

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 19.09.2019
% **Pronounced on : 04.11.2019**

+ **CRL.M.C. 2142/2012 & CRL M.A Nos. 33082/2019 (Stay)**

SHARAD SAXENA

..... Petitioner

Through Mr. Anirudh K Mudgal and Mr. B.
Venkatraman, Advocates.

versus

STATE & ORS

..... Respondents

Through Mr. Amit Ahlawat, APP for the state.
Mr. Anuraj Bhatt and Mr. Lokesh
Pathak for R-2.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

1. The petitioner has filed the present petition u/s 482 of the Cr.P.C. with the following prayer:

(a) Set aside the impugned order dated 12.04.2012 passed by the Learned Court of Shri A.K. Jain, Additional Sessions Judge-03, South East, Saket District Courts, New Delhi in C.R. No. 102/11.

(b) Direct the police of P.S. Kalkaji, New Delhi to register an FIR against the respondents No. 2 and 3 based on the complaint
CRL. M.C. 2142/2012

dated 17.01.2011 filed by the petitioner for commission of cognizable offences by the respondents No. 2 and 3.

2. The petitioner herein had instituted a criminal complaint (CC No. 23/1) against the respondents in the court of Metropolitan Magistrate, South East District alleging offences punishable U/s 420/468/471/474 and Section 120 B IPC having been committed by the respondents. The complaint was accompanied by an application seeking directions to the police U/s 156(3) of the Cr.P.C. to register a case and investigate the matter. The Metropolitan Magistrate vide his order dated 28.07.2011 however, declined the said prayer but he took cognizance on the criminal complaint calling upon the petitioner (complainant) to examine himself and his witnesses under section 200 Cr.P.C. and posted the matter for such purposes.
3. The petitioner feeling aggrieved invoked the revisional jurisdiction of the Court of Sessions and questioned the correctness, legality and propriety of the said order. But his criminal revision petition bearing No. 102/11 was dismissed by the Ld. A.S.J. vide impugned order dated 12.04.2012 which is now challenged by the petitioner, invoking jurisdiction of this Court U/s 482 Cr.P.C.
4. Now a procedural issue has arisen, as to whether the petitioner having availed of the remedy of revision should be allowed to take recourse to section 482 Cr.P.C as a substitute for virtually initiating a second revisional challenge or scrutiny which is clearly barred U/s 397 (3) Cr.P.C which reads as follows :

"(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."

5. 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."

6. 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)

7. The Ld. counsel for the petitioner submitted that inherent power of this Court U/s 482 Cr.P.C is still available and for continuous superintendence the Court would be justified in interfering with the order which has led to the miscarriage of justice. He further submitted that the object of introduction of the bar of section 397(3) Cr.P.C 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, and if a "special case" is made out then such bar ought to be lifted. He relied upon ***Lalita Kumari Vs. Government of Uttar Pradesh and Others***, (2014) 2 Supreme Court Cases 1.

8. On the other hand, it is submitted by the Ld. counsel for the respondents that there is no infirmity in the impugned order. It is further submitted that the petition is liable to be dismissed as this court U/s 482 of the Cr.P.C shall not upset the concurrent findings of the two courts below in the absence of any perversity and the petitioner cannot be allowed to initiate a second revision petition in the garb of section 482 Cr.P.C.

9. 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)

10. In brief the facts are that the petitioner resigned from Indian Navy in the year 1997 as the father of the petitioner was not well and thereafter he joined the family business which was run as EFN Global Impacts Pvt. Ltd. On 07.10.1997 he was appointed as a whole time Director and in the year 2005, he had personally invested 4964 paid up equity shares of the company in his name out of total 11,000 paid up equity shares of the said company, thus he became the owner of 45.13% share capital of the company as single largest share holder. Muneesh Kumar Saxena (respondent No. 2) was holding 33.32% shares and one Pradeep Lakhani was holding 21.55% shares.

11. According to the petitioner, respondent No. 2 started mismanaging the affairs of the company and further started manipulating the share holding pattern of the company and diluted the share holding of the company. The petitioner on noticing such discrepancies, frauds, mismanagement and operations, on 05.03.2007 sent an E-mail that he would not be working with the company after 31.03.2007 and thereby clearly conveyed to respondent No. 2 that he do not want to continue with day to day work of the company. Further, on the intervention of the father of the petitioner who was the Chairman, the petitioner continued handling day to day work of the company for another 3 months i.e. till 30.06.2007 and at no point of time he submitted his resignation letter to the company and continued to be full time director and shareholder of the company.

