THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C.Nos.1561, 1824, 1826, 1860, 1861, 1862, 1874, 1894, 1895, 1931, 1932 and 1933 of 2017

COMMON ORDER

Since common issue is involved in all these revisions, they are being disposed of by this common order.

2. Crl.R.C.No.1561 of 2017 is filed under Sections 397 and 401 of Cr.P.C., aggrieved by the order dated 29.05.2016 passed by the XII Special Magistrate, Hyderabad in Crl.M.P.No.1228 of 2017 in C.C.No.3 of 2013, dismissing the application filed by petitioners/A1 and A2 under Sections 136 and 148 of Indian Evidence Act, 1872 (for short 'the Act'), with a request to eschew/discard the evidence of P.Ws.2 and 3. The other revision cases are filed under Sections 397 and 401 of Cr.P.C., against the docket order dated 31.05.2017 passed in C.Cs., by the XXV Special Magistrate, Hyderabad, permitting P.W.3, namely, Sri K.Ravi Prasad, to give evidence.

3. The petitioners are A1 and A2 in the C.Cs., referred to supra. They filed petitions for the relief of eschewing the evidence of P.Ws.2 and 3 on the ground that the respondent/complainant is a corporate juristic person and it can appoint and authorize a person to give evidence in prosecution for the offence punishable under Section 138 of Negotiable Instruments Act, 1881, only once. The respondent has filed the said cases against petitioners for the offence punishable under Section 138 of Negotiable Instruments

Act, 1881, alleging that the cheques were dishonoured on its presentation and it authorised P.W.1 to examine before the Court. After examination of P.W.1, the affidavits of P.Ws.2 and 3, namely, P.C.Nayak and Chandrashekar Mallappa Kamoji, were filed in lieu of their examination in chief stating that they are authorized persons, appointed by the respondent to give evidence. Petitioners contended that the complainant is incompetent to authorize multiple persons as authorized officers by successive and repetitive appointment without cancelling the authorization given earlier and therefore, the evidence of P.Ws.2 and 3 is liable to be eschewed/discarded. They also contended that the examination of P.Ws.2 and 3 is against the purport of the judgment of the Apex Court in **A.C.NARAYANAN v. STATE OF MAHARASHTRA AND ANOTHER**[1]. Therefore, the evidence of those two witnesses cannot be continued on record as they are incompetent to represent the company and give evidence on behalf of the respondent company, which is a juristic person.

4. The respondent refuted the contentions in its counter in all the petitions contending that in view of the ratio in **A.C.NARAYANAN'S** case, referred to supra, the corporate person can authorize any person to give evidence by passing appropriate resolution by the Board of Directors and there is no bar from authorizing any person simultaneously or one after the other to give evidence on behalf of juristic person i.e., company. Therefore, there is absolutely no bar to appoint P.Ws.2 and 3 to represent the company subsequent to authorization of P.W.1. Apart from that, the evidence cannot be

[1] (2014) 11 SCC 790

eschewed from the record when they were already examined and Sections 136 and 148 of the Act do not permit the Court to eschew the evidence of any witness and prayed for dismissal of the petitions.

5. Upon hearing argument of both the counsel, the Special Magistrate placing reliance on **MMTC LTD., v. MEDCHAL CHEMICALS AND PHARMA (P) LTD.,**[2] and **JANKI VASHDEO BHOJWANI INDUSIND BANK LIMITED**[3], which were relied upon by the Apex Court in **A.C.NARAYANAN'S** case, referred to supra, concluded that the evidence of P.Ws.2 and 3, by exercising power under Sections 136 and 148 of the Act, cannot be eschewed and dismissed all the petitions.

