CASE NO.:
Appeal (crl.) 575-576 of 2004

PETITIONER:
State Rep. by Inspector of Police & Ors.

RESPONDENT:
N.M.T. Joy Immaculate

DATE OF JUDGMENT: 05/05/2004

BENCH:
CJI & G.P. Mathur.

JUDGMENT:
JUDGMENT

(Arising out of Special Leave Petition (Crl.) Nos.3143-3144 of 2002)

G.P. MATHUR,J.

1. Leave granted.

2. These appeals have been preferred by the State of Tamil Nadu against the judgment and order dated 11.4.2002 of a learned Single Judge of the High Court of Madras by which the criminal revision petition preferred by the respondent N.M.T. Joy Immaculate was allowed and the revision was disposed of with certain directions.

3. A written FIR was lodged at P.S. P1-Puliyanthope on 9.10.2001 by one Jaffar Sait alleging that his brother Rizwan Sait was missing since around 9.00 a.m. on 7.10.2001 and on the basis of same a case was registered. On 15.10.2001 Haroon Sait (brother of Rizwan Sait) filed a Habeas Corpus Petition in the High Court of Madras being H.C.P. No.1458 of 2001, wherein besides the State and Inspector of Police, P.S. P1-Puliyanthope, R. Sathish, Miss Joy Immaculate and Miss Nithya were arrayed as respondents no.3 to 5 and a prayer was made that a writ of habeas corpus be issued directing the respondents to produce his brother Rizwan Sait, who is illegally detained by respondents no.3 to 5 and to set him at liberty. It was averred in the writ petition that Rizwan Sait lends money on interest to various businessmen including the shopping business complex of Spencers Plaza, Chennai. Respondents no.3 to 5 and their friends, namely, Vijay and Ranjit had taken money from Rizwan Sait. Miss Joy Immaculate had conducted a fashion show at Music Academy and in that connection she had borrowed more than Rs.50,000/- and her sister Miss Nithya, who was running a business in the name and style of Fashion World at Spencers Plaza, had also borrowed a sum of Rs.65,000/. Joy Immaculate and her sister Nithya did not repay the interest and when Rizwan Sait went to the latter's shop, R. Sathish undertook to clear off their dues. At about 9.00 a.m. on 7.10.2001 R. Sathish came to the writ petitioner's house and thereafter his brother Rizwan Sait left along with him in a Maruti car. While leaving, he had said that he was going to Chittur (A.P.) and would return back in the night. However, as Rizwan Sait did not come back till the morning of 8.10.2001, they started looking for him and went to the shop of Nithya and asked her to give the address of R. Sathish, which she refused to do. However, in the morning of 9.10.2001, R. Sathish himself came to their house and said that their programme of going to Chittur was cancelled and accordingly Rizwan Sait had returned back to his house on the morning of 7.10.2001 itself. A photocopy of a cheque for a sum of Rs.1,50,000/- dated 2.9.2001 issued by Miss Nithya was found in the cupboard of Rizwan Sait. In the Habeas Corpus Petition Haroon Sait raised a suspicion that respondents no.3 to 5 have done some foul play with his brother who had

advanced money to them.

4. An unidentified dead body was found at Kanagavallipuram and on the report of Village Administrative Officer a case was registered with the concerned police station. After autopsy in the Government Hospital, Tiruvellore, the dead body was buried. One Deva @ Dev Raj was arrested by Inspector of P1-Puliyanthope Police Station. He confessed to the police about the commission of crime and showed the place where Rizwan Sait was murdered. It was thereafter ascertained that the unidentified dead body found on 10.10.2001 at Tiruvellore Taluka was that of Rizwan Sait. Thereafter, the case registered on 9.10.2001 at P.S. P1-Puliyanthope was altered to Section 363, 302 IPC. Dev Raj was remanded to judicial custody on 23.10.2001. Joy Immaculate surrendered in the Court of Judicial Magistrate, Alandhur, Chennai on 24.10.2001 and was remanded to judicial custody and R. Sathish surrendered before XXIII Metropolitan Magistrate, Saidpet, Chennai on 25.10.2001. The Investigating Officer made an application before the concerned Magistrate on 31.10.2001 for giving Sathish on police remand. This application was allowed and the learned Metropolitan Magistrate vide his order dated 1.11.2001 granted police remand of accused Sathish for 3 days i.e. from 1.11.2001 to 3.11.2001. It is alleged that he made some sort of a confession to the police and on the basis of the statement made by him, some incriminating articles were recovered. Thereafter, the Investigating Officer moved an application before the concerned Magistrate for grant of police remand of Joy Immaculate, which was opposed by her. The learned Vth Metropolitan Magistrate, Egmore, Chennai passed a detailed order on 6.11.2001, whereunder she was given in police custody for one day and was to be produced in court by 4.00 p.m. on 7.11.2001. It was directed that she would be detained in All Women Police Station and would be interrogated at the office of the Asst. Commissioner of Police, in the presence of the women Inspector of Police. It was further directed that during the period of police custody, the accused should not be harassed physically or psychologically and should be produced before the Court, in the same condition.

