
(2016) 01 RAJ CK 0129

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 3587 of 2015.

Smt. Sunita

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 482

Citation : (2016) 4 AICLR 795 : (2016) 3 CriCC 652 : (2016) 2 CriLR 793 :
(2016) 1 RajCriC 468 : (2016) 2 WLCRajUC 26

Hon'ble Judges : Mr. Banwari Lal Sharma, J.

Bench : Single Bench

Advocate : Mr. Anoop Dhand, Advocate, for the Appellant; Mr. Jitendra Shrimali, PP. and Mr. K.K. Mathur, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Mr. Banwari Lal Sharma, J. - Though the matter is listed on the application filed by the respondents no. 2 to 4 for vacating the interim stay order dated 6.8.2015 but with the consent of learned counsel for the petitioner as well as learned counsel for the respondent accused and learned PP the matter is being heard finally.

2. The present misc. petition has been preferred by the petitioner u/S. 482 Cr.RC. by the petitioner-complainant against the impugned order dated 10.7.2015 passed by learned Sessions Judge, Sikar, in criminal revision petition no. 104/2015 by which learned Sessions Judge partly allowed the revision and quashed the order to the extent for refusing for cross examination PW-1 Smt. Sunita on application of respondents no. 2 to 4 accused persons and allowed the application subject to payment of cost of Rs. 5,000/- to be deposited with District Legal Services Authority, Sikar.

3. The brief facts of the case are that a criminal case is pending against respondents no.2 to 4 for the offence u/Ss. 498A and 406 IPC before learned

CJM, Sikar wherein application was filed by the (respondents no. 2 to 4 accused on 22.7.2014 u/S. 311 Cr.P.C. and prayed that PW-1 Sunita may be recalled for cross examination which was dismissed by the learned CJM, Sikar vide order dated 9.6.2015 observing that respondents no. 2 to 4 accused failed to cross examine the witness when opportunity was given against which respondents no. 2 to 3 preferred revision petition before learned Sessions Judge, Sikar which was allowed as aforesaid by the learned Sessions Judge vide impugned order dated 10.7.2015.

4. Aggrieved by this order, petitioner-complainant filed this misc. petition.

5. Mr. Anoop Dhand, learned counsel for the petitioner submits that order passed u/S. 311 Cr.P.C. is interlocutory order, therefore, revision petition u/S. 397 Cr.RC. is not maintainable against it as envisaged in Section 397(2) Cr.RC. Without considering this legal aspect learned Sessions Judge partly allowed the revision petition, therefore, impugned order passed by learned Sessions Judge is beyond jurisdiction, therefore, same may be quashed and set aside.

6. Learned counsel relied upon *Sethuraman v. Rajamanickam* (2009) 15 SCC 153 and *Surendra Kumar and Ors. v. State of Raj.* 2001(2) R.C.C. 1110.

7. Per contra, learned counsel for the respondents no. 2 to 4 supported the impugned order and submits that learned Sessions Judge while deciding the revision petition to meet the ends of justice allowed the application of respondents accused on costs, therefore, there is no illegality in the impugned order, therefore, this misc. petition may be dismissed.

8. Learned PP also submits that revision petition is not maintainable against the interlocutory order.

9. I have considered the submissions made at Bar and went through documents available on record.

10. In the matter of *Sethuraman v. Rajamanickam* (supra) Hon'ble Supreme Court clearly observed that order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.RC. were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C.

11. Similarly in the matter of *Surendra Kumar v. State of Raj.* (supra) coordinate bench of this court also observed that the order passed on application u/s 311 Cr.P.C. is interlocutory order and revision petition against such order is not maintainable as enshrined in provision u/S. 397(2) Cr.P.C. Section 397(2) Cr.RC. reads as under :-

397. Calling for records to exercise powers of revision.

(1)-----

(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.

12. Since, order passed u/S. 311 Cr.RC. is interlocutory, as such revision petition against such interlocutory order is not maintainable, Without considering this fact, learned Sessions Judge exercised revisional jurisdiction and partly allowed the revision petition which is beyond his jurisdiction, therefore, this misc. petition deserves to be accepted which is hereby allowed and the impugned order to the extent of reverting (reversing) the finding in regard to application u/S. 311 Cr.P.C. passed by the learned CJM, Sikar is quashed and set aside.