

A Vs. B

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Court : Rajasthan

Decided On : Feb-01-1996

Reported in : I(1997)DMC34

Judge : N.L. Tibrewal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397, 397(3), 399, 399(3) and 482

Appeal No. : S.B. Criminal Misc. Petition No. 1022 of 1995

Appellant : A

Respondent : B

Advocate for Def. : R.S. Agrawal, P.P.

Advocate for Pet/Ap. : S.K. Singh, Adv.

Disposition : Petition dismissed

Judgement :

N.L. Tibrewal, J.

1. In this petition under Section 482 of the Code of Criminal Procedure (for short the Code), the judgment and order dated, September 28,1995. of Sessions Judge, Jhunjhunu, in Criminal Revision No. 27/92 confirming the order of Additional Chief

Judicial Magistrate, Jhunjhunu, dated January 4, 1992 is being challenged by the petitioners.

2. A Criminal case being F.I.R. No. 60/89, was registered at Police Station, Manawa Under Section. 498A and 304B, I.P.C. The investigation in the matter was made by several Investigating Officers and finally, a negative report, which is popularly known as Final Report (F.R.) was submitted in the Court of Additional Chief Judicial Magistrate, Jhunjhunu. A protest petition was filed by the complainant challenging the -findings of the Investigating Agency. The learned Magistrate, after considering the entire material on record and taking into consideration all the facts and circumstances, took cognizance against non-petitioner-Habra Mal only and declined to take cognizance against other accused-non-petitioners vide order dated, January 4, 1992. This order Was challenged by the complainants as well as accused Jhabar Mal. The complainants were aggrieved from the order declining to take cognizance against non-petitioner Nos. 2 to 5, while Jhabar Mal accused was aggrieved by the order taking cognizance against him. Both the revision petitions were heard and disposed of by the learned Sessions Judge by a common order. After making elaborate discussion of the relevant material and evidence and taking into consideration all the relevant facts and circumstances, the learned Judge rejected both the revisions by order dated, September 28, 1995.

3. Mr. R.S. Agrawal, learned Public Prosecutor, raised a preliminary objection about the maintainability of the present petition on the ground that the petitioners have availed the right of revision by filing a revision petition in the Court of Sessions Judge, Jhunjhunu and a second revision is not maintainable in view of statutory bar contained in Sub-section (3) of Section 397 of the Code. Mr. Agrawal contended that inherent power Under Section 482, Cr. P.C. cannot be availed of for exercising powers which are expressly barred by the Code. I find much force in the above contentions.

4. Section 397 of the Code confers upon the High Court and Sessions Judge, the power to call for and examine die 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 proceeding of such inferior Court. Sub-section (3) creates a bar for a second revision by the same party. It reads as under :

'(3) If any 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.'

Similarly, Section 399 of the Code deals with the Sessions Judge's power of revision and Sub-section (3) thereof declares at the same time that:

'Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.'

A perusal of the above provisions clearly shows that no second revision by the same person shall be entertainable by the High Court or the Court of Sessions. The object of the above provisions is clear and it is to prevent multiple exercise of revisional powers and to secure early finality to orders. Any person aggrieved by an order of inferior Criminal Court is given two options to approach either to the High Court or to the Court of Sessions Judge and, once he exercises his option, he is precluded to invoke a revisional jurisdiction. The language of the relevant provisions being clear and pre-emptory, does not admit of any other interpretation.

5. Once there is a statutory bar, ordinarily, the same should not be allowed to be circumvented by invoking Section 482 of the Code. It is true that the powers of the High Court Under Section 482, Cr. P.C. are unfettered and are not controlled by Section 397 or 399 of the Code, but still the High Court should not act as a second Revisional Court under the garb of exercising inherent powers. What may be done directly should not be allowed to be done indirectly, as in that case, it would be an evasion of the Statute.

'To carry out effectually the object of a statute/it must be construed as to a defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined' (Maxwell, 11th Edn. P. 109).

6. In a situation where a right of revision has already been availed by a party, inherent powers Under Section 482 of the Code should not be exercised by the High Court at the instance of the same party, unless the High Court is satisfied that interference was necessary to prevent injustice. This should be in rare of the rarest cases.

7. In the instant case, the learned Sessions Judge has made an elaborate discussion of each and every aspect of the matter and I am of the opinion that the bar under Sub-Section 3 of Sections 397/399 is effectually attracted in the present case and it cannot be allowed to be circumvented by invoking inherent jurisdiction under Section 482 of the Code.

Consequently, the petition is hereby dismissed.

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