

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M No. 39009 of 2017
Date of Decision: 13.10.2017**

Rattan Amol Singh

.....**Petitioner**

v.

Jalandhar Development Authority through Rakesh Kumar

.....**Respondents**

CORAM HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present:- Mr. Ankur Bansal, Advocate, for the petitioner

SHEKHER DHAWAN, J.

Present petition under Section 482 of Code of Criminal Procedure [Cr.P.C.] is for quashing of Complaint No . 48/2 of 2011 dated 20.3.2010 (Annexure P/1) titled “**Jalandhar Development Authority v. Rattan Amol Singh**”, filed under Sections 3, 5, 8, 9, 14(2), 15, 18 and 21 read with Section 36 of Punjab Apartment and Property Regulation Act, 1995 [for short, “the Act”] and the impugned order dated 2.7.2012 Annexures P/2, passed by learned Judicial Magistrate Ist Class, Jalandhar.

Learned counsel for the petitioner mainly contended that the continuation of proceedings on the basis of summoning order dated 2.7.2012 (Annexure P/2), passed by learned Judicial Magistrate Ist Class, shall be a miscarriage of justice.

Having considered the submissions made by learned counsel for the petitioner, this Court is of the considered view that the orders under challenge were passed by learned Judicial Magistrate. The said orders can

be challenged before the Court of Sessions as per provisions of Section 397 Cr.P.C. For facility of reference, Section 397 Cr.P.C., is extracted below:-

“397. Calling for records to exercise powers of revision.

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation .- *All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.*

(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

4. The above quoted provisions give power to move before the Court of Sessions as well for challenging the orders by way of revision.

5. Section 482 Cr.P.C. deals with inherent powers of this Court. It is well-established principle of law that inherent powers conferred on this Court under Section 482 Cr.P.C. has to be exercised sparingly with circumspection and in rare cases and that too, to correct patent illegalities of when some miscarriage of justice is done. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed, because they are initiated illegally, vexatiously or without jurisdiction and where the allegations, even if they are taken at their face value

and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

The content and scope of power under Section 482 Cr. P.C. were examined in considerable details by Hon`ble Apex Court in **Madhu Limaye v. State of Maharashtra, 1978 AIR (SC) 47**, and it was held as under:

“The following principles may be stated in relation to the exercise of the inherent power of the High Court:-

(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.”

The main prayer of the petitioner in the present petition is to quash the impugned orders, Annexures P/2 passed by learned Judicial Magistrate. Apparently, the petitioner has an alternative remedy of filing revision against the said orders before the Court of Sessions.

In view the above, the present petition under Section 482 Cr.P.C. is not maintainable and is dismissed as such. However, the petitioner shall be at liberty to avail alternative remedy as available under the law.

(SHEKHER DHAWAN)
JUDGE

13.10.2017

Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No