

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL R.C. NO.2393 OF 2017

ORDER:

This revision is filed under Section Sections 397 and 401 of Cr.P.C. challenging the order dt.21.04.2017 in Crl.M.P.No.310 of 2017 in Crime No.132 of 2016 cancelling the bail granted by the court and issued N.B.W. allowing the application filed under Section 446 of Cr.P.C.

2. Admittedly, the trial court granted bail to the petitioner under Section 437 Cr.P.C vide order, dated 23.02.2017 in Crl.M.P.No168 of 2017 in Crime No.132 of 2016 subject to certain conditions and later, the conditions were relaxed and thereafter, the prosecution filed an application under Section 446 Cr.P.C. which deals with procedure when the bond has been forfeited. But, the order passed by the courts is virtually an order under Section 439(1)(b) Cr.P.C. i.e. cancellation of bail.

3. Granting bail and its cancellation are only interlocutory orders as held by Apex Court in Amar Nath and others Vs. State of Haryana and others¹, Their Lordships Justice N.L.Untwalia and Justice S.Murtaza Fazal Ali held as follows:

“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 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. Thus, for instance orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports

¹ AIR 1977 SC. 2185

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). 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 case law referred to.”

4 In another decision reported in *Bhaskar Industries Limited Vs. Bhiwani Denim & Apparels Ltd & others*², the Hon’ble Apex Court laid down certain guidelines to determine whether the order under challenge is a final order or an interlocutory order, and Their Lordships Justice K.T.Thomas and Justice K.G.Balakrishnan while deciding revision, defined the word ‘interlocutory order’ in para ‘a’ as follows:

“The interdict contained in Section 397(2) is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test is this: if the contention of the petitioner who moves the superior court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If they would, then the order is not interlocutory inspite of the fact that it was passed during any interlocutory stage.”

5. In similar situation, Their Lordships Justice K.T.Thomas and Justice D.P.Mohapatra in the decision reported in *K.K.Patel and another Vs. State of Gujarat and another*³, held as follows:

“It is now well-neigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage. The feasible test is whether by upholding the objections raised by a

² (2001) 7 S.C.C. 401

³ AIR 2000 SC 3346

party, would it result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code.”

6. In another decision reported in *Mohan Lal Magan Lal Thacker Vs. State of Gujarat*⁴, Their Lordships Chief Justice K.N.Wanchoo, Justice J.M.Shelat, Justice R.S.Bachawat, Justice G.K.Mitter and Justice C.A.Vaidyalingam, after considering various judgments of Federal Court and Privy Council, defined the word ‘interlocutory order’ and held (Per Wanchoo C.J., Shelat J. and Vaidialingam J.) as follows:

“(i) A judgment or order may be final for one purpose and interlocutory another or final as to part and interlocutory as to part. The meaning of the two words ‘final’ and ‘interlocutory’ is, therefore to be considered separately in relation to the particular purpose for which it is required. However, generally speaking a judgment or order which determines the principal matter in question is termed final. It may be final although it directs enquiries or is made on an interlocutory application or reserves liberty to apply. [687 H; 688 A, B].

Salaman Vs. Warner [1891] 1 Q.B. 734, *Standard Discount Co. Vs. La Grange* [1877] 3 C.P.C. 67, *A.Great Eastern Rail Co. [1879] 27 W.R 759*, *Shutrook Vs. Tufnell* [1882] 9 Q.B.D. 621, *Bozson Vs. Altrincham Urban Council* [1903] 1 K.B. 547, *Abdul Rehman Vs. The Kind* [1947] *Cassim & Sons Vs. 60 IA 76*, *S.Kuppusami Rao Vs. King* [1497] F.C.R 180, *Mohammad Amin Brothers Ltd. Vs. Dominion of India* [1949] F.C.R 842, *Sardar Svedna Taher Saifuddin Saheb Vs. The State of Bombay* [1958] S.C.R 1007, *Jethainand and Sons Vs. The State of Uttar Pradesh* [1961] 3 S.C.R 754, *Premchand Satramadas Vs. State of Bihar* [1950] S.C.R 799, *State of Uttar Pradesh Vs. Sujan Singh* [1964] 7 S.C.R and *State of Orissa Vs. Madan Gopal* [1952] S.C.R 28, referred to.

(ii) *The order of the High Court in the present case disposed of the controversy whether the filing of the complaint against the appellant was justified. The finality of that order was not to be judged by co-relating that order with the controversy in the controversy viz., whether the appellant*

⁴ AIR 1968 S.C. 733

had committed the offence charged against him therein. The fact that the controversy remained alive was irrelevant. Consequently the order passed by the High Court in the revision filed by the appellant was final order within the meaning of Art. 134(1)(c). [693 D-H] Ramesh Vs. Patni [1966] 3 S.C.R. 198, relied on.

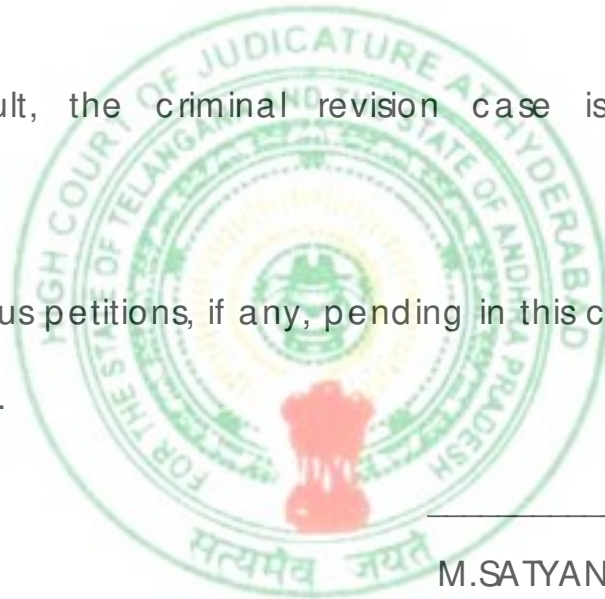
(iii)”

7. In view of the judgments referred supra, the order granting bail or cancellation of bail are only interlocutory against which no revision is maintainable, in view of interdict under Section 397(2) of Cr.P.C.

8. In view of my foregoing discussion, the revision is liable to be dismissed as not maintainable.

9. In the result, the criminal revision case is dismissed as not maintainable.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.



M.SATYANARAYANA MURTHY,J

DATE:04-09-2017

Note:

Furnish C.C. by 6.9.2017.

B/O

ccm

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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