Prabhu Chawla vs State Of Rajasthan & Anr on 5 September, 2016

Equivalent citations: (2016) 3 UC 2338, AIR 2016 SUPREME COURT 4245, 2016 (16) SCC 30, AIR 2016 SC (CRIMINAL) 1324, (2016) 3 CAL LJ 129, (2016) 4 PAT LJR 174, (2016) 2 ALD(CRL) 882, (2016) 97 ALLCRIC 936, (2016) 4 RAJ LW 3381, 2016 CRILR(SC&MP) 883, (2016) 4 CRIMES 435, (2016) 167 ALLINDCAS 125 (SC), (2016) 65 OCR 538

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Bench: Abhay Manohar Sapre, Shiva Kirti Singh, J. Chelameswar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 842 OF 2016
[Arising out of S.L.P.(Crl.) No. 3314 of 2009]

Prabhu Chawla ….Appellant

Versus

State of Rajasthan & Anr. ….Respondents

W I T H

CRIMINAL APPEAL NO. 844 OF 2016
[Arising out of S.L.P.(Crl.) No. 4744 of 2009]

AND

CRIMINAL APPEAL NOS. 845-846 OF 2016
[Arising out of S.L.P.(Crl.) Nos. 1554-1555 of 2011]

J U D G M E N T

SHIVA KIRTI SINGH, J.

Leave granted.

First we take up appeals of Prabhu Chawla and Jagdish Upasane and ors. as these two criminal appeals seek to assail a common order dated 02.04.2009 whereby the High Court of Judicature for Rajasthan at Jodhpur dismissed the petitions preferred by the appellants under Section 482 of the Code of Criminal Procedure (for brevity 'Cr.P.C.'). High Court held the petitions to be not maintainable in view of judgment of Rajasthan High Court in the case of Sanjay Bhandari v. State of Rajasthan[1] (impugned in the other connected appeal) holding that availability of remedy under Section 397 Cr.P.C. would make a petition under Section 482 Cr.P.C. not maintainable. While considering all these matters at the SLP stage, on 05.07.2013, a Division Bench found the impugned order of the High Court to be against the law stated in Dhariwal Tobacco Products Ltd. and Ors. v. State of Maharashtra and another[2]. In that case the Division Bench concurred with the proposition of law that availability of alternative remedy of criminal revision under Section 397 Cr.P.C. by itself cannot be a good ground to dismiss an application under Section 482 of Cr.P.C. But it noticed that a later Division Bench judgment of this Court in the case of Mohit alias Sonu and another v. State of Uttar Pradesh and another[3] apparently held to the contrary that when an order under assail is not interlocutory in nature and is amenable to the revisional jurisdiction of the High Court then there should be a bar in invoking the inherent jurisdiction of the High Court. In view of such conflict, these cases were directed to be placed before the Hon'ble Chief Justice for reference to a larger Bench and that is how the matters are before this Bench for resolving the conflict. The facts of these appeals need not detain us because in our considered opinion the view taken by the Rajasthan High Court in the impugned order is contrary to law and therefore matters will have to be remanded back to the High Court for fresh consideration on merits within the scope of inherent powers available to the High Court under Section 482 Cr.P.C. It would suffice to note that in both these appeals, the miscellaneous petitions before the High Court arose out of an order dated 30.11.2006 passed by learned Judicial Magistrate No. 3, Jodhpur in the complaint no. 1669 of 2006, whereby it took cognizance against the appellants under Section 228A of the Indian Penal Code and summoned them through bailable warrants to face further proceedings in the case.

Mr. P.K. Goswami learned senior advocate for the appellants supported the view taken by this Court in the case Dhariwal Tobacco Products Ltd. (supra). He pointed out that in paragraph 6 of this judgment Justice S. B. Sinha took note of several earlier judgments of this Court including that in R.P. Kapur v. State of Punjab[4] and Som Mittal v. Govt. of Karnataka[5] for coming to the conclusion that "only because a revision petition is maintainable, the same by itself, ..., would not constitute a bar for entertaining an application under Section 482 of the Code." Mr. Goswami also placed strong reliance upon judgment of Krishna Iyer, J. in a Division Bench in the case of Raj Kapoor and Ors v. State and Ors[6]. Relying upon judgment of a Bench of three Judges in the case of Madhu Limaye v. The State of Maharashtra[7] and quoting therefrom, Krishna Iyer, J. in his inimitable style made the law crystal clear in paragraph 10 which runs as follows:

> "10. The first question is as to whether the inherent power of the High Court under Section 482 stands repelled when the revisional power under Section 397 overlaps.

