

Court No. - 90

Case :- APPLICATION U/S 482 No. - 40200 of 2023

Applicant :- Arjun And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Anuj Kumar Sen,Raj Kumar Sharma

Counsel for Opposite Party :- G.A.,Ram Sajiwan Mishra,Satyam Mishra

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the applicants, learned AGA for the State as well as learned counsel for the opposite party no.2 and perused the record.

2. The present applicants have invoked the inherent power of this Court under Section 482 Cr.P.C. assailing the order dated 16.10.2023 passed by Sessions Judge, Chitrakoot rejecting the criminal revision No. Nill of 2023, preferred on behalf of the present applicants, arising out of order dated 29.09.2023 passed by Sub-Divisional Magistrate, Karvi, Chitrakoot in Case No.02393 of 2020, under Sections 133 Cr.P.C.

Point for consideration in the instant matter lies in narrow compass as to whether revision preferred assailing the final order passed in proceeding under Section 133 Cr.P.C. is maintainable or not.

3. Facts culled out from the record are that opposite party no.2 Padum Lal has initiated proceeding under Section 133 Cr.P.C., which was rejected by the Sub-Division Magistrate, Karvi, Chitrakoot. Having been aggrieved, opposite party no.2 has preferred revision being Revision No.47 of 2019. Learned Sessions Judge, Chitrakoot has partly allowed the aforesaid revision and relegated the parties before the trial court to get the matter decided denovo in accordance with law. In pursuance of the order dated 03.09.2020 passed by revisional court, Sub-Divisional Magistrate has passed fresh order dated 29.09.2023 allowing the application under Section 133 (1) Cr.P.C. filed on behalf of the opposite party no.2. Having been aggrieved, present applicants have preferred revision. Learned Sessions Judge, Chitrakoot has rejected the revision, vide order under challenge dated 16.10.2023, on the ground of maintainability considering the order passed under Section 133 Cr.P.C. to be an interlocutory order. In support of his finding, learned revisional court has cited judgement dated

19.02.2016 passed by co-ordinate Bench of this Court in the case of **Ram Kripal vs. State of U.P. and others**, Criminal Misc. Writ Petition No.1494 of 2006.

5. Learned counsel for the applicants submits that the learned revisional court has misread and misinterpreted the judgement passed by co-ordinate Bench of this Court in the matter of **Ram Kripal (supra)**. It is further submitted that the order dated 29.09.2023 was a final order in proceeding under Section 133 Cr.P.C., therefore, revision preferred on behalf of the present applicants is maintainable under the provisions of law as enunciated under Section 397 Cr.P.C.

6. Per contra, learned counsel for the opposite party no.2 has vehemently opposed the submissions as raised by learned counsel for the applicants and contended that the order passed under Section 133 Cr.P.C. is an interlocutory order in its nature, therefore, same is not revisable under Section 397 Cr.P.C. It is further submitted that the order dated 29.09.2023 is concluded by finding of fact recorded by the trial court, therefore, same cannot be assailed in revision.

7. Having considered the rival submissions advanced by learned counsel for the parties and perusal of record, it is manifested that order dated 29.09.2023 has been passed terminating the proceeding finally under Section 133 Cr.P.C. and nothing remained to be decided by learned trial court after passing the said order. However, revisional court has illegally treated the order dated 29.9.2023 to be an interlocutory and held the revision not maintainable relying upon the judgment passed in the matter of Ram Kripal (supra). In view of the provisions as enunciated under Section 397 Cr.P.C., final order dated 29.09.2023 passed by Sub-Divisional Magistrate terminating the proceeding under Section 133 Cr.P.C. finally is revisable. For ready reference the provisions as enunciated under Section 397 is quoted hereinbelow:-

"397. Calling for records to exercise powers of revision.

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to 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 may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanation.- All Magistrates whether

Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(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."

