

HIGH COURT OF MADHYA PRADESH : JABALPUR.

Criminal Revision No. 219 of 2021

APPLICANT -

Dr. (Mrs.) Neena V. Patel
W/o Mr. Vinaybhai B. Patel
31, Valentia, N. Gamadia Road,
Off. Peddar Raod,
Mumbai - 400026

-Versus-

RESPONDENTS:

1. State of Madhya Pradesh
P.S. Lordganj
Jabalpur
2. Mr. Shravankumar P. Patel,
S/o Late Mr. Parmanandbhai Patel,
933, Gole Bazar, Jabalpur
3. Mrs. Sonal K. Amin,
W/o Mr. Kiran Amin,
7/11, University Road, Jabalpur
4. Mrs. Roopa Patel
alias Mrs. Roopa Kumar A. Bharadwaj
w/o Mr. Anup Bharadwaj,
Flat No. 24, Owners Court, 6th Floor,
'A' Road, Churchgate,
Mumbai – 400020
5. Mr. D.K. Tiwari, Former Sub Registrar
S/o Mr. Baijnath Tiwari,
(a) Office of the Sub-Registrar
Collectorate, Jabalpur
(b) Gali No.9, Rajendra Nagar, Near
Ramleela Maidan, Satna
Tehsil Raghurajnagar, District Satna

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6. Mr. Gautam V. Patel
S/o Mr. Vinaybhai B. Patel
(a) 31, Valentia, N. Gamadia Road
Off. Peddar Raod, Mumbai – 400026

(b) 20-07 Spring Grove, Block 53,
53, Grange Road, Singapore - 249565

Shri Kunal Vajani with Shri Devashish Sakalkar and Shri Shubhavy Tandon, counsel for the applicants.

Shri A.S. Pathak, GA for respondent No. 1/State.

Shri Shivam Singh, counsel for respondent Nos. 2 to 4.

Shri Gagan Sanghi with Shri Mohd. Nasir Ansari for respondent No. 5.

ORDER
(07/05/2022)

1. This criminal revision has been filed by the applicant/complainant No. 1 being aggrieved by the order dated 5.10.2020 passed by Second Additional Sessions Judge, Jabalpur in Sessions Case No. 281 of 2012 whereby the application filed by respondent No. 1/State of M.P. under Section 311 of Cr.P.C. has been dismissed.

2. Shorn of unnecessary details, the facts of the case are that the applicant and respondent No. 6 (original complainants) filed a complaint

under Section 200 of Cr.P.C. against accused No. 1 and respondent Nos. 2 to 5 alleging that accused No. 1, respondent Nos. 2 to 4 and youngest brother Mr. Siddharth P. Patel colluded with each other and with common intention created a forged will purporting it to be the last genuine will and testament of late Parmanand Bhai Patel, consequently deceived and caused damage to the applicant and respondent No. 6. It was further alleged that accused No.1, respondent Nos. 2 to 5 and Mr. Siddharth P. Patel have committed forgery of valuable security and will, by making & possessing counterfeit seal intending to use it as genuine and by fraudulent cancellation & destruction of the Will and codicil of late Parmanand Bhai Patel, thereby they committed offence under Sections 467, 468, 471, 472, 473, 474 and 477 read with Section 34 of IPC.

3. Learned Judicial Magistrate First Class examined the witnesses cited therein under Sections 200 and 202 of Cr.P.C. and vide order dated 23.8.2011 issued direction to Police Station Lordganj to submit an inquiry report in respect of the complaint. The said part of order dated 23.8.2011 was set aside by the Sessions Court vide order dated 3.10.2011 in Criminal Revision No. 231 of 2011.

