

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.M-5531 of 2016

.....

Date of decision:1.2.2017

Shiv Ram and others

...Petitioners

v.

Satbir

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Mohan Singh Rana, Advocate for Mr. S.K. Panwar,
Advocate for the petitioners.

Mr. Tapan Kumar, Advocate for Mr. Jaivir Yadav, Advocate for
the respondent.

.....

Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. for quashing of the impugned order dated 19.10.2015 (Annexure-P2) passed by learned Additional Sessions Judge, Palwal, whereby the revision petition bearing No.03 dated 16.1.2015 filed by the respondent has been allowed without even issuing notice to the petitioners and summoned the petitioners under Sections 323 and 325 IPC to face the trial in Criminal Complaint No.132 dated 30.5.2014 filed by the respondent against the petitioners, while setting aside the well reasoned order passed on 5.1.2015 (Annexure-P.1) by the learned Chief Judicial Magistrate, Palwal, wherein the said criminal complaint filed by the respondent against the petitioners was dismissed.

Notice of motion was issued in this case.

Mr. Tapan Kumar, learned Advocate appearing for Mr. Jaivir Yadav, Advocate has put in appearance on behalf of the respondent and contested this petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that Satbir-present respondent filed a complaint for the offences under Sections 323, 325, 452 and 506 IPC against Shiv Ram and others and the learned Chief Judicial Magistrate, Palwal vide order dated 5.1.2015 dismissed the complaint and has not summoned the accused. The complainant filed a revision petition before the Court of Session and the learned Additional Sessions Judge, Palwal, vide order 19.10.2015 without issuing notice to the present petitioners accepted the revision petition and the order passed by the trial Court was set aside and the present petitioners have been summoned under Sections 323 and 325 IPC read with Section 34 IPC.

Learned counsel for the petitioners relied upon the law laid down by the Hon'ble Supreme Court in Manharibhai Muljibhai Kakadia and another v. Shaileshbhai Mohanbhai Patel and others, 2012 (4) R.C.R. (Criminal) 689, in which the Hon'ble Supreme Court has held 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.

xx xx xx xx xx

58. We are in complete agreement with the view expressed by this Court in P. Sundarrajan¹, 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

[5]

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.”

I have gone through the above law laid down by the Hon'ble Supreme Court, which fully applies to the facts of the present case. Therefore, in view of the above law laid down by the Hon'ble Supreme Court and also the fact that notice is necessary to the accused in the revision petition, I accept this petition. The order dated 19.10.2015 passed by learned Additional Sessions Judge, Palwal, is set aside. The matter is remanded back to the learned Additional Sessions Judge, Palwal (revisional Court) to hear the revision petition after giving notice and opportunity of being heard to the present petitioners.

The parties are directed to appear before the learned Additional Sessions Judge, Palwal (revisional Court) on 28.2.2017.

February 1, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No