

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.19878 of 2020

Date of decision: 22nd July, 2020

Mahender @ Mahtab Singh @ Mehtab Singh

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Kshitij Sharma, Advocate for the petitioner.

FATEH DEEP SINGH, J.

The matter has been taken up through video conferencing on account of outbreak of pandemic COVID-19.

Mr. Baljinder Singh Virk, Dy. Advocate General, Haryana puts in appearance on behalf of the respondent/State on his own.

In the instant petition under Section 438 Cr.P.C. moved by accused petitioner Mahender @ Mahtab Singh @ Mehtab Singh seeking pre-arrest bail in case bearing FIR No.0081 dated 09.05.2017 under Sections 323, 325, 326, 436, 452, 294, 506, 34 IPC pertaining to Police Station City Kosli, District Rewari (Haryana), challenge is over the manner in which by the impugned orders dated 07.07.2020 the Court of learned Additional District and Sessions Judge, Rewari acting on the application for cancellation of bail under Section 439(2) Cr.P.C., cancelled the pre-arrest bail of the petitioner earlier granted vide orders

dated 16.05.2017 by the Court of learned Additional Sessions Judge, Rewari, and thus a controversy erupts if such an order is amenable to revision in terms of Section 397 Cr.P.C. in the light of Single Bench order of this Court in '**Kharati Lal vs. State of Haryana**' 2018 SCC Online P&H 3841, or by way of present invocation by filing fresh bail application before a superior Court.

Heard Mr. Kshitij Sharma, Advocate for the petitioner; Mr. Baljinder Singh Virk, Dy. Advocate General, Haryana on behalf of the State and perused the records.

A case detailed above was got registered against the petitioner at the behest of complainant Giriraj Singh and threatened over his arrest by the police, the petitioner managed to secure anticipatory bail vide orders dated 16.05.2017 (Annexure P2) from the Court of learned Additional Sessions Judge, Rewari. It is by another quirk of fate, an application under Section 439(2) Cr.P.C. was moved by the State and by the impugned findings (Annexure P4), the Court of learned Additional Sessions Judge, Rewari withdrew the concession of bail earlier granted to the respondent and by cancelling surety bonds, forfeited the same to the State. It is against this order, the present anticipatory bail application has come up before this Court by virtue of Section 438 Cr.P.C.

Appreciating the submissions of the two sides, this Court has gone through the impugned orders in details and hold that there is nothing cogent and overwhelming circumstance which has necessitated

the impugned order resulting in cancellation of bail earlier granted to the petitioner. The Supreme Court in '**Subhendu Mishra v. Subrat Kumar Mishra**', 2000 SCC (Cri) 1508, had laid down the principle and by which there is nothing substantial in the impugned findings what prompted the Court below to do so, except that another case has been got lodged by the complainant when it was abundantly clear that the parties have a history of multiple litigation between them.

In **Kharati Lal's case (ibid)**, the learned Single Judge of this Court had allowed the revision petition against an order by which regular bail granted to the then petitioner Kharati Lal and another was cancelled by the learned Additional Sessions Judge. In a catena of case law in '**Amar Nath v. State of Haryana**', (1977) 4 SCC 137; '**Bhola v. State**', 1979 SCC OnLine All 130; '**Nilu v. State**', 1983 SCC OnLine Ori 149; '**State of Maharashtra v. Deelipkumar Hirachand Jain**', 1999 SCC OnLine Bom 262; and '**Maya Venkatesan v. State**', 2007 SCC OnLine Mad 635, it has been well laid down that the High Court has no power to revise an interlocutory order by resort to the provisions under Section 397 Cr.P.C. and where even inherent powers under Section 482 Cr.P.C. cannot be exercised. It was on the basis of 14th and 41st reports of Law Commission, which forms the basis of amended Code of Criminal Procedure 1973, which suggested revolutionary changes in the powers of the High Court. The primary object and reason taking away the powers of revision against interlocutory orders was considered must as it was one of

the main contributing factors for delay in disposal of the criminal process. In **Amar Nath's case (ibid)**, their Lordships have observed as follows:-

“6. 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.

7. In **Central Bank of India v. Gokal Chand (A.I.R. 1967 S.C. 799, 800.)** this Court while describing the incidents of an interlocutory order, observed as follows:-

‘In the context of Section 38(1), the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller, may pass many interlocutory orders under Sections 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the

admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties.'

The aforesaid decision clearly illustrates the nature and incidents of an interlocutory order and the incidents given by this Court constitute sufficient guidelines to interpret the connotation of the words "interlocutory order" as appearing in sub-section (2) of Section 397 of the 1973 Code."

