

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

Cr.R. No.624/2013

Narinder Singh Poonia

Vs.

Suresh Kumar and another

Applicant – Narinder Singh Poonia present in person.
Shri Vivek Singh, learned counsel for respondent No.1.

ORDER

(Passed on 31/07/2015)

This criminal revision under section 397 r/w section 401 of Cr.P.C. is directed against order passed by the learned 2nd Additional Sessions Judge, Indore in Criminal Revision No.137/2013 dated 14.05.2013 whereby the learned Additional Sessions Judge set aside the order passed by the learned Judicial Magistrate First Class in Criminal Case No.27166/2010 (**State through Police Station Rajendra Nagar vs. Suresh**) dated 19.12.2012 which in its turn allowed the application of the present applicant dated 17.04.2012 to appear and assist the prosecution in the case on behalf of complainant Ramandeep Singh who is son of the present applicant. This is second round of litigation before this Court.

2. Brief facts relevant for disposal of this application bereft of unnecessary details are that complainant Ramandeep Singh son of the present applicant lodged a complaint before Inspector General of Police, Indore range, Indore, stating therein that land bearing survey No.22/02 area 4.97 acre situated near Neem Chowk, Bijalpur, Indore was purchased by his father, the present applicant, in the year 1988 from the respondent No.1 through an agreement to sale and power of attorney was duly executed in favour of the present applicant. The respondent No.1 suppressed the fact that the land was a part of some government scheme. Subsequently, on discovering that the land is a part of government scheme, executed by Indore Development Authority, he served a notice on the respondent No.1 - Suresh. In reply to the notice, Suresh admitted his liability and assured them that he would execute the sale deed in their favour. In the year 1994, the land was released from the scheme then the present applicant transferred the land to his wife Jasveer Kaur another son Navjeet Singh and the complainant Ramandeep Singh. They filed a civil suit and obtained a decree in their favour on the basis of this decree they got sale deed executed in their favour. Later on, they came to know that the original seller/the

respondent Suresh sold the same land to Catholic Diocese of Indore for Rs.1,00,000/-. The purchaser Catholic Diocese Indore also filed a civil suit which was again decreed against the respondent and thereafter the respondent filed a suit against the present applicant and complainant his brother Navjeet Singh and mother Jasveer Kaur. This suit was also decided in favour of the present applicant and his family members. Subsequent to this, the respondent also sold the same land to some other persons and on the basis of these facts the complaint was lodged and crime No.246/2010 under section 420 Cr.P.C. was registered by Rejendra Nagar Police Station and a charge-sheet was filed.

3. On 01.09.2010, the complainant - Ramandeep Singh filed an application before the trial Court under section 302 Cr.P.C. The application was allowed by the Court and the case was fixed for argument on charges. Subsequently, some documents were filed by the present applicant on which the respondent filed an application taking objection therein that the present applicant has no locus-standi to appear in the case and file objection. This application was decided by the Court on 30.11.20211 and while allowing the application

filed by the respondent the Court observed that the present applicant has no locus-standi to appear in the case and assist the prosecution. This order was assailed before this Court under section 482 Cr.P.C. without challenging the order in criminal revision. The application was disposed of by order of this Court dated 26.03.2012 in M.Cr.C. No.9963/2011 by co-ordinate Bench of this Court. In this order the Court observed in para 11, 12 and 13 of the order thus :-

“11. The aforesaid judgment squarely lays down the public policy as also law on the subject and the limited right given by the legislature to private person, who in the present case, may also include the petitioner being one of the aggrieved person. However, such right will have to be restricted to provisions contained under Sections 301 and 302 Cr.P.C. i.e. only to assist the prosecution and at the most to file written submissions if the evidence is collected in the trial. To that extent, even though permission was granted to the complainant, the son of the petitioner, but as the petitioner feels that his son is not in a position to assist the prosecution and wish for permitting him to be substituted in place of his son for the purpose of assisting the prosecutor, he can move an application after obtaining attorney from the son to assist the prosecution. If such an application is moved, the trial Court would consider the same, but in the light of the observations made above.

12. With this liberty, the present petition is disposed of. The record of the trial Court be sent forthwith so that Court can proceed further in the matter.

13. Parties are directed to appear before the Court concerned on 17.04.2012 on which date the trial Court

will proceed in the matter in accordance with law and will try to expedite the prosecution. A copy of this order be sent to the Court concerned alongwith record.”

