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AMAR NATH AND OTHERS.

v.

STATE OF HARYANA & OTHERS

July 29, 1977

B [N. L. UNTWALIA AND S. MURTAZA FAZAL ALI, JJ.]

Code of Criminal Procedure, 1973—*Ss.* 397 *and* 482—*Scope of.*

Interlocutory order—What is—Order compelling persons to face trial without proper application of mind by the Magistrate—If an interlocutory order.

In the F.I.R. filed by the complainant, a number of persons, including the appellants, were mentioned as participants in a murder. On perusal of the final C report submitted by the Police, the Judicial Magistrate set them at liberty. The complainant's revision petition against the order of the Judicial Magistrate was dismissed by the Additional Sessions Judge whereupon the complainant filed a regular complaint before the Judicial Magistrate against all the accused, including the appellants. When this complaint was dismissed by the Judicial Magistrate, the complainant went in revision before the Sessions Judge who remanded the case to the Judicial Magistrate for further enquiry. The Judicial Magistrate then straightaway issued summons to the appellants.

D Dismissing the appellant's petition under ss. 397 and 482 of the Code of Criminal Procedure, 1973, for quashing the order of the Judicial Magistrate, the High Court held that the Judicial Magistrate's order being an interlocutory order, a revision to the High Court was barred by s. 397(2) and that since the revision was barred, the Court could not take up the case under s. 482 of the Code.

Allowing the appeal and remanding the case to the High Court,

E HELD : The impugned order of the Judicial Magistrate could not be said to be an interlocutory order and does not fall within the mischief of s. 397(2) and, therefore, a revision against this order was fully competent under s. 397(1) or under s. 482 of the Code because the scope of both the sections in a matter of this kind is more or less the same. [229H]

1. Where a revision to the High Court against the order of the Subordinate Judge is expressly barred under s. 397(2) the inherent powers contained in s. 482 would not be available to defeat the bar contained in s. 397(2). Section 482 F contains inherent powers of the Court and does not confer any new powers but preserves the powers which the High Court already possessed. A harmonious construction of ss. 397 and 482 would lead to the conclusion that, where a particular order is expressly barred under s. 397(2) and cannot be the subject of revision by the High Court, the provisions of s. 482 would not apply. It is well settled that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject-matter. Where there is an express provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers. [224G-H]

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2. The term "interlocutory order" is a term of well-known legal significance which has been used in various statutes. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. The term "interlocutory order" in s. 397(2) has been used in a restricted sense and not in any broad and artistic sense. It merely denotes orders of a purely interim or temporary nature 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 H 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 provision in s. 397 of the Code. 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 s. 397(2) of the 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 orders so as to be outside the purview of the revisional jurisdiction of the High Court. [227D-G]

Central Bank of India v. *Gokal Chand* A.I.R. 1967 S.C. 799, 800, *Mohan Lal Magan Lal Thacker* v. *State of Gujarat,* [1968] 2 S.C.R. 685, *Baldevdas* v. *Filmistan Distributors (India) Pvt. Ltd.,* A.I.R. 1970 S.C. 406, *Standard Glass Beads Factory and Anr.* v. *Shri Dhar & Ors.,* A.I.R. 1960 All. 692, *Union of India* v. *Khetra Mohan Banerjee,* A.I.R. 1960 Cal. 190, *Gokal Chand* v. *Sanwal Das & Others,* A.I.R. 1920 Lah. 326, *Begum Aftab Kamani* v. *Shri Lal Chand Khanna,* A.I.R. 1969 Delhi 85 and *Har Parshad Wali and Anr.* v. *Naranjan Nath Matoo and Others,* A.I.R. 1959 J & K 139 referred to.

In the instant case, the impugned order cannot be said to be an interlocutory order which could not be revised by the High Court under s. 397(1) and (2) of the Code. By virtue of the order of the Judicial Magistrate, as affirmed by the Additional Sessions Judge, the appellants acquired a valuable right of not being put on trial unless a proper order was made against them. The complaint made for the second time was dismissed by the Judicial Magistrate on merits; in revision the Sessions Judge ordered further enquiry and the Judicial Magistrate straightaway summoned the appellants, which meant that they were to be put on trial. With the passing of the impugned order, proceedings started and the question of the appellants being put on trial arose. Undoubtedly, this was a valuable right which the appellants possessed and which was denied to them by the impugned order. It cannot, therefore, be said that the appellants were not prejudiced or that any right of theirs was not involved by that order. The impugned order was, therefore, one of moment to the appellants involving a decision regarding their rights. Compelling the appellants to face a trial without proper application of mind by the Magistrate, cannot be held to be an interlocutory matter but one which decided a serious question as to the rights of the appellants. [229C-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 124 of 1977.

