

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.11769 of 2017

ORDER

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in CrI.M.P.No.611 of 2017 in C.C.No.712 of 2010 on the file of IV Metropolitan Magistrate, Cyberabad at Ibrahimpatnam, Ranga Reddy District.

The petitioner herein/accused is the first respondent/A-1 in CrI.M.P.No.611 of 2017 in C.C.No.712 of 2010. The first respondent herein/defacto complainant is the petitioner in C.C.No.712 of 2010. For the sake of convenience, the parties hereinafter will be referred as arrayed in CrI.M.P.No.611 of 2017 in C.C.No.712 of 2010.

The first respondent herein/defacto complainant filed CrI.M.P.No.611 of 2017 in C.C.No.712 of 2010 under Section 311-A Cr.P.C r/w Section 165 of Indian Evidence Act, alleging that the petitioner/defacto complainant purchased plot No.26 admeasuring 67 sq.yds and plot No.27 admeasuring 167 sq.yds, total admeasuring 234 sq.yds, situated at Mangalpally village, Ibrahimpatnam on 18.09.2002 from A.V.C. Housing Private Limited, represented by its Managing Director-A. Srinivasa Rao vide Document No.2547/2002. It is the case that the accused 1 to 5 sold the property to one Chintapalli Vaidevi, w/o C. Narasimha on 07.11.2009 through registered sale deed Doc.No.6016/2009 dated 19-11-2009. During the course of investigation, Chintapalli Vaidevi who is the beneficiary of the transaction, styling as a victim had stated to the Investigating Officer that Accused No.1 had executed the sale deed stating to be the petitioner/defacto

complainant, influenced by strong direct evidence in person of Chintapalli Vaidevi, the Investigating Officer has not collected the left thumb impression of Accused No.1. It is also submitted that, earlier a petition for collection of the left thumb impression of Accused No.1 & others was filed vide Crl.M.P.Nos.911 & 912 of 2015 in C.C.No.712 of 2010, which was dismissed by the IV Metropolitan Magistrate, Cyberabad at Ibrahimpatnam, Ranga Reddy District, stating that the petitions were filed with long delay. It is urged in the grounds that, unless the thumb impression of Accused No.1 is obtained, it is difficult to prove the case of prosecution, since the Investigating Officer failed to undertake the process of obtaining thumb impression of Accused No.1. Apart from that, the only dispute before this Court is, as to who executed the registered sale deed in favour of Chintapalli Vaidevi on 19-11-2009 by affixing left hand thumb impression on the document. But, the document was allegedly executed in the name of the petitioner/defacto complainant and it is the case that Accused No. 1 impersonated the petitioner/defacto complainant and executed the sale deed. Therefore, it is imperative to obtain the thumb impression of Accused No.1 to decide real dispute whether Accused No.1 executed registered sale deed in favour of Chintapalli Vaidevi or not.

The respondent reported no counter.

The Trial Court after considering entire material, passed lengthy order and ordered Crl.M.P.No.611 of 2017, directing the petitioner herein/Accused No.1 to give left thumb impression in open Court, so as to send the disputed thumb impression contained in the registered sale deed along with admitted thumb

impressions to Central Forensic Science Laboratory for comparison and opinion. Aggrieved by the order in CrI.M.P.No.611 of 2017 in C.C.No.712 of 2010 dated 13.11.2017 on the file of IV Metropolitan Magistrate, Cyberabad at Ibrahimpatnam, Ranga Reddy District, the present criminal petition is filed by the petitioner/Accused No.1 under Section 482 Cr.P.C to quash the order on various grounds.