4. Against this order, this applicant went before the Hon'ble Apex Court in SLP which was dismissed by the Hon'ble Apex Court by order dated 07.09.2012.

5. In compliance of direction issued by co-ordinate Bench of this Court in aforementioned M.Cr.C., filed an application/intimation along with general power of attorney purported to have been executed by his son Ramandeep Singh. This application filed by the present applicant is reproduced hereunder:-

Listed 17.04.2012

In the Court of JMFC, Shm Tripti Pandey
Court No.35, District Courts, INDORE

Cr, Case No.27166/2010

State of M.P.

COMPLAINANT

versus

Suresh Kumar

ACCUSED

FEHRIST with Documents & Information

The applicant respectfully submits as under:

1. That in pursuance of the HC order dated 26.03.2012 in M.cr.C. No.9963/2011, the Attorney Powers of Ramandeep Singh is enclosed herewith. From here on the applicant will regularly participate in the conduction of prosecution trial.
2. That the applicant will be present around 12 noon on every date of appearance with the hope that the APPO will be

- directed accordingly so that there is progress of the trial.
3. It is hoped, that in pursuance to the order of the HC, short dates will now be given so that there is expedient disposal of the case.

INDORE: April 17, 2012

Filed by
Prof. Narinder Singh Poonia
Complainant Prosecutor

6. This application was allowed by the learned Magistrate on 19.12.2012. This order is also reproduced hereunder:-

“पक्षकार पूर्ववत् ।

इसी स्तर पर प्रकरण का अवलोकन करने पर ज्ञात हुआ कि माननीय उच्च न्यायालय इन्दौर की M. Cr. C. No. 9963/11 की प्रतिलिपी प्राप्त हुई। उक्त आदेश के अवलोकन पश्चात माननीय उच्च न्यायालय के आदेशानुसार प्रार्थी नरेन्द्रसिंह पुनिया ने एक आवेदन प्रकरण की कार्यवाही में भाग लेने हेतु अनुमति दिये जाने के संबंध में दिनांक 17.04.12 को प्रस्तुत किया जिसका निराकरण न्यायालय द्वारा त्रुटिवश करना रह गया है। अतः आज दिनांक को उक्त आवेदन का निराकरण करते हुए माननीय उच्च न्यायालय की M. Cr. C. No. 9963/11 के आदेशानुसार श्री नरेन्द्रसिंह पुनिया द्वारा प्रस्तुत आवेदन स्वीकार किया जाता है और उस प्रकरण की कार्यवाही में भाग लेने की अनुमति दी जाती है।

प्रकरण पूर्ववती दिनांक 06.02.2013 को पेश हो।”

7. Aggrieved by this order, the respondent Suresh Kumar S/o Ambaram Khati before this Court filed a criminal revision before the Sessions Court which was made over to 2nd Additional Sessions Judge, Indore and allowing the application filed by the respondent and setting aside the order of learned Judicial Magistrate First Class dated 19.12.2012 reproduced above. Aggrieved by this order, this criminal

revision is filed on following grounds:-

(i) That the Judge who wrote the impugned order could not right his name in English and was incapable of writing order in English language. It is unprecedentle for him, that he wrote the impugned order in English. According to the present applicant, the learned Additional Sessions Judge in collusion with the respondent and his advocate for sabotage the trial against the accused passed the order against him and the Additional Sessions Judge placed the present applicant at the mercy of accused and his advocate, while the government advocate who also in collusion with the accused do not appear in the case and remain absent.

(ii) The order of the JMFC was an interim order and revision does not lie against order.

(iii) The revision filed by the applicant was not supported by an affidavit of the accused and, therefore, it was unlawful.

(iv) The appearance of the advocates was unauthorized as Vakalatnama furnished by the advocate was not signed by earlier advocate and his

No Objection Certificate was not given.

(v) The decision of the Magistrate under section 302 Cr.P.C. was absolute and, therefore, the revisional court should not have interfered in the case.

(vi) The present applicant was also a co-complainant before the police and, therefore, he should also be permitted to conduct prosecution of the case.

(vii) Finally the present applicant called the impugned order as criminalized 'CrC' and judicial deceit and also alleges that it was passed in collusion with the accused person.

8. Counsel for the respondent No.1 and the counsel for the State support the impugned order and pray that impugned order be confirmed.

