

CRR No.3305 of 2012 (O&M)

KUMAR MANOJ
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CRR No.3305 of 2012 (O&M)
Date of Decision: November 17,2015**

Vikram Singh, Karta Verinder & Vikram HUF

....Petitioner

Versus

The Collector, Karnal and Others

....Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

- 1. Whether Reporters of local papers may be allowed to see the judgment? Yes*
- 2. To be referred to the Reporters or not? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Vikram Singh, petitioner in person.

Mr. Sanjay Kumar, AAG, Haryana.

NARESH KUMAR SANGHI, J (Oral)

Cr1.M.No.63328 of 2012

Prayer in this application filed under Section 482 Cr.P.C, is for condonation of delay of 13 days in filing the present criminal revision petition.

After hearing the petitioner in person and going through the contents of the application, which is duly supported by an affidavit, the delay of 13 days in filing the present revision petition is condoned.

Criminal miscellaneous application stands disposed of.

Main case

Challenge in the present criminal revision petition is

to the order dated 05.07.2012 passed by learned Judicial Magistrate, First Class, Karnal whereby the complaint No.COMI/1800041/2011, Date of Institution-1.7.2011, titled Vikram Singh Karta Verinder and Vikram HUF Vs. The Collector, Karnal and others, was dismissed.

At the very outset of the hearing of the present criminal revision petition, the petitioner, who is arguing the present petition in person, was asked by this Court to narrate the names of the respondents-accused. The petitioners replied that in view of the provisions contained in Sections 16 & 17 of the Environment Protection Act, 1986, the complaint was maintainable even if the accused were arrayed by their designation. He was once again told that in view of **Manharibhai Muljibhai Kakadia and Another Vs. Shaileshbhai mohanbhai Patel and Others, (2012) 10 Supreme Court Cases 517**, the present criminal revision petition cannot be adjudicated without affording an opportunity to the respondents-accused. The petitioner stated that his petition be decided on merits. He was also cautioned that if so advised, he could be permitted to withdraw the present petition and to file a fresh one after arraying the necessary parties by name as respondents but still the petitioner insisted that present petition be decided on merits. To elaborate his submissions, he has referred to the reply dated 26.7.2013 filed by the Tehsildar, Karnal on behalf of respondent Nos.1,2 & 3 to assume that the respondents-accused had notice of the present petition.

Section 398 Cr.P.C reads as under:

“398. Power to order inquiry- On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (4) of section 204, or into the case of any person accused of an offence who has been discharged:

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.”

Sub Section (2) of Section 401 Cr.P.C reads as under:

“401. High Court's powers of revision-

(1) xx xx

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.”

In para 46 of the judgment of **Manharibhai's case** (**supra**), Hon'ble Supreme Court held as under:

““46. The legal position is fairly well-settled that in

the proceedings under [Section 202](#) of the Code the accused/suspect is not entitled to be heard on the question whether the process should be issued against him or not. As a matter of law, upto the stage of issuance of process, the accused cannot claim any right of hearing. [Section 202](#) contemplates postponement of issue of process where the Magistrate is of an opinion that further inquiry into the complaint either by himself is required and he proceeds with the further inquiry or directs an investigation to be made by a Police Officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. If the Magistrate finds that there is no sufficient ground for proceeding with the complaint and dismisses the complaint under [Section 203](#) of the Code, the question is whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant against the order of the dismissal of the complaint. The Parliament being alive to the legal position that the accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process under [Section 204](#), yet in [Section 401\(2\)](#) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence.”

In Para Nos.48 & 53 of the abovesaid judgment, it was held as under:

“48. In a case where the complaint has been dismissed

by the Magistrate under [Section 203](#) of the Code either at the stage of [Section 200](#) itself or on completion of inquiry by the Magistrate under [Section 202](#) or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of [Section 401](#), it cannot be said that the person against whom the allegations of having committed offence have been made in the complaint and the complaint has been dismissed by the Magistrate under [Section 203](#), has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate under [Section 203](#) – although it is at preliminary stage – nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of [Section 401\(2\)](#) of the Code, the suspects get the right of hearing before the Revisional Court although such order was passed without their participation. The right given to “accused” or “the other person” under [Section 401\(2\)](#) of being heard before the Revisional Court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under [Sections 200](#), [202](#), [203](#) and [204](#). In the revision petition before the High Court or the Sessions Judge at the instance of complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of express provision contained in [Section 401\(2\)](#) of the Code. The stage is not important whether it is pre-process stage or post process stage.

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 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 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 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.”

From the perusal of the substantive law contained in Sections 398 and 401 Cr.P.C in conjunction with the judgment passed by Hon'ble the Supreme Court in **Manharibhai's case** (**supra**), it is very clear that the respondents-accused have to be afforded an opportunity of hearing in a criminal revision petition

filed against dismissal of the complaint. Despite the reasons mentioned in the initial part of this order the petitioner has failed to array the respondents-accused by their names to whom he wants to prosecute, therefore the present petition is not maintainable.

Present criminal revision petition has been filed against the dismissal of the complaint by learned Judicial Magistrate, First Class before this Court, without first approaching the Court of Session. While reading the complaint annexed with the present petition, this Court is surprised to know that the respondents-accused have not been arrayed as accused by their names. Even if the allegations of the petitioner-complainant were to be accepted, then who were the persons before the learned Area Judicial Magistrate to be summoned to face trial. It is not the designation of a person, who has to be prosecuted in a criminal complaint, rather it is the offender by name, who has to be summoned and tried in accordance with law.

Learned Judicial Magistrate, Karnal while dismissing the complaint has observed as under:

“It is alleged by the complainant that despite injunction order dated 7.6.2006 regarding status-quo about creating any change in the land register with respect to the suit property till the decision of the suit, the defendants/accused initiated the acquisition proceedings qua his land and passed an Award dated 23.4.2009 thereby transferring the land in favour of HSIIDC and consequent mutation

was also entered in favour of such transferee. He alleged that the authorities concerned committed breach of fiduciary relationship in holding such land and intentionally violated the injunction order and hence committed the offences punishable under Sections 408 and 409 of the Indian Penal Code. It was conceded that various civil suits qua the very land were pending adjudication and he had moved the court passing injunction order dated 7.6.2006 for initiating contempt proceedings against the accused. He had also challenged the Land Acquisition proceedings and accepted the compensation money under protest. As such, it is quite apparent that the complainant had recourse to due procedure of law and his own conduct in accepting the award money is doubtful. It cannot be said that the accused were entrusted with the land which was misappropriated or converted to own use to the detriment of the complainant and as such, I do not find any sufficient ground for proceeding against the accused under Sections 408 & 409 of Indian Penal Code. Resultantly, the present complaint is not maintainable and is hereby dismissed. File be consigned to the record room after due completion and compliance.”

The submission of the petitioner that the reply filed by the Tehsildar, Karnal on behalf of respondent Nos.1,2 & 3 would be sufficient compliance of Sections 398 and 401 Cr.P.C, is not acceptable. At the cost of repetition, this Court once again holds that in a complaint, the accused has to be arrayed by name though his designation can also be mentioned but the name and his identity is essential. Since the petitioner-complainant has

failed to array the accused by name not only in the complaint presented before the Area Judicial Magistrate but also before this Court, therefore, keeping in view the substantive law and the ratio of the judgment delivered by Hon'ble Supreme Court in **Manharibhai's case (supra)**, the present petition is dismissed.

Since the main criminal revision petition has been dismissed, therefore, ancillary miscellaneous applications enclosed herewith are also disposed of.

November 17, 2015
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(NARESH KUMAR SANGHI)
JUDGE