(1984) 11 AHC CK 0083

Allahabad High Court

Case No: Criminal Revision No. 1294 of 1984

Ram Yash and Others		APPELLANT
	Vs	
State of U.P. and Another		RESPONDENT

Date of Decision: Nov. 15, 1984

Acts Referred:

- Constitution of India, 1950 - Article 134
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 326, 500
- Special Courts Act, 1979 - Section 11(1)

Citation: (1985) AWC 103

Hon'ble Judges: S.K. Dhaon, J

Bench: Single Bench

Advocate: G.P. Dixit and K.S. Tewari, for the Appellant; AGA and G.S. Hajela, for the Respondent

Judgement

S.K. Dhaon, J.

This criminal revision and the companion Criminal Misc. Application u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the New Code) are directed against the same order dated 26th May, 1984, passed by the Munsif-Magistrate, Etawah, summoning the applicants for having committed an alleged offence under Sections 147, 148, 326 read with Section 149 of the Indian Penal Code. They can, therefore, be conveniently disposed of by a common judgment.

2. A complaint was filed by opposite party No. 2, Ram Bharosey, setting out the facts which constitute the offences alleged to have been committed by the applicants. Paragraphs 18 and 19 of the complaint are relevant and may be quoted as below:

18. That the complainant has now learnt that the police is intending the challan of the complainant''s party and file a report in the complainants case.

19. That in order to prevent such an event which is contrary to justice and fair play which requires both the cases to be investigated and sent up, the complainant has no option but to file this complaint.

3. The only submission made on behalf of the applicants is that in view of the aforequoted averments in the complaint, the learned Munsif-Magistrate acted without jurisdiction in issuing processes against the applicants. This submission is founded on Section 210 of the New Code.

4. Before entering into the merits a decision has to be given as to whether the order issuing summons to the applicants in the purported exercise of powers u/s 204 of the New Code constitutes an interlocutory order within the meaning of Sub-section 397(2) of the New Code. If the answer be in the affirmative, the revision application has to be dismissed as not maintainable. If it is held that the revision is maintainable the companion Criminal Misc. Application will have to be dismissed as not maintainable as now it is well settled that a particular order cannot be the subject matter of proceedings u/s 482 of the New Code if it is amenable to the revisional jurisdiction of this Court.

5. Under the Code of Criminal Procedure, 1898 (hereinafter referred to as the Old Code) any order passed by any criminal court, if not appealable, was revisable. Such an order could be either interlocutory or intermediate or qausi-final or final. The revisional power was contained in Section 435 in the Old Code. Section 439 of the said Code empowered the High Court to exercise any of the powers conferred on a Court of appeal by a number of provisions referred to therein including Section 423. The provisions contained in Section 423 talked of powers of an appellate Court in disposing of an appeal. The New Code (Act No. 2 of 1974) repealed the Old Code. By it, the Parliament introduced significant changes in the Old Code.

6. Section 397 of the New Code confers revisional powers upon the High Court or any Sessions Judge. The contents of Sub-section (1) of Section 397 of the New Code are in pari materia with the contents of Sub-section (1) of Section 435 of the Old Code. Sub-section (1) of Section 399 of the New Code provides that the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under Sub-section (1) of Section 401. Under Sub-section (1) of Section 401 the powers conferred upon a Court of appeal by numerous provisions including Section 386 have been made applicable to the High Courts while exercising revisional powers. The contents of Section 386 of the New Code are in pari materia with the provisions contained in Section 423 of the Old Code. It would be thus seen that the Legislature in the New Code kept intact the powers conferred upon a revisional Court under the Old Code. However, in Sub-section (2) of Section 397 of the New Code a radical departure is witnessed. The said provision may be extracted hereunder:

(2) The powers of revision conferred by Sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

7. Under the Old Code Chapter XVI comprised of Sections 200 to 203. These provisions now find place in Chapter XV of the New Code. The position under the Old Code was that judicial proceedings against a person as an accused did not commence unless and until the process for his attendance was issued. In Chandra Deo Singh Vs. Prokash Chandra Bose and Another, the Supreme Court held that from the scheme contained in Chapter XVI of the Old Code it was clear that an accused did not come Into picture at all till process was issued. Since the very question for consideration was whether he should have been called upon to face the accusation, he had neither a right to take part in proceedings nor had the Magistrate any jurisdiction to permit him to do so. Thus, a person, who, was called upon to present himself before the Court in response to a summons issued to him, had not been given any statutory right of a pre-decisional hearing even though the order passed affected his right substantially and even resulted in the curtailment of his liberty. However, the Legislature had taken care of preserving a right of a post-decisional hearing by making an order passed u/s 204 of the Old Code issuing a process amenable to the exercise of a revisional jurisdiction by the Sessions Court as well as the High Court. As shown above, the revisional powers were as wide as appellate powers and, therefore, an impugned order could be subjected to a judicial review in a given case. Of course, the Courts by a series of judicial precedents had imposed a self-fettered restriction that in revisional applications they would be loath to interfere on questions of fact.