6. Aggrieved by the orders of the Special Magistrate, the present revisions are filed on the ground that without cancellation of earlier authorization in favour of P.W.1, no other person can be authorized to act on behalf of the respondent company and that adducing evidence by examining P.Ws.2 and 3 as authorized persons on behalf of the respondent is illegal and contrary to the principles laid down by this Court in Crl.R.C.Nos.469 of 2017 and batch dated 13.04.2017, wherein this Court held as under:

> "Having regard to the above, the affidavits filed by virtue of authorization without cancellation of the earlier authorization since cannot be sustained and the affidavits since not taken on oath, same are cancelled and eschewed with no evidentiary value to those affidavits to take on oath, however, by giving liberty to the complainant if at all the witness wants to depose independently from what he knows of the transactions to simply file

[2] (2002) 1 SCC 234
[3] (2004) 3 SCC 584

separate evidence affidavits with those facts, within the purview of Section 145 of the Negotiable Instruments Act, 1881."

Basing on the principle laid down in the above judgment, it is contended by petitioners that P.Ws.2 and 3 cannot depose on behalf of the Company as authorised persons and it is an error committed by the Court below and prayed to set aside the orders by allowing the revisions.

7. During hearing, learned senior counsel Sri Vinod Kumar Deshpande, appearing for petitioners, would contend that the orders under challenge are not interlocutory orders and they would affect the substantial rights of the parties and this Court can exercise power under Sections 397 and 401 of Cr.P.C. as the orders under challenge are not interlocutory in nature. He placed reliance on several judgments of the Apex Court reported in **AMIT KAPOOR v. RAMESH CHANDER AND ANOTHER**[4]; **MADHU LIMAYE v. THE STATE OF MAHARASHTRA**[5]; **SMT PARMESHWARI DEVI v. THE STATE AND ANOTHER**[6]; **BHASKAR INDUSTRIES LTD., v. BHIWANI DENIM & APPARELS LTD., AND OTHERS**[7]; **MOHAN LAL MAGAN LAL THACKER v. STATE OF GUJARAT**[8] ; **AMAR NATH AND OTHERS v. STATE OF HARYANA AND ANOTHER**[9]; **CENTRAL BUREAU OF INVESTIGATION v. STATE OF GUJARAT**[10] and also relied on the judgment of Madras High Court

[4] (2012) 9 SCC 460
[5] (1977) 4 SCC 551
[6] (1977) 1 SCC 169
[7] (2001) 7 SCC 401
[8] AIR 1968 SC 733
[9] (1977) 4 SCC 137
[10] (2007) 6 SCC 156

in **T. SUBRAMANIAM v. SANTHAMANI AND ANOTHER in A.S.No.816 of 2005.** On the strength of the principles laid in the judgments, learned counsel contended that this Court can exercise power of revision as the orders under challenge would affect the substantial rights of the parties and thereby, the Court cannot decline to interfere with the orders on the ground that the orders were passed during pendency of the C.Cs., and prayed to allow these revisions setting aside the impugned orders passed by the Court below as there is manifest perversity or apparent error in the orders under challenge, *ex facie*.

8. Per contra, Sri Manu, learned counsel for the respondent/complainant, while contending that the orders under challenge are interlocutory orders and are not amenable to revisionary jurisdiction of this Court in view of the bar under Section 397(2) of Cr.P.C. Therefore, the revisions are not maintainable and are liable to be dismissed. He further contended that the common order of this Court in Crl.R.C.Nos.469 of 2017 and batch, referred by petitioners in paragraph No.3 of the grounds of revision, is contrary to the principles laid down in **A.C.NARAYANAN'S** case, referred to supra, and it is *per incuram* and the same cannot be relied upon for the purpose of deciding these petitions. He also contended that any witness can be examined by prosecution since it is for the complainant to prove its own case and failure to hear the material witness is certainly denial of fair justice. To support this contention, he placed reliance on the judgments of the Apex Court in **ZAHIRA HABIBULLAH SHEIKH AND ANOTHER v. STATE OF GUJARAT**

AND OTHERS[11]; J.V.BAHARUNI AND ANOTHER v. STATE OF GUJARAT AND ANOTHER[12], where the Apex Court while deciding a case under Sections 138 and 143 of Negotiable Instruments Act, 1881, held as under:

