



**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-45831-2024 (O&M)
Date of Decision:-28.10.2024

Dr. Sanjeev Kaushal ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Abhishek Sethi & Mr. Tej Bahadur Yadav, Advocates,
for the petitioner.

Mr. Munish Sharma, DAG, Haryana.

GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 10.7.2024 (Annexure P-21) passed the Court of Additional Sessions Judge, Sirsa, whereby a revision petition filed by respondent State against order dated 21.10.23 (Annexure P-20) passed by learned Magistrate, has been accepted. While the learned Magistrate, vide order dated 21.10.2023 had ordered for release of the ultrasound machines on ‘*superdari*’, the said order was reversed by learned Additional Sessions Judge while exercising revisional jurisdiction vide impugned order dated 10.7.2024 (Annexure P-21).
2. The matter arises out of complaint dated 20.8.2016 (Annexure P-10) filed by Chairman, District Appropriate Authority, Sirsa, having been authorised for the same by the District Appropriate Authority, Sirsa, against the petitioner



in respect of various offences under PNDT Act. The allegations, in nutshell, are that upon receipt of a secret information on 19-11-2015 to the effect that a diagnostic center by the name 'City Diagnostic Centre', Dabwali Road, Sirsa owned by Dr. Sanjeev Kaushal (petitioner) had made gross violations of PNDT Act, the complainant constituted a Team comprising of Dr. Viresh Bhushan, Deputy Civil Surgeon, Dr, Raj Kumar, SMO, which conducted inspection of the premises of the Diagnostic center. The record revealed that although ultrasound sonography had been conducted during the period 4-11-2015 to 9-11-2015 but corresponding entries had not been recorded in OPD register in respect of the same.

3. Although Dr. Sanjeev Kaushal initially took a stand that he was present at the Diagnostic Center during the period 04-11-2015 to 09-11-2015, but the said stand was found to be false as 'Call Detail Record' and air travel bookings revealed that he was in West Bengal during the said period. Later, during investigation, Dr. Sanjeev Kaushal stated that he had handed over keys of his Centre to his faithful employee Suresh Kumar for cleaning purposes before he left for Gangtok and Darjeeling and that Suresh Kumar, in his absence, had operated ultrasound sonography machine (USG Machine) and appended his (petitioner's) forged signatures on the forms and in register. The complaint is thus, broadly to the effect the Ultra Sound Machine had been operated by unauthorized/ untrained person, in absence of and in collusion with petitioner Dr. Sanjeev Kaushal and that false record showing petitioner's presence had been fabricated. The USG machines were consequently sealed.



4. The petitioner moved an application for release of USG machines which was accepted by the learned Magistrate vide order dated 21.10.2023 (Annexure P-20) who directed release of the machines on '*superdari*', but upon a revision petition filed by respondent State, the said order was reversed by learned Additional Sessions Judge, vide impugned order dated 10.7.2024 (P-21).
5. The learned counsel, while assailing the impugned order dated 10.7.2024(Annexure P-10) made the following submissions:
 - (i) that an order for release of articles on '*superdari*' during pendency of trial is an 'interlocutory' order attracting the bar engrafted in section 397(2) Cr.PC against filing of revision petition;
 - (ii) that the order passed by Magistrate for release of USG machines on '*superdari*' was a perfectly valid order in view of facts and circumstances of the case particularly in light of ratio of judgement of Hon'ble Supreme Court in *Sunderbhai Ambalal Desai Vs State of Gujarat 2003 AIR(SC) 638*, which mandates that provisions of section 451 should be resorted to;
 - (iii) that the entire proceedings of raid have been conducted in an illegal manner and by unauthorised persons in violation of spirit of section 17 and 30 of PNDT Act.
6. The learned counsel placed reliance upon the following judgements to hammer forth his contentions noted above:
 1. *Sunderbhai Ambalal Desai Vs State of Gujarat 2003 AIR(SC) 638*;
 2. *Dr. Kiran Aggarwal vs. State of Chhatisgarh 2018(189) AIC 518*;
 3. *Aruni Sahgal Versus State of M.P. 2021 ILR(M.P) 114*;
 4. *Sukhada vs. State of Maharashtra 2012(46) RCR(Civil) 669*;



