

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

CRM No.M-20744 of 2013 (O&M)

Date of Decision: 17.03.2015

Kulwant Singh & Ors.

.....Petitioners

Versus

State of Punjab & Anr.

.....Respondents

CORAM: HONBLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.S. Siao, Advocate
for the petitioners.

Ms. Anmol Grewal, AAG, Punjab.

Mr. Gopal Sharma, Advocate
for respondent No.2.

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the order dated 08.04.2013 (Annexure P5) passed by the learned Addl. Sessions Judge, Fatehgarh Sahib, petitioners have approached this Court by way of instant petition under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') , for quashing the impugned order whereby the order dated 03.08.2010 (Annexure P4) passed by learned JMIC, Fatehgarh Sahib dismissing the complaint, was set aside without issuing notice to the accused.

Notice of motion was issued and pursuant thereto learned counsel for the respondents put in appearance.

On 10.02.2015, following order was passed by this Court:

“Learned counsel for the parties pray for time to go through the judgment of Hon'ble the Supreme Court in the matter of **Manharibhai Muljibhai Kakadia and another Vs. Shaileshbhai Mohanbhai Patel and others, 2012 (4) R.C.R. (Criminal) 689.**

In the interest of justice, adjourned to 20.02.2015.”

Learned counsel for the petitioners as well as the learned counsel for respondent No.2 are ad idem that this case is squarely covered by the judgment of Hon'ble the Supreme Court in **Manharibhai Muljibhai Kakadia and another Vs. Shaileshbhai Mohanbhai Patel and others, 2012 (4) R.C.R. (Criminal) 689** and the present petition may be disposed of in terms thereof, remanding the case back to the learned Sessions Judge.

In addition to above, learned counsel for the petitioners also submits that the learned Additional Sessions Judge has exceeded his jurisdiction, while issuing direction to the learned trial Court to summon the accused and that too, without issuing any notice to them.

Having heard the learned counsel for the parties at considerable length and after careful perusal of the record of the case, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, instant petition deserves to be allowed, having been found squarely covered by the judgment of the Hon'ble Supreme Court in Manharibhai Muljibhai Kakadia's case (supra).

The observations made by the Hon'ble Supreme Court in para 57 and 58 of the judgment in Manharibhai Muljibhai Kakadia's case (supra), which can be gainfully followed in the present case, read as under:

“57. In a comparatively recent order in A.N. Santhanam, a two-Judge Bench of this Court was concerned with a question, whether the High Court committed an error in disposing of the criminal revision petition filed by the complainant without any notice to the accused. On behalf of the accused/suspect, it was argued that the High Court committed the error in disposing of the criminal revision without any notice to him. On the other hand, on behalf of

the complainant it was argued that no notice as such was required to be issued to the accused as it was at the stage of taking cognizance. The Court considered Section 401, particularly, sub-section (2) thereof and held as under:

“A plain reading of Clause (2) of the said provision makes it abundantly clear that the High Court in exercise of its revisional power cannot pass any order which may cause prejudice to the accused or other persons unless he has an opportunity of being heard either personally or by pleader in his own defence.

In the instant case it cannot be said that the rights of the appellant have not been affected by the order of revision. The complaint filed by the respondent which was rejected for whatsoever reasons has been resurrected with a direction to the Magistrate to proceed with the complaint. Undoubtedly, whether the appellant herein was an accused or not but his right has been affected and the impugned order has resulted in causing prejudice to him.

In the circumstances, we are of the view that the decision cited by the learned counsel for the respondent has no application whatsoever to the facts situation. In fact the decision of this Court was in a case where the complaint was taken cognizance and not a case where the complaint was rejected. In the circumstances, we hold that the High Court committed an error in allowing the revision filed by the respondent herein without any notice to the appellant.

For the aforesaid reasons, the impugned order is set aside and the Criminal Revision Case No.1045 of 2003 shall stand restored to its file for hearing and disposal on merits after notice to the appellant herein.”

58. We are in complete agreement with the view expressed by this Court in P. Sundarrajan, Radhu Raj Singh Rousha and A.N. Santhanam. We hold, as it must be, that in

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 judgments of the High Courts to the contrary are overruled”.

No other argument was raised.

Considering the peculiar facts and circumstances of the present case noted above, coupled with the reasons aforementioned and to secure the ends of justice, this Court is of considered view that the impugned order is an order without jurisdiction and the same cannot be sustained.

Consequently, impugned order dated 08.04.2013 passed by the learned Additional Sessions Judge, Fatehgarh Sahib (Annexure P5) is set

aside. Matter is remitted back to the learned Addl. Sessions Judge,

Fatehgarh Sahib to pass a fresh order, strictly in accordance with the law.

It goes without saying that even if the learned Addl. Sessions Judge comes to the conclusion that the order dated 03.08.2010 passed by the learned JMIC was to be set aside, still the learned Addl. Sessions Judge, Fatehgarh Sahib shall not exceed his jurisdiction, while issuing a direction to the learned trial Court for summoning the accused. It is so said because it is the sole prerogative of the learned trial Court to decide as to whether any accused is to be summoned or not.

With the above said observations made and directions issued, present petition stands allowed, however, with no order as to costs.

17.03.2015

Bhumika

**(RAMESHWAR SINGH MALIK)
JUDGE**