

Bhima Naik and ors. Vs. State

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Court : Orissa

Decided On : May-16-1975

Reported in : 1975CriLJ1923

Judge : G.K. Misra, C.J. and ;P.K. Mohanti, J.

Appellant : Bhima Naik and ors.

Respondent : State

Judgement :

G.K. Misra, C.J.

1. Petitioners are inhabitants of village Ghantasahi in Nayagarh police station in the district of Puri. In a proceeding initiated under Section 107 of the Criminal P. C. 1898 (hereinafter to be referred to as the old Code) a notice was issued to them under Section 114 of the old Code on 23-2-1974 by a Magistrate 1st Class, Nayagarh, calling upon them to show cause why they should not be ordered to execute a bond for Rs. 200/- with one surety each for the like amount for a period of one year for keeping the peace. On 4-7-1974 the Sub-Divisional Magistrate, Nayagarh, passed an order calling upon the petitioners to execute interim bonds under Section 117(3). The revision has been filed to quash this order.

The substantive part of the impugned order runs thus:

* * * * On hearing the Advocates for the parties, I am convinced that complication and troubles are there in the village covering on several matters such as the right of passage on some land which were discovered to have belonged to a member of one party during course of last settlement, over alleged misconduct of the said member Shri Pabitra Mohanty with wife of another member of the same party, catching fish from 'Koth' land and not allowing water to be taken to one party's land. Whether or not the allegations are true, at the present moment, on these grounds, police have prayed for execution of interim bonds by both parties. Had it been the case of the police that only one party would execute interim bond, it would perhaps have been a different matter. Since the police prayed for execution of interim bonds by both parties in both the cases, I consider it as a balanced view in order to maintain peace. Without reference to the merit of the case to be decided finally as regards execution of bond, it is ordered that both party members should execute interim bonds, under Section 117(3), Criminal P. C. for Rs. 200/- (Rupees two hundred) each to keep peace till conclusion of the enquiry.

Section 484(2)(a) of the Code of Criminal Procedure, 1973 (hereinafter to be referred to as the new Code) prescribes that if any enquiry is pending on 1-4-1974 when the new Code came into force, the same would be continued and disposed of under the provisions of the old Code as if the new Code had not come into force. The proceeding initiated under the old Code was pending on 1-4-1974 and must be continued under that Code. The petitioners were called upon to execute interim bonds under Section 117(3) of the old Code, the corresponding provision under the new Code being Section 116(3).

2. Right to file a revision is not a vested right. The impugned order was passed after the new Code came into force. The petitioners shall have to invoke the revisional jurisdiction, not under the old Code but under the new Code. The revisional jurisdiction of the High Court under the new Code is dealt with in Sections 397, 398 and 401. The validity of the revision must, therefore, be determined with reference to the provisions of the new Code.

3. Section 117(3) of the old Code under which interim bonds were called upon, so far as material runs thus:

Pending the completion of the inquiry under Sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under Section 112 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed, or in default of execution, until the inquiry is concluded:

xx xx xx xx

The scope and ambit of this sub-section is no longer *res integra*. In AIR 1971 SC 2481 : 1971 Cri LJ 1715, (*Madhu Limaye v. Ved Murti*) a Constitution Bench observed thus:

16. xx xx The Magistrate could only ask for an interim bond if he could not complete the enquiry and 'during the completion of the enquiry' postulates a commencement of the enquiry, which means commencing of a trial according to the summons procedure. It was not given to the Magistrate to postpone the case and hear nobody and yet ask the petitioners to furnish a bond for good conduct. The Magistrate should have made at least some effort to get a statement from Brij Mohan or Ved Murti Bhatt or any of the witnesses named in the challan. Nothing of this kind was done. Therefore the proceedings for asking for an interim bond were completely illegal.

Following this decision it was held in (1974) 40 Cut LT 148, (*Udayanath Pradhan V. State*):

The reason why the interim bond was without jurisdiction is that no such bond can be called upon to be executed unless there is commencement of the inquiry which means commencement of the trial according to summons procedure in which some evidence has been taken.

In both the aforesaid decisions the orders asking for execution of interim bonds were quashed.

