

2. The petitioner submits that both the aforesaid orders are illegal, improper, incorrect and are against the facts and material available on record. It has also been submitted that the Courts below erred in not summoning the respondents on the complaint of the petitioner and thus, have failed to exercise the jurisdiction vested in her by dismissing the complaint on the ground that civil litigation was pending between the parties in respect of the property, subject matter of complaint. The Courts below failed to appreciate that filing of the civil suits by the petitioner does not debar him from filing a criminal complaint against the respondents for the criminal offence allegedly committed by them. Thus, the orders passed by the Courts below suffers from material infirmity and requires interference by this Court in exercise of its powers to do complete justice by setting aside both the orders and directing the Metropolitan Magistrate concerned to take cognizance of the complaint filed by the petitioner and proceed with the same in accordance with law.

3. At the outset, I may observe that a petition under Section 482 Cr.P.C. is not permitted to be filed by way of a second revision in view of Section 397(3) of the Cr.P.C. which reads as under:

397 - Calling for records to exercise powers of revision:

(1) & (2)- xxxxx

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

4. However, in exercise of the inherent powers of the High Court under Section 482 of the Cr.P.C. with and the powers of continuous superintendence under Section 483, the High Court may still be justified in interfering with the order which may lead to miscarriage of

justice provided it is fit case to do so.

5. In this regard reference can be made to a judgment delivered by the Apex Court in the case of Krishnan & Anr. Vs. Krishnaveni and Anr. (1997) 4 SCC 241. Some of the observations made in this regard are reproduced hereinbelow for the sake of reference:

6. Section 401 of the Code gives to every High Court power of revision. Sub-section (1) of the said section provides that in the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389 and 391 and on a Court of Sessions by Section 307. Apart from the express power under Section 397(1), the High Court has been invested with suo motu power under Section 401 to exercise revisional powers. In addition, Section 482 saves inherent powers of the High Court postulating that "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice." Section 483 enjoins upon every High Court to so exercise its continuous superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates. It is, therefore, clear that the power of the High Court of continuous supervisory jurisdiction is of paramount importance to examine correctness, legality, or propriety of any finding, sentence or order, recorded or passed as also regularity of the proceedings of all inferior Criminal Courts.

7. It is seen that exercise of the revisional power by the High Court under Section 397 read with Section 401 is to call for the records of any inferior Criminal Court and to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court and to pass appropriate orders. The Court of Session and the Magistrates are inferior Criminal Courts to the High Court and Courts of Judicial Magistrate are inferior Criminal Courts to the Sessions Judge. Ordinarily, in the matter of exercise of power of revision by any High Court, Section 397 and Section 401 are required to be read together. Section 397 gives powers to the High Court to call for the records as also suo motu power under Section 401 to exercise the revisional power on the grounds mentioned therein, i.e., to examine the correctness, legality or propriety of any finding, sentence or order,

recorded or passed and as to the regularity of any proceedings of such inferior Court, and to dispose of the revision in the manner indicated under Section 401 of the Code. The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that its subordinates Courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior Criminal Courts or to prevent miscarriage of justice.

8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to meet out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior Criminal Court in its juridical process or illegality of sentence or order.

9. The inherent power of the High Court is not one conferred by the Code but one which the High Court already has in it and which is preserved by the Code. The object of Section 397(3) is to put a bar on simultaneous revisional applications to the High Court and the Court of Sessions so as to prevent unnecessary delay and multiplicity of proceedings. As seen, under Sub-section (3) of Section 397, revisional jurisdiction can be invoked by "any person" but the Code has not defined the word 'person.' However, under Section 11 of the IPC, 'person' includes any Company or Association or body of persons, whether incorporated or not. The word 'person' would, therefore, include not only the natural person but also juridical person in whatever form designated and whether incorporated or not: By implication, the State stands excluded from the purview of the word 'person' for the purpose of limiting its right to avail the revisional power of the High Court under Section 397(1) of the Code for the reason that the State, being the prosecutor of the offender, is enjoined to conduct prosecution on behalf of the society and to take such remedial steps as to deems proper. The object behind criminal law is to maintain law, public order, stability as also peace

and progress in the society. Generally, private complaints under Section 202 of the Code are laid in respect of non-cognizance offences or when it is found that police has failed to perform its duty under Chapter XII of the Code or to report as mistake of fact. In view of the principle laid down in the maxim *Ex debito justitiae*, i.e., in accordance with the requirements of justice, the prohibition under Section 397(3) on revisional power given to the High Court would not apply when the State seeks revision under Section 401. So the State is not prohibited to avail the revisional power of the High Court under Section 397(1) read with Section 401 of the Code.

