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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on : 16th May, 2017

+ WP(CRL.) 1260/2016 & CrI. M.A. 6619/2016

BRAHM PRAKASH BHARDWAJ Appellant
Through: Mr. Santosh Kumar, Advocate
with appellant in person

versus

STATE & ANR Respondents
Through: ASC Avi Singh and Ms. Anya
Singh, Advocate for State with ASI
Dineshan K., PS Maya Puri
Rakesh Kumar Garg, Advocate for R-2

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Invoking the jurisdiction of this court under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC), the petitioner herein seeks to assail the order dated 16.05.2015 of the court of sessions in Criminal Revision No.77/1/2014 whereby the earlier order dated 20.08.2014 of the Metropolitan Magistrate-01 (West) on the file of the complaint case no.605/1 dismissing the complaint of the petitioner was upheld.
2. On notice, the second respondent against whom the criminal complaint was directed has appeared, he having resisted the petition

by formal reply, in response to which, the petitioner had filed a rejoinder.

3. Submissions of all sides have been heard and the record has been perused.

4. By complaint presented in the court of the Metropolitan Magistrate on 30.03.2012, the petitioner had alleged offences punishable under Sections 182, 199, 200 and 506 of the Indian Penal Code, 1860 (IPC) having been committed by the second respondent, his immediate neighbour. The Magistrate held preliminary inquiry under Sections 200 & 202 Cr. PC wherein the petitioner examined himself as CW-1, also examining one Bala Dutt as CW-2. At the stage of inquiry under Section 202 Cr. PC, report was also called for from the police. Report of such inquiry through police was submitted on 02.05.2013 by SI Ram Gopal of PS Maya Puri.

5. On consideration of the evidence adduced at the pre-summoning inquiry and report of inquiry through the police, the Magistrate found no sufficient grounds to have been made out for proceeding against the respondent and, thus, by order dated 20.08.2014, dismissed the complaint. It may be noted that the Magistrate was not satisfied for the reason of bar under Section 195 Cr. PC vis-à-vis the prayer for prosecution for offences punishable under Sections 182, 199, 200 IPC and further he was not satisfied with the evidence led about the offence of criminal intimidation punishable under Section 506 IPC for the reason the requisite evidence about alarm having been caused pursuant to the threats extended was amiss.

6. The order of the Magistrate dismissing the complaint was challenged by the petitioner through a criminal revision petition before the court of session invoking its jurisdiction under Section 397 Cr. PC. The revision petition was dismissed by the Additional Sessions Judge-03 by order dated 16.05.2015 upholding the view taken by the court of the Magistrate.

7. Against the above backdrop, an issue of procedure has been raised. It has been submitted on behalf of the second respondent that the petitioner having availed of the remedy of revision, the writ jurisdiction or the provision of Section 482 Cr. PC should not be allowed to be used as a substitute for second revisional challenge or scrutiny which is clearly barred under Section 397 (3) Cr. PC.

8. An identical issue had been raised in similar fact situation in *Crl. M.C. 4064/2016, State Vs. Rakesh Dhawan*, decided by this court on 28.04.2017. In the said order, the relevant law on the subject was noted as under :-

“5. There is merit in the contention urged on behalf of the respondent. Reference may be made in this regard to the following observations in Kailash Verma vs. Punjab State Civil Supplies Corporation & Anr., (2005) 2 SCC 571:-

“5. It may also be noticed that this Court in Rajathi v. C. Ganesan [(1999) 6 SCC 326 : 1999 SCC (Cri) 1118] said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilised as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court

under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.”

(emphasis supplied)

6. *In Surender Kumar Jain vs. State & Anr., ILR (2012) 3 Del 99, a learned Single Judge of this Court accepted similar objects by the following observations:-*

“5. The issue regarding filing of petition before the High Court after having availed first revision petition before the Court of Sessions has come up before the Supreme Court and this Court repeatedly. While laying that section 397(3) Cr. P.C. laid statutory bar of second revision petition, the courts have held that High Court did enjoy inherent power under section 82 (sic) Cr. P.C. as well to entertain petitions even in those cases. But, that power was to be exercised sparingly and with great caution, particularly, when the person approaching the High Court has already availed remedy of first revision in the Sessions Court. This was not that in every case the person aggrieved of the order of the first revision court would have the right to be heard by the High Court to assail the same order which was the subject matter of the revision before Sessions Court. It was all to depend not only on the facts and circumstances of each case, but as to whether the impugned order bring about a situation which is an abuse

of process of court or there was serious miscarriage of justice or the mandatory provisions of law were not complied with. The power could also be exercised by this Court if there was an apparent mistake committed by the revisional court. Reference in this regard can be made to the judgments of the Supreme Court in Madhu Limave v. State of Maharashtra(1977) 4 SCC 551, State of Orissa v. Ram Chander Aggarwal, (1979) 2 SCC 305 : AIR 1979 SC 87, Rai Kapoor v. State (Delhi Administration)1980 Cri. L.J. 202, Krishnan v. Krishnaveni and Kailash Verma v. Punjab State Civil Supplies Corporation (2005) 2 SCC 571.”

9. Having heard the learned counsel on both sides, it is clear that in the case at hand, it cannot be said that there has been a miscarriage of justice warranting interference by this court in the extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India or under Sections 482 Cr. PC. There is no case made out of abuse of the process of the court or constituting breach of mandatory provisions. In this view of the matter, the petitioner having already availed of the remedy of revision, the petition at hand ought not be entertained.

10. The petition and the accompanying application are, thus, dismissed.

R.K.GAUBA, J.

MAY 16, 2017

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