In the Supreme Court case such an order was said to be completely illegal while in the Orissa case it was described as being without jurisdiction.

4. In : [1973]1SCR697 (Shri M.L. Sethi v. Shri R. P. Kapur) the meaning of the word 'jurisdiction' was fully examined. The majority view in *Anisminde Ltd.* (1969) 2 AC 147 was followed. Therein the absence of jurisdiction was not confined to entitlement to enter upon the enquiry in question. It was extended to subsequent error in the exercise of jurisdiction. The observations of Lord Reid may be quoted:

But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and. decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive.

Lord Pearce made similar observations.

5. Adopting the majority view the Supreme Court observed thus:

11. The dicta of the majority of the House of Lords, in the above case would show the extent to which 'lack' and 'excess of jurisdiction' have been assimilated or in other words, the extent to which we have moved away from the traditional concept of 'jurisdiction'. The effect of the dicta in that case is to reduce the difference between jurisdictional error and error of law within jurisdiction almost to vanishing point. The practical effect of the decision is that any error of law can be reckoned as jurisdictional. This comes perilously close to saying that there is jurisdiction if

the decision is right in law but none if it is wrong, xx xx.

6. Both on the conclusion in AIR 1971 SC 2481 : 1971 Cri LJ 1715 that the order calling for execution of interim bond before the commencement of the enquiry is completely illegal and on the application of the concept of jurisdiction propounded in : [1973]1SCR697 the impugned order is without jurisdiction and is a nullity.

7. The next question is whether the impugned order is revisable.

Sections 397, 398 and 401 of the new Code deal with the revisional jurisdiction of the High Court. They are extracted here-under:

397. Calling for records to exercise power 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 purpose 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) That 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.

398. Power to order inquiry.- On examining any record under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial

Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under Section 203 or Sub-section (4) of Section 204, or into the case of any person accused of an offence who has been discharged:

Provided that no court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

401. High Court's powers of revision.- (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

Section 398 confers the power to direct further enquiry and is not relevant to the point in issue.

Sections 397 and 401 correspond to Sections 435 and 439 of the old Code with certain changes.

The most significant changes brought about by these two sections in the new code are that the Sessions Judges and the High Courts have concurrent jurisdiction to finally dispose of revisions. Revisions against interlocutory orders and a second revision at the instance of the same person have been barred.

8. Mr. pas contends that the ban imposed by Section 397(2) does not extend to the exercise of revisional powers under Section 401. Doubtless powers to be exercised by the High Court in revision are enumerated in Section 401. But Sections 397, 398 and 401 are inter-linked and are to be read together.

The very opening clause in Section 401(1) to the effect 'in the case of any proceed-ing the record of which has been called for by itself or which otherwise comes to its knowledge' establishes beyond doubt that the revisional powers are to be exercised in relation to records called for by the High Court under Section 397(1). That apart, this view is concluded by : 1958 CriLJ244 (Ramgopal Ganpatrai v. State of Bombay) and an argument to the contrary is not open.

9. Before we examine the connotation of the expression 'interlocutory order' it would be instructive to notice why this interdict was imposed. Under Section 439 of the old Code interlocutory orders were revisable though that power was very sparingly exercised. What influenced the Parliament to impose the ban is given in the Statement of Objects and Reasons of the new Code. It was introduced with a view to speeding up the disposal of criminal cases-It was stated:

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

The following note was given on this clause while giving Notes on clauses:

At present, the High Court can interfere- in revision in respect of interlocutory orders also. When petitions are filed in this regard, the proceedings in the lower court are in most cases stayed in the lower court and this holds up matters until the disposal of the revision petition. It may be that at one stage it was considered that the facility of having a wrong or unjust order struck down by the High Court was a guarantee against even the slightest injustice at any stage of a criminal proceeding. But experience has shown, particularly during recent years, that this facility has been so extensively abused that it has become a major factor delaying disposal of criminal cases not only for months but for years. There are instances where cases have been held up for as long as five years by reason of the stay order during the pendency of a revision petition against some interlocutory order or the other. This facility is availed of mostly by the rich men, industrialist, corrupt officials and the like, who are able to delay disposal of cases against them almost indefinitely. Meanwhile, some of the witnesses die or lose interest in the case and sometimes even the prosecution loses its keenness. These revision petitions against interlocutory orders, therefore, not only delay justice but sometimes defeat it. Interlocutory orders are, therefore, specifically excluded in Clause 407. This change is not likely to result in any injustice. The subordinate courts, after separation of the judiciary, will be manned by judicial officers who may be expected to act strictly according to law. Further, if a Magistrate has a pronounced tendency to pass wrong orders in the course of criminal proceedings, the powers of superintendence given to superior courts would be used to correct such tendency...

