

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

**CRM-M-16455-2017
Date of decision-20.05.2019**

Satish Kumar Saini

....Petitioner

Vs.

Jasbir Kaur

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Petitioner in person.

Mr. Jagtar Kureel, Advocate for the respondent.

MANOJ BAJAJ, J.

This petition has been filed under Section 482 of Criminal Procedure Code for modification of the order dated 28.01.2016 (Annexure P-36) passed by Additional Sessions Judge, Chandigarh in revision petition filed against summoning order dated 02.05.2015 in complaint case No.COMP-IPC/457 dated 26.10.2012 (Annexure P-21).

Petitioner in person has contended that the revisional Court had correctly accepted his argument and had set aside the order of summoning passed by the trial Court, however, it is contended that the grievance is only to the latter part of the judgment whereby it has remanded the case back to the trial Court with the following observations:-

“6. In considered view of this Court, in such situation the impugned order is bad in law and not sustainable. So, in this respect this revision petition is hereby allowed setting aside the impugned order of summoning of accused and case is hereby remanded back to the learned trial Court

with direction that learned trial Court shall summon the police record FIR and other documents which has been registered as per directions of Hon'ble High Court of Punjab and Haryana. The learned trial Court shall go through whole of the record regarding the subject matter and hear the necessary parties again and then pass reasoned order as per record of trial Court be sent back along with copy of this law. Parties are directed to appear in person before the learned trial Court on 23.2.2016. order. Revision file be consigned to the record room.”

Petitioner has argued that his revision petition was founded on the ground that the FIR already stood registered by Chandigarh Police on 05.12.2014 against respondent No.2 and employees of LIC Housing Finance Limited, namely, Vinay Thapa and Charanjit Singh for the offences punishable under Sections 420, 406, 409, 423, 464, 467, 468, 471 and 120-B of Indian Penal Code and therefore, complaint and issuance of process is not sustainable. It was his case before the revisional Court that the trial Court while summoning the petitioner as an accused has not at all examined the aspect of FIR and other attending circumstances. At this stage, learned counsel for the respondent/complainant does not dispute this fact that neither his complaint contains these facts nor the evidence on record related to the issues highlighted by the petitioner.

After hearing learned counsel for the parties, this Court is of the considered view that the material relied upon by the petitioner at best could

be his defence and at the stage of ascertaining a *prima facie* for issuance of process the trial Court is supposed to examine complaint and the pre-summoning evidence.

During the course of the arguments, learned counsel for the respondent (complainant) does not dispute the fact that the FIR got recorded by the petitioner/accused, was not the subject matter of evidence or complaint case before the trial Court and was not part of the material whereupon the summoning order was passed. It is apparent that by way of the impugned portion of the order, the revisional Court has literally allowed the trial Court to examine the defence of the petitioner which is beyond the purview of Section 204 Cr.P.C.

In view of the stand of the parties, it is apparent that the revisional Court has by way of the impugned portion of the order allowed the trial Court to examine the FIR and other relevant material which would amount to examining the defence at the stage of issuance of process to the accused.

In view of the above, impugned order dated 28.01.2016 (Annexure P-36) is set aside and the case is remanded back before the revisional Court to decide it afresh by adjudicating the correctness and validity of the order of summoning passed by the trial Court.

Disposed off.

(MANOJ BAJAJ)
JUDGE

20.05.2019

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No