

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **CRL.M.C. 2393/2012**

+ **Date of Decision: 29th August, 2012**

Jubilant Organosys Ltd. Petitioner

! Through: Mr. Ramesh Gupta, Sr. Advocate
With Mr. Sumit Arora &
Mr. Kapil Dua, Advocates

versus

\$ **Engineering Traders Corp. & Anr. Respondents**

Through: Ms. Jyoti Singh, Sr. Advocate
with Mr. Manish Jain &
Ms. Swati Sehgal, Advocates for
R-1

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J(ORAL)

The only grievance of the petitioner in this petition is that after the criminal complaint of the respondent no.1-complainant filed against the petitioner under Sections 420/120-B of the Indian Penal Code had been dismissed by the learned Metropolitan Magistrate on the ground that on the basis of pre-summoning evidence adduced by the complainant no case was made out for summoning the petitioner herein the revision petition filed against that order by the respondent no.1-complainant could not have been allowed without issuing any notice to the petitioner of the revision petition.

Mr. Ramesh Gupta, learned senior counsel for the petitioner submitted that the Metropolitan Magistrate had after declining the request of respondent no.1-complainant herein to direct the police to register an FIR against the petitioner under Section 420 r/w Section 120-B IPC in exercise of its powers to that effect under Section 156(3) of the Code of Criminal Procedure, 1973(Cr. P.C.) called upon the respondent no.1-complainant to adduce its pre-summoning evidence as provided under Section 200 Cr. P.C. After recording the pre-summoning evidence the complaint against the petitioner and some other persons was dismissed by the Metropolitan Magistrate vide his order dated 11.11.2010 holding that no *prima facie* case of commission of any offence by the accused was made out. Thereafter, the respondent no.1-complainant had challenged that order by filing a criminal revision petition in the Sessions Court and in that revision petition even though the respondent no.1-complainant itself had impleaded the petitioner herein also as a respondent but the Sessions Court did not issue any notice to it and after hearing counsel for the complainant only allowed the revision petition vide its order dated 28.04.2011 and remanded back the matter to the Court of the Metropolitan Magistrate for a fresh decision after taking into consideration some evidence adduced by the complainant which earlier had not been considered while dismissing the complaint. Learned senior counsel also contended that the reversal of the order of the dismissal of the criminal complaint of the Metropolitan Magistrate in revision with affording an opportunity of hearing to the petitioner herein has caused prejudice to the

petitioner inasmuch as it was the beneficiary of that order of the trial Court.

Learned senior counsel submitted that the revision petition of the respondent no.1-complainant could not have been allowed without notice to the petitioner in whose favour there was an order from the Court of the Metropolitan Magistrate and particularly when the petitioner was impleaded as a respondent in the revision petition and the revisional Court had decided not to dismiss that petition in *limine*. In support of this submission Mr. Ramesh Gupta placed reliance on a recent judgment of the Supreme Court in “**A.N. Santhanam Vs. K. Elangovan**”, 2011(2) JCC 720.

On the other hand, Ms. Jyoti Singh, learned senior counsel for the respondent no. 1-complainant submitted that there no doubt the Supreme Court had in the decision cited by Mr. Ramesh Gupta observed that the High Court should not have reversed the order of the Magistrate without notice to the appellant before it but that observation was made since the High Court there had while allowing the revision petition observed that there was sufficient material brought on record by the complainant in his pre-summoning evidence which justified summoning of the appellant there and therefore, there was an order prejudicial to the appellant there and so he should have been heard by the High Court. However, Ms. Jyoti Singh submitted, in the present case there was no such order passed by the Sessions Court and all that was done in revision was that the Magistrate was directed to re-consider the matter after considering some piece of evidence which had earlier been left out from consideration. Thereafter also the Magistrate

could dismiss the complaint, submitted Ms. Singh, and thus no prejudice could be said to have been caused to the petitioner by the Sessions Court by not giving any notice of the revision petition to it. Ms. Jyoti Singh placed strong reliance on one Single Judge Bench decision of this Court in **“Prakash Devi & Ors. Vs. State of Delhi & Anr.”**, 2010 [4] JCC 2833, which decision was subsequently followed by another Single Judge Bench of this Court in the case of **“Tata Motors Ltd. Vs. State”**, MANU/DE/0845/2009, in support of her contention that since there was no order of the Magistrate summoning the petitioner as an accused it had no right to be heard by the revisional Court.

After having given my anxious consideration to the rival submissions and also going through the judgments cited from both the sides I am of the view that the impugned order cannot be sustained in view of the pronouncement of the Supreme Court in Santhanam’s case (supra), cited on behalf of the petitioner. The facts of that case were that the criminal complaint of the complainant of that case was dismissed by the Magistrate finding no *prima facie* case for summoning the person impleaded in the complaint as an accused on the basis of pre-summoning evidence adduced by the complainant. That dismissal of the complaint was challenged by the complainant by filing a revision petition in the High Court. The High Court reversed the order of the Magistrate and observed that a clear case was made for the summoning of the person whose prosecution was being sought for by the complainant. That person then approached the Supreme Court and challenged the High Court’s order on the ground that he had not

been given any opportunity of being heard by the High Court before allowing the revision petition. The Supreme Court accepted that contention of the appellant and set aside the order of the High Court and directed fresh hearing of the revision petition by the High Court after hearing the appellant, against whom the Magistrate had not found any case but the High Court had come to the conclusion in revision that there was sufficient evidence to proceed against him. This decision of the Supreme Court applies on all fours to the facts of the present case.

