

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 10.10.2019
Judgment Pronounced On: 17.10.2019

WP.Crl.2864/2019

MAHUA MOITRA

..... Petitioner

Versus

STATE & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Nitya Ramakrishnan, Mr. Siddharth Aggarwal, Mr. Adit S. Pujari, Ms. Tusharika Mattoo, Ms. Jahnvi, Mr. Chaitanya Sundriyal, Mr. Archit, Ms. Sneha, Mr. Abhinav Sekhri, Ms. Surabhi Dhar, Ms. Nikita, Advocates

For the Respondent : Mr. Rahul Mehra, Standing Counsel (Criminal) with Mr. Jamal Akhtar, Mr. Chaitanya Gosain and Mr. Amanpreet Singh, Advocates for State/R-1
Mr. Mudit Jain, Mr. Deepanshu Choithani, Mr. Shailesh Pandey, Mr. Yugany Sharma, Mr. Hardik Sharma, Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J

1. The present petition under Article 226 of the Constitution of India read with Sec. 482 CrPC seeking a Writ in the nature of certiorari to set aside the ex-parte order dated 25.09.2019 passed by the Ld. ASJ, New Delhi, Patiala House Courts in Criminal Revision No. 506/2019 pending before the Ld. MM, Patiala House Courts.

2. It is submitted by Ld. Counsel for the petitioner that petitioner, who is the complainant before the Ld. Trial Court, has filed the present writ petition seeking inter alia the issuance of a writ of certiorari quashing and setting aside the order dated 25.09.2019 passed by the Learned Additional Sessions Judge in C.Rev. No. 506/2019 titled “Sudhir Chaudhary v. State and Anr. Whereby the entire proceedings in the Ct. Case 9397 of 2019 before Ld. MM, PHC, New Delhi instituted by the petitioner seeking prosecution of Respondent no.2 under Sections 499, 500 IPC have been stayed on the ground that Ld. MM passed order dated 01.08.2019 without hearing the respondent no.2.

3. It is further submitted by Ld. Counsel for the petitioner that petitioner is accomplished member of the All India Trinamool Congress party (hereinafter referred as ‘TMC’), and is a currently serving as a Member of Parliament in the present 17th Lok Sabha from Krishnanagar constituency in West Bengal. Prior to entering politics, the petitioner had a well-established career as an investment banker in London.

4. It is further submitted by Ld. Counsel for the petitioner that on 25.06.2019, the petitioner delivered a speech in the Indian Parliament wherein she warned that India is currently displaying the following 7 signs of fascism:

- (i) Superficial Nationalism.
- (ii) Disdain for Human rights.
- (iii) Media Control.
- (iv) Obsession with national Security.
- (v) Intertwining of Religion and Government.
- (vi) Disdain for intellectuals and Art.
- (vii) Erosion of independence in Electoral System.

5. It is further submitted by Ld. Counsel for the petitioner that in her speech she clarified that these 7 signs of fascism formed a part of a poster put up at the Holocaust Memorial Museum in the United States of America and never claimed to have coined or authored the signs of fascism' herself. Her speech explaining how these factors applied in the Indian context was extremely well received and lauded by the public and widely covered in both print and online media all across the country, as also internationally.

6. It is further submitted by Ld. Counsel for the petitioner that respondent no.2 is a TV news presenter who hosts the Hindi show, Daily News and Analysis (hereinafter referred as 'DNA'), which is

aired on the Indian news channel, Zee News. The respondent no.2 on 02.07.2019, dedicated an entire segment of approximately 7 minutes and 50 seconds of the primetime show, DNA, on Zee News, personally attacking the petitioner and passing defamatory comments about both her personal and professional capacity. He accused the complainant of plagiarizing her speech delivered in Parliament from an Article authored by Mr. Martin Longman that had appeared on an American Website, Washington Monthly, on 31.01.2017 titled, “12 Signs of Fascism.” and he referred to this article as the “source” from which the complainant allegedly copied her speech. The link to the broadcast of the respondent no.2 was then shared on the Facebook, Youtube, and Twitter accounts of Zew News and the official website of Zee News.

