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

Judgment delivered on: 17th November, 2015

+ **CRL.M.C. 3537/2014 & CrI. M.A. 12189/2014**

VINOD KAUSHIK

..... Petitioner

Represented by: Mr. A.K. Padhy, Advocate.

Versus

SUNIL KUMAR

..... Respondent

Represented by: Mr. Manoj Gorkela, Ms. Priya
Sharma and Ms. Surbhi Vyas,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

CRL.M.C. 3537/2014

1. By way of the present petition filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the petitioner seeks setting aside of the impugned order dated 09.06.2014 passed by the learned Additional Sessions Judge ('ASJ'), Delhi, in Criminal Revision No.55/13, whereby the order dated 15.01.2013 passed by the learned Metropolitan Magistrate ('MM'), Delhi, summoning the respondent was set aside.

2. Before deciding this petition, it is necessary to narrate the case put forth by the individual party.

3. As per the petitioner, he had filed a written complaint on 28.11.2007 at Police Station Saraswati Vihar, Delhi, against Madan Lal Arora and others for trespass and theft of original property documents from his ancestral property No.WZ-472/343, Shrinagar, Shakurbasti. Accordingly, FIR No.82/2008 was registered at Police Station Saraswati Vihar, Delhi, as per the directions of the Trial Court, on petitioner's application under Section 156(3) Cr.P.C. Thereafter, the petitioner was summoned by respondent/SI Sunil Kumar, being Investigating Officer of the case, on the pretext of investigation of FIR in question and for submitting certain documents, where the petitioner was forced to enter into compromise dated 27.04.2008, annexed as Annexure-8 to the present petition, consequently, his son gave six post dated cheques (PDCs) to Madan Lal Arora and Avinash, who later on got encashed one of those cheques amounting to Rs.2,00,000/-. The petitioner was also forced to surrender his passport to the respondent as a security.

4. Whereas case of the respondent is that at the relevant time, he was posted as Sub-Inspector under Police Station Saraswati Vihar, New Delhi. The property in question admeasuring 200 square yards is situated at WZ-472/343, Sri Nagar, Shakur Basti, Saraswati Vihar, Delhi, which belongs to petitioner's maternal grandmother, namely, Smt. Narayani Devi, who filed a case against the petitioner claiming that the petitioner wanted to acquire the said property. Thereafter, the petitioner and his maternal grandmother arrived at a compromise and both equally divided the property in question, i.e., 100 square yards each. Pursuant thereto, both the parties had sold their

shares immediately and from then onwards continuous transactions pertaining to purchase and sale of this property have been done. Finally, Mr. Madan Lal Arora purchased it vide Registered Sale Deed dated 23.12.2005. However, petitioner committed a fraud by illegally mortgaging the share of his maternal grandmother's property and his share, which were already sold out to Bank of Baroda, Badli, Delhi, on 11.01.2002. The same fraud was got facilitated by the petitioner with connivance of a Bank officer of the same Bank.

5. It is further stated that the petitioner not only committed fraud against the said Bank but also not paid the instalments. When the Bank did not receive the payment, it sent recovery notice on the property and then only Mr. Madan Lal Arora came to know that fraud has been committed against him. Accordingly, on 30.04.2007, officials of Bank of Baroda came to seal the property due to non-payment of instalments. Thus, to save the property from sealing, Mr. Madan Lal Arora had to pay an amount of Rs.16,80,000/- to the Bank. Thereafter, the said Arora, actual owner of the property in question, got registered an FIR bearing No.68/2008 against the petitioner under Section 420 of the Indian Penal Code, 1860 ('IPC'), which was entrusted to the petitioner for investigation.

6. Mr. A.K. Padhy, learned counsel appearing on behalf of the petitioner submitted that the Criminal Revision Petition No.55/2013 though filed by the respondent belatedly, however, learned ASJ did not give any iota of reasoning or a single ground as to how and why the same has been filed within limitation period. Further submitted that the alleged compromise was

forcibly got written under the threat of arrest by the respondent, therefore, this ground of allowing the revision petition is liable to be rejected.

7. Mr. Padhy submitted that the opinion of the learned ASJ for allowing the revision petition is totally biased and against the facts on record as the same is not substantiated by any evidence. Moreover, the learned ASJ while allowing the aforesaid revision petition by discussing the facts of the case, has acted beyond the powers conferred to a Revisional Court under Section 397 Cr.P.C.

