

Court No. - 88

Case :- CRIMINAL REVISION No. - 1962 of 2020

Revisionist :- Manoj Kumar Patel

Opposite Party :- State Of U.P. And 4 Others

Counsel for Revisionist :- Amarnath Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak,J.

1. Heard Sri Amarnath, learned counsel for the Revisionist, Sri Yogendra Singh, learned Advocate, holding brief of Shri Yogesh Kumar Vaish, learned counsel for the opposite party Nos. 2 to 5, Sri Nitin Kesarwani, learned A.G.A. for the State on admission and perused the record on board.
2. Instant Revision has been preferred by Manoj Kumar Patel (victim) challenging the order dated 27.10.2020 passed by Additional District and Sessions Judge/ Special Judge (E.C. Act), Varanasi, rejecting the application No. 79-Kha, dated 21.10.2020, u/s 311 Cr.P.C. filed by revisionist(herein) in Sessions Trial No. 118 of 2016 (C.N.R. No. UPVR01-000691-2016) (State Vs. Vansraaj Patel and Ors.) arising out of case crime No. 22 of 2016, under Section 307, 352, 727, 326-A of I.P.C., Police Station- Cholapur, District-Varanasi.
3. Factual matrix of the case shows that the informant and his cousin (son of his mother's sister) Manoj Kumar(revisionist herein) were working in the Madan Textile. On 07.01.2016, duo, after completion of their work, were going to the house of Manoj, situated in Benipur Khurd by their respective motorcycle. At about, 08:45 p.m., while they reached in the village Benikhurd near the house of Molae, four persons namely Vansraaj Patel, Vijay Patel, Ramesh Patel and Mahendra, who were inimically with the Manoj, had stopped the motorcycle of Manoj and pored kerosene oil over him, with intention to kill and set him ablaze. Seeing the screams of Manoj, informant had raised alarm. While he had been chased by Vansraaj and Ramesh, he ran away after leaving his motorcycle. In the mean-time, co-villagers had gathered there and aforesaid four accused fled away from the scene. With the help of villagers fire of Manoj as well as his motorcycle was extinguished. During process of extinguishing, Prakash Patel and Golu Patel were also injured. With the help of the villagers Manoj was taken to the Kabirchaurra Hospital through ambulance from where

he was referred to B.H.U. and due to paucity of place he has been admitted in Adarsh Hospital, Sundarpur.

4. In this backdrop, Chedi Patel (first informant) had lodged F.I.R. dated 07.01.2016 (Exhibit K-3), registered as Case Crime No. 22 of 2016, under Section 307, 352 and 427 I.P.C.
5. After investigation, Investigating Officer had submitted charge-sheet dated 31.01.2016. Vide order dated 29.03.2016, learned Trial Court, had framed charges against all the four accused persons, as mentioned in the F.I.R., under Section 307/34, 352 and 402 I.P.C.. As the matter proceeded, at hearing stage Manoj Patel(victim), revisionist herein, has moved an application dated 21.10.2020 (Application No. 79 Kha), under Section 311 Cr.P.C., beseeching acceptance/admission of medico-legal report, prescriptions, discharge-sheet of the injured and for marking of exhibit on the statement of victim recorded under Section 164 Cr.P.C. and also for putting a question to the accused under Section 313 Cr.P.C. with respect to written report (Ex. K-1)
6. Aforesaid application No. 79-Kha dated 21.10.2020, was rejected by the impugned order dated 27.10.2020, which is under challenged in the instant revision.
7. After hearing the matter at length, learned counsel for the opposite party Nos.2 to 5 has raised preliminary objection with regard to the maintainability of the present revision in view of the express bar engrafted under sub-Section 2 of Section 397 of Code of Criminal Procedure, 1973, (In brevity Cr.P.C.) to entertain a revision u/s 397(1) Cr.P.C. against an interlocutory order passed during the pendency of trial of the case. He has submitted that impugned order dtd. 27.10.2020 passed by the Trial Court refusing the acceptance/admission of required documents on record as mentioned in the Application No. 79 Kha, dated 21.10.2020, under Section 311 of Cr.P.C. is an interlocutory order and the instant revision petition, which has been preferred challenging the impugned order by which aforesaid application filed by the present revisionist has been rejected, is not maintainable in the eye of law, therefore, same may be dismissed in limine. In support of his contention, learned counsel for the opposite party Nos. 2 to 5 has placed reliance on the judgement of Hon'ble Apex Court in **Sethuraman Vs. Rajamanickam**, reported in **2009 (5) SCC 153**. He has also cited the case decided by Hon'ble The Andhra Pradesh High Court in **Goli**

Satyanarayan Reddy Vs G. Mahesh & Anr., CrI.R.C. No. 175/2018, decided on 30.12.2019.

