
(2002) 06 PAT CK 0022
In the Patna High Court
Case No : Criminal Revision No. 195 of 2002

Sumit Bose @ Sumit Ranjan Bose and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 27-06-2002

Acts Referred:

Citation : (2002) 06 PAT CK 0022

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—Because of nature of the order under challenge and the stage of criminal proceeding, this revision application has been heard in detail at the stage of admission itself and is being disposed of finally, All the three Petitioners are accused in complaint case No. 456/2001 lodged by opposite party No. 2 and pending before Judicial Magistrate, Purnia. By the impugned order dated 8.3.2002 the learned Magistrate rejected the prayer of the Petitioners to recall warrants of arrest issued against them and to dispense with personal appearance of the Petitioners u/s 205 of the Code of Criminal Procedure (hereinafter referred to as "the Code").

2. Before taking note of main issues and the submission of rival parties the essential facts may be noticed in brief. In May 2001 O.P. No. 2, the complainant filed the complaint in question before the CJM, Purnia The complaint alleges that Petitioners No. 1 and 2 are respectively the Area Manager at Patna and the Regional Manager at Kolkata of ESPN Software India Limited. Petitioner No. 3, Manu Sahni has been shown as representative of the afore said company located at New Delhi without giving details as to how he is the representative. It further appears from the complaint that two television channels belonging to the company were being operated by the complainant, a cable operator at Purnia Allegedly, under a saving scheme launched by the company the complainant sent a draft of Rs. 93124/- dated 8.1.2001 to the company's Patna office. It further appears that allegedly the company wanted to adjust the draft amount towards certain old dues of the complainant but the draft could not be encashed due to

complainant's instructions to his Bank to the effect that the draft was lost. In the complaint petition it has been further alleged that the draft was returned to the complainant but got lost at If Patna and has somehow gone back in the custody of the accused and the company has admitted possession of the draft with them. Allegedly the company stopped supply of the two television channels from 11 February 2001 after the draft could not be encashed.

3. After due enquiry cognizance was taken by the learned Judicial Magistrate u/s 420 IPC on 31.7.2001 for alleged deception by the three Petitioners in obtaining the draft of Rs. 93124/- under company's Super Saver Scheme. It is not in dispute that the draft has not been encashed as yet. Initially, learned Magistrate chose to issue only summons against the Petitioners which is permissible under law although Section 420 of the IPC is a non-bailable offence punishable with more than two years of imprisonment and hence requires to be tried by a Magistrate as a warrant trial. It further appears that summons were served on Petitioners No. 1 and 2, the two employees of the company at Patna and Kolkata respectively but there is material on record to show service of summons on the representative of the company, Petitioner No. 3 who admittedly resides at New Delhi. On 22.9.2001 the learned Magistrate noticed receipt of summons by Petitioner Nos. 1 and 2 and on that very date order was passed for issuance of bailable warrant of arrest which was actually issued on 23.11.2001 and before its service report could be received, on 15.12.2001 non-bailable warrant was ordered to be issued against all the three accused. The non-bailable warrants were actually issued on 21.12.2001 and the Petitioners appeared in the Court of learned Magistrate on 7.2.2002 by filing Vakalatnama and prayed for recall of the warrant of arrest and for being exempted from personal appearance.

4. On behalf of the Petitioners it was submitted that since the Petitioners are admittedly employees and representative of a corporate body and are residents of different places away from Purnea and since the case is actually of a petty nature in which no money has been taken by the Petitioners in their individual capacity and nothing has been received by the Company also, the privilege of Section 205 of the Code should have been given to the Petitioners and such privilege has been refused by the learned Magistrate by the impugned order by ignoring the fact that summons were never served upon representative of the Company, Petitioner No. 3 and by wrongly holding in the impugned order that the allegation in the complaint petition is serious in nature and by wrongly mentioning that identity of the Petitioners is disputed.

5. On behalf of opposite party No. 2, the complainant a preliminary objection was raised that the impugned order is interlocutory in nature and hence criminal revision is not maintainable before this Court in view of bar created by Section 397(2) of the Code. On merits, it was submitted that once warrant was issued by the Magistrate there was no jurisdiction in the Magistrate to allow Petitioner's prayer u/s 205 of the Code. In support of objection on the ground for bar in Section 397(2) of the Code, learned Counsel for opposite party No. 2 placed

reliance upon-1. 1979 BBCJ 132 (N.L. Poddar v. State), 2.1979 BBCJ 437 (Ravi Singh v. State) and 3. M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim and Apparels Ltd. and Others, On the other hand learned Counsel for the Petitioners placed reliance upon- 1 1999 (2) PLJR 5 (SC) (Rajendra Kumar Sitaram Pandey v. Uttam), 2. Jarnail Singh Vs. State of Rajasthan, (a full Bench judgment of Rajasthan High Court in the case of Jai Ram Singh v. State of Rajasthan) and 3. 2000 (106) Cri LJ (a judgment of MP High Court in the case of Akram v. State of MP), to submit that although an order rejecting a prayer u/s 205 of the Code is not a final order in the sense that it does not dispose of the proceeding finally but yet it is not an interlocutory order so as to attract the bar of Section 397(2) of the Code. In the case of N.L. Poddar (supra) this Court held that an order u/s 205 of the Code is interlocutory in nature. It was further held that power of Magistrate is discretionary and hence, such order cannot be set aside in exercise of revisional power. The learned single Judge further proceeded to hold that such order cannot be set aside even in exercise of power u/s 482 of the Code. The latter observation relating to inherent power u/s 482 of the Code was not accepted by another learned Single Judge in the case of Ravi Singh (supra) in view of decision of the Supreme Court in the case of Madhu Limaye Vs. The State of Maharashtra, In this case several judgments of different Courts were noticed to hold that Section 205 covers those kinds of cases where summons ought to have been issued in the first instance but warrant has been issued by mistake and that benefit of Section 205 should be liberally extended, particularly in all trivial and technical cases, to such accused persons, who are ladies, old and sick persons, workers in factories, daily earners, other labourers and busy business people or industrialists. The Supreme Court in the case of Shaskar Industries Limited (supra) declined to decide whether an order u/s 205 of the Code is interlocutory order or not. However, the Court referred to judgment of the Apex Court in the case of K.K. Patel and Another Vs. State of Gujarat and Another, and quoted with approval para 11 of the said report in which several other judgments of the Apex Court were referred, to come to a conclusion that the interim stage of the case at which an order under challenge has been passed is not the sole test to decide whether the order is interlocutory or not. It was further observed-"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."

