



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

% **Reserved on : 24.01.2022**
Pronounced on : 30.08.2022

+ **CRL.M.C. 586/2021 & CRL.M.A.2931/2021**

MR. SITU RAMNATH SHASTRI

..... Petitioner

Through: Mr. Manohar Shetty, Sr. Adv. with
Mr. Nitin Devgan, Adv.

versus

I.F.C.I. FACTORS LTD.

.... Respondent

Through: Mr. Shariq Hussain, Adv.

+ **CRL.M.C. 590/2021 & CRL.M.A.2948/2021**

MR. SITU RAMNATH SHASTRI

..... Petitioner

Through: Mr. Manohar Shetty, Sr. Adv. with
Mr. Nitin Devgan, Adv.

versus

I.F.C.I. FACTORS LTD.

.... Respondent

Through: Mr. Shariq Hussain, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR



JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present petitions under Section 482 Cr.P.C. read with Article 227 of the Constitution of India have been filed by the petitioner, namely, Situ Ramnath Shastri, with the following prayers:

a) Allow the present petition and quash/ set aside both the Impugned orders viz. order dated 16.01.2021 passed by the Addl. Sessions Judge-03, Patiala House Courts, New Delhi in Criminal Revision Petition/Application No. 719/2019 filed in Complaint Case No. 19815/2016 and in Criminal Revision Petition/Application No. 720/2019 filed in Complaint Case No. 19822/2016 and order dated 03.10.2019 passed by the Ld. MM (N .I. Act)-0 1, Patiala House Court at New Delhi in Complaint Case Nos. 19815/2016 and 19822/2016 as being illegal, null and void;

b) Pass any other order(s) which this Hon'ble Court deem fit and proper in the facts and circumstances of the present case.

2. The petitioner has assailed the order dated 16.01.2021 passed by the Ld. ASJ-03, Patiala House Court, in Criminal Revision Petition No. 719/2019 filed in Complaint Case No. 19815/2016 and Criminal Revision Petition No. 720/2019 filed in Complaint Case No. 19822/2016. The brief history of the case as mentioned in the above said order has been produced hereunder:

“2. The brief facts as per the revision petition are, that the respondent/ complainant had moved an application u/s 311 Cr.P.C



for getting the MOU dated 14.06.2007 proved. However, the said application was rejected by ld. MM vide order dated 31.10.2017. Thereafter, the respondent filed two revision petitions before the court of sessions which were rejected vide order dated 17.11.2018. Thereafter, the respondent did not agitate the matter further and went on seeking adjournment. After two years, the respondent again filed an application for leading evidence in connection with Memorandum of Understanding dated 14.06.2007, which was allowed vide order dated 03.10.2019. Hence, the present revision petition.”

3. Based on the submissions made by the parties before Ld. ASJ, the consideration of the revision petitions’ merits and the conclusions that followed are mentioned hereunder:

*“10. At the very outset, I must hold that the present revision petition is against an order of the ld. trial court which was passed u/s 311 Cr.P.C and as has been held by Hon’ble Supreme Court in **Sethuraman’s** case (*supra*), such an order is an interlocutory order. That being the case, no revision petition against such an order lies. On this ground alone, the revision petition must fail.*

11. However, ld. Counsel for revisionist has claimed that the impugned order amounts to review of the earlier order dated 31.10.2017 wherein, a similar prayer of the respondent had been declined. On this account, I find that the concept of review does not apply to an application u/s 311 Cr.P.C. The object and purpose of section 311 Cr.P.C is to enable the court to reach a just decision of



the case. The words "just decision of the case" have a wide connotation and this power has been granted to the court so that justice can be dispensed without being bound by the technicalities of the law. It does not matter whether any witness has been examined, cross examined from the side who seeks to recall that witness or whether entire evidence has been closed or not. What is to be seen by the court is; whether, the recalling of such a witness and bringing of record is essential for just decision of the case? This in itself clearly shows that the earlier order passed on an application u/s 311 Cr.P.C cannot operate as resjudicata. If at a later stage, the court finds that for just decision of the case, recalling of the witness is necessary, the court can allow such witness to be summoned.

12. Even otherwise in the present case, vide an earlier order u/s 311 Cr.P.C dated 31.10.2017, the trial court had rejected the application for summoning of record clerk from Patiala House Courts alongwith five case files of cases instituted by complainant/ respondent against the accused/ revisionist. Those cases had been withdrawn owing to MOU in question. The said prayer was rejected by the ld. trial court but at the same time, the trial court did not state that MOU could not be produced on record or brought on record because the trial court itself observed in the said order, that the complainant could place the certified copy of the MOU on record.

