

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

**CRM-M-27863-2015  
Date of decision: 04.10.2018**

**Mubeen**

**...Petitioner**

**Versus**

**State of Haryana and others**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Mr. Abhimanyu Singh, Advocate  
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

Mr. Rajesh Lamba, Advocate  
for respondent No. 3, 7 and 8.

**ARVIND SINGH SANGWAN, J. (Oral)**

Prayer in this petition, filed under Section 482 Cr.P.C., is for setting aside the order dated 10.03.2015 (Annexure P-6), passed by the revisional Court, vide which the summoning order dated 14.03.2012 (Annexure P-2), passed by the trial Court, was set aside and the case was remanded back to the trial Court; as well as subsequent order dated 09.06.2015 (Annexure P-7), vide which the trial Court has dismissed the complaint.

2. On 19.10.2015, the following order was passed:

**“Mubin, the petitioner had filed a complaint against 15 accused persons. After appreciating the preliminary evidence, the trial Court had opted to summon the accused Nos. 1 to 6, 8 & 9 only. The accused Nos. 2, 6 & 8 had filed a revision petitions against the summoning order. The revisional Court had remitted the case back to the trial Court with a direction to pass fresh orders**

in accordance with law. The learned Additional Chief Judicial Magistrate, Nuh, Sh.Amrit Singh Chalia, vide order Annexure P7, dated 9.6.2015 has dismissed the complaint of the petitioner observing that there is no ground to summon the accused in the complaint. It appears that so far as accused Nos.1, 3, 4, 5 & 9 are concerned, they had not filed any revision petition. The summoning order qua them having become final, it was not apparently within the ambit of jurisdiction of the trial Court to review the order of summoning qua accused nos.1, 3, 4, 5 & 9. At the most the trial Court could have reassessed the complaint so far as the accused Nos.2, 6 & 8 were concerned as they were the one who had opted to file a revision petition. As per para 13 of judgment of revisional Court, the judgment was applicable to only three revisionists. Order dated 9.6.2015 appears to be in favour of all the accused who had been summoned earlier which is apparently violative of provisions of Section 362 Cr.P.C., so far as the summoning order qua accused Nos. 1, 3, 4, 5 & 9 are concerned. Let, comments of the Presiding Officer be called for, for 1.12.2015, for the casual approach adopted in dismissing the entire complaint and consigning the same to records while nullifying the summoning order qua the above said accused.

Sd/- (M.M.S. BEDI), JUDGE”

3. Thereafter, on 01.12.2015, the following order was passed:

“Comments of the Magistrate received to the effect that the Magistrate had considered the order passed by the revisional Court allowing the revision petition deeming to set aside the summoning order qua all the accused whereas only three accused out of eight had filed the revision petition. The approach of the learned

**Magistrate is contrary to the provisions of Section 401 (2) read with Section 399 (3) Cr.P.C., which lay down that no order will be passed by a revisional Court to prejudice any person unless he had an opportunity of being heard either personally or by pleader. In the present case, the complainant Mubeen had been heard only qua three accused namely Tej Bhan, Jakir Hussain and Sher Singh. Vide order dated 9.6.2015, the summoning order dated 14.3.2012, summoning accused No.1 to 6, 8 and 9 out of 15 accused having not been challenged by all the accused, no benefit could be derived by them to the prejudice of the complainant. Notice of motion to respondents Nos.3, 7 & 8, namely Tej Bhan, Jakir Hussain and Sher Singh respectively for 15.3.2016. So far as the remaining respondents are concerned, they are proforma respondents having not challenged the summoning order. The order of revisional Court will be operative only qua Tej Bhan, Jakir Hussain and Sher Singh, and not qua the remaining respondents who had opted not to file any revision petition till further orders.**