10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/ complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the Courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when expeditious trial is conducted.

11-13.xxxxx

14. In view of the above discussion, we hold that

though the revision before the High Court under Sub-section (1) of Section 397 is prohibited by Sub-section (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the Courts below. It remitted the case to the Magistrate for decision on merits after consideration of the evidence. We make it clear that we have not gone into the merits of the case. Since the High Court has left the matter to be considered by the Magistrate, it would be inappropriate at this stage to go into that question. We have only considered the issue of power and jurisdiction of the High Court in the context of the revisional power Under Section 397(1) read with Section 397(3) and the inherent powers. We do not find any justification warranting interference in the appeal.

6. It may also be noted that the aforesaid judgment was also considered in another judgment delivered in the case of Kailash Verma Vs. Punjab State Civil Supplies Corporation & Anr. (2005) 2 SCC 571.

5. It may also be noticed that this Court in Rajathi v. C. Ganesan (1999) 6 SCC 326 said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second Revision. Ordinarily, when a Revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to Revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when the High Court feel that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.

7. The facts of this case needs to be analysed in the light of the ratio of the aforesaid judgments which circumscribe the powers vested in this Court under Section 482, 483 of Cr.P.C. and under Article 227 of

the Constitution of India whenever an attempt is made to again invoke the power of revision though in the garb of petition under Sections 482, 483 read with Article 227 of the Constitution of India in view of the bar created under Section 397(3) Cr.P.C., having already availed the remedy of revision in respect of his grievance by approaching the Sessions Court. The ratio of the judgment, as quoted above, makes it abundantly clear that while the powers vested in this Court under Sections 482,483 Cr.P.C. and Article 227 of the Constitution of India are wide enough to still interfere in a case where even the revisional jurisdiction has already been invoked on a petition filed by the petitioner under Section 397(1) of the Cr.P.C., but such powers are to be exercised only in a case where a grave miscarriage of justice has been done or there is abuse of the process of Court and/or where the required statutory procedure has not been complied with or where the order of sentence requires correction.

8. Briefly stating facts of this case are that a complaint was filed by the petitioner against respondent No.1, his real brother and his wife arrayed as respondent No. 2 alleging trespass by them in respect of property bearing No. 10788, Manakpura, Karol Bagh, New Delhi which comprised of first floor together with rights up to top floor which property was allegedly purchased by the petitioner on 06.07.1979 in a court auction though it is undisputed that the respondents have also been residing in the said property along with the petitioner. In fact, it is the case of the petitioner that the respondents had been residing in the aforesaid property with the permission of the petitioner on the second floor on leave and license basis.

9. It is further alleged that the petitioner constructed another house in Sector-5, Rohini, Delhi, sometimes in April, 2001 and shifted there

leaving behind the house hold articles such as gas connection, water pump etc. in the kitchen on the first floor besides some books, one bed, sofa set, utensils, some clothes, box etc. in the room situated at the first floor at the time of his shifting. It was also alleged that in the month of September, 2001, the respondents illegally and unauthorizedly trespassed into first floor portion of the property belonging to and owned by the petitioner by breaking open the locks and stealthily removed the water pump, gas connection and other articles illegally and trespassed into kitchen of the first floor. On coming to know of these facts, the petitioner reported the matter to the SHO, P.S. Desh Bandhu Gupta Road, New Delhi vide complaint dated 11.09.2001 and to the DCP concerned on 12.09.2001. The aforesaid acts were again repeated by the respondents in the month of November, 2001 by trespassing into the remaining portion of the property on the first floor by again breaking open the lock and removing the goods stealthily belonging to the petitioner lying in the said room including books, one bed, sofa set, utensils, some clothes, box and some other valuable articles etc and putting their locks in the said room. Again a report was lodged with the local police but since the police failed to register the case, the petitioner filed a complaint before the learned Metropolitan Magistrate concerned which was filed under Sections 380, 448, 453, 506 read with Section 34 of the IPC. After a complaint was filed by the petitioner, the Metropolitan Magistrate called for a report from the concerned SHO under Section 156(3) of Cr.P.C.. The petitioner has alleged that the investigating officer who submitted his report has colluded with the respondents filed a false and frivolous report and has not even recorded the statement of any of the independent witnesses residing nearby the property. On the basis

of the aforesaid report filed by the I.O., the learned Metropolitan Magistrate without giving an opportunity to the petitioner to lead evidence in support of his complaint dismissed the complaint vide order dated 04.04.2003 on the basis of the report under Section 156(3) Cr.P.C.. The said order was challenged in Revision which was also dismissed by the learned Additional Sessions Judge as aforesaid. Hence, this petition.