10. What is an interlocutory order has not been defined in the Code. Judicial pronouncements on Articles 133 and 134 of the Constitution of India, 1950 and on Sections 109 and HO of the Civil P. C., 1908 point out the distinction between final and interlocutory orders. They would render substantial assistance in defining the meaning of interlocutory order in Section 397(2).

That their meaning is the same both in civil and criminal proceedings is concluded by AIR 1949 FC 1 : (1948) 49 Cri LJ 625, (S. Kuppuswami Rao v. The King).

11. We would now proceed to examine some of the authorities' laying down tests to distinguish final and interlocutory orders.

In AIR 1950 FC 77, (Mohammad Amin Brothers Ltd. v. The Dominion of India) the previous decisions were reviewed and their Lordships held that the test for determining the finality of an order is, whether the judgment or order finally disposed of the rights of the parties. The finality must be a finality in relation to the suit. If after the order the suit is still a live suit in which the rights of the parties have still to be determined it is an interlocutory order. The fact that the order decides an important and even a vital issue is by itself not material. If the decision on an issue puts an end to the suit the order will undoubtedly be a final one, but if the suit is still alive and has got to be tried in the ordinary way, no finality could attach to the order.

The facts in that case were that a Division Bench of the Calcutta High Court held that there was a bona fide dispute relating to the substantial part of the debt on which the winding up petition was based and as the solvency or otherwise of the company could not be determined until the amount of its liability for taxes was finally decided by the Income-tax Appellate Tribunal, it was just and proper that the winding up proceedings should be stayed till the appeals preferred by the company against the orders of assessment were finally disposed of.

Their Lordships of the Judicial Committee held that the judgment of the Division Bench left the entire case undecided and as such it was an interlocutory and not a final order.

On that very test an order of stay granted under Section 19 of the Indian Arbitration Act of 1899 was held to be an interlocutory order in AIR 1920 PC 86, (Firm Ramchand Nanjimal v. Firm Goverdhandas Vishandas Ratanchand). The order of stay which was under appeal did not finally dispose of the rights but left them to be determined by the courts in the ordinary way.

In AIR 1933 PC 58 (Abdul Rahman v. Cassim & Sons) facts were as follows : A person brought a suit for damages, but became insolvent during the pendency of the suit. The suit was dismissed for the Official Assignee's failure to furnish

security. The appellate court however held that the claim being one for damages did not vest in the Official Assignee and remanded the case for trial on merits.

Their Lordships held that the order of remand did no doubt decide an important and even a vital issue in the case, but it left the suit alive, and provided for its trial in the ordinary way and as such it was an interlocutory and not a final order.

AIR 1949 FC 1 : 49 Cri LJ 625 arose out of a criminal case. An objection was taken that sanction was necessary under Section 197 of the old Code. The contention was overruled by the Madras High Court, On a certificate being granted for leave to appeal the question came up for consideration whether the order passed in revision was a final order. It was held to be an interlocutory and not a final order as the order was not on a point which would terminate the matter before the court finally.

The observations of Lord Esher, M.R. in *Salaman v. Warner* (1891) 1 QB 734 as to the meaning of the expression 'final order' which was accepted, run as follows:

If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final but interlocutory.

The same view was given in : [1951]19ITR108(SC) (*Prem Chand v. State of Bihar*) and an order of the High Court declining to call upon the Board of Revenue to state a case under Section 21(3), Bihar Sales Tax Act, 1944 was held as not a final order.

