A PRABHA MATHUR & ANR.

v.

PRAMOD AGGARWAL & ORS.

(Criminal Appeal No.1532 of 2008)

SEPTEMBER 26, 2008

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[C.K. THAKKER AND D.K. JAIN, JJ.]

Writ petition – Disposal of – Notice and opportunity of hearing – Requirement of – Complaint of cheating against appellants – Dismissal of, by Trial Court and Sessions Judge – Complainant filing writ petition – High Court allowing writ petition without issuing notice to appellants and without affording opportunity of hearing – Propriety of – Held: Not proper – High Court arrived at a finding as to mens rea on part of appellants which could not be arrived at without issuing notice to appellants and without affording opportunity of hearing – Moreso, when appellants were joined as respondents in writ petitions – In any event, in accordance with Rule 2 of Chapter XXII of Allahabad High Court Rules, 1952, notice was required to be issued to appellants before hearing and deciding writ petitions – Allahabad High Court Rules, 1952 – Chapter XXII – Rule 2 – Penal Code, 1860 – ss.420, 467, 468 and 471 r.w. ss.34 and 120B – Principles of natural justice – Administrative Law.

Prosecution case was that the complainants were in the business of sale and purchase of property. They contacted appellants for purchase of property owned by appellants. The appellants sold the property to the complainant and received payment from complainants. However, appellants did not come to the office of Sub-Registrar for registration of sale deeds as was agreed between them. Thereupon, a complaint case was filed against appellants under ss.420, 467, 468 and 471 r.w. ss.34 and 120B IPC. Chief Judicial Magistrate dismissed the com-

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plaint holding that the case was civil in nature. This order was upheld in revision petitions. The complainants filed writ petitions before High Court. High Court without issuing notice to the appellants and without affording opportunity of hearing allowed the writ petitions and remanded the matter to Chief Judicial Magistrate with direction to make further enquiry in the matter. Hence the present appeal.

Disposing of the appeal and remitting the matter to High court, the Court

HELD: 1.1 It is no doubt true that the accused has no *locus standi* at the stage of investigation and he cannot insist for hearing before process is issued against him. At the most, an accused may remain present with a view to be informed as to what is going on and nothing more. It is equally correct that if a person has no *locus standi* or right of hearing, such right does not accrue in his favour by an indirect process. On the facts and in the circumstances of the case, however, High Court ought to have issued notice and afforded hearing before passing the impugned order in writ-petitions. Both the Courts decided the case in favour of the appellants and the complaint was dismissed. The complainants approached the High Court by joining appellants as respondents. The writ petitions were not dismissed *in limine*. In accordance with Rule 2 of Chapter XXII of the Allahabad High Court Rules, 1952, notices ought to have been issued to the appellants before the writ petitions were heard and finally decided. But even otherwise, issuance of such notice to the appellants was necessary and was in consonance with the principles of natural justice and fair play. From the record it is clear that the present appellants were arrayed as respondents in the writ petitions and yet the High Court did not think it appropriate to observe natural justice. [Paras 16-19, 24] [1093,B; 1093,C-F; 1095,D]

A *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi & Ors.* **(1976) 3 SCC 736**; *Chandru Deo Singh v. Prokash Chandra Bose & Anr.* **(1964) 1 SCR 639** and in *Shashi Jena & Ors. v. Khadal Swain & Anr.* **AIR (2004) 4 SCC 236 – referred to.**

B **1.2. Even on merits, the impugned order of the High Court is not sustainable. The High Court made certain observations against the appellants which prejudicially and adversely affected them. High Court had given** *"anxious consideration"* **to the matter and it found that there was** C **no question of not executing the sale deed according to the schedule or prescribed conditions by the appellants, but it reflected** *"criminal intention"*. **It further observed that had the accused not induced the complainants to purchase the property, the latter would not have parted with** D **huge amount and it was a** *"clear case of cheating"*. **The finding as to** *mens rea* **on the part of the appellants and that 'clear case of cheating' being made out, could not have been arrived at without issuing notice to the appellants and without affording opportunity of being heard. Though** E **final direction to the trial Court is to hold further inquiry and to make an appropriate order, in view of earlier portion in the judgment** *probably*, **no option has been left with the trial Court, but to issue process. It is thus a case of** *fait accompli*. **[Paras 20, 22, 23] [1093,G; 1094, F-G; 1095,B-C]**

