

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

(246)

CRM-M-16660-2017
DATE OF DECISION:-17.05.2023

Raj Kumar ASI and others

...Petitioners

vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Ms. Anjali, Advocate, for
Mr. Nipun Vashist, Advocate, for the petitioners.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

Mr. Gaurav Khara, Advocate, for the respondent No.2.

HARKESH MANUJA, J.

(1) By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973, prayer has been made for quashing the order dated 27.10.2016 (Annexure P-5) passed by the Court of learned Additional Sessions Judge, Faridabad.

(2) In the present case, the petitioners were though arrayed as accused in FIR No.467 dated 04.12.2012 under Sections 148, 149, 323, 285, 506 IPC and 25/54/59 Arms Act at Police Station Saran, Faridabad, however, upon investigation they were kept in column No.2 and charge sheet was filed against others namely Surat Singh Deswal, Krishan, Devender @ Devi, Sunil Kumar, Prashant @ Golu and Ashish. During the pendency of trial, an application under Section 319 Cr.P.C. was filed at the instance of respondent No.2 for the purpose of summoning the petitioners as additional accused which was dismissed vide order dated 03.05.2016. Aggrieved thereof, respondent No.2 filed revision petition before the learned Additional Sessions Judge, Faridabad, which was allowed vide order dated 27.10.2016

thereby summoning the petitioners as additional accused.

(3) By way of present petition, the order dated 27.10.2016 passed by the Court of learned Additional District and Sessions Judge, Faridabad, has been impugned at the instance of petitioners.

(4) Learned counsel for the petitioners *inter alia* submits that the order passed by the revisional Court was bad in law as the same was passed at their back and the petitioners were never impleaded as respondents in the revision. In support, reliance has been placed upon a decision of Hon'ble Supreme Court in the case of **Mohit alias Sonu and another Vs. State of UP and another**, 2013 (3) R.C.R.(Criminal) 673.

(5) On the other hand, learned counsel representing respondents No.1 and 2 have supported the order passed by the revisional Court while submitting that the same was validly passed upon consideration of the evidence available on record and also in view of the facts and circumstances of the present case, thus the same warrants no interference.

(6) I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioners.

(7). A perusal of the paper book shows that the application filed at the instance of respondent No.2 for summoning the petitioners as additional accused was declined by the trial Court vide order dated 03.05.2016 which was challenged by way of Criminal Revision No.63 of 2016 before the Court of Additional Sessions Judge, Faridabad, wherein the order passed by the trial Court was reversed vide decision dated 27.10.2016 and the petitioners were summoned as additional accused, however, a perusal of the same shows that the petitioners who were sought to be summoned as additional

accused though, having vested with substantial right on dismissal of the application by the trial Court, were never impleaded before the revisional Court and it was passed at their back without giving them any opportunity and thus, bad in law. The aforesaid view also finds support from the relevant observations made by Hon'ble Supreme Court in case of **Mohit alias Sonu and another (supra)** and para No.29, thereof, is reproduced hereunder:

“29. Indisputably, a valuable right accrued to the appellants by reason of the order passed by the Sessions Court refusing to issue summons on the ground that no prima facie case has been made out on the basis of evidence brought on record. As discussed hereinabove, when the Sessions Court order has been challenged, then it was incumbent upon the revisional court to give notice and opportunity of hearing as contemplated under sub-section (2) of Section 401 of Cr.P.C. In our considered opinion, there is no reason why the same principle should not be applied in a case where such orders are challenged in the High Court under Section 482 of Cr.P.C.

(8) In view of the discussion made hereinabove, once the order dated 27.10.2016 was passed by the revisional Court at the back of the petitioners without affording them any opportunity to defend themselves though having vested with valuable right upon rejection of their summoning as additional accused by the trial Court, the present petition is allowed and the impugned order dated 27.10.2016 is hereby set aside. The matter is remanded back to the revisional Court with a request to decide the **CR. Revision No.63 of 2016 titled R.P.Mishra Vs. State of Haryana**, afresh after affording opportunity to the present petitioners as well. The revisional Court is requested to dispose of the revision petition preferably within a period of 3

months from today considering the fact that issue pertaining to the summoning of the petitioners as additional accused is pending consideration for the past around 7 years.

(9) Since this order has been passed in presence of counsel for both the parties, therefore, they are directed to appear before the revisional Court on 29.05.2023.

17.05.2023
anil

(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No