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

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**CRM-M No.2671 of 2016
Date of Decision: 13.01.2025**

Anil Kumar and others

... Petitioners

Versus

Jaswant Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Nandan Jindal, Advocate,
for the petitioners.

Mr. Balbir Singh, Advocate,
for the respondent.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure (For short "Cr.P.C.") seeking quashing of Criminal Complaint No.51 of 2008 titled as Jaswant Singh v. Anil Kumar and others, filed under Section 323 of IPC and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (For short 'the SC&ST Act'), the order dated 03.06.2015 (Annexure P-10) passed by the Court of learned Additional Sessions Judge, Mohali in Criminal Revision No.58 of 2014 whereby the order dated 26.05.2014 passed in the aforementioned complaint thereby dismissing the complaint had been set aside and permission was granted to the respondent-complainant to lead additional evidence as well as the order dated

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19.10.2015 passed in the aforementioned complaint by the trial Magistrate whereby the present petitioners except Pankaj Kumar Gupta had been summoned to face trial for commission of aforementioned offences.

2. For the sake of continuity and coherence, the parties shall be nominated as per their original nomenclature as given during the course of trial.

3. The facts relevant for the purpose of disposal of this petition are that the aforementioned complaint had been filed by the complainant before the police on the allegations that on 28.12.2005, on being informed that the accused were raising construction on land comprised in Khasra No.615 which was Shamlat Deh land, the complainant had gone there and asked them to stop the construction which was illegally raised but the accused started hurling abuses to the complainant by calling him as “Chamar” and also used other derogatory words about his caste. The accused Satish Bala even caught hold of the complainant and assaulted him. Several persons who had gathered at the spot saved him for the assailants. Initially, a case bearing FIR No.195 dated 06.10.2007 registered at Police Station Zirakpur was registered on the aforementioned complaint. However, subsequently a cancellation report had been filed. The complainant disagreed with the said cancellation report and then the complaint was ordered to be treated as a private complaint/protest petition.

4. The respondent No.2 in his preliminary evidence examined four witnesses namely, CW-1 Mukandi Ram, CW-2 Ranjit Singh, CW-4 Balwant Singh and CW-5 Balbir Singh besides himself stepping into the witness box

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as CW-3. On appraising the preliminary evidence and hearing learned counsel for the complainant, the learned Magistrate vide order dated 26.05.2014 dismissed the complaint by observing that the complainant had failed to prove that he was a member of Scheduled Caste or Scheduled Tribes and the accused were not members of Scheduled Caste or Scheduled Tribe. It was further observed that the allegations qua his being assaulted and criminally intimidated by the accused were also not prima facie proved.

5. As revealed from the record, the petitioner preferred a revision petition against the order dated 26.05.2014 before the Court of learned Additional Sessions Judge, SAS Nagar, Mohali and vide order dated 03.06.2015, the said petition was allowed, the order dated 26.05.2014 was set aside. As prayed for by the complainant, he was allowed to produce additional evidence and direction was given to the learned trial Magistrate to give opportunity to the complainant to lead further evidence and then to pass a fresh order. The Sub Divisional Judicial Magistrate, Dera Bassi then passed order dated 19.10.2015 thereby issuing process for commission of offences punishable under Sections 323 of IPC and Section 3 of the SC&ST Act as against the accused i.e. the present petitioners except Pankaj Kumar Gupta.

6. Feeling aggrieved, the petitioners-accused have filed the present petition.

7. It will be relevant to mention at the outset that though the petitioners sought quashing of the Criminal Complaint No.51 of 2008 in the petition, however, at the time of addressing arguments, learned counsel for

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the petitioners has restricted his claim to the extent to which challenge as to the orders dated 03.06.2015 and 19.10.2015 has been made.

