

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

CRM-M-38614-2022
Date of Decision:-26.9.2022

Jasvir Singh @ Seera

... Petitioner

Versus

State of Punjab and Another

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :-

Mr. Manish Kumar Singla, Advocate
for the petitioner.

Mr. Chaman Lal Pawar, Addl. A.G. Punjab.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioner seeking quashing of order dated 6.8.2022 (Annexure P-5) passed by the Court of learned Additional Sessions Judge, Sangrur vide which the said Court accepted the revision petition filed by respondent No.2-Azeez Khan and set aside the order dated 24.11.2021 (Annexure P-3) passed by the Court of learned Additional Chief Judicial Magistrate, Sangrur and directed the said Court to commit the case bearing FIR No.220 dated 28.7.2019 under Sections 212/34 IPC Police Station Bhawanigarh to the Court of Session for

its trial along with the main case having FIR No.203 dated 14.7.2019 registered under Section 302/34 IPC, Police Station Bhawanigarh.

Mr. C.L. Pawar, Addl. Advocate General, Punjab has put in appearance on behalf of respondent No.1-State, having advance notice of the present petition.

I have heard the counsel for the petitioner as well as the State counsel.

The counsel for the petitioner has submitted that the order dated 24.11.2021 passed by the Court of Addl. Chief Magistrate, Sangrur was an interlocutory order and as such the revision filed before the Court of Additional Sessions Judge, Sangrur against the said order by Azeez Khan (complainant in FIR No.220 dated 28.7.2019 under Sections 212/34 IPC Police Station Bhawanigarh), was not maintainable as per the provisions of Section 397(2) Cr.P.C. In support of his contentions the counsel for the petitioner has placed reliance upon Order dated 13.3.2020 passed by the Coordinate Bench of this Court in **CRR No.3728 of 2017 (O&M)** titled as **Raj Kumar vs. Ravinder and Ors.** wherein it was held that as per the decision of Hon'ble Apex Court in **Girish Kumar Suneja vs. CBI 2017(3)RCR(Cri.)665**, the Court cannot exercise its revisional jurisdiction against an interlocutory order.

The counsel for the petitioner further submitted that FIR No.203 dated 14.7.2019 registered under Section 302/34 IPC, Police Station Bhawanigarh was registered against Aslam Khan and Prince Khan with regard to murder of Jagsir Khan on the basis of the statement of Jagtar Khan brother of said Jagsir Khan. The counsel for the petitioner further submitted

that FIR No.220 dated 28.7.2019 under Sections 212/34 IPC Police Station Bhawanigarh is based on totally different cause of action and was registered on the basis of the statement of respondent No.2-Azeez Khan against petitioner Jasvir Singh and one Mandeep Singh under Section 212/34 IPC. The counsel for the petitioner further submitted that the complainant in both the aforesaid criminal cases are two different persons and offence punishable under Section 212 IPC is triable by the Court of Judicial Magistrate Ist Class, whereas the offence under Section 302 IPC is triable by the Court of Session. The counsel for the petitioner further submitted that the said two criminal cases are registered against entirely different persons. The counsel for the petitioner further submitted that in the given circumstances the Court of learned Additional Chief Magistrate Sangrur rightly dismissed the application moved by the complainant to commit the case having FIR No.220 dated 28.7.2019 under Sections 212/34 IPC Police Station Bhawanigarh, to the Sessions Court. The counsel for the petitioner while concluding his arguments has contended that the impugned order passed by the revisional Court being illegal is liable to be set aside.

On the other hand, the State counsel while supporting the impugned order dated 6.8.2022 passed by the Court of Additional Sessions Judge, Sangrur has submitted that FIR No.220 dated 28.7.2019 under Sections 212/34 IPC Police Station Bhawanigarh was registered against the petitioner and one another person for harbouring the assailants who killed Jagsir Khan and with regard to the said murder FIR No.203 dated 14.7.2019 under Section 302/34 IPC, Police Station Bhawanigarh was separately registered against Aslam Khan and Prince Khan. The State counsel further

submitted that both the aforesaid criminal cases are to be tried together even if the complainant and accused persons are different in both the cases.

I have considered the contentions raised by counsel for the parties.

Undoubtedly, Section 397(2) Cr.P.C. mandates that the power of revision conferred by sub-Section (1) of Section 397 Cr.P.C shall not be exercised in relation to any interlocutory order in any appeal, inquiry, trial or other proceeding. So there is express bar under Section 397(2) CrPC to entertain revision petition against an interlocutory order.

