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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 01st June, 2023

+ CRL.M.C. 2702/2011, CRL.M.A. 3264/2018 (Delay) & CRL.M.A. 3265/2018 (Direction)

KAPOOR CHAND GUPTA Petitioner
Through: Mr. Ranjeet Singh and Mr. Kailash
Pandey, Advocates
versus

STATE & ORS Respondents
Through: Mr. Hitesh Vali, APP for the State.
SI Narasi Prasad Meena, P.S. New
Friends Colony.
Mr. K.N. Jayasankar and Ms. Beena
Nair, Advocates for R-2 to R-4.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.') seeks the following prayers:

- “(a) issue a appropriate direction and order thereby call the record and proceedings from the courts below further quash and set aside the order dated 25.3.2010 passed by ACMM - IV. Delhi in FIR No. 613/07, Order dated 21.04.2011 passed by the Additional Session Judge, South East., New Delhi in C.R No.24/10 and cancellation report filed by the IO in FIR No. 613/2007;
(b) upon quashing direction be issued to the trial court to try the FIR no. 613/2007 dated 19.11.2007 as per the procedure laid down in Cr.P.C.; and



(c) pass any other of further orders as this Hon'ble Court may deem fit and proper in the interest of justice.”

2. The learned Additional Session Judge – 03, South-East, Saket Court Complex, New Delhi, in C.R. No. 24/2010, *vide* order dated 21.04.2011, dismissed the revision petition filed on behalf of the petitioner and upheld the order dated 25.03.2010, passed by the learned Additional Chief Metropolitan Magistrate– IV, South-East, Saket Court, New Delhi. Whereby, the learned ACMM accepted the cancellation report filed by the Investigating Officer, in FIR No. 613/2007, under Sections 406/420 of the Indian Penal Code (‘IPC’) registered at P.S. New Friends Colony.

3. Briefly stated, the facts relevant for adjudication of the present petition are as under:

i. The case of the petitioner, as per the complaint filed under Section 200 read with Section 190 of the Cr.P.C. is as under:

“1. That the complainant Kapoor Chand Gupta S/o Late Sh. Yad Ram Gupta presently 82 years old , is the permanent resident of Firozpur City of Punjab and at present he is residing at House No. : 35/50, Trilok Puri, Delhi.

2. That on 05.01.2001, complainant purchased a Ashok Leyand Diesel Bus chassis , from M/s. Pearey Lai & Sons (Ep.) Ltd., 63, Rama Road, Patel Nagar, Near Fly Over, New Delhi-110 015. The chassis was purchased in Rs. 6,30,745/- (Rupees Six Lacs Thirty Thousands Seven Hundred and Fourty Five only) .

3. That the bus chassis no. : was UBA-032183, Engine no. : VBH-158763 and bus was subsequently registered with the Delhi Transport Authority and bus registration no: DL-1P-A-7622 was allotted . The copy of registration certificate is being filed and marked as annex. A.

4. That the cost of the chassis was Rs. 6,30,745/- + Rs. 5,30,000/- was spent on the manufacturing and fabrication of the body of bus as such after the body the bus , had costed total Rs. 11,60,745/-. Besides Rs. 11,60,745/- , the complainant spent Rs. 50,000/- on



Insurance and Road Tax paid to the Delhi Transport Authority and Insurance company as such the cost of the bus further enhanced from Rs. 11,60,745/- to Rs. 12,10,745/-.

5. That out of Rs. 12,10,745/- (Rupees Twelve Lacs Ten Thousand Seven Hundred and Forty Five only) , the complainant got financed Rs. 5,00,000/- from Ashok Leyand Finance Ltd. , Bhagria House, 43, Community Centre, New Friends Colony, New Delhi-110065, from the accused persons and the balance of Rs. 7,10,745/- was paid and spent by complainant.

