

(2020) 01 JH CK 0252

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 2228 Of 2019

Anil Kumar Karna

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 18-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 397, 397(2), 482
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 01 JH CK 0252

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Amit Nishant, Rohit Sinha

Final Decision : Dismissed

Judgement

1. Heard Mr. Amit Nishant, learned counsel appearing on behalf of the petitioner.
2. Heard Mr. Rohit Sinha, learned counsel appearing on behalf of the opposite party-C.B.I.
3. This petition has been filed by the petitioner for quashing of First Information Report being R.C.08 (S)/2015 dated 30.12.2015 of CBI, Economic Offences Wing, Ranchi.
4. Learned counsel for the C.B.I. at the outset has pointed out that although the petitioner has challenged the F.I.R., but from perusal of the records of this case, it appears that the charge-sheet was submitted, cognizance was taken and the petitioner had filed a petition for discharge before the learned court below which stood dismissed vide order dated 08.05.2019 by appreciating the material against the petitioner and the same has not been challenged in the present petition although the present petition has been filed on 16.07.2019.

5. Upon this, learned counsel for the petitioner submits that he may be permitted to amend the present petition.

6. The learned counsel for the petitioner submits that so far as the quashing of FIR is concerned, the petitioner, who is an Advocate, has been made

accused in the case for having given a wrong legal advice. He submits that the present case is a fit case for exercise of powers under Section 482 of

Cr. P.C as continuation of criminal proceedings as against the petitioner, is an abuse of process of law and ex-facie, no case is made out against the

petitioner. The learned counsel has relied upon judgement passed by Honâ??ble Supreme Court in the case of CBI versus K. Narayana Rao (Civil

Appeal No. 1460/ 2012) para 28 to submit that it has been held by Honâ??ble the Supreme Court that merely because the opinion is not acceptable, a

person cannot be subjected to criminal prosecution in absence of any tangible material to associate the accused with other conspirators.

7. In response, learned counsel for the C.B.I. submits that order refusing to discharge is a revisable order under Section 397 of Cr.P.C. and therefore,

the petitioner may file revision against the same and the order refusing to discharge may not be permitted to be challenged in the present petition filed

under Section 482 of Code of Criminal Procedure.

8. Considering the aforesaid facts and circumstances of this case, this Court finds that in the instant case only the First Information Report which was

instituted as back as in the year 2015 has been challenged by the petitioner and thereafter much water has flown and the petition for discharge has

been rejected vide order dated 08.05.2019. This Court is of the considered view that the order refusing to discharge the petitioner is a revisable order.

9. The Honâ??ble Supreme Court in the case reported in (2016) 16 SCC 30 (Prabhu Chawla versus State of Rajasthan and Another)has considered

the relative scope of Section 482 and Section 397 of the Cr. P.C. In the said case, the concerned High Court had dismissed the petition filed under

Section 482 of Cr. P.C. by holding that the same was not maintainable in view of availability of remedy under Section 397 of the Cr. P.C.

10. The Honâ??ble Supreme Court while considering the scope of Section 397 of the Cr. P.C. and Section 482 of the Cr. P.C. was of the

considered view, after inter alia, considering the earlier judgment passed in the case of Madhu Limaye vs. The State of Maharashtra that so far as the

inherent power of Section 482 of the Cr. P.C. is concerned, the same cannot be controlled by Section 397 of the Cr. P.C., but it has to be sparingly

exercised in such circumstances where there is situation calling for such interference arising out of abuse of the process of law or for the purposes of securing the ends of justice or where the proceeding is without jurisdiction.

11. The Honâ??ble Supreme Court in the case of Asian Resurfacing of Road Agency Private Limited and Another vs. Central Bureau of

Investigation reported in (2018) 16 SCC 299, in para 63 of the judgment, while considering the provisions of Section 397 and Section 482 of Code of

Criminal Procedure has approved the view taken by the Honâ??ble Supreme Court in para 38 of the judgment passed in the case ofG irish Kumar

Suneja versus Central Bureau of Investigation reported in (2017) 14 SCC 809. Para 38 of the judgment in the case of Girish Kumar Suneja (supra) is

quoted hereinbelow for ready reference:-

â??38. The Criminal Procedure Code is undoubtedly a complete code in itself. As has already been discussed by us, the discretionary

jurisdiction under Section 397(2) CrPC is to be exercised only in respect of final orders and intermediate orders. The power under Section

482 CrPC is to be exercised only in respect of interlocutory orders to give effect to an order passed under the CrPC or to prevent abuse of

the process of any court or otherwise to serve the ends of justice. As indicated above, this power has to be exercised only in the rarest of

rare cases and not otherwise. If that is the position, and we are of the view that it is so, resort to Articles 226 and 227 of the Constitution

would be permissible perhaps only in the most extraordinary case. To invoke the constitutional jurisdiction of the High Court when the

Criminal Procedure Code restricts it in the interest of a fair and expeditious trial for the benefit of the accused person, we find it difficult to

accept the proposition that since Articles 226 and 227 of the Constitution are available to an accused person, these provisions should be

resorted to in cases that are not the rarest of rare but for trifling issues.â??

