

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.15173 of 2012 (O&M)

Date of decision: 22nd March, 2016

Uppal Credit & Investment Pvt. Ltd.

... Petitioner

Versus

Ashwani Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. M.S. Sachdev, Advocate
for the petitioner.

Mr. Parshant Sareen, Advocate
for the respondent.

FATEH DEEP SINGH, J.

Though with the sole aim and object to bring about uniformity in the criminal procedure in our country, the framers had meandered through overhauling the criminal law which was earlier governing the Presidency Towns and erstwhile provinces through Criminal Procedure Act (16 of 1852), Criminal Procedure Supreme Courts Act, High Court Criminal Procedure Act (12 of 1865), Act 10 of 1872 leading to consolidation of these laws under Criminal Procedure of 1882 (10 of 1882), which was further replaced by Code of Criminal Procedure 1898 (5 of 1898). Having undergone repeated metamorphosis in 1923, 1955 with State amendments and finally the Code of Criminal Procedure 1973 came into being by Act 2 of 1974. The primary aim was not only to simplify the procedure and speed-up

trials but also to remove anomalies and ambiguities brought about by conflicting decisions of the various High Courts and divergent expression of opinions by the Hon'ble Apex Court. But inspite of the same, certain grey areas still remain which precisely has led to this imbroglio in this petition filed under Section 482 Cr.P.C. by way of exercise of inherent powers by this Court. The brief facts which deserve to be recapitulated are as follows:-

A criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'the Act') was preferred by complainant, present petitioner, M/s Uppal Credit & Investment Private Limited against accused, present respondent, Ashwani Kumar over a dispute pertaining to dishonour of cheque bearing No.032102 dated 30.05.2009 for a sum of ₹5.00 lacs drawn on Centurion Bank Ltd., Jalandhar (now HDFC Bank). After summoning of the respondent as an accused and during the course of trial, an application (Annexure P6) under Section 311 of the Code of Criminal Procedure (hereinafter referred to as, 'the Code') was moved by the complainant/petitioner for seeking examination of two witnesses Sandeep Kumar, Accountant and Harish Vijan on the grounds of being conversant with the facts and essential for judicious determination of the dispute. In his reply (Annexure P7), the accused had denied the averments of the application refuting that the said witnesses were having any knowledge, and hence denying the contentions of the application sought its dismissal. It is vide orders dated 22.03.2012 (Annexure P1) of the Court of learned Judicial Magistrate 1st Class, Jalandhar, the

application in question stood declined and dismissed. It is thus, aggrieved over these findings, the present complainant/petitioners have preferred to challenge the same in this petition under Section 482 Cr.P.C. seeking quashment of the impugned orders.

Heard Mr. M.S. Sachdev, Advocate for the complainant/petitioner and Mr. Parshant Sareen, Advocate on behalf of the accused/respondent.

The very contentions whether a petition under Section 482 of the Code of Criminal Procedure lies or that the impugned orders were revisable orders and thus, amenable to revision in terms of Section 397/399 of the Code, have been sought to be supported as well as refuted by the respective counsels intending to advance the case of their respective sides.

No doubt, the very provisions of Section 397 Sub-Section (2) of the Code have put up a rider that no such powers of revision either by the High Court or any Sessions Judge can be exercised in relation to an interlocutory order which is undisputedly a statutory provision. It needs to be referred here that the very object of providing revision is to set right a patent defect or an error of jurisdiction or law. There has been disparity over the views expressed by various Courts as well as this Court whether an order passed under Section 311 of the Code is interlocutory in nature or not. Therefore, what is necessitated at this juncture is the very definition of 'interlocutory orders'.

It needs to be kept in mind as one of the very purposes of amendment and bringing about The Code of Criminal Procedure, 1973 was to do away with the powers of revision against interlocutory orders as it was found to be one of the contributing factors for delay and disposal of criminal cases. Though the very definition of 'interlocutory orders' is still defying comprehensive meaning due to studied silence in the Code and thus, over a period of time through various pronouncements based on dictionary meanings definition has come to crystallize and the Hon'ble Supreme Court of India in '**State Rep. by Inspector of Police and others v. N.M.T. Joy Immaculate**' **2004(3) RCR (Criminal) 322** has dealt with the same based on various pronouncements from time to time including '**S.Kuppuswami Rao v. King**' **AIR 1949 FC 1**; '**Madhu Limaye v. State of Maharashtra**' **AIR 1978 SC 47**; '**Amar Nath v. State of Haryana**' **1977(4) SCC 137**; '**V.C. Shukla v. State**' **AIR 1980 SC 962** as well as latest pronouncement in the case of '**K.K. Patel v. State of Gujarat**' **2000(2) RCR (Cri.) 863**. Their Lordships were of the view that the feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, holding further in **Madhu Limaye's case (ibid)** that in such a situation, the real intention of the Legislature was not to equate the expression 'interlocutory orders' as invariably to be converse of the words 'final order'. Their Lordships were of the opinion that there may be an order passed during the course of proceedings which may not be final in the sense noticed in **S.Kuppuswami Rao's case (ibid)** but yet it may not be an

