HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT AT JABALPUR

Criminal Revision No.	2078/2020
Parties Name:	Dheerendra Dwivedi @ Dheeru Vs. State of M.P.
Bench Constituted	Single Bench
Judgment delivered By	HON'BLE SHRI JUSTICE VISHAL DHAGAT
Whether approved for reporting	**YES**
Name of counsel for parties	**For petitioner**: Shri Akhil Singh, Advocate **For Respondent/State:** Shri Aman Pandey, Panel Lawyer
Law laid down	Order granting interim custody of vehicle under Section 451 or under Section 457(1) of Code of Criminal Procedure is interlocutory order and criminal revision is not maintainable against it.
Significant paragraph number	**Para-14**

Hearing Through Video Conferencing

O R D E R

17.12.2020

Applicant has filed this criminal revision challenging order dated 24.9.2020, by which application filed by applicant under Section 457 of the Code of Criminal Procedure was rejected by Special Judge, NDPS Act District Rewa.

2. Counsel appearing for the applicant submitted that motor cycle bearing registration No. MP-17-MW-5092 was seized by the Police in Crime No. 203/2020 under Sections 8, 21, 22, 25 and 29 of the NDPS Act and Section 5/13 of Drug Control Act. Applicant is registered owner of the vehicle and he was falsely implicated in the criminal case. He had given the motorcycle to one Rahul Mishra to ferry his ailing father to

hospital. Co-accused persons had already been arrested in the case. Applicant has no role in the crime committed by the co-accused persons. Police had also seized one Samsung mobile phone having his Jio Sim No. 9315051841. It is submitted that said articles may be damaged if they are allowed to remain in custody of the police.

3. Applicant has filed an application under Section 457 of the Code of Criminal Procedure for giving the seized articles on superdginama during pendency of trial. On 5.12.2020, a question was posed to the applicant whether order rejecting his application under Section 457 of the Code of Criminal Procedure was an interlocutory order. Counsel appearing for the applicant had relied on the judgment of **Rajasthan High Court** reported in ***1988 Cr.L.J. 475-Ganesh Vs. State and another.*** Counsel for the applicant relied on para-7 of the said judgment. It was held that order passed under Section 457 of the Code of Criminal Procedure is a final order and not merely an interlocutory order. On basis of said order, it was argued by counsel appearing for the applicant that criminal revision against the impugned order dated 24.9.2020 filed by the applicant is maintainable.

4. Counsel for the State has opposed the prayer of applicant for releasing the articles on superdginama on merits of the case. It is submitted by him there there is possibility that applicant may use vehicle again for committing offence, therefore, application has rightly been rejected by the Court of Sessions.

5. Before hearing the parties on merits of the case, it is to be examined whether impugned order is an interlocutory order or a final order against which revision filed by the applicant is maintainable.

6. Before examining the said issue, Sections 457 and 397 of Code of Criminal Procedure is to be considered.

Section 397 (2) lays down as under:

> "(**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".

Section 457 (1) of the Code of Criminal Procedure lays down as under:

> **"(1**) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property."

7. The meaning and ambit of the expression "interlocutory order" as used in Section 397(2) has been considered by the Supreme Court in several decisions. In ***Smt. Parmeshwari Devi v.The State and another, AIR 1977 SC 403,*** petitioner-Smt. Parmeshwari Devi had in response to an order under Section 94 of the Old Code filed a reply expressing her inability to produce the documents stating the

circumstances pertaining thereto. She was not a party to the trial, but even then the Magistrate issued order on 8th August 1974 i.e. after coming into force of the new Code, directing her to attend court so as to enable it to put her a few questions for satisfying itself regarding whereabouts of the documents. The said order was challenged in revision invoking the bar of Section 397 (2) of the Code. The Supreme Court observed:- "The Code does not define an interlocutory order, but it obviously is an intermediate order, made during the preliminary stages of an enquiry or trial. The purpose of Sub-section (2) of Section 397 is to keep such an order outside the purview of the power of revision so that the enquiry or trial may proceed without delay. This is not likely to prejudice the aggrieved party for it can always challenge it in due course if the final order goes against it. But it does not follow that if the order is directed against a person who is not a party to the enquiry or trial, and he will have no opportunity to challenge it after a final order is made affecting the parties concerned, he cannot apply for its revision even if it is directed against him and adversely affects his rights."

8. The Supreme Court made the following observations in case of ***Mohan Lal Magan Lal Thacker Vs State of Gujarat***,: "An interlocutory order though not conclusive of the main dispute may be conclusive as to the subordinate matter with which it deals." It may thus be conclusive with reference to the stage at which it is made, and it may also be conclusive as to a person, who is not a party to the enquiry or trial, against whom it is directed."

