

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4913 OF 2024

Kotak Mahindra Bank Ltd.]
(KMBL) A Banking Company within the]
Meaning of the Banking Regulation Act, 1949]
having its registered]
office address at 27 BKC, C-27, G Block,]
Bandra Kurla Complex, Bandra (East)]
Mumbai – 400051 and branch office at Kotak]
Infinity Park, 4th Floor, Zone 2, General A.K.]
Vaidya Marg,]
Goregaon (East), Mumbai 400 097]
Through its Authorised Officer]
Mr. Alif Mobhani]..Petitioner.

Versus

- 1] The State of Maharashtra]
A Writ to be served at the office of the]
Government Pleader, High Court -]
Criminal Side, Mumbai]
]
2] The Senior Inspector of Police]
BKC Police Station, Bandra Kurla]
Complex, Mumbai 400 051]
]
3] The Commissioner of Police]
Office of Commissioner of Police,]
Mumbai]..Respondents

Mr. Subhash Jha a/w Advocates Sanjay Anabhawane,
Siddharath Jha, Chetan Gogawale and Mr. Chirag Bhadra i/by
Sanajy Anabhawane for the Petitioner.

Mr. Tanveer Khan, APP for the Respondent/State.
PSI Jarag Suraj, BKC Police Station present.

CORAM : ASHWIN D. BHOBE, J.

DATED : 25 March 2026

ORAL JUDGMENT:

1. Heard Mr. Subhash Jha, learned Advocate for the Petitioner and Mr. Tanveer Khan, learned APP for the Respondent/State.

2. This petition filed under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code challenges the order passed by the Judicial Magistrate First Class, Court No. 71, Bandra, Mumbai (hereafter “Magistrate”), whereby an application filed by the Petitioner under Section 156(3) of the Code of Criminal Procedure 1973 (hereafter “Cr.P.C.”) was rejected (hereafter “impugned order”).

3. The reliefs sought by the Petitioner in this Petition are as follows:-

“(a) By issue of the Writ of Direction and/or Writ of Mandamus and/or such Writ and/or order in the nature of the Writ by exercising inherent and extra ordinary powers of this Hon’ble Court under Article 226 of the Constitution of India r/w Section 482 of Criminal Procedure Code and set aside the impugned order dated 22.07.2024 passed by Ld. Judicial magistrate first class 71th court Bandra Mumbai in Misc. Case 256 of 2023 and direct to the Respondent No.2 to take cognizance of offences against the Accused person by registering the FIR.

(b) Cost of this Petition be provided for

(c) For such further and other reliefs as the nature and circumstances of the case may require”

4. Mr. Tanveer Khan, learned APP for the Respondent/State, raises an objection to the maintainability of the present Petition. His objections are twofold: first, the impugned order is a revisable order; and second, a criminal revision application must be filed before the Sessions Court initially. He refers to and relies upon the judgment of this Court in the case of *Bipasha Deepak Kumar V/s State of Maharashtra and another*¹, wherein this Court has held that an order passed by a Magistrate under Section 156(3) of the Cr. P. C. is a final order, against which a criminal revision application is maintainable under Section 397 of the Cr. P. C. (438 of the BNSS). He submits that the facts in the case of Bipasha Deepak Kumar (*supra*) are identical to those of the Petitioner, therefore, the decision in that case is directly applicable here.

5. Mr. Subhash Jha, learned Advocate for the Petitioner, fairly submits that an order passed under section 156 of Cr. P. C. is a final order because it terminates the proceeding before the Magistrate. He does not dispute that, in the case of *Bipasha Deepak Kumar (supra)*, the impugned order rejected the application filed under section 156(3) of Cr.P.C., and that the Petitioner there had directly approached this Court through a writ petition without first seeking the remedy of revision before the Sessions Court.

