

Akram and Another Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-07-2000

Reported in : I(2000)ACC614; 2000CriLJ3520; 2001(1)MPHT3

Judge : Mr. J.G. Chitre, J.

Acts : Code of Criminal Procedure, 1974 - Sections 205 and 397; [Motor Vehicles Act, 1988](#) - Sections 66, 392, 397(1), 397(2) and 482; [Constitution of India](#) - Articles 20 and 21; [Indian Penal Code \(IPC\), 1860](#) - Sections 323 and 506(1); [Motor Vehicles Act, 1988](#) - Sections 192(A); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 204(2) and 206

Appeal No. : Criminal Revision No. 721/99

Appellant : Akram and Another

Respondent : State of M.P.

Advocate for Def. : Shri Prakash Verma, Dy G.A.

Advocate for Pet/Ap. : Shri L.N. Trivedi, Adv.

Disposition : Revision allowed

Judgement :

ORDER

J.G. Chitre, J.

1. The question to be adjudicated is 'whether the Magistrate trying the cases of petty nature should grant exemption to the accused who has been represented by an advocate or counsel, and wants to get his case tried in accordance with provisions of law.

2. The prosecution case seems to be that petitioners were found carrying some school boys - seven in number - in the bus when they were apprehended by the police who registered a crime against them for infringing the provisions of Section 66 of the [Motor Vehicles Act, 1988](#) (hereinafter referred to as Act for convenience). Shri Trivedi submitted that the petitioners want to contest the case only because they want to oblige those school going boys for enabling them to reach the school in time. Shri Trivedi further submitted that the petitioners want to challenge the improper and arbitrary attitude of the police officials in such case who do not bother much for humanitarian spirit. Shri Trivedi submitted that the offence is punishable with fine only which would extend to sum of Rs: 5000/- with minimum fine of Rs. 2000/-. He pointed out that the Court has been granted the discretion to punish the offenders with less amount of fine in deserving cases by passing speaking orders and providing reasons therefore.

3. Shri Trivedi submitted that it being a petty offence, an application was moved by the petitioners for getting exemption, however, learned Magistrate rejected the prayer by coming to the conclusion that the provisions of Section 205, Criminal Procedure Code 1973 (hereinafter referred to as Code for convenience), are applicable to only Pardanashin women. Learned Magistrate also appears to be harbouring the impression that such concession can not be granted to the male beings if they happen to be the accused before the Magistrate. Shri Trivedi further submitted that learned Magistrate did not interpret the provisions of law properly and, therefore, landed in error by rejecting the prayer of the petitioners and, therefore, the order which is being assailed by this petition, be set aside.

4. Shri Prakash Verma, D.G.A. appearing for the prosecution submitted that the present order is interlocutory and, therefore, revision petition can not be entertained by this Court in view of Section 397(2) of the Code. Secondly, he

submitted that it is the discretion of the Magistrate whether to grant the exemption to the accused and being it so, it is not vested right of the accused to get exemption. He submitted that the revision petition is not maintainable in law and, therefore, it be dismissed in limine.

5. This question has to be sorted out finally for removing the improper concepts of law which some Magistrates are harbouring in their minds, which has resulted in prejudice to those unfortunate citizens who happen to be brought before the Court being indicted for commission of a crime of petty nature or of not a serious nature. Therefore, this Court decides the point at length for giving a guidance to the Trial Courts and for revealing various facets of the matter which has been indicated mainly for the purpose of protecting the fundamental and legal rights of the citizens keeping in view the spirit behind the Articles of [Constitution of India](#).

6. Articles 20 and 21 of Constitution speak of some fundamental rights which have been conferred for the purpose of protecting the liberty and dignity of the citizens in context with criminal trials. Art. 21 provides that, 'no person shall be deprived of his life or personal liberty except according to procedure established by law'.

Keeping in view this dictum of Art. 21, all the Courts are bound to interpret properly and correctly the legal precedents for the purpose of keeping pace and consistency with procedural established by law while conducting a criminal trial. The [Constitution of India](#) has provided fundamental rights for the purpose of welfare activities of the State and for ensuring a democratic life and rule for citizens in India. The Courts are duty bound to protect every legal right of a citizen; leave aside fundamental rights. The Courts have to be watchful to see that the persons who are indicated for crime are being tried keeping consistency with spirit of Article of [Constitution of India](#). Speedy trial has to be assured, fair trial has to be secured and citizens are to be saved from unnecessary harassment, hardship, experienced by them while attending the Courts on and often. It is true, that for the purpose of protecting the members of society and for the purpose of protecting the interest of public at large, the Courts are to be strict in implementing the provisions of law but in those cases only which are of serious nature and which speak of severe punishment and severe treatment to be given to the accused or a person

against whom a proceedings are being conducted, even then our judicial system ensures that the person who is being tried for alleged offence, is to be treated innocent till the offence is proved against him as required by law. We all, honour the golden principle of rule of innocence. Even, at the time of conducting the trials proper attention has to be given to maintain the human dignity. The Courts are very much cautious about that. And, therefore, the time has come that some guiding principles are to be laid down by this Court for the purpose of ensuring speedy trial with proper dignity and decorum of human hood as expected by a democratic nation like India, which is having democratic set up of Constitutional frame work.

