

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.11200 of 2017 and 11191 of 2017

COMMON ORDER:

These criminal petitions are filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the order dated 06.09.2017 passed in C.R.P.No.21 of 2017 and C.R.P.No.22 of 2017 by the Principal Sessions Judge, Guntur, whereby the orders passed in CrI.M.P.No.2411 of 2016 in C.C.No.603 of 2015 and CrI.M.P.No.2412 of 2016 in C.C.No.602 of 2015 by the I Additional Junior Civil Judge, Sattenapalli, were confirmed.

The petitioners herein are the accused and the respondent No.1 is the complainant in CrI.M.P.No.2411 of 2016 in C.C.No.603 of 2015 and CrI.M.P.No.2412 of 2016 in C.C.No.602 of 2015 and the said cases were registered for the offence punishable under Section 138 of Negotiable Instruments Act. During trial, the complainant was examined as P.W.1 and produced one S.Atchaiah in C.C.No.603 of 2015 and K.Venkateswar Rao in C.C.No.602 of 2015 as P.W.2 and got filed affidavits in lieu of their examination-in-chief. In the examination-in-chief of P.W.2, it was mistakenly averred that Exs.P.2 to P.12 (promissory notes in favour of complainant) were executed by accused in favour of P.W.2 instead of complainant and such mistake crept in spite of due diligence of the previous counsel, hence to avoid hardship and irreparable loss to the complainant, it is necessary to reopen and recall the evidence of complainant.

The respondent/accused in both the matters filed counter denying material allegations *inter alia* contending that the petition under Section 311 of Cr.P.C. is not maintainable as the affidavit

filed in lieu of examination-in-chief by P.W.2 was accepted by the Court, till completion of cross-examination no objection was raised by P.W.2, after completion of cross-examination of P.W.2, he has no right to change his evidence i.e. affidavit filed in lieu of examination-in-chief and it is a sworn statement, such admission cannot be withdrawn, which amounts to filling up of lacunas and prayed to dismiss the petition.

The I Additional Junior Civil Judge, Sattenapalli allowed the Crl.M.P.No.2411 of 2016 in C.C.No.603 of 2015 and Crl.M.P.No.2412 of 2016 in C.C.No.602 of 2015 and the matters are reopened and P.W.2 in both the cases is recalled to adduce evidence for the purpose of rectification of mistake crept in the chief examination.

Aggrieved by the order dated 19.01.2017 passed in Crl.M.P.No.2411 of 2016 in C.C.No.603 of 2015 and in Crl.M.P.No.2412 of 2016 in C.C.No.602 of 2015 by the I Additional Junior Civil Judge, Sattenapalli, the petitioner/accused preferred revisions before the Principal Sessions Judge, Guntur. The Principal Sessions Judge, Guntur dismissed C.R.P.Nos.21 and 22 of 2017 holding that the order under challenge is interlocutory in nature by placing reliance on the judgment of Apex Court rendered in **“Sethuraman v. Rajamanickam¹”**

The orders passed by the Principal Sessions Judge, Guntur are now challenged before this Court on the ground that the Courts below did not appreciate the contentions of the petitioner and that the recall of P.W.2 would cause prejudice to the defence of the

¹ 2009 CriLJ 2247

petitioner/accused and both the Courts committed an error in allowing the petition filed by the complainant.

It is also contended that allowing petition to rectify the mistake that crept in affidavit would cause prejudice to the petitioner/accused and clarifying the position as to the execution of promissory notes would amount to filling up lacunas in the evidence of complainant, hence both the Courts below committed an error in allowing the petition.

At the stage of admission, learned counsel for the petitioners contended that the revisional Court did not consider the prejudice being caused to the petitioners/accused and dismissed the revisions.

When this Court took objection about the maintainability of the petition under Section 482 of Cr.P.C., learned counsel for the petitioners contended that when the order under challenge substantially affects the rights of the parties, the Court can exercise power under Section 482 of Cr.P.C. and quash such order. In support of his contentions he relied on “**Amar Nath and others v. State of Haryana and others**”² “**Madhu Limaye v. The State of Maharashtra**”³ “**S.R.Sukumar v. S.Sunaad Raghuram**”⁴

In “**Amar Nath and others Vs. State of Haryana and others**” (referred supra), the Apex Court held as follows:

“The term ‘interlocutory order’ in Section 397(2) has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in S.397. Thus, for instance orders summoning witnesses, adjourning cases,

² AIR 1977 SC 2185

³ (1977) 4 SCC 551

⁴ (2015) 9 SCC 609

passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under section 397(2). But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court case law referred to.”

