

Krishnan & Anr vs Krishnaveni & Anr on 24 January, 1997

Equivalent citations: AIR 1997 SUPREME COURT 987, (1997) 1 CRIMES 97, (1997) 5 SCJ 203, (1997) SC CR R 755, (1997) 1 CURCRIR 146, (1997) 21 ALLCRIR 338, (1997) 1 SCALE 458, (1997) 1 BLJ 1090, (1997) 1 EASTCRIC 643, 1997 SCC (CRI) 544, 1997 AIR SCW 950, (1997) 1 SCR 511 (SC), 1997 CRI. L. J. 1519, 1997 (4) SCC 241, (1997) 34 ALLCRIC 395, (1997) 1 MAH LJ 509, (1997) 1 MPLJ 290, (1997) 2 ORISSA LR 95, (1997) 13 OCR 41, (1997) 2 RAJ LW 241, (1997) 1 RECCRIR 724, (1997) 1 SUPREME 628, 1997 CALCRILR 124, (1997) 1 ALLCRILR 624, (1997) 1 JT 657 (SC)

Author: K. Ramaswamy

Bench: K. Ramaswamy, S. Saghir Ahmad

PETITIONER:
KRISHNAN & ANR.

Vs.

RESPONDENT:
KRISHNAVENI & ANR.

DATE OF JUDGMENT: 24/01/1997

BENCH:
K. RAMASWAMY, S. SAGHIR AHMAD, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T K. Ramaswamy, J.

Leave granted.

This appeal by special leave arises from the judgment dated 26th March, 1992, passed by the Madras High Court in Crl. O.P. No. 10678 of 1991. The facts relevant for our purpose are that in a litigation between Krishnaveni, the first respondent and Tulasiammal, the second wife of her husband, Chinnikrishnan, the first appellant, Krishnan had offered his services and promised to help the first respondent in conducting the said litigation and asked her to execute a power of attorney for that purpose in his favour. It is the case of the first respondent that on faith of the promise of the first appellant, she went to sub-Registrar's office at Madurai where the first appellant made her sign on some stamp papers in the presence of the sub Registrar. Later it transpired the first appellant had got her signature on an agreement to sell her land (which indicated that she had received Rs. 20,000/- and not the power of attorney as she was given to understand. According to the first respondent, when the appellants came to her house on April 15 1989 and demanded money purported to have been spent by the first appellant in the litigation and wanted her to execute the sale deed in her favour, she made enquiries and came to know that the first appellant had played fraud upon her with dishonest intention to cheat her and obtained her signatures on the purported agreement to sell dated September 13, 1986, consequently, She lodged a complaint with the police on April 24, 1989 and the crime came to be registered as Crime No. 31 of 1989 under Section 420 and 406 IPC. The Sub-Inspector after investigation submitted a report stating that the case was essentially of civil nature and no criminal case was made out. Thereupon the first respondent feeling aggrieved, brought the matter to the notice of superintendent of Police, Madurai and requested him to assign the same to another officer to make an honest investigation. Accordingly, the Inspector of Police, Crime Branch was entrusted with the investigation. After thorough investigation, the inspector filed the charge-sheet under Section 173 Crl P.C. on December 4, 1989 which disclosed commission of the offences under sections 420 and 406 IPC. On receipt thereof, the Judicial magistrate No.1, Madurai had taken cognizance of the offences and issued summons on February 22, 1990. Thereupon the appellants filed an application to discharge them. The Magistrate on the said application discharged them/. The magistrate on the said application discharged the accused in Criminal M.P. NO. 262 OF 1990 by order dated 22nd February, 1990. The respondents feeling aggrieved thereby, Filed Revision Applications before the Sessions Judge and the matter was transferred to the First Additional Sessions Judge who by order dated March 26, 1991 dismissed the revision petition. On a further Revision Filed by the first respondent in the High Court, by Order dated March 26, 1992 it allowed the Revision by the impugned order and set aside the order of the Magistrate and directed him to consider the facts on merits at the trial, Thus this appeal by special leave.

When the matter had come up for hearing upon consideration of the decision cited by the learned counsel for the appellants, in particular Dharampal & ORS. V/S Ramshri (Smt.) & Ors. [(1993)] 1 SCC 435 and Rajan Kumar Manchanda V/s State of Kerala {(1990 supp. SCC 132) the matter was referred to a three-Judge Bench. Thus the appeal has come up before us.

