Honnaiah T.H. vs The State Of Karnataka on 4 August, 2022

Author: D.Y. Chandrachud

Bench: Dhananjaya Y Chandrachud

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No 1147 of 2022
(Arising out of SLP (Crl) No 2021 of 2022)

Honnaiah T.H. App

Versus

State of Karnataka and Others Res

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 Leave granted.

2 This appeal arises from a judgment dated 20 December 2021 of a Single Judge of the High Court of Karnataka by which the criminal revision filed by the appellant was dismissed on the ground of maintainability. The appellant, who is the original informant moved this Court.

3 It has been alleged that a dispute occurred on 25 December 2016 between the accused and villagers of Thoppanahalli village in Maddur, Karnataka on the allocation of water. The dispute is alleged to have led to a series of altercations and culminated in the murder of two persons and injuries to several others, including the Date: 2022.08.11 16:28:40 IST Reason:

> appellant. A First Information Report 1 under Section 154 of the Code of Criminal Procedure 1973 2 was registered on 26 December 2016 at PS Maddur, District Mandya, being Crime No. 0582 of 2016, for offences punishable under Sections 143, 147, 148, 504, 323, 302, 307, 114 and 149 of the Indian Penal Code.3 According to the

> FIR, around 1830 hours on 25 December 2016, the accused came to the village of the appellant armed with knives and rods, and abused and assaulted some of the villagers. A few of the accused allegedly assaulted and stabbed the appellant, his elder brother, Mutthuraju, and another villager named Nandeesha with knives. The grievously injured persons were first taken to the Government Hospital at Maddur. The doctors at the hospital referred the injured to Mandya District Hospital from where they were further transferred to K R Hospital, Mysore. Both Nandeesha and Mutthuraju succumbed to the injuries.

4 The appellant claims that the FIR was registered on the information which was furnished by him, making him the informant. Upon investigation, a charge-sheet was submitted under Section 173 CrPC before the competent court and the case was committed for trial.

5 During the course of the trial in SC No. 82 of 2017, the prosecution examined seven prosecution witnesses.4 PW 2, Dr Chikkaboregowda stated that the appellant and another injured witness were brought by the police to Maddur Government Hospital at 1925 hours on 25 December 2016 and that he had referred both the patients to Mandya District Hospital for further treatment. PW 4, Dr Manjoj P working at K R Hospital, Mysore stated that the statement of the appellant was recorded in his 1 “FIR” 2 “CrPC” 3 “IPC” 4 “PW” presence by the PSI Maddur at 0115 hours on 26 December 2016. 6 The appellant was examined as PW 7. During the course of his examination-in-chief, the Public Prosecutor wanted to mark the complaint together with the signature of the appellant as an exhibit. An objection was raised by the defense counsel on the ground that in view of the statement of PW 2, during the course of his examination, the statement of the appellant is referable to Section 161 of the CrPC and cannot be marked as an exhibit.

7 The trial court in its order dated 3 October 2019 refused to mark the complaint on the basis of the statement by PW 2, and on the ground that PW 7 did not depose in his evidence that he gave the complaint to the police. The trial court observed:

> “The witness has not deposed in his evidence that he has given complaint to the police. He has deposed that he has given statement while he was taking treatment in the hospital in presence of the Investigating Officer and the Doctor. On the basis of the above evidence of P.W.2, the statement of this witness cannot be marked by treating the same as First Information Report. And, as requested by the learned Special Public Prosecutor, the statement of the witness and his signature cannot be marked as ‘exhibit’, since the witness has stated that he has given his statement.”

8 The State did not pursue its remedies against the order of the trial court. The appellant instituted a criminal revision under Sections 397(1) and 401 of the CrPC. The High Court by the impugned judgment dated 20 December 2021 upheld the order of the trial court, and dismissed the revision petition on the ground of maintainability. The High Court observed that the appellant as the de-facto complainant had no locus standi to file the revision petition. The relevant observations of the High Court are extracted below:

> "12. The State has left the matter as it is. However, it is the complainant who is now agitating before this Court by challenging the said order. The word 'victim' is defined in Section 2(wa) of the Cr.P.C. which reads as under:
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> "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim"

includes his or her guardian or legal heir;

13. In a given case, it also includes the rights of the complainant which is carved out under Section 372 of Cr.P.C. only for the purpose of challenging the order passed by the Court acquitting the accused or convicting the accused for a lesser offence or imposing inadequate compensation. Except these three requirements in the amended CrPC for the victim/complainant, when the CrPC is silent as to the further rights of a victim/complainant, the filing of the revision petition challenging every order that would be passed during the pendency of the trial is not maintainable. Therefore, revision petition at the instance of the defacto complainant/victim, in the considered opinion of this Court, is not maintainable." The High Court also observed that under Section 397(2) of CrPC, the powers of revision cannot be exercised in relation to an interlocutory order passed in any appeal, inquiry, trial or other proceeding. The High Court held that the order of the trial court declining to mark the statement of the appellant as an exhibit is an interlocutory order, and dismissed the revision petition in view of the bar contained in Section 397(2) of CrPC.