8. Learned A.G.A. for the State has also supported the submissions advanced by learned counsel for the contesting respondents and submitted that revision u/s 379(1) Cr.P.C. is maintainable only against those orders which terminates the proceeding of the main case once for all and other orders which are passed during the pendency of the trial are interlocutory orders and revision against said orders are barred u/s 379(2) Cr.P.C. Instant revision is preferred against the order, which is interlocutory in nature, comes within the teeth of the provision as embodied under sub-Section 2 of Section 397 Cr.P.C., therefore, the same is not maintainable in the eyes of law.
9. Per contra, learned counsel for the revisionist has vehemently opposed the preliminary objection raised by learned counsel for the opposite party Nos. 2 to 5 qua maintainability of the instant revision which has been filed against the interlocutory order, under Section 397(2) Cr.P.C. It is submitted that rejecting the application under Section 311 Cr.P.C. amounts to final disposal/termination of the interim proceeding which was initiated during the pendency of the trial on the basis of said application No. 79-kha dated 21.10.2020. Therefore, sanctity of the aforesaid impugned order could be examined by this Hon'ble High Court in exercising its revisional power under Section 397/401 Cr.P.C.
10. It is further submitted that in exercising its power under the revisional jurisdiction Hon'ble High Court can also exercise its inherent power to examine the legality and validity of the impugned order. That apart, learned counsel for the revisionist has tried to construe the nature of the impugned order as intermediate order. He contended that in the case of **Amar Nath Vs. State of Harayana, reported in A.I.R. 1977 S.C. 2185**, Hon'ble Apex Court has held that an order which substantially affect the right of the parties cannot be said to be an interlocutory order so as to attract the bar u/s 379(2) Cr.P.C. and those orders relating to rights or liabilities of the parties are to be termed as intermediate order and revision against the said orders is maintainable. It is further contended that it is right of the victim to maintain the admissibility of his statement u/s 164 Cr.P.C. by getting mark of exhibit over it and produce the medical record to prove inflicting injuries, therefore, order under challenged is to be construed as an intermediate order against which

revision petition is maintainable u/s 379(1) Cr.P.C. It is further contended that law laid down in the case of **Amar Nath** (Supra) was subsequently approved by Hon'ble Apex Court in case of **Madhy Limaye Vs. State of Maharashtra**. In support of his contention, learned counsel for the revisionist has cited the full Bench decision of Apex Court in the case of **Madhu Limaye Vs. State of Maharashtra**, reported in **1977 (4) SCC 551**. He has also placed reliance on another full Bench decision of Hon'ble Supreme Court in **Prabhu Chavala Vs. State of Rajasthan**, reported in (2016) 16 SCC 30.

11. I have carefully considered the rival submissions made by learned counsel for the parties and perused the record on board on the preliminary objection qua maintainability of the present revision, being barred under sub-Section 2 of Section 397 Cr.P.C., filed challenging the impugned order which is said to be an interlocutory order in rejecting the application No. 79-Kha, dated 21.10.2020 filed under Section 311 of Cr.P.C. for taking the some of the documents on record relating to the medical treatment of the victim and for mark of Exhibit on the statement of victim recorded under Section 164 Cr.P.C. and also for putting a question under Section 313 to the accused with respect to the written report . In the case of **Madhu Limaye** (supra), Hon'ble Supreme Court has discussed in detail with respect to the scope of the revision, under Section 397(1) of Cr.P.C. and inherent power of Hon'ble High Court under Section 482 Cr.P.C. qua interlocutory order, intermediate order and the final order. It is pertinent to mention here that in the old Cr.P.C of 1898, there was no provision of bar in filing the revision against the interlocutory order. Subsequently, seeing the flooded filing of revisions against all the orders including the interlocutory order with intention to protract the litigation, Legislation has embarked the bar under sub-Section 2 of Section 397 of Cr.P.C. to curb the unnecessary filing of revisions against each and every order passed by the trial court so that the expeditious disposal of cases could be ensured. Provision given under Section 397 of Cr.P.C. is reproduced as under:-

“The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity or any proceedings of such inferior court,

and may, when calling for such record, direct that the execution of' any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation:- *All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction shall be deemed to be inferior to the Sessions Judge for the purpose of this subsection and of section 398.*

(2) The power of revision conferred by sub-section (I) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the of the them."

12. In the case of **Madhu Limaye** (supra), Hon'ble Supreme Court has approved the law laid down in the case of **Amar Nath** (Supra), in which it has been pointed out that the purpose of putting a bar on the revisional power in relation to an interlocutory order passed in an appeal, inquiry, trial or other proceeding, is to bring about expeditious disposal of case final.

