

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-1702-2014

Date of Decision : January 05th, 2021

Gurbir Singh

..... PETITIONER

vs.

Maheshinder Singh Grewal and others

..... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Atul Lakhanpal, Senior Advocate, with
Mr. Arjun Lakhanpal, Advocate, for the petitioner.

Mr. K.S. Nalwa, Advocate, for the respondents.

Mr. Amar Ashok Pathak, Additional Advocate General,
Punjab.

...

Sanjay Kumar, J.:

This criminal revision, filed under Section 401 Cr.P.C., arises out of the revisionary order dated 04.04.2014 passed by the learned Additional Sessions Judge, Ludhiana, in Criminal Revision No.10 of 28.05.2010. By the said order, the learned Additional Sessions Judge set aside the summoning order dated 02.03.2010 passed by the learned Judicial Magistrate First Class, Ludhiana, in the complaint case, viz., CrI.No.79/1 of 02.05.1998. As a sequel, he remanded the matter for reconsideration and to pass a fresh order in the spirit of the directions given by this Court in the earlier round of litigation in Criminal Revision No.532 of 1999. Aggrieved thereby, the complainant preferred the present revision.

By order dated 30.05.2014, this Court stayed further proceedings pursuant to the remand order before the learned Magistrate at Ludhiana. The stay order is in operation as on date.

Compendious arguments having been advanced by Mr. Atul Lakhanpal, learned senior counsel for the petitioner; Mr. K.S. Nalwa, learned counsel for the respondents, and Mr. Amar Ashok Pathak, learned Additional Advocate General, Punjab, the matter is ripe for disposal.

The petitioner filed a complaint in CrI.No.79/1 of 02.05.1998 under Sections 417, 419, 420, 463, 468, 471, 472, 477-A, 120-B and 34 IPC alleging commission of offences in relation to the funds and property of Guru Nanak Education Trust and the educational institutions run by it, including Guru Nanak Girls College at Ludhiana. The four respondents herein, along with another, figured as the accused in the said complaint. In the course of his preliminary evidence, the complainant examined himself apart from four other witnesses. However, the learned Magistrate at Ludhiana called upon the police to investigate and submit a report, in terms of Section 202 Cr.P.C. Thereupon, the Station House Officer, Police Station Civil Lines, Ludhiana, undertook an investigation and submitted a report adverse to the complainant. As a result, the learned Magistrate dismissed the complaint by order dated 16.01.1999.

Aggrieved thereby, the complainant preferred Criminal Revision No.532 of 1999 before this Court. The said revision was disposed of by order dated 01.09.2000. Therein, this Court found favour with the complainant's contention that the learned Magistrate had taken account of only the police investigation and not the preliminary evidence led by him, i.e., his deposition and the depositions of his witnesses. This Court accordingly set aside the order dated 16.01.1999 and directed the learned Magistrate to decide afresh as to whether or not process should be

issued to the accused, after considering the preliminary evidence together with the investigation made by the police.

Pursuant to this order, the learned Magistrate at Ludhiana passed the order dated 02.03.2010 holding that sufficient grounds were made out to proceed against all the accused for offences punishable under Sections 420, 465, 468, 471 and 120-B IPC. They were accordingly summoned to face trial.

Aggrieved by the said summoning order, four out of the five accused in the complaint, viz., the respondents herein, preferred Criminal Revision No.10 of 28.05.2010 before the learned Additional Sessions Judge, Ludhiana. This revision was allowed by the impugned order dated 04.04.2014. Thereby, the learned Additional Sessions Judge accepted the respondents' plea that the learned Magistrate at Ludhiana had not considered the investigation made by the police at all and had gone only by the preliminary evidence. In consequence, the learned Additional Sessions Judge set aside the summoning order and remitted the matter for reconsideration and to pass a fresh order taking into account the directions of this Court in Criminal Revision No.532 of 1999. The learned Additional Sessions Judge directed this exercise to be completed within two months. However, owing to the stay granted by this Court in the present revision, the matter remains stalled at that stage.

The preliminary issue that first requires attention is as to the maintainability of this revision. The question is whether the revisionary order of the learned Additional Sessions Judge, Ludhiana, can be subjected to further revision before this Court under Section 397 Cr.P.C.

read with Section 401 Cr.P.C. As the answer to this question has far reaching consequences, the State counsel was also asked to address this Court. Thereupon, Mr. Amar Ashok Pathak, learned Additional Advocate General, Punjab, put in appearance and advanced arguments. This Court records its appreciation for his efforts and assistance in this regard.

