

Crl. Misc. No. M-2429 of 2020 (O&M)

-1-

202

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-2429 of 2020 (O&M)

Davinder Singh

.....Petitioner

versus

State of Punjab and another

.....Respondents

Crl. Misc. No. M-36005 of 2023 (O&M)

Amarjit Singh

.....Petitioner

versus

Jaspal Singh

.....Respondent

Date of Decision: January 29, 2024

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. H.S. Batth, Advocate
for the petitioner in Crl. Misc. No. M-2429 of 2020

Mr. Prateek Sodhi, Advocate
for the petitioner in Crl. Misc. No. M-36005 of 2023

Mr. Subhash Godara, Addl. A.G. Punjab

Harpreet Singh Brar, J. (Oral)

1. Both the petitions are being decided by common judgment as the issue involved in both these petitions is common. However, the facts are borrowed from CRM-M-2429-2020.

Crl. Misc. No. M-2429 of 2020 (O&M)

-2-

2. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 24.07.2018 (Annexure P-3) passed by the Court of learned Additional Sessions Judge, Amritsar and order dated 16.05.2019 (Annexure P-4) passed by learned Court of JMIC, Amritsar qua the petitioner in complaint No. CIS No. COMI/276/2016 dated 30.05.2016/15.04.2017 under Sections 420, 406, 467, 468, 471, 506, 120-B IPC titled as *Jaspal Singh vs. Harjit Singh and others* pending in the Court of learned JMIC, Amritsar whereby the petitioner has been summoned by the learned summoning court vide order (Annexure P-4).

3. Learned counsel for the petitioner(s) *inter alia* contends that on the basis of complaint filed by respondent No. 2, three persons were summoned as accused and the petitioner who was arrayed as accused No. 5 in the complaint (supra) was discharged vide order dated 29.11.2017. Vide order dated 24.07.2018, the revisional Court has set aside the order dated 29.11.2017 passed by the jurisdictional Magistrate. Learned revisional Court had made certain observations and directed the petitioner(s) to be summoned as accused without even issuing notice to the petitioner(s). Learned counsel for the petitioner(s) relies upon judgment passed by Hon'ble Supreme Court in ***Manharibhai Muljiphai Kakadia and another vs. Shaileshbhai Mohanbhai Patel and others, 2012(4) RCR(Criminal) 689*** to submit that the order of discharge passed by learned trial Court creates right in favour of the petitioner(s) and, therefore, while deciding the revision the petitioner(s) are required to be given an opportunity of hearing as vide the impugned order dated 24.07.2018 the right of the petitioner(s) have been adversely effected.

Crl. Misc. No. M-2429 of 2020 (O&M)

-3-

4. Per contra learned State counsel opposes the prayer made by the petitioner(s) on the ground that the revisional Court has passed a well reasoned order. Learned trial Court ought not to have discharged the petitioner(s).

5. As per office report, respondent No. 2 has been served. However, there was no representation on his behalf either on 18.08.2023 or today. As such this Court is left with no other alternative to proceed to decide the case on merits.

5. Having heard learned counsel for the parties and after perusing the record, this Court finds force in the arguments raised by learned counsel for the petitioner(s).

6. Both the petitions are allowed. The impugned order dated 24.07.2018 (Annexure P-3) passed by learned Additional Sessions Judge, Amritsar as well as impugned order dated 16.05.2019 (Annexure P-4) passed by learned Court of Judicial Magistrate Ist Class, Amritsar are set aside. Learned revisional Court is directed to pass a fresh order after giving an opportunity to the petitioner(s) in view of the ratio of law laid down in *Manharibhai Muljiphai Kakadia(supra)*.

(HARPREET SINGH BRAR)
JUDGE

January 29, 2024

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No