
(2001) 01 JH CK 0051

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 9578 of 2000

Madhusudan Paul

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-01-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 228, 228(1), 397, 397(1), 397(2)
Penal Code, 1860 (IPC) — Section 120
Prevention of Corruption Act, 1988 — Section 11, 11(1), 5(1), 5(2)

Citation : (2001) 49 BLJR 759 : (2001) CriLJ 2688 : (2001) 3 RCR(Criminal) 611 : 2001 1 EastCriC 408

Hon'ble Judges : D.N. Prasad, J

Bench : Single Bench

Advocate : Anita Sinha, for the Appellant; Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Prasad, J.—In this application the Office raised objection about the maintainability of this case and, as such, heard learned counsel for both sides and it is being disposed of.

2. This application has been filed u/s 482 of the Code of Criminal Procedure (hereinafter to be referred to as "the Code") for quashing the order dated 20.7.1999 passed by the Assistant Sessions Judge, Pakur, in Sessions Case No. 255 of 1997, whereby and where under, the learned Assistant Sessions Judge dismissed the application filed by the petitioner.

3. The facts giving rise to this application are quite simple which may be shortly stated.

4. The petitioner/accused persons filed a petition u/s 228(1) of the Code praying therein that no offence u/s 307 of the Indian Penal Code is made out against the petitioner/ accused persons. The complainant/op-pusite-party No. 2 also filed

rejoinder stating therein that it is a fit case in which charge u/s 307 of the Indian Penal Code can be framed. Having heard the parties and considering the materials brought on record, the learned Court below dismissed the application by the order impugned and the case was fixed on 20.8.1999 for framing of charge. Against which this application has been filed for quashing of the said order.

5. Learned counsel appearing on behalf of the petitioner submitted at the very outset that the objection raised by the Office is not maintainable as the order framing charge is an interlocutory order and, as such, no revision can be filed. It is also submitted that this Court has got inherent power u/s 482 of the Code for quashing and, as such, this application has rightly been filed. Counsel for the petitioner also relied upon a case of V.C. Shukla Vs. State through C.B.I., .

6. On the other hand, learned Additional Public Prosecutor contended before me that there is no illegality in the objection raised by the office as this application u/s 482 of the Code is not maintainable when the order of framing charge is not an interlocutory order and the revision is maintainable under Sections 397 and 401 of the Code. It is also submitted that this application has been filed u/s 482 of the Code as it is time barred for filing revision application.

7. Obviously the application filed on behalf of the petitioner u/s 228(1) of the Code was dismissed and the case was fixed for framing of charge by holding sufficient evidence for framing of charge under Sections 307/323 of the Indian Penal Code. It is denoted u/s 228 of the Code of Criminal Procedure in the Book of Sarkar on Criminal Procedure (6th Edition) that revision is maintainable against the order of framing charge.

8. Section 397(2) of the Code reads as follows :--

"The power 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."

9. The interlocutory order has not been defined in the Code of Criminal Procedure. However, it is well-settled that interlocutory order merely denotes order of a purely interim or temporary nature which does not decide or touch the important rights or liabilities of the parties. Any order which substantially affects the rights of the persons/accused or decides certain rights of the parties cannot be said to be an interlocutory order. The impugned order indicates that the application of the petitioner for not framing of charge u/s 307 of the Indian Penal Code was dismissed by which, in my view, the order decides certain rights of the parties as the petitioner/accused persons were called for and to face trial for the said offence as well.

10. In the case of V.C. Shukla, (supra), the matter was otherwise as the learned Sessions Judge directed the charge to be framed against the appellant u/s 120B of the Indian Penal Code read with Section 5(1)(d) and Section 5(2) of the

Prevention of Corruption Act and also u/s 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act and the said appeal was filed by the appellant u/s 11(1) of the Prevention of Corruption Act (the Act).

11. It has been held in the case of M/s Mohanlal Devdanbhai Chokshi and others Vs. J.S. Wagh and another, that in V.C. Shukla's case (supra), the Supreme Court has affirmed its own view that framing of charge is not an interlocutory order u/s 397(2) of the Code. Of course, u/s 11 of the Act, such an order was held to be an interlocutory order. This latter part of the decision is based upon the construction of the Special Court's Act and more particularly upon the existence of the non-obstante clause in Section 11 of the said Act which reads as follows :--

"11(1) Notwithstanding anything in the Code, an appeal shall lie as of right from any judgment, sentence or order, not being interlocutory order, of a Special Court to the Supreme Court both on facts and on law."

It was observed that the order of framing charge is not an interlocutory order within the meaning of Section 397(2) of the Code. It was also observed in the decision of V.C. Shukla's case (supra):--

"On a true construction of Section 11(1) of the Act and taking into consideration the natural meaning of the expression "interlocutory order", there can be no doubt that the order framing charges against the appellant under the Act was merely an interlocutory order which neither terminated the proceedings nor finally decided the rights of the parties. According to the test laid down in Kupuswami's case (supra), the order impugned was undoubtedly an interlocutory order. Taking into considerations, therefore, the natural meaning of interlocutory order and applying the non-obstante clause, the position is that the provisions of the Code of Criminal Procedure are expressly excluded by the non-obstante clause and, therefore, Section 397(2) of the Code cannot be called into aid in order to hold that the order impugned is not an interlocutory order. As the decisions of this Court in the cases of Madhu Limaye and Amamath v. State of Haryana, were given with respect to the provisions of the Code, particularly Section 397(2), they were correctly decided and would have no application to the interpretation of Section 11(1) of the Act which expressly excludes the provisions of the Code of Criminal Procedure by virtue of the non-obstante clause."

The matter involved in the case of V.C. Shukla (supra) is quite distinguishable to the matter relating to the case at hand.

12. The petitioner/accused were asked to be present on the date fixed so that charge under Sections 307/323 of the Indian Penal Code, for which sufficient evidence found, may be framed and putting the person for trial by passing the order clearly indicates about deciding certain rights or affecting the right of a person/accused. Thus, in my view, the order impugned for framing of charge cannot be held to be an interlocutory order.

13. It is well-settled that power u/s 482 of the Code should not be resorted to if there is a provision in the Code for redressal of the grievance of the aggrieved party. The inherent power as laid down u/s 482 of the Code does not confer this Court unlimited jurisdiction rather it should be exercised sparingly to prevent abuse of the process of any Court or otherwise to secure the ends of justice. There is provision for filing revision against the order impugned. In this way, in my opinion, the application u/s 482 of the Code should not be entertained.

14. It may be noted here that the order impugned was passed as back as on 20.7.1999 and this application has been filed on 20.12.2000 after lapse of one-and-half years in order to save limitation which is the condition precedent for filing revision against the order impugned.

15. Having regard to the whole facts and circumstance coupled with the reasons aforementioned, I find that the Office has rightly made objection as this application, in my view, is not maintainable u/s 482 of the Code.

16. Thus, this application is dismissed.