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

Decided on: 28th April, 2017

+ CRL.M.C. 4064/2016

STATE

..... Petitioner

Through: Mr. Tarang Srivastava, APP for
the State with SI Kamal Singh,
PS Amar Colony.

versus

RAKESH DHAWAN

..... Respondent

Through: Mr. Saket Sikri, Advocate with
Mr. Vikalp Mudgal, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petition at hand invokes the inherent power of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) to challenge the order dated 11.03.2016 of the court of Additional Sessions Judge-04, (South-East), in criminal revision no.161/2015 whereby the petition under Section 397 Cr.P.C., also of the petitioner/State, challenging the order dated 25.02.2015 of the court of Metropolitan Magistrate-08 (South-East) on the file of criminal case arising out of First Information Report (FIR) No.04/2014 under Section 509 of the Indian Penal Code, 1860 (IPC) of Police Station Amar Colony was dismissed.

2. It may be mentioned at this stage that the respondent herein had been earlier summoned by the Metropolitan Magistrate on the basis of charge-sheet submitted on conclusion of investigation into FIR No.4/2014 which had been registered on 02.01.2014 on the complaint of one Anuradha Laxman, an employee of the company Hot Biz Systems Private Limited in which Neelam Dhawan, sister-in-law of the respondent herein was the proprietor. It appears from the FIR that there was some dispute between the said Neelam Dhawan, on one hand, and the respondent, on the other, as to the use of the premises described as 218, Kailash Hills, East of Kailash, New Delhi. It further appears that the employees of the company wherein the first informant was working had been using, over the years, a washroom at the ground floor of the premises for which they were required to go through the portion which was under the control of the respondent. It was alleged that the respondent had made certain changes which had resulted in the said passage to the washroom becoming unavailable. The first informant statedly had approached the said portion on 31.12.2013 but the respondent asked her to go out and while forcing her away used abusive language and words to the effect that it was not his responsibility and that the employees of the other company could as well urinate on the public road.

3. The magistrate, after hearing arguments, by her order dated 25.02.2015, found no case made out for putting the respondent to trial for offence under Section 509 IPC as had been sought. She, thus, discharged him by said order dated 25.02.2015 which was assailed by

the petitioner/State through revision petition referred to above, but unsuccessfully, in as much as the sessions court found the plea to contrary to be devoid of merits, *inter alia*, with reference to the view taken in the case reported as *Basheer & Anr. Vs. State of Kerala*, *Crl.M.C. 837/2010*, decided on 26.03.2014 by Kerela High Court.

4. The learned counsel representing the respondent, at the hearing, has raised a procedural issue. He submitted that the petitioner having availed of the remedy of revision, provision of Section 482 Cr.P.C. 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.P.C.

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.”

(emphasis supplied)

7. Having heard the learned counsel on both sides, this court is satisfied that it cannot be said that there has been a miscarriage of justice in the case at hand warranting interference by this court in the extraordinary jurisdiction under Section 482 Cr.P.C.

8. The State having availed of the remedy of revision, there being no abuse of the process of court nor any breach of mandatory provisions of law, the petition at hand ought not be entertained.

9. The petition is, thus, dismissed.

R.K.GAUBA, J.

APRIL 28, 2017

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