
(1983) 08 KL CK 0009
In the High Court Of Kerala

Jacob and Another

APPELLANT

Vs

Jayabharat Credit and Investment Co. Ltd., and Others

RESPONDENT

Date of Decision : 02-08-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 114, 115, 205, 31, 397

Citation : (1983) CriLJ 1584

Hon'ble Judges : K.K. Narendran, J

Bench : Single Bench

Judgement

K.K. Narendran, J.—Two questions arise for consideration in these criminal revisions. They are: (1) Whether a third party to the proceedings, who claims for interim custody of a vehicle seized, can challenge in revision u/s 397 of the Cr. p. C. an order passed u/s 451 of the Cr. P.C. 1973 rejecting his claim and giving custody to another claimant, and (2) in granting interim custody of a motor vehicle seized, what are the considerations that should weigh with the Court, can anybody other than the registered owner be given custody ?

2. The short facts of the case are: A case was registered by the Ernakulam Town, North Police Station for the theft of a bus KLR 4150 on the complaint of the petitioner in Crl. R. P. 211 of 1983. The vehicle was seized and produced before the Additional Judicial First Class Magistrate's Court I, Ernakulam on 3-5-1982. (Though in the order the date is given as 3-5-1982, it can only be 3-5-1983). The petitioner in Crl. R. P. 211 of 1983, the petitioner in Crl. R. P. 227 of 1983, who is the first respondent in Crl. R. P. 211 of 1983 and the 2nd respondent in Crl. R. P. 211 of 1983 filed claim petitions before the court for interim custody of the vehicle. The petitioner in Crl. R. P. 211 of 1983 is the complainant. The petitioner in Crl. R. P. 227 of 1983 is the financier who claims to have obtained a letter from the registered owner relinquishing all rights in the vehicle in their favour. The 2nd respondent in Crl. R. P. 211 of 1983, who is the first respondent in Crl. R. P. 227 of 1983, according to her, was in custody of the vehicle and she produced the same before the Police. The learned Magistrate disposed of the

three claims petitions by a common order. Before the Court, the Assistant Public Prosecutor submitted that, according to the Police, no offence of theft was committed and they were filing a refer report. By the order, the learned Magistrate entrusted custody of the vehicle to the 2nd respondent in Crl. R. P. 211 of 1983 Smt. Annie Olivaro. In the order it is stated as follows in para. 9:

As she has agreed that she will pay 25% of the amount due to the Company, the vehicle will be entrusted to the custody of this Annie Olivaro on executing a bond for Rs. 2 lakhs with 2 solvent sureties for the like amount each and in the meantime to keep the vehicle under good repairs and to cause it to be produced before court as and when called for.

The petitioners challenge the above order in these Criminal Revisions.

3. In *Amar Nath and Others Vs. State of Haryana and Another*, the Supreme Court has held:

Section 482 of the 1973 Code contains the inherent powers of the Court and does not confer any new powers but preserves the powers which the High Court already possessed. A harmonious construction of Sections 397 and 482 would lead to the irresistible conclusion that where a particular order is expressly barred u/s 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of Section 482 would not apply. It is well settled that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject matter. Where there is an express provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers.

In *Madhu Limaye Vs. The State of Maharashtra*, the Supreme Court has held :?

The 1973 Code put a bar on the power of revision in order to facilitate expeditious disposal of cases. But in Section 482 it was provided that nothing in the Code, which would include Section 397(2) also, shall be deemed to limit or affect the inherent powers of the High Court. On a harmonious construction it should be held that the bar provided in Section 397(2) operates only in exercise of the revisional power of the High Court, meaning thereby, that the High Court will have no power of revision in relation to any interlocutory order, But in such a case, the inherent power will come into play there being no other provision in the Code for the redress of the grievance of the aggrieved party. In case the impugned order clearly brings out a situation which is an abuse of the process of the court, or for the purpose of securing the ends of justice interference of the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power of the High Court.

Such cases would necessarily be few and far between. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. The present case would undoubtedly fall for exercise of the power of the High Court in accordance with Section 482:

of the 1973 Code even assuming that the invoking of the revisional power of the High Court is impermissible. (Head Note).

In *Madhu Limaye Vs. The State of Maharashtra*, what was quashed was a criminal proceedings initiated illegally, vexatiously and without iurisdiction. So, this decision is distinguishable on facts. In *Salaman v. Warner* (1891) 1 QB 734 a distinction has been drawn between an interlocutory order and a final order by Lord Esher M. R. in the following terms:?

If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purpose 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.

