IN THE COURT OF MS. SMITA GARG,
ADDITIONAL SESSIONS JUDGE - FAST TRACK COURT,
WEST DISTRICT, TIS HAZARI COURTS, DELHI.

Crl. Revision No.551/2017
CNR No.DLWT01-011068-2017

In re:

Manoj Kumar,
S/o Sh. Dharam Pal Singh,
R/o Mohalla Prabhudayal,
Kothi Nawab Sahab,
Jahangirabad,
Bulandshahar, U.P.

…..Revisionist

Vs.

1. State (NCT of Delhi)
2. Kusum Lata,
D/o Sh. Girwar Sigh,
W/o Manoj Kumar
R/o T-13, Punjabi Basti,
Anand Parbat, Delhi. .....Respondents

Date of filing of revision petition : 06.12.2017
Date of pronouncement of judgment : 17.03.2018

JUDGMENT:

1. This revision petition under Section 397 Cr. P. C. is directed

against the order dated 10.11.2017 passed by the Ld. MM (Mahila Court-03), West District whereby the application of the revisionist seeking cancellation of non-bailable warrant against him was dismissed.

2. The brief background relevant for the disposal of the revision petition is that FIR No.241/2001 under Section 498A/406/34 IPC was registered at PS Anand Parbat against the revisionist and his family members at the instance of his wife i.e. the complainant Smt. Kusum Lata. After completion of investigation, the Police filed the charge sheet on 23.11.2002. The trial court took cognizance and summoned the revisionist and the co-accused persons. On 02.09.2003, charge for the offence under Section 498A/406/34 IPC was framed against the revisionist, his brother, mother and sister. During the course of trial, the revisionist was declared as proclaimed offender on 05.03.2012. When the trial against the co-accused persons had concluded, the revisionist was arrested and produced before the court. Hence, the prosecution witnesses were directed to be recalled. On 28.10.2017, an application seeking exemption from personal appearance was preferred on behalf of the revisionist on the ground of ill-health of his mother. Taking note of the previous conduct of the revisionist, the application was dismissed by the trial court and non-bailable warrant was

directed to be issued against him. On the next date of hearing i.e. 10.11.2017, the counsel for the revisionist moved the application seeking cancellation of non-bailable warrants against the revisionist. Being of the opinion that no cogent reason for the repeated absence of the revisionist had been furnished, the application was dismissed by the trial court. Challenging the said order, the revisionist is before this court.

3. I have heard the counsel for the revisionist, Ld. APP for the State/respondent no.1 and the counsel for the complainant/respondent no.2. Trial court record has also been perused.

4. The counsel for the revisionist has submitted that since the widow mother of the revisionist, who is also one of the co-accused, was seriously ill and the revisionist, being the only member of the family residing with her, was taking care of her at her bed side, he could not appear in court on 10.11.2017. He pointed out that though the medical record of the mother of the revisionist had been produced on record but the trial court did not take the said documents in consideration and dismissed the application. He argued that the trial court erred in dismissing the application especially when the revisionist was being represented through his counsel and therefore, the order dated

10.11.2017 is liable to be set aside.

5. On the other hand, the counsel for the respondent no.2 has challenged the maintainability of the revision petition on the ground that the impugned order, being interlocutory in nature, is not amenable to revision in view of the bar contained in Section 397 (2) of Cr. P. C. In support of his contention, the counsel for the respondent no.2 placed reliance on **order dated 27.04.2012 passed by Hon'ble Delhi High Court in Crl. M. C. No.1640/201 titled as Kajal Sen Gupta v. M/s. Ahlcon Ready Mix Concrete, Geetanjali Woolens Pvt. Ltd. v. Pearl International reported as 2003 (2) JCC 1045 and N. Dinesan v. K. V. Baby reported as 1981 Cr.LJ 1551**. He argued that since the revisionist is a habitual absentee and the matter was being delayed due to his repeated non-appearance, the trial court rightly dismissed the application and thus, no interference is called for.

6. In order to deal with the objection regarding the maintainability of the revision petition, it would be apposite to refer to Section 397 Cr. P. C., which is reproduced as under:-

*"**397. Calling for records to exercise powers of revision.** - (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior*

Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.
(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."

The expression 'interlocutory order' has not been defined in the Code. In landmark case of **Amarnath and others v. State of Haryana AIR 1977 SC 2185**, while discussing the term 'interlocutory order', Hon'ble Supreme Court held that the term 'interlocutory order' in Section 397 (2) Cr. P. C. has been used in a restricted sense and not in any broad sense and include orders of a purely interim or temporary reason 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 against the order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 Cr. P. C.

Following and reiterating the legal proposition laid down in Amarnath's case (supra), it was further clarified in **Madhu**

Limaye v. State of Maharastra reported as AIR 1977 SC 47 that the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so, it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by the Section 397 (1). On such a strict interpretation, only those orders would be revisable which are orders passed on the final determination of the action but are not appellable under Chapter XXIX of the Code. This does not seem to be the intention of the legislature when it retained the revisional power of High Court in terms identical to the one in the 1898 Code. On one hand, the legislature kept intact the revisional power of the High Court and, on the other, it put a bar on exercise of that power in relation to any interlocutory order. In such a situation, it appears that the real intention of the legislature was not to equate the expression 'interlocutory order' as invariably being converse to the words 'final order'. There may be an order passed during the course of a proceeding which may not be final but yet it may not be an interlocutory order – pure or simple. Some kinds of orders may fall in between the two. By a rule of harmonious construction, we think that the bar in sub-section (2) of Section 397 Cr. P. C. is not meant to be attracted to such kind of intermediate orders. They may not be final orders for the purpose of Article 134 of the Constitution,

yet it would not be correct to characterize them as merely interlocutory orders within the meaning of Section 397 (2) Cr. P. C.

