

(2000) 07 AP CK 0007

Andhra Pradesh High Court

Case No: Criminal Revision Case No"s. 380 and 563 of 2000

Bhongiri Kiran Kumar and
Others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision: July 27, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 197, 202, 239, 240, 251
- Penal Code, 1860 (IPC) - Section 34, 500
- Special Courts Act, 1979 - Section 11, 11(1)

Hon'ble Judges: T. Ch. Surya Rao, J

Bench: Single Bench

Advocate: A. Prabhakar Rao and S. Bhooma Goud, for the Appellant; Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

T. Ch. Surya Rao, J.

At the threshold of these two Revision Cases, on a perusal of the impugned orders, the point that has emerged for adjudication is whether or not the orders impugned against fall within the ambit of the expression "Interlocutory order" so as to attract the bar under sub-section (2) of Section 397 of the Criminal Procedure Code (for brevity "the Code").

2. In Criminal Revision Case No.380 of 2000 the Revision Petitioners assail the order dated 20.01.2000 passed by the learned Assistant Sessions Judge, Mahabubabad, in Criminal Miscellaneous Petition No.1177 of 1999 in Sessions Case No.428 of 1998 whereunder the learned Judge dismissed the petition filed seeking discharge on the premise that there is no material whatsoever on hand to frame a charge.

3. The Revision Petitioner in Criminal Revision Case No.563 of 2000 assails the order dated 30.03.2000 passed by the learned Judicial Magistrate of First Class, Siddipet, in Criminal Miscellaneous Petition No.2438 of 1998 in C.C.No.363 of 1997 whereunder the learned Magistrate dismissed the petition filed u/s 251 of the Code seeking discharge.

4. Since common question of law is involved at the beginning of the proceedings, the same can be decided together in both the matters. The question germane for adjudication in these matters albeit at the preliminary stage, might arise time and again and might baffle the minds of the Court since, as aforesaid, it eludes any uniform and definite criteria to be elucidated so as to connote the expression "Interlocutory order". For brevity, it may be reiterated that whether the order passed by the learned Assistant Sessions Judge or, as the case may be, the learned Judicial Magistrate of First Class refusing to discharge the accused either u/s 239 or u/s 251 of the Code, is an "Interlocutory order"? In both the revision cases, the accused pleaded that there is absolutely no material on record, which warrants framing of charges against them and, of course, those pleas have ultimately been not found favour with the Courts. It goes without saying that had their pleas been accepted, the proceedings as against them in the respective criminal cases would have been terminated resulting in their discharge from the cases. By refusing to discharge, they are now put to face the trial after framing the necessary charges against them.

5. It is now well settled that framing a charge against the accused or discharging the accused is a step coming within the process of trial. In fact, the Apex Court in V.C.SHUKLA Vs. STATE(1) held at Page 986 as follows :

"For these reasons, therefore, we are satisfied that the proceedings starting with Section 238 of the Code including any discharge or framing of charges u/s 239 or 240 amount to a trial".

The Apex Court reiterated the same view in COMMON CAUSE A REGISTERED SOCIETY Vs. UNION OF INDIA(2). Similarly, any order passed u/s 251 of the Code in respect of summary trial also comes within the process of trial.

6. In view of the said legal position, it gains much more significance that whether the order passed on a miscellaneous application filed by the accused seeking his discharge from the case is an "Interlocutory order" or not?

7. Of course, the question germane for consideration in these revision cases is no more res integra. The Apex Court as well as some of the High Courts in the country have already made an attempt to define the expression "Interlocutory order" inasmuch as the same has not been defined by the code. However, the expression "Interlocutory order" is such that it eludes any definite indicia to be evolved so as to construe that a particular order comes within the purview of that expression or falls out of the purview of the same. The endeavour therefore, in this order is to see how

best the expression "Interlocutory order" can be understood broadly.

8. The Federal Court in *S.KUPPUSWAMI RAO Vs. KING*(3) had an occasion to decide what is a "Judgement" or "final order". In the process, a three Judge Bench held that the expression "Judgement" or "final order" couldn't cover a preliminary or interlocutory order made on a preliminary objection, such as want of sanction u/s 197 of the Code. The Court went to the extent of saying that the order so as to come within the ambit of the expression "Judgement" or "final order" it must not keep the matter alive and it is not sufficient merely to decide an important or vital issue in the case, meaning thereby any order passed before the culmination of the criminal case either in conviction or acquittal is an "Interlocutory order".

