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SooperKanoon Citation : sooperkanoon.com/948438

Court : Delhi

Decided On : Apr-16-2012

Judge : M.L. Mehta

Appeal No. : CRL. M.C. 3923 of 2010

Appellant : Darshan Singh

Respondent : State and Others

Judgement :

M.L. MEHTA, J

(ORAL)

1. This petition under Section 482 Cr PC seeks assailing the order dated 20th August, 2010 of learned ASJ, whereby the criminal revision against the order dated 14th September, 2009 of M.M. was dismissed.

2. The petition has peculiar facts and would demonstrate an utter abuse of process of law by the petitioner. Though the petitioner is aggrieved of the unfortunate death of his son Avtar Singh, but being a practicing advocate, has left no effort to abuse the process of law. On the report lodged by him regarding the death of his son, a case under Section 304 A IPC was registered vide FIR No. 159/1995 at P.S. Agroha (Hissar) in Haryana. He being not satisfied, made a complaint to the Director General of Police, Haryana stating that it has been

specifically revealed from the post-mortem report and other material that his son was murdered pursuant to the conspiracy hatched by his friends, the respondents No. 2 to 6 herein. He accordingly insisted for registration of FIR under Section 302 IPC. The police however, on completion of investigation submitted a charge sheet under Section 304A IPC against one Satwant Singh, owner of Sheetal Dhaba where his son was allegedly murdered. As the petitioner was not satisfied with the investigation and the charge sheet under Section 304A IPC, he filed a writ in this court being CrI.Writ Petition 520/1995 for registration of FIR for the murder and abduction. This petition was however, dismissed as withdrawn with the liberty given to the petitioner to pursue his remedy in Punjab and Haryana High Court, exercising territorial jurisdiction over the area of Hissar where the alleged murder took place. Thereafter, he filed Criminal Writ Petition No. 1025/1995 before Punjab and Haryana High Court. Vide order dated 10.5.1996, the said High Court directed the registration of case as per the complaint of the petitioner and consequently, FIR No. 201/1996 was registered against the respondents under Section 302/34 IPC at P.S.Agroha. The respondents preferred a SLP being SLP (CrI.) 2369/1996 before the Supreme Court against the order of Punjab and Haryana High Court. The Supreme Court vide order dated 27.9.1996 modified the said order of Punjab and Haryana High Court observing as under:

“In our considered view, the High Court was not justified in directing the police to register a fresh case over the death of Avtar Singh for a case had earlier been registered in respect thereof and charge-sheet had been submitted. In other words, the High Court could not have invoked Section 156(3) Cr PC to direct institution of a case again on the complaint of respondent No.2 for the death of his son. But the High Court could ensure that a further investigation is made by the police over the death in question in view of Section 173(8) Cr PC, after submission of the charge-sheet. We, therefore, modify the order of the High Court and direct the police to make further investigation keeping in view the complaint of the respondent No.2. Till completion of the investigation the proceeding under Section 304-A IPC shall remain stayed, as directed by the High Court. The appeal is thus disposed of.”

3. In pursuance of the order of the Supreme Court, further investigation was carried out by senior officers of the Haryana Police and after taking into account the opinions of panel of doctors and forensic experts, a supplementary charge sheet was filed maintaining the commission of offence under Section 304A IPC against Satwant Singh, the dhaba owner. The petitioner filed an application bearing No. 1143/1996 in SLP No. 2369/1996, which came to be dismissed by Supreme Court on 20.4.1998 observing that in view of the further development, no further action was necessary. Thereafter, petitioner filed Criminal Writ Petition being Criminal W.P. No. 17/1999 before Supreme Court for investigation by CBI in the aforesaid FIR No. 159/1995, P.S. Agroha. This was also dismissed by the Supreme Court as withdrawn with the observations that the petitioner could move the High Court of Punjab and Haryana.

4. Now, the petitioner filed a criminal complaint under Section 200 Cr PC on 21.12.1999 against the respondents in the court of CMM, Delhi. The allegations in the complaint against the respondents were same that they had hatched conspiracy and in the process, abducted his son Avtar Singh and murdered him at a hotel in Hissar. The additional allegation that was leveled was that the respondents No. 1 to 3 namely Kapil, Punit and Naresh had, on 14.11.1999, threatened to kill him and for which, he made a complaint to SHO, Karol Bagh, New Delhi. In the said complaint, the petitioner examined himself and six more witnesses at the stage of pre-summoning. The said complaint was dismissed by M.M. vide detailed order dated 9.5.2005. The petitioner took the matter to the Sessions Court in revision being CrL.Rev.No. 105/2005. The learned ASJ vide his order dated 02.08.2007, remanded the matter back to the court of M.M. for deciding afresh in view of the law laid down in the cases of Chandra Deo Singh Vs. Prakash Chandra Bose, AIR 1963 SC 1430 and Smt. Nagawwa Vs. Veeranna Shivalingappa Kongalgi and Ors., AIR 1976 Cr.L.J. 1533. On remand, the matter was heard afresh by the learned M.M. and in view of the law as laid down in the afore-cited judgments and few other decisions of the Apex Court and the High Courts, he, vide his order dated 14.9.2009 dismissed the complaint. Taking note of the legal proceedings undertaken by the petitioner at different levels, it was observed that there is no ground much less sufficient to summon the accused persons. The petitioner again took up the matter in revision before the Sessions

Court and that revision (Crl.Rev. No. 46/2009) also came to be dismissed vide the impugned order dated 20.8.2010 by learned ASJ.

