

THE HON'BLE Dr JUSTICE SHAMEEM AKTHER
CRIMINAL REVISION CASE NO.1093 OF 2018

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner-accused, challenging the order, dated 07.03.2018, passed in CrI.M.P.No.2371 of 2017 in C.C.No.617 of 2015 by the Addl. Judicial Magistrate of First Class, Kavali, whereby the petition filed by the petitioner-accused under Section 45 of the Indian Evidence Act, 1872 was dismissed.

2. Heard the learned counsel for the petitioner, learned Assistant Public Prosecutor representing the 1st respondent-State and perused the record.

3. In view of the decision rendered by a Full Bench of the Apex Court in **GIRISH KUMAR SUNEJA VS. C.B.I.**¹, 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. where there is no final termination of main proceedings. 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.

4. The decision rendered in **GIRISH KUMAR SUNEJA'S** case (1 supra) holds the field. In paragraph No.38 of the said decision, it is held thus:

¹ AIR 2017 SC 3620

“38. The Cr.P.C. is undoubtedly a complete Code in itself. As has already been discussed by us, the discretionary jurisdiction under Section 397(2) of the Cr.P.C. is to be exercised only in respect of final orders and intermediate orders. The power under Section 482 of the Cr.P.C. is to be exercised only in respect of interlocutory orders to give effect to an order passed under the Cr.P.C. or to prevent abuse of the process of any Court or otherwise to serve the ends of justice. As indicated above, this power has to be exercised only in the rarest of rare cases and not otherwise. If that is the position, and we are of the view that it is so, resort to Articles 226 and 227 of the Constitution would be permissible perhaps only in the most extraordinary case. To invoke the constitutional jurisdiction of the High Court when the Cr.P.C. restricts it in the interest of a fair and expeditious trial for the benefit of the accused person, we find it difficult to accept the proposition that since Articles 226 and 227 of the Constitution are available to an accused person, these provisions should be resorted to in cases that are not the rarest of rare but for trifling issues.”

5. The above decision has been reiterated by the Hon'ble Apex Court in its recent judgment, dated 28.03.2018 in **ASIAN RESURFACING OF ROAD AGENCY PRIVATE LIMITED & ANOTHER V C.B.I.** (Criminal Appeal Nos.1375-1376 of 2013.)

6. The discretion given under Section 397(1) Cr.P.C. has to be exercised only in respect of final order and intermediate order. The impugned order is an interlocutory order. It is not a final order or intermediate order. So, the bar to file revision, as contemplated under Section 397(2) Cr.P.C., applies to the instant case. The appropriate remedy available to the petitioner against the order impugned, is not by way of filing this Criminal Revision Case under Sections 397 & 401 of Cr.P.C. Under these circumstances, the Criminal Revision Case is liable to be dismissed as not maintainable.

7. Accordingly, this Criminal Revision Case is dismissed as not maintainable. The petitioner-accused is

at liberty to work out the remedies available under law. The Registry is directed to return the certified copy of the impugned order filed along with this Criminal Revision Case to the petitioner-accused. Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand dismissed.

DR. SHAMEEM AKTHER, J

DATED: 19-04-2018

Hsd