9. The Apex Court in *AMAR NATH Vs. STATE OF HARYANA*(4) considered this aspect. That was a case where the crime was registered against a number of accused including the appellant-Amar Nath. The Police, after holding investigations, filed a charge sheet against the other accused excluding thereby the appellant-Amar Nath. A private complaint, therefore, was filed by the de facto complainant. After conducting enquiry u/s 202 of the Code, the same was dismissed on merits. In revision, however, that order was set aside by the High Court and directed further enquiry by remitting the matter back to the lower Court. Upon receiving the same, the Magistrate straightaway directed the process to be issued to the accused therein. That order issuing process was challenged in revision and the question arose as to whether such an order directing issue of process was an "Interlocutory order" or not. Repelling the contention, the Apex Court held as follows : "We are, therefore, satisfied that the order impugned was one which was a matter of moment and which did involve a decision regarding the rights of the appellants. If the appellants were not summoned, then they would 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". The Apex Court relying upon its earlier Judgement in *CENTRAL BANK OF INDIA Vs. GOKAL CHAND*(5) in para 7 held thus:

" "Every order of the Controller made under this Act, though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller, may pass many interlocutory orders under Sections 36 and 37, such as orders regarding the summoning of the witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of a premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting parties in the prosecution of their case in the pending proceeding; they regulate the procedure only and do not affect any right or liability of the parties". The aforesaid decision clearly illustrates the nature and incidents of an Interlocutory

order and the incidents given by this Court constitute guidelines to interpret the connotation of the word "Interlocutory order" as appearing in sub-section (2) of Section 397 of the 1973 Code".

It is obvious, therefore, that there are certain categories of orders though passed in Interlocutory applications, they are orders which are matters of moment and which affect or adjudicate the rights of the accused on a particular aspect of the trial; and there are certain categories of orders passed in a pending proceeding, which are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding and they regulate the procedure only and do not affect any right or liability of the parties and, therefore, they are "Interlocutory orders".

10. In PARAMESHWARI DEVI Vs. STATE(6), the Apex Court held as follows:

"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 S.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".

11. In MADHU LIMAYE Vs. STATE OF MAHARASHTRA(7), a three Judge Bench of the Apex Court held that an interpretation and universal application of the principle that what is not a final order must be an interlocutory order, is neither warranted nor justified, and 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 of the Code. The Apex Court further held that an order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will certainly be not an interlocutory order within the meaning of Section 397 of the Code. The Apex Court further held that the label of the petition filed by the accused party is immaterial. The three Judge Bench, disapproving the Judgement of the Federal Court in Kuppuswami Rao's case held thus:

"If that strict test as laid down in the Kuppuswami Rao's case were to be applied in interpreting the words "Interlocutory order" occurring in Section 397 of the Code, then the order taking cognisance of the offence by a Court, whether it is so done illegally or without jurisdiction will not be final order and hence will be an interlocutory one..... But, in our Judgement, such an interpretation and the universal application of the principle what is not a final order must be an interlocutory order is neither warranted nor justified".

Referring to its earlier Judgement in Amar Nath's case the Apex Court held that the two points that were decided in Amar Nath's case namely (i) that where the revision to the High Court is expressly barred under sub-section (2) of Section 397 of the Code, the inherent powers contained in Section 482 of the Code would not be available to defuse the bar contained in Section 397 of the Code; and (ii) the impugned order of directing a process to be issued by the Magistrate was not an interlocutory order. While disapproving the former point, the Court reaffirmed the decision in Amar Nath's case as regards the latter point. According to the fact of the case, a complaint was filed against the appellant for "defamation" u/s 500 of I.P.C. After having obtained the necessary sanction from the State Government, cognizance was taken and pursuant to the process issued, the appellant appeared before the Court. After examination of the Chief Secretary to the Government of Maharashtra to prove the sanction, the appellant filed a petition seeking to dismiss the complaint on the ground that the Court had no jurisdiction. That application having been dismissed and a charge having been framed against him, the appellant challenged the Order of the Sessions Judge in a revision before the High Court. The High Court dismissed the revision on a preliminary objection. The Supreme Court held that the order impugned against is surely not an Interlocutory order although it would be a final order or not.

