

THE HON'BLE SRI JUSTICE D. RAMESH
CRIMINAL PETITION No.3119 of 2022 and
CIMINAL REVISION CASE NO.301 OF 2022

COMMON ORDER:-

Criminal Petition No.3119 of 2022

The Criminal petition is filed praying the Court to set aside the order dated 18.4.2022 passed in CrI.M.P.No.55 of 2022 by the Special Judge for SPE & ACB cases-cum-Additional Metropolitan Sessions Judge to the extent of imposing the conditions a) directing the petitioner to deposit Rs.23,29,77,675/- in fixed deposit in the name of Special Judge for SPE & ACB cases-cum-Additional Metropolitan Sessions Judge for a term of one year, subject to renewal and until further orders and b) furnishing bank statements of SBI Account No.38036630496 on the 1st date of the month to the investigating agency along with such other supporting documents as may be required by the investigating agency.

Criminal Revision Case No.301 of 2022:

The criminal revision case is filed against the order dated 18.4.2022 in CrI.M.P.No.55/2022 filed under Section 451 and 457 Cr.P.C. on the file of the Special Judge for SPE & ACB cases-cum-Additional Metropolitan Sessions Judge, Vijayawada in FIR No.29/2021 of CID PS, AP, Mangalagiri registered u/Section 120(B), 166, 167, 418, 420, 465, 468, 471, 409, 201, 109 r/w 34 and 37 IPC and Sec.13(2) r/w 13(1)(c) & (d) of Prevention of Corruption Act, 1988.

3. As the issue involved in the criminal petition and criminal revision case is one and the same and against the same order of the Court below and in the same crime number but the criminal petition was filed by the petitioner/A4 and the criminal revision case was filed by the investigating agency, hence both the cases are being disposed

of with a common order taking the Criminal Petition no.3119 of 2022 as a leading case as it is filed by accused no.4.

4. The present criminal petition is filed challenging the order dated 18.4.2022 on the file of the Special Judge for SPE & ACB cases-cum-Additional Metropolitan Sessions Judge, in CrI.M.P.No.55/2022 which was filed under Section 451 and 457 of Cr.P.C. permitting defreezing of petitioner's State Bank of India's bank account subject to certain conditions.

5. The respondent had freezed the current account bearing number 38036630496 of the petitioner/A4 company with State Bank of India, Pune, Maharashtra by invoking the powers under Sections 102 Cr.P.C. in connection with Crime No.29/2021 of Crime Investigation Department Economic Offence Wing-II, State of Andhra Pradesh for the alleged offences under Section 120-B, 166, 167, 148, 420, 465, 468, 471, 409, 201, 209, 109 r/w 34 and 37 IPC and Section 13(2) r/w 13(1)(c)(d) of Prevention of Corruption Act 1988. In the said crime, the petitioner is figured as A4.

6. The allegations made in the complaint is that the accused along with others hatched a criminal conspiracy and committed offences of criminal breach of trust with a common dishonest and fraudulent intention to divert Government funds by raising fake/forged/bogus invoices and diverted the public funds through associated shell companies of the accused in connivance with accused/public servants and caused wrongful loss to a tune of Rs.371crores.

7. Basing on the above said allegations, the crime is registered against the petitioner company and its Managing Director on 09.12.2021, at that time the amount which was there in the account was negative Rs.56,38,365/-. The reason being that the account was an over draft account which allowed customers to withdraw money even if the

balance is zero or minus to the limit specified by bank. Pursuant to the said crime, the respondents have freezed the bank account. On 05.01.2022 on the date of freezing, the bank balance is Rs.2,42,34,249/- . After freezing the State Bank of India Bank account of 06.01.2022, the petitioner received payment came from Atlas Copco company to a tune of Rs.37,93,574/- and another payment was deposited in the bank to a tune of Rs.20,324/- as cheque was returned the balance went to Rs.2,80,48,147/-. All these amounts were received from the petitioner's customers and the said sums were not connected to APSSDC funds. The said fact was also confirmed by the memo dated 07.3.2022 filed by the respondent before the Court below. Subsequently after 06.01.2022, the petitioner had received payments from different customers to the freezed SBI account till 21.3.2022 to a tune of Rs.23,29,77,675/-. But the Court below without verifying the said facts has passed the order directing the bank to keep an amount of Rs.23,29,77,675/- from the account number 38036630496 relating to the petitioner company in fixed deposit for a term of one year subject to renewal in the name of Special Judge of SPE and ACB cases-cum-III Additional District Judge, Vijayawada, Andhra Pradesh. The same is contrary to the memo filed by the respondents along with the petition. Assailing the said orders, the present petition is filed under Section 482 Cr.P.C.

