
AIR 1977 SC 403 : (1977) 1 SCC 169 : (1977) 2 SCR 160

Supreme Court of India

Case No: Appeal Criminal 411 of 1976

Smt. Parmeshwari Devi

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision: Nov. 23, 1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 397(1), 397(2), 94, 94, 94(1)#Evidence Act, 1872 " Section 139#Penal Code, 1860 (IPC) " Section 181, 182, 193, 197, 199

Citation: AIR 1977 SC 403 : (1977) 1 SCC 169 : (1977) 2 SCR 160

Hon'ble Judges: P. N. Shingal, J; P. N. Bhagwati, J; A. C. Gupta, J

Bench: Full Bench

Final Decision: Allowed

Judgement

P.N. Shinghal, J.

This appeal of Smt. Parmeshwari Devi by special leave, arises from the judgment of the Delhi High Court dated April 22,

1975 dismissing her application for revision of the order of the Additional Sessions Judge of Delhi dated August 29, 1974, confirming the order of

a Metropolitan Magistrate of Delhi dated August 8, 1974. The facts giving rise to the appeal are quite simple and may be shortly stated.

2. A complaint was filed by respondent N.L. Gupta on behalf of Smt. Patashi Devi for the commission of offences under Sections 181, 182, 193,

197, 199, 200, 465, 466 and 471 of the Indian Penal Code by Nand Kishore, Ghanshyam Das and Sanwar Mal. It was alleged that Smt. Patashi

Devi had one-fifth share in the firm of M/s. Gupta Electric and Machinery Stores of which Smt. Parmeshwari Devi (the present appellant), Smt.

Dropadi Devi and Madan Lal Gupta were the other Partners. According to the complaint, the business of the firm was mainly looked after by Smt.

Parmeshwari Devi's husband Mohan Lal and accused No. 1 who was her brother, Smt. Patashi Devi and two other partners ""retired"" from the

business on April 1, 1968 without settling the accounts. Smt. Patashi Devi asked Mohan Lal Gupta for accounts, but he fell ill and died without

rendering accounts. Accused No. 2 filed an attested copy of a deed of dissolution alleged to be signed by Smt. Patashi Devi, in the office of the

Registrar of Firms on November 14, 1968, along with an intimation of the dissolution of the firm which also purported to be signed by her.

3. The complainant filed an application u/s 94 of the CrPC, 1898, hereinafter referred to as the Code, for a direction to the accused to file the

original deed of dissolution. The accused however stated in the court that they were employees of the firm and the document was not in their

possession. The complainant then made another application on March 28, 1974 u/s 94 with a prayer that Smt. Parmeshwari Devi may be directed

to produce the document. The court made an order on March 28, 1974 summoning Smt. Parmeshwari Devi with the document. She stated in her

reply that she did not know anything about the document and that after her husband's death the complainant had taken away all the records of the

firm. She stated further that she was a "pardanashin" lady living in Calcutta and need not be summoned in the court. The Metropolitan Magistrate

thereupon made order dated August 8, 1974 as follows,

In my view when a person is summoned to attend the Court it is desirable that such summoned person attends and made statement on oath that he

is not in the possession of the documents summoned, so that the court may take further steps to secure the production of the documents as

envisaged u/s 96, Cr.P.C. Merely sending a reply through an Advocate that the document is not in his possession is not sufficient compliance of the

order. The request of the Ld. counsel for Parmeshwari Devi that a commission may be issued for recording the statement of Smt. Parmeshwari

Devi cannot be granted as the case is already getting old and issuance of a commission would mean undesirable delay of the case. The counsel for

Smt. Parmeshwari Devi Shri C.L. Mahl is now request-ed to intimate Smt. Parmeshwari Devi forthwith to attend this Court and produce the

document if in her possession on 30th August, 1974.

The Ld. counsel for Parmeshwari Devi has also stated that Smt. Parmeshwari Devi is prepared to file an affidavit even to say that she is not in the

possession of the documents summoned but in my view this also does not serve the purpose as calling of Smt. Parmeshwari Devi in the court and

recording her statement on an oath will give a chance to the court to put her a few questions for satisfying itself regarding the whereabouts of the

document in question."" As has been stated, Smt. Parmeshwari Devi's applications for revision of this order have been dismissed by the Additional

Sessions Judge and the High Court and this is how she has come in appeal to this Court.

