

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.12269 of 2017

ORDER

This criminal petition is filed under Section 482 of Cr.P.C., to quash the docket order dated 03.11.2017 passed in Crl.M.P.No.7787 of 2017 in C.C.No.605 of 2015 by the Additional Judicial First Class Magistrate at Tiruvuru, Krishna District, dismissing the application filed under Section 70(2) of Cr.P.C.

2. The petitioner is the sole accused in C.C.No.605 of 2015 registered for the offence punishable under Section 138 of Negotiable Instruments Act. She did not appear before the trial Court on the date of adjournment, thereby the trial Court issued NBW against her. She filed a petition under Section 70(2) of Cr.P.C., on the ground that she was aged 70 years and unable to move from the bed and thereby she sought for recall of NBW, as she was prevented by a cause which is beyond her reasonable control. But the Magistrate passed an elaborate order and dismissed the said application.

3. The main grievance of petitioner is that she is an old lady and unable to move from the bed and therefore, she requested the Court to recall NBW pending against her. In fact, when there is a bar to entertain a revision under Section 397(2) of Cr.P.C., against an interlocutory order, this petition under Section 482 of Cr.P.C., is not

maintainable in view of the law declared by the Apex Court in **Girish Kumar Suneja V C.B.I**¹, wherein it was held as under:

24. The second reason why Amar Nath 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 Cr.P.C. prohibits interference in respect of interlocutory orders, [Section 482](#) of the Cr.P.C. cannot be availed of to achieve the same objective. In other words, since [Section 397\(2\)](#) of the Cr.P.C. prohibits interference with interlocutory orders, it would not be permissible to resort to [Section 482](#) of the Cr.P.C. 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 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 Crl. Appeal Nos._____/2017 etc. (@ SLP (Crl.) Nos. 9503/2016 etc.) provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers.” (Emphasis supplied by us).

25. This view was reaffirmed in Madhu Limaye when the following principles were approved in relation to [Section 482](#) of the Cr.P.C. 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;

¹ AIR 2017 SC 3620

(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 Cr.P.C. will govern [Section 482](#) thereof. We endorse this view.

In view of the law declared by the Apex Court in the above referred judgment, this petition is not maintainable. However, keeping in view the age of the petitioner and her health condition, the Magistrate is directed to consider the application, if any, filed by her under Section 70(2) of Cr.P.C. and pass appropriate order in accordance with law subject to furnishing the medical certificate about her health condition.

4. With the above direction, the Criminal Petition is disposed of, at the stage of admission.

5. Miscellaneous petitions, if any pending in this criminal petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

12th December, 2017

sj