

(2007) 06 GAU CK 0037
In the Gauhati High Court
Case No : Criminal Revision No. 474 of 2005

Avtar Singh

APPELLANT

Vs

Andrew Yule and Company Ltd. and Others

RESPONDENT

Date of Decision : 15-06-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 190, 190(1), 191, 192
Penal Code, 1860 (IPC) — Section 294, 34, 420, 506

Citation : (2007) CriLJ 3915 : (2007) 4 GLT 661

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : P.P. Board, for the Appellant; P.J. Saikia, for the Respondent

Judgement

I.A. Ansari, J.—By making this application u/s 482, Cr. P.C. the petitioner, who was complainant in Complaint Case No. 209/2004, has sought" for, inter alia, setting aside and quashing the judgment and order, dated 2-5-2005, passed, in Criminal Revision No. 6(I)/2005, whereby the learned Additional Sessions Judge, Dibrugarh, has set aside the order, dated 3-8-2004, passed, in Complaint Case No. 209/2004, whereby the Additional Chief Judicial Magistrate, Dibrugarh, took cognizance of offences u/s 420/506/294/34, IPC and directed issuance of processes to the accused named therein.

2. The material facts, which have led to the making of the present application u/s 482, Cr. P.C. may be set out as follows:

(i) The petitioner herein lodged a complaint, which gave rise to the Complaint Case No. 209/2004 aforementioned, the complainant's case being, briefly stated, thus : The complainant is the proprietor of a business concern, which is run under the name and style of Assam Valley Builders, situated at Morioni Road, Rajabari, Dibrugarh. The accused No. 11, namely, Khowang Tea Estate, is a tea division of accused No. 1, namely, Andrew Yule & Company Ltd. which is a government undertaking. As per quotations, invited by the accused persons for repairing of machinery and equipments of Khowang Tea Estate, which is located

within the district of Dibrugarh, the complainant submitted quotations to accused No. 7. Following the quotations, so submitted, accused No. 7 negotiated with the complainant the cost of the repairing charges and, as had been agreed to by the parties concerned, accused No. 7 issued work order to the complainant. On completion of the work, so allotted to the complainant, the complainant submitted bills to accused-opposite party for a total sum of Rs. 1,56,760/- for payment and, on receipt of the bills, accused No. 7 agreed to pay the bills within a month; but the bills were never paid, whereupon the complainant issued, on 31-5-2004, legal notices to the accused persons, but the accused persons failed to pay the said amount, rather, on receipt of the notices, the accused persons threatened the complainant, on 29-6-2004, at about 6.00 a.m. over telephone.

(ii) On receipt of the complaint from the Chief Judicial Magistrate, learned Additional Chief Judicial Magistrate, Dibrugarh, recorded the statement of the complainant on 3-9-2004 and upon finding that a prima facie case had been made out against the accused, named in the complaint, under Sections 420/506/294/34, IPC, took cognizance of the offences aforementioned and ordered issuance of summons to the accused. Aggrieved by the order, dated 3-8-2004, whereby cognizance of the offences aforementioned had been taken and the directions for issuance of summons to the accused had been passed, the accused impugned the same by way of a revision. This revision was allowed, as indicated herein-above, and the order, dated 3-8-2004, was set aside. It is in these circumstances that the complainant is, now, before this Court with this application made u/s 482, Cr. P.C.

3. I have heard Mr. P. P. Bora, learned Counsel for the complainant-petitioner, and Mr. P. J. Saikia, learned Counsel for the accused-opposite party.

4. Presenting the case on behalf of the complainant-petitioner, Mr. Bora has submitted that the order taking cognizance of offences and directing issuance of processes is an "interlocutory order" and against such an order, revision being barred by Section 397(2), Cr. P.C. the learned Sessions Judge ought not to have entertained the revision, Mr. Bora also challenges the correctness of the view taken by the learned Sessions Judge that the order, dated 3-8-2004, taking cognizance of offences and directing issuance of processes, is bad in law on the ground that there is no formal order taking cognizance of offences before the statement of the complainant had been recorded u/s 200, Cr. P.C.

