

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-34559 of 2013 (O&M)
Date of Decision: 10.9.2015**

Mrs. Dipali Mittal and others

.....Petitioners

Vs.

Sicom Limited

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Kunal Dawar, Advocate
for the petitioners.

Mr. Prabhat K.C., Advocate and
Mr. Munish Kumar Garg, Advocate
for the respondent.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

Petitioners, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seek quashing of the criminal complaint No. 927 of 2013 dated 26.7.2013 titled as (SICOM Ltd. Vs. M/s A2Z Maintenance & Engineering Services Ltd and others), under Section 138/141 of Negotiable Instruments Act, 1881, pending in the Court of learned JMJC, Gurgaon (Annexure P-8)

alongwith subsequent proceedings arising therefrom, including summoning order dated 26.7.2013 (Annexure P-9), passed by the learned trial court.

Notice of motion was issued and pursuant thereto, reply has been filed on behalf of the respondent.

At the very outset, learned counsel for the respondent raised a preliminary objection about maintainability of the present petition. He submits that the petitioners were duty bound to avail their remedy of revision before the learned Sessions Judge, instead of directly approaching this Court, by way of instant petition. He seeks dismissal of the present petition.

Faced with the above, learned counsel for the petitioners submits that although it is a matter of record that petitioners have not availed their alternative remedy of revision, yet in the circumstances of the case, they are entitled to file and maintain the present petition under Section 482 Cr.P.C., before this Court. In support of his contentions, learned counsel for the petitioners places reliance on a judgment of the Hon'ble Supreme Court in Dhariwal Tobacco Products Ltd and others Vs. State of Maharashtra and another 2009 (2) SCC 370. He prays for over-ruling the preliminary submission raised on behalf of the respondent and for allowing the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that present petition is not maintainable and the same is liable to be dismissed, relegating the

petitioners to avail their equally efficacious alternative remedy of revision, provided under the Code of Criminal Procedure itself. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and also undisputed between the parties that petitioners were having an equally efficacious alternative remedy, in the form of criminal revision before the learned Sessions Judge, against the impugned summoning order. It is also not in dispute that before filing the present petition under Section 482 Cr.P.C., petitioners did not file any revision petition against the impugned summoning order.

During the course of hearing, when a pointed question was put to the learned counsel for the petitioners to point out any practical difficulty or bonafide reason, which might have compelled the petitioners to approach this Court straightway, without availing their remedy of revision, he had not answer and rightly so, it being a matter of record. However, while placing reliance on the judgment of the Hon'ble Supreme Court in Dhariwal Tobacco's case (*supra*), he submits that present petition is very much maintainable in spite of non availing of alternative remedy by the petitioners.

This argument raised by the learned counsel for the petitioners is to be noted to be rejected, because the same has been found to be fallacious and contrary to the law laid down by the Hon'ble Supreme Court in its two judgments in State of Punjab Vs. Davinder Pal Singh Bhullar and others, 2011 (14) SCC 770 and Mohit alias Sonu and another Vs. State of U.P. and another, 2013 (7) SCC 789.

Coming to the judgment of the Hon'ble Supreme Court in Dhariwal Tobacco's case (supra), relied upon by the learned counsel for the petitioners, there is no dispute about the law laid down therein. However, on a careful perusal of the cited judgment, the same has not been found to be of any help to the petitioners, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

No doubt, there could not be and should not be any straight jacket formula in this regard. In a given case, if this Court comes to the conclusion, on the basis of peculiar fact situation of the case that it is just and expedient with a view to prevent abuse of process of law or to secure the ends of justice, as warranted in a particular case, there would be no absolute bar to entertain a petition under Section 482 Cr.P.C., while invoking its inherent jurisdiction, in spite of availability of alternative remedy.

However, it is equally true that while invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C., petitioners would be under obligation to make out an exceptional case, enabling this Court to exercise its discretion under Section 482 Cr.P.C. There is no dispute that powers of this Court under Section 482 Cr.P.C. are wide enough, yet it is also a settled principle of law that such powers are

to be exercised sparingly and with circumspection, with a view to achieve the objects envisaged under Section 482 Cr.P.C, itself.

