



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.09.2020

Delivered on : 17.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

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CRL OP (MD)No.17646 of 2018
and
Crl.M.P. (MD)No.7823 of 2018

C.Nagamuthu ... Petitioner/ Appellant

Vs.

1.T.Bright Robinson

2.The State of Tamil Nadu,
Rep. by Public Prosecutor,
Kanyakumari District at Nagercoil.... Respondents/ Respondents

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, praying to set aside the order passed in Revision Petition No.38 of 2012, dated 29.06.2018, on the file of the Principal Sessions Judge, Kanyakumari District at Nagercoil, confirming the order passed by the Revenue Divisional Magistrate, Padmanabhapuram, dated 17.07.2012.

For Petitioner	: Mr.S.C.Herold Singh
For R2	: Mr.A.P.G.Ohm Chairma Prabhu Government Advocate (Crl. side)

ORDER

The petitioner has approached this Court with a prayer to call for the records and set aside the order dated 29.06.2018, passed in Revision Petition No.38 of 2012, by the learned Principal Sessions Judge, Kanyakumari District at Nagercoil, confirming the order dated 17.07.2012, passed in Na.Ka.No.A2/3831/2012, by the Sub-Divisional Magistrate and Revenue Divisional Officer, Padmanabhapuram.

2.The first respondent herein has filed a petition before the Sub-Divisional Magistrate and Revenue Divisional Officer, Padmanabhapuram, stating that the petitioner along with his brothers encroached the pathway, which is used by the first respondent's family members and General Public on 21.06.2012 and made construction work and the same was prevented by the Police. Subsequently also, they continued to do their construction work and therefore, he requested to take necessary action.

3.After due enquiry, the Sub-Divisional Magistrate and Revenue Divisional Officer, Padmanabhapuram, passed an order dated

<https://hcservices.ecourts.gov.in/hcservices/>



17.07.2012, vide Na.Ka.No.A2/3831/2012, directing the petitioner not to claim any individual right over the said pathway in respect of S.No.654/10, situated at Thucklay Village, Kalkulam Taluk, Kanyakumari District, without getting suitable decree from the competent Court. As against the same, the petitioner herein preferred a revision before the Principal Sessions Court, Kanyakumari District at Nagercoil. After considering the arguments of the learned counsel appearing for the parties, the learned Principal Sessions Judge, Kanyakumari District at Nagercoil, dismissed the revision, by confirming the order passed by the Sub-Divisional Magistrate and Revenue Divisional Officer, Padmanabhapuram. Challenging the same, the petitioner herein has preferred this Criminal Original Petition under Section 482 of the Code of Criminal Procedure.

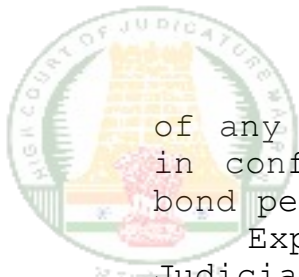
4.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (CrI. Side) appearing for the second respondent.

5.The learned counsel appearing for the petitioner would submit that the disputed property is the Patta land of the petitioner and he is in possession and enjoyment of the said property from the date of purchasing the same and therefore, nobody can claim right over the said property. He would further submit that the petitioner has constructed compound walls in his Patta land after obtaining permission from the authority concerned and therefore, the question of illegal construction and encroachment does not arise. He would also submit that the Sub-Divisional Magistrate and Revenue Divisional Officer, Padmanabhapuram, had passed an order without verifying the documents available with the petitioner and also without examining the witness and therefore, the order passed by him is not sustainable in the eye of law.

6.At this juncture, it is appropriate on the part of this Court to decide as to whether the Criminal Original Petition under Section 482 Cr.P.C. under the guise of second revision, is maintainable.

7.In this context, it is appropriate to incorporate Sections 397 and 482 of Cr.P.C.

"Section 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.

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."

"Section 482 Cr.P.C.-- Saving of inherent power of High Court.-- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

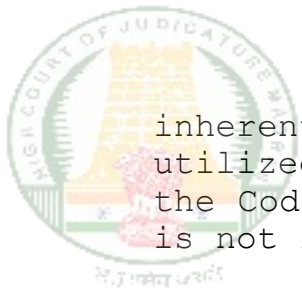
8.While considering Section 397(3) Cr.P.C., it bars second revision. When the Sessions Judge refused to interfere with the order of the Magistrate, the High Court's jurisdiction was invoked. The bar of this Section was, therefore, effectively attracted and the bar could not be circumvented by the subterfuge of treating the revision application as directed against the Sessions Judge's order. When revision against the order of Magistrate dismissing the complaint, had been dismissed by the learned Sessions Judge, application to the High Court under Section 482 Cr.P.C., against the order of dismissal, would not lie, as it would amount to circumventing this provision, which prohibits second revision.

