

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

+ CRL. M.C. 4457/2014

% *Date of decision: 18.12.2019*

PAYAL BATRA

..... Petitioner

**Through: Mr. Vikas Gogne, Mr. Puneet
Relan and Mr. Irfan Muzamil,
Advs.**

versus

STATE (NCT) OF DELHI & ORS

..... Respondents

**Through: Ms. Rajni Gupta, APP for the
State
Mr. Punit K. Bhalla, Ms.
Chetna Bhalla and Mr. Nilesh
Bislani, Advs. For R-3**

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR.J (ORAL)

**1. The present petition is filed by the petitioner with the following
prayers:**

**(a) Pass an order quashing order dated 07.09.2012 passed by
Ms. Pinki, Ld. ASJ Patiala House Court in Revision Petition
No. 81/2011 filed by the Petitioner;**

**(b) Pass an order directing Police to register an FIR under
appropriate sections as brought out in the application filed
u/s 156(3) Cr.P.C.;"**

**2. In brief the facts of the case are that the petitioners had filed a
complaint under Section 200 Cr.P.C along with an application under**

Section 156(3) Cr.P.C for commission of offence under Section 406/418/420/467/468/471/120B IPC. After the receipt of the complaint, the learned MM called for the status report and dismissed the application under Section 156(3) Cr.P.C. The facts as mentioned in the complaint are that the respondent no.2 is the husband of the petitioner, who is an absconder and respondent no.2 along with the co-accomplice sought to mortgage the residential property bearing no. G-601, 6th Floor, Central Park, Gurgaon as a collateral security to the bank but the property stands in the name of the petitioner as co-owner besides respondent no.2. It is further the case of the petitioner that on the basis of the forged document, signatures, hand writing and photographs respondents availed the banking facilities from ICICI Bank, without knowledge of the petitioners, and thereafter, misappropriated the amount. It is stated in the complaint that despite forgery having been committed upon the petitioner by the respondent no.2 banking authorities are threatening the petitioners to divest of her property in question by liquidating the same. The proceedings before the DRT-III were pending with respect to the subject matter. The notice dated 30.10.2010 under Section 13(2) of SARFAESI Act, 2002 for a sum of Rs.66,07,948/- was also received by the petitioner by the petitioner. With these facts and the background, the complainant had filed the criminal complaint along with the application under Section 156(3) Cr.P.C before the learned MM but vide the impugned order dated 12.5.2011 learned MM has dismissed the application under Section 156(3) Cr.P.C by observing as under:-

“Considering the nature of the allegations made by complainant in the complaint, and also the fact that allegations are such that evidence is not beyond the reach of complainant, I decline the request as prayed by the complainant.

Accordingly, the complaint be posted for recording evidence of complainant and statement of witnesses under Section 200 Cr.P.C.”

3. The petitioner has preferred a revision against the order dated 12.5.2011 before the Session Court. The learned Session Judge vide order dated 7.9.2012 dismissed the revision petition with the following observations:-

“14. On examining the nature of facts of the present case, this court is of the considered opinion that no custodial interrogation of respondent is required and evidence is within the control and reach of the complainant. The Id. magistrate has opted for keeping the matter with himself for inquiry instead of sending the same to the police for investigation. It has been held in ***Rameshbhai Pandurao Hedau Vs. State of Gujrat, II (2010) SLT 585***, as under:-

“The power to direct an investigation to the police authorities is available to the Magistrate both under Section 156(3), Cr. P.C and under Section 202 Cr.P.C. The only difference is stage at which the said powers may be invoked. As indicated hereinbefore, the power under Section 156(3) to direct an investigation by the police authorities is at the pre-cognizance stage while the power to direct a similar investigation under Section 202 is at the post-cognizance stage. The learned Magistrate has chosen to adopt the latter course and has treated the protest petition filed by the Appellant as a complaint under Section 200 of the Code and has thereafter proceeded under

Section 202, Cr. P.C and kept the matter with himself for an inquiry in the facts of the case. There is nothing irregular in the matter in which the learned Magistrate has proceeded and if at the stage of Sub-section (2) of Section 202 the learned Magistrate deems it fit, he may either dismiss the complaint under Section 203 or proceed in terms of Section 193 and commit the case to the Court of Session."

In view of the aforesaid observations, this court is of the opinion that there is no illegality or infirmity with the exercise of jurisdiction by the trial Court. This court, therefore, find no reason to interfere with the order of the Id. Magistrate. The revision has no merit or substance and therefore same is dismissed."

4. This order is now challenged by the petitioner, invoking jurisdiction of this Court U/s 482 Cr.P.C.

5. 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."

6. 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."

7. 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.”

8. 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.

9. 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.

10. 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.”

11. 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 disposed of accordingly.

DECEMBER 18, 2019/ib

RAJNISH BHATNAGAR, J

