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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 30th July, 2021
Decided on : 06th August, 2021

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CRL.M.C. 1163/2021 & CRL.M.A.5948/2021; and

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CRL.M.C. 1186/2021, CRL.M.A.6061 and 6251 of 2021

VIPUL GUPTA; and S. P.GUPTA

..... Petitioner/s

Through : Mr.Sandeep Sethi, Senior Advocate with Mr.Vijay Kumar Aggarwal, Mr.Ashul Aggarwal, Mr.Hardik Sharma, Mr.Shekhar Pathak, and Mr.Parth Parashar, Advocates.

versus

STATE & ANR.

..... Respondents

Through : Mr.M.S.Oberoi, APP for the State. Mr.Dayan Krishnan, Mr.Mohit Mathur, and Mr.Sidharth Aggarwal, Senior Advocates with Mr.Narender Mann, Mr.P.S. Singhal, Mr.Ashok Kumar Sharma and Mr.Jai Allagh, Advocates for respondent No.2.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J. (*Through Video Conferencing*)

1. These petitions are filed to assail an impugned order dated 05.04.2021 passed in Crl.Revision No.77/2021 (Crl.M.C. No.1163/2021) and Crl.Revision No.76/2021 (Crl.M.C. No.1186/2021) by the learned Principal District and Sessions Judge (HQs), Delhi (hereinafter referred to as the *Revisional Court*), against the orders dated 01.02.2021,

22.02.2021 and 06.03.2021 passed by the learned Additional Chief Metropolitan Magistrate, Tis Hazari Courts, Delhi in case *State vs S.P.Gupta & Others*.

2. It is the grievance of the learned senior counsel for the petitioners vide the impugned order the learned Revisional Court had directed the petitioner herein to file an amended memo of parties by impleading the complainant *defacto* as respondent No.2, whereas the complainant has no role to play before learned Revisional Court and its only the learned Public Prosecutor for the State, who has to take realm of the case before learned Session's Court. It is argued per sub-section 2 to Section 401 Cr P C no order shall be passed to the prejudice of the accused or *other person* unless he has an liberty of being heard either personally or through pleader. It is argued the words *other person* refers to person *akin* to the *accused* and it does not include the complainant and hence the learned Revisional Court erred to make the complainant *defacto* as respondent No.2.

3. The main issue thus raised is *qua locus standi*. It is argued by respondents the power of revision, admittedly, is a *suo moto* power of correction and supervision over the subordinate Courts; to call for the records and to correct orders. One can say it is discretion of the revisional Court to hear any one whom it needs to hear. It is argued Cr P C when amended in 2009, victim was given right to have a say in criminal proceedings. The question is if such right can be extended to revisions before the learned Session's Court. Reference was made to

MANU/MH/1823/2014 wherein the Court held:-

7. Before going further, the issue regarding the maintainability of the Criminal Revision Application, as raised by Mr. Bhushan Deshmukh, the learned Counsel for the Respondent Nos. 1, 2, 5 and 9, be dealt with. Mr. Deshmukh placed reliance on the decision of the Supreme Court of India in the case of Subramanian Swamy and Ors. V/s. Raju, Through Member, Juvenile Justice Board and Anr., reported in MANU/SC/0849/2013 : (2013) 10 SCC 465, to support his contention that in a prosecution initiated by the State, a third party / stranger would not have any right to participate. I have gone through the said reported judgment and I am unable to hold that this judgment lays down a proposition that in a prosecution initiated by the State, a private party has no right to challenge the order passed in the course of said prosecution by filing an application for revision. Moreover, in this case, the **Applicants are the victims** of the alleged offences and by **no stretch of imagination can be said to be 'strangers'** to the proceedings. Mr. Deshmukh also placed reliance on a decision rendered by a learned Single Judge of the Karnataka High Court in the case of M/s. Kerala Transport Co. Vs. D.S. Soma Shekar and Ors., reported in MANU/KA/0027/1981 : 1982 CRI. L.J. 1065, in support of his contention that the First Informant has no locus standi to file a revision **in a prosecution initiated by the State**. Indeed, it appears that, the observations made by the learned Single Judge support the contention advanced by Mr. Deshmukh, **but, with respect, I am unable to agree with the view expressed by the learned Judge in the said judgment**. It is clear from the scheme of the relevant provisions that the **revisional power belongs basically to the Court**. The Court can call for the record and proceedings even 'suomotu' and **revise** the order. When the court has been given powers to revise an order 'suo-motu', it would be rather futile to raise the issue of locus standi. In fact, **a party applying for revision is only drawing the attention of the court to a particular alleged illegality, impropriety or irregularity**. Moreover, as aforesaid, in this case the Applicants are not 'strangers' to the prosecution, in as much as, though the prosecution has been initiated by the State, the Applicants are the victims of the offence. The Applicant No. 1 is the one who initiated the process of

criminal law against the accused persons. The contention that the Criminal Revision Application is not maintainable as the Applicants have no 'locus standi' to file the same is, therefore, untenable and is rejected.

