

12.02.2026
Court No.42
D/L 67
Sudipta

**CRR 4281 of 2024
with
CRAN 1 of 2025
CRAN 2 of 2026**

**Tapan Kumar Halder
Vs.
Ranita Halder**

Mr. Jyotirmoy Som
Mr. Archo Ghosh

...for the petitioner.

Mr. Soumya Banerjee
Ms. Sucheta Banerjee

...for the opposite party.

1. The present cases pertain to the filing of the revision petitions by the petitioners against the Order(s) dated 16th March, 2024 passed by the learned Judicial Magistrate(s). The plea taken by the Learned Counsel for the petitioners is that since there is concurrent jurisdiction provided under Sections 399 and 401 of the Code of Criminal Procedure, 1973 (Corresponding Sections 438, 440, 442 and 528 of the BNSS) respectively, therefore, the present petitions are maintainable before this Court.

2. Learned counsel for the petitioner has predominantly raised the plea that since the legislature has provided concurrent jurisdiction of revision to the Sessions Court and the High Court, therefore, the doors of the High Court cannot be shut for the petitioners as the second revision

petition is barred under the BNSS, 2023. Therefore, the petitioners would be deprived of the invoking jurisdiction of this Court, if the revision petition is relegated to the Sessions Court.

3. This Court has considered the submission of the learned counsel for the petitioners. There cannot not be any quarrel to the proposition that the statute provides the concurrent revisional jurisdiction to the Sessions Court and the High Court. The Court is conscious of the settled legal proposition that if a revision petition is directly filed before the High Court, it would be maintainable. The only question which falls for consideration is that whether in the face of such concurrent jurisdiction vested on the Sessions Courts and the High Court, the High Court should ordinarily entertain it or not. This issue becomes more important in view of the heavy pendency in the High Court. The Court is also sensitive to the fact that cost of litigation is astronomical and, therefore, all efforts should be thereto minimise it. The convenience of stake holders is also an important issue. Such an issue is more relevant in big states like West Bengal, where people have to undertake long journey to come to the High Court, which again is a toll on the litigants physically, mentally and economically.

4. Bare perusal of Section 399 and Section 401 Cr.P.C. which are akin to Section 440 and 442 of BNSS makes it clear that the Session Judge and High Court have the

concurrent power of revision. Thus, *prima facie*, the revision petition can be filed either before the High Court or the Sessions Court. Before proceeding further, it is necessary to bear in mind the settled proposition of law is that the revisional jurisdiction is not a matter of right. The legislature has conferred such power on the High Court and Session Court primarily to ensure that the justice is imparted and in accordance with the principles of law and the subordinate criminal courts do not exceed their jurisdiction. The revisional jurisdiction is primarily to prevent the subordinate court from abusing or misusing the power vested in them. It is also a settled proposition that the High Court is not bound to entertain an application in revision. Reliance can be placed upon Pranab Kumar Mitra vs. State of West Bengal, AIR 1959 SC 144.

5. The similar question came up before the High Court of Jharkhand in Criminal Revision No. 417 of 2023 titled as Dharam Kumar Saw Alias D.K. Gupta & Ors. vs. State of Jharkhand & Anr. There the plea of the concurrent jurisdiction was also raised and it was canvassed that it is for the litigant to choose the forum. The High Court of Jharkhand in the case of Dharam Kumar Saw Alias D.K. Gupta & Ors. vs. State of Jharkhand & Anr.(supra) relied upon the judgment of the Bombay High Court in Padmanabh Keshav Kamat vs. Anup R. Kantak & Anr., 1999 Cri. LJ. 122 and, inter alia, held as under:

*“8. The above judgment of the Hon'ble Supreme Court was the base in a revision petition filed under Section 397 of the Code directly to the High Court before the learned Single Judge of Bombay High Court in **Padmanabh Keshav Kamat v. Anup R. Kantak and others**, reported in **1999 Cri.L.J. 122**, wherein at paragraphs 11 and 12, it has been held as under:*

“11. The net result of the foregoing discussion is that the present revision application which is filed directly to the High Court, will have to be held as maintainable and not barred by any provision of section 397 of the Criminal Procedure Code. However, maintainability of a proceeding is one thing while its entertainment is another. When the proceeding is maintainable by two different courts, one being inferior or subordinate to the other, then it is certainly a question of propriety, particularly for the superior Court, as to whether it should entertain such a proceeding which could have been filed in the lower Court. It is material to note that revision is not a statutory right of a litigant but it is a matter of discretion of the Court having revisional jurisdiction.