In the present criminal petition, it is contended that, on 03.03.2017, the prosecution filed objections in CrI.M.P.SR 517 of 2017 in C.C.No.712 of 2010 on the file of IV Metropolitan Magistrate, Cyberabad at Ibrahimpatnam under Section 311-A of Cr.P.C r/w Section 165 of the Indian Evidence Act. The said petition was disposed of on the same day by the IV Metropolitan Magistrate, Cyberabad at Ibrahimpatnam. Similar petition was filed in CrI.M.P.Nos.911 & 912 of 2015 and after due enquiry, both the miscellaneous petitions were dismissed vide common order. But, no revision was preferred by the prosecution till today against the dismissal order in CrI.M.P.Nos.911 & 912 of 2015. Against the said dismissal order in CrI.M.P.Nos.911 & 912 of 2015, the first respondent herein/defacto complainant filed CrI.P.No.1981 of 2017 before this Court. On 07.06.2017, this Court disposed of the criminal petition giving an opportunity to the petitioner therein to resubmit the petition and observed that the Magistrate returned the petition referring to the order earlier passed in CrI.M.P.No.911 of 2015, expressing that there are no grounds to number the petition. This Court also expressed an opinion that the Magistrate ought to have passed an appropriate order when he forms an opinion.

The first respondent herein/defacto complainant preferred Crl.P Nos.7911, 7912 and 8948 of 2017 before this Court, against the orders passed in Crl.M.P.Nos.911 & 912 of 2015. Vide order dated 19.09.2017, this Court allowed Crl.M.P.No.8948 of 2017 and closed Crl.P.Nos.7911 & 7912 of 2017, giving liberty to file fresh petitions before the Court below within one week from the date of order, to decide the matter on own merits. Accordingly, the first respondent herein/defacto complainant filed Crl.M.P.No.611 of 2017 in C.C.No.712 of 2010 on the file of IV Metropolitan Magistrate, Cyberabad at Ibrahimpatnam, Ranga Reddy District. Vide order dated 13.11.2017, the IV Metropolitan Magistrate, Cyberabad, allowed the petition directing the petitioner herein/Accused No.1 to give left thumb impression in open Court, to enable the Court to send the disputed thumb impression affixed on the registered sale deed along with admitted thumb impressions to Central Forensic Science Laboratory for comparison and opinion.

It is urged in the grounds of petition that, in view of dismissal of petitions filed before this Court in earlier round of litigations, allowing Crl.M.P.No.611 of 2017 to obtain left hand thumb impression of the petitioner herein/Accused No.1 under Section 311-A Cr.P.C is a grave illegality committed by the Trial Court. That apart, it is urged that, this Court while disposing of Crl.P Nos.7911, 7912 and 8948 of 2017 provided no opportunity to the petitioner herein/Accused no.1 to file fresh application. But, the Trial Court entertained Crl.M.P.No.611 of 2017 and passed the impugned order. Therefore, the order passed by the Court below is unsustainable under law and prayed to set-aside the same.

During hearing, Sri T. Pradyumna Kumar Reddy, learned counsel for the petitioner herein/Accused No.1, reiterated the contentions urged in the petition and contended that the Trial Court erroneously recorded that petitioner herein/Accused No.1 reported no counter in Crl.M.P.No.611 of 2017 and it is a clear error on the face of record, since, the petitioner herein/Accused No.1 opposed the petition by filing written arguments on 07.11.2017. That apart, the dismissal of earlier applications which attained finality and disposed of Crl.P Nos.7911, 7912 and 8948 of 2017 by denying to provide any opportunity to the petitioner herein/Accused no.1 to file fresh application is not sufficient to allow the application, wherein, in the said order, this Court held that, even the second application filed was even rejected, the High Court can order for entertaining *suo moto* revision or invoking Section 483 Cr.P.C to sub-serve the ends of justice and to prevent abuse of process and on the principle of *actus curiae neminem gravabit* (Act of Court shall prejudice no man unless sanctioned by law) and accordingly allowed Crl.P.No.8948 of 2017. Crl.P.No.8948 of 2017 is filed against the dismissal application of the defacto complainant of the said C.C. by the order dated 08.09.2017. In the lower Court, the application was filed under Section 311-A Cr.P.C r/w Section 165 of the Indian Evidence Act, to receive the Truth Labs report.

Earlier, the petitioner herein/Accused No.1 filed Crl.R.C.No.2273 of 2017 before this Court and subsequently, he preferred to withdraw the said criminal revision case. Accordingly, Crl.R.C.No.2273 of 2017 was dismissed as withdrawn with liberty to the petitioner to file appropriate application.

