Bindbasni and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-31-1976

Reported in : 1976CriLJ1660

Judge : K.N. Seth and ;M. Murtaza Husain, JJ.

Appellant : Bindbasni and ors.

Respondent : State of U.P.

Judgement :

M. Murtaza Husain, J.

1. This criminal revision is directed against the order dated 31st October, 1975 passed by the Sessions Judge, Basti whereby he dismissed a revision filed by the revisionist against the order dated 11th April 1975 passed by the Subdivisional Magistrate, Basti, under Section 107/111, Cr. P.C. (new). Through that order the learned Magistrate expressed his satisfaction to the effect that there was apprehension of breach of peace on behalf of the revisionist and he directed a notice to be issued to the revisionist to show cause as to why should they not be bound down.

2. This revision was admitted by Hon'ble H. N. Kapoor, J. on 22nd December, 1975. The learned Judge was doubtful about the maintainability of this revision because in his opinion the impugned order passed by the Magistrate was an

'interlocutory order' as contemplated by Section 397(2), Cr. P. C, (New) whereby no court of revision could interfere with it. A Single Judge decision of this Court in Trijugi Narain Shukla v. State (1975) 1 All LR 627 was cited before him wherein it was held that an order passed by a Magistrate under Section 107/111, Cr. P.C. (new) was not an 'interlocutory order'. In view of that decision Hon'ble Kapoor J., was of the view that an authoritative pronouncement by a larger Bench should be given on the point. In this way the present revision has come before us for disposal.

3. The Code of Criminal Procedure lays down specific procedure for inquiry and trial of cases of different nature, While handling an inquiry or a trial under that Code a Court is called upon to determine several questions before passing an order either discharging the accused or convicting or acquitting him. The proceedings of the subordinate courts determining such questions were subject to revision by the Sessions Judge or the High Court under Sections 435 to 439, Cr. P.C. (1898). Under the New Code of 1974 the position has become different because its Section 397(2) precludes courts of revision from exercising jurisdiction conferred by Section 397(1) of the Code where the said jurisdiction is invoked with respect to an interlocutory order. The entire Section 397 of the new Code runs as follows:

Calling for records to exercise powers of revision : (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purposes of satisfying itself or himself as to the correctness, legality or propriety of any finding sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court, and may, when calling for such record, direct that the execution of any sentence or order be suspended and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation- All Magistrates, whether Executive or Judicial and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

(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.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

4. A bare reading of this section would indicate that under Sub-section (1) the High Court or the Sessions Judge can call for and examine the record of any proceedings pending before any inferior criminal court situate within its or hie local jurisdiction in order to satisfy itself or himself as to correctness etc. of the finding, sentence or order passed by the said court and as to the regularity of the proceedings held by that court. Sub-section (2) however, bars the exercise of that jurisdiction with respect to an interlocutory order. This sub-section has been introduced in pursuance of the scheme for minimising delay in the disposal of cases. This intention of the Legislature is evident from the objects and reasons of the new Code. The relevant portion thereof is as follows:

The powers of revision against interlocutory orders ere being taken away as it has been found to be one of the main contributing factors in the delay of disposal of criminal cases.

5. It is thus clear that the bar upon interference by Courts of revision with interlocutory orders passed by subordinate courts, laid down by Section 397(2) of the new Code, has been intentionally imposed by the Legislature.

6. The expressions 'interlocutory orders' or 'final order' have not been defined in the Code anywhere. In order to judge whether or not a particular order amounts to an 'interlocutory' or 'final' order we have to look to the authorities where in those terms have been defined or explained.

7. In Halsbury's Laws of England, Third Edition, (Simonds), Volume 22, an interlocutory judgment or order has been defined at page 744 as follows:

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 now the declarations of rights 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. The phrase 'interlocutory judgment' is also used to describe a judgment for damages to be assessed.

8. It follows from the above definition that an order will remain interlocutory irrespective of the fact that it is passed before or after the pronouncement of final judgment or order and also irrespective of the fact that it is conclusive as to the subordinate matter with which it deals provided that it does not deal with the final rights of the parties and gives no final decision on the matters in dispute. If an order deals with procedural matters only or directs how declarations of right, already given in the final judgment are to be worked out it will be an interlocutory order even though it conclusively decides those subordinate matters.

