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Court : Allahabad

Decided On : Aug-29-2000

Reported in : 2001CriLJ352

Judge : Ratnakar Dash, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 190(1), 200, 202, 203, 204, 397, 397(2), 399 and 482; Indian Penal Code (IPC) - Sections 379

Appeal No. : Cri. Misc. Appln. No. 5228 of 1996

Appellant : Dev NaraIn Dev

Respondent : State of U.P. and ors.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Surendra Tewari, Adv.

Disposition : Application allowed

Judgement :
ORDER

Ratnakar Dash, J.

1. In this petition under Section 482 Cr.P.C. the petitioner has assailed the order of the learned Sessions Judge, Bulandshahr passed in Criminal Revision No. 81 of

1996 whereby he set aside the order of the learned Chief Judicial Magistrate taking cognizance of the offence under Section 379 IPC in complaint case No. 551 of 1996.

2. The complainant, petitioner herein, filed the aforesaid complaint alleging that on 30-5-1996 at about 2 P.M. the opposite parties (hereinafter referred to as 'the accused persons') being armed with lathis came to his house, dismantled the roof and removed the rafters and other materials. He lodged a report to the police, but as no case was registered on such report, he complained to the Superintendent of Police. Even thereafter when no action was taken, he approached the Court by filing the aforesaid complaint. Learned Magistrate after having recorded the statement of the complainant conducted enquiry as envisaged in Section 202 Cr.P.C. in course of which he recorded the evidence of the witnesses as produced by the complainant. Thereupon, on scrutiny of the evidence he was satisfied that there is a prima facie case under Section 379 IPC and accordingly took cognizance of the said offence and issued process against the accused persons for their appearance. Aggrieved thereby, the accused persons preferred revision and the learned Sessions Judge by the impugned order set aside the order of the learned Magistrate and dismissed the complaint. The legality and propriety of the said order of the revisional Court is under challenge in the present proceeding.

3. Learned counsel appearing for the complainant strenuously urged that the revisional Court exceeded its jurisdiction permitting the accused persons to lead some documentary evidence in consideration whereof it came to hold that since there was serious dispute with regard to title and possession of the house in question between the parties, the criminal case was not maintainable and this finding being contrary to the materials on record, the impugned order requires interference of this Court in exercise of inherent power conferred by Section 482, Cr.P.C. He further urged that the order of the learned Magistrate taking cognizance of the offence being interlocutory one, revision could not have been entertained by the learned Sessions Judge, in view of the bar created by Section 397(2), Cr.P.C.

4. On the other hand, learned counsel appearing for the accused persons would urge that it is the settled position of law that when criminal law is put to motion, it is the bounden duty of the Court to scrutinize carefully the allegations made in the complaint as also the statement of the witnesses examined if any, with a view to prevent a person arrayed as the accused from being called upon to face a false and frivolous charge. If that is not done, criminal justice system would be used as an arm to harass an innocent person in order to wreak personal vengeance. In the present case since the accused persons had no opportunity to place all materials before the learned Magistrate to show that possession of the house in question which was allegedly damaged on the date of occurrence was not with the complainant they produced the relevant documents before the Sessions Judge who on consideration thereof was satisfied that offence under Section 379, I.P.C. was not made out and having held thus passed the order dismissing the complaint. In the circumstances, therefore, the impugned order cannot be held to be bad in law requiring interference of this Court.

5. In view of the aforesaid submissions at the outset I would like to deal with the question as to whether the order of the learned Magistrate taking cognizance of the offence is interlocutory one against which no revision lies. Under the Code of Criminal Procedure, 1898 there was no bar for preferring revision against interlocutory orders. In absence of any provisions, revision was being entertained against interlocutory interim order and in certain cases order was passed staying the criminal proceeding. Experience showed that revision remained undecided for long years and the stay order continued to operate. In the long run it was noticed that the order staying the proceeding prejudicially effected the prosecution inasmuch, as when the trial commenced either the material witnesses were not available for their examination or they were found to be dead, as a result the accused involved in heinous crime was being acquitted. It was in this background that the Legislature brought out an amendment in the Code of Criminal Procedure, 1973 providing specific provision in Section 397(2) that no revision would lie against an interlocutory order. However, while providing such a bar the Legislature did not define the meaning of the expression 'interlocutory order' leaving the same to be interpreted by the Court in the facts and circumstances of each case.

6. According to Blacks Law Dictionary the word 'interlocutory' means, 'Provisional; temporary; not final, something intervening between the commencement and the end of a suit which decides some point or matter but is not a final decision of the whole controversy.

7. The meaning of the word 'interlocutory' according to Websters Dictionary is 'pronounced and arising during legal procedure not final.

8. In the Halsbury's Laws of England, the expression 'interlocutory order' has been interpreted in the following terms;

A judgment and 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 must therefore be considered separately in relation to the particular purpose for which it is required.

