

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.1023 OF 2011

ORDER:

Heard the learned counsel for the petitioners and first respondent.

2. The present Criminal Revision Case is filed challenging the orders passed in CrI.M.P.No.673 of 2011 in C.C.No.759 of 2003, dated 18.04.2011 on the file of the Court of II Additional Chief Metropolitan Magistrate, Hyderabad in allowing the petition filed under Section 311 of Cr.P.C. to recall P.W.1 for the purpose of further chief-examination.

3. The brief facts of the case are that the first respondent-Company filed a complaint against the petitioners herein in C.C.No.759 of 2003 on the file of the Court of II Additional Chief Metropolitan Magistrate, Hyderabad for the offences under Sections 379, 381, 403, 408, 120-B r/w 34 I.P.C. The main allegations made against the petitioners herein is that they being the employees of the first respondent-Company, in collusion with one Mr.Vijay Aggarwal conspired and stolen the relevant information from the hard disc of the company apart from other material. On behalf of the first respondent, its Deputy Manager Mr.V.G.Sudhakar Reddy was examined as P.W.1. Thereafter, he was recalled on three different occasions on 20.06.2007, 20.07.2007 and 14.09.2007 and thereby he was given sufficient opportunity to lead his evidence. During the pendency of the said C.C., the first respondent herein originally, filed CrI.M.P.No.5860 of 2007 to implead said Vijay Agarwal as an accused. However, the

said petition was dismissed. Aggrieved by the said orders, the first respondent herein preferred CrI.R.P.No.26 of 2008 before the IV Additional Metropolitan Sessions Judge, Hyderabad. After hearing, the learned Metropolitan Sessions Judge was pleased to allow the said revision by orders dated 19.03.2008 whereby the said Vijay Agarwal was arrayed as A.4. Aggrieved thereby, said Vijay Agarwal filed CrI.R.C.No.623 of 2008 before this Court. This Court after hearing both the parties, allowed the said revision by orders dated 24.08.2010 setting aside the orders passed by the learned Sessions Judge. As against the said orders of this Court, the first respondent herein approached the Apex Court by way of filing Special Leave Petition (CrI.) No.1490 of 2010 and the said petition was dismissed. Subsequent to the dismissal of the said Special Leave Petition, the present CrI.M.P.No.673 of 2011 came to be filed for recall of P.W.1 once again by the first respondent. The petitioners herein filed a counter disputing the contents of the petition and contending *inter alia* that the petition, as filed, is not maintainable. In fact, already the Apex Court was pleased to consider the contentions raised by the first respondent and negatived the same. It is also mentioned in the counter that the first respondent took a specific ground in the Special Leave Petition about the telephone bills vis-à-vis Vijay Agarwal. However, the Apex Court after considering all the material documents, affidavit etc., declined to implead said Vijay Agarwal as additional accused and observed that the first respondent is trying to reopen the issue of telephone bills vis-à-vis Vijay Agarwal, which is impermissible under law, both factually and legally.

4. After hearing, the trial Court allowed CrI.M.P.No.673 of 2011 by the impugned orders. Aggrieved by the same, the present Criminal Revision Case is filed.

5. The learned counsel appearing for the petitioners contended that the complaint itself was filed in the year 2003 and the first respondent examined one V.G.Sudhakar Reddy, Deputy Manager as P.W.1 on 20.04.2007. Thereafter, he was recalled on three different occasions i.e. on 20.06.2007, 20.07.2007 and 14.09.2007. Thus the first respondent was given ample opportunity to lead its evidence. He also contends that when Mr.Vijay Agarwal was sought to be impleaded as an additional accused, this Court as well as Apex Court rejected the said prayer of the first respondent. Even in the Special Leave Petition before the Apex Court, the telephone bills are the subject-matter and after considering all the material, the same was negatived. Therefore, it is not open for the first respondent to file a fresh petition to recall P.W.1 in connection with said telephone bills vis-à-vis Mr.Vijay Agarwal.

6. On the other hand, the learned counsel appearing for the first respondent sought to support the impugned order and also raised an objection with regard to the maintainability of the present Criminal Revision Case. He submitted that the orders passed under Section 311 of Cr.P.C. are interlocutory in nature and therefore, it comes within the ambit of Section 397(2) of Cr.P.C. whereby the present Criminal Revision Case is barred. In order to support his contention, the learned counsel relied on a

decision of Apex Court in **Sethuraman v. Rajamanickam**¹. In similar circumstances, the Apex Court held as under:

“5. Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under [Section 311](#) Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under [Section 397\(2\)](#) Cr.P.C. The Trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent/accused and the only defence that was raised, was that his signed cheques were lost and that the appellant/complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e., one on the application under [Section 91](#) Cr.P.C. for production of documents and other on the application under [Section 311](#) Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, under [Section 397\(2\)](#), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed.”

7. In reply, the learned counsel appearing for the petitioners relied on **M/s. Pepsi Foods Ltd. And another v. Special Judicial Magistrate and others**² and contended that though the present Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C., this Court can treat the revision has been filed under Section 482 of Cr.P.C. by invoking the inherent jurisdiction and orders can be passed. On the said aspect, the Apex Court held as under:

“26. Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court find that the appellants could not invoke its jurisdiction under [Article 226](#), the court can certainly treat the petition one under [Article 227](#) or Section 482 of the Cod. it ay not however, be lost sight of that provisions exist in the [Code](#) of revision and appeal but sometime for immediate relief [Section 482](#) of the Code or [Article 227](#) may have to be resorted to for correcting some grave errors that might be committed by the

¹ {[2009] 5 SCC 153}

² AIR 1998 SC 128

subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under [Article 227](#) of the Constitution.”

8. Having heard both the counsel and from the perusal of the material on record, the point that arises for consideration in this revision is:-

‘Whether the Criminal Revision Case as filed is maintainable in law?’

9. On factual aspect, originally, P.W.1 was examined on 20.04.2007 and his chief-examination continued till 06.08.2007. Thereafter he was recalled on 20.06.2007, 20.07.2007 and 14.09.2007 and thereby he was given ample opportunity to depose the contents of the complaint. Thereafter once again, the first respondent filed Crl.M.P.No.673 of 2011 on the ground that the first respondent wanted to prove the phone numbers in the telephone bills belonged to H.R. Johnson Ltd. As stated supra, the said contention of the first respondent was already considered and negatived by the Apex Court and declined to implead Mr.Vijay Agarwal as an additional accused, with whom, the petitioners herein are alleged to have colluded/conspired and stolen the hard disc and other material from the office of the first respondent. Thus, when the matter has already attained finality, it is not open for the first respondent to file the present application to recall P.W.1 once again to establish the said alleged *nexus* between Mr.Vijay Agarwal and the petitioners herein for allegedly stealing the hard disc and other material.

10. Now, coming to the aspect of maintainability of the present Criminal Revision Case is concerned, it is filed in the year 2011

and seven years have already been lapsed. No-doubt, the impugned order passed under Section 311 of Cr.P.C. is interlocutory in nature within the ambit of Section 397(2) of Cr.P.C. At the same time, this Court is conscious of the time factor in the event of returning the present Criminal Revision Case on the ground of maintainability. Even if the contention of the first respondent is accepted with regard to the non-maintainability of the revision, still the petitioners are entitled to file a petition under Section 482 of Cr.P.C. invoking the inherent jurisdiction of this Court. Thus this Court is entitled to pass orders by invoking the jurisdiction under Section 482 of Cr.P.C. Therefore, taking into consideration the time factor i.e. the present complaint is filed in the year 2003, this Court deems it appropriate to invoke the jurisdiction under Section 482 of Cr.P.C. and decide the issue.

11. In this context, as contended by the learned counsel for the petitioners, the Apex Court in **M/s. Pepsi Foods Ltd. And another** (2 supra) held that the nomenclature under which a petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. In these circumstances, this Court by invoking its inherent jurisdiction under Section 482 of Cr.P.C. holds that when the first respondent failed in its attempts to implead said Vijay Agarwal as an additional accused in the C.C. more particularly, with reference to the telephone numbers vis-à-vis Mr. Vijay Agarwal, it cannot be allowed to re-agitate the same by way of filing CrI.M.P.No.673 of 2011. The attempt made by the first respondent is nothing but to circumvent the orders passed by this

Court in Crl.R.C.No.632 of 2008 dated 24.08.2010 and the Apex Court in Special Leave Petition No.1490 of 2010 dated 04.03.2011. Hence, for the forgoing reasons, the impugned orders passed by the trial Court are liable to be set aside.

12. Accordingly, the Criminal Revision Case is allowed setting aside the orders passed in Crl.M.P.No.673 of 2011 in C.C.No.759 of 2003, dated 18.04.2011 on the file of the Court of II Additional Chief Metropolitan Magistrate, Hyderabad.

Pending miscellaneous petitions, if any, shall stand closed.

P.KESHAVA RAO,J

10th OCTOBER 2018.
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