
(2005) 03 AP CK 0075

In the Andhra Pradesh High Court

Case No : Criminal Petition No's. 920 and 921 of 2005

D. Durga Prasad and Chandra Chits and Finance

APPELLANT

Vs

Karri Sivannarayana and Another

RESPONDENT

Date of Decision : 16-03-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 397, 397(1), 482, 91
Negotiable Instruments Act, 1881 (NI) — Section 138
Constitution of India, 1950 — Article 227

Citation : (2005) 1 ALD(Cri) 851 : (2005) CriLJ 2637

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : T. Pradyumna Kumar Reddy, for the Appellant; Public Prosecutor for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—Both these petitions are filed by the accused in C. C. No. 141 of 1998 on the file of the Court of Additional Judicial Magistrate of First Class, Anakapalli. criminal Petition No. 920 of 2005 is filed against Criminal Revision Petition No. 21 of 2003, which arises out of Criminal Miscellaneous Petition No. 2386 of 2003 in C. C. No. 141 of 1998 thereafter called, first petition). Criminal Petition No. 921 of 2005 is filed against Criminal Revision Petition No. 20 of 2003, which arises out of Criminal Miscellaneous Petition No. 2387 of 2003 in C. C. No. 141 of 1988 thereafter called, second petition). The petitioner seeks to quash the orders passed by the revisional Court.

2. First respondent initiated criminal action against the petitioner u/s 138 of the Negotiable Instruments Act, 1989 as amended by Act No. 55 of 2002. While the matter is being tried, first respondent filed first miscellaneous petition being Criminal Miscellaneous Petition No. 2386 of 2003 u/s 91 of the Code of Criminal Procedure, 1973 (Cr PC) to send for certain documents pertaining to Insolvency Petition No. 26 of 1996 filed by D. W. 2 on the file of the Court II Additional

Senior Civil Judge, Visakhapatnam. The learned trial Magistrate dismissed the petition holding that D. W. 2 being not a party to the proceedings, it would not be desirable to call for the records in I.P. No. 26 of 1996 merely to prove that D.W. 2 is speaking falsehood. Feeling aggrieved by the order of the learned Magistrate dt. 21-7-2003, petitioner preferred Criminal Revision Petition No. 21 of 2003 u/s 397(1) of Cr. P. C. The learned X Additional District and Sessions Judge, Visakhapatnam (Fast Tract Court) at Anakapalli, by order dt. 6-1-2005 allowed the petition observing that D. W. 2 could not speak about the documents he filed unless he was shown them. Learned Sessions Judge placed reliance on the decision of the Supreme Court in Om Parkash Sharma Vs. Central Bureau of Investigation, Delhi, in allowing the Criminal Revision Petition No. 21 of 2003. The de facto complainant also filed another petition before the learned trial Magistrate being Criminal Miscellaneous Petition No. 2387 of 2003 u/s 311 of Cr PC to reopen the matter and permit him to examine Court witness and mark documents, which he sought to summon in other application referred to hereinabove. Again the Magistrate dismissed the same, but the learned Sessions Judge by order dt. 6-1-2005 made in Criminal Revision Petition No. 20 of 2003 allowed the application. Indeed, the order is only a consequential order to the other order referred to herein-above.

3. In these petitions, learned counsel for the petitioner Sri. T. Pradyumna Kumar Reddy submits that if the documents pertaining to insolvency petitions are summoned from another Court, the same would cause prejudice to the accused and that the learned Sessions Judge grossly erred in allowing the Criminal Revision Petitions filed by the complainant in C. C. No. 141 of 1998.

4. These petitions are filed u/s 482 of Cr PC to quash the orders of learned X Additional District and Sessions Judge, Visakhapatnam (Fast Tract Court) at Anakapalli. The learned Sessions Judge entertained the revision petitions u/s 397 of Cr PC and ordered summoning of all the documents relating to insolvency petition and also to reopen the matter to mark those documents. Both the orders are in the nature of interlocutory nature and therefore embargo u/s 397(2) of Cr PC comes into play. The question therefore is whether the High Court in exercise of its plenary powers u/s 482 of Cr PC can ignore statutory bar and quash the orders of the Sessions Court even it suffers some infirmity?

5. The power u/s 482 of Cr PC is intended to prevent abuse of process of any Court and to secure ends of justice. Nonetheless, if while exercising such power, if statutory provisions are ignored the same would not only amount to abuse of process of law, but abuse of process of the Court itself. The intended power cannot be exercised in such a manner to nullify the selfsame power with which this Court is vested. This is no more *res integra*. In *State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others*, , the Supreme Court considered the question whether High Court can exercise power under Article 227 of the Constitution of India or inherent power u/s 482 of Cr PC ignoring the bar imposed in exercise of such power by Statute. Answering the question in the

negative it was held that "where the Statute bans the exercise of revisional powers ... jurisdiction under Article 227 of the Constitution of India could not be exercised as the cloak of an appeal in disguise". Insofar as exercise of power u/s 482 of Cr PC is concerned, the Apex Court categorically ruled as under.

Section 482 of the Criminal Procedure Code starts with words "Nothing in this Code". Thus the inherent jurisdiction of the High Court u/s 482 of the Criminal Procedure Code can be exercised even when there is a bar u/s 397 or some other provisions of the Criminal Procedure Code. However, as is set out in *Satya Narayan Sharma Vs. State of Rajasthan*, this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein-above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment.

6. In this case the two applications filed by the complainant to reopen the matter and to summon documents from other Court was rejected by the trial Magistrate but were allowed by the revisional Court. Applying the principles laid down by the Supreme Court as above, it must be held that this Court in exercises of powers u/s 482 of Cr PC. These petitions therefore must fail.

The Criminal Petitions, for the above reasons, are dismissed.