

HON'BLE SRI JUSTICE P. KESHAHA RAO

CRIMINAL REVISION CASE No. 1891 of 2018

ORDER:

Heard the learned counsel for the petitioners and the learned Public Prosecutor appearing for the respondent-State.

The present criminal revision case is filed questioning the committal order dated 13.06.2018 passed in P.R.C.No. 1 of 2018 on the file of the Court of the Judicial Magistrate of First Class, Nandikotkur for the offence under Section 304 Part-II of IPC.

The case of the prosecution is that the de facto complainant and the petitioner No.1 are the adjacent owners having a common joint wall. The first petitioner wanted to demolish his house to construct a new house. In the said process, he contacted the second petitioner who is a mason. During the course of construction, the joint wall existing between the houses of the de facto complainant and the first petitioner was demolished and reconstructed the same without taking any precautionary measures resulting the collapse of the joint wall on 07.10.2017 at 6 A.M. while the deceased was sleeping in the house on a cot and the deceased died on the spot due to suffocation. In connection with the same, the de facto complainant lodged a complaint. Pursuant thereto, a case in Crime No.61 of 2017 was registered for the offence under Section 304 Part-II r/w 34 of IPC of Midthur Police Station. After investigation, a charge sheet was filed against the petitioners for the above said offence. On the basis of the charge sheet filed, the committal Court numbered the case as PRC No.1 of

2018 and the committal Court issued summons to the petitioners. After appearance, the petitioners filed a petition under Section 209 Cr.P.C. to reject the charge sheet filed under Section 304 Part II of IPC and direct the police to file the charge sheet for the offence under Section 304-A IPC. The Court below after perusal of the charge sheet and other connected documents filed along with charge sheet, found prima facie that discloses commission of offence under Section 304 Part-II r/w 34 of IPC which is exclusively triable by the Court of Session. Hence, committed the case to the Court of Session, Kurnool Division under Section 209 (a) Cr.P.C. by orders dated 13.06.2018. Consequently, the office was directed to submit the entire records along with the case property to the Court of Session, Kurnool Division forthwith, as required under Section 209 Cr.P.C. The said order has been challenged in the present criminal revision case.

Learned counsel appearing for the petitioners would contend that the learned Magistrate erred in taking cognizance for the offence under Section 304 Part-II IPC. In fact, the charge sheet filed, prima facie establish an offence under Section 304-A IPC. He further contended that the entire material collected by the investigating officer as well as the statements of the de facto complainant and the 161 Cr.P.C. statements recorded by the investigating officer clearly show the ingredients of Section 304-A IPC only. But, filing charge sheet under Section 304 Part-II IPC and taking cognizance of the same by the Court below is without jurisdiction and power. In fact, Section 304 Part-II IPC contains punishment for culpable homicide not amounting to murder and

the charge sheet filed does not disclose that the petitioners have committed the murder. Section 304-A IPC, deals with causing death by negligence. Per contra, the learned Public Prosecutor appearing for the respondent-State supported the impugned order and raised preliminary objection with regard to the maintainability of the revision on the ground that the order impugned is purely interlocutory in nature.

Having heard both the learned counsel and from the perusal of the material on record, and in the above said circumstances, the point that arises for consideration is '*whether the impugned order is an interlocutory order barring the present criminal revision case under Section 397(2) Cr.P.C.?*'

Under the impugned order, the Court having satisfied that prima facie case established for the offence under Section 304 Part-II r/w 34 IPC, and since the said offence is exclusively triable by the Court of Session, committed the case to the Court of Session under Section 209(a) Cr.P.C. The case of the petitioners is that as per the charge sheet, prima facie case is made out only for the offence under Section 304-A IPC. After committal, the Court of Session will hear the petitioners for framing charges and the petitioners have every right to file a discharge petition since the charge sheet does not prima facie disclose the ingredients of offence under Section 304 Part-II r/w 34 IPC. When once the charge sheet is filed for the offence under Section 304 Part-II r/w 34 IPC which is exclusively triable by the Court of Session and not by the Magistrate, merely because the Magistrate has committed the

case to the Court of Session, it will not in any way prejudice the rights and interest of the petitioners, more particularly, when the charge sheet filed would make out a prima facie case for the offence under Section 304 Part-II r/w 34 IPC or under Section 304-A IPC. In fact, at the time of framing charges, the Court of Session will hear the petitioners. That apart, the other remedy available to the petitioners is, to file a petition for discharge. The Court of Session in exercise of powers under Section 216 Cr.P.C. can alter the charge at any stage of the proceedings till the pronouncement of the judgment. That being the course available, after following the mandatory procedure as contemplated under the provisions of the Code of Criminal Procedure, it cannot be said that though the impugned order is interlocutory in nature would finally adjudicate the rights of the petitioners for framing a charge under Section 304-A IPC.