13. Further, Hon'ble Supreme Court has enunciated and reiterated the view, with some modulation, taken in the case of **Amar Nath** (Supra), wherein two points were decided i.e. (i) where a revision to the High Court against the order of subordinate Court is expressly barred under Section 397(2) of Cr.P.C., the inherent power contained under Section 482 would not be available to defeat the aforesaid bar (ii) Impugned order of the Magistrate, however, was not an interlocutory order. Second point, with respect to the nature of impugned order being interlocutory order, was accepted by Hon'ble Supreme Court but first point, with respect to the exercise of inherent power in the matters where bar as contained under Section 397(2) Cr.P.C. came into the play, has been accepted with some modulation.

- 14.**It is accepted by Hon'ble Supreme Court that on plain reading of Section 482 Cr.P.C., however, it would follow that noting in the Cr.P.C., which would include sub-Section (2) of Section 397 Cr.P.C. also, shall be deemed to limit or affect the inherent power of the High Court. It is enunciated by Hon'ble Supreme Court that if it is said that bar under Section 397(2) of Cr.P.C. is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of revisional powers. Applying harmonious interpretation, Hon'ble Supreme Court has opined that bar provided in sub-Section 2 of Section 397 Cr.P.C. operates only in exercise of revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order and in the eventuality of orders other than interlocutory order, inherent power will come into the play, there being no other provision of Cr.P.C. for the redressal of grievances of the aggrieved party. Impugned order, in case, bring about the situation which is abuse of process of Court or for the purpose of securing the end of justice and interference by High Court is absolutely necessary, then provisions as contained under Section 397(2) can not limit or affect the exercise of inherent power of High Court.
- 15.**In this view of matter, by introducing the bar under sub-Section 2 of Section 397 Cr.P.C., legislation is intended to curb the protracted litigation and try to ensure early disposal of the cases.
- 16.**Plain reading of Section 397 Cr.P.C. explicit the scope and applicablity of revisional power that aggrieved party can question the correctness, legality or propriety of any finding, sentence or order, recorded or passed and, to the regularity of any proceeding of inferior Court. It is significant to note that power conferred under sub-Section 1 of Section 397 Cr.P.C. shall not be exercised in relation to any interlocutory order passed in appeal, enquiry, trial or other proceeding as embodied under sub-Section 2 of Section 397 Cr.P.C. Legislation has made the provision of bar under Section 397(2) of Cr.P.C. to the revisional jurisdiction of the High Court and the Sessions Judge in entertaining a revision against an interlocutory order. Therefore, considering the intention of legislation and historical background in which bar has been imposed u/s 397(2) Cr.P.C. to entertain revision u/s 397(1) Cr.P.C. against an interlocutory order, interpretation of any particular order passed during the pendency of the trial to decide or ascertain as to whether it is a final order or interlocutory order or intermediate order for the purpose of maintaining a revision under

Section 397(1) Cr.P.C. must be in consonance with the intention of legislation. In introducing the bar under Section 397(2) Cr.P.C. qua maintainability of revision against the interlocutory order, legislation was intended to expedite the trial. It is noteworthy that interpretation of any statute or any provision must always be made keeping in mind the object of the litigation and no effort should be made in derogation to the legislative intent.

17. As per the provisions enshrined under Section 397 (1) Cr.P.C., revision is maintainable against all those orders who are final in nature and the same cannot be assailed in any appellate jurisdiction. Appeal, in case, is provided against the order proposed to be assailed then preferring an appeal is the adequate remedy available under the procedure (Cr.P.C.) to the aggrieved persons. Addressing on the point of limited access of the revisional jurisdiction, Hon'ble Supreme Court enunciated in the case of **Madhu Limaye** (Supra) that on such a strict interpretation, only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Section XXIX of Cr.P.C.. This does not seem to be the intention of legislation when it retained the revisional power of High Court in terms of identical to one in the old Cr.P.C. 1898.
18. Hon'ble Supreme Court has considered the dictum of **S. Kuppuswami Rao Vs. King Kania**, reported in **AIR 1949 F.C. I**, wherein it is stated that if their decision, whichever may it is given, will, if it stands, finally disposed off the matter in dispute, I think that for the purpose of there, it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but if given in the other, will allow the action to go on, then I think it is not final, but interlocutory. Hon'ble Supreme Court has held that it is to be noticed that the test laid down therein was that if the objection of the accused succeeded, the proceeding could have end but not vice versa. The order can be said to be a final order only if, in either event, the action will be determined. It is further explicated that the real intention of legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of proceeding, which may not be final as per the Judgment rendered by Hon'ble Supreme Court in the case of **S. Kuppuswami (supra)**, but, yet it may not be an interlocutory order pure or simple. Same kind of order may fall in between two. By applying a rule of harmonious constructions,

Apex Court held that bar in sub-Section 2 of Section 397 Cr.P.C. may not be attracted on such kind of intermediate orders. They may not be final order for the purpose of Article 134 of the Constitution of India, yet, it would not be correct to characterize them as merely interlocutory order within the meaning of Section 397(2) Cr.P.C.

