(2010) 06 MAD CK 0251

Madras High Court (Madurai Bench)

Case No: Criminal Revision Case (MD) No''s. 294 to 298 of 2008

S.K.A.P. Balakrishnan, represented by his Power Agent Mr. R. Ravichandran		APPELLANT
	Vs	
Jimmy, V.J. George, Nedungadan and Sons		RESPONDENT

Date of Decision: June 10, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 219(1), 397, 397(1), 397(2), 399
- Negotiable Instruments Act, 1881 (NI) - Section 138, 142

Hon'ble Judges: T. Mathivanan, J

Bench: Single Bench

Advocate: M. Ajmalkhan, for the Appellant; K.P.S. Palanivel Rajan, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T. Mathivanan, J.

The memorandum of criminal revisions are directed against the order dated 16.07.2007 and made in Crl.M.P. Nos. 5613, 5616, 5617, 5612 and 5614 of 2006, on the file of the learned Judicial Magistrate, Theni, dismissing the petitions which were filed u/s 142(b) of the Negotiable Instruments Act for condoning the delay in filing the complaint u/s 138 of the Negotiable Instruments Act. Being aggrieved by the impugned order, the revision petitioner has approached this Court by way of these memorandum of criminal revisions.

2. For easy reference, the petitioner herein may hereinafter be referred to as the complainant and the respondent herein may hereinafter be referred to as the accused.

3. The relevant facts and circumstances which giving rise to the memorandum of criminal revisions may be summarised briefly as follows:

2.1. The accused had issued five cheques for discharging debts which he owes to the complainant. When that cheques were presented before the Bank for encashment which were returned with an endorsement stating "funds insufficient". Hence, on 19.12.2005, the complainant had issued a statutory notice to the accused and thereby he was put under notice to pay the amount covered by the cheques. Even in spite of the receipt of the notice, the accused had not chosen to repay the amount. When the complainant was about to file the complaint, the accused had requested him not to file the complaint and assured that he would repay the amount in due course. Believing his words, the complainant had not filed the complaint. Since the accused had failed to upkeep his assurance, the complainant was constrained to file the complaint u/s 138 of the Negotiable Instruments Act. However, there is a delay in filing the complaint.

2.2. The accused in his counter had contended that the limitation for filing the complaint has been determined in the Negotiable Instruments Act. The Negotiable Instruments Act is a self-governed Act and since the complainant had not complied with the relevant provisions for condoning the delay, these petitions cannot be entertained and liable to be dismissed.

2.3. On hearing both sides, the learned Judicial Magistrate, Theni, had proceeded to dismiss those petitions on 16.07.2007 on the ground that no adequate reasons were assigned to condone the delay. Challenging the impugned order, the complainant has approached this Court by way of these revisions.

3. Heard both sides.

4. A contention was put forth on behalf of the accused saying that the order of dismissal of the petitions for condoning the delay is an interlocutory order and as such no revision will lie as envisaged u/s 397(2) Cr.P.C. The learned Counsel appearing for the accused has also submitted that the revisional power vested with the High Court cannot be exercised freely as it is barred u/s 397(2) of Cr.P.C. He has also maintained that the inherent jurisdiction conferred on the High Court u/s 482 Cr.P.C. also cannot be exercised as the impugned order is virtually an interlocutory in nature.

5. On the other hand, the learned Counsel appearing for the complainant would submit that the impugned order is a final order passed after hearing both sides. Since no proceedings was pending, the rights of the accused were not affected and therefore, the revisional jurisdiction of the High Court has not been fettered. The impugned order is naturally a final one and cannot be termed as interlocutory in nature.

6. The learned Counsel appearing for the complainant would submit further that the complainant and the accused were doing business for several years and on the specific request made by the accused, the complainant had not filed the complaint in time and unless and until the delay in filing the complaint is condoned, the complainant would put into heavy unbearable loss and therefore, he has urged before this Court that in the interest of justice, the impugned order passed by the learned Judicial Magistrate, Theni, be reversed.

7. On taking into consideration the submissions made on behalf of both the parties, it has to be decided as to whether the impugned order is an interlocutory in nature. Secondly, even if it is an interlocutory in nature whether this Court can invoke its inherent power to render equity of justice.