Now the question arises as to whether the order dated 24.11.2021 passed by the Court of learned Additional Chief Magistrate Sangrur was an interlocutory order.

From the perusal of the said order, it appears that the complainant-Azeez Khan filed an application with prayer that case having FIR No.220 dated 28.7.2019 under Sections 212/34 IPC Police Station Bhawanigarh be committed to the Court of Session, to be tried along with FIR No.203 dated 14.7.2019 registered under Section 302/34 IPC, Police Station Bhawanigarh. The said application was declined by the Court of learned Additional Chief Judicial Magistrate vide order dated 24.11.2021 with following observations:-

“Heard upon the application for committing the case to the court of Sessions. After hearing the arguments of both the learned counsel for the parties on said application, I am of the considered opinion that the accused/respondent Jasvir Singh & Mandeep Singh have totally denied the fact that they were the main abettors and conspirators in the matter of Jagseer Khan. The applicant has already moved many applications for the

purpose of inquiry regarding involvement of the Jasvir Singh & Mandeep Singh. The thorough investigation has been conducted by SP, Sangrur and the final report was submitted to the SSP and after the perusal of the investigation the SSP, Sangrur agreed with the investigation of the SP Sangrur and the photocopy of the same is placed on record by the respondent/applicant. The counsel for accused/respondent also alleged that Shinderpal Singh has grudge against Jasvir Singh because the brother of Jasvir Singh namely Shamsher Singh reported the matter to the police against him and an FIR was registered against Shinderpal Singh. The copy of FIR placed on record. The applicant has separate remedy if he is of the opinion that the accused/respondents are involved in the present case. Perusal of the challan does not reveals any fact that the same is to be committed to the court of Sessions rather it is an independent act which is to be tried separately. The matter has already been investigated regarding said fact. The applicant has not approached the higher authorities for further investigation or moved any protest petition against the said report. The applicant deserves no merit and same stands dismissed. Now to come up on 30.11.2021 for consideration on framing charge.”

Being aggrieved complainant-Azeez Khan filed revision petition before the Court of Additional Sessions Judge, Sangrur and the same was accepted vide impugned order dated 6.8.2022 with following observations:-

“In view of the aforesaid discussion and without elaborating further, I am constrained to say that the revisionist has succeeded to prove his case and as such, revision petition is hereby allowed and impugned order is set-aside. The learned trial court is directed to commit the case bearing FIR No.220

dated 28.07.2019 under Sections 212/34 IPC, P.S. Bhawanigarh to the Court of Sessions for trial alongwith the main case in FIR No.203 dated 14.07.2019 under Sections 302/34 IPC P.S. Bhawanigarh. Copy of this judgment alongwith record of the learned trial Court be returned immediately. Revision petition file by consigned to record room.”

In **Amarnath vs. State of Haryana AIR 1977 (SC) 2185**, the main question which falls for determination was as to what is the connotation of the term ‘interlocutory order’ as appearing in Section 397(2) Cr.P.C. which bars any revision of such an order by the High Court. The Hon’ble Supreme Court while interpreting the term ‘interlocutory order’, observed that it merely denotes orders of a purely interim or temporary nature, which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain right 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 provisions of Section 397 of Cr.P.C. 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.

Further in **V.C Shukla's Vs State through CBI AIR 1980(SC)**

962, the Hon'ble Supreme Court held as under:-

- “(1) *that an order which does not determine the rights of the parties but only one aspect of the suit or the trial is an interlocutory order;*
- (2) *that the concept of interlocutory order has to be explained, in contradistinction to a final order. In other words, if an order is not a final order, it would be an interlocutory order;*
- (3) *that one of the test generally accepted by the English Courts and the Federal Court is to see if the order is decided in one way, it may terminate the proceedings but if decided in another way, then the proceedings would continue; because, in our opinion, the term 'interlocutory order' in [the Criminal Procedure Code](#) has been used in a much wider sense so as to include even intermediate or quasi final orders;*
- (4) *that an order passed by the Special Court discharging the accused would undoubtedly be a final order inasmuch as it finally decides the rights of the parties and puts an end to the controversy and thereby terminates the entire proceedings before the court so that nothing is left to be done by the court thereafter;*
- (5) *that even if the Act does not permit an appeal against an interlocutory order the accused is not left without any remedy because in suitable cases, the accused can always move this Court in its jurisdiction under [Art. 136](#) of the Constitution even against an order framing charges against the accused. Thus, it cannot be said*

that by not allowing an appeal against an order framing charges, the Act works serious injustice to the accused.”

