

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.7511 of 2011

ORDER:

The petitioner by way of this criminal petition seeks this Court to revise the order dated 16.05.2011 in MC.No.B/1229/2011 dated 16.05.2011 passed by the Special Executive Magistrate, Hyderabad by virtue of which, the property, which is claimed to be that of the parties, was attached by invoking Sections 145 and 146(1) of the Criminal Procedure Code.

2. Heard the counsel for the petitioner, the learned Public Prosecutor, appearing for the first respondent and the counsel for the unofficial respondents.

3. Before going into the merits of the of the case, the maintainability of this petition has to be decided, as admittedly a revision was preferred against the said order, before the I Additional Metropolitan Sessions Judge, Hyderabad and the said Court, by virtue of order in CRL.RP.No.93 of 2011 dated 20.07.2011, dismissed the revision on merits.

4. The counsel for the respondents by relying on a decision of the Supreme Court in RAJAN KUMAR MACHANANDA v. STATE OF KARNATAKA<sup>1</sup> contends that the bar under Section 397 (3) of Cr.P.C. does not permit this Court to entertain this petition under Section 482

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<sup>1</sup> 1990 (SUPP) SCC 132

Cr.P.C. as it would amount to circumventing the bar laid down under Section 397(3) Cr.P.C.

5. In the said decision, the Supreme Court held that where a revision petition is dismissed by the Sessions Court, a second revision would not lie to the High Court; merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome; if that was to be permitted, every revision application facing the bar of Section 397(3) of the Code could be labelled as one under Section 482 Cr.P.C.

6. The counsel for the petitioner, by way of counter to the aforesaid argument, relies on a decision rendered by the Supreme Court by three Judges of the Supreme Court in MADHU LIMAYE v. STATE OF MAHARASHTRA<sup>2</sup> and contends that revision filed before the Sessions Court would not operate as a bar for a petition under Section 482 Cr.P.C.

7. But, this Court is not able to agree with the said contention, as the issue that came up for consideration before the Supreme Court is completely different. The issue therein was whether against an interlocutory order, when a revision under Section 397(3) Cr.P.C. cannot be maintained, the petition under Section 482 Cr.P.C. can be maintained or not. The Supreme Court held that the inherent power will come into play, there being no other provision in Cr.P.C. for the redress of the grievance of the aggrieved party. Hence, the said decision does not help the petitioner, as the petitioner, in this case,

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<sup>2</sup> (1977) 4 SCC 551

already exhausted his remedy of revision before the Court below, unlike the petitioner in the case dealt with by the Supreme Court, who could not avail the remedy of revision, as the order impugned therein was an interlocutory order. Hence, in view of the above legal position, the petition itself becomes non-maintainable and this Court does not find any necessity to go into the merits of the case.

In the light of the above, the criminal petition is dismissed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

October 26, 2018  
DSK

T. RAJANI, J

