



DISCUSSION PAPER

**MANHARIBHAI MUJLIBHAI KAKADIA CASE:
INCONGRUITIES IN SUPREME COURT'S DECISION**

**& POSITION OF ACCUSED IN REVISION PETITION
OF A COMPLAINT DISMISSED U/S 203 CRPC**

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1.0 INTRODUCTION

In the year 2012, a 3-judge bench of the Hon'ble Supreme Court in the case of *Manharibhai Mujlibhai Kakadia vs Shaileshbhai Mohanbhai Patel*¹ settled the law relating to the position of an accused in a revision petition assailing the dismissal of a complaint by a Magistrate u/s 203 of CrPc (the Code) 1973.

However, it appears that while arriving at a decision in the said case the Hon'ble Supreme Court has missed out on the opportunity to evaluate the question of law in a more comprehensive manner. This discussion paper aims to add the following dimensions before analyzing the question of law raised in *Manharibhai Mujlibhai Kakadia (supra)*:

- a. the qualification afforded by S. 399 (2) of the Code for application of S. 400 (2) to the revision powers of Sessions Judge;
- b. the decisions of the Hon'ble Supreme Court in *Poonam Chand Jain v Fazru*² and *Mahesh Chand c. B Janardhan Reddy*³; and

¹ (2012) 10 SCC 517: 2012 (10) JT 61: 2012 (9) SCALE 617: 2012 (7) SLT 455

² AIR 2010 SC 659

³ AIR 2003 SC 702

2.0 ANALYSIS

In *Manharibhai Mujlibhai Kakadia (supra)* the Hon'ble Court has held 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 S. 203 of the Code at the stage under S. 200 or after following the process contemplated under S. 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 S. 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. The Hon'ble Court further says that this is a plain requirement of S. 401(2) of the Code.

Before deciding on the case, the Hon'ble Court has relied upon following propositions in its analysis:

- a. that when a complaint is dismissed by a Magistrate u/s 203 of the Code, the accused becomes vested with a right;
- b. that powers of Sessions Judge u/s 403 of the Code become implicitly restricted by way of application of S. 401(2) as a result of S. 399 (2) of the Code;

However, it is our view that the foregoing propositions are manifest with incongruities. In this section, we try to explore such incongruities in the said propositions individually.

It follows that the Sessions Judge's power of revision flows from S. 399 (1) of the Code whereas the High Court's power of revision flows from S. 401 (1) of the Code. It further follows that S. 402 (2) provides an explicit bar on the High Court for passing any order that may cause prejudice to the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

Whereas the bar on the Sessions Judge's power of revision flows indirectly from S. 399 (2) of the Code, which states that:

*"Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, **so far as may be**, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge."*

[emphasis added]

The presence and placement of the phrase "so far as may be" in S. 399 (2) is of great significance and one which has been missed out by the Hon'ble Supreme Court in *Manharibhai Mujlibhai Kakadia (supra)*.

It follows that the Legislature was perhaps aware that it would not be prudent to impose blanket restriction envisaged under Ss. 401 (2) over the Sessions Judge's revisioning powers else it would not have qualified such application by prefixing the phrase "*so far as may be*".

In the specific scenario where a complaint is dismissed u/s 203, the stage is that of pre-summoning and the Accused have no right to be heard at this stage. Therefore, when a revision petition is preferred before a Sessions Judge challenging the dismissal order u/s 203, the restrictions under S. 401 (2) would not be available as such restrictions are qualified u/s 399 (2); and that Ss. 401 (2) & S. 403 must be read in harmonious construction with Ss. 200, 202 & 203 and also in harmonious construction with qualified application provided u/s 399 (2) of the Code.

In other words, when the intention of the Legislature is that no interference of the Accused is to be entertained at the stage of Ss. 200 & 202; then upon revision of dismissal order made u/s 203 preferred before the Sessions Judge the bar on such interference continues as the restriction u/s 401 (2) is precluded by the phrase "*so far as may be*" in S. 399 (2). Therefore, the Sessions Judge becomes vested with the powers available to him u/s 403, i.e. option of Court to hear parties.

Furthermore, the Hon'ble Supreme Court in *Manharibhai Mujlibhai Kakadia (supra)* has observed that upon dismissal of the complaint u/s 203 of the Code the accused becomes vested with a right. Even if the bar under S. 401 (2)

may, for the sake of argument, be made applicable on revision powers of Sessions Judge, no such right can be said to accrue to the Accused.

To develop this argument, we rely on the judgements of Hon'ble Supreme Court in *Mahesh Chand (supra)* and *Poonam Chand Jain (supra)*.

The Hon'ble Supreme Court in *Mahesh Chand (supra)* has observed that the second complaint on the same facts be entertained only in exceptional circumstances, namely, where previous order was passed on incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, or unjust or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings have been adduced.

The Hon'ble Supreme Court in *Poonam Chand Jain (supra)* has again observed that there is no bar to the entertainment of a second complaint on the same facts but it can be entertained in exceptional circumstances viz., (a) where previous order was passed on incomplete record or (b) on a misunderstanding of the nature of the complaint or (c) the order which was passed was manifestly absurd, unjust or foolish or (d) where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings.

It follows that law provides for re-institution of a complaint that has been previously dismissed u/s 203, albeit on specific grounds, consequently providing no opportunity to the Accused to be heard on such re-institution of



complaint. Therefore, it can be said that no right vests with the Accused upon dismissal of a complaint u/s 203. Hence, no question of causing prejudice can be said to be made to the Accused as envisaged u/s 401 (2) of the Code.

To sum up, it can be said that the Hon'ble Supreme Court's decision in *Manharibhai Mujlibhai Kakadia (supra)* is manifest with incongruities and that the Accused has no right to be heard in a revision petition before a Sessions Judge challenging the order of dismissal of complaint u/s 203.

4.0 CONCLUSION

It is safe to conclude, on the basis of analysis contained in this paper, that the that the Accused has no right to be heard in a revision petition before a Sessions Judge challenging the order of dismissal of complaint u/s 203.

The Hon'ble Supreme Court's decision in *Manharibhai Mujlibhai Kakadia (supra)* has missed out an opportunity to settle the question of law comprehensively and that the Hon'ble Supreme Court should review its judgement in *Manharibhai Mujlibhai Kakadia (supra)* in view of the additional dimensions presented in this discussion paper.



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