
(1989) 09 KAR CK 0025
In the Karnataka High Court
Case No : Criminal Petition No. 153 of 1989

M. Mruthyanjaya	Vs	APPELLANT
Premjit Singh and Others		RESPONDENT

Date of Decision : 28-09-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 200, 341, 397, 399
Penal Code, 1860 (IPC) — Section 409, 420, 477 A

Citation : (1989) ILR (Kar) 3210

Hon'ble Judges : K. Ramachandraiah, J

Bench : Single Bench

Advocate : B.V. Acharya, for the Appellant; Vinodh P. Washi, for the Respondent

Judgement

K. Ramachandriah, J.—This criminal petition filed u/s 482 of the Code of Criminal Procedure, 1973 (for short "the Code"), involves for consideration the following point of law :

"Whether a complainant whose revision petition filed u/s 397 of the Code before the Sessions Court against the order of the Magistrate dismissing his complaint is also dismissed by the Sessions Judge cannot invoke the inherent jurisdiction of the High Court u/s 482 of the Code for setting aside the orders of the Magistrate and the Sessions Judge ?"

2. The said point arises in the way :

(a) The petitioner as proprietor of Raja Silk House (Pvt.) Ltd., Basavaraja Market, Bangalore, filed a private complaint against the respondents in the Court of the Chief Metropolitan Magistrate, Bangalore City, u/s 190 read with section 200 of the Code alleging that the respondents had committed offences punishable under sections 477A, 420 and 409, Indian Penal Code. Respondents Nos. 1 and 2 are the chairman and general manager of the Bank of Baroda at Bombay and respondents Nos. 3 to 5 are the senior manager, accounts officer and another senior manager of the Bank of Baroda Branch, K.G. Road, Bangalore 9

(hereinafter called "the bank"). It was alleged in the complaint that M. Nanjappa was the managing director of Raja Silk House (Pvt.) Ltd. (hereinafter referred to as "the company") till he was murdered in his house by some miscreants on September 24, 1986, and after his death, the petitioner, as his foster son, is carrying on the business of the company as one of its directors. The deceased, Nanjappa, during his lifetime, had obtained loan facilities from the bank which was the banker of the company in connection with exports and imports of the goods of the company by giving a bank guarantee to the tune of Rs. 23 lakhs. The bank has obtained several documents from the late Nanjappa by exercising undue influence, fraud and coercion over him and utilised those bank papers as acknowledgments for the purpose of saving limitation by inserting dates. The bank was collecting foreign bills of the company which had taken loan from the bank. The bank has also filed a suit against the company for recovery of the loan amount said to be due by it. There were several discussions in regard to interest rate and the money payable by the company and several other questions involved in respect of the transactions between the company on the one hand and the bank on the other hand and the differences between the parties during the said talk had led to the murder of Nanjappa. The bank authorities were showing large sums of money towards outstandings on foreign bills account resulting in great loss to the company and the Joint Chief Controller of Exports and Imports even went to the extent of keeping the licence of the company in abeyance. The bank issued a realisation certificate of foreign bills of the company on June 25, 1984, showing the amount realised by it on the foreign bills of the company to the tune of Rs. 20,94,073.60. Again, it was stated in the certificate issued by the bank on June 25, 1984, that a sum of Rs. 3,72,730.18 had been realised. It is clear from the said two certificates issued by the bank that there was falsification of accounts of the company by the bank authorities and the certificate dated June 25, 1984, had been issued with the specific motive of suppressing the amount that had been realised by the bank on March 15, 1984, inasmuch as in the certificate No. 31/241 issued by the bank, the amount realised by foreign bills was shown as Rs. 13.45.265 while in certificate No. 30 of 1988 dated October 24, 1983, the amount was shown as Rs. 7,00,106.85. and in certificate No. 30/632 dated August 3, 1983, the amount realised was shown as Rs. 18,93,000 aggregating in all to a sum of Rs. 39,39,147.40, whereas in the certificate No. 31/515 dated June 25, 1984, the amount was shown as Rs. 43,14,953.57 for the year 1983. The said figures would show that the bank had been issuing certificates from time to time without disclosing the correct amounts realised on foreign bills of the company with ulterior motives. Reference is also made to some other certificates issued by the bank and it is stated that although the amounts realised during the year 1982 were to the tune of Rs. 26,87,397.96 it was stated in the certificates issued by the bank from time to time that the total amounts realised were Rs. 25,90,508.10, vide certificate dated June 25, 1984, and Rs. 20,04,047.49 in another certificate dated June 25, 1984. It was, therefore, alleged in the complaint that the respondents representing the bank had committed the offences punishable under sections 477A, 420 and 409,

Indian Penal Code. After recording the sworn statements of the petitioner, the learned IV Additional Chief Metropolitan Magistrate, Bangalore, before whom the complaint came up for consideration, dismissed the complaint u/s 203 of the Code on the ground that the dispute between the petitioner complainant and the respondents accused was purely of a civil nature and the evidence lead in support of the complaint shows that the essential ingredients of the offences alleged in the complaint were absent and the petitioner complainant had miserably failed to make out a prima facie case for taking cognizance and, as such, there was no sufficient ground for proceeding against the respondents-accused for the alleged offences.

