



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

115 (2 cases)

**CRM-M-40596-2021 (O&M) &
CRM-M-10187-2020 (O&M)
Date of decision: 23.01.2026**

1. CRM-M-40596-2021 (O&M)

Sukhdev Singh

...Petitioner

VERSUS

Kuljit Singh and another

...Respondents

2. CRM-M-10187-2020 (O&M)

Boota Singh and another

...Petitioners

VERSUS

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. B.S. Bhalla, Advocate, for the petitioner
in CRM-M-40596-2021.

Mr. Rajat Dogra, Advocate for the petitioners
in CRM-M-10187-2020.

Mr. Saurav Verma, Addl. AG, Punjab.

None for respondent No.1 in CRM-M-40596-2021
and for respondent No.2 in CRM-M-10187-2020.

VINOD S. BHARDWAJ, J. (Oral)

There is no representation on behalf of the respondent No.1 in CRM-M-40596-2021, who is also respondent No.2 in CRM-M-10187-2020, despite service. It is noticed that one Mandeep Singla, Advocate earlier had appeared on behalf of the respondent No.1 (in CRM-M-40596-2021) on 30.11.2021 and had also filed his Power of Attorney on 28.07.2023. Since then, he has chosen not to appear in the proceedings before this Court. The matter pertains to the year 2021 and there is no justification to further await the appearance of respondent-complainant. The matters are accordingly dealt

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with and are being decided on merits.

2. Both these petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973 (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) for seeking setting aside of the order dated 07.01.2020 passed by the Additional Sessions Judge, Moga whereby the revision petition filed by respondent No.1 had been allowed and the petitioners were directed to appear before the Judicial Magistrate, Moga in complaint No.25 of 12.02.2015 titled as '*Kuljit Singh Vs. Boota Singh etc.*' notwithstanding that the Judicial Magistrate First Class found no grounds to summon the petitioner and had dismissed the complaint vide order dated 06.05.2017. The same are thus being decided by a common order.

3. For the facility of reference, brief facts are however being extracted from CRM-M-40596-2021 titled '*Sukhdev Singh Vs. Kuljit Singh and another*'.

4. The respondent-complainant Kuljit Singh had filed complaint No.25 dated 12.02.2015 for offences under Section 420, 467, 468, 471, 120B IPC averring that he alongwith his brother Satbir had entered into an oral agreement with Inderjit Singh and Surjit Singh of Gurbachan Singh to purchase the land of the latter. Surjit Singh received Rs.2,50,000/- and entered a pronote. The petitioner Boota Singh (in CRM-M-10187-2020) in conspiracy with Inderjit Singh and Jasbir got prepared an ATS for 13 Kanal of land in favour of Surjit Kaur-sister of Boota Singh and got the sale deed executed for 10 Kanals. Later, Boota Singh conspired with Surjit Kaur, Jasbir Kaur and Sukhdev Singh (petitioners) and got the mutation Nos.4015 & 4016 sanctioned and got the same entered in the Jamabandi on

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23.02.2012. Thereafter, Surjit Kaur executed a subsequent sale deed No.5407 dated 28.02.2002 in favour of Jasbir Kaur. The SDM gave his report, on the complaints filed by him, that there was a forgery. Alleging that forged Jamabandi mentioning about sanction of mutation No.4015 and 4016 had been issued, the present complaint was filed.

5. After going through the file and evidence on record, the Judicial Magistrate First Class, Moga held that complaint was devoid of merit, vide judgment dated 06.05.2007, which was reversed by the Additional Sessions Judge, Moga, hence, the present petition.

6. Learned counsel appearing on behalf of the petitioners contend that respondent No.1 had a dispute with Inderjit Singh, Surjit Kaur and Jasvir Kaur for which he filed a suit No.261 dated 19.05.2011 for joint possession to the extent of 09 Kanals by way of specific performance of agreement to sell dated 01.11.2010 titled '*Kuljit Singh Vs. Inderjit Singh and others*'. The same was dismissed vide judgment dated 28.11.2018 passed by the Civil Judge (Senior Division), Moga. Similarly, his brother Satbir Singh had also filed a suit No.456 dated 25.08.2012 for specific performance of decree for joint possession to extent of 04 Kanals against Inderjit Singh, Surjit Kaur and Jasvir Kaur and both the said civil suits were dismissed vide judgment and decree dated 28.11.2018.