**Sd/- (M.M.S. BEDI), JUDGE”**

4. The Additional Chief Judicial Magistrate, Mewat has submitted a report dated 20.11.2015, in which it is stated that he did not intend to review the order dated 14.03.2012 (Annexure P-2), passed by the then Chief Judicial Magistrate, Mewat and rather in compliance to the remand order dated 10.03.2015, passed by the revisional Court, the impugned order dated 09.06.2015 has been passed.
5. Brief facts of the case are that the petitioner/complainant filed a complaint that as per the Assessment Register for the year 1988-89, Jama Masjid is recorded as owner of plot No. 114, situated in Ward No. 7, Nuh

which was let out to accused Tej Bhan by the father of the complainant on behalf of Jama Masjid and a rent note was executed by accused Tej Bhan on 27.07.1972. It is further stated in the complaint that later on accused Tej Bhan executed another rent deed on 16.06.1974 and since then he is continuing to be a tenant under Jama Masjid and the other accused persons were having the notice and knowledge of the same. The tenancy of Tej Bhan was also recorded in the subsequent Municipal Assessment Register pertaining to the years 1999-2003. It is further stated that other co-accused, being relatives of Tej Bhan, got a sale deed of the property of Jama Masjid executed in the name of accused Manju Rani and thus committed the offence of forgery and cheating.

6. After the complainant recorded his preliminary evidence, the trial Court, vide order dated 14.03.2012 (Annexure P-2), summoned accused Nos. 1 to 6, 8 and 9, under Sections 406, 420, 467, 468, 471 and 120-B of the Indian Penal Code and dismissed the complaint qua accused Nos. 7, 10 to 15.

7. Three persons, namely Tej Bhan, Jakir Hussain and Sher Singh, who were arrayed as accused Nos. 2, 6 and 8, respectively in the complaint and were summoned vide order dated 14.03.2012, preferred revision before the revisional Court. However, other accused persons did not prefer any revision. The revisional Court, after hearing the aforesaid three accused persons as well as the complainant, remanded the case back to the trial Court, vide order dated 10.03.2015 (Annexure P-6). The operative part of the order is as under:

**“13. Allegations made in the complaint even if taken at their face value also do not constitute prima facie case against the revisionists. There was no sufficient ground to proceed against them for**

**commission of any offence.**

**14. Impugned order has been passed by the lower court without applying its mind to the fact of complaint and law applicable thereon.**

**15. In view of the above facts and circumstances, the present revision petition is allowed while setting aside the order dated 14.03.2012 passed by the learned lower court. The matter is remitted back to the learned lower court with the directions to pass afresh order in accordance with law. Parties are directed to appear thereon 07.04.2015 at 9.30 AM sharp. A copy of this judgment be placed in two revision petitions titled as “Sher Singh vs. Mubin” and “Jakir Hussain vs. Mubin”. Copy of this judgment along with trial Court record be sent back to the concerned court for compliance. Revision filed be consigned to the record room after due compliance.”**

8. Thereafter, when the case was remanded back, the trial Court dismissed the complaint in *toto* by passing the impugned order dated 09.06.2015 (Annexure P-7), which reads as under:

**“The present criminal complaint was filed by the complainant Mubeen son of Abdul Karim against 15 accused mentioned in the criminal complaint and the Court of Sh. Mahesh Kumar the then Ld. JMIC, Nuh had summoned the accused No. 1 to 6, 8 and 9 vide order dated 14.03.2012. Accused Tej Bhan, Sher Singh and Jakir filed criminal revision against the summoning order dated 14.03.2012 and the Ld. Revisional Court vide judgment dated 10.03.2015 has set aside the summoning order dated 14.03.2012 with the following observation:**

**“In view of the above facts and circumstances, the present revision petition is allowed while setting**

**aside the order dated 14.03.2012 passed by the learned lower court. The matter is remitted back to the learned lower court with the directions to pass afresh order in accordance with law. Parties are directed to appear thereon 07.04.2015 at 9.30 AM sharp. A copy of this judgment be placed in two revision petitions titled as “Sher Singh vs. Mubin” and “Jakir Hussain vs. Mubin”. Copy of this judgment along with trial Court record be sent back to the concerned court for compliance.”**

