

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.678 OF 2018

ORDER:

This Criminal Petition is filed under Section 482 of Cr.P.C. seeking to quash the order dated 18.12.2017 in Crl.M.P. No.1968 of 2017 in C.C. No.188 of 2016 on the file of the XXIV Special Magistrate, Hyderabad, whereunder the court below dismissed the petition filed by the petitioner/complainant under Section 311 Cr.P.C. to reopen the C.C. for the purpose of recalling P.W.1 for the purpose of marking a document.

2. Heard the learned counsel for the petitioner-complainant, the learned Assistant Public Prosecutor for respondent No.1-State, and perused the material available on record.

3. Learned counsel for the petitioner-complainant would contend that the petition under Section 311 Cr.P.C. was filed by the petitioner-complainant to reopen the C.C. for recalling P.W.1 to mark certified copy of a plaint, but without assigning proper reasons, the court below dismissed the petition, and that the said document is required to arrive at a just decision of the case, and ultimately, prayed to allow this application by setting aside the impugned order passed by the learned Magistrate.

4. 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.

5. Learned counsel for the petitioner-complainant relied on a decision in **Sethuraman v. Rajamanickam**², wherein it is held that against order passed in petitions filed under Sections 311 and 91 Cr.P.C., no revision lies and it is barred under Section 397 (2) Cr.P.C. In the

¹ AIR 2017 SC 3620

² (2009) 5 Supreme Court Cafses 153

instant case, the petitioner-complainant filed Criminal Petition under Section 482 Cr.P.C. assailing the impugned interlocutory order. 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.

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

Date: 30 -01-2018
DRK

Dr. SHAMEEM AKTHER, J

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30.01.2018