5. According to the prosecution, Joy Immaculate made some confessional statements before the Investigating Officer and on her pointing out the wrist watch and shirt of the deceased and also the nylon rope used in the commission of murder were recovered. Thereafter, on 7.11.2001 she was produced before the Vth Metropolitan Magistrate who remanded her to judicial custody. Two weeks thereafter, Joy Immaculate filed a criminal revision petition under Section 397 Cr.P.C. being Crl. R.C. No.1569 of 2001, wherein it was prayed that the order dated 6.11.2001 passed by Vth Metropolitan Magistrate granting police custody be set aside as the same is against the principles laid down in Section 167 Cr.P.C and that the Court may pass such other and further orders as it may deem fit and proper. In the revision petition, accused Joy Immaculate filed an affidavit making serious allegations against the police personnel to the effect that she was interrogated and detained at the police station on 18th and then from 20th to 24th October, 2001 and also referred to certain telegrams which were sent to the Chief Justice of the High Court in this connection. Affidavits in reply were filed by the concerned police personnel. The High Court by the impugned order, which is the subject matter of challenge in the present appeals disposed of the revision petition by issuing several directions and directions no.(a), (b), (c), (d), (g) and (h) are being reproduced below :

(a) The order granting police custody in respect of the petitioner passed by the learned Magistrate is ex facie illegal. Consequently, it is held that the said order is non-est and has to be erased from the records.
(b) In view of the fact that the order granting custody has become non-est, the consequent so-called confession and alleged recovery has no evidentiary value.
(c) The investigation conducted by P1 and P4 Police with reference to the petitioner is not bona fide and false records have been created to implicate the petitioner, thereby caused serious injustice to the

petitioner.
(d) The petitioner had been wrongfully and illegally detained in P4 Police Station for four days and she was harassed and tortured by the Police personnel.
(g) The Commissioner of Police is also directed to take immediate departmental action against the P1 Inspector of Police, P4 Inspector of Police and other Police Personnel who were responsible for the illegal detention and other obscene acts committed on the petitioner at P4 Police Station.
(h) The Home Secretary to the Government of Tamil Nadu is directed to pay a compensation of Rs.1,00,000/- to the petitioner, the victim for her illegal detention in the P4 Police Station by the police personnel who committed the acts of molestation, obscene violation and teasing on the petitioner, within one month from the date of receipt of this order.

The prayer made by the accused for transfer of investigation to C.B.C.I.D. or C.B.I. was declined and the Commissioner of Police was directed to constitute a special team of investigating agency headed by an Assistant Commissioner of Police to continue the investigation of the case. A direction was also issued to the State Government to issue circulars to all the police stations that woman accused/witness should not be brought to the police station and they must be inquired only by the woman police at the place where they reside.

6. We have heard Shri Altaf Ahmad, Additional Solicitor General appearing for the Appellant State of Tamil Nadu and also learned counsel appearing for respondent (accused Joy Immaculate) and have examined the record. In our opinion, the High Court seems to have been carried away by sentiments and has displayed a complete ignorance of the relevant provisions of law, especially that of Code of Criminal Procedure and the Evidence Act.