F **Case Law Reference**

(1976) 3 SCC 736	**referred to**	**Para 16**
(1964) 1 SCR 639	**referred to**	**Para 16**
AIR (2004) 4 SCC 236	**referred to**	**Para 16**

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1532 of 2008

From the final Judgment and Order dated 26.09.2006 of the High Court of Judicature at Allahabad in Criminal Misc. Writ H Petition Nos. 9952 & 9953 of 2006

Dr. Rajeev Dhawan, Apoorva Karol and R.S. Suri for the Appellants. A

S.G. Hasnain, Pramod Swarup, Sandeep Singh and Anuvrat Sharma for the Respondents.

The Judgment of the Court was delivered by B

C.K. THAKKER, J. 1. Leave granted.

2. The present appeal is directed against the judgment and order dated September 26, 2006 passed by the High Court of Judicature at Allahabad in Criminal Writ Petition Nos. 9952-53 of 2006. By the said order, the High Court set aside the order dated July 16, 2005, passed by the Special Chief Judicial Magistrate, Agra and confirmed by the Additional Sessions Judge, Agra on July 29, 2006 dismissing the complaint filed by the complainants against the accused for offences punishable under Sections 420, 467, 468, 471 read with Sections 34 and 120B, Indian Penal Code, 1860. The High Court remanded the matter to the trial Court with a direction to make further inquiry in the matter and to pass an appropriate order in accordance with law. C D E

3. Brief facts giving rise to the present appeal are that Pramod Kumar Aggarwal and Smt. Taruna Aggarwal, wife of Pramod Kumar Aggarwal (hereinafter referred to as 'the complainants') are in the business of sale and purchase of property. It was the case of the complainants that they contacted the appellants herein for purchase of the property from the appellants since appellants were having share in the property situated at village Nagla Padi Muhai Beni Prasad Tehsil, District Agra in front of Civil Court, Agra which was a joint family property. The complainants apprised the appellants-herein that they were interested in purchasing share of the property owned by the appellants. They were also to purchase the remaining property from other co-owners. According to the complainants, the appellants sold their shares in the property to the complainants. Payment was made by the complainants to the appellants. It F G H

A was the allegation of the complainants that it was agreed between the parties that sale-deeds would be executed by the appellants in favour of purchasers. Sale-deeds were also drafted. The appellants, however, did not come to the office of Sub-Registrar, Agra for registration of sale-deeds. The appel-
B lants induced the complainants, gave false assurances and cheated them. Thereby the appellants committed offences punishable under Sections 420, 467, 468 and 471 read with Sections 34 and 120B of the Indian Penal Code (IPC). A complaint was, therefore, filed by the complainants in the Court of Special
C Chief Judicial Magistrate, Agra, being Complaint Case No. 1962 of 2003. The learned Magistrate after recording statements of witnesses, examining documents produced by the complainants and perusing inquiry report submitted by the Police held that the entire case was of a civil nature. There was, therefore, no justification for initiating criminal proceedings. He, ac-
D cordingly, dismissed the complaint.

4. Being aggrieved by the above order, the complainants approached the revisional Court by filing revisions being Criminal Revision Nos. 235-36 of 2005. The Additional Sessions
E Judge again considered the relevant record, heard the arguments of both the parties and held that no error was committed by the trial Court in dismissing the complaint and the revision petitions were liable to be dismissed. Accordingly, both the revisions were dismissed by the Additional Sessions Judge,
F Agra.

5. The complainants in view of dismissal of complaints and revisions challenged those orders by instituting Criminal Writ Petition Nos. 9952-53 of 2006 in the High Court of Judicature at Allahabad.