6. That the complainant paid all the monthly installments to the accused persons on time from January 2001 to December 2002. In the second half of year 2002, Delhi Transport Authority , issued direction to all the bus owner to convert the diesel vehicle into CNG vehicle . Therefore, the complainant 's bus no. DI-IP-A-7622 was also to be converted into CNG vehicle. Then , complainant being an old man , was in requirement of help to convert his bus into CNG vehicle by get fitting the CNG kit. Therefore, the complainant contacted the officials of Ashok Leyand Finance Ltd. , Bhagria House, 43, Community Centre, New Friends Colony, New Delhi-110 065, to help him to get convert his bus from Diesel to CNG vehicle by fitting the CNG Kit, to make it worthy to ply on road in accordance with the directions of the Hon'ble Supreme Court of India and the Directorate of Transport of Delhi..

7. That the officials of Ashok Leyand Finance Ltd. , of its office of Bhagria House, 43, Community Centre, New Friends Colony, New Delhi-110 065 , asked the complainant to leave the vehicle in their office and they assured the complainant to get fit the CNG kit . Accordingly, on 02.12.2002, the complainant handed over his bus no. DI-IP-A-7622 and ignition key to the official of Ashok Leyand Finance Ltd. , Bhagria House, 43, Community Centre, New Friends Colony, New Delhi-110 065 . The officials of Ashok Leyand Finance Ltd. , also asked the complainant to contact M/s. Pearrey Lal 85 Sons for fitting of CNG kit from whom the bus was purchased..

8. That the officials of Ashok Leyand Finance Ltd. , also contacted M/s. Pearey Lal & Sons in the presence of the complainant to get fit the CNG kit in his bus. The complainant also wrote letter to M/s. Pearey Lal & Sons.

9. That the officials of Ashok Leyand Finance Ltd. , after taking ignition key and possession of bus, delayed the fitting of CNG kit



in the bus for about 20 days and on one or other false pretext of contacting the CNG kit dealers , they linger on and delayed the CNG kit fitting in bus for about 20 days. Then, complainant requested the officials of the accused company to return his bus and he decided to arrange the fitting the CNG kit on his own .

10. That the officials of Ashok Leyand Finance Ltd. , Bhagria House, 43, Community Centre, New Friends Colony, New Delhi-110 065, instead of returning the bus of the complainant handed over one letter , on which the date was mentioned 02.12.2002 , but it was given to complainant on 24.12.2002 in the letter they stated that " the vehicle bearing registration no. DL-IP-A-7622 has been surrendered on 02.12.2002 as per clause. 8 (i) of the agreement , your account is showing an overdue of Rs. 2641/- excluding additional finance charges , you are advised to settle the contract in full as per clause 8(i) by paying the settlement figure of Rs. 3,12,268/- (Rupees Three Lacs Twelve Thousand Two Hundred and Sixty Eight only), as we intent to terminate the contract. However, please note that this amount should be paid before 02.12.2002 and failure to pay the same will compel us to take necessary actions to realize the amount value. Please also note that the vehicle is held with us at your risk and responsibility". The copy letter dated 02.12.2002 given to complainant on 24.12.2002 is being filed and marked annex. B.

11. That as per the contents of letter dated 02.12.2002, given to complainant, on 24.12.2002, the full and final overdues against the complainant was Rs. 3,12,268/- which was to be paid in the remaining monthly installments , but the officials of Ashok Leyand Finance Company, by taking advantage of the vehicle kept with them by the complainant for CNG fitting , withheld the vehicle and raised the demand, of full and final balance of the further monthly installment i.e. total Rs. 3,12,268/-, and they had clearly admitted in then- letter dated 02.12.2002 that only Rs. 2641/- were overdue against the complainant

12. That on 27.12.2002, the complainant paid Rs. 17,500 and again on 30.12.2002, the complainant paid Rs. 17,500/- to Delhi Transport Corporation against DTC Bus Stand Fee. The bus of the complainant was in the- possession of accused persons since 02.12.2002, and complainant paid Rs. 35,000/- DTC Stand Fee with the hope and assurance that he will ply his bus on the DTC route to save the permit from cancellation. The complainant was



hoping that the accused persons will return his vehicle as no dues were standing against him. The attested true copies of payment of DTC Bus Stand Fee, paid by the complainant to the DTC are being filed and marked annexs. C & D.

