

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CRIMINAL PETITION No.12487 of 2017****ORDER:**

This Criminal Petition, under Section 482 Cr.P.C., is filed to quash the Order dt.24.11.2017 in CR.M.P.No.548 of 2016 in SSC No.51 of 2012 passed by VII Additional District Judge, Warangal-cum-Special Sessions Judge for Trial of case under SCs and STS (POA) Act, registered for the offences punishable under Sections 506 IPC and Section 3 (1) (IV) (x) SCs and STs (POA) Act.

The petitioner/accused filed an application under Section 65-B of Indian Evidence Act to receive the Compact C.D., for the purpose of confronting the same with prosecution witnesses during their examination as the conversation recorded in the CD is relevant for the purpose of deciding the complicity of this petitioner as accused, since, the complainant insisted for payment of huge money to settle the dispute amicably and requested this Court to receive the said CD along with the conversation papers.

The respondent filed Counter before the trial Court denying the right of the petitioner to introduce such CD as evidence to confront the witnesses at a particular stage. The learned Sessions Judge dismissed the petition assigning reasons for dismissal.

Aggrieved by the Order passed by the District Judge, the present petition is filed under Section 482 Cr.P.C. to quash the Order in CR.M.P.No.548 of 2016 in SSC No.51 of 2012 contending that the conversation recorded in the CD and the copy of the document translated are relevant to confront the witness regarding the subsequent conduct of the respondent/complainant i.e., demanding of huge money for settling the issue pending before the Court.

During the course of arguments, learned counsel for the petitioner fairly conceded that the matter is coming up for argument after closure of prosecution evidence and completion of 313 Cr.P.C. examination of the petitioner herein and if the Court received the CD, the question of certification as required under Section 65-B would arise and filing of an application for recalling the witnesses would arise. At this stage, unless the petitioner is permitted to introduce the CD, it is difficult for him to establish his innocence in the above sessions case and prayed to receive the same.

According to the petitioner/accused, the conversation between the petitioner and the complainant was recorded in the CD, but it was not confronted to the witnesses when the witnesses were cross examined by the counsel for the petitioner and at best, it is only a subsequent event during pendency of the proceedings in SSC No.51 of 2012. The complicity of the accused is to be determined basing on the evidence as on the date of filing charge sheet based on the material before it, but subsequent conduct of insisting for payment of money by the complainant is not a ground to exonerate the petitioner/accused for the offences punishable under Sections 506 IPC and Section 3 (1) (IV) (x) SCs and STs (POA) Act. However, Section 65-B of Evidence Act deals with admissibility of electronic record and filing such an application under relevant provisions of Evidence Act itself is an abuse of process of the Court. No permission is required to confront such electronic record when the witness is in the witness box and if the witness denied the material contained in the C.D and the conversation material written on the paper, then the question would arise whether such CD can be received? Even in the examination under Section 313 Cr.P.C, the accused is entitled to file such documents including CD, subject to admissibility, but he did not choose to file any such material

in his examination under Section 313 Cr.P.C. Therefore, receiving CD as evidence enabling the petitioner to confront without filing any certificate as required under Section 65(B) of Indian Evidence Act and without filing any application for recall of any particular witness under Section 311 Cr.P.C, the question of receiving the CD enabling the counsel for the petitioner to confront those contents of the CD to the witness does not arise.

In any view of the matter, the order under challenge is only interlocutory in nature, against which no revision is maintainable in view of the interdict contained under Sub Section 2 of Section 397 Cr.P.C. When the Order is not amenable to the revisional jurisdiction, this Court cannot entertain a petition under Section 482 Cr.P.C. circumventing the law, in view of the law declared by 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

¹ AIR 2017 SC 3620

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."

By applying the principle laid down in the above judgment, I find that the petition itself is not maintainable.

In view of my foregoing discussion, the petitioner is not entitled to introduce CD without filing any petition under Section 311 Cr.P.C. to recall any of the witnesses and the CD accompanied by a certificate as required under Section 65-B of Indian Evidence Act at the stage of argument. Therefore, I am not inclined to interfere with the order passed by the trial Court exercising jurisdiction under Section 482 Cr.P.C.. Consequently, the petition is liable to be dismissed.

Accordingly, this Criminal Petition is dismissed at the stage of admission. As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 15.12.2017

Note: Issue C.C. by 19.12.2017.

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HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY



Crl.P. No.12487 of 2017

Dt. 15.12.2017

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