7. It is further submitted by Ld. Counsel for the petitioner that following the broadcast by the respondent no.2 fraught with false and defamatory allegations, the petitioner issued a statement on her Twitter Account by which she explained that she had clearly attributed her source for the signs of fascism in her speech itself. Mr. Martin Longman, from whom the petitioner as per the

respondent no.2 had allegedly plagiarized her speech, also stated in a post on his official twitter account that the petitioner had not plagiarized her speech from his work.

8. It is further submitted by Ld. Counsel for the petitioner that owing to the reach of the national broadcast by Respondent no.2 as well as on social media, the petitioner was subjected to harassment both in person and online where many people expressed disappointment of her alleged conduct.

9. It is further submitted by Ld. Counsel for the petitioner that given the harm caused by Respondent no.2 to the petitioner's reputation, the petitioner filed a criminal complaint before the Ld. CMM, Rouse Avenue Courts, Complex, seeking the prosecution of Respondent no.2 under Section 499, 500 of the IPC. By order dated 09.07.2019, the Ld. CMM returned the complaint under Section 201 Cr.PC to be presented before the competent court of jurisdiction on the ground that the Courts in Rouse Avenue only had jurisdiction in respect of cases filed against Members of Parliament. Accordingly, on the same day, the petitioner filed the aforementioned complaint before the Ld. CJM, PHC, New Delhi and by order dated

15.07.2019 the Ld. MM took cognizance of the offence in the complaint filed by the petitioner and listed the case for pre-summoning evidence. The complainant was examined in pre-summoning evidence and discharged as Complaint Witness 1 on 27.07.2019.

10. It is further submitted by Ld. Counsel for the petitioner that respondent filed an application under Section 340 CrPC seeking the prosecution of the petitioner for suppressing facts in her criminal complaint. On 01.08.2019 when the petitioner's complaint was listed for recording the statement of witnesses in pre-summoning evidence, the counsel for the respondent sought to make arguments on maintainability of the application u/s. 340 CrPC and sought another date to complete the arguments. He also sought that the pre-summoning evidence in the main matter cannot be discontinued only because the proposed accused has filed a Section 340 application, whose maintainability is still being argued. Accordingly, the Ld. MM posted the case for pre-summoning evidence on 16.08.2019. Accordingly, on 05.08.2019, two complaint witnesses were examined in pre-summoning evidence.

On 16.08.2019, while the case was listed for arguments on summoning, the counsel for the respondent moved an application seeking “necessary order and direction for dismissal of complaint on the ground of fraud on court”. The Ld. MM listed the application for consideration on 03.09.2019 and on the same day, the counsel for the petitioner concluded arguments on summoning including on the aspect of inquiry under Section 202 of the CrPC, pre-summoning evidence was closed and the Ld.MM listed the main case for clarifications/ appropriate orders on 07.09.2019 at 4 PM.

11. It is further submitted by Ld. Counsel for the petitioner that on 23.08.2019, the application filed by the respondent under Section 340 CrPC was adjourned for 03.09.2019 and on 03.09.2019, the applications filed by the respondent under Section 340 CrPC and application for dismissal of complaint was adjourned for 11.09.2019 owing to the Ld.MM being on leave. On 07.09.2019, the main complaint case of petitioner was adjourned for 03.10.2019 owing to the Ld. MM being on leave. On 11.09.2019, the applications filed by the respondent under Section 340 CrPC and application for dismissal of complaint was adjourned for 17.09.2019 owing to the

Ld.MM being on leave. On 17.09.2019 also the applications filed by the respondent under Section 340 CrPC and application for dismissal of complaint was adjourned for 25.09.2019 owing to the Ld.MM being on leave.

12. It is further submitted by Ld. Counsel for the petitioner that on 25.09.2019 the applications filed by the respondent under Section 340 CrPC and application for dismissal of complaint were listed before the Ld. MM. the Ld. Additional Sessions Judge in C.Rl. No. 506/2019 filed by the respondent stayed the proceedings before the Ld. MM on the ground that the respondent had not been heard before passing the order dated 01.08.2019. In the light of the order dated 25.09.2019 of the Ld. ASJ in Cr. Rev. No. 506/2019, the Ld. MM adjourned the order on summoning in complaint case along with applications under Section 340 CrPC and application for dismissal of complaint filed by the respondent to 04.11.2019.