5. *Ravinder Kumar vs. State of Haryana, 2024(4)RCR(Criminal)491;*
7. The learned State counsel, who has put in appearance pursuant to advance notice having been served upon State, opposed the petition while submitting that the order in question can not be termed as an interlocutory order so as to exclude the same from revisional jurisdiction. It has been submitted that as a matter of fact, the petitioner himself also had invoked revisional jurisdiction against an order of release of articles on '*superdari*' on an earlier occasion in this very case. The learned State counsel places reliance upon the following judgements:
- (i) Madhu Limaye v. State of Maharastra, 1977(4) SCC 551;
 - (ii) Dhan Singh Bhati vs. State of Rajasthan 1999(1) RCR(CrI)214 (DB);
 - (iii) Ganesa Moorthy vs. State(Madras High Court) 2019 CrLJ 1355,
8. This Court has considered the submissions addressed before the this Court and has also gone through the judgements cited by learned counsel. The impugned order is primarily being assailed on the premises that the order dated 21.10.2023 (Annexure P-20) passed by the learned Magistrate, being an order in the nature of an interim arrangement only, was an 'interlocutory' order and thus not amenable to revisional jurisdiction and that revisional Court has committed an error in entertaining the same. AS per Scheme of the Code (Cr.P.C.), while certain orders are specifically made appealable under the Code, section 397 Cr.PC also vests the Court of Sessions and also the High Court with revisional powers to examine propriety of an order passed by a Court inferior to such revisional Court, even though not appealable. Section 397 Cr.PC. reads as under:



“397. Calling for records to exercise powers of revision. –

- (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation. - All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

- (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.
- (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

9. A perusal of section 397 Cr.PC shows that while sub-section(1) vests the Courts with revisional powers, sub-section (2) creates an exception where such powers can not be invoked qua certain types of orders i.e ‘interlocutory orders. It needs to be noticed that there was no such bar in



the earlier Code (Cr.P.C. 1898). However, on account of flooding of High Courts with revisions against all kinds of interim or interlocutory orders leading to protracting of trials, the Law Commission dwelt on this aspect and consequently restrictions were imposed on revisional jurisdiction in 1973 Code and which continue to be there even in the present Code i.e. 'Bhartiya Nagrik Suraksha Sanhita, 2023' (in short BNSS) in section 438(2). The Statement of Objects and reasons accompanying the 1973 Code, i.e. Clause (d) of Paragraph 5 of the Statement of Objects and Reasons reads as under thus :

"the powers of revision against interlocutory orders are being taken away, as it has been found to be one of the main contributing factors in the delay of disposal of criminal cases."

10. Interestingly, the term "*interlocutory order*" has nowhere been defined in Cr.PC or in BNSS or not even in Code of Civil Procedure or in Letters Patent of the High Courts though the term "*interlocutory order*" does figure therein. The term '*interlocutory*', has consequently been defined and over a period of time, been refined by Hon'ble Supreme Court, particularly while examining its import *vis-a-vis* revisional jurisdiction. The notable amongst those judgements are being briefly referred here-in-under.
11. A judgement of Federal Court in *Kuppuswami vs. The King, 1949 AIR (Federal Court) 1*, which has been referred to in several of the subsequent judgements of Supreme Court, discussed the issue as under:



“6. The question then is what is the meaning of "judgment, decree or final order of a High Court" in this section? The expression "final order" has been judicially interpreted and its meaning is now well settled. In *Salaman v. Warner, (1891) 1 Q.B. 734* Lord Esher, M.R. discussed the meaning of the expression, "final order" in these terms:

If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I "think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory. Fry, L.J. remarked as follows:

I conceive that an order is 'final' only where it is made upon an application or other proceeding which must, whether such application or other proceeding fail or succeed, determine the action. Conversely I think that an order is 'interlocutory' where it cannot be affirmed that in either event the action will be determined.

