REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1577 OF 2012
(Arising out of SLP (Crl.) No. 446 of 2007)

Manharibhai Muljibhai Kakadia & Anr. …. Appellants

Versus

Shaileshbhai Mohanbhai Patel & Ors. ….Respondents

JUDGMENT

R.M. Lodha, J.

Leave granted.

2. The sole question for consideration is, whether a suspect is entitled to hearing by the revisional court in a revision preferred by the complainant challenging an order of the Magistrate dismissing the complaint under Section 203 of the Criminal Procedure Code, 1973 (for short 'Code').

3. It is not necessary to set out the facts in detail. Suffice it to say that Shaileshbhai Mohanbhai Patel, respondent no. 1, filed a criminal complaint on 15.5.2004 in the Court of Chief Judicial Magistrate, Surat (for short 'CJM') against Manharibhai Muljibhai Kakadia and Paresh Lavjibhai Patel, appellants, alleging that they had pre-planned a conspiracy; created forged documents bearing signatures of the complainant, his father and uncle, two sons of his uncle and his elder brother and have used the said documents as true and genuine by producing the same before the District Registrar, Cooperative Society, Nanpura, and by making false representation obtained registration of Indoregency Cooperative Housing Society Limited and by doing so the accused (appellants) have caused financial loss and physical and mental agony to the complainant and his family members and have deceived the complainant and his family members by obtaining huge financial advantage by taking possession of the complainant's property. It was, thus, alleged that the appellants have committed offences punishable under Sections 420, 467, 468, 471 and 120-B, IPC.

4. The CJM in exercise of his power under Section 202 of the Code by his order dated 18.6.2004 directed the enquiry to be made by the Police Inspector, Umra Police Station, into the allegations made in the complaint and submit his report within thirty days therefrom.

5. The Investigating Officer investigated into the matter and submitted 'C' Summary Report. In the opinion of the Investigating Officer, the disputes between the parties were of civil nature and no offence was made out.

6. The CJM on 16.4.2005 accepted the 'C' Summary Report submitted by the Investigating Officer. That order has been challenged by the Complainant in a criminal revision application filed under Section 397 read with Section 401 of the Code in the Gujarat High Court.

7. The appellants having come to know of the above criminal revision application made an application for joining them as party respondents so that they can be heard in the matter.

8. On 5.8.2005, the Single Judge of the Gujarat High Court dismissed the application made by the appellants. It is from this order that present appeal has arisen.

9. We have heard Mr. Shyam Divan, learned senior counsel for the appellants and Ms. Meenakshi Arora, learned counsel for respondent no. 1.

10. Mr. Shyam Divan, learned senior counsel for the appellants argued that the plain language of Section 401(2) of the Code entitles the appellants to be heard in the criminal revision application filed by the respondent no. 1 challenging the order of the CJM. According to learned senior counsel, appellants have a right to be heard in the revision

application filed by the complainant as no order could be made to the prejudice of the accused or the other person unless he has had an opportunity of being heard under Section 401(2) of the Code. It was argued on behalf of the appellants that the result of acceptance of the 'C' Summary Report is that criminal proceedings launched by the complainant have come to an end and if the revision application preferred by the complainant is accepted, that would have the effect of revival of the complaint and setting the criminal process back in motion which would be definitely prejudicial to the appellants and before any such prejudicial order is passed, the appellants ought to be heard. In support of the above contentions, learned senior counsel relied upon decisions of this Court in *P. Sundarrajan and others* v. *R. Vidhya Sekar*[1], *Raghu Raj Singh Rousha* v. *Shivam Sundaram Promoters Private Limited and another*[2] and *A. N. Santhanam v. K. Elangovan*[3].

11. Mr. Shyam Divan, learned senior counsel would also argue that expression, "in his own defence" in Section 401 (2) is a comprehensive expression which also means 'in defence of the order' under challenge in revisional jurisdiction. Learned senior counsel submitted that "prejudice" may cover wide range of situations and must be considered in wider sense. Section 401 does not make any distinction

[1] (2004) 13 SCC 472
[2] (2009) 2 SCC 363
[3] 2011 (2) JCC 720 (SC)

between pre-process stage and post-process stage. Sub-section (2) of Section 401 is applicable regardless and whether or not process has been issued under Section 204 of the Code.

12. It was also submitted on behalf of the appellants that cognizance had been taken by the CJM. Cognizance is not equivalent to issuance of process; it is taken prior to issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in the complaint or to the police report or upon information received from any other person that an offence has been committed. In this regard, reliance was placed on *Jamuna Singh and others* v. *Bhadai Sah*[4] , *Kishun Singh and others* v. *State of Bihar*[5] and *State of Karnataka and another* v. *Pastor P. Raju*[6].

