A.K. Subbaiah & Ors vs State Of Karnataka & Ors on 28 August, 1987

Equivalent citations: 1987 SCR (3)1128, 1987 SCC (4) 557, AIRONLINE 1987 SC 32, (1987) ILR (KANT) 3751, (1987) 3 CRIMES 399, (1988) SIM LC 137, 1987 (4) SCC 557, (1987) 2 APLJ 57.2, (1987) 3 JT 435, 1987 SCC (CRI) 768, (1988) 1 SIM LC 137, (1987) 3 JT 435 (SC)

Author: G.L. Oza

Bench: G.L. Oza, Sabyasachi Mukharji

PETITIONER:
A.K. SUBBAIAH & ORS.

Vs.

RESPONDENT:
STATE OF KARNATAKA & ORS.

DATE OF JUDGMENT28/08/1987

BENCH:
OZA, G.L. (J)
BENCH:
OZA, G.L. (J)
MUKHARJI, SABYASACHI (J)

CITATION:
1987 SCR (3)1128 1987 SCC (4) 557
JT 1987 (3) 435 1987 SCALE (2)451

ACT:
Criminal Procedure Code , 1973: ss. 397 & 401--High Court-Revisional jurisdiction--Scope of--Challenge to issue of process----High Court to see whether prima facie case made out--Persons not parties before trial court--Whether could be impleaded in revision.

HEADNOTE:
The trial court took cognizance of a complaint by the State Government under s. 500 I.P.C. filed on the basis of a sanction granted by the State Government under s. 199(2) Cr. P.C., as one of the persons defamed was the Director General of Police, and issued process against the appellants. In the revision petition preferred by the appellants under ss. 397

and 401 Cr. P.C. against that order, in addition to respondent 1, the appellants also joined respondent 2, the Director General of Police, and respondent 3, the Chief Minister of the State, as parties. The High Court admitted the petition and ordered issue of notice to the respondents, but directed deletion of the names of respondents 2 and 3 holding that they were not necessary parties to the proceedings.

In the appeal by special leave assailing the order of the High Court it was contended for the appellants that since the prosecution was instituted by sanction from the State Government, and the news item and the allegation which formed the basis of the complaint pertained to the two respondents they were necessary parties before the High Court. The High Court, therefore in exercise of its jurisdiction under s. 401(2) Cr.P.C. was not right in deleting the names of these two respondents. For the respondents, it was contended that the High Court was right in deleting the names of respondents 2 and 3 as they were not parties in the criminal case pending before the trial court, nor were they necessary parties to the proceedings before the High Court, that under ss. 397 and 401 Cr.P.C. what the High Court was expected to see in revision against the issue of process was as to whether the complaint and the papers filed alongwith it were sufficient to justify the order passed by the trial court and whether it was a proceeding which deserves to continue or it could be quashed.

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Dismissing the appeal by special leave,

HELD: 1. The High Court was right in deleting the names of the two respondents. [1137F-G]

2. When the issue of process is challenged in revision petition before the High Court and the record is called for under s. 397 Cr.P.C., what it is expected to see only is as to whether the complaint and the papers accompanying it prima facie indicate that an offence is made out. If the complaint and the papers in the opinion of the High Court are such which do not prima facie disclose an offence then it will be open to the High Court to entertain the revision and quash the proceedings. Except this the High Court is not expected to go into the matter at all. [1137C-D]

3. Section 401(2) Cr.P.C. contemplates a situation where a person may not be an accused person before the court below but one who might have been discharged and therefore if the revisional court after exercising jurisdiction under s. 401 wants to pass an order to the prejudice of such a person, it is necessary that that person should be given an opportunity of hearing but it does not contemplate any contingency of hearing of any person who is neither party in the proceedings in the court below nor is expected at any stage even after the revision to be joined as party. [1136B-D]

In the instant case the prosecution was launched by the State Government and before the trial court the only parties were the petitioners, who were accused persons, and the

State Government, which stood in the place of a complainant. There were prosecution witnesses and there might even be defence witnesses. But the witnesses are not parties to the proceedings. The two respondents were not parties before the court below. They could not, therefore, be joined as parties before the High Court. [1135B-C]

4. The question about anyone else being instrumental in getting the prosecution launched or questions which are foreign are not to be considered in a revision where the issue of process is being challenged and therefore the further question in the instant case as to whether the party against whom an allegation is made is or is not a necessary party in the proceedings also is not relevant. [1137E-F]

Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors., [1983] 1 SCR 884 referred to.

