IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE ATUL SREEDHARAN

ON THE 24th OF MARCH, 2022

MISCELLANEOUS CRIMINAL CASE No. 5983 of 2014

Between:-

1. **DADHIBAL PRASAD JAISWAL**

2. **RAMDHANI JAISWAL**

.....PETITIONERS

(BY SHRI SHIV KUMAR DUBEY, ADVOCATE)

AND

SMT. SUNITA JAISWAL

.....RESPONDENT

(BY SHRI V.K.JAIN, ADVOCATE)

.....

ORDER

The present petition has been filed by the petitioners herein who are aggrieved by the order dated 21.3.2014 passed by the Court

of the learned 10 Additional Sessions Judge, Jabalpur in Criminal Revision No.249/2013, by which the revision filed by the respondent herein was illegally allowed and set aside the order dated 8.4.2013 of the learned JMFC Jabalpur passed in MJC No.4/2011.

2. The case of the petitioners is that the petitioner no.1 is the husband and the petitioner no.2 is the father-in-law of the respondent. The respondent filed a case under the Domestic Violence Act against the petitioners. In the said case, she moved an application asking the learned Trial Court to call for the record of a "missing person's case" being case no.20/2010, which was registered at Police Station Belbag, Jabalpur relating to the alleged elopement of the petitioner no.1 with another lady. In that case the father of the lady had filed the aforementioned missing person's report, in which the petitioner and the lady alleged to have appeared before the Police and handed over certain documents. Admittedly, the details relating to the said documents are not given in the application. The learned Trial Court vide order dated 8.4.2013 dismissed the application filed by the respondent on the ground that the same is vague as it is not specific of the nature and type of documents required from the police in "missing person's case" no.20/2010. Thereafter, the respondent preferred a criminal revision in which the impugned order was passed and said order set aside the order passed by the learned Trial Court and in consequence thereof the file of the missing person's case

no.20/2010 reached the Trial Court for the purpose of confronting the petitioners during their testimony.

3. Learned counsel for the petitioners submits that the impugned order is bad in law as the same falls foul of the judgment of the Supreme Court passed in ***2009(5) SCC 153 Sethuraman Vs. Rajamanickam.*** The facts in that case related to an application that was moved under section 91 Cr.P.c. and another under section 311 Cr.P.C. where the applications after being rejected, criminal revisions were filed before the High Court, in which the impugned orders were passed allowing the revision petition. In paragraph 5, the Supreme Court has held that orders passed disposing of application under section 91 Cr.P.C. and under section 311 Cr.P.C. were orders of a interlocutory nature against which a, revision under section 397 was not maintainable at all in view of section 397 (2) Cr.P.C. He has also relief upon the judgment of the Supreme Court passed in ***2001 SCC (Cri) 1254 – Bhaskar Industries Ltd. Vs. Bhiwani Denim & Apparels Ltd and others,*** where the Supreme Court referring to previous judgments notable amongst them being ***Madhu Limaye Vs. State of Maharashta (1977) 4 SCC 551 and Amarnath Vs. State of Haryana, (1977) 4 SCC 137,*** wherein the Supreme Court had embarked upon a enquiry to lay down the distinction between an interim order, interlocutory order and orders of an intermediate nature. In paragraph 11, however, the Supreme Court held that an objection regarding maintainability of the revision petition should have been raised before the

Court which invoked such a revisional jurisdiction and that as the same was not done, the Supreme Court left the question undecided.

4. The learned counsel for the respondent on the other hand has submitted that the application under section 91 did not survive after the impugned order was passed by the learned Trial Court on 8.4.2013 and the same was finally concluded and therefore, the same cannot cannot be said to be an interlocutory order as it had finally disposed of the application under section 91 Cr.P.C. moved by the respondent. He has also submitted that the petitioners did not raise the jurisdictional point before the learned Court of revision and, therefore, the learned Court of revision also did not embark into an enquiry upon its power to exercise the revisional jurisdiction under section 397 Cr.P.C. Lastly, he has submitted that the petitioner has failed to show what hardship or inconvenience or disadvantage or prejudice was caused to him.

