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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 12th September, 2023

Pronounced On: 5th December, 2023

+ CRL.M.C. 5007/2014 & CRL.M.A. 17179/2014 (Stay)

M/S BENNETT COLEMAN & CO LTD & ORS Petitioners

Through: Mr. R.K. Handoo and Mr. Aditya
Chaudhary, Advocates.

versus

STATE (NCT OF DELHI) & ANR Respondents

Through: Mr. Hitesh Vali, APP for the State.
Mr. Pramod Kumar Dubey, Senior
Advocate with Mr. Raaj Malhotra, Mr.
Rahul Goyal, Ms. Pallavi Garg, Mr.
Akshat Sharma and Mr. Praful Rawat,
Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeks the following prayers:

"In the circumstances as enumerated above, the petitioners pray that this Hon'ble court may be pleased to:-

1) Quash the order dated 07/04/2014 passed by the Ld sessions judge Saket setting aside the order of dismissal of compliant passed by Ld. magistrate dated 25/01/2014.



2) Quash the order dated 18/04/2013 passed by the Ld sessions judge Saket setting aside the order of dismissal of compliant passed by Ld. magistrate dated 05/12/2012.

3) Set aside / quash the order of the Ld. Magistrate dated 26/04/2014 directing service by publication in the newspaper.

4) Any other order which the court deems fit in the circumstances and in the interests of justice.”

Background

2. The facts of the case, relevant for adjudication of the present petition, are as under:

- i. On 16.04.2022, respondent no. 2/FIITJEE Ltd. filed a criminal complaint under Sections 499/500/501/502 of the Indian Penal Coe, 1860 ('IPC') against 16 accused persons including petitioner no.1, M/s Bennett Coleman & Co. Ltd. (accused no. 1), petitioner no. 2/Sh. Bajaj Arora (accused no. 9) and petitioner no. 2/Sh. Atuj Chandra (accused no. 11).
- ii. *Vide* order dated 26.06.2007, the learned Metropolitan Magistrate summoned accused persons no. 1 to 15 (including the petitioners) for offences under Sections 499/500/501/502/34 of the IPC.
- iii. *Vide* order dated 05.12.2012, the learned Metropolitan Magistrate dismissed the complaint *qua* 08 accused persons (accused nos. 6, 7, 8, 10, 12, 13, 14 and 15) for non-prosecution.
- iv. Respondent no. 2/FIITJEE Ltd. challenged the aforesaid dismissal by way of a revision petition, which was disposed of by the learned ASJ, *vide* order dated 18.04.2013 with a cost of Rs. 20,000/- and remanded the matter back to the learned Trial Court giving one opportunity to respondent no. 2 to serve accused no. 6, 7, 8, 10, 12, 13, 14 and 15.



- v. On 25.01.2014, the learned Metropolitan Magistrate dismissed the complaint *qua* accused nos. 7, 8, 13 and 14 in view of the non-filing of process fee and fresh/correct address of the said accused persons.
- vi. The aforesaid dismissal was once again challenged by respondent no. 2 by way of a revision petition. *Vide* order dated 07.04.2014, the learned ASJ set aside the order dated 25.01.2014 passed by the learned Metropolitan Magistrate and directed respondent no. 2 to file necessary process fee for issuance of summons to accused nos. 7, 8, 13 and 14.
- vii. Subsequently, *vide* order dated 26.04.2014, the learned Metropolitan Magistrate directed service of summons through publication in a newspaper - 'the Statesman', with respect to accused nos. 7, 8, 13 and 14.

Submissions of behalf of the Petitioners

3. Learned counsel appearing on behalf of the petitioners submitted that the present petitioners were arrayed as accused nos. 1, 9 and 11 in the subject complaint and therefore, they were necessary parties in the revision petition filed by respondent no. 2 against the orders dismissing the complaint *qua* some of the accused persons as mentioned hereinabove, by the learned Metropolitan Magistrate. It was submitted that the dismissal of the complaint by the learned Metropolitan Magistrate had accrued a right in favour of the present petitioners, which was denied by respondent no. 2, by not making them a party to the said revision petitions. It was submitted that in doing so, Section 401(2) of the CrPC was not followed, which provides as under:

“401. High Court’s powers of revision.—



(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.”

