

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.5828 of 2018

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C., to quash the order dated 23.04.2018 passed in CrI.R.P.No.277 of 2017 by the Metropolitan Sessions Judge, Hyderabad, reversing the order dated 01.06.2017 passed by the VIII Additional Chief Metropolitan Magistrate, Hyderabad in CrI.M.P.No.49 of 2017 in CrI.M.P.No.50 of 2017 in C.C.No.7 of 2009 filed under Section 311 of Cr.P.C. to recall P.W.1 for further chief examination.

2. The State filed a petition under Section 311 of Cr.P.C., to recall P.W.1 for marking certain documents on various grounds. The Magistrate dismissed the said petition by order dated 01.06.2017. Aggrieved by the same, the State preferred a revision under Section 397 of Cr.P.C. By order dated 23.04.2018, the Metropolitan Sessions Judge, by relying on various judgments referred in paragraph Nos.6 and 7, allowed the revision petition. The said order is impugned in this petition on the sole ground that a revision is not maintainable in view of the bar under Section 397(2) of Cr.P.C., against the order passed under Section 311 of Cr.P.C.

3. During hearing, learned counsel for the petitioner Sri C. Sharan Reddy, while reiterating the contentions, placed reliance on the judgment of the Apex Court in **Sethuraman v. Rajamanickam**¹.

¹ (2009) 5 SCC 153

4. The Public Prosecutor for the State of Telangana also conceded that a revision under Section 397 of Cr.P.C., is not maintainable in view of the bar under Section 397(2) of Cr.P.C.

5. It is an undisputed fact that a petition under Section 311 of Cr.P.C., was filed by the State and the same was ended in dismissal. The said order was reversed by the Metropolitan Sessions Judge by the order impugned. But the order under Section 311 of Cr.P.C., is interlocutory in nature and in view of the bar under Section 397(2) of Cr.P.C., a revision is not maintainable against such an interlocutory order and this question is no more *res-integra* in view of the judgment of the Apex Court in **Girish Kumar Suneja v. C.B.I**², wherein it was clearly held that against an interlocutory order, no revision is maintainable in view of the bar under Section 397(2) of Cr.P.C.

5. Following the principle laid down in **Girish Kumar's** case and **Sethuraman's** case, referred supra, I find that the order passed by the Metropolitan Sessions Judge in Crl.R.P.No.277 of 2017 is illegal and contrary to the purport of Section 397(2) of Cr.P.C., and the same is hereby set aside.

6. In the result, the Criminal Petition is allowed setting aside the order dated 23.04.2018 passed in Crl.R.P.No.277 of 2017 by the Metropolitan Sessions Judge, Hyderabad, while restoring the order dated 01.06.2017 passed in Crl.M.P.No.49 of 2017 in Crl.M.P.No.50 of 2017 in C.C.No.7 of 2009 by the VIII Additional Chief Metropolitan

² AIR 2017 SUPREME COURT 3620

Magistrate, Hyderabad. Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

13th June, 2018

sj

