

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No.598 of 2016**

1. Komal Prajapati S/o late Ramawadh Prajapati, aged about 52 years, Caste-Kumhar
2. Ajay Kumar S/o Komal Prajapati, aged about 30 years, Both R/o Subhash Market, Khurshipar, Zone-2, Distt. Durg (CG).

... Applicants**Versus**

Dhanushdhari Gupta S/o late Jhabbulal Gupta, aged about 69 years, R/o Labour Colony, near Kabir Mandir, Ward No.35, Church Para, Khurshipar, District Durg (CG).

... Non-applicant

For Applicant : Shri TK Jha, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****17/06/2016**

1. The petitioner seeks to challenge the order dated 21.03.2016 passed by the 5th Additional Session Judge, Durg, in Criminal Revision No.272/2014 whereby the revision petition filed by the respondent has been allowed and the matter has been remanded back to the court below.
2. Facts of the case is that, respondent/complainant had filed a complaint case against the present petitioner for the offence punishable under Sections 420,467,468 and 471/34 IPC. Initially the Magistrate court, on perusal of complaint found that no sufficient ground was made out in the complaint for proceeding against the petitioner and dismissed the complaint vide order dated 05.04.2013.

3. Against the said order dated 05.04.2013 passed by the Magistrate dismissing the complaint, the respondent had preferred a revision petition i.e. criminal revision No.272 of 2014 before the 5th Additional Sessions Judge, Durg. Vide impugned order dated 21.03.2016, the revisional court allowed the revision and remanded back the matter to the court below for re-considering the complaint made by the respondent and to pass a fresh order in the light of the statements of complainant and other witnesses examined at the time of registration of the complaint. While allowing the revision petition, the revisional court had further directed both the parties to remain present before the court below on 01.04.2016. It is this direction of the court directing appearance of the applicants before the court below which is under challenge in this petition.
4. Learned counsel appearing for the applicants submits that the impugned order to the extent of remanding back the matter to the Magistrate for considering the complaint fresh and pass appropriate order is not being challenged. However, the direction given to the applicants, who are supposed to be accused in case if the complaint is registered, is bad in law and contrary to the provisions of law, and therefore, the impugned order may be modified to that extent.
5. In support of his contention, he refers the decision of Supreme Court in case of Manharibhai Muljibhai Kakadia Vs. Shaileshbhai Mohanbhai Patel¹ in which the Supreme Court relying upon its earlier decision in A.N. Santhanam Vs. K.Elangovan² has observed in paragraph 53 as

1 2012 (10) SCC 517

2 2012 (12) SCC 321

under:

“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.”

6. Applying the ratio of law laid down in aforesaid case to the facts of the present case, in the opinion of this court, direction given by the revisional court directing appearance of the applicants/the alleged accused before the court below does not seem to be proper, legal and justified. Accordingly, impugned order dated 21.03.2016 stands modified to the extent that direction given to the applicants to appear before the court below is set aside. However, it is directed that the Magistrate Court shall hear the complaint and decide the complaint in accordance with law as per the direction given in paragraph 16 of impugned order dated 21.03.2016.
7. With the aforesaid direction, the petition under Section 482 Cr.P.C. is allowed to the extent as stated in the earlier paragraph.

Sd/-
(P.Sam Koshy)
JUDGE