Lopes, L.J. said as follows:

I think that a judgment or order would be final within the meaning of the rules, when, whichever way it went, it would finally determine the rights of the parties.

In *Bozson v. The Altrincham Urban District Council No. (1) (1903) 1 K.B. 547* Lord Alverstone, C.J. held that the real test for determining the question was:

Does the judgment or order, as made, finally dispose of the rights of the parties?"

12. The Federal Court in *Kuppuswami's* case (*supra*) concluded as under:

“19. The question then is whether in the present criminal case the order is a "judgment, decree or final order" of the High Court"? It is clearly not a decree. It is also not a judgment, as it is only an interlocutory, order made on a preliminary objection in the course of a criminal trial. It is also not a final order, as the order is not on a point which, decided either way, would terminate the matter before the Court finally. In the words of Sir George Lowndes to constitute, a final order it is not sufficient merely to decide an important or even a vital issue in the case, but the decision must



not keep the matter alive and provide for its trial in the ordinary way. It is therefore clear that the order made on the criminal revision application by the Madras High Court is not a final order of judgment within the meaning of Section 205(1), Constitution Act. Indeed, if "judgment" were to mean or include an interlocutory order, the words "final order" in Section 205(1), Government of India. Act, 1935, will be superfluous. The preliminary objection is therefore upheld and the appeal is dismissed."

13. In Mohanlal Maganlal Thakkar v. State of Gujarat, AIR 1968(Supreme Court) 733, the Supreme Court has observed as follows:

"The question as to whether a judgment or an order is final or not has been the subject-matter of a number of decisions, yet no single general test for finality has so far been laid down. The reason probably is that a judgment or order may be final for one purpose and interlocutory for another or final as to part and interlocutory as to part. The meaning of the two words "final" and "interlocutory" has, therefore, to be considered separately in relation to the particular purpose for which it is required. However, generally speaking, a judgment or order which determines the principal matter in question is termed final. It may be final although it directs enquiries or is made on an interlocutory application or reserves liberty to apply."

14. In the case of Amar Nath v. State of Haryana, AIR 1977 Supreme Court 2185, the Supreme Court has observed as under:

"Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. 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 rights of the accused, or decides certain rights 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 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 no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders 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."

15. Supreme Court in Madhu Limaye v. State of Maharashtra, 1977 (4) SCC 551, on an examination of several decisions both of Indian and English Courts including the decision of the Federal Court in S. Kuppuswami's case (supra) and Amarnath's case (supra) held as under:

"Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term "final order". But in our judgment such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by Section 397 (1) of the Code.....In such a situation it appears to us that the real intention of the



legislature was *not* to equate the expression "interlocutory order" as invariably being converse of the words "*final order*". There may be an order passed during the course of a proceeding which may *not* be final in the sense noticed in Kuppuswami's Devi Ram v. State (Crl. Revision No. 39/18) Page No. 21 of 33 (supra), but, yet it may *not* be an interlocutory order-pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in Sub section (2) of Section 397 is *not* meant to be attracted to such kinds of intermediate orders. They may *not* be final orders for the purposes of Article 134 of the Constitution, yet it would *not* be correct to characterize them as merely *interlocutory* orders within the meaning of Section 397 (2)."
(emphasis supplied)

16. In V.C. Shukla vs. State through CBI 1980(supp) SCC 92, it has been observed as under:

“We might reiterate here even at the risk of repetition that the term 'interlocutory order' used in the Code of Criminal procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial because the bar contained in Section 397(3) of the Code would apply to a variety of cases coming up before the courts not only being offences under the Penal Code but under numerous Acts. If, therefore, the right of revision was to be barred, the provision containing the bar must be confined within the four corners of the spirit and the letter of the law, In other words, the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi final.”



