

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL REVISION CASE Nos.651 & 652 of 2017**

**COMMON ORDER:**

These revision cases are preferred under Sections 397 and 401 of Code of Criminal Procedure (fort short "Cr.P.C.") questioning the legality, propriety and regularity of the orders dated 25.01.2017 passed in CrI.M.P.No.2382 of 2016 in C.C.No.41 of 2015 and CrI.M.P.No.2383 of 2016 in C.C.No.42 of 2015 by the Principal Junior Civil Judge, Avanigadda, whereby the petition filed under Section 45 of Evidence Act to refer the cheque bearing No.680012 dated 05.12.2013 and cheque bearing No.906423 dated 04.12.2013 to the hand writing expert for comparison with the admitted and contemporaneous signatures and for his/her opinion.

The petitioners are the accused in private complaint filed for the offence punishable under Section 138 of Negotiable Instruments Act, in which they raised certain contentions disputing the signature on Ex.P.1, but the trial Court dismissed the petitions on the ground that no contemporaneous signatures are available on any unauthenticated documents.

The impugned order in both the petitions was passed in a petition filed under Section 45 of the Evidence Act, which is purely interlocutory in nature and if it is allowed to sustain, it would not culminate the entire proceedings.

But, in the entire Criminal Procedure Code, the word ‘interlocutory order’ is not defined anywhere. But, for the first time in “**Mohan Lal Magan Lal Thacker vs. State of Gujarat<sup>1</sup>**”, the Supreme Court had an occasion to decide whether the order is interlocutory order or not and held 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. However, generally speaking, a judgment or order which determines the principle matter in question is termed final. It may be final although it directs enquiries or is made on an interlocutory applications or reserves liberty to apply [Halsbury's Laws of England (3rd Ed.) Vol. 22, 742-743]. 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 ?”

Though the law in “**Mohan Lal Magan Lal Thacker vs. State of Gujarat**” (referred supra) is reviewed in various judgments, the Apex Court laid down feasible test in “**K.K. Patel v. State of Gujarat<sup>2</sup>**” and “**Bhaskara Industries Limited v. Bhiwani Denim & Apparels Limited<sup>3</sup>**”, wherein the Apex Court laid down a feasible test as to whether an order

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<sup>1</sup> AIR 1968 SC 733

<sup>2</sup> AIR 2000 SC 3346

<sup>3</sup> (2001) 7 SCC 401

is interlocutory or final. The only test is, if an order under challenge is allowed to sustain, it would culminate or terminate the proceedings. If it culminates the entire proceedings, it is final or otherwise an interlocutory order.

In view of the law declared by the Courts in the catena of judgments referred supra, it is clear that, if the order under challenge is allowed to sustain, would terminate or culminate the entire proceedings, is a determining factor to entertain a revision under Section 397 Cr.P.C. But, here, the order under challenge is an order passed on an application filed under Section 45 of the Evidence Act, the same would not culminate the entire proceedings. Therefore, applying the tests laid down by the Apex Court referred above, it can safely be concluded without any hesitation that the order under challenge is only an interlocutory order in nature.

An identical question came up before the Apex Court in “**Sethuraman Vs. Rajamanickam**”<sup>4</sup>, wherein the Apex Court in paragraph 4 held as follows:

"4. Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C. The Trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent/accused and the only defence that was raised, was that his signed cheques were lost and that the appellant/complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e., one on the application under Section 91 Cr.P.C. for production of documents and other on the application under Section 311 Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397(2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered

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<sup>4</sup> 2009 CriLJ 2247

in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed.”

Therefore, in view of the law declared by the Apex Court in “**Sethuraman Vs. Rajamanickam**” (referred supra), the order passed on an application filed under Section 45 of Evidence Act is interlocutory in nature and against such an order, no revision is maintainable.

In “**Girish Kumar Suneja v. C.B.F**”, full Bench of the Supreme Court had an occasion to decide the similar subject and held as follows:

“Therefore, when Section 397(2) prohibits interference in respect of interlocutory orders, Section 482, cannot be availed of to achieve same objective. In other words, since Section 397(2) prohibits interference with interlocutory orders, it would not be permissible to resort to Section 482. To set aside an interlocutory order prohibition in Section 397 will govern Section 482 thereof. In the present case, although, appellants might have an entitlement (not a right) to file a revision petition in High Court but that entitlement can be taken away and in any event, High Court is under no obligation to entertain a revision petition – such a petition can be rejected at threshold. If High Court is inclined to accept revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in culmination of proceedings. There appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before Supreme Court. consequently result of paragraph 10 of order dated 25.07.2014 passed by Supreme Court is that entitlement of appellants to file a revision petition in High Court is taken away and thereby High Court is deprived of exercising its extraordinary discretionary power available under Section 397 of the Cr.P.C. However, it does not mean that appellants have no remedy available to them – paragraph 10 of order dated 25.07.2014 does not prohibit appellants from approaching Supreme Court under Article 136 of Constitution. Therefore all that has happened is that forum for ventilating grievance of appellants has shifted from High Court to Supreme Court. Mere fact that Supreme Court could dismiss petition filed by appellants under Article 136 of Constitution without giving reasons does not necessarily lead to conclusion that reasons will not be given or that some equitable order will not be passed. Thus, if an interlocutory order is not revisable due to the prohibition contained in Section 397(2) that cannot be circumvented by resort to Section 482”.

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<sup>5</sup> AIR 2017 SC 3620

In view of the law declared by the Supreme Court in **“Girish Kumar Suneja v. CBI”** (referred supra), no revision is maintainable against interlocutory order, in view of bar under Section 397(2) Cr.P.C.

Therefore, by following the law declared by the Apex Court, I hold that the orders under challenge are only interlocutory in nature, as they are orders passed on an application filed under Section 45 of the Evidence Act and they would not terminate or culminate the entire proceedings, if the same are allowed to sustain. Therefore, on this ground alone, the criminal revision cases are not maintainable in view of the bar under Section 397(2) Cr.P.C.

It is the contention of the learned counsel for the petitioner that the Court may compare admitted signatures with disputed signatures by exercising power under Section 73 of the Evidence Act. Therefore, it is left open to the Court to compare the admitted signatures with disputed signatures, if any. available on the documents marked before the Court and pass appropriate order.

It is also brought to the notice of this Court, the petitioner filed Crl.M.P.No.139 of 2017 in C.C.No.41 of 2015 and Crl.M.P.No.140 of 2017 in C.C.No.42 of 2015 along with authenticated registered documents containing the signatures of the petitioner on sale deed dated 03.04.2010 document No.721 of 2010 in SRO, Avanigadda and sale deed dated 22.07.2006 document No.2880 of 2006, but the said petitions

were returned questioning the maintainability, but the petitioners are at liberty to represent the same with condone delay petition and the Court may consider the request of the petitioners and pass appropriate orders, if necessary, on comparing the signatures contained on the documents with the disputed signatures, subject to admissibility.

With the above observations, the criminal revision cases are dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

25.10.2017  
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**JUSTICE M. SATYANARAYANA MURTHY**