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Kavita Vs. State and Others

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Court : Delhi

Decided On : Sep-09-1999

Reported in : 1999VAD(Delhi)842; 2000CriLJ315; 81(1999)DLT941; II(1999)DMC508; 1999(51)DRJ272

Judge : M.S.A. Siddiqui, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 209, 397(3) and 482; Indian Penal Code (IPC), 1860 - Sections 120-B, 376, 420, 495 and 511

Appeal No. : Crl.M. (M) No. 2744/96

Appellant : Kavita

Respondent : State and Others

Advocate for Def. : Mr. K.K. Sud, Adv.; Mr. M.S. Butalia and ; Mr. Pawan Behl

Advocate for Pet/Ap. : Mr. B.K. Sharma, Adv

Judgement :
ORDER

M.S.A. Siddiqui, J.

1. By this petition under Section 482 Cr. P.C. the petitioner seeks quashing of the order dated 11.9.1995 passed by Shri V.P. Kandpal, Metropolitan Magistrate,

Delhi discharging the respondents No. 2 to 5 of the offences charged under Sections 495/420/376/120-B/511 IPC.

2. Briefly stated, facts giving rise to this petition are that the petitioner lodged FIR No. 65/95 at the Police Station Gandhi Nagar, Delhi. Investigation pursuant to the said FIR culminated into submission of the charge sheet under Sections 498-A/406/376/420/495/120-B/511 IPC against the respondents No. 2 to 5. on submission of the charge sheet, the learned Metropolitan Magistrate launched on a process of satisfying himself that a prime facie case has been made out on the merits, and passed a detailed order refusing to take cognizance of the offences under Sections 495/420/376/120-B/511 IPC against the respondents. Aggrieved by the said order, the petitioner moved the Addl. Sessions Judge, Shahdara, Delhi by filing a revision petition which was rejected vide orders dated 6.9.1996 passed Crl. (R) No. 5/96. Not satisfied with the dismissal of the revision, the petitioner has cone up before this Court under Section 482 Cr. P.C.

3. Learned counsel for the respondents No. 2 to 5 has raised a preliminary objection regarding maintainability of the petition under Section 482 Cr. P.C. According to the learned counsel, the present petition is a second revision petition against the impugned order dated 11.9.1995 passed by the Metropolitan Magistrate, which is expressly barred by Section 397(3) Cr. P.C. and as such this court cannot act as second revisional court under the garb of exercising inherent powers. Reliance is placed in Deepti Vs . Akhil Raj and others : (1995)5SCC751 ; Dharampal and others Vs . Smt. Ramshri and others : 1993 CriLJ1049 ; Krishnan and another Vs . Krishnaveni and another : 1997 CriLJ1519 .

4. It is pertinent to mention that the inherent power under Section 482 Cr. P.C. is designed to achieve a salutary public purpose. In Madhu Limaye Vs . State of Maharashtra, : 1978 CriLJ165 , it was held: 'the High Court possessed and possesses the inherent powers to be exercised ex debito justitiae to do the real and the substantial justice for the administration of which alone Courts exist'.

5. In a recent judgment of the Supreme Court in Arun Shankar Shukla Vs . State of UP and others : 1999 CriLJ3964 it was held that inherent powers are in the nature of extra ordinary powers to be used sparingly for achieving the object mentioned in

Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. In Raj Kapoor Vs . State, : 1980 CriLJ202 , it was held that the amplitude of the inherent powers under Section 482 remain unaffected under Section 397. In Jitender Kumar Jain v. State of Delhi and Others 1999 SCC (Cr.) 77, it was held that ' it is true that a second revision petition does not lie before the High Court when one is dismissed by the Court of Sessions. Still the Court of Session is a court subordinate to the High Court and, as such its proceedings are open to scrutiny by the High Court in exercise of its inherent power under Section 482 of the Code of Criminal Procedure'.

6. On a conspectus analysis of all these authoritative pronouncements of the Apex Court, it is absolutely clear that inherent jurisdiction of this Court under Section 482 Cr. P.C. can be exercised for advancement of justice and if any attempt is made to abuse the process of the Court and this Court considers its interference absolutely necessary, in that event provision of sub-Section (3) of Section 397 Cr. P.C. cannot limit or affect the exercise of inherent power under Section 482 Cr. P.C. But it has to be borne in mind that extraordinary powers under Section 482 Cr. P.C. have to be exercised sparingly and it should not be resorted to like the remedy of appeal or revision.

