

(1997) 08 MP CK 0057

In the Madhya Pradesh High Court

Case No : Criminal Revision No"s. 326 to 329 of 1996

Khagesh Kumar Goel

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 04-08-1997

Acts Referred:

Constitution of India, 1950 — Article 134
Criminal Procedure Code, 1973 (CrPC) — Section 204, 227
Essential Commodities Act, 1955 — Section 3, 7
Fertiliser (Control) Order, 1985 — Section 19
Penal Code, 1860 (IPC) — Section 199(2), 397(2), 482, 500
Special Courts Act, 1979 — Section 11(1)

Citation : (1998) CriLJ 776

Hon'ble Judges : Tej Shankar, J

Bench : Single Bench

Advocate : Sanjay Gupta, for the Appellant; M.M. Qureshi, Government Advocate and N.K. Modi, for the Respondent

Final Decision : Allowed

Judgement

Tej Shankar, J.—These three Revision petitions arise out of three different cases against the present petitioner. As they raise common questions of law, they have been heard together and are being disposed of by this common order.

2. The facts on the basis of which the petitioner has been prosecuted u/s 3 r/w Section 7 of the Essential Commodities Act and violation of Section 19 of the Fertilizer Control Order 1985, in the aforesaid three different cases are also more or less similar.

3. It is alleged that Raghuveer Saran Gupta non-petitioner No. 2 was proprietor of M/s. Raghuveer Saran. Arun Kumar, a dealer in fertilizers at Dinara (326/96) Satish Kumar Jain, non-petitioner No. 2 was proprietor of M/s. Vivek Traders, a dealer of fertilizers at Pohri (327/96) Hukum Chand Nagaria, non-petitioner No. 2 was proprietor of M/s. Jwala Prasad Hukum Chand, a dealer in fertilizers at

Sirsaud (328/96). There was a stock of Vishwas Brand Single Super Phosphate (In short SSP) with the said proprietors and sample was taken on different dates in the aforesaid three cases and it was sent to the fertilizer analyst for examination. A report dated 4-9-1995 was received and according to the report sample was found substandard to the extent mentioned in the report. In all the three cases it was mentioned in the report that the fertilizer was purchased from the firms mentioned therein. The allegation made against the petitioner was that he was the manufacturer of Vishwas Brand Single Super Phosphate (SSP) which was a company known as Shriniwas Fertilizers Ltd. Jhansi (U.P.). The petitioner claimed that there was, however, no mention of the procedure adopted by the complainant in taking sample. There was no allegation about the business relationship between the said firms and the petitioner. The said firms are not agent of the petitioner. The shops from which the sample was received did not belong to Shriniwas Fertilizers Ltd. Jhansi (U.P.) M/s." Shrinivas Fertilizers Ltd. had no sale depot in M.P. or at Shivpuri. There is no allegation in the F.I.R. that the sample was taken from the bags which were owned by M/s. Shrinivas Fertilizers Ltd. even if it was found that the fertilizer in question was the same which was manufactured by M/s. Shriniwas Fertilizers Ltd. Jhansi (U.P.) There was no allegation to support the allegation that sample was taken from the bags which were in the ownership of the M/s. Shriniwas Fertilizers Ltd. There is also nothing to show that the said firms had obtain any warranty from M/s. Shriniwas Fertilizers Ltd. or that the goods were kept intact in the same condition in which they were purchased. Procedure for taking sample had been laid down in Schedule II of the Fertilizer Control Order 1985 and the provisions are mandatory. Nothing has been shown that the procedure was actually followed. Unless it is specifically alleged that the petitioner was the owner he could not be proceeded with under the Essential Commodities Act. There could not be a joint trial under the provisions of Essential Commodities Act of the alleged manufacturer or Vendor or distributor. They can only be tried if allegations are made that they have connecting links between them so as to constitute the same transaction. This link is absolutely missing in the case. The petitioner before the lower Court contested this point at the time of framing the charge. But the lower Court repelled the contentions and framed the charge and hence the present petitions.

4. A preliminary objection has been raised on behalf of the respondent that revision petition against the framing of charge is not maintainable as it is an interlocutory order.

5. Learned counsel for the petitioner argued at length that the revision petition lies. In support of his contentions she placed reliance upon certain authorities.

