IN THE COURT OF PAWAN SINGH RAJAWAT, ADDITIONAL SESSIONS JUDGE-02, CENTRAL, TISHAZARI COURTS, DELHI

CNR DLCT01-014375-2023

CR Rev No. 545/2023

FIR No. 248/2022

U/s 420/468/469/471/500/120-B/34 IPC &

U/s 66(C)&66(D) IT Act

STATE

Through IO **...Revisionist/Petitioner**

Versus

SIDDHARTH VARADARAJAN & ORS. ..Respondents.

ORDER

1. The present revision petition is field assailing the order dated 23.09.2023 passed by Ld. CMM(Central) on application of respondents seeking release of their electronic devices which were seized by the petitioner herein for the purpose of investigation in FIR No. 248/2022, PS Crime Branch.

2. Arguments already heard on the revision petition. Petitioner alongwith Ld. Addl. PP argued that in view of judgment in the matter of Parmeshwari Devi Vs. State & Anr.: Manu/SC/0174/1976, the present revision is not against an interlocutory order and therefore same is maintainable. He further argued that the Ld. CMM Central has passed an unjustified, illegal order against the provisions of law more specifically The

Information and Technology Act, 2000. He further argued that investigate against the accused persons are pending in respect of Section 66 (C) and Section 66 (D) of Information Technology Act and despite that Ld. CMM has ordered for release of case property without correctly understanding and interpreting Section 76 of I.T. Act which mandates confiscation of electronic devices . He further argued that the order dt. 23.09.2023 is bad in law as it is beyond the scope of Information Technology Act 2000 which is a Special Act. He further submits that the electronic devices are required for further investigation of the case and if released, the accused may tamper with it. He prays that the order dt. 23.09.2023 be set aside.

3. On the other hand Ld. counsel for respondents argued that present revision petition is not maintainable being moved against an interlocutory order in the light of express bar u/s 397(2) Cr.P.C. He relied upon the judgment in the matter of Sandeep Singh VS. State of NCT of Delhi : 2022 SCC Online Del 1466. He also pointed out that the reliance upon judgment of the Parmeshwari Devi by the petitioner is misplaced as the said judgment was considered by the Hon'ble Delhi High Court while passing the judgment in the matter of Anisa Begum Vs. Masoom Ali : 1985 SCC Online Del 382. He also argued that the devices in question has already been examined by the FSL and mirror images have been taken of all the electronic devices which are exact bit by bit copies of the entire device and therefore, the said devices are no more required for any investigation as the investigation, if any can

be carried out with the mirror images of the devices. He prays for dismissal of the revision petition with costs.

4. Since the petitioner is claiming that the present revision is not against the interlocutory order whereas the respondents are claiming that the order dt 23.09.2023 is infact an interlocutory order and therefore the revision is not maintainable, it is imperative that before proceeding to decide the revision on merits, it is to be examined whether the order dt 23.09.2023 is an interlocutory order or not.

5. The essential attribute of a interlocutory order is that it merely decides some - point or matter essential to the progress of the case or collateral to the issue sought but not a final decision or judgment on the matter in issue.

6. In the judgment titled **"Sethuraman v. Rajamanickam, CR. Appl. No. 486-487/2009 (in SLP (Crl.) No. 2688-89/2005)"**, the Hon'ble Supreme Court has defined interlocutory order and relevant para is as under;

> *"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." (Emphasis supplied).

7. In another judgment titled **"Amarnath and Ors. Vs. State of Haryana and Anr., (1977) 4 SCC 137",** the Hon'ble Supreme Court has also defined interlocutory order. It was laid down in this case that interlocutory orders must be those which decide the rights and liabilities of the parties which are purely interim or temporary in nature and do not decide or touch the important rights or liabilities of the parties. The relevant para is as under;

"(3) The term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad and artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or 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 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 proceedings, may no 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 on a particular aspect of the trial cannot be said to be interlocutory so as to be outside the purview of the revisional jurisdiction of the High Court." (Emphasis supplied).

8. Similarly in **"V. C. Shukla Vs. State", AIR 1980 SC 962”,** the Hon'ble Apex Court has observed as follows:-

(1) That an order which does not determine the rights of the parties but only one aspect of the suit or the trial is an interlocutory order;

(2) That the concept of interlocutory order has to be explained, in contradistinction to a final order. In other words, if an order is not a final order, it would be an interlocutory order;

(3) That one of the tests generally accepted by the English Courts and the Federal Court is to see if the order is decided in one way, it may terminate the proceedings but if decided in another way, then the proceedings would continue; because in our opinion, the term interlocutory order in the Criminal Procedure Code has been used in a much wider sense so as to include even intermediate or quasi final orders;

(4) That an order passed by the Special Court discharging the accused would undoubtedly be a final order inasmuch as it finally decides the rights of the parties and puts an end to the controversy and thereby terminates the entire proceedings before the court so that nothing is left to be done by the court thereafter;

(5) That, even if the Act does not permit an appeal against an interlocutory order the accused is not left without any remedy because in suitable cases, the accused can always move this court in its jurisdiction under Act. 136 of the Constitution even against

an order framing charges, the Act works serious injustice to the accused.

