(15) The decision of the Bomaby High Court in *Central Bank of India* Vs. *Madalsa International Ltd. and others* (supra) has been over-ruled by the Supreme Court in *Patheja Bros. Forgings & Stamping and another* vs. *ICICI Ltd.* (6) and, therefore, the respondents cannot derive any benefit from that decision.

(16) On the basis of the above discussion, we hold that during the pendency of the enquiry under the 1985 Act, respondents 1 to 4 cannot use any coercive method to recover the dues of tax from the petitioner in pursuance of the notices Annexures P/8, P/9, P/12 and P/14.

(17) Hence, the writ petition is allowed. the impunged notices are declared illegal and respondents 1 to 4 are restrained from making recovery in pursuance thereof. However, we give liberty to the said respondents to make an application before the BIFR for grant of permission to make recovery of the dues of tax under the 1948 Act and the 1956 Act.

(18) Copy of the order be given dasti on payment of fee prescribed for urgent applications.

R. N. R.

Before V.M. Jain, J

GURDEEP SINGH—*Petitioner*

versus

STATE OF HARYANA—*Respondent*

Crl. M. No. 47596/M of 2000

22nd January, 2001

Code of Criminal Procedure, 1973—Ss. 398, 401(2) and 403—C.J.M. dismissing Criminal complaint filed by the State at the initial stage for want of prosecution—Sessions Judge setting aside the order of dismissal without issuing notice to the accused—Whether violative of principles of natural justice—Held, no—A person who has not even put in appearance in the Court as an accused has no locus standi to be heard by the Court while setting aside the order of dismissal.

(6) 2000 (6) SCC 545

Held, that the complaint filed by complainant was dismissed for want of prosecution even before the accused could be summoned. Aggrieved against the said order passed by the Magistrate the complainant had filed revision petition before the Sessions Judge. The learned Sessions Judge set aside the order of the learned Magistrate,—*vide* which the complaint was dimissed for want of prosecution and the case was sent back to the learned Magistrate for proceeding further in the matter in accordance with law. The accused cannot 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. The accused 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 accused had been passed by the learned Sessions Judge.

(Para 14)

Gorakh Nath, *Advocate for the Petitioner*

None *for the Respondent*

JUDGMENT

(1) This is a petition under Section 482 Cr. P. C. filed by the accused petitioner, seeking quashment of the order dated 6th September, 1999 passed by the Sessions Judge, Sirsa setting aside the order dated 14th October, 1998 passed by the Chief Judicial Magistrate, Sirsa *vide* which the Criminal complaint was dismissed for want of prosecution.

(2) The facts which are necessary for the decision of the present petition are that State of Haryan through Drugs Inspector, Sirsa had filed a criminal complaint dated 7th September, 1998 under the provisions of Drugs and Cosmetics Act, 1948 and Rules of 1945 framed under the aforesaid Act against the accused petitioner Gurdeep Singh, copy Annexure P-5. The case was still at the initial stage when the said criminal complaint was dismissed for want of prosecution by the learned Chief Judicial Magistrate, Sirsa, *vide* order dated 14th October, 1998, as no one was present on behalf of the complainant-State of Haryana, when the case was called for hearing. Aggrieved against the said order dated 14th October, 1998 passed by the Chief Judicial Magistrate, Sirsa, State of Haryana through Drugs Inspector filed revision petition against the said order before the Sessions Court. The learned Sessions Judge, Sirsa, *vide* order dated 6th September, 1999, after hearing the complainant-petitioner (before the Sessions Judge) i.e. State of Haryana, accepted the said revision petition, set aside the order dated 14th October, 1998 passed by the Chief Judicial Magistrate

and the criminal complaint was ordered to be restored to its original number and the complainant-State of Haryana was directed to appear before the Chief Judicial Magistrate for further proceedings. This order dated 6th September, 1999 was passed by the learned Sessions Judge without hearing the accused namely Gurdeep Singh Aggrieved against this order dated 6th September, 1999 passed by the Sessions Judge, Sirsa, Gurdeep Singh accused has now filed the present petition under Section 482 Cr. P. C. in this Court, seeking the quashment of the said order dated 6th September, 1999 passed by the Sessions Judge, on the ground that the Sessions Judge had set aside the order dated 14th October, 1998 passed by the Chief Judicial Magistrate and had accepted the revision petition *vide* order dated 6th September, 1999 without issuing notice to accused Gurdeep Singh (present petitioner) and without hearing him.

(3) I have heard the learned counsel for the accused petitioner and have gone through the record carefully.

