

Mrs Anjula Divedi Vs. State Represented By

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Court : Karnataka

Decided On : Mar-31-2016

Judge : Mohan M. Shantanagoudar and K.N.Phaneendra

Appeal No. : CRL.P 4478/2015

Appellant : Mrs Anjula Divedi

Respondent : State Represented By

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA, BENGALURU DATED THIS THE31T DAY OF MARCH, 2016 :PRESENT: THE HONBLE MR.JUSTICE MOHAN M. SHANTANAGOUDAR :AND: THE HONBLE MR.JUSTICE K.N. PHANEENDRA CRIMINAL PETITION No.4478/2015 BETWEEN:

1. MRS.ANJULA DIVEDI, AGED ABOUT38YRS., GENERAL MANAGER - HR, M/S TAMURA ELCOMPONICS TECHNOLOGIES (P) LTD., HIREHALLI, INDUSTRIAL AREA, TUMKUR, KARNATAKA EARLIER KNOWN AS M/S ROMARSH ELCOMPONICS TECHNOLOGIES (P) LTD.

2. MR.AZAM PASHA , AGED ABOUT38YRS., GENERAL MANAGER - PRODUCTION, M/S TAMURA ELCOMPONICS TECHNOLOGIES (P) LTD., HIREHALLI, INDUSTRIAL AREA, TUMKUR, KARNATAKA EARLIER KNOWN AS M/S ROMARSH ELCOMPONICS TECHNOLOGIES (P) LTD.

3. MR. SURYA SHARMA, AGED ABOUT 37 YRS., SALES MANAGER - (ERSTWHILE), 2 M/S TAMURA ELCOMPONICS TECHNOLOGIES (P) LTD., HIREHALLI, INDUSTRIAL AREA, TUMKUR, KARNATAKA EARLIER KNOWN AS M/S ROMARSH ELCOMPONICS TECHNOLOGIES (P) LTD.

4. MR. KIRAN KUMAR, AGED ABOUT 36 YRS., PRODUCTION MANAGER - (ERSTWHILE), M/S TAMURA ELCOMPONICS TECHNOLOGIES (P) LTD., HIREHALLI, INDUSTRIAL AREA, TUMKUR, KARNATAKA, EARLIER KNOWN AS M/S ROMARSH ELCOMPONICS TECHNOLOGIES (P) LTD. PETITIONERS (BY SRI.K.KASTURI, SR.COUNSEL FOR SRI.PRADEEP KUMAR.J., ADVOCATE) AND: STATE REPRESENTED BY SUB-INSPECTOR OF POLICE, KYATHASANDRA POLICE STATION, TUMKUR - 572 104 (K.S), KARNATAKA STATE. (BY SRI.P.M.NAWAZ, SPP-I) ... RESPONDENT THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 CR.P.C. PRAYING TO QUASH THE PROCEEDINGS AND THE

ORDER

DTD 2407.2014 TAKING COGNIZANCE OF THE OFFENCE U/S 34, 323, 504, 506 OF IPC BY THE LEARNED PRL.CIVIL JUDGE AND JMFC, TUMKUR IN C.C.NO.3947/2014. THIS CRIMINAL PETITION HAVING BEEN HEARD REGARDING

ORDER

S FOR AND RESERVED 3 MAINTAINABILITY OF THE PETITION ON 2402.2016 BEFORE THE DIVISION BENCH CONSISTING OF MSGJ AND KNPJ, PRINCIPAL BENCH, BENGALURU, COMING ON FOR PRONOUNCEMENT OF

ORDER

ON MAINTAINABILITY OF THE PETITION AT DAY, K.N.PHANEENDRA.J., MADE THE FOLLOWING: KALABURAGI AT BENCH THIS

ORDER

We would like to begin this order by saying that A repeated and saner thought will always throw more light even on the same subject. More often in criminal cases a

question that arose for consideration of the Courts, has been that, the object, scope and purpose of section 482 of Cr.P.C. and power of the Court to exercise the provision, in spite of availability of alternate remedy in general and under section 397 of Cr.P.C. in particular. In the present case, we are called upon to answer the same question.

