

Dharmarajan Vs. State

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Court : Kerala

Decided On : Jun-13-2002

Reported in : 2002(2)ALT(Cri)349; 2002CriLJ3399

Judge : N. Krishnan Nair, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397(2)

Appeal No. : Crl. R.P. No. 509 of 2002

Appellant : Dharmarajan

Respondent : State

Advocate for Def. : P.V. Madhavan Nambiar, Director General of Prosecutions

Advocate for Pet/Ap. : S. Gopakumaran Nair, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

N. Krishnan Nair, J.

1. This revision is directed against the order dated 16.5.2002 of the Additional Sessions Judge, Kottayam in SC 241/2001.

2. The facts necessary for the disposal of this revision may be stated as follows: The petitioner is the accused in S.C. 241/2001 (popularly known as 'Suryanelli case') on the file of the Additional Sessions Judge, Kottayam. He is charged with the offences punishable under Sections 120(6), 363, 366(A), 368, 332, 373, 376, 376(2)(g), 392 read with Sections 109 and 34 of the Indian Penal Code. After the close of the prosecution evidence, the petitioner submitted a list of 45 witnesses for the defence. The Court below by the impugned order allowed him to examine 12 witnesses out of the 45 witnesses and refused permission to examine the remaining 33 witnesses. Aggrieved by the refusal of the court below to permit him to examine all the persons mentioned in the witness schedule, the petitioner has come up with this revision.

3. Heard the counsel for the petitioner and also the Director General of Prosecution. The learned counsel for the petitioner submitted that the order of the court below is clearly illegal and cannot be sustained either in law or on facts. According to the learned counsel, in order to enable the petitioner to prove that the prosecution has suppressed the truth before the court, it is necessary to examine all the witnesses mentioned in the witness schedule. He further contended that the reasons given by the court below for refusing permission to examine all the witnesses are no reasons at all. On the other hand, the learned Director General of Prosecution challenged the maintainability of the revision petition on the ground that the impugned order is an interlocutory order, and in view of Sub-section 2 of Section 397 of the Cr.P.C. the order is not revisable. According to him, the witness schedule is intended only to delay the proceedings and the lower court was fully justified in short listing the witnesses.

4. The first question arising for consideration is whether the impugned order is revisable. Section 397(2) of the Cr.P.C. lays down that powers of revision shall not be exercised in relation to any interlocutory order passed in any appeal, enquiry, trial or other proceedings. What is an interlocutory order has not been defined in the Cr.P.C. But, the meaning of the words 'interlocutory order' in Sub-section 2 of Section 397 of the Cr.P.C. came up for consideration before the Supreme Court in several cases. In *Madhu Limaye v. State of Maharashtra* (1977 (4) SCC 551), the Supreme Court held that an order rejecting the plea of the accused on a point

which when accepted will conclude the particular proceeding, cannot be held to be an interlocutory order. The Supreme Court pointed out that there are certain orders which are not interlocutory and which are not final. Such orders are called intermediate orders. It was also held that in respect of intermediate orders, the High Court is not powerless to examine them under Section 482 and even Section 397(2) is no bar to consider the correctness of such orders. In *V.C. Shukla v. State* (1980 Supp. SCC 92) it has been held that the term 'interlocutory order' used in the Code of Criminal Procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi-final. If the examination of a witness is necessary for the defence but the court is not inclined to permit the accused to examine that witness, the order refusing permission to examine that witness would definitely affect the right of the accused. It cannot be said that the High Court has no power to revise such orders in view of the prohibition under Sub-section 2 of Section 397 of the CrP.C. In this case, the grievance of the petitioner is that examination of all the witnesses mentioned in the witness schedule is necessary for the defence and if the impugned order is allowed to stand, it would cause prejudice to him. Therefore, I am of the view that a revision will lie against the order under challenge. In this connection, it is relevant to note the decision of the Supreme Court in *Rajendra Kumar Sitaram Pande v. Uttam* (1999 (3) SCC 134). It has been held in that case that it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under Sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same.