5. Mr. Bora has further submitted that the finding of the learned revisional Court that the dispute, if any, between the parties was a civil dispute and that no offence can be said to have been committed by the accused is completely contrary to law inasmuch as the contents of the complaint and the statement of the complainant had made out a case warranting issuance of processes.

6. Controverting the submissions made on behalf of the complainant-petitioner, Mr. P. J. Saikia, learned Counsel for the accused-opposite party submits that taking cognizance of an offence and directing issuance of process cannot be

regarded as an "interlocutory order" in terms of Section 397(2) and, hence, the revision was maintainable. It is also contended by Mr. Saikia that the learned Additional Chief Judicial Magistrate recorded the statement of the complainant u/s 200, Cr. P.C. without taking cognizance of offences and this approach of the learned trial Court is, according to Mr. Saikia, wholly incorrect and, in such circumstances, the said order could not have been sustained and has rightly been interfered with in revision. As regards the question as to whether the complainant had disclosed commission of any offence, it is the submission of Mr. Saikia that the contents of the complaint, when read as a whole, made out a dispute of civil nature and did not attract any penal provisions. In such circumstances, contends Mr. Saikia, the criminal proceeding was not maintainable and the learned revisional Court committed no wrong in interfering with the order, dated 3-8-2004, aforementioned. Lastly, it is contended by Mr. Saikia that against a revisional order, there can be no second revision in the form of an application u/s 482, Cr. P.C.

7. Before entering into the merit of the order, which stands impugned in this application made u/s 482, Cr. P.C. what needs to be determined is this : whether an order taking cognizance of offences and directing issuance of process by a Judicial Magistrate is or is not an "interlocutory order"?

8. The revisional jurisdiction, it may be noted, is exercisable by both the High Court as well as the Sessions Judge. Section 397(1) empowers the High Court as well as Sessions Judge to 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 proceeding 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, he be released on bail or on his own bond pending the examination of the record.

9. From a careful reading of Section 397(1), it becomes clear that revisional jurisdiction is exercisable for the purpose of correcting any finding, sentence or order, or for the purpose of removing any illegality in any finding, sentence or order or for the purpose of setting aside the impropriety with which may suffer any finding, sentence or order. Such being the object of the revisional jurisdiction, it is clear that the revisional jurisdiction aims at correcting miscarriage of justice arising from misconception of law or of procedure. In effect, thus, the revisional jurisdiction aims at keeping the inferior Courts within the bounds of law. No wonder, therefore, that in *Rajendra Kumar Sitaram Pande and Etc. Vs. Uttam and Another*, , the Apex Court observed, "6. Discretion in the exercise of revisional jurisdiction should, therefore, be exercised within the four corners of Section 397, whenever there has been miscarriage of justice in whatever manner."

10. From a careful reading of Section 397(2), it becomes clear that Section

397(2) bars exercise of revisional jurisdiction in respect of "interlocutory orders". The idea behind putting an embargo on the exercise of revisional jurisdiction against "interlocutory orders" is the legislative intent to curtail delay in the disposal of the criminal proceedings. The expression "interlocutory order" has not been defined in the Code of Criminal Procedure. However, an "interlocutory order" is not converse of the final order nor will it be correct to say that every order passed, which is not final, is an "interlocutory order", be such an order an order, whereby a criminal proceeding is initiated, or be such an order an order, which is passed during the course of such a proceeding. If the expression "interlocutory oroler" is strictly construed without considering the nature of the order, the effect would be that every order, which has not determined or concluded a proceeding, would be an "interlocutory order. Discarding such a narrow meaning, which had been sought to be attributed to the expression "interlocutory order", occurring u/s 397(2), it was pointed out, in *Amar Nath and Others Vs. State of Haryana and Another*, ; by the Apex Court that the expression "interlocutory order", occurring in Section 397(2), has been used in a restricted sense and not in a broad or artistic sense and denotes only those orders, which are interim or temporary in nature and do not decide or tough upon the important rights of the parties. The decision in *Amarnath (supra)*, thus, clarified that an order, which substantially affects the rights of the parties cannot be regarded as an "interlocutory order", In *Madhu Limaye Vs. The State of Maharashtra*, , a three Judge Bench of the Supreme Court held that an order rejecting a plea of an accused on a point, which, if accepted, conclude the particular proceeding, cannot be held to be an "interlocutory order". In *V.C. Shukla Vs. State through C.B.I.*, , the Supreme Court held that the term "interlocutory order", which occurs in the Code of Criminal Procedure, needs to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial and that revisional jurisdiction of the High Court or of the Sessions Judge would be attracted if an order is not purely interlocutory, but intermediate or quasi final.