13. It is further submitted by Ld. Counsel for the petitioner that as per the news reports, on 19.07.2019 more than ten days after filing of the defamation complaint by the petitioner against the respondent, Zee Media Corporation filed a criminal defamation

complaint against the petitioner before the Special Court of Sh. Samar Vishal, Ld.ACMM, Rouse Avenue Court Complex, as a counterblast to the complaint case filed by the petitioner. He further submitted that the application under Section 340 CrPC and the application for dismissal of the complaint case filed by the respondent were part of the tactics employed by the respondent to delay the complaint case of the petitioner.

14. It is further submitted by Ld. Counsel for the petitioner that it is settled law that prior to issuance of summons, a prospective accused has no right to participate in the proceedings and the law actually bars the Magistrate from allowing such participation. He further submitted that Ld. ASJ erred in staying the proceedings on the ground that prospective accused has not been heard. It is settled law that Chapter XVI of the CrPC does not at all allow for the participation of the accused and, therefore, the participation of the accused through an application under Section 340 CrPC at this stage would defeat the purpose of Chapter XVI of the CrPC. It is further submitted by Ld. Counsel that it is settled law that the Magistrate has no jurisdiction to hear the accused at the pre-summoning stage

or allow for his or her participation. Therefore, an order to the contrary by the Magistrate would have been an illegal order. It is further submitted by Ld. Counsel for the petitioner that it is established law that the accused has no “right of hearing” before the issuance of process against him and an application under Section 340 CrPC filed by the accused before the issuance of summons would not be maintainable and application under Section 340 CrPC must be considered at the conclusion of a trial and cannot stall proceedings of a trial. He further submitted that applications under Section 340 CrPC should be acted on sparingly and should not be allowed to be used as tools of vendetta or revenge.

15. It is further submitted by Ld. Counsel for the petitioner that the order of the Ld. ASJ violates the specific bar under Section 397(2) as per which no revision is maintainable against an interlocutory order. Therefore, the order dated 01.08.2019 is an interlocutory order and no revision at all was maintainable against the same, leave alone grant of ex-parte stay. Ld. Counsel further submitted that Ld. ASJ ought to have dismissed the Criminal Revision petition of the respondent considering the settled law that a

prospective accused does not have any right to challenge an order passed by the Magistrate until such prospective accused has been summoned.

16. It is further submitted by Ld. Counsel for the petitioner that even the factual case of the matter that the petitioner was not heard is incorrect as the order records appearance of the counsel for the proposed accused in his application moved under Section 340 CrPC and the Ld. ASJ granted stay ex-parte without stating the reasons for the stay. The Ld. ASJ ought to have noticed that the Order impugned was at the instance of an accused who had not even been summoned, and therefore, there was no irreparable prejudice that could have been caused to such revision petitioner and that stay ought not to have been granted without hearing the petitioner. It is further submitted that impugned order was passed without application of judicial mind in as much as the Ld. ASJ failed to observe that in the order dated 01.08.2019, contrary to the submissions of the respondent in the revision petition, the Ld. MM has recorded that part submissions of the counsel for prospective

accused had been heard and that the adjournment was also sought by the prospective accused.

17. It is further submitted by Ld. Counsel for the petitioner that in any case the actions of the respondent are not bonafide and are a delaying tactic as he did not immediately challenge the order of the Ld. MM dated 01.08.2019 and waited over forty five days to challenge the order of the Ld. MM dated 01.08.2019 during which proceedings before the Ld. MM continued.

18. It is further submitted by Ld. Counsel for the petitioner that it is imperative that this Court, in exercise of its powers under Article 227 of the Constitution, direct Ld. Trial Courts within the jurisdiction of this Court to dismiss attempts made by proposed accused, prior to summoning , solely to delay complaints by filing frivolous applications, which have no legal basis.

19. It is lastly prayed to issue a writ or direction in the nature of Certiorari, or any other appropriate writ, quashing the ex-parte order dated 25.09.2019 passed by the Ld. ASJ, Patiala House Courts in Criminal Revision 506 of 2019.

