

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

**Reserved on : 20.11.2019**  
% **Pronounced on : 13.03.2020**

+ **CRL.M.C. 5882/2019, CRL.M.A.40664/2019 & 40665/2019**

**UNNATI BHARDWAJ & ANR.**

... Petitioners

Through: Mr. Trideep Pais and Ms. Rakshanda  
Deka, Advs.

versus

**K.P. SHARMA**

.... Respondent

Through:

**CORAM:**  
**HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

**ORDER**

**CRL. M.A. 40665/2019**

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

**CRL.M.C. 5882/2019, CRL.M.A.40664/2019**

1. The petitioners have filed the present petition u/s 482 of the Cr.P.C. with the following prayers :

- a) Allow the present petition and quash the impugned order passed by the Ld. Additional Session Judge-03 (South-East), Saket

Courts, New Delhi dated 19.08.2019 in Cri. Rev. No. 204578/2019 titled "Unnati Bhardwaj and Anr. Vs. State (Govt. of NCT) of Delhi and Anr." as well as the summoning order dated 16.03.2016 passed by the Ld. Metropolitan Magistrate-07, (South -East), Saket Courts, New Delhi in CC No. 90/1/2015 titled "K.P. Sharma Vs. Unnati Bhardwaj and Ors."

b) Quash the complaint, CC No. 90/1/2015 titled "K.P. Sharma Vs. Unnati Bhardwaj and Ors." pending in the Court of Ld. Metropolitan Magistrate (South East), Saket Courts, Delhi.

2. Briefly stated, the facts of the case are that the respondent herein had instituted a criminal complaint (CC No. 90/1/15) U/s 200 Cr.P.C. for commission of offence punishable under section 500 IPC read with Section 120-B IPC against the petitioners herein. The petitioners who are the relatives of the respondent who retired as junior engineer in DDA have casted allegations against the respondent that he indulged in corruption and made lot of money in the department. The respondent has filed supporting material substantiating his allegations. It is stated that the acts of the petitioners have brought ill repute and mental agony to the respondent in his department and before the acquaintances.

3. The Ld. MM-07, (SE) vide his order dated 16.03.2016 summoned the petitioners holding as follows:

"In my view after perusal of the record, there are sufficient grounds proceeding against the accused. Hence, I take cognizance of the offence against the accused persons.

Hence, the accused persons be summoned for next date on filing of list of witness, if he has already not done so and process fee for the purpose of summing of the accused persons.

Accused persons be summoned for 14.04.2016. PF is to be filed within 7 days."

4. The petitioners feeling aggrieved invoked the revisional jurisdiction of the Court of Sessions and questioned the correctness, legality and propriety of the said order. But their criminal revision petition bearing No. 204578/2019 was dismissed by the Ld. A.S.J. vide impugned order dated 19.08.2019 which is now challenged by the petitioners, invoking jurisdiction of this Court U/s 482 Cr.P.C.

5. The Ld. Sessions Judge vide impugned order dated 19.08.2019 held as follows :

"12. On perusal of Trial Court Record and order dated 16.03.2016 passed by Ld. Trial Court it appears that the said order was passed after taking into consideration the all facts. It appears that both revisionists in collusion with each other had lodged a frivolous complaint without any rhyme and reason in the office of respondent No. 2. On the allegations levelled by the revisionists in complaint against respondent No. 2, a departmental enquiry was initiated against respondent No. 2 and after conclusion of departmental enquiry, respondent No. 2 was given clean chit. The other cases, if any, pending against respondent No. 2 has no concerned with the present case.

13. The order of Ld. Trial Court is correct and based on the facts and circumstances of the present case, which have been

faced by respondent No. 2 and he has been defamed by revisionists which proves from the conclusion of the departmental enquiry of respondent No. 2.

14. In view of the aforesaid discussion, I do not find any illegality, infirmity or perversity in order dated 16.03.2016 passed by Ld. Metropolitan Magistrate. Hence, the present criminal revision petition stands dismissed."

