.2013 (Annexure P-2), the trial Court, has not taken into consideration a fact that the allegation in the complaint with regard to the offence under Section 452/506 are levelled against co-accused-Parvinder Singh and there is no specific allegation against the petitioners, who are NRI and it is not proved in evidence that they were present in India at the relevant time while the alleged occurrence has taken place.

On the other hand, learned counsel for the respondent has submitted that the trial Court has rightly allowed Surinder Kumar to be substituted as a legal representative of Gurbax Singh as he was holding power of attorney as well as Will on behalf of Gurbax Singh and that the summoning order has been passed in accordance with law.

After hearing learned counsel for the parties, I am of the opinion that it is apparent on record that the Additional Sessions Judge, Patiala while passing the impugned order dated 20.04.2011 (Annexure P-3) has not afforded any opportunity of hearing to the petitioners despite the fact that a right has accrued in their favour when the complaint was dismissed by the trial Court vide order dated 21.07.2009 (Annexure P-5) and before setting aside that order it was incumbent upon the Sessions Court to issue notice to the petitioners and affording an opportunity of hearing to the petitioners. Similarly, it is also apparent on record that the trial Court while passing the impugned order dated

01.08.2013 (Annexure P-4), while allowing Surinder Kumar to be substituted as legal representative of Gurbax Singh has not issued any notice to the natural legal heir of Gurbax Singh and has allowed the application only on the mere assumption that there is a registered Will in favour of the said Surinder Kumar and, therefore, the impugned order is not sustainable.

Accordingly, this revision petition is allowed. The impugned order dated 20.04.2011 (Annexure P-3) and order dated 01.08.2013 (Annexure P-4) are set aside and the matter is remanded back to the Additional Sessions Judge, Patiala for deciding afresh the revision filed by the respondent Gurbax Singh after affording an opportunity of hearing to the present petitioners.

It is made clear that before proceeding further, the revisional Court will also decide as to whether Surinder Kumar is a legal representative of Gurbax Singh and while deciding such application, the Additional Sessions Judge will issue notice to the natural legal heirs of Gurbax Singh and thereafter, pass an order in accordance with law.

Till the disposal of revision petition, the summoning order dated 17.09.2013 shall remain in abeyance.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

08.09.2017
Hemlata

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