Before V.S. Aggarwal, J

LAKHWINDER SINGH & OTHERS,—*Petitioners*

versus

C.B.I. & ANOTHER,—*Respondents*

Crl. R. 287 of 97

19th May, 1997

Code of Criminal Procedure, 1973—S. 397—Power of revision—Interlocutory order—Meaning of—Revision against such order is not competent.

Held, that an interlocutory order is converse of the final order. An interlocutory order is one made or given during the progress of an action. It does not finally dispose of the rights of the parties. It will be difficult to provide a straight jacket formula. The real test would be that if the judgment or the order disposes of the rights of the parties, it would be a final order. If it does not dispose of the rights of the parties, it would be an interlocutory order. If the order is merely a step in aid to adjudicate the rights, in that event, it cannot be termed to be a final order.

(Para 7)

Further held that the revision petition is not maintainable against the interlocutory order.

(Para 11)

P.S. Hundal, Advocate, *for the Petitioners.*

S.K. Saxena, Advocate with Mr. R.K. Handa, Advocate *for the Respondents.*

JUDGMENT

V.S. Aggarwal, J.

(1) Petitioners alongwith others are being tried by the Sessions Judge, Chandigarh with respect to offences punishable under Sections 120-B/302/307 IPC read with Sections 3 and 4 of the Explosive substant Act. On 27th February, 1997 one Surinder Sharma was being examined by the prosecution as a witness. it is alleged that during examination-in-chief of the witness, the Special public prosecutor for Central Bureau of Investigation adduced

evidence from the witness that petitioners were identified by the Central Bureau of Investigation officials in the C.B.I. office in Sector 30. Lakhwinder Singh and Gurmit Singh were shown to him. An objection was raised by the petitioners (defence) that identification of the accused by a witness in presence of the police was hit by Section 162 of the Code of Criminal Procedure and was inadmissible. During examination-in-chief the evidence was further sought to be adduced that the Central Bureau of Investigation officials had called the witness to their office in Sector 30. They showed him some photographs out of which four photographs of the petitioners were identified by the witness. The defence again took up the objection that identification of the accused-persons by means of the photographs in presence of the police officials is not admissible and this evidence should not be allowed to be adduced.

(2) The learned Sessions Judge, Chandigarh *vide* the impugned order dealt with the said objection. The trial court held that the probative value which has to be attached to such a statement is a different matter and has to be determined in light of the other factors, but rejected the contention that the said fact so stated was hit by section 162 of the Code of Criminal procedure.

(3) Learned counsel for the petitioners contended that the prosecution cannot be permitted to adduce evidence with regard to identification of the accused-persons before the police by means of his photographs. In view of the learned counsel this is hit by Section 162 of the Code of Criminal Procedure and the learned trial court should not have recorded the evidence. On behalf of the Central Bureau of Investigation, a preliminary objection had been raised that the impugned order cannot be challenged in a revision petition nor under the inherent powers of the Court. It was urged that it was an interlocutory order and a revision petition as such is barred. Needless to say that petitioners' counsel on the contrary felt and urged that it was not an interlocutory order. Sub-section (2) of Section 397 Cr. P.C. is being referred by the respondents' counsel reads :—

> "397(2). 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."

The said provision clearly show that the power of revising an order under sub-section (1) of Section 397 Cr. P.C. is not to be exercised in relation to an interlocutory order passed in an appeal, enquiry

or trial. The learned trial court had rejected the objection of the petitioners pertaining to admissibility of certain documents. The short question that comes up for consideration is as to whether it is an interlocutory order or not.

(4) The expression "interlocutory order" has not been defined in the Code of Criminal Procedure, 1973. But the purpose of enacting sub-section (2) of Section 397 Cr. P.C. is clear. It is without pale of any controversy that this has been enacted not to frustrate a smooth trial. The day to day proceedings of the trial court should not be frustrated by frequent revisions against interlocutory orders. This has been enacted to help the trial court to trial as expeditiously as possible. The Supreme Court in the case of *V.C. Shukla* v. *State through C.B.I.* (1), noted the purpose of enacting sub-section (2) of Section 397 Cr. P.C. and help that expression "interlocutory order" must be given broad meaning to achieve the object that there is no delay in the trials. In paragraph 5 it was held :—

> "The object seems to be to cut-down the delays in stages through which a criminal case passes before it culminates in an acquittal, discharge or conviction. So far as the Code of Criminal Procedure, 1973 is concerned, it has got a wide and diverse area of jurisdiction in as much as it regulates the procedure of trial not only of the large number of offences contained in the Indian Penal Code but also in other Acts and statutes which apply the Code of Criminal Procedure or which are statutes in pari materia the Code. Having regards, therefore, to the very large ambit and range of the Code, the expression 'interlocutory order' would have to be given a broad meaning so as to achieve the object of the Act without disturbing or interfering with the fairness of the trial."

