

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order delivered on: April 13, 2015

+ **Crl. M.C. No.589/2015**

FANEESH PRASAD SHRIVASTAVA ..... Petitioner  
Through Petitioner in person.

versus

SAGRIKA DAS GUPTA & ORS. .... Respondents  
Through Mr.Ravi Nayak, APP for the  
State

**CORAM:**  
**HON'BLE MR.JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J.**

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. challenging the order dated 26<sup>th</sup> November, 2014 passed by the Additional Sessions Judge, Dwarka Courts, Delhi in CA.No.53/2014 under Section 397 and 399 Cr.P.C. as well as the order dated 10<sup>th</sup> July, 2014 passed by Metropolitan Magistrate, Dwarka Court in CC No. 132/7 under Section 156(3) Cr.P.C.

2. I have heard the petitioner who is appearing in person and have also gone through the impugned orders dated 26<sup>th</sup> November, 2014 and 10<sup>th</sup> July, 2014. The relevant extract of the order dated 10<sup>th</sup> July, 2014 is reproduced as under:

“... .. In ATR IO disclosed that accused no.1 is wife of complainant as they got married in District Solan in

Himachal Pradesh. IO also produced a certificate issued by Sanatan Dharam Sabha Solan certifying the marriage of complainant with accused.

Ld. Counsel for accused submitted that no marriage ever took place and the certificate is false. However, in the documents annexed by the complainant in his complaint there is admission of complainant the accused no.1 is his wife. These documents were prepared in presence of complainant and all those documents in which accused no.1 is claiming herself to be wife of accused, are witnessed by the complainant himself.

Ld. Counsel for complainant would submit that the complainant had no option but to prepare those documents as he was called in Panchkula and he was alone and under fear and pressure. Further he was expecting some benefit to come from those documents, but nothing happened.

The documents in Panchkula were executed in February 2013 but the complaint to police was made in the month of August 2013. Had there been any pressure at the time of execution of documents in Panchkula, he was free when he came to Delhi but no step was taken for about 6 months.

Under these circumstances, and for the fact that all the accused are known to the complainant and no recover or discovery has to be effected, the alleged transactions of giving money was through banks of which complainant himself has record, I do not find any reason to order for investigation. Hence, the application u/s 156(3) CrPC is declined... ..”

3. The above said order of the trial court was challenged by the petitioner before the Revisional Court who has confirmed the order of the trial court by dismissing the revision petition by order dated 26<sup>th</sup> November, 2014 on the following grounds:-

“7. The Id. Trial Court had merely dismissed the application u/s 156 (3) CrPC of the revisionist, but has permitted the revisionist to lead pre summoning evidence in his complaint u/s 200 CrPC. If after leading evidence, any cognizable offence is found to have been committed, the Id. Trial Court would certainly summon the respondents no.1 to 3. The powers u/s 156 (3) CrPC are discretionary and it was for the revisionist to satisfy the Id. Trial Court that the evidence to be produced is not within his domain or control and field investigation by the police is necessary. There appears to be no need for field investigation by the police for collection of evidence. The names of the respondents no.1 to 3, the entire facts and the proposed evidence is within the domain and control of the revisionist. Once it was so, it was not obligatory for the Id. Trial Court to order for direction of registration of FIR. Further the Id. Trial Court after culmination of pre summoning evidence, can very well hold an enquiry itself or direct an investigation to be made, if needed by police, as per the provision of Section 202 CrPC, before passing the order on the point of summoning and the revisionist can also move appropriate application before the said court in this regard. No illegality, impropriety or perversity is found in the impugned order of the Id. Trial Court. The Id. Trial Court has exercised its discretion u/s 156(3) CrPC in a judicious manner and it cannot be said that the said exercise was arbitrary or without application of mind. In view of the aforesaid discussions, the present revision petition is dismissed.”

4. It appears from both the orders that the trial court as well as Revisional Court on the basis of facts have dismissed the application under Section 156(3) Cr.P.C.

5. Having heard the learned counsel for the parties, I am of the view that the present petition under Section 482 Cr.P.C. is liable to be dismissed on the following reasons:-

(i) The Supreme Court in the case of **Rajan Kumar Machananda v. State of Karnataka**, JT 1987(4) SC 637, (para 2) held as under:-

“2. Heard learned Counsel for the parties. The respondent State had challenged the order before the Court of Sessions when the learned Magistrate before whom the matter was proceeding directed release of the truck in favour of the appellant. The Revisional Court dismissed the petition of the State. A second Revision did not lie at the instance of the State to the High Court in view of the provisions of Section 397(3) of Cr.P.C. Obviously, to avoid this bar, the application moved by the State before the High Court was stated to be under Section 482 Cr.P.C. asking for exercise of inherent powers. In exercise of that power, the High Court has reversed the order of the Magistrate as affirmed by the Sessions Judge. The question for consideration is as to whether the bar under Section 397(3) Cr.P.C. should have been taken note of to reject the revision at the instance of the State Government or action taken by the High Court in exercise of its inherent power has to be sustained. It is not disputed by counsel appearing for the State that the move before the High Court was really on application for revision of the order of the Magistrate releasing the truck. That is exactly what is prohibited under Section 397(3) Cr.P.C. Merely by saying that the jurisdiction of the High Court for exercise of its inherent

power was being invoked the statutory bar could not have been overcome. If that was to be permitted every revision application facing the bar of Section 397(3) of the Code could be labelled as one under Section 482. We are satisfied that this is a case where the High Court had no jurisdiction to entertain the revision. The appeal is allowed and we set aside the order of the High Court. The Order of the Magistrate as affirmed by the Session Judge is upheld.”

- (ii) In another case titled as ***Dharampal and others v. Smt. Ramshri and others***, (1993) 1 SCC 435, the Supreme Court held as under:-

“6. There is no doubt that the learned Magistrate had committed an error in passing the subsequent orders of attachment when the first attachment was never finally vacated and had revived the moment the revision application filed against it was dismissed by the learned Sessions Judge. It appears that none of the parties including the Sessions Judge realised this error on the part of the Magistrate. The learned Sessions Judge had also committed a patent mistake in entertaining revision application against the fresh orders of attachment and granting interim stays when he had dismissed revision application against the order of attachment earlier. Let that be as it is. The question that falls for our consideration now is whether the High Court could have utilised the powers under Section 482 of the Code and entertained a second revision application at the instance of respondent 1. Admittedly respondent 1 had preferred a Criminal Application being Cr. R. No.180/78 to the Sessions Court against the order passed by the Magistrate on 17<sup>th</sup> October, 1978 withdrawing the attachment. The Sessions Judge had dismissed the said application on 14<sup>th</sup> May, 1979. Section 397(3) bars a second revision application by the same party. It is now well settled

that the inherent powers under S. 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Hence the High Court had clearly erred in entertaining the second revision at the instance of respondent 1. On this short ground itself, the impugned order of the High Court can be set aside.”

6. It is clear from the above said judgments that the second revision under the garb of the quashing proceedings is not maintainable as there is no provision of second revision petition under Section 397(3) Cr.P.C. which is statutory bar under the said provision.

7. The present petition is accordingly dismissed. Pending application also stands disposed of.

**(MANMOHAN SINGH)**  
**JUDGE**

**APRIL 13, 2015**