Chapter XXX of the Code of Criminal Procedure, 1973, deals with 'Reference and Revision'. Sections 395 and 396 therein relate to the topic of 'Reference' while Sections 397 to 405 deal with 'Revision'. The heading of Section 397 Cr.P.C. is: 'Calling for records to exercise powers of revision'. Sub-section (1) thereof states that the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situated 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 of any proceedings of such inferior Court. The 'Explanation' to Section 397(1) Cr.P.C. states that all Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, are deemed to be inferior to the Sessions Judge for the purposes of this Sub-section and of Section 398 Cr.P.C. Sub-section (2) limits the power of revision by stating that it shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. Sub-section (3) states that if an application under Section 397 Cr.P.C. has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

Section 398 Cr.P.C. deals with the power of the High Court or the Sessions Judge, as the case may be, to direct an inquiry upon examining any record under Section 397 Cr.P.C.

Section 399 Cr.P.C. deals with the Sessions Judge's powers of revision. Sub-section (1) thereof states that in the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under Section 401(1) Cr.P.C. Sub-section (2) states that where any proceeding by way of revision is commenced before a Sessions Judge under Sub-section (1), the provisions of Sub-sections (2), (3), (4) and (5) of Section 401 Cr.P.C. shall, so far as may be, apply to such proceedings and references in the said Sub-sections to the High Court shall be construed as references to the Sessions Judge. Sub-section (3) states that where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

Section 400 Cr.P.C. states that an Additional Sessions Judge shall have and may exercise the power of a Sessions Judge under this Chapter in respect of any case transferred to him by the Sessions Judge.

Section 401 Cr.P.C. deals with the High Court's powers of revision. Sub-section (1) states that in the case of any proceedings, the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the

powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Sessions by Section 307. Sub-section (2) states that no order under Section 401 Cr.P.C. shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard in his own defence. Sub-section (3) states that nothing in Section 401 Cr.P.C. shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction. Sub-section (4) states that where an appeal lies under the Code but no appeal was brought, no proceeding by way of revision should be entertained at the instance of the party who could have appealed against the said order.

Section 402 Cr.P.C. deals with the High Court's power to withdraw or transfer revision cases. Sub-section (1) states that whenever one or more persons convicted at the same trial makes or make application to a High Court for revision and any other person convicted at the same trial makes an application to the Sessions Judge for revision, the High Court shall decide, having regard to the general convenience of the parties and the importance of the questions involved, which of the two Courts should finally dispose of the applications for revision and when the High Court decides that all the applications for revision should be disposed of by itself, the High Court shall direct that the applications for revision pending before the Sessions Judge be transferred to itself and where the High Court decides that it is not necessary for it to dispose of the applications for revision, it shall direct that the applications for revision made to it be transferred to the Sessions Judge. Sub-sections (2) and (3) are irrelevant presently. Sub-section (4) states that where an application

for revision is transferred by the High Court to the Sessions Judge, no further application for revision shall lie to the High Court or to any other Court at the instance of the person or persons whose applications for revision have been disposed of by the Session Judge. Sections 403, 404 and 405 Cr.P.C. are also irrelevant for the purposes of this case.

It is in the context of aforesaid statutory scheme that the issue of maintainability of this revision would have to be addressed.

Mr. Atul Lakhanpal, learned senior counsel, would contend that a revision lies to the High Court independently under Section 401 Cr.P.C., the provision under which the present revision was filed, and assert that this revision is maintainable against the revisionary order of the learned Additional Sessions Judge, Ludhiana. He would rely on the decisions of the Orissa High Court in **Ramachandra Puja Panda Samant vs. Jambeswar Patra and another**; **Deena Nath Acharya vs. Daitari Charan Patra and others**; and **Damodar Panigrahi and others vs. Banchhanidhi Panigrahi and another**; the Bombay High Court in **Sheikh Inayatullah Rizwi vs. Sayad Rahimatullah and others**; and the Kerala High Court in **Hameed vs. Ameena** in this regard.

On the other hand, Mr. K.S.Nalwa, learned counsel, and Mr.Amar Ashok Pathak, learned Additional Advocate General, Punjab, would argue that the statutory scheme of the Code of Criminal Procedure, 1973, does not support the contention of the learned senior counsel and assert that the present revision, as framed and filed, is not maintainable. Mr. K.S.Nalwa, learned counsel, would further contend that no grounds are made out to interfere with the order under challenge even on merits.

