

**M.Cr.C. No.14522/2011**

**29.02.2012**

Shri Vijay Pandey, Advocate for the applicant.

Shri Ashok Chakravarty, Advocate for the respondent.

Heard on admission.

By the instant application, the applicant has challenged the order dated 26.11.2011 passed by the Second Additional Sessions Judge, Chhindwara in Criminal Revision No.171/2011 by which the order dated 25.8.2011 passed by the SDM concerned was confirmed by which a search warrant was issued against the applicant. The applicant has also challenged the proceeding before the SDM Court and also the order dated 3.8.2011 passed by the SDM Chhindwara.

Brief facts of the case are that the applicant and the respondent are husband and wife. The respondent has moved an application under Section 97 of Cr.P.C. before the SDM Court to get the custody for her minor daughter. Vide order dated 16.4.2010 the SDM dismissed the application, but vide order dated 21.5.2010 passed by the First Additional Sessions Judge, Chhindwara in Criminal Revision No.88/2010 the matter was restored and it was directed that custody of minor daughter be given to the respondent. Thereafter

the applicant has filed M.Cr.C. No.6053/2010 before the High Court, which was dismissed on 12.7.2011 on merits. Thereafter the respondent prayed before the SDM Court for compliance of that order, and therefore search warrant was issued. Again the proceedings were objected by the applicant before the SDM Court and Criminal Revision No.541/2011 was also filed, which was disposed of by the Revisionary Court vide order dated 3.8.2011. Thereafter the applicant has challenged the matter before the Revisionary Court by filing Criminal Revision No.171/2011 and the learned Second Additional Sessions Judge vide order dated 26.11.2011 dismissed the revision.

Learned counsel for the applicant submits that the proceedings pending before the SDM were not maintainable, because custody of a child obtained by the father cannot be said to be a wrongful confinement, and therefore the proceedings may be quashed. Learned counsel for the applicant further submits that in the order dated 12.7.2011 passed by this Court in M.Cr.C. No.6053/2010, such a position could not be assessed by the Court, and therefore at present proceedings may be quashed. Learned counsel for the applicant has placed his reliance upon the judgments of the Hon'ble Apex Court in the case of

**“State of Haryana Vs. Bhup Singh”, (AIR 2009 SC 1252, “Vishnu Datt Sharma Vs. Manju Sharma”, (AIR 2009 SC 2254)** and the order of the Full Bench of this Court in the case of **“Madhukar Rao Vs. State of MP”, [2000(1) MPLJ 289**, and it is contended that the order dated 12.7.2011 passed by this Court in M.Cr.C. No.6053/2010 is not binding to the Court below, therefore it is prayed that the proceedings pending before the SDM Court may be quashed.

On the other hand, learned counsel for the respondent has submitted that at present the order dated 12.7.2011 was passed by this Court in M.Cr.C. No.6053/2010 on the basis of contentions raised before this Court. No such contention was raised before the Court that proceeding under Section 97 of Cr.P.C. was not maintainable. He has invited attention of this Court to the judgment of the Hon'ble Apex Court in the case of **“Hari Singh Mann Vs. Harbhajan Singh Bajwa”, (2000 AIR SCW 3848)** to show that a criminal court cannot review its own order even under Section 482 of Cr.P.C., and therefore it is prayed that the present application filed under Section 482 of Cr.P.C. may be dismissed.

It appears that the present application is filed against the order passed by the Revisionary Court

in Criminal Revision No.171/2011, but actually that order was nothing but passed in compliance to the order dated 12.7.2011 passed by this Court in M.Cr.C. No.6053/2010. Actually after passing the order, no criminal court can review its own order in light of the judgment of the Hon'ble Apex Court in the case of **Hari Singh Mann (supra)**, no review can be done under the provisions of Section 482 of Cr.P.C. and therefore if at the time of passing of order dated 12.7.2011, contention for maintainability of the proceeding under Section 97 of Cr.P.C. was not raised, then such type of contention cannot be raised again and again by the applicant. He had the complete opportunity to raise all the contentions before the Court and thereafter the order was passed. At present this Court has no power to re-examine its own order. No review can be done by this Court, though the order may not be a legal one.

Learned counsel for the applicant has placed his reliance on the judgments of the Hon'ble Apex Court in the case of **Bhup Singh (supra)**, **Vishnu Datt Sharma (supra)** and the order of the Full Bench of this Court in the case of “**Madhukar Rao (supra)**”, but the same are related to the matter of precedents. There is a lot of difference between precedents and the order passed in the same case.

If the order passed in a case and some law point is discussed and interpreted, then that order may be considered as a precedent in another case by the lower Court and the similar Court, but in the present case the order dated 12.7.2011 passed by this Court in M.Cr.C. No.6053/2010 is not an order passed in another case, and therefore it is not precedent. Therefore, the ratio laid down by the Hon'ble Apex Court and the Full Bench of this Court relating to the precedent cannot be applied in the present case. In the present case, the judgment of the Hon'ble Apex Court in the case of **Hari Singh Mann (supra)** shall apply, and therefore this Court cannot review its own order. If the applicant has any grievance against the order dated 12.7.2011, then he may approach the Hon'ble Apex Court. In such circumstances, the present application filed under Section 482 of Cr.P.C. cannot be accepted. The Court below has no option except to comply the order dated 12.7.2011 passed by this Court in M.Cr.C.No.6053/2010.

Consequently, the present application filed by the applicant under Section 482 of Cr.P.C. is hereby dismissed at motion stage.

(N.K.Gupta)  
Judge