> "To achieve the purpose of 'speedy disposal', the Legislature has recommended a simplified procedure for trial of the offences under the N.I.Act., i.e., 'summary trial'. The amendment to the Act also made the offence 'compoundable' as the punishment provided in the unamended Act was inadequate and the procedure was found to be cumbersome. Thus, incorporation of Sections 143 to 147 was especially aimed at early disposal of cases in a simplified procedure and more particularly, to do away with all the stages and processes in a regular criminal trial that normally cause inordinate delay in its conclusion and to make the trial procedure as expeditious as possible without in any way compromising with the right of the accused for a fair trial".

Learned counsel for respondent contended that the purpose of incorporating special provisions under Negotiable Instruments Act, 1881 and examination of these witnesses are only to achieve the object of speedy justice by enabling the Court to decide the real controversy between the parties. He also contended that when the common order of this Court in batch of revisions, referred to supra, is *per incuram,* the same cannot be relied upon since it is contrary to the principles laid down in **A.C.NARAYANAN'S** case, referred to supra, and therefore, no reliance can be placed on such judgment. To support his contention, he has drawn the attention of this Court to the judgment of the Apex Court in **UNION OF INDIA AND OTHERS v. R.P.SINGH[13].** On the strength of these principles, he contended that the orders passed by the Court below are not amenable to the

[11] AIR 2006 SC 1367
[12] 2015 (3) SCJ 292
[13] 2014 AIR (SC) 2541

revisionary jurisdiction of this Court as they would not affect the substantive rights of any of the parties and thereby, following the judgment of this Court in Cr.R.C.Nos.469 of 2017 and batch, the Court cannot eschew the evidence of P.Ws.2 and 3 from record, on the ground that their authorization was improper.

9. Considering rival contentions and perusing the material available on record, the points that arise for consideration are as follows:

> ***(1) Whether the orders under challenge are interlocutory in nature, if not, whether the revision petitions under Sections 397 and 401 of Cr.P.C. are maintainable before this Court against such orders?***
>
> ***(2) Whether the authorization of P.Ws.2 and 3 to depose on behalf of the respondent company is in contravention of the direction issued by the Single Judge of this Court in Cr.R.C.Nos.469 of 2017 and bath, dated 13.04.2017 ?***

10. **POINT No.1:**

The petitions are filed under Sections 136 and 148 of the Act. Section 136 of the Act deals with the power of the Judge to decide as to admissibility of the evidence. Section 148 of the Act deals with the power of the Court to decide when question shall be asked and when witness can be compelled to answer.

Section 136 of the Act reads as under:

> "When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved would be relevant; and the Judge shall admit the

evidence if he thinks that the fact, if proved, would be relevant and not otherwise.

If the fact proposed to be proved is one of which evidence is admissible only upon proof of, some other fact, such last mentioned fact must be proved before evidence is given of the fact first-mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact".

Section 148 of the Act reads as under:

"If any such question relates to a matter not relevant to the suit for proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it". In exercising its discretion the Court shall have regard to the following considerations:-

(1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(2) such questions are improper if the imputation which they convey relates to matters so remote in time or of such a character, that the truth of the imputation would not affect, or would not affect in a slight decree the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(4) the Court may, if it sees fit, draw from the witness's refusal to answer, the inference that the answer if given would be unfavourable".

11. None of the provisions permits the Court to eschew or discard the evidence of any witness from the record and at best, the Court

may refuse to record the evidence of witness after putting certain questions, but when once the evidence is recorded, except in certain circumstances, the witness was not tendered for cross-examination, the Court cannot eschew or discard the evidence either by exercising power under Section 136 or under Section 148 of the Act. If, for any reason, the evidence of P.Ws.2 and 3 is not eschewed or discarded, the order if allowed to sustain would not culminate the entire proceedings pending before the Special Magistrate. Therefore, keeping in mind the effect of the orders passed by the Special Magistrate, this Court has to decide whether the orders under challenge are interlocutory in nature. In **BHASKAR INDUSTRIES LTD.,** referred to supra, the Apex Court laid down certain guidelines to determine whether the order under challenge is a final order or an interlocutory order. In **MOHAN LAL MAGAN LAL THACKER'S** case, referred to supra, the Constitutional Bench consisting of five Judges, laid down certain guidelines to determine whether the orders under challenge are interlocutory or not. The term 'interlocutory order' in Section 397(2) Cr.P.C. has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. The Apex Court laid down certain tests, they are as follows:

