

Sant Lal Vs. Krishan Lal

Sant Lal Vs. Krishan Lal

SooperKanoon Citation : sooperkanoon.com/683526

Court : Delhi

Decided On : Jul-25-1975

Reported in : 1976CriLJ215; 1975RLR468

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

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 68 of 1975

Appellant : Sant Lal

Respondent : Krishan Lal

Advocate for Def. : Mr. Vijay Kishan

Advocate for Pet/Ap. : M.G. Dhingra and; Vijay Kishan, Advs

Judgement :

M.R.A. Ansari, J.

(1) Krishan Lal Suri, the respondent here in, filed a suit against Sant Lal Nagrath, the petitioner herein, for recovery of Rs.1,100.00 by way of damages for alleged illegal seizure of his shooting license and his arms. The petitioner filed his written statement in the suit resisting the claim of the respondent herein. In the said written statement, the petitioner made certain allegations which according to the

respondent constituted defamation. On the basis of these alleged defamatory remarks, the respondent filed a complaint against the petitioner under section 500 IPC- The learned Magistrate after perusing the complaint and the statements and his witnesses passed an order under section 204 Cr, P.C. (old) on 30-3-1973 directing the issue of summons for the appearance of the petitioner in his Court on 26-4-1973. The petitioner appeared before the learned Magistrate and filed an application on 26-4-1973 for quashing the proceedings against him and for discharging the petitioner under section 253(2) Cr. P.C. on the ground that the learned Magistrate had no jurisdiction to try the petitioner for an offence under section 500 IPC. This application was dismissed by the learned Magistrate by his order dated 9-7-1973. The petitioner there upon filed a revision petition in the Court of Sessions which was dismissed by the Additional Session Judge, Delhi, by his order dated 28-2-1974. The petitioner thereupon filed a revision petition in this court for quashing the orders of the learned Magistrate dated 30-3-1973 and 9-7-1973. Safer J., before whom this revision petition came up for hearing on 26-4-1974, noticed that the petitioner had filed a single revision petition against two separate orders of the learned Magistrate and the learned Judge expressed his view that the two impugned orders of the learned Magistrate could not be challenged by a single revision petition. The petitioner thereupon withdrew the revision petition and the same was dismissed as withdrawn with liberty to the petitioner to invoke any other remedy open to him. The petitioner has filed the present petition on 27-4-1974 purporting to be under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the new Code). In filing this revision petition, the petitioner has prayed that the proceedings pending against him in the Court of the learned Magistrate including the order dated 30-3-1973 be quashed. In effect, the petitioner has filed a single petition challenging two separate orders for the learned Magistrate which he was not permitted to do by Safer, J. The learned counsel for the petitioner has, however, stated that the revision petition may be treated as a petition challenging the order of the learned Magistrate dated 30-3-1973. Accordingly, this revision petition is treated as such.

(2) Mr. Vijay Kishan, learned counsel for the respondent has raised a preliminary objection against the maintainability of this petition. According to the learned counsel, the order of the learned Magistrate dated 30-3-1973 is in the nature of an

interlocutory order, a revision against which does not lie by reason of subsection (2) of section 397 of the new Code. It is his contention that even though the present petition purports to be one under section 482 of the new Code, it is in substance a revision 470 petition under section 397 of the new Code. It is his further contention that section 482 of the new Code does not apply to cases where there is a specific provision in the Code.

(3) In reply, the learned counsel for the petitioner contends that he has challenged the order of learned Magistrate dated 30-3 1973 on the ground that the learned Magistrate had no jurisdiction to try the by case reason of sections 197 and 199 of the new Code, and that in view of (he nature of his challenge against order of the learned Magistrate dated 30 3.73, the present petition cannot be treated revision petition under section 397 of the new Code but a petition under section 482 of the said; Code.

(4) If the present petition is treated as one- challenging the legality of the order of the learned Magistrate dated 30.3.73 there cannot be any doubt that the present petition is not maintainable either under section 397 or section 482 of the new Code. What constitutes an interlocutory order has been discussed by me in an earlier case in Bhupinder Kumar v. State reported in 1975 Raj LR 228. I have expressed the view that even an order framing the charge against an accused person is in the nature of an interlocutory order and a revision against such an order does not lie by reasons of sub section (2) of section 97 of the new Code. By the same reasoning an order under section 204 Cr P.C. must be held to be an interlocutory order. A Division Bench of this Court in Amrik Singh v. State 1975. Raj LR 69 has also expressed its view that an order under section 204 of the new Code is an interlocutory order. A revision petition against such an order is clearly barred by sub section (2) of section 397 of the new Code. This bar cannot be circumvented by having recourse to section 482 of the new code It is now well settled that S. 482 does not apply to cases which are covered by specific provisions of the new Code. (Vide R.P. Kapur State of Punjab : 1960 CriLJ1239 .

(5) Even if the order of the learned Magistrate dated 30.3 1973 has been challenged on the ground of went of jurisdiction, it will still remain an interlocutory

order In V.N. Abdul Behram v. D.K. Cassim ^ Sir George Lowndes, J, made the following, observation: 471 '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 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 in which the rights of the parties have still to be determined, no appeal lies against it under S. 109(a) of the Code.'

(6) thereforee, the preliminary objection raised by the learned counsel for the respondent against the maintainability of the present petition must be upheld.

(7) Even if it is assumed for the moment that the present petition is maintainable under section 482 of the new Code, the petition has no merit.

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