

(2018) 10 GAU CK 0038

In the Gauhati High Court

Case No : Criminal Petition No. 17 of 2012

Bhuban Kalita @APPELLANT@Hash State Of Assam And Anr

Date of Decision : 30-10-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 125, 125(4), 397(3), 482

Citation : (2018) 10 GAU CK 0038

Hon'ble Judges : Mir Alfaz Ali, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. None appeared for the petitioner. Heard learned senior counsel, Mr. G.P. Bhowmik for the respondent no. 2 and learned Addl. P.P for the respondent No. 1.
2. This criminal petition is filed against the judgment and order dated 30-7-2010 passed by learned Addl. Sessions Judge (FTC) No. 2 Tinsukia in Criminal Revision (P) No. 6(1)/2010.
3. The petitioner herein is the husband of respondent No. 2. The respondent no. 2 filed an application u/s 125 CrPC seeking maintenance, which was registered as Misc. case 13(m/2008 and the learned trial court granted maintenance of Rs. 2,000/- per month in favour of the respondent No. 2.
4. Aggrieved by the order passed by the learned judicial magistrate, the petitioner preferred a revision and he learned revisional court dismissed the revision and upheld the order of maintenance. Having failed before the learned trial court and also the first revisional court, the petitioner preferred the present petition u/s 482 CrPC calling upon this Court to quash the proceeding in the exercise of inherent power u/s 482 CrPC.
5. Learned senior counsel, Mr. Bhowmik submits that this is basically a second

revision which is barred by Section 397 sub-section (3) CrPC. It is not difficult to comprehend that the petitioner has taken recourse to Section 482 CrPC to call upon this Court to exercise the inherent power, only to obviate the bar created by sub-section (3) of Section 397 Cr.P.C.

6. The law relating to invoking the provision of 482 CrPC after dismissal of the first revision by the same party is no longer res-integra. The Apex

court, in *Rajan Kumar Machananda* vs- State of Karnataka 1990 Suppl. (1) SCC 132, dealing with the scope of application of Section 482 CrPC,

after the order of the learned trial court is upheld by the first revisional court, held as under :

“The question for consideration is as to whether the bar under Section 397(3) Cr.P.C. should have been taken note of to reject the revision at the

instance of the State Government or action taken by the High Court in exercise of its inherent power has to be sustained. It is not disputed by counsel

appearing for the State that the move before the High Court was really on application for revision of the order of the Magistrate releasing the truck.

That is exactly what is prohibited under Section 397(3) Cr.P.C. Merely by saying that the jurisdiction of the High Court for exercise of its inherent

power was being invoked the statutory bar could not have been overcome. If that was to be permitted every revision application facing the bar of

Section 397(3) of the Code could be labelled as one under Section 482. We are satisfied that this is a case where the High Court had no jurisdiction to

entertain the revision. The appeal is allowed and we set aside the order of the High Court. The Order of the Magistrate as affirmed by the Session

Judge is upheld.”

7. In *Laxmi Bai Patel* vs- *Shyam Kumar Patel* reported in (2002) 2 SCR 1257 observed as under:

3. Before taking up the merits of the case, it would be proper to consider the exercise of jurisdiction under Section 482 Cr. P.C. by the High Court in

the facts and circumstances of the case.

4. In a case where the sessions court exercising revisional power under Section 397(3) Cr.P.C. has dismissed the revision petition by the aggrieved

party, a second revision petition about acceptance of the same party is barred. The position is well-settled that in such a case power under Section 482

Cr.P.C. can be exercised by the High Court in rare cases and in exceptional

circumstances where the court finds that permitting the impugned order to remain undisturbed will amount to abuse of process of the court and will result in failure of justice. The Court in the case of Dharampal & Ors. v.

Ramshri (Smt.) & Ors., , ""held :

.....Section 397(3) bars a second revision application by the same party. It is now well-settled that the inherent powers under Section 482 of the Code

cannot be utilized for exercising powers which are expressly barred by the Code. Hence, the High Court had clearly erred in entertaining the second

revision at the instance of respondent 1. On this short ground itself, the impugned order of the High Court can be set aside.

In the case of Deepti alias Arati Rai v. Akhil Rai & Ors. , a similar view was taken by this Court and it was observed;

...It should have also applied its mind to the aspect that second revision application, after dismissal of the first one by sessions court is not

maintainable and that inherent power under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the

Code...

5. In the case of Krishnan & Anr. â?"VS-Krishnaveni & Anor. , a three judge bench of this Court held that the inherent power of the High Court is

not one conferred by the Code but one which the High Court already has in it and which is preserved by the Code and that the object of Section

397(3) is to put a bar on simultaneous revisional applications to the High Court and the court of sessions so as to prevent unnecessary delay and

multiplicity of proceedings. This Court made the following observations in paragraph 10 of the judgment:

Ordinarily, when revision has been barred by Section 397(3) of the Code, a person -accused/complainant - cannot be allowed to take recourse to the

revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to

circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401

and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave

miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice

or order passed or sentence imposed by the magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue.

It is, therefore, to meet the ends of justice, or to prevent abuse of the process that the High Court is preserved with inherent power and would be

justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with

Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial

and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded

expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by

promise or inducement. These malpractices need to be curbed and public justice can be ensured only when trial is conducted expeditiouslyâ??.

8. What therefore follows from the above ratio of the Apex Court is that provision of section 482 CrPC cannot be invoked to circumvent the statutory

provision laid down in sub-section (3) of Section 397 CrPC. A person after dismissal of the first revision can invoke the provision of section 482

Cr.P.C. only in rarest of the rare case and in exceptional circumstances, where court finds that allowing the impugned order to remain undisturbed will

amount to abuse of the process of the court and result in failure of justice. Therefore, the Â point needs to be considered in this petition is whether the

impugned order comes within the category of such exceptional case being rarest of the rare one.

9. It appears from the judgment of the trial court and also the revisional court, that relationship between the parties as husband and wife was not in

dispute. What surfaced from the grounds taken in the proceeding u/s 125 Cr.P.C. is that the petitioner/husband took a ground of adultery to avoid the

liability of paying maintenance. It is no doubt true that a woman living adulterous life is not entitled to maintenance in view of sub-section (4) of

Section 125 CrPC. Both the learned trial court and the learned revisional court appears to have extensively discussed this issue and came to the

concurrent finding that the petitioner/husband failed to substantiate the plea of adultery by adducing evidence, though the burden lied upon him.

When the relationship between the wife and the husband was not in dispute and the basic plea raised by the petitioner to avoid the liability to pay maintenance was rejected by both the courts below, having considered the evidence and materials brought on record, leaving no room for reconsideration of the issue, the impugned order can by no stretch of imagination be held to have resulted in failure of justice. Rather, on the facts and circumstances, the present petition itself appears to be an exercise amounting to abuse of the process of the court. Being of the above view, I am unable to persuade myself to accept this petition to be an exceptional one falling in the category of rarest of the rare case, for enabling this Court to exercise the inherent power to interfere with the impugned order. Accordingly, this petition is found devoid of merit and is dismissed.

10. Send down the LCR.