
(2015) 09 CAL CK 0063
In the Calcutta High Court
Case No : C.R.R. No. 1692 of 2014

Vandana Agarwal

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 151, 200, 251, 319, 397
Penal Code, 1860 (IPC) — Section 500, 501

Citation : (2015) 09 CAL CK 0063

Hon'ble Judges : Shib Sadhan Sadhu, J

Bench : Single Bench

Advocate : Sourav Chatterjee and Prasanta Kumar Dutta, for the Appellant

Final Decision : Dismissed

Judgement

Shib Sadhan Sadhu, J—The petitioner by means of the present petition seeks to invoke the inherent powers of this Court under Section 482 of the Code of Criminal Procedure Code, 1973 (hereinafter referred to as Cr.P.C. for brevity) to quash the entire proceedings being case No. C/4851 of 2010 under Sections 500/501 of the Indian Penal Code pending before the Court of Learned Judicial Magistrate, 4th Court, Alipore, South-24-Parganas. Since at the outset challenge has been laid on behalf of the O.P. No. 2 against the maintainability of this Revisional Application, the instant hearing arose accordingly.

2. Mr. Basu, Learned Senior Counsel appearing on behalf of the O.P. No. 2 submitted that the O.P. No. 2 has filed the case being case No. C4851 of 2010 before the Court of Chief Judicial Magistrate, Alipore, South 24-Parganas on 09.07.2010 alleging commission of offence under Section 500 read with Section 501 of the Indian Penal Code against the present petitioner/accused. The Learned Chief Judicial Magistrate took cognizance and thereafter transferred the case to the Court of Judicial Magistrate, 4th Court, Alipore for disposal and the

Learned Transferee Magistrate after examining the complainant and on perusal of the materials issued process under Section 500/501 IPC against the petitioner/accused on 26.07.2010. Thereafter, the accused entered into appearance and she was released on bail. Thereafter on 21.12.2012 she was examined under Section 251 Cr.P.C. and she pleaded not guilty and claimed to be tried. Accordingly the case was adjourned to 1st April, 2013 for recording evidence. Thereafter the case was adjourned on some dates and finally it was fixed for recording evidence on 21.05.2014. At that stage the petitioner has come up with the instant Revisional Application under Section 482 Cr.P.C. which was filed on 14.05.2014. On this factual background Mr. Basu argued that the instant Revisional Application cannot lie and the inherent powers of this Court should not be invoked since it has been preferred after the lapse of almost four years after the Learned Magistrate issued process on 26th July, 2010. He further pointed out that this order issuing process matters most against the present petitioner and subsequent proceedings are merely consequential. He further contended that this summoning order is not an interlocutory order and was a very much revisable order and therefore, the petitioner should have challenged this order in revision within the period of limitation. Since that available remedy has not been taken recourse to by the petitioner, the instant application under Section 482 Cr.P.C. is not maintainable and this Court would not be justified in interfering with the proceedings of the Lower Court by exercising its inherent power under Section 482 Cr.P.C. He further submitted that the law is well-settled on the point that when an order not being interlocutory in nature can be assailed in the High Court in Revisional Jurisdiction under Section 397 of the Cr.P.C., then invoking of the inherent jurisdiction of the High Court under Section 482 of the Cr.P.C. is barred because that would amount to an attempt to circumvent the provisions of 397 or Section 401 Cr.P.C. He placed reliance on the decision of the Hon'ble Supreme Court reported in Mohit alias Sonu and Another Vs. State of U.P. and Another, (2013) 8 AD 631 : AIR 2013 SC 2248 : (2013) 3 JCC 2250 : (2013) 9 JT 205 : (2013) 3 RCR(Criminal) 673 : (2013) 7 SCALE 620 : (2013) 7 SCC 789 in order to substantiate such submission. Mr. Basu continued to contend that although there is no period of limitation fixed by the statute for filing an application under Section 482 of the Cr.P.C. but that does not give licence to any party to file such application at any point of time at his sweet-will but the same should be filed within a reasonable time. In the instant case since the summoning order is the most material order which has affected the right of the petitioner adversely, she could have approached this Court under Section 397 Cr.P.C. within a period of 90 days which period has been fixed by the statute (vide Article 131 of the Limitation Act, 1963). Therefore in all fairness a period of 90 days should have been the reasonable time to invoke the jurisdiction of this Court under Section 482 of Cr.P.C. But the petitioner did not choose to tread that path and has approached this Court after a long long lapse of almost four years and that too without spending even a single word justifying such belated approach. Thus, according to Mr. Basu, the instant Revisional Application is liable to be dismissed only on that count alone. He referred to the decisions reported in Gopal Chauhan

Vs. Smt. Satya and Another, (1979) CriLJ 446 : (1979) ShimLC 181 , Bata alias Batakrushna Behera and Others Vs. Anama Behera, (1990) CriLJ 1110 : (1990) 1 OLR 76 , 1986 C Cr LR (Cal) 269 (Jamuna & Ors. V.S. Panja @ Samares Panja & Anr.), Londhe Prakash Bhagwan Vs. Dattatraya Eknath Mane and Others, (2013) 139 FLR 301 : (2013) 11 SCALE 383 : (2013) 10 SCC 627 : (2014) 1 SCC(L&S) 838 : (2013) 4 SCT 530 and (2013) 3 C CR LR (Cal) 428 (Chobhan Mallick V. The State of West Bengal) in support of his contention. He also cited two unreported judgments - one of this High Court passed in CRR No. 4326 of 2007 in the case of Sanjoy Agarwal V. State of West Bengal and Anr. and the other of Delhi High Court passed in connection with Criminal M.C. No. 1656 of 2011 passed on 24.08.2011 in the case of Rajesh Chetwal V. State, in this regard.

3. Mr. Chatterjee, Learned Counsel appearing on behalf of the petitioner, on the other hand, submitted that the instant Revisional Application is an application under Section 482 of the Cr.P.C. There is no time limit or embargo provided in the statute for exercising inherent powers which can be exercised at any stage in order to do justice. He further contended that simply because a revision petition is maintainable, the same by itself would not constitute a bar for entertaining an application under Section 482 of the Code. Similarly availability of an alternative remedy of filing an appeal is not an absolute bar in entertaining a petition under Section 482 of the Code. Therefore, this Court should hear out and adjudicate the revision on merit without dismissing it as not maintainable. He cited the decisions of the Hon'ble Supreme Court reported in Dhariwal Tobacco Products Ltd. and Others Vs. State of Maharashtra and Another, AIR 2009 SC 1032 : (2009) CriLJ 974 : (2008) 16 SCALE 240 and Punjab State Warehousing Corporation Faridkot Vs. Sh. Durga Ji Traders and Others, AIR 2012 SC 700 : (2012) 1 RCR(Criminal) 358 : (2011) 13 SCALE 522 : (2012) AIRSCW 840 in support of such contention. He contended yet further that the powers under Section 482 is an extra ordinary one and it is quite different from the revisional powers conferred under Section 397 of the Code. In the instant case the application under Section 482 has been filed for quashing the entire proceedings and it is not directed against any particular order. Therefore, the present proceeding is not barred by limitation. Further, according to him the provisions of Articles 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it. So this Court should exercise its discretionary power to prevent miscarriage of justice. Mr. Chatterjee continued to contend that the instant Revisional Application was admitted by this Court and also an interim order of stay was granted which has been extended from time to time. Therefore, it is apparent that this Court was prima facie satisfied about the maintainability of the petition otherwise it would not have been entertained at all. More over when any period of limitation for filing an application under Section 482 Cr.P.C. has not been prescribed by the statute the Court cannot apply such provision by implication. He referred to the decisions reported in Shri D.J. Sen and Others Vs. The State and Another, (2003) 2 CALLT 139 : (2002) CriLJ 4621 , Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, AIR

1998 SC 128 : (1998) CriLJ 1 : (1997) 8 JT 705 : (1997) 6 SCALE 610 : (1998) 5 SCC 749 : (1997) 5 SCR 13 Supp , Sree Sree Iswar Sridhar Jew Vs. Jnanendra Nath Ghose and Others, AIR 1960 Cal 718 . and Mr. France B. Martins and Another Vs. Mrs. Mafalda Maria Teresa Rodrigues, AIR 1999 SC 3243 : (1999) 4 ARBLR 364 : (2001) 104 CompCas 14 : (1999) 4 ComplJ 32 : (1999) 6 JT 238 : (2000) 124 PLR 398 : (1999) 5 SCALE 168 : (1999) 6 SCC 627 : (1999) 1 SCR 685 Supp : (1999) 2 UJ 1394 : (1999) AIRSCW 3216 : (1999) 7 Supreme 379 in order to justify his contention.

4. I have carefully considered the rival contentions put forward by the Learned Counsel appearing for the parties. I have perused the decisions cited by them. I have also gone through the entire proceedings with meticulous care. Further I have perused the written argument filed by Mr. Chatterjee. In spite of service of notice none appeared on behalf of the State.

5. Having regard to the rival submission and contention advanced by the Learned Counsel for the parties in the light of the decisions placed, the twin questions of law that fall for consideration are:-

"i) Whether the inherent powers of the High Court under Section 482 of the Code can be invoked when the petitioner could have approached this Court or the Sessions Court by preferring a Revisional Application under Section 397 of the Code.

ii) Whether the instant Revisional Application filed by the petitioner in invoking the powers of the High Court under Section 482 Cr.P.C. is maintainable in view of inordinate delay and laches on the part of the petitioner."

6. Taking up the first question at first, I would like to say that the law is well settled on the point that order directing issuance of process is not a purely interlocutory order and therefore, the bar under Section 397(2) Cr.P.C. is not applicable. I derive authority on this score from the decision of the Hon"ble Supreme Court reported in Rajendra Kumar Sitaram Pande and Etc. Vs. Uttam and Another, AIR 1999 SC 1028 : (1999) CriLJ 1620 : (1999) 1 Crimes 88 : (1999) 1 JT 426 : (1999) 1 SCALE 402 : (1999) 3 SCC 134 : (1999) 1 SCR 580 : (1999) 1 UJ 595 : (1999) AIRSCW 660 : (1999) 2 Supreme 63 wherein it was held by Their Lordships:-

"Discretion in the exercise of revisional jurisdiction should, therefore, be exercised within the four corners of Section 397, whenever there has been miscarriage of justice in whatever manner. Under sub-section (2) of Section 397, there is a prohibition to exercise revisional jurisdiction against any interlocutory order so that inquiry or trial may proceed without any delay. But the expression "interlocutory order" has not been defined in the Code. In Amar Nath and Others Vs. State of Haryana and Another, AIR 1977 SC 2185 : (1977) CriLJ 1891 : (1977) 79 PLR 695 : (1977) 4 SCC 137 : (1978) 1 SCR 222 , this Court has held that the expression "interlocutory order" in Section 397(2) has been used in a restricted sense and not in a broad or artistic sense and merely denotes orders of

purely interim or temporary nature which do not decide or touch the important rights or liabilities of the parties and any order which substantially affects the right of the parties cannot be said to be an "interlocutory order." In *Madhu Limaye Vs. The State of Maharashtra*, AIR 1978 SC 47 : (1978) CriLJ 165 : (1977) 4 SCC 551 : (1978) SCC(Cri) 10 : (1978) 1 SCR 749 : (1977) 9 UJ 733 , a three Judge Bench of this Court has held an order rejecting the plea of the accused on a point which when accepted will conclude the particular proceeding cannot be held to be an interlocutory order. In *V.C. Shukla Vs. State through C.B.I.*, AIR 1980 SC 962 : (1980) CriLJ 690 : (1980) SCC(Cri) 695 : (1980) 2 SCR 380 , this Court has held that the term "interlocutory order" used in the Code of Criminal Procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi final. This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same."

7. Thus the order dated 26.07.2010 issuing process under the above referred sections of IPC is not interlocutory order and revision could have been preferred against that order. But the petitioner, for reasons unexplained, did not choose to exercise her right of revision and maintained silence for more than 3 1/2 years.

8. I think it pertinent to quote the relevant observations made by Their Lordships of the Hon"ble Supreme Court in the case of *Mohit alias Sonu & Anr. V. State of U.P. & Anr.* (supra) which have a direct bearing upon the issue of controversy with which we are now concerned. Those are as follows:-

"19. In the case of *Raj Kapoor and Others Vs. State and Others*, AIR 1980 SC 258 : (1980) CriLJ 202 : (1980) 1 SCC 43 : (1980) SCC(Cri) 72 : (1980) 1 SCR 1081 , Justice Krishna Iyer, while distinguishing the power of the High Court under Section 397 vis-a-vis Section 482 of Cr.P.C. observed that Section 397 or any of the provisions of Cr.P.C. will not affect the amplitude of the inherent power preserved in Section 482. Even so, easy resort to inherent power is not right except under compelling circumstances. Inherent power should not invade areas set apart for specific power under the same Code.

21. In the instant case as noticed above, when the complainant's application under Section 319 of Cr.P.C. was rejected for the second time, he moved the High Court challenging the said order under Section 482 of Cr.P.C. on the ground that the Sessions Court had not correctly appreciated the facts of the case and the evidence brought on record. The complainant wanted the High Court to set aside the order after holding that the evidence brought on record is sufficient for coming to the conclusion that the appellants were also involved in the commission of the offence.

22. In our considered opinion, the complainant ought to have challenged the order before the High Court in revision under Section 397 of Cr.P.C. and not by invoking inherent jurisdiction of the High Court under Section 482 of Cr.P.C. Maybe, in order to circumvent the provisions contained in sub-section (2) of Section 397 or Section 401, the complainant moved the High Court under Section 482 of Cr.P.C. In the event a criminal revision had been filed against the order of the Sessions Judge passed under Section 319 of Cr.P.C., the High Court before passing the order would have given notice and opportunity of hearing to the appellants.

23. So far as the inherent power of the High Court as contained in Section 482 of Cr.P.C. is concerned, the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when an order, not interlocutory in nature, can be assailed in the High Court in revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In other words, inherent power of the Court can be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance. It is well settled that inherent power of the court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged.

26. In a Constitution Bench decision rendered in the case of Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527 : (1962) 1 SCR 450 Supp , this Court held that:-

"The inherent jurisdiction of the Court to make orders *ex debito justitiae* is undoubtedly affirmed by S.151 of the Code but inherent jurisdiction cannot be exercised so as to nullify the provision of the Code of Civil Procedure. Where the Code of Civil Procedure deals expressly with a particular matter, the provision should normally be regarded as exhaustive."

27. The intention of the Legislature enacting the Code of Criminal Procedure and the Code of Civil Procedure vis-a-vis the law laid down by this Court it can safely be concluded that when there is a specific remedy provided by way of appeal or revision the inherent power under Section 482, Cr.P.C. or Section 151, C.P.C. cannot and should not be resorted to."

9. In this context I think it relevant and appropriate to refer to the decision of the Hon"ble Supreme Court reported in Amit Kapoor Vs. Ramesh Chander and Another, (2012) 4 JCC 2885 : (2012) 9 JT 329 : (2012) 9 JT 312 : (2012) 9 SCALE 58 : (2012) 9 SCC 460 wherein Their Lordships held:-

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful

consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice *ex facie*. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the Cr.P.C.

21. It may be somewhat necessary to have a comparative examination of the powers exercisable by the court under these two provisions. There may be some overlapping between these two powers because both are aimed at securing the ends of justice and both have an element of discretion. But, at the same time, inherent power under Section 482 of the Code being an extraordinary and residuary power, it is inapplicable in regard to matters which are specifically provided for under other provisions of the Code. To put it simply, normally the court may not invoke its power under Section 482 of the Code where a party could have availed of the remedy available under Section 397 of the Code itself. The inherent powers under Section 482 of the Code are of a wide magnitude and are not as limited as the power under Section 397. Section 482 can be invoked where the order in question is neither an interlocutory order within the meaning of Section 397(2) nor a final order in the strict sense. Reference in this regard can be made to *Raj Kapoor v. State*. In that very case, this Court has observed that inherent power under Section 482 may not be exercised if the bar under Sections 397(2) and 397(3) applies, except, in extraordinary situations, to prevent abuse of the process of the Court. This itself shows the fine distinction between the powers exercisable by the Court under these two provisions. In that very case, the Court also considered as to whether the inherent powers of the High Court under Section 482 stand repelled when the revisional power under Section 397 overlaps. Rejecting the argument, the Court said that the opening words of Section 482 contradict this contention because nothing in the Code, not even Section 397, can affect the amplitude of the inherent powers preserved in so many terms by the language of Section 482. There is no total ban on the exercise of inherent powers where abuse of the process of the court or any other extraordinary situation invites the court's jurisdiction. The limitation is self-restraint, nothing more. The distinction between a final and interlocutory order is

well known in law. The orders which will be free from the bar of Section 397(2) would be the orders which are not purely interlocutory but, at the same time, are less than a final disposal. They should be the orders which do determine some right and still are not finally rendering the court functus officio of the lis. The provisions of Section 482 are pervasive. It should not subvert legal interdicts written into the same Code but, however, inherent powers of the Court unquestionably have to be read and construed as free of restriction."

10. The Hon^{ble} Supreme Court made the following observations in the case of State of Punjab Vs. Davinder Pal Singh Bhullar and Others etc., AIR 2012 SC 364 : (2012) CriLJ 1001 : (2012) 1 Crimes 44 : (2011) 14 JT 213 : (2012) 1 RCR(Criminal) 126 : (2011) 3 SCALE 394 : (2012) AIRSCW 207 : (2011) 8 Supreme 577 which can be gainfully followed in the present case, read as under:-

"33. The power under Section 482 Cr.P.C. cannot be resorted to if there is a specific provision in the Cr.P.C. for the redressal of the grievance of the aggrieved party or where alternative remedy is available. Such powers cannot be exercised as against the express bar of the law and engrafted in any other provision of the Cr.P.C. Such powers can be exercised to secure the ends of justice and to prevent the abuse of the process of Court. However, such expressions do not confer unlimited/unfettered jurisdiction on the High Court as the "ends of justice" and "abuse of the process of the court" have to be dealt with in accordance with law including the procedural law and not otherwise. Such powers can be exercised *ex debito justitiae* to do real and substantial justice as the courts have been conferred such inherent jurisdiction, in absence of any express provision, as inherent in their constitution, or such powers as are necessary to do the right and to undo a wrong in course of administration of justice as provided in the legal maxim "*quando lex aliquid alique, concedit, conceditur et id sine quo res ipsa esse non potest*". However, the High Court has not been given nor does it possess any inherent power to make any order, which in the opinion of the court, could be in the interest of justice as the statutory provision is not intended to bypass the procedure prescribed.

35. The provisions of Section 482 Cr.P.C. closely resemble Section 151 of the Code of Civil Procedure, 1908, and, therefore, the restrictions which are here to use the inherent powers under Section 151 CPC are applicable in exercise of powers under Section 482 Cr.P.C. and one such restriction is that there exists no other provision of law by which the party aggrieved could have sought relief. (Vide: Janata Dal Vs. H.S. Chowdhary and Others, AIR 1993 SC 892 : AIR 1992 SC 892 : (1993) CriLJ 600 : (1992) 3 Crimes 199 : (1992) 5 JT 213 : (1992) 2 SCALE 338 : (1992) 4 SCC 305 : (1992) 1 SCR 226 Supp .

38. In Rajan Kumar Machananda Vs. State of Karnataka, (1988) 14 ECR 3 : (1987) 4 JT 637 : (1990) 1 SCC 132 Supp : (1990) SCC 132 Supp , this Court examined a case as to whether the bar under Section 397(3) Cr.P.C. can be circumvented by invoking inherent jurisdiction under Section 482 Cr.P.C. by the High Court. The Court came to the conclusion that if such a course was

permissible it would be possible that every application facing the bar of Section 397(3) Cr.P.C. would be labelled as one under Section 482 Cr.P.C. Thus, the statutory bar cannot be circumvented."

11. From the aforesaid exposition of law it becomes crystal clear that the issue is, as a matter of fact, no more res-integra. Therefore, the petitioner is not entitled to invoke the inherent powers of this Court under Section 482 Cr.P.C. when she could very well have assailed the summoning order either before this Court or before the Court of Sessions in revisional jurisdiction. Thus the answer to the question posed above, has to be in the negative.

12. That brings me to the second question. It is true that there is no period of limitation for filing an application under Section 482 Cr.P.C. as has been contended by the Learned Counsel appearing for the petitioner. But does it mean that a party can approach the High Court under Section 482 Cr.P.C. at any time as per his/her choice, caprice or whim. Certainly the answer would be in the negative. He/she must seek the refuge of Section 482 Cr.P.C. at the earliest opportunity or within a reasonable time. The Orissa High Court in the case of Bata @ Batakrushna Behera & Ors. v. Anama Behera (supra) has expressed the view that period of 90 days which is at par with a revision petition should be treated as reasonable time for filing an application under Section 482 Cr.P.C. The Delhi High Court in the case of Rajesh Chetwal v. State (supra) has agreed with such observation. Himachal Pradesh High Court in the case of Gopal Chauhan v. Smt. Satya & Anr. (supra) has also observed that the inherent powers contemplated under Section 482 Cr.P.C. are not meant to help the litigant who had slept over his supposed grievances for more than three years. In the case of Jamuna & Ors. Vs. S. Panja @ Samarash Panja (supra) this Court held that Section 482 being a discretionary relief should not be granted to a person who has deliberately delayed in coming to the Court and has also failed to file an application under Section 397 of the Cr.P.C. Also in the case of Sanjoy Agarwal v. State of West Bengal & Anr. (supra) this Court observed that even though there is no period of limitation prescribed in filing application under Section 482 of the Code of Criminal Procedure but if it is found that in the guise of filing the application seeking to invoke inherent jurisdiction of this Court vested under Section 482 of the Code, the petitioner in fact has preferred a revisional application long after the period of limitation, the High Court shall refuse to interfere and entertain such application. In the case of Londhe Prakash Bhagwan V. Dattatraya Eknath Mane & Ors. (supra) the Hon"ble Supreme Court has held as under:-

"If no time limit has been prescribed in a statute to apply before the appropriate forum, in that case, he has to come before the Court within a reasonable time. This Court on a number of occasions, while dealing with the matter of similar nature held that where even no limitation has been prescribed, the petition must be filed within a reasonable time. In our considered opinion, the period of 9 years and 11 months, is nothing but an inordinate delay to pursue the remedy of a

person and without submitting any cogent reason therefor. The Court has no power to condone the same in such case. (See: Cicily Kallarackal Vs. Vehicle Factory, (2012) 6 CTC 217 : (2012) 7 JT 426 : (2013) 169 PLR 571 : (2012) 4 RCR(Civil) 901 : (2012) 7 SCALE 328 : (2012) 8 SCC 524 , State of Orissa and Another Vs. Mamata Mohanty, (2011) 112 CLT 46 : (2011) 2 SCALE 377 : (2011) 3 SCC 436 : (2011) 2 SCC(L&S) 83 : (2011) 2 SCR 704 : (2011) AIRSCW 1992 : (2011) AIRSCW 1332 and K.R. Mudgal and Others Vs. R.P. Singh and Others, AIR 1986 SC 2086 : (1986) 1 JT 597 : (1987) 1 LLJ 214 : (1986) 2 SCALE 561 : (1986) 4 SCC 531 : (1986) 3 SCR 993 : (1987) 1 SLJ 221 : (1987) 1 UJ 223 . In these cases, it has been held that the application should be rejected on the ground of inordinate delay."

Therefore, from the aforesaid judicial pronouncements the clear picture reflected is that an application under Section 482 Cr.P.C. must be filed within a reasonable time and it should not be vitiated by inordinate delay or laches on the part of the petitioner.

13. Let me now proceed to examine what is meant by "reasonable time". It is a phrase incapable of any set definition, but whose meaning varies with context. Generally it refers to the amount of time that is fairly required to do whatever is required to be done, conveniently under the permitted circumstances.

The term is entirely relative and dependent on circumstances. So much time as is necessary under the circumstances for a reasonably prudent and diligent man to do, conveniently, what the contract or duty requires should be done having a regard to the rights and possibilities of loss, if any, to the other party to be affected.

Reasonable time means any time which is not manifestly unreasonable under the circumstances. This is defined as that amount of time, which is fairly necessary, conveniently to do what the situation requires to be done. The reasonableness or unreasonableness of time used or taken by a party may be the subject of judicial review in the light of the nature, purpose and circumstances of each case.

The term "reasonable" is a generic and relative one and applies to that which is appropriate for a particular situation.

In the law of Negligence the reasonable person's standard is the standard of care that the reasonably prudent person would observe under a given state of circumstances. An individual who subscribes to such standard can avoid liability for negligence. Similarly a reasonable act is that which might fairly and properly be required of an individual.

14. The aforesaid complaint was filed on 09th July, 2010 in the Court of Chief Judicial Magistrate, Alipore. The Learned Chief Judicial Magistrate took cognizance and transferred the case to the Court of Judicial Magistrate, 4th Court, Alipore for disposal. On receipt of the record the Transferee Magistrate adjourned the case to 26th July, 2010 for S.A. On the said date, the complainant

was present and he was examined under Section 200 Cr.P.C. and thereafter being satisfied the Learned Magistrate issued process against the accused person under Section 500/501 IPC. In obedience to the summons the accused (present petitioner) appeared and prayed for bail and she was released on bail. Thereafter on 21st December, 2012 she was examined under Section 251 Cr.P.C. and the case was adjourned to 1st April, 2013 for taking evidence. But the evidence could not be recorded on that date and on three subsequent dates for one reason or other and there after the date was fixed on 21st May, 2014 for recording of evidence. Before that date, petitioner has knocked the door of this Court on 14th May, 2014 with the instant application under Section 482 Cr.P.C.

15. Therefore, from the aforesaid factual episodes it becomes ample clear that the petitioner has submitted herself to the jurisdiction of the Learned Trial Court and actively participated in the proceedings without any murmur. As soon as she was summoned she must have been supplied with a copy of the petition of complaint and she became aware what allegation was brought against her by the complainant. So if she felt that there was no case made out in the complaint or that there was non-compliance of some mandatory provision of law or that there was a case for quashing of the complaint she should have approached the court at the earliest possible stage. But she did not do so. Instead she appeared before the Court in obedience to the summons and took

16. bail. But at that stage also she did not raise her voice of protest. She came to know better and in more details what was the accusation against her when she was examined under Section 251 Cr.P.C. But still she remained in cocoon and did not become vociferous to ventilate her grievance either before the Trial Court or any Higher Court. Even thereafter the proceeding continued for more than 1 1/2 years but she kept quiet. It is interesting to see that the petitioner did not feel aggrieved or prejudiced since after the date of issuance of process against her but suddenly she woke up from slumber and became aware that she has been prejudiced. The question naturally arises once the summoning order passed by the Magistrate is challenged as bad in law what made the petitioner to wait for nearly four years in challenging the summoning order under Section 482 Cr.P.C. after her entering appearance in that proceeding, taking bail and after the case is posted for recording of evidence, is not forthcoming. As such keeping in view the normal standard of care and conduct of a reasonably prudent and diligent person, it can be safely inferred that the petitioner neither acted promptly nor within a reasonable time. The present petition has been filed nearly after four years. Therefore, there was inordinate delay and laches on the part of the petitioner.

17. The laws aid the vigilant and not those who slumber. No person ought to derive any advantage by his/her wrong. The Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judicial discretion has to be exercised in accordance with law and set of legal principles. The discretion which encourages illegality or perpetuates illegality cannot be exercised.

Therefore, my answer to the second question is also in the negative.

18. Considering the totality of facts and circumstances of the case noted above, coupled with the reasons aforementioned, I am of the considered opinion that the instant petition under Section 482 Cr.P.C. is not maintainable and the same is accordingly dismissed.

19. Keeping in view the age of the case and also the nature of the offence, the Learned Judicial Magistrate, 4th Court, Alipore, South 24-Parganas is directed to dispose of this case finally as expeditiously as possible without giving any unnecessary adjournment to either of the parties but not later than four months from the date of communication of this order.

20. Let a copy of this judgment be sent to the Learned Court below forthwith for information and compliance.

21. The existing interim order of stay, if any, stands vacated.

22. Criminal Section is directed to deliver urgent photostat certified copy of this judgment to the parties, if applied for, as early as possible.