

**T. Narayanaswamy Vs. State and Others**

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**Court :** Karnataka

**Decided On :** Sep-17-1992

**Reported in :** 1993(2)ALT(Cri)80; 1993CriLJ3109; 1992(4)KarLJ459

**Judge :** M.M. Mirdhe, J.

**Appeal No. :** Criminal Revision Petition No. 72 of 1990

**Appellant :** T. Narayanaswamy

**Respondent :** State and Others

**Advocate for Def. :** Sri Y.R. Jagadesh, G.P and ;Sri R. Gopal, Adv.

**Advocate for Pet/Ap. :** Sri Ravivarma Kumar, Adv.

**Judgement :**

ORDER

1. This Cr.P.R. is filled by the petitioner who is an accused in the trial Court under S. 397 read with 401 of Cr.P.C., against the order dated 28-12-89 passed by the Prl. Sessions Judge, Shimoga in Cr.R.P. No. 29/89 setting aside the order dated 14-11-88 passed by the II Additional Munsiff and J.M.F.C., II Court, Shimoga in C.C. No. 5123/88.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader for R. 1 and the learned counsel for R. 2.

3. The petitioner filed a complaint against respondent No. 2 alleging that he has committed an offence punishable under S. 379, I.P.C. by committing the theft of his Autorickshaw. The complaint was referred to Scote Police Station, Shimoga under S. 156(3), Cr.P.C. The police investigated into the case and filed 'B' report to the effect that the complaint of the complainant is false. The petitioner challenged the 'B' report filed by the police. The trial Court took cognizance of the offence and sworn statements of the complainant and his witnesses were recorded and summons was issued to the respondent No. 2. At that stage, the petitioner filed an application under S. 451, Cr.P.C., for the interim custody of the vehicle. Respondent No. 2 also filed an application under S. 451, Cr.P.C. The State bank of Mysore also filed an application for the interim custody of the vehicles and the learned Munsiff and J.M.F.C., II Court, Shimoga after hearing all the concerned parties in the matter passed an order dismissing the applications of the petitioner and the State Bank of Mysore for the interim custody of the Autorickshaw and she allowed the application of respondent No. 2, and granted interim custody to him. Respondent No. 2 was aggrieved by this order and he preferred Cr.R.P. No. 28/89 in the Court of Prl. Sessions Judge, Shimoga against the said order. The learned Prl. Sessions Judge, Shimoga after hearing both sides passed an order on 28-12-89 allowing that revision petition and setting aside the order of the learned Munsiff and J.M.F.C., Shimoga granting interim custody of the Autorickshaw to respondent No. 2. Being aggrieved by that order, the petitioner who is an accused in the trial Court has preferred this revision petition.

4. The learned counsel for the petitioner contended that the Sessions Judge has no jurisdiction to entertain the revision petition filed by respondent No. 2, as the order passed by the learned Munsiff and J.M.F.C., was only an interim order. This point has been dealt with by this Court in the case of M. Abbas v. State of Karnataka, 1980(2) K.L.J. 259. His Lordship has relied on the ruling of the Supreme Court in interpreting the expression 'interlocutory order'. The relevant portion of his Lordship in that judgment is as follows :

'Taking the first contention of Mr. Gopalakrishna, it appears, there is not much substance in the same. What is an interlocutory order has not been defined. This was also one of the contentions raised before the learned Sessions Judge, and he

has rightly rejected the contention after discussing the case law on the point. In *Madhu Limaye v. State of Maharashtra* (1978) Cri LJ 165 their Lordships of the Supreme Court observed (at page 169) :-

'Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. In volume 22 of the third edition of Halsbury's Laws of England at page 742, however, it has been stated in para 1806 :-

'..... a judgment or order may be final for one purpose and interlocutory for another, or final to part and interlocutory as to part. The meaning of the two words must therefore be considered separately in relation to the particular purpose for which it is required ....' In Para 1607 it is said :