17. The judgements referred above indicate that the interpretation that an order which does not finally decide and does not put an end to the issue involved is to be treated as ‘interlocutory’ is not an absolute rule, though it does generally hold good. In Mohanlal Maganlal Thakkar’s case (supra), Hon’ble Supreme Court, while stating that no absolute yardstick had been laid so far for defining finality further observed that the reason for the same was probably that a judgment or an order may be final for one purpose and *interlocutory* for another or final as to part and *interlocutory* as to part. In Madhu Limaye’s case (supra), while further crystallising, it was held that the principle that ‘*interlocutory order*’ is a converse of the term “final order” can neither have universal application nor is warranted. It went on further to hold that there would be certain orders which may not be final and yet may not be ‘interlocutory’ and may fall in between the two. Hon’ble Apex Court, while referring to such orders which fall in between the two categories as intermediate orders, held it would *not* be correct to characterize them as merely *interlocutory* orders within the meaning of Section 397 (2) Cr.PC. so as to attract bar engrafted therein.
18. Bearing in mind the ratio of the judgements of Hon’ble Supreme Court as referred above, this Court proceeds to examine the question as to whether an order for release of ‘Ultrasound machine’ on ‘*superdari*’ is an interlocutory order or not or as to whether it would fall in the category of *intermediate* order in terms of judgement in Madhu Limaye’s case (supra).



19. The learned counsel for the petitioner in order to press upon his contention that the Courts are expected to be liberal in the matter of release of articles on ‘*superdari*’ referred to a judgement of Hon’ble Supreme Court in *Sunderbhai Ambalal Desai Vs State of Gujarat 2002(10) SCC 283* wherein certain observations were made with regard to implementation of section 451 Cr.P.C. in the following manner:

“7. In our view, the powers under Section 451 Criminal Procedure Code, 1973 should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;
2. Court or the police would not be required to keep the article in safe custody;
3. If the proper *panchnama* before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

20. There is certainly no dispute as regards the proposition of law spelt forth in the aforesaid judgement. However the issue in hand pertains to classification as to the nature of an order pertaining to release of article on ‘*superdari*’ which is not discussed in the cited judgement.

21. The learned counsel for the petitioner also cited a judgement of Chhatisgarh High Court rendered in *Dr. Kiran Aggarwal vs. State of*



Chhatisgarh 2018(189) AIC 518. The factual position in the cited case is stated exhaustively in opening para, the relevant extract from which reads as under:

“A team of National Inspection and Monitoring Committee (hereinafter called as 'NIMC') along with State representatives constituted under the direction of the Supreme Court in the matter of Centre for Enquiry Into Health and allied Themes (CEHAT) and others v. Union of India and others AIR 2003 Supreme Court 3309 conducted inspection of her hospital particularly of ultrasound/**sonography** machine installed therein and noticed certain irregularities in maintaining images/records after performing **sonography**. The said committee immediately then and there on said centre sealed ultrasound machine installed by the petitioner and recommended to the District Appropriate Authority for sealing ultrasound machine and filing of criminal complaint before the jurisdictional Criminal Court under Section 28(1) of the Act of 1994, but unfortunately the District Appropriate Authority did not proceed further either to file complaint envisaged under Section 28(1) of the Act of 1994 or proposed any other further proceeding to confirm the order of sealing passed by inspection team leading to filing of writ petition by the petitioner before this Court on 9.5.2018 praying for unsealing of ultrasound/ **sonography** machine and any other reliefs which she is entitled stating inter-alia that the Committee constituted under the direction of the Supreme Court has no power and jurisdiction to seal her ultrasound machine as power and jurisdiction is vested with the District Appropriate Authority i.e. District Magistrate under Section 30(1) of the Act of 1994, therefore, ultrasound machine be unsealed by setting aside the order sealing her ultrasound machine.”