> "The question as to whether a judgment or an order is final or not has been the subject matter of a number of decisions; yet no single general test for finality has so far been laid down. The reason probably is that a judgment or order may be final for one purpose and interlocutory for another or final as to part and interlocutory as to part. The meaning of the two words "final" and .'interlocutory" has, therefore, to be considered

separately in relation to the particular purpose for which it is required. However, generally speaking. a judgment or order which determines the principal matter in question is termed final. It may be final although it directs enquiries or is made on an interlocutory application or reserves liberty to apply.(1) In some of the English decisions where this question arose, one or the other of the following four tests was applied.

1. Was the order made upon an application such that a decision in favour of either party would determine the main dispute ?

2. Was it made upon an application upon which the main dispute could have been decided ?

3. Does the order as made determine the dispute ?

4. If the order in question is reversed, would the action have to go on ?

From this, it is clear that an order which determines the principal matter in question is termed as final order. The Apex Court relied on several judgments of Queen's Bench.

(i) A judgment or order may be final for one purpose and interlocutory another or final as to part and interlocutory as to part. The meaning of the two words 'final' and 'interlocutory' is, therefore to be considered separately in relation to the particular purpose for which it is required However, generally speaking a judgment or order which determines the principal matter in question is termed final. It may be final although it directs enquiries or is made on an interlocutory application or reserves liberty to apply. [687 H; 688 A-,B]

Salaman v. Warner [1891] 1 Q.B. 734, Standard Discount Co., v. La Grange, [1877] 3 C.P.D. 67, A. Great Eastern Rail Co. [1879] 27 W.R,. 759, Shutrook v. Tufnell, [1882] 9 Q.B.D, 621, Bozson v.Altrincham Urban Council, [1903] 1 K.B. 547, Abdul Rehman v. The King [1947] Cassim & Sons v. 60 IA. 76, S.Kuppusami Rao v. King, [1497] F.C.R. 180, Mohammad Amin Brothers Ltd. v. Dominion of India, [1949]F.C.R.

842. Sardar Svedna Taher Saifuddin Saheb v. The State of Bombay [1958]S.C.R. 1007, Jethainand and Sons v. The State of Uttar Pradesh [1961] 3 S.C.R. 754, Premchand Satramadas v. State of Bihar [1950] S.C.R. 799, State of Uttar Pradesh v. Sujan Singh, [1964] 7 S.C.R. and State of Orissa v. Madan Gopal [1952] S.C.R. 28, referred to.

(ii) The order of the High Court in the present case disposed of the controversy whether the filing of the complaint against the appellant was justified, The finality of that order was not to be judged by co-relating that order with the controversy in the controversy viz., whether the appellant had committed the offence charged against him therein. The fact that that controversy remained alive was irrelevant. Consequently the order passed by the High Court in the revision filed by the appellant the appellant had committed the offence charged against him therein. The fact that the controversy remained alive was irrelevant. Consequently, the order passed by the High Court in the revision filed by the appellant was final order within the meaning of Art. 134(1)(c). [693 D-H] Ramesh v. Patni, [1966] 3 S.C.R. 198, relied on.

