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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 2229/2017

Order reserved on: 26th October, 2017

Order pronounced on: 1st November, 2017

VIRKARAN AWASTY

...Petitioner

Through: Mr. Vikas Pahwa, Senior Advocate, with
Mr. Neeraj Chaudhri, Ms. Kinnori
Ghosh, Ms. Kanika Sodhi, Mr. Karan
Khanuja & Ms. Sakshi Aggarwal,
Advocates.

versus

STATE OF NCT OF DELHI

.... Respondent

Through: Mr. Mukesh Kumar, APP for the State,
Mr. Vikram Panwar with Mr. Ashok
Sagar, Advocates for the complainant.

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HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By way of the present petition filed under Section 482 of The Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') the petitioner seeks quashing of order dated 05.05.2017 passed by the Additional Session Judge (hereinafter referred as 'ASJ'), South, Saket Courts, whereby the revision petition titled "*Vikram Awasty v. State*" Crl. Rev. No. 8356/2016 and also order dated 06.08.2016 whereby the learned ACMM declined to cancel the Open Non-Bailable Warrants.

2. The brief facts of the present case are that the complainant/Hassad Food Company lodged an FIR against the petitioner on 03.12.2014 at PS EOW, wherein it was mentioned that the complainant is a company based in Netherland who on misrepresentation made by the petitioner and the Standard Chartered Pvt. Equity Limited (I) & (II) (SCPE), in the financial accounts and with regard to the level of stock of his company (worth approx. Rs.800 crores), was induced to invest in his company approximately to the tune of Rs.750 crores. The complainant acquired 69.5% of the share of the petitioner's company. The petitioner also availed various loan facilities from Consortium of Banks as working capital loans, packing credit and to build a raw material inventory. Later when Deloitte Haskins and Sells (Deloitte) submitted its incomplete audit report in the year 2013 stating the reason to be '*lack of details of actual inventory, not being allowed to access the sites, non cooperation and lack of transparency and further, the default in repaying the credit facilities to the creditors*', that the suspicion was created in the mind of the complainant. Thereafter, the complainant appointed Dr. Amin Controllers Private Limited(Surveyor) to verify the inventory who after investigation revealed that only stock of rice/inventory worth 3-5 million (INR 50 crores) was available in the warehouse of the company whereas substantial bags were filled with husk and wooden pallets to give an impression that the warehouse was filled with stocks. The complainant filed a complaint on account of being defrauded

by the petitioner. The petitioner joined the investigation in the year 2015 and thereafter during the pendency of the investigation he shifted to UK and failed to join the investigation and NBWs were issued against him by the Trial Court. The order dated 06.08.2016 was challenged by the petitioner by way of revision petition in the court of learned ASJ who further dismissed it on the ground of maintainability of revision against an interlocutory order. Hence, the present petition.

3. Mr. Pahwa, learned Senior Counsel for the petitioner contends that the learned ACMM had erred in dismissing the application seeking cancellation of NBWs as the order passed on 06.08.2016 is an interlocutory order; that the issuance of NBWs was challenged by the petitioner by moving an application under Section 70(2) Cr.P.C. which was dismissed on 06.08.2016; that the issuance of NBWs against the petitioner by the concerned court was not communicated to him by the Investigating Officer; that only documentary evidence is required to proceed with the investigation, therefore, the presence of the petitioner is not required; that no custodial interrogation of the petitioner is required; that the petitioner has been participating in the investigation and he has been interrogated in detail for 10 hours by EOW and submitted 5000 pages dossier to the EOW; that the medical condition of the petitioner does not allow him to travel; that the petitioner undertakes to join the further investigation through video-conferencing.

4. In support of his contentions, the counsel for the petitioner has relied upon several judgments namely *Amar Nath v. State of Haryana* reported in (1977) 4 SCC 137, *Inder Mohan Goswami v. State of Uttranchal* reported in (2007) 12 SCC 1, *State through CBI v. Dawood Ibrahim Kaskar* reported in (2000) 10 SCC 438, *State of Maharashtra v. Dr. Praful B. Desai* reported in (2003) 4 SCC 601, *Prem Cashew Industries v. Zen Pareo* reported in (2000) 55 DRJ.
5. On the other hand, Mr. Mukesh Kumar, learned APP for the State opposed the present petition and contended that the petitioner has been evading investigation despite issuance of notices dated 21.12.2015, 23.12.2015, 30.12.2015 for his personal appearance; that the proceeding under Section 82 Cr.P.C. has been issued against the petitioner; that red corner notice has also been sent to the Interpol for publication of his name; that there are various proceedings in different courts pending against the petitioner and his family members; that the trial is at the initial stage of the investigation for which the presence of the petitioner in person is mandatory and the same cannot be exempted.
6. The submissions made by the both the parties have been heard and the records have been perused.
7. After giving careful consideration to the entire facts, it is seen that the main contention of the learned Senior Counsel for the petitioner is that the order dated 06.08.2016 is a final order and not an interlocutory order as it affects the right of the petitioner and

