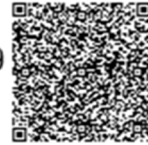


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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

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CRM-M-25385-2022 (O&M)

Date of decision : 17.04.2026

Balkar Singh**...Petitioner****Versus****State of Punjab and another****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Harish Goyal, Advocate
for the petitioner.

Mr. Roshandeep Singh, AAG, Punjab.

Mr. J. S. Bhandohal, Advocate
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure (*for short 'Code'*) [which corresponds to Section 528 of BNSS, 2023] for quashing of Complaint No. 21 dated 05.06.2018, titled as ***Lachhman Singh vs. Mohan Singh and others***, filed under Sections 420, 463, 464, 465, 467, 468, 470, 471 and 120-B of IPC and order dated 09.02.2022, passed by the Court of learned Judicial Magistrate First Class, Fatehgarh Sahib, whereby the petitioner along with the co-accused was summoned to face trial for commission of aforementioned offences. The petitioner has also sought quashing of order dated 18.01.2022 passed by the Court of learned Additional Sessions Judge, Fatehgarh Sahib, whereby the aforesaid complaint, which was initially dismissed by the learned trial Court by passing the order dated 26.03.2019, was restored and remanded to the learned trial Court for deciding the same afresh.

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2. Brief facts relevant for the purpose of disposal of the present petition are that respondent No.2 had filed the aforesaid complaint against the petitioner and co-accused Mohan Singh and Kulwant Singh. After recording of the preliminary evidence, the impugned complaint was dismissed by the learned Judicial Magistrate First Class, Fatehgarh Sahib, vide order dated 26.03.2019. Being dissatisfied with the order dated 26.09.2019, the complainant/respondent No.2 filed a criminal revision before the Court of learned Additional Sessions Judge, Fatehgarh Sahib, which was allowed vide order dated 18.01.2022 and the complaint was remanded back to the learned trial Court for deciding the same afresh in view of the observations made in the order dated 18.01.2022. Subsequent to the remand of the aforesaid case to the learned trial Court, the petitioner along with the co-accused was summoned to face trial for commission of aforementioned offences, vide impugned order dated 09.02.2022. Hence, the petitioner has filed the present petition seeking quashing of the impugned complaint as well as the subsequent proceedings having emanated therefrom.

3. Learned counsel for the petitioner has argued that the petitioner along with the co-accused has falsely been implicated in the impugned complaint. The impugned complaint as well as the summoning order is not sustainable in the eyes of law and are liable to be quashed. After appreciating the preliminary evidence led by respondent No. 2/complaint, the complaint was initially dismissed by the learned trial Court, vide order dated 26.03.2019, as the ingredients for commission of alleged offences were not even prima facie attracted against the petitioner and co-accused. However, respondent No.2/complainant, being aggrieved against the aforesaid order dated

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26.03.2019, filed a criminal revision before the Court of learned Additional Sessions Judge, Fatehgarh Sahib, which was wrongly allowed by the Court concerned and that too without issuing any notice to the present petitioner and thereby not granting any opportunity of being heard. Learned counsel for the petitioner has further argued that the said course adopted by the learned revisional Court was totally contrary to the provisions of Section 401 of the Code (*which corresponds to Section 442 of BNSS, 2023*) and not sustainable in the eyes of law. It is, thus, urged that the present petition deserves to be allowed and the impugned complaint and summoning order as well as all the subsequent proceedings having emanated therefrom are liable to be quashed.

4. Learned State counsel has not raised any arguments.
5. Learned counsel for respondent No.2/complainant has submitted that the present petition is misconceived and an abuse of the process of law. It is argued by him that the revisional Court, vide order dated 18.01.2022, has rightly exercised its jurisdiction in setting aside the dismissal order dated 26.03.2019, as the learned trial Court had failed to properly appreciate the preliminary evidence and the material placed on record. The revisional Court has merely remanded the matter for fresh consideration and has not recorded any finding on merits, thus causing no prejudice to the petitioner. It is further argued that at the stage of summoning, only a prima facie case is to be seen and the learned Magistrate, after due application of the mind to the evidence, has rightly summoned the petitioner, vide order dated 09.02.2022. The veracity and correctness of the allegations can only be adjudicated during trial and not in proceedings under Section 482 of the Code. With regard to the plea of non-issuance of notice in revision, it is argued that no substantive prejudice

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has been caused to the petitioner as he has been granted full opportunity to contest the case before the trial Court post remand. The petitioner can raise all permissible defences during trial. Therefore, it is urged that the present petition for quashing of the complaint and summoning order, involving disputed questions of fact, is not maintainable and is liable to be dismissed.