interlocutory order, pure or simple, and thus some kinds of orders may fall in between the two and therefore, were of the view that the power contained in Sub-Section (2) of Section 397 of the Code was not meant to be attracted to such kinds of intermediate orders. While taking into consideration the judgments in **Amar Nath's case; Madhu Limaye's case; V.C. Shukla's case (ibid)**, in '**Rajendra Kumar Sitaram Pande v. Uttam**' **1999 AIR (SC) 1028**, the Hon'ble Apex Court expressing that the expression 'interlocutory order' under Section 397(2) of the Code has been used in a restricted sense and not in a broad artistic sense and merely denotes orders of purely interim or temporary nature which do not decide or touch the **important rights or liabilities** of the parties and **any order which substantially affects the rights of the parties** cannot be said to be an 'interlocutory order', and therefore, on the basis of previous pronouncements of the Hon'ble Supreme Court it was held that the term 'interlocutory order' used in the Code of Criminal Procedure has to be given a very liberal construction in order to ensure complete fairness of the trial and that the **revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi final**.

A Single Bench view of Hon'ble Gujarat High Court in the case of '**Sheikh Madinabibi Mustafabhai v. State of Gujarat**' **2005(2) GCD 1379** faced with a similar situation, after taking into consideration plethora of case law of various Courts including the Hon'ble Apex Court, has tried to transverse the meaning and the logic

behind it, holding that an order under Section 311 of the Code is not an interlocutory order and that the revision is maintainable against the order passed on application under Section 311 Cr.P.C.

Chapter XXIV of the Code relates to 'General Provisions as to Inquiries and Trials'. Thus, any grievance of a party at the trial, if not taken care or at the earliest appropriate stage before pronouncement of the final judgment, may lead to an innocuous situation after final conclusion of the trial as even in an appeal against such judgment, such an error which might have crept in on account of denial or allowing of such a relief under Section 311 of the Code may not be rectified. Even by the exercise of powers under Section 391 of the Code not only delay will occasion but may also create more complications as procedure under Chapter XXIII of the Code again has to be followed. Therefore, the proposition so propounded that though every interlocutory order is an interim order but each and every interim order could not be an interlocutory order. Thus, it would be appropriate that a revisional Court exercising supervisory jurisdiction can positively correct an order which has some element of finality and, to some extent, has resultant effect on subsequent proceedings at the Court, and therefore it need not necessarily be an order which finally culminates the proceedings that can be termed to be amenable to revision and which intermediary effect may be rectified which could enable revisional Court to entertain by way of revision against such a finding.

Though on behalf of learned counsel for the petitioner, reliance has been placed on **‘Sethuraman v. Rajamanickam’ 2010(5) RCR (Criminal) 512** wherein, such an order was held to be an interlocutory order by the Hon’ble Supreme Court and so by various High Courts in **‘Asif Hussain v. State of U.P. and Another’ 2007(3) CCR 233**; **‘Jagir Singh Sidhu v. Harbeant Singh’ 2003(3) RCR (Criminal) 631**; **‘Karam Singh v. Ram Singh and others’ 1995(3) RCR (Criminal) 143**; **‘Baba Kashmira Singh v. Mahindra & Mahindra Financial Services Ltd.’ 2014(15) RCR (Criminal) 150**; **‘Sanjay and another v. State of Haryana and another’ 2005(1) RCR (Criminal) 15**; **‘Ms. Rashidan and others v. Baaz Ali’ 2002(3) RCR (Criminal) 557**; **‘T. Stanes and Company Ltd. Coimbatore v. Thiru, M.G. Mohamed Iqbal and another’ 2007 CriLJ 4100**; **‘State v. Smt.Indirakumari and others’ (2003) CriLJ 4749** and **‘Rajendra Prasad Bajpai v. State of UP’ 2014(87) ACrC 13** and to the reverse are various pronouncements of different High Courts in **‘R.Srinivasan & others v. G. Shanmugha Vadivu’ 1984 CriLJ 377**; **‘Deborah Mary Crasto Leclerc v. Patrick Oliver Leclerc’ 2015(3) RCR (Criminal) 876**; **‘Narcotics Control Bureau v. Yuvraj Gurang and another’ 2006(4) RCR (Criminal) 657**; and **‘State of Sikkim v. Sri Thukchuk Lachungpa and another’ 2005 CriLJ 201**, which have held that the orders passed under Section 311 of the Code are amenable to revision.