20. Learned Counsel for the petitioner has relied upon following case law in support of his contentions:-

- i) T C Basappa v. T V Nagappa, (1955) 1 SCR 250;
- ii) Hari Vishnu Kamath v. Syed Ahmad Ishaque & Ors., (1955) 1 SCR 1104;
- iii) Swarn Singh & anr. v. State of Punjab & Ors., (1976) 2 SCC 868;
- iv) General Manager, Electrical Rengall Hydro Electric Project, Orissa v. Giridhar Sahu & Ors., 2019 SCC Online SC 117;
- v) Chandra Deo Singh v. Prokash Chandra (1964) 1 SCR 639;
- vi) Nagawaa v. V. S. Konjalgi (1976) 3 SCC 736;
- vii) Chitra Narain v. NDTV & Ors. 2004(72) DRJ 547;
- viii) Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel (2012) 10 SCC 517,
- ix) Adalat Prasad v. Rooplal Jindal (2004) 7 SCC 338
- x) Meenakshi Jain v. State and Ors., 194 (2012) DLT 745;

21. On the other hand, Ld. Counsel for the respondent has submitted that present writ petition is not maintainable for the reason that an equal efficacious remedy is available to the petitioner. He has relied upon the judgment of Hon'ble Supreme Court titled **“Radhey Shyam & Anr. v. Chhabhi Nath & Ors., 2015 (3) SCALE**, in which it was held that an order of Civil Court was not amenable to writ jurisdiction under Article 226 of the Constitution of India. He has further relied upon another judgment of Hon'ble High Court titled **“Union of India v. Mr. Haresh V. Milani and**

anr., C.A. No. 2939/2017 in Writ Petition No. 14039/2017”, in which it was held that an application filed under Section 340 CrPC has to be decided and enquired into first before deciding the writ petition. Ld. Counsel for the respondent has further argued that petitioner is misusing the process of the Court. They have suppressed the material facts and, therefore, an application under Section 340 CrPC was filed before Ld. MM. The Ld. MM has not heard the respondent, and therefore, the respondent has approached the court of Ld. Sessions Judge and the Ld. Addl. Sessions Judge has stayed the proceedings till next date of hearing. Ld. Counsel for the respondent further submitted that there is no illegality or infirmity in the order passed by the Ld. ASJ and, therefore, the present writ petition be dismissed as not maintainable.

22. I have gone through the judgments cited by Ld. Counsel for the respondent. These are clearly distinguishable on the basis of facts and circumstances stated therein. Ld. Counsel for the respondent was given an opportunity to file reply/ written submissions on or before 14.10.2019. However, no reply/ written submissions were filed by the respondent.

23. I have considered the rival submissions. Law on the point of intervention by the prospective accused at pre-summoning stage in a complaint case before Ld. MM is well settled by series of the judgment of the Hon'ble Supreme Court. In case titled **“Chandra Deo Singh v. Prokash Chandra (1964) 1 SCR 639”** the Hon'ble Supreme Court has held as under;

“7. Taking the first ground, it seems to us clear from the entire scheme of Ch. XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued; nor can he examine any witnesses at the instance of such a person..... Whatever defence the accused may have can only be enquired into at the trial. An enquiry under s. 202 can in no sense be characterised as a trial for the simple reason that in law there can be but one trial for an offence. Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision permitting an accused person to take part in an enquiry.”
(Emphasis Supplied).

Perusal of the above judgment reveals that Hon'ble Supreme Court has categorically held that permitting an accused to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision to this effect.

24. In another case titled “**Nagawaa v. V. S. Konjalgi (1976) 3 SCC 736**” the Hon'ble Supreme Court has categorically held that at the stage of Section 202 or Section 204 of the CrPC, the prospective accused has no locus standi and the Magistrate has no jurisdiction to look into any material or evidence which may be produced by the prospective accused.

25. Similarly in “**Chitra Narain v. NDTV & Ors. 2004(72) DRJ 547**” Division Bench of this High Court has held that at the pre summoning stage unless a person becomes an accused after process is issued against him by the Ld. MM, he has no right to participate in the proceedings under Section 202 CrPC.

26. In “**Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517**” the Hon'ble Supreme Court has held under;

“46. The legal position is fairly well-settled that in the proceedings under Section 202 of

the Code the accused/suspect is not entitled to be heard on the question whether the process should be issued against him or not. As a matter of law, upto the stage of issuance of process, the accused cannot claim any right of hearing...