7. In the matter of Madhu Limaye v. State of Maharashtra, reported in AIR 1978 SC 47, the Supreme Court has made some observations about the revisional powers of the High Court and about the interlocutory orders which are indicated by provisions of Section 397(2) of the Code. The Supreme Court laid down some principles in the said judgment which would be necessary to be quoted here. At the lime of exercising inherent powers of High Court, the High Court should note that-

- (1) The power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
- (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
- (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.'

The Supreme Court further observed that-

'The purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to

check this delay by introducing sub-section (2) in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include sub-section (2) of Section 397 also, 'shall be deemed to limit or affect the inherent powers of the High Court'. The bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference of High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, veraciously or as being without jurisdiction. The bar under Section 397(2) will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers.' The Supreme Court further held that-

The instant case (Madhu Limaye's case) undoubtedly falls for exercise of the power of High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting that invoking the revisional power of the High Court is impermissible. 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 be an 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'.

For giving example it has been pointed out in the said judgment that-

'An order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of Section 397(2).' The Supreme Court further pointed out that- 'The order which being impugned in Madhu Limaye's case rejecting the application challenging the jurisdiction of the Court to proceed with trial, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of sub-section (2) of Section 397. It must be taken to be an order of the type falling in the middle course.'

8. Therefore, before coming to the conclusion whether the particular order is interlocutory which has been loaded with the fetters put by provisions of Section 397(2), the Court will have to be attentive to the point as to what extent and as to how that order is affecting the fundamental right, or legal right of a citizen. If it is to be assumed that the accused or a person against whom proceeding is conducted in Criminal Court, is not entitled to challenge it by filing revision in Sessions Court

or High Court because it is not 'final order', there would be total denial of justice to such persons whose fundamental or legal rights have been infringed or put to jeopardy. The nature of that order will have to be considered very attentively and seriously by giving a minute scrutiny look to the entire situation keeping in view the facts and circumstances of that particular case. An order may not be final but even then it can be causing infringements to a legal right of such a person. There may be some order which would be putting fetters on the legal rights of an accused. That order may not be final but even then, that order may be causing a permanent damage to the accused while defending himself in the trial. Even denial of right to cross-examine a particular witness keeping in view the facts and circumstances of that case, would be assuming the nature of 'non-interlocutory order' because that order would be sealing his fate in said trial. Therefore, the term 'inter-locutory order' has to be understood keeping in view its reality. An order may be interlocutory in one case but that may not be in other case. What is important to be seen is whether it is causing a prejudice to legal right of such a person or not. Whether its impact and effect is demolishing any legal right of such litigant which would doom him in future in the said proceeding or any other resultant proceeding has to be seen. If the answer is YES not even 100%, that order can not be thrown as 'interlocutory'. Even in a criminal case or criminal proceedings, an order which is infringing not only the right but even the tinge of legal right, has to be treated as 'non-interlocutory order' keeping in view the facts and circumstances of that particular case, if it is likely to result in denial of opportunity to defend.

9. If the fetters are put in the way of the accused who is defending himself in a trial, by passing interim orders, he would not be able to defend himself and would be losing the battle when the final order is to be passed by the Criminal Court. Whether such person should be refused the entry to the arena of battle field of the legal right for protecting his right in a criminal trial or proceeding by stamping an order as interlocutory as indicated by provisions of Section 392 of that Code Certainly not; because that would be infringing the golden principles of rule of innocence. That would be demolishing principles of natural justice and fair trial. If the accused is entitled to put the end of fetters at initial stage of a criminal trial or proceeding legally, he is entitled to do so because he is not expected to undergo an expensive, fatigue creating, hardship studded ordeal which a person has to

undergo at the time of facing criminal trial or criminal proceedings. The order which is endangering legal right of a person or even indicating the likelihood of such danger, it has to be treated an order which is interlocutory. The order which is even infringing the tinge of legal right of a citizen and likely to jeopardise him at final stage at the time of passing of final order, that has not to be treated as interlocutory order. After all, the Courts are meant for administration of justice to protect a fundamental rights and liberty of citizens. None can be punished without following the due process of law which has been assured by Articles of our Constitution.