9. Their Lordships of the Privy Council had occasion to determine the question of finality of an order in two cases, namely, Firm Ramachand Manji-mal v. Firm Goverdhandas Vishandas Ratanchand AIR 1920 PC 86 and V.M. Abdul Rahman v. D.K.G. Cassim and Sons . In the former case their Lordships had to adjudicate whether or not an order refusing stay of suit under Section 19, Arbitration Act was final. Replying that question their Lordships relied upon two earlier decisions of Court of Appeal in Saleman v. Warner (1191) 1 QB 734 and Bozson v. Altrincham Urban District Council (1903) 1 KB 547 and held that an order is final if it filially disposes of the rights of the parties and as orders refusing stay of suit did not dispose of those rights but leave them to be determined by the courts in the ordinary way, they are not final orders. In the latter case the question arose whether or not an order passed under Order 41, Rule 23, C.P.C. was a final and appellate order. Their Lordships observed that:

The test of finality is whether the order 'finally disposes of the rights of the parties' where order does not finally dispose of those rights but leaves them 'to be

determined by the Courts in the ordinary way the order is not final, that the order went to the root of the suit namely, the jurisdiction of the Court to entertain it,' is not sufficient. The finality must be a finality in relation to the suit. If, after the order, the suit is still alive suit in which the rights of the parties have still to be determined no appeal lies against it under Section 109 (a).

10. The above two pronouncements were considered and followed by their Lordships of the Federal Court of India in S. Kuppuswami Rao v. The King and Mohammed Amin Brothers Ltd. v. The Dominion of India AIR 1950 FC 77. In both of those cases it was held that the expression 'final order' has been used in contradiction to what is known as 'interlocutory order' and the essential test to distinguish one from the other is whether or not the order puts an end to the suit. If it was putting an end to the suit, it was final but if the suit was still left alive and had to be tried in the ordinary way the order was interlocutory. The case of S. Kuppuswami Rao v. The King (supra) involved the question of finality of an order passed by a Criminal Courts. Their Lordships observed that:

We have noticed above the meaning given to the expression 'final order' by the English and Indian Courts, those decisions were in civil cases. We think that the same meaning should be given to that expression in criminal cases also, that is to say, it must be an order which finally determines the points in dispute and brings the case to an end.

11. Their Lordships of the Supreme Court also considered finality of an order passed by a criminal court is M. Maganlal Thakkar v. State of Gujarat : 1968 CriLJ876 . In this authority the earlier decisions referred to above case followed end it was observed that generally speaking a judgment and order which determines the principal matter in question is termed final otherwise it is interlocutory.

12. To sum up the propositions laid down by the above authorities, the test in determining the final or interlocutory nature of an order is one and the same both in civil as well as criminal cases. That test is whether or not the order in question finally disposes of the rights of the parties or leaves them to be determined by the Court in the ordinary way. If the order does not finally dispose of the rights of the

parties and the matters in dispute and leaves the suit or case still alive suit in which the rights of the parties have to be determined, the order will remain interlocutory irrespective of the stage at which it is passed and also irrespective of the conclusive decision of the subordinate matters with which i deals. Applying this test to an order passed by a Magistrate under Sections 107/ 111, Cr. P.C. that order is nothing but interlocutory because it is passed when the Magistrate is of opinion that the information received by him to the effect that any person was likely to commit breach of peace or to disturb public tranquillity etc. was credible. Acting upon that information the Magistrate simply calls upon the person concerned to show cause why he should not be bound down in the prescribed manner. Neither right of the parties are decided at that stage nor the matter in dispute is finally disposed of. That order is simply procedural in nature. It only gives a notice to the party concerned that there is such and such allegation against him and he should turn up before the Magistrate to clarify his position. Even the correctness of the information received by the Magistrate is not finally decided at that stage nor it is decided whether or not the party concerned should be bound down. Those points are to be decided when the case reaches the stage of Section 116, Cr. P.C. in Bhupinder Kumar v. State 1975 Cri LJ 1185 (Delhi) an order framing a charge in the case was held to be an interlocutory order because it does not decide the question of guilt or the innocence of the accused and simply puts the accused on notice as to the offence for which he was tried. Upon the same analogy an order passed under Sections 107/111, Cr. P.C. is an interlocutory order.

