

HARSHADA H. SAWANT  
(P.A.)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**(15) CRIMINAL REVISION APPLICATION NO.380 OF 2002**

Sushila Ramji Singh and Anr. .. Applicants  
**Versus**  
Vinodkumar D. Palrecha and Anr. .. Respondents

**WITH**

**(16) CRIMINAL REVISION APPLICATION NO.625 OF 2015**

Rajaram Ganpat Narvekar .. Applicant  
**Versus**  
Sudhir Dewon Sakpal (since deceased through  
legal heirs) Suhasini Sudhir Sakpal and Anr. .. Respondents

**WITH**

**(17) CRIMINAL REVISION APPLICATION NO.373 OF 2016**

M/s. AFX+Q Engineers and Anr. .. Applicants  
**Versus**  
M/s. Nikita Udyog and Anr. .. Respondents

**WITH**

**CRIMINAL REVISION APPLICATION NO.374 OF 2016**

**WITH**

**CRIMINAL REVISION APPLICATION NO.375 OF 2016**

**WITH**

**CRIMINAL REVISION APPLICATION NO.376 OF 2016**

**WITH**

**CIVIL CONTEMPT PETITION NO.510 OF 2017**

**WITH**

**(18) CRIMINAL REVISION APPLICATION NO.152 OF 2023**

New Style Hund Mensware Readymade and Ors. .. Applicants  
**Versus**  
State of Maharashtra and Anr. .. Respondents

**WITH**

**INTERIM APPLICATION NO.2187 OF 2023**

**IN**

**CRIMINAL REVISION APPLICATION NO.152 OF 2023**

**WITH**

**CRIMINAL REVISION APPLICATION NO.151 OF 2023**

**WITH**

INTERIM APPLICATION NO.2185 OF 2023  
IN  
CRIMINAL REVISION APPLICATION NO.151 OF 2023

WITH  
(21) INTERIM APPLICATION NO.3830 OF 2024  
IN  
CRIMINAL REVISION APPLICATION NO.152 OF 2007

|                               |                |
|-------------------------------|----------------|
| Kailas Bapurao Gadge          | .. Applicant   |
| <b>Versus</b>                 |                |
| State of Maharashtra and Anr. | .. Respondents |

WITH  
(35) CRIMINAL REVISION APPLICATION NO.585 OF 2002

|                                                  |                |
|--------------------------------------------------|----------------|
| M/s. Shetkari Solvant (India) Ltd.               | .. Applicant   |
| <b>Versus</b>                                    |                |
| Maharashtra State Financial Corporation and Anr. | .. Respondents |

WITH  
(47) CRIMINAL REVISION APPLICATION NO.49 OF 2022

|                               |                |
|-------------------------------|----------------|
| Altaf Yousuf Naik             | .. Applicant   |
| <b>Versus</b>                 |                |
| State of Maharashtra and Anr. | .. Respondents |

WITH  
CRIMINAL WRIT PETITION NO.565 OF 2022  
WITH  
CRIMINAL WRIT PETITION NO.1719 OF 2022

WITH  
(49) CRIMINAL REVISION APPLICATION NO.38 OF 2024

|                                |                |
|--------------------------------|----------------|
| Sanjay Sukhdeo Mahale and Anr. | .. Applicants  |
| <b>Versus</b>                  |                |
| State of Maharashtra and Anr.  | .. Respondents |

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- None for Applicants in Criminal Revision Application No.380 of 2002; Criminal Revision Application No.625 of 2015; Criminal Revision Application No.373 of 2016 and connected Revision Applications, Criminal Revision Application No.152 of 2023 and connected Revision Application and Interim Applications; Interim Application No.3830 of 2024; Criminal Application No.585 of 2002

and Criminal Revision Application No.38 of 2024.