The Hon'ble Supreme Court, after discussing the entire case law on the subject, in para 31 to 33 of its judgment in Davinder Pal Singh Bhullar's case (supra), referring to the long catena of earlier judgments, held as under:-

IV. INHERENT POWERS UNDER SECTION 482 Cr.P.C.

*31. The inherent power under Section 482 Cr.P.C. is intended to prevent the abuse of the process of the Court and to secure the ends of justice. Such power cannot be exercised to do something which is expressly barred under the Cr.P.C. If any consideration of the facts by way of review is not permissible under the Cr.P.C. and is expressly barred, it is not for the Court to exercise its inherent power to reconsider the matter and record a conflicting decision. **If there had been change in the circumstances of the case**, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the Court. Where there are no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same*

*materials to arrive at different conclusion is in effect a review, which is expressly barred under Section 362 Cr.P.C. (See: **Simrikhia v. Dolley Mukherjee and Chhabi Mukherjee & Anr**, (1990) 2 SCC 437).*

*32. The inherent power of the court under Section 482 Cr.P.C. is saved only where an order has been passed by the criminal court which is required to be set aside to secure the ends of justice or where the proceeding pending before a court, amounts to abuse of the process of court. Therefore, such powers can be exercised by the High Court in relation to a matter pending before a criminal court or where a power is exercised by the court under the Cr.P.C. Inherent powers cannot be exercised assuming that the statute conferred an unfettered and arbitrary jurisdiction, nor can the High Court act at its whim or caprice. The statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases (Vide: **Kurukshetra University & Anr. v. State of Haryana & Anr.**, AIR 1977 SC 2229; and **State of W.B. & Ors. v. Sujit Kumar Rana**, (2004) 4 SCC 129).*

33. The power under Section 482 Cr.P.C. cannot be resorted to if there is a specific provision in the Cr.P.C. for the redressal of the grievance of the aggrieved party or where alternative remedy is

*available. Such powers cannot be exercised as against the express bar of the law and engrafted in any other provision of the Cr.P.C. Such powers can be exercised to secure the ends of justice and to prevent the abuse of the process of court. However, such expressions do not confer unlimited/unfettered jurisdiction on the High Court as the “ends of Justice” and “abuse of the process of the court” have to be dealt with in accordance with law including the procedural law and not otherwise. Such powers can be exercised ex debito justitiae to do real and substantial justice as the courts have been conferred such inherent jurisdiction, in absence of any express provision, as inherent in their constitution, or such powers as are necessary to do the right and to undo a wrong in course of administration of justice as provided in the legal maxim “quando lex aliquid alique, concedit, conceditur et id sine quo res ipsa esse non potest”. However, the High Court has not been given nor does it possess any inherent power to make any order, which in the opinion of the court, could be in the interest of justice as the statutory provision is not intended to bypass the procedure prescribed. (Vide: **Lalit Mohan Mondal & Ors. v. Benoyendra Nath Chatterjee, AIR 1982 SC 785***

Rameshchandra Nandlal Parikh v. State of Gujarat & Anr. 2006 (1) R.C.R. (criminal) 675 : 2006 (1) Apex Criminal 224 : AIR 2006 SC 915 ; Central Bureau of Investigation v. Ravi Shankar Srivastava, IAS & Anr., 2006 (3) Apex Criminal 65 : AIR 2006 SC 2872 Inder Mohan Goswami & Anr. v. State of Uttranchal & Ors., 2007 (4) R.C.R. (Criminal) 548 : 2007 (5) R.A.J. 451 : AIR 2008 SC 251 and Pankaj Kumar vs. State of Maharashtra & Ors., 2008 (4) R.C.R. (Criminal) 890 : 2008 (6) R.A.J. 293).

Similar view was taken by the Hon'ble Supreme Court in its later judgment in Mohit's case (supra). The relevant observations made by the Hon'ble Supreme Court in para 22 to 27 of the judgment, which aptly apply in the present case, read as under:-

"In our considered opinion, the complainant ought to have challenged the order before the High Court in revision under Section 397 of Cr.P.C. and not by invoking inherent jurisdiction of the High Court under Section 482 of Cr.P.C. Maybe, in order to circumvent the provisions contained in sub-section (2) of Section 397 or Section 401, the complainant moved the High Court under Section 482 of Cr.P.C. In the event a criminal revision had been filed against the order of the Sessions Judge passed under Section 319 of

Cr.P.C., the High Court before passing the order would have given notice and opportunity of hearing to the appellants.

So far as the inherent power of the High Court as contained in Section 482 of Cr.P.C. is concerned, the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when an order, not interlocutory in nature, can be assailed in the High Court in revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In other words, inherent power of the Court can be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance. It is well settled that inherent power of the court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged.

Courts possess inherent power in other statute also like the Code of Civil Procedure (C.P.C.) Section 151 whereof deals with such power. Section 151 of C.P.C. reads:-

“Nothing in this Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the

process of court.”

