

KAILASH VERMA

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v.

PUNJAB STATE CIVIL SUPPLIES CORPORATION AND ANR.

JANUARY 18, 2005

[K.G. BALAKRISHNAN AND B.N. SRIKRISHNA, JJ.]

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*Penal Code, 1860; Ss. 406 and 428/Code of Criminal Procedure, 1973; Ss. 397(1) and (3) and 482:*

*Second Revision Petition—Maintainability of—Held: Since revision is prohibited under Section 397(3) of the Code, the complainant could not be allowed to take recourse to revision before High Court under Section 397(1) of the Code—However, High Court could entertain such petition under Section 482 of the Code to prevent miscarriage of justice/abuse of the process of the Court—Since no such grounds exist, High Court was not justified in exercising its inherent powers in entertaining second revision petition.*

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**Appellant and another person were partners in a firm, a rice mill. There was an agreement between the firm and the respondent—Corporation for dehusking paddy. The Corporation complained that several tons of paddy/rice was outstanding against the firm in breach of the contract. A case was registered against the firm. The appellant filed a petition for discharge on the ground that he was a sleeping partner in the firm. He was discharged by the Trial Court. Respondent—Corporation challenged the order by filing a Revision Petition before the Court of Sessions and it dismissed the same on the ground that the Corporation had already initiated arbitration proceedings and filed a complaint against the firm. Aggrieved, the Corporation filed another Revision Petition before the High Court. Single Judge of the High Court set aside the order of the Trial Court as affirmed by the Court of Sessions. Hence the present appeal.**

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**It was contended by the appellant that in view of Section 397(3) Cr.P.C., the Second Revision Petition filed by the respondent—Corporation before the High Court was not maintainable.**

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**Respondent—Corporation submitted that the High Court, in exercise of its inherent jurisdiction under Section 482 Cr.P.C., could entertain second Revision Petition if there was miscarriage of justice.**

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**A Allowing the appeals, the Court**

**HELD: 1.1. Ordinarily, when a Revision has been barred under Section 397(3) Cr.P.C., the complainant or the accused cannot be allowed to take recourse to Revision before the High Court under Section 397(1) Cr.P.C. as it is prohibited under Section 397(3) Cr.P.C. However, High Court can entertain a petition under Section 482 Cr.P.C. when there is serious miscarriage of justice and abuse of process of the Court or when mandatory provisions of law were not complied with and when the High Court is of the view that the inherent jurisdiction is to be exercised to correct the mistake committed by the Revisional Court. [531-C-D]**

**C** *State through Special Cell, New Delhi v. Navjot Sandhu @ Afshan Guru and Ors.*, [2003] 6 SCC 641, relied on.

*Krishnan and Anr. v. Krishnaveni and Anr.*, [1997] 4 SCC 241; *V.C. Shukla v. State through CBI*, [1980] Supp. SCC 92 and *Rajathi v. C. Ganesan*, [1999] 6 SCC 326, referred to.

**D** **1.2. In the instant case, the appellant was discharged by the Chief Judicial Magistrate and the Revisional Court confirmed that order after elaborately considering the facts and circumstances of the case. The respondent-Corporation had also initiated steps for arbitration proceedings on the basis of the arbitration clause in the agreement. Thus, the High Court was not justified in exercising its inherent power under Section 482 Cr.P.C. in this case. It cannot be either said that there was miscarriage of justice warranting interference by the High Court. [531-H; 532-A-B-C]**

**F** *Bal Kishan Das v. P.C. Nayar*, [1991] Supp. 2 SCC 412, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 117-118 of 2005.

**G** From the Judgment and Order dated 29.8.2002 of the Punjab High Court and Haryana High Court in Crl. Misc. Nos. 50933-M and 530934-M of 2001.

Nidhesh Gupta, Naveen Singh and Ms. S Janani for the Appellant.

Mrs. Jayashreewad, Ashish Wad, Mrs. Yugandhara Jha, Anshu Bhanot

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for M/s. J.S. Wad & Co., for the Respondents.

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The Judgment of the Court was delivered by

**K.G. BALAKRISHNAN, J.** Leave granted.

These appeals are preferred against the judgment of the learned Single Judge of the High Court of Punjab & Haryana. Brief facts of the case are thus.