In a recent view of the Hon’ble Apex Court in the case of **‘Urmila Devi v. Yudhvair Singh’ 2013(4) RCR (Criminal) 899** their

Lordships have delved deep into the subject matter as to what is an interlocutory order and the powers of revision of the Courts in terms of Section 397(2) of the Code, where different ratios and pronouncements by the Hon'ble Supreme Court were taken note of including that of **'Adalat Prasad v. Rooplal Jindal' 2004(4) RCR (Criminal) 1**, wherein the ratios laid down in **Amar Nath's case; Madhu Limaye's case; V.C. Shukla's case and Rajendra Kumar Sitaram Pande's case (ibid)** too were taken into consideration. Thus, holding that where an order is an intermediary order a revision certainly lies.

It needs to be further clarified that in the present case, the complainant has sought indulgence of the trial Court enabling it to examine witnesses under Section 311 of the Code who could throw light on the dispute between the complainant and the accused and which prayer stood declined and therefore, it makes sufficiently clear that it would finally conclude the proceedings of the complainant and that the complainant has been denied a legitimate valuable right to put before the Court his case which could also assist the Court in coming to a judicious comprehensive adjudication of the same. The denial of this certainly has robbed the complainant of a chance to put forth his case in the right perspective and in not doing so, a material prejudice has been caused to him and which might lead to an unfavourable situation in the ultimate which can, by no means, be rectified at a subsequent stage before the higher Courts. Thus, it would be appropriate to test the reasonableness of such an order at the earliest

possible stage as it would be a fair inquiry into the allegations and otherwise would lead to more complications for the parties in their endeavour to pursue the goal of justice.

Thus, what a party has lost at this stage of proceedings, he may not be able to return and therefore, by all means such an order is essentially a vital one for the dispensation of justice and therefore, falls in the category of an intermediary order. Therefore, as an end result the residual effect on the basis of **Madhu Limaye's case; V.C. Shukla's case; Rajendra Kumar Sitaram Pande's case; K.K. Patel's case** and other ratios (ibid), it permeates and is held as has been also laid down in '**M/s Bhaskar Industries Ltd. v. M/s Bhiwani Denim & Apparels Ltd.**' 2001(4) RCR (Criminal) 137 and applying the feasible test enunciated therein "... .. *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 on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code...*"

Reverting back to the instant case, the plea of the petitioner thus culminates the proceedings of complainant and thus is clearly a revisable order.

In the second leg of submissions, though not much of a contentious issue, faintly a point has arisen to the effect that if there is a specific remedy provided under a Statute, can this Court allow or a party can resort to invoke the inherent jurisdiction of this Court under Section 482 of the Code?

The Hon'ble Supreme Court, adjudicating as to the maintainability of a revision against an order passed under Section 319 of the Code had also come to face a similar situation so posed before this Court in the second proposition, whereby a catena of case law enumerated by various pronouncements of the Hon'ble Apex Court were of the view that inherent powers of this Court can only be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance, and thus, in that eventuality is certainly to the mind of this Court, a rarity to be exercised sparingly to meet the ends of justice. Thus, the ratio laid down in '**Adalat Prasad's case (ibid)**' provides that the only remedy to an accused person to challenge an order in the interlocutory stage where ends of justice demand is an extraordinary remedy under Section 482 of the Code of Criminal Procedure and is only permissible if there is no remedy under the Code and thus, sufficiently clarifies under what occasions powers under Section 482 of the Code can be exercised. Reliance placed on '**Mohit @ Sonu and another v. State of UP**' **2013(3) RCR (Criminal) 673**. Since inherent powers are merely pure discretionary which have to be only exercised in the aid of justice. The revisional powers of High Court are supervisory only to conserve and ensure lower Courts do not exceed their jurisdiction. Therefore, propriety demands and so is the position of law laid down in **1999 Cr.L.J. 122** in the case of '**Padmanabh Keshav Kamat v Anup R. Kantak & others**', that in the scheme of hierarchy the party should seek invocation from the lowest Court even if there is concurrent

jurisdiction and thus, impels this Court to hold that the petitioner should seek redressal of his grievance before Court of Session under Section 399 Cr.P.C. as it would be more appropriate. The petitioner is relegated to this position and the petition stands disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

March 22, 2016
rps

Whether to be referred to the Reporters or not?