IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR

ORDER

1.SB Cr Misc Petition No. 1668/2007
Jai Kishan Khandelwal & anr Vs State of Rajasthan & anr

2.SB Cr Misc Petition No. 1669/2007
Dhanesh Chand Sharma Vs The State of Rajasthan & anr

3.SB Cr Misc Petition No. 2080/2007
Lokesh Vs The State of Rajasthan & anr

Date of Order : January 31, 2011

HON'BLE MR JUSTICE MN BHANDARI

Mr AK Gupta
Mr Biri Singh
Mr JS Tanwar – for petitioners
Mr Banwari Lal Agrawal, complainant, in person
Mr Laxman Meena, PP – for the State

BY THE COURT:

All the three misc petitions arise out of the order dated 10.9.2007 passed by Special Judge, Dacoity Affected Area, Bharatpur. The order dated 19.4.2007 passed by Judicial Magistrate No.2, Bharatpur taking cognizance for offence under sections 302 and 120-B IPC against petitioners was upheld vide the order dated 10.9.2007.

Brief facts of the case are that an alleged accident took place in the night of 13/14.12.1996 wherein one Bharat Bhushan was found injured on the road. He was taken to the hospital initially at Bharatpur and thereafter to Jaipur. He died on 18.12.1996.

Complainant- Banwari Lal lodged an FIR stating therein that on 12.12.1996 his son Bharat Bhushan (deceased) came to Bharatpur from Mathura to participate in a marriage. On 13.12.1996, at around 1.00 PM, he was to proceed to Gwalior. At that time, one Lokesh son of Om Prakash came on the scooter to drop him at the bus stop. Accordingly, Bharat Bhushan went with him. In the mid night of 13/14.12.1996 at around 1.00 AM Lokesh's mother and his brother came to the complainant house informing that Lokesh and Bharat Bhushan met with an accident near Chiksana. Bharat Bhushan was then taken to the hospital where he died on 18.12.1996. The FIR was lodged showing it to be death under suspicious conditions and as a outcome of conspiracy. FIR No.243/1996 was lodged in Police Station Chiksana.

After investigation in FIR No.243/1996, charge sheet was filed for offence under sections 304-A and 279 IPC along with section 185 of Motor Vehicle Act. The trial court thereafter

read the substance against Lokesh under section 279 and 304-A IPC.

A separate FIR bearing No.636/1996 was lodged by Police Station Mathura Gate, Bharatpur at the instance of one Prashant Gupta son of Jai Kishan Khandelwal on 14.12.1996 at 9.30 AM, alleging theft of scooter bearing No. RJ 05 M 9698. After investigation therein, charge sheet was filed against Lokesh for offence under section 379 IPC.

Complainant Banwari Lal thereafter submitted complaint on 27.3.1998. Therein, allegations were made for commission of offence under sections 109, 120, 214 and 302 IPC against Lokesh and eleven others. Learned Magistrate sent for the report under section 156(3) CrPC to the Police Station – Chiksana. Without registering the FIR, investigating agency sent the complaint back to the court mentioning that for the same incident, FIR No.243/1996 had already been registered.

The complainant, thereafter, lodged another complaint on 2.12.1998 against police personnel for offence under sections 120-B, 201, 204, 217 and 129 IPC. The impugned order has been passed pursuant to both the complaints lodged by the complainant.

Learned counsel for petitioners submit that it is a case where pursuant to the FIR submitted by the complainant, investigation was made followed by submission of charge sheet for offence under sections 304-A, 279 IPC and section 185 of Motor Vehicle Act. In regard to the same incident, second FIR is not permissible. However, ignoring the aforesaid, order of cognizance was passed vide impugned order. This is more so when in the earlier FIR, cognizance and subsequent orders were passed after hearing complainant. It was purely a case of accident and no material exists for taking cognizance for offence under section 302 and other provisions of IPC. The order of cognizance is based on presumption, whereas, it is settled law that cognizance order should not be passed on presumptions. The court below has thus reviewed its order while passing the impugned cognizance order. When pursuant to the FIR cognizance was taken for the offence under sections 304-A and 279 IPC and section 185 of Motor Vehicle Act, subsequent cognizance order for offence under section 302, 120-B IPC is nothing but reviewing its own order whereas no such jurisdiction exists with the court below. It is a case where for same incidence now two stories have taken shape by two different cognizance orders. The aforesaid is not legally permissible. The complainant, in fact, could have resorted to the remedy at the stage when police had refused to register the case pursuant to the provisions of section 156(3) CrPC. An order of

cognizance passed under these circumstances, is not tenable in the eye of law.