In **Ramachandra Puja Panda Samant vs. Jambeswar Patra and another**[1975 Cri LJ 1921], a Division Bench of the Orissa High Court held that the bar of a second revision was only confined to cases where the criminal revision was dismissed by the Sessions Judge and, at the instance of the person who had lost the criminal revision before the Sessions Judge, no further revision to the High Court would lie. An illustration was given therein to make the position clear : Proceedings under Section 145 Cr.P.C. between X and Y terminated before the Magistrate in favour of X. The criminal revision of Y before the Sessions Judge was dismissed. A criminal revision before the High Court at the instance of Y cannot be entertained. In the same illustration, if Y's criminal revision before the Sessions Judge was allowed, a criminal revision to the High Court against the order of the Sessions Judge at the instance of X is maintainable. This, *per* the Division Bench, is for the simple reason that the second criminal revision before the High Court is not at the instance of the same person who had filed the criminal revision before the Sessions Judge.

In **Deena Nath Acharya vs Daitari Charan Patra and others** [1975 Cri LJ 1931], another Division Bench of the Orissa High Court affirmed the view taken in **Ramachandra Puja Panda Samant** (*supra*) and held that, at the instance of the party whose criminal revision was dismissed by the Sessions Judge, a second revision would not lie.

In **Damodar Panigrahi and others vs. Banchhanidhi Panigrahi and another** [1977 Cri LJ 142], yet another Division Bench of the Orissa High Court considered whether a revision directed against

the revisional order of a Sessions Judge would be maintainable before the High Court. That was a case arising out of proceedings under Section 145 Cr.P.C. The Magistrate had held in favour of the petitioner but upon the revision filed by the other side, the Sessions Judge set aside the order of the Magistrate. In effect, the reversing revisionary order of the Sessions Judge was sought to be subjected to further revision before the High Court. The Bench considered as to whether a second revision to the High Court would be barred under Sections 397(3) and 399(3) Cr.P.C. and observed that it is clear from the language of these provisions that the prohibition is confined to a second revision by the same person who had filed the revision before the Sessions Judge. The Bench concluded that a person who had filed a criminal revision before the Sessions Judge unsuccessfully could not again come before the High Court in revision. It was held that this bar would not operate against a person who was the opposite party before the Sessions Judge and who, upon such revision being allowed, comes up to the High Court in revision, as this revision would not be a second revision by him as he had succeeded before the Magistrate and had no cause to come up in revision before the Sessions Judge. The Division Bench held that, in the light of the language of Sections 397(3) and 399(3) Cr.P.C., the conclusion is irresistible that a second revision, at the instance of a successful party before the Magistrate who thereafter lost in the revision before the Sessions Judge, would lie.

In Sheikh Inayatullah Rizwi vs. Sayad Rahimatullah and others [1981 Mh. L.J. 249], a Division Bench of the Bombay High Court had occasion to consider this issue. That was a case where criminal

revisions were referred to the Division Bench by a learned Judge who was of the opinion that the said revisions were barred under Section 397 Cr.P.C. but were amenable to adjudication as applications made under Section 482 Cr.P.C. It appears that, as per the High Court's rules, applications under Section 482 Cr.P.C. could only be disposed of by a Division Bench and that is how the revisions were sent before the Division Bench. In that context, the Division Bench considered whether the learned Judge was right in his opinion that no revision is maintainable before the High Court once a revision in respect of the same proceedings was filed in the Court of Sessions, irrespective of the fact as to who had moved the Court of Sessions in revision. The Division Bench observed that Section 399(3) Cr.P.C. provides that the order of the Sessions Judge would be final for the party who moves him and therefore, the finality attached only in relation to the person who or on whose behalf the Sessions Judge was moved. *Per* the Division Bench, the decision of the Sessions Judge in a revision cannot be final for the person aggrieved by it and, to put it succinctly, only a concurrent finding of the Sessions Judge and the Courts below would become final, while in cases where the Sessions Judge reverses the order of the Court below in revision, the defeated party is not barred by Section 399(3) Cr.P.C. from moving the High Court. The Division Bench then observed thus:

'.....Under the new Code, full revisional powers are now conferred on the Sessions Judge and the powers of the Sessions Judge and of the High Court are coextensive and concurrent. Section 399(3) of the Code further provides that the decision of the Sessions Judge is final and no further proceedings by way of revision at the instance of the same

person can be entertained by the High Court. A Sessions Judge and High Court being now the two parallel forums with an option to a party to approach any of them for redress by way of revision, a possibility (in case of more persons tried and convicted at one trial) of some of the persons approaching the Sessions Judge and some approaching the High Court could not be ruled out. In such a situation, there would be likelihood of conflict of decision between the High Court and the Sessions Judge. Section 402 of the Code, therefore, had to be newly enacted to make the provision for such cases and it provides that in such cases, the High Court will decide, having regard to the general convenience of the parties and the importance of the questions involved, which of the two Courts should finally dispose of the applications for revision.'

