

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

**CRM-M-40954-2019 (O&M)
Date of decision : 05.07.2022**

Baljit and others

.....Petitioners

versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. V.P. Sangwan, Advocate
for the petitioners.

Mr. B.S. Virk, DAG, Haryana.

Mr. Punit Malik, Advocate
for respondent No.2.

RAJESH BHARDWAJ, J. (Oral)

This petition has been filed praying for quashing the impugned order dated 05.09.2019 passed by learned Additional Sessions Judge, Rohtak whereby the case arising out of the FIR No.23 dated 11.01.2018, under Sections 323, 342, 364, 34 of IPC, registered at Police Station Kalanaur, District Rohtak has been ordered to be clubbed with a case FIR No.17 dated 10.01.2018, registered under Sections 376, 452, 506 of IPC at Police Station Kalanur, District Rohtak.

Learned counsel for the petitioner has vehemently contended that the learned Special Court-cum-Additional Sessions Judge, Rohtak has illegally accepted the revision filed by respondent No.2 and thus, has drawn a wrong conclusion. He submits that as per the facts of the case, FIR No.17 dated 10.01.2018, under Sections 376, 452, 506 of IPC was lodged by wife of petitioner No.2-Bijender against respondent No.2. During the course of investigation, the statement of the prosecutrix was also recorded under Section 164 Cr.P.C. wherein she supported the allegations against respondent No.2. Respondent No.2 got registered FIR No.23 dated 11.01.2018, under Sections 323, 342, 364, 34 of IPC at Police Station Kalanaur, District Rohtak.

Respondent No.2 approached this Court by way of filing CRM-M-2318-2019 praying for clubbing both abovesaid FIRs. However, this Court vide order dated 13.02.2019, declined the same holding that both the occurrence are distinct and evidence are not common and therefore, cannot be tried together. He submits that thereafter the petitioner filed the petition before the learned Judicial Magistrate Ist Class, Rohtak praying for clubbing of both these FIRs. However, during the course of arguments, he had withdrawn that petition and thus, the Court disposed of the petition vide its order dated 03.06.2019. He has submitted that despite this, the petitioner preferred a revision petition before the learned Additional Sessions Judge, Rohtak impugning the order dated 03.06.2019 and the same was illegally allowed by the learned Additional Sessions Judge. Learned counsel for the petitioner submits that the prayer of petitioner was earlier rejected by this Court vide order dated 13.02.2019 and hence, there was no occasion for him to file the fresh petition/application for the same relief before the lower Court. However, he filed the petition before the Magistrate but the same was withdrawn. Having withdrawn the same, he could not have filed the revision petition but learned Additional Sessions Judge has ignored all these facts and accepted the revision petition which is totally unsustainable in the eyes of law. He has submitted that the impugned order being unsustainable deserves to be *set aside*.

Learned counsel for the complainant has opposed the submissions made by counsel for the petitioner. However, he has candidly acknowledged that the order passed by this Court on 13.02.2019 was not further challenged.

I have heard counsel for the petitioner and perused the record.

It is an admitted position that respondent No.2 had approached this Court on earlier occasion by way of filing CRM-M-2318-2019 praying for clubbing both the abovesaid FIRs which was declined by this Court vide order dated 13.02.2019.

Admittedly, this order was not further challenged by respondent No.2 and thus, the same has attained finality. Despite this, respondent No.2 approached learned Judicial Magistrate Ist Class with the same prayer for clubbing both the FIRs. However, during the pendency of the same, the petition was withdrawn and the same was disposed of by the Judicial Magistrate Ist Class vide his order dated 03.06.2019. Respondent No.2 did not stop here and then filed the revision petition impugning the order dated 03.06.2019.

Learned Additional Sessions Judge accepted the same vide the impugned order dated 05.09.2019. Once the petition filed by respondent No.2 before the learned Judicial Magistrate Ist Class was withdrawn, there was no occasion for filing the revision against the same. Besides this, the issue of clubbing both the FIRs was already decided by this Court when respondent No.2 approached this Court by way of filing CRM-M-2318-2019 decided by this Court on 13.02.2019. This order was never ever challenged and thus, attained finality.

In view of the facts and circumstances of the case, this Court is of the opinion that learned Additional Sessions Judge had fallen in error in accepting the revision filed by respondent No.2. Thus, the decision taken by learned Additional Sessions Judge in accepting the revision being unsustainable in the eyes of law is hereby *set aside*. The petition is allowed.

(RAJESH BHARDWAJ)
JUDGE

05.07.2022
m. sharma

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