12. The constitutional Bench of the Apex Court placed reliance on **RAMESH v. PATNI**[14]**,** where the order passed by the Claims Officer under the Madhya Pradesh Abolition of Proprietary Rights Act, 1950, was questioned before the High Court on the ground that the Commissioner had no jurisdiction to entertain or try the appeal, but the High Court dismissed the petition summarily holding that it was not final order and it did not decide the controversy between the parties and did not of its own force affect the rights of the parties or put an end to the controversy and observed as under:

"(1) that the word 'proceeding' in Art. 133 was a word of a very wide import;

(2) that the contention that the order was not final because it did not conclude the dispute between the parties would have had force if it was passed in the exercise of the appellate or revisional jurisdiction of the High Court, as an order of the High Court if passed in an appeal or revision would not be final if the suit or proceeding from which there was such an appeal or revision remained still alive after the High Court's order;

(3) but a petition under Art. 226 was a proceeding independent of the original controversy between the parties; the question therein would be whether a proceeding before a Tribunal or an authority or a court should be quashed on the ground of want of jurisdiction or on other well recognised

---

[14] (1966) 3 SCR 198

grounds and that the decision in such a petition, whether interfering or declining to interfere, was a final decision so far as the petition was concerned and the finality of such an order could not be judged by co-relating it with the original controversy between the parties. The court, however, observed that all such orders would not always be final and that in each case it would have to be ascertained what had the High Court decided and what was the effect of the order. If, for instance, the jurisdiction of the inferior tribunal was challenged and the High Court either upheld it or did not, its order would be final".

13. The Apex Court in **MOHAN LAL MAGAN LAL THACKER's** Case, referred to supra, reviewed the law declared by various Courts and similar view was taken by various High Courts in **DHARAMBIR KHATTAR v. C.B.I.,** arise out of C.R.P.No.340 of 2008 and Crl.M.A.No.7751 of 2008 decided on 05.05.2009 by the Delhi High Court; Rajasthan High Court in **STATE OF RAJASTHAN v. RAMNARAYAN UPADHYA**[15] and in **NEMI CHAND v. STATE OF RAJASTHAN**[16]; Punjab and Haryana High Court in **LAKHWINDER SINGH AND OTHERS v. C.B.I.,**[17]; Kerala High Court in **JOSHY v. THE STATE**[18]; Allahabad High Court in **MUMTAZ-UD-DAULA MUKARRAM ALI v. JAMES R.R.SKINNER**[19]; and Patna High Court in **SIA SARAN SINGH AND OTHERS v. STATE OF BIHAR**[20].

14. After **MOHAN LAL MAGAN LAL THACKER's** case, the Division Bench of the Apex Court in **AMAR NATH's** case, referred to supra, had an occasion to deal with the issue whether an order passed by the Court is interlocutory or final and held as follows:

---

[15] 1976 WLN 234
[16] 1988(1) WLN 585
[17] 1998 Crl.L.J., 258
[18] 1986 Crl.L.J 263
[19] AIR 1925 ALL 263
[20] 1977(25) BLJR 596

"The main question which falls for determination in this appeal is as to, the what is the connotation of the term "interlocutory order" as appearing in sub-s. (2) of S.397 which bars any revision of such an order by the High Court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious diffident. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide 'the rights and liabilities of the parties concerning a particular aspect. It seems to, us thatthe term "interlocutory order" in S.397(2) of the 1973 Code has beenused in a restricted sense and not in any broad or artistic sense.It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights, or the liabilities of the parties. Any order which substantially affects the, right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in S.397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under S. 397 (2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.

15. In the later judgment in **MADHU LIMAYE's** case, referred to supra, relied on by the counsel for petitioners, the Apex Court referring the judgment of the Apex Court in **AMAR NATH's** Case, referred to supra, held that ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. In volume 22 of the third edition of Halsbury's Laws of England at page 742, however, it has been stated in para 1606. A judgment or order may be final for one

purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of two words must therefore be considered separately in relation to the particular purpose for which it is required. In para 1607 it is said : "In general a judgment or order which determines the principal matter in question is termed "final"." In para 1608 at pages 744 and 745 we find the words "An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the- final judgment are to be worked out, is termed "interlocutory". An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals." In S. Kuppuswami Rao v. The King(1) Kania C. J., delivering the judgment of the Court has referred to some English decisions at pages 185 and 186. Lord Esher M. R. said in Salaman v. Warner "If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules 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." To the same effect are the observations quoted from the judgments of Fry L. J. and Lopes L. J. Applying the said test, almost on facts similar to the ones in the instant case, it was held that the order in revision passed by the High Court (at that time, there was no bar like Section 397(2) was not a "final order" within the meaning of Section 205(1) of the Government of India Act, 1935. It is to be noticed that the test laid down therein was that if the objection of the accused succeeded, the proceeding could have ended but not vice versa. The order can be said to be a final order only if, in either event, the action will be determined. In our opinion if this strict test were to be applied in interpreting the words 'interlocutory order" occurring in Section 397(2), then the order taking cognizance of an offence by a Court, whether it is so done illegally or without jurisdiction, will not be a final order and hence will be an interlocutory one. Even so, as we have said above, the inherent power of the High Court can be invoked for quashing such a criminal proceeding. 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. It has been pointed out repeatedly, vide, for example, The River Wear Commissioners v. William Adamson(1) and R.M.D.Chamarbaugwalla v. The Union of India (2) that although the word occurring in a particular statute are plain and unambiguous, they have to be interpreted in a manner which would fit in the context of the other provisions of the statute and bring about the real intention of the legislature. On the one hand, the legislature kept intact the revisional power of the High Court and, on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a situation it appears to us that the real intention of the 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 a proceeding which may not be final in the sense noticed in Kuppuswami's case (supra), 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. They may not be final orders for the purposes of Article 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders within the meaning of Section 397(2). It is neither advisable, nor possible, to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of those types of orders which will fall in between the two. The first two kinds are well-known and can be culled out from many decided cases. We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of subsection (2) of Section 397. In our opinion it must be taken to be an order of the type falling in the middle course.

Thus, from the law declared by the Apex Court in **MADHU LIMAYE's** case, placing reliance on **S. KUPPUSWAMI RAO v. THE KING[21],** the kinds of orders by a rule of harmonious construction, the Court has to think that the bar in sub-section (2) of Section 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purposes of Article 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders within the meaning of Section 397(2). It is neither advisable, nor possible to make a catalogue or orders to demonstrate which kinds of orders would be merely, purely or simply interlocutory and which kinds of orders would be final and then to prepare an exhaustive list of those types of orders which will fall in between the two. The first two kinds are well-known and can be culled out from many decided cases.

16. But, in the later judgment in **BHASKAR INDUSTRIES's** case, referred to supra, the Apex Court laid down a test to determine whether the order under challenge is an interlocutory order or not and held as under:

---
[21] AIR 1949 FC 1

"The interdict contained in Section 397(2) is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test is this: if the contention of the petitioner who moves the superior court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If they would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage".

17. A similar view was taken by the Apex Court in **K.K.PATEL v. STATE OF GUJARAT**[22] and held as under:

"It is now well-neigh 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. The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code.

18. If these two principles are applied coupled with the principles laid down in the judgment in **MOHAN LAL MAGAN LAL THACKER's** Case, referred to supra, the orders under challenge would not terminate or culminate the entire proceedings, if the order passed by the Special Magistrate is allowed to sustain. In such case, it is difficult to hold that the orders under challenge are final orders amenable to revisionary jurisdiction of this Court under Sections 397 and 401 of Cr.P.C.

19. Learned senior counsel for petitioners Sri Vinod Kumar Deshpande also drawn the attention of this Court to the judgment of

---

[22] (2000) 6 SCC 195

the Apex Court in **SMT PARMESHWARI DEVI's** case, referred to supra, which laid a test to determine whether the order is an interlocutory or not. Even according to the principles laid down in the judgment, if the order is directed against a person, who is not a party to the enquiry or trial, and he will have no opportunity to challenge it after a final order is made affecting the parties concerned, then, for such a person, the order could not be said to be interlocutory. An order may be conclusive with reference to the stage at which it is made, and it may also be conclusive as to a person, who is not a party to the enquiry or trial, against whom it is directed.

