

IN THE HIGH COURT OF ORISSA, CUTTACK

CRLREV No. 291 of 2011

An Application U/s.401 read with section 397 of Cr.P.C.

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State of Orissa (G.A. Vigilance Department) ... *Petitioner*
-versus-
Sri Harihar Prasad Ranasingh *Opp. Parties*
& another

For Petitioner : *Mr. Sangram Das, SC (Vigilance)*

For Opp.Parties : *Mr. Amar Kumar Mohanty, Advocate*

P R E S E N T:

THE HONOURABLE SHRI JUSTICE M.S. SAHOO

Date of hearing & Date of judgment : 21.12.2023

M.S.SAHOO, J

1. The petition has been filed seeking, revision of the order dated 23.02.2011 passed by the learned Special Judge (Vigilance), Bhubaneswar in TR Case No. 98 of 1999 (State v. Harihar Prasad Ranasingh and another) filed by the State-petitioner under section 401 read with section 397 of Cr.P.C.

By the order impugned, the learned trial court had rejected the application of the prosecution filed under section 311 of Cr.P.C., by observing that the P.W.1, who is sought to be recalled by the prosecution, by filing the petition dated 15.2.2011 by the prosecution had stated in his examination-in-chief that he is witness only to seizure of some documents of the society by the vigilance police. The further ground of rejection of the prayer for recalling P.W.1

was that in his cross-examination P.W.1 had stated that he has no personal knowledge regarding maintenance of the register seized by the police.

In view of the depositions of the P.W.1 in his examination-in-chief as well as cross-examination learned trial court held that the prayer to recall P.W.1 to prove the seized documents cannot be allowed.

3. Learned Standing Counsel though strenuously argued for admitting the revision petition and allowing the same, referring to the averments made in the petition, however, very fairly referred to the decision of the Hon'ble Supreme Court rendered in **Sethuraman v. Rajamanickam (2009) 5 SCC 153**.

4. In the said decision it has been held at paragraph-5, p.154 of SCC as quoted herein :

“5. 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.”

5. Applying the principles laid down by the Hon'ble Supreme Court in **Sethuraman (supra)** and considering the facts and circumstances of the present case it has to be held that order against which the present revision has been sought for, is interlocutory in nature as the learned trial court rejected the prayer made in the petition filed by the prosecution under section 311 of Cr.P.C. Therefore, Revision against the said order would not be maintainable.
6. Further in view of the categorical statement made by the P.W.1 in his examination-in-chief and cross-examination as referred above, the learned trial court is correcting in holding that P.W.1 is not to be recalled to prove the exhibits/seized documents as he had already stated on oath in his earlier deposition that he is only witness to the seizure of the documents and he has no personal knowledge regarding maintenance of the register seized by the police.
7. In view of the above discussion, the CRLREV is dismissed.

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M.S.Sahoo, J.

Orissa High Court, Cuttack
The 21st December, 2023/dutta