

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL PETITION NO.24682 OF 2017**

**ORDER:**

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in Criminal Revision Petition No.38 of 2017 dated 20.07.2017 on the file of VII Additional District and Sessions Judge, Ongole, confirming the order in CrI.M.P.No.705 of 2017 in C.C.No.166 of 2015 dated 12.04.2017 on the file of III Additional Judicial Magistrate of First Class, Ongole.

The second respondent herein filed application against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act'). The petitioner took a plea that the cheques were issued as security for due payment of monthly instalment for unauthorized chit run by the second respondent. The presumption under Section 139 of N.I Act is rebuttable and to rebut such presumption, the petitioner filed a petition to issue summons to the Head Master of Z.P. High School, Santhanuthalapadu and the District Educational Officer, Prakasam District to adduce evidence and to produce financial statements of the second respondent. As, both the Courts below dismissed the petitions and challenging the same, the present criminal petition is preferred.

During hearing, Sri K. Ananda Rao, learned counsel for the petitioner contended that, to rebut the presumption under Section 139 of N.I. Act, the petitioner has to adduce evidence. But, such opportunity was denied by both the Courts below i.e. III Additional Judicial Magistrate of First Class, Ongole, and VII Additional

District & Sessions Judge, Ongole. Except examination by summoning of those witnesses, no other mode is available to dispel the presumption under Section 139 of N.I. Act and prayed to allow the criminal petition.

The petitioner filed Crl.M.P.No.705 of 2017 in C.C.No.166 of 2015 under Sections 311 & 91 Cr.P.C to summon the Head Master of Z.P. High School, Santhanuthalapadu and the District Educational Officer, Prakasam District, to cause production of financial statements of the second respondent and to examine them. But, the petition was dismissed by the Trial Court, against which the petitioner filed a revision under Section 397 Cr.P.C in Criminal Revision Petition No.38 of 2017 dated 20.07.2017 on the file of VII Additional District and Sessions Judge, Ongole. But, the revision itself is not maintainable against an order passed under Section 311 & 91 Cr.P.C. Admittedly, the order under challenge is interlocutory in nature as held by the Apex Court in view of the law laid down by the Apex Court in **Sethuraman Vs. Rajamanickam**<sup>1</sup>. Against such an order, revision under Section 397 Cr.P.C is not maintainable in view of the bar as per Subsection (2) of Section 397 Cr.P.C. Therefore, entertaining a revision and deciding revision by the VII Additional District and Sessions Judge, Ongole is an illegality committed by the VII Additional District and Sessions Judge, Ongole. Therefore, the order passed by the VII Additional District and Sessions Judge, Ongole, cannot be quashed on that ground alone.

Yet, the learned counsel for the petitioner contended that, no second revision is maintainable against the revisional order.

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<sup>1</sup> 2009 CriLJ 2247

Therefore, the petitioner invoked inherent jurisdiction of this Court under Section 482 Cr.P.C.

There is no quarrel about non-maintainability of the second revision against a revisional order. But, the first revision itself is not maintainable against the order challenged before the revisional Court. even otherwise, the order passed by the Magistrate is only interlocutory in nature, against which no revision lies, in view of Subsection (2) of Section 397 Cr.P.C. But, the petitioner approached the revisional Court and invited an adverse order and further, approached this Court by invoking the inherent jurisdiction under Section 482 Cr.P.C. When no revision is maintainable against an interlocutory order, the petition filed under Section 482 Cr.P.C is not maintainable.

In “**Girish Kumar Suneja v. C.B.P**”, full Bench of the Supreme Court had an occasion to decide the similar subject and held as follows:

“The second reason why **Amar Nath v. State of Haryana** (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

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<sup>2</sup> AIR 2017 SC 3620

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 provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers.

This view was reaffirmed in **Madhu Limaye v. State of Maharashtra** (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.”

In view of the law declared by the Apex Court in the above referred judgments, when there is a bar to entertain a revision under interlocutory order, the jurisdiction of this Court cannot be invoked under Section 482 Cr.P.C. Therefore, by applying the principles laid down in the above judgments, this criminal petition is not maintainable under Section 482 Cr.P.C and the criminal petition is liable to be dismissed at the admission stage.

In the result, the criminal petition is dismissed.

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

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**JUSTICE M. SATYANARAYANA MURTHY**

Date:29.12.2017

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