

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-37733-2016 (O&M)

Date of Decision:-20.9.2022

Tota Singh

... Petitioner

Versus

Shingara Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Rajan Singh Dadwal, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

1. The petitioner Tota Singh assails order dated 2.5.2016 (Annexure P-4) passed by learned Additional Sessions Judge, Ludhiana, whereby a revision petition filed by him challenging order dated 13.10.2014 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Jagraon, has been dismissed.
2. A few facts necessary to notice for disposal of this petition are that a complaint was instituted by the petitioner-Tota Singh in the year 2012 alleging therein that the accused Shingara Singh (respondent No.1), Baljeet Singh @ Babli (respondent No.2) and Manjeet Singh @ Bhitra (respondent No.3), who have no concern or connection with the petitioner's property, were bent upon to dispose of the same in connivance with Ram Singh (respondent No.4) and Bittu (respondent No.5). The petitioner/complainant apprehending the same, had also filed a civil suit so as to restrain the

aforesaid persons from alienating the property of the petitioner/complainant measuring 2 Kanals. The complainant further alleged therein that the aforesaid 5 persons illegally raised construction upon the said property and alienated the same to one Jasvir Singh.

3. It may here be mentioned that said Jasvir Singh was otherwise not arrayed as an accused in the complaint. The Trial Court, upon considering preliminary evidence, ordered for summoning of the 5 accused, vide order dated 20.4.2013 (Annexure P-5) passed by learned Sub Divisional Judicial Magistrate, Jagraon. Thereafter, during the course of pre-charge evidence, an application under Section 319 Cr.P.C. was moved on behalf of the complainant so as to summon Jasvir Singh. The said application was declined vide order dated 13.10.2014 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Jagraon, while observing that the application had been filed by the complainant simply to delay the proceedings.
4. The aforesaid order 13.10.2014 (Annexure P-2) was challenged by the petitioner by way of filing a revision petition before the Court of Sessions, which was also dismissed by the learned Additional Sessions Judge, Ludhiana vide judgment dated 2.5.2016 (Annexure P-4), which is under challenge before this Court.
5. Learned counsel for the petitioner submitted that order dated 2.5.2016 (Annexure P-4) passed by learned Additional Sessions Judge, Ludhiana, as well as order dated 13.10.2014 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Jagraon cannot sustain and that while learned Judicial Magistrate 1st Class, Jagraon declined the application on a flimsy ground that the petitioner/complainant had moved the application under Section 319

Cr.P.C. simply to delay the proceedings, the learned Revisional Court dismissed the revision petition while taking note of facts of a different case altogether.

6. Notice of the instant petition was issued to the respondents.
7. While respondents No.1 to 3 and 6 namely Shingara Singh, Baljeet Singh @ Babli, Manjeet Singh @ Bhitra and Jasvir Singh refused to accept the summons, the service of respondents No.4 and 5 namely Ram Singh and Bittu was effected subsequently as is evident from the office report dated 5.10.2018.
8. In the present case, the petitioner/complainant seeks relief against respondent No.6-Jasvir Singh, who is sought to be summoned with the aid of Section 319 Cr.P.C. Since respondents No.1 to 3 and 6 namely Shingara Singh, Baljeet Singh @ Babli, Manjeet Singh @ Bhitra and Jasvir Singh have refused to accept the summons/notices, they are proceeded against *ex parte*. Similarly, since respondents No.4 and 5 namely Ram Singh and Bittu have also chosen not to appear despite service, they are also proceeded against *ex parte*.
9. This Court indeed finds that the Revisional Court has taken note of certain facts, which are totally alien the present case, and apparently pertain to some other case. While in the present case, the allegations are broadly to the effect that the accused/respondents No.1 to 5 namely Shingara Singh, Baljeet Singh @ Babli, Manjeet Singh @ Bhitra, Ram Singh and Bittu had sold off complainant's property to respondent No.6-Jasvir Singh, the facts as noticed in the impugned order dated 2.5.2016 (Annexure P-4) passed by learned Additional Sessions Judge, Ludhiana, pertain to some other case. The

relevant extract from para No.4 of impugned order dated 2.5.2016 (Annexure P-4) reads as follows:

“4. After hearing respective versions and perusal of the record and order of learned Lower Court revealed the fact that the present revisionist is working as clerk in the office of SDM Khanna, from where the accused Hari Singh and Harwinder Kaur alleged to have got issued a driving licence on forged documents. The revision-petitioner by filing the present revision-petition has specifically admitted that documents were produced before him. He has processed the application of the other accused.....”

10. The aforesaid conduct of the Presiding Officer is an act of sheer carelessness and who has not even bothered to read the order before signing the same. The said order dated 2.5.2016 (Annexure P-4) passed by learned Additional Sessions Judge, Ludhiana certainly cannot sustain and is hereby set aside. The matter is remanded back to the Court of learned Sessions Judge, Ludhiana so as to decide the matter afresh.
11. Since the matter pertains to a complaint instituted in the year 2012, the Revisional Court is directed to dispose of the revision petition after hearing the parties expeditiously preferably within a period of one month from today.
12. The petition stands disposed off accordingly.
13. A copy of this order be conveyed to Shri Daljit Singh Ralhan, presently posted as Additional Sessions Judge at Amritsar, so as to ensure that due care and caution is taken to avoid such lapse in future.

20.9.2022

pankaj

Whether speaking /reasoned
Whether Reportable

**(Gurvinder Singh Gill)
Judge**

Yes / No
Yes / No