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Court : Jammu and Kashmir

Decided On : Feb-21-2005

Reported in : 2005(2)JKJ567

Judge : Mansoor Ahmad Mir, J.

Acts : Code of Criminal Procedure (CrPC) , 1989 - Section 369; ;Banking Rules

Appeal No. : Cr.Rev. No. 25/2004

Appellant : Gh. Rasool Bhat

Respondent : State of J and K Through Supdt. Vigilance Organisation

Advocate for Def. : M.A. Rathore, Adv.

Advocate for Pet/Ap. : A.R. Bhat, Adv.

Disposition : Petition dismissed

Judgement :

Mansoor Ahmad Mir, J.

1. Mr. Rathore has raised a preliminary objection that this revision petition is not maintainable for the reasons that order dated 14.02.2004 passed by Special Judge, Anticorruption which shall be referred hereinafter as-impugned order, is interlocutory one. Mr. Rathore argued that the order dated 16th January, 2002

(annexure-A) and impugned order (annexure-B) are interlocutory orders. The Special Judge, Anticorruption is within his powers to modify the interlocutory orders.

2. Mr. Bhat argued that both the orders are final orders. The impugned order is illegal because the Special Judge Anticorruption has no powers to alter and modify the orders passed by his predecessor on 16th January, 2002 in the application for release of an amount of Rs. 2.95 lacs presented by Ghulam Nabi Beigh.

3. Considered. It appears that Ghulam Nabi Beigh had moved an application on 27th January, 2001 before the court of Special Judge, Anti-corruption for release of an amount of Rs. 2.95 lacs. The learned judge after considering the case of the applicant, directed the respondent to release the amount of Rs. 2.95 lacs in favour of Ghulam Rasool Bhat with the command that Ghulam Rasool Bhat has to execute personal bond. It is profitable to reproduce the operative part of the said order herein; -

'So viewed, the application is allowed and the amounts covered by treasury voucher No. 103 along with interest that has accrued till date, drawn on J&K; Bank Branch Qazigun is released in favour of the allottee Gh. Rasool Bhat S/o Ama Bhat R/o Furrah subject to the following condition;

i. The allottee Gh. Rasool Bhat executes personal bond undertaken to deposit the amount in question alongwith interest at the prevalent bank rates in the state treasury if the amount at any time is found to be involved in case FIR 16/93 P/S VOK or otherwise to have been embezzled or misappropriated or as and when he is directed to do so by this court and further undertaking that his failure to deposit the amount shall entail recovery of the amount alongwith interest as judicial fine.

ii. The allottee furnishes two indemnity bonds from two persons of substance who undertake to deposit the amount alongwith interest at the prevalent rates in the state treasury if the amount at any time is found to be involved in case FIR 16/93 Police Station VOK or otherwise to have been embezzled or misappropriated and in the event of failure of the applicant to deposit the amount pursuant to court orders and to indemnify the state or any loss suffered by it because of failure of

the applicant to comply with the court orders and conditions laid down in personal bond.

iii. Both the allottee and indemnifiers get the bonds registered before Sub Registrar concerned with their photographs duly attested by the registering authority affixed on the said bonds.

The application is accordingly disposed off, and shall go the records after due completion.'

4. In terms of this order, the amount covered by treasury voucher No. 103 stands released in favour of Ghulam Rasool Bhat, subject to the conditions contained in the said order. Thus this order is purely an interlocutory order. In terms of this order, no final order has been passed. The Lordships of our own High Court have held that if a vehicle is released on superdnama or any seized property is released on superdnama, it is purely an interlocutory order. The said judgment is reported in SLJ 1981 page 205 Mohd. Gulzar v. Charanjeet and Anr.

5. Now coming to the impugned order, the impugned order is purely an interlocutory order and in terms of the impugned order, the interest of the applicant stands safeguarded. It is profitable to reproduce the relevant portion of the said order herein:-

'However, I leave the matter wide open because if the original beneficiary Ghulam Rasool Bhat is adamant to recover the interest amount from the Bank he may go for any available remedy against the bank.'

6. The question for consideration is whether the court has the jurisdiction to modify the interlocutory order?

Section 369 Cr. P.C mandates that court cannot alter the judgment. Section 369 Cr.P.C. reads as under:-

'369. Court not to alter judgment. - Save as otherwise provided by this Code or by any other law for the time being in force, or in the case of High Court, by the constitution of High Court, no Court, when it has signed its judgment, shall alter or

review the same, except to correct a clerical error.'

7. While reading this provision of law, the bar contained in Section 369 Cr. P.C. operates only against a judgment and does not apply to interim or interlocutory order. My this view is fortified by a judgment of the Division Bench of this Court in Mirza Mohd. Afzal Beg and Ors. v. State of J&K; and Ors. AIR 1960 J&K; page 1.

Hon'ble High Court of Jammu and Kashmir has also held in a judgment reported in KLJ 1987, page 712, Naranjan Kour v. State of J&K; and Ors., that the courts have powers to alter or modify the interim order at any stage. It is profitable to reproduce para-6 of the judgment herein:-

'6. On its plain reading the bar contained in Section 369 Cr.P.C. operates only against a judgment and does not extend to interim or interlocutory orders. Orders which are of purely interim and temporary nature and do not decide or touch the important rights of the parties, cannot be termed as a judgment. It is well settled that orders, for instance, of summoning witnesses, adjourning cases, calling reports and for taking such other steps in aid of the pending proceedings are merely interlocutory orders and not judgments. Therefore, the bar on the courts to review or alter its own judgments under Section 369 Cr. P.C. cannot extend to interlocutory orders.'

8. Viewed thus the court has powers to modify or alter the orders which are not final but are purely interim or interlocutory orders.

9. However, I deem it proper to discuss, what direction has been passed vide order dated 16.01.2002.

The words 'alongwith interest that has accrued to' used in the order dated 16.01.2002 are of great importance. The learned judge has ordered to release the amount with interest which has accrued till that date.

10. In terms of the impugned order, Mr. Roshan Khayal has pleaded that the payment orders issued by the bank are in the form of current liability which do not earn any interest as per banking rules. Keeping in view the said fact the payment orders do not earn any interest as per the Banking rules, no illegality has been

committed by the learned Judge while passing the impugned order.

11. While reading the impugned order one comes to an inescapable conclusion that learned judge has passed speaking and reasoned order which is legal one. The impugned order is interlocutory one thus revision petition merits to be rejected only on this ground. However, in the given circumstances the revision petition also merits dismissal on merits.

12. Having glance of the aforesaid discussion, the revision petition is dismissed. Send down the record.

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