19. In this view of the matter, Hon'ble Supreme Court in the case of **Madhu Limaye** (Supra) has approved the concept of intermediate orders, which are neither the final order nor the interlocutory order as held in the case of **Amar Nath** (Supra). It is further enunciated that it is neither advisable nor possible to make a catalogue of orders to demonstrate which kind of order would be merely, purely or simply interlocutory orders and which kind of order would be final and then to prepare an exhaustive list of those types of orders which will fall in between the two.

20. In the case of **Mohanlal Maganlal Thakar Vs. State of Gujarat**, reported in **AIR 1968 SC 733**, wherein, after enquiry, an order was passed directing to file a complaint, against the appellant Mohanlal Maganlal Thakar which was affirmed by the High Court. The matter came to Hon'ble Supreme Court on the grant of certificate under Article 134(1)(C) of the Constitution of India. The majority view of Hon'ble three judges has held that aforesaid order for filing of a complaint is a final order within the meaning of said constitutional provision. Minority view of two Judges had given the dissenting judgment holding it as an interlocutory order. Enunciating the interlocutory order, Hon'ble Supreme Court has held in the case of **Parmeshwari Devi Vs. State**, reported in **(1977) 1 SCC 169**, that an order made in a criminal proceeding against a person who is not a party to the enquiry or trial and which adversely affected him is not an interlocutory order within the meaning of Section 397(2) of Cr.P.C.

21. In a recent Judgment of **ASIAN RESURFACING OF ROAD AGENCY PRIVATE LIMITED AND ANOTHER VS. CENTRAL BEAURU OF INVESTIGATION**, reported in (2018) 16 SCC, 299, Constitution Bench of Hon'ble Supreme Court has considered the dictum of **Madhy Limaye** (Supra) and other cases qua bar of filing revision against the interlocutory order under sub-Section 2 of Section 397 of Cr.P.C. and held that dictum of **Madhu Limaye**(Supra) hold the filed and has not been in any manner diluted. Relevant para No. 19,20,21 of the said judgment is reproduced below:

19. *It is not necessary to refer to all the decisions cited at the Bar. Suffice it to say that a Bench of three Judges in Madhu Limaye [Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 : 1978 SCC (Cri) 10] held that the legislature has sought to check delay in final disposal of proceedings in criminal cases by way of a bar to revisional jurisdiction against an interlocutory order under sub-section (2) of Section 397 CrPC. At the same time, inherent power of the High Court is not limited or affected by any other provision. It could not mean that limitation on exercise of revisional power is to be set at naught. Inherent power could be used for securing ends of justice or to check abuse of the process of the court. This power has to be exercised very sparingly against a proceeding initiated illegally or vexatiously or without jurisdiction. The label of the petition is immaterial. This Court modified the view taken in Amar Nath v. State of Haryana [Amar Nath v. State of Haryana, (1977) 4 SCC 137 : 1977 SCC (Cri) 585] and also deviated from the test for interlocutory order laid down in S. Kuppuswami Rao [S. Kuppuswami Rao v. R., 1947 SCC OnLine FC 13 : (1947) 9 FCR 180] . We may quote the following observations in this regard: (Madhu Limaye case [Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 : 1978 SCC (Cri) 10] , SCC pp. 554-56 & 558, paras 6, 10 & 13)*

“6. The point which falls for determination in this appeal is squarely covered by a decision of this Court, to which one of us (Untwalia, J.) was a party in Amar Nath v. State of Haryana [Amar Nath v. State of Haryana, (1977) 4 SCC 137 : 1977 SCC (Cri) 585] . But on a careful consideration of the matter and on hearing the learned counsel for the parties in this appeal we thought it advisable to enunciate and reiterate the view taken by two learned Judges of this Court in Amar Nath case [Amar Nath v. State of Haryana, (1977) 4 SCC 137 : 1977 SCC (Cri) 585] but in a somewhat modified and modulated form.

10. As pointed out in Amar Nath case [Amar Nath v. State of Haryana, (1977) 4 SCC 137 : 1977 SCC (Cri) 585] the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding, is to bring about expeditious disposal of the cases

finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The legislature in its wisdom decided to check this delay by introducing sub-section (2) in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include sub-section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a

sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial, after proper sanction will not be barred on the doctrine of autrefois acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused up to the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.