According to the Division Bench, the object of enacting Section 402 Cr.P.C. was mainly to avoid a conflict of decisions by the two Courts of concurrent jurisdiction and not necessarily to provide a single exercise of revisional jurisdiction. Section 402 Cr.P.C. was held to be not a pointer or a key for construing the provisions of Sections 397(3) and 399(3) Cr.P.C. The Division Bench further observed that the words 'any person' and 'by the same person' in sub-clause (3) of Section 397 Cr.P.C. and the words 'by or on behalf of any person' and 'in relation to such person' appearing in sub-clause (3) of Section 399 Cr.P.C. must be given their proper meaning and construction. The Division Bench opined that a plain reading and construction of these two provisions showed that the Legislature intended that an aggrieved person choosing the forum before the Sessions Judge should be bound by his verdict which shall be final so far as he is concerned and he should be precluded from filing another

revision before the High Court and by necessary implication, it meant that so far as an unsuccessful or aggrieved person by the order of the Sessions Judge is concerned, the decision is not conclusive or final for him and the remedy of a revision to the High Court would not be barred. The Division Bench therefore held that a revision to the High Court would be tenable at the instance of a party who was unsuccessful before the Sessions Judge or who was aggrieved by his order. In other words, *per* the Division Bench, a concurrent finding of the Sessions Judge and of the Courts below becomes final but when the Sessions Judge reverses the order of the Court below in revision, the defeated party is not precluded from moving the High Court.

In **Hameed vs. Ameena [1986 Cri LJ 1805]**, a learned Judge of the Kerala High Court dealt with the issue of maintainability of a second revision. The learned Judge opined that the bar of Section 399(3) Cr.P.C. is not dependent on the nature of the order passed in the revision by the Sessions Judge and that the object of the bar is to deny a second chance of revision to the same person. The learned Judge observed that what the Sub-section says is that where an application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon, in relation to such person, shall be final and no further proceedings by way of revision at the instance of such person shall be entertained by the High Court or any other Court. The bar, *per* the learned Judge, is in relation to the person who availed the chance of revision and opted to file the same before the Sessions Court, whatever be the decision, and once a person filed a revision against an order before the Sessions Judge and courted a decision, irrespective of the nature of the

order or its impact on him, he has no further right of revision. The learned Judge was of the opinion that the position is different so far as the party who has not moved the Sessions Judge is concerned as the second revision prohibited under Section 399(3) Cr.P.C. is only by the person who had approached the Sessions Judge. *Per* the learned Judge, if the opposite party who was satisfied with the order kept quiet without moving the Sessions Judge in revision, but his rival approached the Sessions Judge in revision and got the order set aside or modified, then the order is to his disadvantage and the bar under Section 399(3) Cr.P.C. is not applicable to him and he can come up in revision before the High Court.

However, having given due weight and most respectful consideration to the erudite opinions expressed in the decisions referred to *supra*, this Court must record, with all humility, its inability to concur with the conclusions drawn therein.

As observed in the above decisions, the revisional jurisdiction conferred upon the High Court and the Sessions Judge by Section 397 Cr.P.C. is coextensive and concurrent. In this regard, it may first be noted that the source of revisional power is essentially traceable to Section 397 Cr.P.C. Sections 399 and 401 Cr.P.C. are merely machinery provisions that spell out the scope and ambit of the revisionary powers of the Sessions Judge and the High Court respectively. As pointed out by the Supreme Court in **Krishnan and another vs. Krishnaveni and another [(1997) 4 SCC 241]**, Sections 397 and 401 Cr.P.C. have to be read together in the context of the High Court's revisional power. Section 401 Cr.P.C. is therefore not an independent source of the revisional power of

the High Court and it is only an elaboration on the scope and ambit of the revisional power conferred upon the High Court by Section 397 Cr.P.C. In effect, the filing of the present revision under Section 401 Cr.P.C. simpliciter was misconceived, as the substantive source of revisional power even for the High Court is Section 397(1) Cr.P.C. only.

Be that as it may.

