

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision : April 27, 2016

1. CRM No. M-25245 of 2013

Dr. S.P. Jain

...Petitioner...

versus

Rajender Kumar

...Respondent...

2. CRM No.M-26344 of 2013

Dr. R.K. Sharma

...Petitioner...

versus

Rajender Kumar

...Respondent...

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Amarjit Singh Virk, Advocate,
for the petitioner(s).

Mr. Daman Dhir, Advocate,
for the respondent.

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? (✓)

JASPAL SINGH, J.

By this common judgment, this Court intends to dispose of two petitions i.e CRM No. M-25245 of 2013 captioned as “**Dr. S.P.Jain vs. Rajender Kumar**” and CRM No. M-26344 of 2013 captioned as “**Dr. R.K. Sharma vs. Rajender Kumar**” as in both these cases, an identical question is involved.

2. The brief facts leading to these petitions are that Rajinder Kumar filed complaint No. 87 of 2010, captioned as **“Rajender Kumar vs. Dr. S.P. Jain and another”**, under Sections 323, 506 IPC and under Sections 3(1)(ix) and (x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. Finding that the preliminary evidence led by the complainant is deficient, Judicial Magistrate Ist Class, Kurukshetra dismissed the complaint vide order dated December 02, 2011.

3. Disheartened from the dismissal of the complaint, Rajender Kumar preferred Criminal Revision Petition No. 260 of 2012, titled as **“Rajender Kumar vs. State of Haryana and others”**. The said revision petition was accepted by Id. Additional Sessions Judge, Kurukshetra vide order dated April 08, 2013 whereby order dated December 02, 2011 passed by the Id. Magistrate was set aside and the trial Magistrate was directed to examine the case denovo for summoning of the accused for the commission of the various offences mentioned in the complaint.

4. Aggrieved against the order dated April 08, 2013, petitioner(s) preferred the instant petition.

5. The main contention of learned counsel for the petitioner(s) is that the order dated April 08, 2013 passed by the revisional court is absolutely against the settled canons of law. While passing the impugned order dated April 08, 2013, no opportunity of hearing to the petitioner(s)/accused was provided, which is absolutely violative of the principle of natural justice.

6. By now, it is well settled that in case an order of dismissal of complaint is challenged by way of revision, grant of opportunity of hearing to the respondent-accused is obligatory. In case, **“Manharibhai Muljibhai Kakadia and another vs. Shaileshbhai Mohanbhai Patel”**, 2012 (10) SCC 517; an identical question came-up for hearing and the Hon'ble Apex Court in Para No. 46 has observed as under:-

“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, upto 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. The 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.”

7. A perusal of the aforesaid observation makes it crystal clear that though the accused/suspect is not entitled to be heard at the time of issuance of process against him but when the matter is pending by way of revision either before the Sessions Judge or before the High Court, a notice is required to be issued for providing an opportunity of being heard to him.

8. The observations made in ***Manharibhai Muljibhai Kakadia's*** case (supra) have further been relied upon by the Hon'ble Supreme Court in case ***“Gurdev Singh vs. Surinder Singh and others”***, 2015 (3) SCC 773.

9. Adverting to the facts and circumstances of the case in hand, undisputably, no notice of being heard was issued to the petitioner(s) by the revisional court before passing the impugned order dated April 08, 2013 and on this score alone, the impugned order is not sustainable in the eyes of law and deserves to be set aside.

10. In the light of what has been discussed above, both these petitions stand allowed whereby the order dated April 08, 2013 is set aside and the case is remitted to the Court of Additional Sessions

Judge/revisional court to decide the revision a fresh after affording an opportunity of being heard to the petitioner(s).

11. Petitioner(s) are directed to appear before the revisional court on 05.07.2016.

April 27, 2016
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(JASPAL SINGH)
JUDGE