Appeal by Special Leave from the Judgment and Order dated 14-2-77 of the Punjab and Haryana High Court in Crl. Misc. Petition No. 6070 of 1976.

D. Mookerjee and *D. N. Mukherjee,* for the Appellants.

H. S. Marwah, for Respondent No. 1

Anand Prakash and *S. C. Patel,* for Respondent No. 2

The Judgment of the Court was delivered by

FAZAL ALI, J.—This appeal by special leave involves an important question as to the interpretation, scope, ambit and connotation of the word "interlocutory order" as appearing in sub s. (2) of s. 397 of the Code of Criminal Procedure 1973. For the purpose of brevity, we shall refer to the Code of Criminal Procedure, 1898 as "the 1898 Code", to the Code of Criminal Procedure, 1898 as amended in 1955 as "the 1955 Amendment" and to the Code of Criminal Procedure, 1973 as "the 1973 Code". The appeal arises in the following circumstances.

An incident took place in village Amin on April 23, 1976 in the course of which three persons died and F.I.R. No. 139 dated April

A 23, 1976 was filed at police station Butana, District Karnal at about 5-30 P.M. The F.I.R. mentioned a number of accused persons including the appellants as having participated in the occurrence which resulted in the death of the deceased. The police, after holding investigations, submitted a charge-sheet against the other accused persons except the appellants against whom the police opined that no case at all was made out as no weapon was recovered nor was there B any clear evidence about the participation of the appellants. The police thus submitted its final report under s. 173 of the 1973 Code insofar as the appellants were concerned. The report was placed before Mr. B. K. Gupta the Judicial Magistrate, Ist Class, Karnal, who after perusing the same set the appellants at liberty after having accepted the report. It appears that the complainant filed a revision petition before the Additional Sessions Judge, Karnal against the C order of the Judicial Magistrate, Ist Class, Karnal releasing the appellants, but the same was dismissed on July 3, 1976. The informant filed a regular complaint before the Judicial Magistrate, Ist Class, on July 1, 1976 against all the 11 accused including the appellants. The learned Magistrate, after having examined the complainant and going through the record, dismissed the complaint as he was satisfied that no case was made out against the appellants. Thereafter D the complainant took up the matter in revision before the Sessions Judge, Karnal, who this time accepted the revision petition and remanded the case to the Judicial Magistrate for further enquiry. On November 15, 1976, the learned Judicial Magistrate, on receiving the order of the Sessions Judge, issued summons to the appellants straightaway. The appellants then moved the High Court under s. 482 and s. 397 of the 1973 Code for quashing the order of the Judi- E cial Magistrate mainly on the ground that the Magistrate had issued the summons in a mechanical manner without applying his judicial mind to the facts of the case. The High Court dismissed the petition *in limine* and refused to entertain it on the ground that as the order of the Judicial Magistrate dated November 15, 1976 summoning the appellants was an interlocutory order, a revision to the High Court was barred by virtue of sub s. (2) of s. 397 of the 1973 Code. F The learned Judge further held that as the revision was barred, the Court could not take up the case under s. 482 in order to quash the very order of the Judicial Magistrate under s. 397(1) of the 1973 Code. Otherwise the very object of s. 397(2) would be defeated.

While we fully agree with the view taken by the learned Judge G that where a revision to the High Court against the order of the Subordinate Judge is expressly barred under sub-s. (2) of s. 397 of the 1973 Code the inherent powers contained in s. 482 would not be available to defeat the bar contained in s. 397(2). Section 482 of the 1973 Code contains the inherent powers of the Court and does not confer any new powers but preserves the powers which the High Court already possessed. A harmonious construction of ss. H 397 and 482 would lead to the irresistible conclusion that where a particular order is expressly barred under s. 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of s. 482 would not apply. It is well settled that the inherent

powers of the Court can ordinarily be exercised when there is no express provision on the subject-matter. Where there is an express provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers.