Section 397 Cr.P.C. makes it clear that both the High Court and the Sessions Judge have been conferred with coextensive and concurrent power to call for and examine the record of any proceeding of any inferior criminal Court. In such a scenario, insofar as exercise of such revisional power is concerned, the Sessions Judge is not subordinate to the High Court in this statutory scheme. Sub-section (1) of Section 397 Cr.P.C. makes it clear that both the High Court and the Sessions Judge are empowered to call for and examine the record of any proceeding before any inferior criminal Court. They are therefore placed on par with each other. There is no indication in the provision as to how the power to call for such record is to be exercised but it does not specify that the Sessions Judge has no inherent power to call for the record. On the other hand, Section 399(1) Cr.P.C. speaks of any proceeding, 'the record of which has been called for by himself' and provides that the Sessions Judge may exercise all or any of the powers that may be exercised by the High Court under Section 401(1) Cr.P.C. It is therefore clear that the Sessions Judge also has *suo motu* power to call for the record and exercise all such powers which are conferred upon the High Court under Section 401(1) Cr.P.C. Section 399(2) Cr.P.C. elaborates that the power conferred upon

the High Court under Sub-sections (2), (3), (4) and (5) of Section 401 Cr.P.C. are available to the Sessions Judge while exercising revisional jurisdiction.

Section 401(1) Cr.P.C. makes it clear that in the case of any proceedings, 'the record of which has been called for by itself or which otherwise comes to its knowledge', the High Court may exercise any of the powers conferred on a Court of Appeal or a Court of Sessions. The earlier part of the Sub-section, which speaks of the record 'having been called for by itself' demonstrates *suo motu* exercise of power by the High Court while the latter part, that refers to 'which otherwise comes to its knowledge' indicates that it has been brought to the notice of the High Court by way of an application. The Sessions Judge's power of entertaining applications for revision is manifest from Section 402(1) Cr.P.C. Therefore, the High Court and the Sessions Judge are given coextensive, concurrent and equivalent revisional power and the Sessions Judge is not subordinate to the High Court when it comes to exercise of such statutory revisional power.

It may also be noted that such revisional power has been conferred upon both these fora against the order or proceeding of any inferior Court. Significantly, the statutory scheme does not speak of a revision being entertained by the High Court against a revisionary order passed by the Sessions Judge. What is subjected to revision, as per the clear and unambiguous language of the scheme, is only the order passed by the inferior Court, i.e., the Magistrate. The party aggrieved thereby is given the option to either approach the High Court or the jurisdictional

Sessions Judge. Section 397(3) Cr.P.C. makes it clear that once an application for revision is made by such an aggrieved party either to the High Court or to the Sessions Judge, no further application for revision by the same person should be entertained by the other of them. This would mean that the same order which has been subjected to revision before one or the other fora cannot be again subjected to further revision by the same person. What is of crucial significance is that the statutory scheme does not indicate that the order passed in the revision by the Sessions Judge would be amenable to further revision at the behest of either side. The context in which the bar is created under Section 397(3) Cr.P.C. is only in relation to the order of the inferior Court, which is already subjected to revision, and not the revisionary order that would emanate from the first revision filed by a party. Similarly, Section 399(3) Cr.P.C. attaches finality to the revisionary order passed by the Sessions Judge to the extent that no further revision should be entertained by the High Court against the very same primary order at the instance of the same person who had filed the earlier revision. As pointed out in Section 402 Cr.P.C., there may be several persons who may be adversely affected by the inferior Court's order and some may choose to approach the Sessions Court under Section 397 Cr.P.C. while others may choose to approach the High Court under the same provision. It is to avoid multiplicity of proceedings and decisions that Section 402 Cr.P.C. postulates that the High Court may decide as to which of the two fora should decide all such revisions and take steps accordingly. Section 397(3) Cr.P.C. makes it clear that an aggrieved party is given only one remedy of revision and it is not open to him to first go

before one forum and thereafter the other forum, upon being turned down by the first forum. Section 402(4) Cr.P.C. also makes it clear that once the High Court decides to send all the revisions to the Sessions Judge for adjudication, the petitioners in all such revisions are debarred from approaching the High Court again by way of further revision. In the context of the statutory scheme, it is most important to note that all these provisions only speak of a second revision not lying at the instance of the same person but the order which cannot be subjected to another revision is the primary order of the inferior Court that was subjected to the first revision and not the revisionary order. With due respect, this aspect of the matter was lost sight of in the decisions cited *supra* while construing the provisions of Sections 397(3) and 399(3) Cr.P.C. to mean that a revision would lie against the revisionary order itself, though the language of these provisions does not support such construction. If the statutory scheme is understood in the right perspective and the bars created therein are recognized to be in relation to the primary order which was already subjected to revision, the question of a revision lying against the revisionary order passed by the Sessions Judge does not arise at all.

