Patna High Court
Manjoor Ahamad And Ors. vs State Of Bihar And Ors. on 22 February, 1978
Equivalent citations: 1978 (26) BLJR 630
Bench: C Tiwari, S S Hasan
JUDGMENT C.N. Tiwari and S.S. Hasan, JJ.

1. This application is directed against an Order of the learned Sessions Judge dated 19.12.1977 contained in annexure '3' to the application by which he dismissed a revision application filed against an order of the Magistrate, dated 5.12.1977 contained in annexure 1.

2. The relevant facts are these. At the instance of respondent No. 3 Police submitted a report to the Sub-divisional Officer, Samastipur for an action under Section 107 of the Code of Criminal Procedure (hereinafter referred to as 'the Code'). On receipt of the police report the Sub-divisional Officer, Samastipur started a proceeding under Section 107 of the Code against the petitioners. The petitioners were directed to show cause. Respondent No. 3 filed a petition before the learned Magistrate on 29-9-1977 for action under Section 116(3) of the Code against the petitioners. Two witnesses were examined on behalf of respondent No. 3. Thereafter the learned Magistrgte passed an order under Section 116(3) of the Code on 5-12-1977 directing each of the petitioners to execute a bond of Rs. 1,000/- for maintaining peace till the disposal of the proceeding. On 17-12-1977 the petitioners filed an application in revision against the order of the Magistrate dated 5-12-1977 before the learned Sessions Judge. That petition was somehow described as an appeal and it was submitted as Criminal Appeal No. 644 of 1977 and was fixed for hearing on 5-1-1978. Respondent No. 3 appeared on 17-12-1977 and on the same date the learned Sessions Judge took up the said criminal revision application which had been admitted as Criminal appeal for hearing although the date fixed for its hearing was 5-1-1978. The Criminal Appeal No. 644 of 1977 was converted into Criminal Revision No. 115 of 1977. It was contended on behalf of respondent No. 3, who was opposite party in that criminal revision application, that the order passed under Section 116(3) of the Code directing the petitioners to execute ad-interim bond was an interlocutory order and Section 379(2) of the Code put as ban on the exercise of revisional powers in respect of such an order. This contention found favour with the learned Sessions Judge, who, accordingly dismissed the revision application as not maintainable. It is against that order dated 19-12-1977 of the learned Sessions Judge that this application has been preferred.

3. It is urged on behalf of the petitioners that the learned Sessions Judge has violated the principle of natural justice and his order is contrary to law. Learned counsel appearing on behalf of the respondents submits that the proper course for the petitioners would have been to file an application in revision against the order of the learned Sessions Judge and that this criminal writ application is not maintainable.

4. Learned Sessions Judge erred in holding that the order of the Magistrate dated 5-12-1977 is an interlocutory order as contemplated by Section 397(2) of the Code and that no application in revision lies against such an order. Fazal Ali, J. who delivered the judgment of the Supreme Court in Amar Nath and Ors. v. State of Haryana and Ors. . has obseved:

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 of the liabilities of the parties. Any order which substantially affects the rights 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.

5. 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."

6. In Madhu Limaye v. State of Maharashtra . Untwalia, J. who spoke for the Court observed:

On the one hand, the legislature kept intact the revisional power of the High Court and, on the other, it put bar on the exercise of that power in relation to any interlocutory order. In such a situation it appears to us that the real intention of the legislature was not equal to the expression" interlocutory order as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswami's case AIR 1949 FC (1) (supra), but yet it may not be an interlocutory order-pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in sub-s. (2) of Section 397 is not meant to be attracted to such kinds of intermedicate orders.

7. An order under Section 116(3) of the Code directing a party to execute ad-interim bond affects the party concerned and, therefore, it cannot be said to be an interlocutory order so as to be outside the purview of revisional jurisdiction.

8. In Bindeshwar Singh alias Binda Singh and Ors. v. Ram Baran Singh 1976 B.L.J.R. 99. it has been held by one of us, sitting singly, that the order under Section 116(3) of the Code directing a person proceeded against under Section 107 of the Code to execute a bond to maintain peace till the conclusion of the enquiry is not interlocutory as contemplated by Sub-section (2) of Section 107 of the Code. In view of the aforesaid discussions the impugned order of the learned Sessions Judge holding that the order of the learned Magistrate passed under Section 116(3) of the Code is an interlocutory order and no revision application lies is obviously erraneous and is liable to be set aside.

9. As pointed out above the date fixed for the hearing of the revision application was 5-1-1978. Therefore, the learned Sessions Judge should not have heard the revision application on 19-12-1977 in the absence of the petitioners. It is stated in the application that the learned Sessions Judge asked the petitioners counsel to be present in court but the petitioners' counsel informed the learned Sessions Judge that papers were not with him and he had no instruction to argue on that date and requested the learned Sessions Judge to hear the matter on 5-1-1978 which was the date fixed. But somehow or the other the learned Sessions Judge passed the impugned order ex parte on a date which was not the date fixed in the case. The petitioners were not given adequate opportunity of

being heard.

10. In the circumstances we allow this application, set aside the order of the learned Sessions Judge dated 19-12-1977 and send back the case to him for being heard in accordance with law expeditiously. Both the parties have agreed that they will appear before the learned Sessions Judge on the 20th March, 1978.

11. Let the lower Court records be sent down immediately to the learned Sessions Judge.