7. The learned Vth Metropolitan Magistrate by his order dated 6.11.2001 had granted police remand for one day of the accused Joy Immaculate in exercise of powers conferred by Section 167 Cr.P.C. She was given in police custody on the same day and was produced before the learned Metropolitan Magistrate on 7.11.2001 and thereafter she was sent to judicial custody. The order had exhausted itself as the police custody was actually given. However, the accused challenged the aforesaid order by filing a criminal revision petition under Section 397 Cr.P.C. after two weeks on 21.11.2001.

8. The first question which needs examination is whether the revision petition was maintainable. Sub-section (2) of section 397, Cr.P.C. lays down that the power of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, enquiry, trial or other proceedings. The expression "interlocutory order" has not been defined in the Code. It will, therefore, be useful to refer to its meaning as given in some of the dictionaries:

The New Lexicon - Pronounced and arising during legal
Webster's Dictionary procedure, not final
Webster's Third New - Not final or definitive; made or done
International Dictionary during the progress of an action
Wharton's Law Lexicon - An interlocutory order or judgment is one made or given during the progress of action, but which does not finally dispose of the rights of the parties e.g., an order appointing a receiver or granting an injunction, and a motion for such an order is termed an interlocutory motion

Black's Law Dictionary - Provisional; temporary; not final.

Something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy.

9. Ordinarily and generally, the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. In volume 26 of Halsbury's Laws of England (Fourth Edition) it has been stated as under in para 504:

"\005\005\005..a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. It is impossible to lay down principles about what is final and what is interlocutory. It is better to look at the nature of the application and not at the nature of the order eventually made. In general, orders in the nature of summary judgment where there has been no trial of the issues are interlocutory."

In para 505 it is said that in general a judgment or order which determines the principal matter in question is termed "final".

In para 506 it is stated as under:
"An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed "interlocutory". An interlocutory order, even though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals."

10. In S. Kuppuswami Rao v. King, AIR 1949 FC 1, the following principle laid down in Salaman v. Warner, (1891) 1 QB 734, was quoted with approval:
"If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory."

The test laid down therein was that if the objection of the accused succeeded, the proceeding could have ended but not vice versa. The order can be said to be a final order only if, in either event, the action will be determined.

11. However, in Madhu Limaye v. State of Maharashtra, AIR 1978 SC 47, such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order was not accepted as this will render the revisional power conferred by section 397(1) nugatory. After taking into consideration the scheme of the Code of Criminal Procedure and the object of conferring a power of revision on the Court of Sessions and the High Court, it was observed as follows:

"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 be 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 \026 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 order."

12. Same question has recently been considered in K.K. Patel v. State of Gujarat 2000 (6) SCC 195. In this case a criminal complaint was filed against the Superintendent of Police and Deputy Superintendent of Police alleging commission of several offences under the Indian Penal Code and also under Section 147-G of the Bombay Police Act. The Metropolitan Magistrate took cognizance of the offence and issued process to the accused, who on appearance filed a petition for discharge on the ground that no sanction as contemplated by Section 197 Cr.P.C. had been obtained. The Metropolitan Magistrate dismissed the petition against which a revision was filed before the Sessions Judge, who allowed the same on the objection raised by the accused based upon Section 197 Cr.P.C. and also Section 161(1) Bombay Police Act, which creates a bar of limitation of one year. The revision preferred by the complainant against the order of discharge was allowed by the High Court on the ground that the order passed by the Metropolitan Magistrate rejecting the prayer of the accused to discharge them was an interlocutory order. In the appeal preferred by the accused, this Court after referring to Amar Nath v. State of Haryana 1977 (4) SCC 137, Madhu Limaye v. State of Maharashtra AIR 1978 SC 47 and V.C. Shukla v. State AIR 1980 SC 962 held that in deciding whether an order challenged is an interlocutory or not, as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage. The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings. If so, any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. It was further held that as in the facts of the case, if the objections raised by accused were upheld, the entire prosecution proceedings would have been terminated, the order was not an interlocutory order and consequently it was revisable.

