

assessed the value of the damages caused by demolition of the property of the petitioner at Rs.1607138/- whereas in CWP No.2495 of 2007, value of the damage caused by demolition of part of the boundary wall has been assessed at Rs.5 lacs. However, from the record, it appears that no such assessment of further damage to the boundary wall has been placed on record. From the assessment report in CWP No.11724 of 2003, it appears that damage to part of the boundary wall is also assessed by the Architect valuer. In the fitness of the circumstances, I am of the opinion that damages to the extent of Rs.10 lacs would meet the ends of justice or in the alternative the Municipal Corporation may restore the demolished building at its own expense. The Municipal Corporation will exercise its option within a period of one month with prior intimation to the petitioner. In a similar situation Municipal Corporation, Ludhiana was asked to restore the demolished building in violation of the statutory provisions in case of **Municipal Corporation, Ludhiana versus Inderjit Singh and another (5)**.

(12) These petitions are accordingly allowed in the above terms. Copy of this order be placed on record of each concerned file.

M. Jain

Before Rameshwar Singh Malik, J.

HARMINDER SINGH,—Petitioner

versus

STATE OF PUNJAB & OTHERS,—Respondents

CrI.M. No. M-10830 of 2012

18th April, 2012

*Criminal Procedure Code, 1973 - Ss. 482, 125, 397 (3) -
Petition under Section 482 of Cr. P.C. filed for quashing order of
Addl. CJM - Also impugned order of Addl. Sessions Judge -
Maintenance u/s 125 Cr. P.C. granted and litigation expenses ordered
to be paid by the Addl. CJM - Order modified in first revision and
litigation expenses set aside - Both orders challenged u/s 482 Cr. P.C.*

(5) 2008 (13) SCC 506

- Whether second criminal revision under the garb of Section 482 Cr. P.C. maintainable when confronted with bar under Section 397(3) of Cr. P.C.? - Held, although not an absolute rule but under normal circumstances not permissible - Powers under Section 482 can be exercised only for achieving objects specified in Section - Petition dismissed.

Held, that during the course of the hearing, when confronted with the statutory bar envisaged under Section 397 (3) Cr.P.C. about the maintainability of the instant petition, learned counsel for the petitioner had no answer. I may hasten to add that it may not be an absolute rule but under normal circumstances, the second criminal revision under the garb of the quashing petition under Section 482 Cr.P.C., as in the present case, is not permissible. I say so because the provisions of law cannot be allowed to be circumvented.

(Para 4)

N.S. Dandiwal, Advocate.

RAMESHWAR SINGH MALIK, J.

(1) The petitioner has approached this Court invoking its inherent jurisdiction by way of the instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short). He seeks quashing of the order dated 28.4.2011 (Annexure P-5), passed by the learned Additional Chief Judicial Magistrate, Moga, vide which respondents No. 2 and 3 were granted ad-interim maintenance @ Rs. 1,000/- per month from the date of application and Rs. 1,500/- as litigation expenses under Section 125 Cr.P.C. He has also impugned the order dated 24.2.2012 (Annexure P-7), passed by the learned Additional Sessions Judge, Moga, thereby upholding the grant of adinterim maintenance @ Rs. 1,000/- per month.

(2) The brief facts of the case are that the petition under Section 125 Cr.P.C. was filed by respondent No.2 vide Annexure P-1, claiming maintenance @ Rs. 5,000/- per month. The petitioner filed his reply by way of Annexure P-2, saying that he was posted as Punjabi Teacher in S.D. Senior Secondary School, Moga, and was getting the salary of only Rs. 27,00/- per month, whereas respondent No.3 was earning much more. Learned Additional Chief Judicial Magistrate, Moga, vide order dated

28.4.2011, allowed the application and directed that an amount of Rs. 1,000/- per month be paid as interim maintenance from the date of application. He also directed the petitioner to pay Rs. 1,500/- as litigation expenses, vide impugned order dated 28.4.2011 (Annexure P-5).

(3) The revision petition filed by the petitioner came to be decided, vide impugned order dated 24.2.2012 (Annexure P-7), partly modifying the order dated 28.4.2011, passed by the learned Chief Judicial Magistrate, Moga. Direction for payment of interim maintenance @ Rs. 1,000/- per month was upheld, however, the order for payment of litigation expenses to the tune of Rs. 1,500/- was set aside.

(4) Feeling aggrieved against the above said orders, the petitioner has challenged both the above said orders, by way of the instant petition under Section 482. Cr.P.C. Learned counsel for the petitioner has vehemently contended that the impugned orders suffer from patent illegality as the learned courts below have miserably failed to appreciate the true facts and circumstances of the present case.

(5) Learned counsel for the petitioner further contended that since the petitioner was earning a meager amount of Rs. 2,700/- per month, grant of maintenance @ ' 1,000/- per month was on higher side, particularly when respondent No. 3 was earning handsome income.

(6) Concluding his arguments, learned counsel for the petitioner contended that the impugned orders were liable to be set aside and the present petition deserves to be allowed.

(7) Having heard the learned counsel for the petitioner and going through the record of the case, this Court is of the considered opinion that the present petition is bereft of any merit and liable to be dismissed.

(8) There are two issues which fall for consideration of this Court. The first and important one is regarding the maintainability of the present petition, which amounts to second criminal revision, under the garb of this quashing petition under Section 482 Cr.P.C. The second issue is regarding the merits of the case as to whether amount of Rs. 1,000/- per month, awarded as interim maintenance, is on higher side in the given fact situation of the present case.