However, with due courtesies, in a subsequent view laid down in '**Rajendra Kumar Sitaram Pande and others vs. Uttam and another**' (1999) 3 SCC 134, the Supreme Court considering the ratios laid down in **Amar Nath's case (ibid)**; '**Madhu Limaye vs. State of Maharashtra**' 1978 SCC (Cri) 10 and '**V.C. Shukla vs. State**' 1980 SCC (Cri) 695, has held as follows:-

*"6. Discretion in the exercise of revisional jurisdiction should, therefore, be exercised within the four corners of Section 397, whenever there has been miscarriage of justice in whatever manner. Under sub-section (2) of Section 397, there is a prohibition to exercise revisional jurisdiction against any interlocutory order so that inquiry or trial may proceed without any delay. But the expression "interlocutory order" has not been defined in the Code. In **Amar Nath & Ors. vs. State of Haryana** 1978(1) SCR 222, this Court has held that the*

expression "interlocutory order" in Section 397(2) has been used in a restricted sense and not in a broad or artistic sense and merely denotes orders of purely interim or temporary nature which do not decide or touch the important rights or liabilities of the parties and any order which substantially affects the right of the parties cannot be said to be an "interlocutory order". In Madhu Limaye vs. State of Maharashtra 1978(1) SCR 749, a three Judge Bench of this Court has held an order rejecting the plea of the accused on a point which when accepted will conclude the particular proceeding, cannot be held to be an interlocutory order. In V.C. Shukla vs. State 1980(2) SCR 380, this Court has held that the term "interlocutory order" used in the Code of Criminal Procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi final. This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same. The High Court, therefore, was not justified in coming to the conclusion that the Sessions Judge had no jurisdiction to interfere with the order in view of the bar under sub-section (2) of Section 397 of the Code."

Though the remedy of a party feeling aggrieved by any and every interlocutory order by invoking revisional jurisdiction has been

specifically barred however, there could be a situation where a party has not absolutely suffered any remedy when the order in question resulted in gross miscarriage of justice or undue harassment or amounts to an abuse of the process of a Court, for a party in appropriate case of such a nature may also invoke the inherent jurisdiction of this High Court by virtue of Section 482 Cr.P.C. as was laid down in earlier view of the Supreme Court in '**R.P. Kapoor vs. State of Punjab**' AIR 1960 SC 866, and therefore in such a situation, as in the present one, since the impugned findings are in utter disregard to the law laid down by the Apex Court in **Subhendu Mishra's case (ibid)** and certainly have resulted in gross miscarriage of justice and have been sought to be prevailed upon by learned counsel for the petitioner. It was in such a rare eventuality, this Court cannot be restricted to exercise its powers either under Section 482 Cr.P.C. or Section 397 Cr.P.C. However, in view of the fact being a gray area needs to be comprehensively adjudicated by a larger Bench of this Court at opportune time.

In the present set of allegations by the complainant Giriraj, he has alleged that around 25 days prior to registration of the present case, accused petitioner Mahender alias Mahtab Singh alias Mehtab Singh along with his son Lakhanpal alias Chikku and three-four unknown boys came in front of his house and threatened to kill him and when his family members came to rescue him, they fled away. It is alleged that subsequently on 07.05.2017 around 9:00 p.m. accused Lakhanpal alias

Chikku and Pankaj abused the complainant by using filthy language and threw a stone hitting him on his chest and when the complainant tried to catch hold of Chikku he went inside followed by his father Mahender and mother Daya along with his brother Bharat who entered the house of the complainant with sharp edged weapons including Dandas and assaulted him. It is alleged that accused Lakhapnal alias Chikku tried to give a knife blow on the neck of complainant but the same hit the finger of his right hand and he sustained another injury on his right ear, while accused Bharat gave sharp edged weapon blow on his head 5-6 times and thereafter the complainant fell down, followed by another leg blow on the face of the complainant by accused Bharat while accused Daya gave blows of Danda hitting on the left ankle and Mahender gave Danda blows on his hip.

Learned counsel for the petitioner Mr. Kshitij Sharma, Advocate inter alia contends that only simple injuries are attributed to the petitioner and that the parties have a history of litigation as the petitioner side too has lodged an FIR against the complainant side and that nothing is to be recovered from the petitioner, who is a medically unfit aged person.

Learned State counsel Mr. Baljinder Singh Virk, Dy. Advocate General, Haryana has sought to refute the averments of learned counsel for the petitioner claiming that the accused have assaulted the

victim with blunt and sharp edged weapons and are not desisting from giving effect to their nefarious designs.

Appreciating the submissions of the two sides, the principal accused Lakhanpal alias Chikku already stands arrested and recovery made. Petitioner Mahender alias Mahtab Singh alias Mehtab Singh is a senior citizen and is attributed only simple injuries and his joining the proceedings would suffice the purpose. It would be a travesty of justice to sent the petitioner behind bars in view of the fierce enmity and history of previous litigation that is evident from the allegations and counter allegations. Culpability, if any, would be determined at the trial which is not likely to be accomplished in the near future. In view thereof, the petitioner is directed to appear before the trial Court within a period of 15 days from the date of receipt of certified copy of this order and on his doing so he shall be released on bail to the satisfaction of the trial Court.

The petition stands disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

July 22, 2020

rps

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No