(4) The learned counsel appearing for the accused petitioner has submitted before me that the order dated 6th September, 1999 passed by the learned Sessions Judge, Sirsa is liable to be set aside on the short ground that she has passed the said order without issuing notice to the accused and without hearing the accused petitioner before setting aside the order dated 14th October, 1998 passed by the Chief Judicial Magistrate *vide* which the criminal complaint was dimissed for want of prosecution. Reliance was placed on two decisions of this Court i.e. Criminal Revision No. 1177 of 1997 *Nath Ram and others vs State of Punjab and another* decided on 28th April, 1998, copy Annexure P-3 and Criminal Misc. No. 38938-M of 1999 *Darshan Kumar vs. State of Haryana* decided on 10th December, 1999, copy Annexure P-4. Reliance has also been placed on another judgment of this court, reported as *Vinod Kumar Jain vs. Dharam Singh and another* (1) and also two judgments of other High Courts, reported as *H.P. Agro Industries Corporation Ltd. vs. M.P.S. Chawla* (2), and *Mohd. Afzal & Ors. vs Noor Nisha Begum and another* (3).

(5) After hearing the learned counsel for the accused petitioner and after perusing the record, I find no merit in this petition and the same is liable to be dismissed.

(1) 1999 (1) CLR 251
(2) 1997 (1) CLR 323 (Himachal Pradesh)
(3) 1997 (2) CLR 661 (Delhi)

(6) Section 397 of the Code of Criminal Procedure empowers the High Court or any Sessions Judge to call for and examine the record of any proceedings before any inferior Criminal Court for the purpose of satisfying itself or himself as to the correctness, legality or propricty of any finding, sentence or order, recorded or passed. Under Section 398 of Criminal Procedure Code, it is provided that on examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrate subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (4) of Section 204, or into the case of any person accused of an offence who has been discharged. It is further provided therein that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had opportunity of showing cause why such direction should not be made. Under Section 399 of Code of Criminal Procedure it is provided that in the case of any proceeding the record of which has been called for by himself, 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. It is further provided therein that where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1) of Section 399, the provisions of sub-sections (2), (3), (4) and (5) of Section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge. Under sub-section (1) of Section 401 of Code of Criminal Procedure, it is provided that 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 section 386, 389, 390 and 391 or on a Court of Session by Section 307. Under sub-section (2) of section 401 it is provided that 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. Section 403 of Code of Criminal Procedure provides that save as otherwise expressly provided by this Code, no party has any right to be heard either personally or by pleader before any Court exercising its powers of revision; but the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader.

(7) In the present case, the accused petitioner has challenged the order dated 6th September, 1999 passed by the Sessions Judge, Sirsa on the ground that the said order has infringed the provisions of

Section 401(2) of Code of Criminal Procedure, in as much as the Sessions Judge, Sirsa while accepting the revision petition had not given any opportunity to the accused petitioner of being heard before setting aside the order dated 14th October, 1998 passed by the Chief Judicial Magistrate *vide* which the criminal complaint was dismissed for want of prosecution.

(8) A similar point came up for consideration before this court, in the case reported as *Raju vs. Madan Singh* (4). The complainant had filed a criminal complaint before the Judicial Magistrate. After recording preliminary evidence, the learned Magistrate dismissed the criminal complaint. Aggrieved against the same, the complainant filed revision petition before the Court of Sessions. The learned Additional Sessions Judge allowed the revision petition and directed the trial Magistrate to consider the matter afresh. Aggrieved against this order of the learned Additional Sessions Judge, the accused filed criminal revision petition in this Court. The only submission made before this Court on behalf of the accused petitioner was to the effect that the learned Additional Sessions Judge could not allowed the revision petition without giving notice of the accused petitioner. After noticing the provisions of Section 398 of Code of Criminal Procedure, it was held by this Court that a clear distinction has been made by the legislature in the two cases namely where the accused has been discharged, he must be heard before the Court can in revisional powers direct further investigation. By necessary analogy it follows that it will not be so and such an opportunity need not be granted when the complaint has been dismissed, under Section 203 Cr. P. C. It was further held by this Court in this authority as under :—

> "In fact the consistent view appears to be that it would be improper and unecessary to issue notice when a revision is filed against an order dismissing the complaint under Section 203 Cr. P. C.. One of the earlier decision known is in the case of T. S. Ramabhadra Odayer v. Emperor, AIR 1928 Madras 1198. Herein the Magistrate dismissed the complaint under Section 203 Cr. P. C.. The Sessions Judge issued the notice to the accused. The Madras High Court held that the accused had no *locus standi* in such enquiries. Issuing of the notice to the accused is improper though not illegal. The view point of this Court then known as East Punjab High Court in the case of Messrs Kirpa Ram Jagan Nath v. Thakar Hans Raj, A.I.R. (37) 1950 East Punjab 18 was the same. Almost a similar situation had crept and in paragraph 6