(9) Taking second issue first, it is pertinent to note here that with and amount of Rs. 1,000/- per month, a child cannot be provided good food and education, besides other necessary expenses, in these days of sky-rocketing prices. Thus, respondent No.3 being the mother of respondent No.2, would be certainly taking care so far as the extra expenses, whichever, are required to be incurred, on the maintenance of respondent No.2, because ‘ 1,000/- per month would not be meeting the total monthly maintenance expenses of respondent No.2. Further, learned courts below have very rightly observed that even an unskilled labourer is earning Rs. 4,000/- per month these days. It is his own case set up by the petitioner that he is employed as a teacher in S.D. Senior Secondary School, Gandhi Road, Moga. It has also been observed by the learned Additional Sessions Judge, Moga, while passing the impugned order dated 24.2.2012 that no pay certificate was adduced, in support of the alleged salary, stated by the petitioner.

(10) In view of these facts and circumstances of the present case, I have no hesitation to hold that the interim maintenance @ Rs. 1,000/- per month, granted in favour of respondent No.2 by the learned courts below, is not on higher side. Further, neither this Court has found any manifest illegality nor any has been pointed out by the learned counsel for the petitioner, in any of the impugned orders passed by the learned courts below, so as to warrant the exercise of inherent jurisdiction of this Court under Section 482 Cr.P.C.

(11) So far as first issue is concerned, it is to be noted that during the course of the hearing, when confronted with the statutory bar envisaged under Section 397 (3) Cr.P.C. about the maintainability of the instant petition, learned counsel for the petitioner had no answer. I may hasten to add that it may not be an absolute rule but under normal circumstances, the second criminal revision under the garb of the quashing petition under Section 482 Cr.P.C., as in the present case, is not permissible. I say so because the provisions of law cannot be allowed to be circumvented.

(12) It is a matter of record that the petitioner has already filed his first revision petition before the learned Sessions Court, which came to be decided on 24.2.2012, vide Annexure P-7. In such a situation, the question that arises for the consideration of this Court is whether the petitioner can

be permitted to circumvent the provisions of law contained in 397 (3) Cr.P.C., by resorting to the remedy under Section 482 Cr.P.C., particularly when no serious prejudice, as such, has been pointed out by the learned counsel for the petitioner, which might have been caused to him.

(13) It is also the settled proposition of law that inherent powers under Section 482 Cr.P.C. cannot be exercised, whenever, there is a statutory bar in the Code, as in the present case. The view taken by this Court finds support from the Judgment of the Hon'ble Supreme Court in **Dharmapal and others versus Smt. Ramshri and others Recent Criminal Reports 1993 (1) 696**. The relevant observations made by the Hon'ble Supreme Court in para 6 of the judgment, which can be gainfully relied upon, read as under:-

“The question that falls for our consideration now is whether the High court could have utilised the powers under Section 482 of the Code and entertained a second revision application at the instance of 1st respondent. Admittedly the 1st respondent had preferred a Criminal Application being Cr.R.No. 180/78 to the Sessions Court against the order passed by the Magistrate on 17th October, 1978 withdrawing the attachment. The Sessions Judge had dismissed the said application on 14th May, 1979. Section 397 (3) bars a second revision application by the same party. It is now well settled that the inherent powers under Section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Hence the High Court had clearly erred in entertaining the second revision at the instance of 1st respondent. On this short ground itself, the impugned order of the High Court can be set aside.”

(14) So far as the invoking of the inherent jurisdiction of this Court under Section 482 Cr.P.C., at the hands of the petitioner is concerned, it is the settled position in law that powers under Section 482. Cr.P.C. can be exercised only for achieving the objects specified in the section itself. The powers under Section 482 Cr.P.C. being in the nature of discretionary powers, are to be exercised very sparingly and with circumspection.

(15) In view of the fact situation of the present case, noted above, the instant one is not a fit case for exercising the inherent powers under Section 482 Cr.P.C.

(16) Keeping in view the totality of the facts and circumstances of the present case, coupled with the reasons aforementioned, the present petition is devoid of any merit and it must fail.

(17) Accordingly, the present petition is dismissed.

A. Aggarwal

Before M.M.Kumar & T.P.S. Mann, JJ.

STATE OF HARYANA AND OTHERS,—Appellants

versus

ASI AISH MOHAMMAD,—Respondents

LPA 406 of 2011

25th April, 2011

Punjab Police Rules, 1934 - RI.12.32 - Letters Patent, 1919 - Cl. X -A.C.R.s - Adverse remarks - Challenged before Civil Court but not accepted - Subsequent representation accepted by Inspector General of Police - Adverse remarks expunged - Orders recalled by Director General of Police - Judicial verdict of Civil Court decree should have been respected - Held, Inspector General of Police's power of review, if any, in these circumstances wholly arbitrary - Order passed by Director General of Police upheld.

Held, That the judicial verdict by Civil Court refusing to expunge the adverse remarks has been completely ignored by the Inspector General of Police. It is not only highly improper but it is totally unwarranted. Even if Inspector General of Police enjoys any power of review exercise of such a power in these circumstances is wholly arbitrary. The judicial verdict of Civil Court decree should have been respected and, therefore, the Director General of Police has rightly set aside the order of his sub-ordinate. For the aforesaid reasons the judgment in Ram Niwas Ram Niwas' case (supra)