HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2663 OF 2017

ORDER:

The revision petitioner herein viz., Surinder Pal Singh is arraigned as accused No.1 in C.C. No.9 of 2005 on the file of I Additional Special Judge for C.B.I. Cases, Visakhapatnam, arising out of crime in FIR No.RC7(A)/2001/CBI-VSP, when he moved an application under Section 239 of the Code of Criminal Procedure, 1973 (for short 'Code') read with Section 19 of Prevention of Corruption Act, 1988 (for short 'PC Act'), requesting to drop the proceedings in the said C.C., qua the petitioner to discharge him for want of valid sanction for prosecution against him, the learned Special Judge for CBI Cases rejected the request dismissing the application by the order dated 28.08.2017. Challenging the said order, the present Criminal Revision Case is preferred under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code').

2. Heard Sri Kailashnath Reddy, learned counsel for the revision petitioner, and the learned Special Public Prosecutor for CBI Cases, and perused the order under challenge including the material on record.

3. Initially, there has been argument and counter argument advanced by both sides as to maintainability of the present Criminal Revision Case. The learned counsel for the revision petitioner would

submit that the order impugned in the present revision case is a final order passed and, therefore, amenable to the provisions of Sections 397 and 401 of the Code. Per contra, the learned Special Public Prosecutor for CBI Cases would submit that the *lis* is still pending and it is not a final order and it is only an interlocutory order without giving any finality to the pending proceedings, and, therefore, it is not maintainable and even relied on the decision in **Girish Kumar Suneja v. C.B.I.**[1]**,** where it was held that no revision is maintainable against an interlocutory order in view of the bar under Section 397(2) of the Code.

4. In the present context, learned counsel for the revision petitioner places reliance in **Mohit Alias Sonu v. State of Uttar Pradesh**[2]**.** The learned counsel places reliance on the expression in paragraph No.21, where, the Hon'ble Supreme Court had an occasion to deal with connotation of the expression 'interlocutory order' as appearing in Sub Section (2) of Section 397 of the Code, which bars any revision of such an order by the High Court and observes thus:

> 21. So far as the question as to whether the order of the Judicial Magistrate was an interlocutory order is concerned, Their Lordships after discussing the legislative background of the provisions held: (*Amar Nath v. State of Harayana* [(1977) 4 SCC 137 : 1977 SCC (Cri) 585, SCC p.140, para 3)

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[1] AIR 2017 SC 3620
[2] (2013) 7 SCC 789

"6….The main question which falls for determination in this appeal is as to what is the connotation of the term "interlocutory order" as appearing in sub-section (2) of Section 397 which bars any revision of such an order by the High Court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in

> aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court."

5. The learned counsel for the revision petitioner relies on the expression of the Hon'ble Apex Court contained in paragraph No.16, where, the Hon'ble Apex Court referring to what has been observed by A Three-Judge Bench of the Hon'ble Apex Court in **Madhu Limaye v. State of Maharashtra**[3]**,** extracted it, which is thus:

> "16. A three-Judge Bench of this Court discussing the object of the two provisions i.e. Section 397(2) and Section 482 CrPC observed as under: (*Madhu Limaye case,* SCC pp.555-56, para 10)
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> > "10. As pointed out in *Amar Nath case* [(1977) 4 SCC 137] 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 sub-section (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

[3] (1977) 4 SCC 551

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 up to 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."

6. The main submission of the learned counsel for the revision petitioner is that the sanction orders under Ex.P-43 and P-44 are tainted with non-application of mind, and, therefore, the revision petitioner is entitled to discharge for want of valid sanction in accordance with law. Incidentally, submissions have been that an application requesting to discharge can be made at any stage of the proceedings as held by the Hon'ble Apex Court in **State of Karnataka through CBI v. C. Nagarajaswamy**[4] and the authority signed the sanction order being a Deputy Secretary, Department of Revenue, New Delhi, is inferior in rank to the rank of the revision petitioner, who was holding the post of Commissioner of Central Excise, Visakhapatnam, on the date of initiation of criminal action, and, therefore, vitiates.

7. Touching the submission that Exs.P-43 and P-44 emanated mechanically, the learned counsel would submit that (i) the tape-recorded cassettes three (3) in number said to be containing conversation between the accused were not made available to the sanctioning authority; (ii) copies of statements of approvers G.

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[4] 2005 (8) SCC 370

Eswar Rao (LW.49), M. Kamaraju (LW.50) and B. Sambasiva Rao (LW.51) recorded under Section 164 of the Code were also not made available to the sanctioning authority, and, therefore, non-consideration of these documents would make the order according sanction to prosecute the petitioner as bad, and, therefore, the petitioner is entitled to discharge and the trail Court, somehow, did not properly appreciate these submissions and, somehow, acceded to what was canvassed by the learned Special Public Prosecutor for CBI.

8. The learned Special Public Prosecutor for CBI would submit that the transcripts of tape-recorded cassettes were sent along with file to the Ministry and even the statements of G. Eswar Rao (LW.49), M. Kamaraju (LW.50) and B. Sambasiva Rao (LW.51) recorded under Section 161 of the Code, during the course of investigation, were sent and form part of the materiel for perusal by the sanctioning authority. It is his submission that the statements of these three (3) witnesses recorded under Section 164 of the Code were subsequent to the request for sanction was sent with the report of the Superintendent of Police and the question of placing these records before the sanctioning authority did not arise and, therefore, the sanction order cannot be said to be invalid merely on the premise that a model sanction order was sent to the sanctioning authority by the investigating officer which was also one of the grounds agitated by the petitioner herein.