4. It will be recalled that it was the complainant who made an application u/s 94 of the Code stating that as the deed of dissolution of the

partnership was essential for the trial of the case, Smt. Parmeshwari Devi may be directed to produce it. Smt. Parmeshwari Devi was not a party

to the case, and no reason whatsoever was given in the application why the document was likely to be in her possession or power beyond stating

that the accused had stated in their reply to the earlier application u/s 94 that they were employees of the firm and were not in possession of the

document, and she was the widow of the late Mohan Lal Gupta. The Magistrate therefore ""summoned"" her ""with the document"" by his order

dated March 28, 1974 which is not, however, the subject matter of controversy before us. The question is whether the subsequent order of the

Magistrate dated August 8, 1974 is according to law by which Smt. Parmeshwari Devi has been directed to attend the court so that if she made a

statement on oath"" that she is not in possession of the document, the court may get a chance to ""put her a few questions for satisfying itself

regarding the whereabouts of the documents""?

5. Chapter VII of the Code deals inter alia, with process to compel the production of documents. Sub-section (1) of Section 94, which deals with

summons to produce any document, merely authorises the court to issue a summons to the person in whose possession or power such document is

believed to be, requiring him to ""attend and produce it, or to produce it, at the time and place stated in the summons."" According to Sub-section

(2), a person required under the section merely to produce a document shall be deemed to have complied with the requisition if he ""causes such

document to be produced instead of attending personally to produce the same."" There is nothing in the chapter to provide that the person who

appears in the court, in pursuance of its summons under Sub-section (1) of Section 94, thereby becomes a witness and can be examined and

cross-examined by the court although he has not been cited as a witness in the proceedings. Even if a person produces the document for which a

summons has been issued to him, Section 139 of the Evidence Act clearly provides that he does not thereby become a witness by the mere fact

that he produces it, and he cannot be cross-examined unless and until he is called as a witness. So when Smt. Parmeshwari Devi filed a reply to the

application of the complainant u/s 94 of the Code stating that she did not know anything about the deed of dissolution and it was not in her

possession, the utmost that the Magistrate could do was to issue a search-warrant under Sub-section (1) of Section 96 if he had reason to believe

that she will not or would not produce the document as required by the summons. It was also permissible for the Magistrate to order a search of

Smt. Parmeshwari Devi's house u/s 98 of the Code if it appeared to him that the requirements of that section had been fulfilled. But there is no

provision in the Code under which the court could record her statement on oath, on her inability to produce the document, or ""put her a few

questions for satisfying itself regarding the whereabouts of the document."" In the facts and circumstances of the case, no further action is in fact

called for against the appellant. The Additional Sessions Judge and the High Court went wrong in taking a contrary view.

6. It has been argued that the order of the Magistrate dated August 8, 1974 was an interlocutory order and the power of revision conferred by

Sub-section (1) of Section 397 of the CrPC, 1974, could not be exercised in relation to it by virtue of Sub-section (2).

7. The Code does not define an interlocutory order, but it obviously is an intermediate order, made during the preliminary stages of an enquiry or

trial. The purpose of Sub-section (2) of Section 397 is to keep such an order outside the purview of the power of revision so that the enquiry or

trial may proceed without delay. This is not likely to prejudice the aggrieved party for it can always challenge it in due course if the final order goes

against it. But it does not follow that if the order is directed against a person who is not a party to the enquiry or trial, and he will have no

opportunity to challenge it after a final order is made affecting the parties concerned, he cannot apply for its revision even if it is directed against him

and adversely affects his rights.

8. A somewhat similar argument came up for consideration before this Court in 280041 . The controversy there centered round the meaning of

Article 134(1)(c) of the Constitution and the Court examined the meaning of the words ""final"" and ""interlocutory."" It was held that the meaning ""had

to be considered separately in relation to the particular purpose for which it is required"" to be interpreted. No single test can be applied to

determine whether an order is final or interlocutory. Then it has been held by this Court in that case as follows.

An interlocutory order, though not conclusive of the main dispute may be conclusive as to the subordinate matter with which it deals."" It may thus

be conclusive with reference to the stage at which it is made, and it may also be conclusive as to a person, who is not a party to the enquiry or trial,

against whom it is directed. As has been shown, the order of the Magistrate dated August 8, 1974 was not according to law and it adversely

affected the appellant, who was not a party to the enquiry or trial, as it was solely directed against her. As is obvious, she could have no

opportunity to challenge it after the making of the final order, and such a belated challenge would have been purposeless for it would have given

her no relief. So insofar as the appellant is concerned, the order of the Magistrate could not be said to be an interlocutory order and the revisional

courts erred in raising the bar of Sub-section (2) of Section 397 against it.

9. We have gone through 321958 and 282993 cited by Mr. Vohra. Dhola's case related to the grant of bail, and Gokal Chand's case related to a

right of appeal u/s 38(1) of the Delhi Rent Control Act against an order made inter partes. They cannot, therefore avail the respondent in this case.

10. For the foregoing reasons, the appeal is allowed and the impugned orders of the High Court dated April 22, 1975 and of the Metropolitan

Magistrate dated August 8, 1974 are set aside.