Learned counsel for the petitioners submitted that the words ‘accused’ or ‘other person’ used in the aforesaid provision would include the present petitioners. In support of the said contention, reliance was placed on **Manharibhai Muljibhai Kakadia & Anr. v. Shaileshbhai Mohanbhai Patel & Ors, (2012) 10 SCC 517** wherein it has been held as under:

“46. The legal position is fairly well-settled that in the proceedings under Section 202 of the Code the accused/suspect is not entitled to be heard on the question whether the process should be issued against him or not. As a matter of law, up to the stage of issuance of process, the accused cannot claim any right of hearing. Section 202 contemplates postponement of issue of process where the Magistrate is of an opinion that further inquiry into the complaint either by himself is required and he proceeds with the further inquiry or directs an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. If the Magistrate finds that there is no sufficient ground for proceeding with the complaint and dismisses the complaint under Section 203 of the Code, the question is whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant against the order of the dismissal of the complaint. Parliament being alive to the legal position that the accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process under Section 204, yet in Section 401(2) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence.

47. Three expressions: “prejudice”, “other person” and “in his own defence” in Section 401(2) are significant for understanding their true scope, ambit and width:



47.1. *Black's Law Dictionary* (8th Edn.) explains "prejudice" to mean damage or detriment to one's legal rights or claims. *Concise Oxford English Dictionary* [10th Edn., Revised] defines "prejudice" as under:

"*Prejudice*.— n. (1) preconceived opinion that is not based on reason or actual experience. >> unjust behaviour formed on such a basis. (2) chiefly Law harm or injury that results or may result from some action or judgment. >> v. (1) give rise to prejudice in (someone); make biased. (2) cause harm to (a state of affairs)."

47.2. *Webster Comprehensive Dictionary* (International Edn.) explains "prejudice" to mean (i) a judgment or opinion, favourable or unfavourable, formed beforehand or without due examination ... detriment arising from a hasty and unfair judgment; injury; harm.

47.3. *P. Ramanatha Aiyar; the Law Lexicon (The Encyclopaedic Law Dictionary)* explains "prejudice" to mean injurious effect, injury to or impairment of a right, claim, statement, etc.

47.4. "Prejudice" is generally defined as meaning "to the harm, to the injury, to the disadvantage of someone". It also means injury or loss.

47.5. The expression "other person" in the context of Section 401(2) means a person other than the accused. It includes suspects or the persons alleged in the complaint to have been involved in an offence although they may not be termed as accused at a stage before issuance of process.

47.6. The expression "in his own defence" comprehends, inter alia, for the purposes of Section 401(2), in defence of the order which is under challenge in revision before the Sessions Judge or the High Court.

48. In a case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed the offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. 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) of the Code. The stage is not important whether it is pre-process stage or post process stage.”

Reliance was further placed on **Bal Manohar Jalan v. Sunil Paswan and Anr., (2014) 9 SCC 640**, wherein it has been held as under:

6. The main contention of the learned counsel for the appellant is that though Section 401(2) of the Criminal Procedure Code stipulated that no order in exercise of the power to revision shall be made by the High Court to the prejudice of the accused unless he had an opportunity of being heard either personally or by pleader in his own defence, the High Court in criminal revision did not issue notice to the appellant herein who is Accused 4 in the first information report and without providing an opportunity to him has exercised jurisdiction under Section 401 CrPC by directing to proceed in accordance with law treating the protest petition as the complaint, to the prejudice of the appellant herein and hence the impugned order [Sunil Paswan v. State of Bihar, Criminal Revision No. 830 of 2009, order dated 18-4-2011 (Pat)] of the High Court is liable to be set aside. In support of his submission he relied on the decision of this Court in *Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel* [Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517 : (2013) 1 SCC (Cri) 218] . We have also



heard the learned amicus curiae on the submissions made by the learned counsel for the appellant.

9. In the present case challenge is laid to the order dated 4-3-2009 at the instance of the complainant in the revision petition before the High Court and by virtue of Section 401(2) of the Code, the accused mentioned in the first information report get the right of hearing before the Revisional Court although the impugned order therein was passed without their participation. The appellant who is an accused person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code and on this ground, the impugned order of the High Court is liable to be set aside and the matter has to be remitted.

In support of his contentions, learned counsel for the petitioners further drew the attention of this Court to **Nishu Wadhwa v. Siddhrath Wadhwa & Anrs, 236 (2017) DLT 612** and in particular, paragraphs 9(iii), 10 and 12 thereof and to **Jubilant Organosys Ltd. v. Engineering Traders Corp. & Anr., 2013 (2) JCC 932** and in particular, paragraphs 1, 3 and 10 thereof.

Submissions on behalf of Respondent No. 2

4. Learned Senior Counsel for respondent no. 2 submitted that the present petition is misconceived, inasmuch as no relief was sought *qua* the petitioners in the revision petitions filed against dismissal of the subject complaint *qua* some other accused persons. It was submitted that the subject complaint *qua* the accused persons was dismissed in accordance with Section 204(4) of the CrPC, which provides as under:

“204. Issue of process.—

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.”



5. Learned Senior Counsel submitted that the said dismissal is distinct from a dismissal under Section 203 of the CrPC, which provides as under:

“203. Dismissal of complaint.—If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.”

It was argued that a dismissal of a complaint under Section 203 of the CrPC is on substantive grounds, while an order of dismissal under Section 204(4) of the CrPC would relate to a procedural aspect. Reliance was placed on a judgment passed by a learned Single Judge of this Court in **Rajesh Dubey v. State & Ors., 2013:DHC:4640**, wherein it was held as under:

“13. Whenever a revision is filed either before the Sessions Court or this Court, it is not necessary to give notice to accused for affording him an opportunity of being heard, irrespective of the fact whether the order is prejudicial to him or not. For example, when a complaint is dismissed in default and for non-prosecution due to non appearance of complainant and not taking any steps by filing process fee etc. u/s 204(4), in that eventuality, Section 401(2) would not be applicable and no notice is required to be issued as the order dismissing the complaint for default or non-prosecution does not touch upon the factual or legal merits of the complaint. The said order is a reflection on or about the conduct of the complainant in the proceeding before the Court and the opinion formed by the Court about the said conduct. Such order, if they do not reflect and take into consideration the merits of the case, when challenged in revision, does not require notice to opposite side as held in J.K. International vs. State, 96 (2002) DLT 795 and reiterated in Hindustan Domestic Oil & Gas Co.(Bombay) Ltd & Ors. vs. State & Anr., 2012(4) JCC 2310.

14. Further in Prabha Mathur & Anr. Vs. Pramod Aggarwal and Ors., (2008) 9 SCC 469, it was observed following the decision in Chander Deo Singh (supra) that the accused has no locus standi at the stage of investigation and he cannot insist for a hearing before process is



issued against him. It was emphasised that “it is equally correct that if a person has no locus standi or right of hearing, such right does not accrue in his favour by an indirect process”.

16. Raghu Raj Singh Rousha(supra) relied upon by learned counsel for the petitioner is distinguishable inasmuch as in that case when the application u/s 156(3) Cr.P.C was dismissed, in the revision filed before the High Court, the order was set aside with a direction to the Metropolitan Magistrate to examine the matter afresh after calling for a report from the police authorities. The police authorities were directed to hold a preliminary inquiry on the basis of the complaint made by the petitioner/complainant and to submit a report to the learned Magistrate within three weeks. Things are entirely different in the instant case inasmuch as vide impugned order dated 27.02.2012, learned Additional Session Judge has not given any direction to the police to investigate the matter. The matter has simply been remanded back to the learned Metropolitan Magistrate for reconsidering the application u/s 156(3) Cr.P.C and to pass orders afresh. The learned Metropolitan Magistrate, while deciding afresh may decide the matter as deemed appropriate. The petitioner cannot possibly anticipate what order the learned Metropolitan Magistrate is going to pass. Under the circumstances, such an order cannot be said to be prejudicial to the petitioner. The position of the case has not been altered. Even no direction has been given to the police to investigate the matter or register the case. The only direction is to reconsider the application u/s 156(3) of the Code on the basis of materials already available on record. No order prejudicial to the petitioner has been passed. That being so, while hearing the revision petition by learned Additional Session Judge, presence of petitioner was not required at that juncture. That being so, there is no merit in the writ petition. Same is accordingly dismissed.”

6. Learned Senior Counsel for respondent no. 2 further submitted that the learned Metropolitan Magistrate, while directing service of summons through publication, followed the procedure prescribed in Delhi High Court Rules, Volume IV, Chapter 8, Part A, Rule 2, which provides as under:



“2. Regarding service of summons in non-cognizable cases—In Criminal cases which are not cognizable by the Police, within the meaning of Section 4, clause (f) (*see* Section 2 of New Code) of the Code of Criminal Procedure, summonses are to be served through the civil process serving establishment attached to the Courts. District Magistrate shall see that the prescribed fee, if any, is duly paid in such cases.”

In view of the above, it was submitted that order dated 26.04.2014 passed by the learned Metropolitan Magistrate suffers from no infirmity. In support of his contentions, learned Senior Counsel further placed reliance on the following judgments:

- i. Arun Kumar Sharma v. State & Ors., 2012 [4] JCC 302.
- ii. Hindustan Domestic Oil & Gas Co. (Bombay) Ltd. & Ors. v. State & Anr., 2012 [4] JCC 2310.
- iii. Rakesh Sharma & Ors. v. Mahavir Singhvi, 2008 [3] JCC 1656.
- iv. Shobhana Bhartia & Ors. v. NCT of Delhi & Anr., 2007 SCC OnLine Del 1301.

Analysis and Findings

7. In Hindustan Domestic Oil & Gas Co. & Ors. v. State & Anr., 2012 [4] JCC 2310, a learned Division Bench of this Court was deciding the following question of law:

“Whether and in what cases the Sessions Court or the High Court while deciding a revision petition under Section 397/401 of the Code of Criminal Procedure 1973, is required and mandated by law to issue notice to the opposite side who has not been summoned to stand trial?”



After referring to various judgments delivered by the Hon'ble Supreme Court as well as other High Courts, the learned Division bench answered the aforesaid question and held as under:

“21. The decision of Delhi High Court in J.K. International (supra) is clearly distinguishable. In the said case, the complaint was dismissed in default and for non-prosecution as the complainant was not present and the process fee had not been paid. In said circumstances, it was held that Section 401(2) would not be applicable and no notice was required to be issued. **An order dismissing the complaint for non-prosecution or in default, which is made the subject matter of the revision, cannot be equated with “revision petitions” that are filed on substantive grounds or touch on the merits. Courts have recognized difference between orders of this nature which are procedural and substantive orders.** [See Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and Ors. 1980 (Supp) SCC 420, which draws distinction between procedural and substantive review. Power of procedural review need not be specifically conferred but power of substantive review has to be conferred by the statute before it can be exercised by a judicial forum/court. Power of procedural review is inherent and therefore does not require any statutory provision or conferment.] **A reading of Section 401(2) illuminates that power of revision should not be exercised without notice when an order prejudicial to the accused or other person is being passed. The order dismissing the complaint for default or non-prosecution does not touch upon the factual or legal merits of the complaint.** The said order is a reflection on or about the conduct of the complainant in the proceedings before the court and the opinion formed by the court about the said conduct. Such orders if they do not reflect and take into consideration the merits of the case or the complaint will not require notice to the opposite side when examined in a revision petition. Such orders are not prejudicial to the other side as they do not reflect and take into consideration merits and demerits of the allegations. **When a revision petition is filed against an order dismissing a complaint for nonprosecution or in default, and the same is allowed, it is not an order that causes prejudice to the opposite side, if there is no application of mind or reflection on merits whatsoever. This distinction and aspect has to be kept in mind.**”



(emphasis supplied)

8. In the present case, the present petitioners who had been summoned by the learned Metropolitan Magistrate were appearing in the proceedings and the complaint against them was pending. The order dated 05.12.2012 dismissing the complaint against accused nos. 6, 7, 8, 10, 12, 13, 14 and 15 and order dated 25.01.2014 dismissing the complaint qua accused nos. 7, 8, 13 and 14 were challenged by respondent no. 2 by way of revision petitions, by making only the said accused persons party. The grievance of the present petitioners is that they were necessary parties to the said revision petitions and therefore, orders passed in the said revision petitions were passed without following the provisions of Section 401(2) of the CrPC causing them prejudice. Learned counsel appearing on behalf of the petitioners strenuously argued that the impugned orders passed by the learned Sessions Courts were to their prejudice.

9. In the opinion of this Court, the order of dismissal for non-prosecution against some of the accused persons cannot create a right in favour of the other accused persons who are facing trial. The said dismissal cannot be stated to be on merits under Section 203 of the CrPC, which is at a pre-summoning stage. Admittedly, the stage in the present case was post-summoning. The complaint was dismissed for non-prosecution on the ground of non-filing of process fee and non-furnishing of address of the said accused persons, which had no bearing on the merits of the complaint. Even otherwise, by way of the aforesaid dismissal, right, if any, would accrue in favour of the said accused persons. The interpretation of the term 'other persons' in Section 401(2) of the CrPC cannot be wide enough to include



persons which are otherwise not affected by an order under challenge in a revision petition. As far as reliance placed by learned counsel for the petitioners on **Manharibhai Muljibhai Kakadia** (*supra*) is concerned, it is noted that the judgment therein was delivered in context of different facts and circumstances and does not apply to the present case.

10. It is pertinent to note that the present petition challenging the impugned orders has been filed on behalf of the present petitioners who were not even party to the revision petitions. The impugned orders dated 07.04.2014 and 18.04.2013 do not affect the merits of the case with respect to the present petitioners. The present petitioners have no *locus standi* to challenge the aforesaid orders including the order dated 26.04.2014 (for publication) passed with respect to other accused persons.

11. In view of the aforesaid discussion, the present petition is dismissed and disposed of accordingly.

12. Pending application(s), if any, also stand disposed of.

13. Interim orders, if any, stand vacated.

14. Copy of the judgment be sent to the concerned learned Trial Court for necessary information.

15. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

DECEMBER 05, 2023/bsr