

\$~34 & 35 (with two connected matters)

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

Date of Decision: May 14, 2015

+ (i) CRL.M.C. 1268/2015 & Crl.M.As.4625/2015, 5851/2015

SATISH NEWAR Petitioner

Through: Mr. Pawan Sharma, Advocate

versus

STATE & ANR Respondents

Through: Mr. Vinod Diwakar, Additional
Public Prosecutor for respondent-
State with SI Mahendra Kohli
Mr. Saurabh Sharma, Advocate for
respondent No.2

+ (ii) CRL.M.C. 1275/2015 & Crl.M.As.4637/2015, 5768/2015

HARSH NEWAR Petitioner

Through: Mr. Pawan Sharma, Advocate

versus

STATE & ANR Respondents

Through: Mr. Vinod Diwakar, Additional
Public Prosecutor for respondent-
State with SI Mahendra Kohli
Mr. Saurabh Sharma, Advocate for
respondent No.2

+ (iii) CRL.M.C. 5509/2014

M/S. SARDA SOLVENT EXTRACTIONS (P) LTD.Petitioner

Through: Mr. Saurabh Sharma, Advocate

versus

GOVT. OF NCT OF DELHI & ORS.Respondents

Through: Mr. Vinod Diwakar, Additional
Public Prosecutor for respondent-
State with SI Mahendra Kohli
Mr. Pawan Sharma, Advocate for
respondent No.2

+(iv)

CRL.M.C. 5516/2014

M/S. SARDA SOLVENT EXTRACTIONS (P) LTD.Petitioner

Through: Mr. Saurabh Sharma, Advocate

versus

GOVT. OF NCT OF DELHI & ORS.Respondents

Through: Mr. Vinod Diwakar, Additional
Public Prosecutor for respondent-
State with SI Mahendra Kohli
Mr. Pawan Sharma, Advocate for
respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

%

Vide order of 7th May, 2015 of this Court CRL.M.Cs.5509/2014 and 5516/2014 were directed to be tagged with above-captioned first petition i.e. CRL.M.C.1268/2015. Today, with the consent of learned counsel for the parties, these four petitions were heard together and are being disposed of by this common judgment. The date of 24th July, 2015 in these two connected petitions stands cancelled.

These four petitions arise out of common impugned order of 28th

January, 2013 of revisional court vide which trial court has been directed to frame the charge under Section 420 of IPC read with Sections 120-B of IPC and 34 of IPC and in the alternative to charge under Section 406 of IPC read with Sections 120-B and 34 of IPC.

In the above-captioned third and fourth petitions, the short ground urged by learned counsel for petitioner-*M/s. Sarda Solvent Extractions (P) Ltd.* is that the impugned order deserves to be quashed because it has been passed without any notice to petitioner-*M/s. Sarda Solvent Extractions (P) Ltd.*, who is complainant party. Whereas the grievance in the above-captioned first and second petition is that trial court's order was assailed on the ground that the settlement, as relied upon in the impugned order, is under challenge by *M/s. Sarda Solvent Extractions (P) Ltd.* in the civil litigation and the complainant party cannot be allowed to travel in two boats.

It is submitted that otherwise also, the ingredients of the offence for which petitioners-*Harsh Newar* and *Satish Newar* have been charged are lacking and on merits, the impugned order as well as trial court's order deserves to be quashed. Lastly, learned counsel for petitioners-*Harsh Newar* and *Satish Newar* submits that the very initiation of the proceedings arising out of the FIR in question is bad in law as it is barred by time.

Upon hearing and on perusal of the impugned order and the material on record, I find that *M/s. Sarda Solvent Extractions (P) Ltd.* has not been heard by revisional court.

Apex Court in *Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel* (2012) 10 SCC 517 has 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, up to 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. 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.

XXXXXXXXX

XXXXXXXXX

53. 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.”

Applying the afore-noted dictum of Apex Court to the instant case, impugned order cannot be sustained. The challenge to the impugned order by petitioners-Harsh Newar and Satish Newar has substance because it does not deal with the pleas taken by them in these two

petitions. Therefore, on merits also, the impugned order of 28th January, 2013 is unsustainable and is hereby quashed. Let revisional court pass a fresh reasoned order within eight weeks, after hearing both the sides and after dealing with the contentions raised by the respective parties.

With aforesaid directions, the above-captioned four petitions and the applications are disposed of.

(SUNIL GAUR)
JUDGE

MAY 14, 2015

S