

THE HONORABLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.6783 of 2016

ORDER

This petition under Section 482 of Cr.P.C., is filed to quash the proceedings in C.C.No.23 of 2015 pending on the file of X Additional Chief Metropolitan Magistrate, Secunderabad, registered for the offences punishable under Sections 420, 406, 468, 471, 448, 506, 323 IPC, against the petitioners.

2. The petitioners are A1 to A3 in the aforesaid C.C. Admittedly, the petitioners earlier filed Crl.P.No.3197 of 2016, which ended in dismissal by this Court on 11.03.2016.

3. The present petition is filed raising several contentions, mainly, contending that the Company Law Board recorded a specific finding in CP.No.70(ND)/2008 dated 29.07.2013, observing as under:

“This bench, having gone through all this material available on record, believes the petitioners’ role-play in the company is more or less nothing. The petitioners have not stated anywhere that they used to attend Board meetings at any point of time before their removal as Directors. I do not find it is a family company stated by the petitioners, respondents and other brothers, because second respondent and his two sons (R2 & R3) and his other two brothers along with some outsiders held considerable shareholding in the company initially started this company”.

Taking advantage of this finding, the counsel for petitioners contended that when the Company Law Board recorded a specific finding, filing the present complaint on the same facts would amount to abuse of process of the Court.

4. The counsel for petitioners while reiterating the said contention raised a specific contention that the earlier petition in Crl.P.No.3197 of 2016 filed by petitioners was not decided on merits and therefore, that order would not disable the petitioners to renew their request at appropriate stage and requested this Court to quash the proceedings in C.C.No.23 of 2015.

5. Whereas the counsel for the 3rd respondent contended that when an order was invited in Crl.P.No.3197 of 2016 dated 11.03.2016, filing of an application on the same grounds is impermissible as per Section 362 of Cr.P.C., and he placed reliance on the judgment of the Apex Court in **State of Kerala V M.M.Manikantan Nair**¹ and another judgment of the Allahabad High Court in **C.P.Singh v. State of U.P., and another** in Criminal Miscellaneous Application Nos.30030 and 33719 of 2009.

6. On the strength of the principles laid down in the above two judgments, learned counsel for the 3rd respondent contended that when an order was passed by this Court in the earlier Crl.P.No.3197 of 2016, entertaining the application and passing an order amounting to review of the earlier order passed by this Court, which is impermissible under Section 362 of Cr.P.C., and this Court cannot renew its own order and requested this Court to dismiss the petition.

7. It is an undisputed fact that this Court earlier dismissed Crl.P.No.3197 of 2016 and the grounds raised in the earlier petition are more or less the same. Therefore, when the petitioners invited

¹ (2001) 4 SCC 752

an order from the Court on merits or otherwise and when the said order attained finality, this Court cannot exercise power under Section 482 of Cr.P.C., or under Section 362 of Cr.P.C., to quash the proceedings or to review the order passed by this Court exercising power under Section 482 of Cr.P.C. Whether the order was passed on merits or otherwise is immaterial. If for any reason, if the petitioners are aggrieved by the order, they can approach the appropriate forum assailing the order passed by this Court in Crl.P.No.3197 of 2016, but simply allowed the order to attain finality and as on today, the order passed in Crl.P.No.3197 of 2016 became final.

8. When the order passed by this Court attained finality, this Court cannot review such an order in view of the Bar under Section 362 of Cr.P.C. Section 362 of Cr.P.C., did not permit the Court to alter the judgment subject to certain circumstances prescribed under the Code of Criminal Procedure, 1973, when the judgment was signed and the final order disposing the case was passed. The Apex Court in **State of Kerala's** case, referred above, held as under:

“When an order was passed and attained finality, the High Court only correct any clerical or arithmetical error and in fact, the impugned order is an order of review, as the earlier order was reversed, which could not have been done.

The Code of Criminal Procedure does not authorise the High Court to review its judgment or order passed either in exercise of its appellate, revisional or original jurisdiction. Section 362 of the Code prohibits the Court after it has signed its judgment or final order disposing of a case from altering or reviewing the said judgment or order except to correct a clerical or arithmetical error. This prohibition is complete and no criminal Court can review its own judgment or order after it is signed”.

9. In the facts of the above judgment, the respondent filed a revision, which was dismissed and thereafter filed another petition on the same grounds, but the High Court reversed the earlier order, which amounts to review the order passed by the Court, which is impermissible under law, except to the extent of clerical or arithmetical error. Therefore, the facts of the present case are also identical to the facts of the above case.

10. In **C.P.Singh's** case, the Allahabad High Court placed reliance on a decision of the Apex Court in **Superindent and Remembrancer of Legal Affairs W.B. v. Mohan Singh** (AIR 1975 SC 1002) and another judgment in **Hari Singh Mann V. Harbahjan Singh Bajwa** ((2001)1 SCC 169), and held that when the earlier application was decided, the High Court cannot review its own order either by entertaining a review or by a separate application. In the first decision in **V. Mohan Singh's** case, the Apex Court held that rejection of a prior application for quashing is no bar for the High Court entertaining a subsequent application as quashing does not amount to review or revision. This decision instead of supporting the respondent clearly lays down, following Chopra's case (AIR 1955 SC 633) that once a judgment has been pronounced by a High Court either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the Criminal Procedure Code which would enable the High court to review the same or to exercise revisional jurisdiction. This Court entertained the application for quashing the proceedings on the ground that a subsequent application to quash

would not amount to review or revise an order made by the Court. The decision clearly lays down that a judgment of the High Court on appeal or revision cannot be reviewed or revised except in accordance with the provisions of the Criminal Procedure Code. The provisions of Section 561A (Pre amendment) of the Code cannot be invoked to exercise of a power which is specifically prohibited by the Code.

11. In **Hari Singh Mann v. Harbahjan Singh Bajwa**, referred supra, the Apex Court made it clear that there is no provision in the Code of Criminal Procedure authorising the High Court to review the judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such a power cannot be exercised with the aid or under the cloak of Section 482 of the Code. Vide (State of Orissa v. Ram Chander Agarwala, Air 1979 SC 87).

12. In view of the law declared by the Apex Court in the latter judgment, the present petition under Section 482 of Cr.P.C., is not maintainable as the earlier Crl.P.No.3197 of 2016 was disposed of by this Court and it attained finality. Consequently, I find no merit in the contention raised by the counsel for the petitioners that the earlier order was not passed on merits and this Court can interfere with such proceedings. Strictly adhering to the law declared by the Apex Court, I am of the clear view that the present petition is not maintainable having suffered an order of dismissal in Crl.P.No.3197 of 2016. Consequently, the criminal petition deserves to be dismissed as it lacks merits.

13. In the result, the Criminal Petition is dismissed.

14. Miscellaneous petition, if any, pending in this petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

11th December, 2017

sj