¹ Writ Petition 5022 of 2025 decided on 23rd March 2026

6. In view of the objection raised by Mr. T. G. Khan, learned APP, a query was posed to Mr. Subhash Jha, learned Advocate for the Petitioner, as to whether the Petitioner would consider filing a criminal revision application against the impugned order in accordance with the view expressed by this Court in the case of *Bipasha Deepak Kumar (supra)*. If so, this Court would exclude the time spent by the Petitioner in this petition, as was done in the case of *Bipasha Deepak Kumar (supra)*. Mr. Subhash Jha, learned Advocate for the Petitioner, respectfully declined. He submitted that he would persuade this Court to adopt a view different from the one taken in *Bipasha Deepak Kumar (supra)*.

7. Mr. Subhash Jha, learned Advocate, to persuade this Court to adopt a different view, has relied on the decisions of the Hon'ble Supreme Court in the case of *Dhariwal Tobacco Products Limited and others Vs. State of Maharashtra and Another*²(paragraph nos. 7, 8 and 10) and *Prabhu Chawla Vs. State of Rajasthan and Another*³ (paragraph nos. 2, 3 and 5). He relies on the decision of the Hon'ble Division Bench of this Court in the case of *Mrs. Mamta Digvijay Singh Vs. State of Maharashtra & Anr.*⁴

8. The submissions of Mr. Subhash Jha, learned Advocate for the Petitioner, are that the order impugned is “palpably erroneous and perverse,” and therefore, a higher degree of

² (2009) 2 SCC 370

³ (2016) 16 SCC 30

⁴ Criminal Writ Petition No.4967 of 2025 decided on 23 September 2025

care is required from the Court. He submits that a litigant in such a situation should not be told to seek a remedy under the BNSS. He contends that this Court's jurisdiction is invoked under Section 482 of the Cr. P. C. (Section 528 of the BNSS), and if the order is found to be legally invalid, this Court is not barred from exercising jurisdiction under Section 482 of the Cr. P. C. By referring to the decision of the Hon'ble Supreme Court in the case of *Lalita Kumari vs. Government of U.P and others*⁵, particularly paragraph Nos. 120.1 and 120.4, he submits that this Court should consider directing the Respondent Authorities to explain why action has not been taken on the complaint filed by the Petitioner. Based on their response, appropriate action as deemed fit, and as observed by the Hon'ble Supreme Court in paragraph No. 120.4 of *Lalita Kumari* (supra), as well as potential proceedings under the Contempt of Courts Act, 1971, should be initiated against the officials at fault.

9. Mr. Tanveer Khan, learned APP for the Respondent/State, submits that the criminal revision application under Section 397 of Cr.PC. is an efficacious alternate remedy available to the Petitioner, wherein all the issues raised by the Petitioner can be considered by the Sessions Court. He submits that the Petitioner should be relegated to exhaust the said remedy as held by this Court in the case of *Bipasha Deepak Kumar* (supra).

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2014(2) SCC 1

10. Mr. Subhash Jha, learned Advocate for the Petitioner, fairly submits that the impugned order can certainly be examined by the Sessions Court under its revisional jurisdiction. He submits that the offence in this case is an Economic Offence, and he emphasises that this Court should consider the legality of the impugned order in its extraordinary jurisdiction.

11. Heard Arguments. Perused records with the assistance of the learned Advocates.

12. Records show that the Petitioner previously approached this Court through Criminal Writ Petition (Stamp) No. 12062 of 2023, which was disposed of on 11th July 2023, by the following order:-

“PC.:

1. *By this petition, the petitioner seeks the following substantive reliefs:-*

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- a) *Issue writ of mandamus or any other appropriate writ as deemed fit and proper by this Hon'ble Court and Respondent No. 2 and 3 be directed to follow the mandate of Lalita Kumari (Supra.) as well as RBI Master Circular for wilful defaulters issued vide circular RBI/2014-15/73 DBR No. CID.BC.57/20.16.003/2014-15 and RBI Master Circular for Fraud Classification and Reporting by commercial banks and select Fls issued vide circular RBI/DBS/2016-17/28DBS.CO.CFM.*
- b) *Issue direction to quash the illegal preliminary inquiry and consequent Impugned Closure Report dated 30.05.2023."*

