

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WEDNESDAY THE SIXTH DAY OF SEPTEMBER
TWO THOUSAND AND SEVENTEEN

P R E S E N T

HONOURABLE SRI JUSTICE
M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 276 OF 2017
AND
CRIMINAL REVISION CASE NO. 173 OF 2017

Between :

Thota Sideswara Rao ... Petitioner /Accused

V/s.

The State of Andhra Pradesh
Represented by the Public Prosecutor
High Court of Judicature for the State of
Telangana & Andhra Pradesh,
Hyderabad & Anr. ... Respondents/Respondents

Counsel for the Petitioner : Sri Md. Saleem

Counsel for the Respondents: Public Prosecutor

The court made the following: [COMMON ORDER follows]

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 276 OF 2017
AND
CRIMINAL REVISION CASE NO. 173 OF 2017

COMMON ORDER :

These Criminal Revision Cases are filed under Section 397 and 401 of Cr.P.C., against the orders dated 22/12/2016 passed by the I-Additional Junior Civil Judge, Guntur, in CrI.MP.No. 1000 of 2016 and CrI.MP.No. 1001 of 2016 in C.C.No. 17 of 2015, dismissing the petition filed under Section 45 of the Indian Evidence Act, with a request to send for the promissory note in C.C.No. 696 of 2015, C.C.No. 40 of 2016 and C.C.No.709 of 2015 from the Court of Special Judicial Magistrate of First Class for Prohibition & Excise, Guntur, for making the promissory notes as exhibits in this case.

2. The grounds raised in these Criminal Revision Cases are as hereunder:

- i) *The I-Additional Junior Civil Judge, Guntur erred in dismissing the application filed under section 91 Cr.P.C., without assigning any valid and cogent reasons.*

ii) The I-Additional Junior Civil Judge, Guntur erred in dismissing the application even without considering the reasons assigned in the petition.

iii) The I-Additional Junior Civil Judge, Guntur, ought to have seen that the second respondent is the 'attestor' to the promissory notes in C.C.Nos. 696 and 709 of 2015 and C.C.No. 40 of 2016 and PWs.2 and 3 in their cross-examination stated that they do not know the scribe of Ex.P-1, hence, an application filed seeking to send the document from Prohibition and Excise Court, where the cases are pending adjudication.

iv) In any event, the orders of the court below are unsustainable and the same are liable to be set aside.

3. The contention of the petitioner before the court below is that the second respondent herein who is the complainant in the above case is also 'attestor' to the promissory note executed in favour of Venneganti Venkata Ramana Murthy in CC.No. 696 of 2015 by Mallela Koteswara Rao in CC.No. 709 of 2015 and Sri Nallapati Srinivasa Rao @ Swamy in favour of Nuthikattu Siva Prasad in C.C.No. 40 of 2016. During the cross-examination of PWs 2 and 3 they testified that they does not know Nuthikattu Siva Prasad and the scribe of Ex.P-1 and the person, who executed in favour of Nuthikattu Siva Prasad. Basing on the evidence, the petitioner equally relied on the document, and the Court

ought to have sent for the document under Section 91 Cr.P.C. in C.C.No. 696 of 2015, C.C.No. 40 of 2016 and C.C.No.709 of 2015 from the Court of Special Judicial Magistrate of First Class for Prohibition & Excise, Guntur, for marking the promissory notes as exhibits in the above case.

4. The trial Court dismissed the petitions on the ground that there is no necessity to allow the petitions to send the document in C.C.No. 696 of 2015, C.C.No. 40 of 2016 and C.C.No.709 of 2015 pending on the file of the Court of Special Judicial Magistrate of First Class for Prohibition & Excise, Guntur. The order under challenge is only an order virtually under Section 91 Cr.P.C., which reads as hereunder :

Section 91 of Cr.P.C.

“ Whenever any Court or any Officer in-charge of a Police Station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or Officer, such Court may issue a summons, or such Officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order. ”

5. Therefore, the whole purpose of sending for the document is for trial or inquiry or investigation by the police. The Court is empowered to pass such order and issue a requisition to the Court where other calendar cases are pending. In the present facts of the case, the Court below did not find that these documents are necessary for deciding the issue involved in C.C.No. 17 of 2015.

6. Though several grounds are raised in the above criminal revision cases, the counsel for the petitioner did not appear and advance any arguments. As per the decision in **MISHA SHARMA AND ORS. V/s. VINOD KUMAR SHARMA**¹ the criminal revision cannot be dismissed for default, but this Court can decide the revision on merits without waiting for counsel or the petitioner.

7. Persuaded by the law declared by the Delhi High Court, I would like to decide the present revision cases verifying the available material on record.

8. It appears from the record that a complaint was filed for the offence under section 138 of the Negotiable Instruments Act and during

¹ 1990 CrI. L. J. NOC - 57 { DELHI }

trial the counsel for the petitioner/accused could not elicit that particular witness, who is the 'attestor' of the promissory note and other documents in the other cases. PWs 2 and 3 stated that one Nuthikattu Siva Prasad and the scribe of Ex.P-1 is also the scribe of the promissory note executed in other cases. This admission is of no assistance to the petitioner and the said scribe can scribe any number of promissory notes but that itself is not a ground. Therefore, the trial Court did assign the satisfactory reason in sending for the documents. However, the order under challenge is only an order under section 91 Cr.P.C., which is interlocutory in nature and in view of the bar under section 397 [2] Cr.P.C., no criminal revision is maintainable against an interlocutory application.