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Thakur Ram v. The State of Bihar, [1966] 2 SCR 740, distinguished.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 401 of 1987.

From the Judgment and Order dated 8.9. 1986 of the Karnataka High Court in Crl, Revision Petition No. 482 of 1986.

L.R. Singh for the Appellants.

M. Veerappa and A.K. Panda for the Respondents. The Judgment of the Court was delivered by OZA, J. Leave granted.

This appeal has been preferred by the appellants who are the accused persons in a complaint filed by the State Gov- ernment before the Principal Sessions Court, Bangalore. It is alleged that this complaint is filed by the State Govt. under Sec. 500 of the Indian Penal Code. This complaint was filed by the State Govt. on the basis of a sanction granted by the State Govt. under Sec. 199, clause (2) of the . Code of Criminal Procedure, as one of the persons defamed is the Director General of Police, State of Karnataka. The Trial Court after the filing of the complaint took cognizance of the matter and issued process against the petitioners who were the accused persons before the court below. Against this issue of process, these petitioners filed a criminal revision before the High Court of Karnataka seeking the relief of quashing of the order directing issue of process and also the quashing of proceedings pending in the court below. The revision which was filed in the High Court was filed under Sections 397 and 401. In addition to the State Government, the petitioners joined respondent No. 2, the Director General of Police, State of Karnataka and also respondent No. 3, the Chief Minister of Karnataka, Shri Ramakrishna Hegde.

It is alleged that when the revision petition was filed in the High Court, it was heard for admission and was admit- ted and orders were passed for issue of notices to the respondents. But by the impugned order the High Court di- rected deletion of the names of respondents Nos. 2 and 3 holding that they are not necessary parties to the proceedings and it is against this order that the spe- cial leave was filed and hence this appeal.

The order of the High Court indicates that the matter was taken up on being mentioned by either of the counsel in the matter as it reads:

> "This CRP coming on for being spoken to the Court made the following order:
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> Respondents 2 and 3 in this petition, who are not parties to the complaint, are not neces-
>
> sary parties to the proceedings. Hence, Respondents 2 and 3 in this petition are deleted.
>
> S
>
> d/Judge"
>
> An attempt was made by the learned counsel for the appel- lant, to contend that once the process was issued in the revision by the High Court after admission it is curious that this matter was taken up. Although it is not clearly alleged that this order was passed without affording an opportunity of hearing to the petitioner, admittedly they were heard. The main grievance appears to be that it was suddenly taken up for hearing on being mentioned. This is not unusual and there is no grievance that the petitioners had no hearing. Under these circumstances no grievance could be made to this part of the order. It is not disputed that in the revision petition itself the relief claimed by the petitioners were:
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> "Wherefore the petitioners pray that this Hon'ble court be pleased to call for the records and a return from the respondents and--
>
> (i) Quash the proceedings of the first respondent dated 30.6.1986 bearing Order No. HD 1610 PCC 86, Annexure-'E'.
>
> (ii) Quash the entire proceedings initi-

ated against the petitioners as per the sum- mons Annexure 'F' in C.C. No. 62/86 on the file of the Principal Civil and Sessions Judge, Bangalore City.

(iii) Grant such other reliefs as this Hon'ble Court deems fit in the circumstances of the case including an order as to costs."

A perusal of these prayers made in the revision petition clearly indicates that what was challenged before the High Court was the order dated 30.6.86 by which the process was issued against the petitioners and further the quashing of the proceedings instituted before the court below i.e. Principal Civil & Sessions Judge, Bangalore City which was Criminal Complaint No. 62 of 1986. It is therefore clear that the only challenge before the High Court was to the proceedings on the basis of the complaint and the relief sought was quashing of these proceedings.