2. *It is not in dispute that the police after conducting a preliminary enquiry have closed the case, after observing that the dispute is of a civil nature. The said report dated 30 May 2023, is on page 51 of the aforesaid petition.*

3. *In this light of the matter, prayer clause 'a' cannot be entertained. It is open for the petitioner to file an appropriate proceeding as maintainable in law before the appropriate forum/court.*

4. *If any proceeding is filed before the appropriate forum/court, the concerned forum/court to pass appropriate orders thereon, in accordance with law.*

5. *We make it clear, that we have not gone into the merits of the petition and as such all contentions of all parties are kept open.*

6. *All concerned to act on the authenticated copy of this order.”*

13. Special Leave to Appeal (Crl.) No.10077/2023, filed by the Petitioner against the order dated 11th July 2023 was dismissed by the Hon’ble Supreme Court by order dated 20th August 2023, which reads as follows:-

“O R D E R

1. *We are not inclined to interfere with the impugned judgment and order passed by the High Court. The special leave petition is dismissed accordingly.*

2. *Pending application(s), if any, stand disposed of.”*

14. Mr. Subhash Jha, learned Advocate for the Petitioner, submits that it is after the dismissal of the Special Leave to Appeal (Crl.) No.10077/2023, the Petitioner resorted to Section 156(3) of the Criminal Procedure Code.

15. This Court, in *Bipasha Deepak Kumar* (supra), has addressed the issues regarding the effect of the order passed under Section 156(3) of the Cr. P. C. (175(3) of BNSS) and the availability of an effective remedy for an aggrieved party to redress its grievance. In paragraph nos. 7 to 18, this Court has observed as follows:

“7. The Hon’ble Supreme Court in the case of *Amar Nath v. State of Haryana*⁶, in paragraphs 4 to 9, has explained the concept of “interlocutory orders,” which read as follows:

4. So far as the second plank of the view of the learned Judge that the order of the Judicial Magistrate in the instant case was an interlocutory order is concerned, it is a matter which merits serious consideration. A history of the criminal legislation in India would manifestly reveal that so far the Code of Criminal Procedure is concerned both in the 1898 Code and 1955 Amendment the widest possible powers of revision had been given to the High Court under Sections 435 and 439 of those Codes. The High Court could examine the propriety of any order — whether final or interlocutory — passed by any Subordinate Court in a criminal matter. No limitation and restriction on the powers of the High Court were placed. But this Court as also the various High Courts in India, by a long course of decisions, confined the exercise of revisional powers only to cases where the impugned order suffered from any error of law or any legal infirmity causing injustice or prejudice to the accused or was manifestly foolish or perverse. These restrictions were placed by the case law, merely as a rule of prudence rather than a rule of law and in suitable cases the High Courts had the undoubted power to interfere with the impugned order even on facts. Sections 435 and 439 being identical in the 1898 Code and 1955 Amendment insofar as they are relevant run thus:

“435. (1) The High Court or any Sessions

⁶ (1977) 4 SCC 137

Judge or District Magistrate, or any Sub-divisional Magistrate empowered by the State Government in this behalf, may call for and examine the record of any proceeding before any inferior criminal court situate within the local limits of its or his 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 .

439. (1) In the case of any proceeding the record of which has been called for by itself or which has been reported for orders, 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 423, 426, 427 and 428 or on a Court by Section 338, and may enhance the sentence ; and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in manner provided by Section 429.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.”

In fact the only rider that was put under Section 439 was that where the Court enhanced the sentence the accused had to be given an opportunity of being heard.

