IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 13.06.2022

Orders Pronounced on : **21.06.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.766 of 2019

Bapuji Murugesan .. Petitioner

Versus

Mythili Rajagopalan .. Respondent

Prayer: Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to call for the records and set aside the order, dated 12.02.2019 in Crl.M.P.No.2131 of 2019 and the consequential order, dated 29.04.2019 in Crl.M.P.No.2131 of 2019 passed by the learned VII Addl. Sessions Judge, Chennai in Crl.A.No.29 of 2019 on the file of the learned VII Additional Sessions Judge, Chennai.

For Petitioner : Mr.Bijesh Thomas

For Respondent : Mr.G.R.Hari

ORDER

By a judgment dated 08.01.2019 in C.C.No.1046 of 2005, the respondent was convicted by the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, for an offence under Section 138 of the Negotiable Instruments Act, 1881 and was sentenced to undergo Simple Imprisonment for a period of six months and was directed to pay double the amount of cheque under ***Exs.P-2***, ***P-3***, ***P-4*** and ***P-5*** as compensation under Section 357(3) of the Code of Criminal Procedure.

2. Aggrieved by the said judgment, the respondent filed Crl.A.No.29 of 2019 and while granting suspension of sentence, by an order, dated 12.02.2019 in Crl.M.P.No.2131 of 2019, the learned Principal Sessions Judge, Chennai also exercised the powers under Section 148 of the Negotiable Instruments Act, 1881 and thereby, passed the following order:-

> " *9. Accordingly the sentence of imprisonment imposed on the petitioner by the lower Court alone is hereby suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail on his executing a bond for Rs.10,000/- with two sureties each for a likesum to the satisfaction of the learned Metropolitan Magistrate, FTC-III, Saidapet, Chennai within two weeks from the date of this*

order and further condition that the petitioner shall deposit 15% of the cheque amount (Rs.3,18,000/-) to the credit of C.C. number on the file of the Trial Court within 60 days from the date of this order."

3. The complainant is aggrieved by the said order inasmuch as Section 148 of the Negotiable Instruments Act, 1881 lays down that 20% of the compensation/fine amount has to be deposited and in the instant case, while double the cheque amount has been ordered as compensation, the learned Principal Sessions Judge, Chennai ordered 15% of the cheque amount alone to be deposited in terms of Section 148 of the Negotiable Instruments Act, 1881. And hence the revision.

4. Heard *Mr.Bijesh Thomas*, learned Counsel for the petitioner and *Mr.G.R.Hari*, learned Counsel for the respondent.

5. *Mr.Bijesh Thomas*, learned Counsel for the petitioner, relying upon the judgment in ***Surinder Singh Deswal @ Col. S.S.Deswal and Ors. Vs. Virender Gandhi and Anr.***[1], would submit that the Hon'ble Supreme Court of India has held that an order for deposit under Section 148 of the

1 (2019) 11 SCC 341

Negotiable Instruments Act, 1881 is mandatory and a plain reading of the Section 148 of the Act, it is clear that it is only 20% of the compensation/fine amount and not the cheque amount and therefore, the Trial Court ought to have ordered deposit of a total sum of Rs.8,64,000/-, being 20% of the compensation amount and therefore, he would pray that to that extent, this Court should interfere in the order of the learned Principal Sessions Judge, Chennai.

6. Per contra, *Mr.G.R.Hari*, the learned Counsel for the respondent would submit that the said order, under Section 148 of the Negotiable Instruments Act, 1881, is interlocutory in nature and therefore, the Revision itself is not maintainable. In support of his submission, the learned Counsel submits that the very same order under Section 148 of the Negotiable Instruments Act, 1881 is held to be interlocutory in nature and the Revision is held to be not maintainable by the Kerala High Court in the judgment in Crl.Rev.Pet.No.2752 of 2009 ***(Samuel George, Maliyekkal Bunglow Vs. State of Kerala and Anr.***). He would further rely upon the judgment of this Court in Crl.R.C.(MD).No.126 of 2018 (***Udaiyar @ Sattaiudaiyar and Anr. Vs. State***), wherein, this Court has held that the order of dismissal of

application for suspension of sentence and bail is not a final order and is only an interlocutory order and therefore, the Revision is not maintainable.

