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

+ CRL.REV.P. 1121/2024, CRL.M.A. 27268/2024

SHREYA KAPOOR

.....Petitioner

Through: Petitioner in person (through VC)

versus

STATE OF NEW DELHI & ORS.

.....Respondents

Through: Ms.Priyanka Dalal, APP for the State.
Mr.Aman Leekha, Advocate for
Respondent No. 4 and 5 HDFC Bank.
Insp.Amit Pratap, PS EOW and SI

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

12.09.2024

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1. The present revision petition has been filed challenging the order dated 07.12.2020 vide which learned CMM dismissed the application under Section 156 (3) Cr.P.C. and listed the matter for the complainant's evidence after taking the cognizance.
2. The petitioner is appearing in person and states that since the jurisdiction under Section 397 Cr.P.C. provides concurrent jurisdiction to the High Court and Sessions Court, they have chosen to file the present petition before this court. The petitioner also submits that since some high and mighty people are involved they have chosen to directly file the petition before this court instead of preferring a revision petition before the sessions court.
3. The core question of law in the present revision petition is with regard



to the scope and ambit of Section 397 Cr.P.C., which confers concurrent powers to the High Court as well as to the Sessions Courts with regard to calling the record and to examine proceedings of the inferior courts as to its correctness, legality or propriety, is being resolved.

4. In the present case the petitioner aggrieved by the order of the Ld. MM without approaching the sessions court has presented the revision petition before this Court. It is a discretionary power which has to be exercised in aid of justice in accordance with the recognised rules of criminal jurisprudence. The purview of Section 397 of CrPC extends beyond merely assessing the correctness or legality of an order; it also encompasses its propriety. In an order passed by a Magistrate, although both the Sessions Court and the High Court possess the authority to intervene, it is generally advisable to first seek resolution at the Sessions court, except in exceptional circumstances. Such exceptional circumstances will depend on the facts and circumstances of court. Ordinarily, the order of learned M. M. should be challenged before the learned Sessions Court.
5. In ***Shri Padmanabh Keshav Kamat v. Shri Anup R. Kantak & Others***; 1998(5) BOM CR 546, it was *inter-alia* held that maintainability of a proceeding is one thing while its entertainment is another. It was further inter alia held that when the proceeding is maintainable by two different courts, one being inferior or subordinate to the other, then it is certainly a question of propriety, particularly for the superior Court, as to whether it should entertain such a proceeding which could have been filed in the lower Court. It is material to note that revision is not a



statutory right of a litigant but it is a matter of discretion of the Court having revisional jurisdiction.

6. In ***Pranab Kumar Mitra v. State of West Bengal and another***; AIR1959 SC 144, the Supreme Court while dealing with the revisional powers of the High Court *inter-alia* held that it is a discretionary power which has to be exercised in aid of justice. It was further *inter alia* held that whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon the facts and circumstances of that case. The revisional powers of the High Court vested in it by section 439 of Cr.P.C. do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence, and that subordinate criminal courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code. The High Court is not bound to entertain an application in revision, or having entertained one, to order substitution in every case.
7. The court considers that in the instant case no special circumstances which required the petitioner to by-pass the forum of the Sessions Judge and rush directly to the High Court. The petitioner could have very well filed the revision even before the Sessions Judge. It is pertinent to mention that exercise of revisional powers is not a matter of course but it is a matter of rare and sparing use. Hence, if two forums are available to the petitioner for getting redressal of the alleged wrong, then it will certainly be more appropriate for him to first approach the lower forum. It is certainly within the discretion of the higher forum, that is, this Court to consider whether it should entertain



or not of such a revision application which can lie before the Sessions Judge.

8. Further in **Natwar Lal v. State, 2008** Cr LJ 3579 (3583) (Raj), the High court of Rajasthan while placing reliance on **Shri Padmanabh Keshav Kamat** (Supra) *inter-alia* held as under:

“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.”

9. Therefore, it can be inferred from these judgments that in the case of concurrent jurisdiction between two courts, if a revision petition preferred before High court, the said petition is maintainable however the whether the petition can be entertained or not depends on discretion of the high court after taking into account the facts. Preferably, the revisional court would be sessions court which would be duty bound to entertain the revision petition and 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



Cr.P.C. Thus, I consider that the revision petition should have been filed before the Sessions court against the order of Magistrate. The court considers that no special and exceptional reasons have been assigned for filing the revision petition directly in this Court.

10. Taking in view the above dictum and catena of judgments of Apex court and this court, the present petition is dismissed with liberty to the petitioner to file the petition before the learned Sessions Court in accordance with the law. However, the delay which has occasioned on account of the fact that the revision petition remained under objections before this court shall be condoned by the learned Sessions Court.
11. It is made clear that this court has not gone into the merits of the case and no expression made herein shall tantamount to be an expression on the merits of the case.

DINESH KUMAR SHARMA, J

SEPTEMBER 12, 2024

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