9 The appellant moved this court, aggrieved by the order of the High Court dated 20 December 2021. Notice was issued on 11 March 2022, when the proceedings in SC No. 82 of 2017 pending before the trial court were stayed. By an order dated 11 April 2022, this Court modified its earlier order and stayed only the further recording of the evidence of PW 7 (the appellant) at the trial.

10 We have heard Mr Senthil Jagadeesan, counsel appearing on behalf of the appellant, Mr Shubranshu Padhi, counsel for the State of Karnataka and Mr T.R.B. Sivakumar, counsel for the respondents-accused.

11 The case of the prosecution is that the injured persons, including the appellant, were shifted from the Government Hospital at Maddur to Mandya District Hospital to K R Hospital, Mysore on 26 December 2016. The appellant has not stated at any stage that he was brought by the police to any of the hospitals for treatment. On the basis of the deposition of PW 4, it prima facie appears that the statement of the appellant was recorded at 0115 hours on 26 December 2016 at K R Hospital, Mysore in the presence Dr Manoj P who was examined as PW 4. On the basis of the statement of PW7, intimation about the offence was received at PS Maddur following which the FIR was registered as Crime No 0582 of 2016 at 0230 hours on 26 December 2016. Thus, the basis of the order of the trial court, which has been upheld by the High Court, namely, that the statement of the appellant is a statement under Section 161 CrPC is erroneous. The statement of the appellant, in fact, was the basis on which the FIR was registered. Hence, it was legitimately open to the prosecution to have the statement proved and marked as an exhibit during the course of the trial. 12

There would be a serious miscarriage of justice in the course of the criminal trial if the statement were not to be marked as an exhibit since that forms the basis of the registration of the FIR. The order of the trial judge cannot in these circumstances be treated as merely procedural or of an interlocutory in nature since it has the potential to affect the substantive course of the prosecution. The revisional jurisdiction under Section 397 CrPC can be exercised where the interest of public justice requires interference for correction of manifest illegality or the prevention of gross miscarriage of justice. 5 A court can exercise its revisional jurisdiction against a final order of acquittal or conviction, or an intermediate order not being interlocutory in nature. In the decision in Amar Nath v State of Haryana, 6 this Court explained the meaning of the term "interlocutory order" in Section 397(2) CrPC. This Court held that the expression "interlocutory order" denotes orders of a purely interim or temporary nature which do not decide or touch upon the important rights or liabilities of parties. Hence, any order which substantially affects the right of the parties cannot be said to be an "interlocutory order". Speaking for a two-Judge Bench, Justice Murtaza Fazal Ali observed:

> "6. [...] 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 Amit Kapoor v Ramesh Chander, (2012) 9 SCC 460; Sheetala Prasad v Sri Kant, (2010) 2 SCC 190 6 (1977) 4 SCC 137 as to be outside the purview of the revisional jurisdiction of the High Court." Explaining the historical reason for the enactment of Section 397(2) CrPC, this Court observed in Amar Nath (supra) that the wide power of revision of the High Court is restricted as a matter of prudence and not as a matter of law, to an order that "suffered from any error of law or any legal infirmity causing injustice or prejudice to the accused or was manifestly foolish or perverse." In KK Patel v State of Gujarat,7 where a criminal revision was filed against an order taking cognizance and issuing process, this Court followed the view as expressed in Amar Nath (supra), and observed:
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> "11. [....] It is now well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage (vide Amar Nath v State of Haryana, Madhu Limaye v State of Maharashtra, 8 VC Shukla v State,9 and Rajendra Kumar Sitaram Pande v Uttam 10). The feasible test is whether upholding the objections

> raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable."

13 In the decision in VC Shukla (supra), this Court noted that under the CrPC, the question whether an order such as an order summoning an accused 11 or an order 7 (2000) 6 SCC 195 (1977) 4 SCC 551 1980 Supp SCC 92 10 (1999) 3 SCC 134 Amar Nath v State of Haryana, (1977) 4 SCC 137 framing a charge 12 is an "interlocutory order" must be analysed in the light of the peculiar facts of a particular case. In the present case, the objection taken by the defense counsel (which was upheld by the trial judge) that the statement of the informant is a statement under Section 161 CrPC travels to the root of the case of the prosecution and its acceptance would substantially prejudice the case of the prosecution. According to the charge sheet, the statement of the appellant/ informant formed the basis of the FIR and set the criminal law in motion. Rejection of the prayer of the Public Prosecutor to mark the statement as an exhibit would possibly imperil the validity of the FIR. In this background, the order of the trial court declining to mark the statement of the informant as an exhibit is an intermediate order affecting important rights of the parties and cannot be said to be purely of an interlocutory nature. In the present case, if the statement of the appellant/ informant is not permitted to be marked as an exhibit, it would amount to a gross miscarriage of justice.

