

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

Date of Decision: January 29, 2015

+ (i) **CRL.M.C. 5281/2013 & Crl.M.A.No. 19080/2013**

SAVITA KUMARI GUPTA & ANR Petitioners
Through Ms. Rebecca M.John, Sr. Advocate
with Mr. Bhavook Chauhan & Mr.
Harsh Bora, Advocates

Versus

STATE & ANR Respondent
Through Mr. Navin Sharma, Additional
Public Prosecutor for State
Mr. Vijay Aggarwal & Ms.
Chaitali Jain, Advocates for
Respondent No.2

+ (ii) **CRL.M.C. 5285/2013 & Crl.M.A.No. 19092/2013**

DEVENDER KUMAR GUPTA & ANR Petitioners
Through Ms. Rebecca M.John, Sr. Advocate
with Mr. Bhavook Chauhan &
Mr. Harsh Bora, Advocates

Versus

STATE & ANR Respondent
Through Mr. Navin Sharma, Additional
Public Prosecutor for State
Mr. Vijay Aggarwal & Ms.
Chaitali Jain, Advocates for
Respondent No.2

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Since the challenge to the impugned order of 4th June, 2013 is on identical grounds in the above captioned two petitions, therefore, with the consent of both the sides, these two petitions were heard together and are being disposed of by this common judgment.

Application under Section 156 (3) of Cr.PC by respondent No.2 stood dismissed by Trial Court but Revisional Court vide impugned order of 4th June, 2013 has allowed the aforesaid two applications and has directed registration of FIR. In pursuance to the impugned order, FIR No. 195/2013 under Section 420/120-B/IPC has been registered at Police Station, Pahar Ganj, Central District, Delhi. It is the case of the petitioners that impugned order has been passed without any notice to them and as soon as they had come to know about the registration of the aforesaid FIR, they have come up with these petitions to seek quashing of the impugned order.

At the hearing, learned senior counsel for petitioners had placed reliance upon Apex Court decision in *Raghu Raj Singh Rousha vs. Shivam Sundaram Promoters Private Limited and Another* (2009) 2 Supreme Court Cases 363 to submit that impugned order is illegal in the face of it and it has been passed without affording an opportunity of hearing to the two petitioners. Thus, quashing of the impugned order is sought.

Learned counsel for second respondent relies upon Single Bench decisions of Allahabad High Court in *Vijay Bahadur Pandey vs. State of*

U.P. & Others 2005 (5) CRJ 647 and *Hira Lal vs. State of U.P. and Anr.* 2008 CRI.L.J. 113 to submit that once the FIR has been registered then the challenge has to be laid to the FIR and by merely seeking setting aside of the impugned order, the FIR cannot be quashed.

Upon hearing both the sides and on perusal of the impugned order, the material on record and the decisions cited, I find that the question of prejudice is not required to be gone into and affording an opportunity of hearing to the party against whom the order has been passed, is mandatory. Reliance placed by learned counsel for respondents upon decisions in *Vijay Bahadur* and *Hira Lal (Supra)* is entirely misplaced as the registration of a FIR in instant case is a consequential action taken in pursuance to the impugned order and once the impugned order is rendered unsustainable, then the FIR cannot proceed further. Pertinently, no decision contrary to decision of Apex Court in *Raghu Raj (Supra)* is cited nor any attempt was made by learned counsel for respondent No.2 to distinguish the Apex Court's decision in *Raghu Raj (Supra)*.

By applying the dictum of the Apex Court's decision in *Raghu Raj (Supra)* to the facts of the instant case, impugned order dated 4th June, 2013 is quashed with direction to the Revisional Court to afford an opportunity of hearing to petitioners and thereafter to decide the Revision Petition of respondent No.2 on merits.

Let the Revisional Court decide the Revision Petition expeditiously i.e. in any case on or before 15th May, 2015. Parties to appear before the concerned Revisional Court on 6th February, 2015 and thereafter the Revisional Court shall fix a date of effective hearing.

In the peculiarity of this case, it is directed that the proceedings arising out of the FIR in question be kept in abeyance till 15th May, 2015. It goes without saying that in event of petitioners succeeding in the revision petition, the FIR so registered in pursuance of impugned order shall stand quashed.

With the aforesaid directions, both these petitions and the applications are disposed of while refraining to comment upon the merits of the case.

DASTI.

(SUNIL GAUR)
JUDGE

JANUARY 29, 2015

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