8. In AIR 1949 1 (Federal Court) the meaning of the expression "judgment or final order" in a criminal case came up for consideration. The Court approved the following dictum of Lord Esher in Salaman v. Warner (1981) 1 Q.B. 714 : 60 L.J.Q.B. 624:

If their decision, whichever way it is given, will, if it stands, finally dispose to the matter in dispute, I thick that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory.

The Federal Court observed:

In our opinion, the term "judgment" itself indicates a judicial decision given on the merits of the dispute brought before the Court.

In a criminal case it cannot cover a preliminary or interlocutory order.

At the time when the New Code was enacted it was well-known that where in an enactment a legal term, which had received a judicial interpretation, was used by

the Legislature, it was to be presumed that the term had been used in the sense in which it had been judicially interpreted unless a contrary intention appeared. It was also trite that where a word of a doubtful meaning had received a clear interpretation, the subsequent statute which incorporates the same word or the same phrase in a similar context must be construed in such a manner so that the word or phrase is interpreted according to the meaning that has been previously ascribed to it.

9. An excerpt from the statement of Objects and Reasons of the Bill given rise to Act 2 of 1974 (the New Code) may be quoted with some advantage:

(3) The recommendations of the Commission were examined carefully by the Government, keeping in view, among others, the following basic considerations:

(i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;

(ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to individuals involved but also to society; and

(iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community.

(5) Some of the more important changes proposed to be made with a view to speeding up the disposal of criminal cases are--

(d) the powers of revision against interlocutory orders are being taken away, as it has been found to be one of the main contributing factors in the delay of disposal of criminal cases.

Against these back-drops and in the aforementioned context and setting the question is: Did the Parliament intend to treat an order passed u/s 204 of the New Code issuing a process to a person as an interlocutory order within the meaning of Sub-section (2) of Section 397 of that Code? Luckily, the controversy has engaged the attention of the Supreme Court in three cases. In fact, the task is confined to the discernment of the answer given by the Supreme Court by a careful reading of the three decisions given by it.

10. The first decision of the Supreme Court is in Amar Nath and Others Vs. State of Haryana and Another, In this case a Judicial Magistrate had issued summons to the Appellants therein. The Court first set out the historical background and then proceeded to interpret the provisions of Section 397.

It observed:

...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 307 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 to 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." In paragraph 10 it observed:

...The Magistrate on receiving the order of the Sessions Judge summon the Appellants strightaway which meant that the appellents were to be put on trial. So long as the Judicial Magistrate had not passed this order, no proceedings were started against the Appellants, nor were any such proceedings pending against them. It was only with the passing of the impugned order that the proceedings started and the question of the Appellants being put up for trial arose for the first time. This was undoubtedly a valuable right which the Appellants possessed and which was being denied to them by the impugned order. It cannot, therefore, be said that the Appellants were not at all prejudiced, or that any right of theirs, was not involved by the impugned order. It is difficult to hold that the impugned order summoning the appelants straightaway was merely an interlocutory order which could not be revised by the the High Court under Sub-section (1) and (2) of Section 397 of the 1973 Code. The order of the Judicial Magistrate summoning the Appellants in the circumstances of the present case, particularly having regard to what had proceeded was undoubtedly a matter of moment, and a valuable right to the Appellants had been taken away by the Magistrate on passing an order prima facie in sheer mechanical fashion without applying his mind. We are, therefore, satisfied that the order impugned was one which was a matter of moment and which did invole a decision regarding the rights of the Appellants. If the Appellants were not summoned, then they could not have faced the trial at all, but by compelling the Appellants to face a trial without proper application of mind cannot be held to be an interlocutory matter but one which decided a serious question as to the rights of the Appellants to be put on trial.