13. That the Ashok Leyand Finance Ltd.'s officials , delayed the return of the bus to complainant on one or other false pretext till the month of February 2003. In the month of February 2003 , Ashok Leyand Finance Ltd.'s officials demanded Rs. 1,19,426/- to return his vehicle. Accordingly on 25.02.2003 , the complainant paid Rs. 1,19,426/- to accused persons , which was duly acknowledged by the officials of Ashok Leyand. But, they did not return the complainant vehicle even after payment of Rs. 1,19,426/-. The copy of the payment of Rs. 1,19,426/- made on 25.02.2003, is being filed and same is marked as annex. E.

14. That the bus of the complainant was duly insured for the period of 12.04.2002 to 11.04.2003 and the complainant had already paid insurance subscription of Rs. 11,831/- to the Oriental Insurance Company Ltd., but the accused persons withhold the bus of the complainant on 2.12.2002 and have not returned the till date. The true copy of the insurance company is being filed and marked as annex. F.

15. That after receipt of Rs. 1,19,426/- , the officials of Ashok Leyand Finance Ltd., refused to return the complainant vehicle and delayed the matter on one or other false pretext. After long waiting, complainant reported the matter to the police and also intimated the Delhi Transport Authority not to transfer his vehicle in the name of any other person. But, the complaint and prayers of the complainant fell on deaf ears.

16. That the complainant bus was withheld by the accused persons without any reasons and even after payment of Rs. 1,19,426/-, the accused persons have not returned the bus of the complainant and illegally and unlawfully they have taken away the source of livelihood of the complainant and his family by taking advantage of 82 years of age and due to that extortion , cheating and tortuous , illegal and unlawful acts of the accused persons , the complainant suffered from cardiac attack and remained hospitalized for about 12 days in Dayanand Medical College and Hospital in Ludhiana (Punjab) and spent Rs. 2,00,000/- on his treatment. The copy of medical papers showing the history cardiac ailment is being filed and marked as annex. G.



17. That in December 2006, the complainant received a summon from the court along with a copy of complaint under Section 138 N. I. Act, then the complainant gone through the contents of the complaint and through the contents of para no. 4, the complainant came to know that his vehicle has been sold by the Ashok Leyand Finance Ltd. , on 4.7.2003 for a sum of Rs. 1,70,000/-. It is pertinent to mention here that till date , the registration of the vehicle with the Delhi Transport Authority stood in the name of the, complainant and the vehicle has not been transferred in the name of any other persons. The copy of complaint and the summons received by the complainant in December 2006 is being filed and marked as annex. H.

18. That the bus costed to the complainant in total Rs. 12,10,745/- out of that Rs. 5,00,000/- was financed by the Ashok Leyand Finance Ltd. The vehicle was left in their office for the fitting of CNG kit on 02.12.2002. On 2.12.2002, the balance against the complainant was Rs. 3,12,268/-, thereafter in February 2003, the complainant paid to the accused persons a sum of Rs. 1,19,426/- then, the balance remained in the month of February 2003 , Rs. 1,92,842/- (Rupees One Lakh Ninety Two Thousands Eight hundred and fourty two only).

19. That the cost of the complainant bus in December 2002 was approximately Rs. 8,00,000/- and Ashok Leyand Finance Ltd.'s officials are claiming to have sold its in Rs. 1,70,000/- on 4.7.2003, though till date it remained registered in the name, of complainant and even thereafter they have filed a complaint under Section 138 N. I. Act against the complainant for the dishonoured of the cheque of Rs. 3,60,768/- dated 18.01.2006 by taking advantage of the signature of complainant on the blank cheque , signed and given by the complainant to the accused persons in January 2001 at the time of getting finance the vehicle.

20. That the Ashok Leyand Finance Ltd's officials have misappropriated the vehicle of the complainant by taking advantage of his old age and loneliness as they have not returned his bus since 02.12.2002 only for some of Rs. 1,92,842/- and the market value of the bus of the complainant on 02.12.2002 was approx. Rs. 8,00,000/- {Rupees Eight Lacs only} . Even on today, the value of the bus is Rs. 7,00,000/- (Rupees Seven Lacs only) . And on the other hands, the accused persons have filed a criminal complaint under section 138 of N. I. Act , in respect of dishonour of cheque



no. 162539 for Rs. 3,60,768/- dated 18.01.2006 to extort the complainant by fabricating the false figure of amount and date on the cheque by taking advantage of blank signature of the complainant on the cheque.

