

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRL. MISC. No.M-11543 OF 2017 (O&M)
DATE OF DECISION : 17th APRIL, 2017**

Zila Singh & others

.... Petitioners

Versus

Sub-Divisional Magistrate, Kaithal Distt. Kaithal & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

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Present : Mr. Ravi Dutt Sharma, Advocate for the petitioner.

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A. B. CHAUDHARI, J. (ORAL)

The present petition is directed against order dated 03.03.2017 passed in case No.88/SDO under Section 145 Cr.P.C. by which order learned SDM, Kaithal appointed Tehsildar Pundri, District Kaithal as receiver and to take possession of the disputed lands from the petitioners and others.

It is not in dispute that the suit properties which form the subject matter of the proceedings under Section 145 Cr.P.C. registered before the SDM, Kaithal belong to the petitioners and their rival parties and the dispute about partition etc. arose. The concerned police station officer presented Kalandra under Section 145 Cr.P.C. in DD No.20 dated 06.09.2015 before the SDM.

Learned counsel for the petitioners submitted that petitioners are aggrieved by the interim order dated 03.03.2017 made by the SDM during the pendency of the proceedings under Section 145 Cr. P. C. and

that is why the petitioners have challenged the Kalandra as well as said interim order appointing receiver.

Insofar as the challenge to the Kalandra is concerned this Court finds that the enquiry before the SDM under Section 145 Cr. P. C. is still pending and the parties will have to be heard by the SDM and therefore, at this stage, it is not possible to interfere with the Kalandra.

The order appointing receiver, according to the learned counsel for the petitioners, cannot be challenged before the revisional Court/Sessions Court because the same is an interlocutory order and revision against interlocutory order is barred by Section 397(2) Cr. P. C.

This Court has examined the said question as to whether the interim order appointing receiver in the proceedings under Section 145 Cr. P. C., and thus receiver taking over the possession of the properties of the parties would be an interlocutory order. This Court is of the opinion that the order appointing receiver, who takes possession of the properties of the parties though by way of interim measure, would not amount to an interlocutory order. It is not in dispute that by virtue of appointment of the receiver for suit properties, the petitioners and their rivals are deprived of their properties as the receiver takes the possession. In other words, the right of the petitioners to remain in possession of the property and reap the benefits therefrom for their livelihood is clearly affected by virtue of order appointing receiver during the pendency of proceedings under Section 145 Cr. P. C. Thus the order appointing receiver by way of interim measure would tantamount to depriving them of the enjoyment of their property. Thus in my opinion, it would be a misnomer to call the interim order appointing receiver as interlocutory order.

In the case of *Amar Nath and others versus State of Haryana and another, (1977) 4 Supreme Court Cases 137*, the Apex Court stated thus in relation to Section 397(2) Cr.P.C.:

“6. Let us now proceed to interpret the provisions of Section 397 against the historical background of these facts. Sub-section (2) of Section 397 of the 1973 Code may be extracted thus:

"The powers of revision conferred by Sub- section (1) shall not be exercised in relation to any interlocutory order passed; in any appeal, inquiry, trial or other proceeding."

The main question which falls for determination in this appeal is as to, the what is the connotation of the term "interlocutory order" as appearing in sub-section (2) of Section 397 which bars any revision of such an order by the High Court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious diffident. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide 'the rights and liabilities of the parties concerning a particular aspect. It seems to, us that the term "interlocutory order" in Section 397(2) of the 1973 Code 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 Section 397 of the, 1973 Code. 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) of the 1973 Code. 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.”

In the case of ***Madhu Limay versus The State of Maharashtra, (1977) 4 Supreme Court Cases 551***, the Apex Court stated thus in relation to the term ‘interlocutory order’ :

“14. In passing, for the sake of explaining ourselves, we may refer to what has been said by Kania C. J. in *Kuppuswami's* case at page 187 by quoting a few words from Sir George Lowndes in the case of *V. M. Abdul Rahman v. D. K. Cassim and Sons*. The

learned Law Lord said with reference to the order under consideration in that case:

The effect of the order from which it is here sought to appeal was not to dispose finally of the rights of the parties. It no doubt decided an important, and even a vital, issue in the case, but it left the suit alive, and provided for its trial in the ordinary way.

Many a time a question arose in India as to what is the exact meaning of the phrase "case decided" occurring in Section 115 of the Code of Civil Procedure. Some High Courts had taken the view that it meant the final order passed on final determination of the action. Many others had however, opined that even interlocutory orders were covered by the said term. This Court struck a mean and it did not approve of either of the two extreme lines. *In Baldevdas v. Filmistan Distributors (India) Pvt. Ltd.* it has been pointed out:

"A case may be said to be decided, if the Court adjudicates for the purposes of the suit some right or obligation of the parties in controversy."

We may give a clear example of an order in a civil case which may not be a final order within the meaning of Article 133 (1) of the Constitution, yet it will not be purely or simply of an interlocutory character. Suppose for example, a defendant raises the plea of jurisdiction of a particular Court to try the suit

or the bar of limitation and succeeds, then the action is determined finally in that Court. But if the point is decided against him the suit proceeds. Of course, in a given case the point raised may be such that it is interwoven and interconnected with the other issues in the case, and that it may not be possible to decide it under Order 14 Rule 2 of the Code of Civil Procedure as I preliminary point of law. But, if it is a pure point of law and is decided one way or the other, then the order deciding such a point may not be interlocutory, albeit-may not be final either. Surely, it will be a case decided, as pointed out by this Court in some decisions, within the meaning of section 115 of the Code of Civil Procedure. We think it would be just and proper to apply the same kind to test for finding out the real meaning of the expression 'interlocutory order' occurring in Section 397(2).”

In the light of the pronouncement of the Apex Court as above in the two decisions which still hold the field, in my opinion, it is imperative to hold that the interim order dated 03.03.2017 appointing receiver cannot be called interlocutory order. In the result, I make the following order.

ORDER

- (i) CRL. MISC. No.M-11543 OF 2017 is disposed of. It is held that interim order dated 03.03.2017 appointing receiver to take possession of suit properties is not an interlocutory order.

- (ii) Liberty is reserved in favour of the petitioners to challenge the interim order 03.03.2017 before the Sessions Court by filing revision petition under Section 397 Cr. P. C.

17TH APRIL, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned: **Yes**

Whether Reportable: **Yes**