

(2013) 11 JH CK 0057
In the Jharkhand High Court
Case No : Cr.M.P. No. 2423 of 2012

Meena Kumari Rai

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : (2014) 2 AJR 524

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, for the Appellant;

Judgement

Rakesh Ranjan Prasad, J.—This application is directed against the order dated 2.8,2012 passed in Sadar P.S. case No. 308 of 2002 whereby and whereunder learned Judicial Magistrate, 1st Class, Hazaribagh rejected an application for discharge filled u/s 239 of the Code of Criminal Procedure. When the matter was came up hearing on the point of admission, question of maintainability of the application got cropped up as alternative remedy was available to the petitioner for challenging the impugned order.

2. Heard Mr. Anil Kumar Sinha, learned Sr. counsel appearing for the petitioner and learned counsel appearing for the State.

3. Learned counsel appearing for the petitioners submits that it is true that it has been well settled principle that an inherent power will come into play only when there is no provision in the Code for redressal of the grievance of the aggrieved party and that if the order assailed is purely of an interlocutory character, it can be corrected in exercise of the revisional power of the court and in that event, the High Court would refrain to interfere with the order in exercise of power u/s 482 of the Code of Criminal Procedure. But at the same time, it has also been held that none of the provisions of the Code prohibits or expressly bars invoking power of Section 482 of the Code of Criminal Procedure or Article 227 of the Constitution of India, particularly when for securing ends of justice, interference

of the High Court is absolutely necessary.

4. In this regard it was further submitted that the petitioner is being prosecuted for the offence u/s 409 of the Indian Penal Code on the allegation that the petitioner had kept the file illegally with him but this allegation would not constitute offence u/s 409 of the Indian Penal Code and moreover, during investigation it has come that the concerned file was lying in the office and was being handled by the other person, still the prayer for discharge has been rejected and thereby the order impugned is patently illegal. In that event, there would be no bar for the High Court to examine the legality of the order in exercise of its inherent power.

5. Learned counsel in support of his submission has referred to decisions rendered in cases of Amit Kapoor Vs. Ramesh Chander and Another, as well as in a case of Madhu Limaye Vs. The State of Maharashtra, and also in a case of Amar Nath and Others Vs. State of Haryana and Another,

6. On account of the fact that the order under which prayer for discharge was rejected can be corrected by the Court in exercise of revisional power, an objection has been taken over the maintainability of this application filed u/s 482 of the Code of Criminal Procedure. However, at the same time, this has also been held by the Hon'ble Supreme Court in number of cases that nothing in the Code can limit or affect the exercise of inherent power by the High Court but that power should be exercised by the High Court sparingly, particularly in a situation which calls for interference to prevent abuse of the process of the court or for the ends of justice.

7. In this regard, I may refer to a decision rendered in a case of Madhu Limaya v. State of Maharashtra (supra) whereby their Lordships after taking notice of the provision as contained in Section 397(2) and also u/s 482 of the Code of Criminal Procedure observed at paragraph 10 as under:

10. As pointed out in Amar Nath case the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding, is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The legislature in its wisdom decided to check this delay by introducing sub-section (2) in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however it would follow that nothing in the Code, which would include sub-section (2) of Section 397 also, shall be deemed to limit or affect the inherent powers of the High Court," But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In

such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in Sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision or relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such case would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial, after proper sanction will not be barred on the doctrine of *autrefois acquit*. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused up to the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.

8. Further in a case of *Dhariwal Tobacco Products Limited and others v. State of Maharashtra* and another (*supra*) on issue which fell for consideration was as to whether an application u/s 482 of the Code of Criminal Procedure, 1973 can be dismissed only on the premise that alternative remedy of filing of revision application u/s 397 of the Code is available(sic)

9. Their Lordships after taking notice of number of cases did express its view that the inherent power u/s 482 of the Code can be invoked by the accused in the appropriate cases irrespective of other factors and the court can exercise the same in a deserving case within the parameter of law.

10. Those parameters-in my view have been spelt out in the decision rendered in

a case of *Madhu Limaya v. State of Maharashtra* (supra), as referred to above. There it has been held that in a case which brings about the situation which is an abuse of the process of the Court or for the purpose of securing ends of justice, interference by the High Court is absolutely necessary. Consequently, it has been held that in that event, nothing contained in the Code would limit or affect the exercise of inherent power by the High Court.

11. Thus, the question would arise as to whether the instant case calls for interference of the impugned order in exercise of power u/s 482 of the Code of Criminal Procedure?

12. Keeping in view the submission that accepting the allegation that the petitioner did keep the record with him, no offence would be attracted u/s 409. Moreover, there has been evidence to the effect that the record was lying in the office and was being handled with other person, it would not be desirable to refrain from exercising the power u/s 482 of the Code of Criminal procedure.

13. Accordingly, let the matter be posted after four weeks so that counter affidavit be filed on behalf of the State. Till then further proceeding of T.R. No. 777 of 2012 arising out of G.R. No. 1899 of 2002 in Sadar P.S. case No. 308 of 2002, pending in the court of Judicial Magistrate, 1st class, Hazaribagh shall remain stayed so far the petitioner is concerned.