6. This Court has heard the rival submissions.

7. What is revealed from a perusal of the record is that respondent No.2/complainant had filed the impugned complaint against the petitioner and others, which came to be dismissed by the learned Magistrate on 26.03.2019 after consideration of the preliminary evidence. Aggrieved by the said order, the complainant preferred a revision petition before the learned Additional Sessions Judge, who allowed the same vide order dated 18.01.2022 and remanded the matter for fresh decision. However, the said order was passed without issuing any notice to the petitioner and without affording him any opportunity of hearing. Pursuant to the remand, the learned Magistrate summoned the petitioner vide order dated 09.02.2022, which has led to the filing of the present petition under Section 482 of the Code seeking quashing of the complaint and all subsequent proceedings arising therefrom.

8. Relevant for the purpose is Section 397 of the Code (*which corresponds to Section 438 of BNSS, 2023*), which empowers the High Court or the Sessions Judge to call for an examine the record of any proceeding before any inferior court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety, inter alia, of any order passed by such inferior court. The powers of revision are concurrent with the High Court and Sessions Judge. By virtue of

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Section 399 of the Code, 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 Code and while doing so the provisions of sub-sections (2), (3), (4) and (5) of Section 401 of the Code apply to such power as far as possible. Section 401 of the Code deals with High Court's power of revision and it reads as follows :

“S. 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 of 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 interest of justice so to do, the High Court may treat the application for revision

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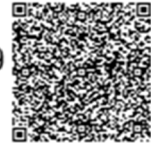


as a petition of appeal and deal with the same accordingly.”

9. In the instant case, there is no dispute that the complaint filed by the respondent-complainant was dismissed by the learned Magistrate and the said order was challenged by the respondent before the learned revisional Court. There is nothing on record to suggest that the revisional Court, while setting aside the order of dismissal of the complaint, had ever issued any notice to the petitioner, thereby giving him any opportunity of hearing. The petitioner, being accused in the aforesaid complaint, had a right to be heard by the revisional Court before setting aside the order passed by the trial Court. It has certainly caused prejudice to the petitioner, who is an accused in the aforesaid complaint.

10. The Hon'ble Supreme Court in the case of ***Manharibhai Muljibhai Kakadia vs. Shaileshbhai Mohanbhai Patel, 2012(4) RCR (Criminal) 689***, has authoritatively held that in a revision petition preferred by the complainant against an order of dismissal of complaint under Section 203 of the Code, the persons arraigned as accused or suspected in the complaint are entitled to a hearing before the revisional court in view of the mandate of Section 401(2) of the Code. It was clarified that even though such proceedings are at a pre-summoning stage, the reversal of an order of dismissal results in revival of the complaint and thereby causes prejudice to the accused and, hence, an opportunity of hearing is mandatory. It was further held that any order passed by the revisional Court without affording such opportunity is unsustainable in law and liable to be set aside. The relevant paragraph of the said judgment reads as under :-

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“ We are in complete agreement with the view expressed by this Court in *P. Sundarrajan, Raghu Raj Singh Rousha* and *A.N. Santhanam*, as it must be, 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 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. In other words, where 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 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 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. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled.”

11. In view of the above discussion as well as the observations made by the Hon’ble Supreme Court in *Manharibhai*’s case (supra), the impugned order dated 18.01.2022 passed by the learned Additional Sessions Judge, Fatehgarh Sahib as well as the summoning order dated 09.02.2022, passed by

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the learned trial Court cannot be stated to be sustainable. Accordingly, the present petition is partly allowed and both the aforementioned orders are hereby set aside. The matter is remanded to the learned revisional Court to decide the revision petition, filed by respondent No.2/complainant, afresh in accordance with law.

17.04.2026*Wassem Ansari***(MANISHA BATRA)
JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*