'REPORTABLE'

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 814 OF 2013
(Arising out of SLP (CRL.) No.1619 of 2010)

Mohit *alias* Sonu and Another .....Appellants

Versus

State of U.P. and Another ....Respondents

J U D G M E N T

M.Y. EQBAL, J.

Leave granted.

2. This appeal is directed against the order dated 28th October, 2009 passed by the High Court of Judicature at Allahabad in Criminal Miscellaneous Application No. 22823 of 2009 whereby the order dated 3rd August, 2009 passed by learned Additional Sessions Judge, Fast Track Court No. 2, Mathura, rejecting the application moved by the complainant/respondent No. 2 herein under Section 319 of the Code of Criminal Procedure, 1973 in Sessions Trial No. 420 of 2007 was set aside and the trial court was directed to summon the accused/appellants herein.

3. The complainant/respondent No. 2 herein (Deepak) lodged an FIR naming seven persons as accused regarding the occurrence which took place on 7th February, 2003 at 10.30 p.m. stating that the accused persons named in the FIR armed with *lathi*, *danda* and hockey caused injuries to his uncle Kamta Prasad as well as to the complainant. The complainant was medically examined on 8th February, 2003 and a lacerated wound of 4 cm x 0.8 cm scalp deep on left side back of his skull was reported by the doctor. Kamta Prasad succumbed to his injuries alleged to have been caused by the accused. The accused were named in the FIR *vide* Case Crime No. 44/03 under Sections 147, 323, 504, 506, 304 of the Indian Penal Code (in short, "I.P.C."). The injured complainant as well as other witnesses were examined by the Investigating Officer (I.O.), but the I.O. submitted charge-sheet only against five accused leaving the names of two accused who are appellants before us. After committal of the case for trial, the trial court in S.T. No. 420 of 2007 examined the complainant as PW-1. In his examination-in-chief, the complainant specifically stated the role of the appellants herein in the occurrence. The complainant then moved an application under Section 319 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') for summoning the appellants herein as accused in the case. However, the trial court *vide* order dated 25th

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July, 2008 disposed of the application in view of the fact that cross-examination of PW-1 had not completed and the fact had not been cleared from the witness that there existed probability of the conviction of the appellants herein. On a Criminal Miscellaneous Application being filed under Section 482 of Cr.P.C. before the High Court of Judicature at Allahabad against the above order, the High Court *vide* judgment and order dated 3rd September, 2008 found no error in the order passed by trial court as the trial court had till then not finally decided the question of summoning the appellants and had simply postponed the issue as it thought that the matter should receive its due and proper consideration only after the cross-examination of the witness is over. Subsequently, PW-2 Vivek and PW-3 Deepak Kumar Dubey were also examined apart from the complainant. The second application filed under Section 319, Cr.P.C. was also rejected by the trial court *vide* order dated 3rd August, 2009 after considering various legal pronouncements, discussing the statements of PW-1, PW-2 and PW-3 and finding out that the e*vide*nce on record is improper and contradictory. Challenging this order, the complainant again filed a Criminal Miscellaneous Application under Section 482, Cr.P.C. which was allowed by the High Court *vide* order dated 28th October, 2009 impugned herein holding that the lower court committed error in

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rejecting the application of the complainant/respondent No.2 for summoning the accused-appellants herein despite the *prima facie* evidence adduced by the prosecution disclosing their involvement in the alleged occurrence for which the other accused are facing the trial on the same facts of the case. The High Court by the impugned order directed the lower court to summon the accused-appellants herein as per provisions under Section 319, Cr.P.C.

