

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.12111 of 2017

ORDER

This petition is filed under Section 482 Cr.P.C., to set aside the order dated 30.11.2017 in Crl.M.P.No.1281 of 2017 in Crl.A.No.170 of 2017 passed by the Principal Sessions Judge, Karimnagar, wherein the Sessions Judge dismissed the petition to dispense with the presence of the petitioner as no proof is filed that the petitioner is suffering from ill-health and when the petition is filed to suspend the sentence, the petitioner absent.

2. In fact, the trial Court already issued NBWs against this petitioner for his non appearance during all adjournments since no interim suspension order was granted by the Sessions Court in exercise of power under Section 389(1) Cr.P.C.

3. 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

¹ 2009 CriLJ 2247

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.”

4. In **Girish Kumar Suneja v. C.B.I**², 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:

“Therefore, when Section 397(2) prohibits interference in respect of interlocutory orders, Section 482, cannot be availed of to achieve 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, although, appellants might have an entitlement (not a right) to file a revision petition in High Court but that entitlement can be taken away and in any event, High Court is under no obligation to entertain a revision petition – such a petition can be rejected at threshold. If High Court is inclined to accept 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 culmination of proceedings. There appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before Supreme Court. consequently result of paragraph 10 of order dated 25.07.2014 passed by Supreme Court is that entitlement of appellants to file a revision petition in High Court is taken away and thereby High Court is deprived of exercising its extraordinary discretionary power available under Section 397 of the

² AIR 2017 SUPREME COURT 3620

Cr.P.C. However, it does not mean that appellants have no remedy available to them – paragraph 10 of order dated 25.07.2014 does not prohibit appellants from approaching Supreme Court under Article 136 of Constitution. Therefore all that has happened is that forum for ventilating grievance of appellants has shifted from High Court to Supreme Court. Mere fact that Supreme Court could dismiss petition filed by appellants under Article 136 of Constitution without giving reasons does not necessarily lead to conclusion that reasons will not be given or that some equitable order will not be passed. Thus, if an interlocutory order is not revisable due to the prohibition contained in Section 397(2) that cannot be circumvented by resort to Section 482”.

5. In view of the law declared by the Supreme Court in **Girish Kumar Suneja**⁷ case, where no revision is maintainable against interlocutory order, in view of bar under Section 397(2) Cr.P.C, similarly petition under Section 482 Cr.P.C is also not maintainable. Hence, the petition is liable to be dismissed. However, the petitioner is permitted to file appropriate application before the Sessions Court to recall NBW pending against him after serving notice on the respondent and on such application and on appearance of the petitioner, the Sessions Judge is directed to dispose of the same in accordance with law on the same day.

6. Accordingly, the criminal petition is disposed of.

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

M. SATYANARAYANA MURTHY, J

07.12.2017
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