Rajendra Kumar Sitaram Pande & Ors vs Uttam & Another on 11 February, 1999

Equivalent citations: (1999) 1 SCJ 445, AIR 1999 SUPREME COURT 1028, 1999 (3) SCC 134, 1999 AIR SCW 660, (1999) 3 ALLMR 232 (SC), 1999 CRILR(SC&MP) 130, 1999 (1) ADSC 609, 1999 CRIAPPR(SC) 106, 1999 CALCRILR 92, 1999 (3) ALL MR 232, 1999 (1) LRI 568, 1999 ALLMR(CRI) 2 871, 1999 CRILR(SC MAH GUJ) 130, 1999 (1) SCALE 402, 1999 SCC(CRI) 393, (1999) 1 JT 426 (SC), 1999 (1) UJ (SC) 595, 1999 (3) SRJ 237, 1999 UJ(SC) 1 595, (1999) ILR (KANT) 2715, 1998 APLJ(CRI) 1 83, (1999) 1 ALLCRILR 450, (1999) 1 EASTCRIC 747, (2001) 1 MADLW(CRI) 466, (1999) MAD LJ(CRI) 470, (1999) 2 MAHLR 272, (1999) 1 MPLJ 544, (1999) 1 ORISSA LR 394, (1999) 16 OCR 360, (1999) 1 RECCRIR 800, (1999) 2 SUPREME 63, (1999) 24 ALLCRIR 530, (1999) 1 SCALE 402, (1999) 1 CHANDCRIC 65, (1999) 1 CRIMES 88, (1998) 4 RECCRIR 854, (1999) 1 CURCRIR 82, (1999) 2 MAH LJ 118, (1999) 2 PAT LJR 5, (1999) 38 ALLCRIC 438, (1998) 3 RAJ LW 1666, (1998) CRILR(RAJ) 461, (1998) 3 CURCRIR 577, (1997) 2 LS 610, (1997) 6 ANDHLD 507, (1998) 1 ANDHLT(CRI) 77, 1999 (1) ANDHLT(CRI) 162 SC, (1998) 3 WLC (RAJ) 583, (1999) 5 BOM CR 511

Author: S.Rajendra Babu

Bench: S.Rajendra Babu

PETITIONER:
RAJENDRA KUMAR SITARAM PANDE & ORS.

Vs.

RESPONDENT:
UTTAM & ANOTHER

DATE OF JUDGMENT: 11/02/1999

BENCH:
G.B.Pattanaik, S.Rajendra Babu

JUDGMENT:

PATTANAIK,J.

The accused persons in a complaint case are the appellants and in this appeal, the Judgment of the Nagpur Bench of Bombay High Court in Criminal Application No.376 of 1994 is under challenge. By the impugned Judgment, the High Court came to the conclusion that the order of the Judicial Magistrate, First Class, Amravati dated 16.8.91, issuing process was only an interlocutory order and was not amenable to the jurisdiction of the Sessions Judge under Section 397 of the Cr.P.C. and therefore, the Sessions Judge committed error in interfering with the said order of the Magistrate, directing issuance of process. The High Court however also observed that it would be open for the Judicial Magistrate to recall the order of issuing process, if satisfied, in accordance with the Judgment of this Court in K.M.Mathew vs. State of Kerala (AIR 1992 SC 2206).

On the basis of a complaint, filed by the Respondent No. 1 alleging inter alia that the accused persons made a false complaint to the Treasury Officer, Amravati, containing false imputations to the effect that the complainant had come to office in a drunken state and abused the Treasury Officer and thereby have committed criminal offence punishable under Section 500 read with Section 34 IPC, the Magistrate postponed the issue of process against the accused and directed the Treasury Officer to submit a report under sub- section (1) of Section 202 of the Code of Criminal Procedure. After receipt of the said report from the Treasury Officer, the Magistrate was of the opinion that sufficient material exist for issuance of process and accordingly issued summons against the accused persons under Section 500 read with Section 34 IPC. This order of the Magistrate dated 16.8.91 was challenged by the accused persons in a revision before the learned Sessions Judge. Learned Sessions Judge came to the conclusion that the Magistrate having himself directed for an inquiry under Section 202, on receipt of the inquiry report from the Treasury Officer, was not justified in discarding the same. On the basis of the aforesaid inquiry report and the allegations in the complaint, the Sessions Judge came to the conclusion that the case is one covered by exception 8 to Section 400 IPC and, therefore, issuance of process itself is an abuse of process. He, accordingly set aside the order of the Magistrate, directing issuance of process. Against the aforesaid revisional order of the learned Sessions Judge, the complainant moved the High Court, invoking its jurisdiction under Section 482 of the Code of Criminal Procedure. The High Court came to the conclusion that the order directing issuance of process being an interlocutory order, the Sessions Judge has no jurisdiction under Section 397 to interfere with the same and accordingly set aside the order of the learned Sessions Judge.

