

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

204

CRM-M-13484-2018
Date of Decision 03.03.2020

RUBI ADHIKARI SEHGAL

..... Petitioner

V/S

YASHPAL JOSHI

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Ranbir Singh, Advocate
for the petitioner.

Mr. Sukhdeep Singh, Advocate for
Mr. Parminder Singh, Advocate
for the respondent.

SUDIP AHLUWALIA J. (ORAL)

Reliance of Ld. counsel for the petitioner is on a decision of Supreme Court in **Prabha Mathur & Anr. Vs. Pramod Aggarwal & Ors**, in which the High Court's decision to set aside the order of dismissal of a complaint by the Magistrate without an opportunity of hearing to the accused persons, was itself set aside by the Apex Court and the matter was remitted back to the High Court with a direction to issue notice upon the appellants/accused persons and afford them an opportunity of hearing before passing an appropriate order, in accordance with law.

In **Manharibhai Muljibhai Kakadia and another Vs. Shaileshbhai Mohanbhai Patel and others**, it was observed by the Supreme Court:-

“The legal position is fairly well-settled that in the proceedings under Sections 202 of the Code the accused/suspect is not entitled to be heard on the question whether the process should be issued against

him or not. As a matter of law, upto the stage of issuance of process, the accused cannot claim any right of hearing. Section 202 contemplates postponement of issue of process where the Magistrate is of an opinion that further inquiry into the complaint either by himself is required and he proceeds with the further inquiry or directs an investigation to be made by a Police Officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. If the Magistrate finds that there is no sufficient ground for proceeding with the complaint and dismiss the complaint under Section 203 of the Code, the question is whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant against the order of the dismissal of the complaint. The Parliament being alive to the legal position that the accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process under Section 204, yet in Section 401 (2) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence. Three expressions, "Prejudice", "other person" and in his own defence" in Section 401 (2) are significant for understanding their true scope, ambit and width. Black's Law Dictionary [Eighth Edition] explains "prejudice" to mean damage or detriment to one's legal rights or claims. Concise Oxford English Dictionary[Tenth Edition, Revised] defines "prejudice" as under:

- 1. Preconceived opinion that is not based on reason or actual experience, unjust behaviour formed on such a basis.*

2. *harm or injury that results or may result from some action or judgment.v.1 give rise to prejudice in (someone); make biased. 2. cause harm to (a state of affairs)''.*

It is seen that in the present case also, complaint against the petitioner was dismissed by the Ld. JMIC, Karnal, vide order dated 04.02.2015 (Annexure P-4).

The aforesaid order was, however, set aside by the Ld. Addl. Sessions Judge, Karnal in Criminal Revision No.32 of 2015 without issuing any notice to the present petitioner/accused in the original complaint which was dismissed.

It has been submitted by Ld. counsel for the respondent-complainant that the issuance of notice under Section 401(2) of the Cr.P.C pertains to the High Court viz, "High Court's power of Revision", and it or the same, would not apply to the revisionary power of the Session Court under Section 399 of the Cr.P.C. Such submission, however, is manifestly fallacious, considering that Section 399 (2) Cr.P.C., specifically provides:-

"Section 399 in The Code Of Criminal Procedure, 1973

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.(Emphasis added).

It, therefore, cannot be gainsaid that simply because a revision has been decided by the Court of Sessions Judge and not by the High Court, the requirement of notifying the accused who is liable to be prejudiced adversely by any order in such revision would be dispensable.

For the aforesaid reasons, the impugned order passed by the Addl. Sessions Judge is clearly illegal and untenable and is, therefore, set aside. The matter is now remanded back to the said Court with a direction to issue notice in the Criminal Revision No.32 of 2015, and thereafter pass an appropriate order in accordance with law after giving an opportunity of hearing to both sides.

(SUDIP AHLUWALIA)
JUDGE

03.03.2020
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No