- Ms. Bhakti Deshpande i/by Mr. Salman Naik and Ms. Mitali Kamdar, Advocates for Applicant in Criminal Revision Application No.49 of 2022 and Respondent No.2 in Writ Petition Nos.565 of 2022 and 1719 of 2022.
- Mr. Gandhar Raikar a/w. Ms. Iyanah Parbhoo and Ms. Anaaya Dalvie, Advocate for Respondent No.1 in Criminal Revision Application No.373 of 2016 and connected Revision Applications.
- Mr. Saurabh C. Nagarshete, Advocate for Respondent No.1 in Criminal Revision Application No.585 of 2002.
- Ms. Dhanalaxmi Krishnaiyer, APP for Respondent No.2 – State of Maharashtra in Criminal Revision Application No.380 of 2002; Criminal Revision Application No.625 of 2015; for Respondent No.1 in Criminal Revision Application No.152 of 2023 and connected Revision Application Application and Interim Applications; for Respondent No.1 in Interim Application No.3830 of 2024; .
- Ms. Manisha R. Tidke, APP for Respondent No.2 – Sate of Maharashtra in Criminal Revision Application No.373 of 2016 and connected Revision Applications and Criminal Revision Application No.558 of 2002.
- Ms. Heera M. Khilnani, Advocate for Respondent No.2 in Criminal Revision Application No.152 of 2023 and connected Revision Application Application and Interim Applications.
- Mr. Sharad T. Bhosale i/by Mr. Dilip Bodake, Advocate for Respondent No.2 in Interim Application No.3830 of 2024.
- Ms. Sangita Phad, APP for Respondent No.1 – State of Maharashtra in Criminal Revision Application No.38 of 2024.
- Mr. Anand S. Patil, Advocate for Respondent No.2 in Criminal Revision Application No.38 of 2024.

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**CORAM : MILIND N. JADHAV, J.**

**DATE : NOVEMBER 19, 2024**

**P.C.:**

- 1.** Heard learned Advocates and learned APPs appearing for the respective parties in all Revision Applications.
- 2.** The submissions advanced by learned Advocates in serial

Nos.15, 16, 17, 18, 21, 35, 47 and 49 have been heard by me. The learned Advocates have relied upon several decisions of the Supreme Court, as also this Court. The aforesaid matters pertain to the parties proposing to file Consent Terms in matters under Section 138 of Negotiable Instruments Act, 1881 (for short '**the said Act**') which have travelled to this Court in Revision proceedings. Since all these matters pertain to deciding a common question of law as to whether this Court would be empowered under Section 397 of Code of Criminal Procedure to accept Consent Terms as a sequitur of which it would lead to compounding of the offence is required to be decided by this Court.

**3.** In the present cases at serial Nos.15, 16, 17, 18, 21, 35, 47 and 49 it is seen that parties have referred to the decision in case of *M/s Meters and Instruments Private Limited V/s. Kanchan Mehta*<sup>1</sup> to contend that even in the absence of original Complainant before this Court, the Court would have power to close the proceeding and discharge the Accused in the absence of consent of Complainant in the interest of justice. Equally in the same breath, parties have also approached the Court by stating both the Accused and Complainant have after the entire trial is over and Appeal proceedings are over have now desired to compromise and file Consent Terms and they have urged the Court to take on record Consent Terms in the interest of

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<sup>1</sup> 2018 (1) SCC 560.

justice and put a quietus to the matter by foregoing the conviction and the fine due to the compromise.

4. However, in the case of *In Re Expeditious Trial of Cases under Section 138 of Negotiable Instruments Act, 1881*<sup>2</sup> in paragraph No.20, it has been held by the Supreme Court that the decision in the case of *M/s. Meters and Instruments Private Limited (1<sup>st</sup> supra)* is not a good law in so as far it confers power on Trial Court to discharge the Accused.