11. The question, as to whether an order taking cognizance of offences by a Magistrate and directing issuance of process to a person as an accused is or is not an "interlocutory order", brings me necessarily to Section 397(2), Cr. P.C., which, I notice, reads, "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."

12. Having taken the above aspect of the law into consideration, the Apex Court has in *Rajendra Kumar Sitaram Pande and Etc. Vs. Uttam and Another*, , laid down, in no uncertain words, that it would not be proper to hold that an order directing issuance of process is purely interlocutory and, therefore, barred u/s 397(2), rather, an order, directing issuance of process, is an intermediate or quasi final order and against such an order, revisional jurisdiction can be exercised. In the present case, the revisional jurisdiction has been exercised by the learned Additional Sessions Judge against an order, whereby directions for

issuance of processes were issued. Such an order cannot, in the light of the law discussed above, be held to be an "interlocutory order". There was, therefore, no bar in the exercise of revisional jurisdiction against the order, dated 3-8-2004 aforementioned if the said order was, otherwise, not sustainable in fact or in law.

13. Turning to the question as to whether recording of statement of a complainant, u/s 200, Cr. P.C. by a Magistrate, without specifically passing an order that he has taken cognizance of the offence, would make the order, directing issuance of process, illegal, it is appropriate to take note of the provisions of Section 190 of the Code of Criminal Procedure (in short, "the Code"), which run as follows:

190. Cognizance of offences by Magistrates. (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class especially empowered in this behalf under sub-s. (2) may take cognizance of any offence -

- (a) Upon receipt of a complaint of facts, which constitute such offence,
- (b) Upon a police report of such facts;
- (c) Upon information received from any person other than a police officer or upon his own knowledge that such offence has been committed.

14. A careful reading of Sub-section (1) of Section 190 of the Code clearly shows that a Magistrate can take cognizance of an offence in three different modes, namely, (a) upon receipt of a complaint of facts, which constitute such offence, (b) upon a police report of such facts and (c) upon information received from any person other than a police officer or upon his own knowledge that such offence has been committed. When a Magistrate, however, takes cognizance of an offence under Clause (c) aforementioned, it is, in the light of provisions of Section 191 of the Code, a duty of the Magistrate to inform the accused, who is to be proceeded against, that he (accused) is entitled to have the case enquired into and tried by another Magistrate and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate, who takes cognizance, the case shall be transferred to another Magistrate as may be specified by the Chief Judicial Magistrate in this behalf.

15. Let me, now, turn to Section 200 of the Code, which, I notice, reads as follows:

200. Examination of complainant-A Magistrate, taking cognizance of an offence on a complaint, shall examine, upon oath, the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate:

Provided that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses (a) If a public servant acting or

purporting to act in the discharge of his official duties or a Court has made the complaint, or (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate u/s 192.

Provided further that if the Magistrate makes over the case to another Magistrate u/s 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

16. A careful reading of Section 200 of the Code makes it clear that a Magistrate, taking cognizance of an offence on a complaint, shall examine, upon oath, the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate. Such examination can be dispensed with under two contingencies, namely, (a) if a public servant, acting or purporting to act in the discharge of his official duties, or a Court has made the complaint, or (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate u/s 192.

17. A careful analysis of the provisions of Section 190 of the Code read with Section 200 thereof clearly reveals that what Section 200 of the Code lays down is the procedure as to what a Magistrate shall do, when he takes cognizance of an offence on receiving a complaint of the facts, which constitute an offence. This, in turn, clearly reveals that taking of cognizance must precede examination of the complainant u/s 200 of the Code.