4. In arriving at its conclusion, the High Court in the impugned order observed as under:

> "3. …. From the perusal of the statements of the witnesses, it appears that the accused persons named Mohit and Sarthak also have committed the offence. There is ample e*vide*nce against the accused persons. They are named in the F.I.R. They are named in the statements of the witnesses recorded by the investigating officer as per provisions under section 161 Cr.P.C. There is specific role attributed to the accused persons and it cannot be said that they have not participated in the crime. The learned lower court relying on the assertion made on the affidavit of some witnesses which cannot be read at the stage of summoning the accused persons under section 319 Cr.P.C., wrongly discussed the e*vide*nce of the witnesses on record in a cursory manner thereby rejecting the application of the applicant. …… therefore, they are liable to be summoned.
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> xxx xxx xxx
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> 6. In the light of the law as is aforesaid, the perusal of the impugned order revealed that lower

court committed error thereby discussing the e*vide*nce and appreciating the contradictions and the affidavits on record, thereby finding that the e*vide*nce of the witnesses is not acceptable being irrelevant in the absence of any motive against the accused persons sought to be summoned in this case. Since the witnesses have stated that accused Mohit alias Sonu and Sarthak alias Babbal have taken part in inflicting injuries to Deepak and Kamta Prasad, therefore the case of accused Mohit and Sarthak cannot be set apart from other accused persons charge sheeted and against whom the trial is going on, thereby finding the improbability of the conviction of accused Sarthak and Mohit regarding their participation in the occurrence along with other co-accused persons facing trial. The citations referred for taking recourse of the finding by lower court is not of the nature for finding the conclusive proof of conviction of the accused persons sought to be summoned rather it is held therein that there must be reasonable prospectus of the case against the newly added accused ending in the conviction for the offence concerned for summoning of the accused. Reasonable prospectus of conviction has been wrongly discussed by the lower court replacing it to the conclusive proof of the conviction with a detailed discussion ……. The discretionary power vested in the court as per provisions under section 319 Cr.P.C. is supposed to be used thereby finding a prima facie case made out against the accused. While there is allegation of same contribution of the accused Sarthak and Monu in the alleged occurrence as remained of other co-accused persons facing trial, how the case of Monu and Sarthak may be separated giving interim finding affecting the case of the other co-accused too in the case, trial of which is going on before the court on the same allegations against the accused in trial.

xxx xxx xxx

8. Thus the learned lower court thereby analyzing the e*vide*nce on record wrongly took recourse of the facts that PW-2 and PW-3 have not proved the

> injuries on their persons despite the fact that they were stating that the injuries were received by them in the alleged occurrence. Similarly it is also wrongly analysed at this stage by the learned lower court that Mudgal (weapon of assault) by which the deceased is said to have been assaulted, is not mentioned in the F.I.R. Merely calling for Ramveer may not be the outcome of the alleged occurrence is also wrongly held at this stage by the learned lower court because the learned lower court was not supposed to give finding at this stage pertaining to the facts of entire trial to be conducted by the learned lower court. Similarly the alleged affidavits on record have also been wrongly considered for the purpose of finding the contradictions in the statements of the witnesses examined before the trial court."

Hence, this appeal by special leave.

5. Mr. Amarendra Sharan, learned senior counsel appearing for the appellants while assailing the impugned order passed by the High Court as being illegal and wholly without jurisdiction, raised two important points for consideration. Learned counsel firstly contended that the order passed by the Sessions Court on the application under Section 319 Cr.P.C. refusing to issue summons to the non-accused person ought to have been challenged by the complainant before the High Court invoking its revisional jurisdiction under Section 397/401 Cr.P.C. According to the learned counsel, application of the complainant before the High Court under Section 482 of Cr.P.C. challenging the order passed under Section

319, Cr.P.C. was not maintainable. Secondly, Mr. Sharan submitted that, in any view of the matter, the High Court while exercising its inherent jurisdiction under Section 482 Cr.P.C. ought to have given notice and opportunity of hearing to the appellants before the order of the Sessions Judge was set aside. On the merits of the appeal, learned counsel submitted that the High Court while deciding the petition of the complainant under Section 482 Cr.P.C. on the first motion upset the reasoned order of the trial court and despite the fact that the entire e*vid*ence adduced till the decision on the application under Section 319 Cr.P.C. by the trial court was not before the High Court, even then the High Court exercised its discretion without issuing notice and giving opportunity of hearing to the appellants. On the merits of the case, learned counsel contended that for the purpose of exercising power under Section 319 Cr.P.C., the Court must be satisfied about the existence of sufficient e*vid*ence on record and not only on the basis of *prima facie* case. Learned counsel contended that the trial court rightly refused to summon the appellants on the ground that the witnesses were contradicted on their earlier statement and that the witnesses in their statement under Section 164 Cr.P.C. have denied the presence of these appellants. Learned counsel put reliance on the decision of this Court in ***Sarabjit Singh and Another*** *v.* ***State of***

