

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

CRM-M-29592 of 2015.

Decided on:- December 01, 2018.

Rohtash Singh.

.....Petitioner.

Versus

Smt. Rewati Devi and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. S.K. Yadav, Advocate
for the petitioner.

Mr. P.R. Yadav, Advocate
for respondent No.1.

Mr. Ripu Daman, A.A.G., Haryana.

HARI PAL VERMA, J. (Oral)

The petitioner has filed present petition under Section 482 Cr.P.C. for setting aside the complaint No.101 dated 14.10.2013 titled as “*Smt. Rewati Devi Versus Rohtash Singh and others*” pending in the Court of learned Sub-Divisional Judicial Magistrate, Mahendergarh and the judgment dated 18.04.2015 passed by learned Sessions Judge, Narnaul, whereby the revision petition filed by the respondent-complainant was accepted and the order dated 18.07.2014 passed by learned Magistrate was set aside without hearing the petitioner.

Vide order dated 18.07.2014, learned Magistrate had dismissed the aforesaid complaint filed by respondent-complainant Smt. Rewati Devi

under Sections 420, 467, 468, 471, 120-B and 506 I.P.C. The complainant had filed a revision petition against the said order before the Court of Session. Vide impugned judgment dated 18.04.2015, learned Sessions Judge, Narnaul had accepted the said revision petition and summoned accused Rohtash Singh (petitioner herein) to face trial under Sections 467, 468 and 471 I.P.C.

Learned counsel for the petitioner has argued that the revisionary Court had accepted the revision petition filed by the complainant without issuing any notice to the petitioner and a glaring prejudice has been caused to the petitioner. By virtue of Section 401(2) Cr.P.C., it is mandatory upon the revisional Court to serve a notice to the accused and to afford an opportunity of hearing before accepting the revision petition. In support of his contentions, learned counsel for the petitioner has relied upon ***B.B. Mohanti Versus State of Rajasthan and another 2009(5) RCR (Criminal) 167*** and ***Nirmala Devi and another Versus State of Haryana and another 2011(4) RCR (Criminal) 648***.

On the other hand, learned counsel for the respondent No.1 and learned State counsel have not been able to rebut the argument of the petitioner that the revisionary Court ever issued notice to the petitioner. They, however, have contended that since the Public Prosecutor had appeared in the case, there was no need to issue any notice to the petitioner.

I have heard learned counsel for the parties.

There is no dispute that the complaint filed by respondent No.1-complainant was dismissed by learned Magistrate vide order dated 18.07.2014 and the complainant challenged the said order before the

revisionary Court, but there is no evidence on record to suggest that the revisionary Court while setting aside the order of dismissal of complaint had ever issued any notice to the petitioner. The petitioner being accused has a right to be heard by the revisionary Court before setting aside the order passed by learned trial Court. It has certainly caused prejudice to the petitioner-accused.

Hon'ble Supreme Court in ***Manharibhai Muljibhai Kakadia and another Versus Shaileshbhai Mohanbhai Patel and others 2012(4) RCR (Criminal) 689*** has observed that before issuance of summoning of the petitioners-accused, notice is required to be issued. The relevant paragraph No.58 of the said judgment reads as under:

*“We are in complete agreement with the view expressed by this Court in **P. Sundarrajan, Raghu Raj Singh Rousha and A. N. Santhanam**, 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 present petition is allowed and the impugned judgment dated 18.04.2015 passed by learned Sessions Judge is set aside. The matter is remanded back to learned Sessions Judge, Narnaul, who shall pass a fresh order in accordance with law, of course after giving notice to all the concerned parties for the date fixed.

The parties are directed to appear before the revisionary Court on 18.12.2018.

December 01, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No