

Murlidhar Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Aug-05-1991

Reported in : 1992CriLJ2032

Judge : B.P. Singh, J.

Acts : Indian Penal Code (IPC) - Sections 379, 406, 411 and 420; ;Code of Criminal Procedure (CrPC) , 1974 - Sections 397, 397(1), 397(2), 451 and 452;
[Code of Criminal Procedure \(CrPC\) , 1898](#)

Appeal No. : C.R. No. 1012 of 1990

Appellant : Murlidhar

Respondent : State of U.P. and anr.

Advocate for Def. : A.G.A. and ;Vinod Prasad, Adv.

Advocate for Pet/Ap. : G.N. Chandra and ;Virendra Saran, Adv.

Disposition : Application dismissed

Judgement :

ORDER

B.P. Singh, J.

1. This is an application for revision against the judgment and order dated 6th July, 1990 passed by the Chief Judicial Magistrate, Mirzapur, in Criminal Case No. 2303/90 (State v. Deoraj Prasad Patel) under Sections 406/420/379/411, IPC.

2. Deoraj Prasad Patel, opposite party No. 2, is facing prosecution in the Court of the Magistrate at Mirzapur for the offences under Sections 406/420/379/411, IPC and a charge sheet has been filed against him in the case.

3. Tata Mercedes Truck No. UPL 7947 (Chasis No. 342050 7617858 and (Engine No. 3125787618370) was initially purchased by one Ajit Lal and the truck in question was registered in his name. Murlidhar applicant purchased the truck in question from Ajit Lal for a consideration of Rs. 71000/-. As the applicant was short of money, he had taken financial assistance from Paras Financing company of Mirzapur. Thereafter, Paras Financing company took away the truck in question illegally without any authority and with the intention to misappropriate the same. The applicant started the search for his truck and after a gap of one year, he came to know that Paras Financing company had delivered the truck in question to Deoraj Prasad Patel, who had subsequently changed the chassis number of the truck and had obtained a fresh false and fictitious registration USB 4622 from the Regional Transport Officer, Deoraj Prasad Patel runs a motor garage and is an expert Mistri. Taking advantage of his technical knowledge, Deoraj Prasad Patel embossed another number upon the old number of the Chassis. Initially, registration No. USB 4622 was given to the truck having Chassis No. 3420026615338 and engine No. 3129156615536. The task of finding out the truck of the applicant was a difficult one and it was after much effort that the applicant was certain that his truck was now registered as USB 4622. Consequently, a FIR was lodged by the applicant against Deoraj Prasad Patel in PS chunar and a case Crime No. 357/87 was registered against Deoraj Prasad Patel under Sections 406/420/ 379/411, IPC. The Police started its investigation and recovered the Truck in question from the possession of Deoraj Prasad Patel.

4. After obtaining the possession of the truck in question, the police ascertained from RTO Gorakhpur as to what was the correct chassis number of the vehicle bearing registration No. USB 4622. The RTO Gorakhpur informed the police that

the present chassis number of the truck bearing registration No. USB 4622 did not tally with the chassis number of the original registration No. UPL 7947. The report of the RTO Gorakhpur was to the effect that the present chassis number of Truck bearing registration No. USB 4622 does not tally with the chassis of the same Truck which was in their record.

5. In the meantime, the applicant, Deoraj Prasad Patel and the Financing Company applied in the Court of the Magistrate concerned for the release of the Truck. Initially, all the applications were rejected by the Magistrate.

6. The Investigating Officer of the case applied to the Court for permission to send the seized Truck to Vidhi Vigyan Prayogshala, Lucknow, for radiological test so that the original chassis number of the truck in question could be ascertained.

7. Accordingly, the Truck was sent to Vidhi Vigyan Prayogshala, Lucknow and it was examined in the Praygoshala. Vidhi Vigyan Prayogshala submitted its report dated 184-1988. This report is to the effect that under the present chassis number of the truck there is original chassis number 342050-7617858. This was the real number of the chassis and the truck having this chassis number was registered as UPL 7947. After the receipt of the report from the Vidhi Vigyan Prayogshala, Lucknow, the learned Magistrate released the truck in favour of the applicant on 28-2-1989 on condition that the applicant was to furnish two securities of Rs. 50,000/- each and a personal bond in the like amount.

