

M/S Prime Impex Ltd.and ors. Vs. M/S P.E.C.Ltd.and anr

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Court : Supreme Court of India

Decided On : Mar-18-2013

Judge : H.L. Dattu and Jagdish Singh Khehar

Appellant : M/S Prime Impex Ltd.and ors.

Respondent : M/S P.E.C.Ltd.and anr

Judgement :

IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No.480 OF 2011.(@ SPECIAL LEAVE
PETITION(CRIMINAL)NO.6102 OF 2012.M/S. PRIME IMPEX LTD. & ORS.
APPELLANTS VERSUS M/S. P.E.C. LTD. & ANR. RESPONDENTS

ORDER

1. Leave granted.
2. This appeal is directed against the judgment and order passed by the High Court at Delhi in Criminal Revision Petition No.456 of 2011, dated 13.10.2011.
3. By the impugned judgment and order, the High Court has taken exception to the findings and conclusions reached by the learned Addl. Chief Metropolitan Magistrate in Complaint Case No.4060 of 2011 and accordingly, has allowed the petition.

4. Shri L. Nageswara Rao, learned senior counsel appearing for the appellants would submit that the High Court, while passing the order in Revision Petition filed under Section 401 of the Criminal Procedure Code, 1973, had not afforded the opportunity of hearing to the appellants herein and submits that the same is opposed to the principles laid down by this Court in the case of Manharibhai Muljibhai Kakadia and Another vs. Shaileshbhai Mohanbhai Patel and Others, reported in (2012) 10 SCC 517. In the said decision, this Court has stated as under:

48. In case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed the offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate under Section 203 - although it is at preliminary stage - nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get the right of hearing before the 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 the 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 face of the 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.

5. In view of the dictum laid down by this Court in the aforesaid decision, we are of the opinion that the High Court was not justified in passing the order without affording opportunity of hearing to the appellants.

6. In the result, we allow this appeal, set aside the judgment and order passed by the High Court and remand the matter back to the High Court for fresh disposal in accordance with law, after affording opportunity of hearing to the appellants.

7. All the contentions raised by both the parties are left open. Ordered accordingly.
.....J.(H.L. DATTU)J.(JAGDISH SINGH KHEHAR) NEW
DELHI; MARCH 18 2013.-.----- 3

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