

CRM-M-51331-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(209)

CRM-M-51331-2022

DATE OF DECISION:- 19.07.2023

GURINDERJIT SINGH @ GINDI

...PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Gaurav Dutta, Advocate
for the petitioner.

Mr. Arun Luthra, DAG, Punjab
for the State-respondent No.1.

Mr. Shamsher Singh, Advocate
for complainant-respondent No.2.

SUVIR SEHGAL, J. (ORAL)

1. Challenge in the instant petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “the Code”) is to order dated 30.09.2022 passed by the learned Sessions Judge, Fatehgarh Sahib, whereby revision petition, preferred by the complainant-respondent No.2, has been accepted and he has been granted two opportunities to examine the officials of Election Commission, Fatehgarh Sahib and a direction has been issued to the Trial Court to pass a fresh order after considering the evidence, if any, of the two named officials.

2. Facts leading to the filing of the petition are that respondent No.2 filed a complaint under Section 31 of the Representation of Peoples Act, 1950 and Section 420, IPC, Annexure P-1, against the accused-petitioner alleging that the accused has got himself registered as a Voter at three different places and has three different Voter ID Cards. It has been alleged that he has committed fraud and he be summoned as an accused, tried and punished for the offences. After examining the preliminary evidence led by the complainant, learned Judicial Magistrate by order dated 01.07.2022, Annexure P-2, did not find any material to summon the accused and dismissed the complaint under Section 203 of the Code. Revision Petition, preferred by the complainant, has been accepted by the impugned order by issuing direction noticed above, but without notice to the accused-petitioner.

3. Counsel for the parties have been heard.

4. Supreme Court in *Manharibhai Muljibhai Kakadia and another Versus Shaileshbhai Mohanbhai Patel and others (2012) 10 SCC 517* has held that when a challenge is laid to an order passed by a Magistrate under Section 203 of the Code in a revision petition, the suspects get a right of hearing before the Revisional Court, although such an order was passed without their participation. It has been held that accused or other person cannot be deprived of hearing in the face of express provision contained in Section 401(2) of the Code. This judgment has been followed by the Apex Court in *Priyanka Srivastava and another Versus State of U.P. and others (2015) 6 SCC 287*.

5. In view of the settled legal position, impugned order passed by the Revisional Court cannot be sustained and deserves to be set aside.
6. Consequently, impugned order dated 30.09.2022, Annexure P-2, is set aside. Matter is remitted back to the learned Sessions Judge, Fatehgarh Sahib, with a direction to decide it afresh after issuing notice and hearing the accused. Parties are directed to appear before the learned Sessions Judge, Fatehgarh Sahib on 23.08.2023.
7. Petition is disposed of.

19.07.2023
Kamal

(SUVIR SEHGAL)
JUDGE

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No