

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

Crl. Misc. M 44082 of 2016 (O&M)

Date of decision: January 9, 2017

Sonia

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. N.S. Shekhawat, Advocate,
for the petitioner.

Mr. Sanjay K. Saini, DAG, Haryana,
for respondent No.1.

Mr. Manish Soni, Advocate,
for respondents No. 2 to 4.

JAISHREE THAKUR, J.

This petition has been filed under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") challenging the order dated 29th November, 2016, by which an application filed under Section 311 Cr.P.C. was dismissed.

In brief the facts are that the petitioner herein got FIR No. 256 dated 20.7.2009 under Sections 498-A, 406, 323 and 506 IPC registered at Police Station Sector 5, Old Gurgaon, in which respondents No. 2 to 4 were arrayed as accused. The petitioner was married to respondent No.2 which

marriage was solemnized on 3.7.2002 as per Hindu rites and ceremonies. The petitioner was tortured and mentally harassed, which led to a matrimonial dispute arising between the parties, which later was compromised between the petitioner and respondent No.1 on 31.12.2007. Thereafter, a FIR No. 7 dated 3.1.2008 under Sections 323 and 506 IPC was lodged at Police Station Civil Lines, Gurgaon, against the petitioner herein and her father, stating that the petitioner herein and her father had tried to administer poison to the complainant, namely, the husband of the petitioner. Since the relationship had soured and abuse did not stop, the petitioner ultimately got a FIR lodged under the aforesaid sections.

Mr. N.S. Shekhawat, learned counsel appearing for the petitioner submits that it was on the basis of FIR No 7 dated 3.1.2008 under Sections 323 and 506 IPC alleging that the petitioner had tried to poison the complainant husband herein, that a divorce petition under Section 13 of the Hindu Marriage Act came to be allowed, even though a trial is pending in the said FIR. Learned counsel for the petitioner contends that there is now adequate evidence available with the petitioner that the MLR in FIR 7 dated 3.1.2008 was prepared by a doctor who was not competent to do so, being an Aurvedic doctor and, stomach wash report does not show any poison/chemical, as alleged. It was also argued that there is now an opinion of the Civil Surgeon, Gurgaon, available, which shows that the patient who was admitted in the hospital, namely, the complainant in FIR No. 7 and husband of the petitioner, did not have any serious ailment and the admission for five days in the hospital was wholly unjustified. It is argued that as the aforesaid information has been made available recently,

which goes to the root of the case as to whether the petitioner had been mentally harassed by lodging false cases, it was imperative that this additional evidence be brought on record. It is argued that application filed under Section 311 Cr.P.C. has been wrongly dismissed.

Learned counsel for the petitioner urges that the said application has been dismissed without taking note of the provision of Section 311 Cr.P.C, which clearly mandate that any evidence can be led by either parties before final decision of the case and the application has been dismissed primarily on the ground that there was a mandate from the High Court to complete the proceedings within a period of two months.

Per contra, Mr. Manish Soni learned counsel for the respondents has vehemently argued that the present petition under Section 482 Cr.P.C. is not maintainable on the ground that the impugned order being an interlocutory order the remedy as available would be to approach the Sessions Court by way of revision. It is also argued that these are delaying tactics as the petitioner is in the habit of filing frivolous applications from time to time and therefore, the impugned order passed should not be interfered with.

I have heard learned counsel for the parties and perused the record with the able assistance of the learned counsel for the parties.

Detailed arguments have been addressed and the question of law that arises is whether the petition under Section 482 Cr.P.C. is maintainable when the statutory remedy of revision is maintainable , specially against the order declining the application under Section 311 Cr.P.C.

Learned counsel appearing on behalf of the respondents submits that once the alternative remedy is available under the statute to file a revision in the Court of Sessions, approaching this Court by way of present petition is an abuse of process of law. In this regard, it is argued that in the judgment rendered by the Hon'ble Supreme Court in **Mohit alias Sonu and another Versus State of U.P. and another 2013 (3) R.C.R. (Criminal) 673**, it has been held when there is a specific remedy provided by way of appeal or revision, the inherent power under Section 482 Cr.P.C. cannot and should not be resorted to. While dealing with the issue, the Hon'ble Supreme Court observed as under:-

“23. So far as the inherent power of the High Court as contained in Section 482 of Criminal Procedure Code is concerned, the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when an order, or interlocutory in nature, can be assailed in the High Court in revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In other words, inherent power of the Court can be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance. It is well settled that inherent power of the Court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged.”