5. Further in the case of *Raj Reddy Kallem V/s. State of Haryana and Anr.*<sup>3</sup> the Division Bench judgment dated 08.04.2024 in Criminal Appeal No.2210 of 2024, the Supreme Court has held that if the Complainant is adequately compensated then the Appeal cannot be kept pending with reference to proceedings under Section 138 of the said Act. Whether this observation and finding of Supreme Court would hold good even if Complainant is unwilling to compound the case, or if Complainant and Accused both approach the Court and file Consent Terms in Revision proceedings is required to be considered in the above case. Today, in the course of submission Mr. Raikar, learned Advocate has placed on record the following decisions for consideration:-

(i) *P. Mohanraj and Others Vs. Shah Brothers Ispat Private*

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<sup>2</sup> 2023 SCC OnLine SC 1197

<sup>3</sup> (2024) 8 SCC 588

*Limited.*<sup>4</sup>

(ii) *Vijay Kumar Vs. Anil Kumar Gupta & Anr.*<sup>5</sup>;

(iii) *JIK Industries Limited and Others Vs Amarlal V. Jumaní and Anr.*<sup>6</sup>

(iv) *Damodar S. Prabhu Vs. Sayed Babalal H.*<sup>7</sup>;

(v) *K. M. Ibrahim Vs. K. P. Mohammed & Anr.*<sup>8</sup>

**6.** To assist the Court on the above issue and while referring to the aforesaid decisions he has made following submissions:-

**6.1.** He would submit that the scope of Revisional jurisdiction of High Court under Section 401 of Cr.P.C. is limited and the Courts have held that invoking this Section to re-appreciate the evidence and come to its own conclusion, in particular when the evidence has already been appreciated by the Magistrate as also Sessions Court in Appeal is not permissible. He would submit that for the High Court to interfere in two concurrent findings of conviction there must be either a gross miscarriage of injustice or total non-consideration of facts as held by the Supreme Court in the case of *State of Kerela Vs. PIJ Namboodiri*<sup>9</sup>.

He would submit that similarly it is held by the Supreme Court in the case of *T.P.Murugan Vs. Bojan* <sup>10</sup> that mere doubt in the admitted

<sup>4</sup> (2021) 6 Supreme Court Cases 258.

<sup>5</sup> 2018 SCC OnLine Del 12746.

<sup>6</sup> (2012) 3 Supreme Court Cases 255.

<sup>7</sup> (2010) 5 Supreme Court Cases 663.

<sup>8</sup> Criminal Appeal No.2281 of 2009.

<sup>9</sup> 1992 2 SCC 452.

<sup>10</sup> 2008 8 SCC 469.

evidence cannot be interfered with, in Revisional jurisdiction in the event of concurrent findings.

**6.2.** He would submit that the Courts have also held that the Revisional Court also enjoy power conferred upon the Appellate Court by virtue of powers contained in Section 401 of Cr.P.C. He would submit that Section 401 Cr.P.C. is a provision enabling the High Court to exercise all powers of Appellate Court. He would submit that the provision contained in Sections 395 to 401 of Cr.P.C. read together do not indicate that revisional powers can be exercised as second Appellate power. He would however submit that for limited purpose, the Revisional Court can be conferred with powers of the Appellate Court for the purpose of satisfying itself for the purpose of ascertaining the legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceeding of such inferior Court as held by the Supreme Court in the case of *State of Maharashtra Vs. Jagmohan Singh and Ors.*<sup>11</sup>.

**6.3.** He would submit that in view of the above judgements, the power to record a compromise in view of the settlement arrived at between the parties, and to take consent terms on record in its Revisional jurisdiction, in particular when there is concurrent finding of conviction by the Magistrate and Sessions judge becomes an impediment for the High Court.

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<sup>11</sup> 2004 7 SCC 659.

