



CRM-M 25943-2018 and one more case

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**201 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

DATE OF DECISION: 24.01.2025

1. CRM-M 25943-2018

Insp. (Retd.) Girraj Singh and othersPetitioner

Versus

State of Haryana and AnotherRespondents

2. CRM-M-25948-2018

HC Sumer SinghPetitioner

Versus

State of Haryana and AnotherRespondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Akash Vashisth, Advocate and
Mr. Akinchan Aggarwal, Advocate for the petitioners.

Mr. Vikas Bhardwaj, AAG Haryana.

Mr. Jai Bhagwan, Advocate for respondent(s) No. 2.

HARPREET SINGH BRAR J.

1. This common order shall decide both the abovementioned petition(s) as they arise out of similar factual matrix. However, for the sake of brevity, the facts are taken from CRM-M 25943-2018.

2. This present petition has been preferred under Section 482 of Code of Criminal Procedure (hereinafter Cr.P.C) (now Section 528 of BNSS) seeking quashing of the impugned order dated 18.12.2012 (Annexure P-8) passed by learned Additional Sessions Judge, Faridabad in criminal revision No. 84 dated 18.12.2012, order dated 29.07.2017 (Annexure P-9) passed by learned Judicial Magistrate First Class (hereinafter JMFC), Faridabad in FIR



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No. 73 dated 16.05.2011 registered under Sections 167, 195, 209, 298, 330, 506 and 120-B of Indian Penal Code (notice issued under Sections 167, 298, 330, 506 and 120-B of IPC) at Police Station Sadar Ballabgarh, District Faridabad whereby cancellation report was rejected and order dated 25.04.2018 (Annexure P-11) passed by learned Additional Sessions Judge, Faridabad in Criminal Revision No. 56 dated 31.08.2017.

3. Succinctly, the facts of the case are that the petitioners were posted in Crime Branch, Sector 30 Faridabad. On 23.01.2011, while the petitioner(s) were on patrolling duty, a secret information came whereby six boys namely Sushil, Nitin, Sudhir, Prince (nephew of respondent no. 2), Tara and Gaurav in connivance with each other armed with deadly weapons were planning a dacoity. Believing the information, a raiding party was formed, who reached the disclosed location of Government tubewell whereby all the abovementioned boys gathered and were making a plan for the same. The petitioner(s) apprehended four of them and two of them managed to flee, recovery of pistol, knife, etc. was effected from them. Thereafter, on the basis of report under section 173 Cr.P.C., the offence u/s 399, 402 of Indian Penal Code and section 25 of Arms Act was found to have been made out and the accused were accordingly charge sheeted vide order dated 19.12.2011. Currently, some of them retired from the services and some are posted at different locations. In lieu of the complaint, the petitioner(s) got arrested Prince and others in FIR No. 39, dated 23/1/2011 who were later acquitted vide judgement dated 28.02.2013 by learned ASJ, Faridabad. However, during the investigation on the complaint of respondent no. 2, investigating agency came

to know of the involvement of the petitioner(s) in another incident. Thereafter, FIR No.-73, dated 16.05.2011 was lodged for the same and, thorough investigation was conducted and report under section 173 Cr.P.C dated 14.05.2012 was prepared in lieu of which cancellation report regarding the non involvement of the petitioner(s) was processed. However, in the absence of protest petition by the respondent no. 2, the order regarding the cancellation report was passed by the learned Court. Thereafter, the respondent challenged the order dated 08.10.2012(supra). However, the learned revisional Court set aside the order(supra) and remanded for re-decision in accordance with law on the ground that no opportunity was afforded to the complainant.

4. Learned counsel for the petitioner(s) *inter alia* contends that initially, no summons were received regarding issuance of notice of learned Trial Court. However, on getting the knowledge of theailable warrants, the petitioner(s) approached the learned trial Court and were thereafter released on bail in September 2017. Further, it is pertinent to mention that the impugned order dated 29.07.2017(Annexure P-9), has been passed by the learned JMIC in absence of any formal complaint filed by the complainant as the same is directed to be filed after the application of mind over the cancellation report. Since, there is no formal complaint therefore, there is uncertainty as to whether the case would be FIR case or Complaint case under chapter XV of Cr.P.C.

5. The learned counsel for the petitioner(s) further contends that, the petitioner(s) being deputed at different stations for discharging their departmental duties never realised the issue in fact arose from the order dated 18.12.2012 (Annexure P-8) setting aside the order dated 08.10.2012

(Annexure P-6) as the same was passed *ex parte* without giving opportunity to the petitioner(s) and the same being against the Principles of Natural Justice.

6. *Per Contra* the learned counsel for the respondent no.-2 contends that the petitioners concocted a fake story on the basis of forged and fabricated documents and implicated Prince (his nephew) along with others in a false case. Further the learned counsel contends that the investigation has not been conducted properly and the recoveries therefrom were planted since the petitioner(s) failed to prove the charges against the accused beyond reasonable doubt. Furthermore, there were material discrepancies and contradictions in the testimonies of the witnesses. Reliance in this regard was taken from ***Balu Sonba Shinde Vs. The State of Maharashtra, 2002 (4) RCR (Crl.) 95.*** and ***Gurajala Ramesh and ors. Vs. State of AP, 2003 (3) CCJ,322,AP.*** Further the learned counsel of respondent No. 2 submits that, the accused equipped with deadly weapons as mentioned in the recovery memo, neither attacked the police party present nor resisted their arrest.