In : 1965 CriLJ94 (*State of U.P. v. Col. Sujjan Singh*) criminal proceedings were taken under Section 6(1)(a) of the Prevention of Corruption Act, 1947. The proceedings were pending in the court of the Special Judge. In the course of those proceedings the respondents filed an application for production of a document by the Union Government which was allowed by the court. It was contended on behalf of the Union Government that the order was a final order as it negatived the

claim of privilege and decided against the right of the Union Government to withhold the production of the document. Their Lordships held that the order was an interlocutory order as it did not purport to decide the rights of the parties. It enabled the accused to have the document duly proved and exhibited in the case and related only to a procedural step for adducing evidence.

The same view has been taken in : [1969]2SCR699 (Tarapore & Co. Madras v. V/O Tractors Export, Moscow). Their Lordships held / that an order, refusing to grant an interim injunction, passed by the High Court in appeal was an interlocutory order as the suit had not been finally disposed of and the rights and obligation of the parties were still to be determined.

Mr. Das, however, contends that a different view was taken in : 1968 CriLJ876 (Mohanlal Maganlal Thakkar v. State of Gujarat) and that the view taken in earlier cases had been superseded. The facts in that case may be stated. After an enquiry under Section 476, Cri. P. C. the Magistrate ordered that a complaint was to be filed against a person in respect of offence under Sections 205, 467 and 468 read with Section 114, I. P. C. In appeal the Additional Sessions Judge held that the complaint was competent only in respect of the offence under Section 205 read with Section 114. The High Court dismissed the revision application against the order of the Court of Session. It was observed in that case that the finality of the order in revision in respect of an enquiry under Section 476, Cri. P. C. is not to be judged by correlating it with the controversy in the- complaint, namely, whether the appellant in that case had committed the offence charged against him in the complaint petition. The Supreme Court in that case was concerned merely with an order passed by the High Court which maintained the order of the Additional Sessions Judge that a complaint could be filed against the appellant. The order of the High Court finally disposed of the proceeding in the magistrate's Court relating to the expediency of instituting criminal proceedings against the appellant. It was only thereafter for the court trying the complaint to decide whether the offence complained of was committed by the appellant. This decision was approved in : [1969]2SCR699 where their Lordships held that the proceeding for filing a complaint under Section 476, Criminal P. C. was a self-contained proceeding and was finally disposed of by the order directing filing of a complaint under Section

205 read with Section 114, I. P, C. The proceeding instituted on the complaint was not a part of or incidental to the proceeding for an enquiry whether a complaint should be filed. Thus : 1968 CriLJ876 unequivocally laid down that where one proceeding is a self contained one and was not a part of or incidental to another proceeding, the order finally disposing of the first proceeding is a final order.

It was contended by Mr. Das that interlocutory orders which have the force of a decree must be distinguished from other interlocutory orders which are a step towards the decision of the dispute between parties by way of a decree or a final order. Reliance in support of such contention was placed on : [1960]3SCR590 , (Satyadhavan Ghosal v. Smt. Deorajin Debi). In that case the test to determine interlocutory and final orders was -not considered. The question mooted there was whether the principles of res judicata have application to interlocutory orders. In that connection their Lordships observed as follows:

Interlocutory orders which have the force of a decree must be distinguished from other interlocutory orders which are a stop towards the decision of the dispute between parties by way of a decree or a final order.

Their Lordships held that the order of remand passed in that case was an interlocutory order which did not terminate the proceedings and the correctness of that order can be challenged in an appeal from the final order. This decision was followed in AIR 1972 SC 1291 : 1972 Lab IC 644, (The United Provinces Electric Supply Co. Ltd. v. T.N. Chatterjee) again in connection with the discussion on the question of res judicata. These decisions, therefore, do not render any help to come to a conclusion different from a series of decisions laying down the test of an interlocutory order.

12. Applying the aforesaid tests to the facts of this case there is no escape from the conclusion that the impugned order dated 4-7-1974 is an interlocutory order. The order calling upon the petitioners to execute interim bonds did not put an end to the main proceeding under Section 107, Cri. P. C. Though the impugned order purported to decide a vital issue as to the execution of interim bonds it did not terminate the proceeding,

13. Mr. Das advanced a further argument that if the impugned order cannot be quashed under Section 401, Cri. P. C. on account of the ban imposed under Section 397(2) it is liable to be quashed under Section 482 of the new Code which corresponds to Section 561-A of the old Code.

