

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-29578-2019 (O&M)
Date of Decision:-15.7.2019

Paramjit Kaur ... Petitioner

Versus

Suman Kapoor ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Arjun Veer Sharma, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

The petitioner has approached this Court challenging order dated 21.2.2018 passed by learned Judicial Magistrate 1st Class, Ludhiana, whereby the learned trial Court closed the cross-examination of CW-1 Suman Kapoor, while ordering that the same to be treated as 'NIL'. The petitioner also challenges order dated 20.12.2018 passed by learned Judicial Magistrate 1st Class, Ludhiana, whereby an application filed by the petitioner under Section 311 Cr.P.C. for recalling the aforesaid witness i.e. CW-1 Suman Kapoor for her further cross-examination, was dismissed.

The learned counsel for the petitioner has submitted that the respondent Suman Kapoor has filed a complaint against the petitioner in respect of an offence under Section 138 of Negotiable Instruments Act, wherein after summoning of the petitioner, she was to be cross-examined but the learned trial Court did not give sufficient opportunities to the petitioner/accused for her cross-examination and vide order dated 21.2.2018 ordered that the cross-examination of the complainant be treated as 'NIL'.

I have considered the aforesaid submissions.

A perusal of the order dated 21.2.2018 reads as follows:-

“File taken up in after lunch session. CW is present for examination but neither the accused nor his counsel has come present for the cross-examination of CW present in the Court. Opportunity for cross-examination of the present witness is given to the accused but no one has appeared on behalf of the accused. It seems that the learned counsel for the accused is not interested to cross-examine the witness present in the court. Perusal of the file shows that the notice of accusation was served upon the accused on 11.05.2017 and thereafter, the present complaint remained pending for the cross-examination of the complainant on the request of accused but he failed to complete the cross-examination of the complainant during this period. Even the cost of Rs.700/- was imposed upon the accused even then he failed to cross-examination of the complainant. He has availed sufficient opportunities including last opportunity. Therefore, there is no ground to adjourn the present complaint for the examination of the witness and cross-examination of present witness is rendered Nil.

Today accused has not come present in the court. In the interest of justice, case is adjourned to 16.3.2018 for awaiting presence of the accused.”

A perusal of the aforesaid shows that sufficient opportunities had already been afforded to the petitioner to cross-examine the complainant, but he did not cross-examine the complainant despite having availed several opportunities. The petitioner, thereafter, chose to file an application under Section 311 Cr.P.C., for recalling the aforesaid witness i.e. CW-1 Suman Kapoor for her further cross-examination. The learned Judicial Magistrate 1st Class, Ludhiana 20.2.2018 dismissed the application while observing that the same would virtually amount to review of its own order.

Aggrieved by the order dated 20.2.2018, the petitioner preferred a revision petition before the Court of learned Additional Sessions Judge, Ludhiana, wherein the learned Additional Sessions Judge also dismissed the revision petition while placing reliance upon Bhaskar Industries Ltd. Versus Bhiwani Denim and Apparels Ltd. and Ors., 2001 SCC (Cri) 1254; Sethuraman Versus Rajamanickam, 2010(5) R.C.R. (Criminal) 512; Mohit alias Sonu Versus State of U.P., 2013(3) R.C.R. (Criminal) 673; Girish Kumar Suneja Versus C.B.I., 2017(3) R.C.R. (Criminal) 665 and Baba Kashmira Singh Versus Mahindra and Mahindra Finance Limited, 2015 ACD 171.

Hon'ble the Supreme Court in Bhaskar Industries Ltd.'s case (supra) has held that the moratorium contained in Section 397(2) is that the powers of revision shall not be exercised in relation to any interlocutory order.

Hon'ble the Supreme Court in Sethuraman's case (supra) while dealing with scope of revision qua an order passed under Section 311 Cr.P.C. held as follows:-

“4. Secondly, what was not realised was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Criminal Procedure Code, were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Criminal Procedure Code. The trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent/accused and the only defence that was raised, was that his signed cheques were lost and that the appellant/complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e. one on the application under Section

91 Criminal Procedure Code for production of documents and other on the application under Section 311 Criminal Procedure Code for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397(2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed.”

Hon’ble the Supreme Court in Mohit alias Sonu’s case (supra) held that sub-section (2) of Section 397 puts a restriction on exercise of such power in relation to an interlocutory order passed by the criminal courts in any appeal, inquiry, trial or other proceeding.

Hon’ble the Supreme Court in Girish Kumar Suneja’s case (supra), describing different nature of orders and while dealing with the scope of Section 397(2) of Code of Criminal Procedure held as follows:-

“17. There are three categories of orders that a court can pass-final, intermediate and interlocutory. There is no doubt that in respect of a final order, a court can exercise its revision jurisdiction-that is in respect of a final order of acquittal or conviction. There is equally no doubt that in respect of an interlocutory order, the court cannot exercise its revision jurisdiction. As far as an intermediate order is concerned, the court can exercise its revision jurisdiction since it is not an interlocutory order.

18. The concept of an intermediate order first found mention in Amar Nath Vs. State of Haryana (1977) 4 SCC 137 in which case the interpretation and impact of Section 397(2) of the Cr.P.C. came up for consideration. This decision is important for two reasons. Firstly, it gives the historical reason for the enactment of Section 397(2) of the Cr.P.C. and secondly considering that historical background, it gives a justification for a restrictive meaning to Section 482 of the Cr.P.C.

21. The concept of an intermediate order was further elucidated in Madhu Limaye Vs. State of Maharashtra, (1977) 4 Scc 551 by

contradistinguishing a final order and an interlocutory order. This decision lays down the principle that an intermediate order is one which is interlocutory in nature but when reversed, it has the effect of terminating the proceedings and thereby resulting in a final order. Two such intermediate orders immediately come to mind- an order taking cognizance of an offence and summoning an accused and an order for framing charges. Prima facie these orders are interlocutory in nature, but when an order taking cognizance and summoning an accused is reversed, it has the effect of terminating the proceedings against that person resulting in a final order in his or her favour. Similarly, an order for framing of charges if reversed has the effect of discharging the accused person and resulting in a final order in his or her favour. Therefore, an intermediate order is one which if passed in a certain way, the proceedings would terminate but if passed in another way, the proceedings would continue.”

This Court in Baba Kashmira Singh's case (supra) has also held that the revision petition against the order allowing additional evidence is not maintainable since an order passed on an application under Section 311 Cr.P.C. is an interlocutory order.

In light of ratio of above referred judgments and while noticing that the trial Court had furnished sufficient opportunities to the petitioner to cross-examine CW-1 Suman Kapoor, this Court does not find any ground to interfere with the impugned orders. There is no merit in this petition and the same is hereby dismissed.

15.7.2019

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No