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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-20068-2018 [O&M]

Date of Decision : March 07, 2019

Ravi and another

.... Petitioners

Versus

State of Haryana and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Mr. Manoj Kumar Sood, Advocate,
for the petitioners.

Mr. Ashish Sanghi, DAG, Haryana,
for respondent-State.

Mr. Sanjeev Kumar Panwar, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing order dated 16.03.2018 (Annexure P/5) passed by learned Sessions Judge, Palwal whereby while allowing the revision petition, prayer for alteration of charge was allowed; and order dated 25.04.2018 (Annexure P/6) passed by Sub Divisional Judicial Magistrate, Hodal whereby charge was also framed under Section 325 IPC in case bearing FIR No. 321 dated 2.6.2015 under Sections 148,149, 323, 325 and 506 IPC registered at Police Station – Hodal.

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2. Facts relevant for the purpose of decision of the present petition; that respondent No.2 got registered aforesaid FIR against the petitioners and other person, on the allegation that on 8.5.2016, the petitioners and other persons formed unlawful assembly and gave beatings to him. Medico-legal examination was got done and police registered case under Sections 148,149, 323 and 506 IPC. Accordingly, learned Sub Divisional Judicial Magistrate framed charge against the petitioners and Vinod under Sections 148,149, 323 and 506 IPC vide order dated 21.4.2016 (Annexure P/1).

3. Respondent No. 2 filed an application under Section 216 Cr.P.C. for alteration of charge and to frame charge under Section 325 IPC as well. The said application was dismissed by Sub Divisional Judicial Magistrate, Hodal vide order dated 15.09.2017, but learned Sessions Judge, Palwal allowed the revision petition vide impugned order Annexure P/5.

4. Learned counsel for the petitioners contended that the impugned order passed by learned Sessions Judge is illegal mainly on the ground that challan was presented against three accused persons namely, Vinod, Ravi and Udai Singh. The revision petition was filed against Vinod and Ravi only. Udai Singh (petitioner No.2 herein) was not arrayed as party and he was condemned unheard. He was neither represented nor any notice was received by him and on that ground order dated 16.03.2018 (Annexure P/5) is liable to be set-aside.

5. Learned counsel for the petitioners has challenged the said order on other grounds as well.

6. While arguing on this point, learned State counsel and learned

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counsel representing respondent No.2 – complainant fairly conceded this factual aspect and the same is evident from copy of the order dated 16.03.2018 placed on the file as Annexure P/5, whereby Udai Singh, petitioner No.2 was not arrayed as party in the revision petition and the order has been passed against him.

7. Law on the point is settled that no person can be condemned unheard and such an order, thereby altering charge against the accused person and adding Section 325 IPC against him is certainly prejudicial to him, especially when he had not been arrayed as party in the revision petition and remained unheard.

8. In view of the above, the impugned orders dated 16.03.2018 (Annexure P/5) passed by learned Sessions Judge, Palwal and order dated 25.04.2018 (Annexure P/6) passed by Sub Divisional Judicial Magistrate, Hodal are legally not sustainable and are hereby set-aside.

9. The present petition stands allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

March 07, 2019

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