Mohan Lal Magan Lal Thacker Vs State of Gujarat

Appeal (crl.) 105 of 1965

Court: Supreme Court of India

Date of Decision: Dec. 15, 1967

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Section 80#Constitution of India, 1950 â€" Article 134, 134(1)#Criminal Procedure Code, 1898 (CrPC) â€" Section 195(1), 476, 476#Penal Code, 1860 (IPC) â€" Section 114, 149,

Citation: AIR 1968 SC 733 : (1968) CriLJ 876 : (1968) GLR 536 : (1968) 2 SCR 685

Hon'ble Judges: K. N. Wanchoo, C.J; R. S. Bachawat, J; J. M. Shelat, J; G. K. Mitter, J; C. A. Vaidyialingam, J

Bench: Full Bench

Final Decision: dismissed

Judgement

Shelat, J.
The appellant, a practising advocate, was engaged by Rama Shamal and Raiji Shamal two of the accused in Criminal Case No.

26 of 1963 in the court of the Judicial Magistrate, Baroda, in respect of charges under Ss. 302, 436, 334 read with s. 149 of the Penal Code. On

January 12, 1963, the appellant presented a bail application on behalf of the said two accused. The Magistrate granted bail on each of the two

accused executing a personal bond of Rs. 1,500 with surety for the like amount. On January 25, 1963, bail bonds were furnished by a person

calling himself Udesing Abhesing. The appellant identified that person as Udesing Abhesing and as personally known to him. On the strength of his

identification the Magistrate accepted the bonds and released the two accused on bail. Thereafter, one of them absented himself from the Court on

three occasions and the Magistrate issued a notice on the said surety. On March 11, 1963, the real Udesing Abhesing appeared and denied that

he had executed the said bonds or stood as surety. The Magistrate issued an informal notice to the appellant to explain why action should not be

taken against him for identifying a person who had falsely impersonated as Udesing Abhesing. The appellant gave his reply. The Magistrate

recorded statements of the real Udesing Abhesing and of one Chiman Shamal. He did so to satisfy himself that there was substance in the

allegation of the said Udesing that he was not the person who had stood as surely. On July 19, 1963, the Magistrate issued a show cause notice to

the appellant under s. 476, Cr. P.C. and the appellant filed his reply. After an enquiry under s. 476, the Magistrate ordered filing of a complaint

against the appellant in respect of offences under Ss. 205, 467 and 468 read with s. 114 of the Penal Code. In an appeal filed by the appellant, the

Additional Sessions Judge, held that the said complaint was justified but only in respect of the offence under s. 205 read with s. 114. In a revision

by the appellant a single Judge of the High Court of Gujarat passed the following order :

This is a matter in which this Court should never interfere in revision. The revision application is, therefore, dismissed"".

2. The High Court gave certificate under Art. 134(1)(c) of the Constitution and that is how this appeal has come up before us.

3. Mr. Sanghi for the respondent raised the preliminary contention that the High Court''s order dismissing the revision was not a final order as it did

not determine the complaint filed by the Magistrate nor did it decide the controversy between the parties therein, viz., the State of Gujarat and the

appellant, whether the appellant had committed the said offence. That controversy being still a live one, the order, according to him, was not final,

the certificate granted by the High Court was incompetent and consequently the appeal is not maintainable.

4. Article 134(1)(c) reads as follows :-

An appeal shall lie to the Supreme Court from any judgment, final order of sentence in a criminal proceeding of a High Court.... If the High Court

certifies that the case is a fit one for appeal to the Supreme Court"".

5. The question as to whether a judgment or an order is final or not has been the subject matter of a number of decisions; yet no single general test

for finality has so far been laid down. The reason probably is that a judgment or order may be final for one purpose and interlocutory for another

or final as to part and interlocutory as to part. The meaning of the two words ""final"" and ""interlocutory"" has, therefore, to be considered separately

in relation to the particular purpose for which it is required. However, generally speaking, a judgment or order which determines the principle

matter in question is termed final. It may be final although it directs enquiries or is made on an interlocutory applications or reserves liberty to apply

[Halsbury''s Laws of England (3rd Ed.) Vol. 22, 742-743]. In some of the English decisions where this question arose, one or the other of the

following four tests was applied.

