

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

% Order delivered on: 21st January, 2015

+ **CRL.M.C. 4679/2014 & CrI.M.A. No.15928/2014**

MEHFOOZ KHAN Petitioner
Through Mr.Bankim K. Kulshreshta, Adv.
versus

STATE(NCT OF DELHI) & ANR Respondents
Through Ms.Jasbir Kaur, APP for the State
along with Insp. Vijay Kumar
Kataria, Mr.Harender Singh,
Additional SHO and Si Manish
Chaudhary, P.S. Welcome.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. Brief facts of the case are that a case under Section 302/34 IPC read with Section 25/27 Arms Act was registered vide FIR No.417/214 at Police Station Welcome. The complainant alleged that 3-4 persons had surrounded her husband at her house and one of them fired pistol which hit her husband. Her husband was declared brought dead in the hospital and at the time of transfer to hospital, the husband told the complainant that he was attacked by hooligans and goons of Anwar. The complainant alleged that she could identify those persons. This FIR was registered on 26th July, 2014. Later on, the petitioner surrendered before the court and he was formally

arrested and again produced before learned Metropolitan Magistrate with muffled face. IO moved an application seeking police custody remand of the petitioner for two days on the grounds that he had to recover the weapon of this offence. Learned counsel for the petitioner submitted before the trial court to defer the decision on this application of IO, on the grounds that another application of TIP for petitioner was already fixed for 1st September, 2014 by learned Relieving Metropolitan Magistrate and if petitioner was sent to police remand, then there was possibility that his face would have been shown to the witness. Learned counsel further requested the trial court to allow two counsel to be present with petitioner, in case he was remanded to police custody, so that IO might not plant the weapon of offence on the petitioner.

2. The trial court observed that the right of the investigating agency to collect the evidence at the earliest could not be curtailed on the grounds of a mere apprehension of the accused that he was likely to be shown to the witnesses during police custody. The trial court directed IO to keep the accused with muffled face during his police custody remand. The trial court further observed that Section 41D of Cr.P.C. provides for the right of accused to meet his Advocate during interrogation, but such right does not mean that Advocate of accused would be allowed to be with him throughout the interrogation. In these circumstances, the trial court granted liberty to the counsel of accused to be present with accused for two hours in a day and remanded him to police custody up to 30th August, 2014.

3. The said order passed by the trial court was challenged by the petitioner in Crl. Revision No.111/2014. After the hearing of the parties, the same was dismissed by the Additional Sessions Judge for the reasons stated in para 7 of the impugned order dated 23rd September, 2014. Para 7 of the said order reads as under:

“7. I have given due attention to the submissions made on behalf of petitioner and the record of impugned order. The impugned order was passed in respect of impugned order. The impugned order was passed in respect of remand of the petitioner. Such order, vide which petitioner was remanded to police custody, rejecting the contentions of petitioner to defer the same till 01.09.2014, did not decide any substantial right of the accused, which might have any bearing on the merit of this case. This order is purely an interlocutory order and therefore, this revision petition cannot be maintained.

8. In State v. N.M.T Joy immaculate, (2004) 5 SCC 724, a full bench of Supreme Court held that:

“the order of remand has no bearing on the proceedings of the trial court itself nor can it have any effect on the ultimate decision of the case. If an order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings. The remand order cannot affect the progress of the trial or its decision in any manner. Therefore, applying the test laid down in Madhu Limaya case, (1977) 4 SCC 551, it cannot be categorized even as an “intermediate order”. The order is therefore a pure and simple interlocutory order and in view of the bar created by sub-section 2 of Section 397 Cr.P.C., a revision against the said order is not maintainable. The High Court, therefore, erred in entertaining the revision against

the order of the Metropolitan Magistrate granting police custody of the accused.”