13. ... *But in our judgment such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by Section 397(1). On such a strict interpretation, only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code. This does not seem to be the intention of the legislature when it retained the revisional power of the High Court in terms identical to the one in the 1898 Code. In what cases then the High Court will examine the legality or the propriety of an order or the legality of any proceeding of an inferior criminal court? Is it circumscribed to examine only such proceeding which is brought for its examination after the final determination and wherein no appeal lies? Such cases will be very few and far between. ... There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswami case [S. Kuppuswami Rao v. R., 1947 SCC OnLine FC 13 : (1947) 9 FCR 180] , but, yet it may not be*

an interlocutory order — pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in sub-section (2) of Section 397 is not meant to be attracted to such kinds of intermediate orders. ...”

(emphasis supplied)

This extract is taken from Asian Resurfacing of Road Agency (P) Ltd. v. CBI, (2018) 16 SCC 299 : (2020) 1 SCC (Cri) 686 : 2018 SCC OnLine SC 310 at page 316

20. Referring to the judgment in Mohanlal Maganlal Thakkar v. State of Gujarat [Mohanlal Maganlal Thakkar v. State of Gujarat, (1968) 2 SCR 685 : AIR 1968 SC 733 : 1968 Cri LJ 876] , it was held that the test adopted therein that if reversal of the impugned order results in conclusion of proceedings, such order may not be interlocutory but final order. It was observed: (Madhu Limaye case [Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 : 1978 SCC (Cri) 10] , SCC p. 560, para 15)

“15. ... In the majority decision four tests were culled out from some English decisions. They are found enumerated at p. 688. One of the tests is “if the order in question is reversed would the action have to go on?” Applying that test to the facts of the instant case it would be noticed that if the plea of the appellant succeeds and the order of the Sessions Judge is reversed, the criminal proceeding as initiated and instituted against him cannot go on. If, however, he loses on the merits of the preliminary point the proceeding will go on. Applying the test of Kuppuswami case [S. Kuppuswami Rao v. R., 1947 SCC OnLine FC 13 : (1947) 9 FCR 180] such an order will not be a final order. But applying the fourth test noted at SCR p. 688 in Mohanlal case [Mohanlal Maganlal Thakkar v. State of Gujarat, (1968) 2 SCR 685 : AIR 1968 SC 733 : 1968 Cri LJ 876] it would be a final order. The real point of distinction, however, is to be found at SCR p. 693 in the judgment of Shelat, J. The passage runs thus: (Mohanlal case [Mohanlal Maganlal Thakkar v. State of Gujarat, (1968) 2 SCR 685 : AIR 1968 SC 733 : 1968 Cri LJ 876] , AIR p. 738, para 11)

‘As observed in Ramesh v. Gendalal Motilal Patni [Ramesh v. Gendalal Motilal Patni, (1966) 3 SCR 198 : AIR

1966 SC 1445] the finality of that order was not to be judged by correlating that order with the controversy in the complaint viz. whether the appellant had committed the offence charged against him therein. The fact that that controversy still remained alive is irrelevant.”

This extract is taken from Asian Resurfacing of Road Agency (P) Ltd. v. CBI, (2018) 16 SCC 299 : (2020) 1 SCC (Cri) 686 : 2018 SCC OnLine SC 310 at page 316

21. The principles laid down in *Madhu Limaye* [*Madhu Limaye v. State of Maharashtra*, (1977) 4 SCC 551 : 1978 SCC (Cri) 10] still hold the field and have not been in any manner diluted by the decision of four Judges in *V.C. Shukla v. State* [*V.C. Shukla v. State*, 1980 Supp SCC 92 : 1980 SCC (Cri) 695] or by the recent three-Judge Bench decision in *Girish Kumar Suneja v. CBI* [*Girish Kumar Suneja v. CBI*, (2017) 14 SCC 809 : (2018) 1 SCC (Cri) 202]. Though in *V.C. Shukla* [*V.C. Shukla v. State*, 1980 Supp SCC 92 : 1980 SCC (Cri) 695], order framing charge was held to be interlocutory order, judgment in *Madhu Limaye* [*Madhu Limaye v. State of Maharashtra*, (1977) 4 SCC 551 : 1978 SCC (Cri) 10] taking a contrary view was distinguished in the context of the statute considered therein. The view in *S. Kuppaswami Rao* [*S. Kuppaswami Rao v. R.*, 1947 SCC OnLine FC 13 : (1947) 9 FCR 180], was held to have been endorsed in *Mohanlal Maganlal Thakkar* [*Mohanlal Maganlal Thakkar v. State of Gujarat*, (1968) 2 SCR 685 : AIR 1968 SC 733 : 1968 Cri LJ 876] though factually in *Madhu Limaye* [*Madhu Limaye v. State of Maharashtra*, (1977) 4 SCC 551 : 1978 SCC (Cri) 10], the said view was explained differently, as already noted. Thus, in spite of the fact that *V.C. Shukla* [*V.C. Shukla v. State*, 1980 Supp SCC 92 : 1980 SCC (Cri) 695] is a judgment by Bench of four Judges, it cannot be held that the principle of *Madhu Limaye* [*Madhu Limaye v. State of Maharashtra*, (1977) 4 SCC 551 : 1978 SCC (Cri) 10] does not hold the field. As regards *Girish Kumar Suneja* [*Girish Kumar Suneja v. CBI*, (2017) 14 SCC 809 : (2018) 1 SCC (Cri) 202], which is by a Bench of three Judges, the issue considered was whether the order of this Court directing that no court other than this Court will

