
(2014) 12 RAJ CK 0021

In the Rajasthan High Court

Case No : Criminal Misc. Petition No. 4976 of 2014

Chhatradhar Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 397(3)

Citation : (2015) CriLJ 1613

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Advocate : Yashudev Singh Choudhary, Advocates for the Appellant; R.R. Baisla, P.P, Advocates for the Respondent

Judgement

M.N. Bhandari, J.

By this criminal misc. petition, a challenge is made to the order dated 5th June, 2014 whereby objection raised by the petitioner regarding maintainability of the second revision petition against the same order was rejected.

1. Learned counsel submits that the non-petitioner preferred a revision petition against the order passed by the Additional Chief Judicial Magistrate, Jaipur Metropolitan. The aforesaid revision petition was dismissed as withdrawn with liberty to file afresh. The non-petitioner then filed another revision petition, but it is not maintainable, in view of Section 397(3) Cr.P.C. The Court below dismissed the application in ignorance of the fact that the petitioner has preferred second revision petition against same order and is hit by Section 397(3) Cr.P.C. In view of above, not only impugned order be set aside but revision petition be dismissed holding it to be not maintainable. I have considered the submission made by learned counsel for petitioner and perused the record.

2. It is not in dispute that after filing of the first revision petition, it was dismissed as withdrawn but with liberty to file a fresh revision petition. The Court below while dismissing the petition as withdrawn, granted liberty to file a fresh

revision petition. The non-petitioner accordingly preferred revision petition to which objection has been raised by the petitioner. The material on record shows that first petition was not decided on merit but dismissed as withdrawn with liberty to file afresh. In view of above, no decision on the first revision petition exist on merit. The bar of Section 397(3) Cr.P.C. cannot apply in a case where revision petition was dismissed as withdrawn with liberty to file afresh. The view aforesaid is supported by the judgment of Patna High Court in the case of Harakh Singh Vs. Lalmuni Kuer, . Therein, similar issue came up for consideration and decided. The relevant paras of the said judgment are quoted hereunder for ready reference.

"7. Counsel for the opposite party has however, urged that the mere fact that an application was filed before the Sessions Judge irrespective of the fact that it was allowed to be withdrawn, would result in the application of the bar contained in sub-section (3) of Section 397. Stress has been laid on the wordings of the sub-section which says "if an application under this section has been made".

I am unable to accept this contention. The argument does not appeal to my common sense. The intention of the Legislature in enacting the provision is obviously to avoid conflict of opinion between two courts of concurrent jurisdiction and to avoid one Court of concurrent jurisdiction acting as if it were a Court of appeal against the decision of the other. The words cannot in my opinion, relate only to the factum of filing the application. The words in its proper context must be deemed to mean further than what literally would be the meaning of the word namely, that the application shall not only be made but entertained and adjudicated upon. Unless there is a decision on the point the legislature could not have intended to make the mere filing of the application a bar in the view which. I have taken I am supported by a decision of a Division Bench of the Madras High Court in the case of Narayana Naick and Others, . The proposition is so obvious that it hardly needs any authority. The contention of the counsel in this respect must therefore, be rejected and the application cannot be held to be non-maintainable on the mere ground that a similar application had been only filed before the Sessions Judge though withdrawn."

3. In view of facts given above and discussion made by this Court, find no error in the impugned order. The second revision petition is maintainable in the facts and circumstances of the case, thus this criminal misc. petition is dismissed. However, dismissal of the petition should not construe that pending revision petition is required to be accepted, rather it should be decided appropriately after considering merit. It dismisses of the stay application also.