18. Before proceeding further, it is also necessary to note as to what "cognizance" is and when a Magistrate can take "cognizance" of an offence or when can a Magistrate be said to have taken "cognizance" of an offence. While considering these aspects of the matter, what is of paramount importance to bear in mind is that "cognizance" has not been defined under the Code. The word "cognizance" really indicates the point, when a Magistrate or a Judge first takes judicial notice of an offence. It also deserves to be borne in mind that "cognizance" is taken of offences and not of persons. Clauses (a), (b) and (c) of Sub-section (1) of Section 190 of the Code set out, as indicated above, three different modes for taking of "cognizance".

19. Whether a Magistrate has or has not taken cognizance of an offence will depend on the mode in which the case is sought to be instituted and the nature of the preliminary action, if any, taken by the Magistrate. The Supreme Court, in *R.R. Chari Vs. The State of Uttar Pradesh*, quoted with approval the observations made by Kulada Charan Das Gupta, J. in *Superintendent and Remembrancer of Legal Affairs Vs. Abani Kumar Banerjee*, with regard to the question as to when a Magistrate can be said to have taken cognizance. The relevant observations read thus:

What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence u/s

190(1)(a) Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but must have done so for the purpose of proceeding a particular way as indicated in the subsequent provisions of this Chapter—proceeding u/s 200 and thereafter sending it for inquiry and report u/s 202. When the magistrate applies his mind not for the purpose of proceeding under the subsequent Sections of this Chapter, but for taking action of some other kind, e.g. ordering investigation u/s 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence.

20. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purpose of proceeding u/s 200 and the succeeding Sections in Chapter XV of the Code, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a). If, instead of proceeding under Chapter XV, he has, in the judicial exercise of his discretion, taken action of some other kind, such as, ordering investigation by the police u/s 156(3), he cannot, be said to have taken cognizance of any offence, (see *Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others*, .

21. When a police report is submitted before a Magistrate for taking of cognizance, the Magistrate may, in terms of Clause (b) of Section 190(1) of the Code, take cognizance if the police report discloses commission of an offence. The Magistrate, in such a case, may also, instead of taking cognizance, direct further investigation. As reflected by Clause (c) of Section 190(1), when a Magistrate takes cognizance of an offence on the basis of the information received by the Magistrate from a person other than a police officer, or upon his own knowledge that an offence has been committed, the Magistrate must, before the evidence in such a case is recorded, let the accused know that the latter is entitled to have the case enquired into and tried by another Magistrate and if the accused or any of the accused, if there be more than one, objects to further proceeding before the Magistrate, who has taken cognizance, the case shall be transferred to such other Magistrate as may be specified, in this regard, by the Chief Judicial Magistrate.

22. What is, now, of immense importance to note is that when a complaint is presented before a Magistrate and even if the same discloses commission of an offence, cognizable or non-cognizable, the Magistrate still has the option, under Clause (a) of Section 190(1) of the Code, to either take cognizance of the offence or, if the complaint discloses commission of a cognizable offence, direct investigation to be conducted by police in terms of Section 156(3) of the Code. In other words, what is of paramount importance to note is that when a Magistrate receives a complaint, he is not bound to take cognizance even if the complaint discloses commission of an offence. This, as held in *Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others*, , becomes clear from the use of words "may take cognizance", which cannot be equated with the expression "must take cognizance". Clarified the Supreme

Court in Devarapalli Lakshminarayana Reddy (supra), the position of law, in this regard, as follows:

If on a reading of the complaint, he finds that the allegation therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation u/s 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in inquiring into a matter which was primary the duty of the police to investigate, he will be justified In adopting that course as an alternative to taking cognizance of the offence, himself.

23. Thus, whether the Magistrate has or has not taken cognizance of an offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted and the nature of the preliminary action, if any, taken by the Magistrate.

24. In short, in the light of decision of Abani Kumar Banerji (supra) approved in R.R. Chari (supra) and in view of what Devarapalli Lakshminarayana Reddy (supra) lays down, it is abundantly clear that when a Magistrate applies his mind to the contents of a complaint for the purpose of proceeding in accordance with the subsequent provisions of the Code, particularly, Section 200 thereof, he can be said to have taken cognizance. When, however, the Magistrate applies his mind not for the purpose of proceeding under Chapter XV of the Code, but for taking action of some other kind, such, as ordering investigation u/s 156(3) or directing issuance of search warrant, he cannot be said to have taken cognizance of the offence.

