

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P.No. 77 of 2011

Smt. Bakul Das (Suklabaidya),
wife of Shri Iresh Chandra Suklabaidya,
resident of Vill. Ashram Palli(Saidabari),
P.S. Kumarghat, P.O. Kumarghat, Dist. North Tripura

..... Petitioner

-VERSUS-

1. Shri Binoy Bhusan Dey,
son of late Ramesh Chandra Dey
 2. Shri Samiran Dey,
son of late Ramesh Chandra Dey
 3. Shri Bishnupada Dey,
son of late Ramesh Chandra Dey
- all are residents of village Nedavi,
P.O. & P.S. Kumarghat, Dist. North Tripura
4. The State of Tripura,
represented by the Secretary, Home Department,
Govt. of Tripura, Civil Secretariat, Agartala,
New Capital Complex, P.O. Kunjaban,
P. S. New Capital Complex, Dist. West Tripura

..... Respondents

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the appellant	:	Mr. D. C. Roy, Advocate
For the respondents	:	Mr. S. Deb, Sr. Advocate Mr. S. Datta, Advocate
Date of hearing	:	25.06.2015
Date of judgment & order	:	13.07.2015
Whether fit for reporting	:	Yes

JUDGMENT & ORDER

By this revision petition filed under Section 397 read with Section 401 of the Cr.P.C. the legality, validity and propriety of the order dated 19.09.2011 delivered in Special Case No. 03/2011 by the Special Judge, North Tripura, Kailasahar, for purpose of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 are called in question.

[2] By the impugned order dated 19.09.2011, the accused persons were discharged from the criminal liability holding that :

"Only thing come out is insult, intimidation by utterance 'sons of Dhupa'. It is not clear whether by such utterance the accused intended to humiliate the member of Scheduled Caste to attract the provision of the Act. It is necessary to prove that addressing by caste name was for the purpose of humiliating the complainant. In absence of such proof no offence stands committed under this Act. This view as laid down by the Kerala High Court in State of Kerala Vs. V. P. Hossen, 2002 CrLJ 3441. There is also no evidence collected to show the scheduled caste status of the complainant or knowledge of the accused that complainant belonging to scheduled caste.

Therefore, basic ingredients that abusement should be intentional not concluded from the collected evidence."

The complaint petition allegation, evidence collected by the I.O. if un-rebutted makes of no offence punishable u/s 3(4)(5)(8) or (9) of the Scheduled Caste and Scheduled Tribe, Prevention of Atrocities Act, 1989.

In view of the above findings, I am of considered view that there is no material kin this case to frame charge against the accused persons and also the absconding

accused. Therefore, the accused persons stand discharged."

[3] The essential facts for the purpose of appreciation of the challenge may be laid at the outset. The petitioner initially filed a complaint in the Court of the Chief Judicial Magistrate, North Tripura, Kailasahar (now Unakoti District) alleging that the complainant purchased a piece of land from one Brejendra Ch. Das but the accused persons, as the complainant is from Dhupa community which is recognized as the Scheduled Caste, have taken several attempts, out of their hatred, for dispossessing her from the said land.

[4] On 23.05.2005 when she was sowing saplings of paddy, one accused person by misleading the police station succeeded in getting the restraint order. As sequel of that occurrence, the accused persons in an orchestrated manner on 26.06.2005 impleaded the son of the complainant namely, Indrajit Suklabaidya, in a criminal case. When the police came to apprehend Indrajit Suklabaidya, the accused persons standing in a queue to humiliate her son called him by the name of the community and uttered loudly 'son of Dhupa' and on the following day her son was released.

[5] For the purpose of grabbing her land, the accused persons succeeded to obtain an order under Section 144 of the

Cr.P.C., with a motive to cause unlawful loss to the complainant. For the said order, the complainant was deprived to prepare the land for the next paddy. Even thereafter, the accused persons instituted a proceeding under Section 107 of the Cr.P.C. For conducting all those cases, the complainant had to spend a sum of Rs.12,000.