1. Was the order made upon an application such that a decision in favour of either party would determine the main dispute ?

2. Was it made upon an application upon which the main dispute could have been decided ?

3. Does the order as made determine the dispute ?

4. If the order in question is reversed, would the action have to go on ?

6. The first test was applied in Salaman v. Warner [1891] 1 Q.B. 734, and Standard Discount Co. v. La Grange [1877] 3 C.P.D. 67. But the

reasoning in the latter case was disapproved in A.G. v. Great Eastern Rail Co. [1879] 27 W.R. 759. In Shutrook v. Tufnell [1882] 9 Q.B.D. 621,

the order did not decide the matter in the litigation but referred it back to the arbitrator, though on the application on which it was made, a final

determination might have been made. The order was held to be final. This was approved in Bozson v. Altrincham Urban Council [1903] 1 K.B.

547, by Lord Halsbury who declined to follow the dictum in Salaman v. Warner [1891] 1 Q.B. 734, and Lord Alverstone stated the test as

follows :-

Does the judgment or order as made finally dispose of the rights of the parties ?

7. This test, however, does not seem to have been applied in A.G. v. Great Eastern Urban Council [1903] 1 K.B. 547, where an order made on

an application for summary judgment under R.S.C. Ord. 14 refusing unconditional leave to defend was held not to be an interlocutory order for

purposes of appeal though made on an interlocutory application. An interlocutory order, though not conclusive of the main dispute may be

conclusive as to the subordinate matter with which it deals.

There are also a number of decisions on the question of finality by the Privy Council and the Courts in India. In Abdul Rehman v. D. K. Cassim &

Sons 60 I.A. 76, the test applied was that ""the finality must be a finality in relation to the suit. If after the order the suit is still a live suit in which the

rights of the parties have still to be determined no appeal lies against it"". And the fact that the impugned order decides an important and even a vital

issue is by itself not material. If the decision on an issue puts an end to the suit, the order is undoubtedly a final one but if the suit is still left alive and

has yet to be tried in the ordinary way, no finality could attach to the order. In this case the order was clearly an order of remand which kept the

entire case undecided. This test was adopted in S. Kuppuswami Rao v. The King [1947] F.C.R. 180, where the court also held that the words

''judgment'' and ''order'' have the same meaning whether the proceeding is a civil or a criminal proceeding. In Mohammad Amin Brothers Ltd. v.

Dominion of India [1949] F.C.R. 842, the Federal Court following its earlier decision adopted against the test, viz., whether the judgment or order

finally disposed of the rights of the parties. In Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay [1958] S.C.R. 1007, this Court

applying the same test held that the appeal before it was not maintainable as the impugned order disposed of a preliminary issue regarding the

validity of the Bombay Prevention of Excommunication Act, 1949, but did not decide the rest of the issues in the suit. In 281698 , the order on

which certificate under Art. 133(1)(c) was granted was clearly an order of remand. Indeed, the High Court gave leave to the parties to amend the

pleadings and directed the trial court to hold a de novo trial on the amended pleadings and the issues arising therefrom and the order was said to

be not a final order since the dispute between the parties still remained to be tried by the trial Court.

But these were cases where the impugned orders were passed in appeals or revisions and since an appeal or a revision is continuation of the

original suit or proceeding the test applied was whether the order disposed of the original suit or proceeding. If it did not, and the suit or

proceeding was a live one, yet to be tried, the order was held not to be final. Different tests have been applied, however, to orders made in

proceedings independent of the original or the main proceedings. Thus in 282595 , an order of the High Court dismissing an application to direct

the Board of Revenue to state a case to the High Court under the Bihar Sales-tax Act, 1944, was held not to be a final order on two grounds : (1)

that the order was made under a jurisdiction which was consultative and standing by itself, it did not bind or affect the rights of the parties though

the ultimate order which would be passed by the Board would be based on the opinion expressed by the High Court, and (2) that on a

construction of Art. 31 of the Letters Patent of the High Court of Patna an appeal would lie to the Privy Council only in cases of orders passed by

the High Court in its appellate or original jurisdiction and not the advisory jurisdiction conferred by the Act. It is clear that though the proceeding in

which the High Court passed the impugned order may be said to be an independent proceeding, one of the tests applied was that it did not

determine the rights of the parties as the controversy as to the liability of the assessee still remained to be determined by the Board. The decision in