13. However, at a later stage, Ahlmad had been successful in tracing the copy of MOU on record and thereafter, a fresh application was moved but it was not for calling the same witness prayer to call whom



had been rejected vide order dated 31.10.2017, but for recalling/ re-examination of CW1. Therefore first of all, it is not the same witness which was sought to be called and therefore, this application cannot be said to be review of the earlier order. Secondly, the MOU was found to be already on record and this changed circumstance must have weighed in the mind of the trial court as is visible from the impugned order wherein the trial court allowed recalling of CW1. Bringing on record the factum of execution of this MOU can also be not said to be an effort to fill the lacuna. I say so because this MOU was executed between the revisionist and the respondent and therefore, the revisionist is aware of the existence of this document. Not only this, it is admitted that this MOU had been acted upon and therefore, it cannot be accepted that revisionist, by production of this MOU, is being blind sided.

14. As regards the contention of ld. Counsel for the revisionist that vide order dated 31.10.2017, ld trial court had already found that the said MOU cannot be proved by the AR and therefore, this application could not have been allowed; I find that the said observation of the trial court vide order dated 31.10.2017 cannot be binding in any manner as the trial court had pre-judged the mode or method of proving this document without giving an opportunity to the respondent/ complainant to prove this document and without giving an opportunity to the respondent to argue on this point, the trial court in order dated 31.10.2017 gave a finding which was not on the subject matter in issue.



15. I accordingly find that the said finding cannot operate as resjudicata as has been claimed by ld. Counsel for the revisionist because firstly, the said finding was beyond the scope of application u/s 311 Cr.P.C which was being decided by trial court on 31.10.2017 and secondly, the finding had been given without hearing the respondent/ complainant on this point, as is evident from the order dated 31.10.2017.

16. I accordingly find no merits in the revision petitions. The same are accordingly dismissed..”

4. I have heard the Ld. senior counsel for the petitioner, Ld. counsel for the respondent and perused the records of the case.

5. It is vehemently urged by the Ld. senior counsel for the petitioner that Section 311 Cr.P.C. cannot be used to fill in the lacunas of the prosecution's case and since there was not even a whisper about the MOU dt.14.06.2007, either in the Complaint or in the Affidavit of Evidence dated 24.09.2013, which was filed nearly six years after the date of MOU, permitting the complainant to lead evidence of the MOU would tantamount to filling of gaps in the case of prosecution. It is further submitted that the complainant (respondent herein) failed to establish the existence of debt or liability for issuance of the cheques and the subsequent introduction of the said MOU is clearly an afterthought. It is further submitted that similar prayer of bringing MOU on record already stood rejected by the Ld. Trial Court and later by the Ld. Sessions Court, hence, the same would act as res judicata. It is further submitted by the Ld. senior counsel for the petitioner that the A.R. of



the complainant sought to be recalled is not the signatory of the alleged MOU and even if the MOU is brought on record the same would be a futile exercise resulting in only delaying the disposal of the case. Reliance has been placed upon the judgments passed by the Hon'ble Supreme Court in *Ishwar Dutt vs. Land Acquisition Collector* [2005 AIR (SC) 3165; 2005 (7) SCC 190], *Vijay Kumar Gupta & Ors. vs. Ashok Kumar Gupta* [(2007) 95 DRJ 167], *Balraj Taneja & Anr. vs. Sunil Madan* [1999 8 SCC 396] and *Shankarlal Ganulala Khandelwal vs. Balmukund Surajmal Bhaaruka* [AIR 1999 Bom 260].

6. On the other hand, it is submitted by the Ld. counsel for the respondent that the foundation of the revision petition, which was filed before the Ld. ASJ, in itself seems quavery as an order passed by the Ld. MM under Section 311 Cr.P.C. is an interlocutory order and the same cannot be challenged by filing a revision petition. Ld. Counsel for the respondent in support of his contention has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of *Sethuraman vs. Rajamanickam* [2009 (5) SCC 153] wherein, it was categorically held by Hon'ble Supreme Court that the order under Section 311 Cr.P.C. is purely an interlocutory order. It is further submitted that since no revision petition was maintainable before Ld. ASJ, thus, the present petition filed against the final outcome of the said revision petition is again not maintainable.

7. It is further submitted by the Ld. counsel for the respondent that the impugned order cannot be said to be a review of the earlier order and even the earlier order can also not operate as res judicata. It is further submitted



that the respondent sought to summon the record clerk from Patiala House Court to testify in order to establish the existence of the MOU, which was untraceable in the present complaint matter. It is further submitted that the Trial Court, while rejecting that application had observed that the complainant could easily place the certified copy of the MOU on record and that there was no need to take an extended route to prove this MOU by summoning the entire bulky record from the record room and therefore, the Trial Court did not have any objections to the MOU coming on record; rather, it only objected to the method by which the MOU was sought to be proved on record, thus, it cannot be deemed that adding this MOU to the record fills in the lacuna of the case of prosecution.