8. Paras Financing company went in revision against the order dated 28-2-1989 and the same was rejected by the learned Sessions Judge, Mirzapur. On 27-3-1989 Deoraj Prasad Patel moved an application in the Court of II Additional Munsif Magistrate, Mirzapur praying that the applicant may be directed to produce the truck in question in the Court. It was also prayed that the order dated 28-2-1989 be recalled.

9. While the application dated 27-3-1989 was pending before the II Additional Munsif Magistrate, Mirzapur, the learned Chief Judicial Magistrate, Mirzapur recalled the case in question to his own file vide order dated 30-4-1990. Thereafter, the learned Chief Judicial Magistrate directed the applicant to produce

the truck in question before him. After some time the truck in question was produced before the Court of C.J.M. on 28-6-1990. The applicant had to spend about Rs. 1800/- in towing the truck in question to the Court with the help of a tractor. Under the orders of the learned Chief Judicial Magistrate, Deoraj Prasad Patel inspected the truck in question and thereafter the learned Chief Judicial Magistrate observed in open Court on 29-6-1990 that he would pass an order for the auction of the vehicle. On the same day, the learned Chief Judicial Magistrate passed an order directing the applicant to again produce the truck before him on 3-7-1990. On 28-6-1990 or 29-6-1990 no final order was passed by the Chief Judicial Magistrate regarding the custody of the truck in question and a simple direction was given to the applicant to again produce the truck before him on 3-7-1990.

10. On 3-7-1990 the applicant filed an objection before the Chief Judicial Magistrate praying that he should not be harassed by repeated orders to produce the truck before the Court, as considerable money is spent in towing the truck in question from the village to Court. On 6-7-1990, the learned Chief Judicial Magistrate after hearing the parties passed an order that the truck be released in favour of Deoraj Prasad Patel. The order passed by the learned Chief Judicial Magistrate is absolutely illegal and is not warranted by the facts and circumstances of the case. It appears that when the truck was in possession of Deoraj Prasad Patel, the chassis was cut and shortened to its present length of 166 'although the base thereof remains the same i.e. 205'.

11. Deoraj Prasad Patel, opposite party No. 2 has contested the claim of the applicant with the allegation that the impugned order was an interlocutory order and as such the revision application was not maintainable under Section 397(2) of the Code of Criminal Procedure. The affidavit (Annexure I) of Ajit Lal relied upon by the applicant was a fictitious documents. In fact, the truck in question stands registered in the name of Murlidhar and Paras Nath Chaurasia. The truck UPL 7947 was never delivered by the Paras Financing company to Deoraj Prasad Patel. The fact that no FIR was lodged by the applicant for more than a year leads to the conclusion that no such truck was taken away by any one. The truck in question belongs to Deoraj Prasad Patel and its chassis number is

3420026615338. It was wrong to say that the chassis of USB 4622 was embossed upon chassis of UPL 7947. It was also wrong to say that the truck having registration No. UPL 7947 was seized by the Police from the possession of Deoraj Prasad Patel.

12. The seized vehicle was never sent to Vidhi Vigyan Prayogshala, Lucknow. The alleged report from the Vidhi Vigyan Prayogshala, Lucknow was a fictitious document which has been procured by the police. The truck in question was never examined by the Vidhi Vigyan Prayogshala at Lucknow.

13. The first application of the applicant for release of the truck in question rejected by the learned Magistrate on 22-3-1988. Again on 2-6-1988 the applicant applied for the release of the truck. The said application is till pending and has not been disposed of by the Court concerned. During the pendency of the application dated 2-6-1988, the applicant moved a third application dated 21-2-1989 for the release of the truck. No notice of this application dated 21-2-1989 was given to Deoraj Prasad Patel or to the Paras Financing company by the Magistrate concerned. Deoraj Prasad Patel remained in the dark when the order dated 28-2-1989 was passed in favour of the applicant regarding the release of the truck in question. The date 21-2-1989, when the third application for release of the truck was moved was not a date fixed in the case as is clear from the order-sheet of the case in question. The order dated 28-2-1989 passed by the learned Magistrate was illegal, unjust and mala fide.

