

06.12.2024

Sl. No.: 24

Court No.30
BM

CRR 4810 of 2023

Subham Roy Choudhury

Vs.

The State of West Bengal & Anr.

Mr. Ajoy Roy Chowdhury

... for the petitioner

Mr. Sabyasachi Mukherjee

Mr. Kiran Mallick

Ms. Swastika Saha

Mr. Shah Md. Umer Edne Sadhique

... for the opposite party no.2

1. The present revisional application has been preferred praying for quashing or set aside the order dated 14.08.2023 passed by the learned 2nd Judicial Magistrate, Barrackpore on proceedings of the petition being Misc. Crl. 353 of 2022 arising out of petition Misc. 515 of 2016 in the background of the judgment and order of Hon'ble High Court dated 08.07.2022.

2. It appears that the present revision has been preferred against an order in an order in a maintenance proceeding passed by the learned Judicial Magistrate, 2nd Court, Barrackpore.

3. The order under revision is an order rejecting the petitioner's prayer praying for exemption to give evidence and a cost of Rs.2,000/- was imposed upon the petitioner/wife therein.

4. The order under revision has been challenged by the husband in the present case.

5. On perusal of the said order, this court finds that the order under revision has been passed against the petitioner/wife and costs has been imposed upon the petitioner/wife payable to the opposite party/husband/petitioner herein. As such, this court

finds no reason as to why the husband has challenged the said order.

6. It also appears that the learned Session Court has not been approached by the petitioner herein, against the order of the learned Judicial Magistrate.

7. In the case of **Natwar Lal and Ors. vs State And Ors.**, decided on **23rd April, 2008**, the **Rajasthan High Court** held:-

*“.....**10.** In the light of the observations of the Hon'ble Supreme Court in **Pranab Kumar Mitra's case (supra)** and **Jagir Singh's case (supra)**, this Court in the above cited cases have not touched the issue about the propriety of filing revision petition directly to the High Court against the order of Magistrates, though, the judgment of the Hon'ble Supreme Court in **Jagir Singh's case (supra)** was referred to this Court in the cases of **Moda Ram, Chijan Das and Reserve Bank of India (supra)**. Likewise, the earlier judgments of this Court in **Om Prakash's case** and **Prabhu Chawla's case** were also not discussed in the above light. It simply laid down that there is no bar on filing direct revision petition in the High Court.*

***14.** The scope and ambit of Section 397 of the Code is not only confined to the correctness or legality of the order but also to its propriety. Both the court of Sessions and Magistrate are inferior to the High Court and courts of Judicial Magistrate are inferior to the court of Sessions Judge. When an order is passed by the Sessions Judge, the only remedy left with the aggrieved party is to approach the High Court under Section 397(1) of the Code to question correctness, legality or propriety but when the same is passed by a Magistrate, though power lies to both the Sessions and the High Court but as a matter of prudence and propriety, it will be appropriate to first approach the lower forum except in rare and special circumstances. Such special circumstances may be where the Sessions Judge has directly or indirectly participated in the enquiry or investigation or trial or through his any action or order interest of justice demands that High Court alone should interfere in the order of the Magistrate.*

***15.** Though, there are various sections in the Code of Criminal Procedure where the concurrent powers have been given like anticipatory bail under Section 438 Cr.P.C and regular bail under Section 439 Cr.P.C. and also in Constitution of India with regard to writ jurisdiction to the Hon'ble Supreme Court under Article*

32 or before the Hon'ble High Court under Article 226 of the Constitution, but in the matters of bail and writ jurisdiction, the lower forum is always chosen. In my humble view, had the legislature amended Section 397 of the Code in the light of the amendment made in Section 378 in appeal against the acquittal by Act 25 with effect from 23.6.2006, this controversy could have been avoided. In amended Section 378, the power to file appeal against the order of acquittal passed by the Magistrate has been given to the Sessions and of the Sessions to the High Court when a case is instituted on police report.