It is clear that High Court exercises jurisdiction under Sec. 401 when it exercises revisional jurisdiction. It is contended by the learned counsel that it is Sec. 397 of the Code of Criminal Procedure which empowers the High Court to call for the record and examine the record about the propri- ety of the order. But the High Court exercises revisional jurisdiction under Sec. 401. Learned counsel laid much emphasis on sub-clause 2 of Sec. 40 1 to contend that as in the revision petition the contention advanced by the peti- tioners is that this prosecution was instituted by sanction from the State Govt. because the two respondents and the petitioner in this revision petition made allegations against the two respondents who have been deleted that it was necessary for them to join them as parties under clause 2 of Sec. 40 1. It was further contended that in fact the news item and the allegation which form the basis of the complaint pertain to these two persons. In fact not about the Chief Minister himself but about his wife and in this aspect of the matter it was contended that these two were necessary parties before the High Court and it was for this reason that the petitioners joined them in the High Court. Learned counsel for the appellants placed reliance on a decision of this Court in Thakur Ram v. The State of Bihar, [1966] 2 SCR 740 and it was contended that the Court below was not right in deleting these two respondents. Learned Advocate General appearing for the State of Karnataka frankly stated that so far as the two respondents' continuance or discontinuance from the criminal revision is concerned the State of Karnataka is not interested and he has nothing more to add but he contended that joining of such parties which are not necessary in a revision arising out of criminal proceedings is a matter of far-reaching consequences. He contended that if such parties are permit- ted to be joined then any accused person who is facing a trial in a criminal prosecution may file a revision chal- lenging either the issue of process or the framing of charge and may join unnecessarily parties and it may become difficult even to serve such parties and because of this the criminal proceedings may remain stayed for long time. This ultimately may result in defeating the criminal justice. And in this view of the matter the learned Advocate General contended that the High Court was right in deleting these two names as they were not parties in the criminal case pending before the trial court nor were necessary parties to these proceedings.

Learned counsel appearing for the two respondents con- tended that in fact in view of Sec. 397 and 401 of the Cr.P.C. what the court i.e. the High Court is expected to see in a revision of this nature against the issue of proc- ess is as to whether the complaint and the papers filed alongwith the complaint are sufficient to justify the order passed by the learned trial court by issuing process against the petitioners-accused persons. It was contended by the learned counsel that the Court is not expected to see any- thing further nor there is any material to come to a conclu- sion as to whether the prosecution has been launched fairly or at the instigation or under the influence of some other person. It was contended that in fact these questions may be before the court below when evidence is recorded what the Court primarily is concerned to see is that the facts al- leged in

the complaint whether prima facie constitute an offence calling for a trial and if the Court is so satisfied it issues process. The High Court in revision under Sec. 401 read with 397 only is concerned to see those papers which were before the court below. Admittedly these two respond- ents Nos. 2 and 3 were not parties before the court below and the High Court was right in deleting their names from the proceedings. Learned counsel placed reliance on a deci- sion of this Court in Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Ors., [1983] 1 SCR 884 and contended that the scope of Sections 401 and 397 has been considered by series of decisions of this Court, the above noted case being one and contended that in the light of law laid down, no grievance could be made against the order of the High Court.

It was also contended that even if the petitioners have chosen to make allegations against respondents 2 and 3 as any one is free to make allegations, it does not call for any enquiry before the High Court as the High Court is not expected to enquire into the allegations and counter-allega- tions while it is only examining in revision the order issued by the trial court which is nothing more but issue of process and that order the trial court has passed on the basis of complaint and papers filed alongwith the complaint and the High Court only is expected to see as to whether on these papers and complaint the Court below was fight in issuing process and it is a proceeding which deserves to continue or it could be quashed; except this while exer- cising revisional jurisdiction, according to the learned counsel, High Court is not expected to go into the matter at all. And therefore the High Court was right in deleting the names of respondents 2 and 3.

> "397. Calling for records to exercise powers of revision.--(1) The High Court or any Ses- sions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself 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 may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record."

This section provides that the High Court or the Court of Sessions may send for the record of any inferior criminal court for satisfying itself about the "correctness, legality and propriety of any findings, sentence or order recorded or passed and as to the regularity of any proceedings of such inferior court." Therefore it clearly indicates that the court when calls for the record in exercising powers under Sec. 397 Cr.P.C. it is expected to examine the records for the purpose of satisfying itself about legality, propriety and correctness of the order passed and also about the regularity of the proceedings. It is not disputed that the complaint filed by the respondent State Govt. was the matter before the trial court on the basis of which and accompany- ing papers the Court after considering issued process and it is this order of issue of process correctness, legality or propriety of which is under challenge before the High Court. A perusal of the revision petition which has been filed here with the SLP clearly shows that there is nothing except a challenge to the propriety and correctness of the order passed by the trial court while issuing process. There is nothing about irregularity or illegality. The grievance is also made about the sanction granted by the State Govt. but that apparently is not a matter which could be gone into at this stage. Admittedly, therefore the

only thing which is before the High Court is to satisfy itself about the cor- rectness or propriety of the order. Admittedly no question of legality is raised. Therefore the High Court is expected to look into those papers and record which were before the trial court.