4. Subsequently, vide order dated 23.11.2011, learned Judicial Magistrate First Class dismissed the aforesaid complaint under Section

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203 of Cr.P.C. for want of sufficient evidence. The order dated 23.11.2011 was set aside by learned Eighth Additional Sessions Judge, Jabalpur vide order (Annexure P-3) dated 9.1.2012 passed in Criminal Revision No. 326 of 2011 observing that prima facie case for taking cognizance of complaint is made out. Thereafter, Judicial Magistrate First Class took cognizance on the aforesaid complaint against accused No. 1 and respondent Nos. 2 to 4 for the offences punishable under Sections 120B, 420, 465, 466, 467, 468, 471, 472, 473, 474 read with Section 34 of IPC vide order (Annexure P-4) dated 16.1.2012.

5. The order (Annexure P-4) dated 16.1.2012 was challenged by accused No. 1 and respondent Nos. 2 to 4 before this Court in Criminal Revision Nos. 360 of 2012 and 763 of 2012 whereby this Court vide common order (Annexure P-5) dated 10.7.2012 partly allowed the aforesaid revisions observing that *the complainant and his witnesses who have been examined before trial Court at the time of taking cognizance can only be examined in Sessions Court and no other witnesses can be permitted to be examined even remaining complainant.*

6. The aforesaid order (Annexure P-5) dated 10.7.2012 was challenged by the applicant and respondent No. 6 before the Supreme Court in Special Leave Petition (Criminal) No. 6558-6559 of 2012 (converted in

Criminal Appeal Nos. 1897-1898 of 2013), which was partly allowed and disposed of by the Supreme Court vide order (Annexure P-6) dated 17.10.2013 with direction that the complainants-petitioners shall be free to examine further witnesses, if any, including the co-complainant in the complaint before the Magistrate for which purpose the Magistrate shall fix an appropriate date.

7. Thereafter on 10.12.2013, the applicant recorded her statement before Judicial Magistrate First Class and learned Judicial Magistrate First Class re-registered the complaint under Section 120B, 420, 465, 466, 467, 468, 474, 477 of IPC and committed the complaint to trial Court on 7.5.2014.

8. Subsequently, respondent No.1/State filed four applications under Sections 91 and 311 of Cr.P.C. seeking production of certain documents as prayed for therein. Learned trial Court dismissed the said applications vide order dated 9.10.2015. Being aggrieved thereby respondent No.1/State filed a petition bearing No. 4662 of 2016 before this Court and this Court vide order dated 24.6.2016 remanded the said applications back to the trial Court for passing an order on merits relating to the documents cited in the applications.

9. Respondent No. 5 challenged the order dated 24.6.2016 before the

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Supreme Court in Special Leave Petition No. 6563 of 2016 (Criminal Appeal No. 858 of 2016) on the ground that he was not heard prior to passing the order dated 24.6.2016. The Supreme Court vide order dated 5.9.2016 set aside the order dated 24.6.2016 and remanded back the matter to this Court with direction to rehear M.Cr.C. No. 4662 of 2016.

10. On remand, this Court dismissed the said petition vide order dated 16.5.2017.

11. The applicant and respondent No. 6 (original complainants) challenged the order dated 16.5.2017 before the Supreme Court in Special Leave Petition (Criminal) No. 7009 of 2017 (Criminal appeal No. 389 of 2018). The Supreme Court vide order (Annexure P-7) dated 13.3.2018 allowed production of several documents as prayed for in the applications filed by respondent No. 1/State.

12. During the course of arguments on framing of charge on the aforesaid complaint, respondent No. 1/State filed an application under Section 311 of Cr.P.C. seeking recall of respondent No. 6 for further examination in order to place on record certified copies of papers and proceedings with regard to the judicial proceedings in relation to the alleged forged Will as well as estate/assets of late Parmanand Bhai Patel, which has been dismissed by the trial Court vide impugned order dated

5.10.2020 on the ground that the complaint was being tried in accordance with the provisions of Sections 225-237 of Cr.P.C. which do not provide for recalling of any witness or complainant prior to framing of charge(s) or recording evidence before framing of charges, hence this revision.