Learned counsel appearing in Dhanesh Sharma's case additionally submitted that he was investigating officer in the subsequent FIR No. 636/1996 and had submitted charge sheet accordingly but cognizance order has been taken presuming him to be investigating officer in FIR No.243/1996. Petitioner Dhanesh Sharma has been called by issuing warrant of arrest whereas cognizance is for bailable offence. Thus, there exists additional reason to set aside the order.

Learned counsel for petitioners further submit that pursuant to FIR No. 243/1996 an order was passed on 6.2.1999 for recording of the statements under sections 200 and 202 CrPC. This was pursuant to protest petition submitted. The protest petition was rejected in the aforesaid case some time in the year 2001 and, accordingly, substance were read over to the accused for offence under sections 304 A and 279 IPC. The court thereafter dismissed even application moved under section 319 CrPC. Apart from the aforesaid, complainant had even preferred writ petition bearing No.6063/1997 which was then dismissed on 10.3.1998. It was asserted that aforesaid facts have not been narrated in this petition as it came to their knowledge later on.

The complainant, present in person, on the other hand, raised objection regarding maintainability of petitions under section 482 CrPC. Against the order of cognizance, a revision petition was preferred by the petitioner by invoking jurisdiction of the court under section 397 CrPC. Challenge to the order passed in revision petition is nothing but amount to second revision petition. As per provisions of section 397 CrPC, second revision petition is not maintainable. The prayer is, accordingly, to dismiss the present petitions after holding them to be not maintainable.

Coming to the facts, it is submitted by the complainant that a case for offence under section 302 IPC has been converted for offence under sections 304-A and 279 IPC with active connivance of the police officers. This has been looked into by the court below minutely and, based on facts, order of cognizance has been passed. Petitioners have erroneously considered it to be an order of cognizance based on presumptions.

It is submitted that on 13.12.1996 deceased Bharat Bhushan left his home at around 1.00 PM with accused Lokesh. At around 12.31 AM of 13/14.12.1996, Lokesh's mother and brother came reporting a case of accident of Lokesh and Bharat Bhushan at village Chiksana, which is little away from Bharatpur. In the

accident, though Lokesh allegedly driving the scooter sustained no injury in view of evidence available, whereas, deceased Bharat Bhushan received injuries by blunt object in view of statement of Dr BL Meena. In his statement, he ruled out the case of accident for the reasons given. Interestingly, another FIR bearing No.636/1996 at Police Station – Mathura Gate, Bharatpur was lodged for theft of same scooter. It was at the instance of accused Prashant Khandelwal alleging theft of scooter at 1.00 AM in the night of 13/14.12.1996. During investigation, his father stated that Prashant Khandelwal returned from hospital at around 10 PM on 13.12.1996, after visiting some one in the hospital and parked his scooter thereupon. It was stolen after parking the same at around 1.00 AM of night of 13/14.12.1996. The allegation of theft of scooter was made on accused Lokesh herein, who is none else but his neighbour only. It is a fact that as per statement of Veerpal and also bus conductor Kshetrapal Singh, Lokesh and Bharat Bhushan were seen going towards Chiksana at about 8.45 PM on 13.12.1996 and, as per evidence, accident took place around 9.00 PM on 13.12.1996 thus lodging of FIR for theft was nothing but to over come with the conspiracy of murder of Bharat Bhushan. The theft case against Lokesh was tried and decided by the trial court vide its order dated 12.7.2010 acquitting Lokesh. Literally, the theft case was found to be false. This itself is sufficient to show that a false story of accident was cooked by the respondent to

convert a case for offence under section 302 IPC to section 304-A IPC.

