

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35999 of 2017 (O&M)
Date of Order:10.07.2019

Hanish Kumar Gaur

..Petitioner

Versus

Puran Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Prateek Pandit, Advocate, for the petitioner.
Mr. H.S.Baath, Advocate, for the respondent.

ANIL KSHETARPAL, J(Oral)

Petitioner has filed this misc. petition under Section 482 Cr.P.C against the order passed by the learned Additional Sessions Judge, Gurdaspur, dated 12.06.2015, whereby the order passed by learned trial Court refusing to summon the petitioner in a criminal complaint has been set aside and the trial court has been directed to decide the case afresh.

Learned counsel for the petitioner has submitted that no notice was issued to the petitioner, accused in the complaint and such procedure adopted is in violation of Section 399 read with Section 401 of the Code of Criminal Procedure,1973. He has also relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Manharibhai Muljibhai Kakadia vs. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC, 517**, which has been followed in **Bal Manohar Jalan vs. Sunil Paswan and Anr., (2014) 5 SCC (Crl.), 256**.

Learned counsel for the respondent has submitted that the learned Additional Sessions Judge, Gurdaspur, has only ordered the trial Court to pass fresh order and, therefore, notice was not necessary.

This court has considered the submissions of learned counsels for the parties and with their able assistance gone through the paper book.

On refusal to summon the accused, the criminal complaint gets rejected. Once that order has to be set aside, accused who shall be adversely affected has to be given notice as required under sub-section(2) of Section 401 of the Code of Criminal Procedure, which is also applicable to a revision filed under Section 399 of the Code of Criminal Procedure. The Sessions Court while directing the trial court to pass a fresh order has to set aside the order of the trial court refusing to summon the accused. In the present case, in fact the order of the trial Court refusing summoning of the accused has been set aside. Hence, procedure as adopted by the learned Additional Sessions Judge is erroneous.

Accordingly, the order dated 12.06.2015, passed by the learned Additional Sessions Judge, Gurdaspur, is set aside. The revision is restored to the Court of learned Additional Sessions Judge, Gurdaspur, who would re-decide the revision petition afresh.

Parties through their counsels are directed to appear before the learned Additional Sessions Judge, Gurdaspur, on 26.07.2019.

July 10, 2019
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No