Shri Krishnamurthy, learned counsel for the appellants, contended that the State as well as the respondents having availed of the remedy of revision under Section 397 of the code of Criminal Procedure, 1973 {for short, the "code"} the high court was devoid of power and jurisdiction to entertain the second revision due to prohibition by section (3) of Section 397 of the Code, therefore the impugned order is one without jurisdiction and vitiated by manifest error of law warranting

interference, In support of his contention, the learned counsel placed strong reliance on the abovesaid two decisions of this court. The further contended that when there is prohibition under section 3297 (3) of the code, the exercise of the power being in violating thereof, is non est. he further placed reliance on the decision of his court in Simrikhia V/S. Dolley Mukherjee & Chhabi Mukherjee & Anr, [(1990) 2 SCC 437] and Deepti @ Aarati Rai V/s Akhil Rai & Ors [JT 1995 (7) SC 175]. The question therefore, is; whether the high court has power to entertain a Revision under section 397 (10 in respect of which the sessions judge has already exercised revisional power and whether under the circumstances of the present case, it could be considered to be one under section 482 of the Code?

Chapter XXX of the code relating to reference and revisional powers of the High courts, consists of the Section 395 to 405 Under the codes, the revisional power of the High Court has concurrently been given by operation of sub-section (1) of section 397 to Sessions judge, to call for the records of any proceeding and to exercise powers of revision . The power is given to examine the record of any proceedings before nay inferior Criminal Court situated 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 proceeding of such inferior Court. Sub-Section (3) thereof provided that if an application under the said 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.. This was brought by way of amendment to section 435 of the predecessor Code i.e., Act V of 1898 .

Section 401 of the code gives to every High Court power of revision Sub-Section (1) of the said section provides that in the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledges the High Court may in its discretion, exercise any of the power conferred on a court of Appeal by Sections 386 389 and 391 and on a court of Sessions by section 307 Apart form the express power sunder section 397 (1) the High Court has been invested with Suo motu power under Section 401 to exercise revisional power. In addition, section 482 saves inherent powers of the High Court Postulating that "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 precess of any court or otherwise to secure the ends of justice" Section 483 enjoins upon every high Court to so exercise its continuous superintendence over the courts of judicial magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cased by such magistrates. It is, therefore, clear that the power of the High Court of continuous supervisory jurisdiction is of paramount impotance to examine correctness, legality or propriety of any finding, sentence or order recorded or passed as also regularity of the proceedings of all inferior criminal courts.

It is seen that exercises of the revisional power by the high court under Section 397 read with Section 401 is to call for the records of any inferior Criminal Court and to examine 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 to pass appropriate orders. The Court of Sessions and the Magistrates are inferior criminal courts to the High Court and Courts of judicial Magistrate are inferior criminal courts to the sessions judge. ordinarily, in the matter of exercise of power of

revision by any High Court, Section 397 And section 401 are required to be read together. section 397 gives powers to the High Court to call for the records as also suo motu power under section 401 to exercise the revisional power on the grounds mentioned therein, i.e. to examine 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 to dispose of the revision in the manner indicated under section 401 of the Code. The revisional. power of the high Court merely conserves the power of the high Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that its subordinates courts do not exceed the jurisdiction or abuse the power vested in them under the code or to prevent abuse of the process of the inferior criminal courts or to prevent miscarriage of justice.

The object of Section 483 and the purpose behind conferring the revisional power under section 397 read with section 401 upon the High court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to met out justice or to correct irregularity of the procedure or to met out justice. In addition, the inherent power of the High Court is preserved by Section 462 . The Power of the High court therefore is very wide, However , High Court must exercise such power sparingly and cautiously when the sessions judges has simultaneously exercised revisional power under Section 397 (1) however, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or tow correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.

The inherent power of the High Court si not one conferred by the code but one which the high Court already has in it and which is preserved by the Code, the object of Section 397 (3) is to put a bar on simultaneous revisional applications to the High Court and the court of Sessions so as to prevent unnecessary delay and multiplicity of proceeding as seen , under sub-section (3) of section 397 revisional jurisdiction can be invoked by" any person" but the code has not defined the word 'person', However, under section 11 of the IPC, 'PERSON' INCLUDES ANY COMPANY OR ASSOCIATION or body of person whether incorporated or not. The word 'person' would, therefore include not only the natural person but also juridical person in whatever form designated and whether incorporated or not By implication the State stands excluded form the purview of the word 'person' for the purposes of the limiting its right to avail the revisional power of the High Court under Section 397 (!) of the code for the reason that the Sate, being the prosecutor of the offender, is enjoined to conduct prosecution on behalf of the society and to take such remedial steps as it deems proper. The Object behind criminal law is to maintain law, public order, stability as also peace and progress in the society, Generally, Private complaint under section 202 of the code are laid in respect of non-cognizance offences or when it is found that police has failed to perform its duty under Chapter XII of Code or to report as mistake of fact. In view of the principle laid down in the maxim Ex debito justitiae i.e. in accordance with the requirements of justice, the prohibition under section 397 (3) on revisional power given to the High Court would not apply when the state seek s revision under section 401 . So the state is not prohibited to avail the revisional power of the high Court under section 397 (1) read with section 401 of the code.

Ordinarily, when revision has been barred by Section 397(3) of the Code, a person accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397 (1) or under inherent power of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397 (3) or section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstance, to exercise the inherent power and in an appropriate case even revisional power and in appropriate case even revisional power under Section 397 (1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity or procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justices can be ensured only when expeditious trial is conducted.