stay investigation/trial in Manohar Lal Sharma v. Union of India [Manohar Lal Sharma v. Union of India, (2014) 9 SCC 516] (Coal Block allocation cases) violated right or remedies of the affected parties against an order framing charge. It was observed that the order framing charge being interlocutory order, the same could not be interfered with under Section 397(2) nor under Section 482 CrPC. [Manohar Lal Sharma case, (2014) 9 SCC 516, paras 24, 25 and 27] It was further held that stay of proceedings could not be granted in the PC Act cases even under Section 482 CrPC. [Manohar Lal Sharma case, (2014) 9 SCC 516, para 32] It was further observed that though power under Article 227 is extremely vast, the same cannot be exercised at the drop of a hat as held in Shalini Shyam Shetty v. Rajendra Shankar Patil [Shalini Shyam Shetty v. Rajendra Shankar Patil, (2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] as under: (Girish Kumar case [Girish Kumar Suneja v. CBI, (2017) 14 SCC 809 : (2018) 1 SCC (Cri) 202] , SCC p. 835, para 37)

“37. ... ‘49. ... (n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.’ (Shalini Shyam case [Shalini Shyam Shetty v. Rajendra Shankar Patil, (2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] , SCC p. 349, para 49)”

22. Learned counsel for the revisionist has placed reliance on the Full Bench judgement of Hon’ble Supreme Court in the case of **Prabhu Chavla Vs. State of Rajasthan (Supra)**, wherein relevant scope of the revisional jurisdiction under Section 397 and inherent power of Hon’ble High Court, under Section 482 Cr.P.C. has been discussed and held that there is no total ban on the exercise of inherent power where abuse of process of Court or other extraordinary situation warrants exercises of inherent jurisdiction and availability of alternative remedy of a criminal revision under Section 397, by itself cannot be a good ground to dismiss an application filed under Section 482 Cr.P.C. Learned counsel for the revisionist has placed reliance on para 6 of the aforesaid judgement,

wherein it is held that we venture to add a further reason in support . Since Section 397 Cr.P.C. is attracted against all orders other than interlocutory order, a contrary view would limit the availability of inherent power under Section 482 Cr.P.C. only to petty interlocutory orders. A situation only unwarranted and undesirable. Aforesaid para no.6 as relied upon by counsel for the revisionist is not helpful in the present matter in holding the maintainability of the revision against the order impugned which is held to be interlocutory order by Hon'ble Supreme Court in the case of **Setthuraman(Supra)**. In para no.4 of the case of **Setthuraman(Supra)**, Hon'ble Apex Court has held as under:-

“4. Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C. The Trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondents/accused and the only defence that was raised, what that his signed cheques were lost and that the appellant/complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e. one on the application under Section 91 Cr.P.C. for production of documents and other on the application under Section 311 Cr.P.C. for production of documents and other on the application under Section 311 Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397(2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed.”

23. Aforesaid observations made by the Hon'ble Supreme Court left no room for discussion to decide the nature of the order passed under Section 311 Cr.P.C. that order passed under the aforesaid section is an interlocutory order.

24. In the aforesaid case accused had moved an application under Section 91 Cr.P.C. and under Section 311 Cr.P.C. seeking direction to produce the Bank Pass-book, Income-tax account etc. and also for recalling the witnesses for cross-examination. Hon'ble Supreme Court has held that

order rejecting the application under Section 91 of Cr.P.c. and under Section 311 Cr.P.C., where the orders of interlocutory nature which cannot be assailed in revision in view of the bar as embodied under sub-Section 2 of Section 397 Cr.P.C.

