

Prabhakaran Vs. Excise Circle Inspector

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Court : Kerala

Decided On : Sep-04-1992

Reported in : 1993CriLJ3599

Judge : K.T. Thomas and; P.A. Mohammed, JJ.

Acts : Narcotic Drugs and Psychotropic Substance Act, 1985 - Sections 20, 36, 36A, 36A(1) and 36D; [Special Courts Act, 1979](#) - Sections 11; Prevention of Corruption Act; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397(2); Indian Penal Code (IPC) - Sections 500; [Constitution of India](#) - Article 134

Appeal No. : Crl. R.P. No. 456/92

Appellant : Prabhakaran

Respondent : Excise Circle Inspector

Advocate for Def. : P. Prosecutor and; K.C. Peter, Adv.

Advocate for Pet/Ap. : K.V. Ramabhadran, Adv.

Judgement :

K.T. Thomas, J.

1. Four learned Judges of this Court, while sitting single on different occasions, have spoken in different terms on a common subject - whether an order framing

charge in a criminal case is an interlocutory order or not. All the four learned Judges have, to Bolster up their respective points of view, relied on the Supreme Court decision in *V. C. Sukla v. State*, AIR 1980 SC 962: (1980 Cri LJ 690). It was Janki Amma, J. who first said in *Jayaprakash v. State*, 1981 KIT 100 ; (1981 Cri LJ 460) that framing charge is only an interlocutory order and hence no revision under Section 397(2) of the Criminal P.C., 1973 (for short 'the Code') would lie. Learned single Judge quoted from the decision in *V. C. Sukla's* case in support thereof. But, Chandrasekhara Menon, J. in *Abdullakutty Haji v. Additional Judicial 1st Class Magistrate*, 1982 KLT 861, dissented from Janki Amma, J. and took the view that a revision is entertainable as the order framing charge is not an interlocutory order. Learned Judge did not find the need to refer the question to a larger bench as the question, according to the learned Judge, was settled by the Supreme Court in *V. C. Sukla's* case, and observed : 'In view of this clear pronouncement of the Supreme Court, it is not possible to conclude that no revision lies from an order framing charge when the proceedings are within the purview of Cr.P.C.'

2. The position remained like that till 1987 when Pareed Pillay, J. felt (in *Sarojani Amma v. Sarojini*, 1987(2) KLT 520 : (1988 Cri LJ 1362) that the view adopted by Janki Amma, J. is the correct understanding of the decision in *V. C. Sukla's* case. However, when the same question was mooted before Sreedharan, J. the learned Judge was not inclined to adopt the reasoning of Pareed Pillay, J. (vide *Narayanan v. Vidyadharan*, 1989 (2) KLT 613. The request 'made for reference to a larger bench was not accepted by Sreedharan, J. since he felt that in view of the clear declaration of law made by the Supreme Court in *V. C. Sukla's* case, there is no need to refer the question to a Bench. Sreedharan, J. thus adopted a view contrary to that of Pareed Pillay, J. and held that framing charge is not interlocutory order.

3. Now Pareed Pillay, J, before whom the question came up again, referred it to a larger Bench to 'have an authoritative decision in view of the conflicting decisions'.

4. Petitioner is the accused before the Sessions Court when the respondent (Excise Circle Inspector) filed a complaint before the Sessions Court alleging that

the petitioner has committed an offence under Section 20(b)(i) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (NDPS Act). Respondent alleged that petitioner was found in possession of 600 grams of ganja on 17-9-1991 which was detected by the Preventive Officer of the Excise Circle concerned who seized the ganja and arrested the petitioner. Before the charge was framed by the Sessions Court, petitioner raised a contention that respondent has no authority to file a complaint for an offence under the NDPS Act since he has not been authorised by the State Government and hence the Sessions Court has no jurisdiction to take cognizance of the offence under the NDPS Act on a complaint filed by him. Learned Sessions Judge did not accede to the aforesaid contention and framed a charge against the petitioner. The present revision petition was filed against the said order.

5. Section 397(2) of the Code reads thus :

'The 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'.

6. As all the four single Judges relied on the Supreme Court decision in V. C. Sukla's case in order to understand the scope of the expression 'interlocutory order' in Section 397(2) of the Code, a full understanding of the said decision is necessary to resolve the apparent conflict in the approaches made by the learned Judges.

7. A background of the case law would be profitable in this context. In Amar Nath v. State of Haryana, AIR 1977 SC 2185 : (1977 Cri LJ 1891) Untwalia and Fazal Ali, JJ. observed that the term 'interlocutory order' has been used in Section 397(2) in the Code in a restricted sense and not in a broad or artistic sense. 'It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights of the liabilities of parties'.