(b) Feeling aggrieved by the said order, the petitioner filed Criminal Revision Petition No. 74 of 1988 u/s 397 of the Code in the Court of the City Sessions Judge, Bangalore. The said criminal revision petition came up for consideration before the VI Additional City Sessions Judge, Bangalore, who, by order dated September 24, 1988, dismissed the revision petition by observing in paragraph 9 of his order that, admittedly, there was a civil dispute between the parties; that the complainant, curiously, had not made any reference in his complaint or in his evidence to the correct figures of amounts furnished by the company in its foreign bills against the value of the goods supplied by the company to its foreign customers and, therefore, he was guilty of withholding basic materials. The learned Sessions Judge has also affirmed the order of the learned Magistrate on the additional new ground by observing that the complainant had not produced any material on record to show that the company had resolved to prosecute the respondents and had authorised the complainant to file a complaint against them.

(c) It is against that order that the petitioner has filed the present petition u/s 482 of the Code.

3. When the petition came up for admission on March 17, 1989, before his Lordship K. B. Navadgi J., his Lordship was of the view that it is necessary to direct issue of notice to the third respondent to hear him on the point of admission and directed the matter to be posted for admission after service of notice on respondent No. 3. It is in pursuance of that order that Sri I. T. Rai, advocate, has entered appearance on behalf of respondents Nos. 1 to 3 and 5. When the matter came up for hearing on the point of admission on September 11, 1989, Sri Vinod P. Washi, senior advocate of Bombay, appearing for respondents Nos. 1 to 3 and 5, raised a preliminary objection that the criminal petition filed u/s 482 of the Code against the impugned order of the learned Sessions Judge is not maintainable and urged that the said point may be decided first and then the question whether this is a fit case for admission may be considered. Thereupon, Sri B. V. Acharya, learned senior counsel for the petitioner-complainant and Sri Vinod P. Washi, senior counsel for respondents Nos. 1 to 3 and 5 were heard not only on the point of maintainability of the petition but also on the point of admission.

4. In the light of what is stated above, the two points that arise for determination

in this petition are :

(a) Whether criminal petition filed u/s 482 of the Code against the impugned order passed in revision u/s 397 of the Code by the learned Sessions Judge is maintainable in view of the bar enacted in sub-section (3) of section 397 against a person whose revision petition is dismissed by the learned Sessions Judge ?; and

(b) If point No. (a) is answered in the affirmative, whether this is a fit case for admission ?

5. For a proper appreciation of point (a), the relevant provisions of the Code to be noticed are, sections 341, 397 and 399. They read as under :

"341. Appeal. - (1) Any person on whose application any court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of section 340, or against whom such a complaint has been made by such court, may appeal to the court to which such former court is subordinate within the meaning of sub-section (4) of section 195, and the superior court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former court might have made u/s 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order u/s 340, shall be final, and shall not be subject to revision.

397. Calling for records to exercise powers of revision. - (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior criminal court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court, and may when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.

Explanation. - All Magistrates, whether executive or judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purpose of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by either of them.

399. Sessions Judge's powers of revision. - (1) In the case of any proceeding the

record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other court."

6. Sri B. V. Acharya, learned senior counsel for the petitioner-complainant, submitted that the criminal petition filed u/s 482 of the Code is maintainable in view of the observations made by a three judge Bench of the Supreme Court in what is termed as a leading case in *Madhu Limaye Vs. The State of Maharashtra*, , in which it is held that an earlier two-judge decision of the Supreme Court in *Amar Nath and Others Vs. State of Haryana and Another*, , was not correctly decided and added that *Untwalia J.* who was a party to the decision in *Amar Nath and Others Vs. State of Haryana and Another*, , is also a party to a larger Bench decision in *Madhu Limaye Vs. The State of Maharashtra*, , and the latter decision in which the principles governing exercise of inherent power of the High Court u/s 482 are succinctly enunciated still holds the field. He further submitted that on facts, the observations made by the learned Additional Chief Metropolitan Magistrate, Bangalore City, in paragraph 14 of his order and the observations made by the learned Additional Sessions Judge in paragraph 9 of his order are erroneous; that the averments made in the complaint of the petitioner disclose prima facie material for taking cognizance of the offences under sections 477A and 409, Indian Penal Code, if not, u/s 420, Indian Penal Code, and to proceed against the respondents for the said offences. In this connection, he also placed reliance on another decision of the Supreme Court in *J.P. Sharma Vs. Vinod Kumar Jain and Others*,