8. Learned counsel appearing on behalf of the respondents raised an objection with regard to maintainability of the petition under Section 482 Cr.P.C. To support his contention, learned counsel has mainly relied on the orders passed by the coordinate bench of this Court in Criminal Petition No.185 of 2021. The said criminal petition is filed assailing the orders dated 19.3.2020 of the learned Special Judge for SPE & ACB cases cum Additional Metropolitan Sessions Judge, Vijayawada passed in

CrI.M.P.No.88/2020 in Crime No.7/RCA/ACB/CIU/2017 whereby the said petitions were dismissed filed under Sections 451 and 457 Cr.P.C.

21. As regards the maintainability of the Criminal Petition under Section 482 Cr.P.C. is concerned, it is already noticed supra from the dictum laid down in the judgment of the Apex Court cited supra, that money lying in the bank account of the accused can be construed as a property for the purpose of Section 102 Cr.P.C. and that the same can be seized by the police officer. Therefore, as the investigating officer in this case seized the said money in the bank account of the petitioner, the accused, who intends to have interim custody of the said property can claim the same by way of filing a petition to that effect under Sections 451 or 457 Cr.P.C. as the case may be before the concerned trial Court. Accordingly, he has filed the present petition under Sections 451 and 457 Cr.P.C. to permit him to operate his bank account and withdraw the said money that was seized by the police.

22. Now, the crucial question that arises for consideration is, whether a remedy is available to the petitioner to challenge the said order passed under Section 451 Cr.P.C., under the provisions of Cr.P.C. or not to ascertain whether a criminal petition under Section 482 Cr.P.C. invoking the inherent powers of this Court to challenge the said order is maintainable or not. It is well settled that inherent powers of this Court under Section 482 Cr.P.C. can be invoked only when there is no specific remedy available to the petitioner to challenge a particular order. Admittedly, no appeal lies against an order passed under Sections 451 and 457 Cr.P.C. Right of appeal is not provided against the said order in the scheme of Cr.P.C. Therefore, as per settled law, when no right of appeal is provided, then the parties have to challenge the said order in the revisional Court by way of filing a revision under Section 397(1) Cr.P.C. Now, the next question that arises for consideration is, whether an order passed under Sections 451 and 457 Cr.P.C. is a final order or an interlocutory order. This examination is required as clause (2) of Section 397 Cr.P.C. bars a revision against an interlocutory order. Now, it is well-settled law that an order passed under Sections 451 and 457 Cr.P.C. is not an interlocutory order and it is a final order so far as claiming the said property is concerned and as such, revision under Section 397(1) Cr.P.C. lies against the said order. The legal position in this regard is not res integra and it has been well settled.

28. Now, when once it is established that a revision lies against the order passed under Section 451 Cr.P.C. and that a remedy to challenge the said order is available, it is relevant to note that inherent powers of this Court under Section 482 Cr.P.C. cannot be invoked to challenge the said order ignoring the remedy available under Section 397(1) Cr.P.C.

29. The judgment of the Apex Court relied on by the learned counsel for the petitioner in the case of *Prabhu Chawla v.*

*State of Rajasthan*⁵ to canvass a proposition of law that despite the remedy available under Section 397(1) Cr.P.C., that inherent powers of this Court under Section 482 Cr.P.C. can be invoked, is not applicable to the present facts of this case. That was a case where it is held that when 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 of the High Court is absolutely necessary, then nothing contained in Section 397(2) Cr.P.C. can limit or affect the exercise of the inherent power by the High Court.

