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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M No. 44969 of 2016 (O&M)
Date of Decision: 15.09.2017

Jasbir Kaur and another

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Mandeep Singh Sachdev, Advocate,
for the petitioners.

Mr. S.S. Cheema, A.A.G., Punjab,
for respondent No. 1.

Mr. Vijay Rana, Advocate,
for respondents No. 2 and 3.

SUDIP AHLUWALIA, J. (ORAL)

This petition is directed against the impugned order passed by the Ld. Additional Sessions Judge, Jalandhar, on 23.09.2014, vide which the revisional petition against an earlier order of the Ld. Trial Court, rejecting an application for arraying additional accused persons in the trial under Section 319 of the Code of Criminal Procedure had been dismissed.

2. The Ld. Court of Sessions allowed the revision partially in favour of all the other accused persons, who were sought to be joined.

However, the present petitioners were ordered to be summoned.

3. The specific grievance of the petitioners is that they had not been notified about the revision, on account of which, they had no scope to oppose the same.

4. In this connection, the decision of the Supreme Court in **“Mohit @ Sonu Vs. State of U.P.”, 2013 (3) R.C.R. (Criminal)**, in which it was held, *inter alia*, that:

“Indisputably, a valuable right accrued to the appellants by reason of the order passed by the Sessions Court refusing to issue summons on the ground that no prima facie case has been made out on the basis of evidence brought on record. As discussed hereinabove, when the Sessions Court order has been challenged, then it was incumbent upon the revision court to give notice and opportunity of hearing as contemplated under sub-section (2) of Section 401 of Criminal Procedure Code. In our considered opinion, there is no reason why the same principle should not be applied in a case where such orders are challenged in the High Court under Section 482 of Cr.P.C.”

5. It is by now settled law that where an order challenging refusal of initiating criminal proceedings against any accused is preferred, the concerned accused acquires an indefeasible right to be heard even if he might not have been entitled for such hearing at original stage.

6. In the present case, however, it is seen from the earlier order

passed by the Ld. Additional Sessions Judge on 22.11.2012 that there was a specific observation:

“However, my learned Presiding Officer issued notices to the respondents and some of them have already appeared through counsels. There is no need to issue summons to remaining respondents.”

7. Such observations are clearly in conflict with the law expressly laid down by the Supreme Court.

8. Consequently, the impugned order cannot sustain and is accordingly set aside with a direction upon the Ld. Revisional Court to pass a fresh order in the same matter after giving an opportunity of hearing to the present petitioners.

15.09.2017

Apurva

(SUDIP AHLUWALIA)
JUDGE

1. Whether speaking/ reasoned : Yes/ No

2. Whether reportable : Yes/ No