It is not in dispute that these two respondents Nos. 2 and 3 were not parties before the court below. Learned counsel for the appellants contended that the proceedings have been launched by the State Govt. on behalf of respond- ent No. 2 and therefore indirectly respondent No. 2 being the complainant is a party to the proceedings. That is too tall a proposition. The prosecution is launched by the State Government and before the court below i.e. the trial court the only parties are the petitioners who are accused persons and the State Govt. which stands in the place of a complain- ant. There are prosecution witnesses and there may even be defence witnesses. But the witnesses are not parties to the proceedings and admittedly these two respondents who have been deleted by the impugned order of the High Court were not parties before the court below.

Learned counsel laid much emphasis on the provisions contained in sub-clause 2 of Sec. 401. Sec. 401 reads:

> "401. High Court's powers of revision. --(1) in the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in, the manner provided by Section 392. (2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.
>
> (3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction. (4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed. (5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

Sub-clause 2 of this Sec. talks of a situation where an order is being passed against any person and it was contend- ed by the learned counsel that the section not only talks of accused persons but also of "or other person unless he has had an opportunity of being heard." Apparently this sub- clause contemplates a situation where a person may not be an accused person before the court below but one who might have been discharged and therefore if the revisional court after exercising jurisdiction under Sec. 401 wants to pass an order to the prejudice of such a person, it is necessary that that person should be given an opportunity of hearing but it does not contemplate any

contingency of hearing of any person who is neither party in the proceedings in the court below nor is expected at any stage even after the revision to be joined as party. Learned counsel for the appellants was not in a position to contend that even if any contention of the appellants is accepted and the High Court accepts the revision petition as it is, there will be any situation where an order may be passed against these two respondents or they may be joined as parties to the proceed- ings. Reference to Section 401 clause 2 is of no consequence so far as these two respondents are concerned. The decision to which reference was made by the learned counsel for the appellants, it appears has no bearing on the question. That was a case where the question before this Court was as to whether when a person was charged under Section 392 and was facing trial before the Court of a Magistrate, it was proper to send the case to the Sessions Court when such applications earlier to the Magistrate have been rejected and it is in this context the scope of the revisional jurisdiction was being examined. In our opinion, this case is of no consequence at all so far as the present case is concerned. In the case of Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors., (supra) this Court considered the scope of Section 482 Cr.P.C. and Sec. 397 in the context of challenge to the criminal proceedings or issue of process and this Court observed that:

> "It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or substracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under S. 482 of the present Code."

In this decision, the earlier decisions of this Court on the question have also been considered.

It is therefore clear that when the issue of process is challenged in the revision petition before the High Court what the High Court is expected to see is as to whether the complaint and the papers accompanying the complaint prima facie indicate that an offence is made out. If so, the Court below was right in issuing process against the accused persons and such proceedings can not be quashed; if the complaint and the papers accompanying the complaint, in the opinion of the High Court are such which do not prima facie disclose an offence then it will be open to the High Court to entertain the revision and quash the proceedings. In the light of the discussions above therefore it is clear that the question about anyone else being instrumental in getting the prosecution launched or questions which are foreign are not to be considered in a revision where the issue of process is being challenged and therefore the further question as to whether the party against whom an allegation is made is or is not a necessary party in the proceedings also is of no avail. The scope of the revisional jurisdiction of the High Court as we have discussed earlier clearly indicates that the High Court is only expected to see the legality, correctness or the propriety of the order, which is an order of issue of process, these things could only be seen by looking into the complaint and the accompa- nying papers and evidence if any which were before the court below. In our opinion, the High Court was right in deleting the names of the two respondents.

We see therefore no substance in this appeal. It is therefore dismissed and the order passed by the High Court is maintained.

P.S.S. Appeal dismissed.