Delhi High Court
Anil Kumar And Ors. vs Moti Ram And Ors. on 20 November, 1992
Equivalent citations: 1993 (2) Crimes 43, 49 (1993) DLT 267, 1993 (25) DRJ 157, 1993 RLR 76
Author: U Mehra
Bench: U Mehra
JUDGMENT Usha Mehra, J.

(1) This petition involved an important question of law regarding the inherent powers of High Court vis-a-vis the scope and ambit of the provisions contained under Sub Section 3 of Section 39, Code of Criminal Procedure. It is well settled that the inherent power of the Court can ordinarily be exercised when there is no express provision on the subject matter. Where there is an express provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers. The Supreme Court in the case of Madhu Limaye Vs. State , has laid down three principles in relation to exercise of inherent powers of the High Court: "1.That the power is not to be resorted if there is a specific provision in the Code for the redress of grievance of the aggrieved party. 2. That it should be exercised very sparingly to prevent abuse of any proceeds of any Court or otherwise to secure the ends of justice, 3.That it should not be exercised as against the express bar of law engrafted in any other provision of the Code."

(2) The Supreme Court in subsequent decisions in Raj Kapoor, Vidyacharan Shukla and Municipal Corporation .of Delhi, affirmed the ratio laid down in Madhu Limaye's case. However, in the case of Madhu Limaye, the Supreme Court was examining the impact on the inherent power on account of the bar of remedy of revision against the interlocutory order provided under Sub Section (2) of Section 397 Criminal Procedure Code . and came to the conclusion that the inherent power of the High Court cannot be taken away because of the complete bar of remedy of revision provided under Sub Section (2) of Section 397. Interlocutory orders were amenable to the provisional jurisdiction and, therefore, the inherent power of the High Court cannot be abrogated. But in that case the Supreme Court was not dealing with sub Section (3) 397. Where the remedy is not completely barred but availing of that remedy second time is prohibited.

(3) In order to determine whether this Court can entertain second revision filed by an unsuccessful revisionist, it will be worthwhile to know in brief the facts of the Case.

(4) One Mrs. Sunita Sehgal was the owner of plot bearing No. 124, Gali No. 2, Satsang Marg, Raj Garh Coloy, Krishna Nagar, Delhi. Bachan, petitioner No.2, is stated to be the tenant of Smt. Sunita Sehgal, Petitioner No.1 Anil Kumar is running business of waste paper in this premises since 1988. Bachan and Raj Rani have got a separate portion. Bachan is stated to be residing since 1985: It is the case of the petitioner that Moti Ram the respondent No. 1 is the attorney of Smt. Sunita Sehgal (5) On 28th February, 1987, the police initiated proceedings against the petitioners by filing a report before Shri S.S. Rathore, Sub Divisional Magistrate, Shahdara, regarding a dispute over the plot in question between the petitioners and the respondents. Anil Kumar and others, the petitioner asserted that they were in possession for more than 2 years while Moti Ram and others asserted that the possession of the.petitioners were illegal. Besides the dispute over hand pump and use of latrine and gate, there was apprehension of breach of peace. A Kalandra' under Section 107 and 150 of the

Code of Criminal Procedure was sent to the Special Executive Magistrate against both the parties.

(6) Mr. Sanjay P. Singh Sub Divisional Magistrate, Shahdara, on the basis of the report dated 1st March, 1987 sent by the S.H.O. Krishna Nagar, took cognizance under Section 145 Code of Criminal Procedure Code. The said order is dated 11th March, 1987. Thereafter Shri S.S. Rathore Sdm Shahdara called a detailed report regarding the property in question and also wanted to know whether there still existed any apprehension of breach of peace. This report was called vide order dated on 22nd June, 1987. Mr. R.B. Sharma, S.I. submitted his report on 28th June, 1987 intimating therein that on account of the dispute regarding possession of the property in question both the parties are aggressive against each other, and therefore, there is an apprehension of breach of peace. After receipt of this report, Mr. S.S. Rathore, Sdm Shahdara issued warrant of attachment under Section 146(1) Criminal Procedure Code . thereby attaching the property in question. The said order was passed on 3rd July, 1987.

(7) Against the orders passed by the S.D.M., the petitioners filed the revision which was listed before the Additional Sessions Judge, Shahdara as Crl. R.6/90. The learned Addl. Sessions Judge vide his order dated 20th March, 1991, found no infirmity and illegality in the order passed by the S.D.M., and therefore, dismissed the revision.

(8) It is against this order of the Additional Sessions Judge that the second revision has been filed by the petitioner in this Court.

