

Haryana Land Reclamation And ... vs State Of Haryana And Anr. on 4 May, 1990

Equivalent citations: JT1990(2)SC328, (1990)98PLR702, (1990)3SCC588, AIRONLINE 1990 SC 33, 1990 (3) SCC 588, 1990 CHAND LR (CIV&CRI) 570, (1990) MAD LJ(CRI) 566, (1990) 3 OCR 396, (1990) 2 GUJ LH 75, (1990) 2 ALL CRI LR 118, (1990) EAST CRI C 543, (1990) ALL CRI R 458, (1991) 1 CHAND CRI C 34, (1990) 2 ALL WC 785, (1990) 2 REC CRI R 189, (1990) 2 KER LT 1, (1990) 2 PUN LR 702, (1990) 2 MAH LR 753, (1990) 2 JT 328, (1990) 2 CUR LJ (CIV&CRI) 203, (1990) 2 ORISSA LR 1, 1990 SCC (CRI) 515, (1990) 2 CURLJ(CCR) 203, (1990) 2 JT 328 (SC), 1990 CRI LR (SC&MP) 412, AIRONLINE 1990 SC 295

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Bench: S.R. Pandian, M. Fathima Beevi

JUDGMENT

S. Rat navel 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 CrPC (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 Haryana Government in Agricultural Department. The Secretary of the appellant-Company filed a criminal complaint before the court of Chief Judicial Magistrate, Sonapat against the second respondent under Sections 409, 467, 468 and 466-A of the Indian Penal Code on the allegations that the second accused committed criminal breach of trust, misappropriated the stocks entrusted to him and defalcated the account books and stocks registers, etc. It seems that the complaint was referred to the police for 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 11.4.1988:

In view of the report of the Police, accused is ordered to be discharged. File be ordered to be consigned to the record room.

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 in 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 and Haryana in Criminal Miscellaneous No. 5492-M of 1988 in 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 Section 482 of the Cr. P.C. for 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 and Anr.* . 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 informant or to the injured or in case the incident has resulted in death, to the relatives of the deceased. Besides, examining the above question, this Court did not examine the intent of Section 397(2) of the Code. In *Amar Nath and Ors. v. State of Haryana and Anr.* the said term is defined thus:

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 CPC, Letters Patent of the High Courts 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 term "interlocutory order" in Section 397(2) of the 1973 Code has been used in 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 of 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.

Untiwalla, J speaking for the Bench in *Madhu Limaye v. State of Maharashtra* 1977(4) SCC 55 after referring to *Amar Nath's* case and to some more decisions and after explaining what the term "interlocutory order" means finally observed as follows:

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's case and Madhu Limaye's case, 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.