8. Section 397(2) reads as follows:

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.

9. Hence, it is thus clear that as per Sub-section (2) of Section 397 of Cr.P.C., revision applications against interlocutory orders have been in terms excluded. Of course, this provision is made with a view not only to avoid justice being delayed but sometimes justice being defeated because, by availing of the facilities to file revision applications to the High Court against interlocutory orders, the hearing of the case may be stayed for a long period.

10. The term "interlocutory order" is used in a restricted sense. It denotes an order of purely interim or temporary nature. It is not always converse of the term ''final order''. An order which overrides important rights and liabilities cannot be termed as interlocutory. This dictum has been held in Amar Nath and Others Vs. State of Haryana and Another, . Further, an interlocutory order is not revisable. The purpose of Section 397 of the new Code is to keep such an order outside the purview of the power of revision so that the enquiry or trial may proceed without delay. An interlocutory order is one made or given during the progress of an action. It does not finally dispose of the rights of the parties. It will be difficult to provide a straitjacket formula. The real test would be that if the judgment or the order disposes of the rights of the parties, it would be a final order. If it does not dispose of the rights of the parties, it would be an interlocutory order. If the order is merely a step-in-aid to adjudicate the rights, in that event, it cannot be termed to be a final order. This principle is laid down in Lakhwinder Singh and Others Vs. C.B.I. and Another, .

11. Under these circumstances, it may be better to have reference with the proviso to Section 482 of Cr.P.C. Section 482-

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order

under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

12. On a combined reading of Sections 397 and 482, it is made crystal clear that the proviso to Section 397 and the proviso to Section 482 operate in two different fields. Section 482 confers a separate and independent power on the High Court to pass orders ex debito justitiae to prevent abuse of the process of the Court or to secure the ends of justice. The High Court is not precluded from treating a petition filed u/s 397 as a petition under this Section and to grant necessary relief, if it is satisfied that it is necessary to do so to prevent the abuse of the process of the Court or for the purpose of securing the ends of justice. This principle is laid down in Otin Panging v. Nambor Kaman 1991 (1) Crimes 509

13. It may be also appropriate to mention here that the opening words of Section 482 "nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court" clearly gives an overriding effect to the provisions of this Section over those of Section 397(2) with respect to interlocutory orders and the two provisions relate to two different jurisdictions and they operate in two different fields. Even if the party has filed revision u/s 399, he can file petition u/s 482 Cr.P.C. Even when the order is hit by Section 397(2), Cr.P.C., the inherent power of the High Court u/s 482 can be exercised. This principle is laid down in Mahesh Chander Singh Vs. Raghunandan Prasad and Another, . As rightly observed in Shyam M. Sachdev v. State 1991 Cri.L.J. 305 the High Court has wide inherent power and in appropriate cases even though the impugned order is interlocutory it has ample power to interfere with a view to prevent the abuse of the process of the Court and to secure the ends of justice.

14. On coming to the instant case on hand, the order dismissing the delay condonation petition is not an interlocutory one but it is a final order. As defined in P.Ramanatha Aiyer''s The Law Lexicon (Reprint 2004) an interlocutory order is one which is made pending the cause and before a final hearing on the merits. An interlocutory order is made to secure some end and purpose necessary and essential to the progress of the suit, and generally collateral to the issues formed by the pleadings and not connected with the final judgment.

15. The learned Counsel appearing for the complainant in order to substantiate his argument has placed the following decisions reported in

1) K.K. Patel and Anr. v. State of Gujarat and Anr. (2006) 6 S CC 195.

2) Madhu Limaye Vs. The State of Maharashtra, .

16. On the other hand, the learned Counsel appearing for the accused has also placed the following decisions for the purpose of fortifying his submissions -

1) Manjula v. Colgate Palmolive (India) Limited (2007) 1 MLJ 140.

2) State (NCT of Delhi) v. Ahmed Jaan (2009) 2 S CC (Cri) 864.

3) State of Himachal Pradesh Vs. Tara Dutt and Another, .

4) G. Jayaraman v. Devarajan 2007 3 L.W. 1034.

5) Madhu Limaye Vs. The State of Maharashtra, .

17. The decision reported in Madhu Limaye Vs. The State of Maharashtra, is lending a helping hand to the case of the complainant.

