

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

CRM-M No. 25328 of 2015(O&M)

Date of decision: 2.2.2017

Kashmir Singh and anotherPetitioners

VERSUS

State of Punjab and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Nitin Narula, Advocate for
Mr. K.B. Raheja, Advocate for the petitioners.

Mr. Mikhail Kad, AAG, Punjab.

None for respondent No.2.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against order dated 04.04.2015 passed by the Additional Sessions Judge, Ferozepur whereby order dated 14.10.2014 passed by the trial Magistrate dismissing the complaint qua the petitioner has been set aside and the petitioners have been summoned to face trial for offence punishable under Sections 406, 498-A and 120-B of the Indian Penal Code, 1860 (in short 'IPC').

The sole submission made by counsel for the petitioners is that as the petitioners have not been provided with an opportunity to be heard in the matter and an order passed by the trial Court favourable to the petitioners has been set aside without giving any notice to them, the impugned order cannot be allowed to sustain and liable to be set aside. In support of his contention, he has referred to judgment of Hon'ble the Supreme Court **Manharibhai Muljibha Kakadia and another Vs.**

Shaileshbhai Mohanbhai Patel and others, 2012(4) RCR (Criminal)**689.**

There is no representation on behalf of respondent No.2 who was earlier being represented by a counsel. Counsel representing respondent No.2 even failed to file any response despite several opportunities granted for the purpose.

I have heard counsel for the petitioners, perused the paper-book particularly the judgement cited at bar.

In the referred authority, the sole question for determination before Hon'ble the Supreme Court of India was whether a suspect is entitled to hearing by the revisional Court in a revision preferred by the complainant challenging an order of the Magistrate dismissing the complaint under Section 203 of the Criminal Procedure Code, 1973 (for short 'Code'). The Court on a detailed consideration of the matter and by referring to series of judgments on issue eventually recorded its findings. The relevant extract from the judgment is reproduced as under:-

“54. 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 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 is at preliminary stage – nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or Sessions Judge, by virtue of

Section 401(2) of the Code, the suspects get right of hearing before 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 Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of 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 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.

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, the impugned order cannot be allowed to sustain and is accordingly set aside.

For the foregoing reasons, the petition is allowed. The impugned order dated 04.04.2015 (Annexure A-2) passed by the Additional Sessions Judge, Ferozepur is set aside and the matter is remitted to the revisional Court for decision of the revision afresh, in accordance with law, after providing an opportunity to the persons sought to be summoned as accused.

FEBRUARY 3, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no