7. Per contra, it was argued by Sri. Vinod P. Washi, learned senior counsel for respondents Nos. 1 to 3 and 5, that since the revision petition filed u/s 397 of the Code by the petitioner against the order of dismissal of his complaint by the learned trial Magistrate is dismissed by the learned Sessions Judge, a second revision petition against the said order is barred by virtue of the provisions of section 397 of the Code, extracted above, and the petitioner cannot overcome the said bar by resorting to the inherent power of this court u/s 482 of the Code which has to be exercised sparingly and with utmost circumspection as has been held by the Supreme Court in a number of decisions. He placed reliance on a number of decisions in support of his said contention. He further submitted that

the dispute between the petitioner and the bank is purely of a civil nature as has been rightly observed by the two courts below and, therefore, it is not a fit case for admission on the facts and added that he would leave it to this court to decide whether or not this is a fit case for admission in the event of this court coming to the conclusion that the criminal petition filed u/s 482 of the Code against the order in revision passed by the learned Sessions Judge is maintainable.

8. In support of the contention that the criminal petition filed u/s 482 of the Code against a revisable order of the learned Sessions Judge is not maintainable, Sri Vinod P. Washi placed reliance on the following decisions : (a) Jagir Singh Vs. Ranbir Singh and Another, ; (B) Rajan Kumar Manchanda v. State of Karnataka JT [1987] 4 637; (c) Dassu v. Smt. Mantira [1976] Cri. LJ 1211 ; (d) Chhedilal Vs. Smt. Kamla and Another, (e) Shariffuddin Haji Noor Baksh Vs. State, (f) Chandra Kalia Devi Vs. The State of Bihar and Another, (g) Basir-ul-huq and Others Vs. The State of West Bengal, and (h) Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, But, I propose to refer to only a few out of the said decisions as the principles laid down in all those decisions are the same.

9. It is held in Jagir Singh Vs. Ranbir Singh and Another, that a revision is not to be entertained by both the High Court and the Sessions Judge in a case where the Sessions Judge refuses to interfere with the order of the Magistrate as the bar u/s 397(3) cannot be circumvented by treating the revision application filed before the High Court as one directed against the order of the Sessions Judge. But, in the instant case, the petitioner has filed a criminal petition u/s 482 of the Code and not a second revision petition against the order of the learned Sessions Judge. Therefore, the said observations have no direct bearing to the facts of the case on hand.

10. In Rajan Kumar Manchanda v. State of Karnataka JT [1987] 4 637, the learned Magistrate before whom the matter was proceeding had directed the release of the truck in favour of the appellant. The said order was challenged by the State by a revision petition in the Court of Sessions. The learned Sessions Judge dismissed the revision petition of the State. Since a second revision petition did not lie at the instance of the State in the High Court in view of the provisions u/s 397(3) of the Code, the State, obviously to avoid the said bar, moved an application before the High Court u/s 482 of the Code asking for exercise of the inherent powers. The High Court reversed the order of the Magistrate as affirmed by the Sessions Judge in exercise of the inherent powers u/s 482 of the Code. When the matter was taken up before the Supreme Court by the other party, the question that arose for consideration before the Supreme Court was whether the bar u/s 397(3) should have been taken note of to reject the revision at the instance of the State Government or the view taken by the High Court in exercise of its inherent power has to be sustained. But, before the Supreme Court, learned counsel appearing for the State, did not dispute that the move before the High Court was really an application for revision of the order of

the Magistrate releasing the truck. In the light of the said submission made by learned counsel for the respondent-state before the Supreme Court, their Lordships have observed as under :

"That is exactly what is prohibited u/s 397(3) of the Code. 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 u/s 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 Sessions Judge is upheld."

11. In view of the law laid down by the larger Bench of three judges of the Supreme Court in the case of *Madhu Limaye Vs. The State of Maharashtra*, , in which the following principles are enunciated in relation to the exercise of the inherent power of the High Court u/s 482 of the Code (at page 50) :

"(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of the process of any court or otherwise to secure the ends of justice; and

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code."

