

(1983) 03 OHC CK 0001
In the Orissa High Court

Rupa Jena and Others

APPELLANT

Vs

Tapai Swain and Others

RESPONDENT

Date of Decision : 21-03-1983

Acts Referred:

Constitution of India, 1950 — Article 134

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 397

Citation : (1983) 55 CLT 434 : (1983) CriLJ 1331

Hon'ble Judges : B.N. Misra, J

Bench : Single Bench

Judgement

B.N. Misra, J.—This revision is directed against the order dated 22-6-1982 passed by the learned Executive Magistrate, Bhanjanagar u/s 146(1) of the Cr. P.C. (hereafter referred as the "Code") in M. C. No. 74 of 1982, a proceeding u/s 145 of the Code. The petitioners are members of the second party and the opposite parties are members of the first party in the Section 145, Cr. P.C. proceeding referred to above. On 16-3-1982 the present opposite parties filed a petition u/s 145 of the Code and on that date, the learned Executive Magistrate initiated the present proceeding and issued orders u/s 145(1) of the Code. On 17-5-1982 the opposite parties filed a petition for attachment of the disputed land. On 2-6-1982 the learned Magistrate heard arguments on both sides and by order dated 22-6-1982 directed attachment of the disputed land. The Revenue Inspector, Bargam was appointed as the receiver and he was directed to put the disputed land to public auction. It is this order of the learned Magistrate which is challenged in this revision.

2. Section 146(1) of the Code empowers the Magistrate to attach the subject of dispute in three cases, i. e.,--

- (i) if it is a case of emergency or
- (ii) if it is decided that none of the parties was in possession; or
- (iii) if no decision is possible as to which of them was in possession.

The order of attachment remains in force until a competent Court decides the rights of the parties or until the Magistrate, on being satisfied that there is no longer any likelihood of a breach of the peace, withdraws it. In the event a receiver is subsequently appointed in relation to the subject of dispute by any Civil Court the receiver appointed by the Magistrate is required to handover the subject of dispute to the receiver appointed by the Civil Court. In the present case, the learned Magistrate has passed the order of attachment during the pendency of the Section 145, Cr. P.C. proceeding before him.

3. Mr. M. Patra, learned Counsel appearing for the opposite parties, has raised a preliminary objection as to the maintainability of the present revision application. It is submitted that an order u/s 146(1) of the Code is an interlocutory order and as such the revisional jurisdiction of this Court is barred under Sub-section (2) of Section 397 of the Code. In support of this contention, reliance is placed in Smt. Premlata and Another Vs. Ram Lubhaya and Others, and Shishu and Others Vs. The State of Haryana and Others, . Mr. M. K. De learned Counsel appearing on behalf of the petitioners has on the other hand, submitted that an order passed u/s 146(1) of the Code is not an interlocutory order and therefore the revisional jurisdiction of this Court is not barred under law and in support of this contention the learned Counsel relies on (1978) 22 (Cri) LJ 232 : 1978 Cri LJ 214 (Kant) Parvatewwa v. Kamalawwa and Hasmukh J. Jhaveri Vs. Shella Dadlani and another,

4. First of all, I would refer to the case of Amar Nath and Others Vs. State of Haryana and Another, wherein the Supreme Court observed (at pages 1894-95)

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The main question which falls for determination in this appeal is as to what is the connotation of the term "interlocutory order" as appearing in Sub-section (2) of Section 397 which bars any revision of such an order by the High Court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. 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.

In the case of *Madhu Limaye Vs. The State of Maharashtra*, the Court observed (at p. 170):

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In what cases then the High Court will examine the legality or propriety of an order or the legality of any proceeding of an inferior Criminal Court ? Is it circumscribed to examine only such proceeding which is brought for its examination after the final determination and wherein no appeal lies ? Such cases will be very few and far between. It has been pointed out repeatedly, vide, for example, the *River Wear Commissioners v. William Adamson* (1876-77) 2 AC 743 and *R.M.D. Chamarbaugwalla Vs. The Union of India (UOI)*, that although the words occurring in a particular statute are plain and unambiguous they have to be interpreted in a manner which would fit in the context of the other provisions of the statute and bring about the real intention of the legislature. 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 notices in AIR 1949 1 (Federal Court) 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) pf Section 397. In our opinion it must be taken to be an order of the type falling in the middle course.

The connotation of the expression "interlocutory order" has been authoritatively laid down by the Supreme Court in the aforesaid two cases. These cases,

however, do not exhaustively define the expression "interlocutory order". The instances noted in the cases are only illustrative. Every order passed by the subordinate Criminal Court has to be construed on its own merits and no hard and fast rule of universal application can be laid down for interpretation of the expression "interlocutory order".

5.. In *Smt. Premlata and Another Vs. Ram Lubhaya and Others*, it was held by the Allahabad High Court that the emergency attachment was just a protective measure to prevent breaking of heads till such time as the Magistrate gave his final decision u/s 145(4) of the Code and, therefore, an order passed under the first clause of Section 146 of the Code would be an interlocutory order. In *Shishu and Others Vs. The State of Haryana and Others*, the Punjab and Haryana High Court held that an order passed under Sub-section (1) of Section 146 of the Code was of interlocutory nature and in support of his decision, the learned Judge relied upon the majority view in a decision of the Jammu and Kashmir High Court, reported in *Brij Lal Chakoo, etc. Vs. Abdul Ahad Nishati and Others etc.*, , and a decision of the Himachal Pradesh High Court reported in 1977 LR (Cri) 10. Thus, the views of the Jammu and Kashmir, Punjab and Haryana and Allahabad High Courts are that an order passed u/s 146(1) of the Code is an interlocutory order.

6. On the other hand in (1978) 22 MLJ (Cri) 232 : 1978 Cri LJ 214, the Karnataka High Court has held that an order attaching the subject-matter of dispute and appointing a receiver to take possession of the disputed properties is not an order of a purely interim or temporary nature so as to be classified as an interlocutory order. In *Hasmukh J. Jhaveri Vs. Shella Dadlani and another*, , *Hasmukh J. Jhaveri v. Sheila Dandlani* the Bombay High Court has held that an order u/s 146 of the Code directing attachment of the subject of dispute can never be embraced by the term "interlocutory order". After an analysis of the case law on the subject, the learned Judge has observed (at p. 962):

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(1) That the term "interlocutory order" has been used in a restricted sense and not in a broad or realistic sense.

(2) That it merely denotes an order of purely interim or temporary nature. The emphasis in this category is on the word "purely", which would again high-light the concept that the nature of the order must be pure and simple, temporary or interim in character and ostensibly deceptive appearance of a temporary character should not be confused with the real and outright temporary nature.

(3) Such orders pertaining to some matters in the proceeding which merely and purely assume the character of steps-in-aid of the proceeding can be embraced by the said terminology, which again affords a pointer about the nature and categories of the orders that are purely temporary or interim without actually affecting or even touching substantially any right or material aspect of the proceeding.

(4) Though a stamp of finality to the proceeding or termination of the proceeding may be quite relevant and important consideration, yet it is not a sole criterion of the test in that behalf.

(5) So also, the potential capacity to terminate proceeding or to give it a label of finality is also not the only and conclusive criterion though it by itself is a relevant feature.

(6) Therefore, the fact that the main proceeding is kept alive that does not ipso facto give a stamp to several such orders as "interlocutory order."

(7) Consequently it is not permissible to equate the expression "interlocutory order" as invariably being the converse of the term "final order".

(8) An order of moment would obviously be lifted out of the sweep of the said terminology.

(9) Irrespective of the order bearing stamp of finality, there may be an intervening stage which can be called as "intermediate stage" at which an order may be passed which in turn may be called as "interlocutory order", which neither gives the finality to the proceeding nor is purely interim or temporary and as such is not an interlocutory order, but would fall in between and incertain cases such order can be said to be not interlocutory.

(10) Any order which--

(a) decides; or

(b) even touches the important rights or liabilities of the parties;

(11) Any order which

(a) substantially affects the rights of the parties; or

(b) decides certain rights of the parties: cannot be termed as "interlocutory".

(12) So also, an order which

(a) adjudicates; or

(b) even affects

(i) either the rights of the parties;

(ii) even any particular aspect of the trial or the proceeding cannot be also termed as "interlocutory order."

I have carefully considered the decisions referred to above and I respectfully agree with the views enunciated in the Karnataka and Bombay cases. In my opinion an order of attachment u/s 146(1) of the Code and appointment of a receiver in respect of the subject of dispute is an order of moment and it substantially and directly affects the rights of the parties. Hence, I hold that the impugned order passed by the learned Executive Magistrate directing attachment

of the subject of dispute and appointing the Revenue Inspector as the receiver is not an interlocutory order. The preliminary objection is accordingly overruled.

7. learned Counsel for the petitioners has assailed the impugned order mainly on the ground that the learned Magistrate has not indicated any reason as to why he decided to attach the subject of dispute and appoint a receiver. According to learned Counsel, in the absence of any reasons the order passed by the learned Magistrate is void and in support of this contention reliance is placed on a decision of this High Court reported in *B. Dasso Patro and Others Vs. B. Tariniga Patro and Another*, . In that case it was held (at page 121):

3. Coming to the first question raised by Mrs. Padhi, it would be noticed from the impugned order that while drawing up the proceedings u/s 145(1) of the Code, the learned Magistrate simultaneously passed order attaching the lands u/s 146(1) of the Code and appointing the Revenue Inspector, Komonda, as the receiver, without assigning any reasons. This would show that the learned Magistrate had not applied his mind properly and had not exercised his discretion judicially while passing the orders u/s 146(1) of the Code without even recording that he had been satisfied that cases required emergent measures. I would, therefore, quash these orders passed in both the proceedings. It is open to the learned Magistrate to pass an order u/s 146(1) of the Code in each of the proceedings in accordance with the provisions contained in Section 146(1) of the Code.

The learned Counsel for the opposite parties has submitted that unlike the provision contained in Sub-section (1) of Section 145 of the Code, Section 146(1) does not require any statement of reasons by the learned Magistrate before attachment of the subject of dispute. It is pointed out that the words "stating the grounds of his being so satisfied", occurring in Sub-section (1) of Section 145 are significantly absent in Sub-section (1) of Section 146. In support of this contention, reliance is placed on the decision of this Court in Criminal Revision No. 39 of 1976, *Kasinath Sahu v. Dandasi Khatai* decided on 9-8-1976. This decision is reported in 1976 CLR 366 but the reporting has been so poor and misleading that the original judgment had to be referred to. In the aforesaid case, it has been held:

...There is no dispute that on the very same police report on which a Magistrate passes an order u/s 145(1) he can also pass an order u/s 146(1), Cr. P.C. attaching the subject-matter of dispute by coming to a conclusion that the case is one of grave emergency. Section 146, Cr. P.C. does not, categorically provide that the Magistrate before passing an order u/s 146(1), Cr. P.C. must record reasons. Therefore, even though the order dated 24-8-1974 does not specifically mention that it is both under Sections 145(1) and 146, Cr. P.C. a reading of the same goes to show that the learned S. D. M. after initiating the proceeding u/s 145(1), Criminal P.C. thought it a case of grave emergency, and therefore, attached the subject-matter of dispute and appointed a receiver in respect of the same. In my view, therefore, the said order is not only one u/s 145(1) but also u/

s 146, Cr. P.C.

The facts of this case are such that resolution of the conflicting views of this High Court in the two decisions referred to above is not necessary. Here the impugned order is not a composite one and even assuming that reasons are necessary to be stated in an order u/s 146(1) of the Code, the order passed by the learned Magistrate in this case does contain the grounds and reasons. The impugned order is extracted hereunder:

22-6-82: The first party member Radhamohan Swain and the 2nd party member Rupa " Upendra Jena are present. Second party members do not take steps to file written statement even today though they have been allowed time on the last seven adjournments. In the meanwhile, the second party member Mangulu Bisoi filed a petition stating that he is not interested in the schedule land for which his name has been dropped from the list of second party members. The first party member No. 3 in his petition dated 17-5-82 has prayed for attachment of the subject of dispute u/s 146(1), Cr. P.C. Though the advocate for the 2nd party received a copy of the petition, no counter has been filed by the 2nd party. The second party appears to be showing an indifferent attitude to legally contest the case but creating disturbance on the schedule land. I, therefore, consider the case to be one of emergency in nature and to avert breach of peace. I do hereby order that the schedule lands be attached u/s 146(1), Cr. P.C. The Revenue Inspector, Baragam is appointed as Receiver who should put the land in public auction and submit bid sheet till the final disposal of case.

First party to lead evidence on the next date. The second party may file written statement in the meantime.

Put up on 16-7-82.

The order makes it clear that the learned Magistrate had considered the allegations made by the present opposite parties in their petition praying for attachment and appointment of a Receiver. This petition is on record. The Court noticed that the present petitioners had not filed their written statement in spite of seven adjournments and had not even bothered to file a counter to the petition filed by the opposite parties. The learned Magistrate has observed that the opposite parties were not putting forward their case before the Court but creating disturbance over the disputed land. On consideration of the materials placed before him, the learned Magistrate came to the conclusion that the case was one of emergency. On considering the materials on record and after hearing arguments of the learned Counsel on both sides, I do not see any justification for interference with the order passed by the learned Magistrate.

8. This revision which has no merit is, accordingly, dismissed. The order of the learned Magistrate dated 22-6-1982 is confirmed. The lower Court records be sent back immediately.