21. That the officials of Ashok Leyand Finance Ltd. , Bhagria House, 43, Community Centre, New Friends Colony, New Delhi-110 065, has cheated the complainant , misappropriated his bus , they have filed a false and frivolous complaint by taking advantage of the old age and blank signature on blank cheques, by entering into criminal conspiracy infurtherance of their common intention to extort money from the complainant . Therefore, the accused persons have committed the offences of extortion, criminal breach of trust, cheating and forgery and chieating by fabricking the forged and false document punishable under Section 384/ 406/420/467/ 468/471/120-B/34 IPC.

22. That the complainant has reported the matter to the SHO of PS : New Friends Colony , Commissioner of Delhi Police , DCP - South District New Delhi, DCP (Crime and Railway) , Delhi, on 19.04.2007 . But, the police has not taken any action on the complaint of the complainant against the accused persons . Despite the cognizable offences have been prima facie committed by the accused persons . The copy of the complaints given by the complainant to the police authorities on 19.04.2007 is being filed and marked as Annex. I.

23. That all the offences by the accused persons have been committee in their office of Bhagna House, 43, Community Centre, New Friends Colony, New Delhi-110 065, within the jurisdiction of PS New Friends Colony. As such this Hon'ble Court has territory jurisdiction to take cognizance on the present complaint and to try and punish the accused persons

PRAYER

It is, therefore prayed that keeping in view the above facts , submissions and in the circumstances of the present complaint, this Hon'ble court may be pleased to take cognizance on the present complaint of the complainant against the accused persons for the offences of extortion, criminal breach of trust, cheating and forgery and chieating by fabricking the forged and false document punishable under Section 384/ 406/420/467/ 468/471/120-B/34 IPC.

It is also prayed that this Hon'ble Court may kindly be pleased to



summon the accused persons through Non Bailable Warrant and to try and punish them for the offences punishable under Section 384/406/420/467/ 468/471/120-B/34 IPC, in the interest of justice.”

- ii. The learned Metropolitan Magistrate *vide* order dated 17.05.2007, had called for a status report from the Station House Officer (‘SHO’), P.S. New Friends Colony. Thereafter, *vide* order dated 02.06.2007, the learned MM directed the SHO, P.S. New Friends Colony, to register an FIR under appropriate sections and to proceed with the investigation. Subsequently, an FIR dated 19.11.2007, bearing FIR no. 613/2007, under Sections 406/420 of the IPC was registered at P.S. New Friends Colony.
- iii. After completion of the investigation in the aforesaid FIR, a Cancellation Report was filed, before the learned Additional Chief Metropolitan Magistrate, under Section 173 of the Cr.P.C.
- iv. In pursuance thereof, the petitioner filed a protest petition dated 21.10.2009, wherein he prayed to reject the Cancellation Report filed by the Investigating Officer in FIR no. 613/2007, under Sections 406/420, registered at P.S. New Friends Colony and further take cognizance on the complaint filed by him.
- v. The learned Additional Chief Metropolitan Magistrate *vide* order dated 25.03.2010, accepted the Cancellation Report filed by the Investigating Officer and dismissed the protest petition filed by the petitioner, herein. The grounds under which the Investigating Officer had filed the Cancellation Report, was recorded by the learned ACMM and are as under:

“1). Bus was taken to godown of the accused company by Sharwan



Kumar in which Prem Lal Sharma was also sitting. Godown is at Najafragh. The vehicle was not left at the office of company at new Friends Colony. And Prem Lal Sharma handed over the receipt of the deposit of the bus to complaint at his home.

2) That the vehicle was actually surrendered and that is why the insurance cover of remaining period of bus in question was sought to be transferred on another bus, if there would have been any intention of plying the bus in question in future then the insurance cover would not have been transferred.

3) DTC stand fee was paid from the year 2002 and not for subsequent period. There was no reason for deposit of bus for CNG fitting with finance company and finance company does not do any such kind of activity.

5). That after Dec 2003 no police complaint was made by complaint till the receiving of summon in u/s 138 N I Act matter in the year 2007. Meaning thereby he had not complaint against accused company.”

