

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

CRM-M-4335 of 2016

Date of Decision: February 08, 2016

Bhalinderjeet Singh

...Petitioner

Versus

State of Punjab

...Respondent

CRM-M-2677 of 2016

Gurlal Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Parminder Singh Sekhon, Advocate
for the petitioner in (CRM-M-4335 of 2016)

Mr. Parminder Singh, Advocate
for the petitioner in (CRM-M-2677 of 2016).

FATEH DEEP SINGH, J.

Though, both these petitions preferred under Section 482 Cr.P.C. are against different orders dated 7.1.2016 in CRM-M No.4335 of 2016 (hereinafter, referred as first petition) and dated 11.1.2016 in CRM-M-2677 of 2016 (hereinafter, referred as second petition) passed in different cases by different Courts of learned Judicial Magistrate 1st Class, Malerkotla and Judicial Magistrate 1st Class, Panipat respectively but there being common question of law involved,

therefore, to facilitate brevity needs to be disposed off together.

In the first petition, petitioner-Bhalinderjeet Singh was facing trial in case got registered by way of an FIR No.24 dated 2.3.2013 under Sections 420,406 IPC Police Station, Amargarh on the allegations of having acted dishonestly and, thus, cheated the complainant, a Government Undertaking in respect of custom milling of paddy for the crop years 2010-2011 and 2011-2012. In the said proceedings, an application under Section 311 Cr.P.C. was moved by the State enabling the prosecution for placing on record and proving agreement dated 20.10.2010 which was the fulcrum on which the prosecution story revolves as to how the grains were handed over through the accused for custom milling. The said application stood allowed vide impugned orders dated 7.1.2016.

In the second petition, petitioner was facing allegation in FIR No.199 dated 26.07.2005 under Sections 420,467,468,471 IPC pertaining to Police Station, Matlauda on the allegations that land belonging to deceased Kusumlata was sold fraudulently on the basis of two sale deeds dated 30.12.2004 and 9.12.1991 on the basis of impersonation and in which an application was moved under Section 311 Cr.P.C. by the complainant for granting permission to produce certified copy of judgment dated 30.01.2015 and order of sentence dated 9.2.2015 of the learned Judicial Magistrate 1st Class, Panipat pertaining to another case FIR No.355 dated 26.07.2005 under Sections 420,467,468 and 471 IPC and which prayer of the complainant stood allowed vide impugned order dated 11.1.2016.

Both these orders have been impugned by the respective accused seeking setting aside of the same.

Heard learned counsel for both the petitioners. The provisions of Section 311 Cr.P.C. have been made with the sole purpose

of empowering the Courts to summon any person as a witness at any stage of any enquiry, trial or other proceedings or to call for evidence and there need not be even a prayer by any of the parties and it is settled law that Court can suo moto on its motion resort to such a provision and the sole purpose is the judicial satisfaction of the Court that such an evidence was essential for the just decision of the case. In both these matters important documents were sought to be brought on the record with the sole purpose to assist the Court in coming to a judicious decision. Admittedly, as has been contented by the learned counsel for the petitioners as well as State that these documents were there in existence and forms part of the public record and it is not a subsequent creation. In both the impugned orders it was with the sole object for judicious adjudication the Court has resorted to such an exercise of its powers. Though, much vehemence has sought to be shown in opposing the impugned orders by the respective counsel representing the petitioners, to the mind of this Court since there is a judicious exercise of powers by the Courts concerned and apparently there is no illegality or perversity in them. Moreover, the same is purely for judicious adjudication. An effective order has been passed by the Courts below which cannot be termed as an interlocutory order as has sought to be projected by the petitioners side to impress upon this Court that no revision lies. The Hon'ble Apex Court in **Rajendra Kumar Sitaram Pande vs. Uttam 1999(1) RCR (Criminal) 800** has detailed at length that the very object of conferring revisional jurisdiction upon superior criminal Courts in terms of Section 397 Cr.P.C. is with a view to prevent the miscarriage of justice arising from misconception of law and irregularity of procedure. Though, the Hon'ble Apex Court was of the view that though interlocutory order has never been defined in the Code of Criminal Procedure but over a period of time a definite meaning

has come to be assigned and crystallised into an expression “interlocutory order” and which too is not enumerated in the Cr.P.C. and it has been held by Hon'ble Apex Court by placing reliance on **Madhu Limaye vs. State of Maharashtra 1978(1) SCR 749** that an order rejecting the plea of the accused on a point which when accepted will conclude the particular proceedings cannot be held to be an interlocutory order and is rather “intermediatory order” and therefore, on the basis of the ratio laid down in **V.C. Shukla vs. State 1980 (2) SCR 380** it was held that the word interlocutory order has to be given a wider interpretation and liberal construction so as to ensure complete fairness at the trial and, therefore, held that such orders in between trial which though are not in itself finality of the trial but substantially affect the rights of the parties upon their determination certainly a revision lies. Precisely the present situation determines finally that aspect at the trial and rights of the parties to that effect at that very juncture and so are to the mind of this Court to be “Intermediatory orders”. To the very query of the Court, the learned counsel for the two sides could not satisfy this Court as to what prevented the petitioners from invoking the jurisdiction of the learned Sessions Court in terms of Section 397(2) Cr.P.C. against such impugned orders passed by the learned Magistrate when it is a settled position of law in view of the law laid down in **Urmila Devi vs. Yudhvair Singh 2013(4) RCR (Criminal) 899** that when there is specific provision under a Statute available to a party it is obligatory for a party to approach the concerned Court under that statutory provision and cannot come up before this Court under Section 482 Cr.P.C. for invocation of inherent powers of the Court which is a rarity as laid down in **State of Haryana and others vs. Ch. Bhajan Lal and others AIR 1992 S.C. 604**

Thus, in the totality of what has been detailed and

discussed above apparently the petitions are not maintainable and there is also no merit in the petitions which both stand dismissed in limine.

**(FATEH DEEP SINGH)
JUDGE**

February 08, 2016

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