RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Criminal Revision Petition No. 1181/2017
CNR: RJHC010227602017 | URN: CRLR / 2692U / 2017

Rajasthan High Court
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Smt. Santosh W/o Rampal Mohbarsa, B/c Meghwal, R/o Plot Number 1 Rooprajat Nagar, Behind New Bus Stand, Pali

----Petitioner

Versus

1. State Of Rajasthan Through P.p.
2. Dr. Ram Lal Mohbarsa S/o Khima Ram, B/c Meghwal R/o Plot Number 1 Rooprajat Nagar, Behind New Bus Stand. Pali

----Respondents

For Petitioner(s) : Ms. Sarika Bishnoi
For Respondent(s) : Mr. Narendra Gehlot, Dy. GA
Mr. Abhijeet Joshi

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable :

20/11/2026

1. The instant revision petition has been preferred assailing the order passed by the learned Additional Sessions Judge, whereby, while exercising revisional jurisdiction, the learned Court has discharged the accused-respondent from the charge framed against him for the offence punishable under Section 498-A of the IPC.

2. Bereft of unnecessary details, the facts, which are narrow in compass and necessary for adjudication of the present revision petition, are that pursuant to a prosecution instituted at the instance of the petitioner, a charge-sheet came to be filed against the accused-respondent, cognizance was taken and, thereafter,

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RAJASTHAN HIGH COURT

the learned trial Court proceeded to frame charge for the offence punishable under Section 498-A of the IPC. Feeling aggrieved by the order framing charge, the accused-respondent preferred a revision petition under Section 397 of the Cr.P.C., without impleading the complainant/victim as a party thereto. The learned revisional Court, without issuing notice to or affording any opportunity of hearing to the complainant/victim, proceeded to allow the revision petition and set aside the order passed by the learned Magistrate, thereby discharging the accused-respondent from the aforesaid charge. Hence, the present revision petition.

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3. Heard learned counsel for the parties and perused the impugned order as well as the material available on record. The legal position governing the controversy has also been considered.

4. A conjoint reading of the provisions contained in Sections 397 to 401 of the Cr.P.C. makes it abundantly clear that where an order prejudicially affecting the interest of an adverse party is proposed to be passed in exercise of revisional jurisdiction, affording such party an opportunity of being heard is not a matter of mere formality, but a statutory safeguard which cannot be dispensed with.

4.1 In the present case, the accused-respondent, while invoking the revisional jurisdiction, did not implead the complainant/victim as a party, and the learned revisional Court, without ensuring her presence or affording her an opportunity of audience, proceeded to pass an order which had the effect of setting aside the order framing charge and discharging the accused. Such an exercise, in the considered opinion of this Court, suffers from a manifest error

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of law and is contrary to the settled principles governing the exercise of revisional jurisdiction.

4.2 Apart from the statutory mandate, this Court is fortified in its view by the law enunciated by Hon'ble the Supreme Court in **Manharibhai Muljibhai Kakadia & Anr. v. Shaileshbhai Mohanbhai Patel & Ors.**, (2012) 10 SCC 517, wherein the right of the complainant to be heard in revisional proceedings, in circumstances where an order prejudicial to his or her interest is contemplated, has been authoritatively recognised. For the ready reference, the relevant paragraphs of the judgment are reproduced herein below:-

> "21. Section 397 of the Code empowers the High Court or the Sessions Judge to call for and 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 the Sessions Judge. By virtue of Section 399, 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 and while doing so the provisions of sub-sections (2),(3),(4) and (5) of Section 401 apply to such power as far as possible. Section 401 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.

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RAJASTHAN HIGH COURT
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(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 interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

Rajasthan High Court
सत्यमेव जयते
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22. In light of the above provisions, the question for consideration before us is to be examined.

23. Section 202 of the Code has twin objects; one, to enable the Magistrate to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an unnecessary, frivolous or meritless complaint and the other, to find out whether there is some material to support the allegations made in the complaint. The Magistrate has a duty to elicit all facts having regard to the interest of an absent accused person and also to bring to book a person or persons against whom the allegations have been made. To find out the above, the Magistrate himself may hold an inquiry under Section 202 of the Code or direct an investigation to be made by a police officer. The dismissal of the complaint under Section 203 is without doubt a pre-issuance of process stage. The Code does not permit an accused person to intervene in the course of inquiry by the Magistrate under Section 202. The legal position is no more res integra in this regard. More than five decades back, this Court in Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker and another[14] with reference to Section 202 of the Criminal Procedure Code, 1898 (corresponding to Section 202 of the present Code) held that the inquiry under Section 202 was for the purpose of ascertaining the truth or falsehood of the complaint, i.e., for ascertaining whether there was evidence in support of the complaint so as to justify the issuance of process and commencement of proceedings against the person concerned."

5. In view of the aforesaid legal position, this Court is of the considered opinion that the impugned order cannot be permitted

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to sustain, having been passed in breach of the fundamental requirement of affording an opportunity of hearing to the complainant/victim.

6. Consequently, the instant revision petition deserves to be and is hereby allowed. The order impugned passed by the learned Additional Sessions Judge is hereby set aside.

7. The matter is remitted to the learned revisional Court for fresh consideration of the revision petition preferred by the accused-respondent. The learned revisional Court shall afford an effective opportunity of hearing to the complainant/victim and thereafter proceed to examine the legality, correctness and propriety of the order framing charge, strictly in accordance with law, uninfluenced by any observation made hereinabove. Both the parties are directed to remain present before the learned revisional Court on 12.01.2027. Since the complainant/victim is being directed to remain present on the aforesaid date, no separate notice shall be required to be issued to her.

8. Before parting, this Court deems it appropriate to reiterate that the principle of *audi alteram partem* means no one shall be condemned unheard, is not an empty legal maxim or a procedural ritual, but one of the most cherished pillars of the administration of justice. The opportunity of hearing is the very essence of a fair adjudicatory process, and its observance assumes greater significance where the order passed is likely to visit an adverse consequence upon a person whose interests are directly involved in the *lis*.

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9. Needless to observe, the learned revisional Court shall make every endeavour to decide the revision petition expeditiously, preferably without granting unnecessary adjournments.

10. The revision petition stands disposed of accordingly.

11. The stay petition and all pending applications, if any, also stand disposed of.

(FARJAND ALI),J

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