So far as the second plank of the view of the learned Judge that the order of the Judicial Magistrate in the instant case was an interlocutory order is concerned, it is a matter which merits serious consideration. A history of the criminal legislation in India would manifestly reveal that so far as the Code of Criminal Procedure is concerned both in the 1898 Code and 1955 Amendment the widest possible powers of revision had been given to the High Court under ss. 435 and 439 of those Codes. The High Court could examine the propriety of any order—whether final or interlocutory—passed by any Subordinate Court in a criminal matter. No limitation and restriction on the powers of the High Court were placed. But this Court as also the various High Courts in India, by a long course of decisions, confined the exercise of revisional powers only to cases where the impugned order suffered from any error of law or any legal infirmity causing injustice or prejudice to the accused or was manifestly foolish or perverse. These restrictions were placed by the case law, merely as a rule of prudence rather than a rule of law and in suitable cases the High Courts had the undoubted power to interfere with the impugned order even on facts. Sections 435 and 439 being identical in the 1898 Code and 1955 Amendment insofar as they are relevant run, thus :

> "435(1) The High Court or any Sessions Judge or District Magistrate, or any Sub-divisional Magistrate empowered by the State Government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his 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....."

> "439.(1) In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of appeal by section 423, 426, 427 and 428 or on a Court by section 338, and may enhance the sentence; and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

> (2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence."

A In fact the only rider that was put under s. 439 was that where the Court enhanced the sentence the accused had to be given an opportunity of being heard.

The concept of an interlocutory order *qua* the revisional jurisdiction of the High Court, therefore, was completely foreign to the earlier Code. Subsequently it appears that there had been large number of arrears and the High Courts were flooded with revisions of all kinds against interim or interlocutory orders which led to enormous delay in the disposal of cases and exploitation of the poor accused by the affluent prosecutors. Some times interlocutory orders caused harrassment to the accused by unnecessarily protracting the trials. It was in the background of these facts that the Law Commission dwelt on this aspect of the matter and in the 14th and 41st Reports submitted by the Commission which formed the basis of the 1973 Code the said Commission suggested revolutionary changes to be made in the powers of the High Courts. The recommendations of the Commission were examined carefully by the Government, keeping in view, the following basic considerations :

> "(i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;
>
> (ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and
>
> (iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community."

This is clearly mentioned in the Statement of Objects and Reasons accompanying the 1973 Code. Clause (d) of Paragraph 5 of the Statement of Objects and Reasons runs thus :

> "the powers of revision against interlocutory orders are being taken away, as it has been found to be one of the main contributing factors in the delay of disposal of criminal cases :"

Similarly, replying to the debate in the Lok Sabha on sub-clause (2) of Clause 397, Shri Ram Niwas Mirdha, the Minister concerned, observed as follows :

> "It was stated before the Select Committee that a large number of appeals against interlocutory orders are filed with the result that the appeals got delayed considerably. Some of the more notorious cases concern big business persons. So, this new provision was also welcomed by most of the witnesses as well as the Select Committee..... This was a well-thought out measure so we do not want to delete it."

Thus it would appear that s. 397(2) was incorporated in the 1973 Code with the avowed purpose of cutting out delays and ensuring that the accused persons got a fair trial without much delay and the procedure was not made complicated. Thus the paramount object in inserting this new provision of sub-s. (2) of s. 397 was to safeguard the interest of the accused.

Let us now proceed to interpret the provisions of s. 397 against the historical background of these facts. Sub-section (2) of s. 397 of the 1973 Code may be extracted thus :

> "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 main question which falls for determination in this appeal is as to the what is the connotation of the term "interlocutory order" as appearing in sub-s. (2) of s. 397 which bars any revision of such an order by the High Court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" in s. 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 s. 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 s. 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.

In *Central Bank of India* v. *Gokal Chand*(1) this Court while describing the incidents of an interlocutory order, observed as follows :

> "In the context of s. 38(1), the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders, which are merely procedural

(1) A.I.R. 1967 S.C. 799, 800.

A and do not affect the rights or liabilities of the parties. In a pending proceeding the Controller, may pass many interlocutory orders under ss. 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a B question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties."

C The aforesaid decision clearly illustrates the nature and incidents of an interlocutory order and the incidents given by this Court constitute sufficient guidelines to interpret the connotation of the word "interlocutory order" as appearing in sub-s. (2) of s. 397 of the 1973 Code.

Similarly in a later case in *Mohan Lal Magan Lal Thacker* v. *State of Gujarat*(1) this Court pointed out that the finality of an order could D not be judged by co-relating that order with the controversy in the complaint. The fact that the controversy still remained alive was irrelevant. In that case this Court held that even though it was an interlocutory order, the order was a final order.