It is submitted that deceased Bharat Bhushan had love affairs with Meenakshi, daughter of petitioner Jai Kishan Khandelwal and sister of Prashant Khandelwal. Since deceased Bharat Bhushan was adamant to marry with Meenakshi, complainant received threatening of dire consequences. It is only to get rid of Bharat Bhushan that he was murdered and the matter was covered up showing it to be a case of accident.

The evidence so discussed by the court below, before taking cognizance, clearly shows that Bharat Bhushan was given head injury by blunt object and thereupon placed on the road in an unusual manner to create a story of accident with motorcycle. Other story came up regarding accident with jeep but in both the cases driver of the scooter Lokesh did not sustain any injury. Story of treatment taken by him was found to be false in view of the hospital record and further more the statement of bus conductor who had seen him moving towards Agra on the next day morning itself.

The court minutely examined the evidence and taking it to be a very unusual case wherein alleged head-in-collusion

accident, pillion rider sustained serious injuries, whereas, the driver of the scooter sustained no injury at all. The trial court also looked into the fact that some witnesses namely Man Singh and Veerpal given contradictory statements during course of investigation and the statements subsequently recorded. This is apart from the unusual statement of Janki Prasad, who said to be at the spot but did nothing even after seeing body lying on the road. Based on evidence, strong case was made our for taking cognizance for offence under sections 302 and other provisions of IPC. Since factual aspects have been considered properly by the court below, this court may not interfere therein while exercising jurisdiction under section 482 CrPC.

The complainant further submits that it is not a case for registration of two FIRs for the same incidence, rather while lodging first FIR, it was clearly stated that Bharat Bhushan died under suspicious conditions, that too, as an outcome of a conspiracy. The investigation was made by the police in collusion with the accused thus charge sheet for offence under sections 304-A and 279 IPC was filed. Petitioner, in the meanwhile, filed a complaint and not an FIR. It is not correct that petitioner's protest petition or any application was dismissed after considering the merit.

In fact, role of the investigating agency is quite suspicious, rather the murder of Bharat Bhushan seems to have been caused in active connivance with them. The aforesaid is reflected from the fact that despite an order under section 156(3) CrPC, police did not register the FIR, whereas, it is not optional for them.

Looking to all these aspects and considering objections, cognizance order was passed on the complaint made by the petitioner and the order of cognizance was then affirmed in the revision petition. The court, while passing the order of cognizance, has not reviewed its earlier order of cognizance but, based on the statements recorded on a complaint, the court rightly came to the conclusion to take cognizance for offence under section 302 and other provisions of the IPC. In any case, there would be no miscarriage of justice because trial in both the cases can go together which will avoid multiplicity of litigation and delay therein.

I have considered rival submissions of learned counsel for petitioners, complainant and learned PP and scanned the matter carefully.

I have minutely looked into the record of the case and

find that any comment by me may cause prejudice to petitioners in trial.

I could have discussed the material in detail to see as to whether it is a case designed to make it for offence under sections 304-A and 279 IPC and section 185 of the Motor Vehicle Act though it is a case for offence under sections 302, 109, 120-B and 214 IPC etc. The order of cognizance so as the order passed by the revisional court deals with the factual aspect of the matter and I do not find any error therein.

Arguments of learned counsel for petitioners is to show that order of cognizance has been passed on presumptions, whereas, I find that order of cognizance is not based on presumptions but on material available on record before the court below. Under these circumstances, interference of this court, while exercising jurisdiction under section 482 CrPC is not called for.

