
(1989) 06 SHI CK 0024
In the High Court Of Himachal Pradesh

Parveen Kumar

APPELLANT

Vs

The State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 12-06-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451

Citation : (1989) CriLJ 2537

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Judgement

Bhawani Singh, J.—By this Revision Petition, the petitioner seeks to challenge the order of Addl. Sessions Judge (II), Kangra, in Criminal Revision No. 18 of 1987 decided on 21-10-1987.

2. The facts, in brief, are that respondent No. 2 is the registered owner of the disputed truck HPK-9045 hypothecated with the Canara Bank, Bhawarna as the same has been purchased with the loan raised from this bank and the outstanding amount is stated to be Rs. 94,000/-. Respondent No. 2 entered into an agreement for sale on 22-7-1987 and as per the terms of the agreement (Ex.A.1), the petitioner has to pay the balance of the instalments to the bank. However, a sum of Rs. 40,000/- was paid to respondent No. 2 at the time of the execution of the agreement. It is further alleged that the delivery of the truck was given to the petitioner immediately on the conclusion of this agreement along with its key and documents.

3. The petitioner further states that since after the obtaining of the possession of the truck he started plying it and at one time in order to go to Pathankote to get the vehicle repaired, he sought permission of the Sub-Divisional Magistrate, Palampur on 30-7-1987 and an entry to this effect is reflected in the record of the Chakki Bridge Check Post. After getting the vehicle repaired at Pathankote, he paid the repair charges and brought back the same to Bhawarna. On 6-8-1987 while he had parked the truck on the road side, respondent No. 2 stealthily took it away and it was recovered from his possession by the police

after a case was registered by the petitioner with the police. At present the case is pending for trial. An application u/s 451 of the Criminal P. C. was filed by the petitioner on 10-8-1987 in the Court of the Sub-Divisional Judicial Magistrate, Palampur, for obtaining the custody of the truck. A similar application was filed by respondent No. 2 also. Both these applications were decided by the Magistrate on 11-9-1987 and by his order the Magistrate held the petitioner entitled to the possession of the truck pending trial of the main case. As a result of this order, the custody of the truck was handed over to the petitioner after execution of a bond in the sum of Rs. 2,00,000/-. This order of the Magistrate was assailed by respondent No. 2 by way of a revision petition before the Addl. Sessions Judge (II), Kangra and he prayed for the custody of the truck. The Addl. Sessions Judge by the impugned decision allowed the petition of respondent No. 2 and ordered handing over of the possession of the vehicle to him on the ground that the truck is owned by respondent No. 2 and the registration of the same also stood in his name. Besides, it was, prima facie, found that a sum of Rs. 94,000/- was still to be paid to the Bank. The Court further found that the factum of payment of Rs. 40,000/- in cash and handing over of the possession of the vehicle on execution of the document (Ex. A.1) was not proved. Taking a cumulative view of the matter, respondent No. 2 was found to be entitled to the custody of the truck. The petitioner has a grievance against this order and, therefore, challenges the same by way of this petition.

4. Shri S.S. Kanwar, learned Counsel appearing for the petitioner, has contended that the impugned order is illegal and without jurisdiction. Elaborating his submissions, it is asserted that the revision before the learned Addl. Sessions Judge, Kangra, was not competent. Therefore, the same is a nullity. A perusal of the order dated 20-10-1987 shows that jurisdiction of the Court was not at all challenged by the petitioner in that Court. Shri Vijay Thakur, learned Counsel for respondent No. 2, submits that the petitioner cannot be allowed to raise this plea for the first time in this Court. The objection of Shri S. S. Kanwar being purely legal in nature, is allowed to be raised as the same relates to the jurisdiction of the Court and goes to the root of the matter. Shri S. S. Kanwar contends that the order of the Magistrate dated 11-9-1987 is interlocutory in nature and is not, therefore, revisable by the Addl. Sessions Judge. In view of this fact, he asserts, the decision rendered by the Addl. Sessions Judge is a nullity and liable to be declared as such and his client entitled to the custody of the truck in accordance with the order of the Magistrate dated 11-9-1987. In order to examine this contention, it is necessary to quote the provisions of Section 451 of the Criminal P. C.:

