

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 10609 OF 2017

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short, "Cr.P.C.") to quash the order dated 11-10-2017 in CrI.M.P.No. 3163 of 2017 in C.C.No. 34 of 2016 on the file of the Court of Additional Judicial I Class Magistrate, Avanigadda (for short, 'the Court below').

2. The petitioner filed the abovementioned miscellaneous petition to issue summons to the witness who is working in B.S.N.L. and unless summons is sent to a Government employee, he will not appear before the Court at the request of the party, directly. Therefore, he requested to issue summons. The previous history of this case is necessary for reference to decide the present dispute. Earlier, the evidence of the petitioner was closed and thereafter he filed a petition to reopen the evidence which was dismissed. Against the said dismissal, he filed revision before this Court and this Court by order dated 18-09-2017 in CrI.P.No. 8760 of 2017 allowed the revision while directing the Court below to fix date for adducing evidence and decide the matter in accordance with law. Accordingly, the petitioner filed the above miscellaneous petition for issue of summons to the witnesses for production of certain documents to substantiate his contention. However, the same was dismissed by the impugned order on the ground that it is the duty of the petitioner to produce the witnesses before the Court and the Court need not issue any summons for appearance of the witnesses. Of course, the reasoning recorded by the Court below is unjust but the question before this Court is about maintainability of the present petition under Section 482 Cr.P.C.

3. In the recent judgment of the Apex Court in ***Girish Kumar Suneja Vs. C.B.I.***¹, it was held that when Section 397 (2) Cr.P.C. prohibits interference in respect of interlocutory orders, Section 482 Cr.P.C. cannot be availed of to achieve the 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, the petitioner filed the petition under Sections 91 and 243 Cr.P.C. before the Court below which ended in dismissal against which no revision is maintainable in view of the bar under Section 397 (2). If the principle laid down in the above judgment is applied to the case on hand, the present petition is not maintainable, since, Section 397 (2) prohibits interference with interlocutory orders, it would not be permissible to resort to Section 482 to achieve the same objective. Therefore, the present petition is not maintainable and the same is liable to be dismissed.

4. The criminal petition is accordingly dismissed at the stage of admission. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 15-11-2017.

JSK

M.SATYANARAYANA MURTHY, J.

¹ AIR 2017 SC 3620