THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.2452 OF 2017

ORDER:

Aggrieved by the order in Crl.M.P.No.1759 of 2017 in C.C.No. 5 of 2011 dated 09.08.2017 passed by the Principal Special Judge for C.B.I. Cases, Visakhapatnam, preferred this revision under Sections 397 & 401 Cr.P.C, questioning the propriety and legality of the order passed by the Court below.

The petitioner filed a petition under Section 91 Cr.P.C r/w 242 Cr.P.C seeking a direction against the General Manager (P & H.R), Union Bank of India, Union Bank Bhavan, Department of Personnel 239, Vidhan Bhavan Marg, Nariman Point, Mumbai to produce sanction file relating to sanction for prosecution against A-17 & 18, alleging that, after the investigation, the respondent/C.B.I obtained sanction order for prosecution against the petitioners/A-17 & 18 dated 18.10.2010 from the General Manager (P & HR), Union Bank of India, Mumbai, against the petitioners/A-17 & 18. The petitioners set up a defence of total denial, but the respondent has not placed requisite material before the competent authority and obtained sanction orders. The sanctioning authority passed the order mechanically without considering the seriousness of the offence and thereby, occasioned a failure or miscarriage of justice.

To prove the factum of non-application of mind by the sanctioning authority, the General Manager (P & HR), Union Bank of India, Mumbai, the entire file is required to be produced before the Court for perusal and marking, if any, prove the innocence of the petitioners/A-17 & 18 and prayed to issue summons under Section 91 Cr.P.C to cause production of the documents.

The respondent/C.B.I filed counter, denying material allegations, *inter alia*, contending that the person who passed sanctioning prosecution and passed order, against the petitioners/A-17 & 18, was already examined and marked exhibits and therefore, the present petition is not maintainable at this stage and prayed for dismissal of the petition.

Upon hearing arguments of both the counsel, the Court below dismissed the application on two grounds. The first ground mentioned is that the petitioners/A-17 & 18 filed earlier Crl.M.P.No.369 of 2015 under Section 91 Cr.P.C which ended in dismissal on the ground that the application was pre-mature. The second ground is that the application is filed at a belated stage, i.e. after two years after dismissal of the earlier application and finally, it was held that the respondent/C.B.I. already examined the concerned witness and now, at this stage, question of summoning any documents by exercising power under Section 91 Cr.P.C would not arise.

Aggrieved by the order under challenge, the present criminal revision case is filed on various grounds, mainly on the ground that, dismissing an application on the two grounds referred supra is an error apparent on the face of record. Merely because the earlier application was dismissed as pre-mature, does not debar the petitioners/A-17 & 18 from claiming such a relief by separate application and unless the respondent/C.B.I proved that the sanction order was passed by the applying its mind, based on the entire material, placed before the authority concerned, the sanction is invalid and consequently, the petitioners/A-17 & 18 would be entitled to acquittal. Therefore, for the said offences, the documents are required to be summoned, so as to enable the petitioners/A-17 & 18 to prove their innocence. But the Court below, on erroneous appreciation of facts and law, dismissed the petition.

During hearing, learned counsel for the petitioner Sri Raja Reddy Koneti, while reiterating the grounds raised in the grounds of revision, mainly contended that there is no time limit to file a petition under Section 91 Cr.P.C to summon any document which is necessary for deciding the real controversy. No time limit can be fixed for filing such applications, in view of the serious consequence that flow from such allegations made against the petitioners/A-17 & 18 and dismissal of an earlier application as it is pre-mature and dismissal of later application i.e. present application on the ground that it is belated is irreconcilable and in the absence of any straitjacket formula, fixing time for filing application under Section 91 Cr.P.C, dismissal of application is an error apparent on the face of record and this Court can exercise power under Sections 397 & 401 Cr.P.C to set-aside the order which is vitiated by an irregularity and illegality and prayed to set-aside the same.

Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in **Nanjappa v. State of**

Karnataka[1], where the Apex Court highlighted the importance of application of mind to the facts for sanction of prosecution. Therefore, in view of the importance attached to application of the mind to the present facts and circumstances of the case, while passing an appropriate order, sanctioning for prosecution, the entire file is necessary to prove the innocence of petitioners/A-17 & 18 and prayed to set-aside the impugned order by allowing the present criminal revision case.

The Special Public Prosecutor for C.B.I, contended that no revision is maintainable, since the application filed before the Court below was under Section 91 Cr.P.C and the order passed thereon is only interlocutory in nature and thereby, the revision is liable to be dismissed, in view of the bar under Section 397(2) Cr.P.C and prayed to dismiss the present criminal revision case.

Considering rival contentions and perusing the material available on record, the point that arises for consideration is "***whether the order under challenge in Crl.P.No.1759 of 2017 in C.C.No.5 of 2011 under Section 91 Cr.P.C r/w Section 242 Cr.P.C is interlocutory in nature. If so, whether the present criminal revision case is maintainable against such an interlocutory order, in view of the bar under Section 397(2) Cr.P.C?***"

[1] 2015 (3) ALT (Crl.) 129 (SC)

P O I N T:

Admittedly, the relief claimed is only to issue summons under Section 91 Cr.P.C to General Manager (P & HR), Union Bank of India, Mumbai, to produce entire file relating to sanction prosecution against petitioners/A-17 & 18 for various offences under the Prevention of Corruption Act.

Section 91 Cr.P.C deals with Summons to produce document or other thing and

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers, Books Evidence Act, 1891(13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

Therefore, such an order can be passed only subject to satisfying about production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial by officer in-charge of the police station. But, who has to apply for such issuing of such summons to produce documents is not specified in the section itself.

In **Vimal Bhatnagar v State of Rajasthan and Ors.**[2], the High Court of Rajasthan considered the scope and was of the opinion that on this trite legal proposition, reliance can also be profitably made to a decision of Delhi High Court in Ashok Chawla (supra), on which the learned Public Prosecutor has placed reliance. The Court, while relying on decision in **State of Orissa v. Debendra N. Padhi**[3] while considering the scope of Section 91 Code of Criminal Procedure the Hon'ble Supreme Court held:

> "Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is 'necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code'. The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section, a police officer may move the Court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. In so far as the <u>accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence</u>. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it whether police or accused. If under Section 227 what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by Court and under a written order an officer in charge of police station can also direct production thereof. <u>Section 91 does not confer any right on the accused to</u>

---
[2] 2016(4)Crimes312(Raj.)
[3] AIR 2003 SC 1512

produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.

Reliance on behalf of the accused was placed on some observations made in the case of Om Parkash Sharma v. CBI. In that case the application filed by the accused for summoning and production of documents was rejected by the Special Judge and that order was affirmed by the High Court. Challenging those orders before this Court, reliance was placed on behalf of the accused upon Satish Mehra's case (supra). The contentions based on Satish Mehra's case have been noticed in para 4 that:

"The learned Counsel for the Appellant reiterated the stand taken before the courts below with great vehemence by inviting our attention to the decision of this Court reported in Satish Mehra v. Delhi Admn., laying emphasis on the fact the very learned Judge in the High Court has taken a different view in such matters, in the decision reported in Ashok Kaushik v. State. Mr. Altaf Ahmed, the learned ASG for the Respondents not only contended that the decisions relied upon for the Appellants would not justify the claim of the Appellant in this case, at this stage, but also invited, extensively our attention to the exercise undertaken by the courts below to find out the relevance, desirability and necessity of those documents as well as the need for issuing any such directions as claimed at that stage and consequently there was no justification whatsoever, to intervene by an interference at the present stage of the proceedings."

In so far as Section 91 is concerned, it was rightly held that the width of the powers of that section was unlimited but there were inbuilt inherent limitations as to the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and desirability, to fulfill the task or achieve the object. Before the trial court the stage was to find out whether there was sufficient ground for proceeding to the next stage against the accused. The application filed by the accused under Section 91 of the Code for summoning and production of document was dismissed and order was upheld by High Court and this Court. But observations were made in para 6 to the effect that if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to look into the material so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time, these observations are clearly obiter dicta and in any case of no consequence in view of conclusion reached by us hereinbefore.

