



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1571 OF 2023

AJAY MADHUKAR GANGAVANE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

....

Mr. Akshay Kulkarni, Advocate for the Applicant

Mr. V. M. Chate, APP for Respondent Nos. 1 and 2

Mr. M. R. Deshmukh, Advocate for Respondent No.3

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 18.10.2024

PER COURT :-

1. After hearing at length, this Court, *prima-facie* is on the view that the impugned order dated 05.04.2023, passed by the learned J.M.F.C., Phulambri, below Exh.1 in Criminal M.A. No.15 of 2023, is revisionable under Section 397 of the Code of Criminal Procedure.

2. No doubt, the learned Advocate for the Applicant heavily placed reliance on the case of *Prabhu Chawla Vs. State of Rajkasthan and others, AIR 2016 SC 4245*, wherein it has been held that the inherent power under Section 482 of the Code of

Criminal Procedure, is not barred though the remedy under Section 397 of the Code of Criminal Procedure is available.

3. In the case of ***Ramesh Manohar Madawi Vs. State of Maharashtra and another, 2023(2) Mh.L.J. (Cri.) 27***, the Division Bench of this Court at the Principal Seat held that merely because the remedy of revision is available to the Applicant to challenge the order of the Magistrate, rejecting his Application for discharge. It cannot be said that the Application under Section 482 Cr.P.C., is not maintainable.

4. In ***Madhu Limaye Vs. The State of Maharashtra, (1977) 4 SCC 551***, the Hon'ble Supreme Court in para 10, held thus:-

“On a plain reading of section 482, however, it would follow that nothing in the Code, which would include subsection (2) of section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out ? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent

power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code. the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of, a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction.”

5. In the case in hand, on 05.04.2023, the learned Magistrate passed the impugned order holding that the accused conspired between themselves and executed registered sale-deed showing forged documents by annexing N.A. certificate in respect of Gat No.81 situated at Mauje Phulambri. The Plaintiff given sale-deed numbers which are executed between the accused by filing the false and forged N.A. assessment certificate. So also, the letter dated 30.08.2022, which shows that the concerned authority has already taken steps in respect of the complainant's grievance. Therefore, right of the Complainant / Applicant is not affected. Since the notice

already sent to the Senior P.I. of Phulambri Police Station and the Superintendent of Police, which are not in consonance with Section 154 of the Code of Criminal Procedure and there is no proper compliance. Therefore, refused to issue directions under Section 156(3) of the Code of Criminal Procedure. Therefore, said order attained the finality and closed the proceeding. Therefore, the revision under Section 397 of the Code of Criminal Procedure, is maintainable. The Applicant has not shown any special reason for not resorting the revisional jurisdiction under Section 397 of the Code of Criminal Procedure, hence, present Application is liable to be dismissed. **Hence it is dismissed.**

6. However, the Applicant/Complainant is granted liberty to approach before the Revisional Court under Section 397 of the Code of Criminal Procedure. The Period consumed before this Court while pursuing this Application would not come in the way of the Applicant. All the contentions of the parties are left open.

[Y. G. KHOBRAGADE, J.]