

• **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON: 02.05.2012
PRONOUNCED ON: 07.05.2012

+ **CRL.M.C. 1511/2012**

SHRI SATBIR SINGH Petitioner
Through : Petitioner in person.

versus

SHRI ANNA HAZARE & ORS. Respondents
Through : None

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J

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1. The petitioner has filed this petition under Section 482 of the Code of Criminal Procedure impugning the order dated 13.4.2012 passed by learned Additional Sessions Judge in Crl.Rev.No.58/2012. The petitioner has claimed himself to be a peace loving, law abiding citizen, social worker and patriot. He alleged that the accused persons as traitors, anti-social persons had hatched the conspiracy to cause losses and lower down the reputation of the Govt. and the Prime Minister of the country in the garb of 'Anshan'. He made allegations in the complaint against the respondents that they instigated the innocent persons of India who collected in a large number in Ram Leela Ground on 16.8.2011 where the respondents made false speeches against the Govt. of India, Prime Minister, Minister and MPs and on being instigated, the public persons collected there, disturbed the peace in the locality, traffic and also created nuisance which caused many problems to the public. He also filed a

complaint in P.S. Kamla Market on which no action was taken. On the basis of averments made in the complaint filed before learned M.M., it was alleged that the respondents have committed the offences punishable under Section 121/121-A/143/147/283/290/500/504/34/120B IPC.

2. It was also alleged in the complaint that thousands of people were made to go on hunger strike and about 2000 people had to be admitted in the hospital and at least one of them, namely, Sandeep Kumar died in hunger strike and another person, namely, Dinesh Yadav died in Patna, which caused loss of life and property of the nation/public. This has caused emotional hurt and shock to the complainant.

3. The learned M.M. dismissed his application seeking direction under Section 156(3) Cr.P.C. on 5.11.2011 and matter was fixed for recording complainant's evidence under Section 200 Cr.P.C.

4. He wanted to examine Dr.Abhishek Manu Singhvi, he being the Chairman of the Standing Committee of `Jan Lok Pal Bill' to ascertain the suggestions, if any given by team Anna for `Jan Lok Pal Bill' and also for the reason that he was moved by the sufferings of the family of the deceased. He feels Team Anna is responsible for loss of life.

5. The petitioner moved an application dated 23.12.2011 for summoning of media persons apart from respondent No.6 Dr.Abhishek Manu Singhvi as witness which was allowed by learned M.M. on the same day. He filed the process fee and summons were issued to respondent No.6 and other media persons as witness for the date 25.1.2012.

6. On the same day, two applications were moved by respondent No.6 Dr.Abhishek Manu Singhvi (i) to seek exemption (ii) seeking direction for withdrawal of summons issued to him which was allowed by learned M.M. vide order dated 17.3.2012.

7. He preferred a revision impugning the order of learned M.M. which has also been dismissed by learned A.S.J. and it is the order passed by learned A.S.J. which is in challenge before this Court.

8. The grounds of challenge as mentioned in the petition are that if respondent No.6 is not allowed to be summoned and appear in the witness box, real facts would not come out in public and his complaint would become infructuous. Respondent No.6 has a main role as the witness in the said complaint. The order passed by learned M.M. is erroneous as he has not only ordered for withdrawal of summons issued to respondent No.6 but also allowed the exemption, which is abuse of process of law. Hence, the order passed by learned M.M. as well as by learned A.S.J. be set aside and restore the summon proceedings which was withdrawn by learned M.M. and accept reply filed by the complainant to that petition of respondent No.6.

9. I have heard the petitioner who has argued in person.

10. The grievance of the petitioner is that his request to summon respondent No.6 Dr.Abhishek Manu Singhvi as his witness was wrongfully rejected and this Court should direct the trial court to examine him as a witness so that the truth may come out. It has been further submitted that two persons lost their life during the demonstrations, he is fighting for

the families of the deceased persons, hence the orders passed by learned M.M. as well by learned A.S.J. be set aside.

11. Perusal of the record reveals that in the complaint case filed by the petitioner on 17.3.2012, two applications were filed on behalf of respondent No.6 seeking exemption and withdrawal of summons. It is pertinent to record here that in the complaint case, Dr.Abhishek Manu Singhvi was not a respondent. Even in the Criminal Revision Petition he was not impleaded as a party and it is for the first time in the petition under Section 482 Cr.P.C. that he has been arrayed as respondent No.6. It is necessary to re-produce the order passed by learned M.M. to understand and appreciate the contentions and prayer made by the petitioner, who is complainant in CC No.5828/1.

“17.03.2012

Present: Complainant in person

Mr.Arshdeep Singh Ld. Counsel for Dr.Abhishek Manu Singhvi.

An application moved on behalf of Dr.Abhishek Manu Singhvi for withdrawal of summons issued to him in a capacity of witness.

Reply to this application filed today by complainant.

This is a complaint case filed by the complainant against Anna Hazare and his associates in respect to their Anshan. This complaint case is at very initial stage of examination of complainant and witnesses U/s. 200 Cr.P.C. Earlier application filed by complainant U/S. 153(3) Cr.P.C. has been dismissed by my Ld. Predecessor.