The facts have come that Lokesh and deceased Bharat Bhushan were seen on the scooter at around 8.45 PM and accident is reported between 9.00 PM to 9.30 PM on 13.12.1996, in view of the statements of Man Singh and Veerpal apart from the statement of bus conductor Kshetrapal who had seen Lokesh and deceased Bharat Bhushan going towards Chiksana on the same

scooter. As per statement of doctor, the type of injuries sustained by deceased Bharat Bhushan cannot be as an outcome of accident apart from the fact that if it was an accident by the motorcycle or, as per second story, by a jeep. A head-in-collusion accident cannot result such injuries to a pillion rider leaving driver to be absolutely safe i.e. he has not even sustained even scratches on his body. Over and above, statement of Janki Prasad who stated to be on the spot and did nothing to even help a person lying on the road after so called accident. The motorcycle was not sent for mechanical examination to find out as to whether it met with an accident and, over and above, registration of FIR for theft of same scooter, wherein, evidence came to the effect that accused Prashant Khandelwal returned back to his residence at around 10.00 PM on 13.12.1996 and thereafter parked the scooter which was stolen at around 1.00 AM of 13/14.12.1996. Police, in its investigation, found it to be a case of theft in FIR No.636/1996 ignoring facts concerned to alleged accident. Therefore only, trial of theft case resulted in acquittal of Lokesh. The theft case was not found to be made out by the trial court. Apart from all, it is also coming out that deceased Bharat Bhushan had love affairs with accused petitioner Jai Kishan Khandelwal's daughter hence, even material has come to show intention for causing incident. This is moreso when Lokesh is none else but known to the accused being neighbour and he had taken scooter with their

knowledge yet a theft case was lodged at the instance of accused herein. It is known that one cannot hide truth by creating false evidence.

I am not giving my conclusions but given few facts relevant to the case and, if elaborated then there exist volumes to show as to whether investigation was properly conducted or not and further as to whether it is a simple case of offence under sections 304-A and 279 IPC and section 185 of the Motor Vehicle Act. The trial court has considered each material available on record, therefore, I am of the firm view that finding recorded therein is not based on presumptions.

Now question comes as to whether two FIRs can be registered for one and the same incident.

Learned counsel for petitioners referred the judgment of the Apex Court in the case of *TT Antony Versus State of Kerala & ors ([2001] 6 SCC 181),* wherein, aforesaid issue came up for consideration. It was held therein that after registration of first information report for commissioning of cognizable offence, requirement of section 154 CrPC is satisfied. In those circumstances, there cannot be a second FIR with fresh investigation as a consequence thereof for the same cognizable

offence or same incident giving rise to one or more cognizable offence. It was a case where police opened fire at two places and, accordingly, case was registered by the Assistant Superintendent of Police bearing No.353/1994. The Superintendent of Police simultaneously registered FIR No.354/1994. Since it was in regard to the firing at two places, on registration of FIR, a commission of enquiry was also appointed. The report of the commission was thereafter received and, accordingly, Director General of Police issued orders to the Inspector General of Police to register a case immediately for the same incident. Accordingly, question was framed regarding fresh registration of case FIR No.263/1997. Hon'ble Apex Court, after considering the facts of that case, held that two FIRs for the same incident cannot be lodged.

Same view was taken in the case of *Vipin alias Golu Vs State of Rajasthan through PP (2010 [1] CrLR (Raj) 840)*. Reference of the judgment in the case of *Sardul Singh Caveeshar Vs State of Bombay (AIR 1957 SC 747)* has also been given apart from the judgment in the case of *State of Haryana Versus Bhajan Lal & ors (AIR 1992 SC 604).*

If the judgments in the case of TT Antony (supra) and Vipin @ Golu (supra) are looked into it, shows registration of two FIRs, in the present matter, after registration of first FIR, the

complaint was made and therein even after an order under section 156(3) CrPC, FIR was not registered by the police. The court proceeded with the matter and recorded statements and, thereupon, order of cognizance was passed. Thus, it is not a case where two FIRs have been registered though it is true that out of one incident FIR was registered bearing No. 243/1996 and, now, there exists cognizance order on complaint but the facts of this case are quite alarming and, during course of arguments, learned counsel for petitioners admitted that after evidence in the first case, an application under section 319 CrPC can be maintained by the complainant and, thereupon, court can take cognizance for offence under section 302 IPC and pass appropriate order. I have considered aforesaid but it will then delay the trial, as the matter is already old by 14 years. Looking to the peculiar facts of this case, aforesaid is not found to be proper by me more so when while exercising jurisdiction under section 482 CrPC, I cannot casually interfere in the order as literally it being a second revision thus barred by the provisions of CrPC.