Gyan Singh vs. Respondent: State of M.P. and Ors.
MANU/MP/0212/2017 wherein the Court noted:-

*10. In view of the specific provision of section 401 (2) of CrPC, it is clear that no order prejudicial to the interest of any other person shall be passed unless he had an opportunity of being heard either personally or through his Counsel. Thus, when a criminal revision is filed by an accused against the order taking cognizance or against the order framing charges, the complainant is required to be heard. Whenever, **any order which is in favor of the complainant is challenged by the accused, then the complainant is required to be heard.***

Himanshu Adya vs. State of MP & Ors. MANU/MP/0213/2017
wherein the Court noted:-

“12. This Court in the case of Gyan Singh v. State of M.P. [2017(2) JL J 71 : Criminal Revision No. 1215 of 2015, order dated 28.2.2017], has held as under:

*In view of the specific provision of section 401 (2) of CrPC, it is clear that no order prejudicial to the interest of any other person shall be passed unless he had an opportunity of being heard either personally or through his Counsel. Thus, when a criminal revision is filed by an accused against the order taking cognizance or against the order framing charges, **the complainant is required to be heard.** Whenever, **any order which is in favor of the complainant is challenged by the accused, then the complainant is required to be heard.***

Isa Khan & Ors. vs. State of Rajasthan & Ors.
MANU/RH/0985/2006 wherein the Court noted:-

8. xxxx

*The expression "other person" in Sub-section (2) of Section 401 of the Code **includes a complainant.** Learned Counsel*

has placed reliance on a decision of this Court in Hazi Mohd. Shafi v. State of Rajasthan & Anr., 2002 (1) RCrD 172 (Raj.), wherein this Court held that no order under Section 401 (2) of the Code shall be made to prejudice the accused or other person unless he has had an opportunity of being heard either personally or through Counsel in his own defence. The word "other person" includes the complainant. Thus, without affording an opportunity of hearing to the complainant, the revisional Court committed apparent error in setting aside the order passed by the learned trial Court.

Niranjan Lal vs. Attar Singh (1990) Supp SCC 57 wherein the Court noted:-

*2. We are distressed that the High Court has allowed the revisional application preferred by Attar Singh and Satvir Singh s/o Mani Ram - respondents 1 and 2 and reduced the sentence imposed on them by the lower appellate court from one of rigorous imprisonment of 18 months to that of sentence undergone (respondents had not remained in jail for a single day). It passes our comprehension how the High Court has persuaded itself to pass such an order **without even issuing a notice to the State or the original complainant**. We can only hope that what has been done by the High Court in this case will not be repeated in future. The High Court which day in and day out quashes orders passed by the executive officials without complying with principles of natural justice has un-understandably allowed this revisional application without hearing the other side. The appeal is, therefore, allowed. The order passed by the High Court is set aside. Both the shall surrender to the custody in order to undergo the sentence imposed by the lower appellate court subject to any order for bail or final order that may be passed by the High Court upon hearing the parties. The High Court will list the matter for hearing only after respondents 1 and 2 surrender to custody. The High Court will thereafter dispose of the matter in accordance with law with expedition.*

4. Hence, the arguments of the respondent is the impugned order is perfectly justified and petitions need to be dismissed at the outset.

5. Heard.

6. I have gone through the decisions referred to above. *Pandharinath Takaram Rout* (supra) is the judgment on a revision pending before the High Court and not before the Session's Court. Further, *Gian Singh* (supra) and *Himanshu Adya* (supra) were the orders in the revision in private cases and not in the cases filed by the State, but whereas present one is a State case. No doubt, when this Court has to deal with the revision under Section 482 Cr P C, the victim can, of course, join the proceedings, but this position of law is different in revision before the Session's Court, viz in a State case because of bar under Sections 401(2) Cr.P.C.

7. Section 401(2) and 403 CrP C are as under:-

“401. High Court' s Powers of revisions.