31. Even as per the general principles of law, when a specific provision is made, easy resort to inherent power, is not right, except under compelling circumstances. As already noticed supra, this case is not falling within any such exceptional circumstance or compelling circumstances, so as to entertain a petition under Section 482 Cr.P.C. despite the fact that a revision lies against the said order.

33. Therefore, the present Criminal Petition is devoid of merits both on fact and law. The impugned order of the learned trial Judge is perfectly sustainable under law and it warrants no interference in this Criminal Petition.

In view of the observations made in the above said judgment of the Coordinate Bench of this Court, though counters are filed, but the learned counsel has focused on the maintainability of the petition, has submitted that in an identical matter, this Court has held that the petition is not maintainable under Section 482 Cr.P.C. when the alternative remedy under the statute is available to the petitioners. Hence requested to dismiss the matter without going into the merits of the case.

9. Reply to the said arguments learned Senior counsel Sri B.Adinarayana Rao, appearing on behalf of learned counsel for the petitioner has submitted that the petition under Section 482 Cr.P.C is maintainable, in view of having an inherent power of the High Court. To support his contention he has relied on the judgment of the Hon'ble Supreme Court reported in between ***Madhu Limaye vs. The State of Maharashtra***¹

¹ AIR 1978 SC 47

At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably, barring a few exceptions :-

(1) That the power is not to be resorted to if there is a specific provision in [the Code](#) for the redress of the grievance of the aggrieved party ;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision [of the Code](#).

As pointed out in Amar Nath's case (supra) the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding is to bring about expeditious disposal of the cases finally, More often than not, the revisional power of the High Court was resorted to in relation to inter-locutory 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 subsection (2) of [section 397](#) also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of [section 397](#) operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in [the Code](#) for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code. the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in [section 397\(2\)](#) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of, a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the [Prevention of Corruption Act](#) without a sanction. then the trial of the accused will be without jurisdiction and even after his acquittal a second trial after proper sanction will not be barred on the doctrine

of Autrefois Acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order. does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused upto the end ? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure, the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with [section 482](#) of the 1973 Code. even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.

As observed by the Hon'ble Apex Court in the above said judgments that the power is not to be restored if there is a specific provision in the Court for redress and has emphasized on his arguments that the Hon'ble Apex Court has categorically and clearly said that the bar provided under sub-section 2 of Section 397 operates only in exercise of the revisional powers of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order, there being no other provision in the Court 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 powers under Section 482 Cr.P.C.

Following the above judgments the Hon'ble Apex Court in **Hoogli Mills Company Limited vs. The State of West Bengal and Anr²** has observed as follows:

Coming to the final issue, [Section 397\(2\)](#) of the Cr.P.C provides that the High Court's powers of revision shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. Whereas [Section 482](#) of the Cr.P.C provides that nothing in the [Cr.P.C](#) will limit the High Court's inherent powers to prevent abuse of process or to secure the ends of justice. Hence the High Court may exercise its inherent powers under [Section 482](#) to set aside an interlocutory order, notwithstanding the bar under [Section 397\(2\)](#). However it is settled law that this can only be done in exceptional cases. This is, for example, where a criminal

² (1977) 4 SCC 137

proceeding has been initiated illegally, vexatiously or without jurisdiction (See [Madhu Limaye v. State of Maharashtra](#), (1977) 4 SCC 551).

10. Learned senior counsel further relied on the judgment of the High Court of Bombay (Nagpur bench) in **Gulam Sarvar vs. State of Maharashtra and Ors**³. Further following the above judgments, the Apex Court in **Prabhu Chawla vs State of Rajasthan and another**⁴ wherein the Hon'ble Apex Court has held that:

In our considered view any attempt to explain the law further as regards the issue relating to inherent power of High Court under [Section 482](#) Cr.P.C. is unwarranted. We would simply reiterate that [Section 482](#) begins with a non-obstante clause to state: "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." A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J. "abuse of the process of the Court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more." We venture to add a further reason in support. Since [Section 397](#) Cr.P.C. is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under [Section 482](#) Cr.P.C. only to petty interlocutory orders! A situation wholly unwarranted and undesirable.

