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Court : Allahabad

Decided On : Feb-15-1979

Reported in : 1979CriLJ718

Judge : S. Malik and; B.N. Katju, JJ.

Appellant : Bhola and ors.

Respondent : State

Judgement :

S. Malik, J.

1. This is an application in revision under Section 397 of the Cr, P. C, 1973 (hereinafter referred to as the Code), praying that the order dated 17-11-1977 of the Sessions Judge, Ghazipur cancelling the bail granted to the applicants by the Magistrate before whom they are being prosecuted for offences punishable under Sections 147, 323. 325 and 452 of the I. P. C. (Crim. No. 60 of 1977), be set aside.

2. The main question involved in this application is whether an order cancelling bail is an 'interlocutory order' within the meaning of Sub-section (2) of Section 397 of the Code or in other words, whether an application in revision would lie to this Court under Section 397 of the Code against an order cancelling bail.

3. As usual, the application came up before a learned single Judge of this Court who by his order dated 3-5-1978 referred the case for disposal to a Division Bench as in his view the question requires reconsideration. As has been mentioned in the referring order, another learned single Judge of this Court in *Tola Ram v. State*, 1976 AH WC 197 : T197B All LJ 481) held that an order cancelling bail is an 'interlocutory order' following the decision of the Rajasthan High Court in *Dhola v. State* (1975 Cri LJ 1274) without giving any reason of his own.

4. Sub-section (2) of Section 397 of the Code was enacted to put a bar on the power of revision of the High Court and a Sessions Judge in order to bring about disposal of cases expeditiously. Often revisions were filed against interlocutory orders mainly with the purpose of delaying final disposal of a case. This bar should not cause any frustration in the mind of an aggrieved party as the High Court has inherent powers to remedy an abuse of the process of any Court or otherwise to secure the ends of justice, as laid down in Section 482 of the Code in a proper case where no alternative remedy is open to the aggrieved party.

5. What is an 'interlocutory order' within the meaning of Section 397(2) of the Code, has been considered in detail by the Supreme Court in *Amar Nath v. State of Haryana* : 1977 CriLJ1891 and *Madhu Limaye v. State of Maharashtra* : 1978 CriLJ165 referred to by the learned Counsel for the parties. The Supreme Court has held that though the expression 'interlocutory order' has not been used in Section 397(2) of the Code in the restricted sense of an order which is converse to the term 'final order' as in that case it would almost have rendered nugatory the revisional powers of the Court of Session or the High Court conferred by Section 397(1) of the Code, an order which does not decide any of the matters in dispute, or substantially decide any vital issue in the case against the accused touching the merits of the case or the rights of the parties, will be an 'interlocutory order.' It has been observed that it is not possible to make a catalogue of orders to demonstrate which would be purely 'interlocutory orders' within the meaning of S, 397 (2) of the Code and that whether an order is an 'interlocutory order' has to be adjudged keeping in view its effect on the questions or rights of the parties involved in the case. In our view, an order cancelling bail granted to an accused does not in any way affect the questions involved in the criminal case pending against the

applicants or the rights of the parties in relation to any of the questions that may be involved in that case. It may be that an order of cancellation of bail deprives an accused of his liberty and for him it may be a matter of moment, but because of the reasons discussed, it cannot escape the bar imposed by Section 397(2) and is purely an 'interlocutory order'. It may be mentioned that in *Amar Nath v. State of Haryana* (supra), while giving examples of what is an 'interlocutory order' within the meaning of S, 397 (2) of the Code, the Supreme Court mentioned 'passing orders for bail'. In our opinion 'passing orders for bail' would include 'granting, rejecting or cancelling bail'. We may repeat that nothing could be brought to our notice due to which it could be said that the impugned order was passed substantially touching some aspect of the case or the merits of the case pending against the accused or affecting some vital question involved in the case.

6. We, therefore, are of the opinion that no revision lay against the impugned order as it is an 'interlocutory order' within the meaning of Section 397(2) of the Code. The application is rejected and the stay order dated 24-11-1977 is hereby vacated.

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