

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21472 of 2023**

Arising Out of PS. Case No.-179 Year-2020 Thana- GAYA KOTWALI District- Gaya

Priyanka Rani @ Neha Gupta Wife of Gaurav Kumar, D/O Shekhar Kumar
R/O Mohalla- A.N. Road, Murarpur, P.S.- Kotwali, District- Gaya

... .. Petitioner

Versus

1. The State of Bihar
2. Naheed D/O Sirajuddin @ Guddu R/O Mohalla- Patna City, Noor Chauraha,
P.S.- Khajkala, District- Patna

... .. Opposite Parties

Appearance :

For the Petitioner : Mr. Abhishek Kumar, Advocate
For the Opposite Party State: Mr. Amitesh Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date : 10-11-2023

An order dated 10.01.2023, passed in POCSO Case No. 29/2022 arising out of Kotwali P.S. Case No. 179/2020, registered for the offences punishable under Sections 342, 323, 370, 370(a), 374 of the IPC and Section 75 and 79 of the Juvenile Justice (Care and Protection of Children) Act, by the learned Presiding Officer, POCSO-cum-Additional Sessions Judge VIth, Gaya, whereby an application filed by the petitioner under Section 227 of CrPC for his discharge has been rejected, is under challenge in the present application filed under Section 482 of the Code of the Criminal Procedure (CrPC in short). The sole ground, which has been taken



on behalf of the petitioner to assail the impugned order, is that the same is cryptic and does not disclose any application of mind.

2. In the Court's opinion, the petitioner has alternative remedy of filing a Revision Petition application under Section 397 of the CrPC. An order refusing to discharge an accused under Section 227 of the CrPC, in the Court's opinion, is not an interlocutory order. It is true that the inherent power of the High Court under Section 482 of the CrPC does not stand repelled when revisional power under Section 397 of the CrPC overlaps. It has been laid down, however, by the Supreme Court in case ***Raj Kapoor v. State***, reported in (1980) 1 SCC 43 that when a specific provision is made easy, resort to inherent power is not right, except under compelling circumstances. The Supreme Court held that it is not because of absence of jurisdiction, but the rule that inherent power should not invade areas set apart for specific power under the same Code. Paragraph No. 10 of the said decision can be usefully noted in this regard and is being reproduced hereinbelow:-

“10. The first question is as to whether the inherent power of the High Court under Section 482 stands repelled when the revisional power under Section 397 overlaps. The opening words of Section 482 contradict this contention because nothing of the Code, not even Section 397, can affect the amplitude



of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. In *Madhu Limaye case* [*Madhu Limaye v. State of Maharashtra*, (1977) 4 SCC 551 : 1978 SCC (Cri) 10 : AIR 1978 SC 47] this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that Section 482 is pervasive it should not subvert legal interdicts written into the same Code, such, for instance, in Section 397(2). Apparent conflict may arise in some situations between the two provisions and a happy solution

“would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the



revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction” [(1977) 4 SCC 551, 556, para 10 : AIR 1978 SC 47, 51] .

In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is a *tertium quid*, as Untwalia, J. has pointed out as for example, where it is more than a purely interlocutory order and less than a final disposal. The present case falls under that category where the accused complain of harassment through the court's process. Can we state that in this third category the inherent power can be exercised? In the words of Untwalia, J.: (SCC p. 556, para 10)

“The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court



can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.”

I am, therefore clear in my mind that the inherent power is not rebuffed in the case situation before us. Counsel on both sides, sensitively responding to our allergy for legalistics, rightly agreed that the fanatical insistence on the formal filing of a copy of the order under cessation need not take up this court's time. Our conclusion concurs with the concession of counsel on both sides that merely because a copy of the order has not been produced, despite its presence in the records in the court, it is not possible for me to hold that the entire revisory power stands frustrated and the inherent power stultified.”

3. In the present case, I do not find any compelling circumstance to interfere with the impugned order as the learned counsel appearing on behalf of the petitioner has not been able to satisfy this Court, based on the materials on record that there was no sufficient ground for proceeding against the accused, which is a condition precedent for exercise of power under Section 227 of the CrPC. The application filed by the petitioner under Section 227 of the CrPC has not been brought on record.

4. For the aforesaid reasons, I am not inclined to entertain this application, which is dismissed, but with a liberty to the petitioner to prefer revision application against the impugned order under Section 397 of the CrPC, if so advised.



5. It is made clear that I have not gone into the merits of the petitioner’s contentions that there was no sufficient ground for proceeding against the accused.

6. This application is accordingly dismissed with the observation and the liberty as aforesaid.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	NAFR
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