

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.2559 OF 2016

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the order dated 30.06.2016 passed in Criminal Revision Petition No.27 of 2015 on the file of the Court of IV Additional Sessions Judge, Kadapa.

2. The contention of the learned counsel for the petitioners is two fold: (1) The trial Court as well as the Revisional Court has not considered the material available on record in right perspective and dismissed the petition on erroneous grounds, and (2) The second revision is maintainable under Section 397 Cr.P.C.

3. *Per contra*, the learned Public Prosecutor submitted that no second revision lies in view of Section 397(3) of Cr.P.C.

4. A perusal of the record reveals that the petitioners, who are A.1 and A.2, are facing the trial in C.C.No.28 of 2014 on the file of the Court of II Additional Judicial Magistrate of First Class, Kadapa. The petitioners herein filed CrI.M.P.No.853 of 2015 in C.C.No.28 of 2014 under Section 239 of Cr.P.C. for discharge. After affording a reasonable opportunity to the petitioners, the trial Court arrived at a conclusion that there is a *prima facie* case against the petitioners to proceed further and accordingly dismissed the discharge petition. Feeling aggrieved by the order of the trial Court, the petitioners preferred Criminal Revision Petition No.27 of 2015 on the file of the Court of IV Additional Sessions Judge, Kadapa under Sections 397 and 399 of Cr.P.C. The

Revisional Court, after considering the material available on record, arrived at a conclusion that there are no grounds much less valid grounds to interfere with the order passed by the trial Court and accordingly dismissed the Criminal Revision Petition. Hence, this revision.

5. It is not in dispute that the revision petition filed by the petitioners was dismissed by the Sessions Judge, Kadapa. This is the second revision filed by the petitioners.

6. The learned Public Prosecutor has drawn the attention of this Court to Section 397 Cr.P.C., which reads as follows:

“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 sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings.

(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.”

7. A perusal of Sub-Section (3) of Section 397 Cr.P.C. clearly demonstrates that a person is not entitled to file second revision. Section 397 of Cr.P.C. clearly debars filing of second revision by the same person. In order to appreciate the rival contentions, this Court is placing reliance on the decision in **Krishnan and another v. Krishnaveni and another**¹, wherein the Hon’ble Apex Court held at paragraph No.5, which reads as follows:

“5. Chapter XXX of the Code relating to reference and revisional powers of the High Court, consists of Sections 395 to 405. Under the Code, the revisional power of the High Court has concurrently been given by operation of Sub-section (1) of Section 397 to Sessions Judge, to call for the records of any proceeding and to exercise powers of revision. The power is given to examine the record of any proceedings before any inferior Criminal Court situated 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. Sub-section (3) thereof provides that if an application under the said 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. This was brought by way of amendment of Section 435 of the predecessor Code, i.e., Act 5 of 1898.”

8. The facts of the case on hand are almost identical to the facts of the case cited supra.

9. Having regard to the facts and circumstances of the case, and also the principle enunciated in the case cited supra, I am of the considered view that no second revision lies in view of Sub-Section (3) of Section 397 Cr.P.C.

¹ AIR 1997 SC 987

10. Accordingly, the Criminal Revision Case is dismissed at the admission stage.

11. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

T.SUNIL CHOWDARY, J

Date: 27.10.2016

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