(4) 1997 (3) All India Criminal Law Reporter 450

while looking at Section 486, Code of Criminal Procedure, 1898 which is similar to Section 398 of the present Code, it was held:—

"Under the present section as amended in 1923, by the addition of the proviso, it is imperative that before further enquiry is ordered in the case of a person who has been discharged, an opportunity should be given to the accused to show cause why further enquiry should not be ordered. the proviso, however, does not apply to the dismissal of a complaint under Section 203. As a matter of fact it will be very undesirable to issue notice to the accused person in such cases. The accused persons has no *locus standi* in inquiries under Chap. XVI Criminal P. C. and the principle is equally applicable where the order in such an enquiry is under revision. That being so, I find that the order of the learned Sessions Judge dated 12th June, 1948, is not vitiated by any illegaility."

Same was the view of the Judicial Commissioner, Vindhya Pradesh in the case of Kedar Ram and others v. Ram Bharosa, AIR 1952 Vindhya Pradesh 49. The Andhra Pradesh High Court in the case of Konda Sesha Reddy and others vs. Muthyala China Pullaiah and another, AIR 1958 Andhra Pradesh 595 while dealing with a similar situation held :—

"The learned Sessions Judge made an order without notice to the accused. It might have been open to the Judge to issue notice; but the omission of it cannot certainly render the order illegal. The principle that no order should be made to the prejudice of a person without giving him an opprtunity to be heard has no application to the present case because the accused would certainly get a hearing after summons is issued under Section 204 and the trial commenced".

The Delhi High Court in the case of A. S. Puri *v.* K.L. Ahuja, 1970 Crl. L. J. 1441 felt that it is improper to issue such a notice though if no notice is issued, it is not illegal. It could be issued as a way of propriety only. Lastly reference may be made to the decision of the Madras High Court in the case of Kannan alias Krishnaraj and others v. R. A. Vardarajan and another, 1988 Crl. L.J. 605. Herein also the Sessions Judge had not issued notice to the accused. It was held that the said order is not illegal.

6. The position herein is not different. The learned Additional Sessions Judge had only remitted the case to the learned Judicial Magistrate. The pleas on merits can still be raised by the petitioner as and when and if the occasion arises. At this stage, he had no *locus standi* to be heard. By way of abundant caution, it is added that if the learned Additional Sessions Judge in a particular case feels that it would help him in arriving at a correct decision and choose to issue notice, there is nothing illegal but otherwise the accused has no right to being heard when complaint had been dismissed under Section 203 Cr. P.C. In revision petition against such an order also no right would be added. There is no ground thus to interfer."

(9) With regard to the case reported as *Sant Singh and another vs. Gurmel Singh* (5), it was observed by this Court that in the reported case an order adverse to the interest of the petitioners had been passed and that is why the revision petition was allowed. However, in the facts of the present case, a finding cannot be recorded that an order adverse to the petitioner has been passed. This Court had also placed reliance on the law laid down by their Lordships of the Supreme Court in the case reported as *Chandra Deo Singh vs. Prokash Chandra Bose alias Chabi Bose and another* (6). In the reported case, the Hon'ble Supreme Court had held that an accused at the stage when preliminary evidence is recorded has no right to being heard. In paragraph 7, it was observed as under :—

"Taking the first ground, it seems to us clear from the entire scheme of Ch. XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to the Magistrate to put any question to the witness at the instance of the person named as accused but against whom process has not been issued; nor can he examine any witness at the

(5) 1986 (2) CLR 335
(6) AIR 1963 SC 1430

instance of such a person. Of course, the Magistrate himself is free to put such questions to the witness produced before him by the complainant as he may think proper in the interest of justice. But beyond that, he cannot go."

(10) After placing reliance on the law laid down by their Lordships of the Supreme Court in Chandra Deo Singh's case (supra), it was held by this court that the decision in the case of Sant Singh (supra) would be distinguishable.