As pointed out earlier, coextensive and concurrent revisional jurisdiction is created in both the fora by the same provision and one forum, *viz.*, the High Court, even if it is considered superior in the ordinary scheme of things, cannot assume unto itself the power of revisional jurisdiction against the revisionary order passed by the other forum, *viz.*, the Sessions Judge. Unless a separate revisional remedy is created by the statute itself against the revisionary order passed by the

Sessions Judge, Section 397 Cr.P.C., as it stands, does not lend itself to an interpretation that allows the remedy of a revision before the High Court against the revisionary order of the Sessions Judge. That is the reason why the 'Explanation' to Section 397(1) Cr.P.C. makes no mention of the Sessions Judge being inferior to the High Court for the purposes of the statutory revisional scheme in Chapter XXX and limits itself to clarifying as to who would be inferior to the Sessions Judge. Had it been the intention of the lawmakers that the revisionary order of the Sessions Judge should be amenable to a further revision before the High Court, the provision itself would have indicated so.

An analogy may also be drawn from the provisions of the Code of Criminal Procedure, 1973, that deal with anticipatory and regular bail. Sections 438 and 439 Cr.P.C. confer concurrent jurisdiction upon the High Court and the Sessions Judge to grant these reliefs. Significantly, if the Sessions Judge refuses relief, it would not be a bar to the petitioning party to approach the High Court. However, what is pertinent to note is that the order of the Sessions Judge is not subjected to challenge, as if by way of an appeal or revision, and the High Court independently deals with the bail application on its own merits. While so, the bars created under Sections 397(3) and 399(3) Cr.P.C. do not allow the same party to approach the High Court by way of a further revision against the same order that was subjected to revision before the Sessions Judge.

At this stage, it would be apposite to notice the judgments of the Supreme Court in the context of the revisional jurisdiction of the High Court. In **Krishnan** (*supra*), the Supreme Court dealt with the question as

to whether a High Court would have power to entertain a revision under Section 397(1) Cr.P.C. against an order in respect of which the Sessions Judge has already exercised revisional power and whether, in the circumstances of that case, it could be considered to be a petition under Section 482 Cr.P.C. That was a case where the party whose revision was dismissed by the Sessions Judge then approached the High Court by way of a second revision. In effect, the order of the inferior Court that stood confirmed in the first revision was sought to be subjected to a second revision. The Supreme Court observed that Sections 397 and 401 Cr.P.C. are required to be read together and that the revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with recognized rules of criminal jurisprudence and its subordinate Courts do not exceed jurisdiction or abuse the power vested in them under the Code or to prevent abuse of process of the inferior criminal Courts or to prevent miscarriage of justice. The Supreme Court cautioned that the High Court must exercise power sparingly and cautiously when the Sessions Judge had simultaneously exercised revisional power under Section 397(1) Cr.P.C. It was further observed that the inherent power of the High Court was not one conferred by the Code but one which the High Court already had in it and which was preserved by the Code. It was pointed out that the object of Section 397(3) Cr.P.C. was to put a bar on simultaneous revisional applications to the High Court and the Court of Sessions, so as to prevent unnecessary delay and multiplicity of proceedings. The Supreme Court ultimately held that though the revision before the High Court under Section 397(1) Cr.P.C.

was prohibited by Section 397(3) Cr.P.C., the inherent power of the High Court was still available under Section 482 Cr.P.C. and as it was the paramount power of continuous superintendence of the High Court under Section 483 Cr.P.C., the High Court was justified in interfering with the order leading to miscarriage of justice and in setting aside the orders of the Courts below.

On the same lines, in **V.C. Shukla vs. State through C.B.I. [1980 Supp SCC 92]**, the Supreme Court affirmed that Section 397(3) Cr.P.C. did not limit the inherent powers of the High Court contained in Section 482 Cr.P.C. and it merely curbed the revisional power given to the High Court or the Sessions Court under Section 397(1) Cr.P.C.

Earlier, in **Madhu Limaye vs. The State of Maharashtra [(1977) 4 SCC 551]**, the Supreme Court held that though a revision would not lie against an interlocutory, due to the prohibition under Section 397(2) Cr.P.C., it would not bar exercise of inherent power by the High Court under Section 482 Cr.P.C .

More recently, in **Shakuntala Devi and others vs. Chamru Mahto and another [(2009) 3 SCC 310]**, the Supreme Court again considered the issue. That was a case where the unsuccessful petitioner in the revision filed against an order under Section 145 Cr.P.C. before the Sessions Judge preferred a second revision before the High Court. The question raised before the Supreme Court was whether the High Court had erred in entertaining a second revision in purported exercise of its inherent powers under Section 482 Cr.P.C. though it was barred under Section 397(3) Cr.P.C. The Supreme Court observed that the object of introducing

Section 397(3) Cr.P.C. was to prevent a second revision so as to avoid frivolous litigation but at the same time, the doors of the High Court were not completely closed to a litigant who had lost before the Sessions Judge and in special cases, the bar under Section 397(3) Cr.P.C. could be lifted. *Per* the Supreme Court, the power of the High Court to entertain a petition under Section 482 Cr.P.C. was not subject to the prohibition under Section 397(3) Cr.P.C. and was capable of being invoked in appropriate cases. The contention that Section 397(3) Cr.P.C. completely debarred the High Court from entertaining an application even under Section 482 Cr.P.C. therefore did not find favour with the Supreme Court.

