

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 18th May, 2022**

+ **CRL.M.C. 174/2021**

SANDEEP SINGH

..... Petitioner

Through: Mr. Mudit Jain, Mr. Hardik Sharma,
Advocates alongwith petitioner in
person.

Versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Manjeet Arya, APP for R-1/State
with SI Vivek Malik.
Mr. Vikas Arora, Advocate for R-
2/complainant.

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. The petition has been filed by the complainant in FIR No.170/2019, which was registered under Sections 380/406/420/506/120B IPC at Police Station Vasant Kunj, Delhi, being aggrieved by the impugned order dated 14th January, 2021 passed by the learned Chief Metropolitan Magistrate, Patiala House Courts, New Delhi.

2. Mr. Mudit Jain, learned counsel for the petitioner submitted that the learned Chief Metropolitan Magistrate reviewed his earlier order dated 20th August, 2020 without any power to do so. Vide order dated 20th August, 2020, 8 moulds being seized by the police in FIR No.170/2019, were ordered to be released to the petitioner, whereas vide the impugned order, the

petitioner was directed to surrender the released moulds within 7 days. Further, the Investigating Officer was directed to take possession of the same.

3. It may be mentioned here that the FIR has been registered by the petitioner as a partner of respondent No.2 submitting that they had set up a partnership firm through a registered Partnership Deed dated 10th March, 2014 for manufacturing remote controls in the name and style of M/s S.S. Manufacturing. The petitioner claims to have suddenly realized that the respondent No.2 had created a parallel company in the name of M/s Rugs Enterprises Pvt. Ltd. which was operating from M/s S.S. Manufacturing at the leased premises and the respondent No.2/accused along with a few employees planned a criminal conspiracy to misappropriate M/s S.S. Manufacturing's finished goods, raw material and machinery hypothecated for their own wrongful gain. According to the petitioner, the respondent No.2 was fully aware of the hypothecation of the machinery to Andhra Bank and the loan, as also the fact that in default of repayment, the loan would be recovered from the property belonging to the petitioner's father which had been mortgaged to Andhra Bank.

4. In the backdrop of these allegations of misappropriation, FIR No.170/2019 was registered at Police Station Vasant Kunj, Delhi against the respondent No.2 and others for having committed offences under Sections 380/406/420/506/120B IPC. Subsequently, Sections 467/468/471 IPC were also added by the Investigating Officer. It is the case of the petitioner that during investigations, the premises of M/s V.P. Automotive Components were raided and 8 moulds were seized which belonged to M/s S.S. Manufacturing. On the same day, upon a raid of the premises of M/s LIT

India Pvt. Ltd., which was a company that belonged to the respondent No.2, 111 boxes of finished goods/remotes were also seized.

5. The petitioner moved an application under Section 451 Cr.P.C. and vide order dated 20th August, 2020, 8 moulds were released to him. In separate proceedings, the wife of the respondent No.2, being the Authorised Representative of M/s Rugs Enterprises Pvt. Ltd. approached the court of the learned Chief Metropolitan Magistrate for release of 111 boxes of finished goods/remotes and vide order dated 17th September, 2020, these were directed to be released to her as an Authorised Representative of M/s Rugs Enterprises Pvt. Ltd.

6. The respondent No.2 filed an application on 28th September, 2020 before the court of the learned Chief Metropolitan Magistrate seeking directions to the petitioner to surrender the moulds released to him earlier. The learned counsel for the petitioner submitted that such an order could not have been passed by the learned Chief Metropolitan Magistrate, since it had no powers to review its order. The order had to be, therefore, set aside straightway. Reliance has been placed on *Muneshwar Bux Singh Vs. State* 1955 SCC OnLine All 362, *Juhi Modi Vs. Neeraj Gupta & Anr.* 1999 SCC OnLine Del 796, *Adalat Prasad Vs. Rooplal Jindal & Ors.* (2004) 7 SCC 338, *Subramaniam Sethuraman Vs. State of Maharashtra* 2005 SCC (CrI) 242, *Smt. Anisa Begum v. Masoom Ali and Ors.* 1985 SCC OnLine Del 382, *M/s Shiva Leasing CO. Vs State*, 1999 (79) DLT 148, *Sunderbhai Ambalal Desai v. State of Gujarat* (2002) 10 SCC 283, *Ravindra Nath Singh v. State of Bihar & Anr.* 2002 SCC OnLine Pat 135, *M.S. Jaggi v Subaschandra Mohapatra* 1997 SCC OnLine Ori 98, *Iqbal Singh Marwah & Anr. V.*

Meenakshi Marwah & Anr. 2005 (4) SCC 370, *K.G. Premshankar v Inspector of Police & Anr.* (2002) Cri.L.J. 4343, *Kekoo J. Maneckji v. Union of India and Ors.* 1980 CRI L.J. 258, *Janta Dal v. H.S Chowdhary and Anr.* (1992) 4 SCC 305) and *Manjit Singh v. State* 2014 (214) DLT 646, in support of the contention that the Magistrate has no power to review its order.

7. It was also submitted that the prayer of the respondent No.2 was that the moulds be given to the Investigating Officer. This, according to the learned counsel for the petitioner would have only resulted in the ruination of the machinery which was so fundamental to the manufacturing process. It was further submitted that these moulds have been hypothecated to the Bank and it was with the permission of the Bank, to put the moulds to good use, that after the hypothecated machinery and raw materials etc. had been sold to a firm M/s SRT Engineering, the moulds were handed over to that company, but the petitioner had no role in that company and was not earning any money therefrom. Thus, it was submitted that the impugned order be set aside.

8. In reply, Mr. Vikas Arora, learned counsel for the respondent No.2, submitted that in appropriate cases, an interlocutory order, such as a *superdari* order, could be reviewed. It was submitted that the necessity to file the application arose, when the petitioner had handed over the moulds to some other company and though had taken them on *superdari* from the court had let the moulds out of his custody to earn unlawfully at the expense of the partnership firm, which could not now function. It was further submitted that when the first order had been passed, no notice had been issued to the respondent No.2, though he was 60% share holder/partner in M/s S.S.

Manufacturing. It was also submitted that at the time the earlier order was passed, the petitioner had misrepresented to the learned Chief Metropolitan Magistrate that he continued to be a partner of the partnership firm, whereas at that point of time, the partnership had been dissolved. It was submitted that the moulds were not of a nature that would deteriorate. Reliance has been placed on *Surya Vadanam Vs. State of Tamil Nadu and Ors.* (2015) 5 SCC 450, *Smt. Anisa Begum* (supra), *Vasu Vs. Unnikrishnan* 1983 SCC OnLine Ker 60, *M/s Niketan Traders Vs. State & Anr.* (2007) 1 JCC 468, *Vishnu Agarwal Vs. State of Uttar Pradesh and Anr.* (2011) 14 SCC 813 and *Ira Juneja & Anr. Vs. State & Anr.* 2004 (72) DRJ 207, in support of the contentions of the learned counsel for the respondent No.2.

9. In the present case, it would be relevant to consider whether there were any grounds to recall the order granting custody of the moulds to the petitioner. The impugned order may now be considered. The 8 moulds were apparently seized on 10th August, 2019. Thereafter an application was moved by the petitioner, which application was taken up for consideration on 20th August, 2020 (Annexure P-5 to the petition). The order does not record the presence of the accused or any submissions on behalf of the accused, but a copy of the order was directed to be sent to the counsel for the accused. It is clear that in the nature of the case set up, it was proper for the court to have issued notice to the accused/the respondent No.2 herein, before deciding the release of moulds. Though a final order on entitlement was not required to be conducted, at least the respondent No.2 ought to have been heard. It has been held in *State Bank of India Vs. Rajendra Kumar Singh & Ors.* (1969) 2 SCR 216, *Shyam M. Sachdev Vs. The State & Anr.* 1990 SCC OnLine Del

240 and *M.S. Jaggi (supra)* that at the time of releasing a property on *superdari*, the courts must grant the affected parties an adequate opportunity to be heard.

