

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 205 OF 2006

Ramprasad s/o Krishnaji Khandelwal,
Age: 42 yrs, Occ: Business,
R/o Khandelwal Plaza, Vazirabad,
Nanded, Dist. Nanded.

... PETITIONER
(Original Complainant)

VERSUS

- 1) The State of Maharashtra,
through its Government Pleader
High court of Judicature of Bombay,
Bench at Aurangabad.
- 2) Mohajam Ali Hashmi s/o Manju Ali Hashmi,
Age: major, Occ: Director, Computric
System & Services (I) Pvt. Ltd.,
R/o Behind Raj Beer Bar, Asadnagar,
Chaitanyanagar Road, Nanded-5.

... RESPONDENTS

...
Mr. G. R. Syed, Advocate for Petitioner.
Mr. A. A. Jagatkar, APP for Respondent No.1 / State.
Mr. R. N. Charan, h/f Mr. Vijay Sharma, Advocate for Respondent No.2.
...

CORAM : **V. K. JADHAV, J.**
DATE : 06th October, 2017.

ORAL JUDGMENT:

. Being aggrieved by the judgment and order passed by III
Ad-hoc Additional Sessions Judge, Nanded dated 10th February, 2006

in Criminal Revision No.9 of 2006, the original Complainant has filed the this criminal writ petition.

2 The Petitioner has filed a complaint against the Respondent / Accused for having committed an offence punishable under Section 138 of the Negotiable Instruments Act. After the evidence of the Complainant and his witnesses came to be recorded, the Respondent / Accused has submitted an application Exhibit 40 in SCC No.1188 of 2003 for sending the disputed cheque Exhibit 23 to the handwriting expert either private or Government to tally his signature on it. The learned Magistrate by order dated 18th January, 2006 below Exhibit 40 has rejected the said application. Being aggrieved by the same, the Respondent / original Accused has preferred Criminal Revision No.9 of 2006 and the III Ad-hoc Additional Sessions Judge, Nanded vide its impugned judgment and order dated 10th February, 2006 has allowed the said revision, quashed and set aside the order passed by the Magistrate and further allowed the application Exhibit 40 in terms of its prayer clause.

3 The learned counsel for Petitioner / original Complainant submits that the revision as against the interlocutory order passed by

the Magistrate refusing to send the disputed cheque for examination to handwriting expert and as such, there is a bar of Section 397 (2) of the Code of Criminal Procedure to entertain the revision by the Sessions Court.

4 The learned counsel for Petitioner / original Complainant in order to substantiate his submissions, placed his reliance on the following two cases:

- a) **Amar Nath and others Vs. State of Haryana and others**, reported in, **AIR 1977 Supreme Court 2185**.
- b) **Sethuraman Vs. Rajamanickam**, reported in, **2009 (5) SCC 153**.

5 The learned counsel for Respondent / original Accused submits that Respondent / original Accused has raised a specific defence that the blank signed cheque has been misused by the Petitioner / original Complainant. The learned counsel submits that the learned Magistrate has rejected the application Exhibit 40 and thus, closed the doors forever for the Respondent / original Accused

to substantiate his defence before the Court. The learned counsel submits that if any order, which substantially affects the rights of the accused or rights of the parties, cannot be said to be an interlocutory order and as such, the bar as provided under Section 397(2) of the Code of Criminal Procedure does not attract. The learned counsel submits that in the case of **T. Nagappa Vs. Y. R. Murlidhar**, reported in, **2008 DGLS (SC) 599**, the Supreme Court has considered the fair trial and observed that the fair trial includes fair and proper opportunities allowed by law to prove the innocence and adducing evidence in support of the defence is a valuable right. The Supreme Court has also observed that denial of that right means denial of fair trial.

6 I have also heard the learned APP for State.

7 On perusal of the record, it appears that the Respondent / original Accused has raised a specific defence that a blank signed cheque has been misused and the disputed cheque is thus, required to be sent for the purpose of comparison of the handwriting appearing in the body of the cheque. The learned Magistrate has rejected the application Exhibit 40 only on the ground that on comparing the

signature with the admitted signature of the Accused, it appears to be the same.

8 In the case of *Amar Nath and others Vs. State of Haryana and others* (supra), relied upon by the learned counsel for Petitioner, in paragraph No.6 of the judgment, the Supreme Court has made the following observations:

“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 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 rights 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 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 be outside the purview of the revisional jurisdiction of the High Court."

9 In the light of the above observations, I do not think that the order passed by the Magistrate challenged in the revision before the Sessions Court is of a purely interim or temporary in nature which

has not decided the important rights or the liabilities of the parties. On the other hand, the order passed by the Magistrate substantially affects the rights of the Respondent / original Accused.

10 In the case of *T. Nagappa Vs. Y. R. Murlidhar* (supra), in paragraph No.9 of the judgment, the Supreme Court has made the following observations:

“9. The learned Trial Judge as also the High Court rejected the contention of the appellant only having regard to the provisions of Section 20 of the Negotiable Instruments Act. The very fact that by reason thereof, only a prima facie right had been conferred upon the holder of the negotiable instrument and the same being subject to the conditions as noticed hereinbefore, we are of the opinion that the application filed by the appellant was bona fide.

The issue now almost stands concluded by a decision of this Court in *Kalyani Baskar (Mrs.) V. M.S. Sampooram (Mrs.)* [(2007) 2 SCC 258] (in which one of us, L. S. Panta, J., was a member) wherein it was held :

"12. Section 243(2) is clear that a Magistrate holding an inquiry under CrPC in respect of an offence triable by him does not exceed his powers

under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the handwriting expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. "Fair trial" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them."

Murlidhar (supra) squarely applies to the facts of the present case.

The revision before the Sessions Court is maintainable. The learned Sessions Judge has rightly quashed and set aside the order of the Magistrate. I do not find any substance in this writ petition. Hence, the following order:

ORDER

- I. Criminal writ petition is hereby dismissed. Rule discharged. In the circumstances, there shall be no order as to the costs.
- II. Criminal writ petition is accordingly disposed of.

[V. K. JADHAV, J.]