

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM NO. M-13956 of 2015
DECIDED ON : MAY 03, 2016

RAJ RANI

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

AND

CRM No. M-16273 of 2015

AJAY BAGLA

....PETITIONER

VERSUS

KUSUM & OTHERS

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Sanjay Vashisth, Advocate,
for the petitioner in CRM No. M-13956 of 2015.

Mr. Mukesh K. Mittal, Advocate
for the petitioner in CRM No. M-16273 of 2015

Mr. Tarun Sharma, AAG, Haryana.

Mr. Sumit Sangwan, Advocate
for respondents No.6 to 8 in CRM No. M-13956 of 2015.
for respondents No. 5 to 7 in CRM No. M-16273 of 2015

JASPAL SINGH, J. (ORAL)

Vide this common order, I intend to dispose of two petitions i.e.

CRM No. M-13956 of 2015 preferred by Raj Rani and CRM No. M-16273 of
2015 preferred by Ajay Bagla, as the same are outcome of one of the same

order dated March 12, 2015 (Annexure P-5) passed by learned Additional Sessions Judge, Bhiwani whereby, criminal revision petitions were accepted which culminating into setting aside of order dated October 07, 2013 vide which private respondents were summoned to face trial as an additional accused in a case FIR No. 245 dated November 08, 2006 under Sections 420, 467, 468, 471, 218 and 120-B IPC registered at Police Station City Dadri, District Bhiwani.

2. Briefly stated the facts giving rise to the instant *lis* are that petitioner-Raja Rani filed an application under Section 319 Cr.P.C. for summoning private respondents as an additional accused to stand trial in the above-referred in case. During trial before learned Magistrate in the above-referred FIR, which was allowed by learned trial Court vide order dated October 07, 2013 (Annexure P-4). The said order was challenged by way of revision petition by private respondents without arraying/impleading the petitioner(s)/applicant and learned Additional Sessions Judge after hearing the revisionist and set aside the order dated October 07, 2013 vide impugned order dated March 12, 2015 (Annexure P-5) and aggrieved against the said order, petitioner(s) preferred the instant petition(s).

3. Having heard learned counsel for the parties and bestowing due consideration to the legal proposition, this Court is of the considered view that impugned order (Annexure P-5) is not sustainable in the eyes of law and deserves to be set aside. The revisional court has committed a grave error while ignoring provisions contained under Section 399(2) as well as Section 401(2) Cr.P.C.. Here it would be pertinent to mention that an application under Section 319 Cr.P.C. was not instituted by the State. Rather, it was

instituted by the petitioner(s). Private respondents while filing revision petition before revisional court neither impleaded the petitioner as one of the respondent nor issued any notice to the petitioner who had moved an application under Section 319 Cr.P.C.. Meaning thereby, petitioner(s) was not afforded an opportunity of being heard before passing the impugned order and acceptance of revision petition who can be termed to be really an aggrieved person. In fact, the criminal revision petition(s) could not adjudicated without affording an opportunity to the petitioner(s) who instituted an application under Section 319 Cr.P.C. Sub Section 2 of Section 401 Cr.P.C. comes into the play, in the given circumstances which reads as under:

“401 *High Court's powers of revision:-*

(1) *XX X X X X*

(2) *No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.”*

4. A glance at the afore-said provision transpires that no order under this section can be made to the prejudice of an aggrieved person unless he has been given an opportunity of being heard. In this regard we can also take support from the observation made by Hon'ble Apex Court in para 46 of judgment captioned as **Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel; (2012) 10 SCC 517;** which reads as under:

“46. *The legal position is fairly well settled that in the proceedings under Section 202 Cr.P.C. 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. 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) Cr.P.C. 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.”

5. Admittedly, no opportunity of being heard has been afforded by revisional court before passing of order and in view of settled proposition of law as mentioned above. The said order is not sustainable in the eyes of law.

6. In the light of above narrated facts, impugned order dated March 12, 2015 passed by learned Additional Sessions Judge, Bhiwani is set aside by way of acceptance of instant petition(s). Let the matter is admitted to the Court of revisional court/Additional Sessions Judge, Bhiwani with a direction to implead applicant/petitioner(s) as one of respondent and then to decide the revision a fresh, that too after affording an ample opportunity of being hear to them. Since the matter is old one, revisional court is directed to make it convenient to dispose of the revision petition expeditiously but not later than six months from the date of receipt of certified copy of this order. Parties through their counsel are also directed to appear before revisional court on July 07, 2016. In case the record has been requisitioned the same be returned to the court concerned.

MAY 03, 2016
sham

(JASPAL SINGH)
JUDGE