11. The second case is of Madhu Limaye Vs. The State of Maharashtra, In this case a Sessions Judge had framed a charge against the Appellant therein u/s 500 of the Indian Penal Code and this order was challenged in a revision preferred before the High Court at Bombay. The question that fell to be decided was whether the order impugned therein was an interlocutory one so as to attract the provisions of Sub-section (2) of Section 397 of the New Code. In paragraph 13 the Court considered S. Kuppuswami Rao''s case (Supra) The Court observed:

But in our judgment such 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 revisible which are orders passed on the final determination of the action but are not appealable under chapter XXXIV of the Code. This does not seem to be the intention of the Legislature when it retained the revisional powers of the High Court in terms identical to the one in the 1898 Code. In what cases then the High Court will examine the legality or propriety of an order or the legality of any proceeding of an inferior criminal court? Is it circumscribed to examine only such proceeding which is brought for its examination after the final determination and wherein no appeal lies? Such cases will be very few and far between. It has been pointed out repeatedly, vide, for example, the River Wear Commissioner v. William Edemption (1876) 2 AC 731 and R.M.D. Chamarbaugwalla Vs. The Union of India (UOI), that although the words occurring in a particular statute are plain and unambiguous, they have to be interpreted in a manner which would fit in the context of the other provisions of the statute and bring about the real intention of the Legislature. 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 noted in AIR 1949 1 (Federal Court) but, yet it may not be an interlocutory order-pure and simple. Some kinds of order may fall in between the two. By a rule of harmoneous construction, we think that the bar in Sub-section (2) of Section 397 is not meant to be attr acted 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 catelogue of orders to demonstrate which type of orders would be merely purely or simply interlocutory and which type 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 culled out from many decided cases.

12. The third case is of V.C. Shukla v. State through C.B.I. AIR 1983 SC 962. In this case a Special Judge, in proceedings under the Special Courts Act, directed a charge to be framed against the Appellant therein u/s 11(1) of the said Act and appeal had been preferred against the order framing the charge. The relevant provisions of Section 11(1) were:

Notwithstanding anything in the Code, an appeal shall lie as of right from any judgment, sentence or order, not being interlocutory order, of a Special Court to the

Supreme Court both on facts and on law.

The direct question which arose for consideration before the Supreme Court was whether an order framing a charge was an interlocutory order within the meaning of Section 11(1) of the said Act. The majority of the Court held that having regard to the purpose, intendment and the scheme of the Special courts Act the word "interlocutory" in Section 11(1) had been used by the Parliament in the same sense in which it has been interpreted by the Federal Court in S. Kuppuswami''s case (supra). The Supreme Court also considered the scheme of the New Code and particularly the provisions of Sub-section (2) of Section 397 contained therein. The court also considered the decisions given by it earlier in the case of Amor Nath and Madhu Limaye (supra). In paragraph 7 it was observed:

...We might reiterate here even at the frisk of repetition 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 because the bar in Section 397(3) of the Code would apply to a variety of cases coming up before the Courts not only being offences under the Penal Code but under numerous Acts. If, therefore, the right of revision was to be barred, the provision containing the bar must be confined within the four corners of the spirit and letter of the law. In other words, the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutouy but intermediate or quasi final.

(Emphasis mine)

In paragraph 22 it was observed:

...An intermediate order is one which is made between the commencement of an action and the entry of the judgment. Untwalia, J. in the case of Madhu Limaye v. State of Maharastra, clearly meant to convey that an order framing charge is not an interlocutory order but is an intermediate order as defined in the passage extracted above in Corpus Juris Secondum, Vol. 60. We find ourselves in complete agreement with the observations made in Corpus Juris Secondum....

In paragraph 44 it was observed:

44. On a true construction of Section 11(1) of the Act and taking Into consideration the natural meaning of the expression "interlocutory order" there can be no dobut that the order framing charges against the Appellant under the Act was merely an interlocutory order which neither terminated the proceedings nor finally decided the rights of the parties. According to the test laid down in Kuppuswami''s case (supra) the order impugned was undoubtedly an inter-locutory order. Taking into consideration, therefore, the natural meaning of interlocutory order and applying the non abstante clause, the position is that the provisions of the Code of Criminal Procedure are expressly excluded by non abstante clause and therefore Section

397(2) of the Code cannot be called into aid in order to hold that the order impugned is not an interlocutory order. As the decisions of this Court in the cases of Madhu Limaye and Amar Nath v. State of Haryana, were given with respect to the provisions of the Code, particularly Section 397(2) they were correctly decided and would have no application to the interpretation of Section 11(1) of the Act, which expressly excludes the provisions of the Code of Criminal Procedure by virtue of the non abstante clause.

