

PETITIONER:
PARMESHWARI DEVI

Vs.

RESPONDENT:
STATE AND ANR.

DATE OF JUDGMENT 23/11/1976

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
BHAGWATI, P.N.
GUPTA, A.C.

CITATION:
1977 AIR 403 1977 SCR (2) 160
1977 SCC (1) 169
CITATOR INFO :
R 1978 SC 47 (16)
E 1980 SC 962 (7,82,104)

ACT:

Code of Criminal Procedure (5 of 1868), Ss. 94, 96 and 98 and Evidence Act (1 of 1872)--Person summoned to produce documents, when may be examined and cross-examined.
Code of Criminal Procedure (2 of 1974) S. 397(3) Interlocutory order, what is.

HEADNOTE:

Section 94(1), Cr. P.C., 1898, which deals with summons to produce any document, authorises the court to issue a summons to the person in whose possession or power such document is believed to be, requiring him to attend and produce it. or to produce it at the time and place stated in the summons. According to sub-s.(2) a person required merely to produce a document shall be deemed to have complied with the requisition if he causes such document to be produced instead of attending personally to produce it.
In the present case, during a criminal trial, the complainant filed an application under s. 94, for a direction to the accused to produce a document. The accused stated that the document was not in their possession. The complainant then made another application under the section praying that the appellant may be directed to produce the document. The appellant was not a party to the case and no reason whatsoever was given by the complainant in the application why the document was likely to be in appellant's possession or power. The Magistrate then passed an order summoning the appellant with the document. The appellant, in her reply, professed ignorance of the document and stated that as she was a "pardanashin" lady she may not be summoned to court. The Magistrate thereupon passed another order directing her to attend the Court so that if she made a 'statement on oath' that she was not in possession of the document, the Court may get a chance to put her a few questions for satisfying itself regarding the whereabouts of the document. The appellant's revision petitions against the order to the District Court and High Court were dismissed.
Allowing the appeal to this Court,

HELD: (1) There is nothing in the Criminal Procedure Code providing that the person who appears in Court, in pursuance of a summons under s. 94(1), becomes a witness and can be examined and cross-examined even though he has not been cited as a witness. Section 139, Evidence Act, also provides that if a person produces the document for which a summons has been issued to him, he does not thereby become a witness and that he cannot be cross-examined until he is called as a witness. All that the Magistrate could do was to issue search warrants under s. 96(1) or s. 98 if the requirements of those sections were satisfied. The Court could not therefore record the appellant's statement on oath on her inability to produce the document, or put her a few questions for satisfying itself regarding its whereabouts. [163C-E]

(2) The order, which was thus not according to law adversely affected the appellant who was not a party to the enquiry or trial. Obviously she could have no opportunity to challenge it at the end of the trial, and such belated challenge would also be purposeless. Therefore, the order could not be said to be an interlocutory order and the revisional courts erred in raising the bar of s. 397(3), Cr. P.C. 1974. [164C-D]

Mohan Lal Magan Lal Thacker v. State of Gujarat [1968] 2 S.C.R. 685, followed.

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 411 of 1976.

Appeal by Special Leave from the Judgment and Order dated the 22nd April, 1975 of the Delhi High Court in Criminal Revision No. 258 of 1974.

Frank Anthony and D. Gobrudhan for the Appellant.

R.N. Sachthy - '(Not present) for Respondent No. 1.

G.S. Vohra, S.K. Gambhir and K.L. Taneja for Respondent No. 2.

The Judgment of the Court was delivered by

SHINGHAL, J. This appeal of Smt. Parmeshwari Devi, by special leave, arises from the judgment of the Delhi High Court dated April 22, 1975 dismissing her application for revision of the order of the Additional Sessions Judge of Delhi dated August 29, 1974, confirming the order of a Metropolitan Magistrate of Delhi dated August 8, 1974. The facts giving rise to the appeal are quite simple and may be shortly stated.