9. In decision reported in **AMARNATH AND ORS. V/s. STATE OF HARYANA AND ORS** ², 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

²] AIR 1977 S.C. 2185

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.”

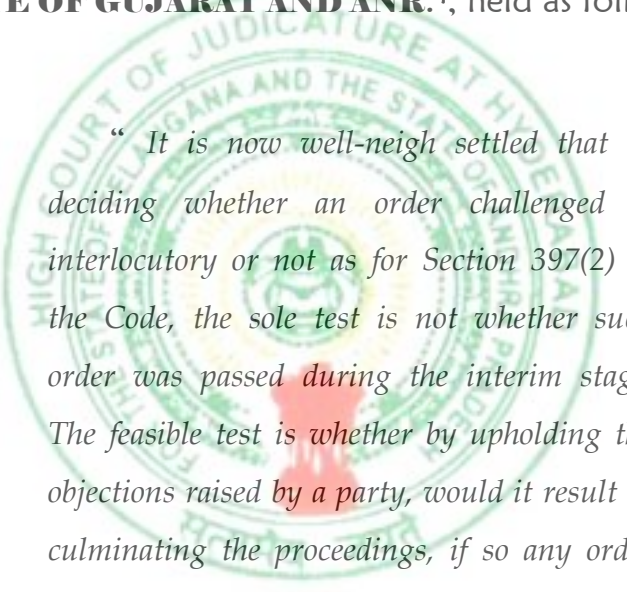
10. In another decision reported in **BHASKAR INDUSTRIES LIMITED V/s. BHIWANI DENIM AND APPARELS LTD. AND ORS.**³, the Hon’ble Apex Court laid down certain guidelines to determine whether the order under challenge is a final order or an interlocutory order, and Their Lordships Justice K.T.Thomas and 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

³ (2001) 7 S.C.C. 401

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 in spite of the fact that it was passed during any interlocutory stage.”

11. In similar situation, Their Lordships Justice K.T.Thomas and Justice D.P.Mohapatra in the decision reported in **K.K. PATEL AND ANR. V/s. STATE OF GUJARAT AND ANR.**⁴, 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 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.”

12. If the order under challenge is allowed to sustain, would it culminate the entire proceedings against the petitioner. If it would culminate its final order and revision is maintainable against such order under Section 397 Cr.P.C. if not no revision is maintainable in view of

⁴] AIR 2000 SC 3346

bar under Clause 2 of Section 397 Cr.P.C. In **SETHURAMAN V/s.**

RAJA MANIKYAM ⁵, the Apex Court held that no revision is maintainable against an order under Section 91 and 311 of Cr.P.C., is not revisable in view of interdict under sub-section 2 of Section 391 of Cr.P.C., on the ground alone the CrI.MP.No. 1000 of 2016 and CrI.MP.No. 1001 of 2016 are not maintainable.

13. In the present case, the petitioner/accused could not elicit that particular witness, who is the 'attestor' of the promissory note and other documents in the other cases. PWs 2 and 3 stated that one Nuthikattu Siva Prasad and the scribe of Ex.P-1 is also the scribe of the promissory note executed in other cases. This admission is of no assistance to the petitioner and the said scribe can scribe any number of promissory notes but that itself is not a ground. Therefore, the trial Court did not satisfy with the reasons assigned in sending for the documents. In the present case, the order would not culminate the proceedings, therefore, the order under challenge is an interlocutory order against which revision is barred under section 397 [2] Cr.P.C.

⁵) 2009 [CrI.LJ] 2247

14. Hence, these Criminal Revision Cases are *dismissed* at the stage of admission holding that it is not a revisable order in view of the bar under section 397 [2] of Cr.P.C.

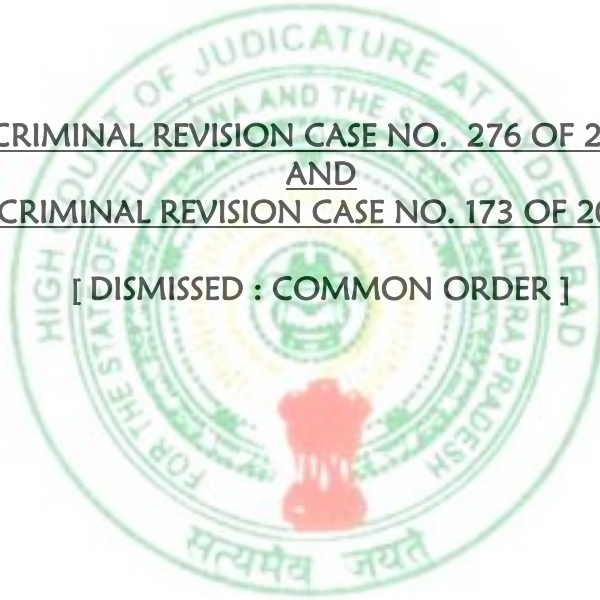
15. As a sequel, *miscellaneous petitions* if any, pending in these Criminal Revision Cases shall stand *closed*.

JUSTICE M. SATYANARAYANA MURTHY.



HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 276 OF 2017
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[DISMISSED : COMMON ORDER]



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