

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

**CRM-M No. 35235 of 2014 (O&M)**

**Date of decision: 18.05.2018**

Hans Raj

...Petitioner

Versus

Harbans Singh

...Respondent

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

Present: Mr. Vipin Mahajan, Advocate, for the petitioner.

Mr. A.S. Manaise, Advocate, for the respondent.

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

Prayer in this petition is for quashing of the order dated 23.05.2014 (Annexure P-4) passed by the Additional Sessions Judge, Gurdaspur, vide which the revision petition filed by the petitioner against the order dated 26.03.2013 (Annexure P-2) was dismissed on the ground that the petitioner has failed to file registered cover/process fee for effecting service on the respondent.

Brief facts of the case are that the petitioner has filed a criminal Complaint No. 146 dated 28.05.2008 against the respondent Harbans Singh and one Subash Chander. The trial Court, vide order dated 26.03.2013, on the basis of preliminary evidence led by the petitioner, summoned the aforesaid accused - Subash Chander. However, the complaint qua present respondent- Harbans Singh was dismissed.

Thereafter, the petitioner has preferred revision petition before the Additional Sessions Judge, Gurdaspur on 25.05.2013 (Annexure P-3). The revisional Court issued notice to the respondent for 16.09.2013 on furnishing requisite process fee, registered AD cover and copy of grounds of revision. Thereafter, on 16.10.2013, it was noticed by the revisional

Court that Ahlmad has not issued summons to the respondent and fresh notice was issued for 20.11.2013. On the next date, it was held that the notice was not issued to the respondent as the petitioner has failed to file the registered AD cover and a direction was issued to the petitioner to file the same, within 03 days for issuance of notice to the respondent.

Thereafter, vide impugned order dated 23.05.2014 (Annexure P-4), the revision petition filed by the petitioner was dismissed by the Additional Sessions Judge, Gurdaspur observing that since it is second repeated default on the part of the petitioner in filing the registered AD cover, therefore, on account of non-compliance of the order, the revision petition is dismissed.

The present petition has been filed challenging the impugned order and the same is pending since 2014.

Learned counsel for the petitioner submits that during the intervening period, in the criminal complaint, the other accused Subash Chander has been convicted by the trial Court. It is further submitted that there was no intention on the part of the petitioner not to furnish the registered AD cover / process fee and the Revisional Court has passed the impugned order in a haste about other one more opportunity given to the petitioner. It is further submitted that non-filing of the process fee/registered AD cover, was on account of default on the part of the Clerk of the counsel representing the petitioner in the revisional Court and on that account, the petitioner could not suffer.

Learned counsel for the respondent, however, opposed the prayer of the petitioner on the ground that it is apparent from the orders passed by the Revisional Court, the petitioner has failed to deposit the

process fee on time.

After hearing counsel for the parties, I find merit in the present petition.

A perusal of the orders, after filing of the petition, passed by the Revisional Court shows that on the first date, notice to respondent was issued and the Ahlmad of the Court did not issue summons to the respondent. Thereafter, on the next date, the petitioner defaulted in depositing the registered AD cover for summoning the respondent and thereafter, vide impugned order 23.05.2014, the revision petition was dismissed.

It is well settled principle of law that no one should be condemned unheard on technical grounds, moreover, the respondent will have a right to appear before the Revisional Court and contest the case on merits, in accordance with law.

Accordingly, this petition is allowed. The impugned order dated 23.05.2014 (Annexure P-4) passed by the Additional Sessions Judge, Gurdaspur, is set aside and the matter is remanded back to the revisional Court for deciding the revision on merits, subject to payment of costs of Rs.5,000/- to be made to the respondent.

The parties are directed to appear before the revisional Court on 30.05.2018 at 10.00 am, In case, the respondent fails to appear before the revisional Court, it will be open for the revisional Court to issue fresh summons to the respondent.

**(ARVIND SINGH SANGWAN)**  
**JUDGE**

**18.05.2018**

Hemlata

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|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether reportable        | Yes |