25. In a recent judgment of this Hon'ble Allahabad High Court, (Lucknow Bench), decided on 12.12.2009 in Criminal Revision No. 1640 of 2019 (Anil Kumar Vs. State of U.P.), co-ordinate Bench of this Hon'ble High Court, after consideration the case of **Sethuram(Supra)** has held that rejection order under Section 311Cr.P.C. is an interlocutory order, hence, the revision is not maintainable u/s 397(1) Cr.P.C. In deciding the issue of maintainability of revision against the rejection order passed under Section 311 Cr.P.C, Hon'ble Court has also considered the decision of Division Bench of Allahabad High Court in the case of **Asif Hussain Vs. State of U.P.**, reported in **2007 (57) ACC, 1036.**

26. Further, in the case of **Girish Kumar Suneja Vs. C.B.I.** reported in (2017) 14 SCC 809, three-Judges Bench judgment, Hon'ble Supreme Court has discussed in detail the scope of revision under Section 397 Cr.P.C. in the context of intermediate and interlocutory order. In the aforesaid judgment, Hon'ble Supreme Court has considered the dictum of **Amarnath(supra)** and **Madhu Limay(supra)**, relevant para 15 to 18 and 20 to 23 of the aforesaid judgments is reproduced as under:-

*“15. While the text of sub-section (1) of Section 397 confer very wide powers on the court in the exercise of its revision jurisdiction, this power is equally **severely curtailed** by sub-section (2) thereof. There is a complete prohibition in a court exercising its revision jurisdiction in respect of interlocutory orders. Therefore, what is the nature of orders in respect of which a court can exercise its revision jurisdiction?*

16. There are three categories of orders that a court can pass -final, intermediate and interlocutory. There is no doubt that in respect of a final order, a court can exercise its revision jurisdiction- that is in respect of a final order of acquittal or conviction. There is equally no doubt that in respect of an interlocutory order, the court cannot exercise its revision jurisdiction. As far as an intermediate order is concerned, the court can exercise its revision jurisdiction since it is not an interlocutory order.

17. The concept of an intermediate order first found mention in *Amar Nath Vs. State of Haryana* in which case the interpretation and impact of Section 397(2) of the Cr.P.C. came up for consideration. This decision is important for two reasons. Firstly it gives the historical reason for the enactment of Section 397(2) of the Cr.P.C. and secondly considering that historical background, it gives a justification for a restrictive meaning to Section 482 of the Cr.P.C.

18. As far as the historical background is concerned, it was pointed out that the Criminal Procedure Code of 1898 and the 1955 Amendment gave wide powers to the High Court to interfere with orders passed in criminal cases by the subordinate courts. These wide powers were restricted by the High Court and this Court, as matter of prudence and not as a matter of law, to an order that “suffered from any error of law or any legal infirmity causing injustice or prejudice to the accused or was manifestly foolish or perverse.” (*Amar Nath case (1977) 4 SCC 137 = 1077 SCC (Cri) 585*). This led to the courts being flooded with cases challenging all kinds of orders and thereby delaying prosecution of a case to the detriment of an accused person.

20. As noted in *Amar Nath (1977) 4 SCC 137 = 1077 SCC (Cri) 585* the purpose of introducing Section 397(2) Cr.P.C. was to curb delays in the decision of criminal cases and thereby to benefit the accused by giving him or her a fair and expeditious trial. Unfortunately, this legislative intent is sought to be turned topsy turvy by the appellants.

21. The concept of an intermediate order was further elucidated in *Madhu Limaye Vs. State of Maharashtra (1977) 4 SCC 551 : 1978 SCC (Cri) 10* by contradistinguishing a final order and an interlocutory order. This decision lays down the principle that an intermediate order is one which is interlocutory in nature but when reversed, it has the effect of terminating the proceedings and thereby resulting come to mind – an order taking cognizance of an offence and summoning an accused and an order for framing charges. Prima facie these orders are interlocutory in nature, but when an order taking cognizance and summoning an accused is reversed, it has the effect of terminating the proceedings against that person resulting in a final order in his or her favour. Similarly, an order for framing of charges if reserved has the effect of discharging the accused person and resulting in a final order in his or her favour. Therefore, an intermediate order is one which if passed in a certain way, the

proceedings would terminate but if passed in another way, the proceedings would continue.

22. *The view expressed in Amar Nath ((1977) 4 SCC 137) and Madhu Limaye ((1977) 4 SCC 551) was followed in K.K. Patel Vs. State of Gujarat ((2000) 6 SCC 195: 2001 SCC (Cri) 200) wherein a revision petition was filed challenging the taking of cognizance and issuance of a process. It was said: (K.K. Patel case ((2000) 6 SCC (Cri) 200), SCC p. 201, para. 11)*

“11..... It is now well-high settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage (vide Amar Nath Vs. State of Haryana ((1977) 4 SCC 137), Madhu Limaye Vs. State of Maharashtra ((1977) 4 SCC 551), V.C. Shukla Vs. State (1980 Supp SCC 92 : 1980 SCC (Cri) 695) and Rajendra Kumar (Sitaram Pande Vs. Uttam ((1999) 3 SCC 134 : 1999 SCC (Cri) 393). The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceeding, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants proceedings would have been terminated. Hence, as per the said standard, the order was revisable.” (Emphasis supplied)

