

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.6324 OF 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the order in CrI.R.P.No.81 of 2016 dated 01.06.2017, passed by the I Additional Sessions Judge, Kurnool, dismissing the revision filed against the order in CrI.M.P.No.1048 of 2016 filed under Section 311 of Cr.P.C in C.C.No.76 of 2007 passed by the Judicial First Class Magistrate, Atmakur.

The petitioner filed CrI.M.P.No.1048 of 2016 before the Judicial First Class Magistrate, Atmakur, under Section 311 Cr.P.C to recall PWs.1 to 3 for cross-examination, since they were not examined as they were absent on the day when the matter was posted for cross-examination, therefore, sought an opportunity to cross-examine the witnesses. But, the Judicial First Class Magistrate, Atmakur, dismissed the petition assigning reasons and the order passed by the Judicial First Class Magistrate, Atmakur is assailed in CrI.R.P.No.81 of 2016 under Section 397 Cr.P.C, which also ended in dismissal, affirming the order passed by the Judicial First Class Magistrate, Atmakur in CrI.M.P.No.1048 of 2016.

Aggrieved by the order passed by the I Additional Sessions Judge, Kurnool in CrI.R.P.No.81 of 2016 dated 01.06.2017, the present criminal petition is filed on various grounds.

In the present criminal petition, this Court raised an objection about maintainability of the petition under Section 482 Cr.P.C, in view of the bar contained in sub-section (2) of Section 397 Cr.P.C.

Learned counsel for the petitioner contended that, in similar case, this Court passed an order in Crl.P.No.6344 of 2017 permitting the petitioner therein to recall P.W.6 and cross-examine. Taking advantage of the order passed by the learned Single Judge of this Court in Crl.P.No.6344 of 2017, learned counsel for the petitioner contended that the petitioner in the present petition is also on the same footing and requested to allow the criminal petition.

No doubt, the petitioner filed Crl.M.P.No.1048 of 2016 before the Judicial First Class Magistrate, Atmakur, under Section 311 Cr.P.C to recall PWs.1 to 3 for cross-examination, which was dismissed by the Judicial First Class Magistrate, Atmakur. Thereafter, the petitioner preferred Crl.R.P.No.81 of 2016 before the I additional District and Sessions Judge, Kurnool and the Sessions Court dismissed the petition, confirming the order passed by the Magistrate, on merits.

The order under challenge is interlocutory in nature, no revision is maintainable against such an order, in view of the law laid down by the Apex Court in **Sethuraman Vs. Rajamanickam**¹, to get over the difficulty contained in Section 397(2) Cr.P.C, the petitioner invoked inherent jurisdiction of this Court under Section 482 Cr.P.C, circumventing the law, wherein the Apex Court in paragraph 4 held as follows:

"4. Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C. The Trial Court, in its common order, had clearly

¹ 2009 CriLJ 2247

mentioned that the cheque was admittedly signed by the respondent/accused and the only defence that was raised, was that his signed cheques were lost and that the appellant/complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e., one on the application under Section 91 Cr.P.C. for production of documents and other on the application under Section 311 Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397(2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed.”

Therefore, on the ground that revision is not maintainable, the Sessions Court should have dismissed the petition, instead of deciding Crl.R.P.No.81 of 2016 on merits.

In the present criminal petition, both, the order passed by the Magistrate in Crl.M.P.No.1048 of 2016 in C.C.No.76 of 2017 and confirmed by the Sessions Judge in Crl.R.P.No.81 of 2016 are assailed. The order passed by the Judicial First Class Magistrate, Atmakur and confirmed by the Sessions Court is purely interlocutory in nature.

In “**Girish Kumar Suneja v. C.B.I**”², full Bench of the Supreme Court had an occasion to decide the similar question and held as follows:

“The second reason why **Amar Nath v. State of Haryana**³ 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:

² AIR 2017 SC 3620

³ AIR 1977 SC 2185

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 v. State of Maharashtra**⁴ 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 any view of the matter, the Apex Court in **Girish Kumar Suneja**⁵, wherein, the full Bench of the Supreme Court had an occasion to decide the similar subject and held as follows:

“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. In the present case, although, appellants might have an entitlement (not a right) to file a revision petition in High Court but that entitlement can be taken away and in any event, High Court is under no

⁴ AIR 1978 SC 47

obligation to entertain a revision petition – such a petition can be rejected at threshold. If High Court is inclined to accept revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in culmination of proceedings.”

In view of the law declared by the Supreme Court in **Girish Kumar Suneja**⁵ case, where no revision is maintainable against interlocutory order, in view of bar under Section 397(2) Cr.P.C, similar petition under Section 482 Cr.P.C is also not maintainable.

The Apex Court considered the principles laid down both in **Amar Nath**³ & **Madhu Limaye**⁴ cases and finally concluded that, when a revision is barred against an interlocutory order, in view of Subsection (2) of Section 397 Cr.P.C, a petition under Section 482 Cr.P.C is not maintainable. Moreover, the Full Bench of the Apex Court took note of the law declared by the Constitutional Bench in other judgments laid down the principles, arrived at such conclusion. The judgment of Full Bench of Apex Court is recent in time and it is binding precedent. When the Apex Court considered the judgments relied on by the learned counsel for the petitioner in **Madhu Limaye**¹⁸ case, and if the law laid down in the above judgment is applied strictly, the petition under Section 482 Cr.P.C is not maintainable.

Learned counsel for the petitioner relied on order passed by this Court in Crl.P.No.6344 of 2017, but, the learned Single Judge of this Court neither adverted to the law declared in Crl.P.No.6344 of 2017 not relied on the judgments of the Apex Court in **Sethuraman**¹ and **Girish Kumar Suneja**² cases. Therefore, the

order passed this Court in Crl.P.No.6344 of 2017 is not binding on this Court, as the learned Single Judge did not advert to the law declared by the Apex Court in the above referred judgments. Hence, in view of the law laid down by the Apex Court in **Girish Kumar Suneja²** case, the present criminal petition is not maintainable against an order under challenge under Section 397 Cr.P.C and in such case, this Court cannot exercise its inherent jurisdiction under Section 482 Cr.P.C and quash the proceedings. Therefore, I find no ground to quash the order in Crl.R.P.No.81 of 2016 dated 01.06.2017, passed by the I Additional Sessions Judge, Kurnool and consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.



JUSTICE M. SATYANARAYANA MURTHY

Date:07.12.2017

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