8. It is argued by learned counsel for the petitioners that they have been falsely implicated in this case. Infact, one Sant Ram who was predecessor-in-interest of the petitioners was owner in possession of the land comprised in Khewat No.473, Khatoni No.662 and Khasra No.615 situated in the revenue estate of Village Baltana and had purchased this land from one Sadhu Ram way back in the year 1968 after making payment of due sale consideration amount. Subsequently, a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 had been filed against the predecessor of the petitioners for ejectment from the abovesaid land but the same had been dismissed on 31.12.1981. The petitioners through their predecessors were in continuous and exclusive possession of the abovesaid land. Subsequently, the legal representatives of Sadhu Ram had started interfering in the possession of the petitioners over the above named property and the complainant-respondent had been supporting them. It is argued that the complaint in question had been filed by the respondent No.2 on totally false and frivolous allegations. No offence as alleged in the complaint had been made out as against the present petitioners. The respondent had even failed to produce any material on record to prove that he belonged to Scheduled Caste category.

9. It is further argued that the order dated 26.05.2014 was a well reasoned order passed on due appreciation of the evidence produced on record. The Revisional Court while passing the impugned order dated

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03.06.2015 had allowed the application moved by the respondent to grant permission to adduce additional evidence and prove caste certificate of the respondent, without considering the fact that it was mandatory to serve notice of the application and the revision petition to the petitioners and, therefore, the impugned order dated 03.06.2015 was not at all sustainable in the eyes of law. It is further argued that the order dated 19.10.2015 as passed subsequently is also not sustainable and is liable to be set aside. With these broad submissions, it is urged that the petition deserves to be allowed and the impugned orders are liable to be quashed. To fortify his argument, learned counsel for the petitioners has placed reliance upon authorities cited as **Manharibhai Muljibhai Kakadia and another v. Shaileshbhai Mohanbhai Patel and others**, (2012) 10 SCC 517, **Subhash Sahebrao Deshmukh v. Satish Atmaram Talekar**, (2020) 6 SCC 625 and **Abhijit Barman and another v. Dilip Chowdhury**, 2015 (26) RCR (Criminal) 738.

10. Per contra, it is argued by learned counsel for the respondent-complainant that there is no illegality or infirmity in the order dated 03.06.2015 as passed by the learned Additional Sessions Judge thereby setting aside the order qua dismissal of the complaint filed by the complainant as well as the order dated 19.10.2015 passed by learned Sub Divisional Judicial Magistrate. It is argued that the respondent-complainant was well within his rights to make prayer for granting him permission to produce by way of additional evidence, his caste certificate and the learned Revisional Court had rightly allowed this prayer. It is further argued that based on the evidence produced on record, the learned Sub Divisional

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Judicial Magistrate had rightly held that there was a prima facie case as against the petitioners on record and did not commit any error in passing the impugned order dated 19.10.2015. It is urged that these orders do not suffer from any illegality or infirmity and deserve to be sustained. Accordingly, it is urged that the petition does not deserve to be allowed.

11. As per Section 397 of the Cr.P.C., the High Court or the Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court falling within their jurisdiction, for the purpose of satisfying as to the correctness, legality or propriety of any findings, sentence or order, recorded or passed, and as to regularity of any proceedings of such inferior Court. Since in the instant case, the main argument as raised by the present petitioners is that they were not given notice of the revision petition and the application for granting permission to the respondent-complainant to produce additional evidence by the Revisional Court before passing an order dated 03.06.2015, therefore, in the opinion of this Court, the sole question for consideration is as to whether the present petitioners were entitled to notice and hearing by the Revisional Court in the revision petition as preferred by the respondent-complainant challenging the order dated 26.05.2014 as passed by the Magistrate thereby dismissing the complaint filed by him at pre summoning stage. This question was considered by Hon'ble Apex Court in **Manharibhai Muljibhai Kakadia and another's** case (Supra) and it was observed that in a revision petition preferred by complainant before the High Court or the Sessions Judge, challenging an order of the Magistrate dismissing the complaint

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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 crime, is entitled to hearing by the Revisional Court. It was further observed that in other words, where a complaint is 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. If the Revisional Court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and is sent back for fresh consideration, the persons who are alleged in the complaint to have committed crime have, however, no right to participate in the proceedings nor they are entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process.