6. On the other hand, learned Counsel for the Petitioners emphasized discussions made in paragraph 6 of the judgment of the Apex Court in the case of (Rajendra Kumar Sitaram Pandey v. Uttam), to submit that as per law laid down by the Supreme Court in the afore said judgment the expression-"interlocutory order" in Section 397(2) has been used in a restricted sense and not in a broad or artistic sense and merely denotes orders of purely interim or temporary nature which do not decide or touch the important rights or liabilities of the parties. A perusal of the relevant discussion in the aforesaid judgment of the Apex Court supports the

contention advanced on behalf of the Petitioners that any order which touches or affects important right of the parties cannot be said to be an "interlocutory order". In the case of V.C. Shukla Vs. State through C.B.I., also the Apex Court held that the term interlocutory order used in the Code has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial. This would also ensure that the revisional power of the High Court or the Sessions Judge could be attracted in case the order was not purely interlocutory but intermediate or quasi final.

7. Although discussions in the case of Rajendra Kumar Sitaram Pandey (supra) worn in the contex of an order of the Magistrate directing, issues of process, it is for the principles for deciding the nature of an order whether it is interlocutory or not that strong reliance was placed upon the aforesaid judgment. On the touchstone of aforesaid principles decided by the Apex Court an order u/s 205 of the Code has to be held to be an intermediate or quasi final order and not purely interlocutory in nature. This inference appears to be unavoidable after going through the provisions of the Code which confer certain rights and liabilities upon the accused which are consequent upon the outcome of a prayer u/s 205 of the Code. An accused does not have a vested right that he must get the benefit of Section 205 and grant of such benefit is a matter of discretion to be exercised by the Magistrate after properly considering several relevant aspects which may vary from case to case. How such discretionary power has to be exercised has been dealt with by two decisions of this Court in a detailed and lucid manner for which reference may be made to 1979 BBCJ 437 (Ravi Singh v. The State of Bihar) and Ram Harsh Das Vs. State of Bihar and Others, However, exercise of discretion by itself will not render the resultant order as purely interlocutory. The effect of the order has to be examined to find out whether the order decides or touches the important rights or liabilities of the parties or not. In a case u/s 205 of the Code the right of the accused to be represented through counsel on routine dates when the Court does not require his presence and his liability to be bound by the action of his counsel are certainly dependent upon the nature of the order passed and hence, such an order cannot be said to be an interlocutory order so as to attract the bar of Section 397(2) of the Code.

8. In view of aforesaid discussion and finding which is based upon judgment of the Apex Court in the case of K.K. Patel v. State of Gujarat (supra) and Rajendra Kumar Sitaram Pandey (supra) and V.C. Shukla v. State (supra) this Court is compelled to observe that the judgment of this Court in the case of N.L. Poddar is no longer a good case law.

9. There is no legal bar in exercise of power u/s 205 of the Code when initially only summons were issued and Petitioners were not taken into custody under the process of execution of warrant. At least in the case of Petitioner No. 3 warrant had been wrongly issued when summons had not been served. Facts of the case and interest of justice require that Petitioners 1 and 2 should get the same treatment u/s 205 of the Code as Petitioner No. 3.

10. Coming to the merits of the case, this Court finds that the learned Magistrate failed to discuss various judgments cited before him and it came to a wrong conclusion that the allegation in the complaint petition is serious in nature. At this stage this Court is not inclined to make any further comments on this aspect of the matter. As a precaution it is observed that during subsequent stage of the criminal proceeding the Court below shall not to be prejudiced by any observation in the impugned order or in the present order of this Court relating to seriousness of allegations. The learned Magistrate also erred in holding that identity of the Petitioners is disputed. The accused persons have not disputed their Identity and the complainant has merely raised a controversy regarding the residential address of Petitioner No. 3.

11. On a careful consideration of all the facts and circumstances of the case, this Court finds that the Petitioners, who are residents of distant places away from Purnia and are facing criminal prosecution not on account of any personal action but on account of their association with a corporate body, deserve to be granted the benefit of Section 205 of the Code. This conclusion has been arrived at after careful consideration of the nature of allegation in the complaint petition. Hence, the interest of justice also requires interference with the impugned order.

12. For the aforesaid reasons, this application is allowed, the impugned order is set aside and the Court below is directed to allow the benefit of Section 205 of the Code to the Petitioners. However, for the said purpose the Court below will be at liberty to further direct the Petitioners to give an undertaking to the satisfaction of the Court that they would not dispute their identity, and that a counsel on their behalf would be present in Court on dates fixed and that they have no objection in taking of evidence in their absence. Even as per judgment of the Apex Court in the case of Bhaskar Industries Limited (supra) the aforesaid precautions are required to be taken by the Magistrate as a matter of course.