

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc.No.M-14902 of 2016 (O&M)
Date of decision : 30.04.2018

Heitesh Malhotra

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Amit Jain, Advocate for the petitioner.

Mr. Raj Kumar Makkad, DAG, Haryana.

RAJ SHEKHAR ATTRI, J.(Oral)

The petitioner has preferred the instant petition under Section 482 Cr.P.C. for quashing of criminal complaint No.132 dated 28.05.2013 titled as M/s Whirlpool of India Limited vs. M/s Brothers Computers and Home Appliances and others, filed under Sections 415, 420, 408, 409, 406, 418, 463, 468 and 472 IPC and impugned order dated 01.03.2014, passed by the learned Judicial Magistrate Ist Class, Faridabad vide which the petitioner has been summoned to face trial and further the impugned order dated 12.02.2016, passed by the learned Addl. Sessions Judge, Faridabad, whereby Criminal Revision No.102 dated 15.09.2015, challenging the abovesaid impugned order dated 01.03.2014 has been dismissed.

The petitioner has been summoned as an accused to face trial vide order dated 01.03.2014, passed by the learned Judicial Magistrate Ist Class, Faridabad in the aforesaid criminal complaint. However, said order was challenged in revision petition which was also dismissed vide judgment dated 12.02.2016, passed by the Addl. Sessions Judge, Faridabad while observing as under:-

“The present revision petition is preferred by the revisionist against the summoning order passed by the learned trial court

dated 01.03.2014. Whether the summoning order is entertained in revision petition is a question for determination before this court. Section 397 Cr.P.C. provided provisions relating to revision petitions against the orders which decides the rights of parties finally. This has been made clear in the statute itself that no revision lies against an interlocutory order. The question was, further, decided by the Hon'ble Supreme Court in Adalat Prasad Vs. Roop Lal Jindal 2004 (4) RCR (Criminal) 1 (SC) wherein it was held that once magistrate issue summons while exercising its power under Section 204 Cr.P.C., the same cannot be reviewed or reconsidered by the magistrate. But the appropriate remedy is to approach the Hon'ble High Court and invoke inherent powers provided under Section 482 Cr.P.C. It has been further herein that "it is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegations against the accused or any material implicating the accused or in contravention of provision of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence, in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking section 482 of the Code." The law laid down as above has been followed in Gambhirsinh Vs. Falgunbhai 2013 (2) Supreme 211. The same view was reiterated by the Hon'ble Supreme Court in Poonam Chand Jain and others Vs. Fazru 2005 (1) RCR (Criminal) 600 wherein the Apex Court has held that once a summoning order is being passed by magistrate under Section 204 Cr.P.C., the same cannot be reviewed or reconsidered but the appropriate remedy is to approach Hon'ble High Court and invoke inherent power of Hon'ble High Court provided under Section 482 Cr.P.C."

Reliance has been placed upon the judgment in Adalat Prasad's case (supra), it is nowhere stated that the revision power of Sessions Court has been relinquished. However, a reliance has been placed upon the judgment of Hon'ble Supreme Court in Rajendra Kumar Sitaram Pande Versus Uttam 1999 (3) Supreme Court 134. Para No.6 of the said judgment reads as under:-

"... This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same."

In this view of the matter, the impugned order dated 12.02.2016, passed by the Addl. Sessions Judge, Faridabad is bad in the eyes of law and suffers from illegality and irregularity and on the wrong interpretation of law.

Consequently, the instant revision petition stands accepted and the impugned order dated 12.02.2016 is set aside while holding that the revision petition before the Sessions Judge is maintainable and further with a direction to restore the revision petition and decide it in accordance with law within a period of six months from the date of receipt of certified copy of this order. Parties are directed to appear before the Sessions Court on 02.07.2018.

30.04.2018
mamta-M

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No