12. The aforesaid view, has been held to be the correct view, in the Judgment reported in (2018) 16 SCC 299 para 63 which is quoted as follows:-

â??63. According to us, despite what is stated in paras 25, 29 and 32 supra, the ratio of the judgment is to be found in para 38, which is an

exposition of the law correctly setting out what has been held earlier in Madhu Limaye A judgment has to be read as a whole, and if there

are conflicting parts, they have to be reconciled harmoniously in order to yield a result that will accord with an earlier decision of the same

Bench strength. Indeed, para 30 of the judgment sets out a portion of para 10 of Madhu Limaye, showing that the Court was fully aware

that Madhu Limaye did not approve Amar Nath without a very important caveat "and the caveat was that nothing in Section 397(2) can

limit or affect the exercise of the inherent power by the High Court. We, therefore, read para 38 as the correct ratio of the said judgment

not only in terms of the applicability of Section 482 of the Code of Criminal Procedure, but also in terms of how it is to be applied."

13. Although there is no complete bar in exercise of power under section 482 Cr. P.C. to quash an order refusing to discharge a person, but in view of

the aforesaid judicial pronouncements, there can be no doubt that power under Section 482 Cr. P.C. against order refusing to discharge is to be

exercised sparingly, only in rarest of rare cases arising out of abuse of the process of law or for the purposes of securing the ends of justice or where

the proceeding is without jurisdiction. The petitioner has not been able to satisfy this Court that the order refusing to discharge the petitioner would fall

under any of the aforesaid rare categories calling upon this Court to exercise power under section 482 of Cr. P.C. In this view of the matter, this

Court is not inclined to permit the petitioner to amend this petition in order to challenge the order refusing to discharge the petitioner. However it will

be open to the petitioner to challenge the order refusing to discharge by filing a revision petition as per law.

14. Admittedly, the FIR in the present case was lodged in the year 2015 and after completion of investigation, charge-sheet was submitted,

cognizance was taken inter alia against the petitioner and subsequently the discharge petition has also been rejected. It is alleged that the petitioner

along with other accused persons entered into criminal conspiracy in order to cheat, defraud and cause wrongful loss to the bank by providing

erroneous legal opinion. The legal opinion given by the petitioner has not been filed along with this petition. This Court is of the considered view that it

cannot be said that no criminal case can ever be filed against an Advocate for his erroneous legal opinion even if in a given case ingredients of any

offence is made out. The Honâ??ble Supreme Court in the judgement relied upon by the petitioner had also quoted the entire legal opinion given by the Advocate and appreciated the role played by the Advocate to come to a conclusion that no criminal case was made out against the concerned Advocate. Accordingly, this court is of the considered view that the alleged involvement of the present petitioner is required to be examined by considering the materials collected during investigation and it cannot be said that ex-facie no criminal case is made out against the petitioner merely because the petitioner is an Advocate. The petition for discharge has already been rejected by the learned court below and the petitioner certainly has an opportunity to challenge the same and this Court is of the considered view that the materials collected during investigation on the basis of police papers handed over to the petitioner can certainly be considered in such proceedings.

15. Accordingly, this Court is not inclined to exercise power under 482 of Code of Criminal Procedure to quash the F.I.R. and is further not inclined to permit the petitioner to amend the present petition to further challenge the order refusing to discharge the petitioner in this proceeding of Section 482 of Cr.P.C. No such ground has been raised in the present petition to bring the case within rarest of rare cases calling for interference under Section 482 of Cr.P.C. Even the order refusing to discharge in the present case cannot be said to be falling within the category of rarest of rare cases calling for interference under Section 482 of Cr.P.C. and certainly the legality and validity of such order can be appreciated in revisional jurisdiction under the provisions of Cr. P.C.

16. Accordingly, this petition is hereby dismissed.

17. However, the petitioner is at liberty to challenge the order refusing to discharge the petitioner by filing revision petition under Section 397 of Cr.P.C. in accordance with law.

18. Interim order, if any, stands vacated.

19. Pending interlocutory applications, if any, are also dismissed as not pressed.

20. Let a copy of this order be communicated to the learned court below through â??FAXâ??.