

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

**CRR No. 1194 of 2015
DECIDED ON: AUGUST 03, 2016**

OM PARKASH GUPTA

.....PETITIONER

VERSUS

JOGA SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. HPS Ishar, Advocate
for the petitioner.

Mr. N.S.Mehrok, Advocate
for the respondent.

JASPAL SINGH, J

Challenge in this revision petition is to the order dated January 29, 2015 passed learned Sessions Judge, Fatehabad whereby, revision filed by the respondent against the order dated August 20, 2014 dismissing the application under Section 319 Cr.P.C., has been allowed.

Undisputably, learned Magistrate after recording preliminary evidence dismissed the complaint against the petitioner and his co-accused Lakhwinder Singh vide order dated October 01, 2011 whereas, Hari Singh was

summoned to face trial under Section 420, 120-B IPC. Subsequently, respondent filed an application under Section 319 Cr.P.C., for summoning the petitioner and other co-accused Lakhwinder Singh to stand trial alongwith their co-accused. Learned trial Court dismissed the said application vide order dated August 20, 2014. Respondent preferred a revision petition before Sessions Court challenging the order dated August 20, 2014 in which the petitioner was not arrayed as a party. But without affording any opportunity of being heard to the petitioner, revision petition was allowed. Resultantly, petitioner was summoned to stand trial as an accused. Since the petitioner was not a party, it can be said that he was condemned unheard, especially, in the circumstances that initially complaint was dismissed qua the petitioner and his co-accused Lakhwinder Singh vide order dated October 01, 2011. Subsequent thereto, application under Section 319 Cr.P.C. was also dismissed.

Thus, the petitioner being a necessary party was required to be given an opportunity of being heard by the Sessions Court but surprisingly neither he was arrayed as a party nor notice was given to him. In fact, the criminal revision could not have been adjudged without affording an opportunity to the petitioner. In such a situation, 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.”

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.

In the light of above narrated facts, impugned order dated January 29, 2015 passed by learned Sessions Judge, Fatehabad is set aside by way of acceptance of instant petition. Let the matter is remitted to the Court of revisional court with a direction to implead petitioner as one of respondent and then to decide the revision a fresh, that too after affording an ample opportunity of being heard to him. 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. In case the record has been requisitioned the same be returned to the court concerned.

AUGUST 03, 2016
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(JASPAL SINGH)
JUDGE

Whether	Speaking/Reasoned	Yes/No
Whether	Reportable	Yes/No