5. The concept of an interlocutory order qua the revisional jurisdiction of the High Court, therefore, was completely foreign to the earlier Code. Subsequently it appears that there had been large number of arrears and the High Courts were flooded with revisions of all kinds against interim or interlocutory orders which led to enormous delay in the disposal of cases and exploitation of the poor accused by the affluent prosecutors. Sometimes interlocutory orders caused harassment to the accused by unnecessarily protracting the trials. It was in the background of these facts that the Law Commission dwelt on this aspect of the matter and in the 14th and 41st Reports submitted by the Commission which formed the basis of the

1973 Code the said Commission suggested revolutionary changes to be made in the powers of the High Courts. The recommendations of the Commission were examined carefully by the Government, keeping in view, the following basic considerations :

“(i) an accused person should get a fair trial in accordance with the accepted principles of natural justice ;

(ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society ; and

(iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community.”

This is clearly mentioned in the Statement of Objects and Reasons accompanying the 1973 Code. Clause (d) of para 5 of the Statement of Objects and Reasons runs thus :

“the powers of revision against interlocutory orders are being taken away, as it has been found to be one of the main contributing factors in the delay or disposal of criminal cases ; ”

Similarly, replying to the debate in the Lok Sabha on sub-clause (2) of clause 397, Shri Ram Niwas Mirdha, the Minister concerned, observed as follows :

“It was stated before the Select Committee that a large number of appeals against interlocutory orders are filed with the result that the appeals got delayed considerably. Some of the more notorious cases concern big business persons. So, this new provision was also welcomed by most of the witnesses as well as the Select Committee. . . . This was a well-thought out measure so we do not want to delete it.”

Thus it would appear that Section 397(2) was incorporated in the 1973 Code with the avowed purpose of cutting out delays and

ensuring that the accused persons got a fair trial without much delay and the procedure was not made complicated. Thus the paramount object in inserting this new provision of sub-section (2) of Section 397 was to safeguard the interest of the accused.

6. Let us now proceed to interpret the provisions of Section 397 against the historical background of these facts. Sub-section (2) of Section 397 of the 1973 Code may be extracted thus :

“The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.”

The main question which falls for determination in this appeal is as to what is the connotation of the term “interlocutory order” as appearing in sub-section (2) of Section 397 which bars any revision of such an order by the High Court. The term “interlocutory order” is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary “interlocutory” has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term “interlocutory order” in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for

bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.

7. *In Central Bank of India v. Gokal Chand [AIR 1967 SC 799, 800 : (1967) 1 SCR 310 : (1967) 2 SCJ 828] , this Court while describing the incidents of an interlocutory order, observed as follows :*

“In the context of Section 38(1), the words “every order of the Controller made under this Act”, though very wide, do, not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding, the Controller, may pass many interlocutory orders under Sections 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding they regulate the procedure only and do not affect any right or liability of the parties.

The aforesaid decision clearly illustrates the nature and incidents of an interlocutory order and the incidents given by this Court constitute sufficient guidelines to interpret the connotation of the words “interlocutory order” as appearing in sub-section (2) of Section 397 of the 1973 Code.

8. *Similarly in a later case in Mohan Lal Magan Lal Thacker v. State of Gujarat [AIR 1968 SC 733 : (1968) 2 SCR 685 : 1968 Cri LJ 876] , this Court pointed out that the finality of an order could not be judged by co-relating that order with the controversy in the*

complaint. The fact that the controversy still remained alive was irrelevant. In that case this Court held that even though it was an interlocutory order, the order was a final order.

9. Similarly in Baldevdas v. Filmistan Distributors (India) (P) Ltd. [(1969) 2 SCC 201 : AIR 1970 SC 406] while interpreting the import of the words “case decided” appearing in Section 115 of the Code of Civil Procedure, this Court observed as follows :