6. The earliest authority upon which reliance has been placed is Amar Nath and Others Vs. State of Haryana and Another, . In this case the words "interlocutory Order" appearing in Section 397(2) have been interpreted. It was a case where the FIR was lodged on the basis of which after investigations a charge-sheet was

submitted against the other accused persons except the appellants against whom it was opined that no case at all was made out as no weapon was recovered nor any clear evidence about his participation was there. A final report was submitted u/s 173 of the 1973 Code against those accused concerned. The Judicial Magistrate, Karnal, accepted the final report and set the appellants at liberty. The complainant preferred a revision petition before the Additional Sessions Judge, Karnal against the order of the Judicial Magistrate which was dismissed. The informant thereafter filed a complaint before the Judicial Magistrate against the 11 accused persons including the appellants. After examining the complaint and going through the record learned Judicial Magistrate dismissed the complaint as he was satisfied that no case was made out against the appellants. Again a revision was preferred and it was allowed and the case was remanded for further enquiry. The learned Judicial Magistrate thereafter issued summons to the appellants straightway. The appellants then moved before High Court u/s 482 and Section 397 of the 1973 Code for quashing the order of the Judicial Magistrate. The petition, was dismissed by the High Court holding that the order was an interlocutory order and the revision was barred by virtue of Sub-section (2) of Section 397 of the 1973 Code. As the revision was barred the Court could not take up the case u/s 482 for quashing the order of the Judicial Magistrate. On these facts the Hon"ble Apex Court considered at length the import of words "interlocutory order" appearing in Sub-sections (1) and (2) of Section 397 of the 1973 Code. It was held that the order of summoning the appellants had been taken away by the Magistrate in passing an order prima facie without applying his mind. Consequently, it was concluded that the order was one which was a matter of moment and which did involve a decision regarding the rights of the appellants. If the appellants were not summoned then they could not have faced the trial at all, but by compelling the appellants to face a trial without proper application of mind cannot be said to be an interlocutory order, but one which decided a serious question as to the rights of the appellants to be put on trial.

7. The other authority upon which reliance has been placed is *Madhu Limaye Vs. The State of Maharashtra*, Again in this case the meaning of "interlocutory order" was considered. In that case the facts briefly narrated were that, it was alleged that the appellant had made certain statements on 27th Sept. 1994 in Delhi and, handed over a "press hand-out" containing alleged statements concerning Shri A.R. Antuiay, the then Law Minister of the Government of Maharashtra. The statements had been published in newspapers. The State Government, therefore, decided to prosecute the appellant u/s 500, I.P.C. Sanction for prosecution was also obtained. Cognizance was taken of the offence alleged to have been committed by the appellant by the Court of Sessions without the case being committed to it as permissible under Sub-section (2) of Section 199 - Process was issued against the appellant upon the said complaint. The Chief Secretary to the Government of Maharashtra was examined as a witness in the Court of Sessions to prove the sanction order. An application was moved by the appellant before learned Sessions Judge for rejecting the complaint on the ground that the

Court had no jurisdiction to entertain the complaint. The appellant raised three contentions before the learned Sessions Judge regarding the legality of the trial and all the contentions were rejected by learned Sessions Judge. He framed a charge against the appellant u/s 500 of Penal Code. A revision petition was filed before the High Court challenging the order of the Sessions Judge. A preliminary objection was raised about the maintainability of the revision petition which was upheld. Aggrieved party approached the Apex Court. While considering the questions involved in the case, the case of Amar Nath and Others Vs. State of Haryana and Another, was taken into consideration. It was observed that two points were decided in that case. A revision to the High Court against the order of the Subordinate Judge is expressly barred under Sub-section (2) of Section 397 and the inherent powers contained in Section 482 would not be available. The second question was that the impugned order was not an interlocutory order. The import of words "interlocutory order" was considered in para 12 onwards. It was observed that an interlocutory order though not conclusive of the main dispute may be conclusive as to the subordinate matter with which it deals with. The Honourable Court also considered a decision of the Federal Court reported in AIR 1949 1 (Federal Court) and observed that the test laid down therein was that if the objection of the accused succeeded, the proceedings could not have ended but not vice versa. The order can be said to be a final order only if, in either event, the action will be determined. In this case the Hon'ble Court observed that 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. The Hon'ble Court went on to say "in such 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, but, it is not an interlocutory order just pure or simple. Further it was observed that rule of harmonious construction has to be applied. The bar in Sub-section (2) of Section 397 did not mean that it can be attracted to such kinds of intermediate orders. They may not be final orders for the purpose of Article 134 of the Constitution of India. It would not be correct to think as merely within the meaning of Section 397(2). The order of summoning in that case was held to be an order of the type falling in the middle course. It was not an interlocutory order so as to attract the bar of Sub-section (2) of Section 397.