5. It is this order of learned ASJ dated 20.8.2010, which has been assailed by way of present petition under Section 482 Cr PC.

6. The grounds which have been set out in assailing the impugned order are that the ASJ has contemptuously amended/molded the order dated 2.8.2007 of his predecessor ASJ, who had decided the issue of jurisdiction of Delhi Court and directed the M.M. to issue summons to the accused persons and try the matter on merits. The impugned order was also assailed on the grounds that the learned ASJ has committed jurisdictional error and material irregularity by not considering the contents of the facts and the evidence on record.

7. I have heard learned counsel for the petitioner and also learned counsel for the respondents.

8. At the outset, learned counsel for the respondents objected the maintainability of the petition by submitting that though the petitioner had preferred the petition under Section 482 Cr PC, but it was in fact a second revision petition against the order of M.M. dated 14.9.2009 whereby, the complaint of the petitioner was dismissed. She submitted that the second petition being barred under Section 397(3) Cr PC, was not maintainable in this court.

9. There was, in fact, no dispute with regard to the proposition that there was statutory bar contained in section 397(3) Cr.P.C. for the second revision petition. The power of this Court and that of the Court of Sessions, so far as a revision is concerned, are concurrent. The intention of the Legislature under section 397(3) Cr.P.C. is definite and the scheme therein is unambiguous and clear. Sub section (3) does not permit the repetition in exercise of jurisdiction of revision under section 397(1) Cr.P.C. It curtails the chance availing second remedy and therefore, an unsuccessful revisionist in the court of Sessions cannot be entertained for the second time by the High Court. In fact, sub section (3) intends and aims to secure finality. The choice lies with the revisionist either to file revision directly in this Court or in the Sessions Court. Having availed the remedy by filing

revision before the Sessions Court, one cannot be permitted to avail second chance to file revision in view of the bar of sub section (3) of section 397 Cr.P.C.

10. The issue regarding filing of petition before the High Court after having availed first revision petition before the Court of Sessions has come up before the Supreme Court and this Court repeatedly. While laying that section 397(3) Cr.P.C. laid statutory bar of second revision petition, the courts have held that High Court did enjoy inherent power under section 482 Cr.P.C. as well to entertain petitions even in those cases. But, that power was to be exercised sparingly and with great caution, particularly, when the person approaching the High Court has already availed remedy of first revision in the Sessions Court. This was not that in every case the person aggrieved of the order of the first revision court would have the right to be heard by the High Court to assail the same order which was the subject matter of the revision before Sessions Court. It was all to depend not only on the facts and circumstances of each case, but as to whether the impugned order bring about a situation which is an abuse of process of court or there was serious miscarriage of justice or the mandatory provisions of law were not complied with. The power could also be exercised by this Court if there was an apparent mistake committed by the revisional court. Reference in this regard can be made to the judgments of the Supreme Court in *Madhu Limaye Vs. State of Maharashtra* (1977) 4 SCC 551, *State of Orissa Vs. Ram Chander Aggarwal*, AIR SC 87, *Raj Kapoor Vs. State (Delhi Administration)* 1980 Cri.L.J. 202, *Krishnan and Anr. Vs. Krishnaveni and Anr and Kailash Verma Vs. Punjab State Civil Supplies Corporation and Anr.*, (2005) 2 SCC 571.

11. Now having seen the dictum of law that the second revision petition was ordinarily not to be entertained by this court and it was only in those cases which would come within the parameters of invoking inherent jurisdiction under section 482 Cr.P.C. and under Article 227 of the Constitution of India, that such a petition could be entertained, I may proceed to see as to whether the instant petition, fall within that category of cases which require invoking of inherent jurisdiction of this Court under these provisions.

12. The main pleas which are raised by the petitioner in assailing the impugned order was that the learned ASJ has amended/molded the order dated 2.8.2007 of her predecessor, who had decided the Delhi Courts to be having jurisdiction and while remanding the case, directed the Trial Court to summon the accused persons on merits.