13. Section 167 Cr.P.C. empowers a Judicial Magistrate to authorise the detention of an accused in the custody of police. Section 209 Cr.P.C. confers power upon a Magistrate to remand an accused to custody until the case has been committed to the Court of Sessions and also until the conclusion of the trial. Section 309 Cr.P.C. confers power upon a Court to remand an accused to custody after taking cognizance of an offence or during commencement of trial when it finds it necessary to adjourn the enquiry or trial. The order of remand has no bearing on the proceedings of the trial itself nor it can have any effect on the ultimate decision of the case. If an order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings. A remand order cannot affect the progress of the trial or its decision in any manner. Therefore, applying the test laid down in Madhu Limaye's case (supra), it cannot be categorised even as an "intermediate order". The order is, therefore, a pure and simple interlocutory order and in view of the bar created by sub-section (2) of Section 397 Cr.P.C., a revision against the said order is not maintainable. The High Court, therefore, erred in entertaining the revision against the order dated 6.11.2001 of the Metropolitan Magistrate granting police custody of the accused Joy Immaculate for one day.

14. The High Court after holding that the order granting police custody is ex-facie illegal has further held that the so-called confession and alleged recovery has no evidentiary value. It has also been held that the investigation conducted by P-1 and P-4 Police with reference to the accused is not bona fide and false records have been created to implicate the accused. The question then arises whether the High Court was right in making the aforesaid observations, even if it is assumed that the order dated 6.11.2001 granting police custody was illegal (though we have held above that the aforesaid order being a purely interlocutory order, no revision lay against the same and the High Court committed manifest error of law in entertaining the revision and setting aside the said order). The admissibility or otherwise of a piece of evidence has to be judged having regard to the provisions of the

Evidence Act. The Evidence Act or the Code of Criminal Procedure or for that matter any other law in India does not exclude relevant evidence on the ground that it was obtained under an illegal search and seizure. Challenge to a search and seizure made under the Criminal Procedure Code on the ground of violation of fundamental rights under Article 20(3) of the Constitution was examined in M.P. Sharma v. Satish Chander AIR 1954 SC 300 by a Bench of 8 Judges of this Court. The challenge was repelled and it was held as under :

"A power of search and seizure is in any system of jurisprudence an over-riding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under Article 20(3) would be defeated by the statutory provisions for searches."

15. The law of evidence in our country is modeled on the rules of evidence which prevailed in English Law. In Kuruma v. The Queen 1955 AC 197 an accused was found in unlawful possession of some ammunition in a search conducted by two police officers who were not authorised under the law to carry out the search. The question was whether the evidence with regard to the unlawful possession of ammunition could be excluded on the ground that the evidence had been obtained on an unlawful search. The Privy Council stated the principle as under :

"The test to be applied, both in civil and in criminal cases, in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the Court is not concerned with how it was obtained".

This question has been examined threadbare by a Constitution Bench in Pooran Mal v. Director of Inspection 1974(1) SCC 345 and the principle enunciated therein is as under :

"If the Evidence Act, 1872 permits relevancy as the only test of admissibility of evidence, and, secondly, that Act or any other similar law in force does not exclude relevant evidence on the ground that it was obtained under an illegal search or seizure, it will be wrong to invoke the supposed spirit of our Constitution for excluding such evidence. Nor is it open to us to strain the language of the Constitution, because some American Judges of the American Supreme Court have spelt out certain constitutional protections from the provisions of the American Constitution. So, neither by invoking the spirit of our Constitution nor by a strained construction of any of the fundamental rights cane we spell out the exclusion of evidence obtained on an illegal search.

So far as India is concerned its law of evidence is modeled on the rules of evidence which prevailed in English Law, and Courts in India and in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure. Where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law evidence obtained as a result of illegal search or seizure is not liable to be shut out."

This being the law, the direction (b) given by the High Court that the confession and alleged recovery has no evidentiary value is clearly illegal and has to be set aside. The effect of the confession and also the recovery of the incriminating article at the pointing out of the accused has to be examined strictly in accordance with the provisions of the Evidence Act.