6. Now a procedural issue has arisen, as to whether the petitioners 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."

7. 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."

8. 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)

9. The Ld. counsel for the petitioners 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.

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.”

(emphasis supplied)

11. A perusal of the criminal complaint in which the impugned order was passed by the Magistrate, which has been upheld by the Court of Sessions in revision, would show that on 19/05/2014, at the fag end of respondent's retirement, petitioner No. 1 in collusion and in conspiracy with petitioner No. 2 lodged a complaint in the office of the respondent i.e. Vice Chairman, Delhi Development Authority, Vikas Sadan INA, New Delhi and the copy of the same was sent to various other authorities.

12. The complaint against the respondent was of corruption. According to the respondent all the charges levelled in the complaint filed by the petitioners against him were false and frivolous and since the date of filing of the complaint, the respondent was in pain and under mental trauma and torture by his fellow colleagues who started questioning his credibility.

13. According to the respondent all the allegations made in the complaint were without any basis and there was no supporting evidence. A supplementary complaint dated 24.06.2014, was also filed by petitioner No. 1 herein and after this complaint the respondent was subjected to an enquiry by his employer, the enquiry being GC No. 256/2014. Petitioner No. 1 was summoned by the DDA to appear in person in relation to her complaint, but she never appeared to prove the allegations which she had made against the respondent alongwith her husband. The said G.C. enquiry was completed on 30.10.2014, in which it was concluded that "it appears a case of personal enmity which needs to be settled through court and no vigilance angle

involved so GC is closed." The respondent ultimately retired from DDA in May, 2015.

14. Since the respondent was given a clean chit in the GC enquiry by his department, so he preferred the complaint before the Magistrate in which the petitioners have been summoned as accused.

15. All the contentions raised by the petitioners in the present petition cannot be decided under the proceedings U/s 482 Cr.P.C. 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 petitioners cannot be allowed to initiate a second revision petition in the garb of section 482 Cr.P.C. More so, the defence as raised by the petitioners in the petition requires evidence, which cannot be appreciated, evaluated or adjudged in the proceedings under Section 482 of Cr.PC and the same can only be proved in the Court of law. Reliance can be placed upon "***State of Madhya Pradesh Vs. Yogendra Singh Jadon & Anr***", Criminal Appeal No. 175 of 2020 (Arising out of SLP (Criminal) No. 172 of 2017) decided by the Hon'ble Supreme Court on January 31, 2020 in which it has been held that "the power under Section 482 of the Code of Criminal Procedure, 1973 cannot be exercised where the allegations are required to be proved in Court of law".

16. Therefore, this Court finds that no special case has been made out for this Court to exercise extraordinary jurisdiction U/s 482 Cr.P.C. 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 petitioners.

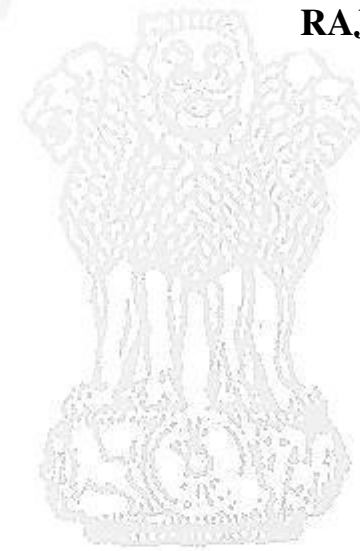
17. In these facts and circumstances, I do not find any palpable absurdity or perversity in the impugned order, which may require to be corrected or set right by this Court, in exercise of its inherent jurisdiction U/s 482 Cr.P.C.

18. The prayers are untenable in law. Hence, this Court does not deem it appropriate to issue notice to the respondent. The petition is, therefore, dismissed and CrI.M.A.40664/2019 is also disposed of accordingly.

**RAJNISH BHATNAGAR, J**

**March 13, 2020**

*Sumant*



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