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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 03rd July, 2018

+ CRL.M.C. 164/2018

AJAY MAINI

..... Petitioner

Through: Mr. Vijay Aggarwal with Ms.
Hemlata Kharaijat, Mr.
Shailesh Pandey, Mr. Shekhar
Pathak & Ms. Barkha Rastogi,
Advocates.

versus

THE STATE (GOVT OF NCT OF DELHI)

& ORS

..... Respondents

Through: Mr. Mukesh Kumar, APP for
State with SI Subhash
Chandra, P.S. Model Town.
Mr. Rajiv Taneja with Mr.
Rijul Taneja with Mr. Sushil
Goyal, Advocates for R-2 to 9.
Mr. O.P. Gaggar, Advocate for
R-10 /Union Bank.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner herein had instituted a criminal complaint (CC no.279/2016) against the respondents in December 2016 in the court of the Metropolitan Magistrate of North District alleging offences punishable under Sections 107, 109, 409, 420, 464, 465, 467, 468,

471, 120-B/34 IPC to have been committed. The complaint was accompanied by an application seeking a direction to the police under Section 156 (3) of the Code of Criminal Procedure, 1973 (Cr. PC) to register a case and investigate the matter. The Metropolitan Magistrate by his order dated 06.12.2016, however, was not impressed with the prayer for direction to the police to investigate. While declining the said prayer, he took cognizance on the criminal complaint calling upon the petitioner (complainant) to examine himself and his witnesses under Section 200 Cr. PC and posted the matter for an appropriate date for such purposes.

2. The petitioner feeling aggrieved questioned the correctness, legality and propriety of the said order invoking the revisional jurisdiction of the court of Sessions. His criminal revision petition (no.7/2017) was dismissed by the Additional Sessions Judge by order dated 22.02.2017 which is sought to be challenged by the petition at hand invoking the jurisdiction of this court under Section 482 Cr. PC.

3. A procedural issue has arisen, in the above context, as to whether the petitioner having availed of the remedy of revision should be allowed to take recourse to Section 482 Cr. PC as a substitute for virtually initiating a second revisional challenge or scrutiny which is clearly barred under Section 397(3) Cr. PC.

4. In *Rajinder Prasad Vs. Bashir*, (2001) 8 SCC 522, the Supreme Court referring to its earlier decision in *Krishnan Vs. Krishnaveni*, (1997) 4 SCC 241 held that

"...though the power of the High Court under Section 482 of the Code is very wide, yet the same must be exercised sparingly and cautiously particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under Section 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of the process or miscarriage of justice by exercise of jurisdiction under Section 482 of the Code. It was further held, "Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of provisions of Section 397(3) or Section 397(2) of the Code."

5. In *Kailash Verma vs. Punjab State Civil Supplies Corporation & Anr.*, (2005) 2 SCC 571, the Supreme Court observed thus :-

*"5. It may also be noticed that this Court in *Rajathi v. C. Ganesan* [(1999) 6 SCC 326 : 1999 SCC (Cri) 1118] said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilised as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law are not complied with and when the High Court feels that the*

inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.”

(emphasis supplied)

6. The *learned* counsel for the petitioner, placing reliance on *Dhariwal Tobacco Products Ltd. and Ors. VS. State of Maharashtra and Anr.*, 2009 (2) SCC 370 and *Shakuntala Devi and Ors. Vs. Chamru Mahto and Anr.*, (2009) 3 SCC 310 submitted that inherent power of this court under Section 482 Cr. PC is still available and it being paramount power of continuous superintendence the court would be justified in interfering with the order which has led to miscarriage of justice. He submitted that the object of introduction of the bar under Section 397(3) is to prevent a second revision so as to avoid frivolous litigation but the doors of the High Court to a litigant who had failed before the court of Sessions are not completely closed if a “*special case*” is made out for such bar to be lifted.

7. A learned single judge of this court in *Surender Kumar Jain vs. State & Anr.*, ILR (2012) 3 Del 99 accepted such objections in another similarly placed petition under Section 482 Cr. PC observing thus :-

“5. The issue regarding filing of petition before the High Court after having availed first revision petition before the Court of Sessions has come up before the Supreme Court and this Court repeatedly. While laying that section 397(3) Cr. P.C. laid statutory bar of second revision petition, the courts have held that High Court did enjoy inherent power under section 82 (sic) Cr. P.C. as well to entertain petitions even in those cases. But, that power was to be exercised sparingly and with great

*caution, particularly, when the person approaching the High Court has already availed remedy of first revision in the Sessions Court. This was not that in every case the person aggrieved of the order of the first revision court would have the right to be heard by the High Court to assail the same order which was the subject matter of the revision before Sessions Court. It was all to depend not only on the facts and circumstances of each case, but as to whether the impugned order bring about a situation which is an abuse of process of court or there was serious miscarriage of justice or the mandatory provisions of law were not complied with. The power could also be exercised by this Court if there was an apparent mistake committed by the revisional court. Reference in this regard can be made to the judgments of the Supreme Court in *Madhu Limave v. State of Maharashtra* (1977) 4 SCC 551, *State of Orissa v. Ram Chander Aggarwal*, (1979) 2 SCC 305 : AIR 1979 SC 87, *Rai Kapoor v. State (Delhi Administration)* 1980 Cri. L.J. 202, *Krishnan v. Krishnaveni and Kailash Verma v. Punjab State Civil Supplies Corporation* (2005) 2 SCC 571.”*

(emphasis supplied)

8. A perusal of the criminal complaint in which the impugned order was passed by the Magistrate, which has been upheld by the court of Sessions in revision, would show that it is admitted case of the petitioner that he had come in contact with the private respondents herein, they being connected to the company described as M/s. DPA Finance Pvt. Ltd. engaged in the business of providing loans and further that he had executed certain documents to avail of certain loan facility though, as per his case, upon being induced to do so. It is also his admitted case in the context of the said loan facility that he had also signed on certain documents for opening an account

with Union Bank of India, Model Town branch, New Delhi so that the loan amount, when extended, could be disbursed in his favour by deposit into the said account. It is further his admitted case that in January 2016, he had been served with a legal notice of demand by M/s. DPA Finance Pvt. Ltd. stating, *inter alia*, that he was in default in repayment of the loan amount which had thus been recalled and he having been called upon to pay the same back. It is again his admitted case that he was served with a notice dated 15.04.2016 by M/s. DPA Finance Pvt. Ltd. calling him upon to pay Rs.5,58,00,000/- with interest with allegations that his cheque for payment of the said amount to the said company had been returned unpaid by the bank upon it being presented, such facts leading to his prosecution for offence under Section 138 of the Negotiable Instruments Act, 1881 (in short, N.I. Act).

9. It is the allegation of the petitioner that he had withdrawn his request for loan amount even before it was disbursed and further that he had been assured that the papers on which he had signed and handed over in that context would be destroyed. He alleges that forgery had been committed by creation of certain cheques purportedly having been issued by him leading to the said notice of demand and the prosecution under Section 138 of the N.I. Act, this aside from the offences of cheating and use of forged documents, as per his case, in complicity with certain officials of the Union Bank of India, Model Town.

10. The Magistrate was not satisfied with the prayer for direction to the police for investigation under Section 156(3) Cr. PC holding that the evidence is available and that the complainant was in a position to adduce the same. The Magistrate followed the ruling in *Gulab Chand Upadhyaya Vs. State of U.P.*, 2002 CrL. L.J. 2907. The said view of the court has been affirmed by the court of Sessions dismissing the revision petition by the impugned order dated 22.02.2017 observing additionally that, if so required, the areas that necessitate investigation may always be subjected to such probe by the police when the case reaches the stage of Section 202 Cr. PC.

11. Having heard the counsel for the petitioner, this court finds no special case made out for this court to exercise the extraordinary jurisdiction under Section 482 Cr. PC in the matter at hand. There is no miscarriage of justice or illegality in the approach adopted by the two courts below. The petition is, thus, dismissed.

R.K.GAUBA, J.

JULY 03, 2018

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