

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

**CRM No.M-3290 of 2018 (O&M)
Date of Decision: January 31, 2019**

Filawar @ Bittu @ Filawar Singh

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.K.S.Lakhanpal, Advocate
for the petitioner.

Mr.Tanuj Sharma, AAG, Haryana
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondent State of Haryana, for quashing of impugned order dated 18.12.2017 passed by learned Special Judge-cum-Addl. Sessions Judge, Rohtak, vide which the application filed by the petitioner under Section 216 Cr.P.C. was dismissed.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that earlier, the petitioner filed revision petition before this Court and vide order dated 05.12.2017, this Court

observed that in view of availability of efficacious and effective remedy under Section 216 Cr.P.C., learned counsel for the petitioner is permitted to withdraw the petition with liberty to approach the trial Court to raise grievance made in the present revision petition and trial Court was directed to consider such application according to law. Thereafter, present petitioner filed application under Section 216 Cr.P.C. before the trial Court by mentioning the order passed by this Court, in which it is stated that offence against the applicant-petitioner does not fall under Section 326-B IPC nor alleged Section 326-B IPC is made out against the accused after going through the prosecution story as well as FSL and medical reports. Reply was taken on this application and then, learned Special Judge-cum-Addl. Sessions Judge, Rohtak, dismissed the application vide impugned order dated 18.12.2017 by observing that Court was directed to consider the application as per law and in this case, after perusing the record and considering the whole case, the Court had framed the charge on 07.11.2017. Now, no case to reconsider the charge-sheet on the same facts is made out. Moreover, under the criminal law, that Court has no power to review its own order and finding no merit in the application, the same was dismissed.

The perusal of the impugned order clearly shows that application filed by the present petitioner under Section 216 Cr.P.C. has not been considered on merit. When specific direction has been given by this Court to consider the application in question as per law and this Court has given liberty to the petitioner while withdrawing the revision, by holding that efficacious remedy is available with the petitioner, therefore, non-consideration of the application under Section 216 Cr.P.C. on merits

amounts to dismissing the application by passing a non-speaking order

without any reasoning. Nothing has been discussed in the impugned order and simply the application has been dismissed by stating that the Court has already framed the charge and no new case to reconsider the charge-sheet is made out.

In view of the above discussion, I find that the impugned order dated 18.12.2017 passed by learned Special Judge-cum-Addl. Sessions Judge, Rohtak, is illegal and the same is set aside. The matter is remanded back to the trial Court with the direction to reconsider the application under Section 216 Cr.P.C. filed by the petitioner on merits and to pass speaking order after giving reasoning. Learned trial Court is also directed to dispose of the application after giving opportunity of being heard to both the parties.

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

January 31, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No