SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Bhupinder Kumar Vs. State

Bhupinder Kumar Vs. State

SooperKanoon Citation : sooperkanoon.com/683042

Court : Delhi

Decided On : Jan-09-1975

Reported in : 1975CriLJ1185; 1975RLR228

Judge : M.R.A. Ansari, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 397

Appeal No. : Criminal Revision Appeal No. 234 of 1974

Appellant : Bhupinder Kumar

Respondent : State

Advocate for Pet/Ap. : Hari Chand and; D.C. Mathur, Advs

Judgement :

M.R.A. Ansari, J.

(1) Bhupinder Kumar Bhatnagar, the petitioner herein, and another by name, Parmod Kumar, were committed by the Metropolitan Magistrate. Delhi to take their trial in the Court of Session and a charge has been framed against the petitioner for an office under section 376 of the Indian Penal Code. The petitioner has filed the present revision petition against the order of the learned Additional Sessions Judge dated 5.6.1974 framing the charge against the petitioner.

(2) The order of the learned Additional Sessions Judge framing the charge is being challenged on the ground that the material on record did not make out a prima facie case against the petitioner for an offence under section 376 Indian Penal Code inasmuch as in the statements .made by the proscutrix under Ss. 161 & 164 Cr. P.C. she had not implicated the petitioner by name and the description of the petitioner given by her in such statements did not tally with the description of the petitioner and further that in the statement of the prosecutrix before the committing Magistrate, she did not identify the petitioner as the person who had committed rape on her.

(3) A. preliminary objection has, however, been raised by the learned counsel for the State against the maintainability of the present petition under the provisions of the new Criminal Procedure Code. It is pointed out that the order of the learned Additional Session Judge framing the charge against the petitioner is in the nature of an interlocutery order and that under section 377(2) of the new Code, no revision lies against such an interlocutory order. S. 397 is:-

(4) The expression 'interlocutory order' has not been defined in the Code nor are the expressions 'judgment' or 'final order' defined in the Code. But the meaning of these expressions has been explained in, the judgments of the Privy Council, the Federal Court and the Supreme Court. In Ramchand Manjimal v. Goverdhandas Vishandas Ratanchand AIR 1920 Pc 86, Viscount Gave, J., held that the test of the finality of an order was whether the order finally disposed of the rights of the parties. This test was adopted by the Privy Council in a later case, namely:-V.N. Abdul Rehman and others v. D.K. Cassim and Sons and another and Sir George Lowndes J., added the following observations to the test laid down by Lord Cave :- 'It should be noted that the appellate Court in India was of opinion that the order it had made went to the root of the suit, namely, the jurisdiction of the Court to entertain it, and it was for this reason that the order was thought to be final and the certificate granted. But this was not sufficient. 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, no appeal lies against it under S. 109(a) of the Code.'

(5) The tests laid down by the Privy Council in the above two cases were approved by the Federal Court in S. Kuppuswami Rao v. The King and it was further held that the tests which had to be applied to determine whether an order was a final order were the same both in respect of orders in civil proceedings as well as orders in criminal proceedings. The Federal Court also approved the following interpretation of the expression 'final order' by Lord Esher, N.R. in Salaman v. Waner (1891) 1 C.B. 734 :- '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 Federal Court reiterated the same rule in a later case, namely, Mohammad Amin Brothers Ltd. v. The Dominion of India and others AR. 1950 FC77 and further observed as follows :- 'The expression 'final order' has been used in contradistinction to what is known as 'interlocutory order' and the essential test to distinguish the one from the other has been discussed and formulated in several cases, decided by the Judicial Committee.' Then after referring to S. Kuppuswami Rao's case and the case of Ram Chand Manjimal the Federal Court further observed as follows :- '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 left alive and has got to be tried in the ordinary way, no finality could attach to the order.'

(6) The Supreme Court considered all the above decisions in Mohan Lal Manganlal Thakkar v. State of Gujarat : 1968 CriLJ876 and observed that:-

'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 as to part. The meaning of the two words 'final' and 'interlocutory' has, thereforee, 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 interlocutery

application or reserves liberty to apply.... In some of the English decisions where this question arose one or the other of the following four tests was applied.

1. Was the order made upon an application such that a decision in favor of either party would determine the main dispute

2. Was it made upon an application upon which the main dispute could have been decided

3. Does the order as made determine the dispute

4. If the order in question is reversed would the action have to go on

7. The facts of the case before the Supreme Court were that after an enquiry under section 476 Cr. P.C., the Magistrate ordered filing of a complaint against the appellant in that case 231 in respect of offences under sections 205, 467 and 468 read with section 114 1PC. In an appeal filed by the appellant, the Additional Sessions Judge held that the said complaint, was justified but only in respect of the offence under section 205 read with section 114 I PC. A revision filed by the appellant in the High Court was dismissed. But the High Court gave a certificate under Article 134(1)(a) of the Constitution. When the appeal came up for hearing before the Supreme Court, preliminary objection was raised against the maintainability of the appeal on the ground that the order of the High Court dismissing the revision petition filed by the appellant was not a final order. Applying the test laid down by the English Courts as well as by the Federal Court, referred to above, the Supreme Court observed as follows :- 'But these were cases where the impugned orders were passed in appeals or revisions and since an appeal or a revision is in continuation of the original suit or proceeding the test applied was whether the order disposed of the original suit or proceeding. If it did not, and the suit or proceeding was live one, yet to be tried, the order was held not to be final. Different tests have been applied, however, to orders made in proceedings independent of the original or the main proceeding'... 'The aforesaid discussion leads to the conclusion that when the Magistrate ordered the filing of the complaint against the appellant, the parties to that controversy were the State and the appellant and the controversy between them was whether the appellant

