

226 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.1467-2016 (O&M)

Date of decision: 06.09.2023

Harbhajan Singh

...Petitioner

vs.

Jaswant Singh

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Harsh Aggarwal, Advocate
for the petitioner.

Mr. Mandeep Singh Dhaliwal, Advocate
for the respondent.

N.S.Shekhawat J.

1. By way of the present petition, the petitioner has challenged the judgment dated 26.11.2015 passed by the Court of Additional Sessions Judge, Sangrur, whereby the order dated 07.03.2015, passed by the Court of Judicial Magistrate 1st Class, Dhuri was ordered to be set aside and the petitioner and other accused were ordered to be summoned for the offences punishable under Sections 120-B, 465, 466, 467, 468, 471 IPC.

2. Learned counsel for the petitioner/accused submitted that the impugned judgment has been passed by the Revisional Court by completely overlooking the facts of the case and the mandatory provisions of law.

3. As per the case of the prosecution, Jaswant Singh son of Kartar Singh, respondent/complainant had filed a criminal complaint under Sections 420, 465, 468, 467, 471, 506, 323, 148, 149 and 120-B of IPC against the present petitioner and four other co-accused in the Court of Judicial Magistrate 1st Class, Dhuri. The respondent / complainant led preliminary evidence and

after taking into consideration, the preliminary evidence, the Judicial Magistrate 1st Class, Dhuri held that the story put forth by the respondent/complainant was improbable and there were no sufficient grounds for proceeding against the accused and the complaint was ordered to be dismissed. The respondent filed a revision petition before the Court of Sessions Judge, Sangrur to assail the order dated 07.03.2015 passed by the Court of Judicial Magistrate 1st Class, Dhuri. Vide the impugned judgment dated 26.11.2015, the Court of Additional Sessions Judge, Sangrur allowed the revision petition and held that there was sufficient material to proceed against the petitioner and two other accused under Sections 120-B, 465, 466, 467, 468, 471 of IPC and the case was sent to the trial Court for proceeding against the accused. Challenging the said judgment passed by the Revisional Court, the petitioner has preferred the present petition before this Court.

4. Counsel for the petitioner contends that the learned revisional Court could not have passed an order without giving the petitioner an opportunity of being heard in the light of the provisions of Section 401(2) of the Cr.P.C., which mandates if an order under this Section is to be made to the prejudice of the accused or other person, he is to be given an opportunity of being heard either personally or by pleader in his own defence, which has not been done. He contends that the petitioner was arrayed as respondent but despite that being so the learned revisional Court has proceeded to pass the impugned order, which is in total violation of the statutory provisions and, therefore, cannot be sustained.

5. Even otherwise, learned counsel contends that the order passed by the Revisional Court is erroneous and is contrary to the findings, which have

been recorded by the trial Court, while considering the evidence led by the complainant therein. Thus, he prays for quashing of the order dated 26.11.2015 passed by the Court of Additional Sessions Judge, Sangrur.

6. Learned counsel appearing on behalf of the respondent opposes the submissions made by learned counsel for the petitioner. However, he is not in a position to controvert the fact that no notice was issued to the petitioner and other co-accused by the Revisional Court.

7. I have heard counsel for the parties and have gone through the records of the case.

8. Although, the counsel for the petitioner has submitted that the Court must proceed to decide the case on merits but in the light of the fact that there is an error apparent on the record, which has been committed by the revisional Court by ignoring the provisions of Section 401(2) of the Cr.P.C., this Court is not proceeding to decide the case on merits. Section 401 Cr.P.C. reads as under :-

“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.”

9. It would not be out of way to mention that the powers of Sessions Judge of revision are provided under Section 399 of the Code of Criminal Procedure, wherein the same powers as provided under Section 401 Cr.P.C. to the High Court has been conferred on the Sessions Judge. In the light of the provisions as contained in sub Section 2 of Section 401 Cr.P.C., the order which has been passed against the petitioner, is no doubt prejudicial to his interest and, therefore, he was required to be given an opportunity of being heard either personally or by a pleader in his own defence, which the learned revisional Court has violated while passing the impugned order despite the petitioner being respondent to the revision petition preferred by the complainant-respondent.

10. In a similar situation this Court while deciding **Crl. Misc. No.M36227 of 2009, Ajay Partap Singh vs. Gurdial Singh, decided on 29.9.2011**, held as follows :-

“The contention as raised by the counsel for the respondent, when looked in the light of the provisions contained under Section 398 of the Code of Criminal Procedure, is correct that till the stage when the complaint was dismissed by the trial Court the petitioner

had no right of hearing nor was he an accused, who was discharged but when seen in the light of the provisions contained under Section 399 read with Section 401 of the Code of Criminal Procedure and specifically Clause 2 of Section 401, which states that no order under this Section shall be made to the prejudice of 'the accused' or 'other person' unless he has an opportunity of being heard either personally or by his pleader in his own defence leaves no manner of doubt that even if the petitioner is not an accused, in the light of the Supreme Court in the case of Dr. S.S.Khanna (supra), he would be covered under the term 'other person'. It cannot be disputed that the findings, which have been recorded by the Revisional Court in the impugned order dated 22.08.2005, is an order which is prejudicial to the petitioner. If that be so, the mandate of Section 401 clearly requires him to be given an opportunity of being heard either personally or by the pleader in his own defence, which the learned Revisional Court failed to do, despite he being a respondent in the revision petition.”

11. After observing as above, relying upon the judgment of the Rajasthan High Court in the case of **B.B.Mohanti vs. State of Rajasthan and another, 2009(5) R.C.R.(Criminal) 167** and in the light of para 12 to 14 thereof, this Court proceeded to set aside the impugned order passed by the learned revisional Court, wherein no opportunity was given of hearing to the petitioner before passing the order, which was prejudicial to him.

12. Apart from that, even while setting aside the order passed by the Judicial Magistrate 1st Class, Dhuri, the Revisional Court, at the most could have remanded the matter back to the Judicial Magistrate 1st Class, Dhuri for reconsideration of the matter in the light of the evidence led by the complainant.

However, the Revisional Court straightaway ordered the summoning of the

petitioner and other accused for the offences punishable under Sections 120-B, 465, 466, 467, 468, 471 of IPC, which is apparently wrong and unsustainable. In view of the above discussion and the law laid down by this Court, the impugned judgment dated 26.11.2015 passed by the Court of Sessions Judge, Sangrur cannot sustain and is hereby ordered to be set aside. However, a direction is issued to the learned Revisional Court / Additional Sessions Judge, Sangrur to decide Criminal Revision No. 30 of 2015 afresh in accordance with law by giving an opportunity of hearing to the petitioner and other co-accused. All consequential proceedings arising before the trial Court as a consequence of the impugned judgment dated 26.11.2015, which has been set aside by this Court, if any, shall also have no effect.

13. Parties are directed to appear before the Sessions Judge, Sangrur on 21.10.2023.

14. Copy of the order be sent to the learned Sessions Judge, Sangrur forthwith.

15. Pending application, if any, is also disposed of.

06.09.2023

hemlata

(N.S.SHEKHAWAT)
JUDGE

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