

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

**CRR No.4619 of 2016 (O&M)
Decided on: 17.08.2017**

Gurdas Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. M.K.Singla, Advocate
for the petitioner.

Mr. K.S. Sidhu, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

The present petition has been filed against the order dated 10.11.2016 passed by the Additional Sessions Judge, Fatehgarh Sahib vide which while setting-aside the order dated 02.04.2016 passed by the trial Court dismissing the application of the prosecution filed under Section 319 of the Code of Criminal Procedure (in short 'Cr.P.C.'), the revision petition was allowed and the petitioner was ordered to summoned as an additional accused.

Counsel for the petitioner submits that before passing the impugned order, the Additional Sessions Judge, Fatehgarh Sahib has not adhered to the provisions of Section 399 read with Section 401(2) Cr.P.C. which clearly provides that before passing any order an opportunity of hearing either personally or through his counsel be afforded to the accused and any other person. Counsel for the petitioner further submits that the petitioner was though sought to be summoned as an additional accused, but he was not even arrayed as respondent

before the Additional Sessions Judge in ground of revision and only the accused persons who are already facing the trial were arrayed as respondents/accused. Counsel for the petitioner has further referred to all the interim orders passed by the Additional Sessions Judge since the time of filing of revision petition till the disposal of the same to argue that firstly neither the petitioner was impleaded/arrayed as a respondent before the Revisional Court nor any notice was given to the petitioner before passing the impugned order. It is further submitted that though the accused persons who are facing the trial were summoned and were represented by a counsel, however, for the purpose of deciding the application under Section 319 Cr.P.C. they had no role to defend the interest of the petitioner. Learned counsel for the petitioner has also relied upon the judgment passed by the Hon'ble Supreme Court “***Mohit @ Sonu and another vs State of U.P. and another***”, 2013(3) RCR (Criminal) 673, in support of his contention.

Learned State Counsel, on instructions from HC Nazar Singh, has not disputed the factual averments made by counsel for the petitioner.

After hearing the learned counsels for the parties, I am of the considered opinion that the impugned order is liable to be set-aside as neither the petitioner was arrayed as respondent/accused before the Revisional Court nor any notice or summon was issued to the petitioner before passing the impugned order vide which the petitioner was summoned as an additional accused under Section 319 Cr.P.C.

In view of the above, the petition is allowed; the impugned order is set-aside and the matter is remitted back to the Court of

Additional Sessions Judge, Fatehgarh Sahib to decide the case afresh, in accordance with law and after affording an opportunity of hearing to the petitioner.

(ARVIND SINGH SANGWAN)
JUDGE

17.08.2017
yakub

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