
(1977) 02 P&H CK 0007
In the Punjab And Haryana At Chandigarh

Nanak Partap Singh and Others	Vs	APPELLANT
State of Punjab and Another		RESPONDENT

Date of Decision : 14-02-1977

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 204, 397, 435, 438, 482
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (1977) CriLJ 1426

Hon'ble Judges : S.C. Mital, J

Bench : Single Bench

Judgement

S.C. Mital, J.—A complaint u/s 406, I. P. C. and Section 6 of the Dowry Prohibition Act was instituted against the petitioners in the Court of the additional Chief Judicial Magistrate, Amritsar. By the impugned order the Magistrate summoned the petitioners. The order being interlocutory, no revision lies against it. The petitioners have moved this Court u/s 482 of the Cr. P. C. The question for determination is as to the invoking of the inherent powers.

2. Section 397(1) of the Code lays down that the High Court or the Sessions Judge may call for and examine the re-cords of any proceeding before any inferior Criminal Court for the purpose of satisfying itself 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. Sub-section (3) provides that 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 the other of them. Sub-section (2) of Section 397 is in the following terms : -

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 proceedings.

3. In Budaraju Seshagiri Rao and Others Vs. T.V. Sarma and Another, , O.

Chinnappa Reddy, observed :-

The object of Section 397(2) is to prevent interference by revisional Courts with the smooth and even progress of enquiries, trials and other proceedings before inferior Courts. Under the Cr. P. C. of 1898, not only was there no such limitation on the powers of the revisional Court, Sections 435, and 438 expressly provided for the suspension of the orders of inferior Courts by the revisional courts pending the examination of the record by the revisional Courts. The new Code has made a clear departure from the old Code and has prohibited interference by revisional Courts with proceedings in inferior courts at interlocutory stages.

4. In the case cited above also, an interlocutory order was sought to be interfered with by invoking the inherent powers of the High Court, The learned Judge further observed :

Section 482 Cr. P. C. merely preserves the inherent powers of the High Court. It is well established that the inherent powers of the High Court cannot be invoked so as to do an act which would conflict with an express provision of law or other general principles of Criminal Jurisprudence. Therefore, the bar u/s 397(2) cannot be got over by the invocation of the inherent powers of the High Court u/s 482 Cr. P. C.

I am in respectful agreement with the observations quoted above.

5. In the other ruling in point of the Delhi High Court, Sant Lal Vs. Krishan Lal, , Ansari, J., while dealing with an objection against a petition u/s 482 of the Code assailing an interlocutory order, expressed the view that where a revision petition against such an order is clearly barred by Sub-section (2) of Section 397 of the new Code, the bar could not be circumvented by having recourse to Section 482 of the new Code. Sant Lal's case was followed by D.S. Lamba, J., in Gurbachan Singh v. Dr. Didar Singh 1976 Cri LJ 506 (Punj & Har). In Santokh Singh v. Panjab Kaur 1976 (Cri) LJ 230 (Punj & Har), enhancement of the maintenance allowance was first assailed by filing a revision petition before the learned Sessions Judge. The second revision being barred by Section 397(3) of the Code, the petitioner moved the High Court u/s 482 of the Code and Article 227 of the Constitution of India. Surinder Singh, J., observed :

However, such a course cannot be permitted in the garb of an application filed under some other provision of law or the Constitution.

Besides, the learned Judge, finding no merit in the petition, dismissed the same. Above all their Lordships of the Supreme Court ruled in R.P. Kapur Vs. The State of Punjab, that the inherent power of the High Court cannot be exercised in regard to matters specifically covered by the other provisions of the Code.

6. Learned Counsel for the petitioners placed reliance on Sarjoo and Others Vs. Babadin and Another, , a Single Bench decision of the Allahabad High Court. There, an order passed by an Executive Magistrate was assailed in revision, but unsuccessfully, before the Sessions Judge. The second revision petition was

barred by Section 397(3) but the learned Judge held that inherent powers of the High Court u/s 482 of the Code could still be invoked to set aside the impugned order. In view of the rulings discussed in the preceding paragraphs, with due respects I am unable to follow the Allahabad view.

7. Stress was then laid by the learned Counsel for the petitioners on the precedents discussed hereinafter. In *Niranjan-lal Bawri v. State* 1975 (Cri) LJ 448 (Punj & Har), P.S. Patter, J., by exercise of the inherent power, quashed the interlocutory order passed by a Magistrate u/s 204 of the Code, summoning the accused person. In that case no objection was raised on the strength of Sub-section (2) of Section 397 of the Code. Hence the precedent is distinguishable. In *Paramjit Kaur v. Gurcharan Singh*. (1975) Cri LJ 391 (Punj & Har), K.S. Tiwana. J., in the exercise of the inherent powers, quashed the proceedings as they were held to be an abuse of the process of law. The learned Judge expressed the view that Section 397(2) was no bar to the quashing of proceedings. *Ravindra Nath Gupta v. Jagan Nath Ahuja* 1976 (Cri) LJ 232 (Punj & Har). was a case in which proceedings launched u/s 420, I. P. C. were quashed by Surinder Singh, J., on the ground that the allegations made in the complaint did not constitute the alleged offence. In *U. K. Batra v. Union Territory, Chandigarh* 1977 (Cri)LJ 25 (Punj & Har). the accused persons were summoned by the trial Magistrate to face a charge u/s 120B read with Section 420, I.P.C. One of them moved this Court under Article 227 of the Constitution of India read with Section 482 of the Cr. P. C, On merits Surinder Singh, J.. came to the conclusion that there was no evidence whatsoever to support the accusation against the petitioner. Hence the learned Judge quashed the proceedings.

8. Learned Counsel for the petitioners then laid stress on the decision of the Himachal Pradesh High Court in *State Vs. Pyare Lal Nehru*, . In that case the accused person applied u/s 482 of the Code for quashing the proceedings pending against him u/s 420, I. P. C. Relying on the ratio of *R. P. Kapur's* case, the learned Judge accepted the petition. As to the effect of Section 397(2) of the Code, the learned Judge expressed the view that against an interlocutory order summoning an accused person, no revision was maintainable and no other relief against the said order was provided. Therefore, it was held that there should be no difficulty in exercising the inherent powers u/s 482 of the Code, but at page 87 of the report the learned Judge observed : -

An argument was advanced that what is prohibitive in the Code should not be considered permissive so as to exercise inherent power of High Court u/s 482. This proposition in its abstract form is no doubt correct. But there may be a case where, in the language of their Lordships in *R.P. Kapur Vs. The State of Punjab*, , it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings in respect of the offence alleged

9. In view of the discussion above my conclusions are :

(1) Where interference by revisional court with an interlocutory order is prohibited by the new Code, invocation of the inherent power u/s 482 of the Code to set aside the order would defeat the object of the new Code. Hence the inherent power be not invoked in such a case.

(2) By and large an accused person comes into the picture when he is summoned by a Court by passing an interlocutory order. Subsequently also interlocutory orders may be passed against him. The passing of such order or orders will not stand in his way to invoke the inherent power of this Court, if he is able to make out a case for quashing the entire proceedings, including the interlocutory order.

10. In the result. I decline to entertain the prayer for setting aside the impugned order.

11. As regards the prayer to quash the entire proceedings, it is well settled that the exercise of power u/s 482 of the Code is in its nature extraordinary. It is to be used sparingly and to do real and substantial justice. No case has been made out to invoke the same. This petition is dismissed with the remarks that it shall be open to the petitioners to raise objections permissible by law before the trial Court and the dismissal of this petition be not construed as an expression of opinion on the merits of the case.