

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 14.09.2018

1. CRM-M-21701-2014 (O&M)

Dr. Guriqbal Singh

...Petitioner

Versus

Piara Lal @ Piare Lal and another

...Respondents

2. CRM-M-26215-2017 (O&M)

Bhupinder Singh

...Petitioner

Versus

Piara Lal @ Piare Lal and another

...Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Naveen Batra, Advocate
for the petitioner (in CRM-M-21701-2014).

Mr. Vipul Dharmani, Advocate
for the petitioner (in CRM-M-26215-2017).

Mr. Ramneek Vasudeva, Advocate
for respondent No.1 (in both cases).

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in both these petitions is for setting aside the order dated
10.03.2012 passed by the Additional Sessions Judge, vide which, while

allowing the revision petition filed by respondent No.1-complainant, the order dated 15.09.2011 passed by the trial Court, dismissing complaint, was set aside and the case was remanded back to the trial Court for passing a fresh order on the point whether the petitioners/accused can be summoned or not as well as the subsequent summoning order dated 06.11.2013 passed by the trial Court in aforesaid criminal complaint, in pursuance to the aforesaid remand order as well as all the subsequent proceedings arising therefrom.

Brief facts of the case are that the complainant-respondent No.1 had three sons namely Dharam Chand, Varinder Kumar and Sham Lal. Dharam Chand was got married with Mohinder Kaur, daughter of co-accused Dharampal in the year 1995. After the death of aforesaid Dharam Chand on 16.09.1997, marriage between said Mohinder Kaur and Varinder Kumar was solemnised on 21.01.2000 and out of this wedlock, no child was born, however, from the previous wedlock of Mohinder Kaur with Dharam Chand, one male child was born. Said Varinder Kumar had gone to M.P. to get the job for ten months along with his wife Mohinder Kaur but when Varinder Kumar returned to his village, he found that one female child was born to his wife and had doubt in this regard. Mohinder Kaur got operated herself of vasectomy for not born any child in future. Thereafter, relations between Varinder Kumar and his family members as well as Mohinder Kaur and her parents became strained. Varinder Kumar filed a petition under Section 10 of the Hindu Marriage Act against his wife Mohinder Kaur. The parents of Mohinder Kaur started extending threats to Varinder Kumar of dire consequences as they had link with higher authorities. At the instance of

Mohinder Kaur and her parents, the police of Police Station Nurpur Bedi had illegally confined Varinder Kumar in the police station. Said Varinder Kumar was a Mechanic and used to sell vegetables and his name was written in Punjabi on his left arm and he was always keeping one note book with him every time in which his address was mentioned. The petition filed by Varinder Kumar was dismissed in default due to fear from the side of accused persons.

On 15.12.2002, Varinder Kumar had left for his job on his cycle in the morning and after doing his work of mechanic, he went to Village Saini Majra, where the house of his relatives is situated. Then he returned to his village on the same day at about 10.00 P.M. When he reached at Bus Stand Nurpur Bedi, a quarrel took place between him and parents of Mohinder Kaur who gave him severe beatings and thereafter, parents of Mohinder Kaur and other accused persons took Varinder Kumar to Police Station in the police vehicle. Consequently, all the accused persons had murdered Varinder Kumar and thrown his dead body in Village Balewal. In connivance with each other, the accused persons made a false report, false post-mortem examination report and on the same, they immediately cremated him. The complainant enquired about his son Varinder Kumar from the police of Police Station Nurpur Bedi on 16.12.2002, but the police did not disclose anything. Again on 17.12.2002, the complainant along with other persons went to the police station for lodging the complaint but the police did not do so. The complainant had also given many applications to the higher authorities regarding murder of his son Varinder Kumar by all the

accused persons but no action has taken.

The trial Court, after recording the preliminary evidence of the complainant, finding that no prima facie case is made out against the petitioners/accused, dismissed the complaint vide order dated 15.09.2011. Thereafter, the respondent-complainant preferred a revision petition before the Court of Sessions and the Additional Sessions Judge, vide impugned order dated 10.03.2012, set aside the aforesaid order of the Magistrate and remanded the case back to pass a fresh order. The operative part of the order dated 10.03.2012 is reproduced as under: -

*“It is a settled law that at the stage of summoning the accused, the Court is not to evaluate the evidence adduced by the complainant on golden scales so as to reach at a conclusion that whether the evidence led by the complainant is truthful and is sufficient for convicting the accused. At the time of summoning of accused, evidence led by the complainant is unrebutted and same has to be taken as prima facie true. In **S.W. Palantikar and others Vs. State of Bihar and others 2002 (1) Criminal Court Cases 360 (SC)**, it was held by the Hon’ble Supreme Court that “sufficient grounds means that a prima facie case is made out against the accused and not sufficient grounds for the purpose of conviction.” Similarly in **Gurdeep Kaur Vs. Balbir Singh and others 2005 (3) Criminal Court Cases 222 (P&H)** our own Hon’ble High Court has laid down that “at the time of summoning an accused, in a complaint case; Trial*

Magistrate is supposed to look into the allegations, as levelled in the complaint or averred at the time when evidence is led. Trial Magistrate has to be prima facie satisfied as to whether there are sufficient grounds for proceeding against the accused named in the complaint or not. It is not the duty of Trial Magistrate to enter into detailed discussions on the merits or demerits of the case". From these authorities on the point involved in the present petition, it can be held that the reasonable test to be applied by the Magistrate is to see whether reasonable grounds are made out to proceed further in the matter and not whether the allegations in the complaint can lead to conviction. However, learned Trial Court on its own assumption have not summoned accused. It is therefore directed that learned Trial Court shall re-examine the evidence available on record in view of the settled legal position after giving opportunity to the complainant to lead any further evidence in support of his case and thereafter to proceed further as per law. With these observations, the revision petition filed by the complainant stands allowed and impugned order is set aside. The complainant is directed to appear before the learned Trial Magistrate on 31.3.2011."

