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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

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CRM-M-51428-2019 (O&M)
Date of decision : 18.09.2024

Gajraj**...Petitioner****Versus****Ajay Raghav @ Bobby and others****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Aditya Jain, Advocate,
Mr. Rajat Singla, Advocate and
Mr. Rahul Vohra, Advocate
for the petitioner.

Mr. D. S. Matya, Advocate
for respondent No. 2.

Mr. Atul Yadav, Advocate for
Mr. Abhimanyu Singh, Advocate
for respondent No. 4.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 482 of Cr.P.C. seeking quashing of order dated 05.10.2019, passed by the Court of learned Sub Divisional Judicial Magistrate, Sohna in Criminal Complaint No. COMI-25 of 2019, titled as ***Gajraj vs. Ajay Raghav @ Bobi and others***, whereby an application filed by the petitioner under Section 311 of Cr.P.C. was dismissed as well as for quashing of order dated 19.11.2019, passed by the Court of learned Sessions Judge, Gurugram, thereby upholding the order dated 05.10.2019.

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the petitioner has filed the aforementioned complaint against the respondents alleging therein that respondent No. 4 was owner in possession to the extent of 1/5th share in the agricultural land mentioned in

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detail in paragraph No. 2 of this petition and had entered into an agreement to sell 05 kanals of the land out of his share with one Suresh Kumar. An written agreement was executed on 13.12.2010. An amount of Rs. 10 Lakhs was given to respondent No. 4 as earnest money. Subsequently, respondent No. 4 and above named Suresh Kumar, through respondent Nos. 1 to 3, had struck a deal for sale of the said land to the petitioner for sale consideration of Rs. 1.38 crore. Written agreement was executed on 10.01.2011, as per terms of which, the sale deed was to be executed on 10.02.2011. However, owner Suresh Kumar got extended the date of execution of sale deed till 10.04.2011 and then on 22.03.2011, respondent Nos. 1 to 3 informed the petitioner that respondent No. 4 had turned dishonest and wanted to sell the entire land for a sum of Rs.1.5 crore. The petitioner was constrained to part with a sum of Rs. 30 Lakhs in addition to the agreed amount and to give a cheque of that amount in favour of respondent No. 4. An amount of Rs. 68 Lakhs was given by him to Suresh Kumar in cash in the presence of respondent Nos. 1 to 3. However, no sale deed was executed in favour of the petitioner and a general power of attorney dated 11.05.2011, shown to be executed by respondent No. 4, was given to him. The petitioner, subsequently, came to know that this GPA was not of the owner but was of some other female, who had impersonated the owner of the land, which was agreed to be sold to him. By alleging that the respondents had cheated the petitioner and duped him of a sum of Rs. 1.13 crore, he had prayed for taking action against them by filing the aforementioned complaint.

3. After recording preliminary evidence, the trial Court issued process for summoning the respondents to appear and face trial for

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commission of offences of cheating and forgery. The above named Suresh Kumar had died in the meanwhile. One of the accused, namely Sonu @ Jitender @ Sumer, was declared a proclaimed person.

4. In pre-charge evidence, the petitioner produced 03 witnesses. The pre-charge evidence was closed by the trial Court, vide order dated 17.07.2019 without granting any opportunity to the petitioner to examine himself as a witness. The petitioner then moved an application under Section 311 of Cr.P.C. making prayer for permitting him to appear as a witness in pre-charge evidence. The said application was dismissed by the trial Court, vide order dated 05.10.2019 and the revision filed against the said order was also dismissed by the revisional Court, as mentioned above.

5. It is argued by learned counsel for the petitioner that the impugned orders, as passed by the Courts below, are not sustainable in the eyes of law and are liable to be set aside as while passing the same, the Courts below did not apply their judicious mind and did not consider the fact that in fact, no sufficient and effective opportunity for examination of the petitioner as witness had been granted to him and his pre-charge evidence was closed by Court order. It is submitted that the trial Court wrongly observed that as many as 24 opportunities had been availed by the petitioner as this observation was against the record, which showed that only 04 effective opportunities had been granted for that purpose. While submitting that the petition is very much maintainable, it is urged that the same deserves to be allowed, impugned orders are liable to be set aside and further that the trial Court be directed to record the statement of the petitioner in pre-charge evidence as witness.

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6. *Per contra*, learned counsel for the respondents have vehemently argued that the impugned orders, passed by the Courts below, did not require any interference whatsoever as they are well reasoned and speaking orders. It is argued that the petitioner had availed sufficient opportunities to produce the evidence in his pre-charge evidence but failed to examine himself. The trial Court closed the pre-charge evidence of the petitioner, vide order dated 17.07.2019 by order of the Court. The said order had never been challenged by the petitioner and, therefore, it did not lie in his mouth to say that he was entitled for appearing and examining himself as witness before the trial Court.