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6. The High Court without issuing notice to the appellants herein and without affording opportunity of being heard, allowed both the writ petitions, set aside the order passed by the trial court and confirmed by the revisional court and remanded the matter to the learned Magistrate with a direction to make fur-
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ther inquiry in the matter and to pass an appropriate order in accordance with law. The said order is challenged by the appellants herein. A

7. On March 08, 2007, notice was issued and further proceedings were stayed. In the said order, it was indicated that the notice will state as to why the petition should not be disposed of at the SLP stage by setting aside the order of the High Court and by remitting it for fresh disposal in accordance with law. B

8. Affidavits and further affidavits were thereafter filed. The Registry was directed to place the matter for final disposal on a non-miscellaneous day and that is how the matter has been placed before us. C

9. We have heard the learned counsel for the parties.

10. The learned counsel for the appellants contended that the order passed by the High Court deserves to be quashed and set aside on the ground that the order was not in consonance with principles of natural justice and fair play. It was submitted that complaints were filed against the appellants. Serious allegations were leveled against them that they had committed certain offences punishable under the Indian Penal Code (IPC). The appellants convinced the Court that the entire transaction was in the nature of civil dispute between the parties and criminal proceedings could not have been initiated. After applying mind and considering the relevant material on record, the trial Court was satisfied that no complaint could have been filed against the appellants. Accordingly, the complaint was dismissed. The said order was confirmed in revision by the Additional Sessions Judge. The High Court could not have set aside the order passed by the Courts below without issuing notice and affording opportunity of hearing to the appellants. The order passed in the writ petitions in violation of principles of natural justice deserves to be set aside. D E F G

11. It was also submitted that under the Allahabad High Court Rules, 1952, ('Rules' for short), when any person is joined H

A as respondent in a writ petition, notice must be issued to such person if the Court does not reject the petition. In the instant case, both the Courts decided in favour of the appellants and the complaint filed by the complainants was dismissed. Even if the High Court felt that the orders passed by the Courts below
B were not in consonance with law, it was incumbent on the High Court to issue notice to the appellants and only thereafter an appropriate order could have been passed. Only on that ground, the impugned order deserves to be set aside.

12. It was also submitted that even on merits, the order
C passed by the High Court is not sustainable.

13. The learned counsel for the complainants supported the order passed by the High Court and the directions issued therein. It was submitted that whatever might have been stated
D by the High Court in the course of deciding writ petitions, the final direction to the trial Court is to make further inquiry and to pass an appropriate order. Such direction could not be said to be contrary to law.

14. Regarding notice and hearing, the counsel submitted
E that under the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), an accused has no *locus standi* till summons or process is issued to him. It is not in dispute that no summons has been issued to the appellants so far. Even the High Court has also not directed the trial Court to issue sum-
F mons to the appellants and hence, there is no question of giving notice or affording hearing to the appellants. It is only after the trial Court issues summons or process that the appellants may challenge the said action by taking appropriate proceedings known to law. At this stage, however, appellants cannot be
G heard to make grievance of absence of hearing. Upholding of such contention would indirectly give the appellants *locus standi* unknown to the Code. It was, therefore, submitted that the appeal deserve to be dismissed.

15. The learned counsel for the State supported the argu-
H ments advanced by the learned counsel for the complainants.

16. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be allowed. It is no doubt true, as held by this Court in *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi & Ors.*, (1976) 3 SCC 736 and reiterated in several other cases that the accused has no *locus standi* at the stage of investigation and he cannot insist for hearing before process is issued against him. It was also held in *Chandru Deo Singh v. Prokash Chandra Bose & Anr.*, (1964) 1 SCR 639 and in *Shashi Jena & Ors. v. Khadal Swain & Anr.*, AIR (2004) 4 SCC 236 that at the most, an accused may remain present with a view to be informed as to what is going on and nothing more. It is equally correct that if a person has no *locus standi* or right of hearing, such right does not accrue in his favour by an indirect process.

