

(2020) 06 GUJ CK 0021

In the Gujarat High Court

Case No : R/Special Criminal Application No. 1618 Of 2015

Dr.Atul Amrutlal Modesara & 1 Other(s)

APPELLANT

Vs

State Of Gujarat & 1 Other(s)

RESPONDENT

Date of Decision : 11-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Negotiable Instruments Act, 1881 — Section 138
Indian Penal Code, 1860 — Section 420
Code Of Criminal Procedure, 1973 — Section 125(1), 155(2), 156(1), 248, 378(4),
397, 397(3), 420, 482
Code Of Criminal Procedure, 1898 — Section 164, 364
Government Of India Act, 1915 — Section 107
Code Of Civil Procedure, 1908 — Section 115

Citation : (2020) 06 GUJ CK 0021

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Jayesh A Dave, Manan Mehta, Sudhir M Khanna

Final Decision : Dismissed

Judgement

Dr. Ashokkumar C. Joshi, J

Rule. Learned APP wavier service of rule on behalf of respondent-Sate and Mr.Sudhir Khanna, learned advocate wavier service of rule on behalf of respondent No.2.

1. Heard learned advocate Mr. Jayesh A. Dave for the petitioners original accused, learned APP Mr. Manan Mehta for the respondent No.1 State

and its authorities and learned advocate Mr. Sudhir M. Khanna for respondent No.2 original complainant.

2. This petition has been preferred by the petitioners praying following reliefs:-

â??14(b) Issue a writ of and in the nature of certiorari or any other writ, order or

direction for setting aside order dated 13-1-2015 passed by the Ld.

6th addl. Sessions Judge Bhuj-Kutchh in Criminal Revision Application No.119 of 2014 and restore the order dated 10-9-2014 passed by the Ld. 3rd

Addl. Chief Judicial Magistrate Bhuj-Kutchh in Criminal Case No.1488 of 2007.

(c) Pending the hearing and/or final disposal of this petition be pleased to stay the implementation and execution of the order dated 13- 1-2015 passed

by the Ld. 6th Addl. Sessions Judge Bhuj-Kutchh in Criminal Revision Application No.119 of 2014 and also stay the further proceedings of criminal

case No.1488 of 2007 pending in the court of Ld. 3rd Addl. Chief Judicial Magistrate Bhuj-Kutchh.â??

3. The facts, leading to filing of present Special Criminal Application, can be recapitulated as under:-

3.1 The petitioners original accused were in need of money for their profession and therefore, they took a loan from the original complainant for an

amount of Rs.33 Lakhs by way of cheque dated 30.12.2006 of Corporation Bank, Madhapar Branch and the said amount is realized in the petitioners'

account. As against the said loan, the petitioners gave promissory note dated 30.12.2006 and also cheque for the amount of Rs.33 Lakhs as security of

the State Bank of India, Madhapar Branch and the petitioners also gave original documents of their plot No.19 situated at Anjar as further security.

As the petitioner could not repay the amount and the cheques were returned on 29.3.2007 with endorsement of â??Fund Insufficientâ??, the petitioners

gave another cheque to the complainant which was deposited on 13.6.2007 and which also was dishonoured on 13.6.2007. Upon assurance by the

petitioners, the said cheque was redeposited on 30.6.2007, however, the said cheque was again dishonoured with endorsement â??Fund

Insufficientâ?. The notice was issued by the complainant and as payments were not made, the complainant filed criminal complaint before the learned

Chief Judicial Magistrate, Bhuj Kutchh on 10.8.2007 for the offence under Section 138 of the Negotiable Instruments Act (N.I.Act) as well as under

Section 420 of the Indian Penal C (IPC)ode being criminal case No.1488 of 2007.

3.2 The learned Chief Judicial Magistrate, Bhuj Kutchh in the proceedings before him, acquitted both the accused persons due to lack of evidence.

