

CRM-M-39910-2023 (O&M)

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(256)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-39910-2023 (O&M)

Date of decision :20.12.2023

VIKAS GUPTA

... Petitioner

Versus

STATE OF PUNJAB & OTHERS

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ishan Gupta, Advocate for the petitioner.

Mr. Mohit Thakur, Asstt. A.G., Punjab.

Mr. Rakesh Bhatia, Advocate for respondent Nos.2 and 3.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 06.05.2023 (Annexure P-1) passed by the Addl. Sessions Judge, Ludhiana in case No.CRR-6895/2022 whereby the criminal revision filed against the order dated 08.06.2022 of the Addl. Chief Judicial Magistrate, Ludhiana in case No.CHI/44326/2021 arising out of FIR No.265 dated 18.06.2021 under Sections 420, 120-B IPC at Police Station Division No.5, Ludhiana, framing charges against the accused/respondent Nos.2 and 3 has been allowed and the charges so framed have been set aside and the matter has been remanded back to the Addl. Chief Judicial Magistrate for re-hearing.

2. The brief facts of the case are that an FIR No.265 dated 18.06.2021 under Sections 420 and 120-B IPC came to be registered against the accused/respondent Nos.2 and 3 at Police Station Division No.5, Ludhiana.

3. On the basis of the investigation conducted, the challan was submitted against the accused for the commission of the offences under Sections 420, 120-B IPC. The copy of the report dated 16.08.2021 under Section 173(2) Cr.P.C. is annexed as Annexure P-2 to the petition.

4. The Court of the Addl. Chief Judicial Magistrate, Ludhiana vide its order dated 08.06.2022 proceeded to frame charges against the accused/respondent Nos.2 and 3 under Sections 420 and 120-B IPC. The copy of the order dated 08.06.2022 is annexed Annexure P-4 to the petition.

5. The aforementioned order was challenged by the accused/respondent Nos.2 and 3 by way of filing of criminal revision bearing No.CRR-6895-2022 before the Court of Sessions, Ludhiana. However, the petitioner/complainant was not made a party therein. Further, no notice was issued to the petitioner/complainant.

6. Vide impugned order dated 06.05.2023 (Annexure P-1), the revision petition was allowed and the case was remanded back to the Court of Addl. Chief Judicial Magistrate, Ludhiana for a fresh adjudication on merits. The copy of the said order dated 06.05.2023 is annexed as Annexure P-1 to the petition. The relevant extract of the said order is as under:-

“So, I am of the considered view that order passed by the Trial Court is not sustainable in the eyes of law and same is set-aside. Trial Court is directed to re-hear the arguments before framing the charge in view of above discussion and directed to pass reasoned order after considering all the evidence collected by IO during investigation and in the light of case laws referred in

the order. Parties are directed to appear before the Trial Court on 20.05.2023. Record of Lower Court along with copy of order be transmitted forthwith, immediately for further proceedings. File be consigned to the Record Room.”

7. The aforementioned order is under challenge in the present petition.

8. The learned counsel for the petitioner/complainant contends that in terms of Section 401 Cr.P.C., no order could have been passed by the Revisional Court without hearing the complainant. Therefore, the impugned order was liable to be quashed and the Revisional Court would proceed to hear both the parties before adjudicating upon the revision petition filed by the accused/respondents. Reliance is placed on the judgment in cases of **Ashish Chadha Versus Smt. Asha Kumari & another, 2012(1) R.C.R. (Criminal) 94** and **Uma Nath Pandey & others Versus State of U.P. & another, 2010(6) R.C.R. (Criminal) 141.**

9. The learned counsel for respondent Nos.2 and 3 does not dispute this legal argument raised but contends that only a remand order has been passed and therefore, there was no requirement of the petitioner/complainant being heard by the Revisional Court.

10. I have heard the learned counsel for the parties.

11. Before proceeding further, it would be apposite to refer to the provisions of Section 401 Cr.P.C. and the same is reproduced hereinbelow:-

401. High Court's Powers of revisions.

(1) In the case of any proceeding the record of which has been called for by itself or Which

otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.”

12. A perusal of Section 401(2) Cr.P.C. would reveal that no order could be passed in revisional jurisdiction to the prejudice of the accused or any other person unless he had an opportunity of being heard either personally or through a lawyer. In the instant case, the petitioner is

the complainant. For reasons best known to the accused, when they preferred a revision petition against the order framing charges before the Court of Sessions, Ludhiana, the petitioner/complainant was not made a party therein. Further, the revisional Court also did not issue notice to the petitioner/complainant. The order framing charges was quashed and the matter was remanded back for fresh examination. Therefore, the said order is certainly to the prejudice of the petitioner/complainant at whose instance the FIR had been filed, the report under Section 173(2) Cr.P.C. had been submitted and charges had been framed. Therefore, he was certainly required to be heard before any order was passed by the Revisional Court.

13. In view of the above, I find merits in the present petition and the impugned order dated 06.05.2023 (Annexure P-1) stands quashed. The parties shall appear before the Revision Court on 22.01.2024 after which the said Court shall proceed to hear the matter in accordance with law.

14. However, it is made clear that this Court has not expressed any opinion on the merits of the case which be examined by the concerned Court with accordance with law.

(JASJIT SINGH BEDI)
JUDGE

20.12.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No