

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-4272-2014 (O&M)
Date of decision: 30.07.2015

Gurmit Singh and ors.

... Petitioners

Vs.

Joga Singh

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rahul Bhargava, Advocate
for the petitioners.

Mr. Ravi Malhotra, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Present criminal revision petition, at the instance of accused-petitioners, is directed against the revisional order dated 11.07.2014 passed by learned Additional Sessions Judge, Amritsar, whereby he allowed the revision petition of the complaint-respondent Joga Singh, without issuing notice to the petitioner.

Brief facts of the case, as noticed by learned trial Magistrate in para 2 of his order dated 24.02.2014 (Annexure P-2), are that accused Pavitar Singh was the President of Gurdwara Sri Teg Bahadur, Nehru Colony and

Gurmit Singh was the Chairman of the aforesaid Gurdwara and Lakhwinder Singh had been deputed as Granthi thereof; that the complainant along with his family had been visiting the aforesaid Gurdwara and on account of that complainant and his family members were known to Gurmit Singh and Pavitar Singh; that Inderjit Singh and Kashmir Singh had also been visiting the aforesaid Gurdwara; that on 01.09.2009, when Bhog Ceremony of Akhand Path Sahib was being performed in the Gurdwara, Lakhwinder Singh went to the third floor of the Gurdwara and committed immoral activities and on account of that, rolla was raised in Gurdwara and report of that was lodged in Police Station Vijay Nagar; that on 03.09.2009 at about 8:00 AM Kashmir Singh and other followers met Pavitar Singh, President of the Gurdwara who was present in the Gurdwara and complained to him about the illegal activities of Lakhwinder Singh. Upon that, accused Pavitar Singh threatened the aforesaid persons and warned them not to come again or they will have to face serious consequences. Thereafter, on 03.09.2009 at about 9:00 AM, complainant Joga Singh along with his wife were present in shop of their son while Inderjit Singh was present in the shop of Property Dealer and Kashmir Singh had come to the Dairy to get milk when all of a sudden Gurmit Singh who was armed with iron seriya/rod, Pavitar Singh armed with Dang/stick, Kuldeep Kaur and Sarabjit Kaur came to the spot and Pavitar Singh raised lalkara upon which Gurmit Singh gave blow with iron seriya upon Kashmir Singh which caused injury on his right leg and then he again gave another blow which caused injury on the left knee of leg of Kashmir Singh. Then Kuldeep Kaur gave blow of brickbat which caused injury on the left eye of Kashmir Singh, then Pavitar Singh removed the turban of Kashmir Singh and

slapped on his face. Accused Sarabjit Kaur gave fist blow and leg blows on the person of Kashmir Singh and Parminder Singh used abusive language. All the accused further threatened that if he will ever try to come forward then they will murder him and then accused left the spot. It is further averred that on 03.09.2009 at about 3:30 PM when son of the complainant was present in his milk dairy, accused Pavitar Singh, Jaswant Singh and Sarabjit Singh Tanni along with 15 to 20 persons had attacked him on his shop after trespassing into the same, after having made preparation to cause hurt and they attacked him. Sarabjit Singh gave blow on the head of son of complainant with iron rod. Palwinder Singh and Jaswant Singh armed with Dang and hockeys gave merciless beating to complainant Joga Singh and removed his turban. Pawanbir Singh and Gurmit Singh received Dattar blow on their shoulders. Accused Kuldeep Kaur and Sarabjit Kaur gave merciless beatings to the wife of complainant and they had looted Rs.5000/- to Rs.7000/- from cash box of dairy of Pawanbir Singh; that matter was thereafter, reported to the police but no action had been taken by the police in this regard.

Complainant-respondent Joga Singh produced his preliminary evidence. Based on the preliminary evidence led by the complainant-respondent and after hearing learned counsel for the complainant, learned trial Magistrate came to the conclusion that the accused-petitioners were liable to be summoned only for the offence under Section 323 of the Indian Penal Code ('IPC' for short), vide order dated 24.02.2014.

Feeling aggrieved, complainant-respondent filed his revision petition which came to be allowed by the learned Additional Sessions Judge, Amritsar vide impugned order dated 11.07.2014, without granting any

opportunity of being heard to the accused-petitioners. Hence the present criminal revision petition, at the hands of accused-petitioners.

The only argument raised by learned counsel for the petitioners was that the impugned order was an order without jurisdiction because the learned Additional Sessions Judge misdirected himself, while not issuing any notice to the petitioner, before allowing the revision petition of the complainant-respondent. He submits that a valuable right had accrued in favour of the petitioners, by passing of the order dated 24.02.2014 (Annexure P-2), which has been illegally taken away even without affording an opportunity of being heard to them. He prays for setting aside the impugned order, by allowing the present petition.