9. In ***Amar Nath & Others Vs. State of Haryana & Ors***., the Supreme Court was dealing with an order summoning the appellants in a complaint case, the appellants having been earlier exonerated by the police in their report under Section 173 of the Code. A question arose whether the order of summoning was an interlocutory order within the meaning of Section 397 (2) of the Code. The Supreme Court observed:- "Decided cases have laid down that interlocutory orders to be appealable 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" on Section 397 (2) of the 1973 Code has been used in a restricted sense and not in Devi Ram Vs. State (Crl. Revision No. 39/18) Page No. 20 of 33 any broad of artistic sense. It merely denote 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 Code of Criminal Procedure. Thus for instance orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such order steps in aid of the pending proceedings may no doubt amount to interlocutory orders against which no revision would lie under Section 397 (2) of the Code of Criminal Procedure. 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."

10. Supreme Court in ***Madhu Limaye Vs. State of Maharastra*** and on an examination of several decisions both of Indian and English Courts including the decision of the Federal Court in ***S. Kuppuswami Rao v. The King*** *the Supreme Court* held that: "But in our judgment such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by Section 397 (1) of the Code.....In such a situation it appears to us that the real intention of the legislature was not to equate 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 Devi Ram Vs. State (Crl. Revision No. 39/18) Page No. 21 of 33*** (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-section (2) of Section 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purposes of Article 134 of the Constitution, yet it would not be correct to characterize them as merely interlocutory orders within the meaning of Section 397 (2)." The Court concluded by saying that :- "We may,

however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of Sub" section (2) of Section 397. In our opinion, it must be taken to be an order of the type falling in the middle course."

11. In view of above law and citations, it is to be considered whether order dated 24.9.2020 stands the test to interlocutory order or an intermediate or order of moment.

12. Applicant is an accused in the case and offences under Sections 8, 21, 22, 25 of the NDPS Act and Section 5/13 of the Drug Control Act are registered against the applicant and others. Order passed under Section 457 may or may not be an interlocutory order and it depends upon the facts of circumstances of the case. Judicial Magistrate acquires jurisdiction to entertain an application under Section 457 of the Code of Criminal Procedure when Police Officer seizes a property and matter is under investigation before the Police but before property is produced before a criminal Court during inquiry or trial. In such condition, Magistrate may make an order for disposal of such property or delivery of such property entitled to possession thereof. If Magistrate passes an order touching the rights of person over the property then order will not be an interlocutory order but if order is passed only to give possession of property during pendency of trial then such order will be an interlocutory order and criminal revision shall not be maintainable due to bar created under Section 397(2) of the Code of Criminal Procedure.

13. Once final charge sheet is filed by the Police and property is said to be involved in the crime then only application under Section 451 of the Code of Criminal Procedure is maintainable. In case of ***Ganesh Vs. State (***supra), relied upon by applicant police has filed final report of no occurrence of crime and solicited the order of Judicial Magistrate for handing over possession of pair of bullocks seized. In said case, Magistrate has decided the issue of title/ownership of the bullocks and has passed an order in respect of disposal of property or delivery of such property. Such an order is a final order, but in the present case application is made only for interim custody of the vehicle during trial. Same is evident from application filed by the applicant available as Annexure A/6 along with criminal revision. Para-3 of the application is quoted below:-

> ''3– यह कि माननीय न्यायालय द्वारा उपरोक्त जप्तशुदा मोटर सायकल जिसका पंजीयन क्रमांक–एमपी–17–एमडब्ल्यू–5092 को एवं जप्तशुदा मोबाइल फोन 9315051841 आवेदक की सुपुर्दगी में दिया जाता है तो आवेदक माननीय न्यायालय द्वारा चाहा गया सक्षम सुपुर्दनामा देने को तैयार है एवं प्रकरण के निराकरण तक सुपुर्दगी में प्राप्त वाहन एवं मोबाइल फोन को विक्रय नहीं करेगा और न ही रंग पेंट में परिवर्तन करेगा और जब भी माननीय न्यायालय का आदेश होगा वाहन एवं मोबाइल फोन को स्वंय के व्यय पर न्यायालय के समक्ष प्रस्तुत करेगा तथा अन्य शर्तें जो माननीय न्यायालय द्वारा अधिरोपित की जाएंगीं उसका भी पालन करने को तैयार है।''

14. Prayer is made by applicant for interim custody of vehicle and cell phone before learned Special Judge NDPS Act, Rewa and learned Special Judge passed an order rejecting the application to give interim

custody of the articles. Said order is not a final order or intermediate order or order of moment but only an interlocutory order. Even if order is passed to release the vehicle Court continues to remain *custodia legis* and article is liable to be produced when directed by the Court and Court may also recall entrustment for reasons, Court may deem fit, therefore, order impugned is interlocutory order and criminal revision filed by the applicant is not maintainable due to bar under Section 397 (2) of the Code of Criminal Procedure, 1973.

15. Criminal Revision filed by the applicant is **dismissed** as not maintainable under Section 397(2) of the Code of Criminal Procedure. Applicant is at liberty to take recourse to appropriate remedy available to him.

(VISHAL DHAGAT)
JUDGE

DUBEY/-