

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

CRM No.M-9445 of 2011 (O&M)

Ajit and another

...Petitioners

VERSUS

State of Haryana and another

...Respondents

(2)

CRM No.M-10878 of 2011 (O&M)

Satbir Singh Malik and another

...Petitioners

VERSUS

State of Haryana and another

...Respondents

Date of Decision: February 20, 2015

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Bedi, Senior Advocate with
Mr.A.S.Sodhi, Advocate,
for the petitioners (in CRM No.M-9445 of 2011).

Mr.J.S.Mehndiratta, Advocate
for the petitioners (in CRM No.M-10878 of 2011).

Mr.Varun Sharma, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Vikram Punia, Advocate
for respondent No.2.

INDERJIT SINGH, J.

Both the above-mentioned petitions are taken up together
being arisen from same FIR.

First petition i.e. CRM No.M-9445 of 2011 has been filed
by the petitioners under Section 482 Cr.P.C. for quashing of FIR
No.224 dated 12.09.2005 under Sections 498-A, 406, 494 and 107

IPC, registered at Police Station Civil Line, District Sonapat, the report under Section 173 Cr.P.C., order dated 15.01.2011 passed by learned Addl. Sessions Judge, Sonapat and all subsequent proceedings.

Second petition i.e. CRM No.M-10878 of 2011 has been filed by the petitioners under Section 482 Cr.P.C. for quashing of the order dated 15.01.2011 passed by learned Addl. Sessions Judge, Sonapat, whereby order dated 05.04.2010 passed by learned Addl. Chief Judicial Magistrate, Sonapat was set aside and petitioners were ordered to be summoned to face trial in case FIR No.224 dated 12.09.2005.

The facts are taken from CRM No.M-9445 of 2011.

Petitioners Ajit Singh and Indira Wati are the parents of Vinod Kumar, son-in-law of the complainant Hawa Singh respondent No.2. It is stated that Vinod was married to the daughter of the complainant namely Santosh. A child was also born to the couple. Ultimately, due to certain temperamental differences, the couple have since separated. Hawa Singh, father of the girl got registered present FIR No.224 dated 12.09.2005 under Sections 498-A, 406, 494 and 107 IPC, registered at Police Station, Civil Line, District Sonapat. After due investigation, the petitioners of first petition along with their co-accused i.e. petitioners of second petition were placed in column No.2 at the time of filing of report under Section 173 Cr.P.C. The complainant moved an application for summoning the petitioners on 13.12.2005, which was kept pending and after framing of the charge against Vinod Kumar under Sections 498-A, 406 and 494 IPC, the

statement of Surjit Khatri, admittedly a student of the complainant was recorded as PW-1. Learned ACJM, Sonapat declined to summon the petitioners under Section 319 Cr.P.C vide order dated 05.04.2010. Thereafter, complainant went in the revision petition against the aforesaid order of learned ACJM, Sonapat and learned Addl. Sessions Judge, Sonapat reversed the order and directed summoning of the petitioners vide impugned order dated 15.01.2011.

Notice of motion was issued in both the petitions and learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petitions.

At the time of arguments, learned counsel for the petitioners argued that the revision petition has been decided by learned Addl. Sessions Judge, Sonapat, without giving any notice to the present petitioners. The notice was only given to the accused Vinod Kumar against whom the challan was presented and who was facing the trial, which is clear from para No.6 of the impugned order dated 15.01.2011 as under:-

“6. Notice of the petition was given to the respondent/accused Vinod and Lower Court Record was requisitioned.”

This argument was admitted by learned State counsel as well as learned counsel for respondent No.2 that no notice was given to the present petitioners before deciding the revision petition.

Learned counsel for the petitioners cited judgment passed by the Hon'ble Supreme Court in ***Mohit alias Sonu and another vs. State of Uttar Pradesh and another, (2013) 7 SCC 789***, in which it is

held as under:-

“33. The second question that needs consideration is as to whether the High Court exercising its revisional jurisdiction or inherent jurisdiction under Section 482 Cr.P.C., while considering the legality and propriety of the order passed under Section 319 of Cr.P.C. Code is required to give notice and opportunity of hearing to the person in whose favour some right accrued by virtue of order passed by the trial court. In other words, whether it would be justified for the High Court to entertain a petition under Section 482 of Cr.P.C. and pass order to the prejudice of the accused or other person (the appellants herein) without giving notice and opportunity of hearing to them.

34. Indisputably, a valuable right accrued to the appellants by reason of the order passed by the Sessions Court refusing to issue summons on the ground that no prima facie case has been made out on the basis of evidence brought on record. As discussed hereinabove, when the Sessions Court order has been challenged, then it was incumbent upon the revisional court to give notice and opportunity of hearing as contemplated under sub-section (2) of Section 401 of Cr.P.C. In our considered opinion, there is no reason why the same principle should not be applied in a case where such orders are challenged in the High Court under Section 482 of Cr.P.C.

35. Recently, a 3-Judge Bench of this Court in the case of Manharibhai Muljibhai Kakadia and Another v. Shaileshbhai Mohanbhai Patel and Others considered the question as to whether in a case where an order of the Magistrate dismissing the complaint under Section 203 of Cr.P.C. at the stage under Section 200, the accused or a person who is suspected to have committed the crime is entitled to hearing by the revisional court. After considering all the earlier decisions, in the case of P. Sundarrajan v. R. Vidya Sekar, Raghu Raj Singh Rousha v. Shivam Sundaram Promoters (P) Ltd. and A.N.Santhanam v. K. Elangovan, this Court held as under:-

“53. 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 the 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 the crime is entitled to hearing by the Revisional Court. In other words, where the 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 the crime have, however, no right to participate in the proceedings nor are they 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.”

Keeping in view the law laid down by the Hon'ble Supreme Court in above cited judgment, notice to the present petitioners was necessary before deciding the revision petition. Therefore, the impugned order dated 15.01.2011 passed by learned Addl. Sessions Judge, Sonapat is set aside. Therefore, finding merit in both the petitions, the same are allowed.

The matter is remanded back to the learned Addl. Sessions Judge, Sonapat for hearing afresh after giving due notice to all the parties, so that, the same may be disposed of in accordance with law.

February 20, 2015
Vgulati

(INDERJIT SINGH)
JUDGE