Reliance has also placed on the judgment rendered in **State, through Special Cell, New Delhi Versus Navjot Sandhu @ Afshan Guru and others 2003 (2) R.C.R. (Criminal) 860** to contend that if the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers, the High Court must refuse to

exercise its inherent powers.

Further reliance has also been placed in the judgment rendered by this Court in **Uppal Credit and Investment Pvt. Ltd. Versus Ashwani Kumar 2016 (2) R.C.R. (Criminal) 684**, wherein a co-ordinate Bench, after discussing various case laws, came to hold that an order passed under Section 311 Cr.P.C. is an order which is interlocutory/intermediary in nature, the appropriate recourse to challenge such order would be to file a revision under Section 397 (2) Cr.P.C. before the Sessions Court.

As regards maintainability of this petition before this Court, which has been filed under Section 482 Cr.P.C., the law is well settled by the Hon'ble Supreme Court in a judgment rendered in **Sethuraman Versus Rajamanickam 2009 (5) SCC 153** wherein the Hon'ble Supreme Court has held that the order passed by the trial court refusing to call the documents and rejecting an 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. If the order passed by the trial court on an application under Section 311 Cr.P.C. is held to be interlocutory in nature, then the revision is clearly barred and this Court would have the necessary jurisdiction to entertain a petition challenging such orders.

In a judgment rendered by the Hon'ble Supreme Court, as far back as in 1977 in the matter of **Madhu Limaye Versus State of Maharashtra** reported as **1977 (4) SCC 551**, the Hon'ble Supreme Court held that inherent powers under Section 482 Cr.P.C. enables the High Court to interfere in the matter to perform its duty towards ultimate requirement of serving the ends of justice. While overruling the judgment rendered in

Amar Nath Versus State of Haryana (1977) 4 SCC 137, the Hon'ble Supreme Court held as under:-

“10. As pointed out in Amar Nath’s case (supra) the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding is to bring about expeditious disposal of the cases finally, More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub-section (2), in section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of section 482, however, it would follow that nothing in the Code, which would include subsection (2) of section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out ? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise

of the revisional power of the High Court under the 1898 Code. the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of, a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction. then the trial of the accused will be without jurisdiction and even after his acquittal a second trial after proper sanction will not be barred on the doctrine of Autrefois Acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order. does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused upto the end ? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure, the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with section 482 of the 1973 Code. even assuming. although not accepting, that invoking the revisional power of the High Court is impermissible.”

In a recent judgment reported as **Prabhu Chawla Versus State**

of Rajasthan 2016 (4) R.C.R. (Criminal) 270, the Hon'ble Supreme Court was seized of the matter where the High Court of Rajasthan had dismissed a petition preferred by the appellant Prabhu Chawla under Section 482 Cr.P.C. by holding it to be not maintainable as the appellant therein had remedy under Section 397 Cr. P.C. The Hon'ble Supreme Court held as under:-

“6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of High Court under Section 482 Cr.P.C. is unwarranted. We would simply reiterate that Section 482 begins with a non-obstante clause to state: “Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.” A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J. “abuse of the process of the Court or other extraordinary situation excites the court’s jurisdiction. The limitation is self-restraint, nothing more.” We venture to add a further reason in support. Since Section 397 Cr.P.C. is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 Cr.P.C. only to petty interlocutory orders! A situation wholly unwarranted and undesirable.