12. In V.C.Shukla's case the Apex Court had again an occasion to deal with the problem in hand. According to the facts in that case, Section 11 of the Special Courts Act (1979) was the subject matter of discussion. Section 11 of the Special Courts Act provides a right of appeal from any Judgement, sentence or order, not being interlocutory order of a Special Court to the Supreme Court and that Section bars appeal or revision against the Judgement, sentence or order of the Special Court to any Court. This power of appeal conferred to the party before the Special Court against the Judgement, sentence or order of that Court is a power notwithstanding anything contained in the Code. The expression "Interlocutory order" as envisaged in Section 11(1) of the Act was the subject matter of the discussion in the said Judgement. The Apex Court sought to distinguish the expression "Interlocutory order" as envisaged by Section 397 of the Code and the expression "Interlocutory order" as embodied in Section 11 of the Special Courts, 1979. In para 46, the Apex Court held as follows:

"Thus, summing up the entire position the inescapable conclusion that we reach is that giving the expression "Interlocutory order" its natural meaning according to the tests laid down, as discussed above, particularly in Kuppuswami's case and applying the non obstante clause, we are satisfied that so far as the expression "Interlocutory order" appearing in Section 11(1) of the Act is concerned, it has been used in the natural sense and not in a special or wider sense as used by the Code in Section 397".

In para 5, the Court held, taking note of the special features of the Code, that there is no appeal against an interlocutory order and that right of appeal is conferred against a final order and the power of revision which vested in High Court to revise any order passed by the Criminal Court but not the final order passed is wide enough to embrace even within its scope any order whether interlocutory, intermediate or final under the old Code. It is only under the new Code, the expression "Interlocutory order" is appearing u/s 397. Keeping in view these features, the Apex Court held thus :

"The words "Interlocutory order" used in Section 397 of the Code relates to various stages of trial namely appeal, enquiry, trial or any other proceeding. The object seems to be to cut-down the delays before it culminates in an acquittal, discharge or conviction. Having regard, therefore, to the very large ambit and range of the Code, the expression "Interlocutory order" would have to be given a broad meaning so as to achieve the object of the Act without disturbing or interfering with the fairness of the trial. The term "Interlocutory order" used in the Criminal Procedure Code has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial because the word containing in Section 397 of the Code would apply to a variety of cases coming up before the Courts not only being offences under Penal Code but under numerous Acts. The revisional power of the High Court or the Sessions Court would be attracted if the order were not a purely interlocutory but intermediate or quasi final. The same, however, in our opinion could not be said of the Special Courts Act, which was meant to cover only specified number of crimes and criminals and the objective attained was quickest despatch and speediest disposal".

Although that was again a matter where it pertains to discharge the Apex Court, in view of the provisions of the Special Courts Act, 1979, more particularly Section 11(1) of the said Act, considered that the provisions of the Code have no application to that Act, in view of the presence of non obstante clause in Section 11 of the said Act. The decision in V.C.Shukla's case that framing of a charge is an interlocutory order, cannot, therefore, be applied to other cases either under the Indian Penal Code or under the other enactments as it is peculiar to Section 11(1) of the Special Courts Act, 1979. In a way, the Apex Court in V.C.Shukla's case reaffirmed the Judgements in Amar Nath's case and Madhu Limaye's case.

13. In A.K.SUBBAIAH Vs. STATE OF KARNATAKA (8), on an order directing the process to be issued against the accused persons on the basis of a complaint filed by the State Government u/s 500 of I.P.C., the accused preferred a revision before the High Court against the issuance of process. The question of bar under sub-section (2) of Section 397 of the Code has not directly arisen in this case. However, the revision petition was entertained. But, in the revision petition in addition to the State Government, when they impleaded the Director General of Police as Respondent No.2 and the Chief Secretary of the State as Respondent No.3 also as parties, the

High Court ultimately directed the deletion of names of Respondents No.2 and 3 and it was affirmed by the Apex Court.

14. In *RAJENDRA KUMAR SITARAM PANDE Vs. UTTAM*(9), a private complaint was filed by the first respondent for the offence of "defamation" punishable u/s 500 read with 34 of I.P.C. The Magistrate postponed the issue of process against the accused and directed the Treasury Officer to submit a report under sub-section (1) of Section 202 of the Code and after receipt of the said report from the Treasury Officer, and after having been satisfied that sufficient material exists for issuance of process, accordingly the Magistrate issued summons against the accused persons. That order was challenged by the accused in a revision before the Sessions Court. The Sessions Judge, after having considered the contents in the complaint and the report of the Treasury Officer, had come to the conclusion that the case was covered by exception 8 to Section 499 of I.P.C. and, therefore, held that the issuance of process itself was an abuse of process. However, the High Court, when moved u/s 482 of the Code, was of the view that directing the issuance of process was an interlocutory order and the Sessions Judge, therefore, had no jurisdiction u/s 397 of the Code. In appeal before the Apex Court, it was held that it would not be appropriate to hold that an order of issuance of process is purely an interlocutory and, therefore, the bar under sub-section (2) of Section 397 of the Code would apply and, on the other hand, it must be held to be intermediate or quasi final and, therefore, the revisional jurisdiction u/s 397 of the Code could be exercised against the same.

