
(1996) 08 RAJ CK 0034

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 59 of 1996

Sawa and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 14-08-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 129, 136, 141, 144, 215
Criminal Procedure Code, 1973 (CrPC) — Section 125, 147, 397, 482

Citation : (1996) 3 RLW 61 : (1997) 1 WLC 239 : (1996) 2 WLN 636

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Yadav, J.—This revision is directed against the order dated 11.12.1995 passed by learned Sessions Judge, Sirohi in Criminal Revision Petition No. 46 of 1995 setting aside an interlocutory order dated 8.11.1995 passed by the learned Executive Magistrate, Sirohi in proceedings u/s 147 Cr.P.C.

2. Brief facts leading upto filing of this revision petition, are that the petitioners purchased land of Khasra No. 748/2 whereas Khasra No. 748/1 which is adjacent to the aforesaid plot belongs to respondents No. 2 to 15. It is alleged that the petitioners were using the water of "Tokra Bandh" for the last 30 years for irrigational purposes of their Khasra No. 748/2 having a water channel from middle of Khasra No. 748/1 belonging to respondents No. 2 to 15 and as such they have acquired easementary rights to irrigate their field from the water channel in question.

3. It is also alleged that respondents No. 2 to 15 are in habit of creating obstructions by breaking the water channel due to which criminal proceedings were initiated against some of them for creating obstructions in the flow of irrigational water to the field of the petitioners and in that case, challan was filed by the police. Later on, a compromise was entered into between the petitioners

and respondents where latter gave assurances that in future they will not create obstructions in the flow of irrigational water to the field of the former. Irrespective of assurances given by respondents they have broken the water channel again by moving tractor over it and level of the water channel has been disturbed in such a manner that now reaching of irrigational water to the field of the petitioners is impossible.

4. Upon the aforesaid complaint of the petitioners, the proceedings u/s 147 Cr.P.C. were initiated by the learned Executive Magistrate, Sirohi. After passing preliminary order on 9.10.95, notices were issued to the respondents. The respondents in pursuance of notices issued to them appeared before the court of learned Executive Magistrate and filed objections stating therein that they have not broken the water channel. They also denied existence of the water channel running from middle of Khasra No. 748/1 belonging to them.

5. According to the allegations made by the respondents, the water channel exists from corner of the field of Khasra No. 748/1 which reaches to Khasra No. 748/2 belonging to the petitioners. After perusal of the affidavits filed by the parties in support of their respective claims, the learned Executive Magistrate made spot inspection and found the existence of a water channel in the middle of Khasra No. 748/1 belonging to the respondents in broken condition. After making spot inspection, the learned Executive Magistrate passed an interim, order on 8.11.1995 directing the petitioners to continue to irrigate their Khasra No. 748/2 from the water channel running in the middle of Khasra No. 748/1. Learned Executive Magistrate further directed to the respondents to the effect that they will not obstruct the water channel till pendency of the proceedings u/s 147 Cr.P.C.

6. Aggrieved against the order passed by learned Executive Magistrate dated 8.11.95, the respondents filed a revision before the learned Sessions Judge, Sirohi. The learned Sessions Judge by his impugned order dated 11.12.1995 set aside the order passed by the learned Executive Magistrate dated 8.11.1995 holding that in absence of express provision contained u/s 147 Cr.P.C. the learned Executive Magistrate has no jurisdiction to pass an interlocutory order and directed that whatever new water channel has been made on the border of Khasra No. 748/1, the same should be allowed to continue. It is further directed by the learned revisional court that the learned Executive Magistrate should decide the matter finally in the light of observations made by him.

7. A close scrutiny of the impugned interlocutory order passed by the learned Executive Magistrate dated 8.11.95 reveals that after taking note of the decisions given by the Patna High Court in the case of Krishna Das Agrawal and Anr. v. Deen Dayal Agrawal, reported in Krishna Das Agrawal and Another Vs. Deen Dayal Agrawal, and Anr. decision of the same High Court reported in Bishwanath Singh Vs. Rajdeo Dubey and Others, as well as a decision given by this Court in the case of Ramesh and Ors. v. State of Rajasthan, reported in 1990 Cri.L.J. 380 came to the conclusion that in view of the decision rendered by the learned

Single Judge of Rajasthan High Court in the case of Ramesh and others (supra) even in absence of express provisions u/s 147 Cr.P.C. in order to achieve inherent object envisaged under aforesaid section he has implied powers to pass an interlocutory order.

8. It is apparent from perusal of ad-interim order dated 8.11.1995 passed by the learned Executive Magistrate that after taking note of conflicting ratio of Patna High Court and ratio of Rajasthan High Court in case of Ramesh and others (supra) he preferred to follow the ratio decidendi laid down by Rajasthan High Court.

9. It is amusing to note that when the aforesaid controversy was raised before the learned Sessions Judge questioning the order, passed by the learned Executive Magistrate then the learned Sessions Judge instead of placing reliance on the decision of Rajasthan High Court in the case of Ramesh and others (supra) he preferred to set aside the order passed by learned Executive Magistrate. Plea raised by the petitioners before learned Sessions Judge to the effect that against an interlocutory order revision is not maintainable before him was also negated and revision was allowed.

10. I have heard the learned Counsel for the parties and perused the orders passed by the learned Executive Magistrate as well as learned Sessions Judge.

11. Indisputably in the present case order passed by the learned Executive Magistrate was an interlocutory order, therefore, a revision filed against such interlocutory order before the learned Sessions Judge was expressly barred within the meaning of Section 397(2) Cr.P.C. which postulates that powers of revision conferred by Section 397(1) shall not be exercised in relation to any interlocutory order passed in any appeal, enquiry, trial or other proceedings.

12. For the reasons stated in the preceding paragraphs I am of the opinion that in view of the mandatory provisions contemplated under Sub-section (2) of Section 397 Cr.P.C. the learned Sessions Judge has no jurisdiction to entertain the revision under Sub-section (1) of Section 397 Cr.P.C. against an interlocutory order passed by the learned Executive Magistrate on 8.11.1995.

13. It is further to be noticed that against the order dated 11.12.1995 passed by learned Sessions Judge arising out of an interlocutory order passed by learned Executive Magistrate on 8.11.1995 the present petitioners have filed second revision before this Court on the plea that as they have succeeded to obtain an interlocutory order in their favour before the learned Executive Magistrate, hence, bar of filing of Second Revision as envisaged u/s 397(3) Cr.P.C. is not attracted in the present case. According to the learned Counsel for the petitioners, filing of second revision at the instance of the "same person" is barred within the meaning of Section 397(3), Cr.P.C. There is no quarrel within the aforesaid proposition of law to the effect that a second revision u/s 397(3) Cr.P.C. is barred by "same person". But the controversy in the present case is different. In the present case, this Court is called upon to decide as to whether

absolute bar clamped u/s 397(2), Cr.P.C. of filing revision against an interlocutory order is equally applicable to the High Court as applicable to the Sessions Judge, inasmuch as, power of entertaining revision u/s 397(1), Cr.P.C. before a Sessions Judge is conterminous with the power of the High Court. A litigant has been given option to file a revision either before the High Court or before the Sessions Judge. Thus, I hold that the absolute bar created u/s 397(2), Cr.P.C. is equally applicable to the High Court as it is applicable to the Sessions Court, therefore, the present revision is not maintainable.

14. Learned Counsel for the revisionist strenuously urged before me that in case of Ramesh and others (supra) an interlocutory order passed by a learned Executive Magistrate was set aside by the learned Sessions Judge in exercise of his revisional power. Aggrieved against which, a second revision was preferred before this Court, which was entertained and was allowed. Learned Counsel for the revisionist also placed before me a decision rendered by the Orissa High Court in case of Niranjana Behera and Another Vs. Laxmidhar Rana and Others, where in similar circumstances, the order passed by the learned Sessions Judge was set aside in second revision. I am not able to subscribe the view taken in the aforesaid two decisions for the reason stated in the preceding paragraphs. Suffice it to say that in the aforesaid two decisions the mandatory provisions envisaged u/s 397(2) Cr.P.C. escaped attention of learned Judges, hence, of the extent of entertaining second revisions aforesaid two decisions cannot be accepted as precedent being per incuriam but I respectfully concur with the ratio decidendi laid down in the aforesaid decisions.

15. Now in the present case, a fundamental question of general importance arises as to whether this Court can afford to remain silent spectator by allowing per set illegal order passed without jurisdiction by the learned Sessions Judge to remain operative and a legal order passed by the learned Executive Magistrate be allowed to be made ineffective especially when the learned Counsel for the revisionist neither made an oral request to convert this revision u/s 482 Cr.P.C. nor any such written application is filed. The memo of revision of this case also reveals that no such prayer is made to convert the present revision into a criminal Misc. Petition u/s 482, Cr.P.C. if in the opinion of the Court, the revision is found to be not maintainable.

16. For appropriate answer of the aforesaid question the scope of Section 482, Cr.P.C. is to be examined. The scope of Section 482 Cr.P.C. came up for consideration before me in case of Chatra Ram and Ors. v. State of Rajasthan (S.B.Criminal Misc. Petition No. 272 of 1996) decided on 15.7.1996, where it was held in paragraphs 10 and 11 as follows:

10. As a matter of fact the provisions of inherent power envisaged u/s 482, Cr.P.C. are unique and special provisions conferring power to a court of record to administer justice strictly according to its judicial conscience based on law and fair play and in process of doing so to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of

any Court or otherwise to secure the ends of justice. It is to be noticed that under other enactments inherent powers are also conferred upon the subordinate Courts such as u/s 151 CPC but under Criminal Procedure Code legislature thought it proper to confer inherent power only upon the High Court which is a court of record within the meaning of Art. 215 of the Constitution.

11. In my humble opinion, once a matter is brought to the notice of this Court u/s 482, Cr. P. C. it is at liberty to make such orders as may be necessary in the circumstances of the case to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise secure the ends of justice...

17. It is easily deducible from the case of Chatra Ram (supra), that provisions of Section 397(2) or 397(3), Cr.P.C. do not limit or affect the inherent power of the High Court u/s 482 Cr.P.C. provided out of three conditions enumerated under the said Section any one of them exists to exercise inherent power. It is true that in exercising such inherent power the High Court should exercise self-restraint and such power can be made functional in rarest of rare cases where judicial conscience of the High Court is shaken. It is further true that a wrong doer cannot be allowed to invoke inherent power of the High Court lest it would amount travesty of justice and fair play.

18. Looking into the facts and circumstances of the present case, I am of the view that the present case falls within the category of rarest of rare cases where self-restraint can be lifted for exercise of inherent jurisdiction to give effect to eminently just and legal interlocutory order passed by the learned Executive Magistrate u/s 147 Cr.P.C. and to secure the ends of justice. In the present case, it would be necessary to set aside the order passed by the revisional court to prevent abuse of process of the Court. Although no prayer is made by the petitioners to convert this revision into a proceeding u/s 482 Cr.P.C. yet I consider just and proper in the interest of justice to convert this revision into a proceeding u/s 482 Cr.P.C. in exercise of my suo moto powers.

19. Now, with the aforesaid introspection, I propose to decide the present case on merits.

20. It is true that there are no consensus of opinions of various; High Courts including this Court on the question whether an Executive Magistrate has implied jurisdiction to pass an interlocutory order in the proceedings u/s 147, Cr.P.C. even in absence of express provision under the said Section. The Rajasthan High Court in a decision reported in AIR 1950 Raj. 08 ruled that an Executive Magistrate while in seisin of the proceedings u/s 147, Cr.P.C. has no jurisdiction to pass an interim order in absence of express provision to pass such interim; order under the aforesaid Section.

21. The aforesaid question again came up for consideration before Rajasthan High Court in case of Ramesh and Ors. (supra) where the learned Single Judge of this Court placing reliance on a decision rendered by the Supreme Court in case of Savitri Rawat Vs. Govind Singh Rawat, ruled that an interlocutory order could

be passed by an Executive Magistrate in order to prevent hardship to any party even in absence of express provision of Section 147, Cr.P.C.

22. It is to be noticed that the earlier decision given by this Court in AIR 1950 Raj 08 was not brought to the notice of the learned Single Judge yet I respectfully concur with the view taken by the learned Single Judge of this Court in case of Ramesh and Ors. (supra) and any decision contrary to it, now does not hold water in view of the ratio decidendi propounded in case of Smt. Savitri (Supra) by the Supreme Court. It would be profitable to quote paragraph 6 of the Supreme Court's judgment rendered in case of Smt. Savitri (supra) which reads thus:

In view of the fore-going it is the duty of the Court to interpret the provisions of Chapter IX of the Code in such a way that the construction placed on them would not defeat the very object of the legislation. In the absence of any express prohibition, it is appropriate to construe the provisions of Chapter IX as conferring an implied power on the magistrate to direct the person, against whom an application is made u/s 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application. It is quite common that applications made u/s 125 of the Code also take several months for being disposed of finally. In order to enjoy the fruits of the proceedings u/s 125, the applicant should be alive till the date of the final order and that the applicant can do in a large number of cases only if an order for payment of interim maintenance is passed by the Court. Every Court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim "ubi aliquid conceditur, conceditur at id sine quo res ipse esse non potest" (where anything is conceded, there is conceded also anything without which the thing itself cannot exist) vide Earl Jowitt's Dictionary of English Law-1959 Edn.P. 1797). Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration.

23. From the aforesaid decision of the Supreme Court, it is easily deducible that although u/s 125, Cr.P.C. there is no express provision for interim maintenance yet the Supreme Court made it permissible to pass such order by necessary intendment to keep the applicant alive till the final decision of proceedings under the said Section. Similarly, in a proceedings u/s 147, Cr.P.C. although there is no express provision for passing interlocutory order yet in order to prevent any hardship to any party by necessary implication an Executive Magistrate is authorised to pass such interlocutory order during the pendency of proceedings under the aforesaid Section.

24. A similar question came up for consideration before the Orissa High Court in case of Niranjana Behera and Another Vs. Laxmidhar Rana and Others, where a

similar situation was brought to the notice of the learned Single Judge of Orissa High Court and it was argued that a learned Single Judge of Orissa High Court in *Uchab Chandra Das Vs. Khirod Ch. Das and Others*, has ruled that an Executive Magistrate has no

jurisdiction, to pass an interlocutory order in absence of express power u/s 147, Cr.P.C. which was binding on him. Learned Single Judge in case of *Niranjan Behera and another (supra)* refused to accept as a precedent decision rendered by the learned Single Judge of the Orissa High Court in case of *Uchhab Chandra Das (supra)* in view of the decision rendered by the Supreme Court in case of *Smt Savitri (supra)*

25. I am in full agreement with the decision rendered by the learned Single Judge of the Orissa High Court in case of *Niranjan Behera & another (supra)*. I am also of the opinion that now after decision in case of *Ramesh and another (supra)* by learned Single Judge of this Court which is based on the decision of the Supreme Court in case, of *Smt. Savitri (supra)* it cannot be said that an Executive Magistrate has no jurisdiction to pass an interlocutory order in absence of express provision u/s 147 Cr.P.C. as held by learned revisional court in the present case in its impugned order.

26. It is disturbing to notice in the present case that when question about the power of the Magistrate to pass or not to pass an interlocutory order in absence of express provision u/s 147 Cr.P.C. was being argued before him, three decisions were brought to his notice, two decisions rendered by the Patna High Court and one decision rendered by the Rajasthan High Court and the learned Executive Magistrate rightly passed the interlocutory order after placing reliance on a decision rendered by this Court in case of *Ramesh and another (supra)* but when the same question came up for consideration before the learned Sessions Judge then instead of; placing reliance on the decision rendered by this Court in case of *Ramesh and another (supra)*, he preferred to set aside the legal order passed by the learned Executive Magistrate.

27. It is to be imbibed by all subordinate courts, tribunals and civil authorities that under the Scheme of Constitution, every High Court is Apex Court in each State or States as the case may be with powers conferred on it under Articles 215, 226 and 227 of the Constitution of India and as such, by necessary intendment, it follows that all the authorities, Civil and Judicial within its territorial jurisdiction are under Constitutional obligation to act with the aid of pronouncement made by High Courts although there is no analogous provision such as Article 144 of the Constitution of India. It is made clear that just as orders and judgments of the Supreme are to be faithfully obeyed and carried out within the territory of India, similarly all the judgments and orders passed by every High Court are to be carried out faithfully through out its territorial jurisdiction unless such orders and judgments are reversed or modified by the Supreme Court in exercise of its appellate jurisdiction under Article 136 of the Constitution of India.

28. The orders and judgments pronounced by every High Court are binding precedents within its territorial jurisdiction and beyond its jurisdictional limit such orders or decisions have persuasive value. No notice for contempt can be issued against a court of record as every court of record has an element of sovereignty and independence in judicial realm and in a democratic polity whereas it is not so in case of other courts and tribunals within the frame work of our Constitution. It is further true that there is no analogous provision as envisaged under Article 141 of the Constitution of India yet its applicability is to be extended to every High Court by necessary implication.

29. Reasons for the aforesaid conclusion are not far to seek inasmuch as Supreme Court under Article 129 of the Constitution is a court of record whereas every High Court is a court of record as enshrined under Article 215 of the Constitution. The relationship between Supreme Court and every High Court is federal in nature subject to Articles 136, 141 and 144 of the Constitution whereas the relationship between every High Court with all courts and tribunals through out the territories in relation to which it exercises jurisdiction is supervisory and of subordination as enshrined under Article 227 and Article 235 of the Constitution. The High Courts and Supreme Court alone can determine what the law of land is being court, of records.

30. I am constrained to make aforesaid constitutional observations, in a cr. misc. petition u/s 482 Cr.P.C. with an object to avoid such serious error of judgment in future as has been done by revisional court in present case by setting aside legal and eminently just interlocutory order passed by learned Executive Magistrate after placing reliance on a decision rendered by this Court in case of Ramesh and others (supra) based on a decision rendered by Supreme Court in case of Smt. Savitri (supra).

31. In the present case order impugned passed by learned revisional court is per se illegal and without jurisdiction, therefore, it is liable to be set aside in exercise of inherent power of this Court.

32. Consequently, the order dated 11.12.95 passed by the learned Sessions Judge is hereby set aside and the order dated 8.11.95 passed by learned Executive Magistrate, Sirohi is restored in toto. Criminal Misc. Petition is allowed with a direction to learned Executive Magistrate to decide the proceedings u/s 147 Cr.P.C. expeditiously in accordance with law without being influenced with any observation made by learned revisional court.