

Mariammal Vs. P. Ramadoss and ors.

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Court : Chennai

Decided On : Apr-09-1997

Reported in : 1997(3)CTC555

Judge : Rengasamy, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397, 397(1) and 482

Appeal No. : Cr.O.P.S.R. No. 15292 of 1996

Appellant : Mariammal

Respondent : P. Ramadoss and ors.

Advocate for Pet/Ap. : A.A. Selvam, Adv.

Disposition : Petition rejected

Judgement :

ORDER

Rengasamy, J.

1. This matter is relating to the maintainability of the petitioner.
2. The petitioner herein was the complainant in Crime No. 705 of 1993 before the Judicial Magistrate, Thirumangalam, for the offences under Sections 447, 448 and 323, Indian Penal Code. The occurrence took place in 11-10-1993 and the First

Information report also was lodged on the same day. However, the Thirumangalam Town Police, who initiated the proceedings before the Judicial Magistrate, Thirumangalam, did not file the charge sheet for more than an year and therefore, the accused therein filed CrI. M.P. No. 2864 of 1994 on 20-10-1994 under Section 167(5) and 468(2), Code of Criminal Procedure to stop the further proceedings and discharge them. The learned Judicial Magistrate allowed the petition discharging the accused persons. Aggrieved of that order, the complainant, who is the petitioner herein, has come forward to this Court and has filed the petition under Section 482, Code of Criminal Procedure to quash the order of the learned Judicial Magistrate.

3. The Registry entertained a doubt as to the maintainability of this petition under Section 482, Code of Criminal Procedure for the reason that Section 397(1), Code of Criminal Procedure provides the procedure to agitate against the illegal order passed by a subordinate courts, and therefore returned the petition. However, the learned counsel for the petitioner had represented the petition with an enforcement which reads that the petition is maintainable in view of the decision reported in 1984 Cri. LJ 576, that further the complainant had failed to file the revision in time and therefore, the only remedy open to the victim is to invoke the inherent powers of the High Court under Section 482, Code of Criminal Procedure. As the registry is not satisfied with this endorsement made by the learned counsel, the matter is placed before the open court for consideration.

4. The learned Counsel for the petitioner Mr. Selvam submitted that even though under Section 167(5), Code of Criminal Procedure, a specific period is mentioned for filing the charge sheet for the summons cases within a period of six months or else to stop the further proceedings, that in this case, the averments of the complaint is very specific for the offence under Section 506(ii), Indian Penal Code also and therefore the time for filing the charge sheet is not restricted to one year as misconceived by the learned Judicial Magistrate, that as the learned Judicial Magistrate has passed the illegal order when he has no Jurisdiction to pass the order under Section 468(2), Code of Criminal Procedure the same can be questioned under Section 482, Code of Criminal Procedure. In other words, according to the learned counsel, when the Court had no jurisdiction to pass an

order but has pass on order under the assumption of power, the same can be questioned under Section 482, Code of Criminal Procedure to quash the order. The learned counsel cited a decision of this Court in Inspector of Police, Central Crime Branch v. Deepam and Anr. 1991 LW (Crl.) 568 which according to him, to having similar facts and the order was questioned invoking the inherent powers of the High Court under Section 482, Code of Criminal Procedure.

5. But in that case relied upon by the learned counsel, the maintainability of that petition under Section 482, Code of Criminal Procedure was not considered by the Court and no ratio was laid for the application of Section 482, Code of Criminal Procedure. It a true that in that case also, the further proceedings was stopped for the reason that he charge was not filed within the specified time and that order was questioned in this court by filing a petition under Section, 482, Code of Criminal Procedure. But, somehow, the Registry did not raise any question as to the maintainability of the petition was taken in file. During the stage of enquiry also, the maintainability of the petition under Section 482, Code of Criminal Procedure was not raised by the respondent. Therefore, this Court purely considered validity of the order passed therein and it did not go into the question as to the maintainability of the petition under Section 482, Code of Criminal Procedure. Therefore, this decision relied upon by the learned counsel Mr. Selvam will not in any way come to his rescue with regard to the point in dispute in this proceedings. In the endorsement made by the learned counsel, while representing the petition, he has cited 1984 Cri. LJ. 576, which has no relevance for this case because that decision relates to a second complaint that was taken cognizance by the Court under Section 202, Code of Criminal Procedure. It does to deal with the maintainability of a petition under Section 482 code of Criminal Procedure in invoke the inherent powers.

