

Rajasthan High Court

Moti Lal Nayak S/O Late Shri Dhanna ... vs State Of Rajasthan on 2 January, 2020

Bench: Sanjeev Prakash Sharma

HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 5023/2018

1. Moti Lal Nayak S/o Late Shri Dhanna Lal Nayak, By Caste Nayak, R/o Opposite Bajrang Daal Mil, Near Pani Ki Tanki, Kotdi, Kota, Presently At 301, Sarvodya Nagar, Deoli Raod, Borkheda, Kota.
2. Smt. Manbhar Nayak W/o Shri Moti Lal Nayak, By Caste Nayak, R/o Opposite Bajrang Daal Mil, Near Pani Ki Tanki, Kotdi, Kota, Presently At 301, Sarvodya Nagar, Deoli Raod, Borkheda, Kota.

----Petitioners

Versus

1. State Of Rajasthan, Jaipur
2. Ritesh Mewara S/o Shri Tarachand Mewara, By Caste Kalal, R/o Vinay Vatika 507, Kotdi, Kota.

----Respondents

For Petitioner(s) : Mr. Sudhir Jain  
For Respondent(s) : Mr. Roshan Sharma on behalf of  
Mr. Anuroop Singhi  
Mr. Fatehram Meena, PP

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA Judgment / Order 02/01/2020

1. The petitioners before this court assail the order dated 2.1.2018 passed by the Learned Additional Session Judge, Women Atrocity Cases No.1, Kota.

2. Learned counsel submits that the complainant had challenged the order passed by the Learned ACJM, Kota dated 17.5.2017 whereby the protest petition filed by the complainant against the final report submitted by the Investigating Authority no. 229/2012 was rejected. However, in the Revision Petition, the (2 of 4) [CRLMP-5023/2018] petitioners who are accused in the complaint were not given an opportunity of hearing.

3. Learned counsel submits that while it is true that the learned ACJM was not required to give opportunity of hearing of deciding for the protest petition, however, at this revisional stage the petitioners were required to be heard as the case against them stood closed after the protest petition was rejected.

4. Learned counsel has relied on the larger Bench's judgment in the case of "Manharibhai Muljibhai Kakadla Vs. Shailesh Bhai Mohanbhai Patel" reported in 2012(10)SCC517.

5. I have considered the submission and find that vide order dated 2.1.2018, the learned Additional Session Judge while accepting the revision petition has set aside the order passed by the Learned ACJM dated 17.5.2017 and remanded the matter back to the concerned ACJM for reexamining the final report and hearing the complainant. At the stage of revision, the learned Additional Session Judge has not given opportunity of hearing to the accused petitioners.

6. In "Manharibhai Muljibhai Kakadla(supra), the Apex Court was examining the law with regard to the aforesaid situation whether the complainant's revision against the dismissal of the his complaint, can be decided without opportunity of hearing to the accused petitioner. The Apex Court examined the provisions of Section 401(2) of the Code and law laid down by the two Judge's Bench and held as under:

(3 of 4) [CRLMP-5023/2018] "53. We are in complete agreement with the view expressed by this Court in P. Sundarrajan<sup>1</sup>, Raghu Raj Singh Rousha<sup>2</sup> and A. N. Santhanam<sup>3</sup>. We hold, 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. "

7. Keeping in view the aforesaid principles laid down by the Apex Court and this court that the learned Additional Session Judge has fallen in error is not giving an opportunity of hearing to the accused petitioners and remanding the matter back to the concerned learned ACJM without giving opportunity of hearing the petitioner.

8. In view thereof, the order dated 2.1.2018 is quashed and set aside and the matter is remanded back to Learned Additional (4 of 4) [CRLMP-5023/2018] Session Judge to give opportunity of hearing the petitioners before deciding the revision petition filed by the complainant. Any other proceedings conducted on the basis of the order dated 2.1.2018 shall also stand quashed.

9. This criminal misc.petition is disposed of.

(SANJEEV PRAKASH SHARMA),J Anu /8 Powered by TCPDF (www.tcpdf.org)