25. It logically follows from what has been observed above that when a Magistrate, on receiving a complaint, records the statement of the complainant, he can be said to have, in the absence of anything showing to the contrary, taken cognizance of the offence. No specific order need be passed by the Magistrate mentioning that he has taken cognizance of the offence, for, cognizance may be inferred to have been taken by the preliminary action, which the Magistrate, on receiving a complaint, takes.

26. What surfaces from the discussions held above is that the scheme of the Code is that when a complaint is presented before a Magistrate, he can either direct an investigation in terms of Sub-section (3) of Section 156 of the Code or he may decide to proceed with the complaint. If he decides to proceed with the complaint by taking cognizance of the offence(s), which the complaint discloses, he shall, for this purpose, take steps in terms of Section 200 of the Code by examining the complainant. If the Magistrate, on receipt of the complaint, takes no steps to indicate that the Magistrate wanted to proceed in terms of Section 200 of the Code and sends the complaint to the police for investigation, it will indicate that the Magistrate has not taken cognizance and, in the later case, there will be no impediment, on the part of the Magistrate, to take cognizance of the offence if and when the police, on investigation carried out, submits a report, in this regard, in terms of Section 190(b). The act of sending of the complaint to

the police for investigation is really at a pre cognizance stage. When, however, a Magistrate, instead of sending the complaint for investigation to the police, decided to proceed further u/s 200 of the Code, the Magistrate shall be deemed to have, unless shown otherwise, taken cognizance of the offence, for, the Magistrate cannot proceed to record the complainant's statement u/s 200 without taking cognizance. The act of proceeding with the examination of the complainant u/s 200 will, thus, be indicative of the fact that the Magistrate has taken cognizance of the offence and has decided to proceed accordingly. It is for this reason that when the Magistrate, after recording statement of the complaint and his witnesses, if any, present, decides to hold inquiry u/s 202 of the Code, he cannot, thereafter, send, for investigation, a complaint, which discloses commission of offence, which is exclusively triable by Court of Sessions. The fact of sending the complaint for investigation after recording of statement of the complainant and/or the witnesses and/ or after holding inquiry u/s 202 of the Code is a stage, which may be called the post-cognizance stage. If the distinction between pre-cognizance stage and post-cognizance stage is borne in mind, there will be no difficulty in appreciating that when a Magistrate, instead of sending the complaint for investigation, decides to proceed u/s 200 and records the statement of the complainant and his witnesses, the Magistrate shall be treated to have taken cognizance of the offence disclosed by the complaint, for, as already indicated herein-above, he cannot proceed to record the statement of the complainant u/s 200 without taking cognizance.

27. If one keeps himself confined to the facts of the present case, what crystallizes from the above discussion is that when a Magistrate, instead of sending a complaint for investigation, decides to proceed with the complaint u/s 200 of the Code, the conclusion has to be, in the absence of anything showing to the contrary, that cognizance has been taken by the Magistrate. Viewed from this angle, when the learned Magistrate, in the present case, instead of sending the complaint to the police for investigation u/s 156(3), proceeded to record the statement of the complainant and did record the statement of the complainant, there can be no escape from the conclusion that the statement, aforementioned was recorded after cognizance of the offences, as disclosed by the complainant, had already been taken by the learned Magistrate. The conclusion, reached by the learned Sessions Judge, that the learned Additional Chief Judicial Magistrate had recorded statement of the complainant without taking cognizance is not correct and on this ground, the impugned order, directing issuance of processes could not have been interfered with.

28. Bearing in mind the principles of law, which govern interference with an order taking of cognizance of offence, when I turn to the present case, what attracts the eyes is that in the case at hand, the complainant's case, as reflected by his complaint, is that the accused persons, having invited quotations from the complainant for doing some repairing job of machinery and equipment of their tea garden, entered into some negotiations with the complainant and, then, placed work order and when the work was completed in terms of the work order,