2. Before advertng to the factual matrix of this case, we feel it appropriate to remind ourselves, certain recognized principles of interpretation of statutes. 4 3. In interpreting any statute or a provision in a statute, one should bear in the mind that statute is an authentic document containing, the intention and expression of the will of the legislature. The Court always bound to make its entire endeavor to bring out that real intention. Every provision of a statute should be construed with reference to its object, purpose, and how it is coached with other provisions of the same statute. Courts should also in its wisdom interpret the law to make the same more effective, meaningful and beneficial, and to achieve its manifest purpose. While interpreting a provision, a construction which would reduce the legislation or the provision a futility, such interpretation should be avoided. Where alternative construction is equally open that should be chosen which is harmonious, and closer to the purpose and object of the introduction of that provision in the statute.

4. With the above prelude, we feel it appropriate, and necessary to make a comprehensive appreciation of all vital features of section 482 and 397 of Cr.P.C. 5 5. The factual narration for disposal of the present petition has in a very narrow compass briefly stated the facts are,- This Petition is filed before the learned Single Judge of this Court under section 482 Cr.P.C. seeking quashing of the order dated 24.7.2014 passed by the Principal Civil Judge & JMFC, Tumkur taking cognizance of the offences punishable u/ss.323, 504, 506 read with Section 34 of IPC and issuing process against the petitioners in CC No.3947/2014.

6. Learned Single Judge while considering the matter has referred two judgments of this court rendered by another bench of equal strength (Single Judge) i.e., - (1) in Sri Rudra Swamy Vs. State of Karnataka and another in Criminal Petition No.3636/2015 and (2) in Sri Santosh Kumar Vs. State of Karnataka in Criminal Petition No.5411/2015. 6 In the above mentioned two Criminal Petitions, it is

observed that as the alternative and efficacious remedy is available to the party u/s.397 of Cr.PC., the petitions filed under Section 482 of Cr.PC. have to be dismissed without delving upon the merits of the cases. In those cases, reliance was mainly placed on the decisions of the Hon'ble Apex Court in the case of - (1) Urmila Devi Vs. Yudhvir Singh reported in (2013) 15 SCC624 (2) Mohit @ Sonu and another Vs. State of Uttar Pradesh and another reported in (2013) 7 SCC789 In view of the above said two decisions rendered by the Hon'ble Apex Court, Learned Single Judge in Crl. Petition No.3636/2015 and Crl. Petition No.5411/2015, has expressed doubt with regard to the maintainability of the petition u/s.482 of Cr.PC. when an alternative remedy u/s.397 of the Code is available.

7. The learned Single Judge in this Petition relying upon the decisions reported in - 7 (1) (2004) 13 SCC324 between Subramaniam Sethuraman Vs. State of Maharashtra and another; and (2) 2009(2) SCC370 between Dhariwal Tobacco Products Ltd., and Others Vs. State of Maharashtra and another; concluded that the view taken by the learned Single Judge in Criminal Petition No.3636/2015 and Criminal Petition No.5411/2015 requires a re-look by an authoritative judicial pronouncement. Therefore, the registry is directed to place the matter before Honble the Chief Justice to refer the matter to the larger bench for an authoritative judicial pronouncement.

8. The learned Single Judge has formulated the following question to be answered by the Division Bench - Whether or not a petition u/s.482 of Cr.PC. is maintainable though remedy is available against the order of the Criminal court u/s.397 of the Cr.PC.?. 8 9. In view of the above said doubt expressed by the learned Single Judge and in view of the difference of opinion between two benches of equal strength, the matter is placed before the Division Bench to consider and answer the above said question raised.

10. In order to appreciate and answer the above question, it is just and necessary to go through the decisions of several courts in this regard. There are divergent opinions of the Supreme Court with regard to the entertainment of the petition u/s.482 of Cr.PC. when an alternative remedy is available u/s.397 of Cr.PC., and

also when the revisional powers of the Sessions Court, High Court are available to the parties.

11. In *Mohit @ Sonu and Another Vs. State of Uttar Pradesh and another* reported in (2013) 7 SCC789 the Hon'ble Apex Court has observed at paragraphs 31 & 32 in the following manner: The inherent jurisdiction of the court to make orders *ex debito justitiae* is undoubtedly affirmed by Section 151 of the Code, but [inherent] jurisdiction cannot be exercised so as to nullify the provisions 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. The intention of the legislature enacting the Code of Criminal Procedure and the Code of Civil Procedure vis--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.PC. or Section 151 CPC cannot and should not be resorted to.

