

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.12558 OF 2017

ORDER:

The petitioner/sole Accused filed this criminal petition under Section 482 Cr.P.C challenging the docket order dated 25.09.2012 in C.C.No.156 of 2010(new C.C.No.357 of 2016), on the file of the Court of IV Metropolitan Magistrate, Cyberabad, Ranga Reddy District at Ibrahimpatnam.

The Magistrate passed an order for issuance of NBW (Non-bailable Warrant) against the accused on payment of process as the petitioner was absent on the date of order, i.e., 25.09.2012.

The case of the petitioner is that the petitioner is suffering from diabetic and his leg was amputated due to gangrene and he is totally bedridden since then and the reasons stated by him for his absence are only due to ill-health and not otherwise. The order under challenge is only docket order for issuance of NBWs on payment of process. The petitioner without filing a petition under Section 70(2) Cr.P.C. to recall the warrant issued against him by approaching the Court below where the case is pending, after lapse of five years from the date of passing the order impugned, approached this Court by invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C. is unsustainable. The order under challenge is not amenable to revisionary jurisdiction in view of bar under Section 397(2) Cr.P.C. and in such a case, this Court cannot exercise power under Section 482 Cr.P.C and placed

reliance on the judgment in **Girish Kumar Suneja v. C.B.I**¹, wherein the full Bench of the Hon'ble Apex Court held at paras 23 and 24 as follows:

“23. We may note that in different cases, different expressions are used for the same category of orders – sometimes it is called an intermediate order, sometimes a quasi-final order and sometimes it is called an order that is a matter of moment. Our preference is for the expression ‘intermediate order’ since that brings out the nature of the order more explicitly.

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

¹ AIR 2017 SUPREME COURT 3620

(Crl.) Nos. 9503/2016 etc.) provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers.” (Emphasis supplied by us).

In view of the law declared by the Hon’ble Apex Court in the decision cited supra, the petition is not maintainable against the order under challenge on this ground alone and the petition is liable to be dismissed.

In view of the facts and circumstances stated by the petitioner, the petitioner is at liberty to file an application under Section 70(2) Cr.P.C. to recall NBW issued against him after serving notice on the respondent and in the event of filing such application, the Magistrate is directed to decide the application on the same day on appearance of the petitioner before the Court.

With the above direction, the Criminal Petition is dismissed. Consequently, miscellaneous petitions pending if any, shall stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:18.12.2017
Rns