(11) In *Vijay Kumar vs. Bachnu and another* (7), the complainant had filed a criminal complaint against the accused. After recording preliminary evidence, the accused was summoned by the Chief Judicial Magistrate. However, before the accused actually put in appearance before the court, the complaint was dismissed by the court on the ground that the complainant had failed to carry out the directions given by the court to furnish complete and better particulars of the accused and to deposit the necessary process fee etc. Apparently, the said order was passed by the learned Magistrate in terms of sub-section (4) of Section 204 of Criminal Procedure Code. The complainant assailed the said order of the learned Magistrate before the Sessions Court by way of revision petition. The learned Sessions Judge without issuing notice to the accused allowed the revision of the complainant and while doing so directed the learned Magistrate to proceed further in accordance with law. The said order passed by the learned Sessions Judge was challenged by the accused in this court by way of criminal revision petition. The sole submission of the learned counsel for the accused petitioner in this court was that the Sessions Judge could not have passed the impugned order without affording an opportunity of being heard to the accused petitioner. After noticing that even though the trial Magistrate had decided to summon the petitioner as an accused, yet before he could be actually served or had put in appearance as an accused before the court, the criminal complaint was dismissed under sub-section (4) of Section 204 of Criminal Procedure Code and as such it could not be said that the accused had been discharged even before he had put in appearance before the court as an accused. It was further held by this court that Section 401 (2) of Criminal procedure Code would also be of no help to the accused petitioner as it could not be said that the accused petitioner was likely to be prejudice or was actually prejudiced by the order passed by the revisional court or that on that count he was entitled to be heard before passing of the said order by the revisional court. It was held that no prejudice had been caused to

(7) 1987 (2) RCR 398

the accused petitioner nor his position had been altered in any manner as he was not on the scene at all i.e. he was not before the trial court as an accused when the criminal complaint was dismissed by the learned Magistrate. It was further held by this Court that after the complaint was dismissed under Section 204(4) Cr. P.C., a revision petition did lie to the Sessions Court and the same had to be dealt with under Section 398 Cr.P.C. Wherein it is provided that only a person who has been discharged was entitled to an opportunity of showing cause before an order of discharge is upset or disturbed by the revisional court. It was further held that the implication of proviso to Section 398 Cr. P.C. would be that a person who has not been discharged or who is not put on trial and has not put in appearance in the court as an accused has no *locus standi* to be heard by the court while setting aside the order of dismissal of complaint under Section 204 (4) Cr. P.C. Reliance was placed on the law laid down in the cases reported as AIR 1950 East Punjab 18 (supra), AIR 1963 SC 1430 (supra) and also the law laid down by their Lordships of the Supreme Court, in the case reported as *Vadial Panchal v. Dattaraya Dulaji* (8).

(12) In *Somu alias Somasundaram and others vs. The State and another* (9), it was held by Madras High Court that where the criminal complaint was dismissed under Section 203 Cr. P.C., petitioners do not get status of accused and they have no right of audience before the revisional authority. Reliance was placed on *Mohd. Jalaluddin v. Syed Ibrahim* (10), and AIR 1928 Mad. 1198(supra). In *Rajnarian Rai vs. State of U.P. and another* (11), it was held by the Allahabad High Court that where the Magistrate had dismissed a complaint by taking recourse to provisions contained in Section 203 Cr. P.C., the accused applicant was not at all a necessary party to be heard in the revision which was preferred by the complainant against the dismissal of his complaint under Section 203 Cr. P.C. Reliance was placed on the law laid down by their Lordships of the Supreme Court, in the case reported as AIR 1963 SC 1430 (supra). Similarly in *Sivasankar vs. Santhakumari* (12) it was held by Madras High Court that in the case of dismissal of a complaint the person accused of the offence need not at all be given the right of audience in revisional proceedings

(8) AIR 1960 SC 1113
(9) 1985 Crl. L.J. 1309
(10) 1979 Crl. L.J. NOC 68
(11) 1989 All L.J. 1395
(12) 1992 (1) All India Criminal Law Reporter 330

challenging the order of dismissal. Reliance was placed on the law laid down in the case reported as *Somu vs. State* (supra). In *D. K. Aggarwal vs. Janardan Pd. Sharma and others* (13), it was held by Allahabad High Court that in a complaint case unless the process is issued under Section 204 Cr. P. C. the person shown as opposite party in the complaint does not become a party to the inquiry proceedings nor his interests affected. It is only after the order for issue of process has been passed and the same being served on him that a person shown as opposite party in the complaint becomes a party to the case. On the process being issued and served on him that he gets a right being heard. It was further held in the said authority that unless process has been issued, the person against whom complaint has been filed does not become a party nor can be said to be an aggrieved person. It was further held that the applicant was not a necessary party in the revision hence he was correctly not made a party in the revision before the Sessions Judge filed by the complainant. Reliance was placed on the law laid down by their Lordships of the Supreme Court in the case reported as *Dr. S.S. Khanna vs. Chief Secretary, Patna* (14). It was further held that the person against whom complaint was filed, was not necessary party in revision against the order refusing to issue process against him and as such he was not entitled to be heard in revision before the Sessions Judge. In *Kannan alias Krishanaraj and others vs. R.A. Varadrajan and another* (15), it was held by Madras High Court that the accused cannot be heard to say that in view of the fact that no notice was given in the revision proceedings, the order passed by Sessions Judge was vitiated. Reliance was placed on the law laid down by their Lordships of the Supreme Court in Chandra Deo Singh's case (supra) and also by Madras High Court in the case Somu *vs* State (supra).

