
(1987) 08 OHC CK 0042
In the Orissa High Court

Bhagabat Prasad Mohanty

APPELLANT

Vs

Kalanji Mohanty and Others

RESPONDENT

Date of Decision : 17-08-1987

Acts Referred:

Constitution of India, 1950 — Article 134
Criminal Procedure Code, 1973 (CrPC) — Section 216, 397
Penal Code, 1860 (IPC) — Section 144, 145, 302, 303, 304

Citation : (1989) CriLJ 410

Hon'ble Judges : K.P. Mohapatra, J

Bench : Single Bench

Judgement

K.P. Mohapatra, J.—This revision is directed against an order passed by the learned Judicial Magistrate, Second Class, Bhadrak, refusing to frame charge against the opposite parties for an offence u/s 506, Part-II of the Indian Penal Code ("I.P.C." for short).

2. The case has a chequered career. For appreciation of the points canvassed, it is necessary to state a few facts. The petitioner filed a petition of complaint against the opposite parties on 9-3-1978 (I.C.C. Case No. 88 of 1978) alleging offences under Sections 144, 447, 426 and 506, Part II, I.P.C. After recording the statement of prosecution witnesses, the learned Judicial Magistrate framed charges against the opposite parties for offences under Sections 144 and 506, Part-I, I.P.C. and refused to frame charges for offences under Sections 145, 447, 426 and 506 Part- II, I.P.C.. Being aggrieved, the petitioner filed a criminal revision before the learned Sessions Judge, Balasore which was dismissed as not maintainable. Thereafter he filed a writ petition in this Court (O. J.C. No. 746 of 1983) which was dismissed on 27-4-1983 with the observation that charge can be altered at any stage of the proceeding and it was open to the petitioner to move the Court for that purpose. In view of the above observation, the petitioner moved the learned Judicial Magistrate for framing charges under Sections 447 and 506 Part-II, I.P.C. but the learned Judicial Magistrate did not oblige. Against the order, the petitioner invoked the criminal revisional jurisdiction of this Court

(Criminal Revision No. 284 of 1983). But the revision petition was dismissed with the observation that the learned Judicial Magistrate should consider the evidence of the prosecution witnesses in order to find out whether there was a prima facie case u/s 506, Part-II, I.P.C. against the opposite parties and if such a case was made out, then he should submit the case record to the learned Chief Judicial Magistrate for directions. Pursuant to the aforesaid observation, the learned Judicial Magistrate again heard the parties, but came to hold by the impugned order that there was no prima facie case under Sections 447 and 506, Part-II, I.P.C. This is how the criminal revisional jurisdiction of this Court has again been invoked on the self-same question.

3. Mr. Arijit Pasayat, learned Counsel appearing for the opposite parties, raised a preliminary objection on the ground that the impugned order of the learned Judicial Magistrate refusing to frame charge is an interlocutory order and so the revisional jurisdiction of this Court cannot be invoked in view of the bar contained in Section 397(2) of the Code of Criminal Procedure ("Code" for short). Mr. Ramakanta Mohanty, learned Counsel appearing for the petitioner, countered by contending that the consistent view of this Court is that framing of charge by a Judicial Magistrate is not an interlocutory order. So the converse of it, namely, refusal of the learned Judicial Magistrate to frame charge is also not an interlocutory order. Therefore, the bar created by Section 397(2) of the Code on Court's jurisdiction to entertain a criminal revision is inapplicable. The contentions raised are undoubtedly very interesting, but not so simple as they appear to be.

4. There has been divergence of judicial opinion as to whether an order for framing of charge is of interlocutory nature or not. For instance, a learned Single Judge of the Delhi High Court in *Bhupinder Kumar Vs. State*, took the view that order for framing of charge by a Sessions Judge in a case committed to him for trial is interlocutory in nature and not revisable u/s 397(2) of the Code. But in (1979) 47 CLT 126, *P. Chiranjivi v. Principal, M.K.C.G. Medical College, Berhampur*, it was held that order for framing of charge is a final order. A Division Bench of this Court in (1983) 55 CLT 565 : 1985 Cri LJ 84, *Kamaljit Singh v. State of Orissa*, after making reference to a large number of decisions of the Supreme Court and some other High! Courts took the view that an order framing a charge is not an interlocutory order within the meaning of Section 397(2) of the Code and, therefore, a criminal revision lies against such an order. The aforesaid view has been followed in (1984) 1 Ori LR 432, *Dinesh Kumar Jujodia v. State Co-operative Marketing Federation Ltd., Bhubaneswar*. Therefore, so far as this Court is concerned, the principle has been indicated in very clear terms. If this be so, the logical conclusion shall be that if the Court has finally passed a firm order refusing to frame charge, such order shall not also be of interlocutory character. I have deliberately used the expression "has finally passed a firm order" with the intention of exposing the settled principle of law that in view of the evidence recorded by him, a Judicial Magistrate may at any stage frame or alter charges against he accused. For this purpose, reference can be made to

