

**CRR-800-2022 (O & M)
(202)**

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

**CRR-800-2022 (O & M)
Date of Decision: 20.11.2023**

Harinder Singh

... Petitioner

Versus

Rajinder Singh

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. B.P.S. Virk, Advocate
for the petitioner.

Mr. Pushpinder Kaushal, Advocate,
for the respondent.

JASJIT SINGH BEDI, J.

The present revision petition has been preferred against the order dated 23.03.2022 passed by the Sessions Judge, SAS Nagar, Mohali.

2. The brief facts of the case are that a criminal complaint came to be instituted at the instance of Rajinder Singh against Harsant Mohan Kaur wife of Harinder Singh and Harinder Singh (petitioner) son of Hardyal Singh under Sections 420, 406, 465, 466, 467, 471 and 120-B IPC. A copy of the complaint is attached as Annexure P-1 to the petition.

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3. The said complaint came to be dismissed for non-appearance of the complainant on 09.12.2021, with the following order was passed:-

“None has appeared for complainant, despite calling case several time. No useful purpose would be served by keeping the present complaint alive when complainant is not interested in pursuing the present complaint. As such, present complaint is dismissed in default for non-appearance of the complainant. File be consigned to the Judicial Record Room”.

4. The respondent/complainant Rajinder Singh filed a revision petition against the order dated 09.12.2021. Vide order dated 23.02.2022, the Sessions Judge, SAS Nagar (Mohali) without issuing process to the petitioner-accused set aside the order dated 09.12.2021, restored the complaint to its original number and remanded the case back to the Trial Court to proceed in accordance with law.

5. The said order dated 23.03.2022 is impugned in the present petition.

6. The learned counsel for the petitioner-accused contends that the impugned order was liable to be set aside in view of the provisions of Section 401 Cr.P.C. Reliance is placed on the judgment of the Hon’ble Supreme Court in **‘Manharibhai Muljibhai Kakadia and another versus Shaileshbhai Mohanbhai Patel and others, 2012(4) RCR (Criminal) 689’**.

7. The learned counsel for the respondent-complainant, on the other hand, contends that as the complaint case was dismissed-in-default

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at the pre-summoning stage, there was no need to issue process to the prospective-accused, and therefore, the impugned order had rightly been passed and the present petition was liable to be dismissed.

8. I have heard the learned counsel for the parties.

9. Before proceedings further, it would be apposite to examine the provisions of Section 401 Cr.P.C. and the same is reproduced 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.

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(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”.

10. The Hon’ble Supreme Court in the case of **‘Manharibhai Muljibhai Kakadia and another versus Shaileshbhai Mohanbhai Patel and others, 2012(4) RCR (Criminal) 689’**, has held as under:-

“58. We are in complete agreement with the view expressed by this Court in P. Sundarrajan, Raghu Raj Singh Rousha and A.N. Santhanam. 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 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

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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”.

11. A perusal of Section 401 Cr.P.C. as discussed by the Hon’ble Supreme Court in ***Manharibhai Muljibhai Kakadia and another (supra)***, would show that where a complaint has been dismissed by the Magistrate and the said order has been challenged by the complainant in a revision petition before the High Court or the Sessions Court, the persons who are arraigned as accused in the complaint have a right to be heard in such a revision petition.

12. In the instant case, the impugned order has been passed without hearing the petitioner-accused and therefore, is liable to be set aside.

13. In view of the above, the present petition is allowed and the order dated 23.03.2022 passed by the Court of the Sessions Judge, SAS Nagar (Mohali) is set aside. The Sessions Judge, SAS Nagar (Mohali) is directed to examine the matter afresh after hearing the petitioner-accused.

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14. As the complaint was instituted in the year 2015, the Revisional Court is directed to conclude the hearing within 04 weeks from the date of receipt of a copy of this order.

15. The present petition is disposed of in the above terms.

(JASJIT SINGH BEDI)
JUDGE

November 20, 2023
sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No