If this test is applied to the present facts of the case, the orders under challenge are not against a third party, but against a party to the proceedings and it would not determine the substantive rights of any of the parties to the proceedings. Therefore, the test laid down in **MOHAN LAL MAGAN LAL THACKER's** Case, **K.K.PATEL's** case and **BHASKAR INDUSTRIES's** case, referred to supra, if applied, the orders under challenge are only interlocutory in nature.

20. Before the other Judge, no objection was raised about the maintainability and when no such objection was raised, the Court cannot consider the objection as to maintainability of the revision before this Court and learned counsel for petitioners relied on paragraphs Nos. 8 and 11 of the judgment in **BHASKAR INDUSTRIES's** case, but this principle is of no assistance for the reason that before the trial Court, no such objection be permitted.

Since the C.Cs., are pending before the trial Court and when revisions are filed, this Court cannot entertain such objection and decide about the maintainability of the revision petitions. Consequently, I hold that the orders under challenge are only interlocutory orders as the orders if allowed to sustain would not determine the substantive rights of the parties or culminate the entire proceedings pending before the Special Magistrate in C.Cs.

21. When this Court concluded that the orders under challenge are interlocutory in nature, in view of the bar under Section 397 (2) of Cr.P.C., revisions are not maintainable against such interlocutory orders. On this ground, the revision petitions are liable to be dismissed. Accordingly, the point is answered against the petitioners and in favour of the respondent.

22. **POINT No.2**

The main ground raised before this Court is that this Court already passed a common order in Crl.R.C.Nos.469 of 2017 and batch, where this Court issued a specific direction, which is extracted in earlier paragraphs. As seen from the order passed by this Court in the said batch of revision petitions based on the principle laid down in **A.C.NARAYANAN's** Case, referred to supra, it was concluded that

> **"by virtue of authorization without cancellation of earlier authorization since cannot be sustained and the affidavits since not taken on oath, same are cancelled and eschewed with no evidentiary value to those affidavits to take on oath, however, by giving liberty to the complainant if at all the witness wants to depose independently**

from what he knows of the transactions to simply file separate evidence affidavits with those facts, within the purview of Section 145 of the Negotiable Instruments Act, 1881. "

But the judgment of this Court in the batch of criminal revision cases appears to be contrary to the exact principle laid down by the Apex Court in **A.C.NARAYANAN's** case, referred to supra. In **A.C.NARAYANAN's** case, while dealing with similar issue, the Apex Court held that where the attorney holder of the complainant is in charge of the business of the complainant payee and the attorney holder alone is personally aware of the transactions, there is no reason why the attorney holder cannot depose as a witness. Nevertheless, an explicit assertion as to the knowledge of the power-of-attorney holder about the transaction in question must be specified in the complaint. In paragraph No.32 of the said judgment, it is made clear that whether the power of attorney holder will have the power to further delegate the functions to another person will completely depend on the terms of the general power of attorney. As a result, the authority to sub-delegate the functions must be explicitly mentioned in the general power of attorney. Otherwise, the sub-delegation will be inconsistent with the general power of attorney and thereby will be invalid in law. Nevertheless, the general power of attorney itself can be cancelled and be given to another person. The Court also relied on the judgment in **MMTC' s** case and **JANKI VASHDEO BHOJWANI's** case, referred to supra. Considering the principles laid down in the above judgments, the Apex Court finally concluded as under:

> "Filing of complaint petition under Section 138 of the N.I.Act through power of attorney is perfectly legal and competent. The power of attorney holder can depose and verify on oath before the Court in order to prove the contents of the complaint. However, the power of attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions.

But, in penultimate paragraph, the Apex Court held as under"

> "The functions under the general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney. Nevertheless, the general power of attorney itself can be cancelled and be given to another person".