(13) In *Nath Ram and others vs. State of Punjab and another* (supra), the order passed by the Additional Sessions Judge setting aside the order of dismissal of criminal complaint under Section 203 Cr. P.C. was set aside by this Court on the ground that principles of natural justice had been violated by not issuing notice to the accused while hearing the revision petition against the order of dismissal of criminal complaint. Reliance was placed on *Mohd. Afzal and others vs. Noor Nisha Begum and another* 1997 (2) CLR 661 (supra). In *Darshan Kumar vs State of Haryana* (supra), criminal complaint was dismissed for want of prosecution and the said order was challenged by the complainant before the Sessions Court who had set aside the order of

(13) 1987 All L.J. 1078
(14) AIR 1983 SC 595
(15) 1988 Crl. L.J. 605

dismissal of the criminal complaint. In the petition filed by the accused challenging the said order of the Sessions Judge, it was held by this court while placing reliance on Section 401 Cr. P.C. that since the accused was not heard by the Sessions Judge before setting aside the order of the Magistrate, the order passed by the Sessions Judge could not be sustained. In 1999 (1) CLR 251 (supra) after noticing that non-summoning of the accused amounted to discharge and as such the order passed by the Magistrate could not be set aside in revision before hearing the accused. It was further held that even otherwise the principles of natural justice have been flouted as dismissal of the complaint *qua* said accused had given a vested right to him and under these circumstances it was obligatory on the part of the Additional Sessions Judge to give opportunity to the petitioner before any adverse opinion could be formulated against him. In my opinion, the law laid down in these authorities cited before me by the learned counsel for the accused petitioner would have no application to the facts of the present case. In any case these authorities run counter to the well settled law on the point laid down by this and other High Courts, while placing reliance on the law laid down by their Lordships of the Hon'ble Supreme Court, referred to above. Since the settled law on the point earlier laid down by this Court (referred to above) is based on the law laid down by their Lordships of the Supreme Court, in my opinion, it is not necessary to refer the matter to a larger Bench to resolve the controversy which has arisen because of the law laid down in the authorites referred to above. Similarly the authority 1997 (2) CLR 661 (supra) of Delhi High Court also runs counter to the earlier law laid down by Delhi High Court and also to the law laid down by their Lordships of the Supreme Court, referred to above. So far as 1997 (1) CLR 323 (supra) of Himachal Pradesh High Court is concerned, the same would have no application to the facts of the present case. In the reported case the petitioner had filed a criminal complaint against the accused. After recording evidence the learned Magistrate ordered the summoning of the accused. When the case was fixed for the service of the notice upon the accused no one appeared on behalf of the complainant and accordingly the complaint was dismissed in default and the accused was acquitted of the offence under Section 138 of the Negotiable Instruments Act. The complainant thereafter filed an application before the Magistrate for restoration of the complaint. The said application was dismissed by the learned Magistrate holding that the complaint was dismissed under Section 256 Cr. P.C. and accused stood acquitted and the complaint which was dimissed in default could not be restored. The said order of the learned Magistrate was challenged by the complainant before the Himachal Pradesh High Court under Section 482 Cr. P.C. After noticing that the offence under Section 138

of the Negotiable Instruments Act was a non-cognizable offence and was triable as a summons case, and placing reliance on Section 256, Cr. P.C., it was held by the Himachal Pradesh High court that the dismissal of the complaint amounted to the acquital of the accused and that Magistrate had no power to order restoration of the complaint. In my opinion, the law laid down in these authorities would have thus no application to the facts of the present case.

(14) In the present case, as referred to above, the complaint filed by complainant was dismissed for want of prosecution even before the accused could be summoned. Aggrieved agaisnt the said order passed by the Magistrate the complainant had filed revision petition before the Sessions Judge. The learned Sessions Judge set aside the order of the learned Magistrate *vide* which the complaint was dismissed for want of prosecution and the case was sent back to the Magistrate for proceeding further in the matter in accordance with law. 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 can not 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.

(15) No other point has been urged before me.

(16) For the reasons recorded above, finding no merit in this petition the same is dismissed.

R.N.R.