In *Pathu v. State of Kerala* 1975 KLT 696 Janaki Amma J. has referred to the decision of the Supreme Court in *Mohan Lal Magan Lal Thacker Vs. State of Gujarat*, wherein the Supreme Court has held:?

...When the Magistrate ordered the filing of the complaint against the appellant, the parties to that controversy were the State and the appellant and the controversy between them was whether the appellant had committed offence charged against him in that complaint. The appeal filed by the appellant before the Additional Sessions Judge was against the order filing the complaint, the controversy therein raised being whether the Magistrate was justified in filing it, that is to say, whether it was expedient in the interest of Justice and for the purpose of eradicating the evil of false evidence in a judicial proceeding before the Court. The controversies in the two proceedings were thus distinct though the parties were the same. When the Additional Sessions Judge held that the complaint was justified in respect of the offence u/s 205 read with Section 115 and was not justified in respect of the other offences, his judgment in the absence of a revision by the State against it finally disposed of that part of the controversy, i. e. that the complaint in respect of offences under Sections 467 and 468 read with Section 115 was not justified. When the appellant filed revision in respect of the complaint for the remaining offence u/s 205 read with Section 114 the single Judge of the High Court dismissed that revision. His order of dismissal disposed of that controversy between the parties and the proceeding regarding the question as to whether the complaint in that regard was justified or not was finally decided. As observed in *Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others*, the finality of that order was not to be judged by correlating that order with the controversy in the complaint, viz., whether the appellant had committed the offence charged against him therein. The fact that the controversy still remained alive is irrelevant. It must consequently be held that the order passed by the High Court in the revision filed by the appellant was a final order within the meaning of Article 134(1) (c).

Following the above decision of the Supreme Court, Janaki Amma J. held in

Pathu"s case 975 KLT 696):?

The order in Crl. M. P. 2153/75 being an order for interim custody is no doubt an interlocutory order. But the order in Crl. M. P. 2151 of 1975 stands on a different footing. The second respondent claims the cow and the calves in her own right and is not interested in the controversy between the petitioner and the first respondent or the ultimate disposal of the complaint. She has to establish her claim independently of the complaint. It is true that since a cow and two calves have been included in the subject matter of the theft, Crl. M. P. 2151 of 1975 if allowed may influence the final disposal of the complaint. But that is no ground for correlating the order therein with the complaint for deciding whether it is an interlocutory order.

The petitioner in Crl. R. P. 211 of 1983 is the complainant in the case. He cannot get over the bar imposed by Section 397(2) by invoking Sec. 482 of the Code. First of all, his rights are not finally settled by the order refusing interim custody of the vehicle to him. If ultimately in the case he comes out with flying colours, he can walk away with the vehicle in spite of the fact that interim custody of the same was given to somebody else. The inherent powers of the court u/s 482 are not to be invoked by a party to the case to challenge interlocutory orders such as giving interim custody of the property pending trial. Even if interim custody was wrongly denied to a party, he will have to wait till the disposal of the case as it cannot be said that the order has resulted in an abuse of the process of court. So, it goes without saying that the petitioner in Crl. R. P. 211 of 1983, who is the complainant in the case, cannot challenge the order granting interim custody in revision before this Court even by invoking the inherent jurisdiction u/s 482. The position as far as the petitioner in Crl. R. P. 227 of 1983 is different. Admittedly, the petitioner-firm is not a party to the case. It has no opportunity to put forward its case in the further proceedings in the case. Though it is the interim custody that was denied to it, the order is a final order as far as it is concerned and not at all interlocutory in character. It has to establish its claims over the vehicle independently of the complaint in the case. Not only that, it is not interested in the controversy between the petitioner and the second respondent in Crl. R. P. 211 of 1983. The finality of the order as far as the firm is not to be considered by correlating that order with the dispute pending for decision in the complaint. So, the bar u/s 397(2) will not apply to the revision filed by the petitioner in Crl. R. P. 227 of 1983.

4. The only question that remains to be considered is whether the dismissal of the claim petition of the petitioner in Crl. R. P. 227 of 1983 is sustainable on the merits. In *Nandiram Vs. State of Gujarat and Others*, the question as to who should be given interim custody of a motor vehicle pending trial came up for consideration. In that case, the Magistrate and the Sessions Judge ordered interim custody of the vehicle to accused No. I from whom it was attached. The High Court of Gujarat adverted to the provisions of the Motor Vehicles Act, 1939, interfered with the order for interim custody, and held:?