451 Order for custody and disposal of property pending trial in certain cases.

When any property is produced before any Criminal Court during any inquiry or trial, the court may make such order as it thinks fit for the proper custody of such property pending, the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do,

the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation : - For the purposes of this Section, "property" includes-

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

5. Chapter XXXIV of the Code of Criminal Procedure, 1973 deals with the disposal of the property. Section 451 specifically relates to the custody and disposal of the property pending trial of the case(s) with which the property in question is concerned. The Court can make any order as it thinks fit for the proper custody of such property pending the termination of the inquiry or trial of the case. It can pass order which it otherwise thinks expedient in the facts of the case before it and before passing such an order, it may embark upon an inquiry and take such evidence as it thinks necessary in this connection. The Court appears to have invoked this provision for deciding the applications of the petitioner and respondent No. 2. The Court received evidence of the parties before passing the order of the custody of the vehicle in question. It is contended that this order of the Magistrate is interlocutory in nature as the same is subject to variation by the Court on the conclusion of the inquiry or trial. In other words, this order is subject to change as soon as the Court decides the case on merits at a later stage. A reference to Vasu Vs. T. Unnikrishnan and Another, is made. On the basis of this decision, it is contended that the order of the Magistrate can be even modified during the trial of the proceedings what to say of the same being modified on the conclusion of the trial as already asserted. I am not, with respect, in agreement with the views expressed by the learned Judge in this decision for the reasons being given hereinafter.

6. Sh. Vijay Thakur while assailing this submission of Sh. S. S. Kanwar has referred to the decision of the Gauhati High Court in 1980 Cri LJ 6 (Radha Prasad Goala v. Manir Mia). It is further contended that there is no particular way to conclude that a particular order is not revisable. Every order has to be examined separately and the tests are laid down by the Supreme Court in the celebrated judgment reported in Madhu Limaye Vs. The State of Maharashtra, It has been observed in this judgment that the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding, is to bring about expeditious disposal of the cases finally. The idea of the legislature was to check the delay in the decision of the cases pending trial before the Courts. On the one hand, bar has been put in the way of the High Court and the Sessions Courts for the exercise of revisional power in relation to any interlocutory order, on the other the power has been conferred in almost the same terms as it was in the 1898 Code.

7. Now the question is which order can be said to be interlocutory and, therefore,

not revisable and which order final and liable for revisional jurisdiction of the Court of Session and the High Court. It is impossible to lay down any strict principles and guidelines to effect a complete and unassailable division. Therefore, the matter has to be examined by the Court to arrive at a decision on such an issue. In Para 12 of this judgment *Madhu Limaye Vs. The State of Maharashtra*, the Court observed:

Ordinarily and generally the expression "interlocutory order" has been understood and taken to mean as a converse of the term "final order". In Volume 22 of the third edition of Halsbury's Laws of England at page 742, however, it has been stated in para 1606:

...a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of the two words must therefore be considered separately in relation to the particular purpose for which it is required.

In Para 1607 it is said:

In general a judgment or order which determines the principal matter in question is termed "final".

In Para 1608 at pages 744 and 745 we find the words:

An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed "interlocutory". An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals.

The Court further observed in Para 13 that:

...The order can be said to be a final order only if, in either event, the action will be determined. In our opinion, if 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. Even so, as we have said above, the inherent power of the High Court can be invoked for quashing such a criminal proceeding. 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 those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter 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....

The Court further said:

...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 AIR 1949 1 (Federal Court) but, yet it may not be an interlocutory order, pure or simple. Some kinds of orders 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 Art 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 any 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.