22. The High Court of Chhatisgarh High Court, while noticing the provisions of section 30 read with Rule 17 conferring powers on the Appropriate Authority to seize records and other material from any Genetic centre, laboratory, imaging centre, observed that the inspection team (NIMC), constituted by Supreme Court was not authorised to seal the ultrasound machine and consequently ordered for unsealing of the same. However, the controversy in the present case as already noticed is restricted to the question as regards the nature of order passed in terms of section 451 Cr.PC. The legality of the complaint and the proceedings launched against the petitioner have already been challenged separately by the petitioner by filing another petition. For the same reasons, the petitioner can not avail of any benefit from judgement of Bombay High Court in Sukhada vs. State of Maharashtra 2012(46) RCR(Civil) 669, wherein the order of suspension of registration and sealing had been issued by the Medical Officer of the Municipal Corporation and not by the Appropriate Authority.
23. Learned counsel for the petitioner also places reliance upon a judgment of Hon'ble the Apex Court rendered in Ravinder Kumar's case (supra), wherein the complaint under PCPNDT Act as well as the proceedings were quashed on the ground that the decision to conduct the search had been taken by the Chariman in his individual capacity and the other two members of the appropriate authority were not party to the same. As already mentioned above, the petitioner has already challenged the complaint as well as the proceedings separately by way of filing a petition in this Court i.e. CRM-M-6362-2017 titled Dr. Sanjiv Kaushal Vs. Dr. Suraj Bhan Kamboj (Annexure P-15), wherein proceedings before the trial



Court have been ordered to be stayed and the said petition is still pending. The instant petition is limited to the issue of release of ultrasound machine on ‘*superdari*’ and wherein the issue of the order being interlocutory has been raised. Under these circumstances, this Court need not delve deep as regards the propriety or legality of the complaint and the proceedings as the legality of the complaint is already being agitated by filing a specific petition to challenge the same i.e. CRM-M-6362-2017. Ravinder Kumar's case (*supra*) having nothing to do with the legal issues being raised in the instant petition, will not advance the case of the petitioner as regards ‘*superdari*’ in the present case.

24. The learned counsel for petitioner next pressed into service a judgement rendered by Madhya Pradesh High Court in Aruni Sahgal Versus State of M.P. 2021 ILR(M.P) 114, wherein it was held as under:

“12. Applicant is an accused in the case and offences under Sections 8, 21, 22, 25 of the NDPS Act and Section 5/13 of the Drug Control Act are registered against the applicant and others. Order passed under Section 457 may or may not be an interlocutory order and it depends upon the facts of circumstances of the case. Judicial Magistrate acquires jurisdiction to entertain an application under section 457 of the Code of Criminal Procedure, 1973 when Police Officer seizes a property and matter is under investigation before the Police but before property is produced before a criminal Court during inquiry or trial. In such condition, Magistrate may make an order for disposal of such property or delivery of such property entitled to possession thereof. If Magistrate passes an order touching the rights of person over the property then order will not be an interlocutory order but if order is passed only to give possession of property during



pendency of trial then such order will be an interlocutory order and criminal revision shall not be maintainable due to bar created under section 397(2) of the Code of Criminal Procedure, 1973.”

13. x x x

14. Prayer is made by applicant for interim custody of vehicle and cell phone before learned Special Judge NDPS Act, Rewa and learned Special Judge passed an order rejecting the application to give interim custody of the articles. Said order is not a final order or intermediate order or order of moment but only an interlocutory order. Even if order is passed to release the vehicle Court continues to remain *custodia legis* and article is liable to be produced when directed by the Court and Court may also recall entrustment for reasons, Court may deem fit, therefore, order impugned is interlocutory order and criminal revision filed by the applicant is not maintainable due to bar under section 397 (2) of the Code of Criminal Procedure, 1973.”

25. As against the aforesaid judgement, the learned State counsel, pressed in service a Division Bench judgement of Rajasthan High Court in case titled *Dhan Singh Bhati vs. State of Rajasthan 1999(1) RCR(Crl)214* . The relevant extracts read as under:

“4. Mr. Ravi Kasliwal canvassed that order passed under section 457 Criminal Procedure Code, 1973 by the Magistrate releasing the vehicle was an interlocutory order and no revision against the said order was maintainable. He placed reliance on *Liyakat Hussain v. Rajendra and others, 1996(2) Crimes 549*, wherein it was held that order passed under section 451 read with Section 457 Criminal Procedure Code, 1973 was an interlocutory order.



