

Haryana Land Reclamation and Development Corporation Ltd.

Vs

State of Haryana and Another

Criminal Appeal No. 333 of 1990

(Smt. M. S. Fathima Beevi, S. Ratnavel Pandian JJ)

04.05.1990

JUDGMENT

S. RATNAVEL PANDIAN, J. -

1. Special leave granted.

2. The question for consideration in this appeal is whether the order of discharge passed by the Chief Judicial Magistrate, Sonapat is or is not an "interlocutory order" within the meaning of Section 397(2) of the Code of Criminal Procedure (Hereinafter referred to as 'the Code'). The appellant which is a State Government undertaking registered under the Companies Act, 1956 is working under the administrative control of the Haryana Government in Agricultural Department. The Secretary of the appellant-Company filed a criminal complaint before the court of the Chief Judicial Magistrate, Sonapat against respondent 2 under the Sections 409, 467, 468, 466-A of the Indian Penal Code on the allegations that the second accused committed criminal breach of trust, misappropriated the stock entrusted to him and the defalcated the account books and stock registers, etc. It seems that the complaint was referred to the police for the investigation under Section 156(3) of the Code. On the final report submitted by the Inspector of Police, Sonapat city, the learned Magistrate passed the following order on April 11, 1988.

"In view of the report of the police, accused is ordered to be discharged. File be ordered to be consigned to the record rooms."

Feeling aggrieved by the said order, the appellant took up the matter before the High Court of Punjab and Haryana in Criminal Miscellaneous No. 5492-M of 1988 and Criminal Miscellaneous No. 478 of 1989. The High Court by its impugned order dated February 10, 1989 dismissed the criminal miscellaneous petitions on the ground that the order of the Chief Judicial Magistrate discharging the accused was an "interlocutory order" and that the petition under the Section 482 of the CrPC for the quashing the order of the Magistrate is barred. Hence this appeal.

3. The High Court in its impugned order has placed reliance on the observation of this Court made in *Bhagwant Singh v. Commissioner of Police* ((1985) 2 SCC 537 : 1985 SCC (Cri) 267 : (1985) 3 SCR 942). The question in the said case was whether in a case where first information report is lodged and after completion of investigation initiated on the basis of the first information report, the police submits a report that no offence appears to have been committed, the Magistrate can accept the report and drop the proceedings without issuing notice to the first information or to the injured or in the case the incident has resulted in death, to the relatives of the deceased. Besides examining the above question, this Court did not examine the intendment of Section 397(2) of the Code.

4. There are several decisions of this Court explaining the terms "interlocutory order" occurring in Section 397(2) of the Code. In *Amar Nath v. State of Haryana* ((1977) 4 SCC 137 : 1977 SCC (Cri) 585) the said term is defined thus : (SCC p. 142, para 6)

"The term "interlocutory order" is a term of well known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, letters patent of the High Court and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. 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 terms "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in the 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 affected the right of the accused, or decides certain rights of the parties cannot be said to be 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."

Untwalia, J. speaking for the bench in *Madhu Limaye v. State of Maharashtra* ((1977) 4 SCC 551 : 1978 SCC (Cri) 10), after referring to *Amar Nath* case ((1977) 4 SCC 137 : 1977 SCC (Cri) 585) and to some more decisions and after explaining what the term "interlocutory order" means finally observed as follow : (SCC p. 561, para 17)

"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."

When the question that has arisen in the present case is examined in the light of the above observations made in *Amar Nath* case ((1977) 4 SCC 137 : 1977 SCC (Cri) 585) and *Madhu Limaye* case ((1977) 4 SCC 551 : 1978 SCC (Cri) 10), it is clear that the order of the High Court is not sustainable and as such is liable to be set aside as the order of discharge passed by the Chief Judicial Magistrate does not fall within the definition of the term "interlocutory order" and the inherent power of the High Court is not limited.

5. For the reasons stated above, we allow this appeal, set aside the order of the High Court and remit the case back to it to dispose of the appellant's petition on merits in accordance with the law.

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