3.3 Being aggrieved and dissatisfied with the said decision of the learned Chief Judicial Magistrate, the original complainant filed revision application

being Criminal Revision Application No.119 of 2014 before the learned Sessions Court, Bhuj wherein learned 6th Additional Sessions Judge, Bhuj vide

order dated 13.1.2015 allowed the said revision application under Section 397 of the Code of Criminal Procedure and set aside the order of learned

Chief Judicial Magistrate and while remanding the matter, also directed the learned Chief Judicial Magistrate to conduct the trial as per the

observations in his order. Resultantly, in the facts and circumstances of the case, the case was required to be tried under Section 138 of the

Negotiable Instrument Act (N.I.Act).

3.4 Being aggrieved and dissatisfied with the order of learned 6th Additional Sessions Judge, Bhuj in Criminal Revision Application No.119 of 2014

dated 13.1.2015, the petitioners original accused persons have preferred present petition, in form of Special Criminal Application under Articles 226

and 227 of the Constitution of India and under Section 482 of the Criminal Procedure Code.

4. Learned advocate Mr. Jayesh A. Dave for the petitioners submitted that the learned Sessions Court has erred in allowing the revision application as

the revision is not maintainable against the order of acquittal passed by learned trial court since the case is based on private complaint. It is also

contended that since the order of acquittal is passed in a private complaint, then the remedy is under Section 378(4) of the Code of Criminal Procedure

to challenge the order by way of leave to appeal before this Court and no revision is maintainable before the court of sessions. It is also submitted that

the learned sessions court has wrongly exercised the power though objections were raised about maintainability of the said proceedings.

4.1 Learned advocate for the petitioners further contended that after recording plea for the offence under Section 138 of the N.I.Act, a purshis at

Exh.142 was filed by the original complainant declaring that he did not want to produce any evidence and therefore, the learned trial court was left

with no option, but to acquit the original accused persons and the learned Sessions Court without observing the provisions of law, wrongly set aside the

order of acquittal and remanded the matter back to the learned trial court for decision afresh.

4.2 It is further urged that the learned Sessions Court had gave the reasons qua the procedure of warrant triable, however, as the evidence was not

sufficient to prove the charge under Section 420 of the Code, the learned trial court passed order to record the plea qua the offence under Section 138

of the N.I.Act which is summons triable and as the complainant has come out with the purshis vide Exh.142 that he did not want to give further

evidence, and therefore, the learned trial court acquitted the petitioners and even if complainant wanted that order to be challenged, then the same

ought to have been challenged by way of leave to appeal before this Court. Learned advocate for the petitioners also submitted that the wife ought not

to be joined in array as a party as accused. It is vehemently urged that as the order passed by the learned Sessions Court is without jurisdiction, this

Court may be pleased to quash and set aside the same and restore the order of acquittal passed by learned trial court in Criminal Case No.1488 of

2007 dated 10.9.2014.

5. Per contra, learned advocate Mr. Sudhir M.Khanna for the respondent No.2 original complainant has submitted that both the trials are separate, i.e.

under Section 420 of the I.P.C. as well as under Section 138 of the N.I.Act, because trial under Section 138 of the N.I. Act is summons triable,

whereas the trial under Section 420 of the I.P.C. is warrant triable. Learned advocate for the respondent No.2 original complainant also submitted that

even if there is any illegality, then also, present proceedings in the nature of quashing cannot be allowed.

5.1 Learned advocate for the respondent original complainant also submitted that if the learned trial court has not followed proper legal procedure and

therefore, if it is an illegality, then the revision is maintainable and therefore, the present petition is required to be dismissed.

5.2 In support of his submissions, learned advocate for the respondent original complainant has placed reliance in the case between Nazir Ahmed v.

Emperor [(1936) 38 BOMLR 987], more particularly on head note, which reads as under:-

“Criminal Procedure Code (Act V of 1898), ss. 164, 364 – Magistrate not acting under s. 164 or s. 364 but giving oral evidence of confession

– Evidence, if admissible – Conviction mainly on such evidence – Whether can be maintained – Construction of ss. 164 and 364 – Scope of

the sections – Precautions to be observed – Ss. 164, 364 to be construed altogether – Criminal trial – Evidence – Magistrate, position of

Magistrates not to act as Police Officers but as judicial persons.â??