7. The learned Counsel further would submit that on a reading of Section 148 of the Negotiable Instruments Act, 1881, it would be clear that deposit of the 20% is not a pre-condition for entertaining the appeal and neither Section 148 of the Negotiable Instruments Act, 1881 imposes the same as the condition for grant of suspension of sentence. Therefore, he would pray that this Court should dismiss the Revision and to direct for disposal of the main appeal on merits, which is pending for the past three years.

8. I have considered the rival submissions made on either side and perused the material records of this case. Again in this matter, this court has to answer the vexed question of whether the order impunged is an interlocutory order and whether any revision would lie against the same. The Hon'ble Supreme Court of India, in ***Madhu Limaye v. State of Maharashtra***[2], considered the aspect in detail and after considering the nature of the powers of revision of the High Court in paragraph No.8 and

2 (1977) 4 SCC 551

the fact that the revisional jurisdiction is being routinely invoked and only to put fetters on such unmindful and repeated approach to the High Courts, the embargo under sub-section (2) of 397 was introduced, the Hon'ble Supreme Court of India, thereafter, from paragraph No.12 onwards, proceeded to consider what can be meaning of the term "interlocutory order" and first considered the definition contained in *Halsbury's Laws of England*, in paragraph No.12, which is extracted hereunder:-

> " ***12.*** *Ordinarily and generally the expression "interlocutory order" has been understood and taken to mean as a converse of the term "final order". In volume 22 of the third edition of Halsbury's Laws of England at p. 742, however, it has been stated in para 1606:*
>
> *"... a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of the two words must therefore be considered separately in relation to the particular purpose for which it is required."*
>
> *In para 1607 it is said:*
>
> *"In general a judgment or order which determines the principal matter in question is termed 'final'."*
>
> *In para 1608 at pp. 744 and 745 we find the words:*
>
> *"An order which does not deal with the final rights of the parties, but either (1) is made*

before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declaration of right already given in the final judgment, are to be worked out, is termed 'interlocutory'. An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals."

(Emphasis Supplied)

9. Thereafter, considering the judgment of ***S. Kuppuswami Rao Vs. King***[3] , the Hon'ble Supreme Court of India has held as follows:-

" ***13.*** *In* ***S. Kuppuswami Rao v. King [AIR 1949 FC 1 : 1947 FCR 180]*** *Kania, C.J. delivering the judgment of the Court has referred to some English decisions at pp. 185 and 186. Lord Esher, M.R. said in* ***Salaman v. Warner [(1891) 1 QB 734]*** *:*

"If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory."

To the same effect are the observations quoted from the judgments of Fry, L.J. and Lopes, L.J.:

"Applying the said test, almost on facts similar to the ones in the instant case, it was held that the order in revision passed by the High Court [at that time there was no bar like Section

3 AIR 1949 FC 1

397(2)] was not a "final order" within the meaning of Section 205(1) of the Government of India Act, 1935. It is to be noticed that the test laid down therein was that if the objection of the accused succeeded, the proceeding could have ended but not vice versa. The order can be said to be a final order only if, in either event, the action will be determined. In our opinion if this strict test were to be applied in interpreting the words 'interlocutory order' occurring in Section 397(2), then the order taking cognizance of an offence by a Court, whether it is so done illegally or without jurisdiction, will not be a final order and hence will be an interlocutory one. Even so, as we have said above, the inherent power of the High Court can be invoked for quashing such a criminal proceeding. But in our judgment such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by Section 397(1). On such a strict interpretation, only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code. This does not seem to be the intention of the Legislature when it retained the revisional power of the High Court in terms identical to the one in the 1898 Code. In what cases then the High Court will examine the legality or the propriety of an order or the legality of any proceeding of an inferior criminal court? Is it circumscribed to examine only such proceeding which is brought for its examination after the final determination and wherein no appeal lies? Such cases will be very few and far

