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

**CRM-M-27074-2014 [O&M]**

**Date of Decision : March 07, 2019**

Avtar Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.**

Argued by Mr. H.S.Brar, Advocate,  
for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab,  
for respondent-State .

Mr. Dhirinder Chopra, Advocate,  
for respondents No. 2 to 9.

**SHEKHER DHAWAN, J.**

Present petition under Section 482 of the Code of Criminal Procedure is for quashing order dated 28.4.2014 (Annexure P/4) passed by learned Additional Sessions Judge, Fatehgarh Sahib in case bearing FIR No. 64 dated 18.05.2010 under Sections 365, 341, 342, 323, 148 read with Section 149 IPC registered at Police Station Fatehgarh Sahib.

2. Facts relevant for the purpose of decision of the present petition; that the petitioner, who is complainant of the above mentioned FIR, was aggrieved of report submitted by the Investigating Agency under Section 173 Cr.P.C. In the said report, offence under Section 365 IPC was

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dropped. The petitioner also filed a complaint under Sections 326, 365, 367, 341, and 149 IPC against respondents No. 2 to 9 for the same occurrence and the respondents were summoned vide order dated 12.1.2012 by learned Judicial Magistrate Ist Class, Fatehgarh Sahib. Respondents No. 2 to 5 filed a revision petition against the summoning order and learned Sessions Judge, Fatehgarh Sahib vide order dated 31.1.2013 issued directions that as per provisions of Section 210 (2) Cr.P.C., the State case and Complaint Case are to be tried together and ordered that both the cases be tried jointly and directions were issued to both the parties to appear before the trial Judge on 06.02.2013.

3. Respondents No. 2 to 9 also filed another application for clubbing the State case as well as Complaint case on 16.4.2014 and learned Additional Sessions Judge, Fatehgarh Sahib on 28.4.2014 passed order (Annexure P/4) without taking into consideration the earlier order dated 31.1.2013 (Annexure P/2) passed by learned Sessions Judge, Fatehgarh Sahib.

4. Learned counsel for the petitioner while seeking quashing of summoning order contended that firstly, the private respondents concealed the factum of earlier order, Annexure P/2; secondly, learned Additional Sessions Judge while passing the impugned order, Annexure P/4 neither referred to the earlier order nor gave any reasoning for ignoring the findings recorded by learned Sessions Judge, Fatehgarh Sahib in the order dated 31.1.2013 and thirdly, learned Additional Sessions Judge vide impugned order evaluated the sufficiency of evidence or its value on an application filed by private respondents whereas the prayer was to club the State case

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and Complaint case only and such findings were not required to be given and prayed that the impugned order, Annexure P/4 be set-aside.

5. Learned counsel for the respondents contended that there are no grounds for interference by this Court while exercising powers under Section 482 Cr.P.C., rather the Court concerned shall take into consideration the judicial order passed by the Courts of competent jurisdiction and prayed that the present petition be dismissed.

6. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case, there is no dispute on the fact that application under Section 210 (2) Cr.P.C. was filed before learned Sessions Judge and order dated 31.1.2013 (Annexure P/2) was passed issuing directions to the trial Court to try the Complaint case and State Case titled **State Vs. Gurdev Singh etc.** jointly in accordance with law. The requirement of Section 210(2) Cr.P.C. is also to that extent. For ready reference, Section 210(2) Cr.P.C. is being extracted hereunder:-

“(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.”

7. Thereafter another application was filed by the accused persons on 16.4.2014 (Annexure P/3) and impugned order dated 28.04.2014 (Annexure P/4) was passed by learned Additional Sessions Judge without considering the earlier order passed by learned Sessions Judge on the same point. More so, learned Additional Sessions Judge

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recorded certain findings on merits, which were not required to be passed at that juncture.

8. It is also settled proposition of law that at such a preliminary stage, superior Courts are not expected to record observations which may subsequently effect and prejudice the case of the parties before learned trial Judge. Such a view was taken by Hon`ble Apex Court in **State of Maharashtra Vs. Som Nath Thapa, Etc., 1996(2) R.C.R. (Criminal) 480.**

9. In view of the above, order dated 28.4.2014 (Annexure P/4) is set-aside and learned Additional Sessions Judge, Fatehgarh Sahib is directed to pass detailed order after hearing both the parties. Parties are directed to appear before learned Additional Sessions Judge, Fatehgarh Sahib (successor Court of Shri Ajaib Singh, Additional Sessions Judge, Fatehgarh Sahib) on **25.03.2019**.

**(SHEKHER DHAWAN)**  
**JUDGE**

**March 07, 2019**

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| Whether speaking/reasoned? | : | Yes |
| Whether reportable?        | : | Yes |