13. Ms. Meenakshi Arora, learned counsel for the respondent no. 1, on the other hand, stoutly defended the order of the High Court. She would argue that since CJM had not taken cognizance of the offence, the appellants have no role to play at any stage prior to issuance of process. She referred to certain provisions, including Chapters XIV, XV and XVI, and also Sections 156, 173, 190 and 202 of the Code. Learned counsel for the respondent no. 1 argued that since the subject revision petition had been filed by the respondent no. 1 against the dismissal of

[4] (1964) 5 SCR 37
[5] (1993) 2 SCC 16
[6] (2006) 6 SCC 728

the complaint at a pre-cognizance stage, the appellants do not have any right of hearing under the provisions of Section 401(2) of the Code. In this regard, the learned counsel placed reliance on Chandra *Deo Singh* v. *Prokash Chandra Bose and another*[7], *Smt. Nagawwa* v. *Veeranna Shivalingappa Konjalgi and others*[8], *Adalat Prasad* v. *Rooplal Jindal and others*[9] and *Mohd. Yousuf* v. *Afaq Jahan (Smt.) and another*[10].

14. Learned counsel for the respondent no.1 also relied upon decisions of Punjab and Haryana High Court, Madhya Pradesh High Court and Gujarat High Court in support of her submission that accused has no right of hearing under Section 401(2) in a revision against an order by which a complaint has been dismissed by the Magistrate under Section 203 of the Code. She relied upon *Gurdeep Singh* v. *State of Haryana*[11], *Panatar Arvindbhai Ratilal* v. *State of Gujarat and others*[12], *Ratanlal Soni* v. *Kailash Narayan Arjariya*[13]. She also relied upon a decision of Delhi High Court in *Tata Motors Limited* v. *State* (Criminal Revision Petition No. 16/2008 and Criminal LPA 4301/2008) decided on 12.2.2009 wherein decision of this Court in *Raghu Raj Singh Rousha*[2] has been distinguished.

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[7] 1964 (1) SCR 639
[8] (1976) 3 SCC 736
[9] (2004) 7 SCC 338
[10] (2006) 1 SCC 627
[11] ILR 2001 (2) P & H 388
[12] 1991 (1) Vol. 32 GLR 451
[13] 1998 (2) MPLJ 321

15. Learned counsel for the respondent no. 1 would submit that decision of this Court in *P. Sundarrajan*[1] was not applicable to the fact situation of the present case inasmuch as in that case, the accused were party in the revision petition whereas in the subject revision the appellants have not been allowed to be impleaded as party respondents and the impugned order has been passed on the application for impleadment. While referring to *A. N. Santhanam*[3], learned counsel for the respondent no. 1 submitted that this case too was not applicable to the facts of the present case as in that case the complainants were examined under Section 200 of the Code whereas in the present case the CJM has accepted the 'C' Summary Report under Section 173 after the investigation was done by the police.

16. In order to appreciate the rival submissions, some of the provisions of the Code need to be referred to. Section 156 deals with Police Officer's power to investigate cognizable case. It reads as follows:

> "S. 156. Police Officer's power to investigate cognizable case. – (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
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> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned."

17. Section 190 falls in Chapter XIV and reads as under:

"S. 190. Cognizance of offences by Magistrates. - (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

18. Chapter XV of the Code deals with the complaints to Magistrates. It has four Sections, 200 to 203, which read as under :

"S. - 200. Examination of Complainant.-- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) If a public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint; or

(b) If the Magistrate makes over the case for inquiry, or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

S. 201. Procedure by Magistrate not competent to take cognizance of the case.- If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall, -

(a) If the complaint is in writing, return it for presentation to the proper court with an endorsement to that effect;

(b) If the complaint is not in writing, direct the complainant to the proper court.

S. 202. Postponement of issue of process.-- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made—

(a) Where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) Where the complaint has not been made by a Court, unless the complainant and the witnesses

present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

S. 203. Dismissal of complaint.—If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

19. Chapter XVI of the Code has Sections 204 to 210. Section 204 deals with the issuance of process by the Magistrate. The process is issued by the Magistrate if in his opinion there is sufficient ground for proceeding.

20. Section 210 provides for procedure to be followed when there is complaint case and police investigation in respect of the same offence. It reads as under:

"S. 210. Procedure to be followed when there is a complaint case and police investigation in respect of

> the same offence.—(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.
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> (2) If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.
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> (3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code."

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.
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> (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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> (3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.
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> (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.
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> (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."

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

[14] (1961) 1 SCR 1

as to justify the issuance of process and commencement of proceedings against the person concerned.

24. In Chandra *Deo Singh*[7], a four-Judge Bench of this Court had an occasion to consider Section 202 of the old Code. The Court referred to the earlier decision of this Court in *Vadilal Panchal*[14] and few previous decisions, namely, *Parmanand Brahmachari* v. *Emperor*[15], *Radha Kishun Sao* v. *S.K. Misra and Anr.* [16], *Ramkisto Sahu* v. *The State of Bihar*[17], *Emperor* v. *J.A. Finan*[18], *Baidya Nath Singh* v. *Muspratt and others*[19] and it was held that the object of provisions of Section 202 (corresponding to present Section 202 of the Code) was to enable the Magistrate to form an opinion as to whether process should be issued or not and to remove from his mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath. It was further held that an accused person does not come into the picture at all till process is issued.

