

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

203

**CRM-M-2763-2020(O&M)
Date of decision: 28.04.2022**

RANJIT KAUR

....Petitioner(s)

Versus

STATE OF PUNJAB AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Aditya Dassaur, Advocate
for the petitioner.

Ms. A.K. Khurana, DAG Punjab.

Mr. Sarju Puri, Advocate
for respondent No.2.

VINOD S. BHARDWAJ. J. (ORAL)

The present petition raises a challenge to the judgment dated 11.12.2019 passed by Additional Sessions Judge, SBS Nagar (Annexure P-11) whereby the revision petition filed by respondent No.2 has been allowed and the petitioner has been summoned to be tried as an additional accused in exercise of power under Section 319 of the Code of Criminal Procedure in case FIR No.72 dated 03.07.2018 registered at Police Station Sadar Nawanshahr under Sections 406 and 420 of the Indian Penal Code, 1860.

2. Learned counsel for the petitioner submits that respondent No.2 had moved an application to the Senior Superintendent of Police, SBS Nagar alleging that she has deposited Rs.3.30 lakhs in the company namely JKB Hire Purchase Corporation, in which husband of the petitioner was the Managing Director, on an assurance that interest amount would be paid on the amount so deposited. It is

alleged that the proceedings were initiated on the ground that the interest in terms of the assurance was not paid back and as such the offence of cheating was committed against her. Preliminary enquiry was conducted by DSP (Special Branch) District SBS Nagar and it was recommended to register FIR against husband of the petitioner. Finding no role attributed and noticing no involvement on the part of the petitioner, she was not chargesheeted. After the recording of evidence of respondent No.2-Kulwinder Kaur/PW1 before the trial Court on 22.02.2019 an application under Section 319 CrPC was moved to summon the petitioner. Reply to the same was duly filed objecting to the same by pointing out that there is no *prima facie* evidence against the petitioner and the application has been misconceived. The Judicial Magistrate First Class dismissed the said application vide order dated 31.05.2019 by placing reliance upon the precedent judgments and also the probative value of the evidence and the allegations substantiated against the petitioner. The said order dated 31.05.2019, dismissing the application under Section 319 CrPC was subject matter of challenge in criminal revision preferred by respondent No.2 before the Court of Sessions Judge SBS Nagar. The said Criminal Revision bearing No. CRR 33 of 2019 was listed before Additional Sessions Judge, SBS Nagar and notice was issued to the petitioner for 10.12.2019. It is contended that the petitioner could not appear on the said date and the revision petition was allowed by the Additional Sessions Judge, SBS Nagar vide judgment dated 11.12.2019 i.e. on the very next day itself, after noticing that there was no representation on behalf of the petitioner. The order of the Judicial Magistrate First Class, SBS Nagar dated 31.05.2019 was set aside and the petitioner was directed to be summoned as an additional accused.

3. Learned counsel submitted that the judgment of the Additional Sessions Judge, SBS Nagar has been passed in undue haste and no opportunity of

hearing was extended to the petitioner. It is pointed out that the matter was listed on 10.12.2019 for appearance of the petitioner and the judgment in question was passed on the very next day. It is contended that the petitioner being a person aggrieved and prejudiced on account of the said judgment, was entitled to be granted an opportunity of hearing and a reasonable time ought to have been granted, so as to enable the petitioner to make appropriate arrangements and to defend herself. It is argued that the petitioner is severely prejudiced and the order passed in her favour has been set aside without affording any effective opportunity to the petitioner to defend. He submits that no irreparable loss would be caused to the respondent-victim in the event the said order is set aside and the matter to be remanded to the Revisional Court to pass a fresh order after granting an opportunity of hearing to the petitioner.

4. Learned counsel for respondent, however, submits that the petitioner was duly served and was made aware about the date of hearing. There is no valid explanation given by the petitioner as to why she did not appear on the said date before the Revisional Court despite being duly served. It is further contended that otherwise the order passed by the Revisional Court is well reasoned and speaking order. He contents that the petitioner intend to delay the proceedings by impugning the judgment whereas the fault lies with the petitioner herself.

5. I have heard the counsel for the parties and perused the material on record.

6. It is undisputed that the petitioner was not represented when the judgment dated 11.12.2019 was passed by the Revisional Court allowing the said revision petition and setting aside the judgment dated 31.05.2019 passed by the Judicial Magistrate First Class, SBS Nagar. The stand taken by the petitioner in the present petition is that the summons were received late by her and that she had

informed her counsel about the same, however, inadvertently, she mentioned the date to be 11.12.2019 instead of 10.12.2019. The said counsel eventually apprised the petitioner that the petition has already been allowed on 10.12.2019. It is evident that the petitioner could not be represented on the said date of hearing before the Revisional Court and that she is severely prejudiced and aggrieved of the said judgment, since the order that was passed in favour of the petitioner by the Judicial Magistrate First Class, SBS Nagar was set aside.

7. Without going into the said controversy as to whether the Revisional Court ought to have awaited appearance of the petitioner or not, as the judgment setting aside the order under challenge was passed on the next day itself, it would be appropriate and would be in the interest of justice in case the petitioner is afforded an opportunity to pursue her case before the Revisional Court. In doing so, the equities in favour of the rival parties should always be balanced. The prejudice caused to the petitioner on being forced to undergo incarceration in a criminal trial far out weigh the right conferred upon the party to seek expeditious adjudication of a dispute. Justice cannot be sacrificed on the altar of expeditious adjudication and reasonable opportunities should be afforded to all stakeholders to put forth their point of view.

8. The impugned judgment dated 11.12.2019 passed by the Additional Sessions Judge, SBS Nagar is thus set aside. The matter is remanded to the Revisional Court for passing fresh order after affording an opportunity of hearing to both the parties. The revision petition is thus restored to its original number. The parties shall appear before the Revisional Court on 10.05.2022 for hearing of the petition on merits.

9. The petitioner shall, however, deposit a sum of Rs.10,000/- with the District Legal Services Authority, SBS Nagar.

(VINOD S. BHARDWAJ)
JUDGE

April 28, 2022
S.Sharma(syr)

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No