

206

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

**CRM-M No. 7488 of 2023
Date of Decision: 29.11.2023**

MONIKA

... Petitioner

Versus

STATE OF HARYANA AND OTHERS

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Bhisham Kumar, Advocate,
for the petitioner.

Ms. Gaganpreet Kaur, DAG Haryana.

Mr. Ravi Malik, Advocate,
for respondent No. 2 to 7.

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SANJIV BERRY, J. (ORAL)

The instant petition under Section 482 Cr.P.C. has been preferred by the petitioner for quashing of the order dated 02.11.2021 (Annexure P-7) passed by learned Additional Sessions Judge, Palwal in Criminal Revision No. 68 of 2021, titled as "*Parkash Chand etc. Vs. State of Haryana & another*" whereby the revision petition preferred by the respondent No.2 to 7 against the order dated 24.02.2021 (Annexure P-4) passed by the learned Judicial Magistrate First Class, Palwal, directing the investigating officer to take opinion regarding injury on the left eye of the injured/petitioner from a specialist doctor of R.P. Centre (AIIMS), Delhi and

to further investigate whether the injury on the petitioner was caused by means of any instrument was remanded back to the learned Judicial Magistrate, First Class, Palwal to pass order afresh in the following FIR :-

FIR No.	Dated	Sections	Police Station
198	03.07.2020	323,325, 148, 149, 427 and 506 IPC	Gadpuri, District Palwal

2. By way of present petition the petitioner has sought quashing of impugned order dated 02.11.2021 (Annexure P-7) passed by the learned Additional Sessions Judge, Palwal whereby revision petition preferred by respondent No.2 to 7 (hereinafter referred to as 'private respondents') against the order dated 24.02.2021 (Annexure P-4) passed by learned Judicial Magistrate First Class, Palwal had been set aside.

3. The instant FIR has been got registered at the instance of petitioner against the accused-private respondents wherein after investigation the challan was presented in Court and application was moved by the prosecution for obtaining medical opinion regarding the left eye of the applicant. The State therein filed reply and learned Court allowed the application directing the investigating officer to take opinion regarding injury on the left eye of the complainant vide impugned order dated 24.02.2021 (Annexure P-4). Aggrieved by the said order private respondents preferred revision petition which has been allowed by learned Additional Sessions Judge, Palwal vide impugned order dated 02.11.2021 (Annexure P-7) thereby setting aside the impugned order dated 24.02.2021 (Annexure P-4) with a direction to the concerned court of Judicial Magistrate First Class, Palwal to pass order on the application afresh after

affording opportunity of hearing to the private respondents. It is, this order which has been challenged by the injured-petitioner before this Court.

4. After hearing the respective arguments and perusing the record with the assistance of learned counsel representing the private respondents as well as learned State counsel, it is observed that order dated 24.02.2021 (Annexure P-4) passed by learned Judicial Magistrate First Class, Palwal, was assailed in the revision petition of the private respondents primarily on the ground that the said order was passed without giving opportunity of being heard and even no notice was ever issued by the concerned Court to the private respondents regarding the application moved by the complainant for medical examination, thereby causing violation of principles of natural justice and causing prejudice to the private respondents. It is not disputed by learned counsel for the State as well as the petitioner in the present case that no notice of such application moved by the petitioner before the learned Judicial Magistrate First Class, Palwal, for getting the medical opinion had ever been issued to the private respondents and even no opportunity to have been heard was afforded by the learned Magistrate while passing the impugned order dated 24.02.2021 (Annexure P-4).

5. Faced with this situation and perusal of impugned order dated 02.11.2021 (Annexure P-7) would reveal that the learned Additional Sessions Judge, Palwal has passed the same in accordance with law, taking into consideration the settled law passed in ***Sanjay Kumar Kedia @ Sanjay Kedia vs. Intelligence Officer, Narcotic Control Bureau and another, 2010(1) RCR (Criminal) 942***. It has been observed in the impugned order

that the learned trial Court should have given opportunity of being heard to the affected party i.e. the private respondents before passing of order dated 24.02.2021 (Annexure P-4). In fact applying the principle laid down in *Sanjay Kumar Kedia's case (supra)* and taking into consideration the basic principle of natural justice had set aside the order dated 24.02.2021 (Annexure P-4) by directing the learned Magistrate to pass the order afresh on the application after affording opportunity of being heard to the affected persons i.e. the accused/private respondents. The learned counsel for the petitioner could not point out any illegality in the impugned order dated 02.11.2021 (Annexure P-7) so as to call for any interference by this Court but faced with circumstances has limited his prayer to the extent that the trial Court may be directed to dispose of such application after hearing the private respondents in an expeditious manner, in accordance with law.

6. In view the above discussion made above, I find no infirmity in the impugned order dated 02.11.2021 (Annexure P-7) being passed in accordance with law and consequently finding no merit in the present petition the same is hereby dismissed.

7. Keeping in view the fact that the present FIR pertains to the year 2020 and the challan has already been presented in Court on 07.04.2021, in the interest of justice, the trial Court is directed to pass the orders on the application after affording opportunity of being heard to the private respondents in accordance with law preferably within a period of three weeks from the date when the arguments on the application are advanced by both the parties.

8. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

(SANJIV BERRY)
JUDGE

29.11.2023
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i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No