13. From a perusal of the aforequoted contents of paragraph 44 of the judgment in V.C. Shukla''s case it is apparent that Hon''ble Mr. Justice Fazal Ali and Hon''ble Mr. Justice A.P. Sen made it clear that the provisions contained in Sub-section (2) of Section 397 of the new Code could not be pressed into service for ascertaining the meaning of the term "interlocutory order" in Section 11(1) of the Special Courts Act. Their Lordships also made it clear that the decisions given in the cases of Madhu Limaye and Amar Nath with respect to the provisions of Sub-section (2) of Section 397 of the New Code had been correctly given. On the other hand, Hon''ble Mr. Justice Singhal went whole hog and took the view that despite the decision of the Federal Court in S. Kuppuswami''s case (supra), the order framing a charge was not an interlocutory order within the meaning of Section 11(1) of the said Act. Hon''ble Mr. Justice Desai, it appears, on the whole, took the view that the Parliament while enacting Sub-section (2) of Section 397 of the New Code did not intend to depart from the meaning given to the term "interlocutory order" in S. Kuppuswami''s case. However in paragraph 105 his Lordship observed:

... But undoubtedly in the context of Section 397(2) read with Section 482 of the Code, this Court with a view to providing a judicial umbrella of active supervision for reaching possible correctible justice by activist attitude and pragmatic interpretation found a third class of orders neither interloutory nor final but intermediate and, therefore, outside the bar of Section 397(2) of the Code of Criminal Procedure....

14. Having given a thoughtful consideration my humble view is that the Supreme Court in V.C. Shukla''s case (supra) has upheld the view taken by Hon''ble Untwalia, J. (as heathen was) in Madhu Limaye''s case (supra) that Sub-section (2) of Section 397 of the New Code kept purely interlocutory orders beyond the purview of Sub-section (1) of Section 397 and not intermediate orders. In other words, intermediate orders are amenable to the revisional jurisdiction of either the Sessions Court or the High Court. What is an intermediate order? The meaning of this term is contained in Volume 60 of the Corpus Juris Secondum. It says:

An intermediate order has been defined as the one made between the commencement of an action and the entry of the judgment.

And this has been approved by the Supreme Court in V.C. Shukla''s case (supra) in paragraph 22. As shown above, criminal proceedings against a person commence only when a summons is issued against him by a competent court u/s 204 of the

New Code. Therefore, the conclusion is inevitable that an order passed u/s 204 of the New Code issuing a process to a person to appear as an accused is an intermediate order within the meaning of Sub-section (2) of Section 397 of the New Code. The instant revision application is, therefore, maintainable in this Court.

15. Before passing on to the merits of the case, I may make it clear that the view which I have expressed on the question of the maintainability of the instant revision application is confined to an order passed u/s 204 of the New Code. It will have no bearing at all on the question as to whether an order framing a charge is an interlocutory order or an intermediate order. I have not adverted to that question as I have neither been called upon to decide such a question nor is a decision of such a question-necessary for deciding the present controversy.

16. So far as the merits of the case are concerned, this revision must succeed. I have already quoted above the relevant paragraphs of the complaint. The complainant had himself brought to the notice of the learned Magistrate that an investigation of the case by the police was going on in relation to the offence which was the subject matter of the complaint. In such a situation the provisions of Section 210 of the New Code were squarely attracted. Sub-section (1) of that provision may be extracted:

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the enquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

17. The words "institution of a case" are not defined in the Code. However, a case can be said to be instituted in a court only when the court takes cognizance of offences alleged therein. Section 190(1) of the New Code contains the provisions for cognizance of offences by Magistrates. This section provides for three ways in which cognizance can be taken. The first manner of taking cognizance is on receiving a complaint of facts which constitute an offence. The second method is on the receipt of a report in writings of uch.

Facts constituting the offence made by any police officer and the third way is upon information received from any person other than a police officer or upon the Magistrate''s own knowledge or suspicion that such an offence has been committed. It is now well settled that cognizance of an offence upon a complaint is taken when the magistrate concerned applies his mind for the purpose of proceeding u/s 200 of the New Code and subsequent provisions. In the instant case it cannot be said that the fact that an investigation by the police was in progress was not made to appear to the learned Magistrate. It was recited in the complaint itself that such an investigation was in progress It will be presumed that before taking cognizance of the offence as made cut in the complaint the Magistrate should have and must have

perused the complaint. The learned Magistrate, therefore, should have stayed his hands immediately after taking cognizance of the offence. He should not have proceeded with the examination of either the complainant or his witness. At any rate, he exceeded his jurisdiction in summoning the applicants to appear before him as accused. The impugned order of the Magistrate summoning the applicant as accused is, therefore, liable to be struck down.

18. The revision application succeeds and is allowed. The impugned order dated 26th May, 1984, passed by the Munsif-Magistrate, Court No. 4, Etawah, in case No. 540 of 1984 summoning the applicants is set aside. The learned Magistrate shall proceed in accordance with the provisions of Section 210 of the New Code on the receipt of the report of the investigating police officer u/s 173 of the New Code. The companion Criminal Misc. Application No. 4592 of 1984 is dismissed as not being maintainable.

Revision allowed.