STATE REP. BY INSPECTOR OF POLICE AND ORS. A

v.

N.M.T. JOY IMMACULATE

MAY 5, 2004

B

[RAJENDRA BABU, CJ, DR. AR. LAKSHMANAN AND G.P. MATHUR, JJ.]

Code of Criminal Procedure, 1973 :

Section 397(2)—Order granting police custody—Revision petition against—Maintainability of—Held : Order being an interlocutory order, revision against the order not maintainable. C

Revision petition against remand order—Scope of—Held : Is limited to the legality of the order passed, having regard to material placed before the Magistrate, even if it is assumed to be maintainable—High Court cannot record any findings regarding conduct of the investigation or records on which prosecution places reliance—It cannot scuttle the trial even before it has commenced—Trial court has to weigh evidence adduced by prosecution and then record findings. D E

Criminal trial—Evidence obtained under illegal remand—Evidentiary value of—Held : if remand order is found to be illegal, the relevant evidence obtained thereunder cannot be excluded—It cannot be said that the confession made and alleged recovery have no evidentiary value—Evidence Act, 1872. F

Words and Phrases :

'Interlocutory order'—Meaning of in the context of sub-section (2) of section 379 of Code of Criminal Procedure, 1973. G

A case was registered against the respondent-accused and others under section 363 and 302 IPC. Respondent surrendered and was remanded to judicial custody. Investigating Officer filed application for grant of police remand of respondent. Respondent was given in H

police custody for one day and on her confessional statement, wrist watch, shirt of the deceased and the nylon rope used in the commission of murder were recovered. Two weeks later respondent filed revision petition under section 397 Cr.P.C. praying that the order granting police custody be set aside as the same was against principles laid down under section 167 Cr.P.C. and also made allegations against police personnel that she was wrongfully and illegally detained. High Court disposed of the revision petition by issuing several directions that the order granting police custody in respect of the respondent was *ex-facie* illegal as such *non-est* and in view of the same the confession made and the alleged recovery had no evidentiary value; that the investigation conducted was not *bona fide* and false records have been created to implicate respondent; that respondent had been wrongfully and illegally detained in police station for four days and was harassed and tortured by them; that the Commissioner of Police must take departmental action against police personnel responsible for illegal detention and other obscene acts committed on respondent; that the State Government must pay respondent Rs. 1 lakh compensation for the same; and that the State Government must issue circular to all police stations that woman accused/witness should not be brought to police station and they must be inquired only by woman police at the place where they reside. Hence the present appeals.

Allowing the appeals, the Court

HELD : *Per Mathur J. (For himself and Rajendra Babu CJI) :*

1. 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 that whether by upholding the objections raised by a party, it would result in culminating the proceedings, and if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) Cr.P.C. remand order cannot be categorised even as an "intermediate order". Therefore, the order is 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 such order is not maintainable. Therefore, High Court erred in entertaining the revision against the remand order. [84-D-G] A

Madhu Limaye v. *State of Maharashtra,* AIR (1978) SC 47, relied on. B

S. Kuppuswami Rao v. *King,* AIR (1949) FC 1; *K.K. Patel* v. *State of Gujarat,* [2000] 6 SCC 195, referred to.

New Lexicon Webster's Dictionary; Webster's Third New International Dictionary; Wharton's Law Lexicon; Black's Law Dictionary; Halsbury's Laws of England, Volume 26 Fourth Edition, referred to. C

2. 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 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. The effect of the confession and also the recovery of the incriminating articles at the pointing out of the accused has to be examined strictly in accordance with the provisions of the Evidence Act. Therefore, the direction given by High Court that since the order granting police custody is *ex-facie* illegal, the so-called confession and alleged recovery has no evidentiary value, is clearly illegal and has to be set aside. Even if it is assumed that the order granting police custody was illegal, the remand order being a purely interlocutory order, no revision lay against the same and High Court committed manifest error of law in entertaining the revision and setting aside the said order. [85-B-C; 86-G; 84-G-H; 85-A-B] D E F

M.P. Sharma v. *Satish Chander,* AIR (1954) SC 300 and *Pooran Mal* v. *Director of Inspection,* [1974] 1 SCC 345, referred to. G

Kuruma v. *The Queen,* [1955] AC 197, referred to.

