

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Criminal Petition No.7048 of 2012

Between:

Vemuri Venkataswamy.

... Petitioner/Accused

AND

N.V.Sankara Srinivasa Rao.

and another.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 22.10.2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether His Lordship wish to
see the fair copy of the Judgment? Yes / No

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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... Respondents

! Counsel for Petitioner : Sri B. Nalin Kumar

^ Counsel for Respondent No.1 : None appeared

^ Counsel for Respondent No.2 : Public Prosecutor (AP)

< Gist:

> Head Note:

? Cases referred:

- 1) 1980 CrI.L.J 1018
- 2) AIR 1978 SC 47 = MANU/SC/0103/1977
- 3) AIR 1980 SC 258 = MANU/SC/0210/1979



HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.7048 of 2012

ORDER:

Perhaps, this is one of the classic examples where the High Court is bound to locomote its plenary power under Section 482 Cr.P.C. to secure ends of justice to the petitioner who suffered injustice due to the errors obviously committed by the staff of trial Court i.e. V Additional Munsif Magistrate, Guntur. The injustice in the words of Principal District and Sessions Judge, Guntur who in his order dated 03.08.2012 in Criminal Revision Petition No.86 of 2012 though emphatically narrated, however refused to set right since the order impugned before him was interlocutory and there was interdict in the form of Section 397(2) Cr.P.C, is thus:

“Para-29: After closure of evidence of petitioner as DWI on 01.07.2010, the petitioner filed a petition in CrI.M.P.No.3836 of 2010 on 14.07.2010 under Section 45 of Indian Evidence Act for referring the questioned documents to FSL, Hyderabad, the same was allowed and sent the documents to State F.S.L. After returning and resubmitting the documents and while waiting for report the trial Court closed the evidence of petitioner on 01.02.2011. But, on 22.03.2011 the petitioner filed CrI.M.P.No.980 of 2011 under Section 45 of Indian Evidence Act for referring the questioned documents to Government Examiner of Questioned documents, Director of Central FSL, Hyderabad, but to the utter dismay, the same was allowed and questioned documents were sent to Central FSL on 07.06.2011. On 23.06.2011 the trial Court received a letter from Central FSL, Hyderabad wherein a fresh DD was sought on its Director's name and also specimen signatures

of petitioner on 5 to 7 sheets along with admitted signatures, thereby on 11.07.2011 the petitioner complied the same. Here the staff exhibited sheer negligence in discharging their official duties and sent the specimen signatures of petitioner and demand draft to State FSL instead of Central FSL which leads to waiting for another five months for State FSL to return the documents seeking some more admitted signatures without even looking at the DD, but the trial Court forgetting the letter sent by State FSL against ordered on 15.02.2012 to write a letter to State FSL to send its report and only on 19.03.2012 the trial Court took notice of the letter sent by State FSL. At this point of time, on 04.04.2012 the petitioner sought time to produce some signatures, but the trial Court refused and passed order closing the evidence of petitioner, aggrieved by the same the petitioner filed Crl.M.P.No.1945 of 2012 and the same was dismissed by the impugned order, which is challenged in this revision.”

2) The above tragedy of errors occurred in C.C.No.767 of 2008 on the file of V Additional Junior Civil Judge, Guntur wherein the petitioner faces trial for the offence under Section 138 of Negotiable Instruments Act. Aggrieved by the order in Crl.M.P.No.1945 of 2012, the petitioner filed Crl.R.P.No.86 of 2012 in the Court of Sessions Judge, Guntur and as stated supra, though learned Sessions Judge found fault with the staff of the trial Court which remitted the documents to State FSL in stead of Director of Central FSL, Hyderabad but, however, declined to pass an order in favour of the petitioner since the order impugned was an interlocutory order which is not amenable for revision in view of bar engrafted under Section 397(2) Cr.P.C.

Hence, instant petition by the petitioner/accused under Section 482 Cr.P.C.

3) In view of obvious mistake committed by the Court staff in remitting the required documents containing specimen signature of the petitioner to State FSL instead of Central FSL, there is no demur that the petitioner was severely prejudiced and in the absence of a report from Central FSL, his defence will be at peril. In fact, the tone and terrorem of the order of the learned Sessions Judge would divulge that the trial Court instead of initiating action against the errant staff attributed the delay in the progression of trial to the petitioner and ultimately dismissed the petition. Thus, in deed, petitioner deserves real justice.

a) It is also pertinent to note that learned Sessions Judge observed that though he cannot exercise power under revisionary jurisdiction due to the interdict in the form of Section 397(2) Cr.P.C. to set aside the impugned order, however, same can be interfered with by the High Court in a petition filed under Article 227 of Constitution of India exercising supervisory jurisdiction and in that regard he quoted the judgment of High Court of Himachal Pradesh rendered in *Dwarka Dass vs. State of Himachal Pradesh*¹. However, it should be noted, the petitioner has not filed writ petition under Article 227 but filed Crl.P. under Section 482 Cr.P.C. Hence, the point of jurisprudential interest at this juncture is, whether this Court can press into service its inherent power to undo the

¹ 1980 CrL.L.J 1018

injustice caused to the petitioner when such an action is barred under Section 397(2) Cr.P.C.

4) Section 482 Cr.P.C. being the enabling provision reads thus:

“Section 482: Saving of inherent powers of High Court.
Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

A plain interpretation of the section would give an understanding that the non-obstante clause gives strength to the inherent power of the High Court to make such orders which are necessary to give effect any order under this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice. So, to secure the ends of justice it would appear, this Court under its inherent power can pass an order which it cannot while exercising under Section 397 Cr.P.C.

5) My view gets fortified by the decision of the Honourable Apex Court in ***Madhu Limaye vs. The State of Maharashtra***² which reads thus:

“Para-11: *xx xx xx On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include Sub-section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed*

² AIR 1978 SC 47 = MANU/SC/0103/1977

upon the exercise of the revisional powers. In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in Sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly.”

The Apex Court thus observed that in spite of order assailed is purely an interlocutory one, however, if it brings about the situation which is either in abuse of process of the Court or for the purpose securing the ends of justice interference of the High Court is absolutely necessary, then nothing contained in Section 397(2) Cr.P.C. can limit or affect the exercise of the inherent power by the High Court. Needless to emphasize that the above decision applies with all its force to the case on hand.

6) In *Raj Kapoor and others vs. State and others*³ the Apex Court happened to discuss *Madhu Limaye*'s case (2 supra). It observed thus:

“Para—9: *In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extra-ordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. xx xx...*”

7) In the result, this Criminal Petition is allowed and the impugned order dated 03.08.2012 in CrI.R.P.No.86 of 2012 on the file of Sessions Judge, Guntur is set aside and consequently CrI.M.P.No.1945 of 2012 on the file of V Additional Munsif Magistrate is allowed and the trial Court is directed to reopen the matter and permit the petitioner to adduce his evidence.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 22.10.2018
Murthy

³ AIR 1980 SC 258 = MANU/SC/0210/1979