**Since the revision of revisionists/accused has been allowed on merit, therefore, there is no ground to summon the accused in this case. Hence, the present criminal complaint is hereby dismissed in the light of the judgment dated 10.3.2015 passed by Ld. Sh. P. R. Sharma, the then Ld. ASJ, Mewat, File be consigned to the record room after due compliance.”**

9. The petitioner/complainant has preferred the present petition challenging the order of remand dated 10.03.2015 (Annexure P-6), passed by the Additional Sessions Judge as well as order dated 09.06.2015 (Annexure P-7), vide which, the complaint has been dismissed by the trial Court qua all the accused persons.

10. As noticed above, while issuing notice of motion, this Court has observed that the order dated 09.06.2015 appears to be in favour of the accused persons who were summoned earlier and is in violation of the provisions of Section 362 Cr.P.C. so far as the summoning order qua accused Nos. 1, 3, 4, 5 & 9 are concerned. Even on receiving the report dated 20.11.2015 from the Magistrate concerned, while issuing notice of motion to Tej Bhan, Jakir Hussain and Sher Singh, who had preferred revision before the Court of Sessions, it was observed by this Court that the approach of the

Magistrate is contrary to the provisions of Section 401(2) read with Section 399(3) Cr.P.C., which lay down that no order will be passed by a revisional Court to prejudice any person unless he has been afforded an opportunity of being heard either personally or by pleader and in the present case, complainant Mubeen was heard only qua three accused persons, namely Tej Bhan, Jakir Hussain and Sher Singh, therefore, keeping in view the fact that the impugned order dated 09.06.2015 (Annexure P-7), dismissing the entire complaint, was passed despite the fact that the impugned summoning order dated 14.03.2012 was not challenged by other accused persons, i.e. accused Nos. 1, 3, 5 and 9, therefore, no benefit could be derived by them to prejudice the rights of complainant.

11. Learned counsel for the petitioner/complainant has submitted that the order passed by the Magistrate is totally non-speaking order and the trial Court has only picked up the findings recorded in para No. 15 by the revisional Court in its remand order dated 10.03.2015, whereas findings recorded in para No. 13 of the said order was not at all considered and, therefore, the dismissal of the complaint is illegal and erroneous.

12. In reply, learned counsel for respondent Nos. 3, 7 and 8/accused persons has submitted that since the impugned summoning order dated 14.03.2012 (Annexure P-2) was set aside by the revisional Court, therefore, the trial Court has rightly passed a fresh order in compliance to the remand order dated 10.03.2015.

13. After hearing learned counsel for the parties as well as perusing the impugned orders, I find merit in the present petition.

14. The approach of the trial Court in passing the impugned order dated 09.06.2015 is apparently illegal and erroneous as only three accused

persons had preferred revision before the revisional Court which has remanded back the case to the trial Court after considering their role as noticed in para No. 13 in that order. Therefore, the trial Court, while passing a fresh order, was not justified in dismissing the entire complaint. Even otherwise, the impugned order dated 09.06.2015 is totally non-speaking order as neither the evidence of the complainant is discussed nor it demonstrates the application of judicial mind.

15. In view of the above, the present petition is allowed and the impugned order dated 09.06.2015 (Annexure P-7), dismissing the complaint, is set aside and the trial Court is directed to pass a fresh order in accordance with law and keeping in view the fact that the order of remand dated 10.03.2015 was passed with regard to three accused persons only, i.e. Tej Bhan, Jakir Hussain and Sher Singh, and without being influenced by the observations made by the revisional Court, as the same were only for the purpose of remanding the case.

16. As the complaint is pending since 2011, the trial Court is further directed to conclude the trial expeditiously, preferably within a period of one year from the date of receipt of the order.

**October 04, 2018**

*Waseem Ansari*

**(ARVIND SINGH SANGWAN)  
JUDGE**

*Whether speaking/reasoned  
Whether reportable*

*Yes/No  
Yes/No*