“A case may be said to be decided, if the Court adjudicates for the purposes of the suit some right or obligation of the parties in controversy; Apart from this it would appear that under the various provisions of the Letters Patent of the High Courts in India, an appeal lies to a Division Bench from an order passed by a Single Judge and some High Courts have held that even though the order may appear to be an interlocutory one where it does decide one of the aspects of the rights of the parties it is appealable. For instance, an order of a Single Judge granting a temporary injunction was held by a Full Bench of Allahabad High Court in Standard Glass Beads Factory v. Shri Dhar [AIR 1960 All 692 : 1960 All LJ 387] as not being an interlocutory order having decided some rights of the parties and was, therefore, appealable. To the same effect are the decisions of the Calcutta High Court in Union of India v. Khetra Mohan Banerjee [AIR 1960 Cal 190] , of the Lahore High Court in Gokal Chand v. Sanwal Das [AIR 1920 Lah 326 : 55 IC 933 : 2 LLJ 32] , of the Delhi High Court in Begum Aftab Zamani v. Shri Lal Chand Khanna [AIR 1969 Delhi 85 : 71 Pun LR (D) 75] and of the Jammu and Kashmir High Court in Har Parshad Wall v. Naranjan Nath Matoo [AIR 1959 J & K 139] .”

8. The impugned order dismisses the Application filed by the Petitioner under section 175(3) of BNSS, registered as Criminal Case No. 1781/M/2025, marking the conclusion of the proceedings before the Magistrate. This order is a final decision on the issue raised in Criminal Case No. 1781/M/2025 and falls within the scope of “case decided.”

9. The question of whether a Criminal Revision

Application under Section 397 of Cr.P.C. against an order under Section 156(3) of Cr.P.C. was considered by the Hon'ble Division Benches of this Court, in the cases cited below:-

a. *In the case of B.S. Khatri (supra), in paragraph No. 31, this Court observed as follows:*

31. We have also noted above that several efficacious alternate statutory remedies under the Criminal Procedure Code are available to the petitioners to challenge the order under section 156(3). Without availing them the petitioners have rushed before this Court, claiming exercise of its extraordinary jurisdiction under Article 226. In our opinion, therefore, there is no need to exercise this jurisdiction to quash merely the complaint and order under section 156, Criminal Procedure Code requiring investigation into complaint by the police. The petitions are therefore liable to be dismissed.

b. *In the case of Narayandas s/o Hiralalji Sarda & Ors vs. State of Maharashtra & Anr⁷, in paragraph No. 15, this Court has observed as follows:-*

15. As regards tenability of the writ petition challenging the direction of the learned Magistrate to investigate under section 156(3) of the Code of Criminal Procedure, it was submitted by Mr. Dewani that such a writ petition cannot be entertained in exercise of the extraordinary jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India. Mr. Dewani pointed out that the said order is revisable and thus effective alternate remedy is available. As such filing of writ petition is not appropriate remedy. In support of this submission, Mr. Dewani relied on R.S. Khatri v. State of Maharashtra, 2004(1) Mh.L.J. 141 (Bombay), wherein the Court dealt with the writ petition challenging the order passed by the learned Magistrate directing the investigation under section 156(3) of the Code of Criminal Procedure. In the said case, it was held by the Division Bench as under:

“We have also noted above that several efficacious alternate statutory remedies under the Criminal Procedure Code are available to the petitioners to challenge the order under

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(2008) SCC OnLine Bom 780

section 156(3). Without availing them the petitioners have rushed before this Court, claiming exercise of its extraordinary jurisdiction under Article 226. In our opinion, therefore, there is no need to exercise this jurisdiction to quash merely the complaint and order under section 156, Criminal Procedure Code requiring investigation into complaint by the police. The petitions are therefore liable to be dismissed”.

c. In the case of Avinash v. State of Maharashtra.⁸ paragraph No. 15, this Court observed as follows:-