10. I have heard learned counsel for the parties and have perused the record and a perusal of the order dated 04.04.2003 passed by the learned Metropolitan Magistrate shows that the report under Section 156(3) Cr.P.C. was based upon the statement of witnesses and documents including LC report in the suit filed by the complainant for permanent injunction against the accused persons which reflected that the accused persons/respondents were having separate keys of the rooms where goods were lying and the suit for permanent injunction was dismissed as infructuous by the learned Additional Sessions Judge and where a statement of the father of the complainant, Balram, widow sister-in-law of complainant Veena and neighbour Premwati was recorded by I.O. which reflected that civil litigations were pending between the parties in respect of the same room and thus, no case was made out against the respondents under Section 380, 436, 435 IPC.

11. In the revision petition filed by the petitioner, the petitioner assailed the order passed by learned Metropolitan Magistrate *inter alia* on the same grounds on which the petitioner has filed the present petition. The Court of Additional Sessions Judge has taken note of the order passed by the learned Metropolitan Magistrate in the light of the provisions contained under Section 200, 202 and 203 of the Cr.P.C. It

has been rightly observed that under Section 202 Cr.P.C., the learned Metropolitan Magistrate is empowered to postpone the issue of process and can inquire into the case himself or direct an investigation to be made by a police officer or by such other officer as he thinks fit into the allegations made in the complaint. If after considering the statement on oath, if any, of the complainant and of the witnesses and the result of the inquiry or investigation under Section 203 Cr.P.C. the magistrate is of the view that there is no sufficient ground for proceeding, he can dismiss the complaint and in every such case, he shall briefly record his reasons for doing so.

12. The order passed by the Metropolitan Magistrate concerned dated 04.04.2003 goes to show that while passing the aforesaid order the Magistrate has taken note of the report submitted by the investigating officer, who was directed to investigate the matter in accordance with the provisions under Section 156(3) of Cr.P.C. which power was rightly exercised by the Magistrate in the light of the powers vested in him under Section 202 Cr.P.C. and which order was never challenged by the petitioner. The order goes to show that the Metropolitan Magistrate has fully dealt with the report as submitted and has taken a view that the report was submitted which is based upon the statement of the witnesses recorded by the Investigating Officer and the proceedings which were going on in the Civil Court including the refusal to grant injunction against the respondents which showed that the complaint filed by the petitioner was basically to take revenge against the respondents so as to settle scores about the property by using the process of the criminal court. A reply has been filed by the respondents which goes to show that the property in question was a joint family property and had been purchased by the

funds provided by Sh. Baldev Singh, the father of the petitioner and of respondent No.1 and that the petitioner had been residing there with other family members, i.e., his father, respondent No.2 and their children as a joint family till the petitioner decided to shift to his own house in Rohini where he is presently residing. In fact, the respondents had been residing in the property along with their father as co-owners of the property and were in possession much prior to the date when the said property was purchased. They have denied that the respondents had been residing on the second floor as alleged or that they were residing as the licensee and that the petitioner had left valuables, gas connection, water pumps, books, sofa set, utensils, clothes, box etc.

13. I may observe here that nothing has been brought to my notice by the petitioner that after the receipt of the report of the investigating officer, he wanted to examine himself or wanted to produce any other evidence in support of the complaint. I do not find that the order dismissing the complaint or dismissal of the revision petition by the learned Additional Sessions Judge suffers from any material infirmity or have caused any miscarriage of justice which may call for interference by this Court under Section 482/483 of the Cr.P.C.

14. Rather, I am of the considered view that in a family dispute like this where the contention of the respondents is that the property is a joint family property and was purchased by respondent No.1 with the funds provided by the father and where the respondent No.1 had also been residing with his family members even before the purchase of the property in question along with petitioner and his father, the efforts made by the petitioner to oust the respondents, firstly by filing a civil suit where he could not succeed and then by filing of complaint in

question is, in fact, is an abuse of the process of Court and, therefore, makes out no case for granting indulgence of this Court under Section 482 of the Cr.P.C. The proceedings undertaken by the Magistrate, orders passed by her on 04.04.2003 and the orders passed by the Additional Sessions Judge does not suffer from any infirmity which may require any correction by this Court under Article 227 of the Constitution of India.

15. I may further observe that in this case efforts were also made by the Mediation and Conciliation Centre which also did not succeed and thus, there is no reason to exercise inherent powers vested in this Court under Section 482 of Cr.P.C.

16. With these observations, the petition is dismissed with costs of Rs.5000/- to be deposited with the Delhi High Court Mediation and Conciliation Centre in its UCO Bank A/c No.48852 within one month from today.

MOOL CHAND GARG, J.

FEBRUARY 02, 2009
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