25. In *Smt. Nagawwa*[8], this Court had an occasion to consider the scope of the inquiry by the Magistrate under Section 202 of the old Code. This Court referred to the earlier two decisions in *Vadilal Panchal*[14] and Chandra *Deo Singh*[7] and in para 4 of the Report held as under:

[15] AIR (1930) Patna 30
[16] AIR (1949) Patna 36
[17] AIR (1952) Patna 125
[18] AIR (1931) Bom 524
[19] ILR (1886) XIV Cal 141

> "4. It would thus be clear from the two decisions of this Court that the scope of the inquiry under Section 202 of the Code of Criminal Procedure is extremely limited — limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint — (*i*) on the materials placed by the complainant before the court; (*ii*) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (*iii*) for the limited purpose of deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact it is well settled that in proceedings under Section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not."

26. In *Adalat Prasad*[9], a three-Judge Bench of this Court had an occasion to consider Sections 200, 202 and 204 of the Code. The scheme of the above provisions was explained in the following manner:

> "12. Section 200 contemplates a Magistrate taking cognizance of an offence on complaint to examine the complaint and examine upon oath the complainant and the witnesses present, if any. If on such examination of the complaint and the witnesses, if any, the Magistrate if he does not want to postpone the issuance of process has to dismiss the complaint under Section 203 if he comes to the conclusion that the complaint, the statement of the complainant and the witnesses have not made out sufficient ground for proceeding. Per contra, if he is satisfied that there is no need for further inquiry and the complaint, the evidence adduced at that stage have materials to proceed, he can proceed to issue process under Section 204 of the Code.
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> 13. Section 202 contemplates "postponement of issue of process". It provides that if the Magistrate on receipt of a complaint, if he thinks fit, to postpone the issuance of process against the accused and desires further inquiry into the case either by himself or directs an investigation to be made by a police

officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding, he may do so. In that process if he thinks it fit he may even take evidence of witnesses on oath, and after such investigation, inquiry and the report of the police if sought for by the Magistrate and if he finds no sufficient ground for proceeding he can dismiss the complaint by recording briefly the reasons for doing so as contemplated under Section 203 of the Code.

14. But after taking cognizance of the complaint and examining the complainant and the witnesses if he is satisfied that there is sufficient ground to proceed with the complaint he can issue process by way of summons under Section 204 of the Code. Therefore, what is necessary or a condition precedent for issuing process under Section 204 is the satisfaction of the Magistrate either by examination of the complainant and the witnesses or by the inquiry contemplated under Section 202 that there is sufficient ground for proceeding with the complaint hence issue the process under Section 204 of the Code. In none of these stages the Code has provided for hearing the summoned accused, for obvious reasons because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provision in the Code. It is true as held by this Court in *Mathew case [(1992) 1 SCC 217]* that before issuance of summons the Magistrate should be satisfied that there is sufficient ground for proceeding with the complaint but that satisfaction is to be arrived at by the inquiry conducted by him as contemplated under Sections 200 and 202, and the only stage of dismissal of the complaint arises under Section 203 of the Code at which stage the accused has no role to play, therefore, the question of the accused on receipt of summons approaching the court and making an application for dismissal of the complaint under Section 203 of the Code on a reconsideration of the material available on record is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 stage.

> 15. It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code."

27. The procedural scheme in respect of the complaints made to Magistrates is provided in Chapter XV of the Code. On a complaint being made to a Magistrate taking cognizance of an offence, he is required to examine the complainant on oath and the witnesses, if any, and then on considering the complaint and the statements on oath, if he is of the opinion that there is no sufficient ground for proceeding, the complaint shall be dismissed after recording brief reasons. The Magistrate may also on receipt of a complaint of which he is authorised to take cognizance proceed with further inquiry into the allegations made in the complaint either himself or direct an investigation into the allegations in the complaint to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. In that event, the Magistrate in fact postpones the issue of process. On conclusion of the inquiry by himself or on receipt of report from the police officer or from such other person who has been

directed to investigate into the allegations, if, in the opinion of Magistrate taking cognizance of an offence there is no sufficient ground for proceeding, complaint is dismissed under Section 203 or where the Magistrate is of the opinion that there is sufficient ground for proceeding, then a process is issued. In a summons case, summons for the attendance of the accused is issued and in a warrant case the Magistrate may either issue a warrant or a summons for causing the accused to be brought or to appear before him.

28. Pertinently, Chapter XV uses the expression, "taking cognizance of an offence" at various places. Although the expression is not defined in the Code, but it has acquired definite meaning for the purposes of the Code.

29. In *R.R. Chari* v. *The State of Uttar Pradesh* [20], this Court stated that taking cognizance did not involve any formal action or indeed action of any kind but it takes place no sooner a Magistrate applies his mind to the suspected commission of an offence.

