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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 4396/2023, CRL.M.A. 16830-16831/2023**

SATISH LAMBA & ANR. Petitioners

Through: Mr. H.S. Bhullar, Ms. Gulnaz
Khan and Ms. Puja Singha
Roy, Advocates.

versus

NCT OF DELHI & ORS. Respondents

Through: Ms. Meenakshi Dahiya, APP
for the State with SI Satyawan,
PS: Kirti Nagar.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

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14.09.2023

1. The present petition has been filed by the petitioners under Section 482 CrPC seeking setting aside of the impugned order dated 21.02.2023 passed by the Court of learned CMM, West, Tis Hazari Courts, New Delhi and seeking direction to the SHO PS: Kirti Nagar to register an FIR based on the complaint dated 07.12.2020 filed by the petitioners herein and initiate an investigation in the matter.

2. A perusal of the last order dated 03.07.2023 shows that when the present matter was listed for the first time the learned APP appearing for the State had raised an objection qua maintainability of the instant petition in the present form under Section 482 CrPC as the petitioners had an alternate efficacious remedy of filing a revision under Sections 399/400 read with Section 397 of the CrPC. It was in



view thereof, that the learned counsel appearing for the petitioners sought time to satisfy this Court.

3. Today the learned counsel appearing for the petitioners in compliance of the said order has relied upon paragraphs 30-32 of ***“Mrs. Anjula Divedi and Others vs State represented by Sub-Inspector of Police, Kyathasandra Police Station, Tumkur”*** to contend that the present petition is very much maintainable before this Court. It is stated therein as under:-

“30. What emerges from the above said decisions is that extraordinary power of the High Court under Section 482 of Cr.P.C., is not circumscribed by Section 397 or 401 of Cr.P.C. They operate distinctively and separately. Under certain circumstances the powers may overlap also. Though the same order passed by the Criminal Court is amenable under Section 397 of Cr5.P.C., where the Court can exercise revisional power, if the High Court is called upon to ascertain whether there is abuse of process of law or whether by exercising Section 482 of Cr.P.C., the Courts can otherwise secure and protect the interest of justice, then the the power under Section 482 of Cr.P.C., is not barred. However, We reiterate that such power should be very sparingly exercised in rare cases, depending upon the facts and circumstances of each case. It is purely the discretion of the High Court to entertain petition under Section 482 of the Cr.P.C., only after going through the materials placed before it, to know as to whether the matter requires exercise of the extraordinary powers under Section 482 of Cr.P.C., or the said order is revisable under Section 397 Cr.P.C., so that the revisional Court itself can take care of the situation and pass appropriate orders. The High Court only after exercising sound discretion, can relegate the parties to approach the revisional Court for their remedies. Therefore the High Court has to take a decision after going through the materials on record and hearing the parties whether it is a fit case to exercise power under Section 482 of Cr.P.C., or not. In the sense, the petitioner under Section 482 Cr.P.C., cannot be out rightly rejected on the said sole ground that the order of the Criminal Court is revisable and therefore, the power under Section 482 of Cr.P.C. is barred.”



31. As mentioned supra, the powers of the revisional Come under Section 397 of the Code and the power of the high court under Section 482 of CrPC, may overlap to certain ext. because both are aimed at securing the ends of justice and both have an element of discretion. But, at the same time, inherent power under Section 482 of the Code being an extraordinary and residuary power, it is inapplicable in regard to matters which are specifically provided for under other provisions of the Code. To put it simply, normally the High Court will not invoke its power under Section 482 of the Code where a party could have availed of the remedy available under Section 397 of the Code. The inherent power under Section 482 of the Code are of a wide magnitude and are not as limited as the power under Section 397 of the Code. Therefore, Section 482 of the Code can be invoked where the order in question is to be tested on the touch stone of the purpose and object of Section 482 of the Code to ascertain whether there was any abuse of process of law and that the circumstances need for securing the ends of justice. The limitation in fact is only self restraint, nothing more. The provisions of Section 482 of CrPC are pervasive. However, inherent powers of the Court unquestionably have to be read and construed as not free from restrictions, but are subject to the restrictions as mentioned supra. However, it is left to the sound discretion of the Learned Judges to consider as to whether the material on records are sufficient to compel the Court to exercise powers, under Section 482 of CrPC.