9. The meaning of the expression 'interlocutory order' came to be interpreted by the Apex Court in the case of Amar Nath v. State of Haryana AIR 1977 SC 2185. The order of issuance of summons to the appellants in the said case was subject matter of challenge in a revision before the High Court under Section 397 read with Section 482, Cr.P.C. In the police report, the appellants were not arrayed as accused since no clear evidence of their participation in the incident was made out. The said report was accepted by the Magistrate. Aggrieved thereby, the complainant moved in the revision to the Sessions Judge, Karnal who accepted the revision and remanded the case to the Magistrate for further enquiry. On receipt of the remand order, the learned Magistrate straightway issued summons to the appellants and it is against that order of the learned Magistrate the appellants moved the High Court in revision. The Court held that the impugned order of issuance of summons was an `interlocutory order' and, therefore, the revision was not maintainable in view of the bar created by Section 397(2), Cr.P.C. The order of the High Court came to be challenged in the Supreme Court. In order to find whether the order of the learned Magistrate is an 'interlocutory order' or a 'final order,' their Lordships made reference to the statement of 'Objects and Reasons' in enacting Sub-section (2) of Section 397, Cr.P.C. as also various judicial pronouncements and held thus :

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 forms the basis for insertion of this particular provision under 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 proceedings, may no doubt amount to interlocutory order against which no revision would lie. under Section 397(2) of the 1973 Code. The orders which are matter of movement and which affects or adjudicates 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.

10. The view taken in Amarnath (supra) has been reaffirmed by a three Judge Bench decision in the case of Madhu Limaye v. The State of Maharashtra (1977) 4 SCC 551 : AIR 1977 SC 47 and also in a latest decision in the case of Rajendra Kumar Sita Ram Pandey v. Uttam (1999) 38 All Cri C 438 : AIR 1999 SC 1028. On a reading of the authoritative pronouncements of the Supreme Court and keeping in mind the legislative intention behind Section 397(2), Cr.P.C. in putting an embargo upon the exercise of the revisional power of the Court, I would hold that an order of taking cognizance of the offence which is no doubt a matter of moment, is a final order since it affects the rights of the accused, inasmuch as on account of initiation of the criminal proceedings, the accused apprehends that the sword of Damocles hanging over his head may fall at any moment and his personal liberty may be curtailed and therefore, in order to further the ends of justice the higher Court if approached would be well within its jurisdiction to bring the whole proceeding to a halt by quashing the said order in exercise of revisional power.

11. Next question that crops up for consideration is whether the learned Sessions Judge was justified in setting aside the order of the learned Magistrate by taking into consideration the documents produced before him by the accused person. Section 190(1)(a) of the Cr.P.C. empowers a Magistrate to take cognizance of any offence upon receiving a complaint of facts, which constitute such offence. While

taking cognizance it is obligatory for him to resort to Section 200 and examine the complainant and his witnesses present if any. After considering the statement that there is sufficient ground for proceeding in the case, the he shall issue process for attendance of the accused. On the other hand, if he is of the opinion that no ground is made out for proceeding, he shall dismiss the complaint after recording brief reasons thereof. A reading of Sections 203 and 204, Cr.P.C. would indicate that when the Magistrate issues the process under Section 204, Cr.P.C. after taking cognizance of the offence he is not required to give detailed reasons of his satisfaction about the offence having been made out from the materials on record. His required satisfaction is implicit in the issue of process itself. But when he decides to dismiss the complaint under Section 203, Cr.P.C.; it is the statutory requirement that he shall briefly record the reasons thereof. In the present case, a reading of the order at Annexure 5 would show that learned Magistrate by applying his judicial mind to the statements of the complainant and the witnesses was prima facie satisfied that a case under Section 379, I.P.C. was made out and accordingly took cognizance of the said offence and issued process against the accused persons. It is well settled by a long catena of decisions of the Supreme Court that at the stage of issuance of process, the Magistrate is mainly concerned with the allegations made in the complaint and the evidence led in support thereof for his prima facie satisfaction, as to whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its revisional jurisdiction, which is a very limited one.

12. In that view of the matter, no fault can be found with the learned Magistrate taking cognizance of the offence under Section 379, I.P.C. and issuing process against the accused persons.

13. It need not be emphasised that the scope of power of revision of the Sessions Judge, as provided in Sections 397 and 399 of the Cr.P.C. is limited. Section 397 postulates that the Sessions Judge can interfere with the order of the inferior Court when he finds that there has been illegality, irregularity of impropriety in the order. Therefore, an order of the Magistrate taking cognizance of the offence being a final order can be challenged in revision by the aggrieved party, but then

interference by the revisional Court is permissible if any of the following tests as laid down by the Supreme Court in the case of Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi, AIR 1976 SC 1947 is satisfied. (Para 5).

(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused.

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible, and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction or absence of a complaint by legally competent authority and the like.

14. Applying the aforesaid tests to the present case I would hold that none of those circumstances existed for the learned Sessions Judge to upturn the order of the learned Magistrate and put an end to the criminal proceeding. To my mind, he overstepped his jurisdiction by allowing the accused persons to bring on record certain documents in support of their defence plea and relying upon those documents he appredated the evidence as if he was exercising power of the appellate Court. It may be stated, when an order of cognizance is challenged in revision, it is impermissible for the Sessions Judge in each and every case to look into the documents produced by the accused in support of his defence plea and quash the order being influenced by those documents notwithstanding the statements of the complainant and his witnesses who supported the case as narrated in the complaint. In certain circumstances, however, the Revisional Court would be justified to have a glimpse over the documents produced by the accused has been initiated on a distorted version to wreck vengeance.

15. Resultantly, the criminal miscellaneous application is allowed. The impugned order of the learned Sessions Judge is set aside and that of the learned Magistrate taking cognizance of the offence is restored.

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