

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.1426 of 2013

ORDER:

This criminal revision case is filed under Sections 397 and 401 Cr.PC challenging the order dated 10.7.2013 in CrI.M.P. No.496 of 2013 in C.C. No.25 of 2001 on the file of the Court of Principal Special Judge for CBI Cases, Visakhapatnam.

2. The contention of the learned counsel for the revision petitioner-accused is two fold:

(a) the Prosecution agency filed the petition after lapse of long time; therefore, the same is not maintainable under law; and

(b) the trial court, without considering the prejudice likely to be caused to the petitioner, allowed the petition on erroneous grounds.

Per contra, learned Standing Counsel for CBI submitted that mere delay in filing of the petition under Section 311 Cr.P.C. is not sufficient to dismiss the same without taking into consideration the material available on record. He further submitted that the trial court rightly considered the material available on record and allowed the petition. He also submitted that no revision lies against the orders passed under Section 311 Cr.P.C.

3. A perusal of the record reveals that the revision petitioner is facing trial in C.C. No.25 of 2001 on the file of the Court of Principal Special Judge for CBI Cases, Visakhapatnam for the offence punishable under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988. After completion of the prosecution evidence, the prosecution filed petition under Section 311 Cr.P.C. to issue summons to Shri H.L.Zutshi, Retired Chairman & Managing Director, HPCL, D-25, Defence Colony, New Delhi – 110 024 as the prosecution intends to examine him in connection with issuance of Office Memorandum (OM) dated 08.5.2001 conferring additional

charge of Director (Marketing) on Shri S.K. Kerr, the then Director (HR) in view of absence of regular incumbent Shri S.K. Kapoor to let in secondary evidence as the original OM dated 08.5.2001 was reportedly lost.

4. The petitioner filed counter *inter alia* contending that the petition is not maintainable under law.

5. After affording reasonable opportunity to both the parties, the trial court allowed the petition.

6. The predominant contention of the learned counsel for the petitioner is that the trial court ought to have dismissed the petition as the prosecution filed the petition at a belated stage.

7. It is a settled principle of law that mere delay in filing petition under Section 311 Cr.P.C., by itself is not a valid ground to dismiss the same, without taking into consideration the facts and circumstances of the case. In the instant case, the prosecution has placed reliance on the OM dated 08.5.2001 in order to establish that Shri S.K.Kerr, was placed as Incharge Director (Marketing). It is the case of the prosecution that the original OM dated 08.5.2001 was lost. In such circumstances, it may not be possible for the prosecution to establish whether Shri S.K.Kerr was Incharge Director (Marketing) at the relevant point of time. While disposing of this type of petitions, the court has to take into consideration the prejudice likely to be caused to the accused. Even at the earliest point of time, the prosecution has taken a specific stand that Shri S.K.Kerr was Incharge Director (Marketing) at the relevant point of time. This fact was not denied by the petitioner. In the absence of original OM dated 08.5.2001, it may not be possible for the prosecution to establish whether Shri S.K.Kerr was Incharge Director (Marketing), without examining him. Even if the petition is allowed, no prejudice would be caused to the petitioner.

8. The trial court has considered all the above facts in right perspective and allowed the petition. The finding recorded by the trial court is supported by the material available on record. There is no illegality or irregularity in the order passed by the trial court.

9. The learned Standing Counsel for CBI submitted that no revision lies against the orders passed under Section 311 Cr.P.C. To substantiate the argument, he has drawn my attention to the decision in **Sethuraman v Rajamanickam**^[1]. In paragraph No.4, the apex court held as follows:

4. Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C. The Trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent/ accused and the only defence that was raised, was that his signed cheques were lost and that the appellant/ complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e., one on the application under Section 91 Cr.P.C. for production of documents and other on the application under Section 311 Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397(2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed.

As per the principle enunciated in the case cited supra, no revision lies against the orders passed under Section 311 Cr.P.C., in view of the bar contained under Sub-section (2) of Section 397 Cr.P.C. The facts of the case on hand are almost identical to the facts of the case cited supra. Viewed from factual or legal aspects, the present criminal revision case is not maintainable and is liable to be dismissed.

10. Accordingly, the criminal revision case is dismissed. Miscellaneous petitions if any pending in this CrI.RC shall stand

closed.

July 14, 2016.
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T.SUNIL CHOWDARY, J

[\[1\]](#) 2009 (1) ALD (Crl.) 871 (SC)