Punjab and Another (2009) 16 SCC 46; ***Hardeep Singh*** v. ***State of Punjab and others*** (2009) 16 SCC 785 and ***Municipal Corporation of Delhi*** *v.* ***Ram Kishan Rohtagi and others*** (1983) 1 SCC 1.

6. On the other hand, Mr. Ashok Bhan, learned senior counsel appearing for the respondent/complainant submitted that from the e*vide*nce adduced by the witnesses, the role played by the appellants has become apparent and the trial court has committed serious error of law in refusing to issue summons to the non-accused appellants. Learned counsel relied upon the decisions of this Court in ***Lok Ram*** *v.* ***Nihal Singh and Another*** (2006) 10 SCC 192; and ***Sarojben Ashwinkumar Shah and Others.*** *v.* ***State of Gujarat and Another*** (2011) 13 SCC 316. Mr. Bhan contended that it is the discretion of the Court to give notice to the accused for the purpose of issuing summons against them. According to the learned counsel, there cannot be pre-cognizance herein. Further, the High Court in exercise of power under Section 482 Cr.P.C., can see the correctness and propriety of the order passed by the trial court. Learned counsel relied upon the decision of this Court in ***Bangarayya*** *v.* ***State of Karnataka and Others*** (2010) 15 SCC 114.

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7. Before going into the merits of the case, we would like to answer the two important points raised by the appellants i.e., (i) whether petition under Section 482 Cr.P.C. before the High Court challenging the order of the Sessions Court passed under Section 319 Cr.P.C. is maintainable; and (ii) whether the High Court before passing the impugned order ought to have given notice and opportunity of hearing to the appellants.

8. Since both the points raised by Mr. Amarendra Sharan, learned senior counsel appearing for the appellants, being interlinked, they are discussed here together. However, before discussing those points, we would like to refer some of the relevant provisions of the Code of Criminal Procedure.

9. Section 397 Cr.P.C. confers power of revision on the High Court or any Sessions Court, which reads as under:-

> "**397. Calling for records to exercise powers of revision**-- (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local 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, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on

his own bond pending the examination of the record.

Explanation-- All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

(2) 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.

(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."

10. Section 399 deals with Sessions Judge's power of revision, whereas Section 401 deals with the power of revision of the High Court. Section 401 reads as under:-

"**401. High Court's powers of revision-**- (1) In the case of any proceeding the record of which has been called for by itself 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 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally di*vide*d in opinion, the case shall be disposed of in the manner pro*vide*d by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being

> heard either personally or by pleader in his own defence.
>
> (3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.
>
> (4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.
>
> (5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

11. From bare reading of the aforesaid two provisions, it is clear that in exercise of revisional power under the aforesaid provisions, the High Court can call for the records of any criminal court and examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceeding of such inferior court. However, sub-section (2) of Section 397 puts a restriction on exercise of such power in relation to an interlocutory order passed by the criminal courts in any appeal, inquiry, trial or other proceeding.

12. Similarly, Section 401 empowers the High Court to call for any record in order to examine the correctness, legality or propriety of any order, finding or sentence passed by the inferior courts. However, sub-section (2) categorically pro*vide*s that no order shall be made by the High Court in exercise of revisional jurisdiction affecting and prejudicing the right of the accused or other person, unless he has been given opportunity of hearing either personally or by pleader in his own defence.

13. Section 482 Cr.P.C. which deals with the inherent power of the High Court is extracted hereinbelow:-

> "**482. Saving of inherent power 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."