13. Learned counsel for the applicant submits that learned trial Court has failed to appreciate that it is a settled position of law that the provisions of Section 311 of Cr.P.C. have been couched in wide terms and apply to any stage of all proceedings, enquiries and trial under Cr.P.C. The absence of a provision for recall of a witness under Section 225 to 237 of Cr.P.C. does not denude the Court of its powers under Section 311 of Cr.P.C. It is further submitted that learned trial Court has further failed to appreciate that the provision of Section 311 of Cr.P.C. are not controlled by the provisions of Sections 225 to 237 of Cr.P.C. and it can be exercised at any stage of all proceedings, enquiries and trials under Cr.P.C. There is no embargo or prohibition in law for a Court to exercise the powers under Section 311 of Cr.P.C. at the stage of framing of charges. It is further submitted that the impugned order is contrary to law laid down by this Court in the case of **Boby alias Sanjeev Singh v. State of Madhya Pradesh, 2010 Cri LJ 3662** wherein it has been held that the power under Section 311 Cr.P.C. can be

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exercised not only for the purpose of examination of witnesses but also to order production of any document, if it is necessary for the just decision in the case. It is further submitted that as per Section 311 of Cr.P.C. , the trial Court may summon any person as a witness at any stage of any enquiry, trial or other proceeding and that power is not confined to any particular class of person. The trial Court has committed an error in holding that after committal of the complaint and at the stage of framing of charges, the trial Court could not exercise its discretion to dismiss the application under Section 311 of Cr.P.C. because Section 311 itself permits summoning of the witnesses at any stage of an inquiry, trial or proceedings. It is further submitted that the prosecution cannot be deprived of its opportunity to prove the case with the best possible evidence. Should the charges be permitted to be framed at present and evidence be permitted to bring in at a later stage, it would lead to an unnecessary delay of the trial as fresh charges would have to be framed and trial would have to recede many steps. In view of the aforesaid, the applicant has prayed for relief to set aside the impugned order and to allow the application filed by respondent No.1/State under Section 311 of Cr.P.C. Learned counsel for the applicant has placed reliance on the decisions of the Supreme Court in the case of **Zahira Habibullah**

Sheikh and another Vs. State of Gujarat and others – (2006) 3 SCC 374; Sheetala Prasad and others Vs. Sri Kant and another – (2010) 2 SCC 190 and decision of this Court in **Heeralal @ Nimma S/o Ram Kumar Golhari Vs. State of Madhya Pradesh – 1997 (1) MPLJ 550.**

14. Learned counsel appearing on behalf of respondent Nos. 2 to 4 has raised an objection that as per the provision of Section 397(2) of Cr.P.C. the power 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 proceedings. In the present case, the impugned order rejecting the application under Section 311 of Cr.P.C. is purely an interlocutory order, hence no revision would lie against the impugned order and the present revision is barred on this ground alone. Learned counsel placing reliance on the decision of the Supreme Court in the case of **Girish Kumar Suneja Vs. Central Bureau of Investigation AIR 2017 SC 3620** has submitted that the Court can exercise its revisional jurisdiction in respect of a final order of acquittal or conviction or an intermediate order. It is further submitted that after the case is committed to the Court of Sessions and prior to the framing of the charges, as there is neither an inquiry, trial or other proceedings, the power under Section 311 of Cr.P.C. cannot be exercised. The applicant would be entitled to move an

application under Section 311 of Cr.P.C. after charges have been framed. It is further submitted that at the stage of framing of a charge, only that material can be considered that has been committed to the Court of Session by virtue of Section 209(c) of Cr.P.C. and at the stage of framing of charge, the Court is barred from hearing any other evidence except that which has been sent to it by the committal Court under Section 209 of Cr.P.C.

15. Learned counsel appearing on behalf of respondent No. 5 has also raised objection that in view of the provision of Section 397(2) of Cr.P.C. this revision is not maintainable and, therefore, it should be dismissed as not maintainable. It is further submitted that this application is not maintainable at present stage because Section 311 of Cr.P.C. permits recall of witness only for the purpose of re-examination and not for further examination. Section 138 of the Evidence Act provides the order of examination. Unless a witness has been examined in chief, cross examined, he cannot be re-examined. In the present case, C.W.1 has not been cross examined as yet and hence cannot be called for being re-examined under Section 311 of Cr.P.C.