On the other hand, learned counsel for the respondent submits that learned Additional Sessions Judge committed no error of law, while passing the impugned order and the same deserves to be upheld. He further submits that no right had accrued in favour of the petitioners, by passing of the order dated 24.02.2014 (Annexure P-2). No notice was required to be served to the petitioners for the purpose of summoning. Since it was only a pre-summoning stage, no fault can be found with the impugned order passed by the learned revisional Court and the same deserves to be upheld. He prays for dismissal of the present revision petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to contentions raised, this Court is of the considered opinion that in the given facts and circumstances of the present case, present one has been found to be a fit case warranting interference, at the hands of this Court.

Since impugned order is ex parte, the same cannot be sustained in law, for the following more than one reasons.

It is a matter of record and not in dispute that respondent-complainant filed his complaint under Sections 452, 427, 308, 324, 323, 506, 148, 149 IPC. It is also a matter of record that the learned trial Magistrate summoned the accused-petitioners only for the offence under Section 323 IPC. No offence was found to be made out against the petitioners under other Sections of IPC, noticed hereinabove. In such a situation, if the learned Additional Sessions Judge was going to set aside the abovesaid summoning order, remanding the case back to the learned trial Magistrate for the purpose of summoning the petitioners for all the abovesaid offences, it was incumbent on the learned Additional Sessions Judge to issue notice to the petitioners and grant them an opportunity of being heard, before passing the impugned order. Since the learned Additional Sessions Judge failed to do so, the impugned order cannot be sustained. Having said that, this Court feels no hesitation to conclude that since the impugned order has been found suffering from patent illegality, the same cannot be sustained.

No doubt, the case was at the summoning stage. However, once the learned trial Magistrate has refused to summon the petitioners for the commission of offences alleged by the respondent-complainant in his complaint, except for the offence under Section 323 IPC, a valuable right would accrue in favour of the petitioners. It is the settled principle of law that accrued right cannot be taken away without granting an opportunity of being heard. In such a situation, it can be safely concluded that the learned Additional Sessions Judge proceeded on a wholly misconceived and

erroneous approach, while passing the impugned order and the same cannot be sustained, for this reason also.

Since the impugned order has been passed without granting of an opportunity of being heard, the golden rule of *audi alteram partem* stands violated. It is the basic rule of law that nobody should be condemned unheard. Since the learned Additional Sessions Judge has failed to ensure meticulous compliance of this golden rule of law, the impugned order has resulted in miscarriage of justice and the same cannot be sustained, for this reason as well.

In fact, the impugned order dated 11.07.2014 passed by learned Additional Sessions Judge, Amritsar is an order without jurisdiction, the same having been passed contrary to the relevant provisions of law contained in Sections 399 and 401 of the Code of Criminal Procedure ('Cr.P.C.' for short), which read as under: -

“Section 399. Sessions Judge's powers of revision.

(1) In the case of any proceeding the record of which has been called for by himself, the 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.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub- section (1), the provisions of sub- sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said sub- sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of an person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by Way of revision at the instance of such person shall be entertained by the High Court or any other Court.

Section 401. High Court' s Powers of revisions.

(1) In the case of any proceeding the record of which has been called for by itself or Which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(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.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.”

A bare combined reading of the abovesaid provisions contained in Sections 399 and 401 Cr.P.C. would make it crystal clear that it was imperative on the part of the learned Additional Sessions Judge to issue a notice to the petitioners and grant them an opportunity of being heard, before passing the impugned order. Since the impugned order has been passed without granting an opportunity of being heard to the petitioners, the same is not sustainable in law.

Following are relevant judgments, rendered by the Hon'ble Supreme Court as well as different High Courts, on the question of law involved herein, as to whether petitioners were entitled for an opportunity of being heard, or not: -

- 1. *Baidya Nath Singh Vs. Muspratt and others, ILR (1886) XIV Cal 141.***
- 2. *Parmanand Brahmachari Vs. Emperor, AIR (1930) Patna 30.***
- 3. *Emperor Vs. J.A. Finan, AIR (1931) Bom 524.***
- 4. *Radha Kishun Sao Vs. S.K. Misra and another, AIR (1949) Patna 36.***
- 5. *Ramkisto Sahu Vs. The State of Bihar, AIR (1952) Patna 125.***