After the case was remanded back to the trial Court, the trial Court subsequently vide impugned order dated 06.11.2013, finding a prima facie case under Sections 302 IPC read with Sections 120-B IPC summoned

accused No.1 to 8 and further summoned petitioner Dr. Guriqbal Singh (accused No.9) under Sections 201, 217, 218 IPC. The petitioner in CRM-M-21701-2014 Dr. Guriqbal Singh as well as petitioner Bhupinder Singh in CRM-M-26215-2017 have challenged the aforesaid impugned orders primarily on the ground that before passing of remand order, the revisional Court has not afforded an opportunity of hearing to them.

Learned counsel for the petitioners have relied upon **Manharibhai Muljibhai Kakadia and another Vs. Shaileshbhai Mohanbhai Patel and others, 2012 (4) RCR (CrL.) 689**, in which question for consideration before the Hon'ble Supreme Court was whether the suspect is entitled to be heard by the revisional Court in a revision petition preferred by the complainant, challenging the order of Magistrate, dismissing the complaint under Section 203 Cr.P.C. The Hon'ble Supreme Court, while deciding the aforesaid issue, has held as under: -

“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.

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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.”

Learned counsel for the petitioners have thus submitted that since on dismissal of the complaint, a right has accrued in favour of the petitioners, therefore, before passing any order, adverse to the right of the petitioners, Court of Sessions was required to afford them an opportunity of hearing as per Section 401 (2) Cr.P.C.

In reply, learned counsel for respondent No.1 has relied upon **Mohit @ Sonu and another Vs. State of U.P. and another, 2013 (3) RCR (Crl.) 673**, in which the aforesaid judgment in **Manharibhai Muljibhai Kakadia**’s case (supra) was relied upon and the Hon’ble Supreme Court has held as under: -

“Indisputably, a valuable right accrued to the appellants by reason of the order passed by the Sessions Court refusing to issue summons on the ground that no prima facie case has been made out on the basis of evidence brought on record. As discussed hereinabove, when the Sessions Court order has been challenged, then it was incumbent upon the revisional court to give notice and opportunity of hearing as contemplated under sub-section (2) of Section 401 of Cr.P.C. In our considered opinion, there is no reason why the same principle should not be applied in a case where such orders are challenged in the High Court under Section 482 of Cr.P.C.”

Learned counsel for respondent No.1-complainant has submitted that in **Mohit @ Sonu**'s case (supra), the Hon'ble Supreme Court, while dealing with the procedure for summoning an accused under Section 319 Cr.P.C., has held that it is incumbent upon the revisional Court to give an opportunity of hearing as contemplated under Section 401 (2) Cr.P.C., while deciding the revision petition against an order passed under Section 319 Cr.P.C.

After hearing learned counsel for the parties, I find merit in both these petitions.

The undisputed facts of the case are that the revisional Court, while passing the impugned order dated 10.03.2012, has not issued any notice to the accused persons, despite the fact that they were arrayed as accused No.2 to 10 along with respondent No.1; State of Punjab. Much less to say, even no notice was issued to the State of Punjab and the revision petition was decided only after hearing the version of the complainant. It is also undisputed that subsequent to passing of the remand order, setting aside the order of dismissal of complaint passed by the Magistrate dated 15.09.2011, the trial Court has subsequently summoned the accused persons vide impugned order dated 06.11.2013 and therefore, the order dated 10.03.2012 passed by the revisional Court, without affording an opportunity of hearing, which was the forming of base for the trial Court to pass a fresh order, thereby summoning petitioners, has adversely affected the rights of the petitioners, who have a right to be heard as per provisions of Section 401 (2) Cr.P.C. in view of judgment of the Hon'ble Supreme Court in **Manharibhai**

Muljibhai Kakadia's case (supra).

Accordingly, both these petitions are allowed. The order dated 10.03.2012 passed by the Additional Sessions Judge and dated 06.11.2013 passed by the trial Court are set aside and the case is remanded back to the Court of Additional Sessions Judge, Ropar for deciding it afresh after affording an opportunity of hearing to the petitioners.

Both the petitioners are granted liberty to raise all the pleas/defences available to them.

Parties through their counsel are directed to appear before the Id. Sessions Judge, Ropar on 24.09.2018.

As CRM-M-21701-2014 is pending since 2014 and further proceedings qua petitioner Guriqbal Singh were stayed, considering the fact that it is an old case, the revisional Court is directed to dispose of the matter preferably within a period of three months from the date of receipt of certified copy of this order.

Nothing observed in this order shall have any bearing on merits of the case and the revision petition will be decided on merits.

Since both these petitions are disposed of, liberty is granted to petitioner Bhupinder Singh to move an appropriate application before the revisional Court or trial Court for seeking permission to travel abroad.

[ARVIND SINGH SANGWAN]
JUDGE

14.09.2018

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Whether speaking/reasoned Yes/No

Whether reportable: Yes/No