5.3 Learned advocate for the respondent original complainant has also relied on the decision in the case between Dhananjaya Reddy v. State of

Karnataka [AIR 2001 SC 1512], more particularly on head note (B) which reads as under:-

â??(B) Penal Code (45 of 1860), S. 300 â?" Murder â?" Proof â?" Accused wife and her paramour alleged to have caused death of her husband

â?

Confessional statement made by accused, paramour before Magistrate

â?" Was not admissible being not signed by him â?" Circumstances of accused wife being last seen with deceased husband â?" Not being

incriminating there was no evidence to prove that accused wife was guilty beyond reasonable doubt â?" Doubt and suspicion of her involvement in

ghastly crime cannot be ruled out â?" But suspicion, however, strong it may be, cannot take the place of proof â?" Benefit of doubt given to accused

wife in view of lapses in investigation, failure of judicial officer to record confessional statement in accordance with law and absence of corroborative

evidence.â??

6. Learned APP Mr. Manan Mehta for the respondent State authorities has made his submissions, however, also submitted that in the light of the

facts of the case on hand, appropriate order may be passed.

7. Having regard to the arguments advanced by both the sides, before I invoke the jurisdiction of this court under Section 482 of the Criminal

Procedure Code [hereinafter referred to as â??Codeâ??], I would like to refer Section 482 as it is:

â??482 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.â??

7.1 Upon plain reading of the section, it starts with the word â??Nothing in this Code shall be deemed to limit....â?. It means this Court has

extraordinary powers where there is no limit under the provisions to exercise for the same. Further, it states â??affect the inherent powers of the

High Court to make such orders as may be necessary to give effect to any order under this Codeâ?. It means, again if the powers are exercised under

this provision, it shall not effect to the inherent powers of the High Court. Further, legislation has used the word "May". Therefore, it is purely

discretionary power. Further, it reads with the words "to prevent abuse of the process of any Court or otherwise to secure the ends of justice". It

means I have to examine (i) to prevent the abuse of process of the Court; and (ii) to secure ends of justice. Both the objectives are also considered by

Hon'ble Supreme Court in case of Narendra sing. v. State of Pubjab [2014 (6) SCC 466].

7.2 It is true that nowhere in the Code, there is explanation of abuse of process of the court, nowhere it is discussed. Simultaneously, explanation for

securing the ends of justice is also not defined and therefore, every case has different facts and circumstances, but simultaneously, to arrive at true

conclusion or to exercise the extraordinary powers, I have to rely on landmark decisions of Hon'ble Supreme Court, before I come to the final merits

of the petition, for exercising powers under Section 482 of the Code, are as under:-

[A] Hon'ble Supreme Court in case of Parbhatbhai Ahir v. State of Gujarat [2017 (9) SCC 641], following 10 principles have been laid down, which

are as under:-

1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice.

The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

2. The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has

been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While

compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to

quash under Section 482 is attracted even if the offence is non-compoundable.

3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court

must evaluate whether the ends of justice would justify the exercise of the inherent power.

4. While the inherent power of the High Court has a wide ambit and plenitude it

has to be exercised;

a) to secure the ends of justice.

b) to prevent an abuse of the process of any court.

5. The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the

dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

6. In the exercise of the power under section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard

to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot

appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature

but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in

punishing persons for serious offences.

7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They

stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned.

8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil

flavour may in appropriate situations fall for quashing where parties have settled the dispute.

9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a

conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and.

10. There is yet an exception to the principle set out in propositions

(viii) and above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a

mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a

financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the

balance.

[B] Further, in the case of State of Haryana v. Bhajan Lal [AIR 1992 SC 604,] following 7 categories of cases had been laid down, which are as

under:-

1. Where the allegations made in the FIR, even if taken at face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the FIR and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation

by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the allegations made in the FIR and the evidence collected in support of the same do not disclose the commission of any offence and make

out a case against the accused.