12. In (Pranab Kumar Mitra v. State of West Bengal and another) 3, A.I.R. 1959 S.C. 144, the Supreme Court while dealing with the revisional powers of the High Court observed:--

"Indeed, it is a discretionary power which has to be exercised in aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon the facts and circumstances of that case. The revisional powers of the High Court vested in it by section 439 of the Code, read with Section 435, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence, and that subordinate criminal courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code. The High Court is not bound to entertain an application in revision, or having entertained one, to order substitution in every case. It is not bound the other way, namely, to treat a pending application in revision as having abated by reason of the fact that there was a composite sentence of imprisonment and fine. The High

Court has been left complete discretion to deal with a pending matter on the death of the petitioner in accordance with the requirements of justice."

In the case of Madhavlal v. Chandrashekhar (supra) there were special and exceptional circumstances which in a way justified filing of the revision application directly to the High Court. However, in the instant case no special circumstances which required the petitioner to bypass the forum of the Sessions Judge and rush directly to the High Court, are pointed out. The petitioner could have very well filed his application even before the Sessions Judge, Panaji. However, he did not do so. The only explanation which Shri Lotlikar could give was that previously this dispute had come before this Court when the petitioner had filed Criminal Writ Petition No. 9 of 1997. However, it is material to note that the said criminal writ petition was not decided on merit nor did the learned Single Judge give any finding on any factual aspect. He simply remanded the matter with a direction to decide the respondent No. 1's application under section 457 after giving opportunity of hearing to the petitioner. Therefore, the mere fact that the dispute between the parties had once come before this Court cannot be regarded as a special or exceptional circumstance justifying the entertainment of this revision application by this Court. Exercise of revisional powers is not a matter of course but it is a matter of rare and sparing use. Hence, as pointed out above when two fora are available to the petitioner for getting redressal of the alleged wrong, then it will certainly be more appropriate for him to first approach the lower forum. It is certainly within the discretion of the higher forum, that is, this Court to consider whether it should entertain or not of such a revision application which can lie before the Sessions Judge. In this respect I am in full agreement with the opinion expressed by my learned brother R.M. Lodha, J., in the case of Tejram v. Sunanda and I am of the opinion that this Court should not entertain this revision application which can be entertained and decided by the Sessions Judge, Panaji. No question of causing inconvenience or prejudice to the petitioner arises, if the Sessions Judge, in

exercise of his revision powers, deals with the application.”

9. In the above case, the judgment of **Madhavlal v. Chandrashekhar**, reported in **1976 CRI. L.J. 1604** was also discussed and it was held that there were special and exceptional circumstances in the way justifying filing revision petition directly to the High Court.

10. In the case of **Padmanabh Keshav Kamat (supra)**, the observations of the learned Single Judge (Hon'ble Mr. Justice R.M. Lodha) as he then was in Bombay High Court in the case of **Tejram Mahadeorao Gaikwad v. Smt. Sunanda Tejram Gaikwad**, reported in **1996 Cri. L.J. 172**, were also quoted as under:

“It is undoubtedly true that Section 397 of the Code of Criminal Procedure confers jurisdiction of revision concurrently on the Court of Sessions as well as the High Court, but it is equally true that where the jurisdiction is conferred on two Courts, the aggrieved party should ordinarily first approach the inferior of the two Courts unless exceptional grounds for taking the matter directly before the Superior Court is made out. Since the applicant has come directly to the High Court, though he could have filed the revision before the Sessions Judge and there are no exceptional reasons, the revision application deserves to be dismissed on this count alone. This Court does not encourage filing of revision application under Section 397 of the Code of Criminal Procedure directly before this Court it could be challenged in revision before the Sessions Court having jurisdiction of revision over the matter.”