8. In Madhu Limaye v. State of Maharashtra, AIR 1978 SC47 : (1978 Cri LJ 165) a bench of three Judges (Goswamy, Untawalia, and Desai, JJ.) considered the question whether an order framing charge is only interlocutory vis-a-vis the power

of revision enshrined in Section 397(2) of the Code. Their Lordships proposed to 'enunciate and reiterate the views taken by the two learned Judges of this Court (Supreme Court) in Amar Nath's case but in a somewhat modified and modulated form'. The bench noted the consequence of revision proceedings being initiated against interlocutory orders and it delays the final disposal of the proceedings and hence observed that the legislature in its wisdom decided to check the delay by introducing Section 397(2) in the Code. Their Lordships were not inclined to follow the 'strict test' adopted by Lord Esher MR (*Salaman v. Warner*, 1991 (1) QB 743. However, their Lordships concluded thus: 'Yet for the reasons already alluded to, we feel no difficulty in coming to the conclusion, after due consideration, that an order rejecting the plea of the accused on a point, when accepted will conclude the particular proceedings, will surely be not an interlocutory order within the meaning of Section 397(2)'.

9. Facts in Madhu Limaye's case have some bearing on this question since the later decision (in *V. C. Sukla's case*) rendered by a larger bench of the Supreme Court, though took a different line, has nevertheless approved the ratio decidendi enunciated in the former decision. Facts were these: At the instance of A. R. Antulay, who was then Home Minister of the State of Maharashtra, a complaint was filed by the Public Prosecutor before the Court of Sessions against Madhu Limaye, who was one of the opposition leaders, for the offence under Section 500, I.P.C. Madhu Limaye raised three contentions among which one was that the Court had no jurisdiction to take cognizance of the offence under Section 500 of the I.P.C. without the case being committed to the Court. The contention was repelled by the Sessions Court and a charge was framed against him. Madhu Limaye filed a revision before the High Court of Bombay. The sustainability of the revision was questioned on the ground that the order framing charge was only an interlocutory order. Bombay High Court upheld the objection and dismissed the revision. Supreme Court, on an appeal filed with special leave, has observed that the legislature by enacting Section 397(2) did not intend to equate the expression 'interlocutory order' as invariably be converse of the words 'final order' as there may be an order passed during the course of the proceeding which may not be final in the sense noticed in *Kuppuswamy's case*, AIR 1949 FC 1 : (1948 (49) Cri LJ 625); but yet it may not be an interlocutory order pure and simple. *Untawalia, J.*

who spoke for the Bench in Madhu Limaye's case has observed thus (at page 170 and 171 (of Cri LJ)):

'Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in Sub-section (2) of Section 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purpose of Article 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders within the meaning of Section 397(2). It is neither advisable, nor possible to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely or simple interlocutory and which kinds of orders would be final and then to prepare an exhaustive list of those types of orders which will fall in between the two. The first two kinds are well known and can be culled out from many decided cases. We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of Sub-section (2) of Section 397. In our opinion it must be taken to be an order of the type falling in the middle course'.

It was on the aforesaid reasoning the Supreme Court held that framing charge, on the facts and circumstances of the case was not an interlocutory order pure and simple.

10. No doubt in V. C. Sukla's case, Supreme Court upheld the ratio decidendi laid down in Madhu Limaye's case. Even so, a majority of Judges in V. C. Sukla's case found that the direction to frame charge against the accused on the facts and circumstances in that case was only an interlocutory order. The Bench consisted of Fazal Ali, Shingal, Desai and A. P. Sen, JJ. Facts in that case were that V. C. Sukla was prosecuted under the [Special Courts Act, 1979](#) for certain offences under the I.P.C. as well as Prevention of Corruption Act. A Judge of the Special Court (who Was a Judge of the High Court) framed charge against the accused for the said offences. An appeal is provided under Section 11 of the Special Courts Act, from any judgment, sentence or order of a Special Court to the Supreme Court 'not being interlocutory order'. Appeal was filed before the Supreme Court invoking its appellate jurisdiction under Section 11 against the order directing

framing of charge. The majority view was expressed through the separate judgments delivered by Fazal Ali, J. and Desai, J., Shingal, J. in his separate judgment took the contrary view.

11. In the judgment delivered by Fazal Ali, J. (for himself and A. P. Sen, J.) it has been remarked, while referring to the decision in Madhu Limaye's case, thus :

'Before proceeding further, it may be observed that the objections taken by the appellant in the aforesaid case related to the root of the jurisdiction of the Sessions Judge and if accepted, would have rendered the entire proceedings void ab initio. The case before this Court was not one based on allegations of fact on which cognizance was taken by a trial Court and after having found that a prima facie case was made out, a charge was framed against the accused. Even so, the ratio decidendi in the aforesaid case was, in our opinion absolutely correct and we are entirely in agreement with the learned Judges constituting the Bench that the order of the Sessions Judge framing charges, in the circumstances of the case, was not merely an interlocutory order but partook of the nature of a final order or, at any rate, an intermediate order so as to be taken out of the bar contained in Section 397(2) of the Code'.

