Madhu Limaye

Vs

The State of Maharashtra

Criminal Appeal No. 81 of 1977

(N. L. Untwalia, P. K. Goswami JJ )

31.10.1977

JUDGMENT

UNTWALIA, J. -

1.This is an appeal by special leave from the order of the Bombay High Court rejecting the application in revision filed by the appellant under Section 397(1) of the Code of Criminal Procedure, 1973 - hereinafter to be referred to as the 1973 Code or the new Code, on the ground that it was not maintainable in view of the provision contained in sub-section (2) of Section 397. The High Court has not gone into its merits.

2. It is not necessary to state the facts of the case in any detail for the disposal of this appeal. A bare skeleton of them will suffice. In a press conference held at New Delhi on September 27, 1974 the appellant is said to have made certain statements and handed over a "press hand-out" containing allegedly some defamatory statements concerning Shri A.R. Antulay, the then Law Minister of the Government of Maharashtra. The said statements were published in various newspapers. The State Government decided to prosecute the appellant for an offence under Section 500 of the Indian Penal Code as it was of the view that the Law Minister was defamed in respect of his conduct in the discharge of his public functions. Sanction in accordance with Section 199(4)(a) of the 1973 Code was purported to have been accorded by the State Government. Thereupon the Public Prosecutor riled a complaint in the Court of the Sessions Judge, Greater Bombay. Cognizance of the offence alleged to have been committed by the appellant was taken by the Court of Session without the case being committed to it as permissible under sub-section (2) of Section 199. Process was issued against the appellant upon the said complaint.

3. The Chief Secretary to the Government of Maharashtra was examined on February 17, 1975 as a witness in the Sessions Court to prove the sanction order of the State Government. Thereafter on February 24, 1975 Shri Madhu Limaye, the appellant, filed an application to dismiss the complaint on the ground that the Court had no jurisdiction to entertain the complaint. The stand taken on behalf of the appellant was that allegations were made against Shri Antulay in relation to what he had done in his personal capacity and not in his capacity of discharging his functions as a Minister. Chiefly on that ground and on some others, the jurisdiction of the Court to proceed with the trial was challenged by the appellant.

4. The appellant raised three contentions in the Sessions Court and later in the High Court assailing the validity and the legality of the trial in question. They are :

(1) That even assuming the allegations made against Shri Antulay were defamatory,

> they were not in respect of his conduct in the discharge of his public functions and hence the aggrieved person could file a complaint in the Court of a competent Magistrate who after taking cognizance could try the case or commit it to the Court of Session if so warranted in law. The Court of Session could not take cognizance without the committal of the case to it.
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> (2) The sanction given was bad in asmuch as it was not given by the State Government but was given by the Chief Secretary.
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> (3) The Chief Secretary had not applied his mind to the entire conspectus of the facts and had given the sanction in a mechanical manner. The sanction was bad on that account too.

5. The Sessions Judge rejected all these contentions and framed a charge against the appellant under Section 500 of the Penal Code. The appellant, thereupon, challenged the order of the Sessions Judge in the revision filed by him in the High Court. As already stated, without entering into the merits of any of the contentions raised by the appellant, it upheld the preliminary objection as to the maintainability of the revision application. Hence this appeal.

6. The point which falls for determination in this appeal is squarely covered by a decision of this Court, to which one of us (Untwalia, J.) was a party in Amar Nath v. State of Haryana. But on a careful consideration of the matter and on hearing learned Counsel for the parties in this appeal we thought it advisable to enunciate and reiterate the view taken by two learned Judges of this Court in Amar Nath's case but in a somewhat modified and modulated form. In Amar Nath's case, as in this, the order of the trial Court issuing process against the accused was challenged and the High Court was asked to quash the criminal proceeding either in exercise of its inherent power under Section 482 of the 1973 Code corresponding to Section 561A of the Code of Criminal Procedure, 1898 - hereinafter called the 1898 Code or the old Code, or under Section 397(1) of the new Code corresponding to Section 435 of the old Code. Two points were decided in Amar Nath's case in the following terms :

> (1) While we fully agree with the view taken by the learned Judge that where a revision to the High Court against the order of the Subordinate Judge is expressly barred under sub-section (2) of Section 397 of the 1973 Code the inherent powers contained in Section 482 would not be available to defeat the bar contained in Section 397(2).
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> (2) The impugned order of the Magistrate, however, was not an interlocutory order.

7. For the reasons stated hereinafter we think that the statement of the law apropos point no. 1 is not quite accurate and needs some modulation. But we are going to reaffirm the decision of the Court on the second point.