Learned counsel for the petitioners have referred judgments of Hon'ble Supreme Court to show that even after an order in the revision petition, jurisdiction under section 482 CrPC is not barred. Reference of judgment in the case of *Ganesh Narayan Hegde vs S Bangarappa & ors (1995 CrLJ 2935)* and

the case of *Dhariwal Tobacco Products Ltd & ors vs State of Maharashtra & anr (AIR 2009 SC 1032)* has been made.

I have considered the facts of that also. It would be relevant to quote para 11 of the judgment in the case of Ganesh Narayan Hegde (supra) thus -

> "11.While it is true that availing of the remedy of the revision to the Sessions Judge under Section 399 does not bar a person from invoking the power of the High Court under Section 482, it is equally true that the High Court should not act as a second Revisional Court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of Court or that the interests of justice otherwise call for quashing of the charges. A few decisions of this Court may usefully be referred at this stage. In Mrs. Dhanalakshmi v. R.Prasanna Kumar & Ors. (AIR 1990 S.C.494) this Court stated in a case of similar nature:
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> "Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash 131 the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end

> in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/ offences are disclosed, and there is no material to show that the complaint is mala fide frivolous or vexatious, in that event there would be no justification for interference by the High Court. The High Court without proper application of the principles that have been laid down by this Court in Sharda Prasad Sinha v. State of Bihar, (1977) 2 SCR 357 : (AIR 1977 SC 1754), Trilok Singh v. Satya Deo Tripathi, 1980 Cri LJ 822: AIR 1979 SC 850 and Municipal Corpn. of Delhi v. Purshotam Dass Jhunjunwala, (1983) 1 SCR 895: (AIR 1983 SC 158) proceeded to analyse the case of the complainant in the light of all the probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondents. The High Court was clearly in error in assessing the material before it and concluding that the complaint cannot be proceeded with. We find there are specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of. It is for the complainant to substantiate the allegations by evidence at a later stage. In the absence of circumstances to hold prima facie that the complaint is frivolous when the complaint does disclose the commission of an offence there is no justification for the High Court to interfere."

Perusal of the aforesaid, no doubt, shows that revision petition under section 397 CrPC does not bar from invoking the powers of the High Court under section 482 CrPC. The Hon'ble Supreme Court however held that High Court should not act as a second revisional court in the garb of exercising inherent powers and such exercise should be undertaken only when it is found that Sessions Judge has declined to exercise his revisional powers.

Same is the position in the case of *Dhariwal Tobacco Products Ltd & ors (supra)*. Therein, dealing with the issue in para 8 following has been held thus -

> "8. Indisputably issuance of summons not an interlocutory order within the meaning of Section 397 of the Code. This Court in a large umber of decisions beginning from R.P.Kapur v. State of Punjab MANU/SC/0086/1960 : 1960CriLJ1239 to Som Mittal v. Govt. of Karnataka MANU/SC/0885/2008 : 2008CriLJ1927 had laid down the criterion for entertaining an application under Section 482. Only because a revision petition is maintainable, the same by itself, in our considered opinion, would not constitute a bar for entertaining an application under Section 482 of the Code.
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> Even where a revision application is barred, as for example the remedy by way of Section 115 of the Code of Civil Procedure, 1908 this Court has held that the remedies under Articles 226/227 of the Constitution of India would be available. (See Surya Dev Rai v. Ram Chander Rai and Ors. MANU/SC/0559/2003 : AIR2003SC3044).
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> Even in cases where a second revision before the High Court after dismissal of the first one by the Court of Sessions is barred under Section 397(2) of the Code, the inherent power of the Court has been held to be available."

