

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL R.C. NO.2275 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. challenging the order, dated 21.07.2017 in CrI.R.P.No.266 of 2015 in C.C.No.1 of 2015 passed by the Special Judge for trial of offences under SCs and STs (POA) Act-cum-VI Addl.Metropolitan Sessions Judge, Secunderabad whereby C.C.No.1 of 2015 which was dismissed under Section 204(4) Cr.P.C. was restored and directed the learned XIX Special Magistrate, Hyderabad to proceed with the matter in accordance with law.

2. The second respondent filed complaint before the magistrate against the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act and when the matter was coming up for payment of process fee to issue notice to the second respondent herein, no process fee was paid on four dates of adjournments from 18.05.2015 to 16.07.2015 within a span of two months, the C.C. was dismissed by exercising power under Section 204(4) Cr.P.C.

3. Aggrieved by the order, the second respondent herein preferred the revision petition which was allowed directing the magistrate to restore C.C. No.1 of 2015 to the file of XIX Special Magistrate, Hyderabad directing to proceed with the case in accordance with law.

4. Aggrieved by the order, the present revision case is filed on various grounds mainly contending that dismissal of case was only

on account of latches on the part of the second respondent and apart from that the order under challenge is filed under Section 397 and 401 Cr.P.C. and that miscarriage of justice has taken place in passing the order and requested this court to set aside the order passed in CrI.R.P.No.266 of 2015 dt.21.07.2017 passed by the Special Judge for trial of offences under SCs and STs (POA) Act-cum-VI Addl.Metropolitan Sessions Judge, Secunderabad.

5. During hearing, learned counsel for the petitioner reiterated the contentions.

6. The present revision is filed challenging the propriety, legality and correctness of the order passed in CrI.R.P.No.266 of 2015 dt.21.7.2017. The petitioner is an accused on whom no notice was served in C.C.No.1 of 2015 filed under Section 138 of Negotiable Instrument Act. But, the court dismissed the complaint on account of non-payment of process fee by exercising power under Section 204(4) Cr.P.C. Such order can be set aside by the revisional court by exercising power under Section 397 Cr.P.C. Accordingly, the revisional court set aside the order since there is manifest perversity and apparent error in the order passed by the XIX Special Magistrate, Hyderabad. But, this court in limited circumstances can interfere in view of limited power vested on this court as held by **Amit Kapoor vs Ramesh Chander & Anr.**¹

7. The present revision is filed under Section 397 and 401 Cr.P.C. under which the jurisdiction of this court is limited.

¹ 2012(9) SCC 460

8. [Section 397](#) of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

9. The well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories afore-stated.

10. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this court under [Article 136](#) of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

11. The jurisdiction of the Court under [Section 397](#) can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under [Section 397](#) is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under [Section 397](#) but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily, as held by the Apex Court in the decision mentioned supra.

12. But, in the present case, I find no error in the order passed by the revisional court.

13. The other ground raised by the petitioner in the revision is that this order under challenge is only an interlocutory and in view of bar under Section 397 (2) Cr.P.C. the revision before the Sessions Judge is not maintainable. But, this contention is without any substance since dismissal of complaint under Section 204(4) Cr.P.C. is a final order in view of tests laid down by the Apex Court in the decisions mentioned below:

14. In *Amar Nath and others Vs. State of Haryana and others*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 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.”

15. In another decision reported in *Bhaskar Industries Limited Vs. Bhiwani Denim & Apparels Ltd & others*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

² AIR 1977 SC. 2185

³ (2001) 7 SC.C. 401

deciding revision, defined the word ‘interlocutory order’ laid down test 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.”

16. 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 another⁴, 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.”

17. In another decision reported in Mohan Lal Magan Lal Thacker Vs. State of Gujarat⁵, 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].

⁴ AIR 2000 SC 3346

⁵ AIR 1968 S.C. 733

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, *SKuppusami 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 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)

18. From this, it is clear that an order which determines the principal matter in question, if termed as, final order.

19. The Hon'ble Apex Court in the Constitutional Bench Judgment referred supra, relied on several judgments of Queen's Bench, however finally concluded as follows:

“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. 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?*
3. *Does the order as made determine the dispute?*
4. *If the order in question is reversed, would the action have to go on?”*

20. By applying the principles in the decisions mentioned supra, I hold that the order is not an interlocutory in nature to exercise the power under sub-section (2) of Section 397 Cr.P.C.

21. Hence, I hold that the order under challenge is a final order which is amenable to the revisional jurisdiction of this court, consequently this contention is turned down.

22. In view of my foregoing discussion, I find no ground warranting interference with the order passed by the Special Judge for trial of offences under SCs and STs (POA) Act-cum-VI Addl. Metropolitan Sessions Judge, Secunderabad and the impugned order is hereby confirmed holding that the revision is devoid of merits.

23. In the result, the criminal revision is dismissed at the stage of admission. Miscellaneous petitions, if any, pending in this revision case shall stand closed.

DATE: 10-08-2017
ccm

M. SATYANARAYANA MURTHY, J

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date:10.08.2017

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