It follows from the provisions referred to hereabove that the registration certificate is an essential necessity before any such motor vehicle can be made use of and that any person in whose favour this certificate of registration is issued, obviously would be the owner thereof. In case of any transfer of ownership in respect of that motor vehicle, the procedure is contemplated u/s 31 of the Act and till any such "transfer of ownership is entered in the certificate of registration, one has to take it that the person in whose favour such a certificate of registration is issued by the motor transport authorities is the owner and that way entitled to remain in possession thereof. Non-compliance of certain provisions of the Motor Vehicles Act sometimes makes the owner responsible. In those circumstances, it would be ordinarily prudent and in consonance with the provisions of the Motor Vehicles Act to allow such a motor vehicle to remain in possession of such a person in whose name the certificate of registration stands. Any other person can be taken to be a person at the most as making use of it on his behalf or if there is no consent on his part, as against his interest, in cases of this character, possession by itself would not be a true criterion for the return of the same to a person from whom it has been seized or attached by the police in relation to a case against him. In my view, the person on whose name the motor vehicle stands with the registering authority, would be entitled to remain in custody thereof and not any other person, unless he is able to establish his superior title or claim over it." (para 6) This question again came up for consideration before the High Court of Karnataka in U. Kariyappa Vs. P. Sreekantaiah and Another, In this case, the Magistrate gave interim custody of the bus to the registered owner. The Sessions Judge interfered with that order and gave custody of the vehicle to the person from whom it was seized. Interfering with that order, the High Court of Karnataka held:?

While making an order for interim custody of a motor-vehicle, what the criminal court has to keep in view is who would be the best person to make use of the vehicle pending conclusion of the enquiry and trial, because if a mechanically propelled vehicle is kept idle for a long time not only there are chances of it being spoiled, but the person who is deprived of that possession of the vehicle, either by theft or other wise is likely to be put great loss in his business.... Therefore, it is clear from the provisions of the Motor Vehicles Act that registration certificate is essential before the motor-vehicle is used on the road. Therefore, it follows that the person in whose favour the certificate of registration is issued or stands, ordinarily and obviously is the proper person for the interim custody of the vehicle so seized and produced before the criminal court.

The High Court further held:?

Here, in the case at hand, merely because the vehicle is seized from the possession of the first respondent will not be proper criterion for the entrustment of the interim custody of the vehicle to him pending conclusion of enquiry or trial. The Criminal Court while making an order of interim custody, as provided u/s 451 Cr. P.C. has to enquire first of all. whether the person who claims for the

interim custody of the vehicle seized, is a registered owner entitled to use the vehicle as required under the provisions of the Motor Vehicles Act. If he is such a person, then ordinarily, he is a right and correct person to whom the custody of the vehicle has to be entrusted.

In this case, the registered owner of the vehicle is one Bhanumathi Amma. The fact that there is a hire purchase agreement with the firm who is the petitioner in Crl. R. P. No. 227 of 1983 is also not denied by any of the parties. The learned Magistrate also has recognised this agreement. Otherwise, there was no reason why the Court directed the first respondent in Crl. R. P. 227 of 1983 to pay 25% of the balance due to the petitioner firm. Going by the hire purchase agreement, the petitioner firm is not bound by the transactions entered into by the respondents one and two and also by respondent one with the said Bhanumathi Amma. The petitioner-firm also produced a letter from Bhanumathi Amma relinquishing her rights to it. In that case, the petitioner firm, the owner of the vehicle, can get the registration of the same in its name and ply the vehicle. Respondents one and two cannot get this done and even if they were plying the vehicle for and on behalf of Bhanumathi Amma they cannot now do it as she had relinquished all her rights to the petitioner firm. Even though the case was being referred to by the Police at the time when the impugned order was passed, it was yet to be referred and the order is no doubt one for interim custody u/s 451 of the Cr. P.C. Interim custody of a motor vehicle has to be given to the registered owner. It cannot, at any rate, be given to a person who is not the registered owner even if the Police took possession of the same from him. This is because the vehicle will have to be kept idle as only a registered owner can ply the same. If the vehicle cannot be used on the road, no purpose will be served in giving interim custody to anybody. In this case, as the first respondent in Crl. R. P. 227 of 1983 to whom interim custody was given by the court is not the registered owner, it was neither legal nor proper that the Magistrate gave interim custody of the vehicle to her.

5. It was submitted by the Public Prosecutor that pending the criminal revisions, the Police have referred the case and submitted a report to the Magistrate. In that case, at any rate, an order has to be passed by the Magistrate u/s 452 of the Cr. P.C. So. I set aside the order impugned in these criminal revisions and direct the Magistrate to pass a fresh order in accordance with law, at any rate, within a week of receipt of a copy of this order by him.

6. The Criminal Revisions are disposed of with the above direction.