8. An application u/s 451 Cr. P.C. has to be decided by the Court after hearing the parties seeking the release of the property in question. The parties are allowed to adduce evidence and it is only after hearing them that the Court passes the order thereby giving the custody of the property to one of them who may be adjudged by the Court to be best entitled for the same. To say that such an order is revisable by the Court on the termination of the proceedings or in between is no reason to call the order interlocutory order. Till such an order is made, it is final between the parties and the Magistrate cannot arbitrarily or without proper justification change the same during the course of the proceedings. The argument of the petitioner that such an order becomes final on the termination of the proceedings cannot be accepted because even that order is subject to determination by a Civil court. Therefore, in the light of the decision of the Supreme Court in *Madhu Limaye Vs. The State of Maharashtra*, it can be held that this kind of order is final between the parties deciding their entitlement to the property in question finally at that stage. Therefore, such an order is necessarily subject to revision by the Court and revision against the same is competent before a Court of Session. The view which I have taken has a support from *Bharat Heavy Electricals Ltd. Vs. State and Another*, *Ishar Singh Vs. The State of Punjab and Others*, The argument of Sh. S. S. Kanwar on this count,

therefore, fails and is rejected.

9. Coming to the merits of the case, Sh. S. S. Kanwar submits that the custody of the vehicle deserves to be given to the petitioner as an agreement (Ex. A-1) has been executed by the parties for the sale of this vehicle and in pursuance of the same, the vehicle passed on and came into the possession of the petitioner along with its documents. It is also contended that the petitioner has already paid a sum of Rs. 40,000/- to the respondent No. 2 towards the price of the truck and rest of the amount is also to be paid to the Bank by way of instalments as specifically provided in the document of sale. In support of his submission, Sh. Kanwar refers to not only the statements of the witnesses cited by him before the trial Court but also to various judicial pronouncements like (1987) 1 Crimes 663 (J. & K.) Sat Singh Vs. State of Punjab and Others, .

10. On the other hand, Sh. Vijay Thakur submits that the contention of the petitioner that his client received a sum of Rs. 40,000/- and that possession of the vehicle had passed on to the petitioner is absolutely wrong, baseless and factually incorrect. He urges that the agreement (Ex. A-1) was executed but nothing beyond the same happened between the parties. Neither the possession of the vehicle passed on to the petitioner as alleged nor a sum of Rs. 40,000/- was paid by the petitioner to his client. He further submits that the theory of the truck being taken out of Bhawarna towards Pathankote and mention of certain entries at Chakki Bridge Check post are absolutely irrelevant because such a permission can be sought from the Motor Vehicles Authority by anyone and no evidence regarding possession is necessary to be adduced before such an authority before seeking permission. Besides, entries at the check post could be manipulated. Reference to the statements of certain witnesses cited by the petitioner was made to show that even the witnesses of the petitioner did not support the case on the material aspects of the matter. Therefore, the learned Counsel contends, the learned Addl. Sessions Judge has rightly come to the conclusion that respondent No. 2 is best entitled to the possession of the vehicle during the pendency of the trial of the case. U. Kariyappa Vs. P. Sreekantaiah and Another, Jacob and Another Vs. Jayabharat Credit and Investment Co. Ltd., and Others, Kavaluri Sidda Reddy Vs. Bathala Rangaswamy Naidu and Another, Nallapareddi Chandrasekhara Reddy Vs. The Government of Andhra Pradesh and Another, . A perusal of these judicial pronouncements indicates that the preponderance of the view is towards releasing the property vehicle in favour of the registered owner of the same. It is the admitted case that, at this time, the registration of the vehicle is in the name of respondent No. 2 and he is in possession of the vehicle in pursuance of the order of the Addl. Sessions Judge (II), Kangra. Besides, as rightly observed by the Addl. Sessions Judge, the petitioner has not been able to prove either the possession of the vehicle or the payment of a sum of Rs. 40,000/- to respondent No. 2. Moreover, the present issue relating to the custody of the vehicle is subject to determination of the case and the entitlement of the parties ultimately by the Competent court.

11. In view of the examination of this matter as aforesaid, there is no merit in this revision petition and the same is accordingly dismissed.

12. Any observation made in this judgment will neither affect the parties nor influence, in any way, the trial court for arriving at a just, proper and legal decision in this case on merits. The trial Court is expected to proceed with the trial of the case as expeditiously as possible.