(5) With this backdrop as to what is the meaning of inter locutory order, one can refer to certain distinctions and meaning ascribed to it. In Corpus Juris Secundum, Volume 47 at page 85 the meaning of interlocutory order and law was given to be :—

> "Something intervening between the commencement and the end of a suit which decides some point or matter but which is not a final decision of the whole controversy."

1. 1980 Crl. L.J. 890

Similarly in Webster's Third New International Dictionary at page 1179 in law the meaning of interlocutory was :–

> "Not final or definitive : made or done during the progress of an action : intermediate, provisional".

In other words it was felt that interlocutory order would be converse to the final order. The same has been considered more often than once by the Supreme Court. In one of the earliest decisions of the Supreme Court in the case of *Mohan Lal Magan Lal Thacker* v. *State of Gujarat* (2), Supreme Court Reports 685 a distinction was drawn as to what is a final and interlocutory order. Referring to some of the decisions from England the same was noted to be :—

> "The meaning of the two words "final" and "interlocutory" has, therefore, to be considered separately in relation to the particular purpose for which it is required. However, generally speaking, a judgement or order which determines the principal matter in question is termed final. It may be final although it directs enquiries or is made on an interlocutory application or reserves liberty to apply. In some of the English decisions where this question arose, one or the other of the following four tests was applied :—
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> 1. Was the order made upon an application such that a decision in favour of either party would determine the main dispute?
> 2. Was it made upon an application upon which the main dispute could have been decided?
> 3. Does the order as made determine the dispute?
> 4. If the order in question is reversed, would the action have to go on?"

Subsequently, while discussing the same question the Supreme Court referred to the decision in the case of *State of Uttar Pradesh* v. *Sujan Singh* (3). Where rights of the parties were not decided and production of certain documents was permitted, was noted that it was an interlocutory order. The Supreme Court hod:—

> "The decision in State of Uttar Pradesh v. Sujan Singh does not help because the proceeding in which the impugned order was passed was assumed to be an interlocutory

2. (1968) 2 S.C. Reports 685.
3. (1964) 7 S.C. Reports 734.

one arising from and during the course of the trial itself. The question was whether the order rejecting the State's claim of privilege from producing a certain document was a final order within the meaning of Article 134 (1) (c). The criminal proceedings, said the Court, were the proceedings against the respondents for an offence under section 6 (1) of the Prevention of Corruption Act, 1947. They were still pending before the Special Judge. In the course of those proceedings the respondents applied for the production of the document by the Union Government and that was allowed by the Court. The order, therefore, was an interlocutory order pending the said proceedings. it did not purport to decide the rights of the parties i.e. the State of Uttar pradesh and the respondents, the accused. It only enabled the accused to have the said document proved and exhibited in the case and therefore was a procedural step for adducing evidence. The court also said that assuming that the order decided some right of the Union Government, that government was neither a party to the criminal proceedings nor a party either before the High Court or this Court. This decision was clearly on the footing that the respondents' application for production of the document in which the Union Government, not a party to the trial, claimed privilege was an interlocutory and not an independent proceeding. The question is what would be the position if (a) the application was an independent proceeding, and (b) if it affected the right of the Union Government."

This question was again considered in the case of *Smt. Parmeshwari Devi* v. *The State and another* (4), Once again the scope of sub-section (2) of Section 397 was subject matter under consideration. It was held that if it is an intermediate order, obviously without effecting the rights of the parties, it would be an interlocutory order. In paragraph 7 the Court concluded :—

"The Code does not define an interlocutory order, but it obviously is an intermediate order, made during the preliminary stages of an enquiry or trial. The purpose of sub-section (2) of Section 397 is to keep such an order outside the purview of the power of revision so that the

4. 1971 Crl. L.J. 245

enquiry or trial may proceed without delay. This is not likely to prejudice the aggrieved party for it can always challenge it in due course if the final order goes against it. But it does not follow that if the order is directed against a person who is not a party to the enquiry or trial, and he will have no opportunity to challenge it after a final order is made affecting the parties concerned, he cannot apply for its revision even if it is directed against him and adversely affects his rights."

In the other words, it was held that the meaning of interlocutory order has to be considered separately in relation to the particular purpose for which it has been considered.