15. Insofar as the question framed by us is concerned, we find that there is a passing reference in paragraph no. 31 made by the Division Bench about availability of several efficacious alternative statutory remedies under the Criminal Procedure Code to challenge the order u/s 156(3). We think though it is obiter dicta, nevertheless the same is binding on us as we respectively agree with the said view, for the above reasons that the order u/s 156(3) of the Code not being an interlocutory order, but being a final order in a proceeding u/s 156(3) of the Code would certainly be revisable under the revisional powers of the Sessions Court or the High Court. The Division Bench in the case of B.S. Khatri v. State of Maharashtra (supra), however, clearly held that the exercise of extraordinary jurisdiction under Article 226 of the Constitution should not be made for considering the challenge to order u/s 156(3) of the Code with which again we respectfully agree. We, however, state that the bar to exercise extraordinary jurisdiction under Article 226 of the Constitution is the one of self-imposed rule. We, however, hold that the order u/s 156(3) of the Code not being an interlocutory order, would obviously be revisable. We thus hold that the order u/s 156(3) of the Code of Criminal Procedure, 1973, is not an interlocutory order, but is a final order terminating the proceeding u/s 156(3) of the Code and that the revision u/s 397 or Section 401 of the Code would lie.

10. The above dicta conclude that an order passed under section 156(3) of the Code of Criminal Procedure, 1973, is not an interlocutory order but a final order that

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(2015) SCC OnLine Bom 5197

terminates the proceeding under section 156(3) of the Code, and that a Criminal Revision Application u/s 397 or Section 401 of the Code of Criminal Procedure, 1973, would lie.

11. It is trite that there is an essential distinction between “maintainability” and “entertainability” of the petition. Although there is no restriction on exercising inherent powers in cases of abuse of court procedures or other extraordinary circumstances, the limitation is simply self-restraint.

12. The Hon’ble Supreme Court in the case of Radha Krishan Industries v/s State of H.P.⁹ dwelling on the issue of rule of alternate remedy and the discretion to entertain or not to entertain a writ, in paragraph nos. 27 to 28, has laid the following principles:-

27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

⁹ (2021) 6 SCC 771

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in *Chand Ratan v. Durga Prasad* [*Chand Ratan v. Durga Prasad*, (2003) 5 SCC 399] , *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot* [*Babubhai Muljibhai Patel v. Nandlal Khodidas Barot*, (1974) 2 SCC 706] and *Rajasthan SEB v. Union of India* [*Rajasthan SEB v. Union of India*, (2008) 5 SCC 632] among other decisions.

13. In the present case, upon perusal of the record, I do not find any circumstances that would impel this Court to entertain the petition, as the Petitioner has the availability of an effective remedy by way of a Criminal Revision Application under Section 438 of BNSS. Having held so, the next issue would be the forum for availing the said Revisional remedy. The scheme of Section 438 of the BNSS provides for concurrent jurisdiction between the High Court and the Sessions Court to entertain a Criminal Revision Application.

14. This Court in the case of *Tejram Gaikwad vs Sunanda Gaikwad*¹⁰ in para 4 has observed as under :

4. First of all the application deserves to be dismissed on the ground that the applicant has not filed the criminal revision before the Sessions Judge, having jurisdiction over the matter. It is undoubtedly true that S. 397 of the Code of Criminal Procedure confers jurisdiction of revision concurrently on the Court of Sessions as well as the High Court,

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1995 SCC OnLine Bom 489

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 S. 397 of the Code of Criminal Procedure directly before this Court if it could be challenged in revision before the Sessions Court having jurisdiction of revision over the matter.

15. *The decision of Tejram Gaiwad (supra) was followed by this Court in the case of Shri Padmanabh Keshav Kamat vs Shri Anup R. Kantak¹¹, observed as follows:*

"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."

16. *Decisions in the case of Tejram Gaikwad (Supra) and Shri Padmanabh Keshav Kamat (Supra) were followed by this Court in the case of Cerena Dsouza vs State of Maharashtra & anr¹²*

17. *The Hon'ble Supreme Court in the case of Jagdeo Prasad v/s The State of Bihar¹³, while considering the issue of concurrent jurisdiction under section 438 of Cr.PC. observed that the High Court should always encourage exhausting an alternate/concurrent remedy before directly interfering itself, as this approach balances the interests of all stakeholders, first by giving the aggrieved party a round to challenge before the High Court. Second, this approach provides the High Court an opportunity to assess the judicial*

¹¹ (1998) SCC OnLine Bom 229

¹² (2002) SCC OnLine Bom 155

¹³ (2025) SCC OnLine SC 2108

perspective so applied by the Session Court in the concurrent jurisdiction.