A complaint was filed by respondent N.L. Gupta on behalf of Smt. Patashi Devi for the commission of offences under sections 181, 182, 193, 197, 199, 200, 465, 466 and 471 of the Indian Penal Code by Nand Kishore, Ghanshyam Das and Sanwar Mal. It was alleged that Smt. Patashi Devi had one-fifth share in the firm of M/s Gupta Electric and Machinery Stores of which Smt. Parmeshwari Devi (the present appellant), Smt. Dropadi Devi and Madan Lal Gupta were the other partners. According to the complaint, the business of the firm was mainly looked after by Smt. Parmeshwari Devi's husband Mohan Lal and accused No. 1 who was her brother. Smt. Patashi Devi and two other partners "retired" from the business on April 1, 1968 without settling the accounts. Smt. Patashi Devi asked Mohan Lal and accused No. 1 who was her brother Smt. Patashi settling accounts. Accused No. 2 filed an attested copy of a deed of dissolution, alleged to be signed by Smt. Patashi Devi, in the office of the Registrar of Firms on November 14, 1968, along with an

intimation

of the dissolution of the firm which also purported to be signed by her.

The complainant filed an application under section 94 of the Code of Criminal Procedure, 1898, hereinafter.. referred to as the Code, for a direction to the accused to file the original deed of dissolution. The accused however stated in the court that they were employees of the firm and the document was not in their possession. The complainant then made another application on .March. 28, 1974 under section 94 with a prayer that Smt. Parmeshwan Devi may be directed to produce the document. The court made an order on March 28, 1974 summoning Smt. Parmeshwan Devi, with the document. She stated in her reply that she did not know anything about the document and that after her husband's death the complainant had taken away all the records of the firm. She stated further that she was a 'Pardanashin' 12---1458SCI/76 162

lady living in Calcutta and need not be summoned in the court. The Metropolitan Magistrate thereupon made order dated August 8, 1974 as follows,--

"In my view when a person is summoned to attend the Court it is desirable that such summoned person attends and made statement on oath that he is not in the possession of the documents summoned, so that the court may take further steps to secure the production of the documents as envisaged u/s 96 Cr.P.C. Merely sending a reply through an Advt. that the document is not in his possession is not sufficient compliance of the order. The request of the Ld. counsel for Parmeshwari Devi that a commission may be issued for recording the statement of Smt. Parmeshwari Devi cannot be granted as the case is already getting old and issuance of a commission would mean undesirable delay of the case. The counsel for Smt. Parmeshwari Devi Shri C.L. Mala is now requested to intimate Smt. Parmeshwari Devi forthwith to attend this court and produce the document if in her possession on 30th August, 1974.

The Ld. counsel for Parmeshwari Devi has also stated that Smt. Parmeshwari Devi is prepared to file an affidavit even to say that she is not in the possession of the documents summoned but in my view this also does not serve the purpose as calling of Smt. Parmeshwari Devi in the court and recording her statement on an oath will give a chance to the court to put her a few questions for satisfying itself regarding the whereabouts of the document in question."

As has been stated, Smt. Parmeshwari Devi's applications for revision of this order have been dismissed by the Additional Sessions Judge and the High Court and this is how she has come in appeal to this Court.

It will be recalled that it was the complainant who made an application under section 94 of the Code stating that as the deed of dissolution of the partnership was essential for the trial of the case, Smt. Parmeshwari Devi may be directed to produce it. Smt. Parmeshwari Devi was not a party to the case, and no reason whatsoever was given in the application why the document was likely to be in her possession or power beyond stating that the accused had stated in their reply

the earlier application under section 94 that they were employees of the firm and were not in possession of the document, and she was the widow of the late Mohan Lal Gupta. The Magistrate therefore "summoned" her "with the document" by his order dated March 28, 1974 which is not, however, the subject matter of controversy before us. The question is whether the subsequent order of the Magistrate dated August 8, 1974 is according to law by which Smt. Parmeshwari Devi has been directed to attend the court so that if she made a "statement on oath" that she is not in possession of the document, the court may get a chance to "put her a few questions for satisfying itself regarding the whereabouts of the documents ?