As a sequel, we are constrained to hold that the Division Bench, particularly in paragraph 28, in the case of Mohit alias Sonu and another (supra) in respect of inherent power of the High Court in [Section 482](#) of the Cr.P.C. does not state the law correctly. We record our respectful disagreement.

In our considered opinion the learned Single Judge of the High Court should have followed the law laid down by this Court in the case of Dhariwal Tobacco Products Ltd. (supra) and other earlier cases which were cited but wrongly ignored them in preference to a judgment of that Court in the case of Sanjay Bhandari (supra) passed by another learned Single Judge on 05.02.2009 in S.B. Criminal Miscellaneous Petition No. 289 of 2006 which is impugned in the connected Criminal Appeal arising out of Special Leave Petition No. 4744 of 2009. As a result, both the appeals, one preferred by Prabhu Chawla and the other by Jagdish Upasane & Ors. are allowed. The impugned common order dated 02.04.2009 passed by the High Court of Rajasthan is set aside and the matters are remitted back to the High Court for fresh hearing of the petitions under [Section 482](#) of the Cr.P.C. in the light of law explained above and for disposal in accordance with law. Since the matters have

³ CrI.W.P.No.1132 of 2017

⁴ (2016) 16 Supreme Court Cases 30

remained pending for long, the High Court is requested to hear and decide the matters expeditiously, preferably within six months.

The impugned order in the third appeal, dated 05.02.2009 passed by the High Court of Judicature for Rajasthan at Jodhpur has been relied upon and followed while passing the order dated 02.04.2009 impugned in the other two appeals. Since that order has been set aside while allowing those appeals hence the order impugned in this appeal also has to be set aside for the same very reasons and for the view taken by us in respect of scope and ambit of [Section 482](#) of the Cr.P.C. Accordingly this appeal is also allowed and impugned order is set aside with the same directions as in the other two appeals.

11. Learned senior counsel has submitted that in the above judgment, the petition filed under Section 482 Cr.P.C. arise out of the orders passed by the trial court under Section 228-A IPC has dismissed on the ground of availability of remedy under Section 397 Cr.P.C. holding that the petition under Section 482 Cr.P.c is not maintainable. In the said circumstances, the Hon'ble Apex Court has set aside the said orders and remanded the matter to the High Court for fresh consideration which clearly establishes that though availability of remedy under Section 397 (2) Cr.P.C., the petition under Section 482 Cr.P.C. is also maintainable in the exceptional cases like this.

12. Learned senior counsel further submitted that in the instant case at the time of freezing of account of the petitioner it is only available balance amount is of Rs.2,42,34,249/- but the Court below erroneously has directed to keep the amount of Rs.23,29,77,695/- from the account number 38036630496 relating to the petitioner A4 company and the said orders are contrary to the record and in fact the Court below has not taken the account statement filed along with the petition wherein the petitioner has got the amount from various customers subsequent to the freezing of the account. Hence at any rate, the subsequent amounts which were received from various other customers of the petitioner's company could not be entitled to transfer to the fixed deposit. By virtue

of the said orders, the petitioner is unable to run the company which is having more than 100 of employees.

13. Learned senior counsel has submitted that in the identical situation the High Court of Bombay (Nagpur Bench) in **Gulam Sarvar vs. State of Maharashtra and Ors. (referred to supra)** has observed as follows:

In this case, although it is alleged that the credit balance in the account in question is part of alleged misappropriated amount, I must say, the allegation has been made, as it appears from the record shown to J-cwp1132.17.odt 7/8 me, just for the sake of it, without showing any material on which such an allegation is founded. Making of an allegation simplicitor, for the purposes of [Section 102](#) of Cr.P.C., is not sufficient and it must be shown that the allegation is founded on such a material as to at least create a reasonable suspension about the amount in the account having some connection or possibility of having some connection with the commission of crime. In the present case, the facts discussed earlier, would show that even such possibility of the link between the credit balance in the account and the commission of the crime has not been indicated.

