

Revision Petition Under Section 397 of Code Of Criminal Procedure

In the Court of Additional Sessions Judge

Criminal Revision petition No. _____/200

FIR No. _____

Police Station _____

Next date in Trial Court _____

In the Matter Of:

XYZ

...Petitioner

Versus

1. State
2. ABC
3. CDF

...Respondents

Revision Petition Under Section 397 of Criminal Procedure Code, 1973 Praying for Quashing and Setting aside Order dated _____ In FIR No. _____ dated _____ Under Section 154 Of Criminal Procedure Code 1973 on Submission of Final report under Section 173, Criminal Procedure Code, 1973 passed by Learned Metropolitan Magistrate, _____ consigning file to record.

Most Respectfully Showeth:

1. The petitioner had filed a criminal complaint under Section 406 and section 420 read with Section 120B of the Indian Penal Code against respondent which is pending before the trial court and is fixed for hearing on _____. The said complaint filed by the petitioner against respondents is reproduced herein below:
 - i. "That the complainant is resident of _____ and is peace loving citizen.
 - ii. That the complainant had approached the accused through one accused No.2 _____ for purchase of one property _____.
 - iii. That therefore, after detailed negotiation between complainant and the accused through accused No.2 the accused agreed to sell the property _____.

- iv. That is to state _____ that the accused _____ had represented to the complainant that the property number _____ was of accused NO.1 and he was always ready and willing to sell his property.
- v. That pursuant to accused No.1 agreeing to sell his property as represented by him to be _____ to the complainant, the complainant and the accused No.1 and 2 agreed amongst themselves that the complainant would pay a consideration of Rs. _____ to the accused as full and final consideration.
- vi. That thereafter the complainant paid on _____ and advance amount of Rs. _____ as follows to the accused. _____
- vii. That the above payment was made in presence of accused No.2 and through him and the accused No.1 gave the complainant a receipt dated _____ and the receipt clearly mentioned as follow:

“Receipt”

Received with thanks from Shri _____ R/o _____ a sum of Rs. _____ in cash and Rs. _____ by Cheque No. _____ dated _____ as advance payment against sale of my second floor with complete terrace rights of property bearing No. _____ measuring _____ Minus one Servant Quarter of first floor.

The balance amount of Rs. _____ is to be paid on or before _____.
Sd/_"

That it is to state that accused No.2 participated actually in the entire transaction and it is he who handed over money of complainant to the accused No.1 and also it was he who handed over the receipt of the accused No.1 to complainant.

- viii. That it is stated by the complainant that the accused No.1 and 2 and he agreed that the entire balance amount of a sum of Rs. _____ will be paid on or before _____ and the same had been clearly mentioned in above receipt dated _____.
- ix. That during the month of _____ when the complainant requested the accused _____ to produce and show the original documents of the above said property he was fooled and no documents were shown to him. The complainant repeatedly requested the accused to show the original papers but all sorts of concocted stories were made by the accused and the papers were never shown to the complainant.
- x. That thereafter on a fact finding by the complainant he came to know that above said property belonged to one _____ and not the accused as stated by him and misrepresented him.
- xi. That thereafter on further enquiry by the complainant he found out that the property no. _____ which belonged to one _____ was sold on _____ to _____ by the original owner of the property. To this effect a zerox copy of sale deed is enclosed herewith.
- xii. That after knowing all these facts the complainant requested accused No.1 and 2 to return the money back, but these people have not returned the money so far and thus cheated the complainant of the above said money.
- xiii. That thereafter the complainant registered a complaint on _____ dated _____ wit the police station _____ to investigate the matter but till

- date no action whatsoever has been taken in the matter and no money has been paid to the complainant.
- xiv. That all the accused have committed various offences under various sections of I.P.C by mis-representing and thereafter duping the complainant of a sum of Rs. _____. The accused have thus committed offences under sections 420,406 read with section 120-B of I.P.C particularly when they were not owners of property in question.
2. That the Learned Metropolitan Magistrate issued the directions to the station house officer, Police station _____ to register the case and investigate the matter vide order dated _____. Consequently, the SHO, registered a complaint on _____ vide FIR No. _____ and started the investigation.
3. That the final report of investigation under Section 173 CRPC from SHO, Police station _____ dated _____ was received by Learned Metropolitan Magistrate on _____.
4. That the Learned Metropolitan Magistrate on receipt of final report under Section 173 CRPC passed orders on _____ as under:
- “Case remains unsolved. No possibility
Of finding any accused in near future.
It is an old case. File be consigned to record”
- Sd/-

5. That the Learned Metropolitan Magistrate passed the above said impugned order without issuing any notice to the complainant which is in violation of law.
6. That the impugned order of the Learned Metropolitan Magistrate dated _____ ordering consigning of file to record is bad in law and suffers from patent illegality on following amongst other grounds and is liable to be quashed and set-aside.

GROUND

- A. That the trial court has failed to exercise its judicial discretion on the facts and circumstances of the case by ordering consignment of file to record without taking into account the facts and circumstances of the entire case.
- B. That the trial court has failed to give the notice to the complainant before ordering consigning of file to record and giving an opportunity of being heard.

- C. That the impugned order of the trial court is against the principles of natural justice as per law laid down by the High Court as well as Supreme Court where they have categorically held that the complainant must be heard.
- D. That the findings of the trial court is against the law and weight of evidence on record.
- E. That the Learned Trial Court failed to appreciate that the proceedings were initiated in the cases on the basis of complaint, which was never dismissed and as such, there was no question of consigning the file to record room. The opportunity to lead evidence ought to have been given. The court is not competent to close the case and consign it to record room without recording the evidence of complainant. The accused can be convicted in absentia even if there is sufficient evidence to proceed against them and if found guilty.
- F. That the plea that the accused are not available is against the basic principle of law. The evidence has to be recorded and finding given. The case can be consigned to record room only after the trial is over. The accused can be arrested later when found.

The petitioner came to know about said order of Learned Metropolitan Magistrate only on _____ when he appeared before the trial court and was informed that the case was consigned to Record Room and the FIR has been cancelled.

PRAYER

It is therefore, humbly and most respectfully prayed-

- i. That this Hon'ble Court may be pleased to call for the records, examine the same for the purpose of satisfying itself as to the correctness, legality and propriety and set aside the impugned order dated _____.
- ii. That the case be remanded to trial court for further evidence in accordance with law and
- iii. That this Hon'ble Court may be pleased to pass such further order(s) as may do complete justice on the facts and circumstances of the case.

Petitioner
Through
Advocate for Petitioner