11. In the case of **Central Bureau of Investigation v. State of Gujarat (supra)** on which much reliance has been placed by the learned counsel for the petitioners, learned CJM passed the order directing the CBI to investigate the matter on 29.09.1999. The CBI moved an application for recalling the order, but that application was rejected on 26.10.1999. Then, the CBI directly filed the application to the High Court against both the orders which were dismissed on the ground of bypassing Sessions Court, though the petitioner was directed to move before the learned Sessions Judge as

directed by the High Court and by order dated 17.05.2007, the orders passed by learned CJM were set-aside and the CBI was directed to investigate the case with special cost and criticism, against which, Special Appeal was filed before the Hon'ble Supreme Court by the CBI, which was allowed by quashing the order of the High Court with the following observations:

“Of course, where it is shown that the investigating agency is not doing proper investigation and/or that there is reason to believe that there is laxity in the investigation, a direction may be given to the CBI to investigate the matter in appropriate cases. This case is not one where any complexity was involved. It was a routine case of theft of Muddamal property. The learned Sessions Judge, therefore, rightly appears to have set aside the orders passed by the learned Chief Judicial Magistrate. The High Court had no basis to doubt the bonafides of the CBI in moving the application before it under Section 397 Cr.P.C. There was no bar for the High Court to entertain the said petition. The criticism levelled against the CBI and its officers and cost imposed do not have any legal sanction. They are accordingly set aside.”

12. *In view of the above observations, it is clear that there is of-course no bar for filing revision directly to the High Court under Section 397 of the Code read with Section 401 of the Code, corresponding to the Section 438 read with Section 442 of the BNSS against the order of the learned Magistrate, but when concurrent jurisdiction is given specially under such circumstances when both are superior Courts one to the Magistrate and another to the Sessions, then the propriety demands that elder superior Court in Hierarchy must be first approached. This is the customary common law as the first elders are always respected. ”*

6. The distinction has to be made between the issue as to the maintainability and entertainability as far as the maintainability is concerned. There cannot be any doubt that the revision petition is maintainable before the High court. However, the issue is that if there are concurrent

jurisdiction with Sessions Court and the High Court, the aggrieved person should first approach the court of primary jurisdiction or should ordinarily invoke the jurisdiction of the High Court at the first instance. Even at the cost of repetition, it may be stated that there could also be cases of grave, serious or urgent in nature where the intervention of the High Court may be necessary, at the outset, however, there is no such plea of gravity, seriousness reflected in the present case(s).

7. This Court is of the firm view that even if the concurrent jurisdiction is available, it is a matter of propriety and judicial discipline that the petitioner must approach the first forum and invoke the jurisdiction of the High Court only in rare and special circumstances. This will not only benefit the litigant by having another remedy available, as per law, but it will also help in de-clogging the High Courts. The High Court has always plenary powers even other than revisional jurisdiction, to correct the wrong. This aspect has also to be seen from another perception particularly in a big state like West Bengal. It will be very difficult from the far flung areas to approach to the High Court and relatively it would be convenient both physically and economically to first invoke the jurisdiction of the learned Sessions Court to redress their grievances against the order passed by the Learned Judicial Magistrate.

8. In view of the discussions made hereinabove, this

Court is of the considered view that though there exist concurrent jurisdiction, however, as a matter of propriety and judicial discipline, ordinarily the order of learned Judicial Magistrate should first be challenged by way of revision before the learned Sessions Court, instead of directly invoking the jurisdiction of this Court except in the exceptional and grave circumstances. However, this shall not curtail the power of the High Court to entertain revision petitions in exceptional cases. It is pertinent to mention that no such grave or exceptional circumstances exist in the present case, nor the same has been pleaded or canvassed before this Court.

9. In view of the above discussions, the petitioner may file a fresh revision petition before the learned Sessions Judge. In the event of the revision petition is file within four weeks of this order, the period taken during this revision petition will not come in the way for the purpose of limitation. It is also to be made clear that all the contentions shall remain open and shall be agitated and decided by the learned Sessions Judge expeditiously in accordance with law, without being influenced by the orders of this Court. In case, if any interim order has been granted in favour of the petitioner, the same shall continue till four weeks of the filling of the revision petition before the learned Session Court. In such cases, if the revision petition is not filed within the four weeks of the date of

receipt of certified copy the interim order shall stand vacated automatically. The certified copies be returned to the petitioner(s) as per rules.

10. The Revision Petition(s) and all pending applications stand disposed of.

(Dinesh Kumar Sharma, J.)