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HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 13/03/2019****Order Delivered on : 03/05/2019****Cr.M.P. No. 1525 of 2017**

Sanjay Kumar Agrawal, S/o. Shri Parmanand Agrawal, aged about 45 years, Proprietor – Ma Banjari Transport, R/o. Itwari Bazar, Police Station – City Kotwali, Raigarh, District Raigarh, Chhattigarh.

---- Petitioner**Versus**

1. Grewal Associate Private Limited, Badbil, police station Balani, District Keojhar (Odisha), through AGM Grewal Associate Private Limited, namely Urgrasen Mahanta, S/o Rusanath Mahanta, aged about 39 years, R/o Badbil, police station Balani, District Keojhar (Odisha)
2. State Of Chhattisgarh Through Police Station City Kotwali, Raigarh, District Raigarh, Chhattisgarh.

---- Respondents**AND****Cr.M.P. No. 1548 of 2017**

Rajesh Agrawal,

(wrongly mentioned as Bunty Singhaniya in impugned order & FIR) S/o Madan Lal Agrawal, aged about 49 years, (also wrongly mentioned in the impugned order, as “Proprietor Aditya Road Carrier, Transport, occupation Lincense-Holder of Lakha Coal Dump Plant, office between Dhimrapur to Kotra Bypass Road, Raigarh, Tahsil & District Raigarh, R/o Disha Vihar Colony, Raigarh, Tahsil and District Raigarh, Chhattigarh.)

R/o 216-F, Krishna Vihar, Raigarh, P.S. Kotra Road, District Raigarh, Chhattigarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Station House Officer, Police Station City Kotwali, Raigarh, Tashil & District Raigarh, Chhattisgarh.
2. Grewal Associate Private Limited, Badbil, police station Balani, District Keojhar (Odisha), through AGM Grewal Associate Private Limited, namely Urgrasen Mahanta, S/o Rusanath Mahanta, aged about 39 years, R/o Badbil, police station Balani, District Keojhar (Odisha)

---- Respondents

For the Petitioners	:	Shri D.K. Gwalre and Shri Mateen Siddiqui, Advocates.
For the Respondent/State	:	Shri H.S. Ahluwalia, Dy. G.A.
For the Other Respondent	:	Shri Kishore Bhaduri, Shri Pawan Kesharwani and Ms. Swati Upadhyay, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV ORDER

Heard.

1. These petitions have been brought under Section 482 of the Code of Criminal Procedure with a prayer to sought relief against registration of FIR bearing Crime No. 671 of 2017 in police station City Kotwali, Raigarh.

2. It is submitted by counsel for the petitioners that respondent – Grewal Associate Private Limited/ complainant had earlier filed a written complaint dated 24.5.2016 making allegation of defalcation of coal and causing loss to the company to the tune of Rs.88,27,843/-. The police did not take any action on this complaint and the police gave information dated 1.4.2017 of non-cognizable under Section 155 of the Cr.P.C. to the complainant.

Petitioner – Sanjay Kumar Agrawal in Cr.M.P. No. 1525 of 2017 had entered into an agreement with respondent – Grewal Associate Private Limited on 17.5.2016 in which, terms were agreed between them for the purpose of resolving the dispute, but without any rhyme and reason, a private complaint was filed on 11.5.2017 against the petitioners alongwith the application under Section 156(3) of the Cr.P.C. The Court of Chief Judicial Magistrate, Raigarh rejected the application under Section 156(3) of the Cr.P.C. against which a revision was preferred. The Revisional Court

passed the impugned order dated 26.8.2017 in Criminal Revision No.88 of 2017 by which, the order impugned was set aside and the Court of Chief Judicial Magistrate, Raigarh was directed to pass an order in accordance with law. Thereafter, the order dated 10.10.2017 was passed by the Chief Judicial Magistrate, Raigarh by which the application under Section 156(3) of Cr.P.C. was allowed and the Station House Officer of Police Station City Kotwali was directed to register FIR and investigate the case. The main contention of the petitioners in both the cases is that while passing the impugned order, the Revisional Court has not provided the petitioners any opportunity of hearing.

