

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.532 OF 2018

ORDER:

This Criminal Petition is filed under Section 482 of Cr.P.C. for quashing the order dated 24.11.2017 passed in I.A. No.2174 of 2016 in C.C. No.26 of 2016 on the file of the Judicial Magistrate of First Class, Tanuku, West Godavari District, wherein the learned Magistrate allowed the accused-respondent No.2 herein to summon the Branch Managers of Indian Bank, Tanuku and State Bank of India, Tanuku, and Chirla Radha Krishna @ Radhayya, Ex-Chairman, AMC, Tanuku.

2. Heard the learned counsel for the petitioner-*de facto* complainant and the learned Assistant Public Prosecutor for respondent No.1-State, apart from perusing the material available on record.

3. The case and contention of the petitioner-*de facto* complainant are that the impugned order is contrary to law and facts; there is necessity for the accused to enter into the witness box in support of his case and he can discharge his burden basing on the evidence available on record; the learned Magistrate erroneously allowed the accused to summon the witnesses in support of his defence; and ultimately, prayed to allow this application by setting aside the impugned order passed by the learned Magistrate.

4. On the other hand, learned Assistant Public Prosecutor opposed the relief sought by the petitioner-*de facto* complainant.

5. In view of the contentions putforth by both sides, the point for determination is, whether the request of the petitioner can be acceded to?

6. In view of the decision rendered by a Full Bench of the Hon'ble Supreme Court in **Girish Kumar Suneja v. C.B.I.**¹, where a revision to the High Court against the interlocutory order of the Subordinate Court is expressly barred under sub-section (2) of Section 397 Cr.P.C., the inherent powers contained in Section 482 Cr.P.C. are not available to defeat the bar contained in Section 397(2) Cr.P.C. As per Section 397(2) Cr.P.C., the powers of revision conferred under sub-section (1) of Section 397 Cr.P.C. shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings. The power of this Court to entertain a revision is severely curtailed by sub-section (2) of Section 397 Cr.P.C. in respect of interlocutory orders passed in any appeal, inquiry, trial or other proceedings. When there is an express bar under sub-section (2) of Section 397 Cr.P.C., the parties cannot resort to the provisions under Section 482 Cr.P.C. to redress the grievance. The decision rendered in **Girish Kumar Suneja's** case (*supra* 1) holds the field. Since the impugned order is an interlocutory order and as there is bar under Section 397(2) Cr.P.C. to file a revision against an interlocutory order, the petitioner cannot seek similar remedy under Section 482 Cr.P.C. Under these circumstances, the Criminal Petition is liable to be dismissed.

7. Accordingly, this Criminal Petition is dismissed. Miscellaneous petitions, if any pending in this Criminal Petition, shall also stand dismissed.

Dr. SHAMEEM AKTHER, J

Date: 29-01-2018

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¹ AIR 2017 SC 3620