

247

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: May 08, 2017
CRM-M-24895 of 2015

Ujala RamPetitioner

Versus

State of Haryana and anotherRespondents

CRM-M-5094 of 2016

Dharampal and anotherPetitioners

Versus

State of Haryana and anotherRespondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Ashwani Bhardwaj, Advocate
for the petitioner (in CRM-M-24895 of 2015).

Mr. Sumit Sangwan, Advocate
for the petitioners (in CRM-M-5094 of 2016).

Mr. G.S. Salwara, DAG Haryana.

Mr. Mohit Garg, Advocate for complainant-respondent No.2.

A.B. CHAUDHARI, J (Oral)

Both these petitions would be disposed of by this common order.

Rule. Heard forthwith with the consent of learned counsel for the rival parties.

It is not in dispute that the complaint case filed by complainant/respondent No.2-Shree Bhagwan was dismissed by the trial Court upon making an order under Section 203 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C.'). The complainant-Shree Bhagwan preferred criminal revision No.59 of 2014 before the Additional Sessions

Judge, Bhiwani and he made all the proposed accused persons as party-respondents. The revisional Court did not issue notice to the accused persons and heard the revision on merits. It found that the order made by the trial Court dismissing the complaint under Section 203 Cr. P.C. was faulty and therefore, he remanded the criminal complaint case to the trial Court for fresh consideration.

Learned counsel for the petitioners has made a grievance that, though, the accused persons were arrayed as party-respondents to the revision petition, learned revisional Court did not even issue notice to the accused persons and decided the revision in absentia. According to him, the revisional Court was under the duty to issue notice and hear the accused persons who are the petitioners in these petitions. He relied on the decision in the case of **Manharibhai Muljibhai Kakadia and another versus Shaileshbhai Mohanbhai Patel and others**, 2012 (4) R.C.R. (Criminal) 689.

Per contra, learned counsel for the complainant opposed the petition and submitted that no prejudice is caused to the petitioners as the revisional Court has simply remanded the matter to the trial Court for a fresh consideration.

It is seen from the Court rather it is an admitted position that the learned revisional Court did not issue notice to the accused persons before him. Indeed the legal position whether the accused persons were entitled to be heard in a revision filed against an order dismissing the complaint under Section 203 Cr. P.C. was set at rest for the first time by the Apex Court in **Manharibhai Muljibhai Kakadia and another's case (supra)** cited by the learned counsel for the petitioners, in explicit terms.

But, then the judgment of the Supreme Court was rendered on 01.10.2012 and so also reported in 2012 itself as against the revisional order passed on 22.01.2015. The submissions made by learned counsel for the petitioners that the revisional Court ought to have taken notice of the said statement of law pronounced by the Apex Court may be right, but then the said judgment might not have been noticed by the revisional Court. At any rate, in my opinion, the said decision covers the issue raised in the present petition. Para 58 of the said judgment itself is a complete answer to what has been contended by the learned counsel for the complainant, and I quote the said Para 58 as under:-

“58. We are in complete agreement with the view expressed by this Court in P. Sundarrajan, Raghu Raj Singh Rousha and A.N. Santhanam. We hold, as it must be, that in a revision petition preferred by complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed crime is entitled to hearing by the revisional court. In other words, where complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the revisional court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed crime have, however, no

right to participate in the proceedings nor they are entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled.”

In view of the above legal position, the following order is inevitable:-

ORDER

- (i) CRM-M-24895 of 2015 and CRM-M-5094 of 2016 are allowed;
- (ii) Impugned judgment and order dated 22.01.2015 made by the learned revisional Court in Criminal Revision No.59 of 2014 is quashed and set aside. Revision is sent back to the revisional Court for fresh hearing on merits;
- (iii) Parties to the revision shall appear before the revisional Court concerned on 22.05.2017 and abide by further directions from the revisional Court;
- (iv) Revision shall be decided within a period of 6 months from the date of appearance before the revisional Court concerned.

(A.B. CHAUDHARI)
JUDGE

May 08, 2017

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**