

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-47568-2017 (O&M)
Reserved on: 12.03.2024
Pronounced on: 21.03.2024

Bhupinder Bahadur

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kunal Dawar, Advocate and
Mr. Jagjot Singh, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

Mr. Dixit Garg, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court by way of filing the present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.' for brevity) for quashing of the impugned order dated 16.11.2017 (Annexure P-1) passed by learned Additional Sessions Judge, Gurugram, in a revision filed by respondent No.2, whereby order dated 19.09.2017 (Annexure P-2) passed by the learned Judicial Magistrate 1st Class, Gurugram, dismissing the application filed under Section 311 Cr.P.C., was set side.

2. Shortly stated, the instant case arises from FIR, bearing No.598 dated 17.12.2008 under Sections 420, 406, 467, 468, 471 of IPC, registered at Police Station Civil Lines, Gurugram. As per the allegations, the petitioner has been accused of misappropriating Rs.8,75,000/- from respondent No.2 company. After completion of investigation, challan was presented and charges were framed on 04.10.2012 by the learned trial Court. After approximately five years i.e. on 03.06.2017, the prosecution evidence was closed by order of the learned trial Court. In the meanwhile, respondent No.2 moved an application under Section 311 of Cr.P.C. for recalling complainant PW-2 namely J.M. Chaturvedi, PW-8 namely Kishan Chand Sharma and PW-5 namely Om Prakash Satija for further examination and also for the examination of Sita Ram Gupta and Deepak. The learned trial Court, after taking into account the facts and circumstances of the case, rejected the application vide order dated 19.09.2017. Against the said order, respondent No.2 filed a revision before the learned Additional Sessions Judge, Gurugram, which was allowed vide order dated 16.11.2017.

3. Learned counsel for the petitioner, *inter alia*, contends that the learned Additional Sessions Court, Gurugram erred in allowing the revision petition, as the same was not maintainable in the first place. As the order deciding an application under Section 311 Cr.P.C. is interlocutory in nature, no revision would lie against such an order. Reliance in this regard is placed upon ***Sethuraman Vs. Rajamanickam, 2009 (5) SCC (153), Baba Kashmira Singh Vs. Mahindra and Mahindra Financial Services Ltd., 2014 (15) R.C.R.***

(Criminal) 150, Neelam Mahajan Vs. State (Delhi), 2016 (229) DLT 29, Ajai Dikshit Vs. State of U.P., 2012 (6) R.C.R. (Criminal) 576 and Smt. Sunita Vs. State of Rajasthan, 2016 (2) Cri.L.R. 793.

4. Learned counsel for the petitioner further contends that the learned Additional Sessions Judge, Gurugram failed to appreciate that the charges were framed on 04.10.2012 and after a period of five years, the application under Section 311 of Cr.P.C. was moved before the learned trial Court by respondent No.2. The learned trial Court provided ample opportunities, including surprisingly several last opportunities to the prosecution to lead their evidence. Moreover, summons were issued to Deepak and Sita Ram Gupta on several dates, but they were not duly served on the said witnesses and reported by the process servers as having not proper or incomplete address. Despite this, no serious efforts were taken by the prosecution to examine them during the appropriate stage. There was an excessive delay and as such, entertaining the application filed under Section 311 of Cr.P.C. would further prolong the trial and adversely affect the fundamental right of the petitioner to a speedy trial.

5. Per contra, learned counsel for respondent No.2 argues that further examination of PW-2, re-examination of PW-5 O.P. Satija, PW-8 Kishan Chand and examination of PW Deepak and PW Sita Ram Gupta are most important and necessary witnesses for proper adjudication of the present case and to ensure a fair trial. With regard to maintainability of the revision petition, he has placed reliance on the judgment of this Court in *Uppal Credit*

and Investment Pvt. Ltd. Vs. Ashwani Kumar, (2016) 2 RCR (Cri) 684, wherein it was held that the order passed on an application under Section 311 of Cr.P.C. is a revisable order and not interlocutory in nature.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, at the very outset, it is appropriate to hold that the learned Additional Sessions Court committed an oversight by entertaining the revision petition filed by respondent No.2. An order dismissing or allowing an application under Section 311 of Cr.P.C. is interlocutory in nature and a revision petition against the same is barred under Section 397(2) of Cr.P.C. Section 397(2) Cr.P.C. reads as under:—

“(2) The powers of revision conferred by Sub-Section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.”

7. Here, it would be prudent to cite the ratio of law laid down by the Hon’ble Supreme Court in ***Sethuraman Vs. Rajamanickam, 2009 (5) SCC (153)***. Para 4 of the said judgment reads as under: -

“Secondly, what was not realised was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Criminal Procedure Code, were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) of Criminal Procedure Code 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 Criminal Procedure Code for production of documents and other on the application under Section 311 Criminal Procedure Code 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.”

8. Further, in ***Mr. Situ Ramnath Shastri Vs. I.F.C.I. Factors Ltd., decided on 30th August, 2022 in CrI. M.C. No. 586/2021*** by the Hon’ble High Court of Delhi, the following observations were made: -

*“11. Reliance can also be placed upon **B.B. Lal Aggarwal v. The State Govt of Delhi & Anr. (CrI. 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.”

9. In view of the authoritative pronouncement of the Hon’ble Apex Court in ***Sethuraman***’s case (*supra*), this Court cannot follow the view taken by the Coordinate Bench in ***Uppal Credit and Investment Pvt. Ltd.***’s case (*supra*). Resultantly, the impugned order dated 16.11.2017 passed by learned Additional Sessions Judge, Gurugram is set aside on account of revision being non-maintainable.

10. Accordingly, the present petition is allowed.

[HARPREET SINGH BRAR]
JUDGE

21.03.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No