



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

903 CRIMINAL WRIT PETITION NO. 151 OF 2025

CHANDRAPRABHA SHRIKANT SHELKE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

....

Mr. A. R. Devkate, Advocate for the Petitioner

Ms Chaitali Chaudhari – Kutti, APP for the Respondent – State

....

CORAM : Y. G. KHOBRAGADE, J.

DATE : 18.02.2025

PER COURT :-

1. Heard at length Adv. A. R. Devkate, learned counsel for the Petitioner and Ms. Chaitali Chaudhari – Kutti, the learned APP for the Respondent State.

2. By the present Petition under Section 226 and 227 of the Constitution of India read with Sec. 482 of the Code of Criminal Procedure, the Petitioner put forth prayer clause (B), which reads as under:-

“(B) To quash and set aside the order issuing summons/process in Cri. M.A. No.209 of 2023 for offence punishable under Section 494 r/w 34 of the Indian Penal

Code, 1860 dated 25-09-2024 (26-09-2024) whereupon the R.C.C. No.277 of 2024 is registered and pending in the court of learned Judicial Magistrate First Class, Ambajogai, Dist- Beed, to the extent of the petitioner, by issuing writ of certiorari or mandamus or any other writ or any other order.”

3. On perusal of above prayer clause, it clearly depicts that the Petitioner is challenging the order issuance of summons passed by the learned J.M.F.C. Ambajogai, District Beed, on 26-09-2024 in R.C.C. No.277 of 2024 for the offence under Section 494 read with Section 34 of the Indian Penal Code.

4. It is well settled principle of law that the order of issuance of process is not the interlocutory and it amounts to adjudication of right of the parties. In the case of ***Madhu Limaye Vs. State of Maharashtra, (1977) 4 SCC 551***, the Hon'ble Supreme Court in paragraph 10 has observed thus:-

“10. As pointed out in Amar Nath's case (supra) the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing Sub-section (2), in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge)

for exercise of the revisional power in relation to any interlocutory order; on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include Sub-section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out ? In our opinion, a happy solution of this problem 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 of 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. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his

acquittal a second trial after proper sanction will not be barred on the doctrine of Autrefois Acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused upto the end? 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.”

5. In the cited case, the Hon'ble Supreme Court considered the inherent power by the High Court i.e.

*“(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.”*

6. In case-in-hand, the Petitioner has specifically questioned the legality and validity of the order dated 25.09.2024, passed by the learned J.M.F.C. Ambejogai, District Beed, in R.C.C. No.277 of 224,

whereby process has been issued as against the Present Petitioner for the offence under Section 494 read with 34 of I.P.C.. Therefore, the Petitioner having efficacious remedy to challenge the order of issuance of process by invoking Section 397 of Cr.P.C. before the Session Judge. Therefore, I not inclined to exercise the powers under Article 226, 227 of the Constitution of India read with 482 of Cr.P.C. Therefore, present Writ Petition is dismissed.

[Y. G. KHOBRADE, J.]

SMS