16. In view of the above discussion, the approach taken by the Bombay High Court in **Padmanabh Keshav Kamat's case (supra)**, which is based on the judgment of the Hon'ble Supreme Court in **Pranab Kumar Mitra's case (supra)** is a correct proposition of law with regard to the scope and ambit of Section 397 of the Code and on the basis of this, I have no hesitation in coming to the conclusion that when the two forums are available, then certainly it is a matter of propriety for the party to first approach the lower forum, except in rare and special circumstances. By doing this, the party getting order from Magistrate will get double remedy, firstly he will approach the court of Sessions in revision, which is a highest court of criminal trial and after examining the legality, propriety and correctness of the order of sentence, the Sessions Court comes to the conclusion that the order requires no interference under Section 397 of the Code, then the party has still second remedy to approach the High Court under Section 482 Cr.P.C. if both the courts below have passed such orders which either cannot give effect to the orders in this Code or results in abuse of the process of law or otherwise does not secure the ends of justice. Thus, the scope of Section 397 and 482 of the Code are all together different. However, these two remedies cannot be availed simultaneously or one after the other in the High Court. Party filing a petition under Section 397 before High Court cannot invoke the jurisdiction under Section 482 of the Code. Power under Section 482 of the Code is sparingly used and that too under the above referred circumstances. It will be relevant to refer the cases cited in this regard.

17. In **Madhu Limaye v. State of Maharashtra reported in AIR 1978 SC 47**, it has been held that Section 397 Sub-section (2) cannot lower the scope of Section 482 of the Code but such cases should be few and far between while exercising the jurisdiction of the High Court very sparingly.

18. In **Dharampal v. Ramshri reported in 1993 Cri.L.J. 1049**, the Hon'ble Supreme Court held that necessary powers under Section 482 of the Code cannot be utilised for exercising powers which are

expressly barred by the Code. In that case the High Court entertained the second revision as a petition under Section 482 of the Code. This was the case of attachment of property in a proceeding under Section 145 of the Code and on the merits, the High Court was not right in questioning the orders by taking different view.

19. In *Ganesh Narayan Hegde v. S.Bangarappa* reported in 1995 SCC 441, it has been held that:

“While it is true that availing of the remedy of the revision to the Sessions Judge under Section 397 does not bar a person from invoking the power of the High Court under Section 482, it is equally true that the High Court should not act as a Second Revisional court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court should interfere only where it is satisfied that if the compliant is allowed to proceeded with, it would amount to abuse of process of court or that the interests of justice otherwise call for quashing of the charges.”

20. From the above discussion, the contention of the learned Counsel for the petitioners that after invoking jurisdiction of the Sessions Judge under Section 397 of the Code, there is bar of petition under Section 482 of the Code is devoid of force as it is always open to the High Court to correct the impugned order passed at any stage i.e. right from filing complaint or FIR till judgment in any inquiry, investigation & trial in any of the three circumstances discussed above namely, (i) when it is necessary to give effect to the order under this Court or (ii) to prevent abuse of the process of the court or (iii) to secure the ends of justice, whereas, barring interlocutory order under Sub-section (2) of Section 397, the revisional court can call for the record of any inferior court to look into the correctness, legality or propriety of the order or sentence including regularity of proceedings under Section 397 of the Code. **Thus, this Court cannot interfere in the above revision petitions, which have been filed against the order of Magistrates without first approaching to the next higher court i.e. the court of Sessions under Section 397 of the Code as no special and exceptional reasons have been assigned for filing the revision petition directly in this Court.....”**

8. In the present case too, it is admitted that there are no special or exceptional reasons for filing this revisional application directly before this Court.

9. Accordingly, the present revision being **CRR 4810 of 2023 is disposed of** with the direction that the petitioner shall be at liberty to approach the Sessions Court with the issues raised in this revision.
10. The period of limitation shall be taken into account by the learned Sessions Judge from the date of this order.
11. Pending applications stand disposed of.
12. Interim order, if any, stands vacated.
13. Copy of this order be sent to the learned Trial Court for necessary compliance.
14. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties expeditiously after due compliance.

(**Shampa Dutt (Paul), J.)**