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Chapter VII of the Code deals, inter alia, with process to compel the production of documents. Sub-section (1) of section 94, which deals with summons to produce any document, merely authorises the court to issue a summons to the person in whose possession or power such document is believed to be, requiring him to "attend and produce it, or to produce, it, at the time and place stated in the summons." According to sub-section (2) a person required under the section merely to produce a document shall be deemed to have complied with the requisition if he "causes such document to be produced instead of attending personally to produce the same". There is nothing in the chapter to provide that the person who appears in the court, in pursuance of its summons under sub-section (1) of section 94, thereby becomes a witness and can be examined and cross-examined by the court although he has not been cited as a witness in the proceedings. Even if a person produces the document for which a summons has been issued to him, section 139 of the Evidence Act clearly provides that he does not thereby become a witness by the mere fact that he produces it, and he cannot be cross-examined unless and until he is called as a witness. So when Smt. Parmeshwari Devi filed a reply to the application of the complainant under section 94 of the Code stating that she did not know anything about the deed of dissolution and it was not in her possession, the utmost that the Magistrate could do was to issue a search-warrant under sub-section (1) of section 96 if he had reason to believe that she will not or would not produce the document as required by the summons. It was also permissible for the Magistrate to order a search of Smt. Parmeshwari Devi's house under section 98 of the Code if it appeared to him that the requirements of that section had been fulfilled. But there is no provision in the Code under which the court could record her statement on oath, on her inability to produce the document, or "put her a few questions for satisfying itself regarding the whereabouts of the document." In the facts and circumstances of the case, no further action is in fact called for against the appellant. The Additional Sessions Judge and the High Court went wrong in taking a contrary view.

It has been argued that the order of the Magistrate dated August 8, 1974 was an interlocutory order and the power of revision conferred by sub-section (1) of section 397 of the Code of Criminal Procedure, 1974, could not be exercised in relation to it by virtue of sub-section (2).

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.

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A somewhat similar argument came up for consideration before this Court in Mohan Lal Magan Lal Thacker v. State of Gujarat(1). The controversy there centred round the meaning of article 134(1) (c) of the Constitution and the Court examined the meaning of the words "final" and "interlocutory". It was held that the meaning "had to be considered separately in relation to the particular purpose for which it is required" to be interpreted. No single test can be applied to determine whether an order is final or interlocutory. Then it has been held by this Court in that case as follows '-

"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. As has been shown, the order of the Magistrate dated August 8, 1974 was not according to law and it adversely affected the appellant, who was not a party to the enquiry or trial, as it was solely directed against her. As is obvious, she could have no opportunity to challenge it after the making of the final order, and such a belated challenge would have been purposeless for it would have given her no relief. So in so far as the appellant is concerned, the order of the Magistrate could not be said to be an interlocutory order and the revisional courts erred in raising the bar of sub-section (2) of section 397 against it.

We have gone through Dhola and others v. State(2) and The Central Bank of India Ltd. v. Gokal Chand(3) cited by Mr. Vohra. Dhola's case related to the grant of bail, and Gokal Chand's case related to a right of appeal under section 38(1) of the Delhi Rent Control Act against an order made inter partes. They cannot therefore avail the respondent in this case.

For the foregoing reasons, the appeal is allowed and the impugned orders of the High Court dated April 22, 1975 and of the Metropolitan Magistrate dated August 8, 1974 are set aside.

V.P.S.

Appeal allowed.

1274.

(1) [1968] 2 S.C.R. 685.

(2) (1975) CrL. L.J. (1)

1274.

(3) A.I.R. 1967 S.C. 799

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