Further, whether the order is an interlocutory, intermediary or quasi-final and final orders, this Court dealt with in detail in **BHONGIRI KIRAN KUMAR AND OTHERS v. STATE OF A.P.**¹ as under:

“In MADHU LIMAYE Vs. STATE OF MAHARASHTRA(7), a three Judge Bench of the Apex Court held that an interpretation and universal application of the principle that what is not a final order must be an interlocutory order, is neither warranted nor justified, and if it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by [Section 397\(1\)](#) of the Code. The Apex Court further held that an order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will certainly be not an interlocutory order within the meaning of [Section 397\(2\)](#) of the Code. The Apex Court further held that the label of the petition filed by the accused party is immaterial. The three Judge Bench, disapproving the Judgment of the Federal Court in Kuppuswami Rao's case held thus:

¹ 2000 SCC Online AP 860

"If that strict test as laid down in the Kuppaswami Rao's case were to be applied in interpreting the words 'Interlocutory order' occurring in [Section 397\(2\)](#) of the Code, then the order taking cognisance of the offence by a Court, whether it is so done illegally or without jurisdiction will not be final order and hence will be an interlocutory one..... But, in our Judgement, such an interpretation and the universal application of the principle what is not a final order must be an interlocutory order is neither warranted nor justified".

Very recently, the Supreme Court in *K.K.PATEL AND ANOTHER Vs. STATE OF GUJARAT AND ANOTHER*(11) held as follows:

"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 (sic 'other') passed on such objections would not be merely interlocutory in nature as envisage in [Section 397\(2\)](#) of the Code".

In *PUBLIC PROSECUTOR Vs. P.PULLA REDDY*(16), a Bench of this Court held as follows :

"It is clear that sub-section (2) envisages interlocutory orders in enquiries, interlocutory orders in trials, and interlocutory orders in proceedings other than enquiries and trials. A final order in a proceeding other than in an enquiry or trial cannot be construed as an interlocutory orders within the meaning of [Section 397\(2\)](#) Cr.P.C. merely because, the proceeding has a direct relation to the enquiry or trial and such enquiry or trial did not terminate on the passing of the final order in the proceeding other than the enquiry or trial. An interlocutory order is one which is passed at some intermediate stage of an enquiry, trial or other proceeding generally, to advance the cause of justice for the final determination of the dispute between the parties arising under the enquiry, trial or other proceeding".

What emerges from the conspectus of the above precedents is that the orders to be passed by the Criminal Courts in the process of trial are of three types, namely, interlocutory, intermediary or quasi-final, and final orders. The orders which determine the rights and liabilities of the parties in a given proceeding, though passed in an interlocutory application, come within the category of intermediary or quasi-final orders, so long as they do not result in terminating the proceeding. As against those persons, those orders, although passed in a pending proceeding, might ultimately result in culmination of the proceedings, although they are not the orders passed finally in the proceedings.

The orders, which are purely procedural such as summoning witnesses, adjourning cases, passing orders for bail, calling for reports, issue of commission for examination of witnesses, inspection of premises, admissibility of documents, and the relevancy of a question, which are the steps taken towards the final adjudication, which regulate the procedure only and do not affect any right or liability of the parties are some of the decisions illustrating the nature and

incidence of an Interlocutory order. The above indicia are only illustrative but not exhaustive. As afore discussed no definite criteria can be evolved to interpret the expression "Interlocutory order". Any guidelines can broadly be given so as to help interpreting the expression "Interlocutory order" as appearing in sub-section (2) of [Section 397](#) of the Code."

Therefore, in the case on hand, merely because the case has been committed to the Court of Session, that will not preclude the petitioners from taking appropriate steps to alter the offence from Section 304 Part-II r/w 34 IPC to Section 304-A IPC. As such, when the impugned order does not finally adjudicate the rights of the petitioners for agitating the issue, it cannot be said that it is a final order. Therefore, the present criminal revision case filed is not maintainable since the impugned order will not come within the ambit of Section 397(2) Cr.P.C. As such, there are no merits in the revision and is liable to be dismissed.

Accordingly, the criminal revision case is dismissed.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand dismissed.

Date:10.12.2018
ccm

P. KESHAVA RAO,J

HON'BLE SRI JUSTICE P. KESHAVA RAO

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