279983 , does not help because the proceeding in which the impugned order was passed was assumed to be an interlocutory one arising from and

during the course of the trial itself. The question was whether the order rejecting the State''s claim of privilege from producing a certain document

was a final order within the meaning of Art. 134(1)(c). The criminal proceedings, said the Court, were the proceedings against the respondents for

an offence under s. 6(1) of the Prevention of Corruption Act, 1947. They were still pending before the Special Judge. In the course of those

proceedings the respondents applied for the production of the document by the Union Government and that was allowed by the Court. The order,

therefore, was an interlocutory order pending the said proceedings. It did not purport to decide the rights of the parties i.e. the State of Uttar

Pradesh and the respondents, the accused. It only enabled the accused to have the said document proved and exhibited in the case and therefore

was a procedural step for adducing evidence. The court also said that assuming that the order decided some right of the Union Government, that

Government was neither a party to the Criminal proceedings nor a party either before the High Court or this Court. This decision was clearly on

the footing that the respondents application for production of the document in which the Union Government, not a party to the trial, claimed

privilege was an interlocutory and not an independent proceeding. The question is what would be the position if (a) the application was an

independent proceeding, and (b) if it affected the right of the Union Government.

The decision in 281073 , would seem to throw light on these questions. There the Claims Officer under the Madhya Pradesh Abolition of

proprietary Rights Act, 1950 held in an application by the appellants that a debt due by them to the respondents was a secured debt though the

respondents had obtained a decree therefore. He, accordingly, called upon the respondents to file their statement of claim as required by the Act.

The respondents filed the statement, but the officer held that it was out of time and discharged the debt. In appeal the Commissioner held that

though the Claims Officer had jurisdiction, he could not discharge the debt as action under s. 22(1) of the Act had not been taken. The appellants

thereupon filed Art. 226 petition alleging that the Commissioner had no jurisdiction to entertain or try the appeal. The High Court dismissed the

petition summarily. The contention was that the High Court''s order was not a final order because it did not decide the controversy between the

parties and did not of its own force affect the rights of the parties or put an end to the controversy. This court observed : (1) that the word

''proceeding'' in Art. 133 was a word of a very wide import, (2) that the contention that the order was not final because it did not conclude the

dispute between the parties would have had force if it was passed in the exercise of the appellate or revisional jurisdiction of the High Court, as an

order of the High Court if passed in an appeal or revision would not be final if the suit or proceeding from which there was such an appeal or

revision remained still alive after the High Court''s order, (3) but a petition under Art. 226 was a proceeding independent of the original

controversy between the parties; the question therein would be whether a proceeding before a Tribunal or an authority or a court should be

quashed on the ground of want of jurisdiction or on other well recognised grounds and that the decision in such a petition, whether interfering or

declining to interfere, was a final decision so far as the petition was concerned and the finality of such an order could not be judged by co-relating it

with the original controversy between the parties. The court, however, observed that all such orders would not always be final and that in each

case it would have to be ascertained what had the High Court decided and what was the effect of the order. If, for instance, the jurisdiction of the

inferior tribunal was challenged and the High Court either upheld it or did not, its order would be final.

The effect of this decision is that a writ petition under Art. 226 is a proceeding independent of the original proceedings between the parties; that the

finality of an order passed in such an independent proceeding is not to be judged from the fact that the original proceedings are not disposed of by

it but are still pending determination; that the test as to whether the impugned order determines the rights of the parties in controversy in the original

proceedings instituted by one of them would not apply to a proceeding independent of such original proceedings; and that if the order finally

determines the controversy in such a proceeding and that proceeding is disposed of, the order is final in so far as that controversy is concerned.

