

(1995) 07 P&H CK 0007

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 13197-M of 1994

Balwinder Kaur (Died)

APPELLANT

Vs

Malik Singh

RESPONDENT

Date of Decision: July 21, 1995

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 397(3), 482
- Penal Code, 1860 (IPC) - Section 34, 406, 420, 498A

Citation: (1996) 1 DMC 315 : (1995) 3 RCR(Criminal) 463

Hon'ble Judges: V.S. Aggarwal, J

Bench: Single Bench

Advocate: None, for the Appellant; Malkiat Singh, for the Respondent

Final Decision: Dismissed

Judgement

V.S. Aggarwal, J.

Smt. Balwinder Kaur was married to Kulwant Singh on 10.4*989. About Rs. 2 lacs are alleged to have been spent on marriage of Balwinder Kaur. Kulwant Singh died in July, 1990. The respondents, as per the petitioner, started harassing Balwinder Kaur after the death of her husband. She was told not to lay claim over the Gratuity, Provident Fund and Pensionary benefits of her late husband. She did not agree. She was turned out of her matrimonial home by the respondents. Her dowry articles were not returned, despite requests made by her. Smt. Balwinder Kaur filed a complaint against the respondents with respect to offence punishable under Sections 406/498-A/420/34, Indian Penal Code.

2. After recording the preliminary evidence, the Additional Chief Judicial Magistrate, Ambala, on 23.12.1992 dismissed the complaint. Balwinder Kaur preferred a revision petition in the Court of Sessions. Learned Additional Sessions" Judge, Ambala on 16.5.1994 dismissed the said revision petition.

3. Petitioner-Balwinder Kaur seeks quashing of the orders by learned Additional Chief Judicial Magistrate, Ambala and that of the Court of Sessions. During the pendency of the present petition Balwinder Kaur died and Maan Singh was allowed to be impleaded as legal representative on 21.11.1994.

4. For the past two hearings, none appeared for the petitioner. In these circumstances only the respondent's Counsel addressed the arguments. Learned Counsel for the respondents took up the preliminary objection that the present petition is not maintainable because by filing a petition u/s 482, Code of Criminal Procedure, the statutory provisions of Sub-section 3 to Section 397, Code of Criminal Procedure cannot be defeated.

5. The objection is well taken and necessarily must prevail. Sub-section 3 to Section 397, Code of Criminal Procedure permits only one revision to be filed by an aggrieved person. Inherent power of the High Court cannot be utilised to circumvent the statutory bars in not allowing the second revision petition. The subject-matter is not much in controversy and is concluded by the decision in the case of *Rajan Kumar v. State of Karnataka*, 1988(2) Recent Criminal Reports 662. A similar question was considered and the Supreme Court answered the same in the following words :-

"The question for consideration is as to whether the Bar u/s 397(3) Cr. P.C. should have been taken note of to reject the revision at the instance of the State Government or action taken by the High Court in exercise of its inherent power has to be sustained. It is not disputed by Counsel appearing for the State that the move before the High Court was really on application for revision of the order of the Magistrate releasing the truck. That is exactly what is prohibited u/s 397(3) Cr.P.C. Merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome. If that was to be permitted every revision application facing the bar of Section 397(3) of the Code could be labelled as one u/s 482. We are satisfied that this is a case where the High Court had no jurisdiction to entertain the revision. The appeal is allowed and we set aside the order of the High Court. The order of the Magistrate as affirmed by the Sessions Judge is upheld."

Subsequently in the case of *Dharampal and others Vs. Smt. Ramshri and others*, a similar question was again considered and the findings of the Supreme Court are as under :-

"The Sessions Judge had dismissed the said application on 14th May, 1979. Section 397(3) bars a second revision application by the same party. It is now well settled that the inherent powers u/s 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Hence the High Court had clearly erred in entertaining the second revision at the instance of 1st respondent. On this short ground itself, the impugned order of the High Court can be set aside."

6. Keeping in view of the aforesaid and in fact the plain language of Section 397(3) Code of Criminal Procedure, it goes without saying that inherent power of the High Court cannot be utilised to circumvent the provisions of Sub-section 3 to Section 397, Code of Criminal Procedure. The present petition is totally misconceived.

For these reasons, the petition fails and is dismissed.