4. The present petition, inter alia, under Section 482 Cr.P.C. has been filed by the petitioner on various grounds. Learned counsel for the petitioner has also referred various judgments before the Court at the time of hearing. The question before this Court is whether the said argument addressed by the learned counsel for the petitioner can be raised and be decided by this Court on merit at this stage despite of the fact that even revision petition filed by the petitioner is also dismissed.

5. The scope of interference in the present petition is very limited as per settled law. I am of the view that the present petition under Section 482 Cr.P.C. is liable to be dismissed on the following reasons:-

- (i) The Supreme Court in the case of ***Rajan Kumar Machananda v. State of Karnataka***, JT 1987(4) SC 637, in para 2 held as under:-

“2. Heard learned Counsel for the parties. The respondent State had challenged the order before the Court of Sessions when the learned Magistrate before whom the matter was proceeding directed release of the truck in favour of the appellant. The Revisional Court dismissed the petition of the State. A second Revision did not lie at the instance of the State to the High Court in view of the provisions of Section 397(3) of Cr.P.C. Obviously, to avoid this bar, the application moved by the State before the High Court was stated to be under Section 482 Cr.P.C. asking for exercise of inherent powers. In

exercise of that power, the High Court has reversed the order of the Magistrate as affirmed by the Sessions Judge. The question for consideration is as to whether the bar under Section 397(3) Cr.P.C. should have been taken note of to reject the revision at the instance of the State Government or action taken by the High Court in exercise of its inherent power has to be sustained. It is not disputed by counsel appearing for the State that the move before the High Court was really on application for revision of the order of the Magistrate releasing the truck. That is exactly what is prohibited under Section 397(3) Cr.P.C. Merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome. If that was to be permitted every revision application facing the bar of Section 397(3) of the Code could be labelled as one under Section 482. We are satisfied that this is a case where the High Court had no jurisdiction to entertain the revision. The appeal is allowed and we set aside the order of the High Court. The Order of the Magistrate as affirmed by the Session Judge is upheld.”

- (ii) In another case titled as ***Dharampal and others v. Smt. Ramshri and others***, AIR 1993 SC 1361, the Supreme Court held as under:-

“4. There is no doubt that the learned Magistrate had committed an error in passing the subsequent orders of attachment when the first attachment was never finally vacated and had revived the moment the revision application filed against it was dismissed by the learned Sessions Judge. It appears that none of the parties including the Sessions Judge realised this error on the part of the

Magistrate. The learned Sessions Judge had also committed a patent mistake in entertaining revision application against the fresh orders of attachment and granting interim stays when he had dismissed revision application against the order of attachment earlier. Let that be as it is. The question that falls for our consideration now is whether the High Court could have utilised the powers under Section 482 of the Code and entertained a second revision application at the instance of the 1st respondent. Admittedly the 1st respondent had preferred a Criminal Application being Cr. R. No.180/78 to the Sessions Court against the order passed by the Magistrate on 17th October, 1978 withdrawing the attachment. The Sessions Judge had dismissed the said application on 14th May, 1979. Section 397(3) bars a second revision application by the same party. It is now well settled that the inherent powers under S. 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Hence the High Court had clearly erred in entertaining the second revision at the instance of 1st respondent. On this short ground itself, the impugned order of the High Court can be set aside.”

6. Learned APP for the State on the other hand has argued that the present petition is not maintainable after the dismissal of the revision petition filed by the petitioner as the impugned order is not contrary to law and is of interim nature. The petitioner has liberty to raise all the issues raised in the present petition at the time of framing of charge.

7. Having gone through both the orders passed by the trial court as well as the revisional court, I find force in the submission of the learned APP for the State. I am of the view that after the dismissal of the revision petition, there is no scope of any interference unless the impugned order is not perverse and contrary to the law. It is a procedural interim order. This Court is not inclined to interfere with the same. However, liberty is granted to the petitioner to raise all pleas raised in the present petition at the time of hearing of framing of charge against the petitioner.

8. The petition is disposed of.

(MANMOHAN SINGH)
JUDGE

JANUARY 21, 2015