**6.4.** He would submit that in this regard, when the Revision Application is pending, one of the following approaches are open to the Accused to be adopted: -

- (i) To challenge the impugned order under Section 482 of Cr.P.C. or file a Writ Petition for Quashing of the impugned Order. However, this involves re-filing of the Revisions as Quashing Petitions since the Revision Petition cannot be converted as a Writ Petition in ordinary course. The compromise can only be recorded by the Hon'ble High Court in its extraordinary jurisdiction.
- (ii) To file a Criminal Application in the existing proceedings for compounding of offence under Section 147 of the Negotiable Instruments Act, 1881. This is permissible as laid down by the Supreme Court which has observed that the non-obstante clause under Section 147 of the said Act will have an overriding effect under the provisions of Cr.P.C. Section 147 and it also does not bar parties from compounding the offence under Section 138 of the said Act even at the Appellate stage as held in *K.M. Ibrahim (8<sup>th</sup> supra)*. For following the compounding procedure the accused will be required to file an application and the same will be dealt with as per the guidelines laid down for compounding which

includes a payment of 15% cost if the application for compounding is made before the High Court or the Sessions Court as held in *Damodar S. Prabhu (7<sup>th</sup> supra)*. The compounding provision has also been discussed in the subsequent judgements of the Supreme Court with respect to the mode and manner of compounding and it explains the difference between quashing of a case and compounding. The distinction between Quashing and compounding is also well explained and it is held that in Quashing, the Court applies it in order to quash the impugned order however, in compounding the consent of the injured party is required to compound the offence. Further, it was also held that there is no reason to refuse a compromise between the parties, however the procedure relating to compounding under Section 320 Cr.P.C. cannot be given a go-by as held by the Supreme Court in the cases of *Vinay Nayak Vs. Ryot Seva Saharkari Bank Ltd.*<sup>12</sup> and *JIK Industries (6<sup>th</sup> supra)*.

- (iii) The third option available to the Accused may not be applicable in all Criminal Revisions but for those cases where during the pendency of Appeals and Revisions, some sentence was served by the Accused and in view of the compromise it is possible for the Court of Revisional

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<sup>12</sup> 2008 2 SCC 305.

jurisdiction to modify the sentence without interfering with the impugned orders of conviction and modify the conviction orders by reducing the sentence to the period already undergone and record that this is in view of the settlement arrived at between the parties. This is also permissible since under Revisional jurisdiction the High Court is permitted to bring in the ends of justice as held by the Delhi High Court in the case of *Vijay Kumar Vs. Anil Kumar Gupta*<sup>13</sup>.

**7.** In the above context, the provisions of Sections 397 and 401 of the Cr.P.C. and the power of revision of this Court will have to be seen and considered *qua* the provisions of saving of inherent power of High Court under Section 482 alongwith Section 401 (5) of the Cr.P.C.

**8.** Ms. Krishnaiyer has referred to and relied upon following three decisions in order to contend that in any Application filed under Section 397 of the Cr.P.C. inherently, the Court would have power under Section 482 being the High Court to determine the same:-

(i) *Harshendra Kumar D Vs. Rebatilata Koley Etc.*<sup>14</sup>;

(ii) *B. V. Sessaiah Vs. The State of Telangana*<sup>15</sup>;

(iii) *Din Nath Vs. Shankar Dass and Anr.*<sup>16</sup>

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<sup>13</sup> 2018 SCC Online Del 12746.

<sup>14</sup> AIR 2011 SC 1090.

<sup>15</sup> Criminal Appeal arising out of Special Leave (Crl) No.7099 of 2018.

<sup>16</sup> Cr. MMO No.158 of 2024 dated 20.03.2024.