Learned counsel for the petitioner herein/Accused No.1 mainly contended that, none of the contentions raised in the written arguments dated 07.11.2017 filed in Crl.M.P.No.611 of 2017 were considered by the Court below and the Court below failed to take into consideration the orders passed earlier and committed an error.

As seen from the order under challenge, the Court below noted that the petitioner herein/Accused No.1 reported no counter to file written arguments before the Court below. But, the Court below did not record the contentions raised by the petitioner herein/Accused No.1 and passed the order under challenge without adverting to the various contentions raised before the Trial Court.

Learned counsel for the first respondent/defacto complainant supported the order of the Trial Court in all respects.

As seen from the order under challenge, the order passed by the Court below is only under Section 311-A of Cr.P.C, which is interlocutory in nature, thereby, it would not culminate or terminate the entire proceedings in the main calendar case.

The interlocutory order is not amenable to revisional jurisdiction and the revision filed against such an order was withdrawn by the petitioner herein/Accused No.1 in Crl.R.C.No.2273 of 2017 on 24.08.2017 with a liberty to file appropriate application. In view of the order passed by this Court, the present criminal petition is filed invoking the inherent jurisdiction of this Court and requested to quash the order under challenge passed by the Court below.

Admittedly, the order under challenge is interlocutory in nature. The Apex Court in **Sethuraman Vs. Rajamanickam**¹ held that, against such an interlocutory order, revision under Section 397 Cr.P.C is not maintainable in view of the bar as per Subsection (2) of Section 397 Cr.P.C. Therefore, the petitioner invoked jurisdiction of this Court under Section 482 Cr.P.C, to quash the order in Crl.M.P.No.611 of 2017 in C.C.No.712 of 2010.

In **Girish Kumar Suneja v. C.B.I**², full Bench of the Supreme Court had an occasion to decide the similar subject and held as follows:

“The second reason why **Amar Nath v. State of Haryana** (AIR 1977 SC 2185) is important is that it invokes the principle, in the context of criminal law, that what cannot be done directly cannot be done indirectly. Therefore, when Section 397(2) of the Code of Criminal Procedure prohibits interference in respect of interlocutory orders, Section 482 of the Code of Criminal Procedure cannot be availed of to achieve the same objective. In other words, since Section 397(2) of the Code of Criminal Procedure prohibits interference with interlocutory orders, it would not be permissible to resort to Section 482 of the Code of Criminal Procedure to set aside an interlocutory order. This is what this Court held:

While we fully agree with the view taken by the learned Judge that where a revision to the High Court against the order of the Subordinate Judge is expressly barred Under Sub-section (2) of Section 397 of the 1973 Code the inherent powers contained in Section 482 would not be available to defeat the bar contained in Section 397(2). Section 482 of the 1973 Code contains the inherent powers of the Court and does not confer any new powers but preserves the powers which the High Court already possessed. A harmonious construction of Sections 397 and 482 would lead to the irresistible conclusion that where a particular order is expressly barred Under Section 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of Section 482 would not apply. It is well settled that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject-matter. Where there is an express provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers.

This view was reaffirmed in **Madhu Limaye v. State of Maharashtra** (AIR 1978 SC 47) when the following principles were approved in relation to Section 482 of the Code of Criminal Procedure in the context of Section 397(2) thereof. The principles are:

¹ 2009 CriLJ 2247

² AIR 2017 SC 3620

(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

Therefore, it is quite clear that the prohibition in Section 397 of the Code of Criminal Procedure will govern Section 482 thereof. We endorse this view.”

In view of the law declared by the Apex Court in the above referred judgment, when no revision is maintainable against an interlocutory order, creating an absolute bar to entertain such revisions, this Court cannot entertain a petition under Section 482 Cr.P.C, circumventing the law. Therefore, based on the principle laid down in **Girish Kumar Suneja**² case, it is difficult to hold that the order under challenge is illegal, as the petition filed under Section 482 Cr.P.C is not maintainable against such an interlocutory order. On this sole ground alone, the criminal petition is liable to be dismissed.

As the petition under Section 482 Cr.P.C is not maintainable, I need not advert to the facts and other contentions to record my findings. Therefore, I am not inclined to disturb the findings recorded by the Court below.

In the result, criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Dated:03.01.2018

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