[6] That was not the end. The accused persons appeared in the house of one Sudhangshu Deb, uttered slang language calling the community of the complainant and expressed that the complainant and his family would be ruined by instituting cases. Thus, a series of cases had been instituted at the instance of the accused persons.

[7] Without taking cognizance, the Chief Judicial Magistrate forwarded the complaint, relevant in the instant case, for due investigation by the police. Thus, the Kumarghat P.S. Case No. 106/2009 u/s 3(4)(5)(8) or (9) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered and taken up for investigation.

[8] On completion of the investigation, the final police report was filed charge-sheeting the respondents No. 1, 2 and 3 with the observations as under :

“During investigation from the seized documents, documents submitted with the complaint and

statement of the witnesses it has been transpired that:

(i) The complainant is a member of SC (Dhoba Community) of his State. On the other hand, the accused persons belong to General Caste of Hindu Community.

(ii) Complainant purchased one land measuring 20 satak on payment of Rs. 17,000/- (Rupees Seventeen thousand) from one Shri Brajendra Das son of late Labaram Das of Nidevi , P.S. KGT at eastern bank of Manu river under KGT Tahashil Mouja KGT by an unregistered deed dated 17.03.2005 and duly inducted the land into the physical possession of the complaint.

(iii) On 23.05.2005, F.I.R. named accused person, Shri Binoy Bhusan Dey son of late Ramesh Ch. Dey created obstruction when the complainant and her day laborers were working at the said land and called police to intervene. Police stopped the work in the said land of the complainant and to prevent any breach of peace issued PR vide P.R. No. 162/2005 dated 23.05.2005 of KGT P.S. under Section 107 Cr.P.C. against (I) Shri Iresh Suklabaidya son of late Suresh Suklabaidya (ii) Shri Kripesh Suklaibadya, son of late Suresh Suklabaidya (iii) Shri Joydeb Suklabaidya son of Shri Kripesh Suklabaidya (iv) Smti. Bakul Suklabaidya wife of Shri Iresh Suklabaidya (v) Subhash Suklabaidya son of Shri Shyama Charan Suklabaidya and (vi) Shri Monoranjan Suklabaidya son of late Suresh Suklabaidya of Asrampalli under KGT P.S. on complaint of Shri Binay Bhusan Dey on 22.05.2005. On this P.R. show cause notice was issued by the S.D.M. dated 08.06.2005 against above

named six accused persons vide No. MGR 171(M)/05/U/S 107/Cr.P.C.

(iv) On 26.06.2005, police arrested Shri Indrajit Suklabaidya vide G.D. entry No. 1029/05/U/S 151 Cr.P.C. and forwarded to Ld. Court of Chief Judicial Magistrate, North Tripura, Kailashahar next day on 27.06.2005 from where Indrajit Suklabaidya was discharged from the liability of his arrest.

(v) After this, another case was filed by Shri Binoy Bhusan Dey against Shri Iresh Suklabaidya son of late Suresh Suklabaidya, Shri Kripesh Suklaibadya son of late Suresh Suklabaidya, Smti. Bakul Suklabaidya wife of Shri Iresh Suklabaidya and Shri Indrajit Suklabaidya son of Shri Iresh Suklabaidya of Asrampalli vide Misc. Case No. 39/2005 under Section 144 Cr.P.C. in the court of S.D.M. KLS to harass the member of a SC Community. In his order sheet dated 02.07.2005 the then S.D.M., KLS., ordered the accused persons to restrain themselves and not to enter into the disputed land. Another Misc. Case No. 02/2006 under Section 144 Cr.P.C. was filed by the said Binoy Bhusan Dey against the same opponent party to harass the member of SC Community again and in his order dated 19.01.2006 in connection with the said case, the then S.D.M again order to restrain the opponent party from entering into the disputed land.

