

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.461 of 2017

JUDGMENT:

This Criminal Revision Case, under Sections 397 and 401 Cr.P.C, is filed challenging the Order dt.31.01.2017 in CrI.R.P.No.48 of 2016 in CrI.M.P.No.387 of 2016 in C.C.No.582 of 2013 passed by the Principal Sessions Judge, Khammam.

The respondent herein filed an application in C.C.No.582 of 2013 pending on the file of III Additional Judicial Magistrate of First Class, Khammam, under Section 311 of Cr.P.C to issue summon to Ega Venkateswarlu, Stamp Vendor, by exercising power under Section 311 Cr.P.C, but, the trial Court dismissed the petition by Order dt. 24.06.2016 and the same is carried in revision, but the District Court allowed the revision setting aside the Order dt.24.06.2016 in CrI.M.P.No.387 of 2016 in C.C.No.582 of 2013 on the file of III Additional Judicial Magistrate of First Class, Khammam, and ordered the petition.

The order passed by the District Judge is now assailed before this Court on the ground that no revision is maintainable against an order passed in a petition filed under Section 311 of Cr.P.C., in view of the bar under Section 397(2) Cr.P.C.

The Public Prosecutor for the State supported the Order under challenge in all respects.

The only question before this Court is whether a revision is maintainable against an Order passed under Section 311 Cr.P.C.

This issue is no more *res integra*, in view of the Judgment of the Apex Court in *Sethuraman v Rajamanickam*¹ and another judgment in *Mohanlal Shamji Soni vs Union Of India And Another*².

According to the above two judgments, the Apex Court consistently held that an Order passed under Section 311 Cr.P.C. is interlocutory in nature and such Order is not amenable to revisional jurisdiction before the District Court under Section 397 Cr.P.C and the High Court under Order Section 401 Cr.P.C.

In *Mohan Lal Magan Lal Thacker v. State of Gujarat*³ the Apex Court laid down certain tests to determine whether the order is in interlocutory or final, which are as follows:

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?"*

Similarly in *K.K.Patel and another Vs. State of Gujarat and another*⁴, the Apex Court laid down a feasible test, 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.

¹ 2009 CrI.L.J 2247

² AIR 1991 SC page 1346

³ AIR 1968 S.C. 733

⁴ AIR 2000 SC 3346

Later judgment in *Bhaskar Industries Limited Vs. Bhiwani Denim & Apparels Ltd & others*⁵, the Division Bench of the Apex Court held the interdict contained under Section 397(2) Cr.P.C is that the power of revision shall not be exercised in relation to an interlocutory order, whether an order is an interlocutory or not cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. 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. Therefore, the Order issuing summons to Ega Venkateswarlu, Stamp Vendor, is purely an interlocutory in nature, in view of the principles enunciated by the Apex Court in the judgments referred to supra and against such an Order, no revision is maintainable in view of the interdict under Sub Section 397(2) Cr.P.C. Therefore, the Order Dt.31.01.2017 in CrI.R.P.No.48 of 2016 in CrI.M.P.No.387 of 2016 in C.C.No.582 of 2013 passed by the Principal District Judge is illegal and the same is liable to be set aside.

Accordingly, this Criminal Revision Case is allowed at the stage of admission.

⁵ (2001) 7 Supreme Court Cases 401

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 01-08-2017.
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