13. For dealing with this plea, it may be relevant to look at the order dated 2.8.2007 of ASJ. This order was passed by ASJ in CrI.Rev. No. 105/2005 against the order dated 9.5.2005 of M.M. whereby the complaint at the first instance was dismissed. Vide this order, the ASJ had remanded the case to the court of M.M. with the direction to decide afresh in view of the law laid down in the cases of Chandra Deo Singh and Smt. Nagawwa (supra). At no place, the learned ASJ has recorded any finding as regard to the Delhi Court having jurisdiction nor there was any direction to issue summons to the accused persons. In the impugned order which came to be passed in second revision filed against the dismissal of complaint after remand by M.M., the learned ASJ has narrated about the legal proceedings which were taken by the petitioner in Delhi High Court as also the Punjab and Haryana High Court and the Supreme Court. The learned ASJ has discussed the reasoning given by M.M. in his order dated 14.9.2009 while dismissing the complaint and did not find any infirmity or illegality. The learned ASJ endorsed the view taken by the M.M. that if the petitioner was not satisfied with the supplementary charge sheet under Section 173(8) Cr PC, the right course for the petitioner was to file protest report against the supplementary charge sheet and that one person, cannot be tried twice for the same offences at Delhi as well as at Hissar (Haryana). It was also observed that the Delhi High Court had already observed to be having no jurisdiction to entertain the petition as the offence was committed at Hissar and the Supreme Court also modified the order of Punjab and Haryana High Court which had directed the registration of FIR under Section 302 IPC. The learned ASJ also did not find any infirmity in the reasoning given by M.M. as regard the allegations of the petitioner under Section 506 IPC, observing that the threat that was alleged to have been given by the aforesaid three respondents did not amount to intimidation in the sense of creating an alarm in his mind and the alleged offence did not fall within the definition of Section 503 IPC.

14. From the above, it is seen that there is nothing amounting to amending or molding the order dated 2.8.2007 of ASJ in the impugned order and also that there was no finding recorded by any of the courts with regard to the Delhi Courts to be having jurisdiction.

15. On the other hand, as is noted above, the Crl. Writ Petition No. 520/1995 of the petitioner was dismissed by this court only on the ground of lack of jurisdiction with the observation that the Punjab and Haryana High Court would have jurisdiction over the area of Hissar where the alleged murder took place.

16. Proceeding further, it is noted that after the filing of supplementary charge sheet under Section 304A IPC against Satwant Singh (dhaba owner), the petitioner filed a criminal writ bearing No. 17/1999 before the Supreme Court for further investigation of the case by CBI. This also came to be dismissed by Supreme Court vide order dated 15.3.1999. In the trial of the aforesaid FIR No. 159/1995 at Hissar, the petitioner was participating and filed an application under Section 319 Cr PC for summoning the respondents herein under Section 302/34 IPC. This application was dismissed by the Judicial Magistrate vide his detailed order dated 3.11.2002 observing that the petitioner had not come to the court with clean hands and by hook or crook, he wanted to summon the accused persons. The petitioner challenged this order by filing criminal revision bearing No. 68/2003 before the Sessions Court at Hissar, which also came to be dismissed vide order dated 7.7.2005. The petitioner not being satisfied and hell bent upon against the respondents now got filed a criminal writ petition being Crl. Writ 26/2003 from his wife Gurcharan Kaur in this Court on similar grounds as were taken earlier by him. This also came to be dismissed by this court vide order dated 23.9.2005.

17. From the above, it would be seen that when the Supreme Court had modified the order of Punjab and Haryana High Court, and cancelled the FIR registered under Section 302 on the direction of the Punjab and Haryana High Court and had directed further investigation under Section 173(8) Cr PC, the right course that was available to the petitioner was to lodge a protest report to the supplementary charge sheet filed in the court of Magistrate at Hissar. The petitioner participated in the trial in the court of M.M. at Hissar and also filed application under Section 319

Cr PC, which was dismissed. The revision against that order was also dismissed. When the matter was remanded by learned ASJ vide his order dated 02.08.2007, the M.M. heard the matter afresh and has evaluated the testimony of the all the witnesses including that of the complainant as adduced at the pre-summoning stage. It was rightly observed by M.M. that the fact of the petitioner having earlier filed a writ petition in this court and the same having been dismissed on the ground of lack of jurisdiction was concealed by the petitioner. In the petition filed by his wife also it was falsely stated that this was the first petition and no similar petition was filed or dismissed by this Court. With regard to the allegations under Section 506 IPC, the M.M. had relied upon the judgment of this court in Kanshi Ram Vs. State, 2000-IVAD (Delhi) 495, wherein, it was held that mere threat is no offence unless it creates alarm in the mind of the complainant and falls within the definition of criminal intimidation under Section 503 IPC. The learned ASJ did not find any infirmity in the entire order dated 14.09.2009 of the M.M. Having gone through the impugned order as also the testimony of the witnesses and also the order of M.M. dated 14.09.2009, I do not see any infirmity or illegality in the impugned order. This does not bring out a situation which could be said to be an abuse of the process of law or resulting any serious miscarriage of justice. On the other hand, the learned ASJ has discussed the well reasoned order dated 14.09.2009 of the M.M. I do not see any mistake apparent or otherwise in the impugned revisional order of the ASJ. Thus, the grounds as set out by the petitioner do not call for invoking the jurisdiction of this court under Section 482 Cr PC. On the other hand, vide the instant petition, the petitioner seeks impugning of the order of M.M. dated 14.09.2009 against which the revision has already been dismissed by the impugned order. In fact, the present petition is nothing but a second revision under the guise of Section 482 Cr PC assailing the order dated 14.09.2009 of the M.M.

18. Having regard to the entire factual matrix as noted above, the petition is nothing but an abuse of process of law by the petitioner. In view of all this, I am constrained to dismiss the petition with costs of Rs.25,000/-.

19. Petition stands disposed of.