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RAMESHAN P.O. & ORS.

v.

RAKESH KUMAR YADAV & ANR.
(Criminal Appeal No. 760 of 2009)

B

APRIL 17, 2009

[ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ.]

C

Code of Criminal Procedure, 1973 - ss. 397/401 - Revision - Maintainability of - complaint u/s. 156(3) - Magistrate directing registration of FIR - Revision by accused before Sessions Judge - Operation of the impugned order stayed - Revision by complainant before High Court - High Court passing the order, without issuing notice to the accused, holding that accused of a cognizable offence cannot file

D

revision before registration of FIR as the order u/s. 156(3) is an administrative order - On appeal, plea that matter since closed by court conclusively, accused was required to be heard on the question of maintainability of the revision - Mater remitted to High Court.

E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 760 of 2009.

From the Judgment & Order dated 15.12.2007 of the High Court of Judicature of Allahabad in CrI. Revision No. 435/2007.

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KTS Tulsı, Bharat Sangal, Mrinalini Oinam and Varnika Tomar for the Appellants.

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Arup Banerjee, R. Shekhar, R.K. Dey, R.K. Srivastava, for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

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2. Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court who allowed the application filed in terms of Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short the 'Code') assailing the order passed by learned Sessions Judge, Jaunpur. The primary stand taken in this appeal is that the revision petition was allowed and disposed of even without issuance of notice to the present appellants.

3. Background facts in a nutshell are as follows:

The appellants filed for revision before the learned Sessions Judge, Jaunpur questioning correctness of the order passed under Section 156(3) of the Code. Learned Single Judge held that no person who is accused of a cognizable offence can file for revision before registration of FIR against him since the order under Section 156(3) of Code is an administrative order at a pre cognizance stage under Chapter XII of Code.

4. It is submitted that the revision petition had been filed by the present respondents. If the High Court was of the view that the order of learned Sessions Judge was indefensible it ought to have granted an opportunity to the present appellants to have their say in the matter. The learned Single Judge closed the issues conclusively by holding that the revision petition was not maintainable. If that was the view the learned Single Judge ought to have given a notice to the present appellants to show that the revision was maintainable. By disposing of the application without issuance of notice to the present appellants, they are prejudiced and the impugned order cannot be sustained in law.

5. Learned counsel for the respondents on the other hand submitted that at the cognizance stage no notice need be given to the accused. Since the order was passed in favour of the present appellants, same ought not to have been set aside

A without issuance of notice to them.

B 6. In the circumstances, we set aside the impugned order and remit the matter to the High Court. Let the parties appear without further notice on 22.4.2009. We make it clear that we have expressed no opinion on the merits of the case. Until the disposal of the matter by the High Court the proceedings before the trial Court shall remain stayed.

7. The appeal is disposed of accordingly.

K.K.T.

Appeal disposed of.