*7. As a sequel, we are constrained to hold that the Division Bench, particularly in paragraph 28, in the case of **Mohit alias Sonu and another** (supra) in respect of inherent power of the High Court in Section 482 of the Cr.P.C. does not state the law correctly. We record our respectful disagreement.*

*8. In our considered opinion the learned Single Judge of the High Court should have followed the law laid down by this Court in the case of **Dhariwal Tobacco Products Ltd.** (supra)*

*and other earlier cases which were cited but wrongly ignored them in preference to a judgment of that Court in the case of **Sanjay Bhandari** (supra) passed by another learned Single Judge on 05.02.2009 in S.B. Criminal Miscellaneous Petition No. 289 of 2006 which is impugned in the connected Criminal Appeal arising out of Special Leave Petition No. 4744 of 2009. As a result, both the appeals, one preferred by Prabhu Chawla and the other by Jagdish Upasane & Ors. are allowed. The impugned common order dated 02.04.2009 passed by the High Court of Rajasthan is set aside and the matters are remitted back to the High Court for fresh hearing of the petitions under Section 482 of the Cr.P.C. in the light of law explained above and for disposal in accordance with law. Since the matters have remained pending for long, the High Court is requested to hear and decide the matters expeditiously, preferably within six months.”*

Therefore, what can be culled is that the High Court would have the jurisdiction under its inherent power to decide this issue and the objection regarding maintainability of the petition is hereby negated.

Now reverting back to the merits of the case as to whether the trial court had erred in dismissing the application under Section 311 Cr.P.C. it is the opinion of the Court that power under Section 311 Cr.P.C. are very wide. The Section confers enormous power in the court for recalling a witness or lead additional evidence in any form before delivering final judgment. This is on account of the concept of giving a person fair trial. The concept of fair trial is nothing other than to give due opportunity to a person and for the Court to arrive at just and fair decision. The question of the procedure to be adopted regarding the principle to be kept in mind, while exercising power under Section 311 Cr.P.C. have been culled out in the

judgment rendered in **Rajaram Prasad Yadav V. State of Bihar and another (2013) 14 SCC 461**, which are as under:-

“17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3. If evidence of any witness appears to the court to be essential to the just decision of the case, it is the power of the court to summon and examine or recall and re-examine any such person.

17.4. The exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

17.5. The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7. The court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

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17.10. Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be gnanimous in permitting such mistakes to be rectified.

17.11. The court should be conscious of the position that after all the trial is basically for the prisoners and the court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

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17.14. The power under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”

These principles came to be noticed by the Hon'ble Supreme Court in **Criminal Appeal Nos. 805-806 of 2016 titled State of Haryana Versus Ram Mehar and others etc. etc. decided on 24.8.2016.**

In the instant case applying the aforesaid principles, as have been laid down, the instant applicant deserves to be allowed. The FIR under Sections 498-A, 406, 323 and 506 IPC came to be registered by the petitioner herein on the ground of demand of dowry and cruelty meted out to the petitioner. Sections 498A IPC is reproduced hereunder:-

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which

may extend to three years and shall also be liable to fine.
Explanation.—For the purpose of this section, “cruelty” means

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- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
 - (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

An FIR came to be lodged against the petitioner and her father for an incident that took place on 1.1.2008 wherein it was alleged that the petitioner herein had administered poison/chemical to the complainant (husband in the present proceedings). On the basis of the FIR that was lodged a divorce decree was granted to the husband on the ground of cruelty which order has been affirmed upto the Hon’ble Supreme Court. The petitioner herein has been able to lay hands on the opinion of the Medical Board as to the nature of the poison that was allegedly administered and the opinion of the Board has become relevant to establish the fact whether a false complaint was registered against the petitioner and her father and whether lodging of such false complaint would or would not tantamount to cruelty. Therefore, rejecting the application under Section 311 Cr.P.C. without going into the crux of the matter , rejecting the said application solely on the ground that trial has to be completed within a period of two months is not a ground that is sustainable in the eye of law . The concept of fair trial as has been held in various judgments particularly in **Ram**

Mehar and others's case (supra) would necessitate that adequate opportunity is given to the parties in order to enable the court to arrive at a just and fair final decision.

For the reasons afore-stated, the present petition is allowed, impugned order is set aside and the application filed by the petitioner under Section 311 Cr.PC. for leading additional evidence is allowed and the petitioner is hereby given two effective opportunity to lead additional evidence on the date to be fixed by the trial court to be concluded within a week.

The parties are directed to appear before the trial court on 16th January, 2017.

January 9th, 2017
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(JAISHREE THAKUR)
JUDGE