

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO. 103 OF 2020

Suresh Tukaram Telang, aged
55 years, Occ. Business, R/o
Savitribai Fule Nagar, near
Siddheshwar Hall, Nagpur

..... Applicant.

..VS..

1. Dhiraj Gopichand Gedam,
President, Bhartiya Gruha
Samasya Niwaran Sanstha Ltd.,
A Public Trust Bearing No. F-
3116(N), aged about 35 years,
Occ. Business, R/ Mate Square,
Pratap Nagar, Cement Road,
Nagpur.

2. State of Maharashtra, through
Police Station Office, Police
Station, Beltarodi.

..... Respondents

Shri U.P. Dable, Advocate for Applicant.
Shri R.R. Vyas, Advocate for Respondent No.1.
Mrs. S.S. Jachak, A.P.P. for Respondent No.2.

CORAM : VINAY JOSHI, J.
DATED : 03/05/2021

Hearing was conducted through Video Conferencing.

2. **RULE.** Rule made returnable forthwith. Heard finally by
consent of learned Counsel for the respective parties.

3. The Applicant (original accused) has challenged the legality, correctness and propriety of the order dated 06.05.2019 passed in Criminal Revision Application No.146 of 2019 by learned Sessions Judge, Nagpur. Learned Sessions Judge by allowing the revision application has set aside the order of the Magistrate dated 20.02.2019 about dismissal of complaint/application and further directed the concerned Police to register the F.I.R. against the Applicant (original accused) and to investigate the matter.

4. Initially, Non-applicant (original complainant) Dhiraj Gopichand Gedam has filed an application bearing Criminal Case No.193 of 2019 against the Applicant alleging that he has committed several offences punishable under the Indian Penal Code. The Non-applicant has sought directions from the Magistrate to register F.I.R. against the Applicant in terms of Section 156(3) of the Code of Criminal Procedure. By order dated 20.02.2019, learned Magistrate concluded that the non-applicant has not made out a case constituting cognizable offence and accordingly, dismissed the complaint/application.

5. Being aggrieved by the dismissal of complaint/application seeking directions under Section 156(3) of the Code of Criminal Procedure, the non-applicant has filed Criminal Revision in the Court of Sessions Judge. After hearing the non-applicant(original complainant), learned Sessions Judge formed an opinion that it was a fit case to issue directions and accordingly, by allowing the revision, directed the Police to register the F.I.R. and investigate the matter.

6. The only point canvassed by the applicant is that learned Sessions judge without hearing him has passed the impugned order. Learned Counsel for the Applicant would contend that in terms of Section 401(2) of the Code of Criminal Procedure, the Applicant gets statutory rights of hearing in revision petition. In support of said contention, he relied on the decisions of the Supreme Court in the cases of ***Manharibhai Muljibhai Kakadia and anr. vs. Shaileshbhai Mohanbhai Patel and ors. (2012) 10 SCC 517 and Priyanka Srivastava and anr vs. State of Uttar Pradesh and ors. (2015) 6 SCC 287***. Undisputedly, the learned Sessions Judge has not issued notice to the Applicant nor gave him right of hearing before deciding the Revision Petition. The limited question arose in this revision is whether the applicant (original accused) has right to defend the order of dismissal of complaint/application when it has been challenged in the Superior Court.

7. The law in this regard is no more *res integra* in view of the decisions of the Supreme Court in the case of Manharibhai Kakadia (*supra*) which was reiterated in the later decision of the Supreme Court in case of Priyanka (*supra*). It has been clearly laid down that as a matter of law, up to the stage of issuance of process, the accused cannot claim any right of hearing, however, when the complainant files revision against the order of dismissal of complaint, the accused gets right of hearing before revisional court as is expressly provide in Section 401(2) of the Code of Criminal Procedure. This being legal position, the impugned order which was passed by the Sessions Judge without hearing the applicant (original accused) would not survive. Apparently, learned Sessions Judge has committed grave error in deciding

the revision without giving right of hearing to the applicant (original accused).

8. In the aforesaid reasons, the impugned order dated 06.05.2019 passed in Criminal Revision Application No.146 of 2019 is set aside and the revision stands restored on the file of the Sessions Court for hearing and for disposal on merits after issuing notice to the applicant herein. The learned Sessions Judge is directed to decide the revision petition expeditiously.

9. Rule is made absolute in above terms. Revision Application stands disposed of with no order as to costs.

JUDGE

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