

1984 CRI LJ 1680 . 1984 CRIMES 2 694 . 1984 ACRR 399 . 1984 SCC ONLINE ALL 891 . 1984 CRI LJ 1680 . 1984 CRILJ 1680 .

Kamlesh Kumar v. Girish Kapoor

Allahabad High Court (12 Apr, 1984)

CASE NO.

Criminal Misc. Appln. No. 9836 of 1983

ADVOCATES**JUDGES**

I.P Singh, J.

Summary

1. 2. The applicant's contention is that in pursuance of the said order of the learned Magistrate he executed the necessary bond on 16-9-1983 and obtained the said print on that very date.
2. 6. The above order was passed in revisional jurisdiction of the Sessions Judge.
3. It is clear that in a revision, the Sessions Judge could, during the pendency of the revision, suspend either sentence or order against which the revision has been filed.
4. The learned Sessions Judge passed an order staying attachment.
5. It was held that the order passed by the Sessions Judge relating to attachment made in proceedings u/s.
6. 9. In my view the impugned order being without jurisdiction has to be struck down because it is a nullity, being ultra vires and is nothing but an abuse of the process of the court.
7. The application is allowed.

8. Sessions Judge, Moradabad in Criminal Revision No. 239 of 1983 is quashed.

JUDGMENT

1. Kamlesh Kumar applicant has moved this application u/s. 482. Cr. P.C to get order dt. 10-10-83 passed by IX Addl. Sessions Judge, Moradabad quashed. The brief facts are that Girish Kapoor O.P No. 1 representing himself to be the Manager of Angles Films, Moti Cinema. Chandni Chowk, Delhi, lodged an FIR at P.S Bilari, Moradabad that a print of film Nasib belonging to Angles Films was stolen from office in New Delhi on 4-6-83 and its print was being run in Bulari. It was in pursuance of this FIR that print of film Nasib running in Anil Touring Talkies, Bilari was seized by the police on 5-6-83. The present applicant is the Manager of the said Touring Talkies. Thus counter claims' to the possession of the said printed time Nasib arose. Both the parties applied u/s. 457. Cr. P.C in the court of Judicial Magistrate, Moradabad for the delivery of the same. The learned Magistrate after considering the evidence led by the parties before him ordered on 16-9-83 that the said print of the film be given in the Sapurdagi of Kamlesh Kumar applicant on his executing a personal bond of Rs. 25,000/- and one surety of the like amount with a condition that he would maintain the said print of the film in the same condition and would produce it in the court when called upon.

2. The applicant's contention is that in pursuance of the said order of the learned Magistrate he executed the necessary bond on 16-9-1983 and obtained the said print on that very date.

3. Girish Kapoor, O.P No. 1 filed Criminal Revision No. 239 of 1983 which came before IX, Addl. Sessions Judge. Moradabad for disposal. In the revision the revisionist moved application dt. 7-10-83 accompanied by an affidavit praying that the said film be kept in sealed cover in Sadar Malkhana, Moradabad during the pendency of the revision so that the same may not be destroyed or disposed of by the Supurdgar Kamlesh Kumar (O.P in the said revision).

4. This application dt. 7-10-83 was disposed of by the following impugned order:

The property in suit is the print of film Naseeb which was given in the custody of Supardar on undertaking that he shall keep the said print in the state as it was delivered to him. In my opinion, the property in question be protected because it is the case property and it may be exhibited at the time of evidence. The prayer of the revisionist appears genuine.

The property in question, i.e print of film Naseeb be taken back from the possession of the opposite party Kamlesh Kumar, Manager cum. proprietor Anil Touring Talkies, Bilari and the same be kept in sealed cover in Sadar Malkhana, Moradabad, pending disposal of the revision. S.H.O, Bilari is directed to comply with the order. Copy of the order be sent for compliance. Report by 14-10-1983.

5. It is against this order that the present application u/s. 482. Cr. P.C has been moved.

6. The above order was passed in revisional jurisdiction of the Sessions Judge. Obviously that jurisdiction was exercised u/s. 397, Cr. P.C Under its provisions the Sessions Judge could pass an interlocutory order by directing that the execution of any sentence or order be suspended. It is, therefore, clear that in a revision, the Sessions Judge could, during the pendency of the revision, suspend either sentence or order against which the revision has been filed. In the present case there is no question of any sentence. There was only the order in question against which revision was filed. At best the said order could only be suspended during the pendency of the revision.

7. The question of suspending the order would only arise if it was still to be executed. If the order had already come into operation, there remained nothing to be suspended. In the present case it is undisputed fact that in pursuance of the order of the learned Magistrate, applicant Kamlesh Kumar had already executed the necessary bonds on the same date and had taken delivery of the said print of the film Naseeb. Accordingly there remained nothing which could be suspended.

8. The impugned order which directs that the film be kept in sealed cover in Sadar Malkhana after taking back from the possession of Kamlesh Kumar applicant, during the pendency of the revision, to my mind is certainly beyond jurisdiction of the learned Sessions Judge exercising revisional power u/s. 397, Cr. P.C The case of Ram Autar v. Udayvir Singh, AIR 1953 All 498 : (1953 Cri LJ 1167) provides an illustration on somewhat parallel facts in support of my above view. In the above case proceedings u/s. 145 Cr. P.C were going on in the court of Magistrate. During the course of the proceedings the learned Magistrate passed an order directing that the property in dispute be attached. Against that order of attachment a revision was filed in the court of Sessions Judge, Aligarh. The learned Sessions Judge passed an order staying attachment. But before the order could be communicated to the S.O of the police station concerned the attachment had taken place. When this fact was brought to the notice of the Sessions Judge he passed an order that the attachment be released in favour of the person from whose possession the property had been attached. It was held that the order passed by the Sessions Judge relating to

attachment made in proceedings u/s. 145, Cr. P.C against the applicant in revision was without jurisdiction.

9. In my view, therefore, the impugned order being without jurisdiction has to be struck down because it is a nullity, being ultra vires and is nothing but an abuse of the process of the court. Besides, interest of justice also requires that this order should not be allowed to stand. The application is, therefore, allowed. The impugned order dt. 10-10-83 passed by the IX Addl. Sessions Judge, Moradabad in Criminal Revision No. 239 of 1983 is quashed.

10. Application allowed.