

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

CRR No.2593 of 2012
Date of Decision: May 16, 2016

Smt. Charanjit Kaur ...Petitioner

Versus

State of Punjab and others ...Respondents

CRR No.2106 of 2012

Charanjit Kaur Gurm ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Ms. Vanita Sapra Kataria, Advocate
for the petitioner.(in both the petitions)

Mr. Gurveer Sidhu, AAG, Punjab.

Mr. BBS Sobti, Advocate
for respondents NO 2 and 3.(in both the petitions)

FATEH DEEP SINGH, J.

Though, both these revision petitions preferred under
Section 401 Cr.P.C. assail different orders dated 12.11.2011 (hereinafter
referred to as first order) and dated 7.7.2012 (hereinafter referred to as

second order) and have been passed by the same very Court of learned Judicial Magistrate 1st Class, Ludhiana that too in the same case bearing FIR No.139 dated 16.12.1999 pertaining to Police Station Sahnewal, District Ludhiana under Sections 420,467,468,471 and 120B IPC thus, having common question of law and facts for the sake of brevity are being taken up and disposed off together.

In the application under Section 311 Cr.P.C. pertaining to first order the State through Charanjit Kaur/complainant had moved an application for summoning of additional witness along with record and recalling for re-examination of retired Inspector Kuldeep Singh, the then ASI, who investigated the case to bring forth the fact that a fake affidavit was earlier taken into police possession vide a memo by this witness and, thus, necessitates his re-examination to prove this vital fact and also on account of death of Gurjit Singh the deponent of this affidavit had sought summoning of concerned clerk from the Office of Local Registrar, births and deaths to hammer home the point that this was a fake and forged affidavit. The same was denied by the accused/respondent in their reply taking the plea that the applicant wanted to fill in lacuna in its case.

In the application under Section 311 Cr.P.C. pertaining to second order the State has sought to summon Record Keeper, from the record room of Civil Judge, Senior Division, Ludhiana along with record of case titled as Samittar Singh and others vs. Sher Singh and others pertaining to the Court of Neelam Saleria, Civil Judge, Senior Division, Ludhiana, order dated 18.10.1995 and to prove on record certified copy of plaint, vakalatnama, Statement of Gurmeet Singh, Harbbhajan Singh etc., compromise Ex.C1 to Ex.C.3 filed in the report. The claim is based on the averments that the accused had committed fraud by forging documents and affidavit dated 3.12.1996

when the property in question was already given prior thereto in the year 1986 to Sher Singh (since deceased) husband of the complainant and that a compromise dated 19.11.1994 was made between the parties in which civil suit, Gurmit Singh has admitted the compromise dated 19.11.1994 in his statement and, thus, to bring about the forgery of affidavit dated 3.12.1996 and the factual incorrectness of the compromise dated 19.11.1994.

The learned trial Court through the impugned first order as well as second order dismissed both these applications and that is how these two separate revision petitions have come up before this Court.

Heard. It is well elicited from the records that the trial is pending before the learned Judicial Magistrate 1st Class, Ludhiana and if the revisionists have any grouse and seeks to challenge the orders passed by the learned Judicial Magistrate 1st class by way of criminal revision, the petitioner is well within his right to challenge the same by way of revision before the learned Sessions Judge in the exercise of powers of the said Court in terms of Section 399 of the Cr.P.C. However, the petitioners instead have chosen to invoke the jurisdiction of this Court. No doubt, by virtue of Section 401 Cr.P.C. the High Court's power of revision cannot be put to restrictions and there vests vast discretion in this Court in the exercise of powers by virtue of these provisions, however, at the same time propriety demands so and is the position of law laid down in **1999 Cr.L.J. 122** in the case of **Padmanabh Keshav Kamat vs. Anup R. Kantak and others** that in the scheme of hierarchy of the Courts it is always desirable that party should seek remedy from the lowest Court even if there is concurrent jurisdiction which impels this Court to hold that the petitioner need to seek redressal of his grievance before the Court of Sessions Judge under

Section 399 Cr.P.C. No doubt, this Court is well within its right to exercise such powers of revision suo moto as well as under Section 401 Cr.P.C. but by passing the Sessions Court which too has revisional powers and thus have to be resorted to only in the rarest of cases calling for interference by this Court only in exceptional cases the Court needs to show indulgence in such matters else it would lead to judicial chaos. Besides, would give this Court ample time to deal with more important matters. Coupled with the fact that this Court would unnecessarily be flooded with such prayers therefore, the petitioners invocation certainly to the mind of this Court is highly inappropriate, illegitimate and uncalled for and, thus, both these petitions do not sustain on that score and ought to be filed before the Court of Sessions.

To answer the respondent's submissions that no revision lies against such an order, this Court in **Uppal Credit and Investment Pvt. Ltd vs. Ashwani Kumar** has expressed its opinion as to the legal recourse available to a party consequent on expression of opinion by the trial Court on an application under Section 311 Cr.P.C. It was held by this Court that very object of providing a revision is to set right a patent defect or an error of jurisdiction or law and after considering on the basis of different ratios of various Courts tried to give a definition to word 'interlocutory order' holding that till date since the same is defying meaning on account of Code of Criminal Procedure being silent on that and placing reliance on various pronouncements in cases **S. Kuppuswami Rao vs. King AIR 1949 FC 1; Madhu Limaye vs. State of Maharashtra AIR 1978 SC 47; Amar Nath vs. State of Haryana 1977 (4) SCC 137; V.C. Shukla vs. State AIR 1980 SC 962** this Court has drawn conclusion and held that any order which substantially affects rights of the parties cannot be termed to be an 'interlocutory order' and held it to be a 'intermediatory order' or quasi-

final order against which a revision certainly lies.

Reverting back to the instant case, the complainant/State had sought indulgence of the trial Court to examine the vital piece of evidence to bring forth the reasons for the forgery and fabrication for which the accused have been charged and learned trial Court had denied the complainant's legitimate and valuable right to put before the Court its case and which certainly has obstructed due dispensation of justice and a material prejudice is caused to the case of the complainant and it was held in Uppal Credit and Investment Pvt. Ltd. (ibid) as under:-

“- - - - -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 - - - -*”

Keeping in view the discussions detailed above it would be in the fitness of the things, if the petitioners are directed to approach the appropriate Court of Sessions Judge in terms of Section

399 of Cr.P.C. and file revision before the same.

Both the petitions stand disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

May 16, 2016
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