12. In **Subhash Sahebrao Deshmukh's** case (Supra), the complaint had 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 Sessions Judge, the person who was suspected to have committed the offence was not given notice. It was observed that they were entitled to hearing by the Revisional Court but had no right to participate in the proceedings if the order of the Magistrate was overturned and were also not entitled to hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for

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issuance of process. While relying upon **Manharibhai Muljibhai Kakadia and another's** case (Supra), the Hon'ble Supreme Court in **M/s Prime Impex Ltd. and others v. P.E.C. Ltd. and another**, (2014) 13 Supreme Court Cases 591, had observed that on a plain reading of Section 401 (2) of the Code, 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 an 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. It was further observed that 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 proceeding before the 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 the revival of the complaint. It was held that it was in this view of the matter that the accused or other person could not be deprived of hearing on

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the face of express provision contained in Section 401 (2) of the Code. The stage was not important whether it was pre-process stage or post-process stage.

13. Similar proposition of law was laid down by High Court of Chattisgarh in the order dated 25.10.2021 passed in CRMP No.540 of 2016 titled as ***Dr. Ajay Verma and others v. Ashish Dev Soni and another*** wherein, a revision petition had been filed against an order of the Magistrate qua dismissal of a criminal complaint. The Revisional Court remanded the matter with direction to re-examine the complaint afresh. It was observed that it was incumbent to implead the proposed accused as a party to the revision petition and issue notice to them by the Revisional Court and in the absence of the same, the rights of the accused were affected adversely, therefore, on that count alone, the order of the Revisional Court suffered from illegality and was liable to be quashed.

14. Reference can also be made to **Abhijit Barman and another's** case (Supra), wherein also complaint filed by the complainant had been dismissed. The complainant filed a revision petition before Sessions Court who had allowed the same. The order of the Revisional Court had been challenged in the High Court of Calcutta. The grievance of the petitioners was that the revision petition was disposed of by the Revisional Court without giving any notice to them and they were denied opportunity of hearing infact entitled to be heard. The High Court of Calcutta had observed that the petitioners were entitled to be heard in the revisional proceedings filed on behalf of the complainant. The impugned order passed by the

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Revisional Court was accordingly set aside and direction was given to rehear and decide the revisional matter afresh.

15. On applying the above discussed settled position of law to the peculiar facts of the present case, it may be mentioned that in the instant case, when the order regarding dismissal of the complaint filed by the respondent-complainant had been challenged before the Court of learned Additional Sessions Judge, SAS Nagar, Mohali in Criminal Revision No.58 of 25.07.2007, simultaneous with the revision petition, an application for granting permission to produce by way of additional evidence the caste certificate of the respondent-complainant had also been filed. On a perusal of the impugned order dated 03.06.2015, it has been revealed that the learned Revisional Court did not go into the merit of the pleas taken in the revision petition and set aside the impugned order simply by observing that unless a certificate indicating that the respondent-complainant belonged to Scheduled Caste was proved, no complaint under the SC&ST Act could have been filed. It was further observed that it appeared that at the relevant time when the complainant was leading his pre-summoning evidence, he could not produce the caste certificate which led to dismissal of the complaint. By making such observations, the application for additional evidence was allowed and the impugned order was set aside without considering the fact as to whether a prima facie case for commission of the subject offences had been made out or not. It is apparent from a perusal of this order dated 03.06.2015 that before passing the same, no notice had been issued to the present petitioners though they were impleaded as parties to the

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revision petition and no opportunity of hearing was given to them which was mandatory in view of the above discussed position of law. As such, this Court has no hesitation in holding that the impugned order is not sustainable in the eyes of law. Accordingly, the petition is allowed. The impugned order dated 03.06.2015 is set aside. As a consequence, the order dated 19.10.2015 also stands quashed automatically. The matter is remitted to the Revisional Court i.e. the Court of Additional Sessions Judge/Sessions Judge concerned with direction to rehear and decide the matter after giving notice to the petitioners and giving opportunity of hearing to them.

13.01.2025
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No