

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.11606 of 2017

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C., to call for the records relating to order, dated 17.02.2017, in CrI.M.P.No.298 of 2017, passed by the II Special Magistrate Court at Hastinapuram, and also the order, dated 06.06.2017, in CrI.R.P.No.60 of 2017, passed by the XIII Additional District and Sessions Judge, L.B.Nagar, and quash the same.

2. The petitioner is accused in C.C.No.106 of 2016 on the file of II Special Magistrate at Hasthinapuram, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. CrI.M.P.No.298 of 2017 is filed under Section 311 Cr.P.C., to recall P.Ws.1 to 3 on the ground that the previous counsel, who appeared for them before the Court below, has not properly cross-examined the witness with regard to certain documents. The Court below, after perusing the entire material on record, dismissed the petition. Aggrieved by the said order, the petitioner preferred revision in CrI.R.P.No.60 of 2017 before the XIII Additional District & Sessions Judge, Ranga Reddy District at L.B.Nagar and the same was dismissed confirming the order, dated 17.02.2017.

3. Learned counsel for the petitioner contended that no opportunity was afforded to the petitioner to cross-examine P.Ws.1 to 3 to confront certain documents and that the petitioner is ready to pay costs of Rs.5000/- to the credit of said Calendar Case, in case the petition is allowed and hence, prays to set aside the impugned order.

4. The only contention of learned counsel for the petitioner is that the earlier counsel on record, who appeared for the petitioner before the Court below, did not cross-examine the witnesses properly therefore, the petitioner intends to cross-examine P.Ws.1 to 3 for confronting certain documents.

5. Section 311 Cr.P.C., conferred power on the Courts to recall witnesses subject to its satisfaction and that recall of witnesses is necessary for deciding the real controversy between the parties. The contention of learned counsel for the petitioner that the earlier counsel on record has not properly cross-examined the witnesses is not a ground to set aside the order and on that simple ground, the petition is liable to be dismissed. The other contention that he will deposit costs of Rs.5,0000/- to the credit of aforesaid Calendar Case, in case the petition is allowed. But, that is also not a ground to set aside the impugned order.

6. Yet, another lacuna in this petition is its maintainability. The petitioner filed petition under Section 311 Cr.P.C., to recall witnesses, which ended in dismissal. Against the said order, revision is not permissible under Section 397 (2) Cr.P.C., in view of law declared by the Apex Court in **Sethuraman v. Rajamanickam**¹. But, still there is doubt to entertain revision under Section 397 Cr.P.C. and pass an order. Of-course, dismissing Interlocutory Application, which is not amenable to revisional jurisdiction, the petitioner is not entitled to invoke the jurisdiction of this Court under Section 482 Cr.P.C., in view of law declared by the Full Bench of the Apex Court in **Girish Kumar**

¹ 2009 CriLJ 2247

Suneja v. C.B.I², wherein the Hon'ble Apex Court held that 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 Cr.P.C. To set aside an interlocutory order prohibition in Section 397 Crl.P.C., will govern Section 482 Cr.P.C., thereof.

7. In view of law declared by the Apex Court, the petitioner is disentitled to invoke the jurisdiction of this Court under Section 482 Cr.P.C., since the revision itself is not maintainable against the order passed under Section 311 Cr.P.C., in view of interdict contained in Section 397 (2) Cr.P.C. Hence, I find no ground to ground set aside the impugned order.

8. Accordingly, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY, J

NOVEMBER 24, 2017

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² AIR 2017 SUPREME COURT 3620

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Date: 24.11.2017

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