

Kaisar Jaha vs The S.P., Distt. Sultanpur And 3 Others on 25 October, 2024

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2024:AHC-LK0:72471

A.F.R.

Court No. - 29

Case :- APPLICATION U/S 482 No. - 9566 of 2024

Applicant :- Kaisar Jaha

Opposite Party :- The S.P., Distt. Sultanpur And 3 Others

Counsel for Applicant :- Manoj Kumar Nishad

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Abhyudaya Mishra, learned counsel for the petitioner and Sri Alok Kumar Tiwari, the learned AGA for the State.

2. By means of the instant writ petition filed under 528 of the Bharatiya Nagrik Suraksha Sanhita (hereinafter referred to as BNSS), the petitioner has challenged the validity of an order dated 28.08.2024 passed by learned Special Judge, P.O.C.S.O. Act/Additional Sessions Judge in Criminal Misc. Case No.360 of 2024 whereby an application under Section 175(3) of BNSS [comparable to Section 156 (3) of Cr.P.C.] has been rejected by the trial Court.

3. Sri Alok Kumar Tiwari, the learned A.G.A. has raised a preliminary objection that the petitioner has got a statutory remedy of filing a revision against the aforesaid order and, therefore, the inherent powers of this Court cannot be invoked by the applicant. He has relied upon a decision of the Hon'ble Supreme Court in the case of Vipin Sahni & Anr. v. Central Bureau of Investigation; 2024 SCC OnLine SC 511 wherein the Hon'ble Supreme Court has held that the where a specific remedy of filing a revision was available, a petition under Section 482 Cr.P.C. could not be filed.

4. Replying to the aforesaid preliminary objection of the learned A.G.A., Sri Abhyudaya Mishra, learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in the case of Prabhu Chawla v. State of Rajasthan & Anr.; (2016) 16 SCC 30, wherein it has been held that the availability of statutory remedy of revision is not an absolute bar against maintainability of an application under Section 482 Cr.P.C.

5. Section 528 of BNSS provides as follows: -

"528. Nothing in this Sanhita 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 Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

6. The aforesaid provision is in pari materia to the provision contained in Section 482 Cr.P.C., which was as follows: -

"482. Saving of inherent powers of High Court.-- 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."

7. Therefore, the law as explained through various precedents regarding scope of exercise of the inherent power under Section 482 would also apply to Section 528 BNSS.

8. Vipin Sahni (Supra) relies upon an earlier decision in the case of Mohit versus State of U.P.: (2013) 7 SCC 789, wherein it was held that: -

"28. So far as the inherent power of the High Court as contained in Section 482 CrPC is concerned, the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when an order, not interlocutory in nature, can be assailed in the High Court in revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In other words, inherent power of the Court can be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance. It is well settled that the inherent power of the Court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged."

9. However, in Prabhu Chawla v. State of Rajasthan & Anr.; (2016) 16 SCC 30, a three Judge Bench of the Hon'ble Supreme Court overruled the decision in Mohit (Supra) by stating that "the Division Bench, particularly in para 28, in Mohit in respect of inherent power of the High Court in Section 482 CrPC does not state the law correctly. We record our respectful disagreement." The Hon'ble Supreme Court further held that: -

"6. ... 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". (Raj Kapoor v. State, (1980) 1 SCC 43, para 10) We venture to add a further reason in support. Since Section 397 CrPC is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 CrPC only to petty interlocutory orders! A situation wholly unwarranted and undesirable."

10. The two Judge Bench of the Hon'ble Supreme Court which decided Vipin Sahni (Supra) after relying upon the earlier two Judge Bench decision in the case of Mohit(Supra), did not take note of the three Judge Bench decision in the case of Prabhu Chawla (Supra), which will prevail over the two Judge Bench decision. Thus the law as it exists now is that there are no absolute restrictions on the inherent powers of this Court and availability of a remedy of filing a revision would not create an absolute bar against the inherent powers of this Court being invoked. However, the inherent power can be invoked only to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

11. The learned Counsel for the petitioner agrees that the petitioner has the option to file a revision under Section 438 of BNSS, but he insists that when the petitioner has got two remedies available, he has the discretion to choose any one of the two remedies available to him.

12. Although availability of a statutory remedy under Section 438 of BNSS may not be an absolute bar against exercise of the inherent powers of this Court, it is certainly a factor which has to be taken into consideration by this Court to ascertain as to whether it is necessary to exercise the inherent power of this Court. The inherent power can be invoked to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

13. The order under challenge has been passed by a Sessions Court and, therefore, the revision would lie before this Court itself. The revision as well the application under Section 528 BNSS, both are assigned to Single Judge Benches of this Court. The scope of enquiry and interference in both the proceedings would also be the same. Therefore, the functionality of an application under Section 528 BNSS and a revision under Section 438 BNSS would be the same. The only difference in the two proceedings would be that the application under Section 528 BNSS has been placed today before Judge 'A' and the revision under Section 438 BNSS would be placed on some other day before Judge 'B'.

14. In Union of India v. Cipla Ltd., (2017) 5 SCC 262, the Hon'ble Supreme Court held that the Court is required to adopt a functional test vis-à-vis the litigation and the litigant. What has to be seen is whether there is any functional similarity in the proceedings between one court and another or whether there is some sort of subterfuge on the part of a litigant. It is this functional test that will determine whether a litigant is indulging in forum shopping or not. The facts stated above clearly establish that it is a typical example of forum shopping, which practice has always been deprecated

by the Courts.

15. Having considered the aforesaid facts and circumstances of the case, this Court is of the considered view that when a statutory remedy of filing a revision before this Court itself is available to the applicant which revision will also be placed before an Hon'ble Single Judge Bench of this Court, although the application under Section 528 of BNSS would be maintainable, it would not be proper for this Court to exercise its discretion of invoking its inherent powers when the petitioner has got a statutory remedy available under Section 438 BNSS, which remedy lies before this Court itself. For the aforesaid reasons, this Court finds that although the application under Section 528 BNSS would be maintainable, it would not be entertainable in view of the peculiar facts and circumstances of the case.

16. Accordingly, the application is dismissed leaving it open to the applicant to avail the statutory remedy under Section 438 BNSS available to her.

(Subhash Vidyarthi J.) Order Date: 25.10.2024

-Amit K-