15. The Apex Court in *RAJENDRA PRASAD Vs. NARCOTIC CELL*(10) has observed as follows :

"Appellant challenged the said order in revision before the High Court of Delhi. As it was an Interlocutory order the question whether a revision was not maintainable as per Section 397(2) of the Code was not considered by the High Court. Nevertheless, the High Court entertained the revision and dismissed it as per the impugned order".

That was a case where an application u/s 311 of the Code was filed for re-examination of prosecution witnesses. Although no ratio has been laid down in the said Judgement, the Apex Court indicated its view that such an order passed u/s 311 of the Code comes within the ambit of an "Interlocutory order".

16. Very recently, the Supreme Court in *K.K.PATEL AND ANOTHER Vs. STATE OF GUJARAT AND ANOTHER*(11) held as follows:

"It is now well neigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397 of the Code, the sole test is not whether such order was passed during the interim stage. The feasible test is whether by upholding the objections raised by a party, would it result in culminating the proceedings, if so any order (sic "other") passed on such objections would not be

merely interlocutory in nature as envisage in Section 397 of the Code".

That was again a case where a miscellaneous application was filed by the accused for discharging him on the ground of want of sanction for prosecution u/s 197 of the Code.

17. Turning to some of the Judgements rendered by various High Courts, the High Courts of Allahabad, Kerala and Madhya Pradesh (Indore Bench) in MUKHTAR ALI Vs. STATE OF U.P.(12), N.K.NARAYANAN Vs. V.VIDYADHARAN(13), and RAMCHANDRA Vs. STATE OF M.P.(14), respectively have taken the view that the Order framing charges cannot be treated as a purely interlocutory and, therefore, revisable by exercise of power u/s 397 of the Code. The Madras High Court in R.LAKSHMIPATHI Vs. S.RAMALINGAM(15) held, when a private complaint was taken on file by the Judicial Magistrate after having recorded sworn statement of the complainant and another and process was issued to the accused and that order was challenged in revision before it, and a preliminary objection was taken about the maintainability of the revision, that a revision as against the order of issue of process was maintainable, more particularly when it was contended that without prima facie case, the case was taken on file by the Magistrate.

18. In PUBLIC PROSECUTOR Vs. P.PULLA REDDY(16), a Bench of this Court held as follows :

"It is clear that sub-section (2) envisages interlocutory orders in enquiries, interlocutory orders in trials, and interlocutory orders in proceedings other than enquiries and trials. A final order in a proceeding other than in an enquiry or trial cannot be construed as an interlocutory orders within the meaning of Section 397 Cr.P.C. merely because, the proceeding has a direct relation to the enquiry or trial and such enquiry or trial did not terminate on the passing of the final order in the proceeding other than the enquiry or trial. An interlocutory order is one which is passed at some intermediate stage of an enquiry, trial or other proceeding generally, to advance the cause of justice for the final determination of the dispute between the parties arising under the enquiry, trial or other proceeding".

The Bench, further held that orders refusing bail, granting bail, or cancelling bail are interlocutory, in the sense that, they are merely provisional and are not of such finality, as that the same court which passed those orders cannot pass orders to the contra at a later stage.

19. What emerges from the conspectus of the above precedents is that the orders to be passed by the Criminal Courts in the process of trial are of three types, namely, interlocutory, intermediatory or quasi-final, and final orders. The orders which determine the rights and liabilities of the parties in a given proceeding, though passed in an interlocutory application, come within the category of intermediatory or quasi-final orders, so long as they do not result in terminating the proceeding. As against those persons, those orders, although passed in a pending proceeding,

might ultimately result in culmination of the proceedings, although they are not the orders passed finally in the proceedings. The orders, which are purely procedural such as summoning witnesses, adjourning cases, passing orders for bail, calling for reports, issue of commission for examination of witnesses, inspection of premises, admissibility of documents, and the relevancy of a question, which are the steps taken towards the final adjudication, which regulate the procedure only and do not affect any right or liability of the parties are some of the decisions illustrating the nature and incidence of an Interlocutory order. The above indicia are only illustrative but not exhaustive. As afore discussed no definite criteria can be evolved to interpret the expression "Interlocutory order". Any guidelines can broadly be given so as to help interpreting the expression "Interlocutory order" as appearing in sub-section (2) of Section 397 of the Code.

20. For the foregoing reasons, the preliminary objection regarding the maintainability of these Revision Cases is not sustainable and, therefore, both the Revision Cases are maintainable.