

IN THE COURT OF SH. DHARMENDER RANA,
ADDL. SESSIONS JUDGE-02, NEW DELHI DISTRICT

In Crl. Revision No. 68/2020

Mehmood Pracha,
S/o Sh. Siraj Pracha,
R/o G-17, First Floor,
Nizamuddin West,
New Delhi-110013.

... Revisionist

Versus

State,
Through Investigating Officer,
in FIR No.212/2020
PS:Special Cell, Delhi.

... Respondent

Petition received on assignment	:	30.12.2020
Arguments on petition concluded	:	31.12.2020
Date fixed for pronouncement	:	05.01.2021
Date of pronouncement	:	05.01.2021

ORDER

1. By way of the instant order, I propose to dispose of a revision petition filed on behalf of Mehmood Pracha, (hereinafter referred to as 'revisionist') impugning order dated 27.12.2020 whereby Ld. Duty MM, Patiala House disposed off an application of the revisionist dated 25.12.2020 directing the IO to supply the copies of the material seized and records made in the search and seizure conducted at the office of the applicant/accused on 24.12.2020.

2. Briefly stated: The revisionist is a practicing advocate and pursuant to an order/warrant dt. 22.12.2020 a police team conducted a search at the office premises of the revisionist. It is submitted that order/warrant dt. 22.12.2020 directed that the police had to mandatorily video record the entire search operation and in compliance of said direction, the raiding team had conducted videography of the whole search

operation. It is submitted that on 25.12.2020, the revisionist had preferred an application U/s 165(5) Cr.P.C seeking copies of the material seized and all the records made during the search and seizure conducted in his office premises. It is pointed out that Ld. Duty MM vide impugned order dt. 27.12.2020 directed that the video footage of the search be preserved and was pleased to allow the application of the revisionist filed U/s 165(5) Cr.P.C to the extent of providing the revisionist with a copy of the report of the search prepared by the respondent but did not allow the revisionist copies of the video footage. It is further submitted that search conducted in the office premises of the revisionist has been a matter of grave concern for the legal fraternity, as during the search the respondent had compromised the confidential and privileged information and data of hundreds of clients of the revisionist. It is further submitted that respondent committed several illegal and criminal acts during the search, all of which will be clear when the video footage recorded by the respondent is perused, therefore, the revisionist apprehends that the respondent has made and will make every attempt to manipulate and tamper the video footage so as to prevent their illegal and criminal acts from being exposed in public domain and which will also exonerate the revisionist. It is further submitted that Ld. Duty MM vide order dt. 27.12.2020 sealed the video footage under the seal of the Court but evidently did so without having perused the footage or recording whether the complete footage was present in the device presented by the respondent or recording the duration of the footage. It is further submitted that it is imperative that the copy of the video footage recorded during the search conducted in the office premises of the revisionist be supplied to the revisionist, as mandated by section 165(5) Cr.P.C so that any attempts by the respondent to manipulate or tamper with the footage may be prevented. Now the instant revision has been moved assailing the order Dated 27.12.2020.

3. On the contrary, it is vehemently argued by Ld. Addl. PP for

the State that the present revision petition is not maintainable as the impugned order is purely interlocutory in nature. It is further submitted that reason cited by the Ld. Counsel for the revisionist in the instant revision petition are frivolous. And thus, relief prayed by the revisionist cannot be granted to him and therefore, revision petition of the revisionist deserves to be dismissed.

4. In rebuttal, Ld. counsel for the revisionist has argued that revision petition is very much maintainable. Strong reliance has been placed in the case of [Amar Nath v. State of Haryana](#), (1977) 4 SCC 137.

5. Before deciding the present revision petition, it would be relevant to reproduce the relevant provision of law which reads as under :

Section 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 situated within its or his local jurisdiction for the purpose of satisfying itself or himself; 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.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(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.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

6. I have heard and considered the submissions made by Ld. Counsel for revisionist and also Ld. Addl. PP for State/respondent and also gone through the material available on record.

7. Before testing the case of the revisionist on merits, the issue of maintainability of the instant revision ought to be resolved first.

8. Hon'ble Apex Court in the case of [Amar Nath v. State of Haryana, \(1977\) 4 SCC 137](#) interpreting the provisions of [Section 397\(2\)](#) of Cr.P.C. held as under:-

"It seems to us that the term "interlocutory order" in [Section 397\(2\)](#) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the 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 proceeding, 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 or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.**"

9. Perusal of the impugned order dt. 27.12.2020 would reveal that the report regarding execution of search warrant dt. 22.12.2020 was supplied to the revisionist by the Ld. Trial Court on 27.12.2020 itself. The revisionist is aggrieved that the video footage has not been supplied to him. It is contended by the Ld. Counsel for the revisionist that as per Section 165(5) Cr.P.C, the revisionist is entitled for receipt of video footage "forthwith". Section 165(5) Cr.P.C is accordingly reproduced for ready reference:-

Section 165(5) Cr.P.C. Copies of any record made under sub- section (1) or sub- section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.

10. Perusal of the section 165(5) Cr.P.C would reveal that IO is required to send the record forthwith to nearest magistrate and on application, the applicant is also entitled for copy of the same. However the word "forthwith" classifies only the record sent to the magistrate and it is not the requirement of law that the record is also required to be 'forthwith' furnished to the applicant. Perusal of the impugned order dt. 27.12.2020 would reveal that the prayer of the revisionist for supply of video footage has neither been denied nor has been conclusively determined. The Ld. Trial Court has specifically observed that "*The applicant raises query as to the duration of video footage and has also requested for supply of the video footage to him. It is imperative to note that the video footage, which is the bone of contention, was recorded to ensure fairness while the search was being made as per the order dt. 22.12.2020 passed by the Ld. CMM,PHC, ND. At this stage, only directions for preserving the video footage is deemed necessary. The concerned court can take a call on supplying the video footage to the applicant at an appropriate stage*".

11. Evidently, the prayer regarding the supply of video footage has not been disposed off by the Ld. Trial Court and the impugned order is purely an interlocutory in nature. I concur with the Ld. Addl. PP that the instant revision petition is legally not maintainable.

12. In view of the above discussions, the present revision petition stands dismissed.

13. Copy of this order be also sent to the Court concerned as necessary information along with the trial court record.

14. Copy of the order be given dasti to the concerned parties. Copy of the order be also uploaded upon the Court's website.

15. File of the revision petition be consigned to the Record Room.

Announced in the open court
On 5th January 2021.

(Dharmender Rana)
ASJ-02/NDD/PHC/ND