9. Attention of the learned Advocates and parties is drawn to the following judgments which refer to powers of the revisional Court under Section 397 read with Section 401 Cr.P.C. in view of the findings and observation made therein :-

(i) In the Full Bench judgment of this Court in the case of ***Abasaheb Yadav Honmane Vs. State of Maharashtra***<sup>17</sup> paragraph Nos. 6.13, 7.3 and 7.6 are relevant and read thus:-

*"6.13. The power of compounding is strictly regulated by statutory powers while the inherent powers of the Court are guided by judicial pronouncements within the scope of section 482 of the Code. Another very important facet of criminal jurisprudence which has developed in the present time is with regard to the impact of compounding and/or quashing criminal proceedings in relation to an offence, its impact on the victim, witnesses and the society at large. This must be treated as a relevant consideration. The Penal Code, 1860 has been subjected to various amendments in order to ensure that society becomes a much safer place for human existence and various offences which affect large sections of society have been incorporated as penal offences. For example, the object of section 498-A was to strike at the root of menace of dowry and to prevent crimes against women. There are various examples of a similar kind where penal provisions have been introduced to sub-serve the purpose of proper administration of justice and protection to individuals. Every crime committed has dual consequences. Firstly it affects the victim adversely. Secondly it disturbs the fabric of the society. It may even introduce an element of fear psychosis in human relationships and thus prejudice harmony in humanity. In the case of Vinay Devanna Nayakv. Ryot Seva Sahakari Bank Ltd., 2008 (1) Bom. C.R. 523, the Supreme Court while dealing with an offence under section 138 of the Negotiable Instruments Act observed as under:*

*"11. It is no doubt true that every crime is considered to be an offence against the society as a whole and not only against an individual even though an individual might have suffered thereby. It is, therefore, the duty of the State to take appropriate action against the offender. It is equally the duty of a Court of law administering criminal justice to punish a criminal. But there are offences and offences. Certain offences are very*

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<sup>17</sup> 2008 (2) Mh.L.J.

*serious in which compromise or settlement is not permissible. Some other offences, on the other hand, are not too serious and the law may allow the parties to settle them by entering into a compromise. The compounding of an offence signifies that the person against whom an offence has been committed has received some gratification to an act as an inducement for his abstaining from proceeding further with the case."*

*Earlier, an offence punishable under section 138 of the Negotiable Instruments Act was not compoundable and it was so held by the Courts. Parliament felt the necessity to make the offence compoundable and thus inserted section 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (Act 55 of 2002). This clearly indicates that the power of compounding has to be exercised within its restricted scope. A crime being a public wrong in breach and violation of public rights and duties, it affects the whole community and is harmful to society in general. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice, often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to the determination of the particular case, protecting its ability to function as a Court of law in the future."*

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*"7.3. The Court has to keep in mind the principle that penal provisions are to be construed strictly. The mandatory provisions of the Code would also have to be interpreted strictly unless the provisions have been worded with liberal language having wide ramifications by the Legislature itself. Rule of liberal construction can safely be applied to these provisions with an intent to achieve public interest and larger interest of justice....."*

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*"7.6. The exercise of inherent powers under section 482 of the Code cannot be circumvented or effaced either by judicial dictum or with reference to other provisions of the Code....."*

(ii) In the Full Bench judgment of this Court in the case of **Maya Sanjay Khandare and Another Vs. State of Maharashtra**<sup>18</sup>, paragraph Nos.18 and 19 read thus:-

*"18. ".....There is no power conferred by the Code either on the*

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18 2021 SCC OnLine Bom 3

*appellate Court/revisional Court to acquit an accused convicted for a commission of a non-compoundable offence only on the ground that compromise has been entered into between the convict and the informant/complainant."*

*19. ....The order of conviction would have to be tested by the appellate Court/revisional Court on merits and if the Court finds it necessary to maintain the conviction, the compromise entered into would be only a factor to be considered while imposing appropriate sentence. In other words while maintaining the conviction for a non-compoundable offence the fact that after such conviction the parties have entered into a compromise would be a mitigating factor to be taken into consideration while awarding appropriate sentence."*

(iii) In the judgment of the Supreme Court in the case of ***Yogendra Yadav and Ors. Vs. State of Jharkhand & Anr.***<sup>19</sup> paragraph No. 4, reads thus :-