7. Notwithstanding the same, respondent No.1 filed a complaint against Boota Singh, Jasvir Kaur (petitioners in CRM-M-10187-2020) and Sukhdev Singh (petitioner in CRM-M-40596-2021) alleging commission of offences under Sections 420, 465, 467, 468, 471 & 120-B, IPC dated 12.08.2015 pertaining to the said agreement(s) to sell.

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8. Preliminary evidence was led by respondent No.1-complainant. However, vide order dated 06.05.2017, the said complaint was dismissed by the Judicial Magistrate First Class, Moga after noticing that the offences are *prima facie* not established.
9. The said order dismissing the complaint was challenged by respondents before the Court of Sessions Judge, Moga.
10. Vide impugned order dated 07.01.2020, the Additional Sessions Judge, Moga allowed the Criminal Revision No.11 of 2017 and set aside the order dated 06.05.2017 passed by the Judicial Magistrate First Class, Moga and directed summoning of the petitioners to face trial for the offences under Sections 420, 465, 467, 468, 471 & 120-B IPC. Aggrieved of the same, the present petitions are filed.
11. The matter bearing CRM-M-40596-2021 came up for hearing on 05.10.2021, when the following order was passed:-

“Learned counsel for the petitioner inter alia contends that the complaint (Annexure P-3) filed by respondent No.1 under Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code, 1860, was dismissed by the Judicial Magistrate Ist Class, Moga vide order dated 06.05.2017 (Annexure P-4) and no summoning order was passed. In the revision petition filed by respondent No.1, the Additional Sessions Judge, Moga, while allowing the revision petition, has not only set aside the order dated 06.05.2017 but in the same order, has also ordered to summon the petitioner under Sections 420, 465, 467, 468, 471, 120-B of the Indian Penal Code, 1860 and has directed the counsel for the parties to appear before the Judicial Magistrate Ist Class, Moga.

Learned counsel for the petitioner has submitted that even in case, the revision petition was to be allowed, then also,

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the matter had to be remitted back for further enquiry only and summoning order could not have been passed by the Additional Sessions Judge. For the said proposition, learned counsel for the petitioner has relied upon the judgment dated 06.09.2012 passed by the Coordinate Bench of this Court in CRM-M-1209-2012 titled Tara Chand and others Vs. Prem Chand, and also to the order dated 31.01.2020 passed by the Coordinate Bench of this Court in CRM-M-4280-2020 titled Sehaj Parkash and others Vs. State of Punjab and another.

Notice of motion for 30.11.2021.

In the meantime, till the next date of hearing, the operation of the impugned order dated 07.01.2020 (Annexure P-5) shall remain stayed.”

12. Similarly, when the matter bearing CRM-M-10187-2020 came up for hearing on 25.10.2021, the interim was granted in favour of the petitioners in view of the order passed in CRM-M-40596-2021 on 05.10.2021, the same reads thus:-

*“Learned counsel for the petitioner has submitted that against the same impugned order, this Court has been pleased to issue notice of motion for 30.10.2021 vide order dated 05.10.2021 passed in **CRM-M-40596-2021** titled as **"Sukhdev Singh Vs. Kuljit Singh and another"** and has also granted interim order in favour of the petitioner therein.*

Notice of motion for 30.10.2021.

*To be heard along with **CRM-M-40596-2021**.*

*Interim order in the same terms as passed in **CRM-M-40596-2021**, till the next date of hearing.”*

12. Since the grievance espoused by the petitioners is confined only to the extent that dismissal of complaint amounted to an acquittal, hence, while exercising the revisional jurisdiction, the Additional Sessions Judge,

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Moga could not have passed an order directing summoning of the petitioners and at best the matter should have been remanded to the Magistrate to pass a fresh order, after taking into consideration evidence as well as the legal principles.

13. No one has chosen to appear on behalf of the respondents despite service and sufficient opportunities, thus seemingly they have no objection to the aforesaid prayer.

14. A single Bench of this Court, while deciding Crl. Misc. No.1209 of 2012 titled Tara Chand & others Vs. Prem Chand dated 06.09.2012 held as under:-

“Learned counsel for the respondent/complainant has very fairly not controverted the legal issue raised by learned counsel for the petitioners. However, he submits that in view of the legal defect in the judgment passed by learned Additional Sessions Judge, Mansa, the matter be remitted to the learned Judicial Magistrate Ist Class, Budladha, for further inquiry and thereafter to pass a fresh order in accordance with law.

Though the learned counsel for the respondent has conceded the infirmity in the order passed by the learned Additional Sessions Judge, Mansa, but to justify the acceptance of the present petition while setting aside the judgment passed by learned Additional Sessions Judge, Mansa, it is deemed appropriate to discuss the legal proposition concerning the issue.

