

Narendra Mohan @ Neeraj Tripathi vs State Of U.P. Thru. Prin. Secy. Home ... on 1 April, 2025

Author: Alok Mathur

Bench: Alok Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:17904

Court No. - 12

Case :- CRIMINAL APPEAL No. - 930 of 2025

Appellant :- Narendra Mohan @ Neeraj Tripathi

Respondent :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko. And Another

Counsel for Appellant :- Ashish Raman Mishra

Counsel for Respondent :- G.A.

Hon'ble Alok Mathur,J.

1. Heard Sri Ashish Raman Mishra, learned counsel for the appellant and the A.G.A. for the State.
2. By means of the present appeal under Section 14 A (1) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 the appellant has assailed the order dated 1.2.2025 passed by Special Judge, S.C./S.T. (P.A.) Act, Bahraich rejecting the police report and ordering further investigation in the said case.
3. Brief facts of the case, as stated in the appeal, are that the complainant i.e. opposite party No.2 had moved an application under Section 156 (3) Cr.P.C on 1.11.2013 where it was stated that opposite party No.2 had gone to see fair of Dussehra at Bahraich where her daughter aged about five years got missing and during the course of search she had reached at the pulia where accused persons, namely Neeraj, Vikram and Raj Kumar simultaneously reached at that place and

committed rape upon the informant. There are witnesses of the said incident and it is stated that after the complainant had made hue and cry the accused persons had run away and had further subsequently threatened the informant not to make any complaint with regard to the said incident. Despite the information having been given the police did not register first information report leading the complainant to file application under Section 156 (3) Cr.P.C. before the Judicial magistrate on 1.11.2013. Report from the police concerned was called where it was stated that there was previous enmity with the husband of the informant and the accused and by means of order dated 25.1.2014 the application under Section 156 (3) Cr.P.C. was allowed and the State was directed to lodge first information report and investigate the matter.

4. The matter was duly investigated by the police and subsequently final report was submitted on 6.6.2014. Against the final report protest petition was preferred by the complainant on which the final report was set aside by means of order dated 1.3.2017 and further investigation in the matter was ordered.

5. Against the order dated 1.3.2017 the appellant had filed a revision which was allowed only on the ground of jurisdiction in as much as the cognizance of the said case under the S.C./S.T. (P.A.) Act could be taken only by the court duly constituted under the said Act. It is in pursuance of the direction dated 1.3.2017 that the matter was taken up by the trial court and the impugned order has been passed.

6. From perusal of the impugned order, it is noticed that the trial court has duly recorded the fact that the complainant in her statement under Sections 161 and 164 Cr.P.C. has supported the case of the prosecution while, on the other hand, the police investigation has been closed only on the ground that the parties were inimical to each other and only on the ground of their inimical relationship the investigating officer was of the view that the incident is doubtful. It has further been observed in the impugned order that from the statement of the prosecutrix / victim, it was noticed that subsequent to the said incident she was hospitalized for five days in a government hospital while, on the other hand, no documents in this regard have been annexed by the investigating officer and further for the said reason he has rejected the final report and directed for further investigation in the said matter.

7. Learned counsel for the appellant has vehemently submitted that the aspect of hospitalization was duly investigated by the investigating officer and he has stated that during 13.10.2013 to 17.10.2013 no person by the name of the prosecutrix was ever admitted in the government hospital and merely on account of the said report of the police, he submits that the impugned order is illegal and it has not considered the material on record and consequently has assailed the validity of the impugned order dated 1.2.2025.