5. Then the question for consideration is whether the lower court was justified in refusing to examine all the witnesses mentioned in the schedule. As already stated, out of the 45 witnesses cited by the petitioner, the court below allowed him to examine 12 witnesses. According to the court below, examination of all the witnesses is not necessary and the list of 45 witnesses is furnished only to delay the proceedings. According to the learned counsel for the petitioner, the court has

no discretion to refuse to issue process to compel the attendance of any witness cited by the accused. I cannot agree. If the court is satisfied that a witness is cited for the purpose of vexation or delay or for defeating the ends of justice, the court is entitled to refuse to issue process after recording the reasons. No accused can claim a right to examine any number of witnesses on the defence side. In this connection, it is relevant to note the following observations of the Supreme Court in *Arivazhagan v. State* (2000 Cr.L.J, 1714): 'The purpose of furnishing a list of witnesses and documents to the Court before the accused is called upon to enter on his defence is to afford an occasion to the Court to peruse the list. On such perusal, if the Court feels that examination of at least some of the persons mentioned in the list is quite unnecessary to prove the defence plea and the time which would be needed for completing the examination of such witnesses would only result in procrastination, it is the duty of the Court to short list such witnesses. If the Court feels that the list is intended only to delay the proceedings the Court is well within its powers to disallow even the whole of it'.

6. In this case I see considerable force in the contention of the learned Director General of Prosecution that the object of furnishing a list of 45 persons as defence witnesses is only to delay the proceedings. The witnesses sought to be examined by the petitioner include the Additional District and Sessions Judge, who disposed of his bail application, the Additional Public Prosecutor who opposed the bail application and the Police Constables who recorded the statements of the witnesses 'during investigation. It is seen that on a scrutiny of the witness schedule, the lower court has allowed the petitioner to examine the necessary witnesses. The lower court has given cogent reasons to disallow the prayer for examining the remaining 33 witnesses. The attempt of the petitioner to examine the Additional District and Sessions Judge who functioned as the Vacation Judge as a defence witness is not bonafide. An accused is not expected to summon the Judge who dismissed his bail application as a witness to give evidence regarding the materials placed before him for the disposal of the bail application. The Additional Public Prosecutors who opposed the bail application are not expected to give evidence before the Court regarding the manner in which the Police Officers conducted the investigation. Since the Investigating Officers were examined in the case and the petitioner was given sufficient opportunity to cross-

examine them, it is not at all necessary to examine the Police Officers who had taken down the statements of the witnesses. It is also seen that a Sub Inspector of Police, Dy.S.P. and Superintendent of Police were cited to prove the flaws in the investigation of the case. As stated earlier, during the examination of the Investigating Officers, the petitioner had sufficient opportunity to bring out the infirmities in the Investigation, if any. The lower court was fully justified in refusing permission to examine these witnesses.

7. I have scanned through the reasons given by the lower court for not permitting the examination of all the witnesses cited by the petitioner. The lower court has considered the locus standi of each witness and cogent reasons are given for not permitting the examination of such witness. I am satisfied that the court below has given convincing reasons. It is not necessary to repeat those reasons in respect of all the witnesses.

8. I fully agree with the lower court that the list of 45 witnesses for the defence submitted by the petitioner is intended only to delay the proceedings. Admittedly, the petitioner was absconding after the alleged occurrence and the court below had to split up the case against him. It is submitted that the evidence in this case is closed and the case is now posted for hearing. It is relevant to note that though the court below has allowed the petitioner to examine 12 witnesses out of the 45 witnesses, he was not even prepared to examine all the 12 witnesses.

9. On a consideration of the facts and circumstances of this case, I have no hesitation to say that the petitioner furnished a list of 45 witnesses only with the object of delaying the proceedings. I see no infirmity in the order of the lower court. This revision is groundless and is liable to be dismissed.

In the result, the revision is dismissed.