The trial Court passed the orders in the petitions filed under Section 311 of Cr.P.C., which are admittedly an interlocutory order in view of law declared by the Apex Court in “**Sethuraman v. Rajamanickam**” (referred supra)

But, in the entire Criminal Procedure Code, the word ‘interlocutory order’ is not defined anywhere. But, for the first time in “**Mohan Lal Magan Lal Thacker vs. State of Gujarat**⁵”, the Supreme Court had an occasion to decide whether the order is interlocutory order or not and held as follows:

“The question as to whether a judgment or an order is final or not has been the subject matter of a number of decisions; yet no single general test for finality has so far been laid down. The reason probably is that a judgment or order may be final for one purpose and interlocutory for another or final as to part and interlocutory as to part. The meaning of the two words "final" and "interlocutory" has, therefore, to be considered separately in relation to the particular purpose for which it is required. However, generally speaking, a judgment or order which determines the principle matter in question is termed final. It may be final although it directs enquiries or is made on an interlocutory applications or reserves liberty to apply [Halsbury's Laws of England (3rd Ed.) Vol. 22, 742-743]. In some of the English decisions where this question arose, one or the other of the following four tests was applied.

1. Was the order made upon an application such that a decision in favour of either party would determine the main dispute ?
2. Was it made upon an application upon which the main dispute could have been decided ?
3. Does the order as made determine the dispute ?
4. If the order in question is reversed, would the action have to go on ?”

⁵ AIR 1968 SC 733

Though the law in “**Mohan Lal Magan Lal Thacker vs. State of Gujarat**” (referred supra) is reviewed in various judgments, the Apex Court laid down feasible test in “**K.K. Patel v. State of Gujarat**”⁶ and “**Bhaskara Industries Limited v. Bhiwani Denim & Apparels Limited**”⁷, wherein the Apex Court laid down a feasible test as to whether an order is interlocutory or final. The only test is, if an order under challenge is allowed to sustain, it would culminate or terminate the proceedings. If it culminates the entire proceedings, it is final or otherwise an interlocutory order.

In view of the law declared by the Courts in the catena of judgments referred supra, it is clear that, if the order under challenge is allowed to sustain, would it terminate or culminate the entire proceedings, is a determining factor to entertain a revision under Section 397 Cr.P.C. But, here, the order under challenge is an order passed on an application filed under Section 311 of Cr.P.C., the same would not culminate the entire proceedings. Therefore, applying the tests laid down by the Apex Court referred above, it can safely be concluded without any hesitation that the orders under challenge are only interlocutory in nature.

An identical question came up before the Apex Court in “**Sethuraman Vs. Rajamanickam**” (referred supra) wherein the Apex Court held as follows:

“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 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

⁶ AIR 2000 SC 3346

⁷ (2001) 7 SCC 401

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, in view of the law declared by the Apex Court in “**Sethuraman Vs. Rajamanickam**” (referred supra), the order passed on an application filed under Section 311 of Cr.P.C. is interlocutory in nature and against such an order, no revision is maintainable. Hence, the Principal Sessions Judge, Guntur did commit no error in dismissing the revisions.

Now, the question is, when the revisional Court dismissed the revision petition, can this Court exercise power under Section 482 of Cr.P.C. and set aside the order? If the order of Sessions Court is in accordance with law, this Court cannot reverse the order of Sessions Court by exercising power under Section 482 of Cr.P.C. as held by the Apex Court in “**Girish Kumar Suneja v. C.B.I⁸**”, wherein the Apex Court held as follows:

“The second reason why Amar Nath (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). Section 482 of the 1973 Code contains the inherent powers of the Court and

⁸ AIR 2017 SC 3620

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* (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 Supreme Court in “***Girish Kumar Suneja v. CBI***” (referred supra), no revision is maintainable against interlocutory order, in view of bar under Section 397(2) Cr.P.C. at the same time, this Court cannot set aside the order invoking power under Section 482 of Cr.P.C. as it amounts to circumventing law.

Therefore, by following the law declared by the Apex Court, I hold that the orders under challenge are only interlocutory in nature, as they are orders passed on an application filed under Section 311 of Cr.P.C. and they would not terminate or culminate the entire proceedings, if the same are allowed to sustain. Therefore, on this ground alone, the criminal petitions are not maintainable in view of the bar under Section 397(2) Cr.P.C. Consequently, the petitions are liable to be dismissed.

In the result, the criminal petitions are dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

30.11.2017

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