

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

CRM-M-9099 of 2017.
Decided on:- March 28, 2018.

Rakesh Kumar Jain and others

.....Petitioners.

Versus

Parmod Rani.

.....Respondent.

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

Present:- Mr. Atul Goyal, Advocate
 for the petitioners.

Mr. Manish Jain, Advocate
 for the respondent.

HARI PAL VERMA, J. (Oral)

The petitioners have filed present petition under Section 482 Cr.P.C. for setting aside the complaint No.COM/770 dated 11.09.2014 titled as “*Parmod Rani Versus Rakesh Kumar Jain and others*” under Sections 342/354-A/500/120-B IPC pending in the Court of learned Judicial Magistrate 1st Class, Ludhiana and the judgment dated 07.11.2015 passed by learned Additional Sessions Judge, Ludhiana, whereby the revision petition filed by the respondent-complainant was allowed and the petitioners have been summoned under Sections 342/500/120-B IPC to face trial.

Learned counsel for the petitioners has argued that vide order dated 16.07.2015, learned Magistrate had rightly dismissed the aforesaid

complaint filed by the respondent-complainant. However, vide impugned judgment dated 07.11.2015 passed by the revisionary Court, the petitioners have been wrongly summoned to face trial.

Learned counsel for the petitioners has further argued that the revisionary Court had accepted the revision petition filed by the complainant without issuing any notice to the petitioners, which is distinctly in contravention of the observations made by Hon'ble Supreme Court in ***Manharibhai Muljibhai Kakadia and another Versus Shaileshbhai Mohanbhai Patel and others 2012(4) RCR (Criminal) 689***. Before issuing summoning to the petitioners, it was incumbent upon the revisionary Court to issue notice to the petitioners so that they can put forward their contentions.

On the other hand, learned counsel for the respondent states that there was sufficient material available on record and as such, the revisionary Court has rightly summoned the petitioners-accused to face trial.

I have heard learned counsel for the parties.

There is no dispute that the complaint filed by the respondent - complainant was dismissed by learned Magistrate vide order dated 16.07.2015 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 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. It has certainly caused prejudice to the petitioners-accused.

Hon'ble Supreme Court in ***Manharibhai Muljibhai Kakadia and another's case (supra)*** 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.”*

Hon'ble Supreme Court in ***Pepsi Foods Limited and another Versus Special Judicial Magistrate and others-(1998) 5 Supreme Court Cases 749*** has held as under:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

Therefore, the impugned judgment dated 07.11.2015 passed by the revisionary Court is in contravention with the observations made by Hon'ble Supreme Court in ***Manharibhai Muljibhai Kakadia and another's case (supra)***.

Accordingly, the present petition is allowed and the impugned judgment dated 07.11.2015 passed by learned Additional Sessions Judge,

Ludhiana is set aside. The matter is remanded back to the revisionary Court to pass a fresh order strictly in accordance with the judgment referred above.

The parties are directed to appear before the revisionary Court on 22.04.2019.

It is made clear that the proceedings in the complaint case pending before the trial Court as a consequence of the impugned judgment passed by the revisionary Court, shall have effect as per this order.

March 28, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No