(vi) After all this, the complainant Smti Bakul Das filed the Title Suit No. 08/2006 to the Ld. Court of Civil Judge (Jr. Division), Kailashahar, North Tripura against Shri Binly Bhusan Dey, Shri Samiran Dey and Shri Brajendra Das in connection with the fraudulent documents submitted by the A/Ps in different occasions and obstructions created by the A/Ps. In this regard Four Issues were framed viz. (i) is the suit maintainable in his present form? (ii) has the plaintiff

any cause of action to file this suit? (iii) is the plaintiff entitled to get the decree as prayed for? (iv) what other relief/reliefs the parties are entitled? In his judgment the learned Civil Judge (Jr. Division), KLS has opined for the first issue that the suit is maintainable. For the second issue opined that there is a cause of action to file the suit, for the third issue it is opined that the plaintiff is entitled to get the decree as prayed for and for the fourth and last issue, it is opined that "in the present circumstances of the suit I am not inclined to grant not other relief in favour of either of the parties". In his final order learned Civil Judge (Jr. Division), KLS mentioned that "the plaintiff is entitled to maintain her possession in the suit land and is entitled to be restored to the physical possession of this suit land on the vacation of this legal custodian and the defendants, their men and agents are perpetually restrained from entering into the suit land". In connection with the Title Suit the learned Civil Judge(Jr. Division), KLS mentioned that the schedule of land in relation to unregistered deed dated 17.03.2005, which was executed by Shri Brajendra Das in favour of Smti. Bakul Das was correctly mentioned. No documents could be produced by the defendants in this regard.

(vii) Shri Binoy Bhusan Dey filed a Title Appeal No. 40/2006 on the possession of Title Suit No. 08/2006 against Smti. Bakul Das, Shri Samiran Dey and Shri Brajendra Das in the Ld. Court of Addl. District Judge, KLS, North Tripura. The Ld. Addl. District Judge dismissed the appeal on the plea that the appellants could not produce any supporting documents during the trial before the Ld. Court of Civil Judge, (Jr. Division), KLS and on being failed to submit any documents the appeal was dismissed and the judgment passed by the Ld. Civil Judge, (Jr.Division)

KLS dated 28.06.2006 is confirmed. The judgment of Ld. Addl. District Judge, KLS passed on 25.11.2006.

(viii) On receiving the judgment of Hon'ble Civil court the then S.D.M., released the attachment order issued vide Misc. No. 64/2005 dated 29.12.2005 u/S 145 Cr.P.C. and the physical possession of Smti. Bakul Das has been restored.

(ix) From the above discussion of judgment of Ld. Civil Judge (Jr.Division), KLS it is clear that the complainant was disposed from her legal possession of land wrongfully by the A/Ps which hits the ingredients Section 3(1) (v) of SC and ST (Prevention of Atrocities) Act, 1989.

(x) It is transpired from the judgment of the Ld. Civil Judge, (Jr. Division) that the FIR named A/Ps made suit, Criminal and other legal proceedings by submitting such documents which has no legal admissibility and complaint against Smt. Bakul Das who is a member of SC Community and thus hits the ingredients of Section 3 (1) (viii) of SC and ST (Prevention of Atrocities) Act, 1989.

(xi) During investigation it is revealed that the A/Ps used abusive language by calling "Dhobar Baccha" etc., publicly and thus intentionally humiliated the complainant and her family members in public on different occasions at different places which is an act of atrocities and hits the ingredients of Section 3 (1)(x) of SC and ST (Prevention of Atrocities) Act, 1989.

(xii) During investigation the complainant informed that Rs.70,000/- (approx.) has been expensed during trial of various cases filed by the A/Ps. Though the complt refused to produce any documents in support

of her claim and informed that she will produce all these documents before the Ld. Court during the trial of the case.