And in **Ezulix Software Pvt. Ltd. Vs. State of Maharashtra and Ors.**⁵ Wherein the Bombay High Court has observed that:

On careful consideration of Section 102 of the Code of Criminal Procedure shows that Police Officer in the course of investigation can seize any property under Section 102 of the Code, if such property is alleged or anticipated to have stolen or which may be found under circumstances which creates suspicion of commission of any offence. As per Section 102(1) of the Code, it is obligatory upon the Investigating Agency to show that the property, which is attached, is under circumstance which creates suspicion of commission of offence.

Taking into consideration the offence, which are alleged against the applicant, it was necessary for the Investigating Agency to show that the amount in the account of the applicant, which had been froze, is in connection with the offence alleged against the applicant. From the material produced by the applicant, it appears that the :: Uploaded on - 19/04/2021 :: Downloaded on - 06/09/2021 03:54:08 :: 6 27-apl-811-20j.odt applicant is owner of the software, designed and developed by it to do the business with it's agent who needs money in digital form. As per the procedure, the agent is required to request the applicant to top-up the amount required in their bank account and role of the applicant ends as soon

⁵ Criminal application (APL) No.811 of 2020

as it tops-up the wallet of a person making the request equivalent to the amount transferred in its bank account.

In view of the above observations of the Hon'ble High Court of Bombay, it clearly discloses that the respondents are entitled to freeze or seize under Section 102 Cr.P.C. with regard to the property of the Court, the investigating agency show that the property which is attached is under circumstances which create suspicion of commission of offence and further observed that making an allegation simplicitor for the purpose of Section 102 Cr.P.C. and is not sufficient and it is shown that the allegations are found on such a material as atleast create a reasonable suspicion about the amounts in the account having some connection with the commission of crime. In view of the above said observations, it is clear that at the time of freezing of the account, the petitioner is having only two crores but contrary to the same without verifying the records that subsequently the petitioner has received amount from various clients to run the business. Hence, the said amount cannot be freed by virtue of the impugned order. Hence in the said circumstances, the petition under Section 482 Cr.P.C is maintainable and accordingly, requested to set aside the impugned order.

14. Reply to the above said judgments learned counsel for the respondents has submitted that on the above referred judgments of the learned senior counsel, were not considered by this Court in Criminal Petition No.185 of 2021 and held that the petition under Section 482 is not maintainable. In fact **Prabhu Chawla's** case (referred to supra) is also referred at paragraph no.29 of the said judgment and held that the petition is not maintainable.

15. Considering the submissions and on perusal of the various judgments of the Hon'ble Apex court and also order of this Court in Criminal Petition No.185 of 2021, this Court is not in consonance with

the findings of the above said criminal petition. The Hon'ble Apex Court has held that by virtue of having a provision under Section 397 Cr.P.C is not a bar to maintain the petition under Section 482 Cr.P.C in exceptional cases but without considering the said observations, in the above matter, the court held that the criminal petition is not maintainable under Section 482 Cr.P.C, in view of the bar under Section 397(2) Cr.P.C.

16. In view of the findings made by the Hon'ble Apex Court, this Court intends to refer the matter to the Division Bench for fresh consideration. Hence, Registry is directed to post the criminal petition to the Division Bench after obtaining orders from the Hon'ble The Chief Justice.

17. In view of the referring of the criminal petition to the Division Bench, as the issue in criminal revision case is also the same, the criminal revision case also may be posted to the Division Bench after obtaining orders from the Hon'ble The Chief Justice.

18. In view of the urgency expressed by the learned senior counsel, both the matters may be placed immediately before the Hon'ble The Chief Justice for obtaining necessary orders.

19. Accordingly, both the matters are disposed of.

Miscellaneous Petitions, if any pending, in this Criminal Petition, shall stand closed.

D.RAMESH,J

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THE HON'BLE SRI JUSTICE D. RAMESH

CRIMINAL PETITION No.3119 of 2022 and
CIMINAL REVISION CASE NO.301 OF 2022

Dated 12.8.2022

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