

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 452/2015 & CRL.M.A. Nos. 10388/2015 &**
10390/2015

% **Date of Decision: 25th October, 2016**

ABDUL RASHID @ PAPPU

..... Petitioner

Through: Mr. Nikhil Majithia, Advocate.

versus

MOHD. RIZWAN

..... Respondent

Through: Mr. B.N. Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

I.S. MEHTA, J.

1. The present revision petition is arising out of the order passed by learned Additional Sessions Judge dated 17.01.2015 *qua* against the present petitioner, i.e., Mr. Abdul Rashid, who prefers to challenge the same on the ground that the order so passed is an *ex parte* order and his opportunity of being heard has been taken away by the Court below.
2. The brief facts stated are that the respondent herein- Mr. Mohd. Rizwan, S/o Mr. Mohd. Suleman had filed a criminal complaint under Section 200 Cr.P.C. *qua* against the present petitioner- Mr. Abdul Rashid @ Pappu arraigned as accused no.5, Mr. Rahisuddin as accused no.1, Ms. Sugra as accused no.2, Mr. Imran as accused

no.3, Ms. Sharifan as accused no.4. In support of his complaint under Section 200 Cr.P.C., dated 08.08.2002, the complainant/ present respondent had examined himself as CW1 and Mr. Mohd. Israr as CW2. They gave contradictory statements *qua* against each other, losing the confidence of their statements and the said complaint went in dismissal on 01.09.2014.

3. Aggrieved from the said order, Mr. Mohd. Rizwan- i.e., the complainant/ present respondent preferred review petition under Sections 397/399 of Cr.P.C. *qua* against Mr. Rahisuddin as respondent no.1, Ms. Sugra as respondent no. 2, Mr. Imran as respondent no. 3, Ms. Sharifan as respondent no. 4 and Mr. Abdul Rashid as respondent no. 5, i.e., the present petitioner as Criminal Revision No. 10/14 filed on 19.11.2014. The learned Additional Sessions Judge vide order dated 17.01.2015 allowed the revision petition without issuing Notice to the respondents in Criminal Revision No. 10/14.
4. The learned counsel for the petitioner has submitted that the order passed by the learned Additional Sessions Judge is bad for want of opportunity of being heard and is violative of Section 399(2) read with Section 401 of Cr.P.C.
5. The learned counsel for the petitioner has submitted that the learned Additional Sessions Judge took the matter in casual manner ignoring that the complaint was made 13 years ago and that passing direction for summoning is a serious matter. The learned counsel for the petitioner has submitted that the complaint filed by the respondent suffers from suppression of material facts, whereas the

father of respondent had also filed a civil suit for Permanent Injunction being Civil Suit No. 60/2002 on 22.07.2002 against the other co-accused mentioned in the complaint.

6. The learned counsel for petitioner has further submitted that allegations alleged in the complaint under Section 200 Cr.P.C. is completely false.
7. On the other hand, the learned counsel for the respondent has submitted that the Court below has rightly appreciated the facts on record and the impugned order is just and proper, and that the same requires no interference. He further submits that the present review petition be dismissed.
8. The facts emerging on the record is that a complaint under Section 200 Cr.P.C. *qua* against the petitioner- Mr. Abdul Rashid was filed by the respondent- Mr. Mohd. Rizwan on 08.08.2002. The said complaint was dismissed by learned Metropolitan Magistrate vide order dated 01.09.2014 on the ground that there are several discrepancies or contradictions between the statements given by the two witnesses.
9. Mr. Mohd. Rizwan preferred review petition under Sections 397/399 of Cr.P.C. before the learned Additional Sessions Judge against the order passed by learned Metropolitan Magistrate. The Memo of Parties of the said Criminal Revision No. 10/14 is reproduced hereunder:

" *MEMO OF PARTIES*

Mohd. Rizwan
S/O Late Mohd. Suleman

*R/o C-29/4, Yamuna Vihar Road, North Ghonda,
Delhi-110053 ...Petitioner/ Revisionist*

Versus

*1. Rahisuddin S/O Abdul Saqoor
2. Sugra W/O Rahisuddin
3. Imran S/O Rahisuddin
4. Sharifan W/O Abdul Saqoor
All R/O Ali Builder Wali Gali, Near Tirpal Factory,
Mustafabad, Delhi
Also at :- C161/2, Anand Parvat, Daya Basti, Delhi*

*5. Abdul Rashid @ Pappu S/O Abdul Hamid,
R/O H. No. C-not known, Gali No.9, Near Jama Masjid,
North Ghonda, Delhi- 110053 ...Respondents "*

10. The learned Additional Sessions Judge on presentation of the said review petition summoned the record without issuing Notice under Section 401(2) of Cr.P.C. to the respondent/present petitioner. The said order is reproduced hereunder:

*" Criminal Revision No. 10/2014
Mohd. Rizwan Vs. Rahisuddin Etc.*

19.11.2014

Fresh revision received by way of assignment. It be checked and registered.