14. The power under Section 397 *vis-à-vis* Section 482 of Cr.P.C. has been elaborately discussed and explained in the case of ***Madhu Limaye*** v. ***State of Maharashtra*** (1977) 4 SCC 551. The facts of that case were that the appellant was said to have

made certain statements and handed over a press hand-out containing defamatory statements against the then Law Minister of the respondent-State. The State Government decided to prosecute the appellant for offence under Section 500 IPC and accorded necessary sanction. On the Public Prosecutor filing the complaint, the Sessions Judge took cognizance of the offence under Section 199(2) Cr.P.C. The appellant contended that even assuming allegations imputed to him were defamatory, they were not made against the Minister in discharging his public functions, but only in his personal capacity. The Sessions Judge rejected these contentions. On revision, the High Court held that a revision petition was not maintainable under Section 397(2) Cr.P.C. since the order of the Sessions Judge was an interlocutory order. A 3-Judge Bench of this Court discussing the object of the two provisions i.e. Section 397(2) and Section 482 of Cr.P.C. observed as under:-

> "10. As pointed out in *Amar Nath's case* [(1977) 4 SCC 137] 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 pro*vide*d 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

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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 up to 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."

15. This Court further observed:-

"13**.** In *S. Kuppuswami Rao* v. *King* [AIR 1949 FC 1] Kania, C.J. delivering the judgment of the Court has referred to some English decisions at pp. 185 and 186. Lord Esher M.R. said in *Salaman* v. *Warner (1891) 1 QB 734*:

> "If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if

> given in one way, will finally dispose of the matter in dispute but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory."

To the same effect are the observations quoted from the judgments of Fry L.J. and Lopes L.J. Applying the said test, almost on facts similar to the ones in the instant case, it was held that the order in revision passed by the High Court [at that time there was no bar like Section 397(2)] was not a "final order" within the meaning of Section 205(1) of the Government of India Act, 1935. It is to be noticed that the test laid down therein was that if the objection of the accused succeeded, the proceeding could have ended but not vice versa. The order can be said to be a final order only if, in either event, the action will be determined. In our opinion if this strict test were to be applied in interpreting the words 'interlocutory order' occurring in Section 397(2), then the order taking cognizance of an offence by a Court, whether it is so done illegally or without jurisdiction, will not be a final order and hence will be an interlocutory one. Even so, as we have said above, the inherent power of the High Court can be invoked for quashing such a criminal proceeding. But in our judgment such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by Section 397(1). On such a strict interpretation, only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code. This does not seem to be the intention of the Legislature when it retained the revisional power of the High Court in terms identical to the one in the 1898 Code. In what cases then

the High Court will examine the legality or the propriety of an order or the legality of any proceeding of an inferior criminal court? Is it circumscribed to examine only such proceeding which is brought for its examination after the final determination and wherein no appeal lies? Such cases will be very few and far between. It has been pointed out repeatedly, *vide* for example, *River Wear Commissioners* v. *William Adamson* [(1876-77) 2 AC 743] and *R.M.D. Chamarbaugwalla* v. *Union of India* [(1957) SCR 930] that although the words occurring in a particular statute are plain and unambiguous, they have to be interpreted in a manner which would fit in the context of the other provisions of the statute and bring about the real intention of the Legislature. On the one hand, the Legislature kept intact the revisional power of the High Court and, on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a situation it appears to us that the real intention of the Legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in *Kuppuswami case* (supra), but, yet it may not be an interlocutory order — pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in sub-section (2) of Section 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purposes of Article 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders within the meaning of Section 397(2). It is neither advisable, nor possible, to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of those types of

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> orders which will fall in between the two. The first two kinds are well known and can be culled out from many decided cases. We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of sub-section (2) of Section 397. In our opinion it must be taken to be an order of the type falling in the middle course."