30. In *Narayandas Bhagwandas Madhavdas* v. *The State of West Bengal*[21], this Court considered the expression, "take cognizance of offence" with reference to Sections 190(1)(a), 200 and 202 and held as under :

[20] (1951) SCR 312
[21] AIR (1959) SC 1118

> "……As to when cognizance is taken of an offence will depend upon the facts and circumstances of each case and it is impossible to attempt to define what is meant by taking cognizance. Issuing of a search warrant for the purpose of an investigation or of a warrant of arrest for that purpose cannot by themselves be regarded as acts by which cognizance was taken of an offence. Obviously, it is only when a Magistrate applies his mind for the purpose of proceeding under S. 200 and subsequent sections of Ch. XVI of the Code of Criminal Procedure or under S. 204 of Ch. XVII of the Code that it can be positively stated that he had applied his mind and therefore had taken cognizance."

31. In *Darshan Singh Ram Kishan* v. *State of Maharashtra*[22], the Court reiterated what was stated in *R.R. Chari*[20]. It was further explained that cognizance takes place at a point when a Magistrate first takes judicial notice of an offence on a complaint, or a police report, or upon information of a person other than a police officer.

32. In *Kishun Singh*[5], while dealing with the expression "taking cognizance of an offence" the Court said that cognizance can be said to be taken by a Magistrate when he takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, would constitute an offence, decides to initiate judicial proceedings against the alleged offender.

[22] (1971) 2 SCC 654

33. In *State of West Bengal and another* v. *Mohd. Khalid and others*[23], the expression, "taking cognizance of an offence" has been explained in paragraph 43 of the Report which reads as follows:

> "43. Similarly, when Section 20-A(2) of TADA makes sanction necessary for taking cognizance — it is only to prevent abuse of power by authorities concerned. It requires to be noted that this provision of Section 20-A came to be inserted by Act 43 of 1993. Then, the question is as to the meaning of taking cognizance. Section 190 of the Code talks of cognizance of offences by Magistrates. This expression has not been defined in the Code. In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons."

34. The above cases where the expression, "taking cognizance of an offence" for the purposes of the Code (old as well as new) has been explained have been noted by a two-Judge Bench of this Court in *Pastor P. Raju*[6]. The Court in para 13 of the Report referred to the distinction between "taking cognizance of an offence" and "issuance of process" and observed as under:

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[23] (1995) 1 SCC 684

> "13. ……..Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out."

35. On behalf of the appellants, it was submitted that the direction by the CJM to the Police Officer to investigate into the allegations made in the complaint amounts to taking cognizance of an offence and the dismissal of the complaint by the CJM under Section 203 of the Code was after he had taken cognizance of the offence. On the other hand, on behalf of the respondent no. 1, it was vehemently contended that dismissal of complaint by the CJM under Section 203 of the Code was at a pre-cognizance stage. The submission on behalf of the respondent no. 1 is that no cognizance has been taken by the CJM while directing the Police Officer to investigate into the allegations of the complaint.

36. We shall immediately advert to the aspect whether or not CJM had taken cognizance of the offence and whether the dismissal of the complaint under Section 203 in the matter was post-taking cognizance.

37. The word, "cognizance" occurring in various Sections in the Code is a word of wide import. It embraces within itself all powers and

authority in exercise of jurisdiction and taking of authoritative notice of the allegations made in the complaint or a police report or any information received that offence has been committed. In the context of Sections 200, 202 and 203, the expression `taking cognizance' has been used in the sense of taking notice of the complaint or the first information report or the information that offence has been committed on application of judicial mind. It does not necessarily mean issuance of process.

38. Having regard to the above legal position, if the order of the CJM passed on 18.6.2004 is seen, it becomes apparent that he had applied judicial mind on the complaint that day. The order records, "on perusing the complaint and the accompanying documents, in the said matter it is necessary to take into custody the documents mentioned in the complaint. It is necessary to find out the persons who have forged signatures on such documents, and record their statements, and to compare the said signatures with the signatures of the family members of the complainant, and in this regard obtain the opinion from the Handwriting Expert, in view of all this such investigations cannot be done by the Court, in view of this fact below Section 156(3) of Cr.P.C. in the matter of the said complaint for police investigations it is hereby ordered to send the said inquiry to the P.I., Umra, Police Station. And, he is ordered to investigate thoroughly in this matter and within 30 days present the report before this Court".

39. From the above order passed by the CJM, there remains no doubt that on 18.06.2004, he had taken cognizance although he postponed issue of process by directing an investigation to be made by Police Officer. The submission of the learned counsel for the respondent no.1 that the CJM had not taken cognizance in the matter and the complaint was dismissed under Section 203 at the pre-cognizance stage has no substance and is rejected.

40. The question now is, in a matter of this nature where complaint has been dismissed by the Magistrate under Section 203 post-cognizance stage and pre-issuance of process, whether on challenge to the legality of the order of dismissal of complaint being laid by the complainant in a revision application before the High Court, the persons who are arraigned as accused in the complaint have a right to be heard.