(1) xxxx

*(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) to (5) xxxx

403. Option of Court to hear parties. *Save as otherwise expressly provided by this Code, no party has any right to be heard either personally or by pleader before any Court exercising its powers of revision; but the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader.*

8. A bare perusal of Section 401(2) Cr P C would show *other person* must be akin to an accused who can participate in the proceedings. The phrase ***in his own defence*** in clause 2 of Section 401 Cr P C strengthens this belief. The complainant is never heard in his defence and hence the word '*other person*' referred to in Section 401 Cr P C is a person *akin* or

similarly placed to an accused. Section 403 Cr P C is also to be read in consonance with Section 401 Cr P C as it starts with the word '*otherwise expressly provided by this Code*'.

9. I may here refer to submissions made by the learned senior counsel for the petitioners stating *inter alia* Section 401(2) Cr P C does not give any right to the complainant to be heard in revision before the learned Session's Court and hence the impugned order suffers from illegality. In support of their arguments, they relied upon *Kerala Transport Co. vs. D.S.Soma Shekar and Ors.* MANU/KA/0027/1981; *Indu Bala & Ors. vs. Delhi Administration and Ors.* 1991 CRL.J.1774; *L.K.Jain and another vs. State* 2001 CRL.J. 259; *Shiv Kumar vs. Hukam Chand & Anr.* 1999 (2) JCC (SC) 466; *Mahabunnisa Begum vs. State of Telangana and Ors.* MANU/AP/1128/2017; *The State of Andhra Pradesh vs. Mahabunnisa Begum and Ors.* Special Leave to Appeal (Crl.) 2240/2018; and *Dhariwal Industries Ltd. vs. Kishore Wadhvani & Ors.* 2016(8) SCALE 735.

10. The crux of the aforesaid decisions is (i) the word *other person* under Section 401(2) Cr P C is either an accused or a person similarly placed to the accused; (ii) in a Session's trial, the complainant can only assist the learned Public Prosecutor at the stage of enquiry, trial or appeal and may submit written arguments only after the evidence is closed; (iii) the complainant cannot be given an opportunity of being heard in an anticipatory bail application; (iv) in a case filed on a police report, the public person has no *locus standi* after the cognizance is taken; (v) in a Magistrate triable case, permission may be granted to the person

concerned to appoint any counsel to conduct the prosecution on his behalf; (vi) the prosecution in Session's case cannot be conducted by any person other than the learned Public Prosecutor; and (vii) the reason need be given if an order Section 401(2) Cr PC is passed to the prejudice of the accused.

11. Further I may also refer to *A.K.Subbaiah & Ors vs. State of Karnataka & Ors.* 1987 SCC (4) 557 wherein the Court held as under:

12. It is not in dispute that these two respondents Nos. 2 and 3 were not parties before the court below. Learned counsel for the appellants contended that the proceedings have been launched by the State Govt. on behalf of respondent No. 2 and therefore indirectly respondent No. 2 being the complainant is a party to the proceedings. That is too tall a proposition. The prosecution is launched by the State Government and before the court below i.e. the trial court the only parties are the petitioners who are accused persons and the State Govt. which stands in the place of a complainant. There are prosecution witnesses and there may even be defence witnesses. But the witnesses are not parties to the proceedings and admittedly these two respondents who have been deleted by the impugned order of the High Court were not parties before the court below.

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Sub-clause 2 of this Sec. talks of a situation where an order is being passed against any person and it was contended by the learned counsel that the section not only talks of accused persons but also of "or other person unless he has had an opportunity of being heard." Apparently this sub-clause contemplates a situation where a person may not be an accused person before the court below but one who might have been discharged and therefore if the revisional court after exercising jurisdiction under Sec. 401 wants to pass an order to the prejudice of such a person, it is necessary that that person should be given an opportunity of hearing but it does not contemplate any contingency of hearing of any person who is neither party in the proceedings in the court below nor is expected at any stage even after the revision to be

joined as party. Learned counsel for the appellants was not in a position to contend that even if any contention of the appellants is accepted and the High Court accepts the revision petition as it is, there will be any situation where an order may be passed against these two respondents or they may be joined as parties to the proceedings. Reference to Section 401 clause 2 is of no consequence so far as these two respondents are concerned.

16. In the light of the discussions above therefore it is clear that the question about anyone else being instrumental in getting the prosecution launched or questions which are foreign are not to be considered in a revision where the issue of process is being challenged and therefore the further question as to whether the party against whom an allegation is made is or is not a necessary party in the proceedings also is of no avail. The scope of the revisional jurisdiction of the High Court as we have discussed earlier clearly indicates that the High Court is only expected to see the legality, correctness or the propriety of the order, which is an order of issue of process, these things could only be seen by looking into the complaint and the accompanying papers and evidence if any which were before the court below. In our opinion, the High Court was right in deleting the names of the two respondents.”

