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Court : Chhattisgarh

Decided On : Jul-23-2014

Judge : Sanjay K. Agrawal

Appeal No. : Criminal Revision No. 799 of 2012

Appellant : Vishal Jindal and Others

Respondent : Puja Jindal and Another

Judgement :

1. Questioning the legality, validity and correctness of the impugned judgment dated 04/12/2012 passed by First Additional Sessions Judge, Raigarh in Criminal Appeal No. 28/2012, the applicants herein have filed this criminal revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter called as Cr.P.C.), by which, their appeal filed under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter called as Act of 2005) has been dismissed.

2. The core facts required for judging the correctness of the impugned judgment are as under.-

2.1 Smt. Puja Jindal/non-applicant No. 1 herein filed an application under Section 12 of the Act of 2005 seeking reliefs as provided under Sections 18, 19 and 20 of Act of 2005, as she is wife of the applicant No. 1. The said application was filed on 27/03/2012. The jurisdictional Chief Judicial Magistrate, Raigarh issued notice to

the present applicants for their appearance before the said Court on 20/04/2012. Present applicants entered into their appearance before the said Court by filing memo of appearance and filed an application seeking time to file reply of the application filed by the non-applicant No. 1 under Section 12 of the Act of 2005. The said application was opposed by non-applicant No. 1 stating inter alia that personal attendance of the applicants be secured before the Court in the next date of hearing.

2.2 The learned Chief Judicial Magistrate, Raigarh, by its order dated 20/04/2012 partly allowed the application filed by the applicants granting time to file reply and directed the applicants to remain present personally before the Court on 01/05/2012, and also sought reply from the non-applicant No.1 to the application under Section 317 of the Cr.P.C. for dispensing their personal attendance filed by the applicants. Feeling dissatisfied with the order dated 20/04/2012, directing their personal attendance before the said Court, the present applicants preferred an appeal under Section 29 of the Act of 2005 before the Court of Session, Raigarh.

2.3 The Court of Session, by its impugned judgment dated 04/12/2012, dismissed the appeal holding that the appeal is not maintainable in law as under Section 29, appeal is only maintainable against the order passed by the Magistrate in exercise of jurisdiction conferred under Sections 18 to 23 of the Act of 2005.

2.4 Assailing this order, the present revision under Section 397 read with Section 40 1 of the Cr.P.C., has been preferred by the applicants herein.

3. Mr. P.K. Verma, learned senior counsel with Mr. Sunil Sahu, appearing for the applicants would submit that the learned Sessions Judge went wrong in holding that the appeal under Section 29 of the Act of 2005 is not maintainable against the impugned order and thereby committed a manifest legal error of law in dismissing the appeal, as such, the appeal under Section 29 of the Act of 2005 was clearly maintainable as the order directing personal attendance has affected their rights substantially.

4. Opposing the submissions made by counsel for the applicants. Dr. N.K. Shukla, learned senior counsel with Mr. Tarkeshwar Nande, appearing for the non-

applicant No. 1 would submit that the order passed by learned Chief Judicial Magistrate. Raigarh on 20/04/2012 was purely an interlocutory order, which was procedural in nature and has not decided the rights of the parties, and therefore, the appeal under Section 29 of the Act of 2005 was not maintainable and learned Sessions Judge has rightly held it to be not maintainable under Section 29 of the Act of 2005.

5. I have heard learned counsel appearing for the parties and considered the rival submissions made therein.

6. The Protection of Women from Domestic Violence Act, 2005 has been enacted to provide for more effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. It is enactment which is a piece of civil law, which is sought to be implemented through instrumentality of the Courts constituted under the Code of Criminal Procedure. The only penal provision in the Act of 2005 against a party-respondent is the one in Section 31 of the Act of 2005.

