

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

Cr. Misc. M 34008 of 2016

Date of decision: 17.10.2016

Harbhajan Singh

Petitioner

vs.

State of Punjab and anr

Respondent

Present: Mr. AK Sama, Advocate.

M.M.S.BEDI,J.

The petitioner is facing trial in a case u/s 138 of the Negotiable Instruments Act on the basis of a cheque dated 20.3.2015 for a sum of Rs.3.20 lacs issued by the petitioner, having been dishonoured on being presented by the complainant Lakhwinder Singh. The defence of the petitioner is that he had taken a loan of Rs.30,000/- from the complainant and that he has handed over a blank cheque to the complainant as security. Despite petitioner having returned Rs.30,000/- in installments of Rs.200/- per day, the security cheque has been misused by the complainant. During pendency of the proceedings, the complainant was cross-examined by the petitioner.

The grievance of the petitioner, in the present petition, is that his application u/s 311 Cr.P.C. for recalling complainant Lakhwinder Singh for further cross-examination has been declined, depriving the petitioner an opportunity to confront the complainant with a diary in which entries had been made by the complainant regarding receipt of installments from the petitioner. In order to prove the said entries, the petitioner sought recalling

of the complainant u/s 311 Cr.P.C. to enable him to effectively cross-examine him in context to the personal diary, alleged to have contained the entries to establish the repayment of Rs.30,000/-. The application has been dismissed by the trial court vide order dated 1.9.2016 observing that in cross-examination of the complainant no question was ever put to the complainant regarding the factum of the diary or scribing of any entry by the complainant in the diary regarding receipt of installments of money. The evidence of the complainant was concluded on 2.7.2016.

Counsel for the petitioner was required to satisfy this court as to why the petitioner could not have filed a revision petition before the Sessions Court to challenge the legality and propriety of the impugned order by invoking the jurisdiction of the Sessions court u/s 397(2) Cr.P.C. Counsel for the petitioner has placed strong reliance on the judgment of the Apex Court in **Prabhu Chawla vs. State of Rajasthan & anr 2016(4) RCR (Criminal) 270**, wherein the Apex Court has taken into consideration the judgment of the Supreme Court in **Dhariwal Tobacco Products Ltd. and ors vs. State of Maharashtra and another (2009) 2 SCC 307** and a later Division Bench of Supreme Court in **Mohit alias sonu and another v. State of Uttar Pradesh and another (2013) 7 SCC 789**, to settle the controversy whether availability of an alternative remedy of revision petition would constitute a bar for entertaining a petition u/s 482 Cr.P.C by the High Court. The Apex Court, relying upon **Dhariwal Tobacco Product Ltd. Case (supra)** has set aside an order passed by the High Court dismissing the petition u/s 482 Cr.P.C. on the ground that on account of availability of alternative remedy u/s 397 Cr.P.C. The petition u/s 482 Cr.P.C. was not maintainable.

I have considered the contention of counsel for the petitioner and gone through the judgments cited by counsel for the petitioner. The Apex Court in **Prabhu Chawla's case (supra)** has relied upon the judgment in **Raj Kapoor and others vs. State and others 1980(1) SCC 433** regarding scope of provisions of Section 482 Cr.P.C. ,besides considering the provisions of Section 397(2) Cr.P.C. The following observations have been taken in to consideration by the Supreme Court , made in **Raj Kapoor's case (supra):-**

“ The first question is as to whether the inherent power of the High Court under Section 482 stands repelled when the revisional power under Section 397 overlaps. The opening words of Section 482 contradict this contention because nothing of the Code, not even Section 397, can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made; easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. In *Madhu Limaye v. The State of Maharashtra*, this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that Section 482 is pervasive it should not subvert legal interdicts written into the same Code, such, for instance, in Section 397(2) . Apparent conflict may arise in some situations between the two provisions and a happy solution would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above,

the inherent power will come into play, there being no other provision in the code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction.”

In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is a *tertium quid* as Untwalia, J. has pointed out as for example, where it is more than a purely interlocutory order and less than a final disposal. The present case falls under that category where the accused complain of harassment through the court's process. Can we state that in this third category the inherent power can be exercised? In the words of Untwalia, J: (SCC p. 556, para 10).

“ The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the

matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.”

I am, therefore clear in my mind that the inherent power is not rebuffed in the case situation before us. Counsel on both sides, sensitively responding to our allergy for legalistics, rightly agreed that the fanatical insistence on the formal filing of a copy of the order under cessation need not take up this court's time. Our conclusion concurs with the concession of counsel on both sides that merely because a copy of the order has not been produced, despite its presence in the records in the court, it is not possible for me to hold that the entire revisory power stands frustrated and the inherent power stultified.”

After going through the judgments in **Prabhu Chalwa's case (supra)**, I am of the opinion that the above said judgment does not lay down an absolute rule of law that that High Court is required to exercise inherent jurisdiction u/s 482 Cr.P.C. in each and every case challenging any order passed by the courts below. While discussing the scope of Section 482 Cr.P.C. and considering the conflict of Section 482 with 397(2) Cr.P.C., it is the settled proposition of law that nothing contained in Section 397(2) Cr.P.C. can limit or affect the exercise of inherent power by the High Court but such cases would be few and far between. The High Court must exercise the inherent power very sparingly. It has also been observed in the above said judgment that one such case would be the desirability of the quashing of a criminal proceedings initiated illegally, vexatiously or as being without jurisdiction and there is no total bar on the

exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. It is not out of place to observe here that the Apex Court in **Padmanabh Keshav Kamat v. Anu R. Kantak, 1999 Cr.L.J 122**, had observed that in the scheme of hierarchy the party should seek invocation from the lowest Court even if there is concurrent jurisdiction. The Apex court in **Urmila Devi v. Yudhvir Singh, 2013(4) RCR (Criminal) 899**, has considered the scope of interlocutory order and the powers of revision of the Courts in terms of Section 397(2) Cr.P.C. and it was laid down that where an order is intermediary order, a revision would lie before the revisional court u/s 397(2) Cr.P.C. I am of the considered opinion that the petitioner ought to have approached the revisional court instead of invoking the jurisdiction of the High Court u/s 482 Cr.P.C. Since the matter has come up before this court where an alternative remedy is available to the petitioner, I have considered the petition on merits and with the assistance of counsel for the petitioner gone through the cross-examination of the complainant Lakhwinder Singh. In the cross-examination of Lakhwinder Singh defence of the petitioner has been specifically put to him that the blank cheque had been given to the complainant as security on account of loan of Rs.30,000/- having been taken by the petitioner. It has specifically been put to the complainant that a sum of Rs.30,000/- had been returned to him. In the cross-examination a question had been put to the complainant if the complainant had maintained any account books for the money transactions, which suggestion had been denied by the complainant in the cross-examination. The personal diary, which is sought to be confronted to the complainant by resummoning him could have easily

been shown to the complainant at the relevant stage. The scope of section 311 Cr.P.C. is to enable the court to permit a party to produce evidence, which is essential for the just decision of the case. In the present case, an attempt is being made to fill in the lacuna by resummoning the complainant. No ground is made out to allow the application filed by the petitioner u/s 311 Cr.P.C.

Dismissed without prejudice to the right of the petitioner to produce any defence evidence at an appropriate stage, in accordance with law.

October 17 ,2016
TSM

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether Reportable

Yes/ No