8. On the other hand, Mr. Manoj Gorkela, learned counsel appearing on behalf of the respondent submitted that the most important document on the basis of which petitioner has falsely blamed the respondent of pressurizing him for compromise is dated 27.04.2008. However, in the said compromise, there is no involvement of the respondent as the same document neither bears the name nor signature of the respondent. It is submitted that even if the contention of the petitioner that compromise was done by him under pressure is believed, then why did he not register a complaint immediately before the higher police authorities regarding forcible execution of document dated 27.04.2008 and why he got deposited an amount of Rs.2,00,000/- in his Bank account to enable Madan Lal Arora to get encashed his cheque. Moreover, on 24.05.2008, the petitioner himself confirmed that the compromise talks were going on between him and the respondent and they will move to the High Court for quashing of FIR, upon which the learned MM adjourned the matter.

9. Mr.Gorkela further submitted that the petitioner has committed the first offence when he forcefully possessed the property of his maternal grandmother (Smt. Narayani Devi), who filed a case against him. Second criminal offence was committed by him when he alongwith a Bank officer claimed the property of Madan Lal Arora, situated at WZ-472/343, Sri Nagar, Shakur Basti, Saraswati Vihar, Delhi, as his own and illegally mortgaged it with the aforementioned Bank.

10. Learned counsel submitted that in FIR No.82/2008 got registered by the petitioner against Mr. Madan Lal Arora, the police had filed the cancellation report. He submitted that the petitioner undertook the compromise in question of his own and also confirmed the same before the learned MM as recorded in the order dated 24.05.2008. However, thereafter, he changed his stand and filed a case against the respondent.

11. Mr. Gorkela submitted that in pursuance of the compromise, the petitioner gave six post-dated cheques to Mr. Madan Lal Arora, out of which only one cheque amounting to Rs.2,00,000/- was encashed and rest were got bounced by the petitioner, which itself is an offence as per provisions of Section 138 of the Negotiable Instruments Act, 1881.

12. Learned counsel further submitted that if the petitioner was pressurized to sign the compromise agreement dated 27.04.2008, then why no immediate action was taken by the petitioner against the respondent and why it took two years to file a complaint case, which was filed on 17.09.2010. Moreover, in the case in hand, there is no benefit for the

respondent to pressurize the petitioner as nothing beneficial can be yielded out of the compromise between the petitioner and Mr. Madan Lal Arora. Although the petitioner instituted the complaint in question with the motive that if trial is initiated, then he can easily pressurize the respondents therein for financial benefit and can barter on the ground that he will withdraw the complaint in question if Mr. Madan Lal Arora withdraws the case bearing FIR No.68/2008 filed by him against the petitioner, wherein the learned MM has chargesheeted the petitioner.

13. I have heard the learned counsel for the parties.

14. Vide order dated 15.01.2013, while considering the settled law that at the time of summoning only *prima facie* case has to be seen and opportunity should be given to the complainant to prove his case, the learned MM summoned the respondent. Being aggrieved, the said order was challenged by the respondent before the learned Revisional Court vide Criminal Revision No.55/13. Vide order dated 09.06.2014, the same was allowed by the learned Revisional Court by setting aside the aforesaid order dated 15.01.2013. Hence, this petition.

15. Perusal of the impugned order dated 09.06.2014 shows that the petitioner did not approach the Bank on 28.04.2008 to stop payment of the cheques but on the contrary, he deposited Rs.2,00,000/- for encashment of first cheque issued to Madan Lal Arora in view of compromise dated 27.04.2008. It is recorded by the Revisional Court that the respondent had honestly investigated the matter under FIR No.82/2008 filed by the

petitioner and came to know that no such occurrence had taken place. On the contrary, it was revealed that petitioner had cheated Madan Lal Arora, who got registered a case bearing FIR No.68/2008 under Section 420 IPC against him.

16. Vide summoning order dated 15.01.2013, the learned MM alleged Dhani Ram to be an attesting witness of the compromise dated 27.04.2008, Annexure-8, however, perusal of the same reveals that the said document does not bear his signatures, which fact has also been considered by the learned ASJ.

17. So far as the issue of limitation is concerned, considering the totality of the facts and circumstances of the case and the judgments relied upon, the learned Revisional Court was of the considered opinion that the revision petition was filed by the respondent/revisionist within the period of limitation. Further recorded, the offence as stated was committed on 27.04.2008, however, the petitioner filed the complaint on 17.09.2010. There was no stamp for receiving the said complaint before the police. If the petitioner was forced to execute the said compromise then what prevented him to either lodge a complaint before the higher police officer or to stop the payment of the cheques in the Bank, reasons were best known to the petitioner. Moreover, the petitioner deposited the amount for encashing the cheque. Even the petitioner did not state before the learned MM on 24.05.2008 about the forcible compromise mentioned above. Therefore, the learned Revisional Court has rightly concluded that the materials placed on record did not disclose grave suspicion against the

respondent for the offence that the compromise in question was forcibly executed in the Police Station under his threat. Hence, recorded that no *prima faice* case is made out against the respondent and set aside the order dated 15.01.2013 passed by the learned MM.