'In general a judgment or order which determines the principal matter in question is termed final.' In para 1608 at pages 744 and 745 we find the words :

'An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed 'interlocutory'. An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals.' Proceeding further, their Lordships observed :

'Although the words occurring in a particular statute are plain and unambiguous, they have to be interpreted in manner which would fit in the context of the other provisions of the statute and bring about the real intention of the legislature. On the one hand, the legislature kept intact the revisional power of the High Court, on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a situation it appears to us that the real intention of the legislature was not to equate the expression 'interlocutory order' as invariably being converse of the words 'final order'. There may be an order passed during the course of a proceeding which may not be final in the sense noticed in *Kuppuswami's case* , but, yet it may not be an interlocutory order pure or simple. Some kinds of the

order may fall in between the two. By a rule of harmonious construction, we think that in bar in sub-section (2) of S. 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purpose of Art. 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders within the meaning of S. 397(2). We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of sub-section (2) of S. 397. In our opinion it must be taken to be an order of the type falling in the middle course.' Mr. Gopalakrishna invited my attention to the decision in *Nathu Lal v. State*, 1976 Cri LJ 358 (All) and argued, the order passed under S. 451 Cr.P.C. was in the very nature interlocutory, because it was an order passed during the pendency of the proceeding and subject to the final determination on the conclusion of the trial. No doubt, the decision supports his contention. But with due respect, I am unable to persuade myself to accept it as laying down the correct law on the question. The provisions of S. 451, Cr.P.C. empowers the Court to make such order as necessary for interim custody of the property produced before the Court during the enquiry and trial and any order passed under S. 451, Cr.P.C., so far as that stage is concerned, would be final between the parties, in that it concludes who among the contending parties would be entitled to the interim custody and is final as between the contending parties and is therefore open to revision.' In view of this ruling the order of the learned Magistrate granting interim custody of the vehicle to the petitioner cannot be said to be an interlocutory order and therefore the respondent No. 2 has challenged it by way of revision in the Court of the Prl. Sessions Judge, Shimoga. Similarly, when the revision petition is decided against the petitioner, he has got a right to prefer a revision petition against that order which cannot be construed as an interlocutory order for the purpose of S. 397, Cr.P.C. in this Court.

5. The learned Sessions Judge, Shimoga has allowed the revision petition of the respondent No. 2 mainly relying on the ruling of this Court in the case of *Abdul Jabbar v. Khaleel Ahamed* : ILR 1986 KAR1769 , and *Syed Hafeezulla Pasha v. State of Karnataka* : ILR 1986 KAR3349 . The perusal of both these rulings go to show that in no way his Lordships has laid down that irrespective of the facts and circumstances of each case, the interim custody of the vehicle is required to be

given to the R.C. owner. In the case of Syed Hafeezulla Pasha v. State of Karnataka : ILR 1986 KAR3349 , his Lordship has observed as follows :

'Therefore, the person in whose favour the Certificate of Registration issued or stands, ordinarily and obviously, is the proper person for the interim custody of the vehicle seized and produced in the Criminal Court. Of course, there may be cases where it may be permissible to entrust interim custody of the vehicle to a person not being a registered owner, where the person from whose possession the vehicle is seized was in lawful possession and where the registered owner does not come forward or he has no objection for entrustment of the custody of the vehicle to some other, after weighting the respective claim to possession thereof; but ordinarily proper and prudent course to be followed is to entrust the custody of the vehicle to a person who is the registered owner and holder of the Certificate of Registration.'

Similarly in the another ruling of his Lordship reported in the case of Abdul Jabbar v. Khaleel Ahamed : ILR 1986 KAR1769 , his Lordship has held as follows :

'When applications are made for interim custody, what the Court has to inquire in the first place is, whether the person who claims for the interim custody of the vehicle seized is the registered owner entitled to use the vehicle as required under the provisions of the Motor Vehicles Act. If, he is such a person, then ordinarily he is the right and correct person to whom the custody of the vehicle has to be entrusted.'