8. Last case of the Apex Court in this chain on which reliance has been placed is V.C. Shukla Vs. State through C.B.I., . In this case the Court considered the import of words interlocutory order appearing in Section 11(1) of the Special Courts Act (1979). The Apex Court defined interlocutory order as well as intermediate order, and held "An interlocutory order merely decides some point or matter essential to the progress of the suit or collateral to the issues sought but not a final decision or judgment on the matter in issue. An intermediate order was one which was made between the commencement of an action and the entry

of the judgment. An order of framing of the charge being an intermediate order falls squarely within the natural meaning of the term interlocutory order as used in Section 11(1) of the Act. It was further observed that the order of framing the charge was purely an interlocutory order as it did not terminate the proceedings, but the trial goes on culminating in acquittal or conviction. Apart from the aforesaid three decisions of the Apex Court, the learned counsel also relied upon a decision of a learned single Judge decision of the Bombay High Court reported in Dr. Dattatraya Narayan Samant and others Vs. State of Maharashtra, . In that case also it was held that framing of the charge was not an interlocutory order. In another decision of the Division Bench of the same High Court reported in M/s Mohanlal Devdanbhai Chokshi and others Vs. J.S. Wagh and another, it was held that an order framing a charge is not an "interlocutory order" and as such the revision was maintainable. Similar view was expressed in a decision of a learned single Judge of this Court reported in 1989 MPLJ 343 : 1989 Cri LJ 153 (Kuldeep Singh v. State of M.P.) In that case it was held that an order of framing charge constitutes an important stage in the case and the right of an accused. The revision application challenging an order framing charge was maintainable. A latest decision of the Division Bench of Allahabad High Court reported in (1997) 2 Crimes 27 (Umakant Pandey v. Additional Chief Judicial Magistrate) has also been relied. In that case the question was as to whether summoning order passed by Magistrate u/s 204, Cr.P.C. was an interlocutory order. The Division Bench held that it cannot necessarily be treated as an interlocutory order, attracting bar u/s 397(2), Cr.P.C.

9. I have carefully gone through the aforesaid authorities and to my mind the law laid down in the aforesaid cases is that every order passed during the trial cannot be essentially called an interlocutory order or a final order. The test laid down in Amarnath's case still holds good. It was laid down therein that an interlocutory order merely denotes orders of 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 attract the bar provided u/s 397(2). In that case certain orders were given for illustration purposes as interlocutory orders against which no revision is maintainable u/s 297(2). It was observed in Madhu Limaye Vs. The State of Maharashtra, that 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). In the aforesaid V.C. Shukla Vs. State through C.B.I., court considered the words with reference to Section 11(1) of the Special Courts Act and found that the order of framing the charge was purely interlocutory order as it did not terminate the proceedings but the trial went on culminating in acquittal or conviction. In Madhu Limaye's case it was specifically observed that 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). It, therefore,

clearly goes to show that in order to take out particular order from the clutches of the interlocutory order, it must be shown that the order is such by which plea of the accused on a particular point if accepted will conclude a particular proceeding. Unless it is shown that the plea if accepted will finally conclude the proceedings, the order passed during the pendency of the case can be taken to be interlocutory order. I may also observe here that in the aforesaid authorities, the apex Court also observed that there may be intermediate order. In V.C. Shukla's case it was held that "In order to construe the term "Interlocutory" it has to be construed in contradistinction to or in contrast with a final order.". In other words, the words "not a final order" must necessarily mean an interlocutory order or an intermediate order. Thus, the expression interlocutory order is not to be understood and taken to mean converse of the term "final order".

10. "Interlocutory order merely decides some point or matter essential to the progress of the suit or collateral to the issues sought but not a final decision or judgment on the matter in issue". An intermediate order is one which is made between the commencement of an action and the entry of the judgment. Thus, the Summum bonum of the aforesaid authority, is that if an order does not put an end to the main dispute but conclusively decide the point raised in controversy, it can certainly not be said to be interlocutory order. In other words if the plea raised finally disposes of the matter and there does not remain anything to be decided further, if accepted the order disposing of the plea, cannot be said to be an interlocutory order.

