

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

CRR No.3712 of 2014 (O&M)

Date of decision: 30th June, 2015

Tarawati and others

... Petitioners

Versus

Santosh Devi and another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ashwani Bhardwaj, Advocate
for the petitioners.

Mr. Vijay Sangwan, Advocate
for respondent No.1.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for respondent No.2.

FATEH DEEP SINGH, J.

In a criminal complaint titled 'Smt. Santosh Devi v. Updesh and others' under Section 323/325/354/452/506/294/148/149 IPC (Annexure P4), the Court of learned Judicial Magistrate 1st Class, Narnaul through orders dated 05.07.2012 summoned only one person Updesh wife of Rajender under Section 323/452 IPC as an accused whereas dismissed the complaint against the other accused. Against this order, a criminal revision was preferred by the complainant and

the Court of learned Additional Sessions Judge, Narnaul through impugned order dated 21.08.2013 (Annexure P1) set aside the order of the learned Magistrate and while allowing the revision petition ordered summoning of all these persons as accused by directing the learned Magistrate to pass fresh orders keeping in view observations of the revisional Court.

It is against these findings the accused present revisionists have challenged through this invocation the findings of the lower revisional Court.

Heard Mr. Ashwani Bhardwaj, Advocate for the petitioners; Mr. Vijay Sangwan, Advocate for respondent No.1 and Mr. Munish Sharma, Asstt. Advocate General, Haryana for respondent No.2.

It is clearly conceded by the learned counsel for the contesting sides that after examination of the complainant and his witnesses, learned Magistrate taking cognizance of an offence on a complaint may issue process against the accused by summoning them if the evidence is of so nature and in terms of Section 203 Cr.P.C. if upon consideration of this evidence the Court comes to a conclusion that there is no sufficient ground for proceeding, the Court of a Magistrate can dismiss the complaint with its reasoning. By virtue of Section 397 Cr.P.C., the High Court and the Sessions Court has been given the powers of revision for the purposes of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order passed by an inferior Court; and Section 401 Cr.P.C. enlists the High Courts' powers of revision and there is no bar for this Court to

entertain a revision even at the behest of a private party, who is complainant.

The finer distinction thus needs to be made between exercise of powers under Section 399 Cr.P.C. by a Sessions Court and by a High Court under Section 401 Cr.P.C. However, Section 399(1) Cr.P.C. lays down that a Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of Section 401 Cr.P.C. and by virtue of sub-section (2) of Section 399 Cr.P.C. even a Sessions Judge can exercise the powers under Section 401(2), (3), (4) and (5) Cr.P.C. As has been contended on behalf of the revisionists, Section 401(2) Cr.P.C. contemplates as follows:

“401. High Court’s powers of revision –

(1) xxxx xxxx xxxx

(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.”

Interpreting the same, Hon’ble the Supreme Court in **‘Manharibhai Muljibhai Kakadia and another v. Shaileshbhai Mohanbhai Patel and others’ 2013 AIR (SC) (Cri) 34** has laid down the proposition that where in an eventuality a complaint is dismissed by a Magistrate in exercise of powers under Section 203 Cr.P.C. The proceedings in a criminal complaint against the person who is alleged to have committed crime and a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court

or Sessions Court by virtue of Section 401(2) Cr.P.C. the suspects get right of hearing before the revisional Court although such order was passed without their participation. It was emphatically made clear by their Lordships that the right given to an accused or the other persons under Section 401(2) Cr.P.C. "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 Section 200, 202, 203 and 204 Cr.P.C. thereby holding that in 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) Cr.P.C. irrespective of the stage whether it is pre-process stage or post-process stage.

Attention of this Court is drawn to the impugned order where the learned Additional Sessions Judge failed to issue process to the accused/petitioners Tarawati, Amar Singh, Harpal Singh and Malkhan Singh and only issued notice to accused Updesh who had been summoned as the lone accused in the complaint by the learned Magistrate.

Thus, in view of the above discussion and the ratio, the learned Sessions Judge has certainly erred in robbing the present revisionists of their valuable right granted under the Statute. Thus, by this denial of legitimate opportunity and right, has resulted into miscarriage of justice and immense prejudice to the case of the present revisionists who are sought to be summoned. In view of the same, the impugned order of the learned Sessions Judge does not

sustain and is set aside being perverse and illegal by way of acceptance of the instant revision petition.

Records be sent back forthwith.

(FATEH DEEP SINGH)
JUDGE

June 30, 2015

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