

SMT. SUBHA RAJ AND ANR.

v.

SANKAR SARKAR AND ANR.

JULY 24, 2007

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

Code of Criminal Procedure, 1973—s. 401 r/w s. 402 and 482—Criminal Revision—Second revision petition—Before High Court—Against dismissal of complaint—Revision petition treated by High Court to be u/s 482, and direction for issue of process—Order passed without hearing the accused—Propriety of—Held: Second revision is barred—Though at the time of issuance of process and taking cognizance, accused has no right to be heard—But in view of the fact that the accused were heard before first Revisional court, and the names of the accused were deleted from the cause title at the behest of the complainant, High Court should have heard the accused—Matter remitted to High Court.

Respondent No. 1 filed criminal complaint against the appellants. The Magistrate dismissed the complaint. Respondent No. 1 filed revision before Addl. District and Sessions Judge and the same was dismissed. He then filed another revision petition u/s. 401 r/w 402 Cr.P.C. before High Court. High Court treated the petition to be under s. 482 Cr.P.C. and directed the Magistrate to issue process against the appellants.

In appeal to this Court, appellants contended that High Court erroneously treated the petition to be u/s 482 as the same was styled to be u/s 401 r/w 402; and that they were not heard by the High Court before allowing the petition.

Respondent No. 1 contended that in the matter of issuance of process, the accused has no right to be heard.

Disposing of the appeal and remitting the matter to High Court, the Court

HELD: 1. The case was registered to be one under the criminal revisional jurisdiction and in view of the bar contained in the Cr.P.C. second

A revision was not maintainable. In any event, appellants were not heard before the order was passed. [Para 6] [495-D]

B 2. Though at the time of issuance of process and taking cognizance the accused has no right to be heard. But in the facts of the instant case before the Revisional Court the appellants were heard. Further, their names were indicated in the cause title, which at the request of respondent No.1 were deleted. This being the position the High Court ought to have heard the appellants before deciding the matter. [Paras 8 and 9] [495-E, F]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 927 of 2007.

From the Judgment & Order dated 12.01.2006 of the High Court at Calcutta in CRR No. 2203 of 2005.

Dhruv Mehta, Rana S. Biswas and Sarla Chandra for the Appellants.

D Tara Chandra Sharma, Neelam Sharma, H.K. Puri, S.K. Puri, Priya Puri, U.B. Banerjee, V.M. Chuhan and S.K. Sharma for the Respondents.

The Judgment of the Court was delivered by

E DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Calcutta High Court allowing the application under Section 401 read with Section 402 of the Code of Criminal Procedure, 1973 (in short the 'Code').

F 3. The main grievance in support of the petition is that the appellants were not granted opportunity of being heard before the petition was allowed by the learned Judge.

4. A brief reference to the factual aspects would suffice.

G Appellant No.1 is the wife of appellant No.2 who is a doctor by profession. Respondent No.1 filed a complaint alleging commission of offences punishable under Sections 323, 342, 382, 386 read with Section 120B of the Indian Penal Code, 1860 (in short the 'IPC'). The learned Magistrate dismissed the complaint after recording statements of the complainant and two others.

H Questioning correctness of the order passed by the learned Magistrate, an

application for revision was filed before the learned Additional District and Sessions Judge, First Track Court V, Alipore, South 24-Parganas. After hearing the revision petitioner-respondent No.1 herein the said revision petition was dismissed.

5. Before the High Court the revision petition was treated to be one under Section 482 of the Code, though styled as one under Section 401 read with Section 402 of the Code. The High Court allowed the petition and directed the Magistrate to issue process against the appellants.

6. Learned counsel for the appellants submitted that before the revisional Court the appellants were heard. Initially in the present petition the appellants were impleaded as parties but at the request of respondent No.1, their names were deleted. Learned counsel for the appellants has further submitted that though the respondent No.1 himself had styled the petition as one under Section 401 read with Section 402 of the Code, the High Court erroneously treated it to be a petition under Section 482 of the Code. It is clear from the cause title that the case was registered to be one under the criminal revisional jurisdiction and in view of the bar contained in the code second revision was not maintainable. In any event, appellants were not heard before the order was passed.

7. Learned counsel for respondent No.1 submitted that in the matter of issuance of process the accused has no right to be heard.

8. There can be no quarrel with the proposition that at the time of issuance of process and taking cognizance the accused has no right to be heard. But in the facts of the instant case before the Revisional Court the appellants were heard. Further, their names were indicated in the cause title, which at the request of respondent No.1 were deleted.

9. Above being the position the High Court ought to have heard the appellants before deciding the matter. Therefore, without expressing any opinion on the merits of the case and maintainability of the petition before the High Court, we set aside the impugned order and remit the matter to the High Court for fresh disposal in accordance with law.

10. The appeal is disposed of accordingly.

K.K.T.

Appeal disposed of.