
(2015) 03 MAN CK 0009
In the Manipur High Court
Case No : Criminal Petition No. 3 of 2014

Heikrujam Nabakumar Singh	Vs	APPELLANT
Kangabam Thoiba Singh and Others		RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Constitution of India, 1950 — Article 19
Criminal Procedure Code, 1973 (CrPC) — Section 144, 144(1), 144(2), 397, 397(2)

Citation : (2015) 03 MAN CK 0009

Hon'ble Judges : N. Kotiswar Singh, J.

Bench : Single Bench

Advocate : Th. Ibohal, for the Appellant; Th. Modhu, Advocates for the Respondent

Final Decision : Disposed off

Judgement

N. Kotiswar Singh, J.—Heard Mr. Th. Ibohal, learned counsel for the petitioner and Mr. Th. Modhu, learned counsel for the respondents.

2. The present revision petition has been preferred by the petitioner being aggrieved by the order dated 30.11.2013 passed in Cril. Revn. Case No. 2 of 2013 by the learned Sessions Judge, Thoubal, Manipur setting aside an ex-parte order dated 17.08.2013 passed under section 144(2) Cr.P.C. by the learned District Magistrate, Thoubal.

3. On 17.08.2013 at the instance of the present petitioner who filed Cril. Misc. Case No. 1 of 2013, the District Magistrate, Thoubal, Manipur, passed an ex-parte order under section 144(2) Cr.P.C. against the present respondents restraining them and their agents from entering into the disputed land which the petitioner was claiming to be the owner thereof, until further order relying on an enquiry report of the Officer-in-Charge, Thoubal Police Station. Being aggrieved by the aforesaid ex-parte order passed by the learned District Magistrate, Thoubal, the present respondents herein preferred a criminal revision petition before the learned Sessions Judge, Thoubal which was registered as Cril. Revn.

Case No. 2 of 2013. The learned Sessions Judge after hearing the parties observed that the essential ingredient for invoking the jurisdiction under section 144 Cr.P.C. of the need of immediate preventive measure or desirability of speedy remedy had not been fulfilled in the present case.

4. The learned Sessions Judge observed that in the present case, the application for passing an order under section 144(2) Cr.P.C. was filed before the District Magistrate, Thoubal on 25.6.2013 against the present respondents. However, after more than 50 days from the date of filing the application, the District Magistrate, Thoubal passed the impugned ex-parte order under section 144(2) Cr.P.C. on 17.8.2013 by observing that the present case is of an emergent nature and the circumstances did not permit of due notice/summons to the opposite parties. The said order passed by the learned District Magistrate had also referred to an enquiry report dated 3.8.2013 submitted by the Officer-in-Charge of Thoubal Police Station. The learned District Judge also observed that the police report indicated that there was a dispute over the land between the parties, each claiming to be the owner of the land and that there was an allegation of forceful plantation of paddy by the present respondents. The learned Session Judge observed that however, neither in the impugned order passed by the learned District Magistrate nor in the police report submitted by the Officer-in-Charge, Thoubal, nothing is indicated about the need for immediate preventive measure or desirability of speedy remedy in the ex-parte order passed after about 50 days of the application filed by the present petitioner. The learned Sessions Judge noted that there was a civil suit pending between the parties relating to the land before the Court of Civil Judge (Sr. Divn.), Thoubal and an ex-parte interim injunction order granted earlier in favour of the complainant/petitioner was subsequently vacated by the learned Civil Judge (Sr. Divn.), Thoubal on 27.5.2011, and accordingly, took the view that invoking jurisdiction under section 144 Cr.P.C. in the face of the aforesaid judicial orders amounts to abuse of power under Section 144 Cr.P.C. Accordingly, the learned Sessions Judge held that passing of an ex-parte order under section 144(2) Cr.P.C. by the learned District Magistrate, Thoubal suffers from illegality and infirmity and accordingly, the revision petition was allowed.

5. Being aggrieved by the aforesaid order of the learned Sessions Judge allowing the revision petition, the present revision petition has been preferred.

6. Mr. Ibohal, learned counsel appearing for the petitioner has submitted that even though the ex-parte order passed on 17.8.2013 may have outlived its purpose by efflux of time, and as such, the validity of the ex-parte order passed under section 144 Cr.P.C. may not be required to be examined, the petitioner is aggrieved by the entertainment of the revision petition by the learned Sessions Judge contending that as an order passed under section 144(2) Cr.P.C. is an interlocutory order, no revision would lie against an interlocutory order in view of the bar placed by Sub-section 2 of Section 397 Cr.P.C.

7. On the other hand, it has been submitted by Mr. Th. Modhu, learned counsel

for the respondents that order passed under section 144 Cr.P.C. is not an interlocutory order and as such it is amenable to revision petition.