16. In the case of ***Amar Nath & Ors.*** v**. *State of Haryana & Ors.*** (1977) 4 SCC 137, two provisions i.e Sections 397 and 482 have been considered and term 'interlocutory order' has been fully discussed. In that case, an FIR was lodged mentioning a number of accused persons including the appellants as having participated in the occurrence which resulted in the death of the deceased. The police after holding investigations, submitted a charge-sheet against the other accused persons except the appellants against whom the police opined that no case at all was made out as no weapon was recovered nor was there any clear e*vide*nce about the participation of the appellants. After submission of the final report, the Judicial Magistrate accepted the report and set the appellants at liberty. The complainant thereafter filed a revision petition before the Additional Sessions Judge against the order of the Judicial Magistrate releasing the

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appellants, but the same was dismissed. The informant filed a regular complaint before the Judicial Magistrate against all the 11 accused including the appellants. The Magistrate after having examined the complainant and going through the record dismissed the complaint as he was satisfied that no case was made out against the appellants. Thereafter, the complainant took up the matter in revision before the Sessions Judge, who this time allowed the revision petition and remanded the matter to the Judicial Magistrate for further enquiry. The Judicial Magistrate on receiving the order of the Sessions judge issued summons to the appellants straightaway. The appellants then moved the High Court under Sections 482 and 397 of the Code for quashing the order of the Judicial Magistrate, mainly on the ground that the Magistrate had issued the summons in a mechanical manner without applying his judicial mind to the facts of the case. The High Court dismissed the petition *in limine* and refused to entertain it on the ground that as the order of the Magistrate summoning the appellants was an interlocutory order, a revision to the High Court was barred by virtue of sub-section (2) of Section 397 of Cr.P.C. The High Court further held that as the revision was barred, the Court could not take up the case under Section 482 in order to quash the very order of the

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Judicial Magistrate under Section 397 of Cr.P.C. Answering the question raised, Hon'ble Fazal Ali, J. delivering the judgment on behalf of the Bench, observed :-

> "While we fully agree with the view taken by the learned Judge that where a revision to the High Court against the order of the Subordinate Judge is expressly barred under sub-section (2) of Section 397 of the 1973 Code the inherent powers contained in Section 482 would not be available to defeat the bar contained in Section 397(2). Section 482 of the 1973 Code contains the inherent powers of the Court and does not confer any new powers but preserves the powers which the High Court already possessed. A harmonious construction of Sections 397 and 482 would lead to the irresistible conclusion that where a particular order is expressly barred under Section 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of Section 482 would not apply. It is well settled that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject-matter. Where there is an express provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers."

17. So far as the question as to whether the order of the Judicial Magistrate was an interlocutory order is concerned, Their Lordships after discussing the legislative background of the provisions held:-

> "6….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 revison 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."

In the concluding paragraph, this Court finally held:-

> "Applying the aforesaid tests, let us now see whether the order impugned in the instant case can be said to be an interlocutory order as held by the High Court. In the first place, so far as the appellants are concerned, the police had submitted its final report against them and

they were released by the Judicial Magistrate. A revision against that order to the Additional Sessions Judge preferred by the complainant had failed. Thus the appellants, by virtue of the order of the Judicial Magistrate as affirmed by the Additional Sessions Judge acquired a valuable right of not being put on trial unless a proper order was made against them. Then came the complaint by Respondent 2 before the Judicial Magistrate which was also dismissed on merits. The Sessions Judge in revision, however, set aside the order dismissing the complaint and ordered further inquiry. The Magistrate on receiving the order of the Sessions Judge summoned the appellants straightaway which meant that the appellants were to be put on trial. So long as the Judicial Magistrate had not passed this order, no proceedings were started against the appellants, nor were any such proceedings pending against them. It was only with the passing of the impugned order that the proceedings started and the question of the appellants being put up for trial arose for the first time. This was undoubtedly a valuable right which the appellants possessed and which was being denied to them by the impugned order. It cannot, therefore, be said that the appellants were not at all prejudiced, or that any right of their's was not involved by the impugned order. It is difficult to hold that the impugned order summoning the appellants straightaway was merely an interlocutory order which could not be revised by the High Court under sub-sections (1) and (2) of Section 397 of the 1973 Code. The order of the Judicial Magistrate summoning the appellants in the circumstances of the present case, particularly having regard to what had preceded, was undoubtedly a matter of moment, and a valuable right of the appellants had been taken away by the Magistrate's passing an order prima facie in a mechanical fashion without applying his mind. We are, therefore, satisfied

