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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.374 of 2018

Order Reserved on : 5.12.2018

Order Passed on : 1.3.2019

M/s Ind Synergy Limited, through its authorised signatory Satyadeep Sahukar, S/o Late Shri S.N. Sahukar, aged about 54 years, Ind Synergy Limited, registered office at Gokulpuram, Kachna Road, Khamhardih, Shankar Nagar, Raipur, District Raipur, Chhattisgarh, Pin 492007

---- Applicant

versus

Suresh Chand Goyal, S/o Late Shri Ratanlal Goyal, aged about 71 years, Chairman-cum-Managing Director, M/s Goyal MG Gases Private Limited, registered office at 53, Friends Colony (West), New Delhi, Pin 110065

--- Respondent

For Applicant	:	Shri Ashish Surana, Advocate
For Respondent	:	Shri Kapil Maini and Shri Rohit Priyaranjan, Advocates

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. The instant revision has been preferred against the order dated 12.3.2018 passed by the 8th Additional Sessions Judge, Bilaspur in Criminal Revision No.22 of 2018, whereby the order dated 23.12.2017 passed by the Chief Judicial Magistrate, Bilaspur in Complaint Case No.32 of 2015 has been set aside and the application of the present Respondent preferred under Section 205 read with Section 317 of the Code of Criminal Procedure has been allowed.
2. Facts of the case, in brief, are that a criminal complaint case under Section 200 of the Code of Criminal Procedure was filed by the

present Applicant against the Respondent/accused before the Court of Chief Judicial Magistrate on 30.7.2015 for an offence punishable under Sections 500, 501 read with Section 34 of the Indian Penal Code. After recording statements of witnesses, vide order dated 16.12.2015, the Trial Court registered the complaint filed by the Applicant and issued process against the Respondent. Being aggrieved by the order dated 16.12.2015, the Respondent filed Criminal Revision No.47 of 2016 and Criminal Revision No.97 of 2016 under Section 397 of the Code of Criminal Procedure before the Sessions Judge, Bilaspur, which were dismissed by the Sessions Judge vide order dated 23.7.2016. Against the order dated 23.7.2016, the Respondent filed a petition under Section 482 of the Code of Criminal Procedure before this Court which was registered as Cr.M.P. No.853 of 2016. In the meanwhile, before the Trial Court, on 19.1.2016, the Respondent filed an application under Section 205 read with Section 317 of the Code of Criminal Procedure for his permanent exemption. Vide order dated 22.9.2016 passed in Cr.M.P. No.853 of 2016, this Court directed the Trial Court to decide the application under Section 205 read with Section 317 of the Code of Criminal Procedure in accordance with law. Vide order dated 26.12.2016, the Trial Court dismissed the application under Section 205 read with Section 317 of the Code of Criminal Procedure filed by the present Respondent and a warrant was issued against the present Respondent. On 20.1.2017, the present Respondent filed Criminal Revision No.22 of 2017 before the Sessions Judge, Bilaspur against the order dated 26.12.2016 passed by the Trial Court. Vide order dated 3.3.2017, the revision was dismissed. Thereafter, the Respondent challenged the order dated 3.3.2017 before this Court in Cr.M.P.

No.319 of 2017. Vide order dated 3.8.2017 of this Court the above Cr.M.P. No.319 of 2017 has been dismissed as withdrawn with certain liberty. On 9.3.2017, the Respondent appeared before the Trial Court for the first time and filed an application under Section 436 of the Code of Criminal Procedure for grant of bail. The Trial Court granted bail to the Respondent. Thereafter, on 6.4.2017, the Respondent again filed an application under Section 205 read with Section 317 of the Code of Criminal Procedure before the Trial Court. Vide order dated 23.12.2017, the Trial Court dismissed the application on the ground that earlier the Respondent's application had been dismissed on 26.12.2016 and the dismissal being affirmed by the Sessions Judge, the fresh application on the same ground cannot be entertained as not maintainable. Against the said order dated 23.12.2017, the Respondent filed Criminal Revision No.22 of 2018 before the Court of Session at Bilaspur. Vide the impugned order dated 12.3.2018, the Additional Sessions Judge has allowed the revision filed by the Respondent and set aside the order of the Chief Judicial Magistrate. Hence, the instant revision by the Applicant/Complainant.

3. Learned Counsel appearing for the Applicant/Complainant submitted that the order passed by the Chief Judicial Magistrate/Trial Court dated 23.12.2017 is an interlocutory order and, therefore, Criminal Revision No.22 of 2018 preferred by the Respondent before the Sessions Court was not maintainable. Despite that, the Sessions Court entertained and allowed the revision which is contrary to law. It was further submitted that the Sessions Court erred in interfering with the order passed by the Trial Court without considering that earlier the application had been

rejected and rejection has been affirmed by the High Court in Cr.M.P. No.319 of 2017. The Sessions Court ought to have considered that earlier the application has been rejected and, therefore, the subsequent application on the same ground is not maintainable.