6. As mentioned above, the learned counsel Mr. A. Selvam concedes that when an order was passed under Section 167(5), Code of Criminal Procedure, a procedure is prescribed under Section 167 sub Section 6 of the code to challenge the order mentioned above. But his contention is that when the order was passed under Section 486(2) of the Code Criminal Procedure, though the court had not powers to invoke that provision, it can be questioned under Section 482, Code of

Criminal Procedure. Section 397, Code of Criminal Procedure is a relevant provision enabling an aggrieved party to challenge any order, finding, any sentence, as to its correctness, legality propriety, either before the Sessions, legality propriety, either before the Sessions Court or before the High Court, It is contended by the learned counsel Mr. Selvam that the learned Judicial Magistrate, Thirumangalam, had no jurisdiction to exercise the powers in this case under Section 468(2), Code of Criminal Procedure as offence alleged would fall Under Section 506-II for which no limitation is fixed. For this grievance also, Section 397(I), Code of Criminal Procedure prescribes the procedure. It was also not contended before me by the learned counsel Mr. Selvam that the petitioner had no right of revision against the order passed by the learned Judicial Magistrate, Thirumangalam. However, the endorsement, he has mentioned that as the petitioner failed to file the revision in time, the only remedy for him is to invoke the inherent powers under Section 482 code of Criminal Procedure. The learned counsel submitted that the petitioner was not aware of the order passed by the Judicial Magistrate in CrI O.P. No. 2864 of 1994 filed by the accused to discharged, them, that the court also did not issue any notice before passing the order and only in the late stage, he came to know about the passing of such order and therefore, now the limitation to file the revision is over. When the petitioner was not aware of the order passed by the Judicial Magistrate discharging the accused persons, it may be a good ground for her to seek condonation of the delay, to file a revision petition against the order passed by the learned Judicial Magistrate. Therefore, it cannot be stated that he petitioner has no remedy under Section 397, Code of Criminal Procedure. Section 482, Code of Criminal Procedure is a special provision to be invoked to give effect to any order passed under this Code or to prevent the abuse of process of any Court or otherwise to secure the ends of justice, the language of the Section makes it clear that the High Court can exercise its powers under this section only in exceptional circumstances when there is no other way to set right the wrong, otherwise, there will be failure of justice, when the specific provision is available to seek the remedy to an aggrieved party, he is bound to seek his remedy only under the prescribed provision. He cannot by pass that provision for his convenience sake and seek to invoke the inherent powers of the High Court. As Section 482 code of Criminal Procedure has

to be sparingly used, when there is no other way to seek the remedy, the petitioner herein cannot straight away file the petition under Section 482, Code of Criminal Procedure by-passing Section 397 code of Criminal Procedure.

7. It is held in *Avadh Narain Lal v. State of Uttar Pradesh* that the inherent powers under Section 482, Code of Criminal Procedure being an extraordinary and residuary power, is not available in regard to matters, which have been specifically provided for under other provisions of the code of Criminal procedure and High Court would not exercise its power under Section 482, Code of Criminal Procedure where any party could have, but did not, avail of the remedy under Section 397, Code of Criminal Procedure. The same is expressed in *Krishnan Lal v. Sh. Ganiya* emphasising that the inherent powers of the High Court cannot be exercised in regard to matters specifically covered by other provisions of the Code.

8. In view of the above, the petition is not maintainable and the same is rejected. The objection raised by the Registry is sustained.

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