16. Learned counsel for the respondents have placed reliance on the decisions of the Supreme Court in the cases of **Zahira Habibulla H.**

Sheikh and another Vs. State of Gujarat and others – (2004) 4 SCC 158; State of Orissa Vs. Debendra Nath Padhi – (2005) 1 SCC 568; Sethuraman Vs. Rajamanickam – (2009) 5 SCC 153; Natasha Singh Vs. Central Bureau of Investigation (State) – (2013) 5 SCC 741; Girish Kumar Suneja Vs. Central Bureau of Investigation – (2017) 14 SCC 809.

17. I have heard learned counsel for the parties at length. The Supreme Court in the case of **Girish Kumar Suneja** (supra) has observed that there are three categories of orders that a Court can pass – final, intermediate and interlocutory. There is no doubt that in respect of a final order, a court can exercise its revisional jurisdiction i.e. in respect of a final order of acquittal or conviction. There is equally no doubt that in respect of an interlocutory order, the Court cannot exercise its revisional jurisdiction. As far as an intermediate order is concerned, the court can exercise its revisional jurisdiction since it is not an interlocutory order.

18. According to Section 397(2) CrPC, revision against an interlocutory order is not maintainable. It is well settled that in deciding whether an order challenged is interlocutory or not as far as Section 397(2) CrPC is concerned, the sole test is not whether such order was passed during the interim stage. If the order under challenge culminates the criminal

proceedings as a whole or finally decides the rights and liabilities of the parties then the order passed is not interlocutory in spite of the fact that it was passed during any interlocutory stage. The feasible test is whether by 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) CrPC. See: **M/s. Bhaskar Industries Ltd. vs. M/s. Bhiwani Denim, 2001(2) JIC 685 (SC); K.K. Patel vs. State of Gujarat, (2000) 6 SCC 195; Rajendra Kumar Sitaram Pande vs. Uttam, (1999) 3 SCC 134; V.C. Shukla vs. State through CBI, 1980 SCC (Criminal) 695 (Four-Judge Bench); Madhu Limaye vs. State of Maharashtra, (1977) 4 SCC 551 (Three-Judge Bench).**

19. The order summoning or refusing to summon witnesses u/s 311 CrPC is an interlocutory order within the meaning of Sec. 397(2) CrPC as it does not decide any substantive right of litigating parties. Hence no revision lies against such orders. See - **Sethuraman Vs. Rajamanickam, 2009(65) ACC 607(SC); Hanuman Ram Vs. State of Rajasthan & others, 2009 (64) ACC 895 (SC).**

20. The Supreme Court in **Girish Kumar Suneja** has held that a revisional court is under no obligation to entertain a revision petition

against an interlocutory order. Such a revision petition can be rejected at threshold. If the revisional court is inclined to accept revision petition, it can do so only against a final order or an intermediate order, namely, an order which if set aside, would result in culmination of proceedings.

21. In the case at hand, the applicant is calling in question an order of dismissal of an application filed by respondent No. 1/State under Section 311 of Cr.P.C. seeking recall of respondent No. 6 for further examination in order to place on record certified copies of papers and proceedings with regard to the judicial proceedings in relation to the alleged forged Will as well as estate/assets of late Parmanand Bhai Patel. It is apparent that the order under challenge in this revision does not culminate the criminal proceedings as a whole or finally decides the rights and liabilities of the parties, therefore, it cannot be said to be a final order or an intermediate order. The impugned order is purely interlocutory in nature.

22. In view of the aforesaid discussion and in the light of the principles laid down by the Supreme Court in the aforesaid decisions, it is apparent that the impugned order passed while dismissing application filed by respondent No.1/State under Section 311 Cr.P.C. for recalling the witness is an interlocutory order and in the considered opinion of this Court no

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revision petition against such an order is maintainable in view of the provision of Section 397 (2) of Cr.P.C.

23. Accordingly, the revision is hereby dismissed as not maintainable.

(Smt. Anjali Palo)
Judge

PB