
(1977) 05 OHC CK 0016
In the Orissa High Court

Chandrabhanu Gountia

APPELLANT

Vs

Durbadal Naik and Others

RESPONDENT

Date of Decision : 26-05-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 397

Citation : (1977) 44 CLT 173 : (1977) CriLJ 1593

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Judgement

S. Acharya, J.—The first party in a proceeding u/s 145 Cr. P. C., has preferred this revision against the order passed by the learned Additional Sessions Judge, Sambalpur in Criminal Revision No. 23(3)(S) of 1974-75 remanding the case to the trial court for a fresh determination of the question of possession involved in this proceeding after taking into consideration the affidavits sworn and the written statements filed in the Court of the S.D.O., Sambalpur and in the court of Shri A. R. Sabat, another First Class Magistrate at Sambalpur. In view of the limited question involved in this revision, it is not necessary for me to state here the respective cases put forward by the contesting parties on the question of possession of the disputed property.

2. Mr. Basu, the learned Counsel for the opposite parties, at the outset opposed the maintainability of this revision on the ground that the impugned order being an interlocutory order in the proceeding, Section 397(2), Cr. P. C., 1973, bars a revision against such an order. According to Mr. Basu, the proceeding u/s 145 Cr. P. C., is still alive, and so the impugned order passed in the said proceeding is merely an interlocutory order, and so no revision is maintainable against that order as provided u/s 397(2) Cr. P. C., 1973. Mr. Swain, the learned Counsel for the petitioner, on the other hand contends that the impugned order is a final order for all intents and purposes and its effect cannot be questioned or remedied at any later stage and so it does not come within the purview of Section 397(2) Cr. P. C., 1973.

3. The Criminal P. C. does not define an "interlocutory order." The word "interlocutory" is used in juxtaposition to the word "final". The meanings of those words, as has been held in the case reported in Mohan Lal Magan Lal Thacker Vs. State of Gujarat, , have to be considered separately in relation to the particular purpose for which they are required to be interpreted. No singular test can be applied to determine whether an order is final or Interlocutory. In the said case it has been held that "an interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals." The expression "interlocutory order" has again been considered in Smt. Parmeshwari Devi Vs. The State and Another, . In this case the trial court made an order summoning Smt. Parmeshwari Devi to attend the court with some documents. The applications for revision preferred by Smt. Parmeshwari Devi were dismissed by the Additional Sessions Judge and the High Court of Delhi. By obtaining special leave she preferred an appeal before the Supreme Court against the order of the Delhi High Court. In the Supreme Court it was argued that the aforesaid order of the Magistrate was an interlocutory order and the power of revision conferred by Sub-section (1) of Section 397, Cr. P. C., 1973 could not be exercised in relation to the said order by virtue of Sub-section (2) of that section. In dealing with this matter their Lordships referred with approval to the above-quoted observation regarding interlocutory order made in the decision reported in Mohan Lal Magan Lal Thacker Vs. State of Gujarat, , and observed as follows :--

..... It may thus be conclusive with reference to the stage at which it is made, and it may also be conclusive as to a person, who is not a party to the enquiry or trial, against whom it is directed. As has been shown, the order of the Magistrate dated August 8, 1974 was not according to law and it adversely affected the appellant, who was not a party to the enquiry or trial, as it was solely directed against her. As is obvious, she could have no opportunity to challenge it after the making of the final order, and such a belated challenge would have been purposeless for it would have given her no relief. So in so far as the appellant is concerned, the order of the Magistrate could not be said to be an interlocutory order and the revisional courts erred in raising the bar of Sub-section (2) of Section 397 against it.

Before their Lordships some other decisions which are not in conformity with the above view, were cited, but their Lordships distinguished those cases stating that the premises on which these decisions were given were different and so those decisions would not apply to the case before them.