7. It is undisputed that the State has not filed any appropriate petition against the impugned order dated 11.9.1995 passed by the Metropolitan Magistrate as well as the order dated 6.9.1996 passed by the learned Addl. Sessions Judge. On the contrary, the present petition has been filed by a private party, at whose instance the FIR No. 65/95 was registered at the Police Station Gandhi Nagar. In dealing with the revisional powers of the High Court vis-a-vis right of a private party to move a revision against the order of acquittal passed in a case instituted upon a police report, the Apex Court in K. Chinnaswamy Reddy Vs . State of Andhra Pradesh and another : [1963]3SCR412 :

'It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a

manifest error on a point of law and consequently there has been a flagrant miscarriage of justice.....'

8. The aforesaid view was also reiterated in the case of Vimal Singh Vs . Khuman Singh and Another : 1999 CriLJ16 .

9. It is also relevant to mention that Section 483 of the Code of Criminal Procedure enjoins upon every High Court to so exercise its continuous superintendence over the Court of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates. Thus, the supervisory or visitorial jurisdiction of the High Court under Section 483 Cr. P.C. is of paramount importance to examine correctness, legality or propriety of any finding, sentence or order, recorded or passed as also regularity of the proceedings of all inferior Criminal Courts. Thus, on a conjoint reading of Sections 482 and 483 Cr. P.C., I am of the opinion that if the glaring illegality or injustice stares the Court in the face, then notwithstanding the prohibition contained in Section 397(3) Cr. P.C., the Court must exercise the inherent powers to annul that illegality or injustice and in that situation the High Court can exercise its inherent powers even at the instance of a private party though the State may not have thought fit to challenge the said illegality or injustice by filing appropriate proceedings.

10. In the instant case, a charge sheet was filed by the police under Sections 498-A/406/376/420/495/120-B/511 IPC. Admittedly, one of the offences in the charge sheet is Section 376 IPC, which is exclusively triable by Sessions Court. On perusal of the impugned order dated 11.9.1995 passed by the learned Metropolitan Magistrate, it appears that the learned Magistrate launched on a process of satisfying himself that a prima facie case has been made out on merits. He has assigned reasons about his reluctance to take cognizance of the offences punishable under Sections 495/420/376/120-B/511 IPC. Thus, in effect, the learned Magistrate has discharged the respondents of the aforesaid offences. In my opinion the whole approach of the learned Magistrate in discharging the respondents of the offences punishable under Sections 495/420/376/120-B/511 IPC is erroneous inasmuch as under Section 209 of the Code he had no

jurisdiction to go into merits even for a prima facie satisfaction. Under Section 209 Cr.P.C., the Magistrate has simply to commit the case to the Court of Sessions and the Sessions Judge can discharge the accused under Section 227 of the Code, if satisfied that from the material placed before him, no offence appears to have been made out. Reference in this connection be made to the decision of the Supreme Court in Sanjay Gandhi v. Union of India & others (1979 CLR (SC) 14. Needless to say that Section 228 of the Code enjoins the Sessions Judge to transfer the case to the committal court if he is of the opinion that there is ground for presumption that the accused has committed on offence which is not exclusively triable by the Court of Sessions. In this view of the matter, I am constrained to observe that the impugned order dated 11.9.1995 passed by the learned Metropolitan Magistrate discharging the respondents No. 2 to 5 of the offences punishable under Sections 495/420/376/120-B/511 IPC is an affront to law which could not be overlooked as it has resulted in miscarriage of justice. thereforee, it has become necessary to exercise powers under Section 482 Cr. P.C. read with Section 483 Cr. P.C. to annul the said manifest illegality.

11. For the foregoing reasons, the petition is allowed and the impugned order dated 11.9.1995 is quashed. The case is remanded to the learned Metropolitan Magistrate with the direction that he shall proceed with the case according to law from the stage at which the impugned order was passed by him. Respondents are directed to appear before the learned Magistrate on 28.9.1999.

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