

* IN THE HIGH COURT OF DELHI AT NEW DELHI
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Order reserved on : 23rd January, 2018
Date of decision : 8th May, 2018

BIJENDER SINGH

..... Petitioner

Through Mr. Arun Yadav, Adv.

versus

MUKESH GUPTA

..... Respondent

Through Ms. Radhika Arora, Adv.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. Vide the present petition, the petitioner assails the impugned order dated 05.03.2015 of the learned MM (NI Act)-03/Dwarka in CC No. 6478/14 vide which the application of the applicant/accused arrayed as the petitioner in the present petition seeking to send a cheque in question for examination to a handwriting expert was declined and also assails the impugned order dated 03.10.2015 of the learned ASJ (Special Fast Track Court), Dwarka Courts, New Delhi in CR No. 37/15 which upheld the order dated 05.03.2015 of the learned MM (NI Act)-03/Dwarka in CC No. 6478/14.

2. Notice of the petition was issued to the respondent to put in appearance and oral arguments have been addressed on behalf of the

petitioner and the respondent by their learned counsel.

3. Written submissions have also been filed on 31.01.2018 on behalf of the petitioner. On behalf of the respondent reliance has been placed on the verdict of this Court in case titled as ***Ravi Chopra Vs. State & Another 2008 (102) DRJ 147*** in support of the contentions of the respondent.

4. The complaint case No. 6478/14 had been filed by the complainant thereof i.e. the respondent in the present petition under Section 138 of the Negotiable Instrument Act, 1881 in which an application filed by the accused therein i.e. the petitioner herein seeking to send the cheque in question for examination by the hand writing expert was declined vide order dated 05.03.2018, which order was upheld by the learned ASJ (Special Fast Track Court), Dwarka Courts, New Delhi vide order dated 03.10.2015 observing to the effect that the dismissal of the application of the petitioner was only an interlocutory order which could not be assailed by way of the revision petition u/S 397 of the Code of Criminal Procedure, 1973 as no valuable rights of the parties had been decided vide the said impugned order and the revision petition was held to be not maintainable.

5. The complainant Mukesh Gupta i.e. the respondent to the present petition has contended through the complaint that the accused Bijender Singh i.e. the petitioner of the present petition entered into some arrangement with regard to the property measuring 8 Acres of land situated at Village Naurangpur, District Gurgaon with one Dal Chand Sharma and the accused had projected that this property was owned by him jointly with his brothers namely Ram Lal, Bharat,

Narain, and mother Lajwanti. Pursuant to an arrangement arrived at, the accused received a sum of Rs.34 lacs from Dal Chand Sharma, who had paid the same after taking money from the complainant Mukesh Gupta and as a consequence thereof, the cheque had been issued by the accused i.e. the present petitioner in the name of the complainant and the cheque given by the accused i.e. the petitioner herein, was dishonoured by the Bank for want of funds.

6. As observed vide the learned MM, the accused i.e. the petitioner herein in his statement u/s 251 of the Code of Criminal Procedure, 1973 stated that he did not know the complainant and did not owe him any money. The order dated 05.03.2015 of the learned trial Court observes that during his statement recorded u/s 313 of the Code of Criminal Procedure, 1973, the accused i.e. the petitioner herein stated that he had given the cheque in question blank, signed to Dal Chand for payment of instalment of a motorcycle which he had purchased from Sai Auto Dealer, Manesar and that the accused Dal Chand had misused the said cheque by playing fraud upon him and by handing over the cheque to the complainant.

7. Placed on Trial Court Record is also an agreement Ex.CW1/A as borne out by the certified copy thereof annexed to the present petition entered into allegedly between the complainant and the respondent to the present petition regarding sale of the property. As per Ex.CW1/A, it was specifically mentioned in the said agreement that Dal Chand had arranged the money from the complainant and that is why the present cheque was handed over to the complainant and the said agreement was signed by both Dal Chand and the accused and on

inquiry as per the order dated 05.03.2015 of the learned Metropolitan Magistrate, the accused i.e. the petitioner could not say whether signatures appearing in his name on the said agreement were his or not. As per the order dated 05.03.2015 of the learned Metropolitan Magistrate in the cross-examination dated 08.07.2010, the complainant also stated that 34 lacs was given as personal loan to the accused on surety of Dal Chand and a letter issued by Vijender was obtained i.e. Ex.CW1/A i.e. the agreement related to the sale of the property.

8. Vide the impugned order dated 05.03.2015 of the learned MM (NI Act)-03/Dwarka in CC No. 6478/14 declined the prayer made by the petitioner herein seeking that the cheque in question given to the respondent be sent for an opinion to the hand writing expert, it having been held that it has been held in several cases that where signatures on a cheque are admitted by drawer, the payee gets implied authority to fill the particulars of the cheque in terms of Section 20 N.I. Act and the core issue in dispute between the parties was in relation to the agreement pertaining to sale of the property on the one hand and also issuance of the present cheque as security of the sale consideration to the complainant. The learned Trial Court thus observed to the effect : -

“sending (to)(?) the cheque in question for opinion of handwriting expert would not render any help in deciding the above core issue particularly when the accused is not in a position to say whether the signatures appearing on the above agreement Ex.CW1/A are his or not.

At this stage, it is point(ed) out by the learned counsel for the accused that it is his prayer that the above document Ex.CW1/A may also (be) sent to (a) handwriting

expert for finding out as to who has written that agreement. I have heard the above submission. As the accused himself is not in a position to say whether he signed the said agreement or not, the question as to who wrote the above agreement becomes of secondary importance. In these circumstances, it is for the accused to prove his defence by leading independence (independent) evidence and the opinion of handwriting expert would be of little use.