The observations of the Supreme Court in **Shakuntala Devi** (*supra*) are of relevance. Therein, the Supreme Court spelt out that a further revision under Section 397 Cr.P.C. would be barred at the behest of a party aggrieved by the revisionary order of the Sessions Judge but the bar does not apply to the High Court exercising inherent powers under Section 482 Cr.P.C. Therefore, the only remedy for a party aggrieved by the revisionary order of a Sessions Judge is to invoke the inherent powers of the High Court under Section 482 Cr.P.C. and not its revisional jurisdiction under Section 397 Cr.P.C. read with Section 401 Cr.P.C.

On the above analysis, this Court is of the considered opinion that a revision under Section 397(1) Cr.P.C. read with Section 401 Cr.P.C. would not lie against the revisionary order of the Sessions Judge. The present revision, even if it is taken to be one filed under Section 397 Cr.P.C. read with Section 401 Cr.P.C. and not as one filed under Section 401 Cr.P.C. simpliciter, is therefore not maintainable.

However, in the light of the observations made by the Supreme Court, in **Krishnan** (*supra*) and **Shakuntala Devi** (*supra*), this Court must necessarily examine as to whether any grounds are made out for exercise of its inherent powers under Section 482 Cr.P.C.

It is the contention of Mr. Atul Lakhanpal, learned senior counsel, that the learned Additional Sessions Judge, Ludhiana, was not correct in opining that the summoning order deserved to be set aside as the learned Magistrate at Ludhiana had not considered the investigation made by the police. He would point out that the learned Magistrate had referred to the report of investigation submitted by the police in the body of the summoning order and that would be sufficient indication of application of mind by the learned Magistrate to the said report. He would assert that it is not necessary at the stage of issuing process for the Magistrate to indicate an opinion on the merits of the matter and it would be sufficient if all the material is taken into account. Learned senior counsel would argue that the mention of the report of investigation is indicative of application of mind by the learned Magistrate to this aspect of the matter also and therefore, the learned Additional Sessions Judge ought not to have concluded that the learned Magistrate had failed to take into consideration the investigation made by the police. He would rely upon the observations made by the Supreme Court in **Nupur Talwar vs. Central Bureau of Investigation, Delhi, and another** [(2012) 2 SCC 188], to the effect that the order whereby cognizance of the offence has been taken by the Magistrate, unless it is perverse or based on no material, should be sparingly interfered with. He would also rely upon the

observations made by the Supreme Court in **Sonu Gupta vs. Deepak Gupta and others [(2015) 3 SCC 424]**, that at the stage of cognizance and summoning, the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence and at that stage, the Magistrate is neither required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the material or the evidence of the complainant.

Per contra, Mr. K.S. Nalwa, learned counsel, would rely upon **Pramatha Nath Taluqdar vs. Saroj Ranjan Sarkar [AIR 1962 SC 876]**. Therein, the Supreme Court observed that the scope of inquiry under Section 202 Cr.P.C. is limited to finding out the truth or otherwise of the complaint in order to determine whether process should issue or not and Section 203 Cr.P.C. lays down what materials are to be considered for that purpose. It was further observed that under Section 203 Cr.P.C., the judgment which the Magistrate has to form must be based on the statements of the complainant and of his witnesses and the result of the investigation or inquiry, if any, and he must apply his mind to the materials and form an opinion whether or not there is sufficient ground for proceeding further.

Learned counsel would also rely upon **Jagdish Ram vs. State of Rajasthan and another [1989 Cri LJ 745]**, wherein a learned Judge of the Rajasthan High Court observed that when a Magistrate takes cognizance of a case filed by a complainant and holds an inquiry under Sections 200 and 202 Cr.P.C., independent of the result of the investigation that is submitted by the police, he can issue process against

the accused but the record which has been submitted by the police is material placed on the record and it is the duty of the Magistrate to consider that record and then arrive at his own conclusion as to whether in such a case, the process should be issued against the accused or not.

