

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.6643 OF 2017

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in CrI.M.P.No.3209 of 2017 in C.C.No.31 of 2016 dated 24.05.2017 pending on the file of VI Special Magistrate Court, Visakhapatnam, dismissing the petition filed under Section 91(2) Cr.P.C to summon the witnesses and produce documents.

The complaint was filed before the Magistrate for the offences punishable under Sections 138 of Negotiable Instruments Act. The second respondent contended that the cheque was forged which is marked as Ex.P-6 and to substantiate his contention, he sought summons to the Bank Manager, State Bank of India, Satyanarayanapuram Branch, Vijayawada and Sub-Registrar, Patamata, Near Benz Circle, Vijayawada, to produce certain documents containing signatures of the petitioner to compare with the disputed signatures to come to an independent conclusion. But, the Trial Court dismissed the petition assigning its own reasons.

The order is now under challenge on the ground that, except those two documents, no other documents are available to substantiate his contention that the cheque was forged. But, the Trial Court did not exercise its jurisdiction conferred on it and committed an error in dismissing the petition.

Admittedly, CrI.M.P.No.3209 of 2017 was filed under Section 91(2) Cr.P.C to summon two witnesses i.e. (1) Bank Manager, State Bank of India, Satyanarayanapuram Branch, Vijayawada and (2) Sub-Registrar, Patamata, Near Benz Circle, Vijayawada, to produce certain documents containing signatures of the petitioner to enable the Court to compare with the disputed signatures to come to an independent conclusion by exercising power under Section 73 of Indian Evidence Act and decide the issue.

Admittedly, the order under challenge is interlocutory in nature as held by the Apex Court in in view of the law laid down by the Apex Court in **Sethuraman Vs. Rajamanickam**¹. Against such an order, revision under Section 397 Cr.P.C is not maintainable in view of the bar as per Subsection (2) of Section 397 Cr.P.C. Therefore, the petitioner invoked jurisdiction of this Court under Section 482 Cr.P.C, to quash the order in CrI.M.P.No.3209 of 2017.

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

“The second reason why Amar Nath v. State of Haryana (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).

¹ 2009 CriLJ 2247

² AIR 2017 SC 3620

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* (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 Apex Court in the above referred judgments, when there is a bar to entertain a revision under interlocutory order, the jurisdiction of this Court cannot be invoked under Section 482 Cr.P.C. Therefore, by applying the principles laid down in the above judgments, this criminal petition is not maintainable under Section 482 Cr.P.C and the criminal petition is liable to be dismissed.

In the result, criminal petition is dismissed.

Consequently, miscellaneous petitions, if any, pending in this Petition shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Dated:29.11.2017
SP