

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

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CRM-M-57655-2022

Date of decision: 17.04.2023

ARUN KUMAR

...Petitioner

VERSUS

SANKLITA @ SHISHU AND ANOTHER

...Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Ms. Anmolpreet Kaur, Advocate for
Mr. Rajesh Kapila, Advocate
for the petitioner.

DEEPAK MANCHANDA, J.(ORAL)

This petition has been filed under Section 482 Cr.P.C. against the order dated 26.08.2022 (Annexure P-3) passed by Sessions Judge, Gurdaspur accepting the revision petition, whereby the order dated 25.01.2022 (Annexure P-1) passed by Judicial Magistrate First Class, Gurdaspur in complaint case bearing No. COMI 145/2017 titled as "*Arun Kumar Vs. Sanklita and others*" filed under Sections 420 and 34 IPC, vide which the accused/respondents No.1 & 2 were summoned to face trial under Sections 406 and 34 IPC, has been set aside.

The factual matrix of the present case is that the husband of respondent No.1 and father of respondent No.2 executed an agreement to sell his double story house situated at Civil Lines, Gurdaspur in favour of the petitioner on 20.03.2013 for consideration of Rs.2,38,50,000/- where deceased Sh. Baldev Raj had received Rs.88,50,000/- as earnest money from the petitioner at the time of execution of agreement to sell. The said sale

deed was to be executed and registered on or before 31.03.2014 on payment of balance sale consideration, the petitioner remained present in the office of Sub-Registrar, Gurdaspur on the said date i.e. 31.03.2014 along with balance sale consideration but both the respondents did not turn up for execution of the sale deed and committed fraud upon the petitioner. Thereafter, aggrieved by the said action of the respondents, petitioner filed a criminal complaint for registration of case before the concerned Senior Superintendent of Police, Gurdaspur where FIR No.98 dated 16.07.2016 under Sections 420 and 34 of IPC at Police Station City Gurdaspur was registered but later on the cancellation report was filed. Thereafter, the petitioner approached the trial Court by filing the present complaint bearing No. COMI 145/2017 titled as "*Anil Kumar Vs. Sanklita & others*" and respondents were summoned vide order dated 25.01.2022 (Annexure P-1) to face the trial for committing offence under Section 406 read with Section 34 of IPC. Aggrieved by the said summoning order, the respondents herein filed the revision petition before learned Sessions Judge, Gurdaspur which has been accepted vide impugned judgment dated 26.08.2022 (Annexure P-3) and the summoning order dated 25.01.2022 (Annexure P-1) has been set aside. Now, aggrieved by the judgment dated 26.08.2022 (Annexure P-3), present petition has been filed seeking quashing of the same.

Learned counsel for the petitioner contends that the respondents were rightly summoned as prima facie sufficient material was found against them to proceed under Section 406 read with Section 34 IPC but the Sessions Judge, Gurdaspur without appreciating the evidence has set aside the well reasoned order dated 25.01.2022. Further, the summoning order is an interlocutory order and as per Section 397 (2) Cr.P.C. no

revision petition would lie before the Court of Sessions against an interlocutory order whereas the Sessions Court conducted a mini trial and had gone into the merits of the case, who is having limited jurisdiction to check about the factum of culpable error and material on record. Hence, the impugned judgment dated 26.08.2022 passed by the Revisional Court is perverse, illegal, arbitrary and is against the settled principles of law.

Having heard learned counsel for the petitioner and as per the allegations in the complaint, the dispute was with regard to execution of the sale deed in terms of the agreement to sell dated 20.03.2013, which is of civil nature. Therefore, the petitioner had the alternate remedy to file civil suit for specific performance. Moreover, the respondents did not receive any amount from the petitioner since there was no agreement between the petitioner and the respondents and there is no question of making any misrepresentation by them to the petitioner or cheating. After perusing the contents of the complaint as well as the summoning order dated 25.01.2022 (Annexure P-1) passed by the trial Court, the matter is of pure civil nature. Filing of the present criminal complaint was second recourse whereas, earlier an FIR was also registered i.e. FIR No.98 dated 16.07.2016 under Sections 420 and 34 of IPC at Police Station City Gurdaspur wherein police presented the cancellation report which was never objected to by the petitioner and subsequently, he adopted the recourse of filing private complaint on the same set of allegations when he did not get the fruitful result after registration of the FIR. Further, deceased Baldev Raj Abrol- husband of respondent No.1 and father of respondent No.2, who actually executed the agreement to sell with the petitioner, whereas the present respondents are merely the legal heirs of deceased-Baldev Raj Abrol, who

