

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21113 of 2015**

Arising Out of PS. Case No.-1909 Year-2004 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

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Anil Kumar Jha Son of Baidyanath Jha Resident of village Pahsara, Police
Station Naokothi, District Begusarai.

... .. Petitioner/s

Versus

1. The State Of Bihar
 2. Hari Kant Mishra
 3. Shiv Kant Mishra Both Sons of Late Chaturbhuj Mishra
 4. Prabhat Kumar Son of Hari Kant Mishra
- All are residents of village Pahsara Police Station Nawkothe, District
Begusarai.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Prabhakar Jha, Advocate
For the Opposite Party/s : Mr. Shyam Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 23-07-2019

Heard learned counsel for the parties.

2. The petitioner is complainant of Complaint
Case No.1909(C) of 2004 brought against Opposite Party
Nos.2 to 4. The Opposite Parties had filed a petition before
the Court-below stating therein that prosecution witness
Vikash Kumar Singh examined in the case, was not a real
person; rather some impersonation has been made by the
complainant by producing some fictitious person. The
complainant filed a rejoinder to that petition and after hearing
the parties the Court-below ordered an inquiry under Section



340 Cr.P.C. by the impugned order dated 09.12.2009.

3. The petitioner had challenged the aforesaid impugned order in Criminal Revision No.38 of 2010/56 of 2011 before the learned Sessions Judge, Begusarai, and the learned Sessions Judge dismissed the criminal revision on 16.01.2014 and declined to interfere with the impugned order. Thereafter, this application under Section 482 Cr.P.C.

4. Learned counsel for the petitioner submits that in the past also identical application was made by the accused persons which was dismissed by the learned Court-below. Hence, subsequent application and order of inquiry is bad in law.

5. Sub-section (3) of Section 397 Cr.P.C. bars second revision application in following words:

“397(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

6. Therefore, apparently in guise of application, under Section 482 Cr.P.C., the petitioner desires exercise of second revisional power by this Court. In a catena of



decision, it has been settled that power under Section 482 Cr.P.C. should not be exercised as against the express bar of law engrafted in any other provisions of the Code. Reference may be made to the case of **Girish Kumar Suneja Vs. Central Bureau of Investigation** reported in (2017) 14 SCC 809 wherein three Judges Bench of the Hon'ble Supreme Court considered earlier judgments on the point and endorsed the same, though the issue of bar under Section 397(2) Cr.P.C. was directly involved in **Suneja's case** which provides that interlocutory orders are not revisable. Paragraphs 24 and 25 of the judgment are being reproduced below:-

*“24. The second reason why **Amar Nath V. State of Haryana, (1977) 4 SCC 137** 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) Cr.P.C. prohibits interference in respect of interlocutory orders, Section 482 Cr.P.C. cannot be availed of to achieve the same objective. In other words, since Section 397(2) Cr.P.C. prohibits interference with interlocutory orders, it would not be permissible to resort to*



Section 482 Cr.P.C. to set aside an interlocutory order. This is what this Court held: (SCC p.140, para 3)

“3. 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 provisions on the subject-matter. Where there is an express provisions, barring a particular remedy, the Court cannot resort to the exercise of



inherent powers.”

25. This view was reaffirmed in Madhu Limaye V. State of Maharashtra (1977) 4 SCC 551 when the following principles were approved in relation to Section 482 Cr.P.C. in the context of Section 397(2) thereof. The principles are: (SCC p.555, para 8)

“(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 Cr.P.C. will govern Section 482 thereof. We endorse this view.”

7. Since the second revision application by the same person is barred under Sub-section (3) of Section 397 Cr.P.C. Therefore, by necessary implication, this application under Section 482 Cr.P.C. is barred. Moreover, no case of



failure of justice and abuse of the process of the Court is made out when the Court-below has decided to conduct an inquiry regarding genuineness of the witness produced. The result of enquiry may go either way.

8. Therefore, this application is dismissed as devoid of any merit.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
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