14 The challenge to the maintainability of the revision at the instance of the appellant impugning an order passed during the pendency of the trial must also be rejected. The revisional jurisdiction of a High Court under Section 397 read with Section 401 of the CrPC, is a discretionary jurisdiction that can be exercised by the revisional court suo motu so as to examine the correctness, legality or propriety of an order recorded or passed by the trial court or the inferior court. As the power of revision can be exercised by the High Court even suo moto, there can be no bar on a third party invoking the revisional jurisdiction and inviting the attention of the High Court that an occasion to exercise the power has arisen. Holding a revision petition instituted by a complainant maintainable, Justice Santosh Hegde writing for this Madhu Limaye v State of Maharashtra, (1977) 4 SCC 551 Court in K Pandurangan v SSR Velusamy13 observed:

> "6. So far as the first question as to the maintainability of the revision at the instance of the complainant is concerned, we think the said argument has only to be noted to be rejected. Under the provisions of the Code of Criminal Procedure, 1973, the court has suo motu power of revision, if that be so, the question of the same being invoked at the instance of an out- sider would not make any difference because ulti- mately it is the power of revision which is already vested with the High Court statutorily that is being exercised by the High Court. Therefore, whether the same is done by itself or at the instance of a third party will not affect such power of the High Court. In this regard, we may note the following judgment of this Court in the case of Nadir Khan v. State (Delhi Admn)."

15 The view of the High Court that a victim/ complainant needs to restrict his revision petition to challenging final orders either acquitting the accused or convicting the accused of a lesser offence or imposing inadequate compensation (three requirements mentioned under Section 372 CrPC) is unsustainable, so long as the revision petition is not directed against an interlocutory order, an inbuilt restriction in Section 397(2) of the CrPC. In the present case, the appellant filed a criminal revision as his interests as an informant and as an injured victim were adversely affected by the trial court rejecting the prayer to mark the statement of the informant as an exhibit. Having held that the order of the trial court is not interlocutory in nature and that the bar under Section 397(2) of the CrPC in inapplicable, a criminal revision filed by an informant against the said order of the trial court was maintainable. In Sheetala Prasad v Sri Kant, 14 a two Judge Bench of this Court has held that a private complainant can file a revision petition in certain circumstances, including when the 13 (2003) 8 SCC 625 14 (2010) 2 SCC 190 trial court wrongly shuts out evidence which the prosecution wishes to produce. Noting the principles on which revisional jurisdiction can be exercised by the High Court at the instance of a private complainant, this Court observed:

> "12. The High Court was exercising the revisional jurisdic-
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> tion at the instance of a private complainant and, therefore, it is necessary to notice the principles on which such revisional jurisdiction can be exercised. Sub-section (3) of Section 401 of the Code of Crimi- nal Procedure prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of a pri- vate complainant (1) where the trial court has wrongly shut out evi- dence which the prosecution wished to produce, (2) where the admissible evidence is wrongly brushed aside as inadmissible, (3) where the trial court has no jurisdiction to try the case and has still acquitted the accused, (4) where the material evidence has been over-

looked either by the trial court or the appellate court or the order is passed by considering irrelevant evi- dence, and (5) where the acquittal is based on the compound-

ing of the offence which is invalid under the law." The principles which have been enunciated in Sheetala Prasad (supra) have been recently relied upon by this Court in Menoka Malik v State of West Bengal 15 to hold that the High Court can exercise its revisional jurisdiction in a revision petition filed by the first informant where the trial court overlooked material evidence. Thus, the impugned judgment of the High Court dated 20 December 2021 is incorrect in holding that the appellant did not have locus to institute the criminal revision against the order of the trial court.

16 In these circumstances, we allow the appeal and set aside the order of the trial court 15 (2019) 18 SCC 721 dated 3 October 2019 and the impugned judgment of the High Court dated 20 December 2021. We accordingly direct that the trial court shall allow the plea of the Public Prosecutor, in the course of the examination of the appellant, to prove the statement of the appellant which was recorded at 0115 hours on 26 December 2016 so that it can be marked as an exhibit during the course of the trial. 17 Having regard to the fact that the trial is pending since 2016, we direct the trial court to conclude the trial by 31 March 2023.

18 Pending applications, if any, stand disposed of.

……..J. [Dr Dhananjaya Y Chandrachud]
.....J. [J B Pardiwala] New Delhi;

August 04, 2022

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