
(1981) 09 RAJ CK 0020
In the Rajasthan High Court

Shri Swetamber Jain Sampraday

APPELLANT

Vs

Digamber Amnay and Others

RESPONDENT

Date of Decision : 29-09-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 397, 435

Citation : (1982) CriLJ 701 : (1981) WLN 471

Hon'ble Judges : M.B. Sharma, J

Bench : Single Bench

Judgement

M.B. Sharma, J.—A preliminary point has been raised by Mr. N. P. Gupta learned Advocate for the non-petitioners that this revision petition is not maintainable in view of Sub-section (3) of Section 397 of Cr.P.C. (new). For the disposal of this preliminary objection some facts need to be stated. They are as follows:

2. The proceedings u/s 145, Cr.P.C. (old) which started in the year 1973, were finally decided by the learned Sub-Divisional Magistrate on Jan, 13, 1981) and he held that on the date of preliminary order and within two months prior to it, the non-petitioners were in possession of the subject of dispute. The revision petition was filed against the order of the Sub-Divisional Magistrate in the court of the learned Sessions Judge, Bhilwara. who transferred it for disposal to the Court of learned Additional Sessions Judge, Bhilwara. It is given out that another revision petition has also been filed by non-petitioners and that too is pending decision in the court of learned Additional Sessions Judge, Bhilwara.

3. When the revision petitions were pending in the court of learned Additional Sessions Judge, Bhilwara, a re-Vision petition No. 143 of 1981 was also filed in this Court on April 9, 1981. A prayer was made in the revision petition that the revisions lying in the court of Additional Sessions Judge be also transferred to this Court and decided in accordance with law along with the present revision petition.

4. I will now take the preliminary objection of Mr. Gupta learned advocate for the

petitioner. It is contended by him that mere making of an application u/s 397(1), Cr. P. C (new) in the court of Sessions Judge is sufficient to invoke the provision of Sub-section (3) of Section 397, Cr. P. C: in other words, according to the learned advocate, once a revision petition is made in the court of Sessions Judge or in this Court, no further application by the same person can be entertained by the other court. According to him, it is not necessary that the revision application not only must have been made but also should have been decided, before the bar of sub-sec. 397(3) is invoked. In support of his submission Mr. Gupta has placed reliance on Mohammad Khan Hanif Khan Vs. Shamim Begum and Another, The learned single Judge of the Allahabad High Court has held that under Sub-section (3) of Section 397, Cr.P.C. (new, even if an application is made and is not decided, no application by the same person can be made in the other court. He has also placed reliance on Jagir Singh Vs. Ranbir Singh and Another, and more particularly to the observations of their Lordships to the following effect (at p. 321 of Cri LJ):

We are concerned with this provision in this appeal. The object of Section 397(3) is clear. It 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 the other authority. The language of Section 397(3) is clear and peremptory and it does not admit of any other interpretation.

5. Their Lordships also, referred in the aforesaid authority to the provisions of Section 435, Cr.P.C. (old) and observed that therein similar provisions were contained. Mr. Samdaria contends that before the bar, Section 397(3)(new) can be invoked, the application should not only be made but must have been decided. According to him mere making of an application in the Sessions Court under Sub-section (1) of Section 397, Cr. P. C will not debar this Court from entertaining a revision petition by the same party. In support of his submission Mr. Samdaria placed reliance on Harakh Singh Vs. Lalmuni Kuer,

6. In the aforesaid authority a learned single Judge of the Patna High Court placed reliance on Appachi Goundan v. Emperor. AIR 1931 Mad 772(2 :32 Cri LJ 1278) and has taken a view that where an application in revision filed before the Sessions Judge is withdrawn, the subsequent application in revision before the High Court is not barred by Sub-section (3) of Section 397 Cr, P. C. (new).

7. I have gone through the aforesaid authorities and the provisions of Sub-section (3) of Section 397 of Cr.P.C. Mr. Samdaria has tried to distinguish Jagir Singh's case 1979 Cri LJ 318)(SO (supra) on the ground that in that case not only a revision petition had been made in the Court of Session but had also been decided. He submits that the observations are to be read in the context of the facts of the particular case. But I am of the opinion that the observations of Supreme Court in the aforesaid authority of Jagir Singh's case leave no doubt that an option is to be exercised by a party at the point of time when the

Magistrate decides the case. The parties have to opt either to file a revision petition in the Court of Session or in this Court. If he makes an application in either of the two courts, then the other court cannot entertain a revision petition by the same person. Any other view will lead to serious consequences. There may be case where in the Court of Session, a revision petition may be argued on merits but feeling that there are no chances of success, a party may withdraw the application and it will be dismissed as withdrawn. Nonetheless it will be a dismissal after the revision petition is entertained. Therefore, I am of the opinion that under Sub-section (3) of Section 397 Cr.P.C. mere making of an application in the Court of Session will debar the same party to prefer a revision petition in this Court and this Court cannot entertain any revision under these circumstances.

8. In the instant case-a revision petition was pending in the Court of Session and is still pending, though a prayer has been made and an application has been filed in this Court that the petitioner wants to withdraw that revision petition. But the view which I have taken will make it clear that once having made a revision petition in the Court of Session, Bhilwara, the petitioner is debarred from making any revision petition in this Court under Sub-section (3) of Section 397 of Cr.P.C. and this Court cannot entertain the present revision petition,

9. I. therefore, dismiss this petition as being barred under Sub-section (3) of Section 397, Cr.P.C. Mr. Samdaria does not press his prayer in the application about withdrawal of the revision petition pending in the court of Additional Sessions Judge, Bhilwara, as he is allowed to withdraw that prayer. The file of the revision petition shall be sent back to the Additional Sessions Judge, Bhilwara, who shall decide it in accordance with law.