23. *We may note that in different cases, different expressions are used for the same category of orders – sometimes it is called an intermediate order, sometimes a quasi-final order and sometimes it is called an order that is a matter of moment. Our preference is for the expression 'intermediate order' since that brings out the nature of the order more explicitly.”*

27. **Learned counsel for the opposite party nos. 2 to 5 has also placed reliance on judgment dated 13.12.1999 in **Goli Satyanarayan Reddy(Supra)** which was decided by single Bench of Andhra Pradesh High Court holding that order passed in rejecting the application under Section 45 of Indian Evidence Act do not decide the case finally, therefore, it is an interlocutory order and revision against the said order is not maintainable under Section 397(2) Cr.P.C.. In the aforesaid case, Hon’ble Judge has considered the law expounded by the Hon’ble Supreme Court in the case of **Amarnaath(supra), Madhu Limay(supra) and Girish Kumar Sunija (supra)****

28. In the light of the discussion as made above, now it is clear from the judgment of **Girish Kumar Sunija(Supra)**, that those orders which have the effect of terminating the proceeding of the main case once for all, though passed at interlocutory stage, are alone can be construed as intermediate order or quasi-final order. On this basis alone, one can reach the conclusion that particular order is interlocutory order or intermediate order or quasi-final order for the purpose of maintaining revision under Section 397(1) Cr.P.C. It is significant to note that it has been consistently held right from the case of **Amarnaath(supra)** in the year 1979 till **Girish Kumar Sunija(supra)** in the year 2017 that an order of summoning a witness is an interlocutory order which is not revisible. I am not in agreement with the submission made by learned counsel for the revisionist that every order passed, during the trial, touching the right and liability of the parties is an intermediate order and liable to be assailed under the revisional jurisdiction. Order passed for summoning witness or for producing the documents are only an step in furtherance of the trial proceeding which does not terminate anything final against any person. If the contention of counsel for the revisionist is accepted and every order passed during the trial of the case is construed as an intermediate order on the ground that it touches right or liability of the parties in relation to trial of the case, it would defeat the very purpose of bar as enshrined under sub-section 2 of Section 397 Cr.P.C. and would dilute the legislative intend.

29. After decision of Hon'ble Supreme Court in the case of **Setthuraman(supra)**, there is no room left for discussion qua nature of rejection order passed in application under Section 311 Cr.P.C., which is held to be interlocutory order and assailing the said order in the revision petition is clearly barred under sub-Section 2 of Section 397 Cr.P.C. Dictum of **Madhu Limay (Supra)** and **Prabhu Chawla (Supra)** relied on by counsel for the revisionist are not come in his rescue to defeat the intention of legislation qua creating bar, in entertaining the revision petition assailing the interlocutory order which has been passed u/s 311 Cr.P.C. In **Setthuraman (supra)** case, Apex Court has clearly held in unequivocal term that an order passed under Section 311 Cr.P.C. to summon a witness or an order passed under Section 91 Cr.P.C. to call for the documents are pure and simple interlocutory order which do not decide anything final, as such revision petition is clearly barred under Section 397(2) Cr.P.C. Therefore, in the light of the aforesaid dictum,

order in question cannot be construed as an order touching the right and liability of the victim in relation to trial of the case and it is not going to decide anything final resulting into the culminating of proceeding of main case once for all.

- 30.** After considering the law enunciated by Hon'ble Apex Court in several decision as discussed above, it can easily be concluded that decision of application under Section 311 Cr.P.C. do not decide anything finally or results into the culminating the main proceeding of the case. Order impugned cannot be construed as an order which is a matter of movement or as an intermediate or quasi final order as discussed in the case of **Amarnaath(Supra)** and **Madhu Limay (Supra)**, so as to maintain the revision against the said order.
- 31.** Hence, the instant revision petition is held to be barred and not maintainable in the eyes of the law under the provisions of sub-Section (2) of Section 379 of Cr.P.C.. Accordingly the present revision petition, filed against the order dated 27.10.2020 passed by Additional District and Sessions Judge/Special Judge (E.C. Act), Varanasi, in Sessions Trial No. 118/2016 (C.N.R. No.- UPVR01-000691-2016) (*State of U.P. Vs. Vansraaj Patel and Others*) arising out of case crime No.22 of 2016, under Section 307, 352, 327, 326-A of I.P.C., Police Station- Cholapur, District- Varanasi, is hereby **dismissed**.
- 32.** Parties shall bear their own costs.

Order Date :- 1.12.2020

Sachin