12. In *Hindustan Times Limited vs Ashok Kumar Aggarwal and Others* (1990) 96 CrL J 1563 wherein the Court noted as under:-

“7 In *M/s. Kerala Transport Co .v.D.S.Soma Shekar and others*, 1982 Cr. L. J. 1065, the question which was considered was whether the **complainant in a police case could seek revision of the sentence**. It was held by a Single Judge of the Karnataka High Court that after filing the final report under Section 173 of the Code of Criminal Procedure, the State is the complainant before the Magistrate and it becomes the duty of the State to prosecute the accused. While analysing the provisions of Sections 397 to 401 of the Code of Criminal Procedure, it was observed that **the complainant has no right whatsoever beyond the right to bringing it to the notice of the court the facts as to whether there has occurred any illegality or impropriety in the finding, sentence or order recorded by a criminal court and while referring to Section 403 of the said Code,**

it was held that there is no right of hearing to be given to a complainant. There is no legal right of hearing conferred on the complainant. However, the question which has arisen for decision before this Court was not raised in this judgment. It is true that if the sentence awarded by the Magistrate is to be held to be totally wrong, this Court has power to modify the order of the Magistrate. I have come across a judgment of the Punjab & Haryana High Court in Harjinder Singh v. State of Punjab, 1980 PLR 435 where a Single Judge for offences punishable under Sections 408 and 409 of the Indian Penal Code thought it fit to give benefit of Probation of Offenders Act. However, in that case the accused was aged about 25 years at the time of commission of the offence.

13. Now, *Babloo Pasi vs. State of Jharkhand and Ors.* 2008 (13) SCC 133 relied upon by the respondent is also misplaced as revision in *Babloo Pasi* (supra) case was filed under Section 53 of the Juvenile Justice Act and not under Section 401 Cr.P.C. The relevant paras of the judgment would clarify this :

“8. Section 52 of the Act provides that any person aggrieved by an order made by a competent authority under the Act may prefer an appeal to the Court of Sessions. Section 53 of the Act confers on the High Court the revisional jurisdiction to satisfy itself as to the legality or propriety of any order passed by the competent authority or Court of Sessions. The Section reads as under:

53. Revision.- The High Court may, at any time, either of its own motion or on an application received in this behalf, call for the record of any proceeding in which any competent authority or Court of Session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:

Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

9. From a bare reading of proviso to the Section, it is plain that in exercise of its revisional jurisdiction the High

Court cannot pass an order, prejudicial to any person without affording him a reasonable opportunity of being heard. At this juncture, it would be profitable to note that Section 54 of the Act also prescribes the procedure to be followed while dealing with inquiries, appeals and revisions under the Act. Sub-section (2) thereof stipulates that save as otherwise expressly provided under the Act, the procedure to be followed in hearing revisions under the Act, shall be as far as practicable in accordance with the provisions of the Code of Criminal Procedure, 1973 (for short 'the Code'). Sub-section (2) of Section 401 of the Code contemplates that no order under the said 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."

14. Thus as is seen above 'other person' does not include a complainant in revision. This is a State prosecution and at the highest the complainant can be a witness to the proceedings and can participate through learned APP for the State but cannot be a party to the revision petition. The judgments relied upon by the respondents did not consider *A.K.Subhaiah's* (supra). I agree with the petitioner if we allow the complainant to participate before the Session's it shall change the entire nature of the proceedings from criminal to civil and hence shall hamper independence of prosecution. The complainant can at best *assist* the prosecution, though prosecution in such a case has to make an independent call.

15. The law laid down in *A.K.Subbaiah & Ors* (supra) hold good even for today. The judgments referred to by the respondent No.2 are mostly under Section 482 Cr.P.C. wherein the High Court may even implead the complainant in revision. The power under Section 482 Cr.P.C. is quite different than the one under Section 401 Cr.P.C. as nothing limits such power of the Court under Section 482 Cr.P.C. and it is far wider than

under Section 401(2) Cr.P.C. but Session's Court does not have such parallel power and it cannot implead anyone, except those mentioned under Section 401(2) Cr.P.C.

16. Thus, in the circumstances, the impugned order passed by the learned Revisional Court is set aside. However, this shall not disentitle the complainant to appear before the learned Revisional Court in the pending revision petitions and to *assist* the learned APP for the State and / or plead their case *through* the learned APP.

17. The petition(s) stand disposed of in above terms. Pending application, if any, also stands disposed of.

AUGUST 06, 2021
DU/M

YOGESH KHANNA, J.

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