7. In the backdrop of the above case law, I proceed to determine as to whether the impugned order can be said to be an interlocutory order so as to attract the bar of Section 397 (2) Cr.P.C. It is seen from the trial court record that the order under challenge is not the one whereby non-bailable warrant was directed to be issued consequent upon the dismissal of the application seeking exemption from personal appearance but is directed against the dismissal of the application for cancellation of the non-bailable warrant. Once the said application has been dismissed by the trial court, but naturally there is every possibility of the revisionist being taken into custody on the date of his appearance before the court. If so, the right to liberty of the revision shall be affected which is a material right of an accused in a criminal proceeding. Thus, in my opinion, the impugned order can not be said to be an interlocutory order.

At this juncture, reference may be made to **Saleem P.A. etc. v. State reported as (1994) 2 LW (Crl.) 402**, which is relevant for the present purpose. Paragraph 24 thereof is reproduced as under:-

"24. In view of the discussion as above, the following

positions emerge:-

1. *Issuance of a warrant of arrest by a Court under the Code shall remain in force beyond the date fixed for its return, until it is cancelled or executed.*
2. *Since the court, which issued the warrant has the power to cancel it, it is but necessary for the person against whom a warrant of arrest had been issued to approach the said Court, by his personal appearance, for its cancellation, which issued it.*
3. *Once a person accused of an offence against whom a warrant of arrest had been issued makes his personal appearance, with a petition for its cancellation, before the Court, which issued it, it behaves on its part not to take him into custody and send him to prison immediately after his appearance, but to pass an order on such petition, forthwith, without brooking any sort of a delay and if the order so passed ends in his favour, he shall be bound over to appear before court on an earliest date fixed for hearing on trial, as the case may be, or otherwise, he could be taken into custody forthwith and sent to prison, with a direction to the prison authorities for his production before court on the earliest date fixed for such hearing or trial is over, so as to enable it to proceed, with ease and grace, and without any obstruction whatever, thereby not affecting in the least his right to speedy trial, a goal to be achieved, as enshrined under Article 21 of the Constitution, or on his application, being presented, release him on bail, on his executing a bond for a specified sum, with sufficient number of sureties, for such sum to secure his appearance on the dates fixed for hearing or trial, as the case may be.*

4. ***However, a person aggrieved by an order of refusal of the cancellation by a Magistrate, who issued the same, can further agitate the same, if he so desires, by filing a revision, either under Section 397 or 401 of the Code, and then resort to invoke the inherent power of this court under Section 482 of the Code, if grounds for resortment to such a course existed (emphasis supplied).”***

In the light of above discussion, it is clear that the present revision petition is maintainable.

The judgments relied upon by the counsel for the respondent no.2 do not render any assistance to him as the orders impugned in the said cases were of entirely different nature.

8. Now adverting to the facts of the case, it is seen from the trial court record that on both the dates i.e. 28.10.2017 when the application seeking exemption from personal appearance had been moved and on 10.11.2017 when the application for cancellation of non-bailable warrant was preferred on behalf of the revisionist, he was being represented by his counsel. Hence, it was not a case where the revisionist was escaping the process of law. The ground on which cancellation of non-bailable warrant had been sought was that the mother of the revisionist was bed ridden and seriously ill and therefore, he could not

appear in the matter on 28.10.2017. Even though no document supporting the averments of the application for exemption from personal appearance had been filed, the medical record of the mother of the revisionist was filed alongwith the application for cancellation of non-bailable warrant. It is a matter of record that the mother of the revisionist is also one of the co-accused and that she has been granted permanent exemption on the ground of her old age and ailments. In such circumstances, the trial court ought to have considered the application sympathetically instead of going into the previous conduct of the revisionist. Insistence on the personal appearance of the accused especially when the same would not have hampered with the progress of the trial was completely unjustified. It needs little emphasis that the recourse to non-bailable warrant should be sparingly adopted and that too only when it appears to the court that the presence of the accused can not be secured otherwise. In view of the medical record of the mother of the revisionist, the impugned order was quite harsh and can not be sustained.

9. For the foregoing reasons, the revision petition is allowed and the impugned order dated 10.11.2017 passed by the Ld. M. M. is hereby set aside. On the date fixed before the trial court, the revisionist shall appear before the Ld. M. M. who shall allow him to join the proceedings in accordance with law.

File of revision petition be consigned to record room.

SMITA GARG Digitally signed by SMITA GARG Date: 2018.03.17 13:25:56 +0100

Announced in the open court on 17.03.2018

(Smita Garg)
Addl. Sessions Judge-FTC, (West)
Tis Hazari Courts, Delhi.