

**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRMP No. 1732 of 2017**

Lalit Kumar Sahu, S/o Abhyas Ram Sahu, Aged about 55 years, R/o Village Bhanpuri, Tahsil Gurur, District Balod, Chhattisgarh. (not made party before the Revisional Court)

**---Petitioner**

**Versus**

1.State of Chhattisgarh, Through District Magistrate Durg, District Durg, Chhattisgarh.

2.Abhilash Meshram, S/o Shri Meshram, Aged about 25 years, R/o Shakti Mandir, Vijay Nagar, Dur, P.S. Mohan Nagar, Durg, District Durg, Chhattisgarh.

**--- Respondents**

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| For Petitioner             | : | Mr. Praveen Dhurandhar,<br>Advocate   |
| For Respondent No. 1/State | : | Mr. Rahul Jha,<br>Government Advocate |
| For Respondent No. 2       | : | Mr. Jaideep Singh Yadav,<br>Advocate  |

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order on Board**

**03/01/2020**

1.Petitioner herein along with three other complainants namely Goverdhan Sahu, Prabhuram Sahu and Ramesh Kumar Sahu lodged an FIR against respondent No. 2 herein and three others namely Prafull Meshram, Khata Ram and Deendayal alleging commission of offence punishable under Section

420 read with 34 of the IPC which was ultimately registered against them and they were chargesheeted and they are standing trial. During the course of the trial, the three complainants other than the petitioner turned hostile and thereafter, on 25/01/2017, respondent No. 2 moved an application before under Section 319 of the Cr.P.C. before the trial Court for arraigning the present petitioner/complainant as an accused which stood rejected by learned trial Magistrate vide order dated 09/05/2017 finding no prima facie case against the petitioner herein for commission of any offence, against which respondent No. 2 preferred a revision under Section 399 of the Cr.P.C. before the Court of Sessions wherein only the State of Chhattisgarh was impleaded as a party/respondent. The said revision preferred by respondent No. 2 herein was allowed by learned Additional Sessions Judge, Durg vide impugned order dated 17/07/2017 and the order dated 09/05/2017 passed by the trial Magistrate was set aside and it was directed to proceed against the petitioner in accordance with law. Questioning the order dated 17/07/2017, this petition under Section 482 of the Cr.P.C. has

been preferred by the petitioner styling and branding the said order as unsustainable and contrary to the provisions contained under Section 401 (2) of the Cr.P.C.

2. Mr. Praveen Dhurandhar, learned counsel appearing for the petitioner would submit that application filed by respondent No. 2 against the petitioner under Section 319 of the Cr.P.C. has rightly been rejected by the trial Magistrate and the revisional Court has erred in allowing the revision petition preferred by respondent No. 2 against the order dated 09/05/2017 passed by the trial Magistrate wherein the petitioner was not impleaded as a party/respondent and without issuing notice to the petitioner and without giving him an opportunity of being heard either personally or by the pleader in his own defence passed the impugned order which runs contrary to Section 399 read with Section 401 (2) of the Cr.P.C., therefore, the order impugned deserves to be set aside. He would also place reliance upon the decisions rendered by the Supreme Court in the matters of Manharibhai Muljibhai Kakadia and Anr. v. Shaileshbhai Mohanbhai Patel and

Ors.<sup>1</sup>; Mohit alias Sonu and Anr. v. State of Uttar Pradesh and Anr.<sup>2</sup>; and Central Bureau of Investigation v. Arvind Khanna<sup>3</sup>.

3. Mr. Jaideep Singh Yadav, learned counsel appearing for respondent No. 2 would however support the impugned order and submit that petitioner was not required to be arraigned as a party/respondent in the revision petition and therefore, learned revisional Court has rightly set aside the order dated 09/05/2017 passed by the trial Magistrate and this petition under Section 482 of the Cr.P.C. deserves to be dismissed.

4. Learned State counsel would submit that petitioner was complainant before the trial Court, therefore, respondent No. 2's application under Section 319 of the Cr.P.C. was rightly rejected by the trial Magistrate.

5. I have heard learned counsel for the parties, considered their submissions and went through the records with utmost circumspection.

6. It is correct to say that petitioner was a complainant along with three other persons who

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1 (2012) 10 SCC 517

2 (2013) 7 SCC 789

3 (2019) 10 SCC 686

lodged an FIR against respondent No. 2 and three others for offence punishable under Section 420 read with Section 34 of the IPC for which they are standing trial but during the course of the trial, the three other complainants except the petitioner namely Goverdhan Sahu, Prabhuram Sahu and Ramesh Kumar Sahu turned hostile which persuaded respondent No. 2 to move an application under Section 319 of the Cr.P.C. for arraigning the petitioner as an accused for offence punishable under Section 420 of the IPC which the trial Magistrate did not found favour with and ultimately rejected the same, but the revisional Court, in the revision preferred by respondent No. 2, set aside the order dated 09/05/2017 passed by the trial Magistrate. It is pertinent to notice that in the revision petition preferred by respondent No. 2, petitioner was not impleaded as a party/respondent and the said revision was ultimately allowed without hearing him by the impugned order dated 17/07/2017.

7. The question that calls for consideration would be whether the petitioner was required to be noticed and should have been given an opportunity to be heard by the revisional Court before

setting aside the order dated 09/05/2017 passed by the trial Magistrate ?

8. The revision was preferred by respondent No. 2 under Section 399 of the Cr.P.C. which states as under :-

**"399. Sessions Judge's powers of revision** – (1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of Section 401.

(2) 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 references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court."