12. Sri B. V. Acharya, submitted that the said observations made by a two-judge Bench of the Supreme Court are not of much assistance to the respondents. Sri B. V. Acharya also laid emphasis on the words "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code" used in section 482. I am inclined to agree with the said submission of Sri B. V. Acharya as the observations made by a Division Bench comprising two judges of the Supreme Court cannot prevail over the law laid down by a larger Bench of three judges of the Supreme Court in *Madhu Limaye Vs. The State of Maharashtra*, . In this connection, it is observed by a two-judge Bench of the Supreme Court in *Arun Kumar Bose Vs. Mohd. Furkan Ansari and Others*, that "we are bound by the decision of the larger Bench". Therefore, I hold that the above extracted principles enunciated by a three judge Bench of the Supreme Court has to prevail over the observations made by a two-judge Bench of the Supreme Court in the case of *Rajan Kumar Manchanda v. State of Karnataka* JT 1987 4 637, on which strong reliance was placed by learned counsel for the respondent.

13. Sri B. V. Acharya also placed on a Full Bench decision of the Andhra Pradesh High Court in *In Re: Puritipatti Jega Reddy*, , in which it is observed as under on the strength of the principles enunciated in *Madhu Limaye Vs. The State of Maharashtra*, (headnote of *In Re: Puritipatti Jega Reddy*, :

"A party who is unsuccessful in revision before the Sessions Judge is precluded from filing a second revision in the High Court by virtue of the provisions of section 397(3). However, the High Court can exercise its inherent powers where that exercise is warranted irrespective of the manner in which the matter has been brought to its notice. Therefore, a party who has been unsuccessful before the Sessions Judge may seek to bring it to the notice of the High Court u/s 482 of the Criminal Procedure Code. But that shall not be automatically taken notice of by the High Court. It must be scrutinised and examined whether there has been miscarriage of justice in any particular case before it entertains any such petition filed by an unsuccessful party. The best course would be to place the matter before the court for admission and at the time of such admission, the court must be prima facie satisfied before it admits, that there has been abuse of the process of any court or that the High Court's interference would be warranted in the ends of justice. Once that prima facie satisfaction is reached by the High Court at the time of admission, then a petition even by the party who has been unsuccessful before the Sessions Judge can be received, entertained and finally disposed of. The label given to the case is immaterial. It is the satisfaction of the court whether the case warrants the exercise of its powers u/s 482 which is important. Therefore, such matters must be carefully scrutinised even at the admission stage."

14. Sri B. V. Acharya also placed reliance on a decision of the Supreme Court in *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, , in which it is observed that "exercise of the High Court's inherent power u/s 482 to quash an interlocutory order summoning the accused in a case in which the allegations in the complaint did not constitute an offence against the accused is not affected by section 397(2) of the Code". Sri B. V. Acharya also placed reliance on the decision of a single judge of the Delhi High Court in *Kuldeep Kumar Vs. Chander Kanta*, In the said case, the observations in paragraph 3 that the provisions of sections 397 and 399 of the Code could not be a bar to the application u/s 482 seem to be the correct position as the High Court cannot be made a prisoner of procedure and it has been held by the Supreme Court in *Raj Kapoor and Others Vs. State and Others*, , that even where the High Court cannot revise an order, it is entitled to examine the matter u/s 482".

15. Sri. B. V. Acharya placed reliance on a decision of a learned single judge of the Patna High Court in *Krishna Sadan Ghosh Vs. Govind Prasad Saraf*, in which it is observed as under :

"Ordinarily, the power conferred on the High Court u/s 482 is not exercisable so as to defeat any other provisions contained in the Code. Nevertheless, such powers may be exercised in exceptional cases to secure the ends of justice or to prevent abuse of the process of the court. The lines drawn between the two sets of cases is no doubt thin but all the same real. It is left to the good sense of the judges of the High Court, to act in any manner they decide."

16. In the light of the observations made and the principles enunciated in the

above mentioned decisions and particularly in Madhu Limaye Vs. The State of Maharashtra, , I find it difficult to persuade myself to uphold the submission made by learned counsel for the respondents that the criminal petition filed by the petitioner against the revisional order of the learned Sessions Judge is not maintainable. Hence, point (a) is answered in the affirmative.

17. Point (b) : On a perusal of the documents produced along with the petition and marked as annexures B to L and the allegations made in the complaint, I am of the opinion that this is a fit case for admission. Point (b) is answered in the affirmative.

18. In the result, for the foregoing reasons, the petition is admitted. Office is directed to get the records and issue notice to the fourth respondent only as respondents Nos. 1 to 3 and 5 are already represented.