8. Bare perusal of the aforesaid Section 397 evince that the High Court or any Sessions Judge are empowered to call for and examine the record of any proceeding before any inferior criminal court situated within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order etc. In explanation to Section 397 all Judicial Magistrates, whether executive or judicial, and whether exercising original or appellate jurisdiction, have been treated to be inferior to the Sessions Judge for the purpose of Section 397 (I) and 398. Under sub-section 2 of Section 397, there is a bar of preferring a revision against the interlocutory order. In the matter of Ram Kripal (supra), co-ordinate Bench of this Court has treated the order impugned dated 04.08.2023 (assailed in said matter) to be an interlocutory order on the strength that by order impugned next date was fixed for evidence of the parties under Section 138 Cr.P.C. The relevant portion of the judgement dated 19.02.2016 passed in case of Ram Kripal (supra) is quoted hereinbelow:-

"The learned Sub Divisional Magistrate, vide impugned order dated 4.8.2003, has only fixed a date directing both the parties to adduce evidence in accordance with section 138 Cr.P.C.

Section 138(1) of Cr.P.C. is reproduced below:

"138. Procedure where he appears to show cause.

(1) If the person against whom an order under section 133 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons- case."

In view of the above, the impugned order dated 4.8.2003 is clearly an interlocutory order against which a revision is not maintainable. The learned Additional Sessions Judge was also of the same view and he committed no illegality while dismissing the criminal revision filed against the aforesaid order as not maintainable.

On a perusal of both the impugned orders, it is clearly evident that both the parties have still full opportunity to lead evidence in support of their respective claims and no prejudice has been caused to any of them."

9. Having careful consideration of the given circumstances of the present matter on the strength of the judgement dated 19.02.2016 passed in the case of Ram Kripal (supra) and the provisions as enunciated under Section 397 Cr.P.C., I am of the considered view that the order dated 29.09.2023 passed by the Sub-Divisional Magistrate, finally terminating the proceeding under Section 133 Cr.P.C., cannot be treated to be an interlocutory order in the eye of law under the provision as enunciated under Section 397 (2) Cr.P.C., therefore, the revision under Section 397 CrPC preferred on behalf of the present applicants assailing the order dated 29.09.2023 is fully competent.

10. While dismissing the revision, preferred on behalf of present applicants, being not maintainable, learned revisional court has miserably failed to examine the final effect of the order dated 29.09.2023 passed by Sub-Divisional Magistrate and has misread and misinterpreted the verdict of co-ordinate Bench of this Court in the matter of Ram Kripal (supra), wherein no such observation has been made by the co-ordinate Bench of this Court that the order passed by Sub-Divisional Magistrate under Section 133 CrPC is only interlocutory order, as relied upon by the learned Sessions Judge. I constrained myself to make any comment against learned Sessions Judge, who has decided the revision in zeal without scrutinising the effect of final termination of proceeding under Section 133 CrPC and the intention of co-ordinate Bench of this Court in the matter of Ram Kripal (supra).

11. In this conspectus, as above, I am of the view that order passed by the learned revisional court is manifestly illegal and against the provisions of law and, therefore, the present application is liable to be allowed to secure the ends of justice.

12. Resultantly, instant application is allowed. Order impugned dated 16.10.2023 passed by Sessions Judge in Revision No. Nil of 2023 (Arjun and another vs. Padum Lal and another) is quashed. Consequently, revision preferred on behalf of the present applicants is restored to its original number. Parties are relegated before the revisional court to get the revision decided in accordance with law.

13. Learned counsel for the opposite party No. 2 has urged to issue a direction for expeditious disposal of the revision filed on behalf of the present applicants, which has been directed to be decided afresh by order of the date.

14. Considering peculiar facts and circumstances of the present case, learned revisional court is hereby directed to make an endeavour to decide the revision expeditiously, preferably within a period of three months from the date of production of certified copy of this order.

15. As prayed by learned counsel for the applicants, learned revisional court is expected to decide the application for the interim relief during pendency of the revision.

Order Date :- 30.11.2023

Jitendra