

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 1152 of 2019

Saeed Khan, S/o. Hatim Khan, aged about 56 years, R/o. Maudhapara,
Raipur District Raipur Chhattisgarh.

---- Applicant

Versus

1. Atul Kumar Sahu, S/o. Ashok Sahu, R/o. Jawahar Lal Nagar, in front of Dena Bank, Raipur District Raipur Chhattisgarh.
2. Ajay Bajaj, S/o. Bhagwat Prasad Bajaj, S/o. Ganesh Ram Nagar, Jawahar Bazar, Raipur District Raipur Chhattisgarh.
3. State of Chhattisgarh, Through S.H.O. Police Station Ganj, Raipur District Raipur Chhattisgarh.

-----Respondents

For Petitioner : Mr. Awadh Tripathi, Advocate

For Respondent No.2 : Mr. Manoj Paranjpe & Mr. Abhyuday Singh,
Advocates

For Respondent No.3/State : Mr. Arijit Tiwari, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

17/03/2020

1. Heard on I.A. No.2/2020, application for dismissal of the instant criminal revision.
2. This criminal revision has been brought being aggrieved by the order dated 17.09.2019, passed in Criminal Case No.1694 of 2007 with prayer to quash the impugned order.
3. The respondent No.2 has filed I.A. No.2, an application raising grounds of maintainability of this criminal revision. It is submitted that this petition has been filed against the order passed by the Sub-Divisional Magistrate Raipur. Remedy was available to the

petitioner to file a criminal revision before the Sessions Judge, therefore, the instant revision petition is not maintainable, which should be dismissed at motion stage. Relying on the judgment of Bombay High Court in ***Tejram S/o. Mahadeorao Gaikwad Vs. Smt. Sunanda, W/o. Tejram Gaikwad & Ors.***, reported in ***1996 Cr. LJ 172***, it is submitted that Bombay High Court has held that even though Section 397 of Cr.P.C. confers jurisdiction of revision concurrently on the Court of Sessions as well as the High Court, the aggrieved party should ordinarily first approach the inferior of the two Courts, unless exceptional grounds for taking the matter directly before the superior Court is made out. It is submitted that the High Court of Delhi has also held similarly in case of ***Sh. Virender Kumar Mutreja Vs. The State (Govt. of NCT of Delhi)***, in Cr. Rev. P. No. 814 of 2019 and in CrI. M.A. No. 32954 of 2019 decided on 16.10.2019, the accused persons directly approached the High Court, it was held that there is of-course no bar for filing revision directly to the High Court under Section 397 of the Code against the order of the Magistrate, but the propriety demands that hierarchy should be followed and the party should make first approach to the lower forum. In case of rare nature and presence of specific circumstances, the party may approach the High Court as well. It is submitted that the petitioner has not made out any case that he had any special and exceptional circumstances because of which filing of revision petition directly before the High Court is justified. Therefore, it is prayed that revision petition be dismissed at motion stage.

4. Counsel for the applicant opposes application and the submission made in this respect. It is submitted that that Section 397 of Cr.P.C. provides for concurrent jurisdiction to the High Court as well as the Sessions Court to entertain the revision petition. Relying on the judgment of Supreme Court in case of **Chander Bhan Singh Vs. Central Bureau of Investigation & Ors.**, reported in **(2019) 3 SCC 193**, it is submitted that the Supreme Court has in that case set-aside the order of the dismissal of the revision petition on the ground of maintainability by the High Court and directed the High Court to consider on the revision petition. It is submitted that in case of **Madhavlal Narayanlal Pittie Vs. Chandrashekhar Chaturvedi**, reported in **1976 Cri. L.J. 1604**, the Bombay High Court has held that the power of High Court as well as Sessions Court are coordinate under Section 397 of Cr.P.C. Jurisdiction of the High Court is not barred if the Court is inclined to exercise the power vested in it and filing revision petition directly to the High Court is not barred. It is also submitted that this Court has in the matter of M.Cr.C.(A) No. 918 of 2019, directly entertained the application in High Court under Section 438 of Cr.P.C., which also shows that the jurisdiction is present with the High Court, which can be exercised for which there is no restriction under the law. It is submitted that this petition is maintainable, which may be heard finally.

5. In reply, it is submitted by the counsel for the respondent No.2 that there is no mention of any exceptional reason for directly approaching the High Court in revision petition, therefore, the petition be dismissed.
6. It is submitted that the ratio of decidendi demands that the party should first approach the Sessions Court and what is the ratio decidendi has been settled in case of **Royal Medical Trust and Another Vs. Union of India & Anr.** reported in **(2017) 16 SCC 605**, and in case of **Natural Resources Allocation, In Re, Special Reference No.1 of 2012**, reported in **(2012) 10 SCC 1** by the Supreme Court that law declared by the Supreme Court is binding on the High Court.
7. The ratio has been settled in case of **Pranab Kumar Mitra vs State of West Bengal and Ors.**, reported in **AIR 1959 SC 144** that High Court is not bound to entertain an application in revision directly and the same has been reiterated in the case of **Central Bureau of Investigation Vs. State of Gujrat**, reported in **(2007) 3 SCC (Cri.) 65**, therefore, the revision petition is not maintainable for the reason that it has been filed directly before the High Court.
8. I have heard the learned counsel for the parties and perused the documents placed on record.
9. There is no doubt that Section 397 of Cr.P.C. confers jurisdiction to the High Court as well as to the Sessions court simultaneously to examine the correctness, legality and propriety of the order

passed by the Court Sub-ordinate to them. The learned Single Judge of the Delhi High Court has in case of **Sh. Virender Kumar Mutreja Vs. The State (Govt. of NCT of Delh) (supra)** has observed in paragraph 13, 14, 15 & 16, which read as under :-

