

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 19.09.2019**
Pronounced on : 16.10.2019

+ **CRL.REV.P. 814/2019 & CRL. M.A. 32954/2019**

SH. VIRENDER KUMAR MUTREJA

..... Petitioner

Through: Mr. S.C. Buttan, Advocate.

versus

THE STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Ms. Rajni Gupta, APP for the State.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

1. The petitioner has filed this revision petition U/s 397 R/w Section 482 Cr.P.C. against the order dated 01.07.2019 by virtue of which the Ld. MM was pleased to pass the order for framing of the charge against the revisionist and others U/s 3A, 4, 4(3), 4(4), 4(5), 5, 6 r/w 23/25 PC & PNDDT Act and 120B (Part-I) IPC.

2. The brief facts of the case are that on 18.6.16 a secret information was received by Civil Surgeon Gurgaon regarding the fact that a laboratory, owned by Ashok Gulia, proprietor of M/s Gulia Path Labs, situated at Wazirpur More, Gurgaon is running a sex determination racket at District Gurgaon. A decoy customer/shadow witness namely Mr. Paramveer was sent to meet Mr. Ashok Gulia to make deal for getting the sex determination test. Mr. Ashok Gulia was contacted by Sh. Paramveer and Mr. Ashok Gulia demanded Rs.24000/- and gave phone number of one Mr. Rakesh to the decoy customer and asked him to reach at Village Sikanderpur, Gurgaon where Mr. Rakesh will meet him for further guidance. Mr. Rakesh also asked the decoy customer to bring Rs.24000/- in cash along with pregnant lady at 4.00 p.m.

3. As per situation, a raiding team was constituted under the control of Civil Surgeon, Gurgaon Mr. Ramesh Dhankhad and decoy patient Mrs. Kavita w/o Sh. Sunil Kumar (pregnant lady) also joined the raiding team. On reaching Gurgaon, accused Rakesh called decoy customer at Najafgarh from where accused Rakesh took the patient Mrs. Kavita in an Alto Car bearing No. DL-9CW-3642 and asked the decoy customer Mr. Paramveer to follow. At Najafgarh, another lady namely Mrs. Mukesh Kumari also sat in the car which was driven by accused Pawan. At Dwarka Sec. 12, one more patient talked to Mrs. Mukesh Kumari, both the patients i.e. Mrs. Kavita and Mrs. Reena with other lady Mrs. Sarla were taken to M/s Visank Eye Clinic at sec.12, Dwarka, New Delhi. Throughout the process, the raiding team followed the Alto Car in which the decoy patient, accused Rakesh, Mrs. Mukesh were travelling. At M/s Visank Eye Clinic sex determination

test was conducted by the applicant/petitioner accused Virender Kumar Mutreja. The decoy customer was informed that sex of the fetus would be disclosed to Mrs. Mukesh who would disclose facts to the decoy while way to the clinic. At the time of raid one more patient namely Mrs. Reena also arrived at the said Clinic. Mrs. Reena had also visited the clinic to get the pre-natal sex determination test conducted along-with her mother in-law Mrs. Sarla and her pre-natal sex determination test was also conducted on that day.

4. A sum of Rs.24000/- (24 numbered notes of Rs.1000/- denomination each) were withdrawn by Dr. Saryu Sharma (Dy. Surgeon Gurgaon City Hospital) from PNDT account for the purpose of conducting sting operation. The details of the currency notes 24 x 1000 as recovered are as follows :-
OCD144231 7CN304177 0AE486090 5BV509432 7AR204575 4BE355467
5AM434197 7AQ762834 1AP243348 5CQ632067 4BV616380 1FE963928
8BD644945 0DN551944 4CM150236 3DA418215 3BN466572
4AR731438 1AR558565 8AE866466 1CN536990 5AV270272 9EH774893
0AP795360. The said amount of Rs.24000/- was paid by Dr. Saryu Sharma to decoy customer Mr. Paramveer who further made the payment to accused Rakesh. Out of the said amount of Rs.24000/- Rs. 11000/- have been recovered from the possession of accused/petitioner Virender Kumar Mutreja at the time of raid. Accused Pawan handed over Rs.9000/- and Rakesh handed over the rest of money that is Rs.4000/-. Petitioner conducted the sex-determination test without filling up form 'F' which is a violation under PNDT Act. No register was maintained by petitioner/accused Dr. Virender Kumar Mutreja for making such entry of

conducting of ultrasound. Dr. Virender Kumar Mutreja had made his confessional statement before SDM/Dwarka Sh. J.B. Kapil in his own writing and he admitted that he conducted sex-determination test of both ladies without filling up form 'F' which is compulsory before conducting ultrasound test of any patient.