(9) The respondent at the outset took up a legal objection that the second revision petition is not maintainable. No revision against a revision order can be filed as it is barred by the provision of Sub Section 3 of Section 397 Criminal Procedure Code . Section 397 reads as under: SECTION 397 (1) The High Court or any Sessions Judge may call for arid 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 him self 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, 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 Session Judge for the purposes of this sub-section and of Section 398(2) The powers of revision conferred by sub section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, iquiry, 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 other of them."

(10) Counsel for the petitioner contended that this Court in the case of Kuldeep Kumar Vs. Smt. Chander Kama 1984 Crl.L.J 550 took the view that the Court cannot be made the prisoners of the procedure. In that case the wife was granted permanent maintenance by the Additional District Judge under Section 25 of the Hindu Marriage Act, 1955 at the rate of Rs.200.00 per month. The wife also filed a. petition under Section 125 of the Criminal P.C. seeking maintenance. The

Metropolitan Magistrate granted maintenance at the rate of Rs. 300.00 per month. Husband feeling aggrieved filed a revision challenging the order of Magistrate on the ground that since the Court of competent civil jurisdiction has already adjudicated the matter and granted maintenance, the learned Magistrate could not grant the maintenance. The learned Additional Sessions Judge agreed with the submission of the husband and observed that since the Pennanent alimony has already been fixed by the Civil Court, the proceedings under Section 125 of the Code could not be initiated nor any maintenance could have been fixed. After having observed so, the Addl. Sessions Judge, instead of disposing of the revision, tried to resolve the matter by reducing the maintenance fixed by the Magistrate from Rs. 300.00 to Rs.200.00 per month. The husband felt aggrieved, assailed the order of Additional Sessions Judge by invoking the inherent jurisdiction of the High Court. His contention was that Addl. Sessions Judge having held that the Magistrate could not have granted maintenance to the wife as she had already been given permanent maintenance. Learned Magistrate ought to have dismissed her petition. It was in this background it was observed that Court cannot be made prisoners of then procedure and whenever the High Court cannot revise an order it is entitled to examine the same by invoking the inherent jurisdiction. But the facts of the present case are totally different, and therefore, petitioner cannot take any help from the above observations made by M.L. Jain, J. in the case of Kuldeep Kumar (supra). Counsel for the petitioner the placed reliance on an another decision of this Court in the case of Devendra Dutt and others Vs. The State and others 1990 Crl. L.J. page 177. I am afraid the case of Devendra Dutt, is also of no help to the petitioner. The Court in that case was not called upon to examine the inherent powers of the High Court vis-a-vis the bar of remedy provided under Section 397(3). In that case, the Court was concerned with the over lapping power of the Court under Section 39 and came to the conclusion that the revisional power prescribed under Section 397 cannot affect amplitude of power preserved under Section 482 Criminal Procedure Code . Petitioner could not be forced to file revision first nor the provision of Section 39 would effect the inherent powers of the High Court. But in the present case the revisionist has already exhausted the remedy provided under Section 397 of the Act by invoking the revisional power of the Sessions Judge and having become successful be is now invoking the same remedy under Section 482 Cr. P.C. before this Court. Therefore, the observations made in the case of Devendra Dutt is of no help to the petitioner.

(11) The counsel for respondent has drawn my attention to an another judgment of this Court in the case of State (Delhi Administration) Vs. Kumari Tukkanna and others 1984 Crl.L.J. 1866 where it was held that language of Section 387-(3) is clear and preemptory and it does not admit of any other interpretation. Any person aggrieved by an order of an inferior Criminal Court is given the option to approach either Sessions Judge or the High Court. Once he exercises his option, he is precluded from invoking the revisional jurisdiction of other authority.

(12) I am of the view that once a party exercises his revisional remedy he cannot invoke the inherent power of the High Court under Section 482 Criminal Procedure Code . against those orders. Inherent powers under Section 482 Criminal Procedure Code . cannot be invoked if there is specific provision in the Code for redressal of the grievance. In fact the High Court should refrain from exercising inherent power to interfere in the order passed under Section 397(1) of the Code at the behest of unsuccessful revisionist. The same cannot be made permissible either by exercising suo-motu power or by invoking inherent power under Section 482 Criminal Procedure Code .

(13) If the High Court is allowed to interfere in the revisional order passed under Section 397(1) of the Code, by an unsuccessful revisionist it would be derogatory to writ of prohibition issued by the Supreme Court, reference can be bad to the decision in Madhu Limaye's case. In fact the party which has already exhausted the remedy specifically provided by the Code, is legally disentitled to avail further remedy owing to exclusion as expressly engrafted by the Code, and attempt to encroach on the arena distinctly earmarked by the Statute. It would amount to entertaining second revision and thereby frustrating the legislative intention to secure expeditious finality. It would be violative of the norms of self restrained subverting the co-ordinate jurisdiction of the Sessions Court.