10. In the present case the learned advocate Shri Trivedi submitted that he cited some judgments of this Court before the Magistrate as follows:

(1) 1964 MPLJ 188 page 74 (State of M.P. v. R. C. Mukerjee)

(2) 1966 JLJ 148 page 105 (Ajodhi v. Tulsabai)

(3) 1984 MPWN 229 page 274 (Krishna Ku. v. Daljitsingh).

In the matter of State of M.P. v. R.C. Mukerjee, Single Bench of this Court held that-

'Simply because an offence under Section 506(1) of the Indian Penal Code was to be tried in the manner provided for trial of warrant cases could be no reason for denying to the accused the benefit of provisions of Section 205, Criminal Procedure Code. If summons is issued in the first instance, Section 205, Criminal Pro-cedure Code, was clearly applicable. The provisions of Section 205 should be liberally used. It was the privilege of the accused, and not the right of the complainant, to be present when the prosecution evidence was recorded. The accused might, for reasons beyond his or her control, have to forgo the privilege. It was not necessary that she should appear at least once before she could be allowed exemption from personal appearance.'

Single Bench of this Court in Ajodhi v. Tulsabai (supra) observed that-

'The petitioner was prosecuted for an alleged offence under Section 323, IPC. She claimed exemption from personal appearance in Court on the ground that she being a 'Pardanashin' lady does not usually appear in public. On the evidence on record the trial Magistrate found that she goes for work in the fields, and, therefore, she is not entitled to the exemption.'

This Court held in that matter-

'The powers conferred under Section 205, Cr. P. C. should be liberally exercised. In considering the application of exemption the Court should look into the allegations in the complaint and also the circumstances of the case might be taken into account. The prayer should be considered unless the Court is of the opinion that the presence of the accused is necessary in the interests of justice or for any other special reason. Therefore under Section 205, Cr. P. C. not only a Pardanashin lady but also a man can be exempted from personal appearance in Court in a case in which he is an accused for some good grounds. The test is not about the woman being 'Pardanashin'. In respect of a 'Pardanashin' woman there may be all more reason for granting her exemption from appearance.'

In the matter of Krishna Kumar v. Daljitsingh (supra) Single Bench of this Court held that-

'From a reading of facts and circumstances of that case, it was clear that the learned Magistrate was of the view that the presence of the accused, even though a 'Pardanashin lady' was necessary for the purpose of executing a bond in respect of future appearances as and when required, by the Court. 'The Court held that approach of the Court was not correct in that matter'.

11. When these three judgments were cited before learned Magistrate it was very strange that the learned Magistrate did not consider the ratio of the judgments of this Court while passing the order which is being assailed by the petitioner in this revision petition. A tendency is growing in subordinate Courts to cite the case only and to overlook them. That shows casualness and shirking attitude on the part of Judge or Magistrate. The Judges and Magistrates are supposed to keep in view that they are dealing with a very important right of liberty of a person who appears

before them as an accused. In criminal proceedings the person who is appearing before the Criminal Court has a big stake to lose. Civil injuries can be compensated by providing the compensation in terms of money but the injury which is caused by an order passed by Criminal Court may not be, in some cases compensated in terms of money. Once a person loses his dignity, and status, he loses it, in some cases forever. Once a person gets humiliated, he gets his crown hurt and crest fallen forever or at least for a longer period when he moves in the society. The Courts should keep in mind all these things. Unfortunately, even upto this decade generally a person who is coming to Criminal Courts is not looked with a proper view. The questions are being asked even these days to a person who is coming to the Criminal Court as to why he happens to be there. It indirectly indicates a stigma- Of course, that tendency has to be swept as early as possible by the members of the society. The Courts are bound to be more particular in safeguarding the human dignity when treating with an accused or opponent appearing in criminal proceedings. The applications which are well supported by provisions of law or legal precedents, can not be thrown in dust-bin by passing slipshod and perfunctory orders. The subordinate Courts are bound to honour the judgments of this Court as they are binding on them. Casualness, disobedience would be dealt with appropriately whenever it comes to the notice of this Court. Let there be an alarm to the persons adopting such shirking or casual attitude which is, in some cases, likely to obstruct flow of administration of justice which has to be always kept unpolluted, undisturbed and as crystal clear as our Constitution guarantees.