18. I find it appropriate to adhere to the principle concerning concurrent jurisdiction as propounded in the above said pronouncements.”

16. There is no quarrel with the law in the pronouncement of the Hon’ble Supreme Court in the case of *Dhariwal Tobacco Products Limited (supra)* and *Prabhu Chawla (supra)*. The issue in the present case is the entertainability of this petition.

17. Useful reference can be made to the pronouncement of the Hon’ble Supreme Court in the case of *Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority and Ors.*¹⁴ and in the case of *Leelavathi N. and Ors vs. The State of Karnataka and Ors.*¹⁵ where the Hon’ble Supreme Court has held that the “entertainability” and “maintainability” are distinct concepts. The objection as to “maintainability” of a petition goes to the root of the matter and if such objection were found to be substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of “entertainability” is entirely within the realm of the discretion of the High Court, writ remedy being discretionary.

18. Having carefully considered the submissions of Mr. Subash Jha, and having perused the records, I find no circumstances, much less exceptional ones, that would require

¹⁴ 2023 SCC Online SC 95

¹⁵ 2025 SCC Online SC 2253

this Court to entertain this petition, especially since the Petitioner has an effective remedy available through a Criminal Revision application under section 438 of BNSS. The facts of the present case do not fall within the exceptions that would warrant entertaining this petition.

19. In the case of *Mrs. Mamta Digvijay Singh (supra)*, relied upon by Mr. Subash Jha, the Hon'ble Division Bench of this Court, in paragraph no. 9, has observed the reasons for entertaining the petition questioning the order passed under section 156(3) of the Code of Criminal Procedure, which are as follows:-

“9. There is another reason to hold that this writ petition is maintainable and the reason is that there are other prayers made in this writ petition seeking invocation of the extraordinary and plenary jurisdiction of this Court under Article 226 of the Constitution. The petitioner has also invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution. We would only indicate that the jurisdiction under Article 226 is not fettered by any technicality and in the appropriate cases the writ Court must exercise its powers and jurisdiction to remedy the situation. In view of the powers vested in this Court under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, we hold that this writ petition is maintainable.”

(“emphasis supplied”)

20. As referred to hereinabove, the only substantive prayer in this petition is contained in prayer clause (a), which relates to the impugned order.

21. The impugned order is a final order and, as such, is amenable to revision under Section 438 of the BNSS.

22. In view of the above, I am not convinced of adopting a different perspective from that in the case of *Bipasha Deepak Kumar* (supra).

23. Preliminary objections raised by Mr. T. G. Khan are upheld.

24. Though Mr. Subhash Jha learned Advocate for the Petitioner had declined to avail the course that was adopted by this Court in paragraph 20 of the order in *Bipasha Deepak Kumar* (supra), in the interest of justice, I deem it proper to extend the benefit of exclusion of time spent by the Petitioner before this Court, in the event the Petitioner avails the option of filling a Criminal Revision Application under section 438 of BNSS before the Sessions Court having jurisdiction.

25. Considering the impugned order was passed on 22 July 2024 and this Petition was filed on 18 August 2024 (as mentioned on the memo of Petition), which is within the limitation period prescribed under Section 131 of the Limitation Act, 1963, if the Petitioner chooses to file a criminal revision application under Section 528 of the BNSS before the Sessions Court having jurisdiction within four weeks from today, then the criminal revision application shall be entertained on merits without insisting on any application seeking condonation of delay.

26. Mr. Tanveer Khan, learned APP for the Respondents/State, in all fairness, submits that the State will

not raise any objection on the ground of limitation or requirement of the Petitioner filing an application for condonation of delay.

27. All contentions raised on merits remain open to be contested in the criminal revision application.

28. In view of above, this Writ Petition No.4913 of 2024 is disposed of.

(ASHWIN D. BHOBE, J.)