18. Insofar as the petition in Crl.M.P. Nos. 5613, 5616, 5617, 5612 and 5614 of 2006, on the file of the learned Judicial Magistrate, Theni, the complainant has not stated the exact delay but in the grounds of revision petition alone he has stated that there was 86 days of delay in filing the complaint u/s 138 of the Negotiable Instruments Act. Further, the complainant has stated in his affidavit filed in support of the petition that in Crl.M.P. Nos. 5613, 5616, 5617, 5612 and 5614 of 2006 that since the accused had requested him not to file the complaint and he would repay the amount in due course, he had not chosen to file the complaint in time. But, though the reasons assigned by the complainant is feeble in nature, his remedy which he may get at the end of the trial shall not be denied. Therefore, to secure the ends of justice, this Court has thought it fit to reverse the impugned order.

19. The learned Counsel appearing for the accused has also submitted that all the five cases are identical in nature and therefore, it could be clubbed together as contemplated u/s 219(1) Cr.P.C. and tried simultaneously. In this connection, he has placed reliance upon the decision reported in Manjula v. Colgate Palmolive (India) Ltd. (2007) 1 MLJ 140. In this case, 16 cheques were drawn on different dates and they were for different amounts, but, they were presented together for payment and were dishonoured and a single notice was sent by the complainant to the drawer. Even though different cheques were given on different dates, the presentation of all those cheques formed the same transaction. Further, the demand was also made by the complainant on the dishonouring of cheques by giving one Lawyer''s notice and not several demands for the payment of dishonoured cheques.

20. Under these circumstances, it is held that the offences committed by the same person in respect of 16 cheques must certainly be held to be part of the same transaction considering the purpose, the sequence, events, nature of the allegation, proximity of commission, unity of action etc. In such circumstances, it is easy to conclude that the offences u/s 138 of the Act in respect of those cheques can be held to be offences in the course of same transaction. Section 219(1) Cr.P.C. refers to identical offences committed on different dates during a span of 12 months. It permits joinder of those charges provided they are offences of the same kind.

21. On coming to the instant case on hand, the complaint referred to in these five revision petitions are identical in nature. The details of the cheques which were

dishonoured, the amounts for which those cheques were drawn and the dates on which the cheques were drawn and the date of presentation and also the date of issuance of legal notice are shown in the under mentioned tabular column:

Sl. No.	Cheque No.	Amount	Date of drawal of the cheque	Date of presentation of the Cheque	Date of issuance of legal notice
1	890454	Rs. 15,500/-	070705	011205	19/12/05
2	931818	Rs. 15,500/-	18/07/05	011205	19/12/05
3	931817	Rs. 15,000/-	14/07/05	011205	19/12/05
4	890453	Rs. 10,470/-	040705	011205	19/12/05
5	931816	Rs. 11,325/-	110705	011205	19/12/05

22. Though the cheques were drawn on different dates and for different amounts all the five cheques were presented for encashment on 01.12.2005 and the legal notices appear to have been sent on 19.12.2005. The parties to the complaint in all the five complaints are one and the same. Therefore, as contemplated u/s 219(1) Cr.P.C. and on the footings of the decision reported in Manjula v. Colgate Palmolive (India) Ltd. (2007) 1 MLJ 140 and on considering the offences committed on different dates during a span of 12 months, the accused may be charged and tried at one trial for several such offences because the series of acts are so interlinked or interconnected.

23. Keeping in view of the facts and circumstances narrated above, this Court is of considered view that the impugned order may be reversed, the delay of 86 days be condoned and the complaints may be directed to be taken on file.

24. In the result, the Criminal Revisions in Crl.R.C.(MD) Nos. 294 to 298 of 2008 will be allowed. The impugned orders are set aside. The delay condonation petitions in Crl.M.P. Nos. 5613, 5616, 5617, 5612 and 5614 of 2006, on the file of the learned Judicial Magistrate, Theni, is allowed on payment of Rs. 500/- each to the High Court Legal Services Committee, Madurai Bench of Madras High Court within a period of two weeks from the date of copy of this order, failing which the delay condonation petition will automatically be dismissed. After the payment of cost, the trial Court is directed to take the complaints on file and to take cognizance of the offences as per the Negotiable Instruments Act.