7. It is further argued by learned counsel for the respondents that the petition is even otherwise not maintainable as the order passed in an application under Section 311 of Cr.P.C. was an interlocutory order, which was not revisable and only a petition under Section 482 of Cr.P.C. could have been filed before this Court but the said opportunity had not been availed by the petitioner and instead thereof, he approached the Court of Sessions by filing a revision petition under Section 397 of Cr.P.C. for challenging the impugned order dated 05.10.2019. It is further stressed that once the petitioner had availed that remedy, then, he was debarred from filing the instant petition. With these broad submissions, it is urged that the petition is liable to be dismissed. To fortify their arguments, learned counsel for the respondents have relied upon *Sethuraman v. Rajamanickam*, 5 SCC 153, *Rajan Kumar Manchanda vs. State of Karnataka*, 1988 (2) RCR (Criminal) 662, *Arun Kumar vs. State of U.P.*, 2013 (18) RCR (Criminal) 809, *Sahab Khan vs. Iqbal Ahmad and other*, (Law Finder Id #2339031) and *Rohit Uppal vs. State of Punjab and others*, 2017 (2) RCR (Criminal) 310.

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8. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record.

9. It is apparent from the record that evidence of the petitioner was closed by order of the Court, vide order dated 17.07.2019 and the said order had never been challenged. An application under Section 311 of Cr.P.C. had been filed by the petitioner subsequently. This application was dismissed by the trial Court, vide impugned order dated 05.10.2019 and thereafter, the petitioner filed a revision petition before the Court of Sessions, which too was dismissed. The first question that arises for consideration before this Court is as to whether a revision petition under Section 397 of Cr.P.C. was maintainable against the order passed by the trial Court on the application filed under Section 311 of Cr.P.C.? This question finds answer in the observations made by Hon'ble Supreme Court in *Sethuraman's* case (supra), wherein it was observed that an order passed by the trial Court on an application under Section 311 of Cr.P.C. is an interlocutory one and the revision against the same is not maintainable. Reference can also be made to *Arun Kumar's* case (supra), wherein it was observed by High Court of Allahabad that the orders rejecting an application under Sections 91 and 311 of Cr.P.C. are interlocutory orders and remedy of revision is barred by Section 397 of Cr.P.C. as the Code provides a remedy to the petitioner by means of an application under Section 482 of Cr.P.C. by invoking inherent powers of the Court. Further, in *Rohit Uppal's* case (supra), this Court had made similar observations by holding that the order passed on an application under Section 311 of Cr.P.C., being an interlocutory order, revision before the Sessions Court was not maintainable and the said Court had no jurisdiction to set aside

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the said order as a petition laying challenge to interlocutory order filed before the High Court under Section 482 of Cr.P.C.

10. In view of the observations made in the afore-cited authorities, this Court has no hesitation in holding that the petitioner could not challenge the impugned order dated 05.10.2019, passed by the trial Court, by invoking revisional jurisdiction of the Sessions Court. So far as the question as to whether the instant petition, being filed under Section 482 of Cr.P.C., is as such maintainable or not, the well settled proposition of law is that the second revision before the High Court invoking inherent powers under Section 482 of Cr.P.C. is not maintainable. Reliance in this regard can be placed upon **Rajan Kumar**'s case (supra), wherein the petitioner had moved an application for release of his truck before the Magistrate. His application was dismissed. He filed a revision petition before the Court of Sessions, which too was dismissed. Thereafter, he filed a petition under Section 482 of Cr.P.C. challenging the orders passed by the Magistrate as well as revisional Court. It was observed by Hon'ble Supreme Court that Section 397(3) of Cr.P.C. prohibited moving of further application by the same person, if such an application has been made by him either to High Court or to Sessions Court under Section 397 of Cr.P.C. and merely by saying that the jurisdiction of the High Court for exercising of its inherent power was being invoked, the statutory bar could not have been overcome. Hon'ble Supreme Court further observed that if that was to be permitted, then revision petitions facing bar under Section 397(3) of Cr.P.C. could be labelled as one under Section 482 of Cr.P.C. It was accordingly held that the High Court had no jurisdiction to entertain a revision, even if it was filed under Section 482 of Cr.P.C. in such

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like cases. In ***Sahab Khan***'s case (supra), this Court had observed that once an order had been passed by the Magistrate and it had been challenged by filing a revision petition under Section 397 of Cr.P.C. before the Court of Sessions and the revision was dismissed, then the petition became barred under Section 397(3) of Cr.P.C. before the High Court in the guise of Section 482 of Cr.P.C.

11. In the instant case, the petitioner had challenged the order passed by the Magistrate by filing a revision petition before the Court of Sessions, which too had been dismissed, vide order dated 19.11.2019. As already observed, the order of dismissal of application under Section 311 of Cr.P.C., being an interlocutory order, a revision petition against the same was not maintainable. However, once the petitioner availed that remedy, then he was barred from claiming any relief by filing a petition under Section 482 of Cr.P.C. as this petition is a revision petition under the guise of a petition under Section 397(3) of Cr.P.C., which being second petition is obviously barred.

13. In view of the discussion as made above, it is held that the instant petition is not maintainable and on this very ground but without meaning to make any comment on the merits of the application, so filed by the petitioner under Section 311 of Cr.P.C., this petition is liable to be dismissed. As such, the same is dismissed.

18.09.2024*Waseem Ansari***(MANISHA BATRA)
JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*