

Court No. - 82

Case :- CRIMINAL REVISION No. - 3859 of 2023

Revisionist :- Maksood

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Sunil Kumar Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Shiv Shanker Prasad,J.

Heard learned counsel for the revisionist and learned A.G.A. as well as perused the material available on record.

This criminal revision under Section 397/401 Cr.P.C. has been filed by the revisionist for quashing the order dated 25.05.2023 passed by Principal Judge, Family Court, Sambhal at Chandausi, in Misc. Case No.51 of 2020 (Smt. Shamshadi Vs. Maksood), under Section 125(3) Cr.P.C., Police Station Baniyather, District Sambhal, whereby the concerned Judge has rejected the bail application of the revisionist.

On the matter being taken up, before considering the case on merit, learned A.G.A. has made preliminary objection to the maintainability of the present instant criminal revision by contending that since the order impugned is an interim/interlocutory order, the present revision under Section 397/401 Cr.P.C. is not maintainable.

On the cumulative strength of the aforesaid, learned A.G.A. submits that the present criminal revision is liable to be dismissed as not maintainable.

On the pointed query made by this Court to the learned counsel for the revisionist as to under which provision of law, the present criminal revision against an interlocutory/interim order is maintainable, he could not answer the same.

The Apex Court in the case of ***Amar Nath & Others Vs. State of Haryana & Others*** reported in ***1977 0 AIR (SC) 2185*** has held as follows:

"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 Code of Criminal Procedure."

The Apex Court has recently been followed by another Division Bench of the Apex Court in the case of **Honnaiah T.H. Vs. State of Karnataka & Others reported in 2022 SCC OnLine SC 1001**. The Apex Court in the case of Honnaiah T.H. (Supra) has opined as follows:

"13. There would be a serious miscarriage of justice in the course of the criminal trial if the statement were not to be marked as an exhibit since that forms the basis of the registration of the FIR. The order of the trial judge cannot in these circumstances be treated as merely procedural or of an interlocutory in nature since it has the potential to affect the substantive course of the prosecution. The revisional jurisdiction under Section 397 CrPC can be exercised where the interest of public justice requires interference for correction of manifest illegality or the prevention of gross miscarriage of justice. A court can exercise its revisional jurisdiction against a final order of acquittal or conviction, or an intermediate order not being interlocutory in nature. In the decision in Amar Nath v State of Haryana, this Court explained the meaning of the term "interlocutory order" in Section 397 (2) CrPC. This Court held that the expression "interlocutory order" denotes orders of a purely interim or temporary nature which do not decide or touch upon the important rights or liabilities of parties. Hence, any order which substantially affects the right of the parties cannot be said to be an "interlocutory order". Speaking for a two-Judge Bench, Justice Murtaza Fazal Ali observed:

"6. [...] 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 Amit Kapoor v Ramesh Chander, (2012) 9 SCC 460; Sheetal Prasad v Sri Kant, (2010) 2 SCC 190 6 (1977) 4 SCC 137 as to be outside the purview of the revisional jurisdiction of the High Court."

(Emphasis supplied)

In view of the aforesaid, the present criminal revision is dismissed as not maintainable with liberty to avail appropriate remedy available in law.

Certified copy of documents annexed alongwith this revision be returned back to counsel for the revisionist as per Rules.

Order Date :- 19.10.2023
Abhishek Singh