8. The complainant (respondent herein) had moved applications under Section 311 Cr.P.C. in the said two complaint cases bearing No. 19815/2016 and 19822/2016 for getting the said MOU dated 14.06.2007 proved, however, the same were rejected by the Ld. MM vide order dated 31.10.2017. Thereafter, the respondent filed two revision petitions before the Court of Sessions challenging the said order dated 31.10.2017, which were rejected vide order dated 17.11.2018. The respondent again filed an application for leading evidence in connection with Memorandum of Understanding dated 14.06.2007 after two years which was allowed by the Ld. MM vide order dated 03.10.2019. The operative portion of the order dated 03.10.2019 passed by the Ld. MM is reproduced hereunder:

“9. Consequently, after the above order, the copy of the MOU which was placed on record, was traced by the Ahlmad. As a result, a new development has taken place in the present case and therefore,



allowing the application would not tantamount to review of the order dated 31.10.2017. Further, in her cross-examination, dated 02.09.2015 and 12.10.2017, CW-1 has deposed about the MOU entered into between the parties, as per which the accused had agreed to pay certain amount to the complainant as full & final settlement. The interest of justice demands that true and complete facts should be brought before the Court, so as to enable the Court to deliver a just decision. In the present case, the factum of MOU entered into between the parties has already come out in the testimony of CW-1. In such a scenario, this Court deems it fit that the MOU be taken into account and the parties are given an opportunity to lead evidence in this regard. Further, since the testimony of CW-1 deals with the MOU in question, the fact that no mention of the MOU has been made in the evidence by way of affidavit of CW-1, does not have any bearing.

10. Accordingly, the application moved by the complainant u/S 311 CrPC to recall the AR/CW-1 Ms. Shweta Sambyal Thakur to examine her as a witness stands allowed. However, it is made clear to both the parties that the examination of CW-1 shall be limited to the MOU dated 14.06.2007 and the examination of CW-1 including her cross-examination, shall be concluded on a single day and only one opportunity shall be provided for her examination/cross-examination. The application stands disposed of accordingly.”

9. The aforesaid order was challenged by the petitioner in Criminal Revision Petition No. 719/2019 filed in Complaint Case No. 19815/2016



and Criminal Revision Petition No. 720/2019 filed in Complaint Case No. 19822/2016 and the same was disposed of vide impugned order dated 16.01.2021. This order dated 16.01.2021 has been challenged before this court. The operative portion of the same has already been quoted hereinabove in the preceding paragraph.

10. In my view, the contention of Ld. counsel for the respondent that no revision petition is maintainable in light of the judgement in the matter of **Sethuraman** (*supra*) has force in it. The relevant portion of the abovementioned judgment is reproduced hereunder:

“5.....Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application u/s 311 Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred u/s 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 u/s 91 Cr.P.C. for production of documents and other on the application u/s 311 Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, u/s 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.”

11. Reliance can also be placed upon ***B.B. Lal Aggarwal vs. The State Govt of Delhi & Anr. (Crl. M.C. 953/2022, Judgment dated 04.04.2022)*** decided by the coordinate bench of this court, wherein, it was observed that no revision lies against an interlocutory order.

12. The intent of section 311 Cr.P.C. is to empower the court to make a fair evaluation at every instance. The court has been entrusted with this authority so that justice be administered without being constrained by the specifics of the legislation. It makes no difference whether a witness has been cross-examined by the party seeking to recall them or whether all of the evidence has been closed or not. The question for the court is whether calling back such a witness and presenting evidence is necessary for a fair resolution of the case. This alone demonstrates how the preceding ruling on the application under Section 311 Cr.P.C. cannot be regarded as final. The court may permit a witness to be summoned if, at a later stage, it determines that recalling the witness was required for a just resolution of the matter.

13. It is trite law that an order passed under Section 311 Cr.P.C. is purely an interlocutory order and a revision against an interlocutory order is clearly barred under Section 397(2) Cr.P.C. Consequently, the revision petitions preferred before Ld. ASJ were not maintainable and thus, the present petitions filed against the final outcome of the said revision petitions are again not maintainable.



14. Therefore, in view of the discussions mentioned hereinabove, I find no infirmity in the impugned orders dated 03.10.2019 and 16.01.2021 and the same are, therefore, upheld. Consequently, the present petitions are dismissed.

15. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

AUGUST 30, 2022/p



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