
(2013) 09 MP CK 0035
In the Madhya Pradesh High Court
Case No : M. Cr. C. No. 6634 of 2010

Bhanupratap Singh

APPELLANT

Vs

Dr. Narottam Mishra and Another

RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 200, 256, 256(1), 378, 378(4)
Representation of the People Act, 1951 — Section 125

Citation : (2013) 09 MP CK 0035

Hon'ble Judges : Sheel Nagu, J

Bench : Single Bench

Advocate : Pratip Visoriya, for the Appellant; V.K. Bharadwaj and Shri Anand Bharadwaj, Advocate for Respondent No. 1 and Shri M.P.S. Raghuvansi, Additional State Advocate General for Respondent No. 2/State, for the Respondent

Final Decision : Dismissed

Judgement

Sheel Nagu, J.—The instant petition u/s 482 of Cr.P.C. assails the final order dated 13.09.2010 by which the complaint case No. 104/2010 filed u/s 200 of Cr.P.C. alleging offence punishable u/s 125 of Representation of Peoples Act, 1951 against the respondent No. 1 has been dismissed due to non presence of the complainant. It is pertinent to mention here that immediately after dismissal of the complaint case on 13.10.2010 on the very same date an application u/s 256 of Cr.P.C. was moved showing the alleged reasonable cause of the complainant being seriously unwell for restoring the criminal complaint to its original number. The trial court considered both these applications on the very same day, and rejected them on the ground that despite calling out the name of the complainant thrice, none appeared thereby impelling the trial court to dismiss the criminal complaint u/s 256 of Cr.P.C. due to non-appearance of the complainant.

2. Per contra, learned counsel for the respondent contends that the present

petition u/s 482 of Cr.P.C. is not maintainable since dismissal of criminal complaint resulted in acquittal of the accused as per section 256(1) of Cr.P.C. against which Code of Criminal Procedure provides the remedy of appeal u/s 378(4) of Cr.P.C. which read thus:-

Section 378(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court.

Therefore, it is urged by respondent that invocation of inherent powers of this Court is not called for in view of various pronouncements of the Apex Court.

3. Learned counsel for the respondent further contends that besides remedy of appeal u/s 378 of Cr.P.C. the petitioner can further avail the remedy of criminal revision u/s 397 of Cr.P.C. and also of filing a fresh complaint alleging the same offence.

4. Since, the preliminary objection as to the maintainability of this petition u/s 482 of Cr.P.C. has been made would be apt to decide the said objection first before advertng to the merits.

5. The Apex Court while considering the scope of extent of inherent powers vested with the High Court u/s 482 of Cr.P.C. has held in the case of Gian Singh Vs. State of Punjab and Another, (para 53) which read thus:-

53. Section 482 of the Code, as its very language suggest saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, "nothing in this Code" which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e. to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on the High Court; it merely safeguards existing inherent powers possessed by the High Court necessary to prevent abuse of the process of any court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

6. From the above, it is evident that inherent powers of the High Court have overriding effect over the provision contained in the Cr.P.C. and needs to be exercised sparingly and with circumspection but not to be resorted to when some other specific provisions of the Cr.P.C. exists for redressal of grievances of the aggrieved party. Meaning thereby that if the Code provides for a specific remedy

for redressal of the grievance of the aggrieved party then inherent powers cannot be invoked to seek the same relief.

7. In the instant case, the petitioner has invoked the inherent powers of the Court u/s 482 of Cr.P.C. to set aside the order of dismissal of criminal complaint in question which was dismissed for non-appearance of the complainant and which resulted into acquittal of the accused. It is not disputed by the petitioner that the remedy of appeal u/s 378(4) of Cr.P.C. and of filing of fresh complaint alleging the same offence is available to him which has not been availed by him.

8. The Apex Court in another case of Punjab State Warehousing Corporation Faridkot Vs. Sh. Durga Ji Traders and Others, has carved out an exception permitting invocation of inherent powers u/s 482 of Cr.P.C. despite availability of alternate remedy of filing an appeal. The law laid down by the Apex Court is that the miscarriage of justice should have occasioned to justify invoking of inherent powers without availing the remedy provided in the Code and also to secure the ends of justice and to prevent abuse of process of the Court.

9. In the instant case, learned counsel for the petitioner is unable to make out an exceptional case to satisfy this Court that failure of justice shall occasion, if the petitioner is relegated to avail the alternate remedy of appeal or is asked to file a fresh criminal complaint, instead of directly approaching this Court by invoking its inherent powers u/s 482 of Cr.P.C.

10. Perusal of the record further do not indicate that any exceptional circumstance exists in the case which may render the statutory remedy of appeal less efficacious to the petitioner as compared to a petition u/s 482 of Cr.P.C. In fact, filing of appeal would not only be more efficacious, but also more suitable for the petitioner as it would make available all the grounds of factual as well as legal nature to the petitioner while raising his grievance in the appeal whereby widening the scope of getting appropriate justice from the Court.

11. In view of above findings, this Court does not deem it appropriate to dwell into various other citations relied upon by both the sides.

12. Learned counsel for the petitioner has further aired his apprehension that obstacle of limitation would now come in his way if his client is relegated to file an appeal against the impugned order. The said apprehension is misfounded as chapter 26 of Cr.P.C. gives adequate powers to the Court concerned to extend the period of limitation provided u/s 468 of Cr.P.C.

13. Another contention of learned counsel for the petitioner is that this MCRC has been admitted by an interim order dated 01.04.2011 and, therefore, in the fitness of things the same should be decided on merits instead of asking the petitioner to avail alternate remedy of appeal. In this regard, learned counsel for the respondents has relied upon the decision of Apex Court in the case of State of U.P. and Another Vs. U.P. Rajya Khanij Vikas Nigam S.S. and Others, in which the Apex Court has overruled the decision of Allahabad High Court rendered in

the case of Suresh Chandra Tewari Vs. District Supply Officer and another, by differing with the view of the Allahabad High Court that a petition once admitted cannot be dismissed on the ground of alternate remedy and the law laid by the Apex Court can be profitably reproduced thus:-

2. At the time of hearing of this petition a threshold question as to its maintainability was raised on the ground that the impugned order was an appealable one and, therefore, before approaching this Court the petitioner should have approached the appellate authority. Though there is much substance in the above contention, we do not feel inclined to reject this petition on the ground of alternative remedy having regard to the fact that the petition has been entertained and an interim order passed.

Even otherwise, the learned Judge was not right in law. True it is that issuance of rule nisi or passing of interim orders is a relevant consideration for not dismissing a petition if it appears to the High Court that the matter could be decided by a writ court. It has been so held even by this Court in several cases that even if alternative remedy is available, it cannot be held that a writ petition is not maintainable. In our judgment, however, it cannot be laid down as proposition of law that once a petition is admitted, it could never be dismissed on the ground of alternative remedy. If such bald contention is upheld, even this Court cannot order dismissal of a writ petition which ought not to have been entertained by the High Court under Article 226 of the Constitution of India in view of availability of alternative and equally efficacious remedy to the aggrieved part once the High Court has entertained a writ petition albeit wrongly and granted the relief to the petitioner.

Accordingly, in view of the above discussion, this Court is of the considered opinion that non-availing of alternate remedy of appeal by the petitioner, this petition u/s 482 of Cr.P.C. is not maintainable and is, therefore, dismissed, sans cost with liberty to the petitioner to avail any of the remedies prescribed under the Code.