Further, the observations cannot be understood to mean that the accused has a right to produce any document at stage of framing of charge having regard to the clear mandate of Sections 227 and 228 in Chapter 18 and Sections 239 and 240 in Chapter 19.

28. We are of the view that jurisdiction under Section 91 of the Code when invoked by accused the necessity and desirability would have to be seen by the Court in the

> context of the purpose-investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry.
>
> As held in Sidhartha Vashisht (Supra) the accused cannot claim an indefeasible legal right to claim every document of the police file. Even giving an expanded application to the doctrine of disclosure, the Petitioner is neither entitled to these documents, nor is it the stage necessitating production under Section 91 Code of Criminal Procedure nor the transfer of investigation to another officer amounted to reinvestigation forbidden under Section 173(8) Cr.P.C. and does not call for issuance of a writ in terms of the dictate of the Hon'ble Supreme Court in T.C. Basappa (Supra)."

In view of the judgment of the Rajasthan High Court referred supra, the accused has no indefeasible legal right to call for document and even giving an extended scope to doctrine of disclosure, the accused is neither entitled to documents nor there is any necessity for production of documents under Section 91 Cr.P.C. In view of the law declared by the Apex Court, the accused is not entitled to take summons as a matter of right.

One of the contentions of the learned Public Prosecutor for C.B.I/respondent herein is that the order under Section 91 Cr.P.C is an interlocutory order and the application under Section 91 Cr.P.C is not revisional, in view of the bar under Section 397(2) Cr.P.C. In view of the specific contention urged by the learned Special Public Prosecutor, it is apposite to extract Section 397(2) Cr.P.C and it is extracted accordingly hereunder:

> "(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding."

But, in the entire Criminal Procedure Code, the word 'interlocutory order is not defined anywhere. But, for the first time in **Mohan Lal Magan Lal Thacker vs. State of Gujarat**[4], the Supreme Court had an occasion to decide whether the order is interlocutory order or not and held as follows:

> "The question as to whether a judgment or an order is final or not has been the subject matter of a number of decisions; yet no single general test for finality has so far been laid down. The reason probably is that a judgment or order may be final for one purpose and interlocutory for another or final as to part and interlocutory as to part. The meaning of the two words "final" and "interlocutory" has, therefore, 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 principle matter in question is termed final. It may be final although it directs enquiries or is made on an interlocutory applications or reserves liberty to apply [Halsbury's Laws of England (3rd Ed.) Vol. 22, 742-743]. In some of the English decisions where this question arose, one or the other of the following four tests was applied.
>
> 1. Was the order made upon an application such that a decision in favour of either party would determine the main dispute ?
>
> 2. Was it made upon an application upon which the main dispute could have been decided ?
>
> 3. Does the order as made determine the dispute ?
>
> 4. If the order in question is reversed, would the action have to go on ?"

In **Amar Nath and others v. State of Haryana**[5], the Apex Court made it clear that the orders summoning documents, calling for reports etc, are interlocutory in nature.

Though the law in **Mohan Lal Magan Lal**[3] is reviewed in various judgments, the Apex Court laid down feasible test in **K.K. Patel v. State of Gujarat and another**[6] and **Bhaskara Industries Limited v. Bhiwani Denim & Apparels Limited and others**[7], wherein the Apex Court laid down a feasible test as to

---

[4] AIR 1968 SC 733
[5] AIR 1977 SC 2185
[6] AIR 2000 SC 3346
[7] (2001) 7 SCC 401

whether an order is interlocutory or final. The only test is, if an order under challenge is allowed to sustain, it would culminate or terminate the proceedings. If it culminates the entire proceedings, it is final or otherwise an interlocutory order.