To appreciate this contention, Section 482 may be extracted:

482. Saving of inherent powers of High Court.- Nothing in this code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

It is same, word for word, as Section 561-A of the old Code. The scope and nature of the power and the extent of its exercise have been fully explained in AIR 1958 SC 376 : 1958 Cri LJ 701, (Talab Haji Hussain v. M.P. Mondkar) and : 1960 CriLJ1239 , (R.P. Kapur v. State of Punjab). Why this section was on the statute book is well known. In prescribing rules of procedure Legislature undoubtedly attempts to provide for all cases that are likely to arise but it is not possible that any legislative enactment dealing with procedure, however carefully it may be drafted, would succeed in providing for all cases that may possibly arise in future. Lacunae are sometimes discovered in procedural law and it is to cover such lacunae and to deal with cases where such lacunae are discovered that procedural law invariably recognises the existence of inherent powers in courts.

With regard to the scope and ambit of the exercise of this inherent power their Lordships observed thus:

This inherent power cannot naturally be invoked in respect of any matter covered by the specific provisions of the Code, It cannot also be invoked if its exercise would be inconsistent with any of the specific provisions of the Code. It is only if the matter in question is not covered by any specific provisions of the Code that Section 561-A can come into operation, subject further to the requirement that the exercise of such power must serve either of the three purposes mentioned in the said section. (See para 5 of : 1958 CriLJ701 at para 12).

It was emphasised that the inherent power has to be exercised sparingly carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. In that particular case bail granted in bailable offences was cancelled. It was held that such power can be exercised in the interest of justice, there being no specific provision in the Code debarring cancellation of bail in bailable cases.

In : 1960 CriLJ1239 the identical principles were re-affirm-ed. Therein the question of quashing a criminal proceeding at an interlocutory stage was fully examined. Some of the categories of cases where inherent jurisdiction to quash proceedings can and should be exercised were indicated. The illustrations were not of course exhaustive. In the following cases their Lordships said that Section 561-A could be invoked:

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction furnishes an illustration of this category.

(ii) Where in the allegations in the F. I. R. or the complaint even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged. In such cases no question of appreciating evidence arises. It is a matter merely of looking at the complaint or the F. T. R. to decide whether the offence alleged is disclosed or not.

(iii) Where , the allegations against the accused persons do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. The latter category comes within the function of the trial Magistrate and it is not to be interfered with under Section 561-A.

14. If Section 397(2) had not been on the statute book : 1960 CriLJ1239 would be clear authority to invoke the power under Section 482 for quashing the impugned order; but those two very Supreme Court decisions lay down that inherent powers cannot be invoked contrary to specific provisions of the Code. In view of the specific provision of the Code under Section 397(2) the inherent power under Section 482 cannot be invoked even in respect of instances illustratively given in : 1960 CriLJ1239 .

The result of the aforesaid discussion is that Section 482 of the new Code cannot be invoked to quash interlocutory orders in view of the positive ban imposed by Section 397(2).

15. The last contention urged by Mr. Das is that the impugned order is a complete illegality and without jurisdiction as was held in AIR 1971 SC 2481 : 1971 Cri LJ 1715 and (1974) 40 Cut LT 148. Being without jurisdiction it is a nullity and is non est in the eye of law and therefore, it is no order at all despite the fact that it was passed at an intermediate stage of the proceeding and has the physical form and shape of an interlocutory order and as such Section 397(2) is no bar for interference by this Court in exercise of its power under Section 401 or Section 482 Cri. P. C.

The contention requires careful examination. The object of enacting Section 397(2) was that by coming up in revision against interlocutory orders there was delay in the disposal of criminal proceedings resulting in great harassment to the litigants. If interlocutory orders passed without jurisdiction cannot be interfered with at any earlier stage, then the harassment would be much greater and would be more oppressive. As we have already indicated, the High Court cannot invoke its inherent jurisdiction even in case of instances enumerated in : 1960 CriLJ1239 . Interlocutory orders which are without jurisdiction and are nullities have no existence in the eye of law. Such orders are to be ignored. The litigants cannot escape harassment merely by ignoring them and it is why the jurisdiction of the High Court is invoked to quash such orders. Section 397(2) will have no application to such interlocutory orders which though have the form of interlocutory orders are no orders at all. On this analysis Section 397(2) will be out of the way

and exercise of the power by the High Court under Section 401 or Section 482 cannot be ousted.