Even an order ex-facie interlocutory in character has been held to be final if it finally disposed of the proceeding though the main controversy

between the parties remained undisposed of. An illustration of such a case is to be found in the 278530 . The dispute there was whether the State

Government had the power to annual or cancel leases granted by the ex-proprietor whose territory had under the agreement of merger merged in

the Union Territory and by reason of s. 4 of the Extra Provincial Jurisdiction Act, 1949 was administered by the State of Orissa. The respondents

gave notice to the State under s. 80 of the CPC but apprehensive that before the prescribed period expired, the State might annual their leases

filed a writ petition. The High Court did not decide the dispute but granted a mandamus restraining the Government from taking action until the

proposed suits were filed. In an appeal against that order the State contended that the order was not final as it was for an interim relief and the

dispute between the parties remained to be determined in the proposed suits. Though the order had not determined the rights of the parties, this

Court negatived the contention and held that the order was final as ''in view of the fact that with these orders the petitions were disposed of finally

and nothing further remained to be done in respect of the petitions"".

8. Facts similar to the facts in the present case were in 134297 . A complaint was filed charging the applicant with offences, inter alia, under s. 193

of the Penal Code. The applicant filed an appeal before the Sessions Judge under s. 476B of the Code of Criminal Procedure against the order

filing the complaint. The Sessions Judge held that the order was bad as s. 476 under which the complaint was filed stood impliedly repealed by s.

479A and set aside the order filing the complaint. In a revision against that order, the High Court held that the Sessions Judge was not right and

setting aside his order remanded the matter to him to decide it on merits. The High Court on an application for certificate held that its order was not

final as the real controversy between the parties i.e. the State and the applicant, was whether the complaint was justified. Since that question was

remitted to the Sessions Judge for determination on merits, the order was only one of remand and did not determine the aforesaid controversy.

This decision proceeds on the footing that there were two independent controversies between the parties involved in the two proceedings. One

was the complaint which charged the applicant with the offence under s. 193 of the Penal Code and the other was the appeal which he filed before

the Sessions Judge alleging that the complaint was not justified and that it could not be filed under s. 476 as it was impliedly repealed by s. 479A of

the Code of Criminal Procedure. The order was held not to be final because it did not determine the latter controversy viz., whether the complaint

was justified and not on the ground that the controversy in the complaint that the appellant had committed the offence with which he was charged,

had yet to be tried by the court. It follows that according to the High Court''s reasoning its order would have been final, if, instead of remanding the

matter to the Sessions Judge the High Court had held either that it was justified or not justified. This decision is in conformity with the ratio laid

down in 281073 and 278530 .

9. The aforesaid discussion leads to the conclusion that when the Magistrate ordered the filing of the complaint against the appellant, the parties to

that controversy were the State and the applicant and the controversy between them was whether the appellant had committed offence charged

against him in that complaint. The appeal filed by the appellant before the Additional Sessions Judge was against the order filing the complaint, the

controversy therein raised being whether the Magistrate was justified in filing it, that is to say, whether it was expedient in the interest of justice and

for the purpose of eradicating the evil of false evidence in a judicial proceeding before the Court. The controversies in the two proceedings were

thus distinct though the parties were the same. When the Additional Sessions Judge held that the complaint was justified in respect of the offence

under s. 205 read with s. 114 and was not justified in respect of the other offences his judgment in the absence of a revision by the State against it

finally disposed of that part of the controversy, i.e., that the complaint in respect of offences under Ss. 467 and 468 read with S. 114 was not

justified. When the appellant filed revision in respect of the complaint for the remaining offence under s. 205 read with s. 114 the Single Judge of

the High Court dismissed that revision. His order of dismissal disposed of that controversy between the parties and the proceeding regarding that

question as to whether the complaint in that regard was justified or not was finally decided. As observed in 281073 , the finality of that order was

not to be judged by correlating that order with the controversy in the complaint, viz., whether the appellant had committed the offence charged

against him therein. The fact that that controversy still remained alive is irrelevant. It must consequently be held that the order passed by the High

Court in the revision filed by the appellant was a final order within the meaning of Art. 134(1)(c).