Perusal of the aforesaid shows that a second revision petition is barred pursuant to the provisions of section 397 CrPC though inherent powers of this court are held to be available. However, on the other hand, complainant has referred judgment of the Hon'ble Supreme Court on the same issue. In the case of

*"Dharampal and ors versus Ramshri (Smt) & ors ([1993] 1 SCC 435)* it was held that second revision petition after dismissal of the first one by Sessions Court cannot be entertained by the High Court in exercise of inherent powers. Para 6 of the aforesaid judgment is quoted thus -

> "6. There is no doubt that the learned Magistrate had committed an error in passing the subsequent orders of attachment when the first attachment was never finally vacated and had revived the moment the revision application filed against it was dismissed by the learned Sessions Judge. It appears that none of the parties including the Sessions Judge realised this error on the part of the Magistrate. The learned Sessions Judge had also committed a patent mistake in entertaining revision application against the fresh orders of attachment and granting interim stays when he had dismissed revision application against the order of attachment earlier. Let that be as it is. The question that falls for our consideration now is whether the High Court could have utilised the powers under Section 482 of the Code and entertained a second revision application at the instance of the 1st respondent. Admittedly the 1st respondent had preferred a Criminal Application being Cr. R.No. 180/78 to the Sessions Court against the order passed by the Magistrate on 17th October, 1978 withdrawing the attachment. The Sessions Judge had dismissed the said application on 14th May, 1979. Section 397 (3) bars a second revision application by the same party. <u>It is now well settled that the inherent powers under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Hence the High Court had clearly erred in entertaining the second revision at the instance of 1st respondent. On this short ground itself, the impugned order of the High Court can be set aside."</u>
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> (emphasis supplied)

Perusal of the aforesaid clearly shows that inherent

powers under section 482 CrPC cannot be exercised when it is specifically barred by the Code. Same view was expressed by the Hon'ble Supreme Court in the case of *"Deepti alias Arati Rai Vs Akhil Rai & others" ([1995] 5 SCC 751)*. Therein, dealing with the issue in para 4, following was held thus -

> "It was contended by the learned counsel for the appellant-wife that the finding recorded by the High Court that there is no allegation of beating, harassment and demand against respondents 2 and 3 is because of misreading the complaint and the other material on record. In view of this contention, we have gone through the complaint filed by the appellant and also the statements of Suresh Chandra Verma, father of the appellant, Devesh, elder brother of the appellant and Ramesh, cousin of the appellant. In her complaint the appellant has clearly stated that three or four months after the marriage her husband, her father-in- law and mother-in-law started harassing her as VCR was not given to her in dowry. She has further stated that her father-in-law and mother-in-law used to demand Rs.6500/- in cash. She has also stated that she was beaten by her husband on 27.7.90, 4.10.90, 12.1.91, 28.1.91, 31.1.91, 12.2.91 and 8.3.92 and that her mother-in-law and father-in-law used to join her husband in beating her and abusing her relatives. She has also stated that her mother-in-law, father-in-law and husband had not given food to her on 24/25th April, 1992. Devesh, in his statement, has stated that respondent no.1 used to beat his sister after taking liquor and her mother-in-law and father-in-law used to harass her. Ramesh has also stated in his statement that he was informed by the appellant that she was harassed by her husband and parents- in-law. He has further stated that she was asked to bring money for VCR by her husband and by the parents-in-law. From what we have pointed out, it becomes apparent that there was sufficient material for the learned Magistrate for framing a charge under section 498(A) even against respondents no.2 and 3. It further appears to us that the learned Government Advocate who appeared on behalf

> of the State before the High Court made the concession without going through the record. We are constrained to observe that the learned Government Advocate should have conducted the case in a more responsible manner considering the nature of the case. The High Court also should have taken care to verify the record before accepting the concession made by the learned Government Advocate. It should have also applied its mind to the aspect that second revision application, after dismissal of the first one by Sessions Court is not maintainable and that inherent power under section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. As we find that the order passed by the High Court is not legal and just it will have to be set aside. We accordingly allow this appeal, set aside the impugned judgment and order passed by the High Court and direct the Judicial Magistrate Ist Class, Bilaspur to proceed further with Criminal Case No.69 of 1993."