4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by

a police officer, unless a Magistrate has issued an order for the same, as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR are absurd to the extent that no prudent man can ever reach a just conclusion that there is sufficient ground

for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act, under which a criminal proceeding is

instituted, with regard to the institution and continuance of the proceedings and / or where there is a specific provision in the Code or the concerned

Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide intention and/or where the proceeding is maliciously instituted with an ulterior

motive for wreaking vengeance on the accused and with a view to spite him due to private and / or personal grudge.

[C] Further, in case of R.P.Kapur v. State of Punjab [AIR 1960 SC 260], Hon'ble Supreme Court has held that while exercising powers under Section

482 of the Criminal Procedure Code, a criminal proceedings against a person can be quashed if the case belongs to any one of the following classes:

1. Where there is a legal bar against institution or continuance of the criminal proceedings.

2. Where the allegations in the FIR do not constitute an offence, even if taken at face value and in their entirety.

3. Where the allegations made constitute an offence, but there is no evidence which can prove them.

8. One of the arguments is with regard to the conversion of the trial from summary triable to warrant triable and from warrant triable to summary

triable. This court is not inclined to opine on such conversion since this Court is not sitting in appeal. However, this observation would not be helpful to

the parties concerned, since this court is travelling quashing petition wherein the court has to travel only the provisions made in Section 482 of the

Code, wherein extraordinary powers are required to be invoked or not to arrive at the conclusion so as to prevent the abuse of process of court or

secure the ends of justice.

9. Having heard the arguments advanced by both the sides, in limine it is undisputed fact that as per the settled principles of law, whenever

acquittal order is passed by the learned Chief Judicial Magistrate, in that case, leave to appeal shall be filed before this Court (High Court) under

Section 387(4) of the Code [hereinafter referred to as Code]. In the present case, learned Chief Judicial Magistrate acquitted both the accused

Dr. Atul Amrutlal Modesara and Smt. Hema W/o Atul Modesara (who are the petitioners in this petition) due to lack of evidence by prosecution

case, against which, the original complainant - Lalji Naran Segani filed Criminal Revision Application No.119 of 2014 before the learned Sessions

Court, Bhuj wherein learned 6th Additional Sessions Judge, Bhuj-Kutch allowed the criminal revision application and set aside the order of learned

Chief Judicial Magistrate dated 10.9.2014 and also directed that the case is remanded and the accused persons shall get the opportunity for cross

examination and learned Chief Judicial Magistrate was directed to proceed totally on merits of the case against which, it appears that the original

accused approached before this Court with the prayer to set aside the order of learned Sessions Judge on various grounds; one such ground was that

the complainant would have filed appeal under Section 378(4) of the Code to challenge the order by way of leave to appeal before the Hon'ble High

Court and no revision is maintainable before the Court of learned Sessions Judge. The complainant has challenged the order of acquittal under Section

138 of the N.I.Act and the learned Sessions Court has wrongly exercised the power though the objection was raised about the maintainability of the

said proceedings, and therefore, the impugned order is without jurisdiction and bad in law.

9.1 It is also argued and stated that in the plea for the offence under Section 138 of the N.I.Act, a purshis Exh.142 is filed by the respondent

complainant where the complainant did not want to produce any evidence and therefore, the learned Chief Judicial Magistrate had no option, but to

acquit the petitioners and the learned Sessions Judge without observing the provision of law, wrongly quashed and set aside the order of acquittal and

remanded the case to the learned Chief Judicial Magistrate by exercising the powers not vested in it. It is also contended and also argued by the

learned advocate for the petitioners that the complainant has filed a private complaint for the offence under Section 420 of the I.P.C. along with

Section 138 of the N.I.Act, but there was no sufficient evidence qua offence under Section 420 of the I.P.C. and therefore, the order passed to record

the plea for the offence under Section 138 of the N.I.Act and after recording of plea, the complainant gave purshis vide Exh.142 and declared that he

did not want to furnish any further evidence, and therefore, the petitioners were acquitted and as the order passed by the learned Sessions Judge is

without jurisdiction and therefore, this Court be pleased to quash and set aside the order of â??denovo trialâ? and restore the order of acquittal passed

by the learned Chief Judicial Magistrate.

