

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

(SB: Hon'ble Mr. Justice Alok Verma)

MCRC No.2051/2013

Rakhi Vijayvargiya

Vs.

Purushottam Patidar

Shri Amit Agrawal, learned counsel for the applicant.
Shri RM Deshpandey, learned counsel for the respondent.

ORDER

(Passed on this 3rd day of August, 2015)

This application under section 482 of Cr.P.C. is directed against the order passed by learned 9th Additional Sessions Judge, Indore in Cr.R. No.252/2008 dated 26.09.2012 whereby, learned Additional Sessions Judge affirmed the order passed by learned JMFC in Criminal Case No.561/2005 dated 01.08.2007 and 20.02.2008.

The factual background giving rise to this application in brief is that respondent Purushottam Patidar filed a criminal complaint against the present applicant under sections 420, 406 and 467 of IPC. The brief facts stated in the complaint were that one boring machine, which was mounted on Layland truck was to be purchased by the respondent alongwith his partner Govindraju.

They approached the complainant through one Hemant Mishra and it is alleged that the present applicant financed the deal and extended loan of Rs.1,50,000/- keeping some blank stamp papers signed by the complainant and his partner and also some blank cheques. Registration book of the vehicle was also handed over to the present applicant. It is further alleged that machine including the vehicle was transferred by the present applicant and her husband to one Rakesh S/o Amritlal Yadav. On the basis of these facts, the complaint was lodged. Learned JMFC after recording statement of complainant under section 200 of Cr.P.C. passed order dated 20.01.2004 and on finding that it was only a loan transaction and the transaction of civil nature, he dismissed the complaint under section 203 of Cr.P.C. Against this order, revision was filed before 21st Additional Sessions Judge, Indore, which was registered as Criminal Revision No.123/2004 and disposed of by order dated 27.04.2004 and learned Additional Sessions Judge in his order remanded the case back to the Magistrate with direction to record further evidence if produced by the complainant and reconsider the matter. In compliance of this order, the Magistrate again passed order dated 04.06.2005 and again dismissed the complaint under section 203 of Cr.P.C. Against this order another CRR No.616/2005 was filed before learned Sessions Judge, Indore and the same was disposed of by order dated 20.09.2005. Learned Sessions Judge

allowed the revision and directed the Judicial Magistrate to register complaint under section 420, 406 and 467 of IPC. However, in para 4 of the order, learned Sessions Judge mentioned that no notice was given to the present applicant before disposing of the revision. On the basis of this order, the learned Magistrate proceeded to register the complaint and the complaint was registered at Criminal Case No.561/2005 and proceeded to frame charges. Against this order again, Criminal Revision No.252/2008 was filed before the Court of 9th Additional Sessions Judge. Learned Additional Sessions Judge affirmed the order framing charges by the Magistrate.

Subsequently, the matter reached to this Court in first round of litigation and on application under section 482 of Cr.P.C was filed. The same was registered as MCRC No.5905/2009 and disposed of by the Coordinate Bench of this Court vide order dated 17.04.2012. The short order passed by the Coordinate Bench of this Court is reproduced here as under in full:-

17.04.2012

Shri Amit Agrawal, counsel for the applicant.

Shri RM Deshpande, counsel for the respondent.

In this case, after dismissal of the complaint by the lower court, a revision was preferred by the respondent.

Admittedly, said revision has been declared without notice to the petitioner. Vide impugned order, the trial court has been

directed to register the complaint against petitioner under sections 420, 406 and 460 of IPC and to proceed with the trial of the case.

It is well settled that such an order cannot be passed without hearing the other party. A reference is made to the case **Narendra Jain and ano. Vs. Shri Sudarshan Foods Pvt. Ltd. & ano. Reported in 2008 Cr.L.R. (M.P.) 681.**

Accordingly, the impugned order framing charges against the petitioner and the order of Sessions Court in remanding back the same with direction that trial Court shall proceed with the matter, is set aside. However, the matter is remanded back to the Sessions Court for re-hearing the Criminal Case No.561/2005, after giving opportunity of hearing to the petitioner.

Parties are directed to appear before the trial court on **07.05.2012**.

In compliance of this order, CRR No.252/2006 was revived and disposed of by the impugned order dated 26.09.2012 and the revision was dismissed. It was held by the revisional court that the order passed by learned Judicial Magistrate dated 01.08.2007 and 20.02.2008 did not suffer from any illegality and, therefore, revisional court refused to interfere.

Now this second application under section 482 of Cr.P.C. is filed by the applicant on the ground that the Coordinate Bench of this Court by order dated 17.04.2012 set aside the order framing

charges against the applicant also order of Sessions Court filed against the same order by which the case was remanded back to the trial Judge to proceed in the matter and the Coordinate Bench again remanded the case to the Sessions Court for “re-hearing the Criminal Case No.561/2005”.

According to the applicant, apparently, there is a typographical mistake in the order while the Court mentioned “Criminal Case No.561/2005”. Counsel for the applicant submits that if the order is read in totality, the effect of the order is that the order by which learned Judicial Magistrate was directed to frame charges under sections 420, 406 and 467 of IPC by the Sessions Court in Criminal Case No.616/2005 was set aside by the Coordinate Bench of this Court and so also the order passed in compliance of this order by Judicial Magistrate and the overall effect of this order that the complaint reached back to the stage where it was prior to the order passed in Criminal Revision No.616/2005 and, therefore, it remains to be an unregistered criminal complaint. He further argues that the Sessions Court erred while reviving the Criminal Revision No.252/2006 which was subsequent to earlier order and, therefore, to get effect to the order passed by the Coordinate Bench of this Court in MCRC No.5905/2009, the impugned order should be set aside and the matter should be remanded back to the Sessions Court for

re-deciding the Criminal Revision No.616/2005.

Learned counsel for the respondent submits that he has been persuing this case for the last 11 years and could not get any relief in the matter, therefore, he prays that no interference should be made and the criminal case should be allowed to proceed.

I have gone through the order passed by Coordinate Bench of this Court in MCRC No.5905/2009 minutely. What transpires from the observations made by the Coordinate Bench of this Court in that order is that the order of the Magistrate by which he framed charges against the present applicant was set aside and also the order of the Sessions Court by which the case was remanded back to the lower court and apparently this was the order passed in Criminal Revision No.616/2005 and the order passed by the Magistrate subsequently on 01.08.2007 to give effect to the direction issued by the Sessions Judge in Criminal Revision No.616/2005.

In this view of the matter, the arguments of counsel for the applicant appears to be acceptable. So far as the arguments of counsel for the respondent is concerned that it will cause severe hardship to him, I feel that any procedural delay cannot be avoid merely because it is causing severe hardship to one party. The order passed by this Court has to be given effect to. Therefore, in the considered opinion of this Court, this application deserves to be

allowed and is hereby allowed. The order passed by 9th Additional Sessions Judge, Indore in Cr.R. No.252/2006 dated 26.09.2012 and 16.12.2008 are set aside and also all the orders including the order dated 01.08.2007 and the orders passed thereafter, are set aside. The matter is remanded back to the Sessions Judge, Indore with the direction to revive Cr.R. No.616/2005 and re-hear the matter afresh.

Parties are directed to appear before the Sessions Judge, Indore on 03.09.2015.

With this observation and direction, the application stands disposed of.

C.c as per rules.

(Alok Verma)
Judge

Kratika/-