

GAHC010041692023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./201/2023

SAIFUL ISLAM
S/O GIASUDDIN
VILL- AND P.O. BHAIRAGURI
DIST. BARPETA, ASSAM
PIN-781311

VERSUS

MOYJAN NESSA AND ANR
D/O ABDUL KHALEK
VILL- HACHARA
P.O BAGUDI
DIST. BARPETA, ASSAM
PIN -781311

2:THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for the Petitioner : MR K BHUYAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

05.06.2023

Heard Mr K Bhuyan, learned counsel for the petitioner and Mr H A Ahmed, learned counsel appearing on behalf of respondent No. 1. Also heard Ms N Das, learned Additional Public Prosecutor for the State of Assam.

3. Although the matter was fixed for admission hearing, as agreed to by the learned counsel for the parties, the matter has been taken up for final disposal.

4. The petitioner has preferred this application under Section 482 CrPC for quashing/modification of the impugned Judgment 08.09.22, passed by the learned Principal Judge, Family Court, Barpeta, in connection with FC (Crl.) No. 366/2020, under Section 125 CrPC.

5. The brief facts of the case is that the respondent No 1 as petitioner filed an application before the learned Principal Judge, Family Court, Barpeta, under Section 125 CrPC, claiming monthly maintenance from her husband, i.e., the present petitioner. The respondent No. 1 has alleged in her petition that due to torture and demand of dowry articles, she was compelled to leave the house of her husband and took shelter in her parental home.

6. On receipt of the notice, the petitioner has appeared before the Court of learned Principal Judge, Family Court and submitted his written statement, wherein he alleged that the respondent No. 1 had left the house of the petitioner voluntarily because she developed an illicit relationship with one Ashadul Ali. It is also alleged in his written statement that the respondent No. 1 had withdrawn huge amount of money from the account of the petitioner for the purpose of setting up of a grocery shop for Ashadul Ali. On 03.10.2020, while the petitioner was not at home, the respondent No. 1 had left his house with golden and silver ornaments, one mobile handset and a cash amount of Rs. 3,70,000/-, but the petitioner has admitted in his written statement that as a CRPF personnel, his gross salary is Rs. 27,000/- per month and he has no other source of income.

7. The petitioner also alleged that the evidence of respondent No. 1 was recorded by the learned trial Court on 12.04.2022 as PW-1, but no date was fixed for cross-examination and subsequently, the cross-examination was closed on the same day. Subsequently, though the petitioner filed a petition seeking time to cross-examine the

witness, the same was rejected by the learned trial Court. According to the petitioner, the rejection order by not giving opportunity to cross-examine the respondent No. 1 is bad in law and against the principles of natural justice.

8. Learned counsel for the petitioner has submitted that the order of learned trial Court directing the petitioner to pay maintenance of Rs 4,000/- per month to the respondent No. 1 and Rs. 4,000/-per month for her daughter, is totally wrong as the learned trial court did not consider the evidence of the petitioner as DW-1, that the respondent No. 1 has maintained illicit relationship with another person, Ashadul by name. As the respondent No. 1 was maintaining adultery with the said Ashadul, so, she is not entitled to get any maintenance from the petitioner.

9. In support of his submissions, the learned counsel for the petitioner has relied upon the caselaw- **2005 12 SCC 341; (Ramkaran vs. Gyarsi & Another)**.

10. On the other hand, the learned counsel for the respondent No. 1 has submitted that the petitioner has filed this application under Section 482 CrPC. The law in this regard is well settled where there is specific remedy provided by way of appeal or revision, inherent power under Section 482 cannot and should not be resorted to. The proper remedy against the order of the Family Court is revision under Section 397/401 CrPC. The High Court under Section 482 CrPC should not interfere with this order of the learned trial Court dated 08.09.2022.

11. In support of his submissions, learned counsel for the respondent No 1 has cited one caselaw:-

(2013) 7 SCC 789 (*Mohit @ Sonu & Anr. vs. State of Uttar Pradesh & Anr.*)

12. The High Court has inherent powers in criminal matters not by virtue of [Section 482](#) Cr.P.C. but because the powers inherent in High Court, as a superior Court of record by virtue of [Article 215](#) of the Constitution of India and as it is a protector of fundamental rights of citizens. [Section 482](#) Cr.P.C. merely makes explicit what is

otherwise inherent in the High Court. Nevertheless, when we see the provision contained in [Section 482](#) Cr.P.C. it says, "nothing in this Court shall be deemed to limit or effect the inherent powers of the High Court to make such orders, as may be necessary to give effect to any order under this Court, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice". Inherent powers of the High Court can be exercised to- (i) make such orders as may be necessary to give effect to any order under this Code, (ii) to prevent abuse of the process of any Court (iii) otherwise to secure the ends of justice.

13. The scope of inherent powers, the circumstances and manner in which they are to be exercised is no longer *res-integra* as it has been dealt with in a catena of decisions of Hon'ble Supreme Court of India. In the case of ***Ahmed Ali Quraishi Versus State of U.P.***, reported in AIR 2020 SC 788, the Hon'ble Supreme Court held as under:-

"10. Before we enter into facts of the present case and submissions made by the learned counsel for the parties, it is necessary to look into the scope and ambit of inherent jurisdiction which is exercised by the High Court under [Section 482](#) CrPC. This Court had the occasion to consider the scope and jurisdiction of [Section 482](#) CrPC. This Court in [State of Haryana v. Bhajan Lal](#), 1992 Supp (1) SCC 335, had elaborately considered the scope and ambit of [Section 482](#) CrPC/[Article 226](#) of the Constitution in the context of quashing the criminal proceedings. In para 102, this Court enumerated seven categories of cases where power can be exercised under [Article 226](#) of the Constitution/[Section 482](#) CrPC by the High Court for quashing the criminal proceedings. Para 102 is as follows:-