Same was the view taken by the Supreme Court in its earlier judgment in the case of **“Raghu Raj Singh Rousha vs Shivam Sundram Promoters(P) Ltd.”**, (2009) 2 SCC 363. In that case also, as in the present case, the complainant had alongwith its criminal complaint filed an application under Section 156(3) Cr.P.C. but that application was rejected by the Magistrate and the complainant was called upon to adduce pre-summoning evidence. The complainant challenged that order by filing a revision petition in the High Court which, in turn, allowed the revision petition and remanded back the matter to the Magistrate for fresh consideration. That order of the High Court, which was passed without any notice to the person sought to be prosecuted, was then challenged by that person before the Supreme Court. The Supreme Court allowed that appeal and directed the High Court to decide the matter afresh after hearing the appellant therein who was sought to be prosecuted by the complainant of that case. It was observed by the Supreme Court that since the Magistrate had taken cognizance by calling upon the complainant to adduce pre-summoning evidence after

rejecting its application under Section 156(3) Cr.P.C. the person impleaded in the complaint as an accused was entitled to be heard by the High Court as the revisional Court. So, the order of the High Court remitting back the matter to the Magistrate was set aside since it was passed without notice to the person sought to be prosecuted. This judgment was though noticed by the Single Judge Bench which had decided the case of Tata Motors (supra) but was not followed on the ground that in the said case no cognizance had been taken by the Magistrate. In the present case the Magistrate had after dismissing the application of the respondent no.1-complainant under Section 156(3)Cr. P.C. called upon the complainant to adduce pre-summoning evidence, as was the situation Ragh Raj Singh's case(supra) also. So, applying the decision of the Supreme Court in Raghu Raj Singh's case to the facts of the present case it has to be held that since the Magistrate had taken cognizance the Sessions Court was supposed to hear the petitioner herein before allowing the revision petition of the respondent no.1 herein.

There was an additional reason also for hearing the petitioner by the Sessions Court after issuing notice to it and that reason was that the complainant itself had impleaded the petitioner herein in its revision petition and the Sessions Court had not dismissed the revision petition in *limine*.

The decisions of this Court, relied upon by the learned senior counsel for the respondent no.1, were rendered before the judgment of the Supreme Court in Santhanam's case(supra) and, therefore, even though in those decisions it was held that a person

who had not been summoned as an accused has no right to be heard by the revisional Court where the complainant challenges the dismissal of his complaint in *limine* by the Magistrate the same are of no help to the respondent no.1. Even otherwise also, in the facts of those cases it was observed that the Magistrate had not taken any cognizance and so the proposed accused, who had not been summoned as an accused, had no right to be heard by the revisional Court when the criminal complaint had been dismissed in *limine*.

In the present case it is clear that the Magistrate had taken cognizance when he called upon the respondent no.1-complainant to adduce its pre-summoning evidence. The Supreme Court had in the case of **“Gopal Das Sindhi vs State of Assam and another, AIR 1961 Supreme Court 986** held that pre-summoning evidence in a complaint case can be recorded after the Magistrate has taken cognizance. Same view was taken by Calcutta High Court in **“Kishori Mohan Guchhait vs Sri Apurba Baran Mondal”, 1979 CrL.L.J. 1099.**

I am not inclined to accept the submission of the learned senior counsel for respondent no.1 that the judgment of the Supreme Court in Sanathan’s case cited from the other side is distinguishable just because in that case the revisional Court had not remanded back the matter to the Magistrate but had come to the conclusion that there was a case made out for summoning the accused impleaded in the complaint. The Supreme Court’s views in that case and in Raghu Raj Singh’s case(supra) are clear that if a Magistrate after taking cognizance and recording pre-summoning

evidence in terms of Section 200 Cr. P.C. dismisses the complaint and that order is challenged in revision the revisional Court has to dispose of the revision petition, one way or the other, after giving an opportunity of hearing to the person who is sought to be summoned as an accused and in whose favour there is already an order of dismissal of criminal complaint. It is not the position in law that the revisional Court is first to form a tentative opinion about the fate of the revision petition and then to give notice to the person sought to be prosecuted in case the tentative opinion is against the order of the Magistrate and the revisional Court intends to reverse the order of dismissal of the complaint which is definitely an order favourable to the person sought to be summoned as an accused. Once that order is found to be unsustainable by the revisional Court without hearing that person then the damage is already done and giving of hearing to that person after that would be meaningless.

This petition is, therefore, allowed and the impugned order of the learned Additional Sessions Judge is set aside and it is directed to decide the revision petition afresh after giving an opportunity of hearing to the petitioner herein also. For that purpose, the revision petition shall now stand revived and shall be taken up for hearing by the revisional Court on 28th September, 2012 at 2 p.m.

P.K. BHASIN, J

AUGUST 29, 2012/pg