12. Section 192A of the [Motor Vehicles Act, 1988](#) (hereinafter referred to as Act for convenience) provides that-

(1) whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sub-section (1) of Section 66 or in contravention or any condition of a permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees and for any subsequent offence with imprisonment which may extend to one year but shall not be less than three

months or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both; provided that the Court may for reasons to be recorded, impose a lesser punishment.

Sub-section (2) provides:

'Nothing in this Section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injury or for the transport of materials for repair or for the transport of food or materials to relieve distress or of medical supplies for a like purpose.'

13. The present petitioner has been charged for committing offence under provisions of Section 66 of the Act.

14. Section 204(2) of Criminal Procedure Code provides that:

'No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.'

These provisions of law require that a copy of the complaint has to be sent along with complaint but seldom it is followed.

15. Section 205 of the Code provides that:

'(1) Whenever Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader. (2) Provides that:

But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings direct the personal attendance of the accused, and, if necessary enforce such attendance in the manner hereinbefore provided.' Section 253 provides that-- sub-section (1) that-

'Where a summons has been issued under Section 206 and the accused desires to plead guilty to the charge without appearing before the Magistrate, he shall transmit to the Magistrate, by post or by messenger, a letter containing his plea and also the amount of fine specified in the summons.'

'(2) Provides that: The Magistrate may, in his discretion, convict the accused in his absence, on his plea of guilty and sentence him to pay the fine specified in the summons, and the amount transmitted by the accused shall be adjusted towards that fine, or where a pleader authorised by the accused in this behalf pleads guilty on behalf of the accused, the Magistrate shall record the plea as nearly as possibly in the words used by the pleader and may, in his discretion, convict the accused on such plea and sentence him as aforesaid.'

16. The legislative intention is very clear to see that in petty cases the accused should not be put to hardship in attending the Court on even first day of hearing. Here 'hearing' does not always mean 'effective hearing'. In petty cases the law has made a provision that accused may convey the Magistrate his plea of guilt by post or through the lawyer. Even in fit cases the plea of guilt can be also recorded on plea put through his lawyer and the accused can be sentenced with fine. When an offence like one, which the present petitioner is facing, which is only punishable with sentence of fine, what prevented the magistrate from exercising the discretion in favour of the petitioner The word 'discretion' does not mean that the magistrate is entitled to pass any order as he desires. The discretion as narrated by Cardozo in his thesis submitted to Yale University speaks 'that when the Judge even is free is always free. He is not the night arrand riding on his dream horse in pursuit of his dream angles like night arrand. He is always guided by principles of law legal precedents, traditions and provisions of law'. Therefore, the discretion has to be used fairly, properly and in democratic way. Gone are old days of 'manorial system' of 15th century. The persons who are alleged of committing petty offences, should not be asked to attend for all days in Criminal Courts. If his plea can be recorded through a lawyer, if he can defend through a lawyer, it is necessary his presence should not be demanded. There may be cases where the identification of the accused is necessary; in such cases the accused needs to be asked to remain present at the time of recording the evidence those witnesses who are concerned with his identification; otherwise there is no point in crowding in Courts when our Courts are already crowded by litigations and litigants. There has to be a full stop at some point of time or at some stage.

17. The tendency which is growing in subordinate Courts in passing the orders against legal precedents without properly understanding the law enunciated, would increase the work load in the High Court. The tendency is growing amongst the litigants to file the lis on petty and flimsy grounds causing crowd in the Courts also needs to be curbed and has to be curbed at the level of subordinate Courts. The 'flow gate' entries of litigations can not be tolerated by High Courts when it is on flimsy grounds. And in view of that, even Sessions Courts have been conferred with power of revision. What can be done at Sessions Court level, can not and should not be brought up to the High Court level. A common man can not afford the expenditure of filing a lis in the High Court. He does not have that much of time to spare in these busy days of hard life and in many cases does not have sufficient money to spend. Let the citizens follow their regular procedure of life, the business or occupation for earning the bread which has become very difficult in these days. Even engaging a good lawyer is expensive.

18. There may be some persons who may face a litigation for honorable cause or on principle. Whether they should be asked to attend the Court on each and every day The spirit of independence, liberty and legal awareness should not be aborted by making the litigant to go to the Court on and often.

19. Thus, this petition is hereby allowed. The order which has been passed by learned Magistrate is hereby set aside keeping in view the petty nature of the offence. It is hereby directed that the petitioner shall be exempted from attending the Court unless the Court finds it necessary that his presence is a 'must' for the correct and legal decision of the case. A copy of this order be placed before Hon'ble the Chief Justice of this Court for circulating it amongst the subordinate Judges for guidance and preventing flooding flow of litigations in the High Court on flimsy grounds.

20. Criminal Revision allowed.