may be under the civil liability to execute the sale deed in terms of agreement executed by the predecessor but as such no criminal liability can be fasten on them and the summoning order dated 25.01.2022 (Annexure P-1) was passed without application of mind as the evidence alleged in the complaint is of civil nature. Secondly, the argument of the petitioner with regard to accepting the revision petition filed by the respondents under Sections 397(2) Cr.P.C. is not acceptable being an interlocutory order and the revision petition against the same cannot be entertained, does not carry much weight as the revisional jurisdiction under Section 397 Cr.P.C. can be exercised where the interest of public justice requires interference for correction of manifest illegality or the prevention of gross miscarriage of justice as settled by the Hon'ble Apex Court in case titled as **“Honnaiah T.H. Vs. State of Karnataka and Others” : 2022(4) RCR (Criminal) 567**, wherein it has been held that:-

“12. There would be a serious miscarriage of justice in the course of the criminal trial if the statement were not to be marked as an exhibit since that forms the basis of the registration of the FIR. The order of the trial judge cannot in these circumstances be treated as merely procedural or of an interlocutory in nature since it has the potential to affect the substantive course of the prosecution. The revisional jurisdiction under section 397 CrPC, 1973 can be exercised where the interest of public justice requires interference for correction of manifest illegality or the prevention of gross miscarriage of justice Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460, Sheetala Prasad v. Sri Kant, (2010) 2 SCC 190. A court can exercise its revisional jurisdiction against a final order of acquittal or conviction, or an intermediate order not being interlocutory in nature. In the decision in Amar Nath v. State of Haryana, (1977) 4 SCC 137 this Court

explained the meaning of the term "interlocutory order" in section 397(2) CrPC, 1973. This Court held that the expression "interlocutory order" denotes orders of a purely interim or temporary nature which do not decide or touch upon the important rights or liabilities of parties. Hence, any order which substantially affects the right of the parties cannot be said to be an "interlocutory order". Speaking for a two-Judge Bench, Justice Murtaza Fazal Ali observed:

"6. [...] It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. 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 rights of the parties cannot be said to be an interlocutory order so as to 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 proceeding, may not 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."

Explaining the historical reason for the enactment of section 397(2) CrPC, 1973 this Court observed in Amar Nath (supra) that the wide power of revision of the High Court is restricted as a matter of prudence and not as a matter of law, to an order that "suffered from any error of law or any legal infirmity

*causing injustice or prejudice to the accused or was manifestly foolish or perverse." In **KK Patel v. State of Gujarat, (2000) 6 SCC 195** where a criminal revision was filed against an order taking cognizance and issuing process, this Court followed the view as expressed in *Amar Nath (supra)*, and observed:*

*"11. [...] It is now well-neigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage (vide **Amar Nath v. State of Haryana, Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551, VC Shukla v. State, 1980 Supp 92 and Rajendra Sitaram Pande v. Uttam (1999) 3 SCC 134**). The feasible test is whether upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable."*

The challenge to the maintainability of the revision against the summoning order dated 25.01.2022 (Annexure P-1) at the instance of the petitioner impugning the order dated 26.08.2022 (Annexure P-3) passed by the Revisional Court during the pendency of the trial is rejected as the revisional jurisdiction of Higher Court under Section 397 Cr.P.C. is a discretionary jurisdiction that can be exercised by the revisional Court even *suo motu* so as to examine the correctness, legality or propriety of an order recorded and passed by the trial Court or the inferior Court. Hence, there is no bar on invoking the revisional jurisdiction and inviting the attention of the Higher Court that an occasion to exercise the power as arise. Therefore,

Sessions Judge, Gurdaspur in accepting the revision petition and setting

aside the summoning order dated 25.01.2022 passed by the trial Court is justified where the trial Court overlooked the material evidence where the dispute was purely of civil nature and should not have interfered where the petitioner adopted the second recourse after cancellation of FIR when he did not succeed in first attempt and the the argument raised by the petitioner that the respondents did not have locus to prefer the criminal revision against the order of the trial Court is not justified.

Keeping in view of the facts and circumstances of the case, the impugned judgment passed by the Sessions Judge, Gurdaspur dated 26.08.2022 (Annexure P-3) is justified whereby the trial Court's order dated 25.01.2022 (Annexure P-1) was rightly set aside. The present petition is devoid of merits and the same is hereby dismissed.

April 17, 2023
Ajay Goswami/Nisha-II

(DEEPAK MANCHANDA)
JUDGE

<i>Whether reasoned/speaking?</i>	<i>Yes/No</i>
<i>Whether reportable?</i>	<i>Yes/No</i>