8. Under Section 435 of the 1898 Code the High Court had the power to "call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its . . . jurisdiction for the purpose of satisfying itself . . . as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court", and then to pass the necessary orders in accordance with the law engrafted in any of the sections following Section 435. Apart from the revisional power, the High Court possessed and

possesses the inherent powers to be exercised ex debito justitiae to do the real and the substantial justice for the administration of which alone Courts exist. In express language this power was recognized and saved in Section 561A of the old Code. Under Section 397(1) of the 1973 Code, revisional power has been conferred on the High Court in terms which are identical to those found in Section 435 of the 1898 Code. Similar is the position apropos the inherent powers of the High Court. We may read the language of Section 482 (corresponding to Section 561A of the old Code) of the 1973 Code. It says :

> Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably, barring a few exceptions :

> (1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
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> (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
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> (3) That is should not be exercised as against the express bar of law engrafted in any other provision of the Code.

9. In most of the cases decided during several decades the inherent power of the High Court has been invoked for the quashing of a criminal proceeding on one ground or the other. Sometimes the revisional jurisdiction of the High Court has also been resorted to for the same kind of relief by challenging the order taking cognizance or issuing processes or framing charge on the grounds that the Court had no jurisdiction to take cognizance and proceed with the trial, that the issuance of process was wholly illegal or void, or that no charge could be framed as no offence was made out on the allegations made or the evidence adduced in Court. In the background aforesaid, we proceed to examine as to what is the correct position of law after the introduction of a provision like sub-section (2) of Section 397 in the 1973 Code.

10. As pointed out in Amar Nath's case (supra) the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding, is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub-section (2) in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include sub-section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out ? In our opinion, a happy

solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial, after proper sanction will not be barred on the doctrine of autrefois acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused upto the end ? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.

11. In R.P. Kapur v. The State of Punjab [(1960) 3 SCR 388 : AIR 1960 SC 866 : 1960 Cri LJ 239], Gajendragadkar, J., as he then was, delivering the judgment of this Court pointed out, if we may say so with respect, very succinctly the scope of the inherent power of the High Court for the purpose of quashing a criminal proceeding. Says the learned Judge at pages 392-93 :

> Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the compliant, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of

> appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.

We think the law as stated above is not affected by Section 397(2) of the new Code. It still holds good in accordance with Section 482.

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 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 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.

13. 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. 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 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, The River Wear Commissioners v. William Adamson [(1876-77) 2 AC 743] and R.M.D. Chamarbaugwalla v. The Union of India [(1957) SCR 930 : AIR 1957 SC 628] 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's case (supra), 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 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.

14. In passing, for the sake of explaining ourselves, we may refer to what has been said by Kania, C.J. in Kuppuswami's case at page 187 by quoting a few words from Sir George Lowndes in the case of V.M. Abdul Rahman v. D.K. Cassim and Sons [(1933) 60 IA 76 : AIR 1933 PC 58]. The learned Law Lord said with reference to the order under consideration in that case :

> The effect of the order from which it is here sought to appeal was not to dispose finally of the rights of the parties. It no doubt decided an important, and even a vital, issue in the case, but it left the suit alive, and provided for its trial in the ordinary way.

Many a time a question arose in India as to what is the exact meaning of the phrase "case decided" occurring in Section 115 of the Code of Civil Procedure. Some High Courts had taken the view that it meant the final order passed on final determination of the action. Many others had, however, opined that even interlocutory orders were covered by the said term. This Court struck a mean and it did not approve of either of the two extreme lines. In Baldevdas v. Filmistan Distributors (India) Pvt. Ltd. [AIR 1970 SC 406 : (1969) 2 SCC 201] it has been pointed out :

> A case may be said to be decided, if the Court adjudicates for the purposes of the suit some or obligation of the parties in controversy.

We may give a clear example of an order in a civil case which may not be a final order within the meaning of Article 133(1) of the Constitution, yet it will not be purely or simply of an interlocutory character. Suppose for example, a defendant raises the plea of jurisdiction of a particular Court to try the suit or the bar of limitation and succeeds, then the action is determined finally in that Court. But if the point is decided against him the suit proceeds. Of course, in a given case the point raised may be such that it is interwoven and inter-connected with the other issues in the case, and that it may not be possible to decide it under Order 14, Rule 2 of the Code of Civil Procedure as a preliminary point of law. But, if it is a pure point of law and is decided one way or the other, then the order deciding such a point may not be interlocutory, albeit - may not be final either. Surely, it will be a case decided, as pointed out by this Court in some decisions, within the meaning of Section 115 of the Code of Civil Procedure. We think it would be just and proper to apply the same kind of test for finding out the real meaning of the expression 'interlocutory order' occurring in Section 397(2).

