



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CrI.O.P.No.10607 of 2011

and

MP(MD)Nos. 1 & 2 of 2011

Nagasubramaniam

...Petitioner / Petitioner / Respondent

Vs.

E.Sangaralingam

... Respondent/Respondent / petitioner/
Accused No.3

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the order passed in CrI.R.C.No.65 of 2010, dated 24.01.2011, by the learned Additional District and Sessions Judge (FTC No.I), Tirunelveli, against CrI.M.P.No.2206 of 2010, dated 10.05.2010, in C.C.No.132/2010 on the file of the learned Judicial Magistrate No.3, Tirunelveli and set aside the same.

(Prayer amended as per Order of this Court, dated 09.11.2011 made in M.P.(MD).No.3 of 2011 in CrI.O.P.(MD).No.10607 of 2011)

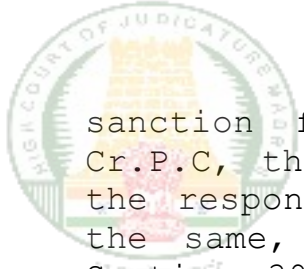
For Petitioner : Mr.D.Saravanan

For Respondent : Mr.P.Santhanakrishnan

O R D E R

This Criminal Original Petition has been filed to set aside the order of discharge, dated 24.01.2011 passed in CrI.R.C.65/2010 by the learned Additional District & Sessions Judge, Fast Track Court I, Tirunelveli, discharging the respondent, who is arrayed as third accused, in the complaint, confirming the order, dated 10.05.2010, passed in CrI.M.P.No.2206/2010 by the learned Judicial Magistrate, Ambasamudram.

2.The case of the petitioner is that he approached the respondent/third accused, while he was working as a Government Servant, for furnishing certain documents. Since the respondent failed to discharge his official duty, the petitioner has lodged a complaint against him, under Section 200 of Cr.P.C., before the Judicial Magistrate Court, Ambasamudram and the same was taken on file in C.C.No.132/2010. While the said case was pending, the respondent herein filed a discharge petition in Cr.M.P.No.2206/2010 before the Judicial Magistrate Court, Ambasamudram on the ground that the sanction of prosecution from the Government is necessary. Since the respondent was discharging his official duty and based on the fact that without obtaining



sanction from the Government Authority, under Section 197 of Cr.P.C, the learned Judicial Magistrate, Ambasamudram, discharged the respondent from the charges, is bad in law. Aggrieved over the same, this petitioner filed CrI.R.C.No.65 of 2010, under Section 397(1) of Cr.P.C before the lower Appellate Court. The lower Appellate Court after hearing both sides, confirmed the order of the learned Judicial Magistrate. Against which, the present Criminal Original Petition has been filed.

3.The learned counsel appearing for the petitioner submitted that the respondent was discharged in violation of G.O.Ms.No.114 and Section 76 of the Evidence Act. However, without considering the facts, the lower Court discharged the respondent/third accused and the lower Appellate Court also confirmed the Order of the lower Court.

4.The learned counsel for the respondent submitted that the petitioner herein filed a petition before the respondent under the Right to Information Act. If the respondent refused to furnish the particulars, the remedy available to the petitioner is only to approach the appropriate forum available under the Right to Information Act. Implicating the respondent in the criminal offence by way of private complaint, does not arise and the sanction of prosecution from the Government is necessary under Section 197 of Cr.P.C.

5.In support of his submissions, the learned counsel for the respondent relied on the following Judgment of the Honourable Apex Court, in **Rajan Kumar Machananda Vs. State of Karnataka** reported in **1990 SCC (Cri) 537**, wherein at paragraph 2, it has been held as follows:

'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 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.''

6.The learned counsel for the respondent citing the decision as stated above submitted that apart from the above decision, the trial Court after discussing the cases elaborately based on the materials available on record, allowed discharge petition filed by the respondent herein and the same was also confirmed by the lower appellate Court. Challenging the concurrent findings of the Courts below, the petitioner has approached this Court invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C., which is bad in law. Hence, he prayed for dismissal of this Criminal Original Petition.

7.I have considered the decision cited supra and the rival submissions made by the learned counsel on either side and perused the materials available on record.

8.The issues involved in this case are:

- (i)whether the petition filed under Section 482 Cr.P.C., is maintainable in view of bar under Section 397(3) Cr.P.C.?
- (ii)When there is an adjudicatory mechanism available under the Right to Information Act, 2005 and without exhausting the said remedy, can the petitioner file a private complaint against the Public Servant?

9.As per Section 397(3) Cr.P.C., 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. In this context, it is relevant to extract below Section 397 (1) and (3) Cr.P.C.

''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 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.

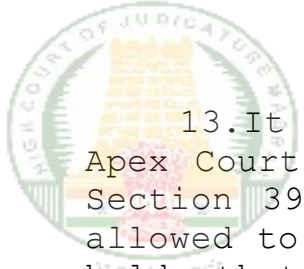
Explanation.- All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(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.''