10. Subsequently, the respondent No.2 filed an application dated 28th September, 2020 for directions to the petitioner to deposit the moulds with the Investigating Officer. The learned Chief Metropolitan Magistrate heard both sides on the application and it was observed in the impugned order that the order dated 20th August, 2020 had apparently been passed assuming that M/S S.S. Manufacturing was still in existence where the petitioner/Sandeep Singh was still a partner and being the complainant in FIR No.170/2019, Police Station Vasant Kunj, he was granted *superdari* of 8 moulds, also recording that this was in the absence of any representation from the respondent No.2/Simran Sodhi. It may be noted that in the first order it has also been recorded that the Investigating Officer was of no assistance whatsoever. The reason for modifying the order was thus based on the absence of an opportunity of being heard being availed of by the respondent No.2 and the absence of useful information from the Investigating Officer. It was on account of the violation of the principles of natural justice that the order dated 20th August, 2020 was, therefore, modified.

11. Since both sides were staking a claim to the ownership rights of the moulds, the learned Chief Metropolitan Magistrate concluded that till the rights of the parties crystallized through adjudication process, the property should be kept in the exclusive possession of the Investigating Officer.

12. In a petition under Section 482 Cr.P.C., interference by this Court, in exercise of its discretionary power can be only when clear perversity or error is disclosed on the face of the record. Perversity and non-application of mind are clearly absent in the present case.

13. In *Dhruvaram Murlidhar Sonar Vs. State of Maharashtra*, (2019) 18 SCC 191, the Supreme Court has held as under :

“8. It is well settled that exercise of powers under Section 482 CrPC is the exception and not the rule. Under this section, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. But the expressions “abuse of process of law” or “to secure the ends of justice” do not confer unlimited jurisdiction on the High Court and the alleged abuse of process of law or the ends of justice could only be secured in accordance with law, including procedural law and not otherwise.”

14. In *Smt. Anisa Begum (supra)*, a number of divergent of judicial opinions were considered, one line of decisions holding that an order under Section 451 Cr.P.C. was purely interlocutory in nature and the other, holding that it is a final order or an intermediate order which affected the valuable rights of the parties to hold and keep the property during the pendency of the case. It was then held that the order under Section 451 Cr.P.C. was essentially interlocutory in nature, as it did not permit any final determination of the rights of the parties. Nevertheless, a decision under Section 451 Cr.P.C. would be as per the discretion of the court, which no doubt, has to be judiciously exercised. The purpose of handing over custody of the goods/property is to enable its production before the court during trial. Such

custody is kept by the *superdar* only on behalf of the court. The *superdar* is bound to produce the property as and when so directed by the court. The court of course has the right to recall such entrustment.

15. There can be no doubt, an order under Section 451 Cr.P.C. is of an interlocutory nature, since the whole purpose is for safe custody of the goods/property during the pendency of the trial, as it is Section 452 Cr.P.C. which would come into play, when the goods/property is to be disposed of at the conclusion of the trial. The Trial Court would not be powerless to modify orders of custody as per changed circumstances. The Trial Court has the powers to recall entrustment, as held in *Smt. Anisa Begum (supra)*. For instance, there could be circumstances where the *superdar* is not in a position to keep the custody of the goods/property and seeks to surrender it into the court. Would the Trial Court be powerless to hand it over to some other person on the same terms as earlier or on different modified terms? Similarly, where the court finds that the initial order was passed on account of certain mistaken notions, as in the present case, that the partnership firm was in existence and the petitioner alone had a right to the moulds and also in view of the fact that the respondent No.2 who also had an equal status as a partner in the erstwhile partnership firm to claim custody, was denied even a hearing, it cannot be said that the modification of this interlocutory order would be possible only, by approaching the High Court under Section 482 Cr.P.C. Orders that would only smoothen the process of trial cannot be rendered so complicated. In fact, the power to modify orders passed under Section 451 Cr.P.C., is inherent in the provision as the purpose is only safe custody and production “during trial”. This is unlike the orders of summoning in respect of

which *Adalat Prasad (supra)* and subsequent judgments have held that recall of orders is not possible.

16. The impugned order dated 14th January, 2021 passed after hearing all the parties resulting in the recall of the earlier order dated 20th August, 2020 cannot be held to be perverse or beyond the jurisdiction of the learned Trial Court. No interference is called for by this Court in exercise of powers under Section 482 Cr.P.C.

17. The present petition lacks merit and the same is dismissed

18. The judgment be uploaded on the website forthwith.

**(ASHA MENON)
JUDGE**

MAY 18, 2022/‘bs’

सत्यमेव जयते