7. Having heard the learned counsel for the parties and after perusing the record, it transpires that the order dated 25.04.2018 (Annexure P-11) was passed without following the drill of Section 197 Cr.P.C. Pertinently, the petitioners being public servants cannot be prosecuted without sanction from the appropriate government, which is conspicuously missing in the present case. At this stage, it would be beneficial to study Section 197 Cr.P.C., the relevant part of which is reproduced below:

Section 197. Prosecution of Judges and public servants.

(1)When any person who is or was a Judge or Magistrate or a public servant not removable from his officer save by

or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State of the State Government.

8. A two Judge bench of the Hon'ble Supreme Court comprising of Justice R. Banumathi and Justice Indira Banerjee in the case of ***D. Devaraja vs. Owais Sabeer Hussain, 2020(7) SCC 695***, speaking through Justice Indira Banerjee, has held as under:

“The tenor of section 197 of the Code of Criminal Procedure, 1973 makes it absolutely clear that sanction is required not only for acts done in discharge of official duty but also for the acts done in excess of such duty or authority. To test the veracity of prior sanction of Appropriate Government is whether there is a nexus between the official duty of the public servant and reasonably discharge of such duty. However if the act alleged against public servant is reasonably connected with discharge of his official duty, it is immaterial whether the public servant has exceeded the scope of his powers and/or acted beyond the four corners of law. The imperative behind the legislation of section 197 is to safeguard the public servant from prosecution in vexatious and frivolous proceedings. Therefore the act alleged in a complaint purported to be filed against the public servant is reasonably connected to discharge of official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate government is obtained under section 197 of the Code of Criminal Procedure, 1973.”

Further, in ***State of Orissa v. Ganesh Chandra Jew (2004) 8 SCC 40***,

the Hon'ble Supreme Court interpreted the use of the expression "official duty" to imply that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. Section 197 of the Code of Criminal Procedure, 1973 does not extend its protective cover to every act or omission done by a public servant while in service. The scope of operation of the Section is restricted to only those acts or omissions which are done by a public servant in discharge of official duty.

9. Moreover, at this juncture, this Court finds it profitable to reproduce Sections 399 and 401 of Cr.P.C., which run as follows:

"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.

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.”

A perusal of the order dated 18.12.2012 (Annexure P-8) (supra) reveals that only counsel for respondent No.2-complainant was heard before passing the impugned order, which was in clear contravention of sub-section (2) of Section 399 of Cr.P.C. It was obligatory on the part of the learned Additional Sessions Judge, Faridabad to hear the petitioners-accused before setting aside the order of acceptance of the cancellation report as passed by the learned Magistrate. Sub-section (2) of Section 401 Cr.P.C. clearly elucidates that 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. Further, Section 399 of Cr.P.C. which deals with the Sessions Judge's powers of revision, in sub-section (2) states that 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 reference in the said sub-sections to the High Court shall be construed as reference to the

Sessions Judge. A two Judge Bench of the Hon'ble Apex Court in the case of ***Gurdev Singh vs. Surinder Singh and Others, (2015) 3 SCC 773***, affirming this principle opined as follows:

“6. We find substance in this submission. Dismissal of the complaint terminates criminal proceedings against the accused. If the complainant carries the matter further by filing a revision and the Sessions Court sets aside the dismissal order and remands the matter to the Addl. C.J.M. for fresh enquiry, the complaint is revived. In this connection, it is necessary to refer to Section 401 of the Code which lays down the High Court's powers of revision. Sub-section (2) thereof states that 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. Section 399 of the Code refers Sessions Judge's powers of revision. Sub-section (2) thereof states that 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 reference in the said sub-sections to the High Court shall be construed as reference to the Sessions Judge.

7. Thus, it was obligatory on the Additional Sessions Judge to hear the accused before setting aside the order of dismissal of complaint in his revisional jurisdiction. Of course, once the matter is remanded to the Addl. C.J.M., the accused will have no right of hearing because at pre-process stage, the law does not give him any such right...”

10. While, a three Judge Bench of the Hon'ble Supreme Court in the case of ***Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel, 2012(4) RCR (Criminal) 689***, speaking through Justice R.M. Lodha, has held as under:-

“In our opinion, this order of the High Court is ex facie unsustainable in law by not giving an opportunity to the appellant herein to defend his case that the learned Judge violated all principles of natural justice as also the requirement of law of hearing a party before passing an adverse order. Further the High Court in exercise of its revisional power cannot pass any order which may cause prejudice to the accused

or other persons unless he has an opportunity of being heard either personally or by pleader in his own defence.”

11. As an upshot of the discussion above, the impugned order dated 18.12.2012 (Annexure P-8) passed by learned Additional Sessions Judge, Faridabad in criminal revision No. 84 dated 18.12.2012 along with all consequential proceedings arising therefrom are set aside. The matter is remanded back to the learned Additional Sessions Judge, Faridabad to consider the matter afresh strictly in accordance with law.
12. The present petitions are allowed.
13. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

24.01.2025
Ajay Goswami

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No