16. The High Court has also recorded a finding that the investigation conducted by P-1 and P-4 Police with regard to accused Joy Immaculate is not bona fide and false records have been created to implicate her causing her serious injustice and further that she was detained in the police station for four days and was harassed and tortured by the police personnel. It is needless to mention that the High Court was hearing a criminal revision petition filed under Section 397 Cr.P.C. against an order passed by a Metropolitan Magistrate granting police custody of the accused. The scope of the revision, even if it is assumed to be maintainable, was a limited one, viz., whether the order granting police remand was legally correct or not having regard to the material placed before the learned Magistrate. The High Court at that stage could not have gone into the merits of the prosecution case as if hearing an appeal against an order of conviction or acquittal as the trial of the accused is yet to begin. The only material available before the High Court was the affidavit filed by the accused, copies of telegrams and the reply affidavits filed by the concerned police officials. The affidavit of the accused has been accepted as a gospel truth and very disparaging and strong remarks have been made against the investigating officers and the investigation done by them. Though we do not want to express any opinion, one way or the other, but at the same time one should not lose sight of the fact that a person who has been accused by the prosecution for having entered into a conspiracy to commit murder, can go to any extent in making wild allegations against the concerned police authorities. The High Court lost sight of the fact that much before the accused Joy Immaculate claims to have been interrogated in the police station (20th October, 2001 and subsequently) and the police came into picture, the brother of the deceased had filed a Habeas Corpus Petition in the High Court on 15.10.2001, wherein she and her sister Miss Nithya had been arrayed as respondents and serious allegations had been made against them and in para 12 it was specifically alleged that these two sisters along with Sathish had illegally detained Rizwan Sait (deceased). The alleged ill treatment meted out to her subsequently by the police cannot have the effect of wiping out the crime committed earlier viz. entering into a conspiracy and thereafter murder of Rizwan Sait on 9th October. The High Court seems to have been very much swayed by the fact that she was a student and was studying in M.A. and like all normal students must be totally devoted to studies. But the statements of witnesses under section 161 Cr.P.C. show that the mother and sister Nithya of accused Joy Immaculate were also carrying on business, that both the sisters borrowed money from Rizwan Sait and that the interest amount had not been timely paid due to which some altercation took place on 4th October when Rizwan Sait used some filthy language against her that if by a particular date the amount was not paid she should come and sleep with him. However, these are all factual aspects of the case which have to be examined by the trial court at the appropriate stage after parties have adduced evidence.

17. Chapter XVIII of the Code of Criminal Procedure contains detailed and exhaustive provisions for the trial of an accused before the Court of Sessions. It provides for framing of charge (Section 228), taking of evidence as may be produced in support of the prosecution (Section 231) and an opportunity to the accused to enter upon his defence and to adduce evidence in support thereof (Section 233). Section 313 Cr.P.C. enjoins that circumstances appearing in evidence against the accused be put to him to enable him to explain the same. The accused Joy Immaculate would get full and complete opportunity to defend herself in the trial. It is for the trial Court to weigh the evidence adduced by the prosecution and then record a finding on its basis whether the investigation has been fair or not or whether any records have been fabricated. If any party feels aggrieved by the findings recorded and ultimate order passed by the learned Sessions Judge

deciding the case it will have a right of appeal before the High Court. There is absolutely no occasion for the High Court to record any finding regarding the conduct of the investigation or the records on which the prosecution places reliance, in a revision petition preferred against an order granting police remand and that too solely on the basis of the affidavits filed by the rival parties. The High Court has virtually scuttled the trial even before it has commenced and that too by a process wholly unknown to law.

18. The High Court has also awarded Rs.1 lakh as compensation to the accused on the ground that she was illegally detained in the police station and the police personnel committed acts of molestation, obscene violation etc. It is noteworthy that after investigation, police has submitted charge sheet against accused Joy Immaculate. Her application for bail was rejected by the learned Sessions Judge and thereafter by the High Court on 18.1.2002 prior to the decision of the revision. There is absolutely no justification for awarding compensation to a person who is facing prosecution for a serious offence like murder even before the trial has commenced. This direction, therefore, deserves to be set aside.

19. In view of the discussion made, the appeals are allowed and the impugned judgment and order of the High Court dated 11.4.2002 is set aside. If the amount of compensation of Rs.1 lakh has already been paid to the accused Joy Immaculate, she is directed to refund the same within two months, failing which it may be recovered from her as arrears of land revenue.

20. It is made clear that any observation made in this order is only for the limited purpose of deciding the present appeals and shall not be construed as an expression of opinion on the merits of the case. The learned Sessions Judge trying the case shall decide the same strictly on the basis of the evidence adduced by the parties and in accordance with law without being influenced in any manner with any observation made in this order or in that of the High Court.