In so far as direction sought on behalf of Dr.Abhishek Manu Singhvi is concerned, I find nothing in the complaint as to how he is relevant in present case or what facts have been witnessed by him. He has not been named in the list of witnesses filed by the complainant but it appears that in a routine manner complainant has got allowed application for summoning of witnesses. Further I find that in the application,

he has not mentioned correct/complete name of Dr.Abhishek Manu Singhvi and same reflects deliberation on the part of complainant to get issue summons against him in a capacity of witness for sensation or otherwise. In the circumstances, summoning order as well as summons issued in respect to Dr.Abhishek Manu Singhvi in a capacity of witness is dropped/withdrawn.

Since this is a complaint case U/s. 200 Cr.P.C. hence same is fixed for examination of complainant or other person as permitted under this Section, for 03.05.2012.

Sd/-
(Anil Kumar)
MM(Central)-05
Delhi/17.03.2012”

12. Feeling aggrieved, the complainant preferred Revision Petition No.58/2012. Learned ASJ considered the submissions made by the petitioner who was also represented by Ms.Chitra Mal, Advocate from Legal Aid and perusing the trial court record. After discussing the case law on the subject, he dismissed the revision petition holding that the order passed by learned M.M., being an interlocutory order was not amenable to challenge in a revision petition under Section 397(2) Cr.P.C. The observations were also made by learned A.S.J. in respect of prayer for examination of Dr.Abhishek Manu Singhvi to be examined as a witness in Para 14 and 15 of the impugned order which are extracted as under:

“14. Even otherwise its a matter of fact that name of Dr.Singhvi did not find mention in the initial list of witnesses dated 30.08.2011, which was filed alongwith the complaint. The second list filed by the complainant on 23.12.2011 does not contain any mention that it is an additional list which is meant to supplement the list already available on record. Also this second list does not contain any reference or context qua which Dr.Singhvi was sought to be summoned for deposition.

15. Although during the hearing of this revision, the revisionist has submitted that he intended to summon Dr.Singhvi only because he is Chairman of Standing Committee on Jan Lokpal Bill and he was desirous of ascertaining if Team

Anna had sent any suggestions qua improvement of the Lokpal Bill being drafted by our Parliament. During the course of hearing the revisionist has agreed that he ought not have insisted for personal appearance of Dr.Singhvi and that the requisite information which he was desirous of bringing on record could have been done through some official from the said Parliamentary Committee. On this score revisionist has submitted in the court that he was not desirous for summoning Dr.Shinghvi for sensationalising the matter as observed by Ld. MM and that he was actuated only by the pain which he felt qua the loss of life by young Sandeep Kumar for which he considers Team Anna to be responsible.”

13. Legal position is well settled that interlocutory order cannot be decided in the Revision Petition. In the case of **M/s. Bhaskar Industries Ltd. v. M/s. Bhiwani Denim and Apparels Ltd. and ors., (2001) 7 SCC 401**, it was held as under:-

8. The interdict contained in Section 397(2) of the Code of Criminal Procedure (for short 'the Code') is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test laid down by this Court through a series of decisions is this: If the contention of the petitioner who moves the superior court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If it would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage.

9. A three Judge Bench of this Court in **Madhu Limaye vs State of Maharashtra** : 1978CriLJ165 laid down the following test: "All order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of Section 397(2)." This was upheld by the four Judge Bench of this Court in **V.C. Shukla vs State through CBI** 1980 Cri LJ 690 .

10. The above position was reiterated in **Rajendra Kumar Sitaram Pande & ors. vs Uttam and anr.** 1999CriLJ1620 . Again in **K.K. Patel and anr. vs State of Gujarat and anr.** 2000CriLJ4592 this Court stated thus:

"It is well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during

the interim stage (vide *Amar Nath v. State of Haryana*, *Madhu Limaye v. State of Maharashtra*, *V.C. Shukla v. State through CBI and Rajendra Kumar Sitaram Pande v. Uttam*). The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed of such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objections raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable."

14. The learned M.M., in his order dated 17.3.2012 has given the reasons as to why Dr.Abhishek Manu Singhvi was not required to be examined as a witness in the complaint case. It has been opined by learned M.M. that from the complaint, it is not made out how his statement is relevant and what facts were witnessed by him. The complainant had not even mentioned the name of respondent No.6 in the list of witnesses, summons were sent to him in routine and in that application, even correct/complete name of respondent No.6 was not mentioned.

15. Even before this Court, the petitioner could not explain as to how the testimony of respondent No.6 becomes relevant for the purpose of his complaint. Even in the list of witnesses initially filed along with the complaint, he even did not propose to mention his name as a witness.

16. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. (**Ref:Janta Dal vs. H.S. Chowdhary 1992(4)SCC305**).

17. It would be apposite to refer to the observation of the Apex Court made in para 15 of the case **Santosh De & Anr. vs. Archana Guha & Ors. (1994) 2 SCC 420** which is extracted below :-

15. The facts of this case impel us to say how easy it has become today to delay the trial of criminal cases. An accused so minded can stall the proceedings for decades together, if he has the means to do so. Any and every single interlocutory is challenged in the superior courts and the superior courts, we are pained to say, are falling prey to their stratagems. We expect the superior courts to resist all such attempts. Unless a grave illegality is committed, the superior courts should not interfere. They should allow the court which is seized of the matter to go on with it. There is always an appellate court to correct the errors. One should keep in mind the principle behind Section 465 CrPC. Any and every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a superior court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself. Such frequent interference by superior courts at the interlocutory stages tends to defeat the ends of justice instead of serving those ends.

18. Having regard to the above legal position, in the facts and circumstances, I find no illegality or infirmity in the impugned order, the petition is hereby dismissed.

PRATIBHA RANI, J

MAY , 2012

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