10. Accordingly, the petitioner filed revision before the Additional District and Sessions Judge, (FTC.No.I), Tirunelveli and the same was taken on file and the lower appellate Court confirmed the order of discharge passed by the learned Judicial Magistrate No.3, Tirunelveli. In view of bar under Section 397(3) Cr.P.C., further revision is not permissible and the same cannot be entertained by any forum. The said position was also discussed by the Hon'ble Apex Court in the case of **Krishnan Vs. Krishnaveni** reported in **1997 (4) SCC 241**, wherein the Apex Court has clearly held that in view of the prohibition under Section 397(3) Cr.P.C., the complainant or the accused cannot be allowed to take recourse to a second revision, but the High Court can entertain a petition under Section 482 Cr.P.C. when there is serious miscarriage of justice and abuse of process of the Court or when mandatory provisions of law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional Court.

11. The learned counsel for the respondent submitted that second revision before the High Court is not maintainable and the further revision against the dismissal order passed by the Revisional Court is barred under Section 397(3) Cr.P.C. By invoking inherent power available under Section 482 Cr.P.C., this Court cannot be converted as second Revisional Court.

12. Per contra, the learned counsel appearing for the petitioner submitted that though there is a bar under Section 397 (3) Cr.P.C., for entertaining second revision, if the revisional Court commits a serious error or miscarriage of justice, this Court has power to interfere with the order of the trial Court as well as the order of the lower appellate Court by invoking inherent jurisdiction available under Section 482 Cr.P.C. and he referred to the decision of the Hon'ble Apex Court in the case of **Krishnan Vs. Krishnaveni** [cited supra].



13. It is true that in the above said decision, the Hon'ble Apex Court has clearly held that in view of the prohibition under Section 397(3) Cr.P.C., the complainant or the accused cannot be allowed to take recourse to a second revision, however, this Court holds that the said provision is not absolute bar, the High Court can entertain a petition under Section 482 Cr.P.C. when there is serious miscarriage of justice and abuse of process of the Court or when mandatory provisions of law are not complied with. If the High Court feels that the inherent jurisdiction is to be exercised there is grave miscarriage of justice, abuse of process of the Court or the order of the trial Court as well as the lower appellate Court is a perverse or incorrigible one.

14. However, in the present case on hand, the petitioner did not show that there is serious miscarriage of justice and abuse of process of the Court or mandatory provisions of law are not complied with. Therefore, the petitioner cannot be allowed to take recourse to second revision.

15. The further contention of the learned counsel appearing for the petitioner is that the respondent has not considered G.O.Ms.No.114 and Section 76 of the Indian Evidence Act, 1872, for non-furnishing of public document, which is a violation of the said Government Order and hence, the petitioner has no other option except to file a private complaint against the respondent, who has not furnished the document. The said contention is not acceptable, for the simple reason that even assuming that there was violation of G.O.Ms.No.114 and Section 76 of the Indian Evidence Act, by non-furnishing the public document to the petitioner, the remedy available to him has to be ventilated before the appropriate forum created under the Right to Information Act, 2005. Without exhausting the remedy available under the Right to Information Act, 2005, filing of the private complaint against the Public Servant, is unsustainable in law. Further, for non-furnishing of the public document is not an offence and it will not attract the penal provisions. When there is no offence implicating the Public Officer and when there is an effective remedy available under the other enactment, like the Right to Information Act, 2005, for non-furnishing the public document, filing a private complaint under Section 200 Cr.P.C. is not maintainable.

16. In view of the above discussions and decisions cited supra, this Court does not find any error or infirmity to interfere with the order passed by the Courts below. Accordingly, the Criminal Original Petition filed under Section 482 Cr.P.C., is dismissed and the orders of Discharge, dated 24.01.2011, passed in CrI.R.C.No.65 of 2010 by the learned Additional District and Sessions Judge, Fast Track Court No.I, Tirunelveli, confirming the order dated 10.05.2010, passed in CrI.M.P.No.2206/2010, by the learned Judicial Magistrate, Ambasamudram, Tirunelveli, is



confirmed.
closed.

Consequently, connected miscellaneous petitions are

Sd/-
Assistant Registrar(AS)

WEB COPY/True Copy/

Sub Assistant Registrar

To

1. The Additional District & Sessions Judge,
Fast Track Court - I,
Tirunelveli.
2. The Judicial Magistrate,
Ambasamudram.
3. The Judicial Magistrate No.3,
Tirunelveli.

+1cc to Mr.D.Saravanan, Advocate Sr.No.87393
+1cc to Mr.P.Santhanakrishnan, Advocate Sr.No.87386

TM

VB/JC/SAR4/14/12/2017/6P/6C

**CrI.O.P.No.10607 of 2011
and
MP(MD) Nos. 1 & 2 of 2011
15.11.2017**