*" 4. Now, the question before this Court is whether this Court can compound the offences under Sections 326 and 307 IPC which are non-compoundable? Needless to say that offences which are non-compoundable cannot be compounded by the court. Courts draw the power of compounding offences from Section 320 of the Code. The said provision has to be strictly followed (Gian Singh v. State of Punjab [Gian Singh v. State of Punjab, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988] ). However, in a given case, the High Court can quash a criminal proceeding in exercise of its power under Section 482 of the Code having regard to the fact that the parties have amicably settled their disputes and the victim has no objection, even though the offences are non-compoundable. In which cases the High Court can exercise its discretion to quash the proceedings will depend on facts and circumstances of each case. Offences which involve moral turpitude, grave offences like rape, murder, etc. cannot be effaced by quashing the proceedings because that will have harmful effect on the society. Such offences cannot be said to be restricted to two individuals or two groups. If such offences are quashed, it may send wrong signal to the society. However, when the High Court is convinced that the offences are entirely personal in nature and, therefore, do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, the prosecution becomes a lame prosecution. Pursuing such a lame prosecution would be waste of time and*

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<sup>19</sup> 2014 AIR (SC) 3055

*energy. That will also unsettle the compromise and obstruct restoration of peace."*

(iv) In the judgment of the Single Judge of the Gauhati High Court in the case of ***Otin Panging and Ors. Vs. Nambor Kaman and Ors.***<sup>20</sup>, paragraph Nos.3 and 4 reads thus :-

*"3. I have considered the rival submissions. I have also perused the provisions of sections 397 and 482 of the Cr. P.C. and Article 227 of the Constitution. Under section 397 of the Cr. P.C. revisional jurisdiction has been vested both in the High Court and the Sessions Judge to call for and examine the records of any proceedings before any inferior criminal Court for the purpose of satisfying itself 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, and then to pass necessary order in accordance with the provisions of section 398 to 401 of the Cr. P.C. The jurisdiction of both the Court is concurrent. However, once an application is made under this section either to the High Court or to the Sessions Judge no further application can be made by such person to the other in view of the specific bar contained in sub-section (3) of section 397 which reads:*

*"(3) If an application under this section 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 482 of the Cr. P.C. deals with the inherent powers of High Court. It provides:*

*"482. Saving of inherent powers of High Court.—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

*The principles in relation to the exercise of inherent powers of the High Court, which have been followed ordinarily and generally, almost invariably, barring a few exceptions, were set out by the Supreme Court in Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 : AIR 1978 SC 47, 50 in the following terms:*

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20 1991 (1) Crimes 509 (Gau.)

- “(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;*
- (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;*
- (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.”*

*The question as to whether the bar contained in sub-section (3) of section 397 of the Cr. P.C. will in any way limit or affect the inherent powers of the High Court under section 482 is also no more res integra. This aspect of the matter was considered by the Supreme Court in Madhu Limaye, Supra. It was observed that the bar operates only in exercise of the revisional power of the High Court meaning thereby that the High Court will have no power of revision under sub-section (1) of section 397. 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 the aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent power. This legal position was reiterated by Krishna Iyer, J. In Raj Kapoor v. State(Delhi Administration), (1980) 1 SCC 43 : AIR 1980 SC 258 in the following words:*

*“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....”*

*In a case where glaring injustice stares the Court in the face, the power under section 482 should be exercised. The matter was also discussed by the Supreme Court in Municipal Corporation of Delhi v. Ram Kishan Rohtagi, (1983) 1 SCC 1 : AIR 1983 SC 67 wherein it was observed:*

*“This provision confers a separate and independent power on the High Court alone to pass orders ex debito justitiae in cases where grave and substantial injustice has been done or where the process of the Court has been seriously abused. It is not merely a revisional power meant to be exercised against the order passed by subordinate Courts”.*

