

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 12718 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to quash the order dated 06-12-2017 in Criminal M.P.No. 2266 of 2017 in C.C.No. 269 of 2016 on the file of the Court of Special Magistrate, Cyberabad at Hayathnagar (for short, 'the Court below').

2. Respondent No. 2 filed the abovementioned miscellaneous petition to recall D.W.2 for further cross-examination. The Court below after hearing both counsel held that a reasonable opportunity should be afforded to respondent No. 2 and accordingly allowed the petition by the impugned order. Feeling aggrieved by the same, the present petition is filed by the petitioner-accused.

3. This Court took an objection about maintainability of the present petition. Learned counsel for the petitioner would contend that the order under Section 311 Cr.P.C. is interlocutory in nature and therefore the present petition is maintainable. Admittedly, the order under challenge is interlocutory in nature and against such an order, no revision is maintainable. In **Sethuraman Vs. Rajamanickam**¹, wherein the Apex Court in paragraph 4 held as follows:

"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,

¹ 2009 CrI.L.J. 2247

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."

Therefore, in view of the law declared by the Apex Court in **Sethuraman** (*supra*), the order passed on an application filed under Section 311 Cr.P.C. is interlocutory in nature and against such an order, no revision is maintainable. In **Girish Kumar Suneja Vs. C.B.P.**², a Full Bench of the Supreme Court had an occasion to decide similar subject and held as follows:

"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 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

² AIR 2017 SC 3620

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."

In view of the law declared by the Apex Court in the above two judgments, the present petition under Section 482 Cr.P.C. is not maintainable and the same is liable to be dismissed.

4. The criminal petition is accordingly dismissed at the stage of admission. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 21-12-2017.
JSK

M.SATYANARAYANA MURTHY, J.

