

(1990) 08 GAU CK 0001

In the Gauhati High Court

Case No : Criminal Revision No. 543 of 1989

Indrapuri Primary Co-operative Housing Society Ltd. and
Another

APPELLANT

Vs

Sri. Bhabani Gogoi

RESPONDENT

Date of Decision : 01-08-1990

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 146(1), 397(1), 397(2)

Citation : (1991) CriLJ 1765

Hon'ble Judges : Manisana, J

Bench : Single Bench

Advocate : C. Baruah, for the Appellant; N.M. Lahiri and A. Roy, for the Respondent

Judgement

Manisana, J.—This revision petition arises from orders of the Sessions Judge, Dibrugarh made in Criminal Revision No. 88(4)89 on 30-10-1989 and 3-11-1989.

2. On 23-10-1989, the Executive Magistrate Dibrugarh in Case No. 241 of 1989 (renumbered as 334 of 1989) passed preliminary order u/s 145(1), Cr. P.C. as well as order of attachment of the subject of dispute u/s 146(1), Cr. P.C. Being aggrieved by the order of the Magistrate, the second party Bhabani Gogoi filed Criminal Revision No. 88(4)89. The learned Sessions Judge, Dibrugarh by an order dated 30-10-1989 admitted the revision petition and fixed the 3-11-89 for hearing on stay matter. On 3-11-1989, the in charge Sessions Judge stayed the operation of the order dated 23-10-1989 of the Magistrate in respect of the order of attachment of the subject of dispute. Hence this petition by the first party.

3. Mr. C. Baruah, the learned counsel for the petitioner, has contended that orders passed under Sections 145(1) and 146(1), Cr. P.C. are interlocutory orders and, therefore, the revision is not maintainable u/s 397(2), Cr. P.C.

4. As regards the order u/s 145(1), the learned counsel has contended that the

proceedings u/s 145, Cr. P.C. deal only with the factum of possession of the parties as on the date of the preliminary order passed u/s 145(1), Cr. P.C. It confers no title to remain in possession of the disputed property. The order is subject to the decision of the civil Court. The unsuccessful party therefore can get relief in the civil Court as the declaration of the possession of one of the parties in the proceeding is until he is evicted therefrom in due course of law.

5. In respect of the order made u/s 146(1) Cr. P.C. the learned counsel has submitted that an order made u/s 146(1) is inherently temporary in nature as the order may be withdrawn at any time by the Magistrate if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute. The learned counsel has further contended that an order u/s 146(1), Cr. P.C. is nothing but a step-in-aid in the pending proceeding u/s 145, Cr. P.C. Therefore, the order is neither final nor quasi final. In support of his contention, reliance has been placed on the following decisions of different High Courts -- Smt. Premalata and Another Vs. Ram Lubhaya and Others, ; Brij Lal Chakoo, etc. Vs. Abdul Ahad Nishati and Others etc., ; Kartar Singh and Others Vs. Smt. Pritam Kaur and Another, Shishu and Others Vs. The State of Haryana and Others, Bechan Mahto and Others Vs. State of Bihar and Another,

6. The expression "interlocutory order" has not been defined in the Code. The question then is, -- What is the meaning of an "interlocutory order"?

7. This Court in *Tridib Sarma v. State of Assam*, (1985) 2 GLR 229 (FB), has after referring to various dictionaries and decisions mentioned in the judgment, held (at page 239):

"From the above definition the general characteristics of an interlocutory order can be seen. We start from the commencement or inception of an action, on one end and the final judgment or determination of the action on other end. In between those two ends numerous types of orders are passed, some on oral or simple prayers and some on interlocutory applications or proceedings. These orders do not finally determine the action. Some of the orders may finally determine the interlocutory applications or proceedings and are final in so far as those interlocutory applications or proceedings and the rights involved therein are concerned. But those will be interlocutory orders vis-a-vis the main action is concerned. Some intermediate orders are passed otherwise than in any such interlocutory applications or proceedings. Generally speaking, all these orders will be treated as interlocutory orders. None of these orders will finally determine the action and the disputed right. All those orders passed in between the commencement and the final decision or determination of the action or disputed right will be generally categorised as interlocutory orders. Any order made as to the procedure in the action will be an interlocutory order. In this sense orders passed before as well as after the judgment in the action could be interlocutory orders as converse of final judgments and orders. Whether all of them will be covered by the term "interlocutory order" for the purpose of Section 397(2), Cr. P.C. is of course a different question".

In the above case, this Court was dealing with the question as to whether order refusing to call for the statements of witnesses in a sessions case given before an inquiry committee constituted by the State Government of Assam was an interlocutory order or not.

8. It also will be helpful to refer to the following decisions of the Supreme Court and Privy Council although the decisions relate to civil matters. In *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, the Supreme Court has, while holding that an order refusing to appoint a receiver or to grant interim injunction is a judgment within the meaning of the Letters Patent, observed that trial Judge should be trusted to pass discretionary or interlocutory orders with due regard to the well settled principles of justice. Any discretionary or routine order passed by the trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice one party or the other cannot be treated as a Judgment. Any discretionary order which the Judge passes must be presumed to be correct unless it is *ex facie* illegally erroneous or causes grave and substantial injustice. The interlocutory order in order to be a judgment must contain traits and trappings of finality either when the order decides the question in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings. In *Shah Babulal's* case (*supra*), the Supreme Court reiterated the observations made in *Shri Radhey Shyam Vs. Shyam Behari Singh*, in the following terms : "Whenever a trial Judge decides a controversy which affects valuable rights of one of the parties, it must be treated to be a judgment within the meaning of the Letters Patent". Thereafter, it was further observed that every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matter of moment or affecting vital and valuable rights of the parties and which work serious injustice to the parties concerned.