5. Heard the learned counsels for the parties and perused the petition and the documents filed therewith.

6. The contention of the learned counsel for the petitioners that they have raised this issue of lack of jurisdiction before the learned Court of revision, does not finds support from the impugned order.. There is no reference by the Court of Sessions that such an argument with regard to lack of jurisdiction was made before it and neither has it dealt with it. Even in the petition there is no specific averment to the effect that the point of jurisdictional error in filing the revision petition was ever raised

before the learned Court of revision. Learned counsel for the petitioners has, however, referred to paragraph H,I and J on the grounds in order to substantiate his argument that these points were raised before the learned Court below. However, having gone through the said grounds it only appears that the petitioners have referred to three judgments of the Supreme Court, not before the Court of revision but before this Court in order to show the error committed by the Court of revision.

7. The order passed by the Supreme Court in ***(2009) 5 SCC 153 (Sethuraman Vs. Rajamanickam)*** is precise, unequivocal and unambiguous. It has clearly arrived at the finding that orders passed on the application under section 91 Cr.P.C. and section 311 Cr.P.C. are interlocutory in nature barring the jurisdiction of a criminal revision. Reasons have not been assigned in the said judgment as to why it considers the said orders passed in such applications, as interlocutory. However, the finding is unambiguous, unequivocal . Under the circumstances, judicial discipline demands that this Court feels bound by the said finding.

8. This Court also finds it essential to examine the effect of paragraph 11 in the judgment of the Supreme Court in ***Bhaskar Industries(supra)*** case where the Supreme Court observed that the objection regarding the maintainability of the revision petition should have been raised before the Court, which invoked such a revisional jurisdiction. However, it left the question undecided. A point relating to law can be raised at any

stage. Whether or not the Court has jurisdiction to entertain a revision against an interlocutory order, is a question of law. Though the same was not taken before the Court of revision that it lacked the jurisdiction to entertain the revision on account of the bar of section 397(2) Cr.P.C, it cannot be said that the learned Court of revision ought not to have known the law relating to the bar on entertaining the criminal revision on account of 397(2).

9. The contention of the learned counsel for the respondent that the application under section 91 Cr.P.C stood finally disposed in view of the order passed by the learned Trial Court and, therefore was not hit under section 397 (2) is untenable. If the said argument is accepted, the concept of a interlocutory order barring revision under section 397(2) would be rendered otiose. Courts dispose of applications by passing orders. Merely because the applications stood disposed of finally cannot make the said order a final order or an order, which is not interlocutory in nature. The test for an interlocutory order has already been laid down very succinctly and clearly in the judgments passed by the Supreme Court in ***Amarnath Vs. State of Haryana (1977) 4 SCC 137*** and ***Madhu Limaye Vs. State of Maharashta (1977) 4 SCC 551,*** where the Supreme Court has held that orders which result in the termination of a proceeding before the Court concerned, will certainly not constitute an interlocutory order. In ***Amarnath's case,*** the Supreme Court further clarified that an order disposing of an application by which a valuable

right of either of the parties is affected, would be an intermediate order and not as interlocutory order, though the said order does not result in the disposal of the the case itself..

10. In this particular case, the respondent could have resorted to another procedure available to it under the law if it felt aggrieved by the order passed by the learned Trial Court. It cannot be said and neither has it been demonstrated by the learned counsel for the respondent how the dismissal of the said application grossly prejudiced the respondent in the conduct of her case. It is not the case of the respondent that it is unable to prove the factum of marriage of the petitioner no.1 to someone else by any other means other than the documents in the missing persons case no.20/2010.

11. Under the circumstances, the petition succeeds and the impugned order dated 21.3.2014 passed by the learned 10th Additional Sessions Judge Jabalpur in Criminal Revision No.249/2013 is quashed and set aside. However, the respondent is given the liberty of resorting to such remedies available to her under the law.

12. With the above, the petition is finally disposed of.

(ATUL SREEDHARAN)
JUDGE

ss

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