

CRM-9733-2022 in/and
CRM-M-27091-2017 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-9733-2022 in/and
CRM-M-27091-2017 (O&M)
Date of Decision:21.03.2022

NEER SINGH AND ANR

.. Applicant/Petitioners

Vs.

STATE OF HARYANA AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. J.P. Sharma, Advocate
for applicant-petitioners.

Mr. Sukhdeep Parmar, DAG, Haryana.

Mr. Nitish Sharma, Advocate for
respondents No.3 to 6.

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Manoj Bajaj, J. (Oral)

CRM-9733-2022

The instant application is for pre-poning the date of hearing of
the main petition to an early date.

Notice in the application.

At this stage, Mr. Sukhdeep Parmar, DAG, Haryana, accepts
notice on behalf of the respondent-State and does not oppose the prayer.

Application is allowed and the date of hearing is pre-poned to
today.

CRM-M-27091-2017

Petitioners have filed this petition under Section 482 Cr.P.C. to

challenge the revisional Court order dated 01.06.2017 (Annexure P-9), whereby the Addl. Sessions Judge, Narnaul has reversed the order dated 24.10.2016 (Annexure P-8) passed by JMIC, Narnaul, dismissing the application under Section 319 Cr.P.C. filed by complainant and proceeded to summon the petitioners as additional accused by allowing the application. The impugned order has arisen from case FIR No.138 dated 01.06.2014, registered under Sections 323, 325, 341, 506 and 34 IPC, at Police Station Nangal Choudhary, District Mahendergarh.

The facts in brief leading to the petition are that:

On the basis of a complaint given by complainant Jogender, the above FIR was registered, wherein it is alleged that on 25.05.2014 when he was coming from Nangal to his village at about 3:00 p.m., co-villagers Sanjay and Dharmender both sons of Hakum Singh, who were drunk came to him and demanded money for wine. Upon refusal of the complainant, Sanjay started beating him and inflicted knife blow on his right hand. Dharmender also caused several injuries to the complainant. After that, Vikram and Neer Singh both sons of Badlu Ram also came there and caused several injuries with a stick and glass bottle. The complainant attempted to save himself by entering in the nearby factory and the accused, who were joined by Ajit and Subhash both sons of Jagdish came there and gave him beatings. Upon hearing complainant's noise, Ramesh Kumar s/o Tara Chand, Sanjay s/o Om Parkash rescued him and during this, a sum of Rs.20,000/- belonging to the complainant was also taken away by the accused. The injured was admitted to Civil Health Centre, Nangal. On these broad allegations, the present FIR was registered.

After registration of the case, the investigation was conducted and the petitioners were found innocent, whereas respondent Nos.3 to 6 were sent to face trial through the final report under Section 173(2) Cr.P.C. (Annexure P-1). After commencement of trial, the complainant was examined as PW-1 and thereafter, the application under Section 319 Cr.P.C. was moved before the trial Court for summoning the petitioners as additional accused. The trial Court after considering the material on record proceeded to dismiss the application vide order dated 24.10.2016 (Annexure P-8).

Aggrieved against the order dated 24.10.2016, the complainant preferred criminal revision bearing No.5RT/2017 before the Addl. Sessions Judge, Narnaul and the said revision petition was allowed through the impugned order dated 01.06.2017 (Annexure P-9). Hence, this petition.

Learned counsel for the petitioners has argued that upon dismissal of the application filed under Section 319 Cr.P.C. by the trial Court, the criminal proceedings against the petitioners came to an end from all angles, therefore, the revisional Court before upsetting the said decision ought to have given an opportunity of hearing to the petitioners. He submits that the revisional Court proceeded to set aside the trial Court order, after considering the arguments on behalf of the complainant and learned counsel for the accused, who were already facing the trial. He submits that in para 11 of the judgment, the revisional Court has relied upon the initial version of the complainant in order to prima facie ascertain the involvement of the petitioners in the alleged crime. According to him, the impugned order warrants interference.

states that the revisional Court did not issue any notice to the petitioners and the impugned order was passed without affording them any opportunity of hearing. According to him, the revisional Court has otherwise considered the relevant material, while exercising the jurisdiction, as there exists prima facie evidence indicating involvement of the petitioners.

Learned counsel for the parties have been heard and with their assistance, the case file has been perused carefully. Section 397 Cr.P.C. vests the revisional jurisdiction with the High Court as well as the Sessions Court to examine the correctness and validity of any finding, sentence or order and the Sessions Judge's power of revision is contained in Section 399 Cr.P.C. is identical to the powers of revision of the High Court, defined under Section 401 Cr.P.C., which reads as under:

401. High Court's Powers of revisions:- (1) *In the case of any proceeding the record of which has been called for by itself or Which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.*

(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.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal

with the same accordingly.”

A bare reading of the above indicates that the learned Additional Sessions Judge, Narnaul was required to hear the accused before setting aside the order passed by the trial Court. Here, it will be useful to rely upon the decision of the Hon'ble Supreme Court titled as “**Gurdev Singh vs. Surinder Singh and others**” reported in (2015) 3 SCC 773 deals with such a situation, wherein it is held that even if a complaint was dismissed on merits, without hearing the accused, the revisional Court has to issue notice to the accused before setting aside the order in revision. The relevant para is reproduced as under:-

“We find substance in this submission. Dismissal of the complaint terminates criminal proceedings against the accused. If the complainant carries the matter further by filing a revision and the Sessions Court sets aside the dismissal order and remands the matter to the Addl. C.J.M. for fresh enquiry, the complaint is revived. In this connection, it is necessary to refer to Section 401 of the Code which lays down the High Court's powers of revision. Sub-section (2) thereof states 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. Section 399 of the Code refers Sessions Judge's powers of revision. Sub-Section (2) thereof states 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 shall, so far as may be, apply to such proceeding and reference in the said subsections to the High Court shall be construed as reference to the Sessions Judge.”

Further, Hon'ble the Supreme Court in **Manharibhai Muljibhai**

Kakadia & Anr. v. Shaileshbhai Mohanbhai Patel & Ors., (2012) 10 SCC

517. The relevant extract of the same are as under:-

“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 the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of Section 401 (2) of the Code, the suspects get the right of hearing before the 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 the 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 the express provision contained in Section 401 (2) the Code. The stage is not important whether it is pre-process stage or post process stage.

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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 the crime have, however, no right to participate in the proceedings nor are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process.”

The above view of the Hon'ble Supreme Court would be equally applicable in the facts and circumstances of the present case, as the prayer of the complainant for arraigning the petitioners as additional accused was declined, therefore, it was necessary for the revisional Court to hear the said accused before setting aside the order passed in their favour. Thus, the impugned order is not sustainable.

In view of the above, impugned order is set aside and the case is remanded back to the revisional Court to hear the petitioner before deciding the revision petition on merits. The parties are directed to appear

before the revisional Court on 22.04.2022.

21.03.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes	No
Yes	No