5. All the ultrasound machines have been seized during the investigation and certificate of registration also seized which is registered in the name of Visank Diagnostic Centre, 201 Aggrawal Arcade Plot no.6 Sec.12, Dwarka, New Delhi-110075 having registration no. DL/SW/2004/24 dated 24.4.2014. Hard disk of ultrasound machine taken out. Petitioner/Accused Dr. Virender Kumar Mutreja, accused Rakesh, Mrs. Mukesh, Pawan driver of Alto, Mrs. Reena, Mrs. Sarla and Ashok Kumar have been arrested.

6. The Ld. Magistrate after hearing the revisionist and the State passed the impugned order dated 01.07.2019 holding that prima facie offences punishable U/s 3A, 4, 4(3), 4(4), 4(5), 5, 6 r/w 23/25 PC & PNDT Act and 120B (Part-I) IPC are made out against the revisionist.

7. I have heard the Ld. counsel for the revisionist and Ld. Addl. PP for the State and have also gone through the records of the case.

8. The Ld. Addl. PP for the state raised a preliminary objection as to the maintainability of the revision petition. She submitted that the revision is not a matter of right and the High Court has discretion to entertain or not to entertain any revision petition. She pointed out that the revisionist has directly approached this Court though the forum of Court of Sessions was very much available to him for challenging the impugned order.

9. On the other hand, the Ld. counsel for the revisionist pointed out that when jurisdiction of the High Court and Sessions Court in the matter of revision is concurrent, the aggrieved party can approach either the High Court or the Sessions Court as per his choice. He further submitted that there is nothing in Section 397 Cr.P.C which creates a bar against entertaining a revisions petition in the High Court.

10. Before dealing with the preliminary objection raised by the Ld. Addl. PP for the state, it would be appropriate to reproduce the provisions of Section 397 Cr.P.C which reads as under: -

"397. Calling for records to exercise of powers of revision.---

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding "before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.---All Magistrates, whether Executive or Judicial, and whether exercising original or appellate Jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of [section 398](#).

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

.... (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by either of them."

11. On plain reading of the above mentioned provisions, it is clear that the jurisdiction of the High Court as well as that of Sessions Court in the matter of exercise of powers of revisional jurisdiction is concerned is co-ordinate and concurrent and there is nothing in the Section which prohibits filing of the revision petition directly in the High Court. Likewise the section does not contain any bar preventing the High Court from entertaining and exercising its powers of revision.

12. The Ld. Addl. PP for the State relied upon the decision in (Tejram s/o Mahadeorao Gaikwad v. Smt. Sunanda w/o. Tejram Gaikwad), 1996 Cri.L.J. 172, wherein the learned Single Judge (R.M. Lodha, J.,) as he was then while dealing with a revision application filed by the petitioner-husband challenging the order of maintenance passed against him under [section 125](#) of the Criminal Procedure Code, by a Magistrate, dealt with the question of maintainability of revision application which was directly filed in the High Court. In paragraph 4 of his judgment, the learned Judge made the following observations:--

"It is undoubtedly true that [section 397](#) of the Code of Criminal Procedure, confers jurisdiction of revision concurrently on the Court of Sessions as well as the High Court, but it is equally true that where the jurisdiction is conferred on two courts, the aggrieved party should ordinarily first approach the inferior of the two courts unless exceptional grounds for taking the matter

directly before the superior Court is made out. Since the applicant has come directly to the High Court, though he could have filed the revision before the Sessions Judge and there are no exceptional reasons, the revision application deserves to be dismissed on this count alone. This Court does not encourage filing of revision application under [section 397](#) of the Code of Criminal Procedure, directly before this Court if it could be challenged in revision before the Sessions Court having jurisdiction of revision over the matter."

13. The Hon'ble Supreme Court in the case of *Pranab Kumar Mitra v. State of West Bengal* reported in AIR 1959 SC 144 has discussed the scope of revisional powers of the High Court in the following words:

"indeed, it is a discretionary power which has to be exercised in aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon the facts and circumstances of that case. The revisional powers of the High Court vested in it by [Section 439](#) of the Code, read with [Section 435](#), do not create any right in the litigation, but only conserve the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence, and that subordinate criminal Courts do not exceed their jurisdiction, or abuse their powers vested in them by [the Code](#). The High Court is not bound to entertain an application in revision, or having entertained one, to order substitution in every case."

