

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.11896 of 2017

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the orders dated 15.11.2017 in Crl.M.P (SR) No.5325 of 2017 in C.C.No.354 of 2015 pending on the file of Special Magistrate-II, Rajendranagar, Ranga Reddy District.

2. The petitioner filed complaint before the trial Court for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act') against the 2nd respondent. In the said complaint, the petitioner filed application under Section 311 Cr.P.C. to issue summons to the Bank Managers of SBH, Rajendranagar Branch and, SBI, Kattedan Brach to examine as witnesses on his behalf to disprove Exs.P.1, P.2 and prove D.1 and to put certain questions with regard to the running of account with the banks.

3. The trial Court dismissed the said application on the ground that in the earlier criminal petitions i.e. Crl.P.Nos.14213 and 14234 of 2016, this Court passed order on 07.08.2017 not to entertain any further application and dispose of the case at the earliest date.

4. Learned counsel for the petitioner contended that the petitioner is entitled to summon or recall any witness subject to permissibility under law. In view of the suggestion put to the witness that no running account was existing with the

bank and passbook was a false document, it necessitated the petitioner to file application under Section 311 Cr.P.C. He further contended that this Court in Crl.P.Nos.14213 and 14234 of 2016 has not issued any direction as stated supra and issuing such a direction will denude the petitioner from filing application to prove his positive case and that based on such order, the trial Court cannot dismiss the petition and prayed to set aside the impugned order passed by the trial Court.

5. Undoubtedly, the order passed in Crl.P.No.14213 and 14234 of 2016 by this Court is against the order passed under Sections 311 and 242 Cr.P.C. to receive documents. This Court observed that those petitions were filed one after another, and is not even contemplated, that itself indicates lack of bonafides on the part of the petitioner, with those observations concluded that there is nothing to interfere with the reasoned order, but for any such future filing of application to consider.

6. In fact, the said order does not disclose issue of any direction not to entertain any further petitions, but there is a direction to the trial Court to dispose of the case at the earliest. The dismissal of the application on the direction not to entertain any more petitions by the trial Court is erroneous on the face of record. However, it is made clear that filing of successive applications one after other for same relief under Section 311 or Section 242 Cr.P.C. is not contemplated under

the Code. But, the contention of the learned counsel for the petitioner is that subject to necessity, the petitioner is entitled to file petition under Section 311 Cr.P.C. No doubt, there is no prohibition under Section 311 Cr.P.C. from filing petition one after other, but it is made clear that subject to satisfaction of the Court, the Court can entertain such applications.

7. According to Section 311 Cr.P.C., any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

8. Such power to recall any witness or issue summons to witness is purely the discretion of the Court subject to satisfaction that it is essential to do complete justice to the parties. Therefore, such power has to be exercised with due circumspection. But in the present case, the petitioner earlier filed CrI.M.P.Nos.1052, 1053, 1542 and 1543 of 2016 under Sections 311 and 242 Cr.P.C. and they were disposed of by the trial Court and that those orders were challenged before this Court in CrI.P.Nos.14213 and 14234 of 2016, which were dismissed with the observation referred supra. Therefore, filing successive applications cannot be permitted because of the circumstances. If the Court satisfies that the evidence of proposed witness is essential to decide the real controversy, the Court may use such power and decide the matter.

Hence, the order passed by the trial Court noting down the observation not to entertain any more petitions and dispose of the case at the early date is misconceived since there was no direction not to entertain such applications.

9. Since the order under challenge is interlocutory in nature, no revision is maintainable against such an order, in view of the law laid down by the Apex Court in **Sethuraman Vs. Rajamanickam**¹, to get over the difficulty contained in Section 397(2) Cr.P.C, the petitioner invoked inherent jurisdiction of this Court under Section 482 Cr.P.C, circumventing the law, wherein the Apex Court in paragraph 4 held as follows:

"4. 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 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."

¹ 2009 CriLJ 2247

10. In **Girish Kumar Suneja v. C.B.I**², the full Bench of the Supreme Court had an occasion to decide the similar subject and held as follows in paragraphs 24,25,27,28 & 29:

“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 (Cr.) 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:

² AIR 2017 SUPREME COURT 3620

- (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 Cr.P.C. will govern Section 482 thereof. We endorse this view.

27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition – such a petition can be rejected at the threshold. If the High Court is inclined to accept the 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 the culmination of the proceedings. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 of the Cr.P.C. Crl. Appeal Nos._____/2017 etc. (@ SLP (Crl.) Nos. 9503/2016 etc.)

28. However, this does not mean that the appellants have no remedy available to them - paragraph 10 of the order does not prohibit the appellants from approaching this Court under Article 136 of the Constitution. Therefore all that has happened is that the forum for ventilating the grievance of the appellants has shifted from the High Court to this Court. It was submitted by one of the learned counsel that this is not good enough for the appellants since this Court is not obliged to give reasons while dismissing such a petition unlike the High Court which would necessarily have to give reasons if it rejected a revision petition. In our opinion, the mere fact that this Court could

dismiss the petition filed by the appellants under Article 136 of the Constitution without giving reasons does not necessarily lead to the conclusion that reasons will not be given or that some equitable order will not be passed. The submission of learned counsel has no basis and is only a presumption of what this Court might do. We cannot accept a submission that has its foundation on a hypothesis.

29. This leads us to another facet of the submission made by learned counsel that even the avenue of proceeding under Section 482 of the Cr.P.C. is barred as far as the appellants are concerned. As held in Amar Nath and with which conclusion we agree, if an interlocutory order is not revisable due to the prohibition contained in Section 397(2) of the Cr.P.C. that cannot CrI. Appeal Nos._____/2017 etc. (@ SLP (CrI.) Nos. 9503/2016 etc.) be circumvented by resort to Section 482 of the Cr.P.C. There can hardly be any serious dispute on this proposition.

11. In view of the law declared by the Apex Court, this Court cannot exercise jurisdiction to quash the order against which, revision is barred and such exercise of power under Section 482 Cr.P.C. would amount to circumventing the law.

12. In view of the aforesaid discussion, more particularly following the judgment of the Apex Court in **Girish Kumar Suneja** case referred supra, this criminal petition is liable to be dismissed.

13. Accordingly, the criminal petition is dismissed at the stage of admission.

Miscellaneous petitions, if any pending in this petition shall stands closed.

M. SATYANARAYANA MURTHY, J

04.12.2017
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