5. Whereas the learned Public Prosecutor supported the impugned order and contended that the orders under section 457 Criminal Procedure Code, 1973 read with Section 451 Criminal Procedure Code, 1973 are final in nature. Reliance was placed on *Raju and others v. State of Rajasthan, 1991(1) RLR 447: 1991(1) RLW 504*. In *Raju & others v. State (supra)* it was observed thus –

"Any order of moment, which substantially affects rights of the parties cannot be called an interlocutory order at all. Right of a registered owner of a vehicle to use the same during the pendency of investigation or trial is an important right and this right comes to an end only when the vehicle has been confiscated in accordance with some provision of law. It is nobody's case that any order of confiscation of the tractors and compressors have been passed in the two cases. This is true that sections 451 to 459 Criminal Procedure Code, 1973 empower the courts to pass suitable orders, both regarding interim custody as also regarding final disposal of the property. But, such orders have to be consistent with the rights of the parties and exigencies of the case. Now, by refusing to deliver the tractors and compressors to the rightful owners, the learned Magistrate has, even though temporarily, decided a valuable right of the claimants, regarding custody of the tractors and compressors during the pendency of investigation/trial. Tested upon this touchstone, if an order decides this valuable right even temporarily, it cannot be said that it is an interlocutory order in the sense, it has been used in Section 397 (2) Criminal Procedure Code, 1973 The interpretation of the expression 'interlocutory' as given in Amarnath's case (AIR 1977 Supreme Court 2185) or Madhu Limaye's case (AIR 1978 Supreme Court 47) would not embrace an order which decides such a valuable right of the claimants.

Shakir Hussain's case 1979 Cr. LR (Raj.) 198 and Raghunath's case (1988 RCC 203) did not lay down correct law, in as much as they failed to take note of the aforesaid two cases of the Apex Court, which interpreted the expression 'interlocutory order' occurring in Section 397 (2) Criminal Procedure Code, 1973 To be more specific, both these judgments of the learned Single Judges of this court are judgments *per incuriam* inasmuch as they were passed



without taking into consideration the law declared by the Supreme Court on the subject.

In these premises, the orders of the learned Magistrate to hand over tractors and compressors in question to their respective claimants were not 'interlocutory orders' and hence revisions against these orders were maintainable before the learned Sessions Court and the Additional Sessions Judge erred in treating these orders as interlocutory orders."

6. Looking to the interpretation of the expression 'interlocutory' as given in Amarnath's case (supra) and Madhu Limye's case (supra), I am of the view that the order passed under section 451 read with Section 457 Criminal Procedure Code, 1973 are not interlocutory in nature and revision against the said order is maintainable.
7. In *Liyakat Hussain's* case (supra) the ratio propounded in Amarnath's case (supra) and Madhu Limye's case (supra) were not relied upon. I subscribe my view that the ratio propounded by this Court in *Raju & others* (supra), it is not necessary for me to discuss the case laws cited at by (sic) in view of *Amarnath's* case (supra) and *Madhu Limaye's* case (supra).
8. Thus the learned Additional Sessions Judge No. 1, Ajmer has not committed any illegality in passing the said order and I hold that the order of the Additional Chief Judicial Magistrate, Ajmer dated 6.5.1997 was not interlocutory in nature.
9. Resultantly, the miscellaneous petition fails and is hereby dismissed."

