

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.11601 of 2017

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed aggrieved by the order, dated 05.05.2017, in CrI.M.P.No.729 of 2017 in C.C.No.253 of 2016 on the file of II Special Magistrate, Hasthinapuram, Ranga Reddy District, whereunder and whereby, the petition filed under Sections 311 and 294 Cr.P.C., to reopen the evidence and to receive the documents filed along with the petition was allowed. Challenging the same, the present petition is filed by the petitioners/A.1 and A.2.

2. The contention of learned counsel for the petitioners is that at the stage of argument, without there being any pleading either in the complaint or at least an averment in the notice, the second respondent/complainant cannot introduce such evidence for the first time by filing application under Section 311 Cr.P.C., and hence, prays to set aside the impugned order.

3. The trial Court though recorded an erroneous finding, the petitioners preferred revision in Criminal Revision Petition No.107 of 2017 before VIII Addition District and Sessions Judge, Ranga Reddy District at L.B.Nagar, and the same was dismissed by order, dated 09.11.2017, on the ground that the revision is not maintainable in view of bar under 397 (2) Cr.P.C., by following the principles laid down by the Apex Court in **Sethuraman v. Raja Manikkam**¹ and **Bhaskar Industries Ltd., v. Bhiwani Denim and**

¹ (2009) 5 SCC 153

Ltd². The present petition is filed without challenging the order passed by District Judge, reiterating the same ground.

4. This Court took an objection about maintainability of the petition at the stage of admission, in view of law declared by the Apex Court in **Girish Kumar Suneja v. C.B.I**³, 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.

5. In view of law declared by the Apex Court, this Court cannot exercise the power under Section 482 Cr.P.C., to set aside the order passed in Interlocutory Applications when there is a clear interdict under Section 397 (2) Cr.P.C., to entertain a revision. In view of the above, the present petition is not maintainable and the same is liable to be dismissed.

6. 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 2001 (3) SCJ 176

³ AIR 2017 SUPREME COURT 3620

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Date: 24.11.2017

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