

(1985) 10 GUJ CK 0038
In the Gujarat High Court

Mohmad Rafiq Alias Chino Mohmad Safi	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 09-10-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2), 167(2), 397, 397(2)

Citation : (1986) 2 GLR 1095

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Judgement

M.B. Shah, J.—Being aggrieved and dissatisfied by the judgment and order dated 23rd September 1985 passed by the City Sessions Judge, Ahmedabad, allowing Criminal Revision Application No. 157 of 1985 filed by the respondent-State and in granting police remand for ten days for making further investigation in the case of murder of one Mr. Kaushik Shah, original opponent No. 2 has filed Criminal Revision Application No. 399 of 1985. At the time of admission of this matter, the Court had passed the following order:

Notice pending admission returnable on October 4, 1985. Mr. R.M. Vin, PP, waives service of notice.

Prayer for interim relief is refused. However, by consent of the parties, it is directed that at present the period of remand shall be up to October 4, 1985. The order granting remand passed by the learned Sessions Judge shall take effect immediately. Matter to be placed for further hearing at 2.45 p.m. on October 4, 1985.

In view of the refusal of the interim order, this revision becomes in fructuous because the remand period is virtually over.

2. However, the learned advocate for the petitioner vehemently submitted that the point involved in this revision application and another Criminal Revision Application No. 400 of 1985 is similar, therefore both the matters should be decided by a common judgment.

3. Criminal Revision Application No. 400 of 1985 is filed by the opponent of the Criminal Revision Application No. 158 of 1985 which is decided by the City Sessions Judge at Ahmedabad on 23rd September 1985 whereby the learned City Sessions Judge has allowed the revision application filed by the applicant State and has directed that the opponent should be handed over in police custody under police remand for ten days for investigating the case of murder of Saitansingh registered as C.R. No. 213 of 1985. Being aggrieved by the said order, the petitioner has filed the aforesaid Revision Application. The learned Sessions Judge also rejected the note for reviewing the order.

4. In both these revision applications the learned advocate for the petitioners vehemently contended that the order passed by the learned Metropolitan Magistrate rejecting the application filed by the investigating officer for grant of police remand is interlocutory order and against that order no revision application would be maintainable before the Sessions Court. He, therefore, submitted that the order passed by the learned Judge is without jurisdiction.

5. In my view, in the case of Ahmed Abubhai Memon v. State of Gujarat 1984 G.L.H. 54, this point is covered. In paragraph 9 of the judgment while dealing with a similar contention the Court has held that an order refusing or granting remand cannot be looked upon as an interlocutory order. The Court further observed that it goes without saying that in a case where an order granting or refusing remand is passed, then no question of any fresh opportunity of granting remand arises.

6. However, the learned advocate for the petitioner relied upon the decision in the case of Amar Nath and Others Vs. State of Haryana and Another, , where in the term "interlocutory order" in Section 397(2) has been interpreted by the Supreme Court and particularly in paragraph 6 of the judgment wherein the Court has held as under:

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 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 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 u/s 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.

The learned advocate for the petitioner vehemently submitted that the order refusing to grant remand does not decide rights or liabilities of parties and,

therefore, it is similar to orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding against which no revision would lie u/s 397(2) of the Criminal Procedure Code. In my opinion, even in the aforesaid paragraph in the last line it is made abundantly clear that the 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. The Court in that case held that the order summoning the appellants as accused in the case cannot be said to be interlocutory because the said order was a matter of moment and it did involve decision regarding the rights of the appellants. Now, in the case of granting or refusing the remand, it would be clear that the order would be a matter of moment affecting the rights of the parties, say remand is granted without following the proper procedure or without assigning any reasons as required by Sub-section (3) of Section 167, then the said order could be challenged on the ground that it is illegal. Similarly if the remand is refused by the Magistrate without applying his mind to the necessary papers submitted by the investigating officer and where adequate ground exists for grant of police remand to aid the investigation and collection of further evidence, then it can be said that the order refusing to grant remand is illegal. If revision application is not entertained against these orders, then the same would become final and at the subsequent stage of trial there is no question of granting remand. Therefore, in my opinion, the aforesaid decision would not advance the contention raised by the petitioner.

7. In the case of *Madhu Limaye Vs. The State of Maharashtra*, , after considering the various decisions in paragraph 11 the Supreme Court in paragraph 13 has observed as under:

Applying the said test, almost on facts similar to the ones in the instant case, it was held that the order in revision passed by the High Court (at that time there was no bar like Section 397(2)) was not a "final order" within the meaning of Section 205(1) of the Government of India Act, 1935. It is to be noticed that the test laid down therein was that if the objection of the accused succeeded, the proceeding could 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 our opinion this strict test were to be applied in interpreting the words "interlocutory order" occurring in Section 397(2) then the order taking cognizance of an offence by a Court, whether it is so done illegally or without jurisdiction, will not be a final order and hence will be an interlocutory one... But in our judgment 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. If it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by Section 397(1). On such a strict interpretation, only these orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chap. XXIX of the Code. This does not seem to be the intention of the Legislature when it

retained the revisional power of the High Court in terms identical to the one in the 1898 Code... On the one hand, the legislature kept intact the revisional power of the High Court and on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a 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 AIR 1949 FC (supra), but, yet it may not be an interlocutory order-pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in Sub-section (2) of Section 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purposes of Article 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders within the meaning of Section 397(2). It is neither advisable, nor possible, to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of those types of orders which will fall in between the two. The first two kinds are well known and can be culled out from many decided cases. We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of Sub-section (2) of Section 397. In our opinion it must be taken to be an order of the type falling in the middle course.

