$~R-23

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: March 3, 2015

\+ CRL.M.C. 1173/2012

POONAM H. SHOKEEN ..... Petitioner

Through: Ms. Beenashaw N. Soni, Advocate

versus

STATE OF NCT OF DELHI & ANR. ..... Respondents

Through: Mr. Karan Singh, Additional Public Prosecutor for respondent-State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

% (ORAL)

Petitioner's application under Section 156(3) of Cr. P.C. was dismissed by the trial court vide order of 26th August, 2011 and the said order has been affirmed by the Revisional Court on 5th December, 2011.

Upon hearing and on perusal of impugned order of 5th December, 2011, this court finds that the proposed accused was not heard when petitioner's revision petition was dismissed.

Learned counsel for petitioner submits that even the trial court has found that cognizable offence is made out but still petitioner's application under Section 156(3) of Cr. P.C. was dismissed by holding that the allegations leveled by petitioner do not require police investigation. It was pointed out by learned counsel for petitioner that the vigilance

reports of 25th January, 2010 and 17th May, 2010 have not been considered by the Court below and the procured status report from the local police has been relied upon.

Reliance is placed on Apex Court's decision in *Lalita Kumari Vs. Govt. of UP & Ors.* 2014 (1) JCC 1, to submit that since the cognizable offence is made out, therefore, it is mandatory to register the FIR.

In the considered opinion of this court, impugned order is rendered unsustainable on the short ground that the proposed accused persons were not heard and the impugned order was passed. Such a course is impermissible in view of the dictum of the Apex Court in *Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel***,** (2012) 10 SCC 517 which is as under:-

> *"We are in complete agreement with the view expressed by this Court in P. Sundarrajan [(2004) 13 SCC 472 : (2006) 1 SCC (Cri) 345] , Raghu Raj Singh Rousha[(2009) 2 SCC 363 : (2009) 1 SCC (Cri) 801] and A.N. Santhanam [(2012) 12 SCC 321 : (2011) 2 JCC 720] . 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."

Consequentially, impugned order of 5th December, 2011 is hereby quashed with direction to Revisional court to decide petitioner's revision petition afresh after putting the proposed accused to notice.

Needless to say, petitioner would be at liberty to urge the pleas taken herein before the revisional court at the time of hearing.

This petition is accordingly disposed of while refraining to comment upon the merits, lest it may prejudice either side.

(SUNIL GAUR)
JUDGE

MARCH 03, 2015
rs