

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 13-8-2019****Delivered on 16-8-2019****CRMP No. 1877 of 2019**

1. Ramkaran Agrawal S/o Late Kishan Lal Agrawal Aged About 72 Years
 2. Santosh Kumar Agrawal, son of Ramkaran Agrawal, aged about 43 years
- Both R/o Ward No. 66 Banki Mongara, Tehsil Katghora, District Korba, Chhattisgarh

---- Petitioners**Versus**

1. Jeevan Pratap Singh S/o Budhwar Singh Aged About 64 Years
R/o Village Lepara, Thana Bankimongara, Tehsil Katghora,
District Korba, CG
2. State Of Chhattisgarh Through District Magistrate, Korba, District Korba, CG

---- Respondent

For petitioners	:	Mr. Sanjay Patel, Adv.
For R-2/State	:	Mr. D.C. Verma, Govt. Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV ORDER**

1. Petitioner has preferred this CRMP under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) for setting aside the order dated 2-5-2019 passed by 2nd Addl. Sessions Judge, Korba in Cr.R. No. 7/2019 and sent the respondent No. 1 to jail.
2. In brief petitioners' case is that on their complaint an FIR under Sections 420, 461, 468, 471 of the Indian Penal Code (in short 'IPC') was registered by PS Bankimongra against respondent No. 1. The Addl. Sessions Judge, Korba had rejected the bail application of respondent No. 1 on 5-12-2018. On 17-12-2018, SHO, Bankimongra filed closure report before the CJM, Korba. On 19-12-2018, the CJM, Korba passed the bail order in favour of respondent No. 1 giving reasons that circumstances have changed, it will take time to pass an

order on the closure report. Being aggrieved, the petitioners preferred revision. Revisional Court dismissed the revision as it was not maintainable because the order of CJM, Korba was of interlocutory nature. Orders passed by both the Courts below are arbitrary. There is ample evidence available on record which show that respondent No. 1 had committed alleged offences. Revisional Court had jurisdiction to entertain revision but it was wrongly dismissed.

3. Counsel for the petitioners argued that order passed by the CJM, Korba is not an interlocutory order because it was not passed in appeal, inquiry, trial or other proceeding, thus there is no bar under Section 397(2) of Cr.P.C. To fortify his argument he placed reliance in the order of Hon'ble Kerala High Court in the matter of **Prasad Jacob (US Citizen) and others -v- State of Kerala and another** [2010 CRLJ 4137], relevant portion of para 10 is extracted below :-

“10. The bar of revision under Section 397(2), Cr.P.C. is only in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding pending before an inferior criminal court. Hence, the learned Magistrate passed the order granting bail not in any appeal, inquiry, trial, or other proceeding pending before him. Since the order granting bail was passed during the crime stage in an independent application filed for the purpose and not in an interlocutory application filed in any pending proceeding before the Magistrate, the order passed by the Magistrate cannot be termed an an interlocutory order within the meaning of Section 397(2), Cr.P.C.

4. It would be pertinent to mention the provision of Section 397 (2) of Cr.P.C.-

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

5. In the matter of **Madhu Limaye -v- State of Maharashtra** [1977 (4)SCC 551] in para 12 and 13, Hon'ble Supreme Court held that :-

“12. 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 p. 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 the 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 pp. 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 declaration 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.”

“13.....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 case*, 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 wellknown 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 sub-section (2) of Section 397. In our opinion it must be taken to be an order of the type falling in the middle course.”

6. In the matter of **Amarnath -v- State of Haryana** [1977(4) SCC

137] it is observed in para 6 that :-

“6. Let us now proceed to interpret the provisions of Section 397 against the historical background of these facts. Sub-section (2) of Section 397 of the 1973 Code may be extracted thus :

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

The main question which falls for determination in this appeal is

as to what is the connotation of the term “interlocutory order” as appearing in sub-section (2) of Section 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 difficulty. 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 that the term “interlocutory order” in Section 397(2) of the 1973 Code 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. 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 Section 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 Section 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.

7. In the matter of **State represented by Inspector of Police and others -v- NMT Joy Immaculate** [2004(5) SCC 729] Hon'ble Supreme Court in para 13 held that :-

“**13.**The order of remand has no bearing on the proceedings of the trial itself nor can it have any effect on the ultimate decision of the case. If an order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings. A remand order cannot affect the progress of the trial or its decision in any manner. Therefore, applying the test laid down in *Madhu Limaye case* [(1977) 4 SCC 551] it cannot be categorised even as an “intermediate order”. The order is, therefore, a pure and simple interlocutory order and in view of the bar created by sub-section (2) of Section 397 Cr.P.C., a revision against the said order is not maintainable. The High Court, therefore, erred in entertaining the revision against the order dated 6-11-2001 of the Metropolitan Magistrate granting police custody of the accused Joy Immaculate for one day.”

8. In **Parbatbhai Aahir v. State of Gujarat**, [(2017) 9 SCC 641], again the Hon'ble Supreme Court has had an occasion to consider whether the High Court can quash the FIR/complaint/criminal

proceedings, in exercise of the inherent jurisdiction under Section 482 CrPC. Considering a catena of decisions on the point, the Hon'ble Supreme Court summarised the following propositions: -

- “(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.
- (2) xxx xxx xxx
- (3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.
- (4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.
- (5) xxx xxx xxx
- (6) xxx xxx xxx
- (7) xxx xxx xxx
- (8) xxx xxx xxx
- (9) xxx xxx xxx
- (10) xxx xxx xxx

9. In **Narinder Singh v. State of Punjab** [(2014) 6 SCC 466], after considering the decision in **Gian Singh v. State of Punjab**, (supra), in para 29.1, Their Lordships summed up as under:

“29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. **However, this power is to be exercised sparingly and with caution.**

- 10. In The case in hand, CJM Korba had passed impugned order after filing of the closure report.
- 11. In the case in hand it cannot be said that some extra ordinary or exceptional circumstances are existed.
- 12. Looking to the above mentioned facts and circumstances of the case, looking to the aforesaid provisions of Section 397(2) Cr.P.C., looking to the aforesaid observations laid down by Hon'ble Supreme

Court in the matter of **Amarnath** (supra), **Madhu Limye** (supra), **State represented by Inspector of Police and others** (supra), this Court finds that CJM Korba passed impugned order in other proceeding, the bail application of respondent No. 1 before CJM Korba was not an independent application, impugned order is interlocutory in nature, thus petitioners do not get any help from the aforesaid observation of Hon'ble Kerala High court in **Prasad Jacob** (supra). Hence, this Court finds that revision does not lie against the impugned order of CJM Korba. Hence, revisional Court has not committed any illegality while passing the impugned order.

13. In the case in hand, it does not appear that there is an abuse of process or intervention is necessary to secure ends of justice. Thus, aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Parbat Bhai Ahir** (supra) is applicable against the petitioners.

14. Looking to the above mentioned facts and circumstances of the case, this Court finds that it is not the fit case where the extra ordinary jurisdiction of Section 482, Cr.P.C. be invoked which is invoked sparingly with care and circumspection. Thus, aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Narinder Singh** (supra) is applicable against the petitioners. Consequently, the instant CRMP is dismissed at motion stage without entertaining for final hearing.

Sd/-
(Sharad Kumar Gupta)
Judge