



2. Learned counsel for the appellant submits that respondent no.1 filed a complaint under Section 156(3) Cr.P.C. alleging offences under Sections 420, 467, 468, 120-B, 114 and 34 of the Indian Penal Code. The Magistrate called for a report from the police. The police, after investigation submitted report that the allegations were false. Notice was issued to the complainant, who then filed a protest petition seeking an order of cognizance and issuance of process. The Magistrate, after hearing the respondent and not being satisfied dismissed the complaint. Aggrieved, the complainant preferred a criminal revision before the Additional Sessions Judge in which the appellant was impleaded as a party respondent. No notice was issued to the appellant. The revision application was allowed and the matter remanded to the Magistrate. Relying upon Sections 399 and 401(2) Cr.P.C, it was submitted that no order to the prejudice of the appellant could have been passed without hearing him after dismissal of the complaint. The Additional Sessions Judge erred in passing the remand order in exercise of revisional jurisdiction placing reliance on Section 398 Cr.P.C. to direct further

investigation by the Magistrate. The High Court further erred in holding that no opportunity of hearing was required under Section 398 Cr.P.C. if the direction for further inquiry was being passed after dismissal of the complaint as opposed to a discharge. Effectively, the complaint case was therefore restored to the prejudice of the appellant. Reliance was placed on ***Manharibhai Muljibhai Kakadia and another vs. Shaileshbhai Mohanbhai Patel and others***, 2012 (10) SCC 517.

3. Learned counsel for respondent no.1 submitted that the dismissal of the application under Section 156(3) Cr.P.C. at the pre-cognizance stage, does not vest any right in the accused to be heard at the stage of remand in revision for further inquiry. Merely because the Magistrate may have called for a police report, it does not tantamount to taking cognizance. There has been no dismissal of the complaint under Section 203 Cr.P.C., entitling the appellant to be heard in the revisional jurisdiction.

4. We have considered the submissions on behalf of the parties. The complaint filed by respondent no.1 before the Magistrate under Section 156(3) Cr.P.C. alleged that by cheating and forging his signatures on blank papers, he had been shown as the sole proprietor of M/s Shivam Wines, when in fact he was a partner and his resignation from the partnership had also been forged. Consequentially, in the recovery suit filed by the Bank leading to the grant of recovery certificate, his private property came to be auctioned.

5. The Magistrate, under Section 156(3) Cr.P.C. directed the police to register a criminal case, investigate and submit police report in 90 days. The police after investigation submitted a report dated 05.04.2006 under Section 173(2) that the accusations were false. The Magistrate did not consider it necessary to proceed under Section 173(8) and issued notice to the complainant as to why the final report by the police be not accepted. The respondent filed a protest petition which was registered as a complaint case.

The Magistrate, after hearing the respondent, and not being satisfied, dismissed the complaint under Section 203 Cr.P.C. on 13.07.2006. It was therefore not a rejection of an application under Section 156(3) Cr.P.C. as was sought to be urged on behalf of the respondent. The Additional Sessions Judge, in a revision preferred by the respondent against the dismissal of his complaint, set aside the dismissal order on 08.10.2007, effectively restoring the complaint case arising out of a protest petition and directed further inquiry by the Magistrate. The High Court declined to interfere with the order.

6. In **B. Chandrika vs. Santhosh**, (2014) 13 SCC 699, this Court observed as follows:

“5. The power of the Magistrate to take cognizance of an offence on a complaint or a protest petition on the same or similar allegations even after accepting the final report, cannot be disputed. It is settled law that when a complaint is filed and sent to police under Section 156(3) for investigation and then a protest petition is filed, the Magistrate after accepting the final report of the police under Section 173 and discharging the accused persons has the power to deal with the protest petition. However, the protest petition has to satisfy the

ingredients of complaint before the Magistrate takes cognizance under Section 190(1)(a) CrPC.”

7. The restoration of the complaint by the Additional Sessions Judge was undoubtedly to the prejudice of the appellant. The right of the appellant to be heard at this stage need not detain us any further in view of **Manharibhai** (supra) observing as follows:

“53.. . . We hold, as it must be, that in a revision petition preferred by the 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 the crime is entitled to hearing by the Revisional Court. In other words, where the 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 the crime have, however, no right to

participate in the proceedings nor are they 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.”

8. The impugned orders dated 6.03.2009 and 08.10.2007 are held to be unsustainable in their present form. They are therefore set aside. The matter is remanded to the Additional Sessions Judge, Greater Mumbai to hear the revision application afresh after notice to the appellant also and then pass a fresh reasoned and speaking order to his satisfaction. The appeal is allowed.

.....**J.**  
**(NAVIN SINHA)**

.....**J.**  
**(INDIRA BANERJEE)**

New Delhi,  
June 18, 2020