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that the order impugned was one which was a matter of moment and which did involve a decision regarding the rights of the appellants. If the appellants were not summoned, then they could not have faced the trial at all, but by compelling the appellants to face a trial without proper application of mind cannot be held to be an interlocutory matter but one which decided a serious question as to the rights of the appellants to be put on trial."

18. In the case of ***Municipal Corporation of Delhi*** *v.* ***Ram Kishan Rohtagi*** (1983) 1 SCC 1, this Court relying upon the earlier decision in ***Madhu Limaye*** case (supra) observed:-

"5. After the coming into force of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "present Code"), there was a serious divergence of judicial opinion on the question as to whether where a power is exercised under Section 397 of the present Code, the High Court could exercise those very powers under Section 482 of the present Code. It is true that Section 397(2) clearly bars the jurisdiction of the court in respect of interlocutory orders passed in appeal, enquiry or other proceedings. The matter is, however, no longer res integra as the entire controversy has been set at rest by a decision of this Court in *Madhu Limaye* v. *State of Maharashtra (1978) 1 SCR, 749* where this Court pointed out that Section 482 of the present Code had a different parameter and was a provision independent of Section 397(2). This Court further held that while Section 397(2) applied to the exercise of revisional powers of the High Court, Section 482 regulated the inherent powers of the court to pass orders necessary in order to prevent the abuse of the process of

the court. In this connection, Untwalia, J. speaking for the Court observed as follows: [SCC para 10, pp. 555-56 : SCC (Cri) P. 15]

> "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....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."

6. It may be noticed that Section 482 of the present Code is the ad verbatim copy of Section 561-A of the old Code. 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 orders passed by subordinate courts. It was under this section that in the old Code, the High Courts used to quash the proceedings or expunge uncalled for remarks against witnesses or other persons or

> subordinate courts. Thus, the scope, ambit and range of Section 561-A (which is now Section 482) is quite different from the powers conferred by the present Code under the provisions of Section 397. It may be that in some cases there may be overlapping but such cases would be few and far between. It is well settled that the inherent powers under Section 482 of the present Code can be exercised only when no other remedy is available to the litigant and not where a specific remedy is pro*vide*d by the statute. Further, the power being an extraordinary one, it has to be exercised sparingly. If these considerations are kept in mind, there will be no inconsistency between Sections 482 and 397(2) of the present Code."

19. In the case of **Raj Kapoor & Ors.** v. **State & Ors.** (1980) 1 SCC 43, Justice Krishna Iyer, while distinguishing the power of the High Court under Section 397 *vis-à-vis* Section 482 of Cr.P.C. observed that Section 397 or any of the provisions of Cr.P.C. will not affect the amplitude of the inherent power preserved in Section 482. Even so, easy resort to inherent power is not right except under compelling circumstances. Inherent power should not invade areas set apart for specific power under the same Code.

20. In the light of the ratio laid down by this Court referred to hereinabove, we are of the considered opinion that the order passed by the trial court refusing to issue summons on the application filed by the complainant under Section 319 of Cr.P.C. cannot be held to be an

interlocutory order within the meaning of sub-section (2) of Section 397 of Cr.P.C. Admittedly, in the instant case, before the trial court the complainant's application under Section 319 of Cr.P.C. was rejected for the second time holding that there was no sufficient e*vide*nce against the appellants to proceed against them by issuing summons. The said order passed by the trial court decides the rights and liabilities of the appellants in respect of their involvement in the case. As held by this Court in **Amar Nath's** case (supra), an order which substantially affects the rights 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 as contemplated under Section 397(2) of Cr.P.C.

