
(2024) 11 ILRA 295
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.11.2024

BEFORE

THE HON'BLE MANISH MATHUR, J.

Application U/S 482 No. 34275 of 2024

Manoj Kumar Yadav & Anr. ...Applicants
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Applicants:
Ekansh Varma, Vishnu Kumar Srivastava

Counsel for the Respondents:
G.A.

Criminal Law - Indian Penal Code, 1860 - Sections 420, 452, 504 & 506 - Against summoning order - Maintainability - Constitution of India, 1950 - Article 227 - The Code of Criminal Procedure, 1973 - Sections 156(3), 200, 397(3) - St. raised objection regarding maintainability of instant application, and submitted that in view of fact summoning order and revisional order was under challenge, application was not maintainable since applicants have alternative remedy of filing petition u/a 227 - Further taken recourse to Section 397(3) and bar contained therein to submit that in cases where second revision was not maintainable, applicants cannot take recourse proceeding u/s 482 to bye pass the bar. (Para 5)

Held, neither Article 227 nor Section 482 indicate any aspect ousting jurisdiction of other - In such circumstances, provisions of Article 227 and Section 482 operate on concurrent basis providing option to applicant to approach Court under either provision. (Para 11)

Regarding complaint, complainant admitted he had taken loan pertaining to moveable property from Bank, did not repay - Applicants, official of Finance Company, initiated proceedings for recovery of loan amount by arbitration proceedings, award passed and due to this, complaint lodged against applicants not to recover loan. (Para 14)

Serious contradiction in averments made in complaint regarding injury upon complainant and his family members by applicants - Till next date of listing, proceedings shall remain stayed. (Para 15)

Application pending. (E-13)

List of Cases cited:

1. Madhu Limaye Vs The St. of Mah.; (1977)4 SCC 551, (Para 10)

2. Krishnan & anr. Vs Krishnaveni & anr.; AIR 1997 SC 987, (Para 14)

3. Prabhu Chawla Vs St. of Raj. & anr.; AIR 2016 SC 4245, (Para 6)

4. G. Sagar Suri & anr. Vs St. of U.P. & ors. reported in (2000)2 SCC 636, (Para 7)

(Delivered by Hon'ble Manish Mathur, J.)

1. Heard learned counsel for applicants and learned Additional Government Advocate appearing for opposite party no.1 State.

2. Issue notice to opposite party no.2, returnable at an early date.

3. Application under Section 482 Cr.P.C. has been filed challenging summoning order dated 16.11.2023 as well as proceedings of Complaint Case No.326 of 2019; Amjad Khan versus Manoj Yadav & Ors., under Sections 420, 452, 504 & 506 I.P.C., Police Station Babina, District Jhansi as well as order dated 29.08.2024 passed in Criminal Revision Case No.42 of

2024; Manoj Yadav & Ors. versus State of U.P. & Ors.

4. Also under challenge is the revisional order dated 29.08.2024 whereby Criminal Revision preferred by the applicants has been rejected.

5. At the very outset, learned Additional Government Advocate has raised a preliminary objection regarding maintainability of this application under Section 482 Cr.P.C. with the submission that in view of the fact that summoning order as well as revisional order is under challenge, the application under Section 482 Cr.P.C. is not maintainable since applicants have an alternative and equally efficacious remedy of filing of petition under Article 227 of the constitution of India. Learned Additional Government Advocate has taken recourse to Section 397(3) Cr.P.C. and the Bar contained therein to submit that in cases where a second revision is not maintainable, the applicants cannot take recourse a proceeding under Section 482 Cr.P.C. to bye pass the Bar created in the aforesaid provision.

6. Learned counsel for applicants has refuted submissions advanced by learned Additional Government Advocate with the submission that proceedings under Article 227 of the Constitution of India and Section 482 Cr.P.C. are concurrent in nature for the purposes of exercising supervisory control over the trial courts and therefore one provision will not oust the other. It is further submitted that since Section 482 Cr.P.C. commences with a non obstante clause, it would prevail over other provisions of Cr.P.C. including the bar of Section 397(3) Cr.P.C. Learned counsel has adverted to the following judgements:-

"(i.) ***Madhu Limaye versus The State of Maharashtra; (1977)4 SCC 551,***

(ii) ***Krishnan & Anr. v. Krishnaveni & Anr.; AIR 1997 SC 987, and***

(iii) ***Prabhu Chawla versus State of Rajasthan & Anr.; AIR 2016 SC 4245"***

7. With regard to submissions of learned Additional Government Advocate, Hon'ble the Supreme Court in the cases of ***Madhu Limaye versus The State of Maharashtra; (1977)4 SCC 551, Krishnan & Anr. v. Krishnaveni & Anr.; AIR 1997 SC 987, and Prabhu Chawla versus State of Rajasthan & Anr.; AIR 2016 SC 4245*** has already held that since provisions of Section 482 Cr.P.C. commence with a non obstante clause, it would have primacy over all the other provisions of the aforesaid Court including the bar of Section 397(3) Cr.P.C. Law enunciated in the case of Madhu Limaye (supra) is as follows:

"10. As pointed out in Amar Nath's case (supra) the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding, is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub-section (2) in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions

Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include sub-section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court", But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial, after proper sanction will not be barred on the doctrine of autrefois acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused up to the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in

accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible."

8. Similarly relevant paragraph in the case of ***Krishnan*** (supra) is as follows:

"14. .....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. .....".

9. Similarly, in the case of ***Prabhu Chawla*** (supra) it has already been held that since provisions of Section 482 Cr.P.C. commence with a non obstante clause, it would have primacy over all the other provisions of the aforesaid Court including the bar of Section 397(3) Cr.P.C. law enunciated are as follows:

"6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of the High Court under Section 482 CrPC is unwarranted. We would simply reiterate that Section 482 begins with a non obstante clause to state:

"482.Saving of inherent powers of High Court.?Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J.

"abuse of the process of the court or other extraordinary situation excites the Court's jurisdiction. The limitation is self-restraint, nothing more". (Raj Kapoor case [Raj Kapoor v. State, (1980) 1 SCC 43 : 1980 SCC (Cri) 72] , SCC p. 48, para 10)

We venture to add a further reason in support. Since Section 397 CrPC is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 CrPC only to petty interlocutory orders! A situation wholly unwarranted and undesirable."

10. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it appears that against the summoning order, applicants have preferred the revision under Section 397(3) Cr.P.C. and upon its rejection, the present application under Section 482 Cr.P.C. has been filed.

11. So far as availability of filing a petition under Article 227 of the Constitution of India is concerned, the wordings of the aforesaid Article juxtaposed with the wordings of Section 482 Cr.P.C. clearly indicate that such

jurisdiction is to be exercised by this Court as a supervisory jurisdiction in order to prevent abuse of process of law. Neither Article 227 of the Constitution of India nor Section 482 Cr.P.C. indicate any aspect ousting jurisdiction of the other. In such circumstances, it can only be held that provisions of Article 227 of the Constitution of India as well as Section 482 Cr.P.C. operate on a concurrent basis providing an option to an applicant to approach this Court under either provision.

12. The said aspect has also been considered by Hon'ble the Supreme Court in the ***G. Sagar Suri & Anr. versus State of U.P. & Ors. reported in (2000)2 SCC 636*** in the following manner:

> *"7. It was submitted by Mr Lalit, learned counsel for the second respondent that the appellants have already filed an application in the Court of Additional Judicial Magistrate for their discharge and that this Court should not interfere in the criminal proceedings which are at the threshold. We do not think that on filing of any application for discharge, the High Court cannot exercise its jurisdiction under Section 482 of the Code. In this connection, reference may be made to two decisions of this Court in Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400] and Ashok Chaturvedi v. Shitul H. Chanchani [(1998) 7 SCC 698 : 1998 SCC (Cri) 1704] wherein it has been specifically held that though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial."*

13. In view of aforesaid discussion and settled law with regard to this proposition, preliminary objection raised by learned Additional Government Advocate is hereby rejected.

14. So far as merits of case are concerned, leaned counsel for applicants has adverted to the complaint made under Section 156(3) Cr.P.C. to submit that the complainant himself has admitted the fact that he has availed himself of loan pertaining to moveable property from the Bank which he did not repay. It is submitted that the applicants are official of the Finance Company who had initiated proceedings for recovery of the loan amount by means of arbitration proceedings in which an award has also been passed and it is owing to this fact that the complaint has been lodged against them to compel the Finance Company not to recover the loan. It is submitted that ex facie contents of the complaint itself indicate that a criminal colour is being sought to be given to a purely civil dispute.

15. Learned counsel has also adverted to statement recorded under Section 200 Cr.P.C. to submit that there is serious contradiction in the averments made in the complaint and the said statement particularly with regard to

applicants having inflicted injury upon complainant and his family members.

16. It is submitted that from a bare perusal of the complaint and statement of the complainant, provisions of Sections 420 504, 506 IPC are not made out and is a factor which was not considered by the trial court.

17. Learned Additional Government Advocate has opposed the application with the submission that at the stage of taking cognizance of a complaint, the aspects required to be considered by the trial court have been adverted to.

18. Prima facie submissions advanced by learned counsel for applicants have force and require consideration for which opposite parties are granted time to file counter affidavit.

19. List this case on 18.12.2024, before appropriate Court along with service report.

20. Till next date of listing, the proceedings in Complaint Case No.326 of 2019; Amjad Khan versus Manoj Yadav & Ors., under Sections 420, 452, 504 & 506 I.P.C., Police Station Babina, District Jhansi as well as order dated 29.08.2024 passed in Criminal Revision Case No.42 of 2024; Manoj Yadav & Ors. versus State of U.P. & Ors shall remain stayed.

(2024) 11 ILRA 300
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 05.11.2024

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.

Writ -A No. 817 of 2024

Dinesh Kumar ...Petitioner
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Petitioner:
Sri Siddharth Khare

Counsel for the Respondents:
C.S.C.

A. Civil Law - Constitution of India,1950-Article 226-whether the omission to disclose pending criminal cases by a selected candidate in a declaration form disqualified him from govt. employment, despite subsequent acquittal and non-involvement in one of the cases-Non-disclosure of pending or past criminal cases must be evaluated contextually, taking into account the nature of offenses, the outcome of the cases and the intent behind the omission-The Apex Court laid down principles in Avtar Singh cases and subsequent cases, held that suppression of trivial matters or unintentional omissions cannot automatically disqualify a candidate-Employers must exercise discretion reasonably and fairly, avoiding arbitrary decisions in assessing character verification and suitability for appointment-Hence, the court quashed the rejection order issued by the State and directed the issuance of the appointment letter to the petitioner within one month-the court held that the petitioner's omission was neither deliberate nor material to his suitability for the post, given his acquittal and the District Magistrate's favorable report.

The writ petition is allowed. (E-6)

List of Cases cited:

1. St. of W.B. & ors. Vs Mitul Kr. Jana Civil Appeal No. 8510 of 2011

2. Commr. Of Police, Delhi & anr. Vs Dhavat Singh (1999) 1 SCC 246