8. Learned A.G.A., on the other hand, has opposed the appeal. He submits that by means of the impugned order the police report has been set aside and the matter has been remitted for further investigation. He submits that at this stage, there is no order adverse to the appellant on the basis of which the present appeal has been filed. Merely against a direction for further investigation, no appeal would lie in as much as the same would be an interlocutory order under Section 14A (1) of

the Act of 1989. He has further submitted that even if the argument of the appellant were to be accepted then it is noticed that the prosecutrix has given statement under Sections 161 and 164 Cr.P.C. and in unequivocal terms stated that she was admitted in the government hospital while the parcha annexed with the final report is not reliable in as much as the same is based solely on the certain reports of the police authorities where it seems that no register of admission of the patient was seen by the investigating officer nor did he ever visit the hospital.

9. Considering the rival submissions, it is noticed that by means of the impugned order, the trial court has only considered the statement of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. where it has been unequivocally stated that she was admitted in the government hospital. Undoubtedly, in case it comes on record that she was, in fact, admitted in a government hospital that in itself would lend credence towards her statements recorded during the investigation and it seems that the said fact narrated by the prosecutrix were contrary to the fact occurring in the final report. Accordingly, I do not find any infirmity in the discretion exercised by the trial court in remitting the matter for further investigation in peculiar facts of the aforesaid case.

10. Apart from the above, we find that the order by which further investigation has been ordered would fall under the category of interlocutory order in as much as no right of an individual has been infringed or any finding in this regard has been recorded. By the order of further investigation the appellant could not have any grievance as no process has been issued to them even though they may be accused at the stage of investigation. Here it would be pertinent to quote Section 14 A(1) of the Act of 1989 as under:-

"14 A. Appeals.?(1) Notwithstanding anything contained in the Code of Criminal Procedure,1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law."

11. Hon?ble Supreme Court has elaborated the concept of Interlocutory order in the case of Amar Nath v. State of Haryana, (1977) 4 SCC 137. The relevant portion is quoted below:-

"6.Let us now proceed to interpret the provisions of Section 397 against the historical background of these facts. Sub-section (2) of Section 397 of the 1973 Code may be extracted thus :

?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 main question which falls for determination in this appeal is as to what is the connotation of the term ?interlocutory order? as appearing in sub-section (2) of Section 397 which bars any revision of such an order by the High Court. 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 Courts and other like statutes. InWebster'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 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 right 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 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.

7.InCentral Bank of India v. Gopal Chand[AIR 1967 SC 799, 800 : (1967) 1 SCR 310 : (1967) 2 SCJ 828] , this Court while describing the incidents of an interlocutory order, observed as follows :

?In the context of Section 38(1), the words ?every order of the Controller made under this Act?, though very wide, do, not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller, may pass many interlocutory orders under Sections 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding they regulate the procedure only and do not affect any right or liability of the parties.

The aforesaid decision clearly illustrates the nature and incidents of an interlocutory order and the incidents given by this Court constitute sufficient guidelines to interpret the connotation of the words ?interlocutory order? as appearing in sub-section (2) of Section 397 of the 1973 Code."

12. Time and again it has been held that at the stage of passing the cognizance order detail reasons are not required to be given by the court and in this regard reference can be made to the decision of Hon'ble Supreme Court in the case of Ajay Kumar Parmar Vs. State of Rajasthan, (2012) 12 SCC 406, wherein the following observations have been made:-

"19. The Magistrate, in exercise of its power under Section 190 Cr.P.C., can refuse to take cognizance if the material on record warrants so. The Magistrate must, in such a case, be satisfied that the complaint, case diary, statements of the witnesses recorded under Sections 161 and 164 Cr.P.C., if any, do not make out any offence. At this stage, the Magistrate performs a judicial function. However, he cannot appreciate the evidence on record and reach a conclusion as to which evidence is acceptable, or can be relied upon. Thus, at this stage appreciation of evidence is impermissible. The Magistrate is not competent to weigh the evidence and the balance of probability in the case."

13. Accordingly, for the aforesaid reasons also we find that the present appeal would not be maintainable as it has been filed against the interlocutory order. No ground for interference is made out. The appeal is devoid of merits and is dismissed accordingly.

(Alok Mathur, J.) Order Date :- 1.4.2025/RKM.