

2023 LiveLaw (SC) 935

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
C.T. RAVIKUMAR; J., SANJAY KUMAR; J.**

October 30, 2023

SPECIAL LEAVE PETITION (Crl.) No. 7976 OF 2023

Bhisham Lal Verma *versus* State of Uttar Pradesh and another

Code of Criminal Procedure, 1973; Section 482 - Though it is clear that there can be no blanket rule that a second petition under Section 482 Cr.P.C. would not lie in any situation and it would depend upon the facts and circumstances of the individual case, it is not open to a person aggrieved to raise one plea after the other, by invoking the jurisdiction of the High Court under Section 482 Cr.P.C., though all such pleas were very much available even at the first instance. Permitting the filing of successive petitions under Section 482 Cr.P.C. ignoring this principle would enable an ingenious accused to effectively stall the proceedings against him to suit his own interest and convenience, by filing one petition after another under Section 482 Cr.P.C., irrespective of when the cause therefor arose. Such abuse of process cannot be permitted. (Para 11)

(Arising out of impugned final judgment and order dated 20-02-2023 in A482 No. 2014/2022 passed by the High Court of Judicature at Allahabad)

For Petitioner(s) Mr. S. Nagamuthu, Sr. Adv. (Amicus Curiae) Mr. Abhishek Kumar Singh, AOR

ORDER

SANJAY KUMAR, J

1. 'Is a second petition maintainable under Section 482 Cr.P.C. on grounds that were available for challenge even at the time of filing of the first petition thereunder?'
2. This is the short question that arises for consideration.
3. As the issue turned on the very maintainability of the case, Mr. S. Nagamuthu, learned senior counsel, was requested to assist the Court and, with his usual graciousness, he agreed to do so.
4. We may first note the relevant facts: Complaint dated 23.06.2012 was filed by the Joint Director, State Urban Development Authority, Uttar Pradesh, before the Station House Officer, Police Station Kotwali, Rampur, alleging irregularities in the construction of toilets under the Integrated Low Cost Sanitation Scheme and embezzlement of public funds by the persons involved. The petitioner herein, being the Project Director/Additional District Magistrate, Rampur, at the relevant time, was also implicated. Thereupon, C.C. No. 1280 of 2012 was registered on the file of Police Station Civil Lines, Rampur, under Sections 409, 420, 467, 468, 471 and 120B IPC read with Sections 7 and 13 of the Prevention of Corruption Act, 1988 (for brevity, 'the Act of 1988'). The petitioner was amongst the accused named therein.
5. In exercise of power under Section 197 Cr.P.C. and Section 19 of the Act of 1988, by order dated 03.12.2013, the Government of Uttar Pradesh accorded sanction to prosecute the petitioner for the offences alleged under Sections 409, 420, 467 and 471 IPC and Sections 7 and 13 of the Act of 1988 and any other offences relating thereto. Upon completion of the investigation, charge sheet dated 30.04.2015 was laid before the learned Sessions Judge, Rampur. Therein, the petitioner was charged with offences under

Sections 409, 420, 467, 468, 471 IPC and Sections 7 and 13 of the Act of 1988. By order dated 12.06.2015, the learned Sessions Judge, Rampur, took cognizance. The case was thereafter taken on file by the Special Court at Bareilly as Special Case No. 19 of 2016.

6. Long thereafter, the petitioner filed his first petition under Section 482 Cr.P.C., viz., Criminal Misc. Application No. 8465 of 2018, before the Allahabad High Court. Therein, he chose to challenge only the Government's sanction order dated 03.12.2013. The State opposed the application, pointing out that a challenge to the sanction could be made before the Trial Court. Thereupon, the petitioner's counsel sought liberty to approach the Trial Court by way of an appropriate application challenging the sanction. Accepting that plea, the High Court disposed of the application, *vide* order dated 15.12.2020, granting liberty to the petitioner to approach the Trial Court and challenge the sanction order. Significantly, at the time of filing of this first petition under Section 482 Cr.P.C., the charge sheet was very much on record and the learned Sessions Judge, Rampur, had already taken cognizance.

7. However, it was only in the year 2022 that the petitioner felt inspired to file a second petition under Section 482 Cr.P.C., viz., Criminal Misc. Application No. 2014 of 2022. His prayers therein were to quash the charge sheet dated 30.04.2015; the cognizance order dated 12.06.2015; and the proceedings in Special Case No. 19 of 2016, insofar as he was concerned. This application was dismissed by the Allahabad High Court, *vide* order dated 20.02.2023. Therein, the High Court noted that the petitioner had earlier filed Criminal Misc. Application No. 8465 of 2018 under Section 482 Cr.P.C. with a limited prayer - to quash the sanction order dated 30.12.2013. Holding that it was not open to the petitioner to go on challenging the proceedings one by one and as he had not felt aggrieved by the charge sheet or the order of cognizance when he had filed the first petition under Section 482 Cr.P.C., the High Court concluded that the subsequent petition challenging the same would not be maintainable and dismissed the application. It is against this order that the petitioner approached this Court by way of the present case.