(14) In the lease of State of Orissa Vs. Ram Chander Aggarwal A.I.R. Supreme Court page 87, the Supreme Court has warned that the inherent power cannot be invoked to exercise such power which would be inconsistent with the specific provision under the Code and in the case of Smt. Saroj Devi Vs. Pyare Lal and another , it is observed that the inherent power cannot be exercised doing that which is specifically prohibited by the Code.

(15) Section 482 with its clear and preemptory language has placed the inherent power of High Court at higher pedestal than the other provisions of the Code. The intention of the legislature under Section 397(3) Cr. P.C. is definite and scheme therein is unambiguous and definite. Sub Section 3 docs not permit repetition in exercise of jurisdiction under Section 397(1). The said subsection curtails the chance of availing remedy, and therefore, an unsuccessful revisionist cannot be entertained for the second time. Sub-Section (3) aims to secure early finality.

(16) The bare reading of Sub-Section 3 would how that it does not curtail the remedy but only bars or abrogate the remedy. It curtails the remedy second time. The power of the High Court and the Court of Sessions, so far as revision is concerned, are concurrent. The revision has choice to File revision directly in the High Court or in the Sessions Court. Having veiled the remedy by filing revision before the Sessions Judge he cannot be permitted to avail second chance, the bar of Sub Section (3) will come in his way. V.R. Krishna lyer, J. in the case of Raj Kapoor Vs. State (Delhi Administration) observed that "In our constitutional order, fragrant with social,justice broader consideration of final relief must govern the juridical process save where legislature interdict plainly forbids that, course". (underlining is mine). In Raj Kapoor's case though Supreme Court was not cat tea upon to deal with Sub-Section (3), it was only dealing with the inherent power of the High Court under Section 482, particularly where the petitioner instead of invoking the revisional power under Section 39 invoked the inherent power of the High Court under Section 482, particularly where the petitioner instead of invoking the revisional power under Section 39 invoked the inherent power of the High Court. It was in this background the above observations were made which will show that the Court was not unmindful of the fact that whenever legislature interdict plainly or statute bar the availing of remedy in that case, the High Court cannot resort to its inherent powers under Section 482 Cr. P.C. to circumvent the prohibition laid down in the Code.

(17) In the present case it is an admitted' fact that the petitioner filed the revision before the Sessions Judge and having failed, he is now trying to invoke the inherent power of this Court under Section 482 Cr. P.C. and alternatively invoking its jurisdiction under Article 227 of the Constitution of India. In either case this Court cannot exercise the power because of the bar created under Sub

Section (3). What cannot be achieved by making resort to Section 482, cannot be accomplished by invoking article 227 of the Constitution of India. Article 227 vests the High Court with the power of superintendence over the Court as well as Tribunal. The Courts which are subjected to the superintendence under this Article are those which are subordinate to the High Court. The Sessions Court under Section 397 Cr. P.C. is a Court of co-ordinate and concurrent jurisdiction to the High Court. The revisional jurisdiction of the Sessions Court being concurrent with the High Court, the same cannot be subjected to superintendence of the High Court under Article 227 of the Constitution of India.

(18) The Bombay High Court in the case of Inayatullah Rizwi Vs. Rahimatullah and offers 1981 Crl. L.J. 1398 observed that:- "UNDER the present Code, full revisional powers are now conferred on the Sessions Judge and the power of the Sessions Judge and the High Court are co-extensive and concurrent and held that a Sessions Judge and the High Court being now the two parallel .forms with an option to a party to approach any of them for redress by way of revision, the inherent power cannot be resorted to interfere the orders passed under Section 397(1). Similarly, such power cannot be invoked as against order passed by the Sessions Judge it being a Court of co-ordinate jurisdiction with same power."

(19) Same view has been expressed by the Punjab and Haryana High Court in the case of Surjit Kaur and others Vs. Trilochan Singh 1988(2) Crimes page 145 where it was observed that the bar, as contained in sub-section 3 thereof operates and cannot be circumvented by resort to Section 482 of the Code. The view expressed by this Court in the case of State (Delhi Administration) Vs. Kumari Tukkanna and others 1984 Crl.L.J. 1866 is in confirmity with the law laid down by the Supreme Court, therefore, needs to be followed.

(20) In view of the law discussed above I am of the considered view that the petition is not maintainable either under Section 482 Cr. P.C. or under Article 227 'of the Constitution of India. The petitioner cannot avail remedy of revision second time. Since on this legal point, I am dismissing the petition, therefore I have not discussed the points raised on merits.