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

+ CRL.M.C. 847/2020 & CRL. MA 3435/2020

SATISH KUMAR GARG

..... Petitioner

Through Mr. Vijay Shankar and Ms. Renu
Beniwal, Advocates.

versus

STATE & ANR

..... Respondent

Through Mr. M.S. Oberoi, APP for the State.
AR of the respondent No. 2 in person.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

% **27.02.2020**

1. The present petition has been filed by the petitioner U/s 482 of Cr.P.C with the following prayers :

"(i) Quash the order dated 25.01.2020 passed by the Ld. ASJ, Sh. Samar Vishal, West District, Tis Hazari Court in criminal revision petition No. 399/2019 titled "Satish Kumar Garg Vs. State & Anrs.

(ii) Allow the petitioner to file and mark exhibit the interest certificate and two self cheques.

(iii) Stay the proceedings/decision of the case till the disposal of this petition."

2. The petitioner had moved an application U/s 311 Cr.P.C before the Court of Metropolitan Magistrate and the Ld. Metropolitan Magistrate vide

his order dated 15.10.2019 dismissed the same. The Ld. Metropolitan Magistrate vide his order dated 15.10.2019 held as follows :

"Perused of the record shows that the complainant was cross examined on 24.01.19 and thereafter complainant was cross examined and discharged on 16.03.19. thereafter the matter was listed for SA and SA was recorded on 06.04.19.

Further DW-1 applicant herein was examined and cross examined on 15.07.19 after the cross examination of the complainant sufficient time has elapsed. Still the applicant herein did not move application. Application under section 311 Cr.P.C is moved at the stage of final argument. The fact of interest certificate and self cheques was well within the knowledge of the accused.

The matter pertains to the year 2014. It appears that the accused has moved the application just to delay the matter. Seeing the facts and circumstances of the case, application under Section 311 Cr.P.C stand dismissed."

3. The petitioner feeling aggrieved invoked the revisional jurisdiction of the Court of Sessions and questioned the correctness, legality and propriety of the said order. But his criminal revision petition bearing No. 399/2019 was dismissed by the Ld. A.S.J. vide impugned order dated 25.01.2020 which is now challenged by the petitioner, invoking jurisdiction of this Court U/s 482 Cr.P.C.

4. Before proceeding to consider the contentions of the petitioner, 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."

5. 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."

6. 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)

7. The parameters of the jurisdiction of the High Court, in exercising jurisdiction under Section 482 Cr.PC, are now almost well-settled. Although it has wide amplitude, but a great deal of caution is also required in its exercise. The requirement is, the application of well known legal principles involved in each and every matter. I have perused the impugned order dated 25.01.2020 and after the perusal of the same, this Court does not find any material on record which can be stated to be of sterling and impeccable quality warranting invocation of the jurisdiction of this Court under Section 482 Cr.PC at this stage.

8. More so, the petitioner invoked the revisional jurisdiction of the Court of Sessions against the order dated 15.10.2019 passed by the Ld. MM and the Ld. Sessions Judge dismissed the revision petition observing that the dismissal of the application u/s 311 Cr.P.C is an interlocutory order in view of the judgments Sethuraman Vs. Rajamanickam (2009) 5 SCC 153 of the Hon'ble Supreme Court of India, Kaushalaya Rani Vs Municipal Corporation of Delhi; 79 (1999) DLT 709 and Anil Kumar Vs. Sunita & Ors., Criminal Appeal No. 774/2011, decided on 19.02.2013 of Hon'ble Delhi High Court and therefore can not be challenged by filing a revision petition. The Ld. Sessions Judge has further observed that the Hon'ble Supreme Court of India in case of Sethuraman (supra) has inter alia held as follows:

"5. Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the

application under Section 311 Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397 Cr.P.C. Therefore, both the orders, i.e., one on the application under Section 91 Cr.P.C. for production of documents and other on the application under Section 311 Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397(2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed."

9. Therefore, in view of the discussions mentioned hereinabove, I am of the view that the present petition is not maintainable firstly being the second revision petition under the garb of section 482 Cr.P.C and secondly the Ld. sessions judge has rightly observed vide impugned order dated 25.01.2020 that the revision is also not maintainable as the dismissal of the application of the revisionist U/s 311 Cr.P.C. is an interlocutory order. Therefore, I do not find any infirmity in the impugned order dated 25.01.2020, the same is, therefore, upheld. Consequently, the present petition is dismissed and CrI. MA 3435/2020 is also disposed of accordingly.

RAJNISH BHATNAGAR, J

FEBRUARY 27, 2020

Sumant