

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 10012 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') questioning the order dated 04-09-2017 in CrI.M.P.No. 1443 of 2017 in C.C.No. 345 of 2016 on the file of the Court of XXIV Special Magistrate, Hyderabad (for short, 'the Court below').

2. The petitioners filed this petition on the ground that the order passed by the Court below is erroneous and on account of such order, the petitioners are deprived of their right to fair trial and therefore requested to set aside the same. In ***Girish Kumar Suneja Vs. C.B.I***¹, a Full Bench of the Supreme Court had an occasion to decide the similar question and held as follows:

"Therefore, 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 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. There appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before Supreme Court. consequently result of paragraph 10 of order dated 25.07.2014 passed by Supreme Court is that

¹ AIR 2017 SC 3620

entitlement of appellants to file a revision petition in High Court is taken away and thereby High Court is deprived of exercising its extraordinary discretionary power available under Section 397 of the Cr.P.C. However, it does not mean that appellants have no remedy available to them – paragraph 10 of order dated 25.07.2014 does not prohibit appellants from approaching Supreme Court under Article 136 of Constitution. Therefore all that has happened is that forum for ventilating grievance of appellants has shifted from High Court to Supreme Court. Mere fact that Supreme Court could dismiss petition filed by appellants under Article 136 of Constitution without giving reasons does not necessarily lead to conclusion that reasons will not be given or that some equitable order will not be passed. Thus, if an interlocutory order is not revisable due to the prohibition contained in Section 397(2) that cannot be circumvented by resort to Section 482."

In view of the law declared by the Apex Court, no revision petition under Section 482 Cr.P.C. is maintainable against an interlocutory order since this Court cannot exercise the power in view of the bar contained under Section 397 (2) Cr.P.C. and the same cannot be circumvented by resort to Section 482 Cr.P.C. to exercise inherent jurisdiction. Hence, I find no ground to quash the proceedings.

3. In the result, the criminal petition is dismissed. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 31-10-2017.

JSK

M.SATYANARAYANA MURTHY, J.