From the statement, seized documents produced along with the complaint, prima facie charge u/s 3(1)(v)(viii) and (x) read with Section 6 of the same Act has well been established against FIR named A/Ps Shri Binoy Bhusan Dey, son of late Ramesh Ch. Dey, and Sri Samiran Dey, son of late Ramesh Ch. Dey both of Asharampalli, P.S. KGT and prima facie charge u/s 3(1)(v)(viii) and (x) read with Section 6 of the same Act has well been established against FIR named A/P Sri Bishnupada Dey, son of Sri Binoy Bhusan Dey of Asharampalli, P.S. KGT.

Therefore, I submit the charge sheet vide 69/2010 dated 16.09.2010 KGT P.S against the accused persons as stated above for facing trial in the Special Court for justice and thus oblige.

[9] On taking cognizance, the case was taken for framing of the charge and by the impugned order the accused persons have been discharged from the criminal liability as the Special Judge, North Tripura, Kailashahar has observed that he did not find any "evidence" collected by the I.O. to frame the charge.

[10] Mr. S. Deb, learned senior counsel appearing for the respondents No. 1, 2 and 3, the accused persons in the Kumarghat P.S. Case No.106/2009 has raised at the outset a jurisprudential objection as to the maintainability of this

revisional petition, in view of Section 397 (2) of the Cr.P.C., which reads as under:

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.

[11] According to Mr. Deb, learned senior counsel the impugned order is not a final order, it is an interlocutory order. The order of discharge cannot by itself be termed as the final order unless the framing of charge itself does not bring the proceeding to an end. Mr. Deb, learned senior counsel in support of his laboured logic has referred **Amar Nath & Ors. v. State of Haryana & Ors.**, reported in **(1977) 4 SCC 137**, where the Apex Court has considered the concept of a interlocutory order qua the revisional jurisdiction of the High Court. 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. Sometimes interlocutory orders caused harassment to the accused by unnecessarily protracting the trials. It was in that background, the Law Commission of India in their 14th and 41st

Reports has recommended for restriction as regards the revision against interlocutory orders. The apex court has held that :

"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 terms "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 as to outside the purview of the revisional jurisdiction of the High Court."

[Emphasis supplied]

[12] Mr. Deb, learned senior counsel also has relied on a decision of **Madhu Limaye v. State of Maharashtra**, reported in **(1977) 4 SCC 551**, where it has been held that :

"12. Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. In volume 22 of the third edition of Halsbury's Laws of England at page 742, however, it has been stated in para 1606 :

.. a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of the two words must therefore be considered separately in relation to the particular purpose for which it is required.

In para 1607 it is said :

In general a judgment or order which determines the principal matter in question is termed "final".

In para 1608 at pages 744 and 745 we find the words:

An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declaration of right already given in the final judgment, are to be worked out, is termed "interlocutory". An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals.

[13] On keen reading of these two reports, as relied by Mr. Deb, learned senior counsel, this Court does not find any difficulty to hold that what is an interlocutory order has been clearly delineated in **Madhu Limaye v. State of Maharashtra**. For burying any sort of ambiguity or confusion a relevant part of the report is extracted hereunder :

"We may give a clear example of an order in a civil case which may not be a final order within the meaning of Article 133(1) of the Constitution. Yet it will not be purely or simply of an interlocutory character. Suppose for example, a defendant raises the plea of jurisdiction of a particular Court to try the suit or the bar of limitation and succeeds, then the action is determined finally in that Court. But if the point is decided against him the suit proceeds. Of course, in a given case the point raised may be such that it is interwoven and inter-connected with the other issues in the case, and that it may not be possible to decide it under Order XIV, Rule 2 of the Code of Civil Procedure as a preliminary point of law. But, if it is a pure point of law and is decided one way or the other, then the order deciding such a point may not be interlocutory, albeit—may not be final either. Surely, it will be a case decided, as pointed out by this Court in some decisions, within the meaning of Section 115 of the Code of Civil Procedure. We think it would be just and proper to apply the same kind of test for finding out the real meaning of the expression "interlocutory order" occurring in Section 397(2)."

