

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

**CRM No.M-8452 of 2017 (O&M)
Decided on: 05.05.2017**

Dr. S.K. Kapoor

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. P.M. Anand, Advocate
for the petitioner.

REKHA MITTAL, J.

CRM-14900-2017

Heard.

Allowed as prayed for.

Document Annexure P11 is taken on record subject to just exceptions.

Disposed of accordingly.

CRM-M-8452-2017

The instant petition directs challenge against orders dated 17.09.2016 (Annexure P6) and dated 13.01.2017 (Annexure P10) passed by the Additional Sessions Judge, Rohtak whereby application filed under Section 193 of the Code of Criminal Procedure (in short 'Cr.P.C.') for summoning Sh. B.P. Jindal, Sh. Anil Kumar and Sh. A.S. Chawla as additional accused was dismissed vide order dated 17.09.2016 and a petition dated 26.09.2016 (Annexure P8) was ordered to be dismissed on 13.01.2017.

Counsel for the petitioner has submitted that as on 17.09.2016, members of the bar of the District Bar at Rohtak were on strike, there was no occasion for the Court to hear the arguments and dispose of the application under Section 193 Cr.P.C. It is further submitted that the orders impugned may be set-aside with a direction to the trial Court to decide the application under Section 193 Cr.P.C. afresh, in accordance with law.

I have heard counsel for the petitioner and perused the paperbook particularly the orders impugned.

The petitioner has placed on record copy of the application dated 27.10.2014 filed under Section 193 Cr.P.C. by Dr. S.K. Kapoor – petitioner/complainant that runs into approximately 40 pages. It appears that the application has not been filed by a Public Prosecutor, representing the State of Haryana, prosecuting Kanwar Singh in respect of FIR No.65 dated 31.10.1998 registered at Police Station Civil Lines, Rohtak for offence under Sections 366, 511, 120 and 120-B IPC. In para 8 of the application, there is reference to as many as 27 documents. On a query raised by the Court with regard to locus of the complainant to file such an application and further to rely upon documents which do not appear to be a part of the challan/report submitted under Section 173 Cr.P.C., counsel for the petitioner is not in a position to advance any arguments much less meaningful by quoting any relevant provision under law or precedent to justify that at the stage of deciding an application under Section 193 Cr.P.C., the Court can take into consideration any materials alien to the report under Section 173

Cr.P.C.

The trial Court in order dated 17.09.2016, in the concluding para has held as follows:-

“There is nothing even prima facie except the naming by the complainant himself, there are nothing on record to show any such complicity of Shri Anil Kumar the then District Magistrate, Shri A.S. Chawla the then S.P. and Shri B.P. Jindal the then Sessions Judge, Rohtak. Even otherwise also it is far from stretch of imagination that the head of three organs at District level that is S.P. and District Administration and District & Sessions Judge will become joint against one Additional Sessions Judge in order to kidnap his daughter. All three different branches of District Administration and Court have their own sphere of work. It cannot be expected to unite for commission of crime. It is a self evolve thinking because there is no single iota of evidence for summoning them. Moreover in this matter CBI enquiry had already been conducted still nothing has come up on record against the person named under Section 193 Cr.P.C. application.....”

Counsel for the petitioner has failed to point out any materials on record either in the report submitted under Section 173 Cr.P.C. or documents relied upon to prima facie prove complicity of the persons sought to be summoned as additional accused, in exercise of jurisdiction under Section 193 Cr.P.C. That being so, petitioner cannot derive any advantage from the judgment of Constitution Bench of Hon'ble the Supreme Court **“Dharam Pal and others vs State of Haryana and another”**, 2013 (3) RCR (Criminal) 787.

So far as the plea with regard to non-providing of an opportunity of hearing before passing order dated 17.09.2016, the Court

below in the order dated 13.01.2017 has noticed that only grievance of the petitioner is that the arguments were heard on 03.09.2016 but the same have been reflected to be heard on 17.09.2016 by the predecessor Court. However, there is no allegation of the petitioner that the arguments were not heard by her predecessor. Counsel for the petitioner has not disputed these factual findings that arguments on the application under Section 193 Cr.P.C. were actually heard on 03.09.2016 though reflected to be heard on 17.09.2016. This being the position, it merits rejection of the contention of the petitioner that either the application under Section 193 Cr.P.C. was disposed of without hearing arguments or the order disposing of the application is liable to be set-aside for want of opportunity of hearing with a direction to decide the application afresh by the trial Court. Examined from any angle, I do not find any reason to intervene in exercise of jurisdiction under Section 482 Cr.P.C.

For the foregoing reasons, the petition fails and is accordingly dismissed *in limine*.

05.05.2017
yakub

(REKHA MITTAL)
JUDGE

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