9. The judgment of Anisa Begum (supra) is the direct authority on the issue in question. In this case, the Hon'ble Delhi High Court, observed that order u/s 451 Cr.PC is essentially interlocutory in nature since the order dismissing the superdari application did not decide the rights of the parties and was an interlocutory order against which no revision would lie and this judgment was referred in Sandeep Singh (supra) wherein Hon'ble High Court has observed in para 14 that

14. In Smt. Anisa Begum (supra), a number of divergent of judicial opinions were considered, one line of decisions holding that an order under Section 451 Cr.P.C. was purely interlocutory in nature and the other, holding that it is a final order or an intermediate order which affected the valuable rights of the parties to hold and keep the property during the pendency of the case. It was then held that the order under Section 451 Cr.P.C. was essentially interlocutory in nature, as it did not permit any final determination of the rights of the parties. Nevertheless, a decision under Section 451 Cr.P.C. would be as per the discretion of the court, which no doubt, has to be judiciously exercised. The purpose of handing over custody of the goods/property is to enable its production before the court during trial. Such custody is kept by the superdar only on behalf of the court. The superdar is bound to produce the property as and when so directed by the court. The court of course has the right to recall such entrustment.

10. Hon'ble High Court in para 15 of Sandeep Singh further held that

15. There can be no doubt, an order under Section 451 Cr.P.C. is of an interlocutory nature, since the whole purpose is for safe custody of the goods/property during the pendency of the trial, as it is Section 452 Cr.P.C. which would come into play, when the

goods/property is to be disposed of at the conclusion of the trial. The Trial Court would not be powerless to modify orders of custody as per changed circumstances. The Trial Court has the powers to recall entrustment, as held in Smt. Anisa Begum (supra). For instance, there could be circumstances where the superdar is not in a position to keep the custody of the goods/property and seeks to surrender it into the court. Would the Trial Court be powerless to hand it over to some other person on the same terms as earlier or on different modified terms? Similarly, where the court finds that the initial order was passed on account of certain mistaken notions, as in the present case, that the partnership firm was in existence and the petitioner alone had a right to the moulds and also in view of the fact that the respondent No.2 who also had an equal status as a partner in the erstwhile partnership firm to claim custody, was denied even a hearing, it cannot be said that the modification of this interlocutory order would be possible only, by approaching the High Court under Section 482 Cr.P.C. Orders that would only smoothen the process of trial cannot be rendered so complicated. In fact, the power to modify orders passed under Section 451 Cr.P.C., is inherent in the provision as the purpose is only safe custody and production "during trial". This is unlike the orders of summoning in respect of which Adalat Prasad (supra) and subsequent judgments have held that recall of orders is not possible.

11. The argument of Ld. Addl PP and Petitioner that in view of Section 76 of IT Act, the confiscation of electronic devices of respondents was validly done as said devices are suspected to have been used in the commission of offence is humbly rejected as the stage of Section 76 IT Act arise only after conclusion of trial as mandated in Section 452 CrPC. It is not the case of the petitioner that there is complete code in Information Technology Act for disposal of case property as provided under Customs Act or Forest Act.

12. Section 451 CrPC empowers a criminal court to make such order as it thinks fit for the proper custody of the property produced before it during any inquiry or trial, pending conclusion of the inquiry or trial. Similar is the power u/s 457 Crpc albeit with respect to order custody of property seized during investigation which is yet to conclude. The purpose of such an order obviously is to preserve the property either as evidence or in order to make a proper order after the case is over. No doubt, Section 451 gives wide discretion to the court to make orders for proper custody of the property pending trial but it does not confer jurisdiction upon it to investigate and decide the question of title or ownership of the rival claimants to the property. Of course, the order being discretionary in nature the Court has to exercise the discretion vesting in it judicially keeping in view all the circumstances of the case. In the process the Court may incidentally be guided by the consideration as to who is the person prima facie entitled to the possession of the case property and hand over its possession to him with a view to safeguard his interest but that may not be the sole consideration for the Court while entrusting custody of the case property or property used in the commission of an offence etc. to any of the rival claimants. One cannot be oblivious to the fact that the property produced in Court during the course of an inquiry or trial is *custodia legis* and it remains so even when its custody is entrusted to anyone of the rival claimants or anyone else because he is liable to produce the same as and when directed by the Court. The power to recall entrustment for any reason which the Court

may deem fit *inheres* in the Court in the very nature of the circumstances and the purpose for which the properly is entrusted on *Superdari*. The duration of such entrustment can at best be until the conclusion of the trial/investigation. So, in the eye of law, possession or custody is only that of Court.

