

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-36231 of 2015

.....

Date of decision:4.11.2015

Subash Sharma

...Petitioner

v.

State of Haryana

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Rakesh Chopra, Advocate for the petitioner.

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Inderjit Singh, J.

The petitioner has filed this petition under Section 482 Cr.P.C. for setting aside/quashing the impugned order dated 9.6.2015 (Annexure-P.1) passed by learned Judicial Magistrate Ist Class, Rajpura, whereby application dated 4.6.2015 (Annexure-P2) in FIR No.273 dated 17.10.2011 registered for the offences under Sections 409, 420, 468 and 471 IPC at Police Station City, Rajpura filed by the prosecution for taking cognizance against the petitioner has been allowed and also for quashing the subsequent proceedings by allowing the petition filed by the petitioner with costs throughout.

I have heard learned counsel for the petitioner and have gone through the record.

As per the petitioner's version, on the application of the

prosecution under Section 190(1(a) Cr.P.C, the petitioner has been summoned by the Court by taking the cognizance. The impugned order dated 9.6.2015 passed by the learned Judicial Magistrate Ist Class, Rajpura is, in no way, can be held as interlocutory order. It is an intermediatry order and revision petition is maintainable against this order. The petitioner has filed petition under Section 482 Cr.P.C. instead of filing revision petition.

Learned counsel for the petitioner has placed reliance on the judgment of Hon'ble Supreme Court in Dhariwal Tobacco Products Ltd. and others v. State of Maharashtra and another, 2009 (1) R.C.R. (Cr.) 677, wherein it was held that where remedy of revision under Section 397 Cr.P.C. was available to the accused, but accused filing application under Section 482 Cr.P.C. for quashing of summoning order, whether an application under the Criminal Procedure Code can be dismissed only on the premise that an alternative remedy under Section 397 Cr.P.C. was available to the accused and held that it cannot be dismissed.

In Mohit alias Sonu and another v. State of U.P. and another, 2013 (3) R.C.R. (Cr.) 673, the Hon'ble Supreme Court has held as under:-

“22. 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. May be, 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.

23. 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.

24. 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.”

25. 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.”

26. 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

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Criminal Procedure and the Code of Civil Procedure vis-a-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 view of the law laid by the Hon'ble Supreme Court relying upon the decision of the Constitution Bench of the Hon'ble Supreme Court, I find that when the remedy by way of revision petition is available to the petitioner, this petition under Section 482 Cr.P.C. is not maintainable and the same is dismissed being not maintainable. However, the petitioner would be at liberty to file the revision petition.

November 4, 2015.

(Inderjit Singh)
Judge

hsp