

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

Judgment delivered on : 08th April 2016

+ CRL.M.C. 2242/2014

NEELAM MAHAJAN & ANR

..... Petitioners

Through: Ms. Anu Narula, Mr. Kamal Aurora,
Advocates with petitioner in person.

versus

THE STATE & ORS

..... Respondent

Through: Ms. Meenakshi Chauhan, Additional
Public Prosecutor for the State with
ASI Tej Pal Singh, Police Station
Adarsh Nagar, Delhi

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

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P.S. TEJL. J.

1. By this petition filed under Section 482 of Cr.P.C. read with Article 227 of the Constitution of India, the petitioners seek setting aside of the order dated 26.08.2013 passed by learned Metropolitan Magistrate in a case registered as FIR No. 50/1995 under Section 498A/406 of IPC at Police Station Adarsh Nagar, Delhi.

2. The petitioners are aggrieved by the order dated 26.08.2013 passed by learned Metropolitan Magistrate in a case registered as FIR No. 50/1995 under Section 498-A/406 of IPC at Police Station Adarsh

Nagar, Delhi, vide which the application under Section 311 of Cr.P.C. filed by respondent No. 2 to 4 was allowed and they were permitted to cross-examine the petitioner No.1 and 2.

3. The contention of Ms. Anu Narula, counsel appearing on behalf of the petitioner is that though the case was received in Court in the year 1995 but the charges could only be framed on 25.02.1999 and due to filing of frivolous revision petitions on behalf of the respondents before the Session Court as well as High Court, the trial could not start till 11.11.2008. It is further submitted on behalf of the counsel for the petitioners that the examination of petitioner No.1 was continued till 03.01.2011.

4. The petitioner No.1 was put to cross-examination on 08.08.2011, but could not be completed due to adjournments sought on behalf of the respondents on one pretext or the other and ultimately on 07.05.2012, when the respondents again sought an adjournment for cross examination, the Trial Court was compelled to pass the order thereby closing the opportunity of cross examination of the petitioner No.1.

5. Learned counsel for the petitioners further contended that the application under Section 311 Cr.P.C. filed on behalf of the respondents was dismissed vide order dated 09.07.2012 by a reasoned order. Accordingly, PW3 was examined on 03.12.2012, 07.01.2013 and 20.03.2013. For cross examination of PW-3 the respondents sought further time and the Trial Court after recording the conduct of

the respondents, closed the opportunity of cross examination of PW-3 vide order dated 28.05.2013.

6. It is further contended on behalf of the petitioners that the respondents had filed another application under Section 311 Cr.P.C. on 20.07.2013, seeking recall of PW-1 and PW-3 and that too without disclosing the fact that their earlier application under Section 311 of Cr.P.C. seeking recall of the witnesses had already been dismissed vide order dated 09.07.2012. The said application, however, was allowed vide order dated 26.08.2013.

7. Being aggrieved by the aforesaid order dated 26.08.2013, the petitioners preferred revision petition before the Sessions Court raising their contention that while allowing the later application under Section 311 of Cr.P.C., in fact the Trial Court has reviewed its earlier order dated 09.07.2012, which is gross violation of legal provisions. As per contention of learned counsel for the petitioner, once the application under Section 311 of Cr.P.C. has been rejected by the Trial Court, further application under the same provisions cannot be allowed as it would tantamount to review of the earlier order passed by the same court, which is not permissible under the law.

8. It is further contended on behalf of the petitioner that the Revisional Court, without going into depth of the merits of the controversy and even the prima facie question of maintainability of revision petition, the revision petition filed by the petitioners was dismissed in the light of the judgment of Hon'ble Supreme Court in

***Sethuraman v. Rajmanickam*, 2009 Cri.LJ 2247.**

9. In the present petition, before this Court, the petitioners have challenged the order passed by learned Metropolitan Magistrate as well as by the Sessions Court and it is submitted that the respondents cannot take any premium on their own wrongs by delaying the trial and then by concealing important factum of their first application under Section 311 of Cr.P.C. having been dismissed vide order dated 09.07.2012.

10. In support of the aforesaid contentions, counsel for the petitioner relied on the judgments reported in ***Sridhar Das v. State of West Bengal*, 1996 Cri.LJ 813; *Hari Singh Mann v. Harbhajan Singh Bajwa and others*, 2001 Cri.LJ 128; *State of Kerala v. M.M. Manikantan Nair*, 2001 Cri.LJ 2346 and *Jawahar Yadav v. State of Chhattisgarh & Ors*, 2006 Cri. LJ 2078.**

11. Written submission on behalf of respondent No. 2, filed by Mr. K. Kaushik, Advocate, is also on record, in which he has vehemently opposed the aforesaid contentions raised on behalf of the petitioners. Counsel for the respondents contended that the order passed under Section 311 Cr.P.C. is an interlocutory order and the revision against such an order is specifically barred under Section 397(2) of Cr.P.C. It is further averred that recalling of a witness under Section 311 of Cr.P.C. does not amount to review of earlier order in terms of Section 362 of Cr.P.C. Moreover, recalling the witnesses for their cross-examination is not barred under Section 362 of Cr.P.C. as it cannot be

said to be an order reviewing its earlier order by which the cross-examination was closed.

