

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34928 of 2016

Arising Out of PS. Case No.-26 Year-2015 Thana- DARBHANGA COMPLAINT CASE
District- Darbhanga

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Surya Kant Jha Son of late Ram Ballav Jha resident of village-
Ghanshyampur, P.S.- Ghanshyampur, district- Darbhanga

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Kewali Devi Wife of Haridaya Bantar resident of village- Ghanshyampur,
P.S.- Ghanshyampur, district- Darbhanga

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Prashant Sinha, Advocate Mr. Uday Pratap Singh, Advocate
For the Opposite Party/s :		Mr. Jai Narain Thakur, APP
For Opposite Party No.2:		Mr. Pankaj Kumar Jha, Advocate Ms. Nirmala Kumari, Advcoate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 24-07-2019

Heard learned counsel for the parties.

2. The petitioner is accused in connection with
C.R. No.26 of 2015 wherein cognizance was taken by the
learned Sub-Divisional Judicial Magistrate, Biraul at Benipur,
for the offences under Sections 147/323/341/504/354 of the
Indian Penal Code on the complaint of Opposite Party No.2.

3. The petitioner challenged the aforesaid order
before the learned Sessions Judge, Camp Court at Benipur,
Darbhanga, in Criminal Revision No.58 of 2016 and the
criminal revision was dismissed on 13.07.2016. The order of



cognizance as well as of the Revisional Court are under challenge in this application under Section 482 Cr.P.C.

4. Submission of the learned counsel for the petitioner is that due to old dispute and personal vendetta false case has been lodged. Earlier criminal case was lodged by the complainant against the petitioner was found untrue by the police and thereafter the present complaint was filed just to harass the petitioner and others.

5. Learned counsel for Opposite Party No.2 submits that probable defence of the accused cannot be examined at this stage nor the trustworthiness of the prosecution case can be tested if the ingredient of offences are disclosed.

6. According to complaint petition, on 22.11.2014 the complainant was cooking food inside her house. At that time the petitioner along with his criminal associates entered into the house of the complainant and started abusing her by taking caste name and also committed assault. The petitioner attempted to outrage the modesty of the complainant. The occurrence took place for the reason that the petitioner was aggrieved with lodging of an earlier criminal case by Opposite Party No.2. There is allegation of commission of theft of



ornament etc. The inquiry witness supported the allegation against the petitioner.

7. Since, second revision application is barred under Sub-Section (3) of Section 397 Cr.P.C. at the hands of the same person. Hence, this Court cannot exercise power under Section 482 Cr.P.C. in the guise of second revision. The aforesaid issue has already been settled in a catena of judgments. Recently, the Supreme Court had occasion to examine the issue in the case of **Girish Kumar Suneja Vs. Central Bureau of Investigation** reported in (2017) 14 SCC 809.

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.”

8. Considering the aforesaid proposition as well as the fact that the material available on the record does not show that the impugned orders have resulted in failure of



justice and amounts to abuse of the process of the Court, this application stands dismissed as devoid of any merit.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
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