- vi. Aggrieved by the aforesaid order passed by the learned ACMM, the petitioner herein, filed a revision petition bearing C.R. No. 24/2010, before the Court of Additional Session Judge – 03, South East, Saket Court Complex, New Delhi. The learned ASJ *vide* order dated 21.04.2011, dismissed the aforesaid revision petition filed by the petitioner herein and held that he finds no infirmity in the impugned order dated 25.03.2010, passed by the learned ACMM.
- vii. The learned ASJ while dismissing the aforesaid revision petition filed on behalf of the petitioner, recorded as under:-

“3. The material allegations of complainant in nutshell is that he had purchased a bus on 05.01.2001 bearing registration no. DL IPA 7622 for a sum of Rs. 12,10,745/- and out of which Rs. 5lacs was financed by the accused company Ashok Leyland Finance Ltd. and paid monthly installment on time from January 2001 to December 2002. In the second half of year 2002, Delhi Transport Authority issued a direction to convert the diesel vehicle into CNG, therefore, complainant contacted the officials



of accused company for fitting of the CNG kit and he was asked by company to leave the vehicle at their office and assured the complainant to get fitted the CNG kit. Thereafter on 02.12.2002, he left the said vehicle with company at Bagharia House, 43, Community Center, New Friends Colony and in this regard the company official also contacted M/s. Pyare Lal & Sons company for fitting of the CNG kit. Instead of returning the bus on 24.12.2002, the company handed over a letter by stating that the said vehicle was surrendered on 02.12.2002 and asked to clear the outstanding amount of Rs. 3,12,268/-. It is further alleged in the complaint that 27.12.2002 and again on 30.12.2002, the complainant had paid Rs. 17,500/- for DTC bus stand fee. Further had paid a Rs. 1,19,426/- on 25.02.2003 for return of the vehicle. It is further alleged by the complainant that he has already paid the insurance amount upto 11.04.2003. But despite this the accused persons had not returned the said bus. Furthermore, in December 2006, complainant received summons u/s 138 NI Act by which he came to know that the said vehicle sold by the accused company for the sum of Rs. 1,70,000/- and therefore filed a criminal complaint to the police for initiating criminal action against the accused person for alleged cheating and misappropriation of the bus and further misutilising of the blank signed cheques.

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9. Main grievance of the revisionist/ complainant is that the accused persons have misappropriated his bus which was given to them for the purpose of CNG fitting and thereby cause wrongful loss to him and wrongful gains to themselves and thereby also committed offence of cheating. Police during investigation have found that the said bus was surrendered to the accused persons voluntarily by the complainant and a letter in this regard was written by the complainant himself. Further from other circumstances that is the complainant letter to the insurance company to transfer the insurance policy from the said bus to his other vehicle and non payment of the installments after November 2002 corroborates the facts that the complainant himself surrendered the said bus to the accused persons. The complainant version that he deposited the bus stand fee to the DTC is also falsified because that bus stand fee was of the period before the surrendering of the said vehicle to accused persons.



Complainant in protest petition had not even denied that no such letter of surrender was written by him. Further complainant had not filed any civil or criminal case despite being aggrieved of misappropriation and cheating from the hands of accused persons since December 2002 till the receiving of the summons of an offence u/s. 138 NI Act filed by the accused persons in the year 2007. Therefore, on consideration of entire material collected during the investigation, the Id. Trial court has rightly accepted the conclusion arrived in cancellation report, thus no offence appears to be made out for misappropriation and cheating against the accused persons.

10. Ld. Counsel for the complainant had submitted that he had also made a payment of Rs. 1,19,426/- on 25.02.2003 and the same was not reflected in the accounts of accused persons. It is also transpired during the arguments that complainant had financed number of buses from the accused company and that payment is to be adjusted accordingly in other accounts. Even if it is presumed that on 25.02.2003, he had made that payment of Rs. 1,19,426/- for the said bus then also there is no case of misappropriation and cheating made out against accused company because as per the evidence collected by the police, he himself surrendered the bus and any kind of subsequent payment made to accused company do not point towards a criminal offence of cheating and misappropriation by the accused persons. At most a civil dispute could be inferred from this transaction.

11. It is rightly observed by the trial court in the impugned order that in protest petition, the revisionist only reiterated the details of earlier complaint and offered no explanation or clarification suggesting the short comings of the cancellation report. Therefore, there is no justification in continuance of the proceedings through protest petition.