*It was further made clear;*

*“the power being an extraordinary one, it has to be exercised sparingly.”*

*4. From the aforesaid discussion, it is clear that sections 397 and 482 of the Cr. P.C. operate in two different fields. Sections 482 confers a separate and independent power on the High Court to pass orders ex debito justitiae to prevent abuse of the process of the Court or to secure the ends of justice. This inherent power of*

*the High Court, as observed by the Supreme Court in Raj Kapoor, Supra, does not stand repelled when the revisional power under section 397 overlaps. In a given case, the High Court is not precluded from treating a petition filed under section 397 as a petition under section 482 and to grant necessary relief, if it is satisfied that it is necessary to do so to prevent an abuse of the process of the Court or for the purpose of securing the ends of justice. Nothing contained in subsection (3) of section 397 can come on the way of doing so, However, this inherent power being extraordinary, must be exercised sparingly and with restraint.*

(v) In the case of ***Kamla Devi Vs. Uttam Chand*** <sup>21</sup> passed by the learned Single Judge of the Himachal Pradesh High Court, paragraph Nos. 7 and 8 reads thus :-

*" 7. Moreover, this Court has ample power to treat the present petition under Section 482 Cr.PC, which gives inherent powers to the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent the abuse of process of any Court or otherwise to secure the ends of justice. If the present petition is not held to be maintainable at this stage, petitioner would be rendered remediless as she will not have any opportunity to assail the order dated 12.7.2007 passed by the learned Additional Sessions Judge exercising revisionary powers under Section 397 Cr.PC.*

*8. Undisputedly, powers under Section 482 Cr.PC are required to be used very sparingly, especially, in the circumstances, where court comes to the conclusion that order passed by the court below is perverse on the face of it and is a result of sheer abuse of the process of law. Keeping in view the fact that this petition has remained pending before this Court since 4th October, 2007, and same was admitted on 5th October, 2007, it would not be proper and just to dismiss the same on the ground of maintainability that too after nine years of the admission of the case. Accordingly, in view of the aforesaid discussion, this Court is of the definite view that present petition is maintainable under Section 397 Cr.PC and bar created under Section (3) would not come in her way as far as filing of present petition is concerned. Since prior to filing of this petition, she had not filed any revision petition under Section 397 Cr.PC. Rather, same was filed by respondent No. 3 Uttam Chand. Hence, this court is of the view that this petition cannot be held to be barred under Section 397(3) and same is maintainable in view of the discussion made hereinabove."*

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21 2016 Cri.L.J. 3297

(vi) In the case of *Khemraj Agrawal and Ors. Vs. State of C.G. and Ors.*<sup>22</sup> passed by the Chhattisgarh High Court, paragraph No. 110 reads thus :-

*" 110. The quality and content of the revisional jurisdiction of the High Court while dealing with a revision under Section 397 CrPC is not to be equated with that of the Court hearing a criminal appeal, including one referable to the proviso to Section 372 CrPC. Notwithstanding the scope and ambit of Section 401 CrPC, the revisional jurisdiction of the High Court is not to be treated as coextensive with the powers of the Appellate Court as delineated in Section 386 CrPC. This is so, notwithstanding the wider jurisdictional gamut available to the High Court in terms of Section 401 CrPC. It is also sound, as a principle, that distinction has to be maintained between converting an appeal to a revision and converting a revision to an appeal; be it in any jurisdiction which provides for appellate and revisional interference."*

**10.** In view of the aforesaid decisions on the issue at hand, I appoint Mr. Faiz Merchant, learned Advocate and Counsel practicing in this Court to assist the Court in garnering the legal decisions and to place them before the Court and assist the Court as *Amicus Curiae* in the present case to determine the question framed in paragraph No. 2 herein above.

**11.** Registry is directed to give a copy of all Revision Applications alongwith a compilation of judgments referred to herein above to Mr. Merchant within a period of one week from today.

**12.** List the present group of matters together on **29<sup>th</sup> November, 2024**. To be placed under the caption 'For Directions'.