14. The above authority of the Hon'ble Supreme Court was the base in a revision petition filed under [Section 397](#) of the Code directly to the High Court before the learned Single Judge of Bombay High Court in *Padmanabh Keshav Kamat v. Anup R. Kantak and Ors.* reported in 1999 Cri.L.J. 122, wherein at paras 11 and 12, it has been held as under:

“When the proceeding is maintainable by two different Courts, one being inferior or subordinate to the other, then it is certainly a question of propriety, particularly for the superior Court, as to whether it should entertain such a proceeding which could have been filed in the lower Court. However, when no special circumstances which required the petitioner to bypass the forum of the Sessions Judge and rush directly to the High Court, are pointed out, then the High Court should not entertain revision application which can be entertained and decided by the Sessions Judge. Exercise of revisional powers is not a matter of course but it is a matter of rare and sparing use. When two Forums, are available to the petitioner for getting redressal of the alleged wrong, then it will certainly be more appropriate for him to first approach the lower forum. It is certainly within the discretion of the higher forum, that is, High Court to consider whether it should entertain or not such a revision application which can lie before the Sessions Judge. Mere fact that the dispute between the parties had once come before High Court cannot be regarded as a special or exceptional circumstances justifying the entertainment of revision application by High Court.”

15. In this Padmanabh Keshav Kamat's case (supra), the observations of the learned Single Judge (Hon'ble Mr. Justice R.M.Lodha) as he then was in Bombay High Court in the case of *Tejram Mahadeorao Gaikwad v. Smt. Sunanda Tejram Gaikwad* reported in 1996 Cri. L.J. 172, were also quoted which have already been reproduced hereinabove.

16. In *Central Bureau of Investigation v. State of Gujarat* reported in (2007) 3 SCC (Cri.) 65, the CJM passed the order directing the CBI to investigate the matter on 29.9.99. The CBI moved an application for recalling the order but this application was rejected on 26.10.99. Then the CBI directly filed the application to the High Court against both the orders which was dismissed on the ground of bypassing Sessions Court.

17. Thus, from the above, it is clear that there is of-course no bar for filing revision directly to the High Court under [Section 397](#) of the Code against the order of the Magistrate but when concurrent jurisdiction is given specially under such circumstances when both are superior courts one to the Magistrate and another to the Sessions, then the propriety demands that elder superior court in hierarchy must be first approached. This is the customary common law as the first elders are always respected.

18. The scope and ambit of [Section 397](#) of the Code is not only confined to the correctness or legality of the order but also to its propriety. Both the court of Sessions and Magistrate are inferior to the High Court and courts of Judicial Magistrate are inferior to the court of Sessions Judge. When an order is passed by the Sessions Judge, the only remedy left with the aggrieved party is to approach the High Court under [Section 397\(1\)](#) of the Code to question correctness, legality or propriety but when the same is passed by a Magistrate, though power lies to both the Sessions and the High Court but as a matter of prudence and propriety, it will be appropriate to first approach the lower forum except in rare and special circumstances. Such special circumstances may be where the Sessions Judge has directly or indirectly participated in the enquiry or investigation or trial or through his any action or order interest of justice demands that High Court alone should interfere in the order of the Magistrate.

19. Though, there are various sections in [the Code](#) of Criminal Procedure where the concurrent powers have been given like anticipatory bail under [Section 438](#) Cr.P.C and regular bail under [Section 439](#) Cr.P.C. and

also in Constitution of India with regard to writ jurisdiction to the Hon'ble Supreme Court under [Article 32](#) or before the Hon'ble High Court under [Article 226](#) of the Constitution, but in the matters of bail and writ jurisdiction, the lower forum is always chosen.

20. Therefore, in view of the above discussions, I have no hesitation to come to the conclusion that when two forums are available, then certainly it is a matter of propriety for the party to first approach the lower forum, except in rare and special circumstances.

21. In the instant case, no special circumstances which require the revisionist to bypass the forum of Sessions Judge and rush directly to this Court are pointed out. By doing this, the party getting order from the Magistrate will get double remedy, firstly he will approach the Court of Sessions in revision, which is the highest court of criminal trial and after examining the legality, propriety and correctness of the order, the Sessions Court if comes to the conclusion that the order requires no interference U/s 397 of the Code, then the party has still second remedy to approach the High Court U/s 482 Cr.P.C. Thus, this Court cannot interfere in the present revision petition, which has been filed against the order of the Magistrate without first approaching to the next higher court i.e the Court of Sessions U/s 397 of the Code as no special and exceptional reasons have been assigned for filing the revision petition directly in this Court.

22. Consequently, the revision petition is dismissed and the CRL. M.A. 32954/2019 is also disposed of accordingly. However, the petitioner is at

liberty to file the fresh revision petition before the Ld. Sessions Judge and in that event the period taken during the revision petition will not come in the way for the purpose of limitation.

RAJNISH BHATNAGAR, J

OCTOBER 16, 2019

Sumant

