

Before : H. S. Rai & A. P. Chowdhri, JJ.

SUNIL KUMAR SABHARWAL,—Petitioner.

versus

MRS. NEELAM SABHARWAL AND ANOTHER,—Respondents.

Criminal Misc. No. 5809-M of 1990.

1st November, 1990.

Criminal Procedure Code, 1973—Ss. 125, 397(2) & 482—Order granting interim maintenance to wife and minor child—Whether can be termed as interlocutory order—Revision against such order—Whether barred.

Held, that the expression 'interlocutory order' under S. 397(2) of the Criminal Procedure Code is to be given a restricted meaning. Orders which are purely procedural, necessary for the progress of the case, such as orders summoning witnesses, adjourning cases etc. are interlocutory. Finality of the case is not *sine qua non* of an order for being taken out of the category of interlocutory order. The crucial test is that the order substantially affects the rights and liabilities of the parties either with regard to the case as a whole or any aspect thereof. Applying the above tests, we are of the considered view that the order, in question, is not an interlocutory order. Under the order the petitioner was saddled with a liability to pay maintenance till it was either finally decided or it was varied. For default in payment of the amount, coercive process could be used against the petitioner. It is plain that the rights and liabilities of the parties stood determined though until final decision of the case by the impugned order and the order could not, therefore, be considered to be interlocutory. It does not stand to reason that the aggrieved party should have no remedy against an order fixing interim maintenance. (Para 7)

Held, that an order granting interim maintenance is not an interlocutory order and revision there against is not barred under Section 397(2) of the Code. (Para 9)

C. B. Goel, Advocate, for the Petitioner.

H. S. Gill, Advocate, for the Respondents.

JUDGMENT

A. P. Chowdhari, J.

(1) The short and significant question for our consideration is whether an order granting interim maintenance in proceedings under

section 125 of the Code of Criminal Procedure (hereinafter referred as 'the Code') is an interlocutory order within the meaning of Section 397 (2) of the Code so as to bar a revision.

(2) Only a few facts need to be stated to give the factual background. During the pendency of a petition for maintenance the Judicial Magistrate 1st Class, Chandigarh, by order dated January 24, 1990 granted interim maintenance at the rate of Rs. 500 per month to respondent No. 1 (wife) and Rs. 800 per month to respondent No. 2 (minor son). The petitioner's revision petition was dismissed by the learned Additional Sessions Judge, Chandigarh, by order dated April 28, 1990 holding that the order of interim maintenance was not a final order and it was only an interlocutory order and as such revision was not maintainable. The learned Additional Sessions Judge followed two Single Bench decisions of this Court in *Pawan Kumar v. Chanchal Kumari* (1), and *Harjit Singh v. Jasjit Kaur* (2). Aggrieved by the order, the petitioner filed the present petition in this Court under section 482 of the Code for quashing the orders passed by both the Courts below. The petition was heard by our learned brother J. S. Sekhon J. He noticed a conflict of views in the two decisions cited above as also another single Bench decision of this Court in *Sumer Chand v. Sandhuran Rani and another* (3). Considering the importance of the question he admitted the petition to a larger Bench. This is how the petition has been heard by us.

(3) The contention of the learned counsel for the petitioner is that the impugned order has burdened the petitioner with considerable financial liability. If the petitioner failed to comply with it, he could be arrested and sent to jail. The order would ordinarily remain in force till final decision of the main petition which may take quite some time. It was submitted that if revision is held barred, the only remedy left with the aggrieved person was to invoke the extraordinary jurisdiction of the High Court under Section 482 of the Code with all the difficulties involved in such a course of action.

(4) The contention of Shri H. S. Gill learned counsel for the respondents, on the other hand, is that the order in question is only an **be led** by the parties. Counsel submitted that in the absence of finality attached to the order, the same was only an interlocutory

(1) 1987 (2) Recent C.R. 454

(2) 1989 (2) Recent C.R. 191.

(3) 1988 (2) P.L.R. 12.

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order and the legislative policy contained in Section 397 (2) of the Code barred a revision against an interlocutory order. According to him, therefore, the impugned order was unexceptionable and there was no case for invoking the extraordinary jurisdiction of the High Court under section 482 of the Code.

(5) We have given our anxious consideration to the respective submissions of the learned counsel for the parties.

