

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

CRM-M-36662-2019 (O&M)
Date of decision : 16.09.2019

Vinod Kashyap and others

...Petitioners

Versus

R.S. Kanwar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sunil Chadha, Sr. Advocate with
Mr. Vaibhav Narang, Advocate and
Ms. Swati Verma, Advocate for the petitioners.

Mr. R.K. Girdhar, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Present petition has been filed under Section 482 Cr.P.C. for quashing of complaint and all subsequent proceedings including summoning order dated 17.07.2019.

Although, learned Senior Counsel appearing for the petitioners has raised various contentions, however, this Court is of the view that the present petition can be disposed of on a short ground. Para 6 of the order of summoning is extracted as under:-

“6. It is the case of the prosecution that all the accused in conspiracy with each other have committed fraud with

him with malafide intention created the sale deeds and they also created forged affidavit by impersonating the complainant for the purpose of cheating and then used the said document knowingly that the same is not genuine and is rather forged one. In order to prove the offences prima facie against the accused, complainant has examined himself as CW-1, and reiterated the version of the complainant, repetition is avoided for sake of brevity, and in documentary evidence he produced documents Ex.C1 to Ex.C36 referred above. Further H.P.S Ghotra, Deputy Excise and Taxation Commissioner, Firozpur was examined as CW2 who proved the order dated 01.10.2014 Ex C40, further Sammer Kumar, Excise and Taxation Inspector, Rupnagar was examined as CW3 who proved the letter along with connected relevant record bear letter no.746 dated 17.07.2017 already Ex C19, Ex C37, Ex C38 and Ex C39”

Learned counsel for the respondent also does not dispute that some of the facts as noticed in para 6 are alien to the present case, although, he tried to justify that it is a result of inadvertent error on account of cut, copy, paste.

This Court is of the view that summoning of an accused is a serious matter and not only the Sub Divisional Judicial Magistrate is required to apply its mind but application of mind must be reflected in the order passed. Once, it is not disputed that some of the facts which have been noticed in para 6 as reproduced above, which is operative part of the order passed summoning the petitioners-accused, are alien to the present case, it is considered appropriate to remit the matter back to the Sub

Divisional Judicial Magistrate to pass a fresh order after noticing the correct facts.

Learned Sub Divisional Judicial Magistrate is also cautioned to avoid any such mistake even if it is bona fide. Hence, order dated 17.07.2019 passed by the Sub Divisional Judicial Magistrate, is set aside.

Accordingly, the present petition is allowed.

This Court has not opined on the merits of the case and, therefore, it shall be open to the parties to raise all the arguments.

16.09.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No