12. According to the petitioner, respondent No. 2 specifically excluded him from the important decisions of the company and started executing and

forging documents behind his back, so the petitioner urged respondent No. 2 not to indulge in manipulation of accounts and mismanagement of funds but despite this respondent No. 2 continued his misdeeds and caused immense loss to the company and to the petitioner in the capacity of share holder and Director of the company. In December 2009, the petitioner came to know that respondent No. 2 started openly manipulating the accounts of the company and carried out various offences in connivance with his wife and other family members and funds from unknown sources were shown as a loan taken by the company. On 13.12.2010 on surfing the website of the Registrar of Companies, the petitioner came to know that respondent No. 2 in connivance with some Vipul Baranwal (respondent No. 3) had prepared and submitted false documents that the petitioner has resigned as director of the said company on 11.08.2008. They had also filed another forged document with ROC which is form 23 AC showing that the petitioner had signed the same in the capacity of Director on 31.08.2008. When this fact was brought to the notice of respondent No. 2 and other official of the company as well as to the notice of C.A. Mr. P.K. Lakhani & Company by the petitioner, they had started threatening the petitioner and told him that they do not bother as they have high connections. The petitioner thereafter filed a complaint with P.S. Kalkaji but no action was taken by the police against the respondents.

13. The magistrate was not satisfied with the prayer made by the petitioner for directions to the police for investigation U/s 156 (3) Cr.P.C holding as follows :

"Report was called from SHO which reflected that the complainant himself has resigned through E-mail on 05/03/07 and the same was treated as Resignation and complainant also gave no objection in filing the said resignation to the ROC dated 11.08.08, verbally to the employees of the company.

File also reflects that petition before Company Law Board has also been filed by the complainant. Perused the copy of the reply of the respondents filed therein. Further, it is alleged that a false case was got registered by respondent against the complainant at Gurgaon. It is the own case of the complainant that he sent the email tilted resignation dated 05/03/07. In my considered opinion, no investigation is required from the police and all the evidence is within the reach of the complainant. Accordingly, in view of the judgment "***Subhakaran Loharuka & Anr. V/s. State (Govt. of NCT of Delhi) & Anr. 170 (2010) DLT 516***", the application U/s 156(3) Cr.P.C., is dismissed. One opportunity is granted to complainant to lead pre-summoning evidence."

14. The said view of the magistrate has been affirmed by the Court of Sessions while dismissing the revision petition vide impugned order dated 12.04.2012 relying upon the ruling in *M/s Skipper Beverages Pvt. Ltd. Vs. State, 2001 IVAD Delhi 625*" in para 6 and 7 observed as under :

Para-6: Chapter XII of the Code deals with information to the police and its power to investigate the offences. [Section 156](#) of the Code included in this chapter speaks of the power of the police officers to investigate cognizable cases and sub clause (3) thereof lays down that any Magistrate empowered under [Section 190](#) of Code may order such an investigation. Chapter XV of the Code deals with complaints to a Magistrate and the procedure to be adopted by the Magistrate after taking cognizance of an offence. This chapter provides an alternative as well as additional remedy to a complainant

whose complaint is either not entertained by the police or who does not feel satisfied by the investigations being conducted by the Police.

Para-7: It is true that [Section 156\(3\)](#) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders under [Section 156\(3\)](#) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in to help the complainant. The police assistance can be taken by a Magistrate even Under [Section 202\(1\)](#) of the Code after taking cognizance and proceeding with the complaint under Chapter XV of the Code as held by Apex Court in 2001 (1) Supreme Page 129 titled " Suresh Chand Jain Vs. State of Madhya Pradesh & Ors."

15. The Ld. ASJ further relied on case titled as "**Subhkaran Luharuka & Anr. Vs. State**, III(2003) DLT (Crl.) 194" wherein it has been observed as follows :

"52A. For the guidance of subordinate Courts, the procedure to be followed while dealing with an application under [Section 156\(3\)](#) of the Code is summarized as underMagistrate, before passing any order to proceed under Chapter XII, should not only satisfy himself about the pre-requisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for collection of evidence which is neither in the possession of the complainant nor can be

produced by the witnesses on being summoned by the Court at the instance of complainant, and the matter is such which calls for investigation by a State agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code."

16. Having heard the Ld. counsel for the parties, this Court finds that no special case has been made out for this Court to exercise extraordinary jurisdiction U/s 482 Cr.P.C. The entire evidence in this case is documented and no investigation at all is required to be done by the police as the same is within the reach of the petitioner. There is no miscarriage of justice or illegality in the approach adopted by the two courts below nor any such has been pointed by the petitioner. Consequently, the revision petition is dismissed and the CRL M.A No. 33082/2019 is also disposed of accordingly.

RAJNISH BHATNAGAR, J

November 04, 2019

Sumant

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