4. On a consideration of the Supreme Court decisions. I am firmly of the opinion that the impugned order cannot be said to be an interlocutory order so as to bar a revision u/s 397(2) Cr. P. C., 1973, By the impugned order the court below has washed its hands clean of the matter pending before it, and it cannot any further pass any order in that Criminal Revision which had been filed before it. By the impugned order the case before the court below has come to an end, and so far

as that court is concerned it is a final order. Moreover, that order is conclusive as to the persons affected by that order, as they would not have any further effective opportunity to challenge this order at any other stage, for after the decision of the dispute u/s 145 Cr. P. C., by the court to which it has been remanded it would be useless and purposeless to challenge this order of remand. Considering the above aspects of this case, I am of the opinion that in the facts and circumstances of this case the impugned order is not an interlocutory order but is a final order for all intents and purposes, and so this revision against that order is not hit by the provisions of Section 397(2) of the Cr. P. C., 1973.

5. To say that the said order is an interlocutory order, as on the passing of the said order the proceeding u/s 145 Cr. P. C., is not disposed of finally, is to shut out a person aggrieved by this order not to seek any legal remedy against this order for all times to come, for he would not have any effective opportunity to challenge this order at any later stage. If such orders are called interlocutory orders and are not allowed to be interfered with at the earliest possible occasion, then the consequential harassment, suffering or illegality, if any, in such orders cannot at all be eradicated or cured. The object of putting an end to revisions against interlocutory orders by engrafting Section 397(2) in the Criminal P. C., is to avoid delay in the disposal of criminal cases or proceedings which causes great harassment to the litigants and defeats justice for all practical purposes. The effect of an order passed in a criminal proceeding cannot in many cases be eradicated or annulled at a later stage and if the party aggrieved against such an order is not allowed to move the superior court to avoid such an order then that will not only cause great hardship and harassment to him but will also cause injustice to him. Sub-section (2) of Section 397 certainly is not engrafted to impose such total ban whatever may be the consequences thereof. So orders which are passed at an interlocutory stage of a criminal proceeding, but are for all intents and purposes final and cannot be corrected or their effect cannot be nullified at any later stage, cannot and should not be regarded as interlocutory orders so as to come within the ban provided u/s 397(2) Cr. P. C., debarring the courts to assess the correctness and/or the legality of such an order at the proper time.

6. The decision in *Bhima Naik and Others Vs. State of Orissa*, , was arrived at in the context of facts and circumstances which are entirely different from the context and premises on which one has to consider the impugned order in the present case. It has been observed in the decisions reported in *Mohan Lal Magan Lal Thacker Vs. State of Gujarat*, and *Smt. Parmeshwari Devi Vs. The State and Another*, that the meanings of the words "final" and "interlocutory" have to be considered separately in relation to the particular purpose for which they are required to be interpreted, and no singular test can be applied to determine whether an order is final or interlocutory. Considering the connotation given by the Supreme Court to the words "interlocutory order", I am, on the facts and circumstances of this case, firmly of the opinion that the remand order passed in this case is not an interlocutory order so as to come within the provision of

Section 397(2) Cr. P. C,

Thus the preliminary objection raised by Mr. Basu to the maintainability of this revision is without any substance.

7. By this revision petition it is urged that the learned Additional Sessions Judge has committed an error of record by directing the Magistrate to give his fresh decision on the matter on taking into consideration certain affidavits and written statements mentioned in that order, as those documents cannot be so considered as the Magistrate before whom they were sworn in or filed was not in seisin of the proceeding at that time. The affidavits sworn by Ugresan alias Baya Majhi, Badhu Naik, Gunu Naik and Kamal Mahakud on 24-10-68 before Shri P.K. Das, a Magistrate, First Class, are on record. On the same date the second party filed their written statements before the said Shri P.K. Das. The above documents are all addressed to the court of the S.D.O., Sambalpur, Admittedly on 24-10-68 the proceeding in question was pending in the court of the S.D.O., Sambalpur. On that date, as is evident from the order sheet of the case, Mr. P. K. Das, Magistrate First Class at Sambalpur was in charge of the S.D.O.'s court at Sambalpur and so on that date the proceeding in question was pending before Mr. P. K. Das in his capacity as the S.D.O. That being so the aforesaid affidavits were rightly sworn and the written statements were rightly filed before Shri P. K. Das on 24-10-68.

