

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202

CRM-M-43413-2018

Date of Decision:01.11.2018

Ranjit Singh and another

.....Petitioners

Versus

Dalwinder Singh

.....Respondent

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

Present: Mr. Gagandeep Singh Sirphikhi, Advocate,
for the petitioners.

HARI PAL VERMA, J.(Oral)

Petitioners have filed the present petition under Section 482 Cr.P.C. for quashing the order dated 07.04.2018 (Annexure P-3) passed by learned Additional Sessions Judge, Amritsar, whereby the revision petition filed by the respondent-revisionist was allowed and the petitioners were ordered to be summoned in a complaint case filed under Sections 420, 467, 468, 471, 120-B IPC and to appear before the trial court to face trial.

Learned counsel for the petitioners has argued that the respondent has filed a criminal complaint and after considering the evidence so adduced by the complainant, the trial Court has recorded a finding that there are no sufficient grounds to proceed further with the complaint and to summon the petitioners-accused. Accordingly, the complaint was dismissed on 22.08.2017 by the learned Magistrate. The said order was challenged by

way of a revision petition by the complainant.

The Revisionary Court vide order dated 07.04.2018 set aside the order passed by learned Judicial Magistrate 1st Class, Amritsar, acquitting the petitioners and summoned the petitioners to face trial in the aforesaid complaint.

Learned counsel for the petitioners has argued that the order of summoning passed by Revisionary Court is contrary to the law settled by the Hon'ble Apex Court in the case of **Manharibhai Muljibhai Kakadia and another** Versus **Shaileshbhai Mohanbhai Patel and others**, 2012 (4) RCR (Criminal) 689, as the revision petition has been allowed without giving any notice to the petitioners.

Mr. Tarundeep Kumar, Advocate, for Mr. D.S. Pheruman, Advocate, has put in appearance on behalf of the respondent and filed his power of attorney, which is taken on record. He has argued that the petitioners have rightly been summoned by the Revisionary Court and no prejudice is going to be caused to them even if notice has not been issued to the petitioners.

I have heard learned counsel for the parties.

There is no dispute that the complaint filed by the respondent was dismissed by the trial court and the complainant challenged the said order before the Revisionary Court, but there is no evidence on record to suggest that the learned Revisionary Court while setting aside the order of dismissal of complaint had ever issued any notice to the petitioners. The petitioners being accused have a right to be heard by the Revisionary Court before setting aside the order passed by learned trial Court.

The Hon'ble Apex Court in **Manharibhai Muljibhai Kakadia's case (supra)**, observed that before issuance of summoning of the

petitioners-accused, notice is required to be issued. The relevant paragraph

58 of the judgment is reproduced 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 accepted and the

matter is remanded back to learned Additional Sessions Judge, Amritsar,

who shall pass a fresh order, 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 05.12.2018.

November 01, 2018
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(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No