
(2012) 07 KAR CK 0016

Karnataka High Court

Case No: Criminal P No. 503 of 2011

Lawrence Milton

APPELLANT

Vs

Rev. Johnson Paul and
Others

RESPONDENT

Date of Decision: July 5, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 397
- Penal Code, 1860 (IPC) - Section 295, 297, 500

Citation: (2012) ILR (Kar) 4008 : (2012) 5 KarLJ 190

Hon'ble Judges: Subhash B Adi, J

Bench: Single Bench

Advocate: D R Sundaresha, for the Appellant; D S Hosmath, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Subhash B Adi

1. Petitioner in this petition has sought for taking cognizance of offence punishable under Sections 295, 297, 500 of IPC against the respondents - accused. Petitioner is the complainant, who had filed a private complaint in P.C.R. No. 173 5/2009. Learned Magistrate taking cognizance, recording the sworn statement and also considering the documents, by order dated 25.3.2010 ordered for issue of summons. The order of issue of summons was called in question by the accused before the Revisional Court in CrI. R.P. No. 104/2010. The Revisional Court by order dated 16.12.2010 allowed the revision petition and set aside the order dated 25.3.2010, taking cognizance and issuing summons. As against the order of allowing the revision petition, complainant is before this Court.

2. Learned Counsel for the complainant submitted that, the revisional court has no jurisdiction to entertain a revision petition against taking cognizance and also issue of process, as they are not interlocutory orders and as such, Section 397 of Cr. P.C. does not permit the revisional court to revise interlocutory orders. He relied on the judgment of the Apex Court in Criminal Appeal No. 612/2012 decided on 4.4.2012 and another judgment of the Full Bench of Allahabad High Court reported in 2011 CRL.L.J. 2278 in the matter of Father Thomas vs. State of U.P. & Anr. and submitted that, the order passed by the Magistrate directing the Police Officer to investigate the case is an interlocutory order and it is not barred or any direction issued to Investigating Officer u/s 156 of Cr. P.C. Taking cognizance or referring the matter are not the proceedings, which can be revised u/s 397 of Cr. P.C. and in a judgment in Crl. A. No. 612/2012, the Apex Court has held that, validity of issue of process and taking cognizance can be questioned u/s 397 of Cr. P.C.

3. The judgment referred to by the learned Counsel for the petitioner reported in Crl. A. No. 612/2012 is not a matter considering the scope of the revisional court u/s 397 of Cr. P.C. However, in a judgment reported in 2012 AIR SCW1821 in the matter of Om Kr. Dhankar v. State of Haryana & Anr., the Apex Court relying on the earlier judgment reported in (1977) 4 SCC 551 in the matter of Madhu Limaye v. State of Maharashtra has held as under:

9. Insofar as the first question is concerned, it is concluded by a later decision of this Court in the case of Rajendra Kumar Pande and others v. Uttam and another. In Rajendra Kumar Sitaram Pande case (supra) this Court considered earlier decisions of this Court in the cases of [Madhu Limaye Vs. The State of Maharashtra](#), V.C. Shukla v. State, Amarnath v. State of Haryana and K.M. Mathew v. State of Kerala and it was held as under:

6.... This being the position of law, 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.....

10. In view of the above legal position, we hold, as it must be, that revisional jurisdiction u/s 397, Cr. P.C. was available to the respondent No. 2 in challenging the order of the Magistrate directing issuance of summons. The first question is answered against the appellant accordingly.

4. In view of this judgment and the judgment of the Apex Court reported in 2011 CRL.L.J. 1626 in the matter of Harshendra Kumar D. v. Rebatilata Koley etc., the revisional court has jurisdiction to go into the question as against issue of process.

5. Considering these circumstances and the judgment of the Apex Court, I find that the revisional court can exercise the jurisdiction as against the order of issue of process.

6. However, the learned Counsel for the petitioner submits that, the revisional court has not considered the entire material produced in the case and the case requires reconsideration. Having regard to these circumstances, I find one more opportunity could be given to the parties.

Accordingly, the petition is allowed. The impugned order dated 16.12.2010 passed by the I Addl. Sessions Judge, Mysore, in Crl. R.P. No. 104/2010, is hereby set aside. The revisional court is directed to consider the entire matter on merit.