(6) Attention of the Court was further drawn to the decision of the Supreme Court in the case of *Amar Nath and others* v. *State of Haryana and others,* (5). The Supreme Court noted that where rights of the parties were not finally adjudicated and it is merely an *adinterim* order, it must be taken to be an interlocutory order. The findings of the Court were :—

"Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" in Section 397 (2) of the 1973 Code 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 rights 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 of the 1973 Code. 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) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the

5. 1977 Crl. L.J. 1891

accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court."

the decision in the case of *Madhu Limaye* v. *State of Maharashtra* (6), also throws considerable light and guidelines in this regard. It was noted that expression "interlocutory order" has been understood and to mean converse of final order. In paragraph 12 the supreme court noted :—

"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 page 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 pages 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 declarations 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." Subsequently, the Supreme Court which referring to the earlier decision from the

6. AIR 1978 SC 47

Federal Court and approving the same, it was held :—

"In S. Kuppuswami Rao v. The King, 1947 FCR 180 : (AIR 1949 FC 1) Kania C.J., delivering the judgment of the Court has referred to some English decisions at pages 185 and 186 (of FCR) : (at P. 3 of AIR). 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 S. 397 (2) was not a "final order" within the meaning of S. 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 oder 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" occuring 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."

It would further be appropriate to refer to the decision of the Supreme Court in the case of *V.C. Shukla* v. *State through C.B.I.* (supra). The Supreme Court held that expression "interlocutory order" occuring under sub-section (2) of Section 397 Criminal Penal Code has been given a liberal meaning and in paragraph 21 it was concluded :—

> "To begin with, in order to construe the term 'interlocutory', it has to be construed in contradistinction to or in contrast with a final order. We are fortified by a passage appearing in the Supreme Court Practice, 1976 (Vol. 1 p. 853) where it is said that an interlocutory order is to be contrasted with a final order, referring to the decision of Salaman v. Warner, (1891) 1 QB 734. In other words, the words 'not a final order' must necessarily mean an interlocutory order or an intermediate order."

(7) Having referring to some of the leading cases on the subject from the Supreme Court, one can easily draw the conclusions and interlocutory order is converse of the final order. An interlocutory order is one made or given during the progress of an action. It does not finally dispose of the rights of the parties. It will be difficult to provide a straight jacket formula. The real test would be that if the judgment or the order disposes of the rights of the parties, it would be a final order. If it does not dispose of the rights of the parties, it would be an interlocutory order. If the order is merely a step in aid to adjudicate the rights, in that event, it cannot be termed to be a final order.

(8) With this backdrop we can travel back and see to the facts of the case.

(9) The learned trial court permitted the evidence to be produced and led pertaining to the identification. The objection that the evidence was irrelevant and hit by Section 162 of the Code of Criminal Procedure was negatived. The learned trial court still felt that the probative value of the evidence has to he considered subsequently. Indeed no right of the parties was effected. It is merely step-in-aid taken to proceed with the trial and negative day-to-day objections during the course of trial. The evidenciary evidence has yet to be evaluated. Therefore, it must be taken to be an interlocutory

order and not a final order qua the petitioners. Therefore, the revision petition must be stated to be not maintainable.

(10) In that evident an argument was floated that inherent powers of the Court can be pressed into service to quash such an order which was against the law. At the outset, it may be stated that this Court for the moment is not expressing any opinion about the validity of the order passed by the trial court but where there is a specific bar by the Criminal Procedure Code, ordinarily inherent powers would not be utilized unless there is total abuse of the process of the court or the interest of justice so requires. Both the provisions namely Section 397(2) and 482 Cr. P.C. has to be harmoniously construed. Ordinarily this Court would not press into service the inherent powers in face of the specific bar imposed by the legislature. Merely because certain evidence has been taken to be admissible will not permit this Court to scrutinize the same in another form by exercising the inherent powers. The said contention also, therefore, must fail.

(11) For these reasons, the preliminary objection must prevail and it is held that the petition is not maintainable against the interlocutory order. Nothing said herein should be taken as an expression of opinion on the merits of the main case. The petition is dismissed.

S.C.K.

Before K. Sreedharan, C.J. N.K. Sodhi & Swatanter Kumar, JJ

OM PARKASH CHAUTALA,—*Petitioner*

versus

THE STATE OF HARYANA & OTHERS,—*Respondents*

CWP No. 10245 of 97

11th August, 1997

Constitution of India, 1950—Arts. 174 194(3), 212, 213 and 226—Ordinances 2 & 3 of 1997—Rules of Procedure and Conduct of Business in Haryana Legislative Assembly—Rls. 104 & 121—Suspension of member—Challenge to—Vidhan Sabha can be prorogued only by order of Governor—No provision for deemed prorogation of Assembly—Ordinances 2 & 3 of 1997 issued by mistake during session withdrawn under Art. 213 (2)(b)—Court