14. It was Paras Nath Chaurasia who had gone in revision against the order dated 28-2-1989 which was rejected on 7-2-1990. Deoraj Prasad Patel never moved any application for revision against the order dated 28-2-1989. It was only on 27-3-1989 that Deoraj Prasad Patel applied for the release of the truck in his favour.

15. On 6-7-1990 the applicant had moved an application before the learned Chief Judicial Magistrate expressing inability to bring the truck in question to Court. After hearing both the parties, the learned Chief Judicial Magistrate had passed the order giving the truck in question in the custody of Deoraj Prasad Patel.

16. Affidavit, counter-affidavit and rejoinder affidavit have been filed and I have gone through the record of the case in the light of the arguments which were advanced at the Bar.

17. Learned counsel for opposite party No. 2 has raised two contentions; Firstly, that the impugned order was an interlocutory order and, as such, no revision lay against the same and secondly that on the matter before the learned Chief Judicial Magistrate the Court was perfectly justified in passing the impugned order, as the current registration of the truck in question stood in the name of opposite party No. 2.

18. Coming to the first contention, I may point out that Section 397(2) of the Code provides that revisional powers of the Court shall not be exercised in relation to an order passed in an appeal, enquiry, trial or other proceeding. The Code does not define the term interlocutory order, but the term 'interlocutory order' has been the subject-matter of discussion in three leading cases of the Supreme Court. In the first case of *Mohanlal Maganlal Thakkar v. State of Gujarat*, AIR 1968 SC 733 : (1968 Cri LJ 876) the Supreme Court has observed as follows at page 878 of Cri LJ:

The question as to whether a judgment or an order is final or not has been the subject-matter of a number of decisions, yet no single general test for finality has so far been laid down. The reason probably is that a judgment or order may be final for one purpose and interlocutory for another or final as to part and interlocutory as to part. The meaning of the two words 'final' and 'interlocutory' has, therefore, to be considered separately in relation to the particular purpose for which it is required. However, generally speaking, a judgment or order which determines the principal matter in question is termed final. It may be final although it directs enquiries or is made on an interlocutory application or reserves liberty to apply.

19. In the case of *Amar Nath v. State of Haryana*, AIR 1977 SC 2185 : (1977 Cri LJ 1891) the Supreme Court has observed as follows at page 1894 and 1895 of CRLJ:

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 rights 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 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.'

20. In the third case viz. *Madhu Limaye v. State of Maharashtra*, AIR 1978 SC 47 : (1978 Cri LJ 165) the head note runs as follows:

Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. But an interpretation and the universal application of the principle that what is not a final order must have been interlocutory order is neither warranted nor justified. If it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by Section 397(1). On such a strict interpretation, only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code. This does not seem to be the intention of the Legislature when it retained the revisional power of the High Court in terms identical to the one in the 1898 Code.

Although the words occurring in a particular statute are plain and unambiguous, they have to be interpreted in a 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 and, 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 that the real intention of the legislature was not to equate the expression 'interlocutory order' as invariably being converse of the words 'final order.'

21. On a perusal of the above cited decisions, it is quite clear that the 'interlocutory orders' are not to be confused with the 'intermediate orders' which though not final orders are sometimes passed during the course of a trial or enquiry. Such intermediate orders though not deciding the dispute finally between the parties, it could decide some points of controversy finally and against such orders the revision will lie. Of course, no revision would lie against orders which are pure and simple interlocutory orders.

22. In the present case, the impugned order has been passed by the learned CJM while exercising the powers under Section 451 of the Code. Section 451 of the Code empowers the criminal Court to pass orders for custody and disposal of the subject-matter pending trial in cases. The present impugned order is regarding the custody of the truck which is the subject-matter of the trial. For the period during which the trial continued the impugned order has given the custody of the truck to opposite party No. 2. It may be emphasised that the impugned order does not finally decide the question as to who is entitled to the custody of the truck in question. This question would be decided only when the case is finally decided and the expected order is passed under Section 452 of the Code. Thus, the impugned order is an interlocutory order and the remedy of the applicant by way of revision is not maintainable. The applicant may have other remedies available to him under the Code, but not an application for revision under Section 397 of the Code.

23. In this view of the matter, it is not necessary to give any finding upon the second contention raised by the learned counsel for the opposite party No. 2.

In the result, the application for revision is hereby dismissed.