*This Court in the case of **Padam Sen & Anr. v. State of Uttar Pradesh**, AIR 1961 SC 218 regarding inherent power of the Court under Section 151 C.P.C. observed:-*

“The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore, it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict what has been expressly provided in the Code or against the intentions of the Legislation. It is also well recognised that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code.”

*In a Constitution Bench decision rendered in the case of **Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal**, AIR 1962 SC 527, this Court held that :-*

*“The inherent jurisdiction of the Court to make orders *ex debito justitiae* is undoubtedly affirmed by S.151 of the Code but inherent jurisdiction cannot be exercised so as to nullify*

the provision of the Code of Civil Procedure.

Where the Code of Civil Procedure deals expressly with a particular matter, the provision should normally be regarded as exhaustive.”

27. The intention of the Legislature enacting the Code of Criminal Procedure and the Code of Civil Procedure vis-à-vis the law laid down by this Court it can safely be concluded that when there is a specific remedy provided by way of appeal or revision the inherent power under Section 482 Cr.P.C. or Section 151 C.P.C. cannot and should not be resorted to.

In addition to the above, the view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court and different High Courts including this Court:-

1. Punjab State Warehousing Corporation Faridkot V. M/s Sh. Durga Ji Traders & Others 2011 (14) SCC 615 (Supreme Court)
2. Hamida V. Rashid @ Rasheed & Others 2008 (1) SCC 474 (Supreme Court)
3. Adalat Prasad V. Rooplal Jindal 2004 (7) SCC 338 (Supreme Court)
4. Madhu Bala & Others V. State of Haryana 2015 (3) R.C.R. (Criminal) 881 (Punjab & Haryana High Court)
5. Rajinder Singh V. State of Haryana 2015 (1) Law Herald 601 (Punjab & Haryana High Court)
6. Sudhir Gowda V. State of Haryana & Anr. 2014 (3) DCR 506 (Punjab & Haryana High Court)
7. Rajinder Arora alias Raju V. State of Punjab & Another 2011 (1) R.C.R. (Criminal) 462 (Punjab &

Haryana High Court)

8. Krishan V. State of Haryana 2002 (2) R.C.R. (criminal) 23 (Punjab & Haryana High Court)

9. M/s Golden Forests (I) Ltd. V. Registrar of Companies 1991 (1) R.C.R. (Criminal) 758 (Punjab & Haryana High Court)

10. Amarjeet Singh V. State of Punjab 1997 (3) R.C.R. (Criminal) 204 (Punjab & Haryana High Court)

11. Mukhtiar Singh V. State of Punjab 1997 (3) R.C.R. (Criminal) 14 (Punjab & Haryana High Court)

12. Bachan Singh V. Harpreet Kaur 1996 (1) R.C.R. (Criminal) 806 (Punjab & Haryana High Court)

13. Shikha Makkar and Another V. State (Government of NCT of Delhi) and another (Crl. M. A. No. 3525-26 of 2015 decided on 10.03.2015 (Delhi High Court)

14. Madhurima Chandra and others V. M/s Ansun Electronic Pvt. Ltd & Another 2015 (1) NIJ 704 (Delhi High Court)

15. Mahendra V. State and Anr. 2014 (3) JCC 1589 (Delhi High Court)

16. Harsh Kapoor and Others. V. Komal Kapoor 2013 (2) U.D. 349 (Uttarakhand High Court)

17. Balabhadra Dash and another, etc. V. State of Orissa and Others. 1991 CriLJ 2457 (Orissa High Court)

18. Mohan Lal and another V. State 1974 CriLJ 1407 (Allahabad High Court)

Reverting back to the facts and circumstances of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court in the cases referred to hereinabove, this Court feels no hesitation to conclude that since the petitioners have failed to make out the present one as an exceptional case, for entertaining the present petition, this Court would be exceeding its jurisdiction, while

exercising its powers under Section 482 Cr.P.C, because the petitioners have got an equally efficacious alternative remedy, specifically provided under the Code of Criminal Procedure itself.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, present petition is not maintainable. Thus, it must fail primarily on the issue of its maintainability.

Consequently, present petition is dismissed as not maintainable. Petitioners are relegated to their equally efficacious alternative remedy by way of criminal revision before the learned Sessions Judge. However, since this Court has not gone into the merits of the case, the observations made hereinabove will not influence the learned court below, while deciding the case on merits. It is so said, because the observations made hereinabove should not prejudice the rights of either of the parties.

Resultantly, with the abovesaid observations made and directions issued, present petition stands disposed of.

(RAMESHWAR SINGH MALIK)
JUDGE

10.9.2015
Ak Sharma