
(2010) 09 MP CK 0061
In the Madhya Pradesh High Court
Case No : M. Cr. C. No. 466 of 2010

Yashwant Singh and Others

APPELLANT

Vs

Smt. Sita Singh and Another

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 203, 397, 397(1)
Penal Code, 1860 (IPC) — Section 294, 323, 498A, 506B

Citation : (2011) 1 DMC 285 : (2010) ILR (MP) 2650 : (2011) 1 MPLJ 350

Hon'ble Judges : Indrani Datta, J

Bench : Single Bench

Judgement

Indrani Datta, J.

Invoking extraordinary jurisdiction of this Court conferred u/s 482 of Code of Criminal Procedure Petitioners have assailed the order dated 15/12/2009, passed by the Special Judge and Additional Sessions Judge, Datia (M.P.) in Criminal Revision No. 52/2008, confirming the order dated 01/05/2007, passed by the Judicial Magistrate First Class, Bhandar, District Datia in Criminal Case No. 152/2007, by which cognizance has been taken against the Petitioners u/s 498A of IPC on a complaint filed by the Respondent No. 1.

Facts in nutshell giving rise to this petition are that Respondent No. 1 Smt. Sita Singh filed a complaint against the Petitioners under Sections 498A, 323, 294 and 506B of IPC, alleging that she was married to Petitioner No. 1 about three and a half years back. Her father had given sofa, almirah, cooler, T.V., refrigerator, ornaments, clothes etc. valuing about at Rs. 1.5 lacs. In the marriage, Petitioners demanded a motorcycle which her father could not give. After some time, Petitioners started harassing her with respect to demand of motor-cycle. She was also beaten and sustained injuries. Thereafter, she lodged a report at police station Bhandar on 17/08/2007. After examination of the complainant and her witnesses, learned trial Court has taken cognizance against the Petitioners u/s 498A of IPC. Order of the learned trial Court was challenged

by the Petitioners by preferring a Criminal Revision before the Revisional Court and the same has confirmed by the Revisional Court, giving rise to this petition.

Manifold submissions have been advanced by learned senior Counsel for the Petitioners that the Revisional Court has erred in holding that order of taking cognizance passed by the trial Court is an interlocutory order. It is submitted that the said order is not an interlocutory order and, therefore, the revision is maintainable. It is further submitted that from the evidence adduced by the Respondent No. 1/complainant, prima facie, offence u/s 498A of IPC is not made out against the Petitioners as the ingredients required for making out an offence u/s 498A of IPC are wholly lacking.

Learned senior Counsel for the Petitioners placed reliance in the case of *Devchand Manji Bheel v. Kutub @ Kutubuddin Fakruddin* 2005(1) MPWN 12, wherein a Bench of this Court has held that order issuing process for trial is revisable.

Further, learned senior Counsel for the Petitioners placed reliance in the case of *Adalat Prasad v. Rooplal Jindal and Ors.* 2004 SCC 1927, wherein the Hon''ble Apex Court in paragraph 15 has held as under:

It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Code of Criminal Procedure does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code.

Relying on the above citations, it is contended by learned senior Counsel for the Petitioners that the order passed by learned Magistrate for taking cognizance against the Petitioners is interlocutory, hence, that order is not justified and deserves to be quashed and the Petitioners are entitled to be discharged.

Combating the claim of the Petitioners, learned Counsel for the Respondents urged that the order passed by the trial Court is interlocutory order, hence, revision is not maintainable. The order of Revisional Court is legal, proper and does not require any interference. Therefore, the petition deserves to be dismissed.

Heard rival contentions of both the parties and perused the documents on record.

So far as the order of taking cognizance against the Petitioners is concerned, this order cannot be treated as interlocutory order and hence, no bar of Sub-section (2) of Section 397 of Code of Criminal Procedure is applicable in the present case. The Petitioners are substantially affected by that order. Hence, order cannot be treated as interlocutory order.

In the case of Rajendra Kumar Sitaram Pande and Etc. Vs. Uttam and Another, , the Hon''ble Apex Court has held that it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under Sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction u/s 397 could be exercised against the same.

In the case of Madhu Limaye Vs. The State of Maharashtra, , the Hon''ble Apex Court has held that ordinary and generally the expression "interlocutory order" has been understood and taken to mean as a converse of the term "final order". But 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 1989 Code.

Similar is in the case of V.C. Shukla v. State 1980 SCC 695, wherein the Hon''ble Apex Court has held that the term "interlocutory order" used in the Code of Criminal Procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi-final. This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and and, therefore, the bar under Sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction u/s 397 could be exercised against the same. The High Court, therefore, was not justified in coming to the conclusion that the Sessions Judge had not jurisdiction to interfere with the order in view of the bar under Sub-section (2) of Section 397 of the Code.

Considering the above legal position, the order of issuance of process and taking cognizance cannot be treated as interlocutory order. Hence, the order dated 15/12/2009 passed by the Revisional Court in Criminal Revision No. 52/2008 is hereby set aside and the matter is remanded back to the Revisional Court to decide the revision afresh in accordance with law.

With the aforesaid observation, M.Cr.C. stands disposed of.