

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

CRM-M-36308-2015 (O&M)
Date of Decision: 31.07.2023

JAGVIR AND OTHERS

...Petitioners

Versus

RAJESH

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vikas Chaudhary, Advocate
for Mr. Anil Malik, Advocate
for the petitioners.

Mr. Tarun Yadav, Advocate
for Mr. Tapan Kumar, Advocate
for the respondent.

HARSH BUNGER, J.

Petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure, for setting aside the impugned order dated 22.08.2014 (Annexure P-4) passed by the learned Additional Sessions Judge, Bhiwani, in Criminal Revision No.54 of 2014; whereby, an order dated 14.05.2014 (Annexure P-2) passed by the Court of Sub Divisional Judicial Magistrate, Charkhi Dadri, dismissing the complaint No.261-IC of 2009 titled as *Rajesh vs Tejvir and others* under Sections 325, 323, 148, 149 and 506 of the Indian Penal Code; has been set aside, without issuing any notice or affording any opportunity of hearing to them and the matter was remanded back to the trial Court for afresh decision.

Petitioners have further impugned the summoning order dated 11.09.2015 (Annexure P-5) passed by the Court of Sub Divisional Judicial

Magistrate, Charkhi Dadri, wherein, the accused-petitioners have been summoned to face trial in complaint case No.261-IC of 2009 along with all consequential proceedings arising therefrom.

2. Briefly, the respondent herein (Rajesh son of Shri Jagdish) filed a complaint No.261-IC of 2009, against the present petitioners under Sections 325, 323, 148, 149 and 506 of the IPC. It appears that before summoning the accused in the said complaint, it was dismissed by the learned Judicial Magistrate Ist Class, Dadri, vide order dated 14.05.2014 (Annexure P-2).

3. Being dis-satisfied with the said order dated 14.05.2014 (Annexure P-2), the respondent herein (Rajesh) filed a Criminal Revision (No.54 of 2014) before the Court of learned Additional Sessions Judge, Bhiwani, which was allowed vide order dated 22.08.2014 (Annexure P-4) by observing as under :-

“13. Consequently, I allow this revision petition, while setting aside the impugned order being erroneously passed without proper appraisal of evidence of the complainant. Trial Court is directed to decide the matter afresh in accordance with law looking into consideration the observations of this Court. Therefore, this complaint is restored to its original number with the direction to complainant through his advocate to appear before the Trial Court for further proceedings on 28.8.2014. Lower Court record along with copy of this judgment be sent back forthwith. File be consigned to record-room after due compliance.”

4. It appears that subsequent to the remand of the afore-said case to the trial Court, the accused in the complaint were summoned vide order dated 11.09.2015 (Annexure P-5) passed by the Court of Sub Divisional Judicial Magistrate, Charkhi Dadri.

5. The case of the petitioners is that one case FIR No.53 dated 03.02.2009 under Sections 148, 149, 323, 325, 341, 506 IPC, was registered in Police Station Sadar Dadri, District Bhiwani, against the respondent (Rajesh) and his other four accomplices for causing injuries to Tajvir son of Randhir Singh. It is stated that as a counterblast to the afore-said FIR against Rajesh (respondent herein), he filed the Criminal Complaint No.261-IC of 2009, against the present petitioners and Tajvir (brother of petitioners No.1 to 4, herein). It is submitted that the said complaint was filed with a sole motive to exert pressure upon the petitioners to compromise the matter registered against the respondent herein (Rajesh). It is next submitted that the afore-said complaint was dismissed vide order dated 14.05.2014 (Annexure P-2) when the case was at the stage under Section 203 of the Cr.P.C and it was dismissed prior to the summoning of the accused in the complaint.

