

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Reference No.2 of 2017

Date of decision:18.12.2017

Court on its own motion

...Petitioner

v.

State of Haryana

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: By Post.

.....

Inderjit Singh, J.

The District and Sessions Judge, Ambala has sent reference which is reproduced as under:-

“Subject: Reference in view of different views in the cases of
“**Rohit Uppal Vs. State of Punjab and others**”, 2017 (2)
R.C.R. (Criminal) 310 and “**Uppal Credit and Investment
Pvt. Ltd. vs. Ashwani Kumar**”, 2016 (2) **R.C.R. (Criminal)
684.**

Respected Sir,

Many times, criminal revisions are filed in the Courts of District & Sessions Judges/Additional Sessions Judges when certain applications under Section 311 Cr.P.C., Section 319 Cr.P.C. etc. are decided by the trial Courts. The aggrieved parties then prefer revision petitions before the Courts of

Sessions or before the Hon'ble High Court, as the case may be.

An objection is invariably raised by the respondents that the order being an interlocutory order, a revision petition would not be maintainable in view of the provisions of Section 397(2) Cr.P.C.

On 20.05.2017, one such matter was listed before the Court being presided over by the undersigned, where an application under Section 91 read with Section 311 Cr.P.C. had been dismissed by the trial Court and the revision petition was filed in the Court of the undersigned. During the course of arguments, the issue of maintainability was again raised. Learned counsel for the petitioner referred to certain judgments titled **Amit Kapoor Vs. Ramesh Chander & Anr., 2012 (3) Apex Court Judgments 512 (SC), Jagannath Verma and others Vs. State of U.P. and another, 2015 (1) RCR (Criminal) 414 (Allahabad), Ratan Mandal vs. State of Jharkhand, 2006 (1) RCR (Criminal) 492 (Jharkhand), R. Lakshminarayanan Vs. Inspector of Police, CBI, Bangalore, 2006 (1) RCR (Criminal) 187 (Karnataka), Nirmal Vs. State of Punjab, 2001 (4) RCR (Criminal) 622 (P&H), Rajesh Kumar Vs. State of Haryana, 2001 (4) RCR (Criminal) 274 (P&H) and Vikas Kumar Roorkeval Vs. State of Uttarakhand and others, 2011 (1) RCR (Criminal) 477 (SC);** whereas learned counsel for the respondents relied upon

Sethuraman Vs. Rajamanickam, (2009) 5 Supreme Court Cases 153.

The undersigned then searched for the law and came across two recent Judgments, in which different views have been taken by the Hon'ble High Court. In the case of “**Rohit Uppal Vs. State of Punjab and others**”, 2017 (2) R.C.R. (Criminal) 310, it has been held that an order passed under Section 311 Cr.P.C. is an interlocutory order and its validity can be challenged under Section 482 Cr.P.C. and not by way of a revision petition as the same is barred under Section 397(2) Cr.P.C., whereas in the other judgment again passed by a Single Bench of Hon'ble Punjab and Haryana High Court on 22.03.2016 in the case of “**Uppal Credit and Investment Pvt. Ltd. Vs. Ashwani Kumar**”, 2016(2) R.C.R. (Criminal) 684, it has been held that an order passed under Section 311 Cr.P.C. would not be an interlocutory order and therefore, a revision petition would be maintainable and would not be barred under Section 397 (2) Cr.P.C. Copies of both the Judgments are also annexed herewith as annexure-1 and annexure-2. Copy of the order passed by this Court on 20.05.2017 is also annexed herewith as annexure-3.

In view of the aforesaid, this reference is being sent to the Hon'ble High Court seeking guidance on the issue.”

This reference was taken on judicial side.

[4]

I have gone through the record. The learned District & Sessions Judge, Ambala, has asked on the legal point whether the order passed on an application filed under Section 311 Cr.P.C. is an interlocutory order or not. The learned District & Sessions Judge, Ambala, has also given some citations in his order under reference.

First of all, the learned District & Sessions Judge, Ambala, is to decide the case as per law laid down by the Hon'ble Supreme Court, but he has referred two contradictory judgments of this Court. The learned Sessions Judge should have searched for the judgment of the larger bench or of the Hon'ble Supreme Court. The Hon'ble Supreme Court in Sethuraman v. Rajamanickam, 2010 (5) R.C.R. (Criminal) 512, has specifically held that against the order rejecting application under Section 311 Cr.P.C., revision to the High Court is not maintainable. The learned Sessions Judge in the reference has also mentioned regarding that judgment. When the law has been laid down by the Hon'ble Supreme Court on the point then looking the contradictory view of this Court is not as per law. The judgment passed by the Hon'ble Supreme Court is binding upon all the Courts subordinate to it.

The law laid down by the Hon'ble Supreme Court in above said judgment is binding unless some other view has been expressed by the larger Bench of the Hon'ble Supreme Court in any other judgment.

So as per the law laid down by the Hon'ble Supreme Court in this judgment which has been mentioned in the reference itself, the order passed under Section 311 Cr.P.C. is an interlocutory order and, therefore, no revision is maintainable against the interlocutory order.

The reference is disposed of accordingly.

December 18, 2017.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No