To comprehend the controversy involved herein effectively, it is desirable to reproduce Section 398, Cr.P.C, which reads as under:-

"398, Power to order inquiry: In examining any record under section 397 or otherwise, the High Court or the

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Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (4) of Section 204 or into the case of any person accused of an offence who has been discharged.

Provided that no court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made."

*Perusal of the above provision clearly reveals that while exercising the powers under Section 397, Cr.P.C, the court of Additional Sessions Judge, Mansa, could direct the Judicial Magistrate Ist Class to make further inquiry into the complaint which had been dismissed under Section 203, Cr.P.C qua petitioner no.4 and for the offences punishable under Sections 307, 354, 452, 506 read with Section 34, IPC and Section 25 of the Arms Act qua petitioner Nos.1 to 3. In support of the above finding, the reference can be made to **Jai Parkash Pathak vs. Surendera Gendely, (Chhattisgarh) 2009(1) Crimes 380; Prabhu Lal vs. State, 1978 Criminal Law Reporter 370 and Lalji Bai Singh vs. Asal Chand, (1978) KARNATAKA Law Journal, 329.***

In view of the settled proposition as well as the submissions made by the learned counsel for the complainant/respondent, the present petition is allowed. The judgment dated 21.12.2011 (Annexure P-1) passed by the learned Additional Sessions Judge, Mansa, as well as the consequential proceedings arising therefrom are hereby quashed qua the directions issued for the summoning of the petitioners for the offences punishable under Sections 307, 354,

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452, 506 read with Section 34, IPC and Section 25 of the Arms Act. The matter is remitted to the board of learned Judicial Magistrate Ist Class, Budladha, to further inquire into the complaint and pass the fresh summoning order qua petitioner Nos. 1 to 3 for the offences punishable under Sections 307, 354, 452, 506 read with 34, IPC and Section 25 of the Arms Act in accordance with law. The Judicial Magistrate Ist Class shall also further inquire into the role of petitioner No.4 and pass such order as deemed fit on the basis of the material available on record.”

15. It is evident from a bare perusal of the statutory provision that in cases where a complaint is dismissed by the Magistrate under Section 203 Cr.P.C., the revisional power of the Court is circumscribed to direct only a further inquiry into the complaint. By directing summoning of the petitioners, the Additional Sessions Judge, Moga has invoked the powers under Section 399 Cr.P.C. overlooking that Section 398 Cr.P.C. was a specific clause dealing with an order under Section 203 Cr.P.C., hence, the general and plenary power under Section 399 Cr.P.C. was not to be invoked in such a situation and the special provision gain prominence under the established legal principle ‘*generalia specialibus non derogant*’ i.e. ‘general things do not derogate from special things’.

16. Failure to refer to the said Section 398 Cr.P.C. while directing summoning of the petitioner herein, render the impugned order in conflict with law.

17. Consequently, the order of Additional Sessions Judge, Moga dated 07.01.2020 needs no interference and is thus upheld to the extent of setting aside of order dated 06.05.2017 passed by the Judicial Magistrate First Class, Moga, however, the petition deserves to be partly allowed to the

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extent of the direction issued by the Additional Sessions Judge, Moga in para No.16 of the order dated 07.01.2020 directing summoning of the petitioners, which reads thus:-

“16. Consequently, the instant revision petition is hereby allowed and impugned order dated 06.05.2017 passed by the learned trial court is set aside whereby, all the respondents are ordered to be summoned to face the trial for the offences punishable under Sections 420, 465, 467, 468, 471, 120-B. Learned Trial Court is directed to proceed with the complaint as per law. Lower court record alongwith copy of this order be sent back forthwith. Counsel for parties are directed to appear before the successor court of Mrs. Shilpa, learned JMIC, Moga on 27.01.2020. Revision file be consigned to the record room”

18. The present petitions are accordingly ***partly allowed***. The order passed by the Additional Sessions Judge, Moga is ordered only to be read as an order of remand and the order, to the extent whereby the petitioners have been summoned for offences under Sections 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code, 1860, is set aside. The Judicial Magistrate First Class, Moga is directed to conduct further inquiry and to consider the case on its own merits and to pass a fresh order as per merits and law, after taking into consideration the legal principles and arguments that may be advanced by the parties.

19. Pending application(s), if any, shall stand disposed of.

(VINOD S. BHARDWAJ)
JUDGE

23.01.2026

Sumit Gusain

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