had committed offence charged against him in that complaint. The appeal filed by the appellant before the Additional Sessions Judge was against the order filing the complaint, the controversy therein raised being whether the Magistrate was justified in filing it, that is to say, whether it was expedient in the interest of justice and for the purpose of eradicating the evil of false evidence in a judicial proceeding before the Court. The controversies in the two proceedings were thus distinct though the parties were same. When the Additional Session Judge held that the complaint was justified is respect of the offence under section 205 read with section 114 and was not justified in respect of the other offences his judgment in the absence of a revision by the State against it finally disposed of that part of the controversy, i.e., that the complaint in respect of offences under Ss. 467 and 468 read with section 114 was not justified. When the appellant filed revision in respect of the complaint for the remaining offence under section 275 read with S. 114 the Single Judge of the High Court dismissed that revision. His order of dismissal disposed of that controversy between the parties and the proceeding regarding the question as to whether the complaint in that regard was justified or not was finally decided. As observed in : [1966]3SCR198 (supra) the finality of that order was not to be judged by co-relating that order with the controversy in the complaint, viz. whether the appellant had committed the offence charged against him therein. The fact that the controversy still remained alive is irrelevant. It must consequently be held that the order passed by the High Court in the revision filed by the appellant was a final order within the meaning of Article 134(1)(c)'.

(7) In the course of an inquiry or trial under the Criminal Procedure Code, the Court is called upon to determine several questions before passing an order either discharging the accused or convicting him or acquitting him. The proceedings of the subordinate Courts determining such questions were subject to revision by the Sessions Judge or the High Court under sections 435 to 439 Cr. P.C. (1898). But the position is different under the new Code and sub-section (2) of section 397 has been introduced for the first time ousting the jurisdiction of the revisional Courts in respect of interlocutory orders passed by the subordinate Courts. This sub-section has been introduced in pursuance of the scheme for minimising the delay in the disposal of cases. In this connection, reference may be made to the omission in the new Code of provisions relating to committtal proceedings. It is not for the

Courts to question the wisdom of the Legislature in omiting certain provisions of the old Code and in introducing certain new provisions in the new Code which would avoid delay in the disposal of cases. On the other hand, it is the duty of the Courts to interpret the new provisions in the Code in the light of the scheme underlying them.

(8) Applying the tests laid down by the decision referred to above, it has to be consi dered whether the order of the Additional Sessions Judge framing the charge against the petitioner terminates any proceedings or whether it finally decides any question that arises in such proceedings. In other words, does the order determine the question of the guilt or innocence of the petitioner in respect of the offence with which he is charged It is obvious that an order framing the charge does not decide the question of the guilt or the innocence of the petitioner. A charge merely puts the petitioner on notice as to the offences for which he is being tried. The order keeps the proceedings alive. Even if the order framing a charge is treated as an order declining to discharge the petitioner, even then it does not amount to a final orders. It has been held by a Division Bench of this Court in B.D. Sethi and others v. V.P. Dewan (1971) 73 Plr 123, that an order of discharge of an accused under section 259 of the old Code was not a judgment or a final order, as it did not prohibit the Magistrate from entertaining a fresh application asking for the same relief on the same facts or from reconsidering that order. The learned counsel for the petitioner contends that, an order framing a charge against the accused cannot be reconsidered by the Court and that thereforee, such an order is not interlocutory order and in support of this contention, he seeks to rely upon the following observations of this Court in B.D. Sethi's case referred to above- 'During the course of proceedings a Magistrate has to pass various interlocutory orders and it will not be correct to say that he has no jurisdiction to re-consider any of them. ' For example the orders exampting the presence of the accused or refusing it are not final orders. I do not understand these observations to mean that the test to be applied to an interlocutory order is whether it was open to the Magistrate to reconsider it or that the test of a final order is that it would not be open to the Magistrate to reconsider it. Such a test has not been laid down in the judgments of the Privy Council, the Federal Court and the Supreme Court which have been referred to (supra). thereforee, even if it may not be open to the trial Court to

reconsider the order framing the charge against the petitioner, it will not be a final order. It still remains an interlocutory order & by virtue of sub-section (2) of section 397 of the new Code, the powers of the revision conferred on this Court cannot be exercised in relation to such an interlocutory orders. This revision petition, thereforee, not maintainable.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com