

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2408 of 2017

JUDGMENT:

This criminal revision case, under Sections 397 and 401 of Cr.P.C., is filed questioning the propriety and legality of the interim order, dated 27-07-2017 passed in CrI.M.P.No.90 of 2017 in CrI.A.No.161 of 2017 by the IV Additional District and Sessions Judge, Kurnool, granting stay of execution of order, dated 31-05-2017 passed by the Special Judicial Magistrate of First Class (for Prohibition and Excise), Kurnool in D.V.C.No.19 of 2016, on the condition that the petitioners shall pay half of the maintenance amount already granted by the lower Court including the arrears of maintenance and shall continue to pay until further orders and by 10th day of every succeeding month.

It is the case of the petitioner that the 1st respondent already obtained an Award under Section 125 of Cr.P.C., in M.C.No.07 of 2012 by settling the matter before Lok Adalath for Rs.50,000/- and accordingly petitioners deposited the said amount to the credit of M.C.No.07 of 2012.

Learned counsel for the petitioner contended that in view of the above settlement before Lok Adalath, granting of monthly maintenance in D.V.C.No.19 of 2016 is illegal and prayed to allow the revision case.

This Court raised an objection at the stage of admission about the maintainability of revision against the interlocutory order passed by the Court below.

Learned counsel for the petitioner fairly admitted that the order under challenge is an interlocutory order and submitted that when the trial Court passed such irregular or illegal order the revision is maintainable.

The order under challenge is only an interlocutory order passed during the pendency of the Criminal Appeal and the said order if allowed to sustain it would not culminate or terminate the entire criminal proceedings by applying the principles laid down by in a decision reported in **K.K. Patel and another Vs. State of Gujarat and another**¹, the Hon'ble Apex Court 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.”

In another decision reported in **Bhaskar Industries Limited Vs. Bhiwani Denim & Apparels Ltd & others**², the

¹ AIR 2000 SC 3346

² (2001) 7 S.C.C. 401

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.”

In view of the above principles laid down by the Hon'ble Apex Court, I find that the order under challenge is only an interlocutory order granting stay during pendency of Criminal Appeal. If this order allowed to sustain this would not culminate or terminate the entire proceedings, pending before the Court below. Therefore, the order under challenge is an interlocutory order against which no revision is maintainable in view of Section 397(2) Cr.P.C., and the revision case is liable to be dismissed.

Accordingly, the Criminal Revision Case is dismissed as not maintainable, at the admission stage.

The Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

September 07, 2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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