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15. Therefore the proposition of law which emerges as also argued by Ld. counsel for revisionist that court even after acceptance of cancellation report may continue with complaint case proceedings. But it is not mandatory and all depends upon facts and circumstances of each case. In present set of facts, revisionist unable to point out any shortcoming in the findings disclosed in cancellation report. Even has not disputed his own



letter of surrender of vehicle. Furthermore could not bring forth any new fact suggesting commission of offence in protest petition to enable court to proceed with inquiry despite acceptance of final report. Even otherwise on consideration of entire material on record no offence of misappropriation and cheating appears to have been made out.”

viii. Aggrieved by the orders passed by the learned ASJ dated 21.04.2011 as well as order passed by the learned ACMM dated 25.03.2010, the petitioner has preferred the present petition.

4. Learned counsel appearing on behalf of the petitioner submitted that the learned Additional Sessions Judge as well as the learned Additional Chief Metropolitan Magistrate have erred in not appreciating that the Investigating Officer in his cancellation report has made wrong statements.

5. It was further submitted that the Courts below have erred in holding that the present complaint/FIR was filed by the petitioner as a counter blast of the complaint filed under Section 138 Negotiable Instruments Act, 1881, by respondent no. 2/company, herein.

6. It was submitted that the Investigating Officer in his cancellation report has wrongly mentioned that the petitioner could not produce any receipt of the amount of Rs. 1,19,426/-, which was paid to respondent no. 2/company, on 25.02.2003.

7. It was submitted that if the story of surrender of the bus mentioned herein above is accepted, then why did respondents no. 2 and 3 accept the aforesaid amount in the month of February, 2003.

8. It was further argued that the learned Courts below have ignored the fact that the bus was sold without information/consent of the petitioner for a meagre amount of Rs. 1,70,000/-, when the bus at the time of sale was just 2



years old and the original cost of the said bus was of a sum of Rs. 12,10,745/-.

9. *Per Contra*, learned counsel appearing on behalf of the respondent no. 2 and 3 submitted that the present petition under Section 482 of the Cr.P.C. challenges two consecutive findings of the learned Courts below and therefore, the inherent powers provided under Section 482 of the Cr.P.C., can not be exercised to defeat the statutory bar of Section 397(3) of the Cr.P.C.

10. It was further submitted that the Investigating Officer after examining the relevant witnesses had come to a conclusion in the Cancellation Report that it was the original petitioner, i.e., Sh. Kapoor Chand Gupta, who had surrendered the bus in the godown of the respondent no. 2/company.

11. Heard the learned counsel appearing on behalf of the parties.

12. It is pertinent to note that during the pendency of the present proceedings the petitioner herein i.e. Sh. Kapoor Chand Gupta, has since passed away, an application bearing application no. CRL.M.A. 3263/2018, to bring on record the legal representative of the petitioner, was allowed by the predecessor Bench of this Court *vide* order dated 07.09.2022 and the name of the petitioner was substituted by Sh. Sahil Gupta s/o Sh. Sushil Gupta, R/o House No. 46, Street No. 1 Ferozepur Cantt, Punjab.

13. In **Rajan Kumar Manchanda v. State of Karnataka, 1990 (Supp) Supreme Court Cases 132**, the Hon'ble Supreme Court has held as under:

“2. ...A second Revision did not lie at the instance of the State to the High Court in view of the provisions of Section 397(3) of Cr.P.C. Obviously, to avoid this bar, the application moved by the State before the High Court was stated to be under Section 482 Cr.P.C. asking for exercise of inherent powers. In exercise of that power, the High Court has reversed the order of the Magistrate as affirmed by the Sessions Judge. The question for consideration is as to whether the bar under Section 397(3) Cr.P.C. should have been



taken note of to reject the revision at the instance of the State Government or action taken by the High Court in exercise of its inherent power has to be sustained. It is not disputed by counsel appearing for the State that the move before the High Court was really on application for revision of the order of the Magistrate releasing the truck. That is exactly what is prohibited under Section 397(3) Cr.P.C. Merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome. If that was to be permitted every revision application facing the bar of Section 397(3) of the Code could be labelled as one under Section 482. We are satisfied that this is a case where the High Court had no jurisdiction to entertain the revision. The appeal is allowed and we set aside the order of the High Court. The Order of the Magistrate as affirmed by the Session Judge is upheld.”