17. On the facts and in the circumstances of the case, however, in our opinion, submission of the learned counsel for the appellants is well-founded that the High Court ought to have issued notice and afforded hearing before passing the impugned order in writ-petitions.

18. We have already noted that both the Courts decided the case in favour of the appellants and the complaint was dismissed. The complaints approached the High Court by joining appellants as respondents. The writ petitions were not dismissed *in limine.* In accordance with Rule 2 of Chapter XXII of the Rules, notices ought to have been issued to the appellants before the writ petitions were heard and finally decided.

19. But even otherwise, issuance of such notice to the appellants was necessary and was in consonance with the principles of natural justice and fair play.

20. Even on merits, the impugned order of the High Court is not sustainable. The High Court made certain observations against the appellants which have prejudicially and adversely affected them.

21. In this connection, learned counsel for the appellants

A invited our attention to the following portion of the judgment of the High Court;

> "The Court of Special Chief Judicial Magistrate, Agra dismissed the said complaint holding that simply because the deed was not executed according to the scheduled
B conditions no penal offence is made out. The Revisional Court also cited certain authorities and ultimately dismissed the Revision. I have given my anxious consideration to the matter and I find that this is not a question of not executing the sale deed according to the
C schedule or prescribed conditions, but *it shows the criminal intention of the opposite parties who obtained the money by way of case and Bank draft an did not execute the sale deed. Had the opposite parties not induced the complainant to purchase the property, the*
D *complainant would not have parted with this huge amount which is a clear case of cheating*. Thus, the order of the Special Chief Judicial Magistrate, Agra and that of Revisional Court are devoid of any force. The order dated 16.7.2005 passed by Special Chief Judicial Magistrate,
E Agra and the order dated 29.7.2006 passed by Revisional Court in Criminal Revision No. 235/05 and in Criminal Revision No. 236/05 are liable to be set aside".
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> (emphasis supplied)

F 22. Bare reading of the above paragraph shows that the High Court had given "*anxious consideration*" to the matter and it found that there was no question of not executing the sale deed according to the schedule or prescribed conditions by the appellants herein, but it reflected *"criminal intention"*. It was
G further observed that had the accused not induced the complainants to purchase the property, the latter would not have parted with huge amount. It was thus a "*clear case of cheating*". In view of above findings, the High Court observed that the Special Chief Judicial Magistrate and Additional Sessions Judge
H were not right in dismissing the complaints and the orders

passed by them were liable to be set aside. Accordingly, both the orders were set aside by the High Court and direction was issued to the trial court to make further inquiry and pass appropriate order. A

23. We see considerable force in the argument of the learned counsel for the appellants that the above finding as to *mens rea* on the part of the appellants and that 'clear case of cheating' being made out, could not have been arrived at without issuing notice to the appellants and without affording opportunity of being heard. The counsel is also right in submitting that though final direction to the trial Court is to hold further inquiry and to make an appropriate order, in view of earlier portion in the judgment *probably,* no option has been left with the trial Court, but to issue process. It is thus a case of *fait accompli.* B C D

24. From the record it is clear that the present appellants were arrayed as respondents in the writ petitions and yet the High Court did not think it appropriate to observe natural justice. In our opinion, the High Court could not have set aside the judgments of Courts below and could not have made the aforesaid observations. E

25. Hence, without entering into larger question and expressing any opinion one way or the other as to the right of the accused of claiming hearing before issuance of process/summons, on the facts and in the circumstances of the case, the impugned order passed by the High Court deserves to be set aside and is, accordingly, set aside. F

26. For the foregoing reasons, the impugned order passed by the High Court is set aside and the matter is remitted to the High Court. The High Court will issue notice to the appellants herein, afford them opportunity of hearing and pass an appropriate order in accordance with law. G

27. Before parting with the matter, we may state that we may not be understood to have expressed any opinion one way H

A or the other so far as merits are concerned. As and when the High Court will hear the matter, it will decide the writ petitions without being influenced by any observations made by it in the impugned order or by us in this judgment.

28. Ordered accordingly.

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D.G. Appeal disposed of.