

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No. M-34561 of 2013
DECIDED ON : AUGUST 26, 2016

MANMOHAN SINGH CHADHA & OTHERS

...PETITIONERS

VERSUS

MOHAN RATTAN & OTHERS

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. ADS Jattana, Advocate
for the petitioners.

Mr. M.S. Cheema, Advocate
for respondent No.1.

Mr. J.S. Toor, APP
for respondent No.2-UT Chandigarh.

JASPAL SINGH, J

By virtue of instant petitioner preferred under Section 482 of the Code of Criminal Procedure (for short 'Code'), petitioners have sought the setting aside of order dated February 04, 2011 (Annexure P-2) passed by learned Additional Sessions Judge, Chandigarh whereby, the order dated November 22, 2008 (Annexure P-1) passed by learned Chief Judicial Magistrate, Chandigarh dismissing the complaint captioned as **“M/s Delhi Automobiles Ltd vs. Harcharan Singh & others”** was set aside and the case was remanded to Chief Judicial Magistrate, Chandigarh for fresh consideration

and decision. Petitioners have also sought the setting aside of order dated July 12, 2013 (Annexure P-3) whereby, they have been summoned to face trial for the offences punishable under Sections 379, 441, 448, 506 and 120-B IPC.

Undoubtedly, the above-referred complaint was dismissed vide order dated November 22, 2008 passed by learned Chief Judicial Magistrate, Chandigarh after due consideration the preliminary evidence adduced by the complainant. Aggrieved against the said order, M/s Delhi Automobile filed revision petition before the Revisional Court, which was accepted vide order dated February 04, 2011, after hearing learned counsel for the revisionist only. At that time no notice to any of the respondents was issued. The non-issuance of notice to respondents prior to the passing of order dated February 04, 2011 amounts to non providing of an opportunity of being heard to the respondents/accused. Thus, the revisional court has committed a grave error and has ignored the provisions contained in Section 399(2) as well Section 401(2) of the Code. 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.”

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.”

Concededly, 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.

In the light of above narrated facts, impugned order dated February 04, 2011 passed by learned Additional Sessions Judge, Chandigarh is set aside by way of acceptance of instant petition. As a consequence of setting aside of order dated February 04, 2011, another order dated July 12, 2013 passed by whereby, petitioners have been summoned to face trial is also not sustainable in the eyes of law and is hereby, set aside.

Let the matter be remitted to the revisional court/Successor Court of Mr. Gurbir Singh, Additional Sessions Judge, Chandigarh with a direction to issue notice to respondents/accused and then to decide the revision a fresh, that too after affording an ample opportunity of being heard 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 October 26, 2016. In case the record has been requisitioned the same be returned to the court concerned.

AUGUST 26, 2016
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*