

(1985) 07 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 138 of 1985

Mohinder Gupta

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 05-07-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 197, 397, 397(1), 397(2), 397(3)

Penal Code, 1860 (IPC) — Section 500

Citation : (1987) 16 ILR HP 439

Hon'ble Judges : R.S. Thakur, J

Bench : Single Bench

Advocate : S.S. Kanwar, for the Appellant; L.S. Panta, Dy. A.G. and Bhawani Singh, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Thakur, J.—This is a petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, against the order of the learned Additional Sessions Judge (I), Kangra at Dharamsala, dated February 27, 1985, whereby the revision petition filed by the Petitioner was dismissed.

2. The facts are that in March 1984, the Respondent S.S. Ahuja, was posted as District and Sessions Judge in Kangra Sessions Division with headquarters at Dharamsala (who will hereinafter be referred to as the third Respondent), while the Petitioner was posted as clerk of Court in the Court of the Senior Sub-Judge-cum-Chief Judicial Magistrate, Chamba. The Petitioner in March 1984 had applied to the third Respondent for leave which was rejected and on this, the Petitioner served a notice on the third Respondent u/s 80 of the CPC through Shri K.K. Gupta, Advocate at Chamba (hereinafter referred to as Shri Gupta), wherein it was stated that either he should be paid damages for the rejection of his leave application or he would institute a civil suit against him (Respondent No. 3).

3. On March 20, 1984, while the third Respondent was holding circuit court at Chamba which falls within his Sessions Division, said Shri Gupta Advocate appeared before him in connection with a criminal appeal (State v. Kancha Lama), and during the course of the proceedings in the appeal, the third Respondent by way of digression, enquired from said Shri Gupta Advocate, whether he had instituted a suit on behalf of the Petitioner pursuant to notice u/s 80 of the CPC served on him to which said Shri Gupta is said to have replied that he had not yet received instructions to institute the suit from the Petitioner and that he would do so on receiving such instructions. The third Respondent is then alleged to have passed a remark in the presence of said Gupta and other officials of the Court to the effect that "after Misra Sahib had gone (reference to the former Chief Justice of Himachal Pradesh High Court), even mosquitos and flies have started giving notices to him. He is also said to have made it clear that these remarks were not meant for said Shri Gupta.

4. Said Shri Gupta then construed these remarks as having been made against the Petitioner and he conveyed them to the Petitioner accordingly. The Petitioner on this instituted a complaint u/s 500 of the Indian Penal Code against the third Respondent in the Court of the Chief Judicial Magistrate at Chamba, wherein the Petitioner alleged that the Respondent No. 3 have made these imputations with intent or knowledge to harm the reputation of the Petitioner and that he was liable to be dealt with for defamation. The learned Chief Judicial Magistrate then recorded the preliminary evidence in the case and thereafter dismissed the complaint vide his order dated March 24, 1984 on the ground that since the third Respondent had made these remarks while discharging his official duties as a Sessions Judge, the provisions of Section 197 of the Code of Criminal Procedure were attracted in the case and that no such prosecution could be launched against him without obtaining prior sanction in this behalf from the State Government.

5. The Petitioner then went in revision against this order of the Chief Judicial Magistrate to the Court of the Sessions Judge. The Additional Sessions Judge (I) Kangra Division at Dharamsala disposed of this revision petition vide the impugned order affirming the findings of the Chief Judicial Magistrate and dismissing the revision petition as stated earlier.

6. Since a high officer of the judicial hierarchy of this State was involved and also an official of the same judiciary, I thought it proper to issue notice to the Respondents, pending admission.

7. At the time of arguments a preliminary objection was raised by the counsel of the third Respondent that the instant petition was incompetent. The contention of the learned Counsel was that after the complaint of the Petitioner was dismissed by the Chief Judicial Magistrate, Chamba, the Petitioner had the option to choose either of the two forums for challenging that order in revision, namely, the Sessions Judge at Dharamsala or the High Court, and the Petitioner obviously chose the former one and after having filed the revision there, he could not

maintain the instant petition as the same was barred under Sub-section (3) of Section 397 of the Code of Criminal Procedure and in these circumstances, he had no light also to invoke the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure; or the powers of superintendence under Article 227 of the Constitution of India.

8. The learned Counsel for the Petitioner on the other hand has contended that despite the bar provided under Sub-section (3) of Section 397 of the Code of Criminal Procedure the inherent powers of this Court u/s 482 Code of Criminal Procedure remain unaffected and unfettered and that this Court has every power to have resort to the provisions of those inherent powers to prevent the abuse of process of the Court or otherwise to secure the ends of justice and the exercise of these powers were called for in the instant case as both the lower courts have gravely erred in holding that the defamatory remarks made by the third Respondent had a nexus with the: duties he was discharging as Sessions Judge at the time of these objectionable utterances and as such the provisions of Section 197 Section 397 of the Code of Criminal Procedure were attracted.

9. The relevant provisions of Section 397 of the Code of Criminal Procedure read as under:

397. Calling for records to exercise of power 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 bailer on his own bond pending the examination of the record.

(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.

10. Thus the provisions of Section 397 of the Code of Criminal Procedure empowers the High Court and the. Sessions Judge to look into the record of any subordinate court to see whether any of its finding, sentence or order did not suffer from any incorrectness, illegality or impropriety. The Sub-section (2) however, places an embargo on the exercise of such powers in relation to any interlocutory order. There is further embargo under Sub-section (3) which is relevant for the disposal of this petition whereby the High Court is debarred from entertaining any such application in case the same had been made before the

Sessions Judge and disposed of by him and vice-versa. Then Sub-section (3) of Section 399 of the Code of Criminal Procedure again lays down that where the Sessions Judge has exercised the revisional powers under that Section which were also exercisable by the High Court u/s 401 of the Code of Criminal Procedure the decision of the Sessions Judge thereon shall be final and no further proceedings by way of revision shall be entertained by the High Court or any other Court.

10-A. Now in the instant case, admittedly, the Petitioner had chosen the forum of Sessions Judge, Dharamsala, after his complaint against the third Respondent was dismissed by the Chief Judicial Magistrate, Chamba, and the Sessions Judge even vide the impugned order dismissed the revision petition and in my opinion this order even if illegal has assumed finality and the instant petition by him in this Court is not competent.

11. It appears that the Petitioner was quite alive to this insurmountable hurdle in his way and that is why he has tried to maintain this petition u/s 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India. I, however, feel that the petition under the aforesaid provisions is entirely misconceived and is a mere subterfuge to circumvent and avoid the bar which is attracted in the instant case in view of Sub-section (3) of Section 397 as also of Section 399 of the Code of Criminal Procedure Obviously, the provisions of Section 482 of the Code of Criminal Procedure are the residuum of powers vested in the High Court in order to exercise them in extraordinary circumstances to give effect to any order under the Code of Code of Criminal Procedure or to prevent the abuse of the process of any; Court or otherwise to secure the ends of justice. That is to say, these powers can be invoked only where the High Court exude to justice finds it necessary to exercise them in cases where there are no specific provisions in this behalf in the Code to have resort to. In case there are specific provisions laid down by the Code itself the inherent powers under this Section cannot be invoked or resorted to.

12. In the instant case, obviously, when the Petitioner found aggrieved by the order of the Chief Judicial Magistrate, he challenged the same in revision before the Sessions Judge and the moment the Sessions Judge also chose to dismiss his revision petition, his further remedy in this behalf became barred.

13. The learned Counsel for the Petitioner has not contended and indeed it could not be contended with any justification, that the order of the Chief Judicial Magistrate or that of the Sessions Judge were non-est as it was very much within the jurisdiction of the Chief Judicial Magistrate to give a finding as done by him and when the correctness, legality or propriety thereof was challenged by the Petitioner in revision before the Sessions Judge, the Additional Sessions Judge also had jurisdiction and competence in revision to return his own verdict with regard thereto and once he did so, whether legally right or wrong, I do not think the same could be challenged by filing a petition u/s 482 Code of Criminal Procedure or under Article 227 of the Constitution of India.

14. The Supreme Court in Jagir Singh Vs. Ranbir Singh and Another, has clearly laid down rule in this behalf in the following words:

The object of Section 397(3) is to prevent a multiple exercise of revisional powers and to secure early finality to orders. Any person aggrieved by an order of an inferior Criminal Court is given the option to approach either the Sessions Judge or the High Court and once he exercises the option he is precluded from invoking the revisional jurisdiction of other authority. The language of Section 397(3) is clear and peremptory and it does not admit of any other interpretation.

When the Sessions Judge refused to interfere with the order of the Magistrate, the High Court's jurisdiction was invoked to avoid the order of the Magistrate and not that of the Sessions Judge. The bar of Section 397(3) was, therefore, effectively attracted and the bar could not be circumvented by the subterfuge of treating the revision application as directed against the Sessions Judge's order.

The revision application before the High Court cannot be treated as an application directed against the order of the Sessions Judge instead of as one directed against the order of the Magistrate. It is not permissible to do so. What may not be done directly, cannot be allowed to be done indirectly; that would be an evasion of the statute. It is a well known principle of law that the provisions of an Act of Parliament shall not be evaded by shift or contrivance.

In the same ruling their lordships also observed that the powers under Article 227 of the Constitution of India, could also not be invoked in such a situation as the power of judicial superintendence under Article 227 of the Constitution are only to be exercised sparingly to keep subordinate courts and tribunals within the bounds of their authority and not to correct mere errors and that where the Criminal Procedure Code itself banned the exercise of the revisional powers by the High Court, it would indeed require very exceptional circumstances to warrant interference under Article 227 of the Constitution since the power of superintendence was not meant to circumvent statutory law.

15. Then, in Madhu Limaye Vs. The State of Maharashtra, their lordships of the Supreme Court spelled out the principles under which the powers of the High Court u/s 482 Code of Criminal Procedure could be exercised as follows:

- (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 process of any Court or otherwise to secure the ends of justice;
- (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

In the instant case, as I have already observed, since the Petitioner, after his complaint was dismissed by the Chief Judicial Magistrate, Chamba, had chosen to challenge the same in revision before the Sessions Judge, he cannot be allowed

to reagitate the matter in the High Court after his revision petition by the Sessions Judge was dismissed, in view of the specific bar provided under Sub-section (3) of Section 397 and again Sub-section (3) of Section 399 of the Code of Criminal Procedure even by maintaining the petition u/s 482 of the Code of Criminal Procedure in view of the principle enunciated above.

16. In the background of the above discussion, the petition fails and is dismissed in limine.