

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL R.C. NO.2252 OF 2017

ORDER:

This criminal revision case under Sections 397 and 401 of Cr.P.C. challenging the order, dated 20.06.2017 in Crl.M.P.No.321 of 2017 in C.C.No.142 of 2016 passed by the Special Judicial Magistrate First Class-I, Rajendranagar, Ranga Reddy District, filed by the petitioner with a request to send the documents to handwriting expert for opinion.

2. The petitioner filed petition to send the documents for the above said purpose requesting to send the disputed signatures on Exs.P-3 to P-5 to compare with signatures on Exs:P-1 and P-2 by handwriting expert on the ground that Ex.P-1 document was created subsequently after receiving reply notice and that the signature on Ex.P-1 is not that of the petitioner, but the trial Court dismissed the petition based on the allegations made in the reply notice marked as Ex.P-12 dt.26.04.2016.

3. The order passed by the trial Court is now challenged on various grounds, mainly contending that the opinion of expert is necessary to decide whether there was any legally enforceable debt, forgery of the signatures of the petitioner on the cheques and to decide the real controversy between the parties.

4. During hearing, learned counsel for the petitioner Sri Challa Sinivasa Reddy while reiterating the contentions raised before the trial Court would draw attention of the Court to the cross examination of PW-1 dt.21.02.2017, to substantiate his contention in cross-examination, the counsel for the accused put certain suggestions that it was created subsequently after receipt of legal notice marked as Ex.P-5 and on the strength of suggestions put to

PW-1, he contended that the opinion of expert is necessary for deciding the real controversy between the parties.

5. The first respondent herein filed complaint for the offence punishable under Section 138 of Negotiable Instruments Act and before filing complaint, in compliance of proviso to Section 138 of N.I. Act, a notice was issued within one month from the date of return of the cheque with cheque return memo, demanding the petitioner to pay the amount covered by dishonoured cheque for which Ex.P-12 notice was issued admitting about the execution of undertaking dt.30.03.2014 which is marked as Ex.P-1 before the trial Court and also admitted that as per undertaking, the cheques mentioned in the notice are meant for security purpose only and not for presentation to realise the amount covered by cheques. This crucial judicial admissions in the reply notice issued by the petitioner through his counsel would clinches the issue of creation or fabrication of Ex.P-1. The judicial admission need not be proved in view of Section 58 of Indian Evidence Act when it is reduced into writing. Section 31 of the Indian Evidence Act made it clear that admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained. Therefore, the petitioner having admitted about the execution of undertaking dt.30.03.2014 is estopped to contend that it is forged document or fabricated or created document. If Sections 31 and 58 of the Evidence Act are read together, the respondent need not be called upon to prove the judicial admission made in the reply to legal notice marked as Ex.P-12.

6. The only contention before this Court is that when the petitioner put a suggestion that signatures on Exs.P-1 and P-2 are created after receipt of reply notice is not sufficient to order the petition directing the trial Court to send the disputed signatures on

document along with the admitted signatures to the expert for his opinion. Even otherwise, the opinion of expert under Section 45 of the Evidence Act is irrevocable but not a conclusive proof. Moreover, this order under challenge is only an order passed for conclusion of the trial in the main C.C. which is interlocutory in nature against which no revision is maintainable in view of bar under Section 397(2) Cr.P.C. Therefore, the present revision is not maintainable on the first ground that it is an interlocutory order in view of bar under sub-section 2 of Section 397 Cr.P.C. as the order would not culminate the entire proceedings. The word interlocutory is not defined in the Criminal Procedure Code, but created an interdict in entertaining revision under Clause 2 of Section 397 Cr.P.C.

7. In *Amar Nath and others Vs. State of Haryana and others*¹, 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.”

8. In another decision reported in *Bhaskar Industries Limited Vs. Bhiwani Denim & Apparels Ltd & others*², the Hon’ble Apex Court laid down certain guidelines to determine whether the order under challenge

¹ AIR 1977 S.C. 2185

² (2001) 7 S.C.C. 401

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."

9. 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 another*³, 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."

10. In another decision reported in *Mohan Lal Magan Lal Thacker Vs. State of Gujarat*⁴, 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].

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*

³ AIR 2000 SC 3346

⁴ AIR 1968 S.C. 733

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)"

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

12. 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?"*

14. By applying the tests, I can safely conclude that this matter under challenge is allowed, the entire proceedings would culminate, is the test and thereby it is only an interlocutory order against which no revision is maintainable in view of Section 397(2)

Cr.P.C. The judicial admission on the reply notice marked as Ex.P-12 is suffice to conclude prima facie that the petitioner is the executant of the document. However, this observation is only subject to proof in the main case and it will have no bearing on the disposal of the main calendar case before the trial Court and it appears from the record that this revision is aimed to protract the matter for some time. 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.

15. In the result, the criminal revision case is dismissed at the stage of admission.

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

DATE: 08-08-2017
ccm

M. SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRL RC. NO.2252 OF 2017

Date:08.08.2017

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