



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 24.01.2024

+ **CRL.M.C. 7716/2023 & CRL.M.AS. 28737/2023. 2364/2024**

IN THE MATTER OF:

HAZI MEHRUDDIN & ORS.

..... Petitioners

Through: Mr. Baharu Barqi and Mr. Maroof Ahmad, Advocates.

versus

THE STATE GOVT OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Laksh Khanna, APP for State with SI Jaivind Kumar PS Jamia Nagar, New Delhi.
Mr. Ajeet Shukla and Mr. Noor Alam, Advocates for respondent Nos. 2 and 3.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C read with Article 227 of the Constitution of India seeking setting aside of the order dated 07.03.2023 passed by the learned ASJ, South East, Delhi in Revision Petition 134/2023 as well as the proceedings pending before the learned MM in FIR No.469/2017 registered under Sections 307/323/34 IPC at PS Jamia Nagar, New Delhi.

2. The facts as available on record are that the complainant/respondent No.2 had initially filed a complaint dated 30.07.2017, which resulted in registration of the aforesaid FIR. The investigation culminated in filing of the cancellation report. Respondent No.3 filed a Protest Petition whereby vide order dated 21.12.2018, the Trial Court proceed to treat the matter as a



complaint case and fixed the matter for pre-summoning evidence. The complainant examined witnesses in support of the complaint and closed his evidence on 12.04.2022. The Trial Court vide order dated 05.11.2022 declined summoning of the accused persons/petitioners.

3. Respondent No.2 challenged the said order before the Sessions Court and impleaded the accused persons as respondents therein. The revision petition was taken up for consideration without issuing notice to the accused persons. The Revisional Court allowed the said revision petition and remanded back the matter to the trial court with directions to pass fresh summoning order.

4. The petitioners contend that great prejudice has been caused to them as inspite of being impleaded in the said revision petition, the Revisional Court proceeded to hear the matter without issuing any notice to them. The Revisional jurisdiction under Section 397 Cr.P.C is exercised to examine the correctness, legality or propriety of an order passed by the trial court or an inferior court. The jurisdiction being limited, the issue of legality, propriety or correctness of the order under challenge is the very foundation of exercise of the jurisdiction under Section 397 Cr.P.C. Needless to say that the revisional court while exercising such jurisdiction is not to itself commit the same error which it is examining. The dismissal of the complaint case, thereby refusing to entertain respondent No.2's request for summoning the accused persons had resulted in refusal of a valuable right accruing in favour of the accused persons.

5. The issue raised in the present petition is squarely covered by the decision of the Supreme Court in Mohit @ Sonu & Anr. v. State of U.P. @



Anr.¹ wherein while taking note of its earlier decisions, the Court held as under:-

“xxx

35. Recently, a three-Judge Bench of this Court in Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel considered the question as to whether in a case where an order of the Magistrate dismissing the complaint under Section 203 of Cr.P.C. at the stage under Section 200, the accused or a person who is suspected to have committed the crime is entitled to hearing by the revisional court. After considering all the earlier decisions, in the case of P. Sundarrajan v. R. Vidya Sekar, Raghu Raj Singh Rousha v. Shivam Sundaram Promotors (P) Ltd. and A.N.Santhanam v. K. Elangovan, this Court held as under:

“53. We are in complete agreement with the view expressed by this Court in P. Sundarrajan, Raghu Raj Singh Rousha and A.N. Santhanam. We hold, as it must be, that in a revision petition preferred by the 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 the crime is entitled to hearing by the Revisional Court. In other words, where the 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

¹ (2013) 7 SCC 789



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 the crime have, however, no right to participate in the proceedings nor are they 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.”

xxx”

6. Keeping in view the aforesaid enunciation of law, the revisional court’s exercise of its jurisdiction without issuance of any notice to the accused persons and without giving them an opportunity of being heard, is in teeth of the aforesaid decision and, thus liable to be set aside.

7. Accordingly, the petition is allowed and matter is remanded back to the Sessions Court, to be listed on 05.02.2024. The Revisional Court shall provide an opportunity for hearing to the petitioners and consider the matter afresh without being influenced by its earlier decision.

8. The petition alongwith pending applications is disposed of in above terms.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 24, 2024/rd