[Emphasis supplied]

[14] It has been held in **Madhu Limaye v. State of Maharashtra** that an order rejecting the plea of the accused on a point when is accepted will bring end to a particular proceeding will surely be not an interlocutory order within the meaning of Section 397(2) of the Cr.P.C. Thus, the finality of an order, for not being interlocutory in nature, can also be gathered from the incidence of “conclusion of a particular proceeding”.

[15] In the considered opinion of this Court an interlocutory order merely decides some points or matter essential to the progress of the suit or the action or their collaterals, but it is not final decision or judgment on the matter in issue. Where some fact or aspect of a controversy in the course of adjudication of the main dispute between the parties is disposed of by an order but the order does not have the effect of finality to the dispute which the parties brought to the court, the order would nonetheless be an interlocutory order and it would not cease to be an interlocutory order merely because it disposed of a certain aspects of the controversy between the parties. The term “interlocutory order” in Section 397(2) 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 upon the important rights or 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.

[16] Accordingly, this Court does not find any substance in the jurisdictional objection raised by the respondents No. 1, 2 and 3.

[17] Mr. Roy, learned counsel appearing for the petitioner has emphatically submitted that the Special Judge has misdirected his consideration by searching for the evidence in the stage of framing of the charge. It is well settled principle in the criminal jurisprudence that meticulous consideration of evidence and other materials is not necessary in that stage.

[18] In **State by Central Bureau of Investigation v. S. Bangarappa**, reported in **(2001) 1 SCC 369**, it has been held that :

Time and again this Court has pointed out that at the stage of framing charge the court should not enter upon a process of evaluating the evidence by deciding its worth or credibility. The limited exercise during that stage is to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed further vide State of M.P. v. Dr. Krishna Chandra Saksena- (1999) 11 SCC 439.

[Emphasis supplied]

[19] Mr. Roy, learned counsel appearing for the petitioner has persuaded this Court for taking a note of the non-

consideration of the materials in the police papers viz., (1) Census Report containing the list of SC and (2) the SC Certificate dated 07.04.1999 of the victim Indrajit Suklabaidya.

[20] That apart, the SC Certificate of the complainant-petitioner dated 17.09.1982 has also been referred to show that that observation of the Special Judge as noted hereinafter absolutely emanates from brazen non-appreciation of the materials :

“From perusal of the case record it is found that I.O. did not seize any paper to determine the case status of Bakul Das to determine that he (sic) belongs to SC Community.”

[21] Mr. Roy, learned counsel has further submitted that whether the utterance “son of dhoba’ was to humiliate or not, can only be gathered if the context in which those words were uttered is appreciated. The adequate materials as to the context in which such words were uttered have been laid, but those were not appreciated by the Special Judge. Thus, an apparent miscarriage of justice has been caused inasmuch as despite availability of the adequate materials as stated, the accused persons have been discharged by the impugned order.

[22] Mr. Roy, learned counsel for the complainant-petitioner has reiterated that there are adequate materials to frame the charge under Section 3 (v), (viii), (ix) and (x) of the

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. For the purpose of reference, the relevant provisions of Section 3 are reproduced hereunder:

3. Punishments for offence of atrocities-

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

*** * * * ***

(iv) Wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;

*** * * * ***

(viii) Institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix) Gives, any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe.

(x) Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

*** * * * ***

[23] Having due regard to the submission made by the learned counsel for the parties and on scrutiny of the police

papers, this Court is of the view that there are sufficient materials for the Special Court to proceed further by framing the charge under Section 3 (v), (vii), (ix) and (x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and accordingly, the impugned order is interfered with and quashed.

[24] The Special Judge, Unakoti, formerly North Tripura District, is directed to frame the charge and complete the trial as expeditiously as possible.

[25] In the result, this criminal revision petition stands allowed. Send down the LCRs.

JUDGE

A. Ghosh