

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1430 of 2017

JUDGMENT:

This criminal revision case, under Sections 397 and 401 of Cr.P.C., is filed challenging the order, dated 07-03-2017 in CrI.M.P.No.3914 of 2016 in C.C.No.151 of 2015 passed by the IX Special Magistrate, Hyderabad.

The petitioner/Accused filed petition under Section 254 (2) of Cr.P.C., praying the Court to issue summons to the Deputy Civil Surgeon and In-charge Medical Officer – Dr. Syed Muneera (CAS & IMO), ESI Dispensaries, Himmathpura, H.No.20-4-129/32/1, Manjli Begum Haveli, Shalibanda, Near Pista House, Hyderabad and call for records of Attendance register and movement register of the accused for 2 days i.e., on 10-02-2015 and 11-02-2015 and the movement register on the said dates between 12.00 noon and 1.00 p.m., for just decision of the case. The trial Court ordered the petition issuing summons to the witness and now the order is challenged on various grounds.

Learned counsel for the petitioner/accused would submit that the offence allegedly committed by the petitioner is punishable under Section 138 of Negotiable Instruments Act and the trial Court failed to appreciate his contention in proper perspective for production of relevant documents to prove his innocence, who is facing trial for the above offence.

He also contended that the trial Court also did not consider the facts of the case in proper perspective and committed a serious error in ordering such petition.

This Court, took an objection at the stage of admission about the maintainability of the revision in view of the Bar under Section 397 (2) of Cr.P.C., since summoning of witness is an interlocutory order, which would not culminate the entire case.

This question is no more *res integra* in view of judgment in **Amar Nath and others Vs. State of Haryana and others**¹, it is 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

¹ AIR 1977 SC. 2185

the revisional jurisdiction of the High Court case law referred to.”

Therefore, it is abundantly clear from the decision of the Hon’ble Apex Court that summoning of a witness, or call for records is an interlocutory order and it hit by Section 397 (2) of Cr.P.C. and no revision is maintainable against such an order.

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 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 similar situation, in the decision reported in **K.K.Patel and another Vs. State of Gujarat and another**³, the Hon’ble Apex Court held as follows:

² (2001) 7 S.C.C. 401

³ AIR 2000 SC 3346

“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 **Mohan Lal Magan Lal Thacker Vs. State of Gujarat**⁴, the Hon’ble Apex Court after considering various judgments of Federal Court and Privy Council, defined the word ‘interlocutory order’ and held 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 Rehman Vs. The Kind [1947] Cassim & Sons Vs. 60 IA 76, S.Kuppusami 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

⁴ AIR 1968 SC. 733

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) ”

The Hon'ble Apex Court in the Constitutional Bench Judgment, 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?"*

Thus, from the principles laid down in all the judgments it is clear that when an order under challenge is sustained if culminates the entire proceedings, it would be a final order. But in this case it is clear that the order under challenge is only to issue summons to a witness, who is a Doctor and it is only a step in aid to determine the main proceedings and such order would not culminate the entire dispute between the parties, thereby the order is only interlocutory in nature and hit by Section 397 (2) of Cr.P.C., and against such order no revision is maintainable. Therefore, I find that the revision petition is not maintainable in view of interdict contained under Section 397 (2) of Cr.P.C. and consequently, the revision is liable to be dismissed at the admission stage.

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

August 17, 2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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