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A crime was registered against the appellant alleging that he committed the offences punishable under Section 406 and 428 of the Indian Penal Code. The appellant was a partner in a firm consisting of two partners, and the other partner, Zahir Ahmad, was the second accused before the Chief Judicial Magistrate. The appellant and Zahir Ahmad were running a rice mill by the name, Jagdamba Rice Mills. Under the policy of the State Government, the Civil Supplies Corporation entrusted the paddy to M/s Jagdamba Rice Mills for de-husking. There was an agreement between the firm and the corporation in terms whereof the firm was to supply advance rice to the corporation. As per the complaint of the Civil Supplies Corporation, the Jagdamba Rice Mill failed to supply the advance paddy due to the corporation. According to the corporation, about 1440 tons of rice was outstanding against the firm. Based on the complaint of the corporation, a case was registered and a report was filed before the Additional Chief Judicial Magistrate, Sangrur. The appellant, Kailash Verma filed an application for discharge alleging that he was only a sleeping partner and the entire business of the firm was being conducted by Zahir Ahmad, the co-accused. The appellant was discharged by the Chief Judicial Magistrate. The Chief Judicial Magistrate was of the view that the allegation contained in the complaint was of civil nature and no criminal case was made out. The Chief Judicial Magistrate also observed that there was no *prima facie* case to show that the paddy was supplied to the accused and that there was shortage of rice supplied to the corporation. The order of the Chief Judicial Magistrate was challenged by the corporation in a Revision filed before the Court of Sessions Judge, Sangrur. The Sessions Judge, after elaborately considering the question raised, upheld the order passed by the Chief Judicial Magistrate. The Sessions Judge noticed the fact that the corporation had initiated arbitration proceedings against the Jagdamba Rice Mill and had also filed a complaint under Section 138 of the Negotiable Instruments Act and that the filing of the present complaint alleging commission of offences punishable under Section 406 and 428 IPC was an abuse of the process of court. The corporation filed a further Revision before

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A the High Court and by the impugned order the learned Single Judge set aside the order passed by the Additional Chief Judicial Magistrate, Sangrur, as well as the order passed by the Sessions Judge. This order is challenged before us.

B We heard the counsel for the appellant, as also the counsel for the respondents. The counsel for the appellant contended that the respondent-corporation had already filed a Revision against the order of discharge passed by the Chief Judicial Magistrate and in view of Section 397 (3) of the Criminal Procedure Code, the second Revision before the High Court was not maintainable and that the High Court seriously erred in entertaining the same. The counsel for the respondent-corporation, on the other hand, contended  
C that the High Court exercised the power under Section 482 Criminal Procedure Code and that the High Court had inherent jurisdiction to set aside the order passed by the Sessions Judge in Revision as there was serious miscarriage of justice. The counsel for the respondents submitted that the power under Section 482 of the Criminal Procedure Code could be exercised by the High Court even in cases where the Revision was not maintainable under Section 397(3)  
D of that Code.

E In *Krishnan and Anr. v. Krishnaveni and Anr.*, [1997] 4 SCC 241, this question came up for consideration. That was a case where the complaint was registered under Sections 420, 406 IPC. After inquiry, the police filed a report stating that the case was essentially of a civil nature and no offence  
F was made out. The complainant brought the matter to the Superintendent of Police. As per the directions of the Superintendent of Police, the case was investigated by the Crime Branch and a fresh report was filed under Section 173 IPC. On receipt of the report, the Magistrate took cognizance of the offences under Sections 420 and 406 IPC. Thereupon, the appellant/accused  
G filed an application for discharge and the accused was discharged by the Magistrate. The complainant filed a revision before the Sessions Court and the revision was dismissed. On further revision by the complainant, the High Court set aside the order of the Magistrate and directed the trial of the criminal case on merits. This was challenged on the ground that the second revision was not maintainable. A Bench consisting of three Judges of this  
Court held :

H “.....though the revision before the High Court under sub-section (1) of Section 397 is prohibited sub-section 3 thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High

Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below.” A

Reliance was placed in that case on the decision in *V.C. Shukla v. State through CBI*, [1980] Supp. SCC 92.

It may also be noticed that this Court in *Rajathi v. C. Ganesan*, [1999] 6 SCC 326 said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second Revision. Ordinarily, when a Revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to Revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when the High Court feel that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court. B C D

In *State through Special Cell, New Delhi v. Navjot Sandhu @ Afshan Guru and Ors.*, [2003] 6 SCC 641, the power of the High Court under Section 482 came up for consideration and it was held as under : E

“Section 482 of the Criminal Procedure Code starts with the words “Nothing in this Code.” Thus, the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However, as is set out in *Satya Narayan Sharma’s* case [2001] 8 SCC 607, this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent powers. The inherent power is to be used only in cases where there is an abuse of the process of the court or where interference is absolutely necessary for securing the ends of justice.” F G

In the present case, the appellant was discharged by the Chief Judicial Magistrate and the revisional court confirmed that order after elaborately H

A considering the facts and circumstances of the case. It may also be noted that in *Bal Kishan Das v. P.C. Nayar*, [1991] Supp. 2 SCC 412, under similar facts and circumstances, this Court held that no offences were made out under Section 406 IPC as it was a matter of civil nature. The respondent-corporation had also initiated steps for arbitration proceedings on the basis of the arbitration clause in the agreement. In our view, the High Court was not justified in exercising its inherent power under Section 482 of the Criminal Procedure Code in this case. It cannot be either said that there was miscarriage of justice warranting interference by the High Court. Hence, we allow these appeals and set aside the judgment of the High Court. The order of discharge passed by the learned Magistrate in favour of the appellant is affirmed.

C S.K.S.

Appeals allowed.