

the tenant here is neither a permanent tenant nor an occupancy tenant. The decisions, therefore, are of assistance in but, a very little way. But, I think the Punjab Security of Land Tenures Act itself appears to afford some guidance in the matter. Section 18(3) prescribes the purchase price to be paid by the tenant at three-fourths of the value of the land as determined by section 18(2). It means that the interest of the landowner is assessed at three-fourths and the interest of the tenant is assessed at one-fourth. The value of the land as determined under section, 18(2) may be more or less than the value of the land on the date of the notification of acquisition. But that makes no difference. What is important is that the interests of the landowner and the tenant are fixed at three-fourths and one-fourth of the value of the land. On that basis, I direct the apportionment of the compensation between the appellant and the first respondent in the ratio of 1:3. The appeal is allowed to that extent only. There will be no order as to costs.

N. K. S.

MISCELLANEOUS CRIMINAL

Before S. C. Mittal, J.

NANAK PARTAP SINGH (CAPTAIN) and others,—*Petitioners.*

versus

THE STATE OF PUNJAB and another—*Respondents.*

Criminal Misc. No. 3049-M of 1976.

February 14, 1977.

Code of Criminal Procedure (Act 2 of 1974)—Sections 397(2) and 482—Interlocutory order summoning an accused—Inherent powers of the Court—When can be involved to quash interlocutory orders.

Held that (1) Where interference by revisional Court with an interlocutory order is prohibited by the Code of Criminal Procedure 1973, invocation of the inherent power under Section 482 of the Code to set aside the order would defeat the object of the Code. Hence the inherent power be not invoked in such a case.

(2) By and large an accused person comes into the picture when he is summoned by a Court by passing an interlocutory order. Subsequently also interlocutory orders may be passed against him. The passing of such order or orders

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will not stand in his way to invoke the inherent power of the Court, if he is able to make out a case for quashing the entire proceedings, including the interlocutory order.
(Para 9).

Petition under section 482 Criminal Procedure Code praying that proceedings under section 406 I.P.C. and Section 6, Dowry Prohibition Act, 1961 pending in the Court of Sh. T. N. Gupta, Addl. C.J.M. Amritsar, against the petitioners be quashed.

Gur Rattan Pal Singh, Advocate, for the petitioners.

M. L. Sharma, Advocate for G. R. Majithia, Advocate, for Respondents.

JUDGMENT

S. C. Mittal, J.—(1) A complaint under section 406, Indian Penal Code and section 6 of the Dowry Prohibition Act was instituted against the petitioners in the Court of the additional Chief Judicial Magistrate, Amritsar. By the impugned order the Magistrate summoned the petitioners. The order being interlocutory, no revision lies against it. The petitioners have moved this Court under section 482 of the Code of Criminal Procedure. The question for determination is as to the invoking of the inherent powers.

(2) Section 397(1) of the Code lays down that the High Court or the Sessions Judge may call for and examine the records of any proceeding before any inferior Criminal Court for the purpose of satisfying itself as to 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. Sub-section (3) provides that if an application under this 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. Sub-section (2) of section 397 is in the following terms :—

“The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings.”

(3) In *Budaraju Seshagiri Rao and others v. T. V. Sarma and another*, (1), O. Chinappa Reddy, J., observed :—

“The object of section 397 (2) is to prevent interference by revisional Courts with the smooth and even progress of enquiries, trials and other proceedings before inferior Courts. Under the Criminal Procedure Code of 1898, not only was there no such limitation on the powers of the revisional Courts, Section 435, and 438 expressly provided for the suspension of the orders of inferior Courts by the revisional courts pending the examination of the record by the revisional Courts. The new Code has made a clear departure from the old code and has prohibited interference by revisional Courts with proceedings in inferior courts at interlocutory stages.”

(4) In the case cited above also, an interlocutory order was sought to be interfered with by invoking the inherent powers of the High Court. The learned Judge further observed:—

“Section 482 Criminal Procedure Code merely preserves the inherent powers of the High Court. It is well established that the inherent powers of the High Court cannot be invoked so as to do an act which would conflict with an express provision of law or other general principles of Criminal Jurisprudence. Therefore, the bar under Section 397(2) cannot be got over by the invocation of the inherent powers of the High Court under section 482 Criminal Procedure Code.”

I am in respectful agreement with the observations quoted above.

(5) In the other ruling in point of the Delhi High Court *Sant Lal Nagrath v. Krishan Lal Suri and others* (2), Ansari, J., while dealing with an objection against a petition under section 482 of the Code assailing an interlocutory order, expressed the view that where a revision petition against such an order is clearly barred by sub-section (2) of section 397 of the new Code, the bar could not be circumvented by having recourse to Section 482 of the new Code. *Sant Lal's case* was followed by D. S. Lamba, J., in *Gurbachan*

(1) 1976 Cr. L.J. 902.

(2) 1976 Cr. L.J. 215.

