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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 9th April, 2019

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W.P.(CRL) 979/2017

ANIL NAYYAR

..... Petitioners

Represented by: Mr. S.P. Mehta, Adv.

versus

M/S SHIVANI TEXTILE LTD.

..... Respondents

Represented by: Mr. Praveen Kapoor, Adv.

CORAM:**HON'BLE MS. JUSTICE MUKTA GUPTA****MUKTA GUPTA, J. (ORAL)**

1. Respondent filed a complaint under Section 200 Cr.P.C. along with an application under Section 156(3) Cr.P.C. on which complaint after examining the authorized representative of the complainant and its other witnesses the learned ACMM dismissed the complaint by the order dated 4th November, 2016 and declined to summon the petitioners as accused as it held that no criminal colour could be given to a transaction which was purely civil in nature.
2. Aggrieved by the order dated 4th November, 2016 passed by the learned ACMM the respondent filed a revision petition before the learned Additional Sessions Judge which was decided by the impugned order dated 22nd February, 2017 wherein the learned ASJ on the basis of evidence led by respondent company came to the conclusion that based on the pre-summoning evidence led by the complainant it cannot be said that the case was of civil nature and commission of any cognizable offence was not

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disclosed. Learned Additional Sessions Judge held that there were sufficient grounds to proceed against the petitioner on the allegations of use of criminal force against Jitesh Arora employee of the complainant company in snatching four cheques and also for having hurled abuses at him and threatening them of dire consequences. Thus, the learned ASJ set aside the order dated 4th November, 2016 and partly allowing the revision petition directed summoning of the petitioner under Sections 355, 379 and 506 IPC. Hence the present petition.

3. The short issue raised by learned counsel for the petitioner is that by virtue of Section 398 Cr.P.C. the only jurisdiction available with the learned Additional Sessions Judge was that it could have directed further enquiry under Section 202 Cr.P.C. and not directed that the petitioner be summoned under Section 204 Cr.P.C. for particular offences. Contention of learned counsel for the petitioner is liable to be negated for the jurisdiction of a Sessions Court or a High Court in revision is wide enough as contemplated under Section 397, 399 read with Section 401 Cr.P.C. and not confined to Section 398 Cr.P.C. alone.

4. Sections 397, 398, 399, 401 Cr.P.C. read as under:

"397. Calling for records to exercise powers of revision.

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, - recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

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Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.

(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(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.

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 Magistrate 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:

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

399. Sessions Judge's powers of revision.

(1) In the case of any proceeding the record of which has been called for by himself, the Sessions judge may exercise all or any of the powers which may be exercised by the High Court under sub- section (1) of section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub- section (1), the provisions of sub- sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said sub- sections to the High Court shall be construed as references to the Sessions Judge.

(3) *Where any application for revision is made by or on behalf of an person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by Way of revision at the instance of such person shall be entertained by the High Court or any other Court.*

401. High Court's Powers of revisions.

(1) *In the case of any proceeding the record of which has been called for by itself or Which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.*

(2) *No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.*

(3) *Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.*

(4) *Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.*

(5) *Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice"*

5. A bare perusal of these four provision reveals that in a revision petition filed under Section 397 Cr.P.C. while examining the correctness, legality or propriety of any finding, sentence or order, Sessions Court or High Court can direct further enquiry into any complaint which has been

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dismissed under Section 203 or sub-Section (4) of Section 204 Cr.P.C. and pass any such order which a Court of Appeal exercises under Section 386, 389, 390 and 391 Cr.P.C. Thus, directing further enquiry is one of the options available under Section 398 Cr.P.C., however the jurisdiction under Section 399 read with Section 401 Cr.P.C. is wide enough to correct the illegality, impropriety or incorrectness of any finding or judgment or order passed by the learned Metropolitan Magistrate.

6. There being no error in the impugned order, this Court finds no merit in the petition and the same is dismissed.


(MUKTA GUPTA)
JUDGE

APRIL 09, 2019
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