

**Ritesh Kumar Vs. Bal Kishan**

**Ritesh Kumar Vs. Bal Kishan**

**SooperKanoon Citation :** [sooperkanoon.com/699045](http://sooperkanoon.com/699045)

**Court :** Delhi

**Decided On :** Jul-30-1997

**Reported in :** 1998CriLJ191; 1997(42)DRJ610; ILR1997Delhi359

**Judge :** Anil Dev Singh, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

**Appeal No. :** Criminal Miscellaneous Appeal No. 2868 of 1996

**Appellant :** Ritesh Kumar

**Respondent :** Bal Kishan

**Advocate for Pet/Ap. :** R.K. Bahri,; A.K. Chaudary and; A.K. Singh, Advs

**Judgement :**

**Anil Dev Singh, J.**

(1) A preliminary objection has been raised by the learned counsel for the respondents questioning the maintainability of the petition. The preliminary objection is as follows :- 'An appeal against the order of trial Court under Section 340 refusing to make a complaint against the respondents having already been dismissed and no revision under Section 342 of the Code of Criminal Procedure being permissible, Section 482 of the Code cannot be invoked even for the purpose of looking into the allegations of abuse of the process of law and to

secure the ends of justice as the power comprised therein is in the nature of second revision.

(2) In order to deal with the preliminary objection it is necessary to detail a few facts. An Fir was filed against the petitioner under Sections 147/148/149/427/342 Indian Penal Code in Police Station Bhajan Pura. The petitioner alleged that in connection with the F.I.R. the respondents-police officers fabricated two D.D. entries. On this ground he moved an application before the Metropolitan Magistrate for making a complaint against the respondents under Section 193 Indian Penal Code but the learned Metropolitan Magistrate declined the prayer of the petitioner. Thereafter, the petitioner filed an appeal which was dismissed by the learned Additional Sessions Judge, Shahdara, on August 6, 1996. The petitioner has filed the instant application under Section 482 of the for directing the subordinate Court for filing the complaint under Section 193 Indian Penal Code against the respondents. Learned counsel appearing for the respondents, as already pointed out, has taken the above said preliminary objection against the maintainability of the petition. In this regard learned counsel has invited my attention to Sections 195(1)(b), 340 and 341 of the Code. These sections read as follows :-

'195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. -

(1) No Court shall taken cognizance - (a) ..... (b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or (ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or (iii) of any Comical conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate. xx xx xx

340. Procedure in cases mentioned in Section

195. -

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of Sub-section

(1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, - (a) record a finding to that effect; (b) make a complaint thereof in writing; (c) send it to a Magistrate of the first class having jurisdiction; (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and (e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by Sub-section

(1) in respect of an offence may, in any case where that Court has neither made a complaint under Sub-section

(1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of Sub-section

(4) of Section

195.

(3) A complaint made under this section shall be signed, - (a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint; (b) in any other case, by the presiding officer of the Court;

(4) In this section, 'Court' has the same meaning as in Section

## 195. '341. Appeal -

(1) Any person on whose application any Court other than a High Court has refused to make a complaint under Sub-section

(1) or Sub-section

(2) of Section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of Sub-section

(4) of Section 195, and the superior Court may there-upon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made under Section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order under Section 340, shall be final, and shall not be subject to revision.'

(3) Thus, it is apparent that the order passed by a Court under Section 340 of the Code is not subject to revision, but Section 341(2) does not bar the exercise of inherent jurisdiction of the High Court under Section 482 of the Code for preventing the abuse of process of the Court or to secure the ends of justice. Section 482 of the Code confers very wide powers on the High Court to do justice to the parties. Section 341(2) of the Code cannot limit or affect exercise of inherent powers of the High Court. It is Section 482 which regulates the inherent powers of this Court. Section 482 has a different parameter than Section 397 which deals with the revisional powers of the High Court but some times the possibility of overlapping in the exercise of the two powers cannot be ruled out. In *Krishnan and another v. Krishnaveni and another*, 1997 CrL.J. 1519, the Supreme Court examined the scope of Sections 482 and 483 of the Code. A comparison was made between the revisional powers of the High Court and the object of Sections 482 and 483. The Supreme Court, in this regard, held as follows :-

'It is seen that exercise of the revisional power by the High Court under Section 397 read with Section 401 is to call for the records of any inferior Criminal Court and to examine 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 to pass appropriate orders. The Court of Session and the Magistrates are inferior Criminal Courts to the High Court and Courts of Judicial Magistrate are inferior Criminal Courts to the Sessions Judge. Ordinarily, in the matter of exercise of power of revision by any High Court, Section. 397 and Section 401 are required to be read together. Section 397 gives powers to the High Court to call for the records also suo motu power under Section 401 to exercise the revisional power on the grounds mentioned therein, i.e., to examine 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 to dispose of the revision in the manner indicated under Section 401 of the Code. The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that its subordinate Courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior Criminal Court or to prevent miscarriage of justice. 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 meet 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, High Court must exercise such power sparingly and 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 judicial process or illegality of sentence or order. xx xx xx

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 motu power under Section 401 and continuous supervisory jurisdiction under Section 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 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 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 to 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 expeditious trial is conducted.

(4) In *Madhu Limaye v. The State of Maharashtra*, : 1978 CriLJ165 , the Apex Court pointed out that Section 482 of the Code had a different parameter and was a provision independent of Section 397(2). It was held that while Section 397(2) applied to the exercise of revisional powers of the High Court, Section 482 regulated the inherent powers of the Court to pass orders necessary in order to prevent the abuse of the process of the Court.

(5) Again in *Municipal Corporation of Delhi v. Ram Kishan Rohtagi*, : 1983 CriLJ159 , the Supreme Court held that Section 482 confers a separate and independent power on the High Court alone to pass orders *ex debito justitiae* in

cases where grave and substantial injustice has been done or where the process of the Court has been seriously abused. The Court also observed that the power conferred under Section 482 of the Code is not merely a revisional power meant to be exercised against the orders passed by subordinate Courts. The Supreme Court, however, did not rule out the possibility that there may be overlapping in the exercise of power under Section 482 and the revisional power under Section 397 of the Code.

(6) In view of the above said decisions of the Supreme Court I am of the opinion that the power conferred under Section 482 of the Code cannot be cribbed or hedged in by the provision of Section 341(2) thereof. Thus, the preliminary objection as to the maintainability of the petition under Section 482 is overruled. However, I am not expressing any opinion on the question as to whether or not in the facts and circumstances of the present case power under Section , which is meant to be sparingly and cautiously used, should be exercised.

(7) List the matter for further hearing on merits on October 13, 1997.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**