

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1583 OF 2017

ORDER:

This criminal revision is filed under Sections 397 and 401 of Cr.P.C. questioning the propriety and legality of the order dated 02.05.2017 in CrI.M.P.No.1096 of 2017 in C.C.No.94 of 2015 whereby the IX Special Magistrate, Somajiguda, Hyderabad dismissed the petition filed under Section 91(1) of Cr.P.C. to produce the documents as they are books of accounts pertaining to the year 01.04.2014 to 31.03.2015 of Om Enterprises and Income tax returns of Om Enterprises to prove that the amount covered by the cheque was not issued.

Though the petition is filed under Sections 397 and 401 Cr.P.C, this Court cannot dismiss the petition for default but this Court is competent to decide the petition by verifying the material available on record without waiting for the counsel for the petitioner as held by Delhi High Court in **Nisha Sharma and others v. Vinod Kumar Sharma**¹. Therefore, persuaded by the judgment of the Delhi High Court, I would like to decide this revision in accordance with law.

The order under challenge is only to production of documents by exercising power under Section 91(1) of Cr.P.C. and such an order is an interlocutory order as held by the Apex Court in **Amar Nath and others Vs. State of Haryana and others**².

The Apex Court 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

¹ 1990 Cri.L.J. NOC 57 (Delhi)

² AIR 1977 S.C. 2185

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 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.”

Therefore, order issuing summons to the witnesses and production of documents and reports as an interlocutory in nature.

In ***K.K.Patel and another Vs. State of Gujarat and another***³, the Apex Court held that:

“It is now well-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 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.”

In ***Mohan Lal Magan Lal Thacker v. State of Gujarat***⁴, the Constitution Bench had laid down the tests to ascertain whether the order under challenge is interlocutory or not, which read as under:

1. Was the order made upon an application such that a decision in favour of either party would determine the main dispute?
2. Was it made upon an application upon which the main dispute could have been decided?
3. Does the order as made determine the dispute?
4. If the order in question is reversed, would the action have to go on?”

If these tests are applied to the present facts of the case seeking production of documents by exercising power would not

³AIR 2000 SC 3346

⁴ AIR 1968 S.C. 733

culminate or terminate the entire proceedings but still the Court has to proceed. Therefore, the order under challenge is not a final order or that it affected substantial rights of the parties. Therefore, I find no ground to interfere with the impugned order passed by the trial Court by exercising powers under Sections 397 and 401 Cr.P.C. and consequently, the revision is liable to be dismissed at the stage of admission.

Accordingly, the Criminal Revision Case is dismissed.

Miscellaneous petitions, pending if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 12.09.2017
ssp

