
(2015) 09 AHC CK 0067
In the Allahabad High Court
Case No : Matters No. 5279 of 2015

Raheesh Pal Singh and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 17-09-2015

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 146, 397, 397(1), 397(2), 397(3)
Penal Code, 1860 (IPC) — Section 406, 498A, 498-A

Citation : (2015) 6 ALJ 379

Hon'ble Judges : Manoj Kumar Gupta, J.

Bench : Single Bench

Advocate : Manoj Pathak, for the Appellant

Final Decision : Dismissed

Judgement

Manoj Kumar Gupta, J.—The petitioners have invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution challenging the order dated 21.10.2014 passed by the Judicial Magistrate Court No. 3, Aligarh in complaint case No. 908 of 2014 whereby they have been summoned under Section 406 , IPC, as well as the order dated 23 July, 2015 passed in Criminal Revision No. 959 of 2014 dismissing the revision. In the submission of the learned counsel for the petitioners, the proceedings in question amounts to gross abuse of the process of law and are liable to be quashed.

2. In the case of Krishnan and another Vs. Krishnaveni and another, a three Judge Bench of the Supreme Court, after taking into consideration the law laid down in the earlier decision in the case of Madhu Limaye Vs. The State of Maharashtra, , has held that even though the second revision is prohibited under Section 397(3) , Cr.P.C. but it will not take away the inherent power of the High Court under Section 482 , Cr.P.C. The relevant observations made in this regard are as under:-

"12. In V.C. Shukla Vs. State through C.B.I., , a four-Judge Bench per majority

had held that sub-section (3) of Section 397 , however, does not limit at all the inherent powers of the High Court contained in Section 482 . It merely curbs the revisional power given to the High Court or the Sessions Court under Section 397(1) of the Code. In Rajan Kumar Manchanda case the case related to release of a truck from attachment, obviously on filing of an interlocutory application. It was contended that there was prohibition on the revision by operation of Section 397(2) of the Code. In that context it was held that it was not revisable under Section 482 in exercise of inherent powers by operation of sub-section (3) of Section 397 . On the facts in that case, it was held that by virtue of provisions contained in Section 397(3) , the revision is not maintainable. In Dharampal case which related to the exercise of power to issue an order of attachment under Section 146 of the Code, it was held that the inherent power under Section 482 was prohibited. On the facts in that case it could be said that the learned Judges would be justified in holding that it was not revisable since it was prohibitory interim order of attachment covered under Section 397(2) of the Code but the observations of the learned Judges that the High Court had no power under Section 482 of the Code were not correct in view of the ratio of this Court in Madhu Limaye's case as upheld in V.C. Shukla's case (supra) and also in view of our observations stated earlier. The ratio in Deepti's case (supra) is also not apposite to the facts in the present case. To the contrary, in that case an application for discharge of the accused was filed in the Court of Magistrate for an offence under Section 498A , IPC. The learned Magistrate and the Sessions Judge dismissed the petition. In the revision at the instance of the accused, on a wrong concession made by the counsel appearing for the State that the record did not contain allegation constituting the offence under Section 498-A , the High Court without applying its mind had discharged the accused. On appeal, this Court after going through the record noted that the concession made by the counsel was wrong. The record did contain the allegations to prove the charge under Section 498A , IPC. The High Court, since it failed to apply its mind, had committed an error or law in discharging the accused leading to the miscarriage of justice. In that context, this Court held that the order of the Sessions Judge operated as a bar to entertain the application under Section 482 of the Code. In view of the fact that the order of the High Court had led to the miscarriage of justice, this Court has set aside the order of the High Court and confirmed that of the Magistrate."

"14. In view of the above discussion, we hold that though the revision before the High Court under sub-section (1) of Section 397 is prohibited by sub-section (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483 , the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below."

(Emphasis supplied)

3. The judgment in the case of Krishnan and another v. Krishnaveni and another (supra) was followed by Supreme Court in Prashanta Kumar Dey v. State of W.B., (2002) 9 SCC 630 : (AIR 2003 SC 4412).

4. In view of the above legal proposition, I am of the opinion that the petitioner has the remedy of filing petition under Section 482 of the Criminal Procedure Code itself and as such, this court declines to exercise its supervisory jurisdiction under Article 227 of the Constitution.

5. The petition is dismissed, with liberty to avail the remedy available under the Criminal Procedure Code, 1973. The certified copy of the impugned order shall be returned to learned counsel for the petitioners, after retaining its photostat copy on record.