21. In the instant case as noticed above, when the complainant's application under Section 319 of Cr.P.C. was rejected for the second time, he moved the High Court challenging the said order under Section 482 of Cr.P.C. on the ground that the Sessions Court had not correctly appreciated the facts of the case and the e*vide*nce brought on record. The complainant wanted the High Court to set aside the order after holding that the e*vide*nce brought on record is sufficient for coming to the conclusion that the appellants were also involved in the commission of the offence.

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22. In our considered opinion, the complainant ought to have challenged the order before the High Court in revision under Section 397 of Cr.P.C. and not by invoking inherent jurisdiction of the High Court under Section 482 of Cr.P.C. Maybe, in order to circumvent the provisions contained in sub-section (2) of Section 397 or Section 401, the complainant moved the High Court under Section 482 of Cr.P.C. In the event a criminal revision had been filed against the order of the Sessions Judge passed under Section 319 of Cr.P.C., the High Court before passing the order would have given notice and opportunity of hearing to the appellants.

23. So far as the inherent power of the High Court as contained in Section 482 of Cr.P.C. is concerned, the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when an order, not interlocutory in nature, can be assailed in the High Court in revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In other words, inherent power of the Court can be exercised when there is no remedy pro*vide*d in the Code of Criminal Procedure for redressal of the grievance. It is well settled that inherent power of the

court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged.

24. Courts possess inherent power in other statute also like the Code of Civil Procedure (C.P.C.) Section 151 whereof deals with such power. Section 151 of C.P.C. reads:-

> "Nothing in this Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court."

25. This Court in the case of ***Padam Sen & Anr.*** *v.* ***State of Uttar Pradesh,*** AIR 1961 SC 218 regarding inherent power of the Court under Section 151 C.P.C. observed:-

> "The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore, it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict what has been expressly pro*vide*d in the Code or against the intentions of the Legislation. It is also well recognised that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly pro*vide*d in the Code."

26. In a Constitution Bench decision rendered in the case of ***Manohar Lal Chopra*** *v.* ***Rai Bahadur Rao Raja Seth Hiralal,*** AIR 1962 SC 527, this Court held that :-

> "The inherent jurisdiction of the Court to make orders *ex debito justiciae* is undoubtedly affirmed by S.151 of the Code but inherent jurisdiction cannot be exercised so as to nullify the provision of the Code of Civil Procedure. Where the Code of Civil Procedure deals expressly with a particular matter, the provision should normally be regarded as exhaustive."

27. The intention of the Legislature enacting the Code of Criminal Procedure and the Code of Civil Procedure *vis-à-vis* the law laid down by this Court it can safely be concluded that when there is a specific remedy pro*vide*d by way of appeal or revision the inherent power under Section 482 Cr.P.C. or Section 151 C.P.C. cannot and should not be resorted to.

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28. The second question that needs consideration is as to whether the High Court exercising its revisional jurisdiction or inherent jurisdiction under Section 482 Cr.P.C., while considering the legality and propriety of the order passed under Section 319 of Cr.P.C. Code is required to give notice and opportunity of hearing to the person in whose favour some right accrued by virtue of order passed by the trial court. In other words, whether it would be justified for the High Court

to entertain a petition under Section 482 of Cr.P.C. and pass order to the prejudice of the accused or other person (the appellants herein) without giving notice and opportunity of hearing to them.

29. Indisputably, a valuable right accrued to the appellants by reason of the order passed by the Sessions Court refusing to issue summons on the ground that no *prima facie* case has been made out on the basis of e*vide*nce brought on record. As discussed hereinabove, when the Sessions Court order has been challenged, then it was incumbent upon the revisional court to give notice and opportunity of hearing as contemplated under sub-section (2) of Section 401 of Cr.P.C. In our considered opinion, there is no reason why the same principle should not be applied in a case where such orders are challenged in the High Court under Section 482 of Cr.P.C.

