

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

**CRM No. M-24741 OF 2018 (O&M)
DATE OF DECISION : 19.11.2018**

Harkishan

...Petitioner

versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHAR DHAWAN

Present : Mr. P. S. Jammu, Advocate,
for the petitioner.

Mr. Ashish Sanghi, DAG, Haryana.

SHEKHAR DHAWAN, J. (ORAL)

The present petition is challenge to the order dated 16.04.2018 (Annexure P-6), whereby application of the petitioner herein, for discharge was dismissed.

Learned counsel for the petitioner contended that in case FIR No.334 dated 09.05.2013 under Sections 353/228/186/34 IPC and Section 3 of Prevention of Damage to the Public Property Act, 1984, registered at Police Station City Sirsa, District Sirsa, the matter was investigated by the police and report under Section 173 Cr.P.C was filed before learned Chief Judicial Magistrate, Sirsa. The Court has framed charge against three persons namely Lal Chand, Fateh Chand and Jaimal Chand but at the same time, charge for the above said offences was

also framed against the present petitioner, who had just come present in the Court of his own and he was not required by the Court.

Learned State counsel, while arguing this point, contended that the petition before this Court is not maintainable as if the petitioner was aggrieved by the order of the trial Court, he has remedy available as per law, to file revision petition before the Court of Session.

However, learned counsel for the petitioner further pointed out that even in this case, an application under Section 319 Cr.P.C was filed so as to summon the petitioner along with other persons but the same was dismissed by the Court vide order dated 14.02.2018 and there was no challenge to the same.

In view of the facts narrated above, there was absolutely no reason or ground for the learned Chief Judicial Magistrate, Sirsa to frame charge against the present petitioner and the Court should have discharged the petitioner right away, by taking cognizance itself that if the application was filed by the petitioner the same should have been accepted by the Court. If the petitioner is directed to continue with such proceedings, for one reason or the other on technical grounds, it shall be miscarriage of justice and the said order is certainly liable to be quashed.

Accordingly, the present petition is accepted and the impugned order is set-aside to the extent that the petitioner

shall not be called in Court to face trial in FIR No.334 dated 09.05.2013 under Sections 353/228/186/34 IPC and Section 3 of Prevention of Damage to the Public Property Act, 1984, registered at Police Station City Sirsa, District Sirsa at this stage. However, the trial against the other three persons namely Lal Chand, Fateh Chand and Jaimal Chand, shall proceed further in accordance with law.

(SHEKHAR DHAWAN)
JUDGE

NOVEMBER 19, 2018
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1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No