

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40951 of 2015
Date of Decision: 20.08.2018

Gurwinder Sharma

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. J.S. Dhaliwal, Advocate
for Mr. H.S. Brar, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

Mr. Aakash Singla, Advocate
for respondent no. 2.

SURINDER GUPTA, J.(Oral)

Instant petition has been filed by petitioner under Section 482 Cr.P.C. seeking setting aside of impugned order dated 12.08.2015 (Annexure P-1) passed by Additional Sessions Judge, Patiala in case FIR No. 134 dated 27.08.2014, registered for offences punishable under Sections 304-A/201 of Indian Penal Code, at Police Station Passiana, District Patiala. Vide impugned order, learned Additional Sessions Judge, Patiala directed the trial Court to reconsider the matter, appraise the material on record as learned Court found that *prima facie* there is sufficient material to proceed against the accused for offence punishable under Section 304 IPC instead of Sections 279/304-A IPC.

Heard.

The short question, which arises for consideration in this case is
as to whether Court of Revision below could set aside the order passed by

trial Court without hearing the affected party i.e. accused?

In case bearing FIR No. 134 dated 27.08.2014, registered at Police Station Passiana, District Patiala for offences punishable under Sections 304-A/201 IPC, challan was presented by the police and learned trial Court framed charges against accused for offences punishable under Sections 279/304-A/201 IPC.

Feeling aggrieved, complainant filed revision against order of trial Court framing charge against accused without impleading the accused as party and learned Court of Revision below accepted that revision without hearing the accused.

Learned Court of Revision below has set aside the order passed by learned trial Court with observations in para 14 of its order, which is reproduced as follows:-

“14. In the wake of facts just discussed above, this Court is of the opinion that it is not a case of offences punishable only u/s. 279/304-A IPC that too against the present accused alone. Prima facie there is sufficient material to proceed against the accused u/s 304 IPC.”

Above observations adversely affect the accused-petitioner and Court of Revision below before recording above observations was required to hear the affected party i.e. petitioner.

Learned trial Court while framing charge has observed that offences under Sections 279/304-A/201 IPC are disclosed against the accused. Above order was passed after hearing the prosecution and accused. Before Court of Revision accused, who is affected by impugned order, was unrepresented. Petitioner there before Court of Revision was complainant,

who initiated prosecution and respondent was State, which is pursuing prosecution of accused at the behest of complainant.

Section 398 Cr.P.C. provides that Court of Revision cannot pass any direction for inquiry into a case of any person, who has been discharged unless such person has opportunity of being heard. As per spirit of above provision, no order adversely affecting complainant or accused could be passed by the trial Court in revision without hearing him. The respondent for reasons best known to him has avoided to implead the petitioner as party before the Court of Revision.

For the reasons as discussed above, the instant revision is allowed. Order dated 12.08.2015 (Annexure P-1) passed by Court of Revision below is set aside with direction to Court of Revision/successor Court to implead petitioner as respondent no. 2, take the revision on board and decide the same afresh after hearing the parties.

Parties through their counsel are directed to appear before Court of Revision/successor Court on 05.09.2018. No separate notices to parties shall be issued.

August 20, 2018

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No