

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2610 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 Cr.P.C., is filed challenging the propriety and legality of the order, dated 08.09.2017, passed in CrI.M.P.No.1069 of 2017 in C.C.No.13 of 2017, by the Special Judicial Magistrate of First Class, Hyderabad.

2. The petitioners/A.1 and A.2 filed the aforesaid miscellaneous petition under Section 205 Cr.P.C., to dispense with their presence by permitting them represent their case by special vakalat holder namely Sri Vijay Babu, Advocate. The Court below after considering the material available on record, allowed the same by impugned order, dated 08.09.2017.

3. In the affidavit filed before the Court below, it is stated that A.1 is company and A.2 is its Managing Director. It is stated that A.2 is also Managing Director of M/s. Madhucon Granites Limited, situate at Bangalore and also Director of M/s. Madhucon Sugar and Power Industries Limited situate at Khammam District. The turnover of above said companies is more than Rs.977/- crores per annum. Since A.2 is playing a key role in aforesaid companies, his presence on day today business is very much required, the petitioners filed the aforesaid application for dispensing with their presence before the trial Court. Hence, the petition.

4. The trial Court upon hearing argument of both the counsel, allowed the petition in part while dispensing with their presence on all other dates being represented by Special Vakalat holder,

directed the petitioners to appear on the date of first examination i.e., 251 Cr.P.C., 313 Cr.P.C., examination and on the date of pronouncement of judgment. Challenging the same, the present criminal revision case is filed.

5. The petition under Section 205 Cr.P.C., is filed only to dispense with appearance of the petitioners on all dates of adjournment on the grounds stated above. The order under challenge is only an interlocutory order and against which no revision is maintainable in view of bar under Section 397 (2) Cr.P.C. But, the contention of learned counsel for the petitioners is that it is not an interlocutory order. The word 'Interlocutory order' is not defined either in Criminal Rules of Practice or Criminal Procedure Code, but the Constitutional Bench of the Apex Court in **Mohan Lal Magan Lal Thacker vs. State of Gujarat**¹ laid down certain guidelines to decide whether the order is interlocutory order or not, which reads as under:

"The question as to whether a judgment or an order is final or not has been the subject matter of a number of decisions; yet no single general test for finality has so far been laid down. The reason probably is that 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 "final" and "interlocutory" has, 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 principle matter in question is termed final. It may be final although it directs enquiries or is made on an interlocutory applications or reserves liberty to apply [Halsbury's Laws of England (3rd Ed.) Vol. 22, 742-743]. In some of the English decisions where this question arose, one or the other of the following four tests was applied.

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 ?

¹ AIR 1968 SC 733

3. Does the order as made determine the dispute ?

4. If the order in question is reversed, would the action have to go on ?”

6. Though in **Mohan Lal Magan Lal case (supra)** is reviewed the law declared in various judgments, the Apex Court laid down feasible test in **K.K. Patel v. State of Gujarat and another**² and **Bhaskara Industries Limited v. Bhiwani Denim & Apparels Limited and others**³, wherein the Apex Court laid down a feasible test as to whether an order is interlocutory or final. The only test is, if an order under challenge is allowed to sustain, it would culminate or terminate the proceedings. If it culminates the entire proceedings, it is final or otherwise an interlocutory order.

7. The facts in the aforesaid Judgments are not applicable to the present facts of the case as the order under challenge is purely an Interlocutory order, since it would culminate the entire proceedings pending before the Court. Therefore, the revision is not maintainable against the order passed under Section 205 Cr.P.C., in view of bar under Section 397 (2) Cr.P.C. Identical question was decided by two Courts in **Nandlal v. State of Bihar**⁴ and **Dineshan v. K.V.Baby**⁵, wherein it was held thus:

“An order allowing or disallowing exemption from personal attendance under Section 205 is an interlocutory order and in view of the provisions of Section 397 (2), revision does not lie.”

Applying the same principles laid down by the two Courts in the Judgments referred supra and in view of the possible test laid down by the Apex Court in **K.K. Patel’s case** and **Bhiwani**

² AIR 2000 SC 3346

³ (2001) 7 SCC 401

⁴ 1979 BLJ71

⁵ 1981Cr.LJ 1551 (K)

Denim's case (referred supra) , the revision under Sections 397 and 401 Cr.P.C., is not maintainable against the order under challenge and consequently, the revision case is liable to be dismissed.

8. Accordingly, the Criminal Revision Case is dismissed, however, liberty is given to the petitioners to file appropriate application before appropriate Court.

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

OCTOBER 23, 2017
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M. SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL REVISION CASE No.2610 of 2017

Date: 23.09.2017

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