13. In the case of Trijugi Narain Shukla v. State of U.P. (1975) 1 All ER 627 a learned Single Judge of this Court held that an order passed under Sections 107/111, Cr. P.C. by a Magistrate was not interlocutory. The reasoning given by the learned Judge in support of that finding is as follows:

An interlocutory order means an order which is passed after the proceedings have commenced and before the proceedings have terminated. The notice as far as the applicant is concerned is the first step in the proceeding. The proceeding under Section 107 are commenced, no doubt, so far as the Magistrate is concerned, with the information received by him, but so far as the citizen is concerned it commenced with the issue of notice to him to show cause. The notice must

therefore be deemed to be the preliminary step and not an interlocutory step in the proceedings. Further a notice of the nature issued by the learned Magistrate cannot be deemed to be an interlocutory order as it is of the nature of a show cause notice only. The preliminary objection is accordingly overruled.

14. We find it difficult to agree with the above noted reasoning. We have already referred to the authorities where-in it has been held that every order passed during the proceedings of a case, if it does not finally decide the case, is interlocutory. On that account no distinction can be made amongst different interlocutory orders on the ground that the one is passed at the preliminary stage of the proceedings whereas the other is passed at a later stage. In our opinion every order passed in a case or proceedings which does not finally decide the rights of the parties therein is interlocutory and on that account an order by a Magistrate under Sections 107/111, Cr. P.C. is nothing but an interlocutory order.

15. Reliance was placed on be-half of the revisionists upon a Division Bench case of Orissa High Court in Bhima Naik v. State 1975 Cri LJ 1923 (Ori). In that-case the question for consideration was whether or not provisions of Section 397(2), Cr. P.C. (new) applied to a preliminary order passed under Section 107, Cr. P.C. as it was an interlocutory order. After discussing the matter at length the Court came to the conclusion that an order passed by a Magistrate under Sections 107/111, Cr. P.C. was an interlocutory order for the purposes of Section 397(2), Cr. P.C. It was, however, further laid down in that authority that interlocutory orders passed without jurisdiction are nullities and are non est in the eye of law can be interfered with in revision under Section 401, Cr. P.C. and in appropriate cases under Section 432, Cr. P.C. but interlocutory orders passed within jurisdiction could not be interfered with under any of those sections as well. We are not called upon to express any opinion on this observation because the same was made with reference to the particular circumstances of the case wherein the impugned order was apparently passed by the Magistrate concerned without having any jurisdiction to pass it. The order involved in the present revision is not of that category. Here the Magistrate concerned had jurisdiction to proceed with the matter and he has passed the order under revision in exercise of that jurisdiction and after coming to the conclusion that the information received by him was credible. The order which is involved in

the present revision is, therefore, not the one which may be said to have been passed by the Magistrate concerned without jurisdiction. All that we have to see in the present revision is whether or not the aforesaid order is interlocutory to which the provisions of Section 397(2), Cr. P.C. are attracted. In our opinion such an order is an interlocutory order and Section 397(2), Cr. P. C which impose an absolute bar upon exercise of revisional jurisdiction by the High Court and the Sessions Judge with respect to interlocutory orders passed by a subordinate court, bars the present revision.

16. Yet another point which makes the present revision not maintainable is that Section 397(3), Cr. P.C. (new) lays down that if a revision application has been made by any person either to the High Court or to the Sessions Judge under Section 397(1), Cr. P.C. no further application by the same person shall be entertained by the other of them. In the present case the applicants had filed a revision challenging the impugned order of the Magistrate before the Sessions Judge, Basti. After having availed of that remedy once before a court of concurrent jurisdiction it is not open to the revisionists to come up again with the present revision before this Court.

17. We are, therefore, of the opinion that the present revision is not maintainable, firstly, because the impugned order passed by the learned Magistrate under Sections 107/111, Cr. P.C. is an interlocutory order and Section 397(2), Cr. P.C. (new) bars the exercise of revisional jurisdiction by the High Court and the Sessions Judge with respect to such an order. Secondly the present revision is not maintainable on account of the bar imposed by Section 397(3), Cr. P.C. (new).

18. The revision is accordingly dismissed as not maintainable.