9. The First point raised by the applicant is in respect of capability of the Judge to write an order in English. To support this contention, the applicant in the main application and also in his written argument as well as during the argument submits that the respondent No.1 with help of his advocates and the learned Additional Sessions Judge sabotaged the

criminal trial by replacing a forged order on record of the court and to substantiate this point he filed photographs of nameplate fixed outside the court of the learned Additional Sessions Judge in which spelling of his name is written as 'Ikabal', however, in the impugned judgment according to the present applicant he wrote his spelling as 'Iqbal'. Similarly, he also points out that in occupation of the respondent No.1, the work business is written, however, nowhere in the record of the lower court his occupation is mentioned as business. And similarly, in his own name prefix 'Pro.' was used, however, in his name in the application no such prefix was used and his name was written as 'Narinder Singh Poonia'. He further submits that the learned Additional Sessions Judge in connivance with the advocates of the respondent signed the above order and placed it in record of the court and this according to him this was 'Deshdroh'. However, going through the impugned order, I do not find such minor discrepancies would render the whole order as forged and there is no reasons to believe that the learned Sessions Judge signed the order while the order was written by the respondent and his advocates. Also there is no reasons to believe that the Judge is not capable of writing the order in English language and,

therefore, all these arguments put forth by the applicant cannot be accepted.

10. The next important point raised by him is that the revision did not lie against the impugned order passed by the Magistrate. The learned Sessions Judge relied on case of **Amarnath Vs. State of Haryana; AIR 1977 SC 2185** and **Madhulay Vs. State of Maharastra; AIR 1978 SC 47**. He applied the test that when substantial rights of a person are affected by the order, revision lies. However, there is another test to decide whether the revision lies against the particular order or not or whether the order is of an interim nature or is a final order. The test is that if in the order of revision the order of the lower court is reversed then the proceedings in respect of person who filed the revision comes to an end. Applying this principle to the present case, it is apparent that by the impugned order the present applicant was allowed to prosecute the case and, therefore, if this order is reversed he cannot be permitted to conduct prosecution in the case, therefore, the revision in considered opinion of this Court was maintainable.

11. Coming to the merit of the case the learned Sessions

Judge observed in para 10 of the impugned order that no application was filed under section 301 and 302 of Cr.P.C. in compliance with the direction issued by the said order dated 26.03.2012 by the Hon'ble Court. The application produced by the applicant before the Court is reproduced above in para 5 of the order. It is apparent from the language used in the application that it was only an information to the Court and not an application, to intimate that the present applicant would prosecute the case on behalf of the public prosecutor, however, this was not in line with direction issued by this Court in M.Cr.C. No.9963/2011 and, therefore, in opinion of this Court the learned revisional court did not err in holding that no application was filed by the applicant and in this inference of the learned revisional court, no interference is called for. Considering merits of the case also it is true that under the scheme of Criminal Procedure Code ample rights are given to the complainant or any other private persons to prosecute the case in helping the public prosecutor to seek justice. And this is the principle laid down by Hon'ble Apex Court in case of **J.K. International Vs. State (Govt. of NCT of Delhi) and other (2001) 3 SCC 462** which was quoted by co-ordinate Bench of this Court in M.Cr.C. No.9963/2011 and

also relied heavily by the applicant. It is also true that the present applicant being father of the complainant Ramandeep Singh is interested in the prosecution of the matter. However, he is not a co-complainant as claimed by him because his son filed the complaint. This apart, settling personal scores against the accused persons is not permissible under the provisions of sections 301 or 302 Cr.P.C. That appears to be exactly the case in this matter. The charge-sheet was filed in this case in the year 2010. Thereafter, not a single prosecution witness could be examined, however, there is a list of 13 prosecution witnesses in the charge-sheet. On the basis of surmises and conjectures, he is liabing various allegations by written submissions before the trial Judge which are the matter of which could be raised at the time of final hearing of the case. All these obstructions created by him is resulting in delay in trial of the case and to some extent harassment to the respondent No.1. In this view of the matter, no case is made out in favour of the present applicant for granting him permission to conduct the prosecution under sections 302 Cr.P.C. This revision is devoid of merit and liable to be dismissed and dismissed accordingly with cost of Rs.2000/- to be deposited before the trial Judge.

12. Office is directed to transmit a copy of this order along with application for revision filed before this Court and also written argument submitted by the applicant to the Judge Shri Iqbal Khan Ghauri for his perusal. The Judge is at liberty to start proceeding for contempt against the present applicant, if he so deem fit.

13. With this observation and direction, this revision stands disposed of.

(ALOK VERMA)
JUDGE