41. Before we deal with the above question further, some of the decisions of the High Courts upon which heavy reliance was placed by the counsel for the respondent no. 1 may be noticed. In *Panatar Arvindbhai Ratilal*[12], a Single Judge of the Gujarat High Court had an occasion to consider *locus standi* of the suspects at the stage of grant of 'C' Summary. That was a case where the police did not initiate any investigation for quite some time in respect of an offence registered with the police station. The complainant approached the CJM wherein direction for investigation by the police was made. The police after

investigation submitted report and sought 'C' Summary. The complainant objected to the report submitted by the police as to 'C' Summary. The Magistrate allowed the suspects to be heard against which the complainant filed the criminal revision before the Sessions Judge. The Sessions Judge agreed with the complainant and overruled the order of the Magistrate allowing the accused to make submission. There were seven accused in the complaint and two of them approached the High Court against the order of the Sessions Judge. The Single Judge of the High Court confirmed the order of Sessions Judge. The Magistrate thereafter heard the complainant and granted 'C' Summary. Against that order, the complainant filed a revision before the Sessions Judge. Two accused who had earlier challenged the order of the Sessions Judge before the High Court applied to the Sessions Judge for permission to make submission in support of the order of the Magistrate. The Sessions Judge allowed the application made by the accused against which order the complainant filed criminal revision before the High Court. The High Court noted the provisions contained in Sections 397(2) and 403 of the Code and then held that allowing the suspects to be heard at this stage would amount to permitting them to have their say at the stage which is not contemplated by the Code and it would be giving a premature hearing to the accused. The High Court was persuaded by the submission of the

complainant that an accused cannot be given pre-trial hearing. The High Court observed as follows :

> "6. The views consistently expressed by this Court as well as by the Supreme Court about the hearing of the suspects at the stage of granting of 'C' summary or not is clearly to the effect that they have no locus standi.
>
> 7. In this background we turn to the submission made under Section 403 of the Code of Criminal Procedure, by learned Advocate Shri J.R. Nanavati. There again at first sight it might appear that party referred to in the said section could be a party other than one arrayed before the Court on either side, but when we realise that the matter to be dealt with under Chapter 30 of the Code of Criminal Procedure wherein occurs Section 403 power is that of a Revision and it being the power exercised by the Court, a party may or may not be heard as the Court may decide and this alone would explain the inclusion of Section 403 in that Chapter.
>
> 8. Otherwise all the procedural laws have as its foundation the maxim Audi Alterem Partem and at all stages wherever the need be there are provision for issuance of notice and making sure that the party against whom the orders are being sought is heard. Therefore, there was no need of inclusion of Section 403 at the place where we find it and we can appreciate it only and only if bearing in mind the fact that it being a chapter dealing with revisional jurisdiction which is expressly privilege of the Court realising the order of subordinate Court that there might be an occasion, the party need not be or may not be heard, and therefore, there is a specific provision in that behalf.
>
> 9. Once we appreciate the aforesaid section in this light of submissions made by learned Advocate Shri Nanavati pertaining to the aforesaid decision of the Gujarat High Court as well as that of the Supreme Court on hearing of the suspects at the stage of granting of 'C' summary, can also be understood

> because the same principle will apply whether the accused are being dealt with under Chapter 13 or 17 of the Code of Criminal Procedure or under Chapter 30 of the Code of Criminal Procedure, as the case may be, the principle will not alter and more so when we appreciate the inclusion of Section 403 of the Code of Criminal Procedure, it becomes quite clear that the principle on the contrary would be reinforced."

42. The Madhya Pradesh High Court in *Ratanlal Soni*[13] was concerned with the legality of an order passed by Additional Sessions Judge without notice to the accused persons who were arrayed as non-applicants therein. The Single Judge of that Court referred to two decisions of this Court in *Chandra Deo Singh*[7] and *Smt. Nagawwa*[8] and couple of decisions of the High Court and stated in paragraph 6 of the Report as under :

> "6. In view of the aforesaid enunciation of law it is luminously clear that the accused-has no locus standi to appear and participate before the process is issued. This being the accepted position of law it can safely be concluded that when a revision is filed challenging the order refusing to take cognizance the accused has no locus standi to contest. He is not a necessary party. The determination is to be made by the Court to find out the approach of the Court below and to scrutinise the justifiability of the order refusing to take cognizance. This being the position of law disposal of revision by the revisional Court without issuing notice to the non-applicant is not infirm or pregnable. Once it has been held that the accused persons have no role to play before process is issued the revision at their instance challenging the order of the revisional Court directing the Magistrate to reconsider the matter is not tenable as they cannot raise grievance in regard to the same as yet there is no direction for issuance of process."

43. A Single Judge of Punjab and Haryana High Court in *Gurdeep Singh*[11] was concerned with a petition under Section 482 of the Code filed by the accused seeking quashment of the order passed by the Sessions Judge setting aside the order of the CJM whereby the complaint was dismissed for want of prosecution. The dismissal of complaint by the CJM for want of prosecution was at the initial stage. The challenge to the order of the Sessions Judge by the accused was on the ground that the Sessions Judge while allowing the revision application had infringed the provisions of Section 401(2) of the Code inasmuch as no opportunity of being heard was given to the accused although the complaint was dismissed for want of prosecution. The Single Judge of that Court took the view as follows :