Placing reliance on the judgment of the Supreme Court in the case of **Raghu Raj Singh Rousha vs. Shivam Sundaram Promoters (P) L and Anr.** reported in **(2009) 2 SCC 363**, it is argued that in the said case it has been clearly held that in criminal revision the person affected is a necessary party. Reliance has also been placed on the order of Co-ordinate Bench of this Court in **Rajendra Chawla and Others vs. Chandra Prakash Chabda and Anr.** in **Cr.M.P. Nos. 1583 of 2017 & 1663 of 2017** passed on 28.2.2019. In the said case, it was held that after rejection of application under Section 156(3) of the Cr.P.C. by the Judicial Magistrate, the order of Revisional Court directing registration of FIR and investigation of the case is illegal and bad and it was observed that in accordance with the provision under Section 397 of the Cr.P.C. and in view of the dictum of the Supreme Court in the case of **Manharibhai Muljibhai Kakadia vs. Shaileshbhai Mohanbhai Patel** reported in **(2012) 10 SCC 517**, in such case the accused cannot be deprived of his valuable right to be heard. Therefore, it is prayed that the petitions be allowed and the order of the Revisional Court and the

Court of Chief Judicial Magistrate, Raigarh and the FIR lodged on that basis be also quashed.

3. Learned Counsel for respondent – Grewal Associate Private Limited opposes the submissions made in this respect. Reliance has been placed on the judgment of this Court in the case of **Amarnath Agrawal vs. Jai Singh Agrawal and Others** reported in **(2015) SCC Online Chh 14** stating that the order of registration of FIR under Section 156(3) of the Cr.P.C. is not revisable because such power can be exercised only by the High Court under Section 482 of the Cr.P.C. to entertain the petition for quashing of FIR and investigation. Reliance has also been placed on the judgment of Allahabad High Court in the case of **Father Thomas vs. State of U.P. and Others** reported in **2010 SCC Online All 2438** on the point that the prospective accused has no *locus standi* to challenge a direction for investigation of a cognizable case under Section 156(3) of the Cr.P.C. before cognizance or issuance of process against the accused. Placing reliance on the dictum in **Amarnath Agrawal vs. Jai Singh Agrawal and Others** (supra), it is submitted that the petitioners have no *locus standi* to challenge the impugned order.

4. Learned State counsel submits that FIR has been lodged in accordance with the order passed by Chief Judicial Magistrate, Raigarh and the investigation is under progress, therefore, there is no reason to interfere with these proceedings.

5. I have heard learned counsel appearing for the parties at length and also perused the evidence available on record.

6. The Sessions Judge exercises the power of revision under Sections 397 and 399 of the Cr.P.C. Section 399(2) of the Cr.P.C. provides 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 of Cr.P.C. shall be applicable.

7. Sub-section (2) of Section 401 of Cr.P.C. provides 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.

8. Hon'ble Supreme Court in the case of **Manharibhai Muljibhai Kakadia vs. Shailesh Bhai Mohanbhai Patel** reported in **(2012) 10 SCC 517** held that in a revision petition filed by the complainant against dismissal of complaint then under Section 401(2) of the Cr.P.C. the suspect/ accused get the right of hearing before the Revisional Court although such order challenged was passed without their participation. It was further made clear that in case the dismissed complaint is restored to file, in that case the accused shall have no opportunity of hearing until the trial Court takes a decision to issue process to the accused persons.

9. The matter in issue is very limited that in the revision against the order of dismissal of the application under Section 156(3) of the Cr.P.C. the proposed accused is a necessary party or not. This question has been dealt with by this Court in the case of **Rajendra Chawla and Others vs. Chandra Prakash Chabda** in **Cr.M.P. 1583 of 2017** vide order dated 28.2.2019.

Learned Single Bench has held that dismissal of the application under Section 156(3) of the Cr.P.C. thereby it would be a dismissal in the form of termination of the complaint proceeding therefore, if such order was subject to challenge in revision, then by virtue Section 401(2) of the Cr.P.C. the suspect/ accused get the right of hearing before the Revisional Court.

10. After considering all the facts and circumstances of this case and the legal propositions on this point, I am of this view that the Revisional Court below has failed to exercise the power of revision as required under Sections 397, 399 and 401 of the Cr.P.C. in disposing of the revision petition without affording opportunity to the suspect/ accused, in that case this certainly amounts to miscarriage of justice. Therefore, on the basis of these findings, this petition is allowed and the impugned order dated 26.8.2017 in Cr.R. No. 88 of 2017 passed by the Learned Fourth Additional Sessions Judge, Raigarh is set aside. The consequences of that order i.e. the order for registration of FIR passed by the Chief Judicial Magistrate, Raigarh dated 10.10.2017 and the FIR dated 15.10.2017 registered as Crime No. 671 of 2017 are also quashed. The revision petition before the Sessions Court below is restored to its file and the concerned Court is directed to give an appropriate opportunity of hearing to the petitioners in these cases before passing any order on the said revision petition.

11. Accordingly, this petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge