
(2003) 06 SHI CK 0013

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 20 of 2003

Sudershan Lal Bhatia and Others

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 30-06-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 182, 392(2), 397(2), 482
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2003) 3 ShimLC 129

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : D.D. Sood and D. Dhadiual, for the Appellant; H.K.S. Thakur, Dy. A.G. for Respondent No. 1 and S.D. Vasudeva, for Respondents No. 2, for the Respondent

Judgement

M.R. Verma, J.—A question about the maintainability of the present revision petition has arisen and this order is meant to dispose of such question.

2. The admitted facts relevant for the determination of the aforesaid question are that Respondent Karam Dei (hereafter referred to as 'R-2') lodged a complaint u/s 3(viii), (ix)(x) and (xv) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereafter referred to as 'the Act') against the Petitioners in the Special Court, Kangra at Dharamsala. The Court directed Deputy Superintendent of Police, Headquarters Kangra, to inquire into the complaint and report. After inquiry, the Deputy Superintendent of Police submitted his report to the effect that the allegations in the complaint were false and no case was made out and recommended action against the complainant u/s 182 of the Code of Criminal Procedure (hereafter referred to as 'the Code?'). On objections filed by R-2 against the said report, the Special Court ordered fresh inquiry to be conducted by Deputy Superintendent of Police (Vigilance), Kangra, who submitted his report, which was returned by the Special Court, with the direction to resubmit it on 9.9.1996. When the report was resubmitted as

directed by the Court, the Special Court directed registration of a case against the Petitioners. Thus, FIR No. 307/1996 was registered against the Petitioners at Police Station, Palampur, on 18.9.1996. The investigation was entrusted to Deputy Superintendent of Police, Palampur, but conducting of investigation by him was objected to by R-2, therefore, it was entrusted to Deputy Superintendent of Police Dehra, who submitted his report on 29.3.1997, observing that no case was made out against the Petitioners and the complaint was false. He further recommended action against the complainant u/s 182 of the Code and cancellation of the FIR. Special Court then directed to send the case file to the Superintendent of Police, Kangra for taking appropriate steps in accordance with law. The Superintendent of Police, Kangra again examined the entire case and recommended cancellation of FIR vide his report dated 16.3.1998. R-2 filed various applications against such report. Finally, the Special Court ordered cancellation of the FIR. R-2 preferred Criminal Revision Petition No. 24 of 2000 in this Court which was accepted and the case was remanded to the Special Court with direction to dispose of the matter by a speaking order. After hearing the parties, the Special Court directed reinvestigation of the case vide its order dated 22.11.2003, which is the order under challenge in this petition. At the time of hearing of this petition for admission, an objection about its maintainability was taken by the learned Counsel for R-2.

3. I have heard the learned Counsel for the parties on the aforesaid question which arose for determination in view of the preliminary objection raised for Respondent No. 2.

4. It was contended by the learned Counsel for R-2 that the order sought to be impugned is merely an interlocutory order, therefore, no revision lies against it, in view of the provisions of Section 392(2) of the Code. It was further contended that where filing of a revision against any particular order is expressly barred u/s 397(2) of the Code, then provisions of Section 482 of the Code can also not be invoked and even if the cognizance of an offence is taken by a Court, the powers of the police to investigate the case are not exhausted. They can still proceed with the investigation.

5. On the other hand, the learned Counsel for the Petitioners had contended that the impugned order in fact decides about a valuable right of the Petitioners inasmuch as the order for reinvestigation of the case has come into being on a cancellation report submitted by the police on which report, at one point of time, the Special Court itself had ordered cancellation of the case, though a speaking order was not passed. While considering the same material second time, the Court, instead of cancelling the case, has directed reinvestigation, which order keeps alive a case against the Petitioners, which has several times been recommended for cancellation. Therefore, the impugned order is not a formal interlocutory order which cannot be called in question by way of a revision petition but is an order which determines the substantial rights of the Petitioners and can be challenged by way of a revision petition.

6. It may be pointed out at the very outset that the question as to whether the investigation could be ordered and whether the police has the power to reinvestigate/to continue its investigation even after cognizance has been taken by the Court, are not the questions involved for consideration at present. The question for determination at present is whether revision lies against the impugned order or not, the answer to which depends solely on the answer to the question as to whether the impugned order is an interlocutory order within the meaning of Section 397(2) of the Code or not?

7. In *Amar Nath and Others Vs. State of Haryana and Another*, the Hon^{ble} Supreme Court, while interpreting the expression "interlocutory order" as used in Section 397(2) of the Code, held as under:

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.

8. In *Madhu Limaye Vs. The State of Maharashtra*, the Hon^{ble} Apex Court held as under:

12. 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.

9. It was further held :

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 order may fall in between the two. By a rule of harmonious construction, we think that the bar in subsection (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 called out from many decided cases.

The Hon^{ble} Supreme Court went on to hold :

An order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of Section 397(2).

10. In K.K. Patel and Another Vs. State of Gujarat and Another, the Hon^{ble} Supreme Court held as under :

That apart, the view of the learned Single Judge of the High Court that no

revision was maintainable on account of the bar contained in Section 397(2) of the Code, is clearly erroneous. It is now well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage (vide *Amar Nath and Others Vs. State of Haryana and Another*, ; *Madhu Limaye Vs. The State of Maharashtra*, ; *V.C. Shukla Vs. State through C.B.I.*, and *Rajendra Kumar Sitaram Pande and Etc. Vs. Uttam and Another*, The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the Appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable.

11. In *M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim and Apparels Ltd. and Others*, the Apex Court held :

8. The interdict contained in Section 397(2) of the Code of Criminal Procedure (for short "the Code") is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test laid down by this Court through a series of decisions is this if the contention of the Petitioner who moves the superior Court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If they would, then the order is not interlocutory in spite of the fact that it was. passed during any interlocutory stage.

12. It clearly emerges from the above cited decisions that expression "interlocutory order" as used in Sub-section (2) of Section 397 of the Code, is not necessarily an order other than a final decision or converse of the expression "final order". It, however, means the order of a purely interim or temporary nature which does not decide the important rights or liabilities of the parties. However, the order which adjudicates and substantially affects the rights of the parties or a particular aspect of the case, cannot be said an ?interlocutory order? so as to be outside the purview of the revisional jurisdiction of the High Court. Therefore, the test to decide as to whether the order is "interlocutory" within the meaning of Section 397(2) of the Code or not, is whether by upholding the objections raised in the revision, it would result in culminating the proceedings or not. In case on acceptance of the objection raised against the order the proceedings would culminate as a whole, the order cannot be termed as "interlocutory" even if passed during an interlocutory stage.

13. In the case in hand, the investigating agency had submitted various reports for cancellation of the case against the Petitioners which was, at one point of time, accepted by the Special Court and the case was ordered to be cancelled. However, in revision this Court found such an order cryptic and remanded the

case back to the Special Court for passing a speaking order. While passing such order, the Special Court did not agree with the last cancellation report and directed reinvestigation. The main contention of the Petitioner now is that refusal to accept the cancellation is not supportable in view of the material before the Court on the basis of which material, the cancellation report was once accepted. Evidently, if the contention of the Petitioners is finally accepted, the case would stand cancelled bringing an end to the case registered against the Petitioners. Therefore, the impugned order directing re-investigation in the case, instead of agreeing with the cancellation report submitted by the Police, decides the substantial rights of the Petitioners and cannot be said an "interlocutory order" so as to be outside the purview of the revisional jurisdiction of this Court.

14. As a result, the objection regarding maintainability of the petition is overruled and the revision petition is held maintainable and the question is accordingly disposed of.