His Lordship in this ruling has referred to the case of M/s. Mangharam and Sons v. R. C. Morzaria : ILR 1984 KAR923 , and has observed that while laying emphasis on this principle, the interim custody of the vehicle should ordinarily be entrusted to the R.C. owner and points out that there is also possibility of some other person undisputedly being owner of the vehicle though not registered owner as provided under the Motor Vehicles Act being entitled to interim custody. The law laid down in these two rulings can be summed up as follows :

When rival claims are made by different persons to the interim custody of a vehicle, ordinarily the R.C. owner is to be preferred to other claimants while giving

the interim custody of the vehicle, but there may be a case where a person who is not a R.C. owner, but who is in lawful possession of the vehicle will have to be preferred to the R.C. owner for giving the interim custody of the vehicle.

The question of granting interim custody of a vehicle will have to be decided on the basis of facts and circumstances of each case. The learned Sessions Judge, Shimoga who allowed the revision petition of respondent No. 2 committed the mistake in interpreting the ruling on which he relied to the effect that the interim custody of the vehicle should be given to the R.C. owner in each and every case.

6. In this case the Autorickshaw has been seized from the possession of the accused i.e., petitioner. Even the R.C. book was found with the petitioner. It is the defence of the petitioner that respondent No. 2 has entered into an agreement with him on 18-11-1987 agreeing to sell the vehicle to him and he handed over the possession and custody of the vehicle to him. It is also the defence of the petitioner that respondent No. 2 himself had handed over him the R.C. book and also Form No. 29 duly signed by him. The complaint is filed on 12-7-1987 i.e., nearly eight months after the alleged agreement of sale. In his objections the complainant respondent No. 2 has not denied specifically about this case set up by the petitioner. He has stated that he does not admit the averments made in paras 3, 4 and 5 of the application of the petitioner. But, he has never averred specifically that he has not signed the agreement in question in favour of the petitioner and that he has not signed Form No. 29 and he never handed over the R.C. book. The learned Magistrate has mentioned in her order that during the course of the arguments when a specific explanation was sought by the Court as to the execution of the agreement in favour of the accused by the complainant, the learned counsel for the complainant stated before the Court that without prejudice to his rights as the R.C. owner he admits the execution of the agreement in favour of the accused. In view of the absence of specific denial about the agreement set up by the petitioner and signing on Form No. 29 by respondent No. 2 coupled with the admission of the counsel for the respondent No. 2 in the Court below, there is prima facie proof of the agreement in favour of the petitioner. Here is a case where the petitioner can be said to be in lawful possession of the Autorickshaw in view of the agreement and Form No. 29 relied

upon by him. There is no law which lays down that it is only the registered owner who should run the vehicle and not others. In every day we see that R.C. owners give their vehicles to be run by the persons with whom they make agreement to run the vehicle or some other agreement by virtue of which the driver agrees to make some payments to R.C. owner for allowing him to run the vehicle. Therefore, even though the petitioner may not be R.C. owner of the vehicle, still he will be entitled to run the vehicle as it is covered by the R.C. which stands in the name of the respondent No. 2. The possession of the vehicle with the petitioner before it was seized by the police prima facie appears to be lawful. Taking into consideration all these factors, the learned Magistrate was right in distinguishing the ruling in the case of Abdul Jabbar v. Khaleel Ahamed : ILR 1986 KAR1769 . On the facts and circumstances of the case, the learned Sessions Judge was not right in allowing the revision petition of respondent No. 2 and setting aside the order of the learned Munsiff and J.M.F.C. For the reasons discussed above, I proceed to pass the following order :

The revision petition is allowed. The order of the learned Sessions Judge is set aside and the order of the learned Munsiff and J.M.F.C. II Court, Shimoga is restored.

7. Petition allowed.

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