> "14. …….By no stretch of imagination, in my opinion, the accused can seek the setting aside of the order passed by the Sessions Judge on the ground that the said order was passed by the Sessions Judge without issuing notice to the accused. As referred to above, the accused petitioner cannot take benefit of provisions of Section 401(2) Cr.P.C. as it could not be said that any order to the prejudice or against the petitioner had been passed by the learned Sessions Judge. On the other hand, the order, - vide which the complaint was dismissed for want of prosecution was set aside by the learned Sessions Judge. If the case of the accused petitioner was not covered under Section 401(2) Cr.P.C., it was not at all necessary for the learned Sessions Judge to have heard the accused petitioner while setting aside the order of the learned Magistrate in view of the provisions of Section 403 Cr.P.C. Even otherwise in view of the proviso to Section 398 Cr.P.C. only the person who was discharged had a right to be heard

> before the order of discharge could be set aside in revision by the Court of Sessions in exercise of its revisional jurisdiction. In this view of the matter, in my opinion, the contention of the learned counsel for the accused petitioner that the order passed by the learned Sessions Judge was liable to be set aside only on the ground that the accused petitioner was not heard, could not be sustained."

44. In *Tata Motors Limited,* Single Judge of the High Court was concerned with controversy arising out of complaint which was dismissed by the Metropolitan Magistrate under Section 203 of the Code in *limine.* In the revision petition filed under Section 397 read with Section 401 and Section 482 of the Code, it was contended on behalf of the complainant that the Metropolitan Magistrate erred in taking into consideration possible defence of the accused instead of ascertaining whether on a consideration of the complaint and the pre-summoning evidence, a prima facie case had been made out for summoning the accused for the offence mentioned in the complaint. It was also argued on behalf of the complainant before the High Court that the accused persons have not yet been summoned and even cognizance of the case has not been taken by the Metropolitan Magistrate and, therefore, there was no occasion at all for the accused persons to be heard. It was also argued on behalf of the complainant that at the pre-cognizance stage, there was no question of the accused being given an opportunity even in a revision petition filed by the complainant against the order of dismissal of complaint. On the contrary, on behalf of the accused persons it was argued that under

Section 401(2) of the Code, if adverse order is going to be passed in revision petition which might prejudice either the accused or any other person then such a person has to be mandatorily given an opportunity of being heard either personally or by pleader in defence. The Single Judge of that Court on consideration of the submissions of the parties and the decisions cited before him culled out the legal position as follows :

> "20. xxx xxx xxx
>
> (1) There is a distinction to be drawn between the criminal complaint cases which are at the pre-cognizance stage and those at the post-cognizance stage. There is a further distinction to be drawn between the cases at the post-cognizance but pre-summoning stage and those at the post-summoning stage.
>
> (2) It is only at the post-summoning stage that the respondents in a criminal complaint would answer the description of an 'accused'. Till then they are like any other member of the public. Therefore at the pre-summoning stage the question of their right to be heard in a revision petition by the complainant in their capacity as "accused" in terms of Section 401(2) CrPC does not arise.
>
> (3) At the post-cognizance but pre-summoning stage, a person against whom the complaint is filed might have a right to be heard under the rubric of 'other person' under Section 401(2) CrPC. If the learned MM has not taken the cognizance of the offence then no right whatsoever accrues to such "other person" to be heard in a revision petition.
>
> (4) Further, it is not that in every revision petition filed by the complainant under Section 401(2) CrPC, a right of hearing has to be given to such "other person" or the accused against whom the criminal complaint has been filed. The right accrues only if the order to

> be passed in the revision petition is prejudicial to such person or the accused. An order giving a specific direction to the learned MM to either proceed with the case either at the post-cognizance or post-summoning stage or a direction to register an FIR with a direction to the learned MM to proceed thereafter might be orders prejudicial to the respondents in a criminal complaint which would therefore require them to be heard prior, to the passing of such order."

45. On facts obtaining in the case, the Single Judge observed that the Metropolitan Magistrate had not even taken cognizance of the offences and, therefore, there was no question of the applicants being heard at the stage of revision application.

46. The above decision of the Delhi High Court in *Tata Motors Limited* came up for consideration of that Court in *Prakash Devi and others* v. *State of Delhi and another* [Criminal Miscellaneous Case No. 2626/2009 decided on February 5, 2010]. The Single Judge, on facts of the case which were under consideration before him, observed that the Magistrate had dismissed the complaint filed by the complainant after taking into consideration the status report filed by the police. The Magistrate had not examined the complainant and other witnesses under Section 202 of the Code and in the revision filed by the complainant the revisional court had remanded the matter to the Magistrate to grant another opportunity to the complainant to lead pre-summoning evidence and to proceed in the matter in accordance with law and, therefore, there

was no occasion for the Sessions Judge to accord hearing to the accused persons. The High Court held as under:

> "16. …….As already discussed above, the character of the petitioner was still not that of an accused as the complaint filed by the respondent was dismissed under Section 203 Cr.P.C. and since the matter was remanded back to the Magistrate to grant opportunity to the complainant to lead pre-summoning evidence, therefore, the said order does not cause any prejudice to the rights of the petitioner. Even after the said remand, the fate of the complaint case could either be dismissal under Section 203 or under 204 Cr.P.C., if the Court with the fresh material before it, comes to the conclusion to proceed against the respondent. Since in the present case the process was not yet issued against the petitioner and the complaint was dismissed under S. 203 of Cr.P.C., therefore, preceding the said stage, the petitioner had no right to seek opportunity of hearing before the Revisional Court in the light of the legal position discussed above."