12. It was from the aforesaid passage that Sreedharan, J. found support to his view which has been expressed in Narayanan's case, 1989 (2) KLT 613 and commented that 'it is well settled that it would not be proper to treat the order framing charges as an interlocutory order pure and simple'.

13. Desai, J. in his separate judgment while reiterating the ratio in Madhu Limaye's case pointed out that, 'it is, therefore, incorrect to contend that the decision in Madhu Limaye's case is an authority for the proposition that framing of the charge is not an interlocutory order but it is such an intermediate order as not to fall within the ambit of interlocutory order. There was no challenge to the framing of the charge but; there was a challenge to the jurisdiction of the Court to entertain the complaint. He further observed that 'however, the decision is not an authority for the proposition that framing of charge by itself is not an interlocutory order. At the same time, His Lordship has added that the test remains unaltered that every interlocutory order, merely because it disposes of an aspect-nay a vital aspect - in

the course of a pending proceeding adversely affecting a party for the time being, would not be something other than interlocutory order. After discussion, Desai, J. has further observed while dealing with the order directing framing of charge passed by the Special Court that 'merely because emphasis is laid on the Court seriously applying its judicial mind at the stage of framing charge, and therefore, it can be said to be an important stage, the order framing the charge even after applying the ratio of the later decisions would not be an order other than an interlocutory order. It would be unquestionably an interlocutory order. It is the aforesaid passage which Pareed Pillay, J. has extracted in his decision in Sarojani Amma's case, 1987 (2) KLT 520 : (1988 Cri LJ 1362) in which he concluded that 'in view of the authoritative pronouncement in V. C. Sukla's case that framing of charge is an interlocutory order, the indubitable position is that such an order is not revisable as postulated in Section 397(2) of the Code'.

14. Legal position laid down by the Supreme Court as understood from a reading of the three decisions--(1) Amar Nath's case (2) Madhu Limaye's case and (3) V. C. Sukla's case - is the following:

15. Framing of charge may or may not amount to interlocutory order as it depends upon facts of the case, the statute under which proceedings have been initiated, as also the nature of objections raised against it etc. If the objection or objections raised against the order framing charge are such that upholding such objection/objections would result in termination of the proceedings, then framing of charge cannot be regarded as merely interlocutory order for the purpose of revisional jurisdiction under Section 397(2) of the Code.

16. Applying the above test in the case on hand, the order framing charge against the petitioner cannot be regarded as merely interlocutory order, for, if the objection against such framing is upheld the entire proceedings would come to an end. Such is the nature of the objection raised. Hence the embargo contained in Section 397(2) of the Code against exercise of revisional jurisdiction cannot be brought to stall a petition which seeks to revise the order.

17. The objection raised is that, cognizance of the offence under the NDPS Act cannot be taken on a report or a complaint filed by the Excise Circle Inspector of

the State of Kerala.

18. Section 36 of the NDPS Act empowers the Government to constitute Special Courts for such area as may be specified. It is admitted that no such Special Court has been constituted for the area within the limits of which the alleged offence has been detected. But, Section 36D provides that until a Special Court is constituted for such area, any offence under the NDPS Act shall be tried by a Court of Sessions. A Division Bench of this Courts has held in *State of Kerala v. Balkrishnan*, 1991 (2) KLT 323, that 'the Court of Session empowered to try the case during the transitional period shall be deemed to be a Special Court having power under Section 36A(1)(d) of the Act to take cognizance of the police report or upon a complaint made by an Officer of the Central or State Government authorised in this behalf'. The correctness of the above decision has not been questioned before us and hence we abide by the said decision.

19. Section 36A(i) starts with the non-obstante clause with the words 'notwithstanding anything contained in the Code of Criminal Procedure, 1973.....'.

Clause (d) reads thus:

'A Special Court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an officer of the Central Government or a State Government authorised in this behalf, take cognizance of that offence without the accused being committed to it for trial'.

20. Learned public prosecutor informed us, after ascertaining the position from the Government, that no officer has been authorised by the State Government as per the aforesaid Clause (d). If so, the respondent has no authority to file a complaint for the offence under the NDPS Act. The corollary is that the Court of Sessions or Special Court has no jurisdiction to take cognizance of the offence under the NDPS Act on such complaint. The charge framed against the petitioner is hence without jurisdiction.

We, therefore, allow this revision and set aside the order framing charge against the petitioner.

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