(6) The expression 'interlocutory order' has not been defined in the code. The said expression was, however, interpreted by the Supreme Court in *Amar Nath v. State of Haryana* (4), for the first time in these words :—

“.....Decided cases have laid down that interlocutory orders to be applicable 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 a restricted sense and not in any broad or artistic sense. The 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 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. 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 as to be outside the purview of the revisional jurisdiction of the High Court.”

(4) A.I.R. 1977 S.C. 2185

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(7) The same interpretation was approved and affirmed in *Madhu Limaye v. State of Maharashtra* (5). A learned Judge of the Bombay High Court in *Hasmukh J. Jhaveri v. Sheela Dadlani and another* (6), reviewed the case law and reduced the substance in the form of 12 propositions. In brief, it may be taken as settled law that the expression 'interlocutory order' under section 397(2) of the Code is to be given a restricted meaning. Orders which are purely procedural, necessary for the progress of the case, such as orders summoning witnesses, adjourning cases etc. are interlocutory. Finality of the case is not a *sine qua non* of an order for being taken out of the category of interlocutory order. The crucial test is that the order substantially affects the rights and liabilities of the parties either with regard to the case as a whole or any aspect thereof. Applying the above tests, we are of the considered view that the order, in question, is not an interlocutory order. Under the order the petitioner was saddled with a liability to pay maintenance till it was either finally decided or it was varied. For default in payment of the amount, coercive process could be used against the petitioner. It is plain that the rights and liabilities of the parties stood determined though until final decision of the case by the impugned order and the order could not, therefore, be considered to be interlocutory. It does not stand to reason that the aggrieved party should have no remedy against an order fixing interim maintenance.

(8) This very question directly arose in *Sumer Chand v. Sandhuran Rani and another* (supra). It was examined in some detail by Ujagar Singh, J., and it was held that an order granting interim maintenance under section 125 of the Code of Criminal Procedure was not an interlocutory order. On the other hand, a contrary view was expressed in *Harjit Singh v. Jasjit Kaur* (7). The learned Judge purported to follow two earlier Single Bench decisions in *Tek Chand v. Naraini Devi and others* (8), and *Pawan Kumar v. Chanchal Kumari* (9). Both these orders are short ones and what was held was that in the facts and circumstances of these cases extraordinary jurisdiction of the High Court under section 482 of the Code could not be invoked.

(5) A.I.R. 1978 S.C. 47

(6) 1981 CrL. L.J. 958

(7) 1989 (2) Recent C.R. 191

(8) 1986 (2) Recent C.R. 287

(9) 1987 (2) Recent C.R. 454

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(9) For the reasons stated above, we hold that an order granting interim maintenance is not an interlocutory order and revision there-against is not barred under section 397(2) of the Code. We, therefore, quash and set aside the order dated 28th April, 1990 passed by the learned Addl. Sessions Judge and direct that he shall enter the present revision petition against its original number and hear and dispose of the same on merits according to law within a period of three months. The parties through their counsel are directed to appear in the court of Addl. Sessions Judge, Chandigarh, on 3rd December, 1990.

P.C.G.

Before : H. S. Rai & A. P. Chowdhri, JJ.

BALRAM SINGH,—Petitioner.

versus

SUKHWANT KAUR AND ANOTHER,—Respondents.

Criminal Misc. No. 7923-M of 1989

9th January, 1991.

Criminal Procedure Code, 1973—Ss. 467 to 473 & 482—Indian Penal Code, 1860—S. 406—Offence of criminal breach of trust—Whether can be termed as a continuing offence.

Held, that having regard to the nature of the offence and the purpose which is intended to be achieved by constituting criminal breach of trust as an offence, we are of the view that the offence in question is a continuing one.

(Para 14)

Held, that the definition of 'stolen property' under S. 410 of the Indian Penal Code is broad enough to include within its sweep property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed and it continues to be so till it comes into possession of a person legally entitled thereto. In other words, once a property is criminally misappropriated or in respect of which criminal breach of trust has been committed the same continues to be stolen property till it is restored to the person entitled to its possession. The above provision furnishes a key to the understanding of the nature of the offence of criminal misappropriation and criminal breach of trust. On principle, therefore, we are of the considered view that the offence under S. 406 of the Indian Penal Code is continuing offence.

(Para 15)