

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.24606 OF 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the order dated 26.12.2017 passed by the II Additional Special Judge for C.B.I. Cases, Visakhapatnam in CrI.M.P.No.2138 of 2017 in C.C.No.14 of 2010 and to direct the Special Judge to adjourn the proceedings till disposal of pending quash proceedings in CrI.P.Nos.12603 and 11934 of 2017 on the ground that the criminal petition is reserved for orders and whereas, the II Additional Special Judge for CBI Cases is going to pronounce the judgment within three days.

2. The petitioner filed a petition under Section 309 Cr.P.C. on 26.12.2017 to adjourn the proceedings for a period of four weeks on the ground that one Kasturi Janardhan and Sri Rayudu Veera Raghavulu filed CrI.P.Nos.12603 and 11934 of 2017 respectively and orders if any passed will go to the root of the case, but the Special Judge granted time till 29.12.201 instead of granting four weeks time to proceed with the matter and that the impugned is not supported by any reasoning.

3. The petition under Section 309 Cr.P.C. is neither amenable to the revisional jurisdiction under Section 397 Cr.P.C. nor inherent jurisdiction under Section 482 Cr.P.C and no revision is maintainable against such order in view of the bar under Sub-section 2 of Section 397 Cr.P.C. The Apex Court in **Girish Kumar**

Suneja v. C.B.I¹ had an occasion to decide the similar question 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 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”.”

4. When no revision is maintainable against interlocutory order, in view of the interdict contained under Section 397(2) Cr.P.C, the Court cannot entertain a petition under Section 482 Cr.P.C. and if any such petition is entertained it is nothing but circumventing Section 397(2) Cr.P.C as held by the Apex Court in **Girish Kumar Suneja**’ case. Hence, I find no ground to quash the impugned order since the trial Court did commit no error.

¹ AIR 2017 SUPREME COURT 3620

5. Accordingly, the criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:28.12.2017

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