

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

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1. **CRM-M-9924-2016 (O&M)**
Date of decision: 09.05.2023

Kulwant Singh and othersPetitioners
Versus

State of Punjab and anotherRespondents

2. **CRM-M-10557-2016 (O&M)**

Harsharan SinghPetitioner
Versus

State of Punjab and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Vipin Mahajan, Advocate for the petitioners.

Mr. Amit Rana, Sr. DAG, Punjab.

Mr. Arun Abrol, Advocate for respondent No.2.

MANJARI NEHRU KAUL, J. (ORAL)

1. This order shall dispose of above referred two petitions as they arise out of the same impugned order.

2. The petitioners have invoked the extraordinary jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Code') with a prayer to quash the order dated 22.08.2014 (Annexure P-4) passed by Learned Additional Sessions Judge, Adhoc, Fast Track Court, Gurdaspur vide which a revision petition filed in Criminal Complaint N.2/07.01.2009 titled as 'Anek Chand Vs. Hansa Singh and others' by respondent No.2-complainant was accepted without hearing the petitioners.

3. Learned counsel for the petitioners contends that the complainant-respondent No.2 filed a Criminal Complaint dated

07.01.2009 under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the SC/ST Act') read with Sections 382/452/506 of the IPC in the Court of Chief Judicial Magistrate, Gurdaspur, which was dismissed vide order dated 22.01.2014. Thereafter, a revision was preferred by the complainant against the order of the Trial Court before the learned Additional Sessions Judge, Gurdaspur. However, learned Additional Sessions Judge, Gurdaspur, without issuing any notice to the petitioners, erroneously allowed the revision petition vide impugned order dated 22.08.2014 and remanded the case back to the learned Trial Court to decide it afresh.

4. Learned counsel for the petitioners submits that the impugned order deserves to be set aside as it had been passed contrary to the principles of natural justice, as no adverse order could have been passed against the petitioners without affording an opportunity to them, of being heard. In support, learned counsel has drawn the attention of this Court to the zimni orders passed by the Court below (Annexure P-5) to show that neither any notice was issued to the petitioners nor were they heard at the time of the passing of the impugned order.

5. Learned counsel appearing for respondent No.2 has not been able to controvert the submissions made by the counsel opposite. Learned counsel has very fairly conceded that since as per settled law an opportunity of hearing should have been afforded to the opposite party in case some adverse order was to be passed, he would not oppose the prayer of the petitioners to remand the matter back to the Court below for deciding it afresh after affording an opportunity of hearing to

them.

6. I have heard learned counsel for the parties and perused the relevant material on record.

7. The question of law which arises for consideration of this Court is as to whether an accused is entitled to be heard or not, by a Revisional Court in a revision preferred by the complainant to impugn an order of dismissal passed by the Magistrate in a complaint under Section 203 of the Code more so when an adverse order has been passed against him.

The Hon'ble Supreme Court in ***Manharibhai Muljibhai Kakadia and another Vs. Shaileshbhai Mohanbhai Patel and others*** : ***2012(4) RCR (Criminal) 689***, while dealing with a similar question of law has answered in the affirmative in the following terms:-

“58. We are in complete agreement with the view expressed by this Court in P. Sundarrajan¹, Raghu Raj Singh Rousha² and A. N. Santhanam³. 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 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.”

8. Adverting to the instant case, this Court has no hesitation in holding that the learned Revisional Court clearly erred by passing an adverse order against the petitioners, without giving them an opportunity of being heard. Therefore, in view of the settled law, this Court deems it appropriate to invoke its inherent jurisdiction under Section 482 of the Code and remand the matter back to the Revisional Court.

9. Accordingly, the order dated 22.08.2014 is set aside. The matter is remanded back to the Revisional Court at Gurdaspur to decide the revision petition afresh, in accordance with the provisions of law, after affording an opportunity of hearing to the petitioners.

10. The parties through their counsel are directed to appear before the Revisional Court on 29.05.2023. The Revisional Court is directed to make earnest efforts to decide the revision petition expeditiously preferably within a period of 04 months from today.

11. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

12. The instant petitions stand disposed of accordingly.

09.05.2023

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(MANJARI NEHRU KAUL)
JUDGE

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