10. Even so, the next question is whether this was a case where the High Court could have granted the certificate. In 279364 , it was held that the

High Court had no jurisdiction to grant a certificate under Art. 134(1)(c) on a mere question of fact. In 283363 , it was again observed that the

Constitution does not confer ordinary criminal jurisdiction on this Court except in cases covered by clauses (a) and (b) of Art. 134 which provide

for appeals as of right. The High Court before it certifies the case in cases not covered by clauses (a) and (b) of Art. 134 must be satisfied that it

involves some substantial question of law or principle. Only a case involving something more than mere appreciation of evidence is contemplated

by the Constitution for the grant of a certificate under Art. 134(1)(c) which alone applies in this case. The question in the revision application

before the High Court was whether the Magistrate was right in his conclusion that offences referred to in s. 195(1)(b) or (c) of the Code of

Criminal Procedure appeared to have been committed in or in relation to a proceeding in his court and that it was expedient in the interest of justice

to file a complaint. Obviously, this is a question of fact and involve no substantial question of law or principle. It seems that the certificate was

issued because it appeared as if the single Judge in the language in which he passed his order meant that the High Court as a matter of law would

never exercise its revisional jurisdiction in such cases. The order, however, cannot mean that the High Court cannot entertain and decide revision

applications in respect of orders passed under s. 476 of the Code of Criminal Procedure. What the single Judge presumably meant was that the

question being one of fact only, the High Court would not interfere particularly where there is a concurrent finding both of the Magistrate and the

Sessions Judge in appeal. The question being one of fact only and there being no substantial question of law or principle, the High Court was not

competent to certify the case under Art. 134(1)(c).

11. In this view it is not necessary to go into the contentions on merits raised by the appellant''s counsel. The appeal is not maintainable and is

dismissed.

12. Bachawat, J. The Judicial Magistrate, First Class. Third Court, Baroda made an enquiry under s. 476 of the Code of Criminal Procedure and

directed the filing of a complaint against the appellant in respect of offences under Ss. 205, 467 and 468 read with s. 114 of the Indian Penal Code

alleged to have been committed by the appellant in relation to proceedings in his Court. He found that there was a prima facie case for enquiry into

the offences and it was expedient in the interests of justice that such an enquiry should be made. In an appeal filed after the complaint was made,

the Additional Sessions Judge, while setting aside the order in respect of the offences punishable under Ss. 467 and 468 read with s. 114,

confirmed the order directing the filing of a complaint with regard to the offence punishable under s. 205 read with s. 114. A revision application

filed by the appellant was dismissed by the High Court. In view of s. 195(1)(b) of the Code of Criminal Procedure, a prosecution for an offence

punishable under s. 205 read with s. 114 alleged to have been committed in relation to a proceeding in any Court cannot be launched without a

complaint in writing of such Court or of a superior Court. The effect of the order of the High Court confirming the direction for the filing of a

complaint in respect of the offence is that the bar of s. 195(1)(b) is removed, and the trial of the offence can now proceed. The appellant is still on

trial. The Court has not pronounced on his guilt or innocence. He is being tried for the offence by a competent Court and an order of conviction or

acquittal is yet to follow. The order of the High Court involves no determination of the merits of the case or of the guilt or innocence of the

appellant. From whatever point of view the matter is looked at, the order is interlocutory.

13. In a civil proceeding, an order is final if it finally decides the rights of the parties, see Ramchand Manjilal v. Goverdhandas Vishindas

Ratanchand [1920] L.R. 47 IndAp 124. If it does not finally decide the rights of the parties the order is interlocutory, though it conclusively

determines some subordinate matter and disposes of the proceeding in which the subordinate matter is in controversy. For this reason, even an

order setting aside an award is interlocutory, see Croasdell and Cammell Laird & Co., Limited v. In re [1906] 2 K.B. 569. A similar test has been

applied for determining whether an order in a criminal proceeding is final, see s. Kuppuswami Rao v. The King [1947] F.C.R. 180. For the

purposes of this appeal, we do not propose to examine all the decisions cited at the bar and to formulate a fresh test on the subject. Whatever test

is applied, an order directing the filing of a complaint and deciding that there is a prima facie case for an enquiry into an offence is not a final order.

It is merely a preliminary step in the prosecution and therefore an interlocutory order. As the order is not final, the High Court was not competent

to give a certificate under Art. 134(1)(c) of the Constitution. The appeal is not maintainable and is dismissed.

14. Appeal dismissed.