"102. In the backdrop of the interpretation of the various relevant provisions [of the Code](#) under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code which we have extracted and reproduced above, we give the following categories

of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in [the Code](#) or the Act concerned, providing efficacious redress for the

grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

14. Hon'ble Supreme Court time and again has examined the scope of jurisdiction of the High Court under [Section 482](#) CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under [Section 482](#) CrPC. In **State of Karnataka v. L. Muniswamy**; reported in (1977) 2 SCC 699, the Hon'ble Supreme Court held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. In paragraph- 7 of the judgment, the following has been stated:-

"7 ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High

Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

15. In the case of **State of Karnataka v. M. Devendrappa**; reported in (2002) 3 SCC 89, the Hon'ble Supreme Court held that-

"6. ... All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

16. After considering the earlier several judgments of this Court including the case

of *State of Haryana v. Bhajan Lal*; reported in 1992 Supp (1) SCC 335; in *Vineet Kumar v. State of U.P.*, reported in (2017) 13 SCC 369, the Hon'ble Supreme Court laid down the following-

"41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal, reported in 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal; 1992 SCC (Cri) 426], which is to the following effect:

"102. ... (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.' Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court [Vineet Kumar v. State of U.P., 2016 SCC OnLine All 1445] has noted the judgment of State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335], but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

17. In ***Madhu Limaye Vs. State of Maharashtra***, the Hon'ble Supreme Court held as follows:

*"10. The first question is as to whether the inherent power of the High Court under [Section 482](#) stands repelled when the revisional power under [Section 397](#) overlaps. The opening words of [Section 482](#) contradict this contention because nothing of the Code, not even [Section 397](#), affect the amplitude of the inherent power preserved in so many terms by the language of [Section 482](#). Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. in *Madhu Limaye Vs. State of Maharashtra* this Court has exhaustively and if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that [Section 482](#) is pervasive it should not subvert legal interdicts written into the same Code, such, for instance, in [Section 397\(2\)](#). Apparent conflict may arise in some situations between the two provisions and a happy solution. 'would be to say that the bar provided in sub-section (2) of [Section 397](#) operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the court or for the purpose of securing the ends of justice interference*

by the High Court is absolutely necessary, then nothing contained in [Section 397](#) (2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction'.

18. In short, there is not total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the Court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring justice stares the court in the face.

19. It has been held by the Hon'ble Supreme Court in the matter of ***Janata Dal Vs. H.S. Chaudhary***; (1992) 4 Supreme Court Cases 305, that the controlling power of the High Court under [Section 401](#) Cr.P.C. must be exercised in the interest of justice and with regard to all facts and circumstances of the each particular case to prevent miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted in some undeserved hardship to individuals. The relevant observations of the Hon'ble Supreme Court are extracted as under:-

"128. [Section 397](#), [401](#) and [482](#) of the new Code are analogous to Section 435, 439 and 561 (A) of the old code of 1898 except for certain substitutions, omissions and modifications. Under [Section 397](#), the High Court possesses the general power of superintendence over the actions of Courts subordinate to it which the discretionary power when administered on administration side, is known as the power of superintendence and on the judicial side as the power of

revision. In exercise of the discretionary powers conferred on the High Court under the provisions of this Section, the High Court can, at any stage, on its own motion, if it so desires and certainly when illegalities and irregularities resulting in injustice are brought to its notice, call for the records and examine them. The words in [Section 435](#) are, however, very general and they empower the High Court to call for the record of a case not only when it intends to satisfy itself about the correctness of any finding, sentence or order but also as to the regularity of any proceeding of any subordinate Court.

129. By virtue of the power under [Section 401](#), the High Court can examine the proceedings of inferior Courts if the necessity for doing so is brought to its notice in any manner, namely, (1) when the records have been called for by itself, or (2) when the proceedings otherwise comes to its knowledge.

130. The object of the revisional jurisdiction under [Section 401](#) is to confer power upon superior criminal Courts - a kind of paternal or supervisory jurisdiction - in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted on the one hand, or on the other hand in some underserved hardship to individuals. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious attention being given to the said facts and circumstances which vary greatly from case to case."

20. Further the issue was again examined in the matter of ***Amit Kapoor Vs. Ramesh Chander***; (2012) 9 SCC 440. The relevant part of the judgment is read as under:

"The jurisdiction of the Court under [Section 397](#) can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not

specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under [Section 397](#) is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under [Section 397](#) ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, [Section 482](#) is based upon the maxim quando lex liquid alicuicon cedit, conceder videtur id quo res ipsa esse non protest, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused.”

21. Further, in the case of ***New India Assurance Company Limited Vs. Krishna Kumar Pandey***; decided on 06.12.2019 passed in Criminal Appeal No.1852 of 2019, it was held as under:-

“8. The scope of the revisional jurisdiction of the High Court (or Sessions Court) under [Section 397](#) Cr.P.C, is limited to the extent of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order passed by an inferior Court. The revisional Court is entitled to look into the regularity of any proceeding before an inferior Court. As reiterated by this Court in a number of cases, the purpose of this revisional power is to set right a patent defect or an error of jurisdiction or law.”

22. In view of the aforesaid proposition of law, this Court is of the opinion that the petitioner ought to have challenged the order of Family Court before this Court in revision under Section 397/401 CrPC and not by invoking inherent jurisdiction of the High Court under Section 482 CrPC.

23. In the result, the petition is dismissed with a direction to the petitioner to take

recourse to proper provision of law.

24. It is made clear that the matter is disposed of, without going into the merits of the case.

JUDGE

Comparing Assistant