the complainant raised a bill for Rs. 1,56,760/-, but payment for the bill was not made by the accused persons. These assertions of the complainant may or may not be true; but these assertions have to be assumed as correct. What the complainant also alleged, in the complaint, is that despite the fact that he issued notices to the accused persons, the payments were not made; rather, the accused telephoned the complainant, abused him and threatened his life. These allegations too may or may not be true, but it is the duty of the Court to assume that these allegations are true and, then, determine if the allegations constitute offence. If the sequence of facts, given by the complainant, are borne in mind and assumed to be true, it logically follows that the complainant does make out a case that the accused persons had dishonestly induced the complainant to do the repairing job, made thereby wrongful gain for themselves, caused wrongful loss to the complainant and, further, that the accused intimidated the complainant. The distinction between mere breach of contract and the offence of cheating is a fine one. Every breach of contract cannot amount to cheating. It depends upon the intention of the accused at the time, when the accused is alleged to have induced the complainant to deliver a property. The accused person's initial intention can, however, be ascertained by his subsequent conduct; but subsequent conduct is not the sole test. Unless fraudulent or dishonest intention is shown to exist in the mind of the accused at the very beginning of the transaction, offence of cheating cannot be said to have been made out. In the present case, the complainant does not disclose a case of mere breach of promise or contract. The alleged subsequent conduct of the accused, their denial to pay the bills raised by the complainant and the act of threatening the complainant *prima facie* indicate that it was with fraudulent or dishonest intention that the accused had induced the complainant to do the repairing job. In such circumstances, it could not have been held (as has been held by the learned Additional Sessions Judge) that the complaint makes out a case of civil dispute and does not attract any penal provisions. The learned Additional Sessions Judge has, in fact, not taken into account at all the complainant's statement made in paragraph 8 of the complaint, wherein he clearly stated. "That on receipt of that Notice, the accused persons conspired With each other, threatened to the life of the complainant on 29-6-2004 at about 6,.00 p.m. over telephone and abused him with obscene words."

29. What crystallizes from the above discussion is that the complainant had made out a *prima facie* case for issuing process and, in such circumstances, the order, dated 3-8-2004, aforementioned, could not have been said to be without jurisdiction, illegal, incorrect or improper. Hence, such an order could not have been interfered with in exercise of revisional jurisdiction u/s 397, Cr. P.C.

30. The question, now, is as to whether it is permissible in law for the High Court to interfere, in exercise of powers u/s 482, Cr. P.C. with an order, which has been passed by a Sessions Judge in exercise of his revisional jurisdiction. Answered the Supreme Court, in *Madhu Limaye Vs. The State of Maharashtra*, , thus:

...On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include Sub-section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court. But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in Sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any inter-, locutory order. Then in accordance with one or 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.

31. From what has been observed, in *Madhu Limaye* (supra), it becomes clear that the exercise of power of revisional jurisdiction by a Sessions Judge does not take away the inherent power of the High Court u/s 482, Cr. P.C. It does not, however, mean, I must hasten to add, that the High Court would pass an order, u/s 482, Cr. P.C. which it would not, otherwise, be possible for the High Court to pass, because of the embargo put by Section 397(2) Cr. P.C. When an order assailed is purely an "interlocutory order", it would neither be revisable u/s 397, Cr. P.C. nor would the High Court exercise its inherent powers in such cases, for, exercise of inherent power, in such cases, would make the restrictions, imposed by Section 397(2) Cr. P.C. otiose. It, therefore, depends upon the facts of a given case as to whether High Court would exercise jurisdiction u/s 482, Cr. P.C. or not.

32. In the present case, the learned Additional Sessions Judge has exercised the revisional jurisdiction to set aside the order, dated 3-8-2004, whereby directions to issue processes to the accused-opposite party had been passed. The exercise of revisional jurisdiction, in fact, was wholly incorrect in the facts of the present case. In such circumstances, allowing such a revisional order to survive would be an abuse of the process of law and, in a case, such as the present one, it is inevitable for the High Court to take resort to, and exercise its inherent power under Sections 482, Cr. P.C. and set aside the revisional order aforementioned.

33. In the result and for the reasons discussed above, this application made u/s 482 of the Code succeeds. The impugned order, dated 2-5-2005, is hereby set aside and the order, dated 3-8-2004, aforementioned, passed in the complaint case, is hereby restored.

34. With the above observations and directions, this criminal revision shall stand disposed of.

35. Send back the LCR.