3.1. 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 H

A 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 Magistrate. 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 B 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. Furthermore, it cannot be lost 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 C wild allegations against the concerned police authorities; and that much before the accused claims to have been interrogated in the police station and the police came into picture, the brother of the deceased had filed a Habeas Corpus petition making serious allegations against respondent-accused, her sister and S that they had illegally detained D the deceased. The alleged ill treatment meted out to respondent subsequently by the police cannot have the effect of wiping out the crime committed earlier viz. entering into a conspiracy and thereafter murder of deceased. [87-B-G]

E 3.2. Chapter XVIII of the Code of Criminal Procedure contains detailed and exhaustive provisions for the trial of an accused before the Court of Sessions. Respondent-accused 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 F finding on its basis whether the investigation was fair or not or whether any records have been fabricated. If any party feels aggrieved by the findings recorded and ultimate order passed, it will have a right of appeal before High Court. There is absolutely no occasion for High Court to record any finding regarding the conduct of the investigation or the records on which the prosecution placed reliance, in a revision G petition preferred against an order granting police remand and that too solely on the basis of the affidavits filed by the rival parties. High Court has virtually scuttled the trial even before it has commenced and that too by a process wholly unknown to law. [88-B-F]

H 4. After investigation, police has submitted charge sheet against

accused. Her bail application was rejected by Sessions Judge and thereafter by High Court prior to the decision of the revision. Hence, 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 and as such the direction is set aside. [88-F-H] A

B

Per Lakshmanan, J. (Supplementing) :

1. What has got to be decided in a full-fledged trial, High Court merely on the pleadings of the parties has given a finding that the order granting police custody and the consequent confession and the alleged recovery had no evidentiary value. Single Judge has also given a finding that records were created to implicate the respondent in the case. Needless to state that any further investigation in the case permitted by Judge would be an exercise in futility in the context of such finding which could be given during the course of a full-fledged trial. Judge has erred in allowing the criminal revision petition against the order of the lower Court as the order passed by the lower Court was acted upon, i.e., one day police custody was granted, the accused was taken into custody and surrendered back, and thus the petition to set aside that order has become infructuous. [90-E-H] C D

E

2.1. Section 160 Cr.PC has reference to the persons to be examined as witnesses in the trial or inquiry to be held after the completion of the investigation. As an accused cannot be examined as a witness either for or against himself, he cannot be included in the class of persons referred to in the Section. But the police officers are fully authorised to require the personal attendance of the suspects during the investigation. [89-G-H] F

2.2. High Court has erred in directing the State Government to issue a circular to all the police stations instructing the police officials that the women accused/witness should not be brought to the police station and that they must be enquired only by women police or in the presence of women police at the places where they reside, as it is contrary to the statutory provisions under Section 160 Cr.P.C. In fact, the Judge has erred in expanding the scope of Section 160 Cr.P.C. to the accused as well, which might lead to hardship to an investigating G H

A **agency. If such direction is accepted, no purposeful investigation into any serious offence involving women accused could be conducted successfully. [91-A-C]**

3. Single Judge of High Court was not justified in awarding compensation of Rs. 1 lakh relying upon the affidavit filed in the case B **and also on the basis of the assumption that the respondent was not involved in the incident which will foreclose the further enquiry ordered by the Judge in the matter. [91-D]**

4. The direction passed by High Court to take immediate depart- C **mental action against the Police Personnel and who were responsible for the detention and other alleged acts committed on the respondent is not warranted in view of the fact of allowing the present criminal appeals and setting aside the judgment of Single Judge. [91-F-G]**

5. It is a principle of cardinal importance in the administration D **of justice that the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody. At the same time, it is equally necessary that in expressing their opinions, Judges and Magistrates must be guided by considerations** E **of justice, fair play and restraint. It is not infrequent that sweeping generalization defeat the very purpose for which they are made. It has been recognized that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve. [91-G-H; 92-A-B]**

F *The State of Uttar Pradesh* **v.** *Mohd. Naim,* **AIR (1964) SC 703;** *A.M. Mathur* **v.** *Pramod Kumar Gupta,* **AIR (1990) SC 1737 and** *Kashi Nath Roy* **v.** *State of Bihar,* **[1996] 4 SCC 539, referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. G 575-576 of 2004.

From the Judgment and Order dated 11.4.2002 of the Madras High Court in Crl. R.C. No. 1569 and Crl. M.P. No. 8264 of 2001.

Altaf Ahmed, Additional Solicitor General, Subramoniam Prasad, H Gopalakrishnan R. and Abhay Kumar for the Appellants.

