

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.8217 of 2017

ORDER:

This Criminal Petition under Section 482 Cr.P.C. is filed to quash the Order dt.08.08.2017 in CrI.M.P.No.3725 of 2017 in C.C.No.105 of 2016 passed by V Special Magistrate Court, Visakhapatnam, dismissing the application filed under Section 311 Cr.P.C. to recall Pws. 1 and 3 for limited purpose of putting certain questions relating to variations in the name of the drawer i.e., maker of the cheque.

The Order dt. 08.08.2017 is under challenge on various grounds. The order under challenge is only in interlocutory in nature, against which no revision is maintainable in view of the interdict contained under Sub Section 2 of Section 397 Cr.P.C. When the Order is not amenable to the revisional jurisdiction, this Court cannot entertain a petition under Section 482 Cr.P.C. circumventing the law, in view of the law declared in "*Girish Kumar Suneja v. C.B.I*"¹, and in the said judgment, the Apex Court held as follows:

"The second reason why Amar Nath (AIR 1977 SC 2185) is important is that it invokes the principle, in the context of criminal law, that what cannot be done directly cannot be done indirectly. Therefore, when Section 397(2) of the Code of Criminal Procedure prohibits interference in respect of interlocutory orders, Section 482 of the Code of Criminal Procedure cannot be availed of to achieve the same objective. In other words, since Section 397(2) of the Code of Criminal Procedure prohibits interference with interlocutory orders, it would not be permissible to resort to Section 482 of the Code of Criminal Procedure to set aside an interlocutory order. This is what this Court held:

While we fully agree with the view taken by the learned Judge that where a revision to the High Court against the order of the Subordinate Judge is expressly barred Under Sub-section (2) of Section 397 of the 1973 Code the inherent powers contained in Section 482 would not be available to defeat the bar contained in Section 397(2). Section 482 of the 1973 Code contains the inherent powers of the Court and does not confer any new powers but preserves the powers which the High Court already

¹ AIR 2017 SC 3620

possessed. A harmonious construction of Sections 397 and 482 would lead to the irresistible conclusion that where a particular order is expressly barred Under Section 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of Section 482 would not apply. It is well settled that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject-matter. Where there is an express provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers.

This view was reaffirmed in *Madhu Limaye* (AIR 1978 SC 47) when the following principles were approved in relation to Section 482 of the Code of Criminal Procedure in the context of Section 397(2) thereof. The principles are:

- (1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
- (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
- (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

Therefore, it is quite clear that the prohibition in Section 397 of the Code of Criminal Procedure will govern Section 482 thereof. We endorse this view.”

By applying the principle laid down in the above judgment, I find that the petition itself is not maintainable as no revision is maintainable in view of the interdict contained under Sub Section 2 of Section 397 Cr.P.C. However, it is left open to the petitioner to raise all his contentions before the Magistrate and the Magistrate has to answer all the queries raised by the petitioner's counsel at the end of the trial and pass appropriate orders in accordance with law.

With the above observation, this Criminal Petition is disposed of.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 18.12.2017

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HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY



CrI.P. No.8217 of 2017

Dt. 18.12.2017

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