

19.06.2024
rc/ct.no.34
Item No.08

CRR No. 2631 of 2023
with
CRAN No. 1 of 2023

In the matter of : Goutam Saha @ Goutam Kumar Saha
.....Petitioner

Mr. Indranuj Dutta
Ms. Benazir Sk. ...for the Petitioner

Mrs. Anasuya Sinha
Mrs. Subhasree Patel ...for the State

Affidavit of service and notice to mention filed in Court today are taken on record.

None appears for the private opposite party despite service.

Learned counsel for the petitioner submits that the private opposite party filed an application under Section 125 of the Code of Criminal Procedure before the learned Additional Chief Judicial Magistrate, Bidhannagar and by an order passed on March 22, 2021 in Misc. Case No. 8 of 2020 the learned Trial Court allowed the prayer of the opposite party for interim maintenance and granted interim maintenance to the opposite party to the tune of Rs. 7000/- per month for herself and Rs.7000/- per month for her unmarried daughter from the date of the order till disposal of the case or until further orders. Challenging the said order, the petitioner approached the learned Sessions Judge, North 24-Parganas at Barasat and the Criminal Revision being No. 124 of the 2021 was admitted upon condonation of delay in filing the same. The order passed by the learned Trial Court was stayed by

the learned Sessions Judge. Upon the matter being transferred to the learned Additional District and Sessions Judge, Fast Track, 1st Court, Barasat, the said learned Court dismissed the revisional application by an order passed on July 01, 2023 solely on the ground of maintainability since according to the learned Court, the order under challenge was an interlocutory order and could not be dealt with in a revisional application due to the provisions laid down under Section 397(2) of the Code of Criminal Procedure. The said order is under challenge in the present application.

Placing reliance on the authority in *Madhu Limaye Vs. State of Maharashtra* reported in Supreme Court Reports, 1978, 749 and an unreported judgment of a coordinate Bench of this Court delivered on June 25, 2018 in CRR 872 of 2018 [*Shri Sabyasachi Sengupta Vs. Smt. Subhanka Sengupta (Das) & Anr.*], learned counsel for the petitioner submits that an order granting interim maintenance cannot be construed to be an interim order, more so, since the Hon'ble Supreme Court has observed that a strict interpretation of the term "interlocutory order" shall render almost nugatory the revisional power of the Sessions Court or the High Court conferred by Section 397(1).

It appears that the learned Additional District and Sessions Judge, Fast Track 1st Court, Barasat has dismissed the application filed by the petitioner solely on the ground that the application is not maintainable since it has been filed against an order granting interim maintenance which is an interlocutory order. The term "interlocutory order" has been explained in the

authority in *Madhu Limaye* (supra). The relevant portion of the judgment is set out hereunder :-

“.....

In S. Kuppuswami Rao v. The King Kani C.J., delivering the judgment of the Court has referred to some English decisions at pages 185 and 186.; Lord Esher M.R. said in Salaman v. Warner “If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory.” To the same effect are the observations quoted from the judgments of Fry L.J. and Lopes L.J. Applying the said test, almost on facts similar to the ones in the instant case, it was held that the order in revision passed by the High Court (at that time there was no bar like section 397(2) was not a “final order” within the meaning of section 205(1) of the Government of India Act, 1935. It is to be noticed that the test laid down therein was that if the objection of the accused succeeded, the proceeding could have ended but not vice versa. The order can be said to be a final order only if, in either event, the action will be determined. In our opinion if this strict test were to be applied in interpreting the words ‘interlocutory order’ occurring in section 397(2), then the order taking cognizance of an offence by a Court, whether it is so done illegally or without jurisdiction, will not be a final order and hence will be an interlocutory one. Even so, as we have said above,

the inherent power of the High Court can be invoked for quashing such a criminal proceeding. But in our judgment such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. 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). On such a strict interpretation only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code. This does not seem to be the intention of the Legislature when it retained the revisional power of the High Court in terms indetical to the one in the 1898 Code.

There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswami's case (supra) but, yet it may not be an interlocutory order – pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in sub-section (2) of section 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purposes of Article 134 of the Constitution, yet it would not be correct to characterize them as merely interlocutory orders within the meaning of section 397(2).”

In other words, the Hon'ble Court has insisted upon harmonious construction in interpreting orders which are apparently interlocutory but has the flavour of a final order.

In view of the fact that the order of interim maintenance granted by the learned trial court cannot be termed as an interlocutory order in strict sense of the term, the revisional application being CRR No. 2631 of 2023 is allowed.

The order passed by the learned Additional District and Sessions Judge, Fast Track Court, 1st Court, North 24-Parganas on July 01, 2023 in criminal revision no. 124 of 2021 is set aside/quashed.

The learned Additional District and Sessions Judge, Fast Track Court, 1st Court, North 24-Parganas is directed to deal with the revision application filed by the petitioner on merits, in accordance with law.

The connected application being CRAN No. 1 of 2023 is disposed of accordingly.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent certified *website* copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh,J)