Manivannan H., Balaji Srinivasan, V. Sudeer, M.B.R.S. Raju, Ms. S. Sunita and S. Srinivasan for the Respondent. A

The Judgments of the Court were delivered by

G.P. MATHUR, J. : 1. Leave granted. B

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. C

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 D 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 E 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 F 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 G 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 H

A 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 B 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.

C 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 D 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 E 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 F 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 G 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 H 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. A

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 : B C D E

(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. F

(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. G

(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 H

A 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.

B

(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.

C

(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.

D

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 E 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.

F

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 G 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 H 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 Webster's Dictionary	- Pronounced and arising during legal procedure, not final
Webster's Third New International Dictionary	- Not final or definitive; made or done 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'.

A In volume 26 of Halsbury's Laws of England (Fourth Edition) it has been stated as under in para 504:

> ".....a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as
B 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."

C 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:

D
> "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
E 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
F 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
G 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
H 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. A

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: B

> "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-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." C D E

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 F G H

A 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 B 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 C 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 D 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 E 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 F 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.

G

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 H 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

A 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 B 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 C 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, D neither by invoking the spirit of our Constitution nor by a strained construction of any of the fundamental rights can 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 E 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 F 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 G 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 H 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

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A 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.

B

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 C 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 D 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 E 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.

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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 G 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. H 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.

DR. AR. LAKSHMANAN, J. : I have had the privilege of perusing the judgment proposed by my learned brother Hon'ble Mr. Justice G.P. Mathur. I respectfully agree with the opinion expressed by him. However, I would like to add the following few lines.

Section 160 of the Code of Criminal Procedure deals with police officer's power to require attendance of witnesses. This Section aims at securing the attendance of persons who would supply the necessary information in respect of the commission of an offence and would be examined as witnesses in the inquiry or trial therefor. This Section applies only to the cases of persons who appear to be acquainted with the circumstances of the case, i.e. the witnesses or possible witnesses only. An order under this Section cannot be made requiring the attendance of an accused person with a view to his answering the charge made against him. The intention of the legislature seems to have been only to provide a facility for obtaining evidence and not for procuring the attendance of the accused, who may be arrested at any time, if necessary. In other words, this Section has reference to the persons to be examined as witnesses in the trial or inquiry to be held after the completion of the investigation. As an accused cannot be examined as a witness either for or against himself, he cannot be included in the class of persons referred to in the Section. But the police officers are fully authorised to require the personal attendance of the suspects during the investigation.

A In the instant case, the High Court, by an impugned order has given a direction to the State Government to issue circulars to all the police stations instructing the police officials that the woman accused/witness should not be summoned or required to attend at any police station under Section 160 Cr.P.C. but they must be enquired only by women police or B in the presence of a women police, at the places where they reside. The High Court has issued a further direction to the Government to ensure that this instruction is strictly followed by the police in future.

In our opinion, the High Court has committed a serious error in giving C such a direction contrary to the statutory provisions under Section 160 of Cr.P.C. which is applicable only to the witnesses and not the accused. The High Court has also committed a grave error in giving a finding as to the confession and recovery of a nylon rope alleged to have been used in the commission of murder, thereby stifling/foreclosing the investigating into an offence of murder even before a final report in the case as contemplated D under Section 173(2) of the Cr.P.C. is filed.

The High Court, in the present case, while dealing with the revising has not only set aside the order granting police custody, but has held that the consequent confession and the alleged recovery have no evidentiary E value in the case. In other words, what has got to be decided in a full-fledged trial, the High Court merely on the pleadings of the parties has given a finding that the order granting police custody and the consequent confession and the alleged recovery had no evidentiary value whatsoever in the case. The learned single Judge has also given a finding that records F were created to implicate the respondent-Joy immaculate in the case. Needless to state that any further investigation in the case permitted by the learned Judge would be an exercise in futility in the context of such finding which could be given only during the course of a full-fledged trial. The High Court, while disposing of the criminal revision, has given several G findings/directions in para 40 of the judgment/order. In our opinion, the learned Judge has miserably erred in allowing the criminal revision petition against the order of the lower Court in criminal M.P. No. 5171/2001, as the order passed by the lower Court was acted upon, i.e., one day police custody was granted, the accused was taken into custody and surrendered back, and thus the petition to set aside that order has become infructuous. H

Further, the learned Judge has erred in directing the State Government to issue a circular to all the police stations instructing the police officials that the woman accused/witness should not be brought to the police station and that they must be enquired only by women police or in the presence of women police at the places where they reside. The learned Judge has failed to note that the aforementioned findings is contrary to the statutory provisions contained in Section 160 of the Cr.P.C. In fact, the learned Judge has erred in expanding the scope of Section 160 Cr.P.C. to the accused as well, which might lead to hardship to an investigating agency. If the directions of the learned single Judge is accepted, no purposeful investigation into any serious offence involving women accused could be conducted successfully.

