

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

% Order delivered on: 3rd March, 2015

+ **Crl. M.C. No.574/2015**

MOHINDER PAL SINGH Petitioner
Through Mr.Rajeev Singh Chauhan, Adv.
with Mr.Abhishek Sethi, Adv.

versus

STATE (NCT OF DELHI) & ORS Respondents
Through Mr.Ravi Nayak, APP for the State.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

Crl. M.A. No.2209/2015 (exemption)

Exemption allowed, subject to just exceptions.

The application is disposed of.

Crl. M.C. No.574/2015 & Crl. M.A. No.2208/2015

1. The abovementioned petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing and setting-aside the impugned order dated 20th December, 2014 passed by the ASJ, Patiala House, New Delhi in Criminal Revision No.51/2014 as well as the order dated 18th March, 2014 passed by the MM.

2. Brief facts of the case are that the petitioner filed a complaint case against respondents No.2 to 9 under Sections 420, 406, 468, 471, 120B, 323, 341, 342, 352, 325 and 506 IPC, bearing CC

No.232/01/13 titled as *Mohinder Singh v. Sahvan Singh & Ors.*, which is now fixed before the MM for pre-summoning evidence. Along with the complaint, the petitioner had also filed an application under Section 156(3) Cr.P.C. for registration of FIR against the sadi respondents and for investigation of the matter by the police. By order dated 18th March, 2014, the learned Trial Court dismissed the application of the petitioner under Section 156(3) Cr.P.C. by observing that there is nothing on record which requires investigation by the police as the petitioner is well aware of the names and addresses of the accused persons/respondents.

3. Aggrieved by the said order dated 18th March, 2014, the petitioner preferred a revision petition, bearing No.51/2014 before the ASJ who by the impugned order dated 20th December, 2014 dismissed the said revision petition and affirmed the order dated 18th March, 2014 passed by the MM.

4. The petitioner by way of filing the present petition has challenged both the impugned orders dated 18th March, 2014 and 20th December, 2014, on various grounds as stated in the petition. It is stated in the petition that the documents in question are in possession/custody of the respondents No.2 to 9 which are to be recovered by the police to establish forgery and fabrication by sending the same to experts for opinion after taking specimen writing and signatures of the petitioner and the respondents.

5. The ASJ while dismissing the revision petition has come to the conclusion that the Court may resort to 156(3) Cr.P.C. in case it is found that the investigations that are required to be carried out in the

allegations made in the complaint, require police assistance. However, if the investigations are documentary and do not require any police investigations, then the Court may proceed under Section 200 Cr.P.C. and record the statement of the complainant and any other evidence that he may produce and summon the accused persons under Section 204 Cr.P.C., in case a *prima-facie* case is made out. The observation is also made that mere dismissal of the application under Section 156(3) Cr.P.C. does not imply that the allegations made in the complaint have been disbelieved of that the complaint does not disclose any *prima-facie* case.

6. 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, in 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***, AIR 1993 SC 1361, the Supreme Court held as under:-

“4. 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 the 1st respondent. Admittedly the 1st respondent had preferred a Criminal Application being Cr. R. No.180/78 to the Sessions Court against the order passed by the Magistrate on 17th October, 1978 withdrawing the attachment. The Sessions Judge had dismissed the said application on 14th 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 1st respondent. On this short ground itself, the impugned order of the High Court can be set aside.”

7. Under these circumstances, I am of the considered view that the impugned orders do not require any interference. The petition is accordingly dismissed. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

MARCH 03, 2015