6. *Narayandas Bhagwandas Madhavdas Vs. The State of West Bengal, AIR (1959) SC 1118.*
7. *Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and another, (1961) 1 SCR 1.*
8. *R.R. Chari Vs. The State of Uttar Pradesh, 1962 AIR (SC) 1573.*
9. *Chandra Deo Singh Vs. Prokash Chandra Bose and another, 1964 (1) SCR 639.*
10. *Jamuna Singh and others Vs. Bhadai Sah, 1964 AIR (SC) 1541.*
11. *A.S. Puri Vs. K.L. Ahuja, 1970 Cri. LJ 1441.*
12. *Darshan Singh Ram Kishan Vs. State of Maharashtra, (1971) 2 SCC 654.*
13. *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and others, (1976) 3 SCC 736.*
14. *Panatar Arvindbhai Ratilal Vs. State of Gujarat and others, 1991 (1) Cri. LJ 451.*
15. *Kishun Singh and others Vs. State of Bihar, (1993) 2 SCC 16.*
16. *State of West Bengal and another Vs. Mohd. Khalid and others, (1995) 1 SCC 684.*
17. *Ratanlal Soni Vs. Kailash Narayan Arjariya, 1998 (2) MPLJ 321.*
18. *Gurdeep Singh Vs. State of Haryana, 2001 Cri. LJ 2378.*
19. *Adalat Prasad Vs. Rooplal Jindal and others, (2004) 7 SCC 338.*

20. *P. Sundarrajan and others Vs. R. Vidhya Sekar, (2004) 13 SCC 472.*
21. *State of Karnataka and another Vs. Pastor P. Raju, (2006) 6 SCC 728.*
22. *Mohd. Yousuf Vs. Afaq Jahan (Smt.) and another, (2006) 1 SCC 627.*
23. *Shriram Nagordhar Mahajan and others Vs. State of Maharashtra and another, 2006 CriLJ 2216.*
24. *Raghu Raj Singh Rousha Vs. Shivam Sundaram Promoters Private Limited and another, (2009) 2 SCC 363.*
25. *A.N. Santhanam Vs. K. Elangovan, 2012 (12) SCC 321.*
26. *K. Rajasekar Vs. A. Abdul Gafoor, CrI. R.C. (MD) No.483 of 2011 decided on 01.02.2012.*
27. *Manharibhai Muljibhai Kakadia and another Vs. Shaileshbhai Mohanbhai Patel and others, 2013 (1) SCC (Cri.) 218.*

The relevant observations made by the Hon'ble Supreme Court in paras 40, 48 to 53 and 58 of its judgments in **Manharibhai Muljibhai Kakadia's** case (supra), which can be gainfully followed in the present case, read as under: -

“The question now is, in a matter of this nature where complaint has been dismissed by the Magistrate under Section 203 post-cognizance stage and pre-issuance of process, whether on challenge to the legality of the order of dismissal of complaint being laid by the complainant in a revision application before the High Court, the persons who are arraigned as accused in the

complaint have a right to be heard.

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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. Three expressions, “prejudice”, “other person” and “in his own defence” in Section 401(2) are significant for understanding their true scope, ambit and width. Black’s Law Dictionary [Eighth Edition] explains “prejudice” to mean damage or detriment to one’s legal rights or claims. Concise Oxford English Dictionary [Tenth Edition, Revised] defines “prejudice” as under :

“1. Preconceived opinion that is not based on reason or actual experience. > unjust behaviour formed on such a basis. 2. harm or injury that results or may result from some action or judgment. v.1 give rise to prejudice in (someone); make biased. 2. cause harm to (a state of affairs)”.

Webster Comprehensive Dictionary [International Edition] explains “prejudice” to mean (i) a judgment or opinion, favourable or unfavourable, formed beforehand or without due examination; detriment arising from a hasty and unfair judgment; injury; harm.

P. Ramanatha Aiyar; the Law Lexicon [The Encyclopaedic Law Dictionary] explains “prejudice” to mean injurious effect, injury to or impairment of a right, claim, statement etc.

“Prejudice” is generally defined as meaning “to the harm, to the injury, to the disadvantage of someone”. It also means injury or loss.

The expression “other person” in the context of Section 401(2) means a person other than accused. It includes suspects or the persons alleged in the complaint to have been involved in an offence although they may not be termed as accused at a stage before issuance of process.

The expression “in his own defence” comprehends, inter alia, for the purposes of Section 401(2), in defence of the order which is under challenge in revision before the Sessions Judge or the High Court.

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We are in complete agreement with the view expressed by this Court in P. Sundarrajan¹, Raghu Raj Singh Rousha² and A. N. Santhanam³. 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 judgments of the High Courts to the contrary are overruled.”

Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court in the cases referred to hereinabove, it is unhesitatingly held that petitioners were entitled for an opportunity of being heard, at the hands of learned Additional Sessions Judge, before passing the impugned order. Admittedly, such an opportunity of being heard was not granted to the petitioners, therefore, the impugned order cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the

considered view that present petition deserves to be allowed. Consequently, impugned order dated 24.02.2014 (Annexure P-2) passed by learned Additional Sessions Judge, Amritsar, is hereby set aside. The case is remanded back to the learned revisional Court of Additional Sessions Judge, Amritsar with a direction to decide the case afresh on merits, after granting an opportunity of being heard, to both the parties.

Resultantly, with the abovesaid observations made and directions issued, present criminal revision petition stands allowed, however, with no orders as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

30.07.2015
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