In *Ram Kirpal Shukul v. Rup Kuari*, 11 IA 37, Privy Council has described an order of the trial Judge as an "interlocutory judgment". In *Sheonath v. Ramnath*, 10 IA 413, Privy Council observed: "A party is not bound to appeal from every interlocutory order which is a step in the procedure that leads to a final decree". A reading of *Ram Kirpal's* case shows that the case deals with the judgment which though called interlocutory, had, in fact, terminated the previous proceedings.

9. The word "judgment" has not been defined in the Code. In *Halsbury's Laws of England* (4th Edn, Vol. 9), there is a discussion regarding the meaning of the word "judgment" in criminal proceedings. In that discussion, it has been stated that in criminal proceedings the word "judgment" means final order in a trial terminating in a conviction or acquittal of the accused. In my opinion, in criminal proceedings, the word "judgment" means statement given by the Judge of the grounds of conviction or acquittal or of an order made under the Code.

10. The above discussions may now be summarised. Interlocutory orders are all those orders passed between the commencement and the final order terminating

the proceedings either in the main proceeding or in a part of the proceeding or in an ancillary proceeding arising out of the main proceeding. There are routine orders passed in the course of the proceeding. There are interlocutory orders which are a step towards the decision of the dispute or controversy between the parties by way of final order. There are orders which though called an interlocutory orders which decide matter of moment and which affects vital and valuable rights of the parties. There are interlocutory orders containing traits and trappings of finality either when the orders decide the dispute between the parties in the main proceeding or in an ancillary proceeding or in a part of the proceedings. There are discretionary orders that may be termed as interlocutory orders.

11. In view of the above discussions, there are interlocutory orders which can be called or regarded as judgments considering the meaning of "judgment" stated above. In other words, every interlocutory order cannot be regarded as a judgment, but only that order would be or would be regarded as a judgment which decides the matter of moment affecting the valuable rights of the parties, or the interlocutory order which contains traits and trappings of finality either when the order decides the question for controversy in the main proceeding or ancillary proceeding or in a part of the proceedings. Therefore, there are two kinds of interlocutory orders, one which would be regarded as a judgment and other which would not be regarded as a judgment.

12. The question which therefore arises for consideration is whether all kinds of interlocutory orders are within the purview of Section 397(2), Cr. P.C. As already stated, all the interlocutory orders would not be regarded as judgments. In view of the discussion above all those orders which would not be regarded as judgments are interlocutory order in order to attract the applicability of Section 397(2), Cr. P.C. This view of mine finds support from the decision of this Court in *Tridib's case* (supra) in which it has been held that all interlocutory orders, as generally understood, shall not be excluded under Sub-section (2) of Section 397, Cr. P.C. for the "purpose of revision u/s 397(2). Orders which are interlocutory are not final in the general sense but fall in the middle course being an intermediate or quasi final order and are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial and which result in denial of fair trial to the accused, which will not be interlocutory orders within the purview of Sub-section (2) of Section 397, Cr. P.C.

13. Now coming to the question whether the preliminary order passed u/s 145(1) is an interlocutory order. As already stated, interlocutory orders are those orders passed between the commencement and the final order terminating the proceedings. An order u/s 145(1) is the first order for initiating a proceeding u/s 145, Cr. P.C. This is the foundation upon which the jurisdiction of the Magistrate to proceed u/s 145, Cr. P. C. For these reasons, a preliminary order u/s 145(1) is not an interlocutory order. This view of mine also finds support from the decision in *Brij Lal Chakoo, etc. Vs. Abdul Ahad Nishati and Others etc.*,

14. The next question is whether an order u/s 146(1), Cr. P.C. is an interlocutory order. Subject of dispute under attachment is in custodia legis. See Deokuer and Another Vs. Sheoprasad Singh and Others, Therefore, a party may be affected by the order of attachment and may cause some inconvenience or to some extent prejudice one party, but the possession of the subject of dispute during attachment will be treated as a possession of the party finally declared to be in possession. The order u/s 146(1) is a discretionary order and it is to be presumed that the Magistrate has passed the order with due regard to the well settled principle of justice by applying his mind to the facts and circumstances of the case and pressing necessity in the interest of maintenance of peace unless it is ex facie erroneous. The order u/s 146(1) is a step in the procedure. The order can be revoked at any time as is provided under the proviso to Section 146(1). In that view of the matter, the order passed u/s 146(1) is an interlocutory order within the purview of Section 397(2), Cr. P.C. In the above cited cases reported in Criminal Law Journal, it has been held that an order u/s 146(1) is an interlocutory order and, therefore, revision is not maintainable against it. I respectfully agree with above decisions. In that view of the matter, the order u/s 146(1) is an interlocutory order and no revision lies u/s 397(2), Cr. P.C.

15. As regards the order u/s 145(1), the learned counsel for the petitioner, has called upon me to examine the legality and propriety of the order passed u/s 145(1), Cr. P.C. by exercising power u/s 482, Cr. P.C. or Article 227 of the Constitution of India. The revision petition is pending before the learned Sessions Judge. It is at the stage of hearing. If there is an alternative and proper forum for remedy, the High Court should not generally exercise its power u/s 482, Cr. P.C. or Article 227 of the Constitution of India. For these reasons, I am not inclined to invoke the jurisdiction of this Court u/s 482, Cr. P.C. or Article 227 of the Constitution of India.

16. For the foregoing reasons, the order passed by the learned Sessions Judge staying the order u/s 145 is of no consequence as no revision lies from an order u/s 146(1), Cr. P.C. As regards the revision from the order u/s 145(1), the case is sent back to the learned Sessions Judge and the learned Sessions Judge shall dispose of the matter as early as possible.

With the above observation and direction, the petition is partly allowed and disposed of.