Reliance is also placed on **Anil Kumar Sah and others vs. Nagendra Singh [1991 Cri LJ 421]**, wherein the Patna High Court observed that the real object of the investigation under Section 202 Cr.P.C. is to collect all necessary evidence which would throw light on the allegations made by the complainant and the Investigating Officer's powers are not restricted to merely taking note of what is produced before him by the complainant, either by way of oral evidence or by means of documents. Further, the Court held that it is not permissible for a Magistrate to disregard the facts and circumstances mentioned in the report of the Investigating Officer and the reasons given therein, without stating as to why he did not accept these facts and circumstances and did not agree with the reasoning of the Investigating Officer. The Court found that the Magistrate had neither cared to look into the materials collected by the Investigating Officer nor had he indicated what were his grounds for not accepting the reasoning of the Investigating Officer.

Learned counsel also pressed into service **Daleep Singh vs. Smt. Magan [1996 Cri LJ 190]**, wherein a learned Judge of the Rajasthan High Court observed that it is the bounden duty of the Magistrate to consider the allegations made in the complaint and the statements of the complainant, under Section 200 Cr.P.C., and the witnesses, under Section 202 Cr.P.C., and also the result of the inquiry or

investigation, if any, under Section 202 Cr.P.C., and if he is of the opinion that, *prima facie*, an offence is made out, then he is competent to take cognizance against the accused and issue process.

Lastly, learned counsel relied on **M/s Rattan Industries Limited and another vs. Shruti Gupta [2012 (4) RCR (Criminal) 343]**. Therein, a learned Judge of this Court observed that it is settled law that at the time of summoning, the Magistrate has to form an opinion, *prima facie*, that there is sufficient ground for proceeding against (not the evidence to convict) the accused, as contemplated under Section 204 Cr.P.C. The Magistrate, at this stage, is not legally required to pass a detailed judgment in that regard.

There can be no dispute with the legal proposition that at the time of summoning the accused, i.e., at the time of issuing process, the Magistrate is not required to express an opinion on the merits of the matter or indicate his mind as to the weight that needs to be given to either the material or the statements of the complainant and his witnesses. All that is required at that stage is proper application of mind by the Magistrate to all the material placed before him, so as to form a *prima facie* opinion that sufficient grounds exist for proceeding further.

In the case on hand, the matter stands on a slightly different footing inasmuch as this Court had occasion to consider this very issue in the earlier round of litigation in Criminal Revision No.532 of 1999. At that stage, the attack against the order of the learned Magistrate, Ludhiana, dismissing the complaint was that only the investigation by the police had been taken into consideration and not the preliminary evidence

led by the complainant, in the form of his own statement and the statements of his witnesses. In such a scenario, this Court set aside the order dismissing the complaint and remanded the matter to the learned Magistrate for consideration afresh by taking into account not only the investigation of the police but also the preliminary evidence.

However, the learned Magistrate committed the same error in the second round, but in converse, by taking into consideration only the preliminary evidence and ignoring the police investigation. Perusal of the summoning order demonstrates that the statements of the complainant and his witnesses were set out at length and in the mere passing, reference was made to the report submitted by the police. In this context, it may be noted that in Criminal Revision No.532 of 1999, the complainant had asserted before this Court that the report submitted by the police was unsustainable and could not be taken into account as it was one-sided. While so, in the summoning order, the learned Magistrate took note of the fact that by the said report, the police had opined that no offence was made out as the 5th accused in the complaint case had not even operated the bank account in question. However, the learned Magistrate did not disclose the reason as to why he found the opinion expressed by the police in the said report to be unacceptable and as to why he found the materials relied upon by the police to be unworthy of credence. Though the learned Magistrate did not have to record a detailed reasoned order on the merits of the matter, he necessarily had to express an opinion as to why he disagreed with the findings in the police report to the effect that the complaint deserved to be dismissed. Without indicating such an opinion,

the learned Magistrate could not have issued the summoning order straightway. All the more so, when this Court categorically required him to consider the investigation by the police along with the preliminary evidence before coming to a decision as to whether process should be issued in the case. The summoning order therefore did not satisfy the requirements of law and the order of this Court in Criminal Revision No.532 of 1999.

In such circumstances, the learned Additional Sessions Judge, Ludhiana, was well justified in setting aside the said summoning order and remitting the matter to the learned Magistrate, Ludhiana, for consideration afresh in keeping with the spirit of the directions issued by this Court in the earlier revision. In effect, no grounds are made out even for exercise of inherent power by this Court under Section 482 Cr.P.C.

The revision is therefore liable to be rejected, both on the ground of maintainability as well as on merits, and is accordingly dismissed.

Interim order dated 30.05.2014 shall stand vacated.

January 05th, 2021
Kang

(Sanjay Kumar)
Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes