

(2021) 01 CHH CK 0014
In the Chhattisgarh High Court
Case No : Criminal Revision No. 49 Of 2015

Dr. Shahid Ali And Ors

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 12-01-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 420, 467, 468, 471
Code Of Criminal Procedure, 1973 — Section 177, 200, 201, 203, 204, 208, 401(2),
402, 403

Citation : (2021) 01 CHH CK 0014

Hon'ble Judges : Rajendra Chandra Singh Samant, J

Bench : Single Bench

Advocate : Neeraj Choubey, Alok Nigam, Harshwardhan Parganiha

Final Decision : Disposed Of

Judgement

Rajendra Chandra Singh Samant, J

Heard.

1. The present revision petition has been filed by the petitioner being aggrieved by the order date 02.07.2014, passed by the Court of 6th Additional

Sessions Judge, Raipur, C.G. in Criminal Revision No.510/2013, in which the Revision petition was allowed and the order of the Additional Chief

Judicial Magistrate, Raipur, C.G. dated 07.11.2013 about the dismissal of complaint filed by respondent No.2, was set aside.

2. The learned counsel for the respondent No.2 had filed a complaint before the Court of Additional Chief Judicial Magistrate, Raipur against the

petitioners praying for taking cognizance of offences under Sections 420, 467, 468, 471 and 120 B read with Section 34 of I.P.C. The learned trial

Court completed the inquiry on the complaint under Section 200 of Cr.P.C.

pursuant to which the order dated 07.11.2013 was passed. The trial Court refused to entertain the complaint and to take cognizance of offences on this ground that the Court at Raipur does not have jurisdiction and the jurisdiction is available with Bilaspur Court.

3. The Criminal Revision No.510 of 2013 was preferred before the Court of 6th Additional Sessions Judge, Raipur, C.G. and the same has been decided by the impugned order by which the order of the A.C.J.M., Raipur dated 07.11.2013 was set aside and the trial Court was directed to consider whether the cognizance can be taken or not in the complaint case. It is submitted by the learned counsel for the applicant that the applicants were respondents in the revision petition No.510 of 2013 before the Court of 6th Additional Sessions Judge, Raipur, C.G. but before passing the impugned order, no notices were issued to them, therefore, they were not provided with the opportunity of hearing which is against the principle of natural Justice. Making a reference to the Section 401 (2) of Cr.P.C., that "no order 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."

4. Reliance has been placed on the judgment of Supreme Court in case of Manharibhai Muljibhai Kakadia & Anr. Vs. Shaileshbhai Mohanbhai Patel & Ors. reported in 2012 (10) SCC 517 and Bal Manohar Jalan Vs. Sunil Paswan & Anr. reported in 2014 (9) SCC 640, in which it has been held that giving an opportunity of hearing to the respondent in Criminal Revision is necessary and mandatory.

5. It is submitted that this principle has been reiterated by the Supreme Court in the case of Subhash Sahebrao Deshmukh Vs. Satish Atmaram

Talekar & Ors. reported in Criminal Appeal No.2183 of 2011 decided on 18.06.2020, in Cr.M.P. No.1583 of 2017 of this Court between the parties

Rajendra Chawla & Ors. Vs. Chandra Prakash Chabda & Anr. and in Cr.M.P. No.1663 of 2017 between the parties Rajendra Chawla & Ors. Vs.

Chandra Prakash Chabda & Anr. decided on 28.02.2019.

6. Learned counsel for the State/respondent opposes the revision petition and submits that the learned Revisional Court has observed in the impugned order, that the objection as to jurisdiction of a complaint case can be taken only after taking cognizance in the complaint case, therefore, the order

passed by the learned Revisional Court is proper, which needs no interference.

7. Learned counsel for respondent No.02 adopts the arguments advanced by the learned State counsel and submits that the order of the A.C.J.M.,

Raipur returning the complaint case for presentation in the proper Court does not fall within the scope of Section 201 of Cr.P.C. It is also submitted

that the accused in complaint case has no right to be heard before the stage of issuance of process under Section 204 of Cr.P.C. As in the present

case, the trial Court refused to take cognizance and therefore, there was no issuance of summons, hence, the applicant did not have any right to be

heard in the revision petition. It is very clear that the order of the A.C.J.M., Raipur, C.G. is not a dismissal of complaint under Section 203 of Cr.P.C.

1 Relying on the judgment of Punjab and Haryana High Court in the case of Gurdeep Singh Vs. State of Haryana reported in ILR 2001 (2) P& H

388. It is submitted by the Single Bench held in this case that if the case of the accused petitioner was not covered under Section 401(2) of Cr.P.C.

then it was not at all necessary for the Sessions Judge to have heard the accused petitioner while setting aside the order of the learned Magistrate in

view of provisions of Section 403 of Cr.P.C.

1 Reliance has also been placed on the judgment of M.P. High Court in Ratan Lal Soni Vs. Kailash Narayan Arjariya reported in 1998 (2) MPLJ 321,

wherein it was held that the accused has no locus-standi to appear and participate before the process is issued, therefore, this being the position in law,

it can safely be concluded that when a revision is filed refusing to take cognizance, the accused has no right to be heard.

1 Similar is the view taken by Delhi High Court in Tata Motors Ltd. Vs. State in Crl. Rev. P. No.16/2008 decided on 12.02.2009, it is also submitted

that the ratio laid down in the case of Manharibhai Muljibhai Kakadia (supra) and Bal Manohar Jalan (Supra) are not applicable to this case. Hence,

the revision petition is without any substance which is liable to be dismissed.

11. In reply, it is submitted by the learned counsel for the petitioner that Section 402 of Cr.P.C. does not make a discrimination as to pre or post

cognizance stage. It is a clear case where the complaint was filed before the Court not having the territorial jurisdiction to take cognizance and try the

case.

12. Relying on the judgment of Supreme Court in the case of Amar Nath Vs.

State of Haryana reported in 1977 (4) SCC 137, it is submitted that the order that has been passed is not an interlocutory order as it decides and affects or adjudicates the right of an accused on a particular aspect.

13. Reliance has also been placed on the judgment of Supreme Court in the case of Adalat Prasad Vs. Rooplal Jindal & Ors. reported in (2004) 7

SCC 338. It is submitted that the respondent side has placed reliance on the judgments of the High Court where the apex Court has settled the position

of law with respect to the right of an accused in Criminal Revision in the case of Manharibhai Muljibhai Kakadia (supra). All these judgments of High

Courts have been considered in the case of Manharibhai Muljibhai Kakadia (supra).

14. Heard learned counsel for both the parties and perused the documents present on record.

15. Considered on the submissions and perused all the documents filed along with the petition. As per the submissions, it is clear that the order dated

07.11.2013 passed by A.C.J.M., Raipur is not an order under Section 203 of Cr.P.C. The order itself mentions that the complaint petition was returned

for presentation before proper Court under Section 201 of Cr.P.C. The sessions Judge did not make any effort to order for issuance of summons and

after hearing the respondent No.2, who was the revisionist before him, the impugned order has been passed by restoring the complaint case and

directing the Court to consider with respect to taking cognizance in the complaint case.

2 The view of the M.P. High Court in the case of Ratan Lal Soni (supra), Single Bench of Punjab and Haryana High Court in the case of Gurdeep

Singh (Supra) and Single Bench of Delhi High Court in the case of Tata Motors Ltd. (supra) has been discussed by the Full Bench of the Supreme

Court in the case of Manharibhai Muljibhai Kakadia (supra). It has been held in the paragraph No.48:-

â??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 right of hearing before 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.

Thus the word 'prejudice' has been very much elaborated that the termination of proceeding in a complaint against the persons, who are alleged to have committed crime for an interest in that complaint case and therefore, the outcome of the order of the Revisional Court and therefore, in case, the outcome of the revisional order in the Court is in the form of re-initiation of the complete proceeding, that may be considered as prejudice to the accused within the meaning of Section 401(2) of Cr.P.C. which is as follows:-

Â Section 402. Power of High Court to withdraw or transfer revision cases. Â

Â(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.

17. The position is thus very much clear that when a complaint is dismissed

under Section 203 of the Cr.P.C. at the stage of either Section 208 or Section 202 of Cr.P.C. then upon the challenge to the legality of the said order in revision by complaining the persons, who are arrayed as an accused have a right to be heard. The distinction has to be seen that the judgment in Manharibhai Muljibhai Kakadia (supra) and the other reliance of the applicant side other case was cited by the petitioner side do not deal with the order of return of plaint under Section 201 of Cr.P.C.