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Singh and another v. Dr. Didar Singh, (3). In *Santokh Singh v. Panjab Kaur*, (4), enhancement of the maintenance allowance was first assailed by filing a revision petition before the learned Sessions Judge. The second revision being barred by section 397(3) of the Code, the petitioner moved the High Court under section 482 of the Code and Article 227 of the Constitution of India. Surinder Singh, J., observed:—

“However, such a course cannot be permitted in the garb of an application filed under some other provision of law or the Constitution.”

Besides, the learned Judge, finding no merit in the petition, dismissed the same. Above all their Lordships of the Supreme Court ruled in *R. P. Kapur v. State of Punjab*, (5), that the inherent power of the High Court cannot be exercised in regard to matters specifically covered by the other provisions of the Code.

(6) Learned counsel for the petitioners placed reliance on *Sarjoo and others v. Babadin and another*, (6), a Single Bench decision of the Allahabad High Court. There, an order passed by an Executive Magistrate was assailed in revision, but unsuccessfully, before the Sessions Judge. The second revision petition was barred by section 397(3) but the learned Judge held that inherent powers of the High Court under section 482 of the Code could still be invoked to set aside the impugned order. In view of the rulings discussed in the preceding paragraphs, with due respects I am unable to follow the Allahabad view.

(7) Stress was then laid by the learned counsel for the petitioners on the precedents discussed hereinafter. In *Niranjanlal Bawri v. The State and another*, (7), P. S. Pattar, J., by exercise of the inherent power, quashed the interlocutory order passed by a

(3) 1976 Cr. L.J. 506.

(4) 1976 C.L.R. (Pb. & H.) 230.

(5) AIR 1960 S.C. 866.

(6) 1975(2) Cr. L.J. 1562.

(7) 1975(3) C.L.R. 448.

Magistrate under section 204 of the Code, summoning the accused person. In that case no objection was raised on the strength of sub-section (2) of section 397 of the Code. Hence the precedent is distinguishable. In *Paramjit Kaur v. Gurcharan Singh*, (8), K. S. Tiwana, J., in the exercise of the inherent powers, quashed the proceedings as they were held to be an abuse of the process of law. The learned Judge expressed the view that section 397(2) was no bar to the quashing of proceedings. *Ravindra Nath Gupta v. Jagan Nath Ahuja* (9), was a case in which proceedings launched under section 420, Indian Penal Code, were quashed by Surinder Singh, J., on the ground that the allegations made in the complaint did not constitute the alleged offence. In *U. K. Batra v. Union Territory, Chandigarh* (10), the accused persons were summoned by the trial Magistrate to face a charge under section 120-B read with section 420, Indian Penal Code. One of them moved this Court under Article 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure. On merits Surinder Singh, J., came to the conclusion that there was no evidence whatsoever to support the accusation against the petitioner. Hence the learned Judge quashed the proceedings.

(8) Learned counsel for the petitioners then laid stress on the decision of the Himachal Pradesh High Court in *Jatinder Nath Kaile v. Devinder Pal Arora* (11). In that case the accused person applied under section 482 of the Code for quashing the proceedings pending against him under section 420, Indian Penal Code. Relying on the ratio of *R. P. Kapur's case*, the learned Judge accepted the petition. As to the effect of section 397(2) of the Code, the learned Judge expressed the view that against an interlocutory order summoning an accused person, no revision was maintainable and no other relief against the said order was provided. Therefore, it was held that there should be no difficulty in exercising the inherent powers under section 482 of the Code, but at page 87 of the report the learned Judge observed :—

“An argument was advanced that what is prohibitive in the Code should not be considered permissive so as to exercise

(8) (1975)2 Cr. L.T. 391.

(9) 1976 C.L.R. (Pb. & H.) 232.

(10) 1977 C.L.R. (Pb. & H.) 25.

(11) 1976 C.L.R. (H.P.) 81.

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inherent power of High Court under section 482. This proposition in its abstract form is no doubt correct. But there may be a case where, in the language of their Lordships in *R. P. Kapur v. State of Punjab* (5), (supra) it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings in respect of the offence alleged

(9) In view of the discussion above my conclusions are :—

(1) Where interference by revisional court with an interlocutory order is prohibited by the new Code, invocation of the inherent power under section 482 of the Code to set aside the order would defeat the object of the new Code. Hence the inherent power be not invoked in such a case.

(2) By and large an accused person comes into the picture when he is summoned by a Court by passing an interlocutory order. Subsequently also interlocutory orders may be passed against him. The passing of such order or orders will not stand in his way to invoke the inherent power of this Court, if he is able to make out a case for quashing the entire proceedings, including the interlocutory order.

(10) In the result, I decline to entertain the prayer for setting aside the impugned order.

(11) As regards the prayer to quash the entire proceedings, it is well settled that the exercise of power under section 482 of the Code is in its nature extraordinary. It is to be used sparingly and to do real and substantial justice. No case has been made out to invoke the same. This petition is dismissed with the remarks that it shall be open to the petitioners to raise objections permissible by law before the trial Court and the dismissal of this petition be not construed as an expression of opinion on the merits of the case.