8. Since the issue raised in this petition is as to whether an order passed under section 144(2) Cr.P.C. is an interlocutory order or not, this Court would not venture into the facts of the case involved nor on the merit of the case as to whether grounds which were necessary for invoking the said ex-parte order passed by the District Magistrate, Thoubal under Section 144(2) Cr.P.C. existed or not, more so, when the said order had outlived its purpose due to efflux of time inasmuch as no order passed under Section 144 Cr.P.C. could remain valid after 2(two) months and in any event not beyond 6 (six) months as provided under Sub-section 4 of Section 144 of Cr.P.C.

9. As to the issue whether an order is interlocutory or not for the purpose of Section 397 Cr.P.C. has not been defined in the Code. It may be mentioned that under the earlier Code of Criminal Procedure, existing prior to 1973, it did not contain the provision for excluding revisional jurisdiction in respect of any interlocutory order. The aforesaid exclusionary provision has been included in Section 397 in the 1973 Code in order to avoid delay in the criminal proceedings.

10. As to what amounts to an interlocutory order has been discussed by the Hon"ble Supreme Court in a number of decisions of which some of the leading cases may be mentioned herein below:--

"1. Amar Nath and Others Vs. State of Haryana and Another, ,

2. Madhu Limaye Vs. The State of Maharashtra,

3. K.K. Patel and Another Vs. State of Gujarat and Another, ,

4. M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim and Apparels Ltd. and Others, ,

5. Mohit alias Sonu and Another Vs. State of U.P. and Another, ,"

11. In the aforesaid cases, the Hon"ble Supreme Court has laid down a number of tests to determine whether an order amounts to interlocutory or not.

In Amar Nath and Others Vs. State of Haryana and Another, , it has been observed by the Hon"ble Supreme Court that the term "interlocutory order" under section 397(2) Cr.P.C., 1973 has been used in a restricted sense and not in any broad or artistic sense. It merely denotes an order of a purely interim or temporary nature which does not decide or touch the important rights or the liabilities of the parties. On the other hand, 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 the order, because that would be against the very object which form the basis for insertion of this particular provision under section 397 of the Code. The Hon"ble Supreme Court gave the examples of the orders of summoning witnesses, adjourning cases, passing orders for bail, calling for records and such other steps

in aid of the pending proceeding to be an interlocutory order against which no revision would lie under Section 397(2) of the Cr.P.C. However, it observed that 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, as held in para 6 thereof which is reproduced as follows.

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

(emphasis added).

12. Similarly, in *Madhu Limaye Vs. The State of Maharashtra*, , it was held that if an order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of section 397(2) Cr.P.C. which was relied upon in *M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim and Apparels Ltd. and Others*, , as observed in para Nos. 8 and 9 thereof.

"8. The interdict contained in Section 397(2) of the Code of Criminal Procedure (for short "the Code") is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test laid down by this Court through a series of decisions is this: if the contention of the petitioner who moves the superior court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If they would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage.

9. A three-Judge Bench of this Court in *Madhu Limaye Vs. The State of Maharashtra*, laid down the following test: (SCC p. 560, para 15)

"[A]n order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of Section 397(2)." This was upheld by the four-Judge Bench of this Court in *V.C. Shukla Vs. State through C.B.I.*, ."

(emphasis added)

13. In *K.K. Patel's* case(supra), the Hon"ble Supreme Court observed that in deciding whether an order challenged is an interlocutory or not under section 397(2) Cr.P.C., the sole test is not whether such order was passed during the interim stage. According to the Hon"ble Supreme Court, the feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings. If so, any order passed on such objection would not be merely interlocutory order under Section 397(2) of the Code as observed in para 11 thereof which is reproduced herein below.

"11. That apart, the view of the learned Single Judge of the High Court that no revision was maintainable on account of the bar contained in Section 397(2) of the Code, is clearly erroneous. It is now well-nigh 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 (vide *Amar Nath and Others Vs. State of Haryana* and *Another*, , *Madhu Limaye Vs. The State of Maharashtra*, , *V.C. Shukla Vs. State through C.B.I.*, and *Rajendra Kumar Sitaram Pande and Etc. Vs. Uttam and Another*, . The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable."

(emphasis added).

14. The offshoot of the aforesaid judgments is that even an order passed during

an interlocutory stage of a trial which is not a final order, if fulfils any of the tests evolved by the Hon"ble Supreme Court in the above referred cases, can not be said to be an interlocutory order. These two categories of orders which are not interlocutory orders may be stated as below:

"(i) Any order which is a matter of moment and 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 against the order.

(ii) If the contention of the petitioner who moves the superior Court in revision, as against the order under challenge is upheld, then the order is not an interlocutory in spite of the fact that it was passed during an interlocutory stage."

