

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

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CRM-M-3925-2018 (O & M)
Date of Decision:04.12.2018

Vikas Vashisht and another

...Petitioners

Versus

Dalbir Sarbha

...Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Amit Singh Sethi, Advocate
for the petitioners.

Mr. R.S. Chahal, Advocate
for the respondent.

MANOJ BAJAJ, J.

Petitioners have filed this petition for quashing of complaint CC No.RT 332/31.01.2013/01.07.2013 under Sections 193/120-B/420/406/34 IPC; order dated 27.09.2017 passed by the Revisional Court, whereby the order dated 17.08.2015 passed by the learned trial Court refusing to issue process against accused (petitioners) was reversed. The Revisional Court has issued process against the petitioners.

Learned counsel for the parties have been heard. It is not in dispute that after the refusal of the process by the learned trial Court, no notice was issued to the accused by the Revisional Court to offer them opportunity of hearing. This fact is recorded in Para 5 of the impugned judgment dated 27.09.2017 which reads as under:-

“ When the revision petition was filed no notice was given to the accused as the criminal complaint filed against the accused was dismissed and in these circumstances there was no necessity to issue notice to the accused.”

The impugned order has been passed by the learned Additional Sessions Judge, Sonipat while exercising the revisional powers as contemplated under Section 399 Cr.P.C. The power is identical which can be exercised by this Court under Section 401 Cr.P.C. as the same is also applicable to the Sessions Judge's powers of revision. Section 401 Cr.P.C., which contemplates the High Court's powers of revisions reads as under:-

401. High Court' s Powers of revisions:- (1) *In the case of any proceeding the record of which has been called for by itself or Which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.*

(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.*

(3) *Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal*

into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.”

A bare reading of the above indicates that the learned Additional Sessions Judge, Sonipat was required to hear the accused before setting aside the order of the learned trial Court, whereby the issuance of process was refused in the complaint.

Learned counsel for the complainant has contended that once the learned trial Court has refused to issue the process and the accused were never allowed to participate, therefore, there was no reason to issue notices to the accused and offer them the opportunity of hearing. The factual position is not in dispute, however, after refusal to issue process in the complaint, a valuable right had accrued in favour of the accused and, therefore, it was incumbent upon the revisional Court to hear the accused before setting aside the order in their favour. The decision of the Hon'ble

reported in (2015) 3 SCC 773 deals with such a situation, wherein it is held that even if a complaint was dismissed on merits, without hearing the accused, the revisional Court has to issue notice to the accused before setting aside the order in revision. The relevant para is reproduced as under:-

“We find substance in this submission. Dismissal of the complaint terminates criminal proceedings against the accused. If the complainant carries the matter further by filing a revision and the Sessions Court sets aside the dismissal order and remands the matter to the Addl. C.J.M. for fresh enquiry, the complaint is revived. In this connection, it is necessary to refer to Section 401 of the Code which lays down the High Court's powers of revision. Sub-section (2) thereof states 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. Section 399 of the Code refer Sessions Judge's powers of revision. Sub-Section (2) thereof states that 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 reference in the said sub-sections to the High Court shall be construed as reference to the Sessions Judge.”

Hon'ble the Supreme Court further relied upon **Manharibhai Muljibhai Kakadia & Anr. v. Shaileshbhai Mohanbhai Patel & Ors., (2012) 10 SCC 517.** The relevant extract of the same are as under:-

“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 the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of Section 401 (2) of the Code, the suspects get the right of hearing before the 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 the 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 the express provision contained in Section 401 (2) the Code. The stage is not

important whether it is pre-process stage or post process stage.

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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 the crime have, however, no right to participate in the proceedings nor are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process.”

In the light of the above judgments and the facts of this case, particularly the fact that the revisional Court has issued the process against the petitioners and then remanded the matter for continuation of the complaint in accordance with law, it was incumbent upon the Revisional Court to hear the accused before setting aside the order of the learned trial Court.

In view of the above, impugned order is set aside and the case is remanded back to the revisional Court to hear all the accused before deciding the matter on merits. The parties are directed to appear before the revisional Court on 20.12.2018.

04.12.2018
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(MANOJ BAJAJ)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No