9. The learned Special Judge for CBI Cases formulated the point for determination in paragraph No.8 as under:

> "Whether the sanction orders Exs.P.43 and P.44 accorded to prosecute the petitioner/1st accused are not valid and the petitioner/1st accused is entitled to ask to discharge him for want of a valid sanction to prosecute him, in accordance with Sec.19 of Prevention of Corruption Act?"

The order of the learned Special Judge for CBI Cases shows that by the time, the present application was made, PWs.1 to 35 were examined and Exs.P-1 to P-64 were marked besides Material Object Nos.1 to 12 on behalf of the prosecution, and, on behalf of defence, Exs.D-1 to D-46 were marked and Exs.X-1 and X-2 filed by the witnesses were even marked, and, the matter was coming up for cross-examination by the investigating officer PW.35. At that stage, the present application was filed under Section 239 of the Code read with Section 19 of PC Act to discharge him for want of valid sanction to prosecute him in accordance with Section 19 of PC Act.

10. The order passed by the learned Special Judge for CBI Cases is perused. He has referred to the decisions relied on by the learned counsel for the revision petitioner before him and the learned Special Public Prosecutor for CBI cases. Then referred to the submissions made by them respectively, and by considering the various submissions in the light of what has been stated by PW.32, the relevant witnesses being the Deputy Secretary, Department of

Revenue, and referring to the rulings in paragraph Nos.10 and 11, arrived at that Exs.P-43 and P-44 are authenticated by PW.32 being the Deputy Secretary on behalf of the President of India as per the power derived under Article 77 of the Constitution of India which contemplates that the orders and their instruments made and executed in the name of the President of India shall be authenticated by the signature of a Secretary, Special Secretary, Additional Secretary, Joint Secretary, Deputy Secretary, Under Secretary or Assistant Secretary to the Government of India or by the signature of Section Officer in the Department of Ministers as per the Authentication (order and other instruments) Rules, 1958, and even the evidence of PW.32 revealing First Information Report, Show Cause Notices, NHA Orders, Transcripts, relevant documents and statements of witnesses which were received from CBI, Visakhapatnam, were all put up before the competent authority for applying its mind to accord sanction and then the Finance Minister applied his mind and approved the prosecution and granted sanction. The learned Special Judge also observes that when the sanction itself is very expressive, the argument that the particular material is not properly placed before the sanctioning authority for according sanction and the sanctioning authority has not applied its mind becomes unsustainable as enunciated by the Hon'ble Apex Court in **C.S. Krishna Murthy v. State of Karnataka** [20005 IV AD (SC) 141] and **State of Tamilnadu v. Damodaran** [AIR 1992 (SC) 563] and thereby held that there was proper exercise of mind by the sanctioning authority and PW.32, being Deputy Secretary, as an instrument on behalf of the President of India, subscribed his signature and, therefore, it cannot be said that there was no application of mind and that PW.32 holds the rank inferior to that of the rank of the petitioner, are not sustainable and dismissed the application.

11. So far as application of mind is concerned, though the evidence of PW.32 is not placed before this Court by the revision petitioner, still from the order, it is evident that Exs.X-1 and X-2 would contain every document including transcripts of the tape-recorded conversations of the revision petitioner, which are three (3) in number, and the statements of the three (3) witnesses, whose names are referred to in the above i.e. M. Kamaraju (PW.28), G. Eswararao (PW.29) and B. Sambasivarao (PW.30), recorded under Section 161 of the Code were also placed for perusal which consists of a part of record marked as Exs.X-1 and X-2 Volumes. Merely, on the premise that the statements recorded by the learned Magistrate under Section 164 of the Code of these three (3) witnesses, before the sanctioning authority for according sanction under Exs.P-43 and P-44, is not a ground to hold that Exs.P-43 and P-44 are tainted with non-application of mind for the reason that these statements were recorded by the learned Magistrate only subsequent to the request made to the sanctioning authority and only after they turned as approvers. When there is overwhelming evidence on record, laid in the direction of establishing the complicity of the revision petitioner, irrespective of the fact, whether that evidence is convincing and cogent to record a

conviction, which exercise yet to be done by the learned Special Judge, in accordance with law, certainly, it cannot be said that on the mere ground that the statements of these three (3) witnesses recorded under Section 164 of the Code, since did not form part of the record for perusal to apply mind for issue of sanction orders, would vitiate sanction orders under Exs.P-43 and P-44.

12. When the case reached the stage of cross-examining the investigating officer, invariably the final witness before conclusion of prosecution evidence, it would not have been proper for the revision petitioner to come up with an application of this nature under Section 239 of the Code read with Section 19 of PC Act as application of mind requires an intrinsic examination of the evidence on record by the learned Special Judge for CBI Cases and ought to have agitated the same after conclusion of trial during the course of arguments.

13. The learned counsel for the revision petitioner before the learned Special Judge for CBI Cases placed reliance in **C. Nagarajuswamy's Case[4],** but, even the learned Special Public Prosecutor for the complainant relied on the same decision referred to in the above for the proposition that the revision petitioner is not liable to be discharged at the fag end of the case and the petition is liable to be dismissed as referred to by the learned Special Judge in paragraph No.6 at page 12 of the order.

14. Thus, the twin grounds, on the basis of which the revision petitioner sought for his discharge, are without any merit and the order under challenge does not suffer from any patent illegality warranting interference.

15. Therefore, the Criminal Revision Case is dismissed, at the admission stage itself.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present Criminal Revision Case stand dismissed.

A. SHANKAR NARAYANA, J

April 3, 2018.
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