12. In another ruling, the Hon'ble Apex Court in the case of *Padal Venkata Rama Reddy @ Ramu Vs. Kovvuri Satyanarayana Reddy and others* reported in (2011) 12 SCC437 has observed in the following manner: In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Courts inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provisions which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.

13. In the above said rulings, the Hon'ble Apex Court is of the opinion that the High Court cannot exercise powers

u/s.482 of Cr.PC. when the matter can be dealt with by the revisional court u/s.397 of Cr.PC.

14. In this background, some of the other rulings of the Hon'ble Apex Court also throw some light on this point. In this regard, we would like to rely upon the decision rendered in R.P. Kapur Vs. State of Punjab reported in AIR 1960 SC866 wherein the learned Judge has observed in the following manner: Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. 12 However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the 13 complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused person. 15. In another decision, Three Judges Bench of the Hon'ble Apex Court reported in (1997) 4 SCC241 in the case of Krishnan and another Vs. Krishnaveni and another, at paragraphs 8 and 10, has observed in the following manner: 8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest

continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and 14 cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.

9. XXXX XXXX XXXX XXXX XXXX 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 under Section 397(1) or under inherent powers of the High Court under Section 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 moto power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on 15 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 be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 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 16 inducement. These

malpractices need to be curbed and public justice can be ensured only when trial is conducted. 16. In AIR 2009 SC1032 between Dharimal Tobacco Products Ltd., & Others Vs. State of Maharashtra & Another, the Hon'ble Apex Court considering various decisions on this point right from R.P. Kapur's case reported in AIR 1960 SC866 to Som Mittal's case reported in (2008) 3 SCC574 has observed in Paragraph-8 as under: 8. Indisputably issuance of summons is not an interlocutory order within the meaning of Section 397 of the Code. This Court in a large number of decisions beginning from R.P. Kapur Vs. State of Punjab, AIR 1960 SC866 to Som Mittal Vs. Govt. of Karnataka [(2008) 3 SCC574] has laid down the criterion for entertaining an application u/s.482. Only because a revision petition is maintainable, the same by itself, in our considered opinion, would not constitute a bar for entertaining an application u/s.482 of the Code. 17. Ultimately the court has laid down the criterion for entertaining petition filed u/s.482 of Cr.PC. It is observed that only on the ground that a Revision Petition is maintainable, the same by itself, would not constitute a bar for entertaining an application u/s.482 of Cr.PC.

17. In yet another decision reported in (2012) 9 SCC460- Amit Kapoor Vs. Ramesh Chander and others, the Hon'ble Apex Court at paragraph Nos. 12 and 27.1, has specifically held that - Section 397 of the Code vests the Court with the power to call for and examine the records of a subordinate Court for the purpose of satisfying itself as to the legality of regularity of any proceedings or an 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 well founded error and it may not be appropriate for the Court to scrutinize the orders which upon the face of it bears and token of careful consideration and appear to be in accordance with law. If one looks into the 18 various judgments of this court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous and there is no compliance of the provisions of law, the finding is recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but merely indicative. Paragraph 27.1, though there are no limits of the powers of the High Court u/s.482 of the Code, but mere power, the more due care and caution to be exercised in invoking these powers. Power of quashing criminal proceedings should be exercised very sparingly and with circumspection and that

too in rarest in rare cases.

18. In a decision reported in (2013) 15 SCC624 between Urmila Devi Vs. Yudhvair Singh, the Hon'ble Apex Court at paragraphs 21, 21.1 to 21.3 has considered this legal position and laid down the following legal aspects:

19. 21. Having regard to the said categorical position stated by this Court in innumerable decisions resting with the decision in Rajendra Kumar Sitaram Pande, as well as the decision in K.K.Patel, it will be in order to state and declare the legal position as under:

21. 1 The order issued by the Magistrate deciding to summon an accused in exercise of his power under Sections 200 to 204 Cr PC would be an order of intermediary or quasi-final in nature and not interlocutory in nature. 21.2 Since the said position viz. such an order is intermediary order or quasi-final order, the revisionary jurisdiction provided under Section 397, either with the District Court or with the High Court can be worked out by the aggrieved party. 21.3 Such an order of a Magistrate deciding to issue process or summons to an accused in exercise of his power under Sections 200 to 204 Cr PC, can always be subject-matter of challenge under the 20 inherent jurisdiction of the High Court under Section 482 Cr PC. 19. The above rulings make it abundantly clear that when an alternative remedy is available, the party may approach the revisional court seeking the remedy. Apart from going to the revisional Court, he can also approach the High Court or the Supreme Court, if his case falls under the object recognized u/s.482 of Cr.PC.

20. In Mohits case as well as Padal Venkataramreddys case noted above, the court has said that inherent powers u/s.482 of Cr.PC. can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. In Padal Venkataramanareddys case, it is also observed that inherent powers u/s.482 Cr.PC. includes power to quash First Information Report, investigation or any Criminal proceedings pending before any court subordinate to it. It has got very wide magnitude and such power under section 482 Cr.P.C. can be exercised to meet the ends of justice to prevent abuse of process 21 of any court and to make such order as may be necessary to give

effect to any order in the Code depending upon the facts of each given case.

21. In the decisions noted above, the Hon'ble Apex Court has no occasion to consider and discuss in detail as to under what circumstances, inherent powers of the High Court u/s.482 of Cr.PC. can also be exercised when the party can resort to the revisional jurisdiction of the High Court and the Sessions Court u/s.397 of Cr.PC.

22. In the latest ruling of the Hon'ble Apex Court as noted above in Urmila Devis case, the court has categorically held regarding challenge of the order of issuance of process, Sessions Court and High Court are having revisional jurisdiction u/s.397 of Cr.P.C.; it is also held that issuance of process, summons can always be the subject matter of challenge under the inherent jurisdiction of the High Court u/s.482 of Cr.PC. 22 23. In the backdrop of the above dictums of the Hon'ble Apex Court, now we proceed to consider the aspect as to under what circumstances, powers u/s.482 of Cr.PC. can also be exercised by the courts, even when the revisional jurisdiction of the Sessions Court and the High Court is available. In our opinion, meticulous reading and meaningful understanding of the words used in Section 482 of Cr.P.C. would throw light to answer the questions. Section 482 of Cr.PC. reads thus: 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. 24. It is clear that when the court is posed with a question or a circumstance wherein the court was called upon to exercise its powers u/s.482 of Cr.PC., then the court is supposed to find out whether it is an extraordinary case and there is any abuse of process of law or as to whether ends of justice, need to be secured or not. If the answer is in the Affirmative, the court has to interfere with such an order or proceedings, to put an end to the continuation of such proceedings. As a matter of caution, in various cases, the Hon'ble Apex Court has observed that power u/s.482 of Cr.PC. should be exercised sparingly with circumspection and in rarest of rare cases. Therefore, it falls within the parameters of the sound judicious discretion of the Court, to ascertain whether the case on hand falls under such category of extraordinary case, where the court shall

exercise such powers u/s.482 of Cr.PC, or to relegate the party to invoke the revisional jurisdiction u/s.397 of Cr.P.C.

25. It should be borne in mind that quashing of a complaint or Criminal proceedings u/s.482 of Cr.PC. is provided u/s.482 of Cr.PC. and not u/s.397 or u/s.401 of Cr.PC. Therefore, exercise of such power depends upon the facts and circumstances of each case. The parameters, ambit and powers u/s.482 of Cr.PC. has 24 been in detail explained by the Hon'ble Apex Court particularly in RP Kapurs case reported in AIR 1960 SC866 which we have referred to above and also in Bajanlals case reported in AIR 1992 SC604 wherein the Hon'ble Supreme Court has consistently from 1960, has been of the opinion that in some of the categories of cases, the High Court will exercise the powers u/s.482 Cr.PC. in order to prevent the abuse of process of any court or otherwise to secure the ends of justice. The sum and substance of the guidelines for exercising jurisdiction under section 482 Cr.P.C., are categorized as under:

1. Where the allegations made in the first information report or the complaint, if are taken at their face value and accepted, do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the material collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, which cannot be investigated by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the 26 Code or the concerned Act (under which a criminal proceeding is instituted) for the institution and continuance of the proceedings and/or where there is no specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. 26. Though it is not possible to lay down precise and inflexible guidelines or any rigid formula or to give an exhaustive list of the circumstances in which such powers could be exercised, but when the case falls under any of the aforementioned categories or if the court comes to the conclusion that any other category which is almost similar to the above is involved in the case, then irrespective of the fact that the party has got efficacious remedy u/s.397 Cr.PC., the High Courts 27 power under section 482 Cr.P.C., is not restricted.

27. The Hon'ble Apex Court has also observed in Harshendra Kumar D. Vs. Rebatilata Koley and Others reported in (2011) 3 SCC351at paragraph 25 in the following manner- 25. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the 28 accused or embark upon an enquiry in respect of merits of the accusations. However, in an

appropriate case, if on the face of the documents - which are beyond suspicion or doubt - placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

28. In a decision reported in 2013 AIR SCW784 between Rajiv Thapar and Others Vs. Madan Lal Kapoor, the Hon'ble Supreme Court while dealing with Sections 482, 202 and 227 of the Cr.P.C., held that - Quashing of criminal proceedings pre-trial stage - exercise of power can be done only if material produced by the accused is of sterling and impeccable quality - sufficient to persuade reasonable man to condemn actual basis of allegations made as false. 29 29. The above mentioned two decisions in fact re-iterate the enormous power vested with the High Court u/s.482 of Cr.P.C., where the High Court only can look into the documents produced by the accused even at the preliminary stages or at the pre-trial stage. Such power is not vested in the revisional courts. Therefore, a classical distinction can be made between Sections 482 and 397 of the Code in this regard.

30. What emerges from the above said decisions is that extraordinary power of the High Court u/s.482 of Cr.PC. is not circumscribed by Section 397 or 401 of Cr.PC. They operate distinctively and separately. Under certain circumstances the powers may overlap also. Though the same order passed by the Criminal courts is amenable under Section 397 of Cr.PC. where the court can exercise revisional power, if the High Court is called upon to ascertain whether there is abuse of process of law or whether by exercising Section 482 of Cr.PC., the courts can otherwise secure and protect the interest of justice, then the power u/s.482 of Cr.PC. 30 is not barred. However, We reiterate that such power should be very sparingly exercised in rare cases, depending upon the facts and circumstances of each case. It is purely the discretion of the High Court to entertain petition u/s.482 of Cr.PC. only after going through the materials placed before it, to know as to whether the matter requires exercise of the extraordinary powers u/s.482 of Cr.PC. or the said order is revisable under section 397 Cr.P.C., so that the revisional court itself can take care of the situation and pass appropriate orders. The High Court

only after exercising sound discretion, can relegate the parties to approach the revisional court for their remedies. Therefore, the High Court has to take a decision after going through the materials on record and hearing the parties whether it is a fit case to exercise power u/s.482 of Cr.PC or not. In the sense, the petition under section 482 Cr.P.C., cannot be outrightly rejected on the sole ground that the order of the Criminal court is revisable and therefore, the power 31 u/s.482 of Cr.PC. is barred.

31. As mentioned supra, the powers of the revisional courts u/s.397 of the Code and the power of the High Court u/s.482 of Cr.P.C., may overlap to certain extent because both are aimed at securing the ends of justice and both have an element of discretion. But, at the same time, inherent power u/s.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 High Court will not invoke its power u/s.482 of the Code where a party could have availed of the remedy available u/s.397 of the Code. The inherent power u/s.482 of the Code are of a wide magnitude and are not as limited as the power u/s.397 of the Code. Therefore, Section 482 of the Code can be invoked where the order in question is to be tested on the touch stone of the purpose and object of Section 482 of the Code to ascertain whether there was any abuse of process of law and that the circumstances 32 need for securing the ends of justice. The limitation in fact is only self restraint, nothing more. The provisions of Section 482 of Cr.P.C. are pervasive. However, inherent powers of the Court unquestionably have to be read and construed as not free from restrictions, but are subject to the restrictions as mentioned supra. However, it is left to the sound discretion of the learned Judges to consider as to whether the material on records are sufficient to compel the court to exercise powers, u/s.482 of Cr.PC.

32. With these observations, we answer the question referred to us in the following manner: The petition filed u/s.482 of Cr.PC. is maintainable under extraordinary circumstances mentioned supra, though remedy is available against the order of the Criminal court u/s.397 of Cr.PC.. However, jurisdiction under Section 482 of Cr.P.C. will be exercised in such an event by the High Court with utmost care and caution, sparingly and under extraordinary circumstances. 33 The records shall be

placed before the learned Judge having roster to decide the criminal petition on merits. Sd/- JUDGE Sd/- JUDGE PL*

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