9.The inherent powers cannot be invoked in a manner that the effect would be just entertaining a second revision, which has been expressly barred except in extraordinary cases. The bar, as contained in sub-section (3) of Section 397 Cr.P.C., cannot be circumvented by resorting to Section 482 Cr.P.C. A second revision under the garb of a quash petition under Section 482 Cr.P.C. is not maintainable.

10.At this juncture, it is appropriate to consider the following decisions of our Hon'ble Apex Court and this Court:

(a) **Deepti alias Arati Rai v. Akhil Rai & Ors, [JT 1995 (7) SC 175 = 1995 (5) SCC 751]:**

"4. ... It should have also applied its mind to the aspect that second revision application, after dismissal of the first one by sessions court is not maintainable and that



inherent power under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. As we find that the order passed by the High Court is not legal and just it will have to be set aside."

(b) **Laxmi Bai Patel Vs. Shyam Kumar Patel [JT 2002 (3) SC 409]:**

"3. Before taking up the merits of the case, it would be proper to consider the exercise of jurisdiction under Section 482 Cr.P.C. of the High Court in the facts and circumstances of the case. In a case where the sessions court exercising revisional power under Section 397(3) Cr.P.C. has dismissed the revision petition by the aggrieved party, a second revision petition about acceptance of the same party is barred. The position is well-settled that in such a case power under Section 482 Cr.P.C. can be exercised by the High Court in rare cases and in exceptional circumstances where the court finds that permitting the impugned order to remain undisturbed will amount to abuse of process of the court and will result in failure of justice. The Court in the case of **Dharampal & Ors. v. Ramshri (Smt.) & Ors. [JT 1993 (1) SC 61]**, held:

" Section 397(3) bars a second revision application by the same party. It is now well-settled that the inherent powers under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. Hence, the High Court had clearly erred in entertaining the second revision at the instance of Respondent 1. On this short ground itself, the impugned order of the High Court can be set aside." "

(c) **Dharampal Vs. Ramshri [1993 (1) SCC 435 = 1993 SCC (Cri) 333 = AIR 1993 SC 1361]:**

"6. ... It is now well settled that the inherent powers under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Hence the High Court had clearly erred in entertaining the second revision at the instance of Respondent 1. On this short ground itself, the impugned order of the High Court can be set aside."

(d) **Rajathi Vs. C.Ganesan [1999 SCC (Cri) 1118 = 1999 (6) SCC 326 = AIR 1999 SC 2374 = 1999 Cri.L.J. 3668]:**

"10. In **Krishnan v. Krishnaveni (1997 (4) SCC 241 : 1997 SCC (Cri) 544)**, this Court explained the scope and power of the High Court under Section 482 of the Code. The question before the Court was if in view of the bar of second revision under sub-section (3) of Section 397 of the Code was prohibited, whether inherent power of the High Court is still available under Section 482 of the Code. This Court said as under: (SCC p. 248, para 10)



"10. 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 the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has *suo motu* power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings.' ' "

11. Now, applying the principles set out in the judgments referred to above to the case on hand, I am of the view that there is no compelling circumstance or exceptional circumstance or it could not even be stated to be a rarest of rare case, warranting invocation of Section 482 Cr.P.C. by this Court, and it is a clear case that under the guise of second revision, the petitioner has approached this Court under Section 482 Cr.P.C. Therefore, I am of the considered opinion that the impugned orders passed by both the Courts below in directing the petitioner not to claim any individual right over the said pathway in respect of S.No.654/10, situated at Thucklay Village, Kalkulam Taluk, Kanyakumari District, without getting suitable decree from the competent Court, do not warrant any interference by this Court. Therefore, this Criminal Original Petition deserves to be dismissed as not maintainable.

12. For the reasons stated above:

(a) This Criminal Original Petition is dismissed.

(b) The impugned orders of both the Courts below in directing the petitioner not to claim any individual right over the pathway in respect of S.No.654/10, situated at Thucklay Village, Kalkulam



Taluk, Kanyakumari District, without getting suitable decree from the competent Court, are confirmed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Principal Sessions Judge,
Kanyakumari District at Nagercoil.
- 2.The Sub-Divisional Magistrate and Revenue
Divisional Officer,
Padmanabhapuram.
- 3.The Public Prosecutor,
Kanyakumari District at Nagercoil.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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VB (23.09.2020) 6P 5C