

In the High Court of Punjab and Haryana at Chandigarh.

CRM-M-11344-2014

Date of Decision: 01.12.2015

Kaushalya and another

...Petitioners

Versus

Pushpa Devi

...Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. S.P. Chahar, Advocate,
for the petitioners.

Mr. M.S. Kathuria, Advocate, for
Mr. Rakesh Nehra, Advocate,
for the respondent.

SABINA, J.

Petitioners have filed this petition challenging the order 23.03.2013.

Learned counsel for the petitioners has submitted that vide order dated 02.11.2011, petitioner No.2 was ordered to be summoned to face the trial qua offence punishable under Section 497 of Indian Penal Code, 1860 ('IPC' for short). So far as Petitioner No.1 is concerned, he was ordered to be discharged. Aggrieved against the said order, respondent preferred a revision petition. However, vide impugned order dated 23.03.2013, the revision petition filed by the respondent was allowed without affording an opportunity of hearing to the petitioner. Learned counsel for the petitioner has placed

reliance on “***Manharibhai Muljibhai Kakadia Vs. Shaileshbhai Mohanbhai Patel and Others 2012 (4) RCR (Civil) 689***, wherein it was held as under:-

“We are in complete agreement with the view expressed by this Court in P. Sundarrajan, Raghu Raj Singh Rousha and A.N. Santhanam. We hold, as it must be, that in a revision petition preferred by complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed crime is entitled to hearing by the revisional court. In other words, where complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the revisional court overturns the order of the

Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed crime have, however, no right to participate in the proceedings nor they are entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgment of the High Courts to the contrary are overruled.”

Learned counsel for the respondent, on the other hand, has opposed the petition.

In the present case, facts are not in dispute. Respondent had filed a complaint against the petitioner under Sections 497, 302, 201/34 IPC. Vide order dated 02.11.2011, the trial Court ordered to summon the petitioner No.2 qua commission of offence punishable under Section 497 IPC. So far as petitioner No.1 is concerned, she was ordered to be discharged. Respondent preferred a revision petition against the order dated 02.11.2011. Service of petitioners was dispensed with by the court of revision as they had not put in appearance before the trial Court before passing of the summoning order. The Court of Revision allowed the revision

petition and ordered that the petitioners be summoned to face the trial. Court of revision was required to issue notice to the petitioner before setting aside the order passed by the trial Court. As the complaint was dismissed, a valuable right had accrued to the petitioners, therefore, petitioners were required to be heard before an adverse order was passed against them.

Accordingly, this petition is allowed. Impugned order dated 23.03.2013 is set aside and the court of revision is directed to pass a fresh order in accordance with law.

December 01, 2015
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(SABINA)
JUDGE