

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 27-04-2007

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Crl.R.C.No. 2205 of 2002

T.Stanes & Company Limited

Coimbatore represented by

Mr.William Hobert

Assistant General Manager (Operations)

8/23-24, Race Course Road,

Coimbatore.

... Petitioner

-vs-

1. Thiru. M.G.Mohamed Iqbal, B.Sc., (Agri)  
Agricultural Officer (Quality Control)  
O/o Assistant Director of Agriculture,  
Mettupalayam.

2. The General Agencies

53/66. Main Road, Mettupalayam - 641 301. .... Respondents

Criminal Revision filed seeking direction to call for the orders passed under Section 311 of Criminal Procedure in C.M.P.No.778 of 2002 in S.T.C.No.68 of 1990 on the file of the Special Judge for Essential Commodities Act, Coimbatore, and set aside the said order, dated 12.12.2002.

For petitioner : Ms.Sudha Ramalingam

For respondents : Mr.Hasan Mohamed Jinnah  
Govt. Advocate (Crl.side) for R1

Mr.N.Mani for R2

O R D E R

This Criminal Revision is directed against the Interlocutory Order, dated 12.12.2002 made in C.M.P.No.778 of 2002 in STC No.68/90 on the file of the Special Court under the Essential Commodities Act, Coimbatore.

2. The revision petitioner is the accused No.1 in the case pending before the court below. The first respondent herein filed the criminal complaint under Section 200 (a) of Criminal Procedure Code on the ground that the accused had contravened and violated section 19 (1) of Fertiliser Control Order 1985 and that the same is punishable u/s 7 (i) and (ii) of Essential Commodities Act.

3. The first respondent / complainant had filed the Interlocutory Application in C.M.P.No.778 of 2002 under Section 311 of the Code of Criminal Procedure to recall P.W.1 for the purpose of further examination, for which, it is stated by the first respondent, before the trial court, that due to inadvertence, while P.W.1, Agricultural Officer Thiru.Iqbal was examined, certain pages of the stock register were left out from marking, though they are vital documents for the purpose of establishing the prosecution case and on that ground, the prosecution pleaded for recalling P.W.1, so as to examine the witness further. The revision petitioner / A1 had raised his objection, by way of filing counter. The trial court considering the arguments advanced by both sides, has allowed the petition to recall P.W.1. Against which, this Criminal Revision Petition has been preferred by the petitioner / A1.

4. Learned counsel appearing for the revision petitioner submits that the petition has been filed before the trial court, under Section 311 of the Code of Criminal Procedure to fill up the lacuna in the prosecution case. According to the revision petitioner, there is no reason as to why the witness P.W.1 has to be recalled as the second time, especially when the same witness had been permitted to be re-examined, and some documents were marked through him. According to the learned counsel for the revision petitioner, the impugned order passed by the trial court, permitting to recall P.W.1 for marking document would prejudice the petitioner / A1.

5. The first contention raised by the learned Government Advocate appearing for the first respondent is that the revision petition itself is not maintainable, since the revision petitioner cannot challenge the order passed in the Interlocutory Application filed under Section 311 Cr.P.C, in view of Section 397 (2) Cr.P.C. Further, submitted that as per the finding of the court below, by recalling P.W.1 and marking the relevant pages of the document, which was already produced before the court, the revision petitioner would not be prejudiced. In support of his contention, Mr.Hasan Mohamed Jinnah, the learned Government Advocate cited the following

decisions reported in 1) 1985 Crimes (1) 121, Umed Singh & others vs. Devi Singh & others and 2) 1980 CrL.J 1018, Dawarka Dass vs. State of Himachal Pradesh.

6. The learned Government Advocate further submits that the case is of the year 1990 and still pending before the trial court on trivial grounds. After the closure of the prosecution evidence, the case was posted for questioning the accused under Section 313 Cr.P.C and the questioning was also over. He further submitted that the criminal revision preferred by the petitioner / A1 is not legally sustainable, in view of Section 397 (2) of the Code of Criminal Procedure.