between. It has been pointed out repeatedly, vide for example, River Wear Commissioners v. William Adamson [(1876-77) 2 AC 743] and R.M.D. Chamarbaugwalla v. Union of India [AIR 1957 SC 628 : (1957) SCR 930] that although the words occurring in a particular statute are plain and unambiguous, they have to be interpreted in a manner which would fit in the context of the other provisions of the statute and bring about the real intention of the Legislature. On the one hand, the Legislature kept intact the revisional power of the High Court and, on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a situation it appears to us that the real intention of the Legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswami case, but, yet it may not be an interlocutory order — pure or simple. 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 purposes 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 simply 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 wellknown 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.*"

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 purposes 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 simply 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.

10. The Hon'ble Supreme Court of India, thereafter, considered the decisions in ***Amar Nath and Ors. Vs. State of Haryana and Another***[4] case, then, ***Mohan Lal Magan Lal thacker Vs. State of Gujarat***[5] and ***Parmeshwari Devi (SMT) Vs. State and Another***[6] and held in paragraph No.17 that applying literally the test would amount to insurmountable difficulty. Therefore, held that a purposeful interpretation of Section 397(2) of the Code of Criminal Procedure, whereby, it is concluded that it cannot be termed as if the Revision is maintainable under Section 397 of the Code of Criminal Procedure only against such of those final orders, against which, no appeal would lie, but, the Revision, would be maintainable as against such intermediate orders, which cannot be termed as pure and simple interlocutory order, but, at the same time, would not be final orders.

11. Time and again, the Hon'ble Supreme Court of India has considered the issue and laid down tests characterise whether an order is interlocutory order or not. In ***Hasmukh A. Jahveri Vs. Shella Dadlani***[7], the Hon'ble Supreme Court of India held that the meaning of the term "interlocutory order" is not always converse of the term "final order" and

4 (1977) 4 SCC 137
5 AIR 1968 SC 733
6 (1977) 1 SCC 169
7 1981 CrLJ 958 (Bom)

held that an order determining important rights and liabilities cannot be termed as interlocutory. In ***State of Gujarat Vs. Ashulal Nanji Bisnol***[8], it is held that the orders which affect the rights of the parties are not interlocutory but final orders.

12. In ***Parmeshwari Devi (SMT) Vs. State and Another*** (cited supra), an order, summoning a third party to the case, though it may not be a conclusive with reference to the stage on which it is made, it was held that it was not interlocutory in nature. In ***Amar Nath and Ors. Vs. State of Haryana and Another*** (cited supra), the test advocated is that if the upholding objections raised by one party, it would result in culminating the proceedings, then the same would not be an interlocutory order.

13. In ***Sulochana Vs. M.Kulasekaran***[9], this Court had held that if the order substantially affects the rights of the accused, it would not be an interlocutory order. Therefore, in this background, as per the definition in *Halsbury's Laws of England*, which was approved by the Hon'ble Supreme Court of India, if the order simply relates to a matter of procedure and gives

8 2002 (4) Crimes 47 (54) (Guj)
9 2003 CrLJ 4373 (4377) (Mad)

no final decision on matters in dispute, then it is interlocutory in nature. In this regard, in ***L.G.R. Enterprises and Ors. vs. P. Anbazhagan***[10], this Court had enunciated the purpose of the Parliament bringing in Section 148 of the Negotiable Instrument Act and paragraph No.8(i) of the said judgment is extracted as hereunder:-

