

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

¹ (2012) 10 SCC 517

deprived of hearing on the 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 sub-section (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 Paswan***², 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

² (2014) 9 SCC 640

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.

.....J.
(Hrishikesh Roy)

.....J.
(Manoj Misra)

New Delhi;
May 12, 2023

ITEM NO.35

COURT NO.14

II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (CrI.) No(s).
4230/2023

(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)

SANTHAKUMARI & ORS.

Petitioner(s)

VERSUS

THE STATE OF TAMIL NADU & ANR.

Respondent(s)

(FOR ADMISSION and I.R.)

Date : 12-05-2023 This petition was called on for hearing
today.

CORAM :

HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE MANOJ MISRA

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

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the
signed order.

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

(SONIA BHASIN)
COURT MASTER (SH)

(KAMLESH RAWAT)
ASSISTANT REGISTRAR

[Signed Order is placed on the file]