18. So far as the contention of the petitioner that the learned Revisional Court has acted beyond the powers conferred to a Revisional Court under Section 397 Cr.P.C. is concerned, it is imperative to reproduce Section 397 Cr.P.C., which confers power of revision on the High Court or any Sessions Court. The same reads as under:-

*“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 subsection (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.”

19. From bare reading of the aforesaid provisions, it is clear that in exercise of revisional power under the aforesaid provisions, the Revisional Court can call for the records of any criminal court and examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceeding of such inferior court.

20. In the case of ***Amit Kapoor Vs. Ramesh Chander***, (2012) 9 SCC 460, the Supreme Court held as under:-

“12. The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex liquid alicuiconcedit, conceder videtur id quo res ipsa esse non

protest, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused.”

21. By way of this petition, the petitioner has sought to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C. for quashment of the impugned order dated 09.06.2014 by which the learned Revisional Court refused to issue summons to the respondent.

22. For easy reference, Section 482 is reproduced as under:-

“482. Saving of inherent power of High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

23. Section 482 Cr.P.C., as it's very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, 'nothing in this Code' which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of the court, and (iii) to otherwise secure ends of justice. As has been repeatedly stated that Section 482 Cr.P.C. confers no new powers on

High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

24. Even as per the judgment rendered in the case of ***State of Haryana Vs. Bhajan Lal, 1992 Supp(1) SCC 335***, a note of caution was added that the power under Section 482 Cr.P.C. should be exercised sparingly and that too in the rarest of rare cases.

25. The Apex Court in the case of ***Pankaj Kumar Vs. State of Maharashtra, (2008) 16 SCC 117***, while discussing the scope and ambit of powers of the High Court under Section 482 Cr.P.C., as well as, the expression “rarest of rare cases” held as under:-

“10. The scope and ambit of powers of the High Court under Section 482 Cr.P.C. or Article 227 of the Constitution has been enunciated and reiterated by this Court in a series of decisions and several circumstances under which the High Court can exercise jurisdiction in quashing proceedings have been enumerated. Therefore, we consider it unnecessary to burden the judgment by making reference to all the decisions on the point. It would suffice to state that though the powers possessed by the High Courts under the said provisions are very wide but these should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The

inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. The powers have to be exercised sparingly, with circumspection and in the rarest of rare cases, where the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings ought to be quashed.

11. Although in Bhajan Lal's case (supra), the court by way of illustration, formulated as many as seven categories of cases, wherein the extra-ordinary power 4 under the afore-stated provisions could be exercised by the High Court to prevent abuse of process of the court yet it was clarified that it was not possible to lay down precise and inflexible guidelines or any rigid formula or to give an exhaustive list of the circumstances in which such power could be exercised.

12. The purport of expression “rarest of rare cases” has been explained very recently in Som Mittal (supra). Speaking for the three-Judge Bench, Hon'ble the Chief Justice has said thus:

“When the words 'rarest of rare cases' are used after the words 'sparingly and with circumspection' while describing the scope of Section 482, those words merely emphasize and reiterate what is intended to be conveyed by the words 'sparingly and with circumspection'. They mean that the power under Section 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression “rarest of rare cases” is not used in the sense in which it is used with

reference to punishment for offences under Section 302 IPC, but to emphasize that the power under Section 482 Cr.P.C. to quash the FIR or criminal proceedings should be used sparingly and with circumspection.”

26. In view of the above discussion and as held by the Apex Court, needless to mention that the inherent powers have been conferred on the High Court only to make use of them sparingly and the same should not be exercised to stifle a legitimate prosecution.

27. Coming back to the case in hand, this Court could have exercised the power under Section 482 Cr.P.C., had there been a case from the perusal of the materials placed on record that the action taken by the learned Revisional Court is without jurisdiction or barred by law, which has resulted in abuse of the process of law or interference is necessary to secure the ends of justice.

28. Considering the facts and circumstances of the case, I am of the considered opinion that there is no perversity or illegality in the order dated 09.06.2014 passed by the learned Revisional Court which needs any interference by this Court.

29. Accordingly, the present petition is dismissed with no order as to costs.

Crl. M.A. 12189/2014 (for directions)

In view of the dismissal of the petition itself, the present application has become *infructuous*. The same is dismissed accordingly.

**SURESH KAIT
(JUDGE)**

NOVEMBER 17, 2015

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