9.2 It is also contended that the learned Sessions Judge has gave the reasons qua the procedure of warrant triable cases, while in the present case, the

charge is under Section 420 of I.P.C. therefore, the learned Chief Judicial Magistrate has passed the order to record the plea qua the offence under

Section 138 of the N.I.Act which is summons triable case, the complainant himself has come out with the purshis vide Exh.142 that he does not want

to gave further evidence and therefore, learned Chief Judicial Magistrate has acquitted the petitioners, and even if complainant wants that order to be

challenged, then he could have challenged the same before the High Court under Section 378(4) of the Code.

9.3 Lastly, it is submitted that this Court be pleased to quash and set aside the order of learned Sessions Judge, Bhuj-Kutch in Criminal Revision

Application No.119 of 2014 dated 13.1.2015 and restore the order of acquittal passed by the learned Chief Judicial Magistrate in Criminal Case

No.1488 of 2007 dated 10.9.2014.

10. Pursuant to the order passed by the learned Sessions Judge, it is made clear that this Court is not sitting in appeal as an Appellate Court upon that

order. Therefore, there is very limited scope to re-appreciate each and every contentions raised before the learned Sessions Judge. Simultaneously, it

is made clear that the learned Sessions Judge has observed in the beginning of his order that the learned Sessions Judge is fully aware about the

settled principles of law that every acquittal orders of the learned Chief Judicial Magistrate shall be challenged by way of filing leave to appeal before

the Hon'ble High Court. But, in the present case, which is on hand, the learned Sessions Judge has observed that since the offence under Section 138

of the N.I.Act is summary triable, whereas the offence under Section 420 of the I.P.C. is warrant triable and therefore, merely in case of warrant

trial, if the complainant gives a purshis that he does not incline to prosecute the case, the Court cannot pronounce acquittal. The learned Sessions

Judge has also placed reliance in the case of Banta singh Siyan Singh v. Gurubax singh Gurudit Singh [1967 CR.L.J.1447]{ Punjab & Haryana High

Court} wherein it is observed that:

“Once the trial is rightly started as the trial of a warrant-case, there is no provision in the Code under which at a later stage the procedure can be

changed to be one prescribed for trial of a summons case. It is absolutely immaterial that the charge which is framed may relate, to an offence triable

as a summons case. If the change of procedure is permitted, in most of the cases, it may act to the prejudice of the accused inasmuch as he may lose

the right of double cross-examination.”

10.1 Therefore, the learned Sessions Judge has observed that on the basis of the facts and circumstances before the learned Chief Judicial Magistrate,

the learned Chief Judicial Magistrate would have passed the judgment under Section 248 of the Code and therefore, the learned Chief Judicial

Magistrate has committed serious mistake in following the said procedure.

11. Further, the learned Chief Judicial Magistrate has committed error in applying

the procedure and in recording plea, if any, under Section 145(2) of

the Code and therefore also, the learned Sessions Judge was required to intervene in the same and ultimately, the revision was allowed.

12. The learned Sessions Judge has also placed reliance upon the decision in case of Valmiki Fleriyo nv. Mrs. Smt. Loriyana Farnandiz [2005 CR.L.J.

2498] {Bombay High Court}, as per that judgment, the learned Sessions Court is empowered to examine such issue in revision when there is charge

under Section 420 of the I.P.C. and the learned Chief Judicial Magistrate would have framed the charge under Section 420 of the I.P.C., but that

argument was not considered by the learned Chief Judicial Magistrate. Simultaneously, the learned Sessions Judge has held that there is requirement

for suo-motu procedure by the learned Sessