

(2019) 01 P&H CK 0205

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 32372 Of 2016 (O&M)

Luxmi Narain @ Tala And Others

APPELLANT

Vs

State Of Haryana And Another

RESPONDENT

Date of Decision : 30-01-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Indian Penal Code, 1860 — Section 148, 149, 323, 324, 325, 326, 452, 504, 506

Citation : (2019) 01 P&H CK 0205

Hon'ble Judges : Mahabir Singh Sindhu, J

Bench : Single Bench

Advocate : Ashit Malik, Yashwinder Singh, G.S. Sandhu

Judgement

Mahabir Singh Sindhu, J

Present petition has been filed under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') praying for quashing of the impugned judgment dated 07.06.2016 (P-4), passed by learned Additional Sessions Judge, Karnal (for short 'Revisional Court'), whereby the order dated 25.01.2014 (P-3), dismissing the complaint of respondent No.2, has been set aside and matter remanded back for fresh adjudication. Further prayer is for quashing the order dated 29.07.2016 (P-5), vide which, the petitioners were ordered to be summoned in the said complaint consequent upon the remand of the matter.

It is contended by learned Counsel for the petitioners that learned Revisional Court, while allowing the revision petition filed at the instance of the complainant/respondent No.2, did not even issue the notice to the present petitioners (respondents therein) and straightway allowed the same while setting aside the order dated 25.01.2014 (P-3) and remanded the matter back to learned trial Court.

The contention is opposed by learned Counsel for respondent No.2 on the premise that no prejudice has been caused to the petitioners and simply the

matter has been remanded for fresh adjudication by learned trial Magistrate.

Heard both sides and perused the paper-book.

Undisputedly, Criminal Complaint No.25/11 dated 10.05.2011 was filed by respondent No.2-Ravi Kumar for prosecution of the petitioners under Sections 323, 324, 325, 326, 504, 506, 452, 148 and 149 of the Indian Penal Code and after recording preliminary evidence, the said complaint was dismissed by learned Judicial Magistrate 1st Class, Karnal (for short 'JMIC'), vide order dated 25.01.2014 (P-3).

Aggrieved against the above order, revision petition was filed by respondent No.2/complainant and the same has been allowed by learned Revisional Court without hearing the petitioners (respondents therein).

Although, the complaint was dismissed by learned JMIC without issuing any notice to the petitioners, but the fact remains that they have not been heard by the Revisional Court before passing the impugned judgment (P-4). Once the petitioners were impleaded as party respondents in the revision petition, then before proceeding further in the matter, it was obligatory for the learned Revisional Court that at least notices should have been issued to the petitioners (respondents therein) for adjudication of the revision petition.

Since the petitioners, being the aggrieved party, have not been heard before passing the impugned judgment and as such, the same cannot be sustained in the eyes of law as the law is well settled that no one should be condemned unheard. Even a reference can be made to the judgment of the Hon'ble Supreme Court titled as 'Gurdev Singh Versus Surinder Singh and others', 2015(3) SCC 773 in a similar situation and part of para 7 of the same, being relevant, reads as under:-

" Thus, it was obligatory on the Additional Sessions Judge to hear the accused before setting aside the order of dismissal of complaint in his revisional jurisdiction. Of course, once the matter is remanded to the Addl. C.J.M., the accused will have no right of hearing because at pre-process stage, the law does not give him any such right. It is only in the aforementioned situation that the accused is entitled to a hearing. "

In view of the discussion made above as well as the judgment of Hon'ble Supreme Court, this Court has no option except to allow the present petition and set aside the impugned judgment dated 07.06.2016 (P-4), passed by learned Revisional Court as well as the consequent summoning order dated 29.07.2016 (P-5), passed by learned JMIC.

Ordered accordingly.

Both the parties shall appear before the Revisional Court on 15.02.2019.

Learned Revisional Court is requested to decide the matter expeditiously.

The observations may not be considered as an expression of opinion on the merits of the case.