If this principle laid down in the above judgment is applied, the contention of petitioners cannot be accepted for the reason that in **A.C.NARAYANAN's** case, the Apex Court made it clear that the power of attorney can be given to another person also, but whether earlier power of attorney to P.W.1 is cancelled or not is a question and if it is cancelled, P.Ws.2 and 3, who were authorized independently or jointly, are entitled to depose before the Court, even otherwise, they are competent witnesses under Section 118 of the Act since there is a difference from civil proceedings and criminal proceedings in view of Section 120 of the Act, where the spouses are competent witnesses in a civil case, but in criminal case, only the party to the proceedings is a competent witness. But, in the present case, the respondent/complainant is a company, which is a juristic person, cannot depose and it must be represented by some person authorized by the company itself. In such case, a person, who is authorized by the company, is competent and even a person, who is not authorized, can also be examined as a witness independently and their evidence cannot be eschewed on the ground that earlier power of attorney in favour of P.W.1 was not cancelled by the subsequent authorization. The powers of agent and principal depends upon the nature of agency and terms and conditions of such authorization are created the relationship of principal and agent by giving power of attorney to any person, but those documents are not placed before this Court to decide whether the power of attorney granted or authorization accorded in favour of P.W.1 is still subsisting or deemed to have been cancelled on account of the alleged authorization in favour of P.Ws.2 and 3. When P.W.1 was examined representing the company, the evidence of P.Ws.2 and 3 is only a corroborative evidence to support the prosecution, subject to testing their evidence as per the principles of appreciation of evidence. Therefore, the evidence of P.Ws.2 and 3 cannot be eschewed or discarded on the ground that the authorisation allegedly given to them is not in accordance with law, but their evidence can be considered as independent witness to prove the transaction subject to testing their evidence within the ambit of provisions of the Act regarding reliability and credibility.

23. The counsel for respondent though placed reliance on other judgments with regard to other aspects, in view of my findings recorded above, I need not discuss the principles laid down in other judgments regarding the legality of the judgment of this Court as it is contrary to **A.C.NARAYANAN's** case etc.

24. It is also contended by learned counsel for respondent that certain documents were filed along with the affidavits by P.Ws.2 and 3 before eschewing the evidence of P.Ws.2 and 3 by the order of this Court in Crl.R.C.Nos.469 of 2017 and batch and when the evidence was eschewed, the respondent is not entitled to rely on those documents. But, it is true that if the documents were filed before passing an order in the batch of revision cases, the documents are deemed to have been eschewed along with the oral evidence of P.Ws.2 and 3 and if filed subsequent to passing of order by this Court, the Court has to consider it. However, the respondent is not totally debarred from filing fresh petitions to receive the documents in the evidence of P.Ws.2 and 3. Therefore, taking into consideration the point of time when the respondent filed documents before the Special Magistrate, the Court is required to decide if the documents are filed before eschewing the evidence by the order of this Court in batch of revisions or subsequent to it. If the documents were filed earlier, it is left open to the respondent to file a fresh application to receive the documents in evidence, and on filing such application, the Special Magistrate is directed to decide the same in accordance with law.

25. In view of my foregoing discussion, the revision petitions are not maintainable, in view of the bar under Section 397(2) Cr.P.C.; and the evidence of P.Ws.2 and 3 cannot be eschewed on any of the grounds raised before the Court, but it is left open to petitioners to raise a plea with regard to competency of witnesses to depose and credibility of their testimony during trial, and this order would not

come in the way of trial Court to decide the credibility and competency of the witness at the time of final hearing of the matters while disposing of C.Cs., pending before the Special Magistrate. Consequently, all the Criminal Revision Cases would fail.

26. In the result, all the Criminal Revision Cases are dismissed, leaving it open to petitioners to raise all legal pleas regarding competency and credibility of the evidence of P.Ws.2 and 3 and if such contention is raised, the trial Court is requested to decide the same after completion of trial.

27. Miscellaneous petitions, if any pending in these revisions, shall stand closed.

M. SATYANARAYANA MURTHY, J

10th August, 2017

sj