

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.2397 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) questioning the order in CrI.MP.No.174 of 2017 in C.C.No.336 of 2015 dated 01.03.2017 passed by the IV Special Magistrate, Hyderabad, dismissing the application filed under Section 311 Cr.P.C.

The petitioner filed an application under Section 311 Cr.P.C. to recall P.W.1 for the purpose of marking partnership deed dated 27.01.2011 alleging that the petitioner is the complainant and the matter is coming up for arguments but came to the notice of the petitioner that the document i.e. partnership deed is necessary for deciding the real controversy between the parties.

When the document is confronted to the witness during cross examination, the witness denied the execution of partnership deed dated 27.01.2011 signed by both parties. However, the respondent-accused denied the signature on the document and denied the partnership deed. In the initial cross examination, he denied the business of Jithendra Herbal Care but after recall, he admitted that D-1 has given complaint to the police in the name of the firm. Therefore, the document is necessary to prove the contentions of the petitioner.

The respondent filed counter denying the material allegations, *inter alia*, contending that the document is neither directly nor indirectly related to the issue in the Calendar Case. He denied the execution of document and requested to dismiss such petition.

The trial Court, upon hearing the contentions of both the parties, dismissed the petition on the ground that the document is not relevant for deciding the real controversy between the parties.

Aggrieved by the order passed by the IV Special Magistrate, Hyderabad, the present petition under Section 482 Cr.P.C. is filed raising several contentions. This Court took an objection about maintainability of the petition under Section 482 Cr.P.C. When there is a bar to maintain petition under Section 397(2) Cr.P.C. against such an interlocutory order, the counsel for the petitioner contended that the order of the trial Court is bereft of any reasons and dismissed the petition on the ground that the document is not relevant and requested to set aside the order.

The petitioner filed petition under Section 311 Cr.P.C. to recall P.W.1 for the purpose of marking the partnership deed and it is relevant for deciding the real controversy. The said petition was dismissed. No revision lies against such an order in view of bar under Section 397(2) Cr.P.C.

When no revision is maintainable against an interlocutory order, this Court cannot exercise inherent power under Section 482 Cr.P.C in view of the decision of the Full Bench of the Apex Court in **Girish Kumar Suneja v. CBI**¹ wherein it is held as under.

“...when Section 397(2) prohibits interference in respect of interlocutory orders, Section 482, cannot be availed of to achieve same objective. In other words, since Section 397(2) prohibits interference with interlocutory orders, it would not be permissible to resort to Section 482. To set aside an interlocutory order prohibition in Section 397 will govern Section 482 thereof...”.

¹ AIR 2017 SC 3620

In view of the judgment of the Apex Court, this Court cannot exercise inherent power under Section 482 Cr.P.C. to quash the interlocutory order as no revision is permitted in view of the bar under Section 397(2) Cr.P.C. On this ground alone, Criminal Petition is dismissed by confirming the order of the Court below without touching the merits of the case. Miscellaneous petitions, if any, pending shall stand dismissed.

(M.SATYANARAYANA MURTHY, J)

21st November 2017
RRB