Section 216 of the Code which provides that any Court may alter or add to any charge at any time before judgment is pronounced. If it is a simple case of refusal by the Judicial Magistrate to frame charge under any particular section of I.P.C. against an accused and in view of the evidence, there is further scope to add or alter charge against him, then the order shall be construed as a purely interlocutory one. For instance, when charge-sheet is submitted against an accused for having committed an offence u/s 304, I.P.C. and charge is framed by the Sessions Judge under that section, after consideration of the evidence the charge can be altered to one u/s 302 or even 324 or 325 or 326, I.P.C. But when the Judicial Magistrate has passed a contested, firm and final order after hearing both parties refusing to frame charge, then there is an end to the matter and the question of addition or alteration of charge till the stage of judgment u/s 216 of the Code will not arise. In that case the order of refusal to frame charge cannot be deemed to be interlocutory, but must be construed as a final order so that the aggrieved party may move the higher Court for appropriate relief of alteration or addition of charge in the light of the evidence on record. This contingency may also be illustrated. A case has been committed to the Court of session u/s 302, but the Sessions Judge wrongly frames a charge u/s 304, I.P.C. The evidence recorded subsequently discloses a clear case u/s 302, I.P.C. The prosecution moves the Sessions Judge for alteration of charge from 302 to 304, I.P.C. but the Sessions Judge passes a final order refusing to frame a charge u/s 302, I.P.C. thereby completely burying the provisions of Section 216 of the Code. If in such a case the order of the Sessions Judge will be treated as an interlocutory order, Section 397(2) of the Code would obstruct a revision petition to the High Court and there is no doubt that there shall be a grave miscarriage of justice. Therefore, somewhere a balance has to be struck so as to interpret the order of refusal to frame charge either of an interlocutory character or a final one in order to facilitate invocation of the revisional jurisdiction of the High Court.

5. The problem can be viewed from another angle with reference to a few decisions of the Supreme Court which interpreted Section 397(2) of the Code to find out as to what is an interlocutory order in the context of criminal cases. In *Amar Nath and Others Vs. State of Haryana and Another*, , the following observation was made:

The main question which falls for determination in this appeal is as to 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 difficulty. 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 rights 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 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 u/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 orders so as to be outside the purview of the revisional jurisdiction of the High Court.

In *Madhu Limaye Vs. The State of Maharashtra*, , it was held as follows:

...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 Chap. 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 identical to the one in the 1898 Code.

x x x

On the one hand, the legislature kept intact the revisional power of the High Court and, on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a situation it appears to us that the real intention of the legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". 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* AIR 1949 FC 1 : 1948- 49 Cri LJ 623 (supra), but, yet it may not be an interlocutory order - pure or simple. Some kinds of orders may fall in between the two. By a rule of harmonious construction we think that the order 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 characterise them as merely interlocutory orders within the meaning of Section 397(2). It is neither

advisable, nor possible, to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of those types of orders which will fall in between the two. The first two kinds are well known and can be culled out from many decided cases. We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of Sub-section (2) of Section 397. In our opinion it must be taken to be an order of the type falling in the middle course.

In *V.C. Shukla Vs. State through C.B.I.*, , the meaning of the expression "interlocutory order" was further liberalised and it was ruled thus:

It will be important to note that the words "interlocutory order" used in this sub-section relates to various stages of the trial, namely, appeal, inquiry, trial or any other proceeding. The object seems to be to cut-down the delays in stages through which a criminal case passes before it culminates in an acquittal, discharge or conviction. So far as the Code of Criminal Procedure, 1973 is concerned, it has got a wide and diverse area of jurisdiction inasmuch as it regulates the procedure of trial not only of the large number of offences contained in the Indian Penal Code but also in other Acts and statutes which apply the Code of Criminal Procedure or which are statutes in pari materia with the Code. Having regard, therefore, to the very large ambit and range of the Code, the expression "interlocutory order" would have to be given a broad meaning so as to achieve the object of the Act without disturbing or interfering with the fairness of the trial....

6. At least on two occasions on being approached by the petitioner invoking the writ and the criminal revisional jurisdiction, this Court observed that it was open to the learned Judicial Magistrate to consider the prosecution evidence and if the evidence warranted framing of charge u/s 506 Part-II, I.P.C. he was free to do so. The learned Judicial Magistrate has considered and by the impugned order he has passed a firm and final order declining to frame charge against the opposite parties u/s 506, Part-II, I.P.C. In view of this order, application of the provisions of Section 216 of the Code in the proceeding is a far cry and the impugned order is a sure indication that the provisions of Section 216 of the Code are useless so far as the proceeding is concerned. This being the position and in view of the principle laid down by the Supreme Court in the decisions referred to above, I must have to arrive at the irresistible conclusion that the impugned order is not of an interlocutory character. It is a final order or at the worst an intermediate order, neither of which attracts the bar contained in Section 397(2) of the Code. The preliminary objection of Mr. Pasayat in my opinion, in the facts and circumstances of the case, is untenable.

7. It is now for consideration if there is material on record for framing charge against, the opposite parties u/s 506 Part-II, I.P.C. In this connection, I would quote the finding of the learned Judicial Magistrate in the impugned order:

...In the instant case, the evidence of P.Ws. discloses that there was no action by the accused persons save and except holding lathi, acid, knives and bottles. They came to the field and told the constable that the complainant and his men be directed to stop the work. Otherwise they would cause assault. If this statement would appear I do not find any reason to show that this is intended to cause death or grievous hurt to the complainant or his men....

Apart from the above, if the evidence of the prosecution witnesses is considered, it will appear that despite the presence of a police constable (P. W. 3) the opposite parties came to the place of occurrence being armed with lathis, acid, knives and bottles and gave out threats that unless the petitioner and his labourers desist from reaping the standing paddy crop, they shall be assaulted causing death or grievous hurt. Part-II of Section 506, I.P.C. is attracted if the criminal intimidation includes threat to cause death or grievous hurt. In my view, the prosecution evidence adduced so far discloses a prima facie case u/s 506, Part-II, I.P.C. It is not understood why the learned Judicial Magistrate (invested with powers of the Magistrate of Second Class) shut his eyes to the relevant evidence and remained adamant so as not to frame charge u/s 506 Par-II, I.P.C. though the evidence prima facie warranted it.

8. For the aforesaid reasons, I would allow the criminal revision and vacate the impugned order. I direct that the learned Sub-Divisional Judicial Magistrate, Bhadrak, shall withdraw the case to his file and proceed with the trial in accordance with law in the light of the observation made above.