Above all, the learned Judge has committed a grave error in awarding a compensation of Rs. 1 lakh on the ground that the police personnel committed acts of obscene violation, teasing the respondent herein. The learned Judge has relied upon only on the basis of the affidavit filed in the case for coming to the conclusion and also on the basis of the assumption that the respondent was not involved in the incident which will foreclose the further enquiry ordered by the learned Judge in the matter. There is no justification for awarding compensation to a person who is facing prosecution for a serious offence like murder even before the trial has stated.

The learned Judge has also directed to take immediate departmental action against P-1 Inspector of Police and P-4 Inspector of Police and other Police Personnel who were responsible for the detention and other alleged acts committed on the respondent at P-4 police station. This direction, in our opinion, is not warranted in view of the fact of our allowing the criminal appeal and setting aside the judgment of the learned single Judge. The said direction issued by the learned Judge is set aside.

We, therefore, set aside the order in the criminal revision to prevent abuse of process of court or otherwise to secure the ends of justice. It is a principle of cardinal importance in the administration of justice that the proper freedom and independence of Judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody. At the same time,

A it is equally necessary that in expressing their opinions, Judges and Magistrates must be guided by considerations of justice, fair play and restraint. It is not infrequent that sweeping generalization defeat the very purpose for which they are made. It has been recognised that judicial pronouncements must be judicial in nature, and should not normally depart B from sobriety, moderation and reserve, as observed by this Court in The *State of Uttar Pradesh* v. *Mohd. Naim,* AIR (1964) SC 703. It is also very apt to quote para 13 of the judgment in *A.M. Mathur* v. *Pramod Kumar Gupta,* AIR (1990) SC 1737 which reads thus :

> C "Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be a constant theme of our Judges. This quality in decision making is as much necessary for Judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard D might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the Court as well to other coordinate branches of the State, the Executive and Legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed E in these qualities, it will be neither good for the judge nor for the judicial process."

The Court, in a number of other decisions, has also observed that the Courts should not make unjustifiable observations and directions beyond F the scope and ambit of the *lis* pending before it and that such a direction and observation issued will only hamper the free-flow of justice and cause lot of inconvenience to the litigants who come before the Court for redessal of their genuine grievances.

It is also apt to quote hereinbelow the observations made by this Court G in *Kashi Nath Roy* v. *State of Bihar,* [1996] 4 SCC 539 wherein this Court held that granting of bail on the ground of an infirmity in evidence in the criminal trial was not a glaring mistake or impropriety so as to attract adverse remarks and suggestion for initiation of action against the Judge-Subordinate from the High Court Judge. While stating the proper course H to be adopted in such a case, this Court held as follows :

'The courts exercising bail jurisdiction normally do and should refrain from indulging in elaborate reasoning in their orders in justification of grant or non-grant of bail. For, in that manner, the principle of "presumption of innocence of an accused" gets jeopardized, and the structural principle of 'not guilty till proved guilty proved guilty' gets destroyed, even though all sane elements have always understood that such views are tentative and not final, so as to affect the merit of the matter. Here, the appellant has been caught and exposed to a certain adverse comment and action solely because in reasoning he had disclosed his mind while granting bail. This may have been avoidable on his part, but in terms not such a glaring mistake or impropriety so as to visit the remarks that the High Court has chosen to pass on him as well as to initiate action against him, as proposed.

Whenever any such intolerable error is detected by or pointed out to a superior court, it is functionally required to correct that error and may, here and there, in an appropriate case, and in a manner befitting, maintaining the dignity of the court and independence of judiciary, convey its message in its judgment to the officer concerned through a process of reasoning, essentially persuasive, reasonable, mellow but clear, and result-orienting, but rarely as a rebuke. The premise that a Judge Committed a mistake or an error beyond the limits of tolerance, is no ground to inflict condemnation on the Judge-Subordinate, unless there existed something else and for exceptional grounds."

I respectfully agree with all other directions and the observations made by brother G.P. Mathur, J. in allowing the criminal appeal and setting aside the impugned judgment of the High Court dated 11.04.2002.

N.J. Appeals allowed.