7. In the decision, Shailendra Kumar vs. State of Bihar, reported in 2002 SCC (Cri) 230, the Hon'ble Supreme Court has held as follows "Section 311 empowers the court to summon material witnesses though not summoned as witnesses and to examine or recall and re-examine if their evidence appears to it to be essential to the just decision of the case. Section 311 reveals that it is of a very wide amplitude and if there is any negligence, laches or mistakes by not examining material witnesses, the court's function to render just decision by examining such witnesses at any stage is not, in any way, impaired."

8. In order to enlighten the court on the legal aspect, both the learned counsel have relied on the Full Bench decision of the Hon'ble Supreme Court rendered in Madhu Limaye vs. State of Maharashtra, reported in AIR 1978 SC 47, wherein it has been ruled by the Hon'ble Apex Court, that the inherent power under Section 482 Cr.P.C may be invoked for quashing any interlocutory order, even though revision is prohibited under Section 397 (2) of the Code of Criminal Procedure and formulated the following principles in relation to the exercise of the inherent power of the High Court :

1. That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

2. That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

3. That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

9. In the decision Bhaskar Industries Ltd., vs. Bhiwani

Denim & Apparels Ltd., and others, reported in 2001 SCC (Cri) 1254, the Hon'ble Apex Court has held as follows : "The interdict contained in Section 397 (2) is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test is this : if the contention of the petitioner who moves the superior court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate ? If they would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage."

10. It is not in dispute that the earlier order passed by the Hon'ble Apex Court in Amar Nath vs. State of Haryana, reported in 1977 SCC (Cri) 585, holding that no power in the High Court to revise interlocutory order and the inherent powers cannot be exercised when there is an express bar in a provision of the Code, has been modified in Madhu Limaye.s case.

11. In the light of the aforesaid decision of the Hon'ble Apex Court, it is clear that though there is a bar under Section 397 (2) Cr.P.C to maintain a criminal revision against the interlocutory orders, under Section 482 of the Code of Criminal Procedure, this Court can invoke the inherent powers and quash the interlocutory orders.

12. As per Section 482 Cr.P.C, only to prevent abuse of process of any court, which is subordinate to this Court or otherwise to secure the ends of justice, the inherent power can be invoked, for which the revision petitioner has to establish that the impugned order is an abuse of process of the court below.

13. It is not in dispute that P.W.1 was already examined and subsequently, recalled for marking a document. By the impugned order, the learned Judicial Magistrate has allowed the petition filed by the respondent / complainant to recall the said witness for the purpose of marking a particular page of the register, which was left out, while other pages of the register were marked. According to the learned Government Advocate, the impugned order would not prejudice the revision petitioner.

14. Learned Government Advocate further contended that allowing the petition filed under Section 311 Cr.P.C to recall P.W.1 for marking document itself would not be illegal and it



cannot be construed as abuse of process of the Court.

15. Punjab and Haryana High Court, in the decision Surinder Singh vs. State, reported in 1988 (2) Cri 35, has held that the Magistrate ordering production of additional witnesses, being an interlocutory order is not open to revision under Section 397 (2) Cr.P.C.

16. Himachal Pradesh High Court, in the decision Dawarka Dass vs. State of Himachal Pradesh, reported in 1980 CrL.L.J.1018, has held that the order which is sought to be challenged being an interlocutory order passed by the Magistrate during the course of the trial, held that the impugned order was not revisable under Section 397 (2) of the Code of Criminal Procedure, but in the interest of justice, keeping in view the principles of natural justice, the inherent power under Section 482 can be invoked.

17. In the decision Sanjay vs. State of Haryana, reported in 2005 CrL.L.J.287, Punjab and Haryana High Court has held that an order of rejection of application under Section 311 Cr.P.C is an interlocutory order and hence revision is not maintainable.

