

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRR No.665 of 2023 (O&M)

Amarjit Singh
... Petitioner
Versus
Central Bureau of Investigation
... Respondent

2. CRR No.2244 of 2023 (O&M)

Pritam Singh & another
... Petitioners
Versus
Central Bureau of Investigation
... Respondent

Date of decision: 13th February, 2024

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. K.S. Sidhu, Senior Advocate with
Mr. Praagbir S. Dhindsa & Mr. Kartik Bansal,
Advocates for the petitioners.
Mr. Akashdeep Singh, Spl. Public Prosecutor, CBI
for the respondent.

MANJARI NEHRU KAUL, J.

CRM No.4495 of 2024 in CRR No.665 of 2023

Learned senior counsel appearing for the applicant/
petitioner submits that since he is ready with the arguments in the main
case fixed for 05.03.2024, the hearing be advanced to today.

Learned counsel for the respondent/CBI does not oppose the
prayer made for advancing the date of hearing.

Accordingly, on joint request of both the parties the revision
petition is taken up for hearing today.

CRR Nos.665 & 2244 of 2023 (O&M)

1. Since both the aforementioned revision petitions arise out of the same FIR, they are being taken up for hearing together and shall be decided by way of this common judgment.

2. Challenge in the first revision petition i.e. CRR No.665 of 2023 is to an order dated 22.02.2023 passed by the learned Special Judge, CBI Punjab, SAS Nagar, Mohali, vide which the application filed by the petitioner for supplying the original statement of complainant/Rajwant Kaur has been dismissed; while the second revision petition i.e. CRR No.2244 of 2023 is directed against an order dated 20.09.2023 passed by the said Court, vide which application filed by the respondent/CBI for summoning of additional witnesses, has been allowed.

3. During the course of hearing, a pointed query was put to the learned senior counsel for the petitioner enquiring about the maintainability of the instant petitions in their present form. This query stemmed from the fact that the orders being challenged were interlocutory and typically not subject to challenge through a revision petition. However, the learned senior counsel vehemently asserted that the revision petitions were indeed maintainable in the instant case. To bolster his submissions, the learned senior counsel cited a plethora of cases where similar petitions had been entertained by the Court under Section 401 of the Cr.P.C. To buttress his arguments, learned senior counsel has relied upon the orders passed by this Court in **CRR 495 of 2021 titled as ‘Baljinder Singh vs. State of Punjab’**; **CRM-M No.8247 of 2020 titled as ‘Om Parkash Chhabra and others Chand**

Prakash Chhabra’ and CRM-M No.15173 of 2012 titled as ‘Uppal Credit and Investment Pvt. Ltd. Vs. Ashwani Kumar’ 2016(2) RCR (Criminal) 684. Learned senior counsel for the petitioners contended that there existed no explicit bar against entertaining the instant petitions and deciding the same.

4. Furthermore, the learned senior counsel for the petitioners, emphasized the importance of maintaining the rule of judicial discipline and propriety. It was argued that consistency and uniformity in judicial decisions was essential for lawyers to provide accurate assistance to their clients. Therefore, the Court should refrain from adopting a hyper technical view, by deciding the instant petitions in the interest of justice, as had been done by Coordinate Benches of this Court. However, should the Court be disinclined to entertain the petitions and opt for a contrary view, the learned senior counsel strenuously urged that since a question of law qua the maintainability of the petition was involved, the matter be referred to a Division Bench of this Court for further consideration.

5. Learned counsel for the CBI has, at the outset, raised an objection to the maintainability of the present petitions under Section 401 of the Cr.P.C. He has contended that since the law in the said regard stands squarely settled by the Hon'ble Supreme Court in **‘Sethuraman vs. Rajamanickam’ 2010 (5) RCR (Criminal) 512**, there would be no question of the matter being referred to a Division Bench of this Court. Furthermore, it has been argued that the petitioners’ recourse to this Court was untenable under both Section 482 and Section 397 of the Cr.P.C. As per learned counsel for the respondent/CBI, even though a direct challenge to an interlocutory order was impermissible under

Section 397 Cr.P.C., attempting to do so indirectly through Section 482 Cr.P.C. was also equally impermissible. In support of his arguments, learned counsel has relied upon a judgment rendered by Hon'ble the Supreme Court in '**Girish Kumar Suneja vs. Central Bureau of Investigation**' (2017) 14 SCC 809, wherein the Hon'ble Supreme Court observed as under:

“24. The second reason why Amar Nath is important is that it invokes the principle, in the context of criminal law, that what cannot be done directly cannot be done indirectly. Therefore, when Section 397(2) of the Cr.P.C. prohibits interference in respect of interlocutory orders, Section 482 of the Cr.P.C. cannot be availed of to achieve the same objective. In other words, since Section 397(2) of the Cr.P.C. prohibits interference with interlocutory orders, it would not be permissible to resort to Section 482 of the Cr.P.C. to set aside an interlocutory order. This is what this Court held:

“While we fully agree with the view taken by the learned Judge that where a revision to the High Court against the order of the Subordinate Judge is expressly barred under sub-section (2) of Section 397 of the 1973 Code the inherent powers contained in Section 482 would not be available to defeat the bar contained in Section 397(2). Section 482 of the 1973 Code contains the inherent powers of the Court and does not confer any new powers but preserves the powers which the High Court already possessed. A harmonious construction of Sections 397 and 482 would lead to the irresistible conclusion that where a particular order is expressly barred under Section

397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of Section 482 would not apply. It is well settled that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject-matter. Where there is an express provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers.” (Emphasis supplied by us).

6. Additionally, learned counsel for the CBI-respondent has asserted that the judgments cited by the learned senior counsel for the petitioners, which were handed down by Coordinate Benches of this Court, would be rendered per-incuriam in light of the settled law by the Hon'ble Supreme Court.

7. Heard learned counsel for the parties at length and perused the relevant material on record.

8. Before proceeding further, it would be relevant to reproduce the observations made by Hon'ble Supreme Court of India, in **Sethuraman's case (supra)**, which read thus:

“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. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed.”

9. Thus, the case laws cited by the learned senior counsel would not hold sway, in the light of the above settled law by the Hon'ble Apex Court in **Sethuraman's case (supra)**. It needs to be reiterated that the highest Court of the land has unequivocally ruled on the non-maintainability of a revision petition against an interlocutory order passed under Section 311 Cr.P.C., which has been reiterated in a plethora of cases thereafter, both by the Hon'ble Apex Court as well as different Courts of this country.

10. In the circumstances, the learned senior counsel's vehement plea for referring the matter to the Division Bench of this Court is utterly devoid of any merit on account of the fact that this Court cannot undermine the authoritative judgments of Hon'ble the Supreme Court by revisiting settled law. In the realm of judicial propriety and discipline, it is imperative for the courts to unequivocally adhere to the judgments

passed by the Higher Courts, and in this case by none other than the Highest Court of the land, as its decisions are binding and sacrosanct. Disregarding or revisiting a judgment passed by Hon'ble the Supreme Court would undermine the integrity of the legal system and erode the foundation of justice itself.

11. As a sequel to the above, both the instant petitions stand dismissed, being not maintainable.

(MANJARI NEHRU KAUL)
JUDGE

February 13, 2024
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No