

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.R.C. NO.2269 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. challenging the order dated 29.09.2016 in CrI.M.P.No.4 of 2016 passed by the Learned Addl.Judicial Magistrate of First Class, Kavali, SPSR Nellore District whereby dismissed the petition filed under Section 311 Cr.P.C.

2. The order under challenge is only interlocutory in nature. In Mohan Lal Magan Lal Thacker Vs. State of Gujarat¹, 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 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] SC.R. 1007, Jethainand and Sons Vs. The State of Uttar Pradesh [1961] 3 SC.R. 754, Premchand Satramadas Vs. State of Bihar [1950] SC.R. 799, State of Uttar Pradesh Vs. Sujan Singh [1964] 7 SC.R. and State of Orissa Vs. Madan Gopal [1952] SC.R. 28, referred to.

¹ AIR 1968 SC. 733

(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 SC.R. 198, relied on.*

(iii)

3. In decision reported in **Amar Nath and others Vs. State of Haryana and others**², 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.”

4. In another decision reported in **Bhaskar Industries Limited Vs. Bhiwani Denim & Apparels Ltd & others**³, 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:

² AIR 1977 SC. 2185

³ (2001) 7 SC.C. 401

“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 in spite of the fact that it was passed during any interlocutory stage.”

5. 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 another⁴, held as follows:

“It is now well-nigh 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.”

6. The Hon'ble Apex Court in the Constitutional Bench Judgment referred supra, relied on several judgments of Queen's Bench, however finally laid down the following tests to determine whether the order is final or interlocutory:

“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 AIR 2000 SC 3346

4. *If the order in question is reversed, would the action have to go on?"*

7. As held by the Constitution Bench of Apex Court in *MOHANLAL MAGANLAL THACKER v. STATE OF GUJARATH*⁵, the Apex Court consistently held that the order passed if culminates the entire proceedings, it is a final order against which a revision is maintainable and bar under Section 397 (2) Cr.P.C. would not come in the way to entertain. The petition filed under Section 311 Cr.P.C. filed before the trial Court which is purely an interlocutory order against which no revision is maintainable in view of power under Section 397 (2) Cr.P.C. as held by Apex Court in *SETHURAM v. RAJAMANICKAM*⁶.

8. Therefore, at the stage of admission, this criminal revision case is dismissed. It is left open to the petitioner to take appropriate steps, if he desires so.

DATE: 31-07-2017
ccm

M. SATYANARAYANA MURTHY, J

⁵ AIR 1968 Page 733

⁶ 2009 Cr.L.J. 2247

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