7. Chapter I of the Act of 2005 containing Sections 1 and 2 deals only with the short title, extent, commencement and the definitions. The domestic violence is defined in Section 2(g) read with Section 3. Chapter II of the Act of 2005 has only one Section and that Section 3 deals with the definition of the expression domestic violence. Chapter III of the Act of 2005 containing Sections 4 to 11 deals with the procedure for appointment of protection officers, service providers etc. and their powers and duties. Chapter IV of the Act of 2005 containing Sections 12 to 29 deals with reliefs that can be granted and the orders that can be passed and the procedure to be followed by the Magistrate before passing orders granting such relief. The provision for appeal against such orders are available in Section 29. Chapter V of the Act of 2005 deals with miscellaneous provisions.

8. In this revision, this Court is concerned with Chapter IV of the Act of 2005. The reliefs which can be granted on an application under Section 12 of the aforesaid Act can be broadly classified as under:

- (i) Protection orders under Section 18 which are for preventing the respondent from committing an act of Domestic Violence;
- (ii) Residence orders under Section 19;
- (iii) Monetary relief under Section 20 which includes maintenance, loss of earnings, medical expenses and loss caused due to destruction, damage or removal of any property from the control of the aggrieved person;
- (iv) Custody orders under Section 21 dealing with temporary custody of any child or children to the aggrieved person or visitation rights to aggrieved person under Section 21; and
- (v) Compensation orders under Section 22.

9. Thus, Sections 18 to 22 of the Act of 2005 deals with final orders that can be passed. Power to pass interim and ex parte orders have been provided in Section 23. The relief may be claimed under Sections 18 to 22, but before final orders are passed under Sections 18 to 22, by virtue of Section 23, the Magistrate is empowered to grant interim orders and by virtue of sub-section (2) of Section 23 it can be ex parte also. Section 24 deals with the manner in which copies of orders are to be furnished free of cost. Section 25 deals with the duration of the orders and the procedure for alteration of orders passed. Section 26 deals with reliefs in other suits and legal proceedings and Section 27 deals with the territorial jurisdiction of the Judicial Magistrate who exercise powers under the Act of 2005. Section 28 provides that in all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973. The last Section of Chapter IV that is Section 29 dealing with the provisions relating to appeal. Section 29 of the Act of 2005 states as under:

29. Appeal- There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

10. The crucial question that falls for consideration is whether an appeal under Section 29 of Act of 2005 is maintainable against purely interlocutory orders passed by the trial Magistrate or it is confined to the final orders passed under Sections 18 to 22 of the Act of 2005.

11. On plain and careful reading of the Section 29 of the Act of 2005, which provides for an appeal to the Court of Session against the order made by the Magistrate which is served on the aggrieved person or the respondent as the case may be, the legislature has consciously used the word the in Section 29 must certainly have reference to the orders referred earlier and therefore, all final orders referred under Sections 18 to 22 must be held to be fall within the expression the order and it includes the final orders passed on an application under sub-section (1) of Section 12 of the Act of 2005. Thus, in the considered opinion of this Court the word the order must take within its sweep all orders passed under Sections 18 to 22 of the Act of 2005.

12. The further question to be considered is whether the order passed under sub-sections (1) (2) of Section 23 of the Act of 2005 to be appealable under Section 29. Section 31 provides for penalty for breach of protection order by respondent. Section 31 of the Act of 2005 provides as under.-

31. Penalty for breach of protection order by respondent.(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrates may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

13. Section 31 of the Act of 2005 makes it clear that the breach of interim protection order shall be an offence under Section 31 (1) and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both. Thus, in view of the aforesaid fact, an interim protection order passed under Section 18 substantially affects the rights of party at least till the final orders are passed or till such orders are altered or modified as breach of the order passed under Section 23(2) is an offence, punishable under Section 31 of the Act of 2005, and therefore, the order passed under Section 23, will be amenable to the appellate jurisdiction under Section 29 and it cannot be held that such interim orders would be purely interlocutory (procedural) orders, which will not affect the rights of parties at all or substantially and as such, appeal would be maintainable under Section 29 of the Act of 2005.