Pr: Revisionist in person, with Ld. Counsel Sh. B. N. Sharma.

TCR be summoned.

Be taken up on 14.01.2015 for further proceedings.

*(Dr. PS Malik)
ASJ01/NE/KKD/Delhi
19.11.2014 "*

11. On 14.01.2015 the learned Additional Sessions Judge heard the arguments on behalf of the revisionist only and passed the impugned

order dated 17.01.2015, directing the issuance of process without giving the opportunity of being heard to the respondent/ present petitioner.

12. What was required by the learned Additional Sessions Judge while exercising the supervisory power under Section 399 read with Section 401(2) of the Criminal Procedure Code, 1973, is that, the said Court should have issued Notice to the respondents as the Hon'ble Apex Court has already observed in the case of ***Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel*** reported in **(2012) 10 SCC 517**. The relevant portion of the judgment reads as under:

"48. In a case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed the offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate under Section 203-although it at preliminary stage-nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of Section 401 (2) of the Code, the suspects get the right of hearing before the Revisional Court although such order was passed without their participation. The right given to "accused or "the other person" under Section 401(2) of being heard before the Revisional Court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Section 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of the complainant challenging the order of dismissal of complaint, one of the things that could happen is

reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage."

13. It will be in the fitness of things to reproduce Sections 399 and 401 of the Code of Criminal Procedure, 1973 as under:-

"399. Sessions Judge's power of revision.- (1) *In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of section 401.*

(2) *Where any proceeding by way of revision is commenced before a Sessions judge under sub-section (1), the provision of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.*

(3) *Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.*

xxxx

401. High Court's powers of revision.- (1) *In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.*

(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.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

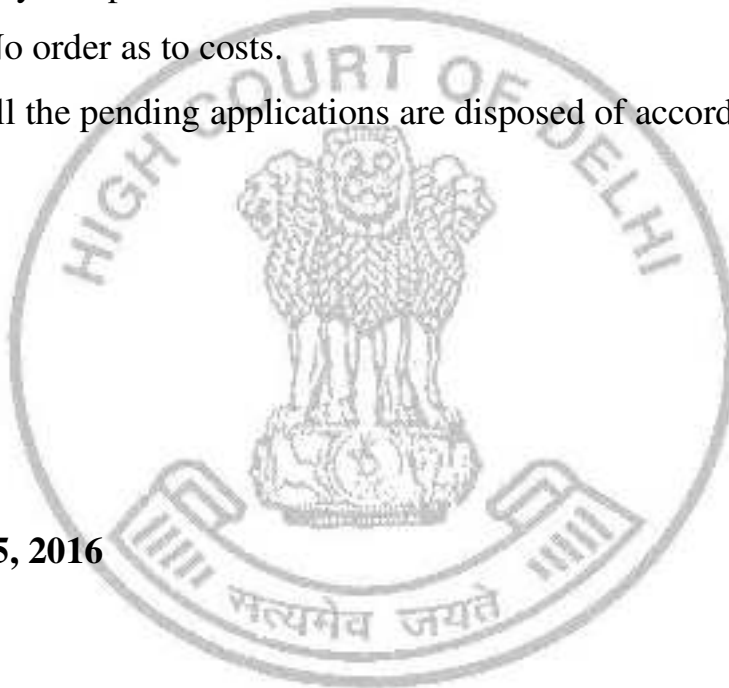
(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interest of justice to do so, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

14. The right envisaged under Section 401(2) of Cr.P.C. is a valuable right accrued in favour of the present petitioner and passing of the order by the learned Additional Sessions Judge in absence of issuance of Notice is violative of Section 401(2) of Cr. P.C.
15. Moreover, as per the settled proposition of law laid down in the judgment of the Hon'ble Supreme Court of India in ***Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors. (1998) 5 SCC 749***, it has been held that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as matter of course.
16. In the instant case there is no explanation/ reason coming out from the facts of the record for the non-issuance of Notice of revision petition to the petitioner, which is violative of Section

401(2) of Cr.P.C. Consequently, I set aside the impugned order dated 17.01.2015 and remand it back to the Court below to pass appropriate order(s) after giving due opportunity to both the parties. Parties are directed to appear before the learned Additional Sessions Judge/ successor court on 23.11.2016.

17. The revision petition is disposed of accordingly.
18. Let one copy of this order be sent to the concerned court for necessary compliance.
19. No order as to costs.
20. All the pending applications are disposed of accordingly.



I.S.MEHTA
(JUDGE)

OCTOBER 25, 2016