

Sr. No.122

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

**CRM-M-3058-2019(O&M)
Date of decision:23.01.2019**

Hassan Khan

.....Petitioner

versus

State of Haryana

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. R.S.Cheema, Sr.Advocate with
Mr. A.S.Cheema, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

Present petition has been filed seeking setting aside the Order dated 29.11.2018, passed by the Court of Additional Sessions Judge, Palwal (Annexure P-13) passed in FIR No.407, dated 07.07.2015 registered under Sections 147, 148, 149, 323, 435, 436, 427, 395, 285 of IPC and Section 25 of Arms Act at Police Station: Sadar Palwal.

Learned counsel for the petitioner contends that the Trial Court is proceeding only against three persons; who were made accused in the original challan filed before the Magistrate; and against whom the case was committed to the Court of Additional Sessions Judge, Palwal. However, thereafter, under the Order of this Court passed in CWP No.19699 of 2015, the supplementary challan has been filed by the Police; before the Committing Magistrate. As per the supplementary challan, the persons originally committed to the Court of Additional Sessions Judge, Palwal are not even found to be the accused in the case. Rather a set of another 15 persons is found to be accused. Therefore, the exercise of the Court of

Additional Sessions Judge, Palwal in proceedings with the trial is a futile exercise.

Learned counsel has further pointed out that the Committing Magistrate has not been able to commit the case qua the 15 persons; named in the supplementary challan; because two persons, namely, Radha Charan and Pappu; who earlier were released on bail after they had appeared before the Magistrate, had jumped the bail and thus, were not appearing before him. Before that one or the other accused had absented.

However, today learned counsel for the petitioner has produced the Order dated 18.01.2019; passed by Judicial Magistrate Ist Class, Palwal, which shows that the only absenting accused, the above said Radha Charan and Pappu had surrendered before the Court and now they have been again released on bail by the Committing Court. The case has now been adjourned by the Magistrate for 28.01.2019 for checking of the challan, for onward committing of the case.

Since the FIR pertains to the year 2015 and the matter is still at the stage of commitment, therefore, it would not be unjustified if the Committing Magistrate is directed to commit the case to the concerned Trial Court forthwith in accordance with law and till such commitment; the Trial Court is directed not to proceed further with the trial against the original accused.

Accordingly, the present petition is ***disposed of*** with a direction that the Committing Magistrate shall commit the case in accordance with law, to the Competent Court on 28.01.2019; or on any other date deem convenient by it, but not beyond a period of one month from the date of receipt of certified copy of this Order. It is further clarified that even if

some accused mentioned in fresh challan does not appear before the Committing Magistrate, the case shall still be committed by him, alongwith the report regarding absenting accused. The Trial Court shall, thereafter, deal with such accused in accordance with law.

Still further it is directed that till the case is committed by the Magistrate on fresh challan, the proceedings before the Trial Court shall remain stayed.

Copy of this Order be supplied to the Counsel for the petitioner, ***dasti*** on payment of usual charges.

23rd January, 2019

Shivani Kaushik

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*