47. It may not be out of place to refer to an earlier decision of the Delhi High Court in *A.S. Puri* v. *K.L. Ahuja*[24]. In that case, inter alia, the question before the High Court was whether Additional Sessions Judge had committed an error in hearing the arguments of the accused's counsel to whom he had not ordered notice of the revision petition filed before him by the complainant. The Single Judge of that Court dealt with the question as under :

> "25. …..This question need not detain us because the learned Additional Sessions Judge had invited the

[24] AIR 1970 Delhi 214

> counsel for Mr. Puri to address arguments, when he was present in Court at the time of the hearing of the revision petition. It appears that notice of the revision petition did go to Mr. Puri but as it appears from the docket the learned Additional Sessions Judge had only ordered notice to the respondent, which was the State. If even by any error committed by the Officer of the learned Magistrate, notice had also gone to Mr. Puri nothing prevented the learned Additional Sessions Judge from hearing Mr. Puri for it was his discretion to hear him. A Full Bench of the Calcutta High Court, consisting of eight Judges, pointed out in Hari Dass Sanyal v. Saritulla, (1888) ILR 15 Cal 608 (FB), that while no notice to an accused person was necessary in point of law before disposing of a revision petition directed against the order of dismissal under Section 203, Criminal Procedure Code and ordering a further enquiry as a matter of discretion it was proper that such a notice was given. In spite of that the learned Additional Sessions Judge had set aside the order of dismissal. In this situation the complainant cannot make any further grievance of this."

48. The legal position is fairly well-settled that in the proceedings under Section 202 of the Code the accused/suspect is not entitled to be heard on the question whether the process should be issued against him or not. As a matter of law, upto the stage of issuance of process, the accused cannot claim any right of hearing. Section 202 contemplates postponement of issue of process where the Magistrate is of an opinion that further inquiry into the complaint either by himself is required and he proceeds with the further inquiry or directs an investigation to be made by a Police Officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. If the

Magistrate finds that there is no sufficient ground for proceeding with the complaint and dismisses the complaint under Section 203 of the Code, the question is whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant against the order of the dismissal of the complaint. The Parliament being alive to the legal position that the accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process under Section 204, yet in Section 401(2) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence. Three expressions, "prejudice", "other person" and "in his own defence" in Section 401(2) are significant for understanding their true scope, ambit and width. Black's Law Dictionary [Eighth Edition] explains "prejudice" to mean damage or detriment to one's legal rights or claims. Concise Oxford English Dictionary [Tenth Edition, Revised] defines "prejudice" as under :

> "1. Preconceived opinion that is not based on reason or actual experience. > unjust behaviour formed on such a basis. 2. harm or injury that results or may result from some action or judgment. v.1 give rise to prejudice in (someone); make biased. 2. cause harm to (a state of affairs)".

49. Webster Comprehensive Dictionary [International Edition] explains “prejudice” to mean (i) a judgment or opinion, favourable or unfavourable, formed beforehand or without due examination …….; detriment arising from a hasty and unfair judgment; injury; harm.

50. P. Ramanatha Aiyar; the Law Lexicon [The Encyclopaedic Law Dictionary] explains “prejudice” to mean injurious effect, injury to or impairment of a right, claim, statement etc.

51. “Prejudice” is generally defined as meaning “to the harm, to the injury, to the disadvantage of someone”. It also means injury or loss.

52. The expression “other person” in the context of Section 401(2) means a person other than accused. It includes suspects or the persons alleged in the complaint to have been involved in an offence although they may not be termed as accused at a stage before issuance of process.

53. The expression “in his own defence” comprehends, inter alia, for the purposes of Section 401(2), in defence of the order which is under challenge in revision before the Sessions Judge or the High Court.

54. In a 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 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 crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or Sessions Judge, 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 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.

55. In *P. Sundarrajan*[1], a two-Judge Bench of this Court was concerned with a case where a complaint under Section 420 IPC came to be dismissed by the Judicial Magistrate. Against the order of dismissal of the complaint, the complainant preferred revision petition before the High Court. The High Court was of the view that no notice was necessary to the suspects for disposal of the revision and set aside the order of the Magistrate and directed the Magistrate to proceed with the complaint afresh in accordance with law. Against the order of the High Court, the suspects approached this Court under Article 136. The Court granted leave and allowed the appeal, set aside the order of the High Court and sent the matter back to the High Court with a direction to issue proper notice to the persons accused of the crime in the complaint and proceed with the revision petition after affording them a reasonable opportunity of hearing. This Court in paragraphs 5 and 6 of the Report (Pg. 472 and 473) held as under:

> **"**5. In our opinion, this order of the High Court is ex facie unsustainable in law by not giving an opportunity to the appellant herein to defend his case that the learned Judge violated all principles of natural justice as also the requirement of law of hearing a party before passing an adverse order.
>
> 6. We have, therefore, no hesitation in allowing this appeal, setting aside the impugned judgment and remanding the matter to the High Court to issue proper notice to the appellant herein who is the respondent in the criminal revision petition before it and afford him a reasonable opportunity of hearing and to pass appropriate orders. The appeal is allowed."