> " ***8.1.*** *Having observed and found that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of Section 138 of the N.I. Act was being frustrated, the Parliament has thought it fit to amend Section 148 of the N.I. Act, by which the first appellate Court, in an appeal challenging the order of conviction under Section 138 of the N.I. Act, is conferred with the power to direct the convicted accused - appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. By the amendment in Section 148 of the N.I. Act, it cannot be said that any vested right of appeal of the accused - appellant has been taken away and / or affected."*

14. In ***Surinder Singh Deswal @ Col. S.S.Deswal and Ors. Vs. Virender Gandhi and Anr.*** (cited supra), the nature of power exercisable under Section 148 of the Negotiable Instruments Act, 1881 is discussed and

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laid down by the Hon'ble Supreme Court of India. It is useful to extract the paragraph No.9 of the said judgment as hereunder:-

> " ***9.*** *Now so far as the submission on behalf of the appellants, relying upon Section 357(2) CrPC that once the appeal against the order of conviction is preferred, fine is not recoverable pending appeal and therefore such an order of deposit of 25% of the fine ought not to have been passed and in support of the above reliance placed upon the decision of this Court in Dilip S. Dahanukar [Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd., (2007) 6 SCC 528 : (2007) 3 SCC (Cri) 209] is concerned, the aforesaid has no substance. The opening words of the amended Section 148 of the NI Act are that "notwithstanding anything contained in the Code of Criminal Procedure….". Therefore irrespective of the provisions of Section 357(2) CrPC, pending appeal before the first appellate court, challenging the order of conviction and sentence under Section 138 of the NI Act, the appellate court is conferred with the power to direct the appellant to deposit such sum pending appeal which shall be a minimum of 20% of the fine or compensation awarded by the trial court.*"

15. Applying the tests to the power exercisable under Section 148 of the Negotiable Instruments Act, 1881, as rightly pointed out by the learned Counsel for the respondent, it is not a pre-condition in the appeal to be taken on file and therefore will not result in a final order of deciding the appeal. Applying the test of deciding the rights of the parties, it has been

held that it is only a direction to deposit, subject to the final outcome in the appeal and therefore is only a matter of procedure without finally determining the rights of parties. Applying the test as to whether non-passing of such order or accepting of any plea by the accused or the complainant, whether it would result in culmination of proceedings, the answer is again in the negative. Therefore, applying any of the tests advocated by the Hon'ble Supreme Court of India, still the order, which is passed in exercise of power under Section 148 of the Negotiable Instruments Act, is neither a final order nor an intermediate order so as to hold that the revision as against the same is maintainable.

16. Thus, in this context, it is pertinent to state that by the judgment of Kerala High Court in ***Samuel George, Maliyekkal Bunglow's*** case (cited supra), it has been held that such powers are in the interlocutory in nature and Revision is not maintainable. Even in a case as instance case where the direction of deposit is made coupling it as a condition for grant of suspension of sentence, this Court had already held in ***Udaiyar @ Sattaiudaiyar and Anr. Vs. State*** [Crl.R.C.(MD).No.126 of 2018] (stated supra) that the order for grant of suspension of sentence or bail are all

interlocutory orders and are not revisable under Section 397 of the Code of Criminal Procedure. Therefore, viewing from any angle, I hold that the Revision against the present order is not maintainable.

17. However, as held by the Hon'ble Supreme Court of India in ***Madhu Limaye v. State of Maharashtra*** (cited supra), the petitioner would be at liberty to approach this Court in exercise of inherent power under Section 482 of the Code of Criminal Procedure.

18. Therefore, this Criminal Revision Case is dismissed as not maintainable, however, with liberty to the petitioner to approach this Court by way of appropriate proceedings invoking the inherent jurisdiction under Section 482 of the Code of Criminal Procedure, if he chooses to do so. Consequently, Crl.M.P.No.10854 of 2019 is closed.

21.06.2022

Index : yes
Speaking order
grs

To

The VII Additional Sessions Judge, Chennai.

D.BHARATHA CHAKRAVARTHY, J.,

grs

Pre-Delivery order in

Crl.R.C.No.766 of 2019

21.06.2022