In view of the law declared by the Courts in the catena of judgments referred supra, it is clear that, if the order under challenge is allowed to sustain, would terminate or culminate the entire proceedings is a determining factor to entertain a revision under Section 397 Cr.P.C. But, here, the order under challenge is an order passed on an application filed under Section 91 Cr.P.C. If, summons were not issued by the General Manager (P & HR), Union Bank of India, Mumbai, the entire criminal proceedings would not be culminated or terminated. Therefore, applying the tests laid down by the Apex Court referred above, it can safely be concluded without any hesitation that the order under challenge is only an interlocutory order in nature.

An identical question came up before the Apex Court in **Sethuraman Vs. Rajamanickam**[8], wherein the Apex Court in paragraph 4 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

[8] 2009 CriLJ 2247

> 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."

Secondly what was not realized was that the order passed by the Court below refused to call for documents and rejecting an application under Section 311 Cr.P.C i.e. interlocutory order and such a revision is clearly barred under Section 397(2) Cr.P.C.

Therefore, in view of the law declared by the Apex Court in **Sethuraman**[4] case, the order passed on an application filed under Section 91 Cr.P.C is interlocutory in nature and against such an order, no revision is maintainable.

In later judgment in **Vimal Bhatnagar**[2] case, the Single Judge of the Rajasthan High Court had an occasion to decide about the identical question regarding maintainability of revision against the order passed under Section 91 Cr.P.C and by following the judgment of the Apex Court in Apex Court in **Sethuraman**[4] case, the Rajasthan High Court held that revision is not maintainable.

Similarly, in **Salman Khan v. State of Rajasthan**[9], again by following the judgment of the Apex Court in **Sethuraman**[4] case, the Rajasthan High Court held that no revision is maintainable against an order passed under application filed under Sections 311 and 91 Cr.P.C. The law declared by the Apex Court in **Sethuraman**[4] case is a binding precedent, whereas, the other two judgments of Rajasthan High Court in **Vimal Bhatnagar**[2] case and **Salman Khan**[5] case, though not binding, they have persuasive

[9] 2015(4)RLW3031(Raj.)

value. Therefore, by following the law declared by the Apex Court and persuaded by the law declared by Rajasthan High Court in the two judgments referred supra, I hold that the order under challenge is only interlocutory in nature, as it is an order passed on an application filed under Section 91 Cr.P.C and it would not terminate or culminate the entire proceedings, if the order is allowed to sustain. Therefore, on this ground alone, the criminal revision case is not maintainable in view of the bar under Section 397(2) Cr.P.C.

The other contention of the learned counsel for the petitioner Sri Raja Reddy Koneti is that the documents are necessary to prove that the petitioners/A-17 & 18 are innocent. But, as discussed in earlier paragraphs, the Apex Court in **Vimal Bhatnagar**[2] case, held that no indefeasible right is conferred on the accused to summon any document or a thing under Section 91 Cr.P.C. Therefore, the petitioners/A-17 & 18 are not entitled to seek a direction against the General Manager (P & HR), Union Bank of India, Mumbai to produce the entire file relating to sanction of prosecution against these petitioners/A-17 & 18 in C.C.No.5 of 2011, as no indefeasible right is conferred to call upon certain documents, the petitioners/A-17 & 18 are not entitled to claim the relief in the present criminal revision case.

Viewed from any angle, the petitioners/A-17 & 18 are not entitled to claim any relief in the criminal revision case for two reasons. The first reason is that the revision against an order passed on an application filed under Section 91 Cr.P.C is not maintainable, since it is an interlocutory order, in view of the bar under Section 397(2) Cr.P.C. The second ground is that the petitioners/A-17 & 18 have no indefeasible right to summons any document. Therefore, I have no illegality or irregularity in the order of the Court below, warranting interference of this Court under Sections 397 & 401 Cr.P.C. Accordingly, the point is answered in favour of the respondent/C.B.I and against the petitioners /A-17 & 18.

In the result, the criminal revision case is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:22.09.2017

SP