15. In Amar Nath's case, reference has been made to the decision of this Court in Mohan Lal Magan Lal Thacker v. State of Gujarat [(1968) 2 SCR 685 : AIR 1968 SC 733 : 1968 Cri LJ 876]. After an enquiry under Section 476 of the 1898 Code an order was made directing the filing of a complaint against the appellant. It was affirmed by the High Court. The matter came to this Court on grant of a certificate under Article 134(1)(c). A question arose whether the order was a "final order" within the meaning of the said constitutional provision. Shelat, J. delivering the judgment on behalf of himself and two other learned Judges, said that it was a final order. The dismissing judgment was given by Bachawat, J. on behalf of himself and one other learned Judge. In the majority decision four tests were culled out from some English decisions. They are found enumerated at page 688. One of the tests is "if the order in question is reversed would the action have to go on ?" Applying that test to the facts of the instant case it would be noticed that if the plea of the appellant succeeds and the order of the Sessions Judge is reversed, the criminal proceeding as initiated and instituted against him cannot go on. If, however, he loses on the merits of the preliminary point the proceeding will go on. Applying the test of Kuppuswami's case such an order will not be a final order. But applying the fourth test noted at page 688 in Mohan Lal's case it would be a final order. The real point of

distinction, however, is to be found at page 693 in the judgment of Shelat, J. The passage runs thus :

> As observed in Ramesh v. Gendalal Motilal Patni [(1966) 3 SCR 198 : AIR 1966 SC 1445 : (1966) 2 SCJ 762] the finality of that order was not to be judged by co-relating that order with the controversy in the complaint, viz., whether the appellant had committed the offence charged against him therein. The fact that controversy still remained alive is irrelevant.

The majority view is based upon the distinction pointed out in the above passage and concluding that it is a final order within the meaning of Article 134(1)(c). While Bachawat, J. said at page 695 : "It is merely a preliminary step in the prosecution and therefore an interlocutory order". Even though there may be a scope for expressing different opinions apropos the nature of the order which was under consideration in Mohan Lal's case in our judgment, undoubtedly, an order directing the filing of a complaint after enquiry made under a provision of the 1973 Code, similar to Section 476 of the 1898 Code will not be an interlocutory order within the meaning of Section 397(2). The order will be clearly revisable by the High Court. We must, however, hasten to add that the majority decision in Mohan Lal's case treats such an order as an order finally concluding the enquiry started to find out whether a complaint should be lodged or not, taking the prosecution launched on the filing of the complaint as a separate proceeding. From that point of view the matter under discussion may not be said to be squarely covered by the decision of this Court in Mohan Lal's case. 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 which, when accepted, will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of Section 397(2).

16. We may also refer to the decision of this Court in Parmeshwari Devi v. State [(1977) 2 SCR 160 : (1977) 1 SCC 169 : 1977 SCC (Cri) 74] that an order made in a criminal proceeding against a person who is not a party to the enquiry or trial and which adversely affected him is not an interlocutory order within the meaning of Section 397(2). Referring to a passage from the decision of this Court in Mohan Lal's case the passage which is to be found in Halsbury's Laws of England, Volume 22, it has been said by Shinghal, J. delivering the judgment of the Court, at page 164 (SCC p. 172, SCC (CRI) p. 77, para 8) :

> It may thus be conclusive with reference to the stage at which it is made, and it may also be conclusive as to a person, who is not a party to the enquiry or trial, against whom it is directed.

As already mentioned, the view expressed in Mohan Lal's case may be open to debate or difference. One such example is to be found in the decision of this Court in Prakash Chand Agarwal v. M/s Hindustan Steel Ltd. [(1971) 2 SCR 405 : (1970) 2 SCC 806] wherein it was held that an order of the High Court setting aside an ex parte decree in the suit and restoring the suit to the file of the trial Court is not a final order within the meaning of Article 133. It is to be noticed that if the High Court would have refused to set aside the ex parte decree, the proceeding for setting it aside would have finally ended and on some of the principles culled out by the majority in Mohan Lal's case, such an order would have been a final order. We are, however, not under any necessity to enter into this controversial arena. In our opinion whether the type of the order aforesaid would be a final order or not, surely it will not be an interlocutory order within the meaning of sub-section (2) of Section 397 of the 1973 Code.

17. Before we conclude we may point out an obvious, almost insurmountable, difficulty in the way of applying literally the test laid down in Kuppuswami Rao's case and in holding that an order of the kind under consideration being not a final order must necessarily be an interlocutory one. If a complaint is dismissed under Section 203 or under Section 204(4), or the Court holds the proceeding to be void or discharges the accused, a revision to the High Court at the instance of the complainant or the prosecutor would be competent, otherwise it will make Section 398 of the new Code otiose. Does it stand to reason, then, that an accused will have no remedy to move the High Court in revision or invoke its inherent power for the quashing of the criminal proceeding initiated upon a complaint or otherwise and which is fit to be quashed on the face of it ? The Legislature left the power to order further inquiry intact in Section 398. Is it not, then, in consonance with the sense of justice to leave intact the remedy of the accused to move the High Court for setting aside the order adversely made against him in similar circumstances and to quash the proceeding ? The answer must be given in favour of the just and reasonable view expressed by us above.

18. For the reasons stated above, we allow this appeal, set aside the judgment and order of the High Court and remit the case back to it to dispose of the appellant's petition on merits, in the manner it may think fit and proper to do in accordance with the law and in the light of this judgment.

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