6. Learned counsel for the petitioners submits that the respondent (Rajesh), being aggrieved against the afore-said order dated 14.05.2014, filed a Criminal Revision No.54 of 2014 before the learned Additional Sessions Judge, Bhiwani, which has been wrongly allowed by the Court below and that too without issuing any notice to the present petitioners and thereby not granting any opportunity of hearing to them. Learned counsel for the petitioners contends that the said course adopted by the learned Divisional Court below, is totally contrary to the provisions of Section 401 of the Cr.P.C. Learned counsel for the petitioners submits that the petitioners came to know about the aforesaid orders only after when the matter was remanded back to the trial Court for afresh decision and thereafter, the Summoning order dated 11.09.2015 (Annexure P-5) was passed by the trial Court. Accordingly, the instant petition has been filed, seeking quashing of the order dated 22.08.2014

(Annexure P-4) passed by the learned Additional Sessions Judge, Bhiwani, while exercising the revisional jurisdiction under Section 399 read with Section 401 of the Cr.P.C and all consequential proceedings arising therefrom, including the Summoning order dated 11.09.2015 (Annexure P-5).

Learned counsel for the petitioners places reliance upon a judgment rendered by the Hon'ble Supreme Court in the case of ***Manharibhai Muljibhai Kakadia and another vs Shaileshbhai Mohanbhai Patel and others 2012(4) RCR (Criminal) 689.***

7. Upon issuance of notice in this case, leaned counsel for the respondent appeared and opposed the prayer of the petitioners by submitting that no prejudice has been caused to the petitioners with passing of order dated 22.08.2014 (Annexure P-4) passed by learned Additional Sessions Judge, Bhiwani, whereby the matter was remitted back to the trial Court for afresh decision and thereafter, a Summoning order dated 11.09.2015 (Annexure P-5) has been passed by the trial Court, whereby the petitioners have been summoned to face trial in the complaint case No.261-IC of 2009 and the petitioners would have an opportunity to put forth their claim/stand before the trial Court. Accordingly, it is prayed that the instant petition may be dismissed.

8. I have heard learned counsel for the parties and perused the paper book with their able assistance.

9. Section 397 of the Code empowers the High Court or the Sessions Judge to call for an examine the record of any proceeding before any inferior court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety, inter alia, of any order passed by such inferior court. The powers of revision are

concurrent with the High Court and Sessions Judge. By virtue of Section 399, 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 and while doing so the provisions of sub-sections (2), (3), (4) and (5) of Section 401 apply to such power as far as possible. Section 401 deals with High Court's power of revision and it reads as follows :

“S. 401. High Court's powers of revision. (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.”

10. In the instant case, there is no dispute that the complaint filed by the respondent-complainant (Rajesh) was dismissed by the learned Magistrate vide order dated 14.05.2014 (Annexure P-2) and the said order was challenged by the respondent before the learned Revisional Court. There is no evidence on record to suggest that the Revisional Court below, while setting aside the order of dismissal of the complaint dated 14.05.2014 (Annexure P-2), had ever issued any notice to the petitioners herein. The petitioners being accused in the afore-said complaint, have a right to be heard by the Revisional Court before setting aside the order passed by the trial Court. It has certainly caused prejudice to the petitioners, who are the accused in the afore-said complaint No.261-IC of 2009.

11. Hon’ble Supreme Court in *Manharibhai’s* case (supra), has observed that before issuance of summoning of the petitioners-accused, notice is required to be issued. The relevant paragraph No.58 of the said judgment reads as under :-

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

12. In view of the above discussion as well as the observations made by the Hon’ble Supreme Court in **Manharibhai’s** case (supra), the impugned order dated 22.08.2014 (Annexure P-4) passed by the learned Additional Sessions Judge, Bhiwani, in Criminal Revision No.54 of 2014, cannot be sustained and the same is hereby set aside.

13. It goes without saying that all subsequent proceedings including the Summoning Order dated 11.09.2015 (Annexure P-5), is also set aside and the matter is remanded back to the Revisional Court below to decide the afore-said Criminal Revision No.54 of 2014, afresh in accordance with law.

14. The parties are directed to appear before the Revisional Court below on 29.08.2023.

15. However, it is made clear that the proceedings in the complaint case pending before the trial Court as a consequent of the impugned judgment dated 22.08.2014 (Annexure P-4) passed by the Revisional Court below, shall

have effect as per this order.

16. The instant petition is accordingly disposed of in aforestated terms.

17. All pending application/s (if any) shall stand closed.

July 31st, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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