

(2010) 07 MAD CK 0291

Madras High Court (Madurai Bench)

Case No: Criminal Original Petition (MD) No. 1041 of 2010

Chandra

APPELLANT

Vs

Thangaraj and Poochiammal

RESPONDENT

Date of Decision: July 2, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 145, 397, 397(1), 397(2), 397(3)
- Penal Code, 1860 (IPC) - Section 294, 506

Citation: (2010) 1 LW(Cri) 1177**Hon'ble Judges:** R. Mala, J**Bench:** Single Bench**Advocate:** Sankarappa Naicker, for the Appellant; K. Srinivasan, for R1 and P. Subbaraja, for R2, for the Respondent**Final Decision:** Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. Mala, J.

The Petitioner approaches this Court with a prayer to set aside the judgment passed in Crl. R.C. No. 6 of 2006 on the file of the I Additional Sessions Judge, Tirunelveli confirming the order passed by the Judicial Magistrate Court, Sankarankovil in S.T.C. No. 1195/2006, dated 27.06.2006 and direct the Judicial Magistrate Court, Sankarankovil to reconsider and pass orders in S.T.C. No. 1195 of 2006.

2. The Petitioner represented by her husband Mr. Sankarappa Naicker. On the basis of the complaint given by her wife, the Petitioner herein, a case has been registered against the Respondents herein in crime No. 38 of 2006 for the offence under Sections 294(b) and 506(i) of I.P.C. on the file of the Chinnakovilankulam P.S. After investigation, the investigation agency has filed charge sheet and the same was taken on file in S.T.C. No. 1195 of 2006 by the learned Judicial Magistrate, Sankarankovil. During the commencement of trial, the Respondents herein admitted

their guilty and hence the learned Judicial Magistrate convicted them and sentenced the 1st Respondent to undergo imprisonment till raising of the court and to pay a fine of Rs. 250/- in default of payment, to undergo one week simple imprisonment for the offence u/s 506(i) of I.P.C. and sentence the 2nd Respondent to pay a fine of Rs. 250/- in default of payment, to undergo one week simple imprisonment for the offence u/s 294(b) of I.P.C. Against the said judgment, the Petitioner herein has preferred a revision in Crl. R.C. 6 of 2008 before the Court of I Additional Sessions Judge, Tirunelveli, where the same was dismissed and confirmed the judgment of the trial Court. Against the said order of the 1st appellate Court, the Petitioner has filed the present criminal original petition.

3. The Petitioner's husband would submit that the complaint has been given against both the Respondents and a case has been registered for the offence under Sections 294(b) and 506(i) of I.P.C. and both of them were liable to be convicted for both the offences. But, the trial Court and 1st appellate court have committed an error in convicting the 1st Respondent for the offence u/s 506(i) I.P.C and convicting the 2nd Respondent for the offence u/s 294(b) I.P.C and hence, he prayed to set aside the judgment passed in Crl. R.C. No. 6 of 2006 on the file of the I Additional Sessions Judge, Tirunelveli confirming the order passed by the Judicial Magistrate Court, Sankarankovil in S.T.C. No. 1195/2006, dated 27.06.2006 and direct the Judicial Magistrate Court, Sankarankovil to reconsider and pass orders in S.T.C. No. 1195 of 2006 and thus he prayed for the allowing of the application. He has also filed his written argument.

4. The learned Counsel appearing for the Respondents would submit that the petition itself is not maintainable since, the Petitioner has already preferred a revision, which was dismissed. Even though, a concurrent jurisdiction both in High Court and District and Sessions Court, once the Petitioner exercised the revisional jurisdiction before the Sessions Court, he is barred file a second revision before this Court. To substantiate his arguments, he relied on various decision of the Apex Court and this Court.

5. He would further submit that as per the F.I.R. the 2nd accused used filthy language and 1st accused caused criminal intimidation and hence the learned Judicial Magistrate and the learned I Additional District Judge, have considered all the aspects in proper manner and awarded the aforesaid punishment and hence, he prayed for the dismissal of the application.

6. This Court heard the rival submissions made on either side and perused the written argument filed by the Petitioner.

7. On the basis of the complaint given by the wife of the Petitioner, a case has been registered for the offence under Sections 294(b) and 506(i) of I.P.C. in crime No. 38 of 2006 and the same was taken on file in S.T.C. No. 1195 of 2006 on the file of the learned Judicial Magistrate, Sankarankovil and during the commencement of trial,

the accused/Respondents herein admitted guilty and hence, the learned Judicial Magistrate convicted the 1st Respondent for the offence u/s 506(i) I.P.C and convicted the 2nd Respondent for the offence u/s 294(b) I.P.C. Against the said judgment, the Petitioner herein has preferred a revision in CrI. R.C. 6 of 2008 before the Court of I Additional Sessions Judge, Tirunelveli, where the same was dismissed and confirmed the judgment of the trial Court. Against the said order of the 1st appellate Court, the Petitioner has filed the present criminal original petition.

8. Now, this Court has to decide in this matter whether this criminal original petition is maintainable?

9. It is appropriate to incorporate the of Sections 397 and 482 of Code of Criminal Procedure.

Section 397(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior criminal court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

(2) The powers of revision conferred by Sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

Section 482 - 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 other under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

10. While considering Section 397(3), it bares second revision. When the Sessions Judge refused to interfere with the order of the Magistrate, the High Court's jurisdiction was invoked to avoid the order of the Magistrate and not that of the Sessions Judge. The bar of this section was, therefore, effectively attracted and the bar could not be circumvented by the subterfuge of treating the revision application as directed against the Sessions Judge's order. When revision against the order of Magistrate restoring complaint has been dismissed by Sessions Judge application to the High Court u/s 482 against the order of dismissal would not lie as it would amount to circumventing this provision which prohibits second revision. When a person aggrieved by the final order made u/s 145 filed a revision application before

the Sessions Judge and sought stay, on his refusal, second revision petition before the High Court is not maintainable. The bar to a second revision applies to the person who has filed in the Court of Session and failed in it. Where cognizance was taken and accused was discharged under the old Code, second revision to the High Court is not maintainable in view of the bar. If a person moves the High Court u/s 397 under its revisional jurisdiction without approaching the Sessions Court, he cannot be refused relief on the ground that special circumstances have to be made out. But if he chooses to move the Sessions Court u/s 397, he cannot thereafter approach the High Court for another revision. However, the power of revision u/s 397, is without prejudice to the power of the High Court u/s 482.

11. Inherent powers cannot be invoked in a manner that the effect would be just entertaining a second revision which has been expressly barred except in extraordinary cases. The bar, as contained in Sub-section (3) cannot be circumvented by resort to Section 482. A second revision in the garb of petition u/s 482 Code of Criminal Procedure is not maintainable. An order passed in revision cannot be quashed u/s 482 Code of Criminal Procedure. The bar of this section would be attracted effectively and it cannot be circumvented by the subterfuge of treating the revision application as directed against the Sessions Judge's order instead of one directed against the order of a Magistrate. It is not permissible to do so.

12. At this juncture, it is appropriate to consider the decisions relied on by the learned Counsel appearing for the Respondents herein and the relevant portions of the said decisions are extracted hereunder:.

1. [Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others,](#)

It should have also applied its mind to the aspect that second revision application, after dismissal of the first one by Sessions Court is not maintainable and that inherent power u/s 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. As we find that the order passed by the High Court is not legal and just it will have to be set aside.

2. [Krishnan and another Vs. Krishnaveni and another,](#)

The object of Section 483 and the purpose behind conferring the revisional powers u/s 397 read with Section 401 upon the high court is to invest continuous supervisory jurisdiction as to prevent miscarriage of justice.

Ordinarily, when revision has been barred by Section 397(3) of the Code, a person, accused or complainant cannot be allowed to take recourse to the revision to the high court u/s 397(4) or under inherent power of the high court.

3. [Laxmi Bai Patel Vs. Shyam Kumar Patel,](#)

In a case where the sessions court exercising revisional power u/s 397(3) Code of Criminal Procedure has dismissed the revision petition by the aggrieved party, a second revision petition about acceptance of the same party is barred. The position is well settled that in such a case power u/s 482 Code of Criminal Procedure can be exercised by the High Court in rare cases and in exceptional circumstances where the court finds that permitting the impugned order to remain undisturbed will amount to abuse of process of the court and will result in failure of justice.

4. 1997 (2) CTC 561 (K. Govindaraj v. Ashwin Barai)

Maintainability of quash criminal proceedings petition against order in revision by Sessions Court, neither second revision u/s 397 nor quashing petition can be maintained by unsuccessful person in revision before Sessions Court, no second petition in respect of same complaint is maintainable.

If an application under this Section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them. In other words when the earlier revision petition u/s 397(1) was filed, there cannot be a second revision petition by the same accused, and this provision of law cannot be circumvented by invoking the inherent jurisdiction of the High Court u/s 482 of Code of Criminal Procedure This view gains support from the decision of the Supreme Court in [Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others](#), wherein at page 752 and at the end of para 4 it was held as follows:

It High Court should have also applied its mind to the aspect that second revision application, after dismissal of the first one by Sessions Court if not maintainable and that the inherent power u/s 482 of the Code cannot be utilised for exercising powers which are expressly barred by the code.

Therefore the Petitioner/accused herein is specifically barred u/s 397(3) of Code of Criminal Procedure for maintaining this application u/s 482 of Code of Criminal Procedure to invoke the inherent power of the High Court to set aside the order dated 28.03.1995 in CrI. Revision Case No. 15 of 1994 and consequently to revise the charges framed by the Judicial Magistrate, Pondicherry and gto discharge the accused from the case in C.C.230 of 1992.

Para 10. In Krishnan v. Krishnaveni this Court explained the scope and power of the High Court u/s 482 of the Code. The question before the Court was if in view of the bar of second revision under Sub-section (3) of Section 397 of the Code was prohibited, whether inherent power of the High Court is still available u/s 482 of the Code. This Court said as under: (SCC p.248, para 10)

10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court u/s 397(1) or under inherent powers of the High Court u/s 482 of

the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power u/s 401 and continuous supervisory jurisdiction u/s 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power u/s 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when trial is conducted expeditiously.

11. In the present case, the High Court minutely examined the evidence and came to the conclusion that the wife was living separately without any reasonable cause and that she was able to maintain herself. All this the High Court did in exercise of its powers u/s 482 of the Code which powers are not a substitute for a second revision under Sub-section (3) of Section 397 of the Code. The very fact that the inherent powers conferred on the High Court are vast would mean that these are circumscribed and could be invoked only on certain set principles.

13. Considering the above said citations and the ingredients of Sections 397 and 482 of Code of Criminal Procedure, I am of the considered opinion that the second revision in the guise of Section 482 of Code of Criminal Procedure is not maintainable.

14. Furthermore, in the case in S.T.C. No. 1195 of 2006, the accused/ Respondents herein have pleaded guilty and hence, the learned Judicial Magistrate awarded the aforesaid sentence in accordance with law. It is a judicial discretion of the Officer concerned to award the sentence in accordance with law. Accordingly, the learned Judicial Magistrate sentenced the Respondents, which was confirmed by the I Additional District and Sessions Judge. I do not find any infirmity or illegality in the sentence passed by the learned Judicial Magistrate, which was confirmed by the learned I Additional District and Sessions Judge and they considered all the aspects in proper manner and hence, the same is liable to be confirmed and the criminal original petition is liable to be dismissed as not maintainable.

15. Accordingly, this criminal original petition is dismissed as not maintainable.