8. Mr. Swain, the learned Counsel for the petitioner, states that Mr. P.K. Das was not the permanent S.D.O. of that sub-division but was posted as a Magistrate, First Class at that place and as the proceeding in question was pending before the S.D.O. and had not been transferred to the court of Shri P.K. Das, the affidavits sworn and the written statements filed before Shri P.K. Das cannot be utilised in this proceeding. From the order passed in this case on 24-10-68 it is clearly seen that Shri P.K. Das was in charge of the S.D.O.'s court on that date. The second party in the proceeding filed written statements on that date in that court and that was accepted by Shri P.K. Das functioning as the S.D.O., on that date. The first party in the proceeding prayed for time and Shri P.K. Das acting as the S.D.O., adjourned the case till 20-11-68 as prayed for. From the order sheet of the case it is quite evident that the case record of the said proceeding was placed before Shri P.K. Das on 24-10-68 for necessary orders, and that officer functioning as the S.D.O. passed orders on that date in the said proceeding. So, Shri P.K. Das, who was in charge of the court of the S.D.O. on that date, was certainly in seisin over the said proceeding, and that being so the above mentioned affidavits sworn and written statements filed on that date before Shri P.K. Das were all valid and should have been taken into consideration in this case.

9. Mr. Swain submits that the said affidavits bear the seal of the court, of the Magistrate, First Class, and not that of the S.D.O. and so it can not be said that the said affidavits were sworn in the court of the S.D.O.

From the order sheet of this case it is seen that the first preliminary order u/s

145(1) Cr. P. C., dated 3-9-68 was signed by Shri P.K. Das as S.D.O.-cum-Magistrate, First Class, Sambalpur. On that date the first party in the proceeding swore an affidavit before Shri P.K. Das and filed that before him, and Shri P.K. Das acting as the S.D.O.-cum-Magistrate, First Class accepted that affidavit and issued the preliminary order in the proceeding. He also passed orders in this proceeding as the S.D.O., Sambalpur on 20-1-69, 25-4-69 and 24-10-68. From the above it is quite evident that Shri P.K. Das was in charge of the S.D.O.'s court on many occasions, including the date on which the aforesaid affidavits were sworn and written statements were filed before him. The affidavit filed by the first party on 3-9-68, on the basis of which the preliminary order was passed in the proceeding, bears the seal of the court of the Magistrate First Class, Sambalpur though it was addressed to the S.D.O., Sambalpur. The affidavits and the written statements in question are all addressed to the court of the S.D.O., Sambalpur. The above facts indicate that when Shri P.K. Das was functioning as the S.D.O., of that place, the seal of the Magistrate, First Class, was being incorrectly put in all petitions and affidavits which were being filed in respect of cases pending in the court of the S.D.O., Sambalpur. So, merely from the seals put in the above-mentioned affidavits, it cannot be said that those affidavits were not sworn in the court of the S.D.O., Sambalpur and/or that the said written statements were not filed in that court.

10. On the above considerations, I find that the court below is correct in holding that the learned Magistrate was not justified in deciding the matter without taking into consideration the above-mentioned affidavits and the written statements filed in this proceeding. The court below of course, could have finally disposed of the matter by taking into consideration those affidavits and written statements on record. But as the court has already passed an order of remand, and I do not see any illegality in the same, and no case of injury or harassment of a substantial nature is made out by the petitioner. I do not like to interfere with the impugned order, and hence it is confirmed.

11. There is no merit in this revision and it is accordingly dismissed.

The trial court to which the matter has been remanded for fresh disposal must take up the matter with expedition and dispose of the same within 2 months from the date of the receipt of the lower court records, with intimation to this Court.

The L.C.R. be sent back immediately.