The opening words of Section 482 contradict this contention because nothing of the Code, not even Section 397, can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. In Madhu Limaye v. The State of Maharashtra this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that Section 482 is pervasive it should not subvert legal interdicts written into the same Code, such, for instance, in Section 397(2). Apparent conflict may arise in some situations between the two provisions and a happy solution "would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction".

In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is a tertium quid, as Untwalia, J. has pointed out as for example, where it is more than a purely interlocutory order and less than a final disposal. The present case falls under that category where the accused complain of harassment through the court's process. Can we state that in this third category the inherent power can be exercised? In the words of Untwalia, J.: (SCC p. 556, para 10) "The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973

> Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible." I am, therefore clear in my mind that the inherent power is not rebuffed in the case situation before us. Counsel on both sides, sensitively responding to our allergy for legalistics, rightly agreed that the fanatical insistence on the formal filing of a copy of the order under cessation need not take up this court's time. Our conclusion concurs with the concession of counsel on both sides that merely because a copy of the order has not been produced, despite its presence in the records in the court, it is not possible for me to hold that the entire revisory power stands frustrated and the inherent power stultified." In our considered view any attempt to explain the law further as regards the issue relating to inherent power of High Court under Section 482 Cr.P.C. is unwarranted. We would simply reiterate that Section 482 begins with a non-obstante clause to state: "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice." A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J. "abuse of the process of the Court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more." We venture to add a further reason in support. Since Section 397 Cr.P.C. is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 Cr.P.C. only to petty interlocutory orders! A situation wholly unwarranted and undesirable.
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> As a sequel, we are constrained to hold that the Division Bench, particularly in paragraph 28, in the case of Mohit alias Sonu and another (supra) in respect of inherent power of the High Court in Section 482 of the Cr.P.C. does not state the law correctly. We record our respectful disagreement.

In our considered opinion the learned Single Judge of the High Court should have followed the law laid down by this Court in the case of Dhariwal Tobacco Products Ltd. (supra) and other earlier cases which were cited but wrongly ignored them in preference to a judgment of that Court in the case of Sanjay Bhandari (supra) passed by another learned Single Judge on 05.02.2009 in S.B. Criminal Miscellaneous Petition No. 289 of 2006 which is impugned in the connected Criminal Appeal arising out of Special Leave Petition No. 4744 of 2009. As a result, both the appeals, one preferred by Prabhu Chawla and the other by Jagdish Upasane & Ors. are allowed. The impugned common order dated 02.04.2009 passed by the High Court of Rajasthan is set aside and the matters are remitted back to the High Court for fresh hearing of the petitions under Section 482 of the Cr.P.C. in the light of law explained above and for disposal in accordance with law. Since the matters have remained pending for long, the High Court is requested to hear and decide the matters expeditiously, preferably within six months.

The impugned order in the third appeal, dated 05.02.2009 passed by the High Court of Judicature for Rajasthan at Jodhpur has been relied upon and followed while passing the order dated 02.04.2009 impugned in the other two appeals. Since that order has been set aside while allowing

those appeals hence the order impugned in this appeal also has to be set aside for the same very reasons and for the view taken by us in respect of scope and ambit of Section 482 of the Cr.P.C. Accordingly this appeal is also allowed and impugned order is set aside with the same directions as in the other two appeals.

……J. [J. CHELAMESWAR] ……J. [SHIVA KIRTI SINGH] .....J. [ABHAY MANOHAR SAPRE] New Delhi.

September 05, 2016.

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[2] 2009 (1) CrLR (Raj.) 282 [4] (2009) 2 SCC 370 [6] (2013) 7 SCC 789 [8] AIR 1960 SC 866 [10] (2008) 3 SCC 574 [12] (1980) 1 SCC 43 [14] (1977) 4 SCC 551