13. Section 457 CrPC provides for procedure to deal with property seized by police during investigation but has not filed report u/s 173 CrPC before the Magistrate and as such no inquiry or trial is pending. It provides that whenever the **court gets a report of seizure of property by the police, even if such property is not produced** before a criminal court **during an inquiry as well as trial,** the court can order disposal of the property as it deems fit. Sub-Section (2) says that if a person so entitled is known, the court may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the court may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

14. In the case of **Ram Prakash Sharma vs. State of Haryana, reported in (1978) 2 SCC 491**, the Apex Court has held that Section 457 Cr.P.C can be applied by the Court for releasing custody of the seized property **when the investigation is not over and charge- sheet has not yet been filed.** However, it was

observed that the court has power to dispose of property seized by the police but not yet produced before the court does not mean that the Court must always release such property to the person from whom the property has been recovered, especially when the stage of the case is in suspicion, the investigation is not over and charge-sheet has not yet been laid. It also note that if the release of the property seized will, in any manner, affect or prejudice the course of justice at the time of the trial, it will be a wise discretion to reject the claim for return.

15. In **Smt. Basava Kom Dyamangouda Patil ond v. State of Mysore & Others (1977) 4 SCC 358** it was held that, the Police should not indefinitely keep property in its custody nor need the court keep the property seized and produced before it unduly long but this does not whittle down the need for the court to be vigilant when an application is made for return of property seized by the police as to the necessity of such property being required in the future course of the trial.

16. The order under challenge is in fact passed by the Ld. CMM (Central) by exercising the power u/s 457 CrPC only as admittedly the investigation is yet to conclude and no report in terms of Section 173 CrPC is filed by the investigating agency.

17. Section 457 CrPC enables the Court to decide the custody of property pending investigation. The order of release of articles/property involved in any offence, even before the conclusion of investigation and filing of chargesheet when the IO

of the case informs the Court that investigation qua such property is complete either by mechanical examination of vehicles, identification of recovered articles by the complainant, forensic examination of equipments/weapon used in crime or even scene of crime in case of any premises.

18. In the matter of Sandeep Singh (supra), the judgment in the matter of Smt. Anisa Begum (supra) and number of divergent of judicial opinions were considered, one line of decisions holding that an order under Section 451 Cr.P.C. was purely interlocutory in nature and the other, holding that it is a final order or an intermediate order which affected the valuable rights of the parties to hold and keep the property during the pendency of the case. It was then held that the order under Section 451 Cr.P.C. was essentially interlocutory in nature, as it did not permit any final determination of the rights of the parties. Nevertheless, a decision under Section 451 Cr.P.C. would be as per the discretion of the court, which no doubt, has to be judiciously exercised. The purpose of handing over custody of the goods/property is to enable its production before the court during trial. Such custody is kept by the superdar only on behalf of the court. The superdar is bound to produce the property as and when so directed by the court. The court of course has the right to recall such entrustment

19. The argument that order of Ld. CMM is not an interlocutory order is humbly rejected as the order of release of electronic devices to respondents being owner of such devices was made after

having noted that mirror imaging of the devices have been done and custody of same is no more required to be with IO. Moreover, the order u/s 452/453 is an appealable order as the order under those section finally decides the fate of such case property at the conclusion of trial/inquiry. The legislature have deliberately not provided for appeal against order passed u/s 451 as well as u/s 457 CrPC as order u/s 451 Cr.P.C. and u/s 457 Cr.P.C. is an interim measure whereas provision of appeal has been provided in respect of orders passed U/s 452 & 453 CrPC.

20. It is also to be noted that the investigating agency by continuous seizure of electronic devices of the respondents, is not only causing undue hardship to them, but impinges upon their fundamental right of Freedom of profession, occupation, trade or business as guaranteed under Article 19(1)(g) as well as Freedom of Speech and expression under Article 19(1)(a) of the Constitution of India as admittedly the respondents are working for news portal *The Wire* which is engaged in disseminating news and information and the electronic devices were being used for their work. The Press is considered the Fourth Pillar of our great Democracy and if it is not allowed to function and operate independently, it would cause serious injury to the foundations of our Democracy.

21. The impugned order not only safeguarded the interest of the respondents but has also ensure that respondents are duty bound to keep the devices safe from tempering and in case they notices any

anomaly with the devices, same shall be immediately notified to the IO and devices in handed over to him.

22. In view of the above discussion and case law cited there is no force in the contention of revisionist that impugned order is not an interlocutory order merely because it disposes of an important aspect of the course of proceedings. The impugned order does not terminate the proceedings but the investigation and trial if any will go on until it terminates in either submission of closure report and if chargesheet is filed in either acquittal or conviction. The impugned order does not decide any right but only the interim custody of the devices till conclusion of investigation or disposal of the case. Consequently, the impugned order passed on the application praying for releasing the devices in question on superdari is purely interlocutory in nature and the revision petition against the order dated 23.09.2023 of Ld. CMM(Central) in view of Section 397 (2) Cr.PC is not maintainable. Accordingly, the present revision is hereby dismissed as not maintainable.

Announced in the Open Court on 18th October, 2023.

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