

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No.1126 of 2015**

Chain Singh S/o Kishan Singh Aged About 38 Years Holding Post Of Teacher R/o Village Sandiya, P.S. Sojat, Civil & Rev. Distt. Pali, Rajasthan State.

---- **Petitioner****Versus**

1. Man Singh Rajpurohit S/o Late Salam Singh Rajpurohit Aged About 51 Years Cultivator Of Village Janta Police Station Saja, Civil & Rev. Distt. Bemetara, Chhattisgarh.
2. State Of Chhattisgarh Through The State Of District Magistrate/Govt. Advocate Bemetara, Civil & Rev. Distt. Bemetara, Chhattisgarh.

---- **Respondents**

Shri JR Verma, counsel for the petitioner.
Smt. M. Asha, Panel Lawyer for the State/respondent No.2.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****03.3.2016.**

Heard.

2. It is submitted on behalf of the petitioner that in the impugned order dated 10.3.2014 the trial Court, while dismissing the complaint filed by respondent No.1 against the present petitioners and other 8 non applicants/proposed accused held that prima facie no case is made out as there is absence of any foundation regarding the constitution of the offence. Against the said order, the complainant/revisioner approached before the Sessions Judge, Bemetara and has filed criminal revision No.23/14. The learned revisional Court vide order dated 22.7.2015 quashed the order dated 10.3.2014 and directed that the complaint filed against all the accused by the complainant be registered under Section 417, 418

and Section 500/34 of the Indian Penal Code and to proceed as per provisions of law. It is submitted that learned revisional court has not granted any opportunity of hearing to the petitioner before passing of the said order. Learned counsel for the petitioner draws attention of this Court on the provisions of Section 401(2) of the Code of Criminal Procedure, 1973 (for short 'the Code') wherein the High Court while hearing the revision against the order under the provisions of Section 401 of the Code no order under this Section shall be made to the prejudice to the accused or other person unless the said person had an opportunity to being heard either in person or through pleader in his own defence. It is further submitted that the petitioner and other proposed co-accused were impleaded as accused before the trial Court and they were the necessary party before passing any order in criminal revision. It is further submitted that the State was not a party before the trial Court, the matter was complaint case and without impleading the accused, without any appreciation on the facts as to why all the proposed accused were not made party in the said criminal revision and why there is no necessity to call them before passing of the order, the Court below patently violated the natural principles of justice and also the procedural law as provided under Section 401(2) of the Code, hence, order passed by the revisional court may be quashed. The revisional court may be permitted to proceed further after affording opportunity of hearing to all the proposed accused as mentioned in the complaint case and thereafter to pass the order afresh without being influenced by impugned order dated 22.7.15.

3. On behalf of respondent No.2, the above submission is opposed orally.

4. For the purpose of appreciation of the arguments advanced in the instant petition, order impugned passed by the revisional court and also the order dated 10.3.2014 passed by the trial Court are perused.

5. On close scrutiny, it is apparent that in the revision, the complainant/revisioner has not impleaded all the proposed accused as respondents. It does not reflect as to whether the revisional court held that before passing the order dated 22.7.15 hearing on behalf of the petitioner and other proposed co-accused are necessary or not. It is also does not reflect whether the revisional court held that there is no necessity to hear the petitioner and other proposed co-accused and as per provisions under Section 401(2) of the Code "no order under this Section shall be made to the prejudice of the accused or other persons unless he had an opportunity of being heard either personally or by pleader in his own defence." As per the settled law, any order against any person passed in his back and that an opportunity to hear before passing such order would be proper and as per the doctrine of natural justice and if at all as required to be heard before passing such order there should be the appreciation of the said fact. The doctrine of hearing the person against whom the some order is to be passed is equally applicable to the Sessions Court also and in absence of any such appreciation on opportunity goes to show that the learned Sessions Judge acted arbitrarily and illegality and passed improper order behind the back of the present

petitioner and other proposed co-accused persons which requires interference.

6. In the circumstances, it would be appropriate to invoke the jurisdiction of inherent power of this Court under the provisions of Section 482 of the Code for the secure of the ends of justice. Consequently, the instant petition stands allowed. Order passed by the revisional court in criminal revision No.23/14 dated 22.7.15 is hereby quashed. The said revision is directed to restore to its original number. The sessions Judge is directed to dispose of the said revision on its merits after affording opportunity for hearing to the petitioner and also all other proposed co-accused in the matter as per the provisions of law. Needless to mention that while deciding the said criminal revision after hearing all the parties, impugned order dated 22.7.2015 shall not come in the way. The petition allowed. The petitioner is directed to remain present before the revisional Court either in person or through his counsel on **04.05.2016**. The petitioner may file a copy of this order before the revisional court for compliance. Registrar (Judl.) is also directed to transmit a copy of the order to the revisional court for compliance through usual and fax mode.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE