

THE HON'BLE Dr JUSTICE SHAMEEM AKTHER
CRIMINAL REVISION CASE NO.1096 OF 2018

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, is filed by the petitioners-A1 to A3, challenging the order, dated 06.04.2018, passed in CrI.M.P.No.255 of 2018 in S.C.No.81 of 2010 by the Sessions Judge, Mahila Court, Vijayawada, whereby the petition filed by the petitioners under Sections 233 (3) and 243 Cr.P.C. to summon the Executive Officer of the temple and produce the records/registers, was dismissed.

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

3. Learned counsel for the petitioners relied on a decision reported in **PRABHU CHAWLA V STATE OF RAJASTHAN AND ANOTHER**¹, wherein it is held thus:

“The first question is as to whether the inherent power of the High Court under Section 482 stands repelled when the revisional power under Section 397 overlaps. The opening words of Section 482 contradict this contention because nothing of the Code, not even Section 397, can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made; easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same code. In *Madhu Limaye v The State of Maharashtra* (AIR 1978 SC 47) this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. When it is true that Section 482 is pervasive it should not subvert legal interdicts written into the same Code such, for instance, in Section 397 (2). Apparent conflict may arise in some situations between the two provisions and a happy solution.”

¹ AIR 2016 SC 4245

4. In view of the decision rendered by a Full Bench of the Apex Court in **GIRISH KUMAR SUNEJA VS. C.B.I.**², 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.

5. 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:

“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.”

6. The above decision has been reiterated by the Hon'ble Apex Court in its recent judgment, dated

² AIR 2017 SC 3620

28.03.2018 in **ASIAN RESURFACING OF ROAD AGENCY PRIVATE LIMITED & ANOTHER V C.B.I.** (Criminal Appeal Nos.1375-1376 of 2013.)

7. 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 petitioners 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.

8. Accordingly, this Criminal Revision Case is dismissed as not maintainable. The petitioners are 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 petitioners. Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand dismissed.

DR. SHAMEEM AKTHER, J

DATED: 20-04-2018

Hsd