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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.845 of 2017

1. Kamal Nayan Pandey, S/o Shri Joshik Prasad Pandey, aged about 48 years, Branch Manager, District Cooperative Central Bank, Maryadit Branch Pratappur, District Surajpur, Chhattisgarh
2. Santosh Nawik, S/o Shri Harinarayan Nawik, aged about 34 years, Samiti Prabandhak, Dawankara, Tahsil Pratappur, District Surajpur, Chhattisgarh

---- Applicants

versus

Sunil Tiwari, S/o Late Ramkesh Tiwari, aged about 43 years, occupation service, R/o Godhanpur, P.S. and Tahsil Ambikapur, District Surguja, Chhattisgarh

--- Respondent

For Applicants	:	Shri V.K. Pandey, Advocate
For Respondent	:	Shri Rakesh Pandey, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

27.7.2018

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. The instant revision has been preferred against the order dated 26.5.2017 passed by the Additional Sessions Judge, Pratappur, District Surajpur in Criminal Revision No.8 of 2017 arising out of the order dated 27.3.2017 passed by the Judicial Magistrate First Class, Pratappur in M.Cr.C. No.93 of 2017.
3. Facts of the case, in brief, are that the Respondent filed a complaint case under Section 200 of the Cr.P.C. against the present Applicants and one Ashok Tiwari before the Judicial Magistrate First Class, Pratappur. After examining the

Complainant and his witnesses, the Judicial Magistrate First Class registered the complaint case only against Ashok Tiwari and rejected the complaint case against the present Applicants vide order dated 27.3.2017. Being aggrieved by the order dated 27.3.2017, the Respondent filed Criminal Revision No.8 of 2017 on 25.5.2017. Thereafter, on the next day itself, i.e., 26.5.2017, the Revisional Court set aside the order dated 27.3.2017 passed by the Judicial Magistrate First Class and directed him to take cognizance against the present Applicants in the complaint case. Hence, this revision has been preferred by the Applicants.

4. Learned Counsel appearing for the Applicants submits that the Revisional Court has not complied with the mandatory provisions of Sections 399(2) and 401(2) of the Cr.P.C. as the Revisional Court has not given opportunity of hearing to the Applicants before directing the Trial Court for taking cognizance against them in the complaint case. Therefore, the impugned order passed by the Revisional Court is perverse.
5. Per contra, Learned Counsel appearing for the Respondent supports the impugned order passed by the Revisional Court.
6. I have heard Learned Counsel appearing for the parties and perused the records of the Courts below with due care.
7. Sub-section (2) of Section 399, Section 400 and sub-section (2) of Section 401 of the Code of Criminal Procedure read as under:

“399. Sessions Judge's powers of revision.—

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(2) Where any proceeding by way of revision is

commenced before a Sessions Judge under sub-section (1), the provisions 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.

400. Power of Additional Sessions Judge.—
An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.

401. High Court's powers of revision.— xxxx

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(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.”

8. As per sub-section (2) of Section 399 of the Cr.P.C., while deciding a revision, the Sessions Judge has all powers which the High Court exercises under Section 401(2) of the Cr.P.C. As per Section 400 of the Cr.P.C., the Additional Sessions Judge has all powers which are available to a Sessions Judge for deciding a revision. Sub-section (2) of Section 401 of the Cr.P.C. mandates that 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.
9. In the light of above, if I examine the case in hand, against the order dated 27.3.2017, revision was filed before the Additional Sessions Judge on 25.5.2017 and on the next day itself, i.e., 26.5.2017, the Revisional Court, without giving the Applicants any notice, has set aside the order dated 27.3.2017 passed by the Trial Court and directed the Trial Court to take cognizance against the Applicants. Thus, it is clear that the Applicants have not been

afforded any opportunity of being heard. Therefore, the impugned order dated 26.5.2017 is not maintainable.

10. Consequently, the present revision is allowed. The impugned order dated 26.5.2017 passed by the Revisional Court is set aside. The matter is remanded back to the Revisional Court to decide the revision afresh after affording opportunity of hearing to the present Applicants in accordance with law. The Applicants shall appear before the Revisional Court on 16.11.2018.
11. Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE