

Hans Raj Vs. State

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Court : Delhi

Decided On : Aug-13-1996

Reported in : 1996IVAD(Delhi)85; 64(1996)DLT785

Judge : N.G. Nandi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397(3); [Indian Penal Code \(IPC\), 1860](#) - Sections 494

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 235 of 1996

Appellant : Hans Raj

Respondent : State

Advocate for Pet/Ap. : G.D. Gandhi and; Mukta Gupta, Advs

Judgement :

N.G. Nandi, J.

(1) In this petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code'), the petitioner (accused) prays for the setting aside of the order dismissing the application by the petitioner for dropping of the charge under Section 494, IPC.

(2) The say of the petitioner is that his wife Smt. Asha Rani daughter of Shri Ram Dhan, initiated false proceedings against him for the offences u/Sees. 494/498-A/406, Indian Penal Code by way of Fir No. 167/87, P.S. Kingsway Camp, Delhi complaining that the petitioner had contracted a remarriage with one Smt. Shashi Bala daughter of Shri Tola Ram during the subsistence of her marriage and also caused cruelty and harassment to her; that the charge sheet was filed on 5.6.1987 against the petitioner- accused and charge u/Secs. 494/498-A/406, Indian Penal Code was framed by the Court of learned Metropolitan Magistrate, Delhi and the revision petition preferred against the order of framing of charge, was also dismissed by the Court of Additional Sessions Judge, Delhi. Thereafter, the petitioner moved this Court u/Section 482 of the Code being CrI.M.(M) 1696/93 and while dismissing the same as withdrawn on 29.4.94, the question of compliance with the mandatory, statutory provisions of Section 198 of the Code was left open to the petitioner to approach the Trial Court for raising the necessary objection in light of Section 198; that thereafter, the petitioner moved the Trial Court for dropping of the charge for offence u / Section 494, Ipc on the contention that the complaint is not to the Court but on the police report and the consequent non-compliance of Section 198 of the Code and therefore, no cognizance could be taken by the Court hence the request for dropping of the charge which came to be rejected by the learned Metropolitan Magistrate. Thereupon the petitioner moved the Sessions Court by way of Criminal Revision Petition u/Section 397 of the Code which also did not find favor and again this petition u/Section 482 of the Code.

(3) It is submitted by Mr. Gandhi, learned Counsel for the petitioner that the contention raised by the petitioner regarding non-compliance with the requirement of Section 198 of the Code has not been considered in the first instance by the Mm and also in the criminal revision application before the Sessions Court inasmuch as the Courts below committed an error while taking cognizance of a police report u/Section 173 of the Code on the complaint by the wife for the offence u/Section 494, IPC; that the Court could not have taken cognizance of the police report for the alleged offence u/Section 494, Indian Penal Code since a private complaint should have been filed to the Court directly and that the charge against the petitioner ought to have been dropped for non-compliance with the

requirements of Section 198 of the Code. As against this, it is submitted by Ms. Gupta, learned App for the -State that this petition u/Section 482 of the Code is .in the nature of second revision application to circumvent the Bar contained in Sub-section (3) of Section 397 of the Code and that the same would not be maintainable; that the objection u/Section 198 of the Code has been considered and rejected by the Courts below.

(4) It is suggested from the present petition itself that against the order refusing to drop the charge against this accused a Criminal Revision Application No. 16/95 under Sub-section (1) of Section 397 of the Code was preferred by this very petitioner and the same came to be dismissed by the Sessions Court. In the present petition, the petitioner prays for the same relief which he attempted before the Sessions Court in CrI .R. 16/95 under Sub-section (1) of Section 397 of the Code. In the case of Madhu Limaye v. State of Maharashtra reported in : 1978 CriLJ165 , the Supreme Court while dealing with Sections 482 and 397(2) of the Code, laid down the principles in relation to the exercise of the inherent powers of the High Court. The principles are :

(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party; (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice; (3) That it should not be exercised as against the express Bar of law engrafted in any other provision of the Code.

Thus, the provisions of Section 482 of the Code have to be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice.

(5) In the instant case, the grievance of the petitioner is that the Trial Court could not have taken cognizance of the offence alleged as the same was on police report and not by way of private complaint to the Magistrate Court for the alleged offence u/Section 494, IPC. The petitioner in support of his contention has relied on the decision reported in 1995 (2) Crimes 443. The Bombay High Court, considered the provisions of Sections 198 and 494, Indian Penal Code in the revisional jurisdiction of the High Court u/Section 397(1) of the Code.

(6) There can be no disagreement with the proposition that Section 482 of the Code can be pressed into service though very sparingly, even though the second revision is not entertainable before the High Court u/Section 397(3) of the Code in suitable cases for preventing the abuse of process of Court or to secure the ends of justice. I am not inclined to exercise the inherent powers u/Section 482 of the Code, not because this petition is in the nature of second revision and not entertainable before the High Court u/Section 397(3) of the Code but because of the reason that the powers u/Section 482 of the Code can be used very sparingly to prevent abuse of process of the Court or to secure ends of justice, and looking to the facts, the attempt on the part of the petitioner seems to be malafide to defeat/circumvent the Bar contained in Sub-section (3) of Section 397 of the Code. The objection by the petitioner is technical in the sense that the Court could not have taken cognizance of the offence alleged u/Section 494, Indian Penal Code on the basis of police report u/Section 173(2) of the Code as the complaint for offences u/Section 494, Indian Penal Code as contemplated u/Section 198 of the Code has to be a private complaint to the Magistrate. I would have appreciated the contention of the petitioner had the present case been covered by the principles laid down in the case of State of Haryana v. Ch. Bhajan Lal & Ors. reported in Air 1992 Suppi 1 Scc 335.

(7) I do not deem it proper to exercise the powers u/Section 482 of the Code as this is not the case which deserves the exercise of the inherent powers which have to be very sparingly since the same would not be for securing the ends of justice or for preventing the abuse of process of Court. In the result, the petition fails with the observation that the Trial Court, while deciding the case finally, would consider all the aspects of the matter, in accordance with law.

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