18. Section 201 of Cr.P.C. is as follows:-

Section 201. Procedure by Magistrate not competent to take cognizance of the case. "If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,-

1. If the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

2. If the complaint is not in writing, direct the complainant to the proper Court."

(s) The view of the Delhi High Court in Tata Motors Ltd. (supra) and Punjab and Haryana High Court in Gurdeep Singh (Supra) also do not speak of

the order passed by a Court under Section 201 of Cr.P.C. In this case, the A.C.J.M. Raipur had examined the witnesses and proceeded to pass order with respect to taking cognizance in the complaint case, but no opinion has been expressed by the learned A.C.J.M., Raipur on the material present

before it in the complaint. Therefore, the order is directly limited to this extent, that the Court had no jurisdiction to entertain and the Court does not

have territorial jurisdiction to entertain the complaint case and the same was returned which is clearly an order under Section 201 of Cr.P.C.

(T) The order under Section 201 of Cr.P.C. is not an order of dismissal of complaint, it is simply an act of returning the complaint to the complainant

with instruction to file the complaint case before the proper Court. The meaning of the word 'proper Court' which is mentioned in the provision under

Section 201 of Cr.P.C. is clearly a Court having jurisdiction and having the competency to take cognizance in a complaint case.

(U) Section 177 of Cr.P.C. provides that ordinarily and offence shall be inquired and tried by a Court within whose legal jurisdiction, it was committed.

The learned A.C.J.M., Raipur has had in order dated 07.11.2013, made observation on the basis of the facts presented in the complaint that the

territorial jurisdiction on that complaint would be with the Criminal Court in

Bilaspur. The learned Revisional Court has not made any comment on that observation in the order of the learned A.C.J.M. and there is no word of disagreement regarding the same. There was a question of jurisdiction present which led to the passing of the order by the learned A.C.J.M.

(V) The order passed was neither incorrect nor improper or illegal. The observation of the Revisional Court that the question of jurisdiction has to be raised by the party concerned after the stage of taking cognizance is totally erroneous observation and conclusion. The Section 201 of Cr.P.C. is very much specific empowering the Magistrate to return the complaint for its presentation before a proper Court that is a Court having jurisdiction and having competence to take cognizance and try the same. The Revisional Court has failed to give consideration on the correctness, propriety and legality of this order passed by the learned Magistrate and has diverted in different direction and drawn a different conclusion which was totally uncalled for in this case. Therefore, the impugned order passed by the Revisional Court is misconceived, which is improper, incorrect as well as illegal.

23 The argument on behalf of the petitioners had been concentrated only on one point that the petitioners did not get an opportunity of hearing in the case regarding which discussion has been made hereinabove with respect to the correct position in law. It is well settled that in case an order is passed by the Magistrate dismissing a complaint under Section 203 of Cr.P.C. which may be at the stage of Section 200 or Section 202 of Cr.P.C., in that case, the proposed accused persons shall have a right of hearing, in case any revision is filed against that order. There is a distinction to be pointed out as the case cited and mainly the case of Manharibhai Muljibhai Kakadia (supra) does not mention at all with respect to any order that may be passed by any Magistrate under Section 201 of Cr.P.C. Therefore, it is a case in which the Magistrate has not proceeded to form an opinion whether the complaint case is fit to be taken cognizance or not, therefore, the prejudice as mentioned in the Section 401(2) of Cr.P.C. and as explained in the case of Manharibhai Muljibhai Kakadia (supra) by the Apex Court seems to have appeared in the present case. Hence, if the order of Magistrate is specific and passed under Section 201 of Cr.P.C. for returning the complaint, in that case, if any revision is filed, there would not be any necessity to give the proposed accused person any opportunity of hearing, as this situation is

not covered under Section 401(2) of Cr.P.C.

24. However, on the basis, other finding that has been recorded hereinabove with respect to legality propriety and correctness of the impugned order,

technically the impugned order is not maintainable. The present revision petition is allowed and the impugned order is set aside. The order passed by

learned A.C.J.M. Raipur is restored.

25. Accordingly, the revision petition is disposed off.