

2024:PHHC:142639



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

**CRM-M-54344-2022 (O&M)
DECIDED ON: 09.07.2024**

VIJAY SARPAL AND OTHERS

.....PETITIONERS

VERSUS

M/S SAHARA FORAGE ET BTP SARL LIMITED LIABILITY CO. PVT. LTD.

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Hemant Bassi, Advocate
 for the petitioners.

 Mr. Amitabh Tewari, Advocate
 for the respondent.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Section 482 Cr.P.C. has been invoked seeking quashing of impugned order dated 26.08.2022 (Annexure P-10) passed by Additional Sessions Judge, Gurugram whereby, the criminal revision petition filed by the respondent against the order dated 13.01.2021 passed by Judicial Magistrate Ist Class, Gurugram stands allowed and trial/Area Magistrate was directed to consider the request of the complainant for sending the case for registration of FIR and investigation by the police. Further prayer has been made seeking quashing of order dated dated 16.09.2022 (Annexure P-11) passed by Judicial Magistrate Ist Class, Gurugram whereby, the concerned SHO was directed to register an FIR against accused.

2. Learned counsel for the petitioners has contended that in the action Taken Report that was submitted before the concerned Magistrate, it was stated that the parties had contracted for the supply of a drilling equipment. He further contends that the accused company received a deposit 57,595 Euros from the complainant. The complainant travelled to India in 2018 and asked the accused to add specific accessories in the machine after he had seen it. Following careful consideration, the price of the accessories was set at 3380 euros. The respondent/complainant declined to pay the amount agreed upon by the parties for the installation of accessories when the suggested accused asked them to do so and instead requested that the accused provide the shipment details. When the alleged accused asked the complainant to pay the money for the installation of accessories after acquiring the shipment details, he declined. Under these circumstances, the suggested accused did not ship the computer to the complainant. In the action taken report, the police came to the conclusion that as this is a civil case, no cognizable offence was committed.

3. Learned counsel for the complainant has argued that there is no illegality or perversity in the order 26.08.2022 (Annexure P-10) and without having police investigation, the respondent/complainant may not place all the incriminating documents before the concerned Magistrate in preliminary evidence.

4. Heard.

5. From the perusal of record, it reveals that the revision petition remained pending before the Additional Sessions Judge, Gurugram because the accused named in the complaint were deemed relevant parties and notices were issued to them during the hearing on 09.05.2022. However, it seems that no amended memo of parties was filed with the Revisional Court, nor was the title amended to reflect the impleadment of the accused. Furthermore, on 09.05.2022, notice was directed to be issued to the proposed accused. However, no report of Ahlmad is available on record regarding the

service and speed post receipts and tracking reports were filled without envelopes or addresses, which indicates refusal of service. Despite this, in the order dated 26.07.2022, it has been wrongly recorded that notices were served but respondents No.1 to 6 did not appear, leading to ex-parte proceedings. The memo of parties shows only one respondent, which is the State, represented by the Government Pleader. However, there is a report stating that no one appeared on behalf of respondent No.1, which does not make sense given the State’s representation.

6. In view of above and without commenting further on the merits of the case, the case is remanded back to the Revisional Court for adjudicating it afresh on merits as per law after associating the petitioners’ proposed respondent.
7. In the afore-said terms, the present petition is disposed off.
8. Pending criminal misc. application, if any shall also disposed off.

09.07.2024
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No