

Nathu Lal Vs. State

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Court : Allahabad

Decided On : Aug-07-1975

Reported in : 1976CriLJ358

Judge : Hari Swarup, J.

Appellant : Nathu Lal

Respondent : State

Judgement :

ORDER

Hari Swarup, J.

1. This revision has been filed against an order refusing to release the property pending in a criminal trial. The applicant was being prosecuted for an offence under Section 4 of the Public Gambling Act. Certain properties, i. e. a watch, a ring and currency notes of Rs. 200 were seized under Section 13 of the Act and brought to the court. The accused moved an application for release of these properties. The trial Court rejected the application. This order is now being sought to be revised.

2. The Order could be passed only under Section 451 of the Criminal P.C. 1973[^] which reads as under:

When any property is produced before any criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

The question arising for determination is whether the order of the Magistrate was an interlocutory order or not. According to Brown's Law Dictionary Pages 192-193 (as quoted in Vankataramaiya's Law Lexicon 1971[^] p. 649) an interlocutory order means:

Something intervening or happening between the commencement of law proceedings and their termination, that is, during the progress of an action of law or a suit in equity ...an interlocutory order is an order made during the progress of a suit upon some incidental matter which arises out of proceedings, as an order for an injunction, for instance.

In Stroud's Judicial Dictionary, Fourth Edition, Volume 3, various instances are given to show what an interlocutory order means. Item 6 runs thus:

Interlocutory order (Judicature Act 1973) was not confined to an order made between writ and final judgment, but meant an order other than final judgment

Applying the tests mentioned above, generally an order which is passed in a proceeding, but does not decide the right, or terminate any proceeding could be an 'interlocutory order. An order under Section 451 is in every manner an interlocutory order, because it is an order passed during the pendency of the proceeding for the purpose of preservation and protection of the property which is to be utilised for final determination of the proceedings. The order of the learned Magistrate cannot be deemed to be anything but an Interlocutory order within the meaning of Section 397(2) of the Criminal P.C. Section 397(2), Cr.P.C. provides:

(2) 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.

The revision is accordingly not maintainable.

3. learned Counsel contended that the wrist watch which has been seized will deteriorate unless it is properly preserved, i, e. it is occasionally wound up and cleaned. If the applicant has such an apprehension he can move the trial Court to pass suitable orders.

4. The revision being not maintainable is dismissed.

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