therefore prays for setting aside the order dated 05.05.2017 where by the order dated 06.08.2016 his application for setting aside had been dismissed. It is relevant to understand the meaning of interlocutory order. An Interlocutory Order (also known as an Interim Order) means the decision of the Court which does not deal with the finality of the case but settles subordinate issues relating to the main subject matter which may be necessary to be decided during the pendency of the case due to the urgency of those issues. It was held by the Apex Court in ***Central Bank Of India vs Shri Gokal Chand*** reported in ***1967 AIR 799*** that *“All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties. The legislature could not have intended that the parties would be harassed with endless expenses and delay by appeals from such procedural orders.”* In the present case, the presence of the petitioner for investigation does not affect the rights of the party rather the coercive process has been issued to procure his presence in person in order to continue with the investigation process which has been delayed since a number of years on account of his being not personally present. It is observed that during the pendency of the investigation various notices were issued against the petitioner for his personal appearance but he had avoided the investigation on one pretext or the other. Perusal of the record further transpires that the petitioner joined the investigation only once in August 2015 and thereafter

despite issuance of notice dated 21.12.2015, 23.12.2015 and 30.12.2015, the petitioner chose not to appear and replied only via emails and couriers.

8. The power of this court while exercising its power under Section 482 Cr.P.C is well settled which states that the High Court while exercising its inherent power should interfere only in rare cases where it is satisfied that there is abuse of process of court or to secure interest of justice.
9. In the present case, it is observed that the Trial Court had issued NBWs after proper consideration of the facts and circumstances of the present case and subsequently, the order of the court dated 06.08.2016 dismissing the application of the petitioner for cancellation of NBWs is a well reasoned order. Keeping in view the above, it is observed that the order dated 06.08.2016 is an interlocutory order as it does not finalise the complete proceedings pending before the Trial Court and thus no criminal revision is maintainable in view of Section 397(2) of the Code of Criminal Procedure against the order dated 06.08.2016. Therefore, the interference of this court in the order dated 06.08.2016 and subsequent order dated 05.05.2017 while invoking its inherent power is not called for.
10. As far as the contention that the petitioner has joined the investigation in August 2015 and thereafter he had joined the investigation on several occasions when notices were served upon him and to join the investigation through video-conferencing, it is observed that the case in hand is at its initial stage for which

interrogation of the petitioner in person is necessary. During the process of interrogation, the investigating agency may come across certain relevant facts and recoveries which are germane and crucial for concluding the investigation. In *Narayan Sai alias Narayan Asharamji Harplani v. State of Haryana* reported in (2016 SCC OnLine P&H 10966, it is observed that:-

“Apart from this, the allegations against the petitioner are very serious in nature and therefore, this Court has no hesitation to conclude that the plea of the petitioner that he be interrogated through video-conferencing cannot be accepted. Chapter XII CrPC deals with information to police and their powers to investigate. Therefore, the police is required to adhere to the very provisions of law as enshrined under Chapter XII CrPC. Even otherwise, the powers of a Magistrate under the provisions of Section 167(2)(b) CrPC are discretionary and that too during trial and one cannot claim as a matter of right that his evidence be recorded through video-conferencing, especially when serious allegations have been levelled against the accused. In case the prayer of the petitioner for investigation through video link is accepted, the very purpose of police investigation would be defeated. Therefore, this Court has no hesitation to conclude that filing the present petition is nothing but a clear abuse of the process of law. The petitioner is not entitled for relief, as prayed for. He has been named as an accused in the FIR and therefore, he is bound to cooperate in the investigation. In case an accused is allowed to be interrogated through the videoconference in the offences, like the present one, the very purpose of police investigation would be frustrated.”

11. On the basis of the above observations, it is viewed that the impugned order dated 05.05.2017, is a well reasoned order and the same is upheld.
12. Accordingly, the present petition is dismissed.
13. However, it is made clear that the observations made hereinabove shall not be taken as an expression on the merits of the case.

SANGITA DHINGRA SEHGAL, J

NOVEMBER 1, 2017

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