27. Similarly in “**Adalat Prasad v. Rooplal Jindal (2004) 7 SCC 33**” the Hon’ble Supreme Court has held under;

“14... In none of these stages the Code has provided for hearing the summoned accused, for obvious reasons because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provision in the Code. It is true as held by this Court in Mathew's case before issuance of summons the Magistrate should be satisfied that there is sufficient ground for proceeding with the complaint but that satisfaction is to be arrived at by the inquiry conducted by him as contemplated under sections 200 and 202, and the only stage of dismissal of the complaint arises under section 203 of the Code at which stage the accused has no role to play, therefore, the question of the accused on receipt of summons approaching the court and making an application for dismissal of the complaint under section 203 of the Code for a reconsideration of the material available on record is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 stage.”

28. In “**Meenakshi Jain v. State and Ors., 194 (2012) DLT 745**” the Hon’ble Supreme Court has again held that so far as the legal position is concerned, the accused/respondent or the prospective accused has no right of participation in the proceedings

at the pre-summoning stage or till the time he is summoned. He has no locus standi to assail the order passed by the learned Magistrate.

29. Perusal of the record reveals that in the present complaint case, in ordersheet dated 01.08.2019, the Ld. MM has observed that by filing a application under Section 340 CrPC, the prospective accused cannot stall the proceedings in the complaint case. The Ld. MM has not decided the application. Perusal of the record reveals that Ld. MM has passed the following order on 01.08.2019;

C.C No. 9397/19
Mahua Moitra vs. Sudhir Choudhary
01.08.2019

Present: Advocate Sh. Shadan Farasat, Ld.
counsel for complainant.
CW Varun Maithu Thomas in person.
Advocate Sh. Vijay Aggarwal, Ld.
counsel for applicant of application u/s
340 Cr.PC.

Today the matter is listed for further pre summoning evidence. However, an application u/s 340 Cr.PC had been filed by the applicant/prospective accused and part detailed arguments on the maintainability of the said application has been heard today.

Further, arguments on the said aspect is deferred at request of Ld. counsel for applicant as he submitted that another matter is pending before the Ld. ACMM, Rouse Avenue at 02.00 PM today.

Hence, at request, let further arguments on the said aspect be addressed on 23.08.2019.

At this stage, Ld. counsel for complainant submitted that the complainant witness is present today and his PSE be recorded. It is 02.15 pm now & complainant has also appeared.

He has submitted that only because the prospective accused has filed an application u/s 340 Cr.PC, the proceedings of the main complaint case cannot be stalled.

Submissions heard.

This court is in agreement with the submissions of Ld. counsel for complainant. However, the regular stenographer is on leave today and other matters are pending and thus recording of the evidence of the witness present today is not feasible today due to infrastructural impediment. Hence, let matter be adjourned for leading further PSE for 05.08.2019.

Copy of order be given dasti.

(PREETI PAREWA)
MM-06/PHC/ND/01.08.2019

30. The said order was challenged before the Ld. ASJ who has passed the following order on 25.09.2019;

“C.R No. 506/2019
Sudhir Chaudhary v. State & Anr.

25.09.2019

Ld. PO has been appointed as Secretary to Hon'ble Justice (Retd.) D.K. Jain Inquiry Committee in the matter of S. Nambi Narayan v. Siby Mathews and others in Civil Appeal no.6637-6638 of 2018 in the Ministry of Home Affairs, on deputation.

Present: Shri Vijay Aggarwal, Counsel for petitioner.

Ld. Counsel has filed certified copy of impugned order dated 01.08.2019.

Along with the petition, petitioner has also filed application for stay of proceedings before the Ld. Trial Court.

Heard and perused the record.

Ld. Counsel has, inter-alia, submitted that the impugned order was passed without hearing him, as can be seen from order dated 01.08.2019. He further submits that for further submissions TCR is required.

Let TCR be summoned for the next date.

Put up for further arguments on 18.10.2019.

Meanwhile, proceedings before the Ld. Trial Court shall remain stayed.

A copy of the order be sent to the Ld. Trial Court.

As requested, copy of the order be also given dasti to Ld. Counsel for petitioner.

(Rakesh Syal)
1st Link ASJ-03/NDD
PHC/New Delhi.
25.09.2019.”