On the other hand if interlocutory orders are passed within jurisdiction, then they cannot be interfered with on account of the ban imposed by Section 397(2). Certain instances may be given to illustrate this concept.

An order calling for execution of an interim bond under Section 117(3) was passed after the commencement of the enquiry under Section 107, Cri. P. C. Evidence taken up to that stage may be such on which another court of fact may take a different view. The Magistrate's conclusion one way or the other cannot be interfered with in revision as he acts within jurisdiction and in exercise of such jurisdiction he might have come to a wrong conclusion on facts. Section 397(2) is a bar in the path of interference under Section 401 or Section 482.

Under Section 145, Cri. P. C. if an Executive Magistrate is satisfied that a dispute likely to cause a breach of the peace exists concerning any land, he shall pass a preliminary order in writing stating the grounds of his being so satisfied. Suppose, the Magistrate in his order writes that there was no apprehension of breach of peace and yet called upon the parties to the dispute to file written statements, the order of the Magistrate would be without jurisdiction. Such an order, though interlocutory, can be revised. A Criminal Court has no jurisdiction to deal with civil rights. The Magistrate gets jurisdiction only when there is an apprehension of breach of peace. If there is no apprehension of breach of peace there is lack of jurisdiction and the preliminary order so issued will be without jurisdiction and a nullity. In such a case if Section 397(2) will be a bar, the entire proceeding would continue till it is finally found out that the Magistrate acted without jurisdiction. On the other hand if there was an apprehension of breach of peace, he gets jurisdiction and any interlocutory order passed by him subsequently cannot be interfered with in revision.

16. In this case the impugned order, as has already been pointed out, was passed without jurisdiction and was completely illegal and is a nullity. It is no order - much less an interlocutory order - in the eye of law. Section 397(2) will have no application to such an order. It would therefore, be open to the High Court to

interfere in revision under Section 401 or 482.

17. We would, sum up our conclusions thus:

(i) The proceeding under Section 107, Cri. P. C. which was initiated prior to the commencement of the new Code would be enquired into under Section 484(2)(a) as it was pending on 1-4-1974 when the new Code came into force.

(ii) A revision filed against the impugned order would be under the new Code as the right to file a revision is not a vested right. The revisional jurisdiction would be exercised with reference to Sections 397 and 401 of the new Code.

(iii) Sections 397, 398 and 401 of the new Code are interlinked and are to be read together.

(iv) If the decision on an issue puts an end to a suit or proceeding, the order is a final order. But if the suit or criminal proceeding is still alive and has got to be tried in the ordinary way, no finality is to be attached to the order. It will be an interlocutory order.

(v) Section 482 of the new Code cannot be invoked to quash an interlocutory order in view of the specific provision in Section 397(2) banning revision of interlocutory orders.

(vi) Though the impugned order dated 4.7.1974 has the form and shape of an interlocutory order it is illegal and without jurisdiction. It is a nullity and is non est in the eye of law.

(vii) Interlocutory orders passed without jurisdiction which constitute nullities can be interfered with in revision under Section 401 and in appropriate cases under Section 482. Interlocutory orders passed within jurisdiction cannot be interfered with either under Section 401 or under Section 482.

18. Mr. Das placed reliance on Section 483 of the new Code to contend that under this section High Court can exercise powers of superintendence analogous to Article 227 of the Constitution. The section lays down that every High Court shall so exercise its superintendence over the courts of Judicial Magistrates subordinate

to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates. The impugned order has been passed by an executive Magistrate. Section 6 of the Code makes a distinction between Judicial Magistrates and Executive Magistrates. Section 483, therefore, is not applicable to orders passed by Executive Magistrates. It is not necessary in this case to express an opinion as to whether High Court would exercise powers of judicial superintendence over the courts of Judicial Magistrates.

19. The result of the aforesaid discussion is that the impugned order is quashed and the Criminal Misc. Case is allowed.

P.K. Mohanti, J.

20. I agree.

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