14. In *Surender Kumar Jain v. State & Another*, 2012 SCC OnLine Del 571, a learned Single Judge of this Court, held as under:

“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 482 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 Limaye Vs. State of Maharashtra**



(1977) 4 SCC 551, State of Orissa Vs. Ram Chander Aggarwal, AIR SC 87, Raj Kapoor Vs. State (Delhi Administration) 1980 Cri.L.J. 202, Krishnan & Anr. Vs. Krishnaveni & Anr and Kailash Verma Vs. Punjab State Civil Supplies Corporation and Anr (2005) 2 SCC 571.”

15. In Varinder Kaur v. The State (NCT of Delhi) & Anr., 2017 SCC OnLine Del 10638, a learned Single Judge of this Court, has observed as under:

21. It is worth mentioning that in the garb of petition under Section 482 CrPC, the petitioner has filed second revision petition which is not maintainable. In the case Wajid Mirza vs. Mohammed Ali Ahmed & Ors. 1982 CriLJ 890, the High Court of Andhra Pradesh has observed as under :-

‘23. This Court in Re Puritipati Jagga Reddy, (1979) 1 AJLJ 1 : AIR 1979 Andra Pra 146 at p. 149 (FB) held :

The language of sub-section (3) of Section 397 contains no ambiguity. If any person had already chosen to file a revision before the High Court or to the Sessions Court under subsection (1), the same person cannot prefer a further application to the other Court. To put it in other words, sub-sec.(1) and (3) make it clear that a person aggrieved by any order or proceeding can seek remedy by way of revision either before the High Court or the Sessions Court. Once, he has availed himself of the remedy, he is precluded from approaching the other forum. It is equally manifest from the provisions of sub-section (3) that this bar is limited to the same person who has already chosen to go either to the High Court or to the Sessions court seeking a remedy and that it does not apply to the other parties or persons.’

22. The Bombay High Court has taken the same view in the case Inayatullah Rizwi v. Rahimatuallah & Ors. 1981 CriLJ 1398 and observed that :

‘We are, therefore, of the view that a revision to the High Court would be tenable at the instance of a party who is unsuccessful before the Sessions Judge, or who is aggrieved



by his order. In other words, a concurrent finding of the Sessions Judge and of the Courts below become final, but when the Sessions Judge reverse the order of the Court below in revision the defeated party is not precluded from moving the High Court. The consensus of judicial opinion as can be seen supports only this view.'

16. In Pooja Walia v. State and Anr., 2011 SCC OnLine Del 2462, a learned Single Judge of this Court has held as under:

“8. At the very outset, I must state that the present petition is in essence a second revision filed by the petitioner raising the same set of grievances which were raised by her before the learned Additional Sessions Judge. Although, the Section 482 Cr.P.C. starts with a non-obstante clause that would mean merely on account of the fact that a person has preferred a revision in the Sessions Court, he need not be necessarily debarred from assailing the order in High Court in exercise of its power in Section 482 Cr. P.C. in order to prevent abuse of process of law or to secure the ends of justice, but ordinarily in the absence of this, the Court would discourage a party to have a petition under Section 482 Cr.P.C.”

17. In Ritu Sethi v. State and Another, 2023 SCC OnLine Del 35, this Court has observed as under:

“10. The grounds taken in the present petition as well as during the course of the arguments are the same which were taken by the petitioner before the learned Appellate Court. The grounds raised before the learned Appellate Court were dealt by a detailed threadbare analysis of the prosecution evidence on record and finding of the learned trial Court. It was for the petitioner to demonstrate the perverseness in the impugned judgment passed by the learned Appellate Court in order to cause interference by this Court with two concurrent findings of acquittal qua the present respondent. The Hon'ble Supreme Court in Manju Ram Kalita V. State of Assam, (2009) 13 SCC 330, while dealing with the scope of reappreciation of



evidence by higher court in criminal revision observed in para 9 as under:

“9. ...It is a settled legal proposition that if the courts below have recorded the finding of fact, the question of reappraisal of evidence by the third court does not arise unless it is found to be totally perverse...”

