

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 1-8-2019

Delivered on 2-8-2019

CRMP No. 52 of 2018

Sunil Kumar Tahalwani S/o Parmanand Tahalwani, Aged About 38 Years R/o Ward No. 13, Tilda, P. S. Nevra Tehsil Tilda, District Raipur CG

---- Petitioner

Versus

1. Sanjay Nihichalani S/o Shri Kanhaiya Lal Nihichalani Aged About 43 Years R/o Tilda P. S. Nevra Tehsil Tilda, District Raipur Chhattisgarh,
2. State Of Chhattisgarh Through District Magistrate, Raipur District Raipur Chhattisgarh

---- Respondent

For petitioner

Shri Sarfaraj Khan, Adv.

For Respondent No. 1

Shri G.D. Wasvani, Adv.

Respondent No. 2

Shri H.S. Ahluwalia, Dy. Adv. Govt.

Hon'ble Shri Justice Sharad Kumar Gupta**CAV ORDER**

1. Petitioner has preferred this CRMP under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) for setting aside the impugned order dated 3-1-2018 passed by the Revisional Court in Criminal Revision No. 366/2017 and for restoration of the order passed by the trial Court dated 12-7-2017.

2. In brief, the case of respondent No. 1 is that he had filed a complaint against the petitioner before the Inspector General, Registrar, Raipur. In the reply petitioner stated that respondent No. 1 is a mentally retarded person. Being aggrieved he filed a complaint case against petitioner under Section 500 of the Indian Penal Code (in short 'IPC'). The JMFC Tilda dismissed the said complaint on 12-7-2017. Being aggrieved he preferred a criminal revision before Addl. Sessions Judge, Raipur who quashed the order of the trial Court and took cognizance against the petitioner under section 500 of IPC. Trial Court considered

the civil dispute as a defence for dismissing his complaint which is totally incorrect.

3. In brief the petitioner's case is that no case is made out against him. The order of the trial Court is just and proper.

4. In brief case of the respondent No. 2 is that he has no concern with impugned order.

5. Counsel for the petitioner argued that revisional Court exceeded its jurisdiction embodied in Section 398, Cr.P.C. and wrongly took cognizance against him.

6. Counsel for respondent No. 1 argued that he has no quarrel regarding legal position that revisional Court can exercise only the powers envisaged in Section 398 of Cr.P.C., where the complaint is dismissed under section 203 or 204(4) of the Cr.P.C.

7. Counsel for the respondent No. 1 placed reliance in the matter of **Rewaram -v- State of MP** reported in 2004 (4) MPLJ 351, para 5 and 6 of which are relevant and quoted below :-

“5. Having heard the learned counsel for the parties and after perusing the impugned judgment, this Court is of the view that the learned Lower Revisional Court has erred in directing the learned Magistrate to register the offence and take the cognizance of the offence under section 3 (1)(10) of the Act and also under section 506 of the IPC. Section 398 of Cr.P.C. Is a special provision which reads as under :-

398. Power to order inquiry:- On examining any record under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make, or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under Section 203 or sub-section (4) of Section 204, or into the case of any person accused of an offence who has been discharged:”

6.....In the case of **Harun Khan and ors. -v- Maheshchand (1997(2) Crimes 301)** in paragraph 9, this Court has observed as under : 9. In **Rajaram Gupta and ors v. Dharamchand and ors. (1983 MPLJ 56)**, this Court while considering Section 398, Cr.P.C. has held that the only order that can be made by the revising

Court under Section 398, Cr.P.C., 1973 is for further enquiry. No direction therefor in the nature of putting any impediment in the judicial discretion to be exercised by the Lower Court has to be made. Any direction or instruction indicating the manner in which further enquiry is to be made and particularly whether to frame a particular charge can also not be given. A similar view was reiterated in case of **G.D. Singh -V- State of MP (1990 MPLJ 39)**.

8. In **Parbatbhai Aahir v. State of Gujarat**, [(2017) 9 SCC 641], again the Hon'ble Supreme Court has had an occasion to consider whether the High Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 CrPC. Considering a catena of decisions on the point, the Hon'ble Supreme Court summarised the following propositions:

- “(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.
- (2) xxx xxx xxx
- (3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.
- (4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.
- (5) xxx xxx xxx
- (6) xxx xxx xxx
- (7) xxx xxx xxx
- (8) xxx xxx xxx
- (9) xxx xxx xxx
- (10) xxx xxx xxx”

9. In the matter of **Narinder Singh v. State of Punjab** [(2014) 6 SCC 466], after considering the decision in **Gian Singh v. State of Punjab**,[(2012) 10 SCC 303], in para 29.1 and 29.2, Their Lordships summed up as under:

“29.1 Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under

Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.”

10. Looking to the above mentioned facts and circumstances of the case, looking to the aforesaid judicial precedent laid down by Hon'ble MP high Court in the matter of **Rewaram** (supra), this Court finds that while dealing with the revision against the order of trial Court dismissing the complaint under Section 203 or under Section 204(4), Cr.P.C. or discharging of an accused from an offence, revisional Court can only order for further inquiry, except it, revisional Court cannot pass any other order, because special provision has been made in Section 398 of the Cr.P.C. Revisional Court can neither take the cognizance nor order the trial Court to take cognizance in particular section/s and register the case. Thus, this Court finds that revisional Court has abused the process in taking the cognizance against petitioner under Section 500 of IPC. Hence, looking to the aforesaid judicial precedents laid down by hon'ble Supreme Court in the matters of **Parbatbhai Aahir** (supra) and **Narinder singh** (supra), this Court finds that on the ground of abuse of process and to secure ends of justice, this Court can intervene in the impugned order of revisional Court which relates to taking cognizance under Section 500, IPC against the petitioner.

11. Looking to the above mentioned fact and circumstances of the case, this Court finds that it is a fit case where the extra ordinary jurisdiction of Section 482 of the Cr.P.C. be invoked which is invoked

sparingly with care and caution.

12. Consequently, the impugned order of revisional Court taking cognizance against the petitioner under Section 500, IPC is set aside. The matter is remanded back to the revisional Court with the direction that he will pass the appropriate order looking to the provisions of Section 398 of the Cr.P.C. within a period of 15 days from the date of receipt of a copy of this order.

13. Petitioner and respondent No. 1 are directed to appear before the revisional Court on 7-8-2019.

14. A copy of this order be sent to the Court concerned immediately for compliance.

Sd/-
(Sharad Kumar Gupta)
Judge