14. The Kerala High Court in *Sulochana and another v. Kuttappan and others*, 2007 Cri LJ 2057 and the Bombay High Court in *Abhijit Bhikaseth Auti v. State of Maharashtra and another*, 2009 Cri LJ 889, has taken the view that order passed by the Trial Magistrate exercising jurisdiction under Sections 18 to 23 of the Act of 2005, appeal is maintainable under Section 29 of the Act of 2005. I find myself in respectful agreement with view so taken by the respective High Courts.

15. The further question to be considered is whether the order dated 20/04/2012, by which, learned Chief Judicial Magistrate has directed the personal attendance of the present applicants is an order, which is appealable under Section 29 of the Act of 2005.

16. In *Shankarlal Aggarwala and others v. Shankarlal Poddar and others*, AIR 1965 SC 507(1), their Lordships of the Supreme Court dealing with the provision relating to appeal under Section 202 of the Companies Act, 1913 which provided for an appeal from any order or decision made or given in the matter of the winding up of a Company by the Court, it has been held that an appeal will not lie against purely procedural orders which do not affect the rights and liabilities of parties.

17. Likewise, in *The Central Bank of India Ltd. v. Gokal Chand* AIR 1967 SC 799, the Supreme Court has held that the orders which are purely procedural do not affect substantive rights of the parties are not appealable.

18. Thereafter, in *Amar Nath and others v. State of Haryana and others*, AIR 1977 SC 2185, while considering the provisions contained in Section 397(2) of the Cr.P.C., their Lordships of Supreme Court has held that any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, and further held that the orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory order against which no revision would lie under Section 397(2) of the Code of Criminal Procedure, 1973 and held as under:-

The powers of revision conferred by subsection (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

The main question which falls for determination in this appeal is as to what is the connotation of the term interlocutory order as appearing in sub-section (2) of Section 397 which bars any revision of such an order by the High Court. The term interlocutory order is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary interlocutory has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term interlocutory order in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the, right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so

as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the, 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.

19. Thus, keeping in view the principles of law laid down by their Lordships of the Supreme Court in above-noted cases, it appears that purely interlocutory orders which deals with procedure and which do not affect or determine the rights and liabilities of the parties, will not come within the sweep of the expression the order as used in Section 29 of the Act of 2005. The order impugned has to affect or have a material bearing on the rights of the parties in order to make such order appealable. It has correctly been pointed out that Section 29 of the Act of 2005 does not exclude interlocutory orders from the sweep of expression the order. But, even without such a specific exclusion, as found in sub-section (2) of Section 397 of the Cr.P.C. and sub-section (1) of Section 19 of the Family Courts Act, the purely interlocutory orders, which do not substantially affect or determine the lights and liabilities of the parties, shall not be appeal able within the meaning of Section 29 of the Act of 2005. However, even in the absence of such specific exclusion, purely procedural orders, which are only steps in aid for final disposal of an application under Section 12 of the Act of 2005 claiming reliefs under Sections 18 to 22 of the Act of 2005, can be excluded from the purview of the expression the order in Section 29 of the Act of 2005.

20. If the facts of the instant case are examined in light of the principles laid down in the foregoing paragraphs, the impugned order directing the personal attendance of the present applicants is only an interlocutory procedural order passed by the trial Magistrate to secure the presence of the present applicants, which only steps in aid for final disposal of the application filed by non-applicant No.1, which has

neither decided the right of the applicants nor has affected any of their rights and, therefore, the impugned order is a pure and simple interlocutory order, against which, an appeal under Section 29 of the Act of 2005 is not maintainable in law. The learned Additional Sessions Judge is absolutely justified in dismissing the appeal as not maintainable in law.

21. Concludingly, the revision is held to be devoid of any merit; it deserves to be and is hereby dismissed.

Revision dismissed.

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