In *Madhu Limaye V/s. The State of Maharashtra* [(1977) 4 SCC 551], a three-Judge Bench was to consider the scope of the power of the High Court under Section 482 and Section 397 (2) of the Code. This Court held that the bar on the power of revision was put in order to facilitate expedient disposal of the case but in Section 482 it is provided that nothing in the Code which would include Section 397 (2) also, shall be deemed to limit or affect the inherent powers of the High Court. On a harmonious construction of said two provisions in this behalf, it was held that though the High Court has no power of revision in an interlocutory order, still the inherent power will come into play when there is no provision for redressal of the grievance of the aggrieved party. In that case, when allegation of defamatory statements were published in the newspapers against the Law Minister, the State Government had decided to prosecute the appellant for offence under Section 500, IPC. After obtaining the sanction, on a complaint made by the public prosecutor, cognisance of the commission of the offence by the appellant was taken to take trial in the Sessions Court. Thereafter, the appellant filed an application to dismiss the complaint on the ground that Court had no jurisdiction to entertain the complaint. The Sessions Judge rejected all the contentions and framed the charges under Section 406. The Order of the Sessions Judge was challenged in revision in the High Court. On a preliminary objection raised on the maintainability, this Court held that power of the High Court to entertain the revision was not taken away under Section 397 or inherent power under Section 482 of the Code.

In *V.C. Shukla V/s. State through C.B.I.* (1980) 2 SCR 380 at 393], a four-Judge Bench per majority had held that sub-section (3) of Section 397, however, does not limit at all the inherent powers of the High Court contained in Section 482. It merely curbs the revisional power given to the High Court or the Session Court under Section 397 (1) of the Code. In *Rajan Kumar Manchanda* case (*supra*),

the case relating to release of a truck from attachment, obviously on filing of an interlocutory application. It was contended that there was prohibition on the revision by operation of Section 397 (2) of the Code. In that context it was held that it was not revisable under section 482 in exercise of inherent powers by operation of sub-section (3) of Section

397. On the facts in that case, it was held that by virtue of provisions contained in section 397 (3), the revision is not maintainable. In *Dharam Pal* case (supra) which related to the exercise of power to issue an order of attachment under Section 146 of the Code, it was held that the inherent power under Section 482 was prohibited. On the facts in that case it could be said that the learned Judges would be justified in holding that it was not revisable since it was prohibitory interim order of attachment covered under Section 397 (2) of the Code but the observations of the learned Judges that the High Court had no power under Section 482 of the Code were not correct in view of the ratio of this Court in *Madhu Limaye's* case (supra) as upheld in *V.C. Shukla's* case (supra) and also in view of our observations stated earlier. The ratio in *Deepti's* case (supra) is also not apposite to the facts in the present case. To the contrary, in that case an application for discharge of the accused was filed in the Court of Magistrate for an offence under Section 498A, IPC. The learned Magistrate and the Sessions Judge dismissed the petition. In the revision at the instance of the accused, on a wrong concession made by the counsel appearing for the State that the record did not contain allegation constituting the offence under Section 498-A, the High Court without applying its mind had discharged the accused. On appeal, this Court after going through the record noted that the concession made by the counsel was wrong. The record did contain the allegations to prove the charge under Section 498A, IPC. The High Court, since it failed to apply its mind, has committed an error or law in discharging the accused leading to the miscarriage of justice. In that context, this Court held that the order of the Sessions Judge operated as a bar to entertain the application under Section 482 of the Code. In view of the fact that the order of the High Court had led to the miscarriage of justice, this Court has set aside the order of the High Court and confirmed that of the Magistrate.

The ratio of *Simrikhia's* case (supra) has no application to the facts in this case. Therein, on a private complaint filed under Section 452 and 323, IPC the Judicial Magistrate, First Class had taken cognisance of the offence. He transferred the case for inquiry under Section 202 of the Code to the Second Class Magistrate who after examining the witnesses issued process to the accused. The High Court exercising the power under Section 482 dismissed the revision. But subsequently on an application filed under Section 482 of the Code, the High Court corrected it. The question whether the High Court could was right in reviewing its order. In that factual backdrop, this Court held that the High Court could not exercise inherent power for the second time. The ratio therein as stated above, has no application to the facts in this case.

In view of the above discussion, we hold that through the revision before the High Court under sub-section (1) of Section 397 is prohibited by 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 is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below. It remitted the case to the Magistrate for decision on merits after consideration of the evidence. We make it

clear that we have not gone into the merits of the case. Since the High Court has left the matter to be considered by the Magistrate, it would be inappropriate at this stage to go into that question. We have only considered the issue of power and jurisdiction of the High Court in the context of the revisional power under Section 397 (1) read with Section 397(3) and the inherent powers. We do not find any justification warranting interference in the appeal.

The appeal is accordingly dismissed.