The principles/guidelines regarding the scope of criminal revision petition have been further clarified in **Girish Kumar Suneja’s** case (supra) wherein the Apex Court has held as under:-

“While the text of sub-section (1) of [Section 397](#) of the Cr.P.C. appears to confer very wide powers on the court in the exercise of its revision jurisdiction, this power is equally severely curtailed by sub-section (2) thereof. There is a complete prohibition in a court exercising its revision jurisdiction in respect of interlocutory orders. Therefore, what is the nature of orders in respect of which a court can exercise its revision jurisdiction?

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.”

The concept of an intermediate order was also elucidated in **Madhu Limaye vs The State of Maharashtra, AIR 1978 (SC) 47** by contradistinguishing a final order and interlocutory order. In **Madhu Limaye’s case (supra)** it was also held that the High Court possesses the inherent powers to be exercised to do the real and substantial justice for the administration of which alone courts exists.

In the light of the above, the principle that emerges is 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.

Now coming to the facts of the present case, this Court is of the view that the learned Additional Chief Judicial Magistrate passed order dated 24.11.2021 after going through the entire facts and circumstances of the case and declined the request made by respondent No.2 to commit the case to the Court of Session with the observations which have already been reproduced hereinabove. The said order definitely curtailed the rights of respondent No.2. The aforesaid order dated 24.11.2021 passed by Additional Chief Judicial Magistrate cannot be termed as interlocutory order as it has adversely prejudiced the rights of respondent No.2 (complainant).

Further reverting to the facts of the present case, there is no doubt that in the murder case, FIR was registered on the basis of statement of Jagtar Khan brother of deceased Jagsir Khan against Aslam Khan and Prince Khan who allegedly murdered Jagsir Khan, whereas FIR No.220 dated 28.7.2019 under Sections 212/34 IPC Police Station Bhawanigarh was registered on the basis of the statement of respondent No.2 Azeez Khan, father of deceased Jagsir Khan against petitioner and Mandip Singh for harbouring the assailants of Jagsir Khan. So as has been rightly pointed out by the counsel for the petitioner in both the said two criminal cases the complainant as well as the accused persons are different.

Now the issue arises as to whether the offence under Section 212 IPC is to be tried by the Court of Session, which has already taken the cognizance of murder case having FIR No.203 dated 14.7.2019.

The revisional Court while relying upon **Sujith vs State Of Kerala 2008 Cri.L.J. 824(Kerala)** came to the conclusion that the case having FIR No.220 dated 28.7.2019 under Sections 212/34 IPC is to be tried along with the main case having FIR No.203 dated 14.7.2019 under Sections 302/34 IPC, by the Court of Session.

This Court is of the view that there is no infirmity or perversity in the impugned order dated 6.8.2022 (Annexure P-5) passed by the Court of Additional Sessions Judge, Sangrur. The reasons being the main FIR was registered by the brother of the deceased against Aslam Khan and Prince Khan alleging that both of them murdered his brother Jagsir Khan. During the investigation of said case, it was found that the petitioner and one Mandeep Singh harboured the assailants by providing them shelter, car and ₹4,000/- and tried to help them in escaping from the State of Punjab to some other State. FIR No.220 dated 28.7.2019 lodged under Section 212/34 IPC is derivative of the main case having FIR No.203 dated 14.7.2019 registered under Section 302/34 IPC. Further, the incident of killing of Jagsir Khan and subsequent harbouring of the assailants are inter-connected and form part of the same transaction and thus, requires to be tried by one Court. As the Court of Session has already taken cognizance of the main criminal case relating to murder of Jagsir Khan, this Court is of the view that the criminal case registered under Section 212/34 IPC being off-shot of murder case, requires to be tried by the said Court (Sessions Court), even if offence punishable under Section 212/34 IPC is triable by the Court of Judicial Magistrate 1st Class. So the contention raised by the counsel for the

petitioner that the offence under Section 212 IPC is a separate offence and cannot be tried along with main sessions case is not tenable.

In the light of the above, it is held that the learned Additional Sessions Judge, Sangrur has not committed any illegality in passing the impugned order dated 6.8.2022 (Annexure P-5) and the said order is hereby upheld.

Resultantly the present petition fails and is hereby dismissed being devoid of merits.

(KARAMJIT SINGH)
JUDGE

26.9.2022
Gaurav Sorot/P.Chawla

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No