Mr. Lalit, learned counsel, appearing for the appellants submitted that the order of the Magistrate, directing issuance of process cannot be held to be an interlocutory order not amenable to the revisional jurisdiction under Section 397 of the Code of Criminal Procedure. He further contended that when the allegations in the complaint read with the report of the Treasury Officer obtained from him pursuant to an inquiry made under sub-section (1) of Section 202, clearly bring out the case under exception 8 to Section 400, the High Court in exercise of its inherent jurisdiction under Section 482 ought not have interfered with the order of the Sessions Judge, passed in revisional jurisdiction. The learned counsel also submitted that even if the remedy of approaching the Magistrate by the accused under Section 205 for recalling the process already issued is available in terms of the judgment of this Court in Mathew's case, but the matter being present in this court itself, this Court may consider the averments made in the complaint petition to find out whether any offence is made out and then would pass appropriate order. Mr. Deshpande, the learned counsel,

appearing for the respondent, on the other hand contended that the direction given by the High Court is fully justified in the facts and circumstances of the case and no interference at all is called for under Article 136 of the Constitution of India.

In view of the rival submissions at the bar, the first question that arises for consideration is whether the order of the Magistrate, directing issuance of process can be said to be such an interlocutory order, which is not amenable to the revisional jurisdiction under Section 397, in view of the bar in sub-section (2) thereof. Sub-section (2) of Section 397 reads thus:

> 397(2) : 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 very object of conferring revisional jurisdiction upon the superior criminal courts is to correct miscarriage of justice arising from misconception of law or irregularity of procedure.
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> Discretion in the exercise of revisional jurisdiction should, therefore, be exercised within the four corners of Section 397, whenever there has been miscarriage of justice in whatever manner. Under sub-section (2) of Section 397, there is a prohibition to exercise revisional jurisdiction against any interlocutory order so that inquiry or trial may proceed without any delay. But the expression "interlocutory order" has not been defined in the Code. In Amar Nath & Ors. vs. State of Haryana 1978(1) SCR 222, this Court has held that the expression "interlocutory order" in Section 397(2) has been used in a restricted sense and not in a broad or artistic sense and merely denotes orders of purely interim or temporary nature which do not decide or touch the important rights or liabilities of the parties and any order which substantially affects the right of the parties cannot be said to be an "interlocutory order". In Madhu Limaye vs. State of Maharashtra 1978(1) SCR 749, a three Judge Bench of this Court has held an order rejecting the plea of the accused on a point which when accepted will conclude the particular proceeding, cannot be held to be an interlocutory order. In V.C. Shukla vs. State 1980(2) SCR 380, this Court has held that the term "nterlocutory order"used in the Code of Criminal Procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi final. This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub- section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same. The High Court, therefore, was not justified in coming to the conclusion that the Sessions Judge had no jurisdiction to interfere with the order in view of the bar under sub-section (2) of Section 397 of the Code.

The next question that arises for consideration is whether reading the complaint and the report of the Treasury Officer which was obtained pursuant to the Order of the Magistrate under sub-section (1) of Section 201 can it be said that a prima facie case exist for trial or exception 8 to Section 400 clearly applies and consequently in such a case, calling upon the accused to face trial would be a travesty of justice. The gravamen of the allegations in the complaint petition is that the accused persons made a complaint to the Treasury Officer, Amravati, containing false imputations to the effect that the complainant had come to the office in a drunken state and abused the Treasury Officer, Additional Treasury Officer and the Collector and circulated in the office in the filthy language and such imputations had been made with the intention to cause damage to the reputation and services of the complainant. In order to decide the correctness of this averment, the Magistrate instead of issuing process had called upon the Treasury Officer to hold inquiry and submit a report and the said Treasury Officer did submit a report to the Magistrate. The question for consideration is whether the allegations in the complaint read with the report of the Magistrate make out the offence under Section 500 or not. Section 499 of the Indian Penal Code defines the offence of defamation and Section 500 provides the punishment for such offence. Exception 8 to Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with regard to the subject matter of accusation. The report of the Treasury Officer clearly indicates that pursuant to the report made by the accused persons against the complainant, a departmental inquiry had been initiated and the complainant was found to be guilty. Under such circumstances the fact that the accused persons had made a report to the superior officer of the complainant alleging that he had abused to the Treasury Officer in a drunken state which is the gravamen of the present complaint and nothing more, would be covered by exception 8 to Section 499 of the Indian Penal Code. By perusing the allegations made in the complaint petition, we are also satisfied that no case of defamation has been made out. In this view of the matter, requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process would not be in the interest of justice. On the other hand in our considered opinion this is a fit case for quashing the order of issuance of process and the proceedings itself. We, therefore, set aside the impugned order of the High Court and confirm the order of the learned Sessions Judge and quash the criminal proceeding itself. This appeal is allowed.