In this (these) circumstances, I am not inclined to send the above agreement or the cheque in question for opinion of handwriting expert. The present application is accordingly declined.”

9. The learned ASJ (Special Fast Track Court), Dwarka Courts, New Delhi vide order dated 03.10.2015 in CR No. 37/15 declined the prayer made by the petitioner observing to the effect that the dismissal of the application of the petitioner seeking handwriting expert opinion was only an interlocutory order which could not be assailed by way of the revision petition u/S 397 of the Code of Criminal Procedure, 1973.

10. Without adverting to the merits or demerits of the submissions made in the application filed on behalf of the accused i.e. the petitioner of the present petition vide application dated 18.07.2013 made to the learned Metropolitan Magistrate seeking that a handwriting expert be appointed and he be permitted to examine and submit the report in relation to Ex.CW1/A and Ex.CW1/B, it is essential to observe that the said order dated 05.03.2015 of the learned MM (NI Act)-03/Dwarka in CC No. 6478/14 to the extent that it declined to allow the prayer made by the accused therein in the complaint case i.e. the petitioner in the present petition for

examination of the documents Ex.CW1/A and Ex.CW1/B i.e. the agreement and the cheque in question cannot be termed to be an interlocutory order and rather though not conclusive of the main dispute is conclusive to the subordinate matter with which it deals.

11. As observed by the Hon'ble Supreme Court in "**Madhu Limaye Vs. The State of Maharashtra**" AIR 1978 SC 47 to the effect:-

"13. Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term final order. In volume 22 of the third edition of Halsbury's Laws of England at page 742, however, it has been stated in para 1606:

... 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 two words must therefore be considered separately in relation to the particular purpose for which it is required.

In para 1607 it is said:

In general a Judgment or order which determines the principal matter in question is termed "final".

In para 1608 at pages 744 and 745 we find the words:

An order which does not deal with the final rights of the parties, but either (1) is made before Judgment and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after Judgment and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed "interlocutory". An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals."

12. The verdict of the Hon'ble Apex Court in "**Amar Nath and Ors. Vs. State of Haryana and Anr.**" AIR 1977 SC 2185 observed to the effect:-

6. Let us now proceed to interpret the provisions of s. 397 against the historical background of these facts. Sub- section (2) of s. 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-s. (2) of s. 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 s. 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 s. 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 s. 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.”

13. The verdict of the Hon’ble High Court of Karnataka in **“Poornima Finance Corporation Vs. Lilly Joseph” 2009(2) KCCR 1271** is in facts similar to the kind of the instant case wherein it makes reference to the verdict of the Apex Court in **“Mrs. Kalyani Baskar Vs. Mrs. M.S. Sampooram 2007 STPL 3772** wherein the Apex Court, with reference to Section 243, Criminal Procedure Code (Cr.P.C.) held that accused has a right statutorily conferred by law to lay his specific defence and in furtherance of the same, if he were to make a request to the trial Court to refer any document for examination by an expert for his opinion, that is one step in aid of his defence.”

It was thus held in **“Poornima Finance Corporation Vs. Lilly Joseph” (supra)** that any order rejecting such request to the Trial Court to refer any document for examination by an expert for his opinion which is a step in aid of his defence amounts to the deprivation of

the right conferred on an accused under Section 243 of the Code of Criminal Procedure and amounts to denial of the opportunity and the right to defend and that such orders are revisable under Section 397 of the Cr.P.C., 1973 by the Court conferred with the power on revision in the instant case.

14. The learned Trial Court vide order dated 5/3/2015 has taken away the right of an accused, i.e., the petitioner herein in a way by refusing to refer the documents for the opinion of the hand writing expert which needs to be considered to be the right to defend. Thus, the order dated 05.03.2015 of the learned MM concerned substantially affects the right of the accused, i.e., the petitioner herein to put forth his defence to contend that Ex. CW1/A, the agreement in question between him allegedly and Sh. Lal Chand was not in fact so executed by him.

15. In the facts and circumstances of the instant case, it is held that the impugned order dated 03.10.2015 of the learned ASJ, Special Fast Track Court, Dwarka Courts, New Courts which held that the Criminal Revision No. 37/15 was not maintainable has essentially to be set aside and is thus set aside with observations to the effect that the said CRL. REV. 37/15 which dealt with the impugned order dated 05.03.2015 of the learned Trial Court in CC NO. 6478/14, dealt with matters of moment in relation to the prayer made by the petitioner seeking that the document Ex. CW1/A be sent to the hand writing expert for examination as to who had written the same, inasmuch as the impugned order dated 05.03.2015 by the learned Trial Court itself

observed to the effect that the core issue was in relation to the agreement pertaining to sale of the property on one hand and the issuance of the cheque in question as security in relation to sale consideration to the complainant, qua which Ex. CW1/A was allegedly issued by the petitioner herein.

16. The CRL.M.C.193/16 is thus allowed to the extent that the impugned order dated 03.10.2015 of the learned ASJ Dwarka Courts, New Delhi holding that the CRL.REV.NO.37/15 was not maintainable, is thus set aside with directions to the said Court/ successor Court to dispose of the said CRL.REV.NO.37/15 which assails the impugned order dated 05.03.2015 of the learned Trial Court, i.e., the MM concerned in CC no. 6478/14, on merits.

17. The parties are directed to appear before the learned Revisional Court/ the Successor Court of the ASJ Special Fast Track Court, Dwarka Courts, New Delhi and the said learned Court is directed to dispose of CR. NO. 37/15 filed by the petitioner thereof, i.e., the respondent to the present petition on merits.

18. The petition is disposed of accordingly.

(ANU MALHOTRA)
JUDGE

May ,2018/mk