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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 28.05.2024***+ **CRL.M.C. 361/2011 & CRL.M.As. 7835/2015 & 9420/2015****SHIV CHARAN CHAUHAN & ORS** PetitionersThrough: Mr.Pawan K Bahl &
Ms.Prakhya Bahl, Advs.

versus

STATE OF NCT OF DELHI RespondentThrough: Mr.Shoaib Haider, APP. along
with W/SI Akanksha Chillar,
PS Adarsh Nagar.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C'), challenging the Order dated 13.10.2010 (herein-after referred to as 'Impugned Order') passed by the learned Additional Sessions Judge, Fast Track Court, Rohini, Delhi (herein-after referred to as 'ASJ'), in Crl.Rev. 31/2010 titled *Pankaj & Ors. v. State*; and Crl. Rev. 33/2010 titled *Shiv Charan Chauhan & Anr. v. State*, whereby the learned ASJ, while partly allowing the Revision Petitions filed by the petitioners under Section 396 of the Cr.P.C. and deleting the charge under Section 406 of the Indian Penal Code, 1860 (in short, 'IPC') against the petitioner no. 2- Smt. Rukmani Devi, at the same time, framed charges under Sections 379/356 of the IPC against her (who has unfortunately passed away since then), and Sections 343/34 of



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the IPC against the remaining accused persons/petitioners, and Sections 506II/34 of the IPC against petitioners nos.1 and 3 herein, namely, Sh. Shiv Charan Chauhan and Sh. Pankaj Chauhan.

2. The learned counsel for the petitioners submits that the learned Metropolitan Magistrate, Mahila Court, North West District, Delhi (hereinafter referred to as 'MM'), *vide* the order dated 16.07.2010, had framed charges against Smt. Rukmani Devi under Sections 406/498A/34 of the IPC; and under Sections 498A/34 of the IPC against rest of the accused persons. The petitioners challenged the same by way of the above two Revision Petitions. The Order dated 16.07.2010 was not challenged by the State or by the complainant.

3. He submits that during the oral submissions before the learned ASJ, only a passing reference was made by the learned APP therein that in case it is found that the charge under Section 406 of the IPC is not made out against the accused-Smt. Rukmani Devi charges under Sections 379 and 356 of the IPC are *prima facie* made out. On this submission, however, the learned ASJ did not put the accused-Smt. Rukmani Devi to notice that such a charge can or would be framed against the petitioners. The petitioners, therefore, had no opportunity to refute/object the same or make any submissions against such charge.

4. He submits that on his own, the learned ASJ also observed that charges under Sections 343/34 of the IPC are also



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made out on the allegations of the complainant and proceeded to frame charges accordingly against the rest of the petitioners. Again, no notice of the same was given to the petitioners for eliciting their response or objections.

5. Similarly, the learned ASJ, without any notice and without granting an opportunity of hearing to the petitioners, directed framing of charges under Sections 506II/34 of the IPC against petitioners nos.1 and 3 herein, namely, Sh. Shiv Charan Chauhan and Sh. Pankaj Chauhan.

6. The learned APP is not in a position to refute that prior to framing of these additional charges, notice was not served on the petitioner and their objection against the same were not heard by the learned ASJ.

7. This Court, by its order dated 06.09.2023, had issued notice to the respondent no.2/complainant. Even after the service of notice, none has appeared for the respondent no.2/complainant.

8. I have considered the submissions made by the learned counsels for the parties.

9. As noted hereinabove, the learned MM, *vide* the order dated 16.07.2010 had framed charges against Smt. Rukmani Devi under Sections 406/498A/34 of the IPC; and under Sections 498A/34 of the IPC against rest of the accused persons. The petitioners feeling aggrieved thereof, had challenged the same by way of the above Revision Petitions.



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Neither the State nor the Complainant had challenged the said order.

10. Section 397 of the Cr.P.C. empowers the High Court or any Sessions Judge to call for and examine the record of any proceeding before any inferior Criminal Court situated within its local jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed.

11. Section 399 of the Cr.P.C. states that in exercise of the revisional power, 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 of the Cr.P.C., and where proceedings by way of revision is commenced before a Sessions Judge, the provisions of sub-section (2), (3), (4), (5) of Section 401 shall apply to such proceedings.

12. Section 399 of the Cr.P.C. is reproduced hereinbelow: -

“399. Sessions Judge's powers of revision.—

(1) In the case of any proceeding the record of which has been called for by himself, 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.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions



Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.”

13. Section 401 of the Cr.P.C. in turn 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 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.”

14. Sub-section (2) of Section 401 of the Cr.P.C. in no uncertain terms provides that no order shall be made to the



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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. This is also a due compliance with the principles of natural justice.

15. The Supreme Court in ***Manharibhai Muljibhai Kakadia & Anr. v. Shaileshbhai Mohanbhai Patel & Ors.***, (2012) 10 SCC 517, has elaborately dealt with the right of hearing given to the accused under sub-section (2) of Section 401 of the Cr.P.C. The Supreme Court observed 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



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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.

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 of post-process stage.”

(Emphasis Supplied)

16. The Supreme Court in ***Bal Manohar Jalan v. Sunil Paswan & Anr.***, (2014) 9 SCC 640, relying on the judgment of ***Manharibhai*** (supra), has held that the accused person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Cr.P.C. and on this ground itself, the order of revision court is liable to be set aside and the matter has to be remitted back.

17. In ***Chandra Pratap Singh v. State of Madhya Pradesh***, (2023) 10 SCC 181, the Supreme Court held that though in view of the wide powers conferred by Section 386 of the Cr.P.C., even an appellate court can exercise the power under Section 216 of the Cr.P.C. of adding or altering a charge, however, if the appellate court intends to do so, elementary principles of natural justice require appellate court to put the accused to the notice of charge proposed to be altered or added when prejudice is likely to be caused to the accused by alteration or addition of charges.

18. In the present case, the learned ASJ, has not given a notice to the petitioners before proceeding to frame additional



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charges against them, thereby denying an opportunity to the petitioners of being heard before passing the impugned order. The order does cause a prejudice to the petitioners.

19. In view of the above, the Impugned Order in so far as it directs framing of additional charge under Sections 379/356 of the IPC against Smt. Rukmani Devi (which challenge today has become infructuous because of the unfortunate death of Smt. Rukmani Devi); Sections 343/34 IPC against the remaining accused; and Sections 506II/34 of the IPC against petitioner nos.1 and 3 herein, is set aside.

20. The matter is remanded back to the learned ASJ to give notice to the petitioners/accused of the intent to frame additional charges, and after giving opportunity of hearing to the parties, pass an order in accordance with law.

21. It is made clear that this Court has not expressed any opinion on whether the additional charges against the petitioners could validly be made/sustained on the material on record or not.

22. The petition is disposed of in the above terms.

23. The matter be listed before the Court of the learned ASJ on 29.07.2024. The parties are given notice of such listing.

NAVIN CHAWLA, J

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Click here to check corrigendum, if any