

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.9212 OF 2017

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the order dated 08.08.2017 passed in CrI.M.P.No.198 of 2017 in C.A.No.184 of 2015 by the IV Additional District and Sessions Judge, Nellore, whereby the petition filed under Section 391 of Cr.P.C. by the petitioner was dismissed recording specific reason that the examination of proposed witness is unnecessary since the offence is punishable under Section 138 of Negotiable Instruments Act (for short "N.I.Act").

Aggrieved by the order passed in CrI.M.P.No.198 of 2017 in C.A.No.184 of 2015, the present petition is filed on various grounds mainly contending that the Court below did not consider the difficulty expressed by the petitioner for non-examination of the proposed witness, as the proposed witness was bedridden by the date of examination of petitioner as accused, under Section 313 of Cr.P.C. and that the evidence of proposed witness is necessary to prove his innocence in the above crime.

Respondent No.2 is the defacto complainant, who filed the private complaint for the offence punishable under Section 138 of N.I.Act after following necessary procedure provided under clause (b) to Section 138 of N.I.Act, as the cheque issued by the petitioner was dishonoured on its presentation in the bank for collection. The trial Court after completion of trial, examined the petitioner under Section 313 of Cr.P.C. explaining the incriminating material that appeared in the testimony of prosecution witnesses, but the petitioner denied the same and proposed to examine the defence

witnesses. The petitioner was examined himself as D.W.1 and marked Ex.D.1, thereafter the evidence was closed.

The trial Court found the petitioner/accused guilty for the offence punishable under Section 138 of N.I.Act. Against which, the petitioner preferred the appeal, which is pending before the Court and the present petition is filed to permit him to adduce additional evidence and proposed to examine the Tahsildar and the person, who sold the land to the petitioner.

The offence allegedly committed by the petitioner is punishable under Section 138 of N.I.Act, for which the examination of Tahsildar to prove that the land was not government land and the examination of person, who sold the property is not much relevant. However, the order under challenge is only interlocutory in nature, against which no revision is maintainable in view of the bar under Section 397 (2) of Cr.P.C. in view of the judgment of the Apex Court in “**Sethuraman v. Rajamanickam**”¹

The order under challenge is interlocutory in nature, against which no revision is maintainable under Section 397 (2) of Cr.P.C. Therefore, the petitioner invoked the jurisdiction of this Court under Section 482 of Cr.P.C. But the petition under Section 482 of Cr.P.C. is not maintainable under law as held by the Apex Court in “**Girish Kumar Suneja v. C.B.P**”. 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

¹ 2009 Cr.L.J. 2247

² AIR 2017 SC 3620

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 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.”

In view of the law declared by the Supreme Court in “**Girish Kumar Suneja v. CBI**” (referred supra), no revision is maintainable against interlocutory order, in view of bar under Section 397(2) Cr.P.C. at the same time, this Court cannot set aside the impugned order invoking power under Section 482 of Cr.P.C. as it amounts to circumventing law.

Therefore, I find no merit in the present petition as it is devoid of merits. Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed. No costs.

Consequently, miscellaneous petitions pending, if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

19.12.2017
Ksp