4. Learned Counsel appearing for the Respondent supported the impugned order. It was submitted that with regard to the maintainability of the revision before the Sessions Court, the Applicant has never taken that ground before the Sessions Court. Therefore, the same cannot be taken in the present revision petition. It was further submitted that the nature of the order passed on the application under Section 205 read with Section 317 of the Code of Criminal Procedure is not interlocutory and, therefore, the revision against the said order is maintainable. In this regard, reliance was placed upon **(2001) 7 SCC 401 (Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd.)**, **2009 SCC OnLine Pat 568 (Sheela Kumar W/o Arvind Prasad v. State of Bihar through Vigilance)**, **2000 SCC OnLine MP 425 (Akram v. State of M.P.)**, **2003 SCC OnLine Chh 54 [V.K. Punshi v. State of M.P. (Now C.G.)]** and **2006 SCC OnLine Chh 83 (Ramesh Jayaswal v. State Industrial Court, Chhattisgarh)**. It was further submitted that earlier when the application under Section 205 read with Section 317 of the Code of Criminal Procedure was rejected, at that time, the Respondent was not present before the Trial Court and a warrant was issued against him. Therefore, at that time, on the same ground, the application submitted by the Respondent was dismissed. Later on, in the second round of hearing, when he submitted the application for permanent exemption under Section

205 read with Section 317 of the Code of Criminal Procedure, by that time, the Respondent appeared before the Trial Court and was granted bail under Section 436 of the Code of Criminal Procedure by the Trial Court. Therefore, looking to these changed circumstances, the Sessions Court has rightly allowed the revision preferred by the Respondent.

5. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
6. With regard to maintainability of the revision before the Sessions Court or before this Court, from the material available, it is clear that this ground was not raised before the Sessions Court and it has been raised for the first time before this Court. While dealing with this issue in **Bhaskar Industries case** (supra), it was held by the Supreme Court as under:

“8. The interdict contained in Section 397(2) of the Code of Criminal Procedure (for short “the Code”) is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test laid down by this Court through a series of decisions is this: if the contention of the petitioner who moves the superior court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If they would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage.

11. At any rate the objection regarding maintainability of the revision petition should have been raised before the court which invoked such a revisional jurisdiction. Inasmuch as the same was

not done, we leave that question undecided now.”

7. In **Sheela Kumar case** (supra), a Single Bench of the Patna High Court observed thus:

“22. Thus a right of an accused to be represented through his counsel in his absence, is dependent upon nature of order which may be passed under Section 205 of the Code and as such it cannot be said to be an interlocutory order so as to attract the bar of Section 397(2) of the Code.

23. Thus, I hold that this revision application is maintainable.”

8. While dealing with the issue, in **Ramesh Jayaswal case** (supra), this Court also observed thus:

“15. It is no longer *res integra* that order passed by the Magistrate in applications under sections 205 and 317 of the Cr.P.C. is not an interlocutory order for the purpose of filing revision against the said order. ”

9. In **V.K. Punshi case** (supra), it was observed by this Court as under:

“13. Therefore, in view of the above propositions of law on the point, if we look into the facts of the present case the petitioner requested that he was residing at a distance of 1400 kms. from Durg, he was engaged in the business activities and he was required, frequently to go to various parts of India and abroad. It was very difficult for him to appear, therefore, his personal attendance may be exempted and he be permitted to appear or to plead through an advocate as per the provisions of section 205 of the Cr.P.C. which the learned Labour Court allowed partially with conditional

order which has been mentioned above. This definitely affects the rights of the petitioner. If this application was allowed then this proceeding would have been terminated finally in favour of the petitioner because his personal appearance would have been exempted. Therefore, the finding of the learned Industrial Court that the order passed by the Labour Court is interlocutory in nature does not stand to the law laid down on the point. Therefore, the finding of Industrial Court on this aspect is not legal and correct.”

10. In the light of above observations, in the case in hand, there is no doubt that the order passed by the Magistrate on the application under Section 205 read with Section 317 of the Code of Criminal Procedure is not an interlocutory order for the purpose of filing a revision against the said order. Therefore, the argument advanced in this regard has no substance.
11. From perusal of the entire material available, it is clear that the present is a case where the complaint has been registered against the present Respondent, who is a 72 years old person and is a resident of New Delhi. No doubt that in earlier round of hearing his application under Section 205 read with Section 317 of the Code of Criminal Procedure had been rejected. By that time, the Respondent had not appeared before the Trial Court nor was he granted bail and a warrant had been issued against him. In these circumstances, the Trial Court rejected the application under Section 205 read with Section 317 of the Code of Criminal Procedure, which was also affirmed by the Sessions Court as well as by this Court. But, in second round of hearing, when the Respondent again moved application under Section 205 read with Section 317 of the Code of Criminal Procedure, by that time, he had appeared before the Trial Court and he had also been granted

regular bail under Section 436 of the Code of Criminal Procedure by the Trial Court and assurance has also been given by the Respondent that during the course of trial, he shall not raise any question regarding his identity. In these circumstances, considering all the aspects and facts of the matter and the changed circumstances, I find that there is no infirmity or illegality in the impugned order passed by the Court of Session.

- 12.** Consequently, the instant revision is dismissed.

Sd/-

(Arvind Singh Chandel)
Judge