8. On behalf of the petitioner, Mr. Pradeep Kumar Singh Baghel, learned senior counsel, would argue that a second petition is maintainable under Section 482 Cr.P.C.. He relied on the judgment of this Court in ***Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Mohan Singh and others***¹. Therein, it was held that a subsequent application under Section 561-A of the Code of Criminal Procedure, 1898, presently Section 482 Cr.P.C, would be maintainable in changed circumstances. It was affirmed that a subsequent application, which is not a repeat application squarely on the same facts and circumstances, would be maintainable. To the same effect was the more recent decision of this Court in ***Anil Khadkiwala vs. State (Government of NCT of Delhi) and another***². Earlier, in ***S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and another***³, this Court held that when the first petition under Section 482 Cr.P.C was withdrawn with liberty to avail remedies, if any, available in law, the High Court would not be denuded of its inherent jurisdiction under Section 482 Cr.P.C. on being petitioned again and the principle of *res judicata* would not stand attracted. Again, in ***Vinod Kumar, IAS. vs. Union of India and others***⁴, a 3-Judge Bench of this Court observed that dismissal of an earlier

¹(1975) 3 SCC 706

²(2019) 17 SCC 294

³(2007) 4 SCC 70

⁴Writ Petition No. 255 of 2021, decided on 29.06.2021 = 2021 SCC OnLine SC 559

petition under Section 482 Cr.P.C would not bar filing of a subsequent petition thereunder in case the facts so justify.

9. Mr. S. Nagamuthu, learned *amicus curiae*, would however point out that entertainment of the second petition in **Mohan Singh** (*supra*) was held permissible as the circumstances obtaining at the time of the subsequent petition were clearly different from what they were at the time of the earlier one and that was the distinguishing factor which saved the second petition. He would further point out that, in **Simrikhia vs. Dolley Mukherjee and Chhabi Mukherjee and another**⁵, this Court cautioned that the inherent jurisdiction under Section 482 Cr.P.C cannot be invoked to override the bar of review under Section 362 Cr.P.C. Reference was made to **Sooraj Devi vs. Pyare Lal and another**⁶ which held that the inherent power of the Court could not be exercised for doing that which is specifically prohibited by the Code of Criminal Procedure, 1973. He also drew our attention to **R. Annapurna vs. Ramadugu Anantha Krishna Sastry and others**⁷, wherein a quash petition under Section 482 Cr.P.C. was dismissed on 28.01.1995 and without mentioning the same, another petition was filed under Section 482 Cr.P.C. with a similar prayer. Noting that the second petition was not made on the strength of anything which had developed after 28.01.1995 but only on the facts which subsisted prior to that date, this Court held that the second petition was not maintainable, as the High Court did not have the power to upset the order dated 28.01.1995 which had attained finality.

10. In **S. Madan Kumar vs. K. Arjunan**⁸, the Madras High Court observed that a person who invokes Section 482 Cr.P.C. should honestly come before the Court raising all the pleas available to him at that point of time and he is not supposed to approach the Court with instalment pleas. It was further observed that there may be a change of circumstances during the course of criminal proceedings which would give scope for the person aggrieved to invoke the inherent jurisdiction of the Court, but when he is posted with all the facts and circumstances of a case, he cannot withhold part of it for the purpose of filing yet another petition seeking the same relief.

11. We are in complete agreement with these observations of the Madras High Court. Though it is clear that there can be no blanket rule that a second petition under Section 482 Cr.P.C. would not lie in any situation and it would depend upon the facts and circumstances of the individual case, it is not open to a person aggrieved to raise one plea after the other, by invoking the jurisdiction of the High Court under Section 482 Cr.P.C., though all such pleas were very much available even at the first instance. Permitting the filing of successive petitions under Section 482 Cr.P.C. ignoring this principle would enable an ingenious accused to effectively stall the proceedings against him to suit his own interest and convenience, by filing one petition after another under Section 482 Cr.P.C., irrespective of when the cause therefor arose. Such abuse of process cannot be permitted.

12. In the case on hand, the filing of the charge sheet and the cognizance thereof by the Court concerned were well before the filing of the first petition under Section 482 Cr.P.C., wherein challenge was made only to the sanction order. That being so, the petitioner was not at liberty to again invoke the inherent jurisdiction of the High Court in relation to the charge sheet and the cognizance order at a later point of time. The

⁵(1990) 2 SCC 437

⁶(1981) 1 SCC 500

⁷(2002) 10 SCC 401

⁸(2006) 1 MWN (Cri) DCC 1 = 2006 SCC Online Mad 94

impugned order passed by the Allahabad High Court holding to this effect is, therefore, incontrovertible on all counts and does not warrant interference.

The Special Leave Petition is devoid of merit and is accordingly dismissed.

Before parting with the case, we place on record our appreciation and gratitude to Mr. S. Nagamuthu, learned *amicus curiae*, for his able and scholarly assistance.

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