Following the aforesaid judgment, the Hon’ble Supreme Court recently in *Malkeet Singh Gill Vs. State of Chattisgarh*, (2022) 8 SCC 204, has held as under:

“10. Before advertent to the merits of the contention, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the appellate court and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short “CrPC”) vests 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. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.””

18. It is pertinent to note that the abovementioned FIR, bearing No.613/2007, registered at P.S. New Friends Colony was with respect to commission of offence under Section 406/420 of the IPC. It was observed by



the learned Additional Sessions Judge in the impugned order dated 21.04.2011, that the petitioner herein did not dispute his own letter of surrender of vehicle and also that a specific finding by way of evidence collected by the Investigating Officer has come on record that the bus was surrendered to respondent no. 2 and 3 by the petitioner himself. It is further observed that the grounds taken by the petitioner in the present petition are the same that had been taken in the protest petition as well as the revision petition filed by him before the concerned Courts. The learned Additional Chief Metropolitan Magistrate and subsequently the learned Additional Sessions Judge in the revision petition, have examined the said grounds and thereafter passed detailed orders. It is pertinent to note that the petitioner herein had transferred the insurance of the vehicle himself to some other vehicle and remained silent about the issue for four years and had not paid instalments after November, 2002. One of the ground taken by the petitioner herein, is that he had made a payment of Rs. 1,19,426/-, after the surrender of the bus. It has been rightly observed by the learned ASJ, that even if it is presumed that the abovementioned payment was made, the same will not make out a case under Sections 420/406 of the IPC, in view of the fact that petitioner himself had surrendered the bus.

20. In view of the above, this Court does not find any illegality or infirmity in the impugned order passed by the learned Additional Chief Metropolitan Magistrate *vide* order dated 25.03.2010, in FIR No. 613/2007, registered at P.S. New Friends Colony and subsequently order dated 21.04.2011, passed by the learned Additional Session Judge, in C.R.No.24/2010. The learned ASJ,



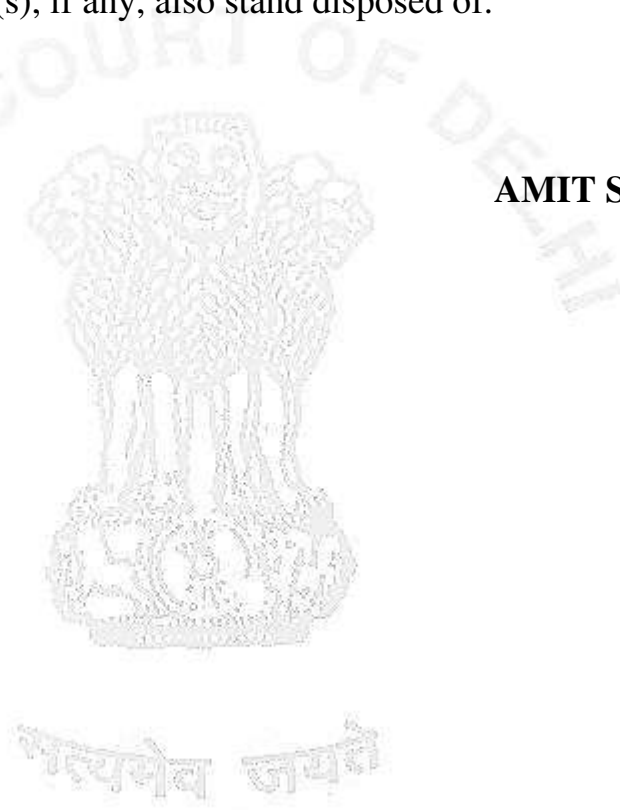
based on the material on record, has rightly dismissed the revision petition filed on behalf the petitioner herein.

21. In the facts and circumstances of the case, this Court finds no reason to interfere with the impugned orders passed by both the learned Additional Chief Metropolitan Magistrate as well as the learned Additional Session Judge. The present petition is dismissed and disposed of accordingly.

22. Pending application(s), if any, also stand disposed of.

**AMIT SHARMA
JUDGE**

JUNE 01, 2023/sn



सत्यमेव जयते