I find that in the case of *Dhariwal Tobacco Products (supra)* earlier judgments were not brought to the notice of Hon'ble Apex Court wherein petition under section 482 CrPC held not maintainable treating it to be second revision petition after dismissal of the revision petition under section 399 CrPC by the Sessions Judge. A specific reference of section 397 CrPC has been made therein. Same is the position of other judgments cited by the learned counsel for petitioners. The outcome of the discussion made above is that misc petition preferred under section 482 CrPC is nothing but a second revision petition thus not maintainable, more specifically, in the facts of this case. Provisions of section 397 CrPC are quoted for ready reference thus -

“ **397. Calling for records to exercise powers of revision.**

(1) The High Court or any Sessions Judge may call for and examine the 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 proceedings of such inferior court, and may, when calling for such record, direct that the execution of' any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation. All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 398.

(2) The powers of revision conferred by sub-section (I) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an 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 of the of them.”

The discussion on facts may cause prejudice to the petitioners. However, the way matter has been investigated and given shape is shocking. Thus, in the peculiar facts and circumstances of this case, interference in the order under challenge may cause failure of justice more so when I do not find abuse of process of law herein. According to me, present misc petitions are not even maintainable.

Learned counsel for petitioners have given certain more facts during course of arguments though are not part of pleadings. There is a reference of filing of the writ petitions by the complainant. The order passed in that writ petition is on record thus looked into by me. In the SB Civil Writ Petition No. 6063/1997 this court refused to give direction to the investigating agency to file charge sheet for offence under section 302 IPC on the ground that such a direction cannot be given by the court but liberty was given to the complainant herein to argue the matter for the aforesaid and with a further direction to the investigating agency to complete the investigation within a period of two months. The writ petition was disposed of and was not dismissed as alleged.

In other writ petition bearing No.1872/1999 filed by the complainant herein, the court finding that charge sheet has already been filed against the accused person, petitioner was left free to approach the concerned court in accordance with law. Hence, in none of the cases, there exists dismissal of the writ petition by discussing the merit or facts of the case. Thus, aforesaid cannot be taken adverse to the complainant.

Further fact narrated by learned counsel for petitioners

is regarding protest petition filed by the complainant pursuant to FIR No.243/1996 and rejection of the same. However, petitioners have not narrated the fact that aforesaid was after taking note of filing of private complaint where matter is to be threshold. A reference of the decision on the application under section 319 CrPC has also been made though order has not been placed before me but it is been admitted that complainant has been given liberty to file such an application at an proper stage. Thus, none of the orders referred to above contain adverse finding.

The facts aforesaid have been discussed as it was argued orally though not part of the pleadings.

Substance of the discussion made above is that in the facts and circumstances of the case, petition under section 482 CrPC is not maintainable as it is literally a second revision after dismissal of first one by the Sessions court. The provisions of section 397 (3) CrPC bars second revision petition so as the judgments of the Hon'ble Supreme Court wherein it has been held that inherent powers cannot be exercised if there is specific bar. According to me, there is no abuse of process of law in the present matter. Hence, I am not inclined to exercise inherent powers under section 482 CrPC.

So far as case of Dhanesh Sharma (SB Cr Misc Petition No.1669/2007) is concerned, warrant of arrest has already been converted in summons thus the main grievance raised by him no more survives. So far as the fact regarding investigation by him in FIR No. 636/1996 is concerned, even investigation therein shows in what manner it was conducted. Thus, cognizance on a complaint against him cannot be said to be illegal.

During the course of arguments, none of the counsel pressed the applications earlier filed in the petitions and were to be considered at the time of hearing. All the applications are dismissed accordingly.

Since matter is committed for trial, pending case pursuant to FIR No. 243/1996 can also be tried by the same court.

In view of the discussion made above, I do not find any merit in all the three misc petitions and, accordingly, same are dismissed.

(MN Bhandari) J

bnsharma