

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.11961 OF 2017

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to set aside the order dated 12.10.2017 in CrI.M.P.No.1222 of 2017 in C.C.No.281 of 2016 on the file of XIX Special Magistrate at Hyderabad, whereby the petition filed by the petitioner seeking direction against the respondent to deposit his original passport No.Z2492500 issued at Dubai on 21.11.2013 was dismissed.

The petitioner filed the above said CrI.M.P.No.1222 of 2017 on the ground that the respondent is avoiding to appear before the Court, thereby the trial is being delayed.

The petitioner is the complainant, who filed the private complaint for the offence punishable under Section 138 of Negotiable Instruments Act. But curiously a direction as sought against the respondent to deposit his passport into the Court on the sole ground that he is avoiding to appear before the Court, but this is not a ground to issue such direction to deposit the passport into the Court, if such direction is issued, it would amount to depriving liberty of the respondent to move to other country. Therefore, the order sought for by the petitioner is in violation of fundamental right guaranteed by the Constitution of India.

The order under challenge is interlocutory order, against which no revision is maintainable under Section 397 (2) of Cr.P.C. Therefore, the petitioner invoked the jurisdiction of this Court under Section 482 of Cr.P.C., at the same time the petition under Section 482 of Cr.P.C. is not maintainable under law as held by the Apex

Court in “**Girish Kumar Suneja v. C.B.I**”¹. In the said judgment, the Apex Court held as follows:

“The second reason why Amar Nath (AIR 1977 SC 2185) 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 Code of Criminal Procedure prohibits interference in respect of interlocutory orders, Section 482 of the Code of Criminal Procedure cannot be availed of to achieve the same objective. In other words, since Section 397(2) of the Code of Criminal Procedure prohibits interference with interlocutory orders, it would not be permissible to resort to Section 482 of the Code of Criminal Procedure 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 provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers.

This view was reaffirmed in Madhu Limaye (AIR 1978 SC 47) when the following principles were approved in relation to Section 482 of the Code of Criminal Procedure 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 Code of Criminal Procedure will govern Section 482 thereof. We endorse this view.”

In view of the law declared by the Supreme Court in “**Girish Kumar Suneja v. CBI**” (referred supra), no revision is maintainable against interlocutory order, in view of bar under Section 397(2) Cr.P.C. at the same time, this Court cannot set aside the impugned

¹ AIR 2017 SC 3620

order invoking power under Section 482 of Cr.P.C. as it amounts to circumventing law.

Therefore, I find no merit in the present petition as it is devoid of merits. Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed. No costs.

Consequently, miscellaneous petitions pending, if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

05.12.2017
Ksp