56. In *Raghu Raj Singh Rousha*[2], a two-Judge Bench of this Court was faced with a question whether, in the facts and circumstances of the case, the High Court in exercise of its jurisdiction under Sections 397 and 401 of the Code was justified in passing an order in the absence of the accused persons. That was a case where a complaint was filed under Section 200 of the Code in respect of offences punishable under Sections 323, 382, 420, 465, 468, 471, 120-B, 506 and 34 of IPC. Along with the complaint, an application under Section 156(3) was also made. The Metropolitan Magistrate passed an order refusing to direct investigation under Section 156(3) and the complainant was asked to lead pre-summoning evidence. The complainant aggrieved by the order of the Metropolitan Magistrate filed a revision petition before the High Court. The High Court with the consent of the APP appearing for the State set aside the order of the Metropolitan Magistrate with a direction to him to examine

the matter afresh after calling for a report from the police authorities. It is from this order that the matter reached this Court at the instance of the suspect/accused. The Court observed that if the Metropolitan Magistrate had taken cognizance of the offence and issuance of summons upon the accused persons had been merely postponed, in a criminal revision filed on behalf of complainant, the accused was entitled to be heard before the High Court. Sections 397, 399 and 401 were noticed by this Court and so also few earlier decisions including *Chandra Deo Singh*[7], *Vadilal Panchal*[14], *P. Sundarrajan*[1] and then in paragraphs 22 and 23 (Pg. 369) of the Report, the Court held as under :

> "22. Here, however, the learned Magistrate had taken cognizance. He had applied his mind. He refused to exercise his jurisdiction under Section 156(3) of the Code. He arrived at a conclusion that the dispute is a private dispute in relation to an immovable property and, thus, police investigation is not necessary. It was only with that intent in view, he directed examination of the complainant and his witnesses so as to initiate and complete the procedure laid down under Chapter XV of the Code.
>
> 23. We, therefore, are of the opinion that the impugned judgment cannot be sustained and is set aside accordingly. The High Court shall implead the appellant as a party in the criminal revision application, hear the matter afresh and pass an appropriate order."

57. In a comparatively recent order in *A. N. Santhanam*[3], a two-Judge Bench of this Court was concerned with a question, whether the

High Court committed an error in disposing of the criminal revision petition filed by the complainant without any notice to the accused. On behalf of the accused/suspect, it was argued that the High Court committed the error in disposing of the criminal revision without any notice to him. On the other hand, on behalf of the complainant it was argued that no notice as such was required to be issued to the accused as it was at the stage of taking cognizance. The Court considered Section 401, particularly, sub-section (2) thereof and held as under :

> "A plain reading of Clause (2) of the said provision makes it abundantly clear that the High Court in exercise of its revisional power cannot pass any order which may cause prejudice to the accused or other persons unless he has an opportunity of being heard either personally or by pleader in his own defence.
>
> In the instant case it cannot be said that the rights of the appellant have not been affected by the order of revision. The complaint filed by the respondent which was rejected for whatsoever reasons has been resurrected with a direction to the Magistrate to proceed with the complaint. Undoubtedly, whether the appellant herein was an accused or not but his right has been affected and the impugned order has resulted in causing prejudice to him.
>
> In the circumstances, we are of the view that the decision cited by the learned counsel for the respondent has no application whatsoever to the facts situation. In fact the decision of this Court was in a case where the complaint was taken cognizance and not a case where the compliant was rejected. In the circumstances, we hold that the High Court committed an error in allowing the revision filed by the respondent herein without any notice to the appellant.

> For the aforesaid reasons, the impugned order is set aside and the Criminal Revision Case No. 1045 of 2003 shall stand restored to its file for hearing and disposal on merits after notice to the appellant herein."

58. We are in complete agreement with the view expressed by this Court in *P. Sundarrajan*[1] , *Raghu Raj Singh Rousha*[2] and *A. N. Santhanam*[3] . We hold, as it must be, 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 Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 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 Section 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. This is a plain requirement of Section 401(2) of the Code. If the revisional court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed crime have, however, no right to participate in the proceedings nor they are entitled to any hearing

of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled.

59. In view of the above position, the impugned order dated 5.8.2005 cannot be sustained and is liable to be set aside and, is set aside. The appellants' application for impleadment in the criminal revision petition stands allowed. High Court shall now hear the matter and dispose of the criminal revision petition in accordance with law. The appeal is allowed as above.

…….J.
(R.M. Lodha)

…….J.
(Chandramauli Kr. Prasad)

…….J.
(Sudhansu Jyoti Mukhopadhaya)

NEW DELHI.
OCTOBER 1, 2012.