

Savitri Devi and anr. Vs. State and anr.

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Court : Delhi

Decided On : Aug-13-1987

Reported in : ILR1987Delhi319

Judge : M.K. Chawla, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 397(2)

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 279 of 1987

Appellant : Savitri Devi and anr.

Respondent : State and anr.

Advocate for Pet/Ap. : D.C. Mathur,; Satish,; S. Sharma and;

Judgement :

M.K. Chawla, J.

(1) Smt. Savitri Devi, the present petitioner along with her son Naresh Kumar, since deceased, was summoned on a complaint by respondent No. 2, Smt. Nupur, for allegedly having committed an offence punishable under Section 406 and 498-A of Indian Penal Code. During the trial the petitioner moved an application on 17-5-1986 for the grant of exemption from personal appearance. The learned trial court issued its order dated 17-5-1986 allowing the application and exempted her personal appearance in Court till further order.

(2) The first and, foremost contention of the petitioner is that the learned Additional Sessions Judge could not and should not have entertained the revision petition in as much as the order of the trial court was interlocutory one and a revision petition was not maintainable under sub-section (2) of Section 397 of Code of Criminal Procedure. Furthermore, the discretion exercised by the learned lower court should not have been interfered with, which on the face of it is just proper and legal under the circumstances of the case.

(3) The learned counsel for the respondent does not see eye to eye to the submissions made in support of the petition. According to her, the order granting exemption to the petitioner is a final order in as much as it has finally determined the rights of the parties with regard to their personal appearance. Her further submission is that there is no provision under which the accused can be granted general exemption, while the complainant is required to attend the proceedings on every date of hearing. The discretion has rightly been exercised and the impugned order does not call for any interference.

(4) After hearing the learned counsel for both parties at length, I am of the opinion, that the learned Additional Sessions Judge had no jurisdiction to entertain and dispose of the revision petition against an interlocutory order.

(5) Section 205 of the Code of Criminal Procedure is the relevant provision which confers the powers on the Magistrate to dispense with the personal attendance of the accused, if proper case is made out. The words, 'may, if he sees reasons, so to do' shows that the Magistrate has a discretion to dispense with the personal attendance of the accused or not, thinks fit, though, such a discretion has to be exercised judicially and not arbitrarily or capriciously, keeping in view the circumstances of the case.

(6) The question now arises for decision is as to whether the order of the learned Metropolitan Magistrate is an interlocutory one or not.

(7) An interlocutory order has been defined as the one which is passed at some intermediate stage of a proceeding, generally to advance the cause of justice for the final determination of the rights between the party. The Supreme Court in case

reported as Amar Nath and others v. State of Haryana and others 1977 S.C. 2185 has defined the term interlocutory order, thus : 'The term interlocutory order' in Section 397(2) has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties'. Any order which substantially affects the right 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 formed the basis for insertion of this particular provision in Section 397. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2). Following the observation of the Supreme Court, in my opinion, an order rejecting or accepting an application for exemption from personal attendance is an interlocutory order. However, the privilege of exemption from personal attendance of the accused, does not impose a corresponding duty on the Magistrate, not to interfere with the said liberty, if the circumstances so suggest. A bare perusal of sub-section (2) of Section 205 of the Code of Criminal Procedure makes the point abundantly clear i.e. where the Court has allowed the application exempting appearance or allowed the accused to appear through pleader, then subsequently if the Magistrate feels that the presence of the accused is necessary at any stage of the trial he will be at liberty to direct their personal appearance, provided he passes a speaking order containing the reasons why the appearance has been directed. Even this power is discretionary which has to be exercised judicially.

(8) Once the Magistrate has exercised his discretion, it is not for the Sessions Judge or for that matter the High Court, to substitute 'its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the discretion has been rightly exercised or not.

(9) Under similar circumstances in the case of Jaswant Raivs. State, 1976 C LR 11 the order of the Additional Sessions Judge cancelling his previous order granting exemption to the petitioner, without sufficient cause was held to be bad.

In this view of the matter, sub section (2) of Section 397 creates a complete bar to entertain or take cognizance of there vision petition against an interlocutory order of the lowercourt. The Additional Sessions Judge was not Justified to modify the order of the trial court as has been done in this case.I, thereforee, accept the revision petition aside the impugned order and restore the order of Shri R. S. Arya, Metropolitan Magistrate dated 17/06/1987. Ordered accordingly.

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