13. The Hon'ble Supreme Court in the case of **Pranab Kumar Mitra v. State of West Bengal repored in AIR 1959 SC 144** has discussed the scope of revisional powers of the High Court in the following words:

"indeed, it is a discretionary power which has to be exercised in aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon the facts and circumstances of that case. The revisional powers of the High Court vested in it by Section 439 of the Code, read with Section 435, do not create any right in the litigation, but only conserve the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence, and that subordinate criminal Courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code. The High Court is not bound to entertain an application in revision, or having entertained one, to order substitution in every case."

14. The above authority of the Hon'ble Supreme Court was the base in a revision petition filed under Section 397 of the Code directly to the High Court before the learned Single Judge of Bombay High Court in **Padmanabh Keshav Kamat v. Anup R. Kantak and Ors.** reported in 1999 Cri.L.J. 122, wherein at paras 11 and 12, it has been held as under:

"When the proceeding is maintainable by two different Courts, one being inferior or subordinate to the other, then it is certainly a question of propriety, particularly for the superior Court, as to whether it should entertain such a proceeding which could have been filed in the lower Court. However, when no special circumstances which required the petitioner to bypass the forum of the Sessions Judge and rush directly to the High Court, are pointed out, then the High Court should not entertain revision application which can be entertained and decided by the Sessions Judge. Exercise of revisional powers is not a matter of course but it is a matter of rare and sparing use. When two Forums, are available to the petitioner for getting redressal of the alleged wrong, then it will certainly be more appropriate for him to first approach the lower forum. It is certainly within the discretion of the higher forum, that is, High Court to consider whether it should entertain or not such a revision application which can lie before the Sessions Judge. Mere fact that the dispute between the parties had once come before High Court cannot be regarded as a special or exceptional circumstances justifying the entertainment of revision application by High Court."

15. In this Padmanabh Keshav Kamat's case (supra), the observations of the learned Single Judge (Hon'ble Mr. Justice R.M.Lodha) as he then was in Bombay High Court in the case of Tejram Mahadeorao Gaikwad v. Smt. Sunanda Tejram Gaikwad reported in 1996 Cri. L.J. 172, were also quoted which have already been reproduced hereinabove.

16. In **Central Bureau of Investigation v. State of Gujrat** reported in (2007) 3 SCC (Cri) 65, the CJM passed

the order directing the CBI to investigate the matter on 29.09.99. The CBI moved an application for recalling the order but this application was rejected on 26.10.99. Then the CBI directly filed the application to the High Court against both the orders which was dismissed on the ground of bypassing Sessions Court.”

10. There is distinction to the pronouncement of the Bombay High Court in ***Madhavlal Narayanlal Pittie Vs. Chandrashekhar Chaturvedi (supra)***, in which it was held that filing of the revision petition before the High Court is not barred. There is no mention of the circumstances under which the petition can be filed before the High Court and also there is no mention about the propriety.
11. The propriety has been discussed in case of ***Tejram Vs. Smt. Sunanda (supra)*** and also in case of ***Sh. Virender Kumar Mutreja Vs. The State (Govt. of NCT of Delhi) (supra)***, according to which the propriety demands that party should first approach the Sessions Court, which is subordinate to the High Court to ventilate his grievance rather than to approach to the High Court. Of-course there is no bar in filing revision petition before the High Court but for the same a specific question has to be made out.
12. The facts of the case are these that the applicant was in possession of the disputed shop. The private respondents filed an application in the Police Station – Ganj, Raipur on the basis of which a complaint was filed before the Court of SDM, City Raipur on which the impugned order has been passed directing the petitioner to vacate the shop and handover the possession to the

private respondent.

13. On perusal of the whole petition, it is found that the petitioner has grievances that evidence presented was not appreciated correctly. Material irregularities are present in the proceeding before the SDM, City Raipur. On whole reading of the petition there appears to be no mention of any exceptional grounds why the petition should be entertained directly by the High Court and there appears to be no reason why this High Court should entertain the revision petition directly under Section 397 of Cr.P.C., when the applicant has remedy available to file revision before the Sessions Court and the judicial propriety demands accordingly.
14. In a result, I.A. No.2/2020 is allowed. The revision petition is dismissed as not maintainable. However, the applicant is at liberty to file revision petition, before the Sessions Court.

Sd/-
(Rajendra Chandra Singh Samant)
Judge