32. With these observations, we answer the question referred to us in the following manner:

The petition filed under Section 482 of CrPC is maintainable under extraordinary circumstances mentioned supra, though remedy is available against the order of the Criminal Court under Section 397 of CrPC. However, jurisdiction under Section 482 of CrPC will be exercised in such an event by the High Court with utmost care and caution, sparingly and under extraordinary circumstances.

The records shall be placed before the Learned Judge having roster to decide the criminal petition on merits.

4. However, considering the settled legal position and the facts involved in the present petition, in the opinion of this Court, the present petition is *per se* not maintainable under Section 482 CrPC as



the appropriate remedy for the petitioners is to file a revision petition under the relevant provision of Section 397 CrPC.

5. More so, when it is settled position of law that the inherent powers under Section 482 of the CrPC is sparingly exercised with utmost caution and care and that to only when a party, being the petitioners herein, is able to justify the use/exercise thereof to the satisfaction of this Court.

6. Even otherwise, this Court finds that there is no averment, categoric or otherwise in the present petition, to show that the present case is one such extra ordinary case which calls for interference by this Court under Section 482 of the CrPC. In fact, there is no denial of the said fact by the learned counsel appearing for the petitioners as according to him the present petition is also maintainable. This Court is unable to agree with the said contention. Despite the same, the learned counsel appearing for the petitioners drawing the attention of this Court to paragraph 13 of the petition has submitted that there is in fact a pleading to that effect, which for the sake of convenience is reproduced as under:-

“13. That the impugned order dated 21.02.2023 has been passed by the Court of Ld. CMM, West, Tis Hazari courts, New Delhi which is situated within the Territorial Jurisdiction of this Hon'ble Court. Therefore, this Hon'ble Court is competent and has jurisdiction to entertain the instant Petition u/s 482 of the Cr.P.C. read with Article 226 of the Constitution of India.”

7. In the opinion of this Court, the above is of little, in fact, of no assistance to the petitioners as the same is merely a formal assertion made by the petitioners without there being any such averment anywhere in the present petition.



8. Moreover, the said position of law has also been affirmed by *Mrs. Anjula Dwivedi & Ors. (supra)* cited by the learned counsel for the petitioners as is apparent from the quoted paragraphs therefrom which are reproduced hereinabove.

9. It is trite law that a Court while interpreting a provision of the Statute is bound to abide by what is expressed and contained therein without interfering or altering or carving out either a new meaning or something which is not manifest therefrom. As per the facts of the present case, admittedly, when an appropriate and specific remedy of law under the (same) Statute being the CrPC is already available to the petitioners, this Court in view of the aforesaid conclusion and even otherwise as per the legal position finds no reason to interfere with the impugned order passed by the learned Trial Court.

10. The petitioners cannot be allowed to bypass the already existing alternate efficacious statutory remedy under Section 397 CrPC which is specifically provided and available to them

11. Accordingly, and even otherwise, after finding that there is no pleading to the effect that the case of the petitioners is such that this Court can exercise its inherent powers for interfering under Section 482 of the CrPC, which undisputedly is to be exercised sparingly, this Court is constraint to hold that the instant petition in the present form is not maintainable in the eyes of law or under the facts involved. In view thereof, this Court is hesitant in entering into the domain of the disputes involved herein under the present petition filed under the provisions of Section 482 Cr.P.C.

12. At this stage, despite the aforesaid categoric findings by this



Court after hearing the learned counsel for the petitioners in his presence, the said learned counsel further submitted that the passages/extracts of the impugned order dated 21.02.2023 and also the Status Report dated 28.09.2021 filed before the learned Trial Court are sufficient enough for this Court to interfere under Section 482 of the CrPC.

13. To this end, this Court is unable to understand the reasons for interfering into the merits of the matter when it has already once opined in the presence of the learned counsel for the petitioners that the present petition is *prima facie* not maintainable before this Court under the provisions of Section 482 of the CrPC.

14. Thus, the present petition is dismissed alongwith the pending applications, subject to the petitioners depositing a cost of Rs.10,000/- with the Delhi Police Welfare Society Fund [Account No.18200100001081 and IFSC Code-UCBA0001820] within a week from today since the police force was put in motion and involved for a considerable period of time.

15. Acknowledgement slip in respect of thereof be filed before the Registry within a period of three days.

16. Accordingly, list the matter for compliance on 05.10.2023.

SAURABH BANERJEE, J

SEPTEMBER 14, 2023/So