30. Recently, a 3-Judge Bench of this Court in the case of ***Manharibhai Muljibhai Kakadia and Another*** v. ***Shaileshbhai Mohanbhai Patel and Others*** (2012) 10 SCC 517 considered the question as to whether in a case where an order of the Magistrate dismissing the complaint under Section 203 of Cr.P.C. at the stage under Section 200, the accused or a person who is suspected to have committed the crime is entitled to hearing by the revisional court. After considering all the earlier decisions, in the case of **P.**

Sundarrajan *v.* **R. Vidya Sekar** (2004) 13 SCC 472, **Raghu Raj Singh Rousha** v. **Shivam Sundaram Promotors (P) Ltd**. (2009) 2 SCC 363 and ***A.N.Santhanam*** *v.* ***K. Elangovan*** *(2012) 12 SCC 321,* this Court held as under:-

> "53. We are in complete agreement with the view expressed by this Court in *P. Sundarrajan*, *Raghu Raj Singh Rousha* and *A.N. Santhanam*. We hold, as it must be, that in a revision petition preferred by the complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed the crime is entitled to hearing by the Revisional Court. In other words, where the complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the Revisional Court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed the crime have, however, no right to participate in the proceedings nor are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled."

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31. The same question came up for consideration before different High Courts some of which we would like to refer hereinbelow. In the case of ***Sayeed Bhagat and Others*** v. ***State of Andhra Pradesh*** 1999 Crl.L.J.4040, a Bench of the Patna High Court noticed the facts of the case where an application was filed in a criminal case under Section 319 of Cr.P.C. to summon the remaining accused persons who were named by the witnesses. The Magistrate refused the said prayer mainly for want of sufficient e*vide*nce. The said order was challenged in revision by the complainant. The revisional court set aside the order of the Magistrate without hearing the petitioners against whom prayer was made for issuance of summons. When the matter came up before the High Court, the Bench held as under:-

> "8. In the instant case also though the jurisdiction of the Court to summon a person under Section 319 of the Cr.P.C. cannot be questioned, the revisional Court, in my view should have heard the petitioners before passing the impugned order because the same has prejudiced them."

32. In a similar case in **Satish Chandra Dey** *v.* **State of Jharkhand & Anr.** *2008 (2) AIR Jhar R 330,* the order of Sessions Judge was challenged in the High Court under Section 482 of Cr.P.C. on the ground *inter alia* that the Sessions Judge directed the Magistrate to summon the petitioner to face trial along with other

accused though the trial court had refused to exercise its jurisdiction to summon the petitioner to face trial. The question raised before the High Court was that the revisional court has erred in law in passing such order without giving opportunity of hearing to the petitioner. Allowing the said petition, the High Court held as under :-

> "10. Thus it is e*vide*ntly clear from the relevant provision of law that no order to the prejudice of an accused or any other person can be made unless the said accused or the said persons have been given an opportunity of being heard.
>
> 11. In the instant case also learned Sessions Judge in absence of the petitioner has passed the impugned order whereby he directed the trial Court to implead the petitioner as an accused in the proceeding which in view of the provision as contained in Sections 399/401/401(2) of the Code of Criminal Procedure is illegal.
>
> 12. In the result, this application is allowed and the impugned order dated 23.6.2006 s set aside and the case is remanded to the learned Sessions Judge, Bokaro for hearing afresh after giving due notice to the parties so that the same be disposed of in accordance with law."

33. Since the reasoning discussed hereinabove would be suffice to dispose of the present appeal, we do not wish to go into the merits of the case with regard to the scope of the provisions of Section 319 of Cr.P.C.

34. After giving our anxious consideration in the matter, we conclude by holding that the High Court has committed a grave error in passing

the impugned order for the reasons given hereinbefore. We, therefore, allow this appeal, set aside the order of the High Court and remand the matter back to the High Court to consider the matter afresh after giving an opportunity of hearing to the present appellants.

.....J.
(P. Sathasivam)

.....J.
(M.Y. Eqbal)

New Delhi,
July 1, 2013.

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