

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

**CRM-M No.16922 of 2016
Date of Decision: 03.02.2020**

Hardeep and others

..... Petitioners

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Salil Bali, Advocate
for the petitioners.

Mr. Manish Bansal, Deputy Advocate General, Haryana.

Mr. Aman Pal, Advocate
for respondent No.2.

SUDIP AHLUWALIA J. (ORAL)

The complaint (Annexure P-1) filed on behalf of respondent No.2 was initially dismissed by the Ld. SDJM, Siwani, District Bhiwani on 16.07.2013 under Section 203 Cr.P.C. and the cancellation report filed in the connected FIR No.165 dated 25.12.2009 was accepted vide the said order.

2. The complainant challenged the dismissal order in revision, which was allowed by the Ld. Additional Sessions Judge, Bhiwani, with the following observations:-

“23. In view of above discussion, it is absolutely clear that learned Magistrate wrongly and illegally dismissed the complaint of the complainant and accepted the cancellation report submitted by the police. Therefore, the impugned order dated 16.07.2013,

passed by the learned Magistrate, is illegal, perverse and not according to the judicial settled canons and deserves to be set aside. Resultantly, instant revision petition stands allowed. Learned Magistrate is directed to conduct the inquiry afresh and decide the same in accordance with law. Revisionist-complainant is directed to appear before the learned trial Court on 13.01.2016. Learned Magistrate is directed to hold further inquiry and pass the speaking judicious order in accordance with law. Record of the trial Court along with a copy of this order be sent back whereas record of this revision petition be consigned to records.”

3. It is, therefore, clear that in remanding the matter back to the Ld. Trial Court, the Revisional Court had clearly directed to hold further inquiry and thereafter, to pass a judicious order in the same on merits, as would have transpired from such further inquiry.

4. The Ld. Trial Court, thereafter, issued processes against the petitioners-accused persons vide the impugned order dated 28.04.2016. The reasoning for issuing summons upon the petitioners in the said order is, however, somewhat novel, and its under relevant extracts are set out as below:-

“After the preliminary evidence the arguments of summoning of accused were advanced. However vide order dated 16.07.2013 passed by Sh. Surender Kumar, the then Ld. SDJM, Siwani, the present complaint was dismissed.

Thereafter, the complainant preferred a revision petition before the Court of Sh. Virender Parshad, Ld. ASJ, Bhiwani. Thereafter vide order

dated 06.01.2016, the order dated 16.07.2013 was set aside and the complaint was remanded back.

In view of the reasons and circumstances mention in the order dated 06.01.2016 passed by Sh. Virender Parshad, Ld. ASJ, Bhiwani, all the accused are ordered to summoned under Sections 148, 149, 323, 325, 307 and 506 of IPC on filing summoning fees and copies of complaint etc. for 31.05.2016.”

5. It, therefore, becomes clear that the Ld. Court below has nowhere applied its judicial mind on the material placed before it, in the further inquiry post remand, but has acted on the premise as if, there was any direction passed by the Revisional Court to summon all the accused persons.

6. To that extent, there is some merit in the revisional application, but that in itself is not a ground to outright quash the complaint, because the merits of the case have not been considered at all in the impugned order.

7. In the circumstances, the impugned order is set aside and a direction is passed upon the Ld. trial Court to take a fresh independent decision as to whether or not there are sufficient grounds to issue process in the complaint on the basis of the material which has transpired from the case record, after giving an opportunity of hearing to both the parties.

8. Parties are directed to appear before the Ld. trial Court on 20.02.2020.

February 03, 2020

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**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No