

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.12287 of 2017

ORDER

This criminal petition is filed under Section 482 of Cr.P.C., to quash the order dated 04.04.2017 passed in Crl.M.P.No.810 of 2017 in C.C.No.123 of 2016 by the Judicial Magistrate of First Class, Special Mobile Court, Chittoor, whereby the Magistrate dismissed the application filed under Section 311 of Cr.P.C., to recall P.W.1 for further cross-examination.

2. The petitioner is accused in C.C.No.123 of 2016. He filed a petition under Section 311 of Cr.P.C., to recall P.W.1 on the ground that the witness was not cross-examined on certain aspects regarding the discharge of the debt due under the promissory note and failure to take back the promissory note etc., which are crucial in the matter. But the Magistrate, upon hearing arguments of the petitioner, dismissed the petition.

3. The order under challenge was passed in a petition under Section 311 of Cr.P.C., which is interlocutory in nature, against which, no revision is maintainable in view of the law declared by the Apex Court in **Sethuraman v. Rajamanickam**¹.

4. Since the revision is not maintainable against the order passed in a petition filed under Section 311 of Cr.P.C., in view of the bar under Section 397(2) of Cr.P.C., the petition under Section 482

¹ 2009 Cr.L.J. 2247

of Cr.P.C. is not maintainable. In **Girish Kumar Suneja V. C.B.I**², the Apex Court 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;
- (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.

² AIR 2017 SC 3620

In view of the law declared by the Apex Court in the above referred judgment, when no revision is maintainable in view of the bar under Section 397(2) of Cr.P.C., the petition under Section 482 of Cr.P.C., is not maintainable.

5. In the result, the Criminal Petition is dismissed. However, the petitioner is at liberty to workout the legal remedies available under law.

6. Miscellaneous petitions, if any pending in this criminal petition, shall stand dismissed.

12th December, 2017

Note:
Issue CC by 18.12.2017

sj

M. SATYANARAYANA MURTHY, J

