

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

CRM No.M-13072 of 2014 (O&M)

Date of Decision: July 17, 2019

Mange Ram

...Petitioner

VERSUS

Ajit Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Naresh Kaushik and Mr.D.L.Gulati, Advocates
for the petitioner.

Mr.R.S.Malik and Mr.Vikas Gulia, Advocates
for respondents No.1 to 6, 9 and 10.

None for respondent No.7.

INDERJIT SINGH, J.

Petitioner Mange Ram has filed this petition under Section 482 Cr.P.C. against State of Haryana and other respondents for quashing of order dated 03.04.2014 passed by learned Addl. Sessions Judge, Sonapat, in criminal case SC No.930/14 titled as 'Mange Ram vs. Ajit and others'.

Notice of motion was issued. Learned counsel for respondents No.1 to 6, 9 and 10 appeared and contested the petition. Earlier, learned counsel for respondent No.7 was appearing but today, none has put in appearance on behalf of respondent No.7.

I have heard learned counsel for the parties and have gone through the record.

The perusal of the record shows that in the complaint case,

accused were summoned by learned JMIC and some of the offences were exclusively triable by Court of Session. Learned Magistrate, on appearance of the accused, committed the case to the Court of Session. Learned Addl. Sessions Judge, Sonapat, vide impugned order dated 03.04.2014 sent/remanded back the case to the lower Court for recording pre-charge evidence and thereafter, to assess as to whether the case has to proceed further for the offence triable by the Court of Session.

Section 209 Cr.P.C. provides as under:-

209. Commitment of case to Court of Session when offence is triable exclusively by it.

When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-

(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;]

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session.

As per above provisions, after the appearance of the accused before the Magistrate, if the offences are triable by Court of Session, then the case is to be committed to the Court of Session. The procedure of Sessions trial has been given separately. Sections 225 and 226 Cr.P.C., which states as under:-

“225. Trial to be conducted by Public Prosecutor.

In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

226. Opening case for prosecution.

When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.”

In view of the above provisions, I find that there is no procedure to record pre-charge evidence by the Magistrate in a Session trial case where the accused have been summoned under the offence, which are exclusively triable by Court of Session. Learned Addl. Sessions Judge, Sonapat, has relied upon a judgment and referred the case for recording the evidence under Section 244 Cr.P.C. Provisions of Section 244 Cr.P.C. apply to the cases triable by Judicial Magistrate where the Magistrate is to record pre-charge evidence before framing of the charge in complaint case but this procedure is not applicable to the Session trial case. The Magistrate is not to record any evidence for framing of the charge and to find out whether case is made out or not. It is to be seen by the trial court (Session Court) from the documents on record before it that whether any prima facie case is made out or not.

In view of the above discussion, I find that impugned order dated 03.04.2014 passed by learned Addl. Sessions Judge, Sonapat, is not as per law, illegal and the same is set aside. Learned Magistrate is directed to send the case file to the Court of Session.

Finding merit in the present petition, the same is allowed accordingly.

July 17, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No