

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-4269 of 2015

Date of decision : April 27, 2016

Baldev Singh and others

...Petitioners...

versus

State of Punjab and another

...Respondents...

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Vipin Mahajan, Advocate,
for the petitioners.

Mr. A.S. Sidhu, AAG, Punjab.

Mr. M.S. Saini, Advocate for
Mr. Ritesh Pandey, Advocate,
for respondent No.2.

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.

This is a petition under Section 482 Cr.P.C. for quashing of order dated January 12, 2015 (Annexure P-3) passed by Id. Additional Sessions Judge, Adhoc, Fast Track Court, Gurdaspur, vide which the revision petition filed by respondent-complainant has been accepted without issuing any notice to the petitioners.

2. The brief facts of the case are that respondent-complainant filed criminal complaint No.437 dated 24.12.2008, captioned as “***Sukhdeep Singh vs. Baldev Singh and others***”, under Sections 324, 380, 379, 323, 506, 148 and 149 IPC. Observing

that the complaint is baseless and without any merit, Judicial Magistrate Ist Class, Batala, dismissed the complaint vide order dated August 21, 2014.

3. Disheartened from the dismissal of the complaint, Sukhdeep Singh-complainant preferred Criminal Revision Petition No.06 of 2014, titled as ***“Sukhdeep Singh vs. Baldev Singh and others”*** and the said revision petition was accepted by Id. Additional Sessions Judge (Adhoc), Fast Track Court, Gurdaspur vide order dated January 12, 2015 and matter back was remanded to Id. trial court to decide a fresh and to summon the accused under the relevant law.

4. Aggrieved against the order dated January 12, 2015, the petitioners preferred the instant petition.

5. The main contention of learned counsel for the petitioners is that the order dated January 12, 2015 passed by the revisional court is absolutely against the settled canons of law. While passing the impugned order, no opportunity of hearing to the petitioners/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 petitioners by the revisional court before passing the impugned order dated January 12, 2015 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, the instant petition stands allowed whereby the order dated January 12, 2015 is set aside and the case is remitted to the Court of Additional Sessions Judge/revisional court to decide the revision afresh after affording an opportunity of being heard to the petitioners.

11. Petitioners are directed to appear before the revisional court on 05.07.2016.

April 27, 2016
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(JASPAL SINGH)
JUDGE