Fateh Singh Vs State of U.P.& Ors.

Court: Allahabad High Court

Date of Decision: May 23, 1995

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 204, 397, 397(2)

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

Final Decision: Allowed

Judgement

N.B. Asthana, J.
This revision has been directed against the summoning order dated 11193 passed by C.J.M., Chamoli in Criminal Case

No. 554 of 1992 under Section 406/420,I.P.C. A preliminary objection was taken, that in view of the law as laid down in Kailash Chaudhari and

others vs. State of U.P. and another, 1994 All. L.J. 174 the revision against the summoning order is not, Maintainable. In that case it was held that

An order issuing process on ex. parte consideration of the complaint and the material under Section 204 of the Code being only a step towards

trial is an interlocutory order. Under Section 397(2), Cr. P.C. no Revision lies against an interlocutory order.

2. It was, however, urged that in view of the law as laid down by the Supreme Court in Amar Nath''s case reported in AIR 1977 S.C. 2185 and

Madhu Limaye''s case reported in AIR 1978 S.C. 47 the revision against the summoning order is maintainable.

3. In Smt. Swaran Anand and others v. Chief Judicial Magistrate, 1977 (14) A.C.C. 6, it was held by the High Court that order summoning an

accused person under Section 204, Cr. P.C. is an interlocutory order. Revision against such an order is barred under Section 397(2) of Cr. P. C.

This ruling went to the extent of saying that the provisions of Section 482, Cr. P.C. cannot be applied.

4 In M/s. Resolute of India Ltd. and another v. Munsif Magistrate, Hawaii and another, 1978(15) A.C.C. 126, it was held that The order of the

Magistrate summoning the accused is an interlocutory order. In Hare Ram Satpathy v. Tika Ram Agarwal, 1978 AC.C. 356, it was held by the

Supreme Court that It is well settled that once the Magistrate has after satisfying himself prima fade that there is sufficient materials for proceeding

against the accused issued process against him, the High Court cannot go into the matter in its revisional jurisdiction which is very limited.

5. In Khacheru Singh v. State of U.P., AIR 1982 S.C. 784, it was held that We do not see any justification, though we are not expressing any

opinion on the merits of the case for the order passed by the learned Additional Sessions Judge, Meerut in Criminal Revision No. 83 of 1979

which was affirmed by the High Court of Allahabad by its order dated 7580. All that the learned Magistrate had done was to issue a summons to

respondent No. 2 Satyavir Singh if, eventually, the learned Magistrate comes to the conclusion that no offence was made out against Satyavir

Singh, it will be open to him to discharge or acquit him, as the case may be. But it is difficult to appreciate why the order issuing "summons" to the

accused should be quashed. We, therefore, set aside the order passed by the Sessions Court and the High Court, restore that of the learned

Special Judicial Magistrate, First Class, Meerut dated February 2, 1979 and remit the matter to the trial court for disposal in accordance with law.

6. In Bindbasni and others v. State of U.P., 1976 AC.C. 183, a Division Bench of this Court held that The expression "interlocutory order" or final

order have not been defined in the Code any where. In order to Judge whether or not a particular order amounts to an "interlocutory" or "final

order" we have to look to the authorities wherein those terms have been defined or explained.

7. Every order passed during the proceeding of a case, if it does not finally decide the case, is interlocutory and on that account no distinction can

be made amongst different interlocutory orders on the ground that one is passed at the preliminary stage of the proceedings whereas the order is

passed at a later stage.

8. In G.D. Mukerji v. Shyam Lal Tewari, 1978 A.C.C. 313, this Court held that The position appears to be very clear that under Section 397(2),

Cr. P.C. a court of revision has no power to interfere with an interlocutory order passed in any appeal enquiry trial or other proceedings.

