

[2023 LiveLaw \(SC\) 465](#)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
HRISHIKESH ROY; J., MANOJ MISRA; J.

May 12, 2023

CRIMINAL APPEAL NO. OF 2023 (Arising out of SLP (Crl.) No.4230 of 2023)

SANTHAKUMARI & ORS. versus STATE OF TAMIL NADU & ANR.

Code of Criminal Procedure, 1973; Section 156(3) - Proposed accused has right to be heard in revision filed under Section 401 Cr.P.C. against dismissal of petition under Section 156(3) Cr. P.C.

(Arising out of impugned final judgment and order dated 18-11-2022 in CRRC No. 1436/2022 passed by the High Court of Judicature at Madras)

For Petitioner(s) Mr. K.Lenin Devasahaya Vinober, Adv. Ms. U.Priyadarsini, Adv. Mr. D. Percivul Pericles, Adv. Mr. Scv Vimal Pani, Adv. Mr. A. Lakshminarayanan, AOR

For Respondent(s) Mr. M.P. Parthiban, AOR Mr. R. Sudhakaran, Adv. Ms. Shalini Mishra, Adv. Mr. G.R. Vikash, Adv. Mr. Bilal Mansoor, Adv. Mr. K.Deivendran, Adv. Mr. D. Alagendren, Adv. Mr. Vishal Tiwari, Adv. Dr. Joseph Aristotle S., Adv. Ms. Vaidehi Rastogi, Adv.

ORDER

1. Leave granted.

2. This appeal is against the order dated 18.11.2022 passed by the High Court of Judicature at Madras in Criminal Revision Case No.1436 of 2022 whereby the revision of the complainant against an order of the learned Magistrate dismissing his application under Section 156(3) of the Code of Criminal Procedure, 1973 (for short “the Code”) has been allowed and a direction has been issued to register First Information Report against the appellants.

3. The short submission on behalf of the appellants is that while exercising revisional power, the High Court in compliance of the provisions of sub-section (2) of Section 401 of the Code should have given opportunity of hearing to the proposed accused as they would be the persons who would be prejudiced by the order. But, such opportunity was not provided, therefore, the revisional order is liable to be set-aside.

4. In support of the above contention, the appellants have placed reliance on a three-judge Bench decision of this Court in **Manharbhai Muljibhai Kapadia & Another v. Shaileshbhai Mohanbhai Patel & Others**,¹, wherein in paragraph 48, in the context of a revision against an order dismissing a complaint under Section 203 of the Code, the provisions of sub-section (2) of Section 401 of the Code were interpreted as under:

“48. ... by virtue of Section 401(2) of the Code, the suspects get right of hearing before Revisional Court although such order was passed without their participation. The right given to “accused” or “the other person” under [Section 401\(2\)](#) of being heard before the Revisional Court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, [203](#) and 204. In the revision petition before the High Court or the Sessions Judge at the instance of complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the

¹ (2012) 10 SCC 517

face of express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.”

(Emphasis Supplied)

5. The learned counsel for the respondents does not dispute that the prospective accused, namely, appellants herein, have not been served notice of the revision proceedings and the revision has been allowed by the High Court with a direction to register First Information Report against them.

6. Having considered the submissions, since it is not in dispute that the proposed accused were not served notice of the revision proceedings, the order passed by the High Court is in the teeth of the provisions of subsection (2) of Section 401 of the Code as interpreted by this Court in **Manharbhai Muljibhai Kapadia (supra)**.

7. The decision in **Manharbhai Muljibhai Kapadia (supra)** has also been followed in **Bal Manohar Jalan v. Sunil Paswan²**, wherein it was held:

“9. In the present case challenge is laid to the order dated 4-3-2009 at the instance of the complainant in the revision petition before the High Court and by virtue of Section 401(2) of the Code, the accused mentioned in the first information report get the right of hearing before the Revisional Court although the impugned order therein was passed without their participation. The appellant who is an accused person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code and on this ground, the impugned order of the High Court is liable to be set aside and the matter has to be remitted.”

8. In view of the aforesaid, the appeal is allowed and the impugned order dated 18.11.2022 is set aside. The matter is remitted back to the High Court to decide the revision afresh in accordance with law.

Pending application(s), if any, shall stand disposed of.

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² (2014) 9 SCC 640