31. Perusal of the order dated 01.08.2019 passed by the Ld. MM reveals that the Ld. Trial Court has only held that it is in agreement with the submission of Ld. Counsel for the complainant that only because the prospective accused has filed an application under Section 340 CrPC, the proceedings of the main complaint case cannot be stalled. Vide order dated 23.08.2019, the Ld. MM has held that the application under Section 340 CrPC filed by the

applicant was adjourned at his request as the arguing counsel was not available. The case was further listed for 03.09.2019, 07.09.2019, 11.09.2019 and 17.09.2019 when the Ld. MM was on leave. On 25.09.2019, the Ld. MM has passed the following order;

C.C No. 9397/19

Mahua Moitra vs. Sudhir Choudhary

25.09.2019

Present: Complainant Absent.

Sh. Shadan Farasat, Ld. Counsel for Complainant.

Sh. Vijay Aggarwal, Ld. Counsel for Prospective accused.

Matter is listed or reply/ arguments on the application filed on behalf of prospective accused seeking necessary order and direction for dismissal of the complainant on the ground of fraud on the Court.

Ld. Counsel for complainant submits that he shall not be filing a reply to the abovesaid application and straightaway address arguments.

Ld. Counsel for prospective accused submits that the proceedings of the present case have been directed to be stayed by the Ld. Sessions Court today itself and a copy of the said order shall be placed on record. Heard.

In view of submissions, matter is adjourned for further directions, if any, from Ld. Sessions/ arguments on pending applications moved on behalf of prospective accused/ order on summoning on 04.11.2019.

Date earlier fixed i.e. 03.10.2019 stands cancelled.

(PREETI PAREWA)

MM-06/PHC/ND/01.08.2019

32. Perusal of the above ordersheets reveals that Ld. Trial Court has yet to decide the application moved on behalf of the prospective accused under Section 340 CrPC as well as on the application filed on behalf of the prospective accused seeking dismissal of the complaint on the ground of fraud on the court.

33. Perusal of the order dated 01.08.2019 of the Ld. MM further reveals that prospective accused has filed an application under Section 340 CrPC. Part detailed arguments on the point of maintainability were heard by the Ld. MM. Further arguments were deferred at the request of Ld. Counsel for the applicant himself. Ld. MM, thereafter, has held that proceedings in the complaint case cannot be stalled because of filing of application under Section 340 CrPC. In the opinion of this Court, the order passed by the Ld. MM dated 01.08.2019 on the application under Section 340 CrPC is an interlocutory order as it does not decide anything finally.

34. In the judgment titled “**Sethuraman v. Rajamanickam, CR. Appl. No. 486-487/2009 (in SLP (Crl.) No. 2688-89/2005)**”, the Hon’ble Supreme Court has defined interlocutory order and relevant para is as under;

“4. Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C. 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 Cr.P.C. for production of documents and other on the application under Section 311 Cr.P.C. 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.**” (Emphasis supplied).

35. In another judgment titled “**Amarnath and Ors. Vs. State of Haryana and Anr., (1977) 4 SCC 137**”, the Hon’ble Supreme

Court has also defined interlocutory order and relevant para is as under;

“(3) The term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad and artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or 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 proceedings, 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 on a particular aspect of the trial cannot be said to be interlocutory so as to be outside the purview of the revisional jurisdiction of the High Court.” (Emphasis supplied).

36. In view of the above proposition of law, the order passed by the Ld. MM on 01.08.2019 is clearly an interlocutory order as she has not decided the application under Section 340 CrPC moved by the respondent finally but only adjourned the same and observed that by moving such application, the respondent i.e. prospective

accused cannot stall the proceedings in the main complaint case and, therefore, no revision lies against the said order to the Ld. Sessions Judge. Ld. Addl. Sessions Judge has, therefore, wrongly entertained the revision petition and stayed the proceedings of the criminal complaint. The order dated 25.09.2019 passed by the Ld. Addl. Sessions Judge, is therefore, set aside and proceedings pending before the Ld. Addl. Sessions Judge are quashed being not in accordance with law. The petition stands disposed of accordingly.

October 17, 2019
(Amit)

BRIJESH SETHI
(JUDGE)