18. From the facts and circumstances of the case, in the light of the decisions of the Hon'ble Apex Court and various High Courts, it is clear that the trial court exercising its discretion has allowed the petition filed under Section 311 Cr.P.C. The impugned order cannot be said as violative of any provision of the Code of Criminal Procedure or any other law in force. Therefore, there is no question of preventing any abuse of process by the court below, by way of invoking the inherent power under Section 482 of Cr.P.C. would arise. Similarly to secure the ends of justice, this Court need not invoke the inherent power, since marking a particular page of the register, that was already marked would not prejudice the revision petitioner / accused, and he is also at liberty to raise all his defence which are available under law before the trial court. Therefore, in the light of the decisions referred above, I am of the considered view that the inherent power under Section 482 of the Code of Criminal procedure cannot be invoked and hence, in view of Section 397 (2) Cr.P.C, the criminal revision petition, challenging the interlocutory order passed by the court below is not legally sustainable and hence, the criminal revision fails.

19. In the result, the Criminal Revision is dismissed. Since, the matter is pending for a long time, the trial court

is directed to dispose the case as early as possible,  
according to law.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

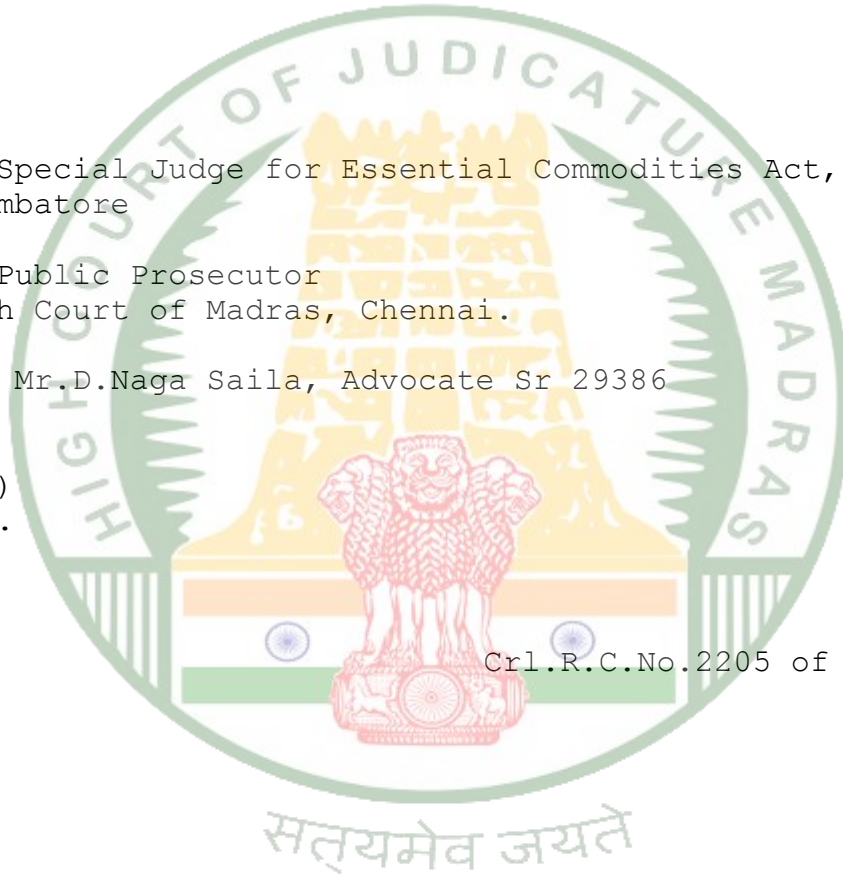
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To

1. The Special Judge for Essential Commodities Act,  
Coimbatore
2. The Public Prosecutor  
High Court of Madras, Chennai.

+1cc to Mr.D.Naga Saila, Advocate Sr 29386

SMV (CO)  
km/11.6.



Cr1.R.C.No.2205 of 2002

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