26. The learned State counsel also cited *Ganesa Moorthy vs. State (Madras High Court) 2019 CrLJ 1355*, to further support his case. The relevant extract reads as under: _



“9. In any case, after perusing the various judgments, which are brought to the attention of this Court, this Court is of the view that the orders passed under section 451 of Cr.P.C., 1973 cannot be characterised as an ***interlocutory*** order essentially. It depends upon the property seized and properties produced before the Court. Some may lose its value by passage of time; some may perish due to exposure to rain and sun or due to efflux of time and in such event, the Magistrate is empowered to dispose of the properties, pending finalisation of the trial. In such circumstances, it should be considered that the order to be passed under section 451 of Cr.P.C., 1973 is almost like final orders touching upon valuable right to property of the petitioner. Any decision rendered by the Courts, exercising power under section 451 of Cr.P.C., 1973 will affect the rights of the petitioner to have his property returned and in such circumstances to turn the petitioner away on the ground that the revision case is not maintainable, will not secure the ends of justice. More so, such orders passed under section 451 of Cr.P.C., 1973 are also not appealable.

10. For the above said reasons, this Court is more inclined to accept the decision of various High Courts which held that the revision is maintainable against the order passed under section 451 of Cr.P.C, 1973 as the same is not ***interlocutory*** in nature, but such order determines the constitutional rights of the petitioner for return of properties or for disposing of properties. Therefore the revision case shall be disposed of on its merits, by holding that the revision is maintainable.”

27. While a Single Bench of Hon’ble Madhay Pradesh High Court in Aruni Sahgal’s case (supra) has categorically held that an order passed for release of a case property on ‘*superdari*’ in terms of Section 451 Cr.P.C. is an interlocutory order and that revision petition against the same would not



be maintainable being hit by the bar under Section 397(2) of Cr.P.C., a Division Bench of Hon'ble Rajasthan High Court in Dhan Singh Bhati's case (supra) has taken a contrary view while examining release of tractors and compressors on 'superdari' and held that such release could not be termed as 'interlocutory'. The Hon'ble Division Bench Rajasthan High Court observed that even though such orders were temporary in nature, but the same decide a valuable right of the claimants as regards the custody of articles during the pendency of investigation/trial and, as such, cannot be termed as interlocutory in the manner the word 'interlocutory' is used in Section 397(2) Cr.P.C. It was categorically held therein that the interpretation of expression 'interlocutory' as given in Amar Nath's case (supra) and Madhu Limaye's case (supra) by Hon'ble the Supreme Court would not embrace an order, which decides such a valuable right of the claimants.

28. At this juncture, Sections 451 and 452 Cr.P.C. need to be briefly referred, which read as under:

“451. Order for custody and disposal of property pending trial in certain cases.

- When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation. - For the purposes of this section, "property" includes -



- (a) property of any kind or document which is produced before the Court or which is in its custody;
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

452. Order for disposal of property at conclusion of trial.

- (1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.
- (2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.
- (3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in Sections 457, 458 and 459.
- (4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.



(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.”

29. While as per Section 452 Cr.P.C., a final decision as regards disposal of the case property is taken by the trial Court at the conclusion of trial, wherein the Court would be competent to deliver the property to any person found entitled for the same or confiscate the same in case it is found that such property etc. had been misused by the accused or even order for its destruction in given circumstances, Section 451 Cr.P.C. on the other hand deals with the provision as to how the case property is to be dealt with during the pendency of trial. Section 451 Cr.P.C. vests the trial Court with powers to make appropriate order in this regard to safeguard the same during the pendency of the trial. More often than not it is the accused, who would be the owner of the case property and his claim as regards ‘*superdari*’ would be decided under Section 451 Cr.P.C. normally on the basis of his ownership. Needless to mention, even a 3rd party, who is an owner, can even file an application for release of such article on ‘*superdari*’.

30. While release of case property in terms of Section 451 Cr.P.C. is an arrangement which continues during the course of trial, a separate order would be passed by trial Court at the conclusion of trial regarding final



disposal of the same. Both the said proceedings are in a way different and deal with different aspects. While Section 451 Cr.P.C. deals with the right of the accused or the party to use and possess the case property during the pendency of trial, Section 452 Cr.P.C. is a provision under which the trial Court has to take a final decision as regards disposal of the case property and wherein the Trial Court can even order for confiscation or destruction of the property.