9. In K.M. Mathew v. State of Kerala and another, 1992 JIC 212 (SC) it was held by the Supreme Court that It is open to the accused to plead

before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on

reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. No specific provision is

required for the Magistrate to drop the proceedings or rescind the process. The order issuing the process is an interim order and not a judgment. It

can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings if the complaint on the very face of it

does not disclose any offence against the accused.

10. It was further held that in case the Magistrate on second thought comes to the conclusion that the accused have committed no crime, he can set

aside the order summoning the accused. The aforesaid view was confirmed in State of Rajasthan v. Aruna Devi, 1994 JIC 16 (SC) in which it was

said that It would, however, be open to the respondents, on the matter being taken up further by the Magistrate, to urge that no case against them

has been made out whereupon such order shall be passed by the Magistrate as deemed legal and just.

11. In view of the above rulings the order summoning the accused is an interlocutory order against which no revision lies. The remedy of the

accused lies in approaching the trial court itself and plead before it that no case against him was made out and that the process against him be

withdrawn.

12. It was however, vehement ally urged on behalf of the revisionist that there is no such implied power under Section 204, I.P.C. and that

subordinate court does not possess any power to recall its own order. This argument in view of the law as laid down in K.M. Mathew"s case has

no substance. Reliance was also placed upon Section 362 of the Cr. P.C. which lays down that save as otherwise provided by this Code or by

any other law for the time being in force no court when it has signed its judgment or final order disposing of case shall alter or review the same

except to correct, clerical or arithmetical errors. This section speaks of judgments or final order disposing of the cases. The summoning order is

neither a judgment nor a final order disposing of a case, and, therefore, this section would not be a bar for the summoning court to consider its own

order afresh to find out whether the complaint discloses any offence against the accused.

13. It was also urged in this connection that it would be futile to go before the trial court in this connection because once it has passed the

summoning order it is not likely to withdraw it. I do not agree with this agreement. The Supreme Court has held that such a power is inherent in

Section 204, Cr. P.C. It cannot be said that the exercise would be futile.

14. In Amar Nath "s case a direction was given to the trial court to make further inquiry in the matter and then come to a conclusion whether the

accused should be summoned or not. The trial court without complying that order of the superior. Court straightway summoned the accused. In

these circumstances it was held by the Supreme Court that order summoning the accused is not an interlocutory order. In the particular facts and

circumstances of the case the summoning order in that case was not held to be an interlocutory order. It cannot be said on the basis of the above

ruling that an order summoning the accused is not an interlocutory order. The said order does not decide anything. The proceedings continue. In

the case of Madhu Limaye, the petitioner had challenged the jurisdiction of the court \k try him. This application was rejected. The Supreme Court

held that if any plea is taken before the trial court which accepted conclude the matter and that plea is rejected by the trial court then the aforesaid

order would be revisable. It is not the case here. If the revisionist filed application or objection before the trial court that no case against him has

been made out and he should be discharged from the order issuing process and if such an application is rejected then a revision may lie in view of

Madhu Limaye''s case. But not in the instant case when the revision has been filed against the summoning order. In Madhu Limaye''s case the

revision was not filed against the summoning order.

15. An application was also filed stating that in case the court comes to the conclusion that revision does not lie then the revision be treated as an

application under Section 482, Cr. P.C. It was for the revisionist to decide before the arguments were heard as to whether he would press the

revision or would go in under Section 482, Cr. P.C. since the prayer has been made in the alternative I am not inclined to grant it. It may however,

be pointed out at this stage that in Kailash Chaudhari''s case (supra) it was said that The High Court as a matter of sound exercise of judicial

discretion should not invoke its inherent jurisdiction under Section 482, Cr. P.C. to quash the complaint unless the accused has first approached

the Magistrate for the purpose of dismissing the complaint on the ground that there was no sufficient ground to proceed in the matter.

16. In view of the discussion made above no revision lies against the summoning order. The revision is not maintainable and is therefore dismissed.

The stay order granted on 1994 is vacated.

Revision allowed.