Similary in *Baldevdas* v. *Filmistan Distributors (India) Pvt. Ltd.*(2) while interpreting the import of the words "case decided" appearing in s. 115 of the Code of Civil Procedure, this Court observed as follows : E

"A case may be said to be decided, if the Court adjudicates for the purposes of the suit some right or obligation of the parties in controversy;"

Apart from this it would appear that under the various provisions of the Letters Patent of the High Courts in India, an appeal lies to a F Division Bench from an order passed by a Single Judge and some High Courts have held that even though the order may appear to be an interlocutory one where it does decide one of the aspect of the rights of the parties it is, appealable. For instance, an order of a Single Judge granting a temporary injunction was held by a Full Bench of Allahabad High Court in *Standard Glass Beads Factory and Anr.* v. *Shri Dhar & Ors.*(3) as not being an interlocutory order having decided some rights of the parties and was, therefore, appealable. To G the same effect are the decisions of the Calcutta High Court in *Union of India* v. *Khetra Mohan Banerjee*(4), of the Lahore High Court in *Gokal Chand* v. *Sanwal Das and others;*(5) of the Delhi High Court

(1) [1968] 2 S.C.R. 685.
H (2) A.I.R. [1970] S.C. 406.
(3) A.I.R. [1960] All. 692.
(4) A.I.R. [1960] Cal. 190.
(5) A.I.R. [1920] Lah. 326.

in *Begum Aftab Zamani* v. *Shri Lal Chand Khanna*(1) and of the Jammu & Kashmir High Court in *Har Parshad Wali* and *Anr.* v. *Naranjan Nath Matoo and others*(2). A

Applying the aforesaid tests, let us now see whether the order impugned in the instant case can be said to be an interlocutory order as held by the High Court. In the first place, so far as the appellants are concerned, the police had submitted its final report against them and they were released by the Judicial Magistrate. A revision against that order to the Additional Sessions Judge preferred by the complainant had failed. Thus the appellants, by virtue of the order of the Judicial Magistrate as affirmed by the Additional Sessions Judge acquired a valuable right of not being put on trial unless a proper order was made against them. Then came the complaint by respondent No. 2 before the Judicial Magistrate which was also dismissed on merits. The Sessions Judge in revision, however, set aside the order dismissing the complaint and ordered further inquiry. The Magistrate on receiving the order of the Sessions Judge summoned the appellants straightaway which meant that the appellants were to be put on trial. So long as the Judicial Magistrate had not passed this order, no proceedings were started against the appellants, nor were any such proceedings pending against them. It was only with the passing of the impugned order that the proceedings started and the question of the appellants being put up for trial arose for the first time. This was undoubtedly a valuable right which the appellants possessed and which was being denied to them by the impugned order. It cannot, therefore, be said that the appellants were not at all prejudiced, or that any right of theirs was not involved by the impugned order. It is difficult to hold that the impugned order summoning the appellants straightaway was merely an interlocutory order which could not be revised by the High Court under sub-ss. (1) and (2) of s. 397 of the 1973 Code. The order of the Judicial Magistrate summoning the appellants in the circumstances of the present case, particularly having regard to what had preceded, was undoubtedly a matter of moment, and a valuable right of the appellants had been taken away by the Magistrate's passing an order *prima facie* in a mechanical fashion without applying his mind. We are, therefore, satisfied that the order impugned was one which was a matter of moment and which did involve a decision regarding the rights of the appellants. If the appellants were not summoned, then they could not have faced the trial at all, but by compelling the appellants to face a trial without proper application of mind cannot be held to be an interlocutory matter but one which decided a serious question as to the rights of the appellants to be put on trial. B C D E F G

For these reasons, the order of the Judicial Magistrate, Ist Class, Karnal dated November 15, 1976 cannot be said to be an interlocutory order and does not fall within the mischief of sub-s. (2) of s. 397 of the 1973 Code and is not covered by the same. That being the posi- H

(1) A.I.R. 1969 Delhi 85.
(2) A.I.R. 1959 J. & K. 139.

A tion, a revision against this order was fully competent under s. 397(1) or under s. 482 of the same Code, because the scope of both these sections in a matter of this kind is more or less the same.

As we propose to remand this case to the High Court to decide the revision on merits, we refrain from making any observation regarding the merits of the case. The appeal is, therefore, allowed, the B order of the High Court dated February 14, 1977 refusing to entertain the revision petition of the appellants is set aside. The High Court is directed to admit the revision petition filed by the appellants and to decide it on merits in accordance with the law.

P.B.R. *Appeal allowed.*