9. By virtue of Section 399 (2) of the Cr.P.C. the provisions of sub-sections (2), (3), (4) and (5) of Section 401 have been made applicable to the revisional proceeding under Section 399 of the Cr.P.C., as such, the provisions of Section 401 (2) would apply in the revision petition preferred by respondent No. 2 before the Court of Sessions.

10. At this stage section 401 (2) of the Cr.P.C. is required to be noticed which reads as under :-

**"401. High Court's powers of revision -**

(1) XXX XXX XXX

(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."

11. The aforesaid provision would show that the revisional Court is under obligation to issue notice to the accused or other person and hear him either personally or by pleader in his own defence. This provision is in consonance with the principles of standard justice therefore, any order made to the prejudice of any other person will be fatal.

12. The petitioner is not an accused. Now, the question is whether the petitioner (suspect) would fall within the meaning of "other person" to whom the revisional Court ought to have noticed and heard before passing the impugned revisional order ?

13. The question so posed for consideration is no longer *res integra* and it stands determined and finally concluded by the Supreme Court in the matter of Manharibhai (supra). In paragraph 47.5 of the report, it has been held that the expression "other person" in the context of Section 401(2) means a person other than the accused. It includes suspects or the persons alleged in the complaint to have been involved in an offence although they may not be termed as accused at a stage before issuance of process. In paragraph 48, their Lordships have further held that once a challenge is laid to the order against dismissal of the complaint under Section 203 of the Cr.P.C., opportunity of hearing to the accused is necessary and it has been held as under :-

"In a case where the complaint has been dismissed by the Magistrate under

Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. 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 crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get right of hearing before 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 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 express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage."

Finally, in paragraph 53 of the report, it has been held by their Lordships as under :-

"53. We are in complete agreement with the view expressed by this Court in *P. Sundarrajan*<sup>4</sup>, *Raghu Raj Singh Rousha*<sup>5</sup> and *A. N. Santhanam*<sup>6</sup>. We hold, 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

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4 P. Sundarrajan v. R. Vidhya Sekar, (2004) 13 SCC 472

5 Raghu Raj Singh Rousha v. Shivam Sundaram Promoters (P) Ltd, (2009) 2 SCC 363

6 A.N. Santhanam v. K. Elangovan, (2012) 12 SCC 321

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 the 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."

14. The principle of law laid down in Mantharinbhai (supra) has been followed with approval by the Supreme Court in Mohit (supra) by holding that even in a proceeding under Section 482 of the Cr.P.C. questioning the order passed under Section 319 of the Cr.P.C., the provision contained under Section 401 (2) of the Cr.P.C. has to be complied with and such person is entitled for notice and opportunity of hearing in whose favour some right has been accrued by virtue of the order passed by the trial Court and it has been held in paragraphs 34 and 38 of the report as under :-

"34. Indisputably, a valuable right accrued to the appellants by reason of the order passed by the Sessions Court refusing to issue summons on the ground that no prima facie case has been made out on the basis of evidence brought on record. As discussed hereinabove, when the Sessions Court order has been challenged, then it was incumbent upon the revisional court to give notice and opportunity of hearing as contemplated under sub-section (2) of Section 401 of Cr.P.C. In our considered opinion, there is no reason why the same principle should not be applied in a case where

such orders are challenged in the High Court under Section 482 of Cr.P.C.

38. After giving our anxious consideration in the matter, we conclude by holding that the High Court has committed a grave error in passing the impugned order for the reasons given hereinbefore. We, therefore, allow this appeal, set aside the order of the High Court and remand the matter back to the High Court to consider the matter afresh after giving an opportunity of hearing to the present appellants."

15. The principle of law laid down in the above-cited judgment in Mohit (supra) has then been followed with approval in the matter of Central Bureau of Investigation (supra) wherein their Lordships of the Supreme Court have held as under in paragraph 23 of the judgment :-

"23. So far as the order passed by the Revisional Authority is concerned, if any adverse order is passed by the Revisional Court, without issuing notice to the respondent, it is open to the High Court to set aside the order and remit the matter back for fresh consideration but, at the same time, it is not open to allow the Revision in its entirety. "

16. In view of the aforesaid legal analysis, it is quite vivid that though the petitioner is one of original complainant in the case, but he was branded as a suspect at the instance of respondent No. 2 and the application filed by respondent No. 2 under Section 319 of the Cr.P.C. branding him as an accused/suspect was rejected by the trial Magistrate, but before the revisional Court he was entitled to be noticed and heard in his defence in view of the provisions contained under Sections 399 read with 401(2) of the Cr.P.C. and following the binding principles of law laid down by the supreme Court in the aforesaid cited judgments in Mantharinbhai (supra), Mohit (supra) and Central Bureau of Investigation (supra), as such, the order passed by the Additional Sessions Judge dated 17/07/2017 deserves to be and is accordingly set aside. Matter is restored to the file of revisional Court for hearing and disposal in accordance with law after arraigning the present petitioner as a party/respondent and then issuing notice and granting him an opportunity to be heard and the revision petition will be disposed of preferably

within a period of 45 days from the date of receipt of a copy of this order.

17. Accordingly, this writ petition under Section 482 of the Cr.P.C. stands allowed.

18. A copy of this order be sent to the concerned revisional Court by email/fax.

**Sd/-**  
**(Sanjay K. Agrawal)**  
**Judge**

Harneet