(Emphasis added)

From this paragraph of the judgment it is clear that the Supreme Court has interpreted the words "interlocutory order" in connection with Section 397 of the Criminal Procedure Code as not invariably being converse to the words "final order" and has held that by a rule of harmonious construction the bar in Sub-section (2) of Section 397 is not meant to be attracted to intermediate orders. Therefore, in any case the orders of granting remand or refusal to grant remand would be intermediate orders and revision application u/s 397 would be maintainable. Further, refusing to grant police remand has nothing to do with the trial of the case. It is a pretrial stage i.e. at the stage of the investigation of the case. To that extent it is a separate independent proceeding and that application for it is to be decided as per the provisions of Section 167 of the Criminal Procedure Code. Therefore, the contention of the learned advocate for the petitioner that the order passed by the Metropolitan Magistrate refusing to grant police remand is an interlocutory one against which revision application u/s 397(2) is not maintainable, is without any substance.

8. The learned advocate for the petitioner further submitted that the petitioner was arrested on 28th August 1985 at about 10-00 a.m. and within one hour of his arrest he was produced before the learned Metropolitan Magistrate i.e. without waiting for minimum 24 hours" statutory period and, therefore, it should

be deemed that the investigation was over and hence there was no question of granting police remand for investigation. In my view, this submission is totally misconceived. In Sub-section (1) of Section 167 of the Criminal Procedure Code, when any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of 24 hours fixed by Section 57 and there are grounds for believing that the accusation or information is well founded, then the investigating officer is required to forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the case diary and forward the accused to such Magistrate who may pass appropriate order u/s 167(2) of the Criminal Procedure Code. Therefore, when the accused is produced before a Magistrate within one hour from his arrest, it cannot be said that the investigation was over and there is no question of granting police remand for further investigation. On the contrary, if the investigating officer is of the opinion that investigation cannot be completed within 24 hours fixed u/s 57, then he is required to produce the accused before the nearest Judicial Magistrate within 24 hours.

9. The learned advocate for the petitioner thereafter submitted even on merits the orders passed by the learned Sessions Judge are illegal because the learned Metropolitan Magistrate has rejected the application of the investigating officer for remand after taking into consideration the facts submitted by the investigating officer. In my view, this submission of the learned advocate is also without any substance.

10. In Criminal Revision Application No. 399 of 1985 the impugned judgment and order passed by the Metropolitan Magistrate, Court No. 12, Ahmedabad, on 28-8-85 is as under:

Heard I.O. and the accused. Read the case-diary of investigation that is the case wherein the murder of doctor has been committed in day light. Police submits that they want to arrest other accused and they want to recover weapons used in the crime and for the purpose of identification of the accused they want the accused in police custody. Accused was in police custody in C.R. No. 208/85 from 22-8-85 to till today and he has been considered in custody by police in this case. Looking to the case I do not think any ground or reason to remand the accused in police custody. Hence remand application stands rejected.

The learned Magistrate has not dealt with the contention of the investigating officer that in a murder of a doctor committed in broad day light remand was sought because the investigating officer wanted to arrest other accused involved in the crime; to recover the weapon used in the crime and for the purpose of identification of the accused. Therefore, against this order in the revision application filed by the State before the Sessions Court it was pointed out that on July 20, 1985 at about 12-15 p. m. one Kaushik Ramanlal Shah, a Medical Practitioner, was butchered to death and he died almost instantaneously near his dispensary. The first information report was recorded on the same day at 2-00 p.m. The Police Inspector could not trace out the assailants. However, during the

investigation of the other case information with regard to the assailants of Dr. Kaushik Shah was revealed and, therefore, the offence was registered against the assailants. The learned Sessions Judge has taken into consideration the fact that the investigating officer required the opponent in police custody for further effective investigation as the police papers show that weapons like razor, dagger, a gupti and a knife were used. The Court further considered the fact that out of five assailants only two have been arrested at the end of two months. Therefore, taking into consideration the overall picture of the investigation, the Court granted 10 days" police remand. It cannot be said that this order is in any way erroneous or illegal which calls for interference in revision application.

11. With regard to the Criminal Revision Application No. 400 of 1985, in my view same is the position. The learned Metropolitan Magistrate, Court No. 12, Ahmedabad by his order dated 28-8 85 rejected the application for police remand by holding "read the case-diary of investigation. Looking to the merit of the case at this stage I do not find any ground or reason to remand the accused in police custody." In this case also the learned Sessions Judge has taken into consideration the police papers which reveal that the petitioner wielded a knife and caused knife injury to the deceased Saitansingh Chavda who was butchered to death in broad day light at about 1-30 p.m. in a thickly populated locality like Dhalgarwad in the City of Ahmedabad. The learned Sessions Judge further took into consideration that the police papers show that there was a deep-rooted conspiracy among the petitioner and his associates belonging to one community to launch murderous assaults on the persons belonging to other community and for finding out the roots of conspiracy the police remand for a reasonable period should be granted. Further, the learned Sessions Judge took into consideration that the weapon used by the petitioner and his clothes were required to be traced. In my view, the reasons given by the learned Sessions Judge cannot be said to be erroneous which call for interference in revision application.

In the result, both the revision applications fail and are rejected. Rule discharged.