12. In support of the aforesaid contentions, counsel for the petitioners relied on the judgments of Hon'ble Supreme Court in ***Rajathi v. C. Ganesan*, AIR 1999 SC 2374; *Sethuraman v. Rajamanickam*, 2009 Cri.LJ 2247;** and the judgment of this Court in ***Sanjeev Nanda v. State of NCT of Delhi*, 2008 (1) RCR (Criminal).** Learned counsel for the respondents also relied upon the judgment of High Court of Rajasthan in ***Vijay Kumar Sharma v. State of Rajasthan and another*, 2005 Cri.LJ 2893.**

13. Ms. Meenakshi Chauhan, Additional Public Prosecutor appeared on behalf of the State.

14. I have heard the contentions raised by learned counsel for the petitioners as well as learned counsel for the respondent No.1 and also gone through the impugned order passed by the learned Metropolitan Magistrate as well as the Revisional Court.

15. The admitted facts of the case are that the respondents' first application under Section 311 of Cr.P.C. had been rejected by the learned Metropolitan Magistrate vide order dated 09.07.2012 and the second application under Section 311 of Cr.P.C. was allowed by the learned Metropolitan Magistrate vide order dated 26.08.2013. It is also well settled law from the catena of judgments of Hon'ble Supreme Court that no revision shall lie against the interlocutory order. The

order of the revisional Court is based on the very principle. For better appreciation, Section 311 of Cr.P.C. is reproduced as under:-

“311. Power to summon material witness, or examine person present. – Any court may, at any stage of any inquiry, trial or other proceedings under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

16. The main question arises for consideration is whether the order passed under Section 311 of Cr.P.C. is an interlocutory order or not? In this regard catena of judgments of Hon'ble Supreme Court has settled the legal principle while holding that the meaning of the two words "final" and "interlocutory" has to be considered separately in relation to the particular purpose for which it is required. However, generally speaking, a judgment or order which determines the principal matter in question is termed final and simultaneously, an interlocutory order, though not conclusive of the main dispute may be conclusive as to the subordinate matter with which it deals. Therefore, in the considered opinion of this Court, if the decision on an issue puts an end to the suit, the order is undoubtedly a final one but if the suit is still left alive and has yet to be tried in the ordinary way, no finality

could be attached to the order.

17. In ***V.C. Shukla v. State through CBI, 1999 SCC (Cri.) 393***, the following propositions were laid:

(1) that an order which does not determine the rights of the parties but only one aspect of the suit or the trial is an interlocutory order;

(2) that the concept of interlocutory order has to be explained in contradistinction to a final order. In other words, if an order is not a final order, it would be an interlocutory order;

(3) that one of the tests generally accepted by the English Courts and the Federal Court is to see if the order is decided in one way, it may terminate the proceedings but if decided in another way, then the proceedings would continue; because, in our opinion, the term 'interlocutory order' in the Criminal Procedure Code has been used in a much wider sense so as to include even intermediate or quasi final orders;

(4) that an order passed by the Special Court discharging the accused would undoubtedly be a final order inasmuch as it finally decides the rights of the parties and puts an end to the controversy and thereby terminates the entire

proceedings before the court so that nothing is left to be done by the court thereafter;

(5) that even if the Act does not permit an appeal against an interlocutory order the accused is not left without any remedy because in suitable cases, the accused can always move this Court in its jurisdiction under Art. 136 of the Constitution even against an order framing charges against the accused. Thus, it cannot be said that by not allowing an appeal against an order framing charges, the Act. works serious injustice to the accused.

18. Applying these tests to the impugned order, this Court finds that the order permitting the re-examination of the petitioners is purely an interlocutory order as it does not terminate the proceedings but the trial goes on until it culminates in acquittal or conviction. Furthermore, it is impossible to spell out the concept of an interlocutory order unless it is understood in contradistinction to or in contrast with a final order.

19. Coming to the facts of the present case, this Court observes that the learned Metropolitan Magistrate has allowed the application under Section 311 of Cr.P.C. subject to the condition that only two separate opportunities will be granted to conclude the evidence of both the witnesses i.e. one opportunity to conclude the evidence of each witness subject to payment of cost of Rs.2,000/- (in total) out of which Rs.1,000/- is to be payable to the complainant and Rs.1,000/- is to be

deposited in DLSA.

20. After perusing the impugned order as well as the material placed before this court and in the light of the facts and circumstances of the present case this Court is also of the opinion that every interlocutory order merely because it disposes of an aspect, nay a vital aspect in the course of a pending proceeding even adversely affecting a party for the time being would not be something other than interlocutory.

21. This Court also perused the order passed by the revisional Court holding that the order passed under Section 311 Cr.P.C. is interlocutory order and therefore the same is not revisable and this court finds no reason to disagree with thereto.

22. It is also a settled law that the parties to the complaint have a right to be fairly and adequately represented in a criminal trial. Every accused has a right to meet the case of the prosecution on even terms. It is also the duty of the Court to ensure that the principles of natural justice are not violated and an accused is afforded with a reasonable opportunities to represent his case. Fair trial is the main object of criminal procedure and it is the duty of the Court to ensure that such fairness is not hampered with or threatened in any manner.

23. In view of the aforesaid discussions and settled legal principles, in the considered opinion of this Court, there no illegality or infirmity in the orders dated 26.08.2013 passed by learned Metropolitan

Magistrate as well in the order dated 28.02.2014 passed by learned Additional Session Judge while deciding the revision petition of the petitioner. Accordingly, the present petition is devoid of any merit and the same is hereby dismissed. Consequently, the order dated 9th May 2014 passed by this Court directing impugned order of 26.08.2013 be not given effect to, is hereby vacated.

24. Let a copy of this order be sent to the concerned Court for information.

25. In view of the aforesaid directions, the present petition filed by the petitioner is disposed of.

APRIL 08, 2016
pkb

(P.S.TEJI)
JUDGE

