

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

**CRM-M-4760-2014 (O&M)
Date of decision: - 4.10.2017**

Rajan Satia and another

.....Petitioners

versus

Kulbhushan Setia

.....Respondent

CORAM: - HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: - Mr. D.S. Malwai, Advocate for the petitioners.

Mr. Rahul Sharma, Advocate for respondent.

ARVIND SINGH SANGWAN, J (ORAL)

Prayer in the present petition is for quashing of the order dated 15.1.2014 (Annexure P-3) passed by Additional Sessions Judge, Sri Muktsar Sahib, vide which the order passed by the trial Court on 24.8.2012 was set aside and the petitioners were ordered to be summoned to face trial.

Brief facts of the case that respondent-complainant has filed a complaint against Rajan Satia son of Bharat Bhushan Satia and Sagar Satia son of Rajan Satia under Sections 405/406/420/423/424/465/467/471/120-B IPC.

Thereafter, respondent led his preliminary evidence and after the preliminary evidence was recorded, trial Court at the stage of summoning of the accused-petitioners dismissed the complaint vide order dated 24.8.2012 by making following observations: -

“Therefore, how the offence under Section 467/468/471 of IPC is made out, is a golden question. Kulbhushan Setia has not stated anywhere that he had given consent to Ajay Setia and Anil Setia who retired from partnership business and there was no retirement deed executed by Ajay Setia and Anil Setia as well. Therefore, the document dated 1.4.1994

cannot be termed as a forged document. More particularly complainant himself has stated on oath that he does now know if any new partnership deed was executed after 1.4.1994, that means the partnership deed dated 1.4.1994 was within the knowledge of Kulbushan and simply that he has not withdrawn amount equivalent to his share will not mean that the offence is made out and as far as Section 423/424 are concerned, the same are punishable for two years and alleged transaction if any took place in the year 1994 and the present complaint was filed in 2009. even if the previous complaint is taken into consideration the same was filed in 2007 and the Court could not have taken the cognizance for the same. As far as under Section 406 of IPC is concerned, the same is punishable for three years and as per Section 468 of Cr. P.C., the cognizance could have been taken within three years. The allegations are not those of under Section 420 of IPC and no offence under Section 420 of IPC is made out. As such the evidence on record is not sufficient for summoning of the accused. Complaint is therefore dismissed under Section 203 of Cr. P.C. File be consigned to judicial record room.”

Thereafter, respondent-complainant preferred criminal revision petition before the revisional Court. The revisional Court vide impugned judgment dated 15.1.2014, allowed the revision petition and ordered summoning of the petitioners-accused for the offences punishable under Sections 406, 420, 423, 465, 467, 471 read with Section 120-B IPC. The petitioners have filed the present petition challenging the impugned judgment dated 15.1.2014.

Learned counsel for the petitioners has submitted that a perusal of the judgment would show that no notice was issued to the petitioners and in fact the service/issuance of notice to petitioners was dispensed with by the revisional Court which itself show that no notice was issued to the petitioners and the impugned order has been passed without affording them any opportunity of hearing. He further relies upon a judgment of the Hon'ble Supreme Court in 2012 (4) RCR (Criminal) 689, Manharibhai Muljibhai Kakadia and another vs. Shaileshbhai Mohanbhai Patel and others, where the Court observed 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.

It is, thus, submitted on behalf of the petitioners that it was incumbent upon the revisional Court to issue notice and afford an opportunity of hearing to the petitioners before passing the impugned order dated 15.1.2014, summoning the petitioners to face trial. It is further submitted that since a legal right has accrued in favour of the petitioners after the trial Court has acquitted them and, therefore, without affording them any opportunity of hearing,

Revisional Court could not pass the order summoning the petitioners.

In view of above, present revision petition is allowed and the impugned order dated 15.1.2014 is set aside and the matter is remanded back to the revisional Court for deciding the revision petition afresh after affording an opportunity of hearing to the petitioners- accused.

Parties are directed to appear through their counsel before the trial Court on 31.10.2017.

(ARVIND SINGH SANGWAN)
JUDGE

4.10.2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No