

IN THE HIGH COURT OF BOMBAY AT GOA.

Criminal Revision Application 56 of 2015

Mr. FRANCO B. MARTINS,
major of age, Indian National,
r/H. No.590/3-A. Bandfoll,
Chinchinim, Salcete, Goa.

..Petitioner

Versus

(1) MRS. ARCHANA PAI KUDCHADKAR,
major of age, Indian National, r/o Near Dr.
Rebello Hospital, Madel,
Margao,Goa.

(2) S T A T E
through the Public Prosecutor,
High Court, Panaji, Goa.

Respondents

....

Mr. Nitin Sardessai, Sr. Advocate with Mr. L.
Raghunandan, Advocate for the appellant.
Mr. Menino Teles, Advocate for respondent no.1.

...

CORAM : K.L. WADANE, J.
Judgment reserved on 22/9/2015
Judgment pronounced on 30/09/2015.

Judgment :

Heard Shri Mr. Nitin Sardessai, learned Senior
counsel with Mr. L. Raghunandan, learned Advocate
appearing for the appellant and Mr. Menino Teles, learned
counsel appearing for the respondent no.1.

2] The petitioner is the original complainant, filed complaint against the respondent no.1-accused for the offence punishable under Section 138 of the Negotiable Instruments Act. The said complaint was filed before the learned Judicial Magistrate First Class, Margaon Goa bearing Criminal Case No. 132/2013 .

3] On 28.3.2013 the respondent no.1 issued a cheque in favour of the petitioner in lieu of the legal enforceable debt for an amount of Rs. Fifteen lakhs. The petitioner deposited the said cheque drawn on ICIC Bank for clearance through the Petitioner's bank i.e. Corporation Bank.

4] On 30th April, 2013 the bank of the respondent no.1 i.e. ICICI bank intimated the Corporation Bank that the said cheque has been returned unpaid with the remark "payment stopped by drawer" .

5] On 10.5.2013 the Corporation Bank in turn informed the petitioner about the said memo dated 30.4.2013 sent by ICICI bank.

6] The petitioner, therefore, sent a demand notice through his Advocate demanding for payment of Rs. Fifteen lakhs. However, the respondent no.1 failed to pay the amount. The petitioner filed a complaint for the offence punishable under Section 138 of the Negotiable Instruments Act.

7] At the time of filing of the complaint, the Advocate of the petitioner-complainant by inadvertently pleaded that the petitioner was intimated of dishonour of cheque on 30.4.2013.

8] The petitioner filed affidavit in evidence on 20.8.2013 committing same mistake as found in the complaint. The petitioner on finding the said typographical error that the date of intimation to the petitioner ought to have mentioned as 10.5.2013, moved an application for amendment of the complaint to correct the same.

9] On 29.10.2013 the learned Judicial Magistrate First Class, after hearing the petitioner, was pleased to allow application to correct the typographical error. After carrying

out the amendment, the complainant filed Affidavit-in-Verification, verifying the contents of the amended complaint. Thereafter the learned Judicial Magistrate First Class has issued process against the respondent no.1. The respondent no1 being aggrieved with the order of the amendment filed Revision Application No.19/2014 before the learned Additional Sessions Judge. On 2.5.2015, the learned Additional Sessions Judge, after hearing both sides, was pleased to allow the Criminal Revision Application and quashed and set aside the order dated 29.3.2013 holding that there was no typographical error considering the contents of the complaint, affidavit and the bank memo dated 30.4.2013. The petitioner has challenged the said order of the learned Additional Sessions Judge by way filing this revision application.

10] I have heard the arguments of Mr. Sardesai, the learned Senior Advocate, appearing for the petitioner and Mr. Teles, the learned Advocate appearing for the respondent no.1.

11] Mr. Nitin Sardesai, the leaned Senior

counsel appearing for the applicant has argued that the order passed by the Judicial Magistrate First Class allowing to amend the typographical mistake is an interlocutory order. Therefore, the Criminal Revision Application against the said order is not maintainable.

12] As against this, Mr. Teles, the learned counsel appearing for the respondent no.1 has argued that the order allowing the amendment attains finality and it cannot be changed or modified in subsequent stage of the proceedings before the Judicial Magistrate First Class. Therefore, according to Mr. Teles, the order passed by the Judicial Magistrate First Class is not an interlocutory order. Therefore, the revision could lay against such order before the learned Additional Sessions Judge. He relied upon the observations made in the case reported in **1977 Cri L.J. 1891** (Amar Nath and others Vs. State of Haryana and others). The Division Bench of Punjab and Haryana Court has observed thus:

"Para 6 :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 diffident. 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".

13] Looking to the observations of the above authority (supra) it appears that the term, "interlocutory" has been defined as an order other than the final decision. Admittedly, the orders must be those which decide the rights of the parties.

14] Mr. Nitin Sardesai, the learned Senior Counsel appearing for the applicant has argued that after the amendment, the respondent no.1 is at liberty to cross-examine the witnesses. Therefore, according to Mr. Sardesai, this is an interlocutory order. He relied upon the observations of this Court reported in 2011 All MR 1603 (Shri Digambar Ganpat Korde Vs. Shri Vinayk Rao Anandrao Gawande and Anr.), which reads thus:

"paragraph 4 :Coming back to the facts pleaded in the present case and bearing in mind the essential ingredients of offence under [section 138](#) of the Negotiable Instruments Act, if the cheque was dishonoured and returned for non-payment in respect of which demand notice was sent and served and furthermore if the amount demanded remained unpaid

despite opportunity availed of as a result of return of demand notices by the accused, the offence in such a case, is said to have been constituted. In such case mistake as to a figure in respect of the amount occurred in the case and brought to the notice of the trial Magistrate was allowed to be rectified or corrected.

Under these circumstances, such order which was interlocutory in its nature, ought not to have been disturbed by the learned Ad-hoc Addl. Sessions Judge”.

15] Considering the facts and the observations of the above case, it appears that the order allowing the typographical mistake is in the nature of interlocutory order. Therefore, the learned Additional Sessions Judge ought not to have entertained such revision. Consequently, the order passed by the Additional Sessions Judge appears to be incorrect. Therefore, it needs to be set aside.

16] Hence, Criminal Revision Application is allowed. The order passed by the learned Additional Sessions Judge dated 2.5.2015 is hereby quashed and set aside and the order passed by the learned Judicial Magistrate First Class, Margaon Goa below Exhibit 12 in Criminal Case No.132/2012 dated 29th October, 2013 is restored.

Criminal Revision Application is disposed of accordingly.

There shall be no order as to costs.

K.L.WADANE, J

mukund