15. We will now proceed to examine whether an order passed under Section 144 Cr.P.C. is an interlocutory order or not satisfies any of the above tests.

An order passed under Section 144 is by itself a temporary order as its validity is limited to a period of 2 months or at the maximum 6 months as provided in the Code. However, though the effect of the order will be for a limited period, the order passed under Section 144 Cr.P.C. is an order of moment which would have serious repercussions on the rights of the parties. On the satisfaction of the District Magistrate or the Sub-Divisional Magistrate or any Executive Magistrate specifically empowered by the State Government, if there are sufficient grounds for proceeding under the section, the said Magistrate may direct any person or persons to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if the Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety or a disturbance of the public tranquility, or a riot or an affray and in case of emergency or where circumstances do not admit of serving notice upon the person against whom the order is directed, an order may be passed ex-parte as provided under section 144(2) Cr.P.C. Thus, the order passed under section 144 would have serious repercussions on the freedom of speech and expression and movement of the person concerned against whom the order is passed. In fact, because of this restraint placed on the persons on the freedom of speech, expression and movement, the provision of Section 144 Cr.P.C. had been challenged as violative of the fundamental rights as guaranteed under Article 19 of the Constitution, as can be seen in the case of *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, . The Hon"ble Supreme Court, however, held that such restriction placed upon the fundamental rights of the person concerned is within the permissible reasonable restrictions.

It cannot be denied that the order passed under section 144 sub-clause (1) or (2) substantially affects the right of the person concerned against whom the order is issued as it restricts his certain rights and accordingly, by applying the first of the aforesaid tests, this Court is of the view that an order passed under Section 144 Cr.P.C. is not an interlocutory order so as to bar a revision to the

High Court or the Sessions Court under Section 397 Cr.P.C.

The Hon"ble Supreme Court in the aforesaid case of Madhu Limaye v. SDM, Monghyr (supra) observed that the person affected has several remedies. He can ask the order to be vacated as against him, he can file a revision and a petition for a writ. It may be noted, however, that the aforesaid observation was made when the Code of Criminal Procedure, 1898 was applicable wherein the bar in respect of interlocutory order on revision was not there.

16. It may be also mentioned that the Hon"ble Supreme Court in Ramlila Maidan Incident Vs. Home Secretary, Union of India (UOI) and Others, after elaborately discussing the scope of Section 144 Cr.P.C. observed that an order under Section 144 Cr.P.C. has a direct consequence of placing a restriction on the right of freedom of speech and expression and right to assemble peacefully, and should be an order in writing and based on material facts and such order is revisable and is subject to review as stated in para 45 thereof which is reproduced herein below:

"45. Moreover, an order under Section 144, Cr.P.C. being an order which has a direct consequence of placing a restriction on the right to freedom of speech and expression and right to assemble peaceably, should be an order in writing and based upon material facts of the case. This would be the requirement of law for more than one reason. Firstly, it is an order placing a restriction upon the fundamental rights of a citizen and, thus, may adversely affect the interests of the parties, and secondly, under the provisions of the Cr.P.C., such an order is revisable and is subject to judicial review....." The aforesaid observations of the Hon"ble Supreme Court in Madhu Limaye v. SDM, Monghyr (supra) and "In Re: Ramlila Maidan Incident" (supra) clearly fortify the observation of this Court that order passed under Section 144 Cr.P.C. is revisable, though from another aspect and not on the ground of such an order not being an interlocutory order.

These observations were made because of the serious implications and inroads such an order can make on the personal liberties which made the Court mindful of the requirement of judicial review of such orders. These observations, however, reinforce the view that order passed under Section 144(1) or (2) Cr.P.C. vitally affects the rights of the person against whom such order is passed.

It may be also noted that even if there is a provision under sub-section (5) of Section 144 Cr.P.C. that the Magistrate on his own motion or on an application of any person aggrieved, rescind or alter any order, such a provision can not divest the order of its character of being not an interlocutory order. The order issued under Section 144(1) or 144(2) of Cr.P.C., for however, limited period it may be, retains the character of being a matter of moment touching on his personal liberties since it would affect the rights of the persons against whom it has been passed.

Therefore, existence of such provision for modification of an order passed under Section 144 Cr.P.C. will not make any difference as regards its attribute of being

not an interlocutory order.

17. Accordingly, for the reasons discussed above, this Court holds that an order passed under Section 144(1) or 144(2) Cr.P.C. is not an interlocutory order and hence it is amenable to revision jurisdiction of the superior Courts under Section 397 Cr.P.C. and the bar placed under Sub-section (2) of Section 397 Cr.P.C. will not be applicable.

Revision petition is accordingly disposed of.