

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.1424 OF 2018

ORDER:

Heard learned counsel for the petitioner/accused, learned Additional Public Prosecutor for respondent State and perused the record.

This petition is filed under Section 482 Cr.P.C. to quash the order dated 01.11.2017 in CrI.M.P.No.4760 of 2017 in C.C.No.154 of 2016 on the file of IV Additional Judicial Magistrate of First Class, Chittoor.

Learned counsel for the petitioner would submit that the petitioner has not properly instructed his Advocate to conduct the cross-examination of P.W.2. P.W.2 is the attester of the subject pronotes. Further cross-examination of P.W.2 is essential. The order passed by the Court below is erroneous and ultimately prayed to quash the impugned order and allow the petitioner to further cross-examine P.W.2.

As seen from the material on record, P.W.2 was cross-examined on behalf of the petitioner herein. Moreover, the application to further cross-examine P.W.2 was filed at the stage of 313 Cr.P.C. examination. The petitioner/accused filed applications to recall P.W.1. Those were considered by the Court below. Thereafter when the matter is posted for examination of the accused under Section 313 Cr.P.C. the petitioner/accused has come up with an application to recall P.W.2 for further evidence. There are no justifiable grounds to allow the application. The Court below had rightly dismissed the same assigning the reasons.

It is apt to refer a 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.

With the above observation, the Criminal Petition is dismissed.

The Miscellaneous Petitions, if any, pending shall stand closed.

Dr. SHAMEEM AKTHER, J

08th February, 2018.
ssp

¹ AIR 2017 SC 3620