11. In the aforesaid background of law it has to be seen as to whether framing of charge is an interlocutory order or final order. In the aforesaid Amar Nath and Others Vs. State of Haryana and Another, an order of summoning of the accused was held to be not an interlocutory order, whereas in Madhu Limaye Vs. The State of Maharashtra, an order challenging the jurisdiction of the Court to proceed with trial was also held to be not an interlocutory order. But in V.C. Shukla Vs. State through C.B.I., with reference to the Section 11 (1) of the Special Courts Act, it was ruled that an order of framing the charge was purely an interlocutory order as it did not terminate the proceedings but the trial goes on culminating in acquittal or conviction.

12. In the view of the matter, we have to see as to how far an order of framing the charge in the case in hand amounts to an interlocutory order or not. Before entering into this point, I may also observe that in the aforesaid authority of Kuldeep Singh v. State of M.P. (1989 Cri LJ 153) of this Court, the learned single Judge took the view that, an order of framing the charge is revisable. Similarly, the Bombay High Court in the aforesaid authority also held that an order of framing the charge is not an interlocutory order within the meaning of Section 397(2). Carefully perusal of these authorities shows that one important aspect has not at all been taken into consideration. To my mind, there are two main considerations u/s 227, Cr.P.C. The Court is required to take into consideration

record of the case and the documents submitted therewith. After hearing the submissions of the accused and prosecution, if it concludes that there is no sufficient ground to proceed against the accused the Court has to discharge the accused. On the other hand if the Court is of the opinion that there is ground for presuming that the accused committed an offence a charge has to be framed. If the case is triable by the Court of Session and if it is not, it may frame a charge and transfer the case to Chief Judicial Magistrate. Thus, at the time of framing of the charge it is the duty of the Court to discharge the accused if there is no sufficient material to proceed against the accused and the reasons has to be given, but if there is ground for presuming that the accused committed an offence a charge has to be framed. In other words if the accused is discharged u/s 227, Cr.P.C. or the accused prays that he has to be discharged as there is no sufficient ground against him and the plea is rejected, it certainly goes to show that his plea if accepted would have put an end to the matter. An order discharging the accused or refusing to discharge is certainly not an interlocutory order. I am supported by a decision of the Apex Court reported in (1990) 2 JT (SC) 328 Haryana Reclamation and Development Corporation Ltd. v. State of Haryana. Thus, such an order is not hit by the provisions of Section 397(2) and the revision petition is maintainable.

13. The other case is, where according to the material on record, there is ground for presuming that the accused committed a particular offence and the charge is framed. The plea of the accused is that on the basis of material on record that charge could not be framed, but a minor or other charge is made out and this plea is repelled by the Court and the charge is framed. Such an order of framing charge to my mind is certainly an interlocutory order. The reason is that if the plea of the accused that a minor or other charge is made out is accepted it will not put an end to the matter and the accused has still to be tried on the charge which can be framed according to him. It will be open to him to show at proper time that on the material on record the offence made out is minor offence. A contention has been raised to the effect that it may be said that the accused stands discharged with reference to the major offence and as such it puts an end to that content. This to my mind is not correct. The accused can be discharged only as proceeded u/s 227. There cannot be an order of discharge if there is a ground to proceed against the accused, even if a minor charge is made out from material on record. In case a minor charge is made out even then the order of framing charge by the Court cannot be said to be a final order as it does not put an end to the controversy. It is certainly an interlocutory order because trial has to continue with respect to the minor charge claimed by the accused.

14. I, therefore, conclude that the order passed at the time of framing the charge negating the plea of the accused that no charge is made out and he is entitled to be discharged is not an interlocutory order and revision petition is maintainable and such an order is not hit by the provisions of Section 397(2), Cr.P.C. On the other hand if the plea of the accused is that a minor charge is made out instead of charge framed by the order of framing charge, such an

order is certainly an interlocutory order and the revision petition against such an order is not maintainable and is hit by provisions of Section 397(2), Cr.P.C. This aspect has not been considered in the authorities of Bombay High Court cited by learned counsel or in the Single Judge authority of this Court. As such, these authorities do not help the learned counsel to show that every order of framing of charge is revisable. In the cases in hand the plea of the accused was that there was no material on record against the accused-petitioner and no charge could be framed against him. In other words it means that the petitioner claimed to be discharged. If this plea had been accepted by the Court below it would have put an end to the trial of the petitioner. This order to my mind, in view of what has been stated above is not hit by provisions of Section 397(2), Cr.P.C. The preliminary objection is, therefore, repelled and it is held that the revision petitions are maintainable. They are accordingly admitted.

15. Let a copy of the order be placed on the record of connected petitions.