

(2007) 10 KL CK 0011

In the High Court Of Kerala

Case No : Criminal M.A. No's. 10900, 10265, 11091, 10857, 10776, 10765, 10706, 10361, 10541, 10431, 10324, 10251, 10175, 10217 and 10368 of 2007 in Criminal R.P. No's. 2602, 1035, 2470, 2459, 893, 2629, 2575, 2941, 2586, 2144, 1801, 489, 1842, 2585 of 2007 and 90

Sreenivasan T.

APPELLANT

Vs

Prajith Raj and State of Kerala

RESPONDENT

Date of Decision : 23-10-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357(3), 362, 397, 397(3), 482

Citation : (2007) 10 KL CK 0011

Hon'ble Judges : V. Ramkumar, J

Bench : Single Bench

Advocate : Sunny Mathew, for the Appellant; Public Prosecutor, for the Respondent

Judgement

V. Ramkumar, J.—In all these cases, after the disposal of the revisions, petitions have been filed by the accused seeking enlargement of time for payment of the compensation ordered to be paid u/s 357(3) Cr.P.C. It was then felt as to whether enlargement of time if granted in these applications would not amount to review of that part of the final orders passed in the revision thereby offending Section 362 Cr.P.C. The learned Counsel for the applicants argued that it would not amount to review of that part of the final order and that even if it would amount to review, the power u/s 482 Cr.P.C was wide enough to overwrite Section 362 Cr.P.C. The arguments were mainly addressed by Adv. Sri. Sunny Mathew and Adv. Shri. A.X. Varghese.

2. Interpreting Section 561A of the 1898 Code, a three Judges' Bench of the Supreme Court in Dr. Raghubir Sharan Vs. The State of Bihar, observed that the High Court sitting in appeal in a suitable case could judicially correct the observations of the lower court by recourse to its inherent power u/s 561A Cr.P.C but cautioned that the said power must be exercised only in exceptional cases

where the interest of the party concerned would irrevocably suffer otherwise. In *Raj Kapoor and Others Vs. State and Others*, a two Judges' Bench of the Apex Court had to consider whether the inherent power of the High Court u/s 482 Cr.P.C. would stand repelled, when the revisional power u/s 397 overlapped. It was observed that there would not be any bar in exercising the inherent power in view of the opening words of Section 482 itself which says that nothing in the Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of process of any court or otherwise to secure the ends of justice. The overriding words at the beginning of the Section were held to be wide enough to circumvent even the power of revision u/s 397 of the Code. Again in *Puran Vs. Rambilas and Another etc. etc.*, a two Judges Bench of the Supreme Court reiterated that the bar u/s 397(3) does not affect the jurisdiction of the High Court u/s 482 Cr.P.C. The position was further reinstated by two judges of the Apex Court again in *Mary Angel and Others Vs. State of Tamil Nadu*, to say that Section 482 Cr.P.C is not controlled or curtailed by any of the provisions of the very same Code. In *Dinesh Dutt Joshi Vs. The State of Rajasthan and Another*, the question arose before a two Judges' Bench of the Apex Court as to whether the power u/s 482 could be exercised to fill any procedural lacunae and it was held that the inherent power could be exercised even to cover any procedural lacuna in the statute. In *State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others*, which is the celebrated Parliament Attack case, the Apex Court in paragraph 29 of the judgment reiterated the position that the power u/s 482 Cr.P.C. could be exercised notwithstanding the power u/s 397 or any other provision of the Cr.P.C though not against the power under other laws. In *Mahendra Singh and Others Vs. State of Bihar*, even though it was observed by a two Judges' Bench of the Apex Court that filing too many applications u/s 482 Cr.P.C., after the rejection of the 1st one seeking enlargement of time for deposit of the fine amount was not permissible, the Supreme Court granted one month's time for making deposit of fine as directed by the High Court. Of course, in the decisions reported in *Sankatha Singh Vs. State of U.P.*, and *Moti Lal Vs. State of Madhya Pradesh*, a different note is struck to hold that in the face of an express bar either in the form of Section 362 or any other Section, the power u/s 482 cannot be invoked by the High Court so as to review its own judgment or order, those decisions were not in the context of seeking enlargement of time fixed under the final order passed by the High Court in revision.

3. After a careful evaluation of the aforesaid rulings of the Apex Court, I do not think that it is impermissible for the High Court to grant enlargement of time fixed under the final order passed in a revision by resorting to Section 482 Cr.P.C. in deserving cases. I am also convinced that by granting enlargement of time in these petitions filed u/s 482 Cr.P.C., this Court will not be offending Section 362 Cr.P.C. In this view of the matter, I proceed to examine the petitions filed in each of the cases on their own merits.

4. In CrI.R.P. No. 1842/2007, the petitioner/accused was directed to pay a sum of Rs. 1,50,000/- as compensation u/s 357(3) Cr.P.C within three months of 29.06.2007. As per CrI. M.A. No. 10217/2007, the petitioner has sought for a further extension of three months from 26.09.2007 on the ground that he had suffered huge loss in his business and was unable to raise funds in spite of best efforts put in by him. Having regard to the aforementioned ground raised by the petitioner, the time as prayed for is granted.

5. In CrI.R.P. No. 2602/2007, the petitioner was directed to pay a sum of Rs. 50,000/- as compensation within three months from 06.07.2007. As per CrI.M.A. No. 10980/2007, he has sought for a further extension of three months time from 06.10.2007 on the ground that he has sustained huge loss in his business and that in spite of best efforts put in by him, he could not raise the amount. The petitioner is given two months" time from today to pay or deposit the compensation amount of Rs. 50,000/-.

6. In CrI.R.P. No. 2470/2007, the petitioner therein, who is a lady, was directed to deposit a sum of Rs. 60,000/- within three months from 25.06.2007. As per CrI.M.A. No. 11091/2007, she has sought for time till 31.10.2007 for depositing the balance amount of Rs. 40,000/-. She has also stated that pursuant to the orders of the First Appellate Court, she had deposited Rs. 20,000/- before the trial Court. The time prayed for is granted and the 1st respondent/complainant shall be permitted to withdraw the entire amount of Rs. 60,000/- including the amounts already deposited and to be deposited before the trial Court.

7. In CrI.R.P. No. 2585/2007, the petitioner/accused therein was directed to deposit a sum of Rs. 40,000/- within three months from 05.07.2007. As per CrI.M.A. No. 10368/2007, the petitioner has sought for one month"s time from 01.10.2007 to deposit the amount of compensation. He would say that he has been suffering from low back ache and he is undergoing treatment in the Community Health Centre, Kalady and has been advised to take rest for 45 days on account of which he has been finding it difficult to raise funds. Considering the above ground put forward by the petitioner, he is given a further time of one month from today for complying with the conditions in the final order.

8. In CrI.R.P. No. 489/2007, the petitioner/accused was directed to deposit a sum of Rs. 50,000/- within three months from 03.07.2007. As per CrI.M.A. No. 10175/2007, he has prayed for six months time from the date of the order to make a deposit. Since he has not given the details of the illness or treatment, he is given two more months" time from today to deposit the amount.

9. In CrI.R.P. No. 1801/2007, the petitioner/accused therein was granted three months" time from 29.06.2007 to deposit the compensation amount of Rs. 1,55,000/-. As per CrI.M.A. No. 10251/2007, he has sought for extension of time by one month from 27.09.2007 to deposit the amount. The reason put forward by the petitioner is that he made an attempt for settling the matter with the 1st respondent/complainant, but all his efforts failed and he could mobilise a sum of

Rs. 50,000/- only so far. The petitioner is given a further time of one month from today to deposit the entire amount.

10. In CrI.R.P. No. 2144/2007, the petitioner was given two months" time to deposit a sum of Rs. 20,000/- as compensation u/s 357(3) Cr.P.C. He has filed CrI.M.A. No. 10324/2007 seeking two month"s extension of time for depositing the compensation. The ground put forward for extension is that he is afflicted with jaundice. He is given one more month"s time from today to deposit the amount.

11. In CrI.R.P. No. 1035/2007, revision petitioners 2 and 3, who are the directors of a company, were each directed to pay a sum of Rs. 1,00,000/- u/s 357(3) Cr.P.C. within two months from 11.07.2007. They have filed CrI.M.A. No. 10265/2007 seeking enlargement of time for payment of balance amount of Rs. 1,00,000/- stating that they have already deposited Rs. 1,00,000/- on 22.09.2007. Having regard to the financial conditions highlighted by the petitioners, they are given one month"s time from today to deposit the balance amount of Rs. 1,00,000/-.

12. In CrI.R.P. No. 2586/2007, the revision petitioner/accused was directed to pay a sum of Rs. 90,000/- as compensation within three months from 05.07.2007. As per CrI.M.A. No. 10431/2007, he has prayed for extension of two more months time on the ground of financial difficulties. The petitioner is given two months" time from today to deposit the amount.

13. In CrI.R.P. No. 2941/2007, the revision petitioner/accused was directed to pay a sum of Rs. 1,025,00/- to the complainant within two months from 06.08.2007. He has filed CrI.M.A. No. 10541/2007 seeking six months time to pay the amount. The reason put forward in support of the petition is that his son was afflicted by cancer and he unexpectedly succumbed to the disease on 30.09.2007 and his wife and children have not recovered from the shock of bereavement. The petitioner is given five months" time from today to deposit the compensation.

14. In CrI.R.P. No. 2575/2007, the revision petitioner/accused therein was directed to pay a sum of Rs. 98,000/- as compensation within three months from 04.07.2007. He has filed CrI.M.A. No. 10361/2007 seeking enlargement of time of two months on the ground of financial stringency. The petitioner is given two months" time from today to deposit the amount.

15. In CrI.R.P. No. 2629/2007, the revision petitioner/accused was directed to pay a sum of Rs. 80,000/- as compensation within three months from 09.07.2007. He has filed CrI.M.A. No. 10706/2007 seeking enlargement of time by two months on the ground of financial difficulties. He is granted time till 09.12.2007 for depositing the amount.

16. In CrI.R.P. No. 893/2007, the revision petitioner/accused therein was directed to pay a sum of Rs. 2,00,000/- as compensation within three months from

10.07.2007. He has filed Crl.M.A. No. 10765/2007 seeking extension of time by another two months on the ground that he was unable to deposit the amount in time by selling his immovable property and mobilise funds by way of sale proceeds. He is given two months" time from today to pay the compensation.

17. In Crl.R.P. No. 908/2006, the petitioner/accused therein was directed to pay a sum of Rs. 2,25,000/- within three months from 02.07.2007. He has filed Crl.M.A. No. 10776/2007 seeking two more months time on the ground that his father who is a heart patient had to undergo a major surgery for which he has raised considerable amount and he is in acute financial stringency. He is given two months" time from today to deposit the compensation.

18. In Crl.R.P. No. 2459/2007, the petitioner/accused was directed to pay a sum of Rs. 38,000/- as compensation within three months from 02.07.2007. He has filed Crl.M.A. No. 10857/2007 seeking extension of time of two months to pay the compensation on the ground that he was assaulted by a group of miscreants resulting in the Kayamkulam police registering crime against them and he has been advised to take rest for three months by the doctor at the Government Hospital, Kayamkulam. He is given one month"s time from today to deposit the compensation amount.