31. Another sharp distinction between the two provisions is that while an order under Section 452 Cr.P.C. is an appealable order as is specifically provided by Section 454 Cr.P.C, no such appeal is provided so as to challenge an order passed under Section 451 Cr.P.C. In any case, an order passed under Section 451 Cr.P.C. would finally decide application under Section 451 Cr.P.C. determining a valuable right of the accused or of any other party and which is independent of the order passed subsequently in terms of Section 452 Cr.P.C. for final disposal of the case property and, as such, it will be a misnomer to say that Section 451 Cr.P.C. is an interim management only and is an interlocutory order so as to attract the bar under Section 397(2) Cr.P.C. The contention raised on behalf of the petitioner in this regard, as such, cannot be accepted and is repelled.
32. At this stage, it will not be out of place to mention that initially the petitioner moved an application for return of the ultrasound machine, which was dismissed by learned Judicial Magistrate 1st Class, Sirsa vide order dated 20.1.2017 (Annexure P-13). The petitioner challenged the said order by way of filing a revision petition before the Court of learned Sessions Judge, Sessions Courts, Sirsa, but when the matter was taken up



for arguments, learned counsel for the petitioner restricted his prayer to shifting of all the machines to one room, so that he could utilize the remaining rooms and consequently the revision petition was allowed vide order dated 9.12.2021 (Annexure P-18) to the limited extent of relocating the ultrasound machines in one room. Later the petitioner filed a writ petition in this Court i.e. CWP-7324-2014, wherein a similar prayer was made for "de-sealing" the four ultrasound machines. This Court, while noticing that the 'superdari' application had already been declined by the Magistrate and also by the revisional Court, disposed off the writ petition as withdrawn vide order dated 13.9.2023 (Annexure P-19) while granting liberty to the petitioner to move appropriate application/petition before the Illaqa Magistrate/Competent Authority for possession of the ultrasound machines. It was thereafter that a second round of '*superdari*' application was initiated by petitioner by way of filing a fresh application, which was accepted by learned Judicial Magistrate 1st Class, Sirsa vide order dated 21.10.2023 (Annexure P-20). However, the aforesaid order dated 21.10.2023 (Annexure P-20) was reversed by learned Additional Sessions Judge, Sirsa upon a revision petition having been filed by State of Haryana, vide impugned order dated 10.7.2024 (Annexure P-21), while relying upon a judgment of Hon'ble the Apex Court in Voluntary Health Association of Punjab Versus Union of India, 2017(1) R.C.R. (Criminal) 995, wherein Hon'ble the Apex Court had observed that the authorities concerned should take steps to seize the machines, which are used contrary to the provisions of the Act and which thereafter may be confiscated in accordance with law.



33. Apart from the aforesaid legal issue as regards the maintainability of the revision petition before the Court of Sessions against order dated 21.10.23 (Annexure P-20) passed by learned Magistrate, which in the earlier part of the judgment has been held against the petitioner, this Court finds that the impugned order cannot be said to be suffering from any other infirmity inasmuch as the ultrasound machine would constitute an important piece of evidence and would duly qualify to be called as case property and the investigating agency would be expected to safe-keep the same as the trial is still pending. Hon'ble the Supreme Court in Voluntary Health Association of Punjab's case (supra) has also made certain observations in this regard as regards seizure of the property.
34. As far as the legality of complaint or the proceedings instituted thereupon are concerned, as already mentioned above, a separate petition to challenge the complaint and the proceedings thereupon is already pending in this Court, wherein proceedings before trial Court have been ordered to be stayed. Under these circumstances, this Court would rather remain confined to the issue of '*superdari*' which is under challenge in this petition. In any case since this Court finds that delay in conclusion of trial would necessarily mean that the ultrasound machines or other case property will remain sealed and the petitioner will not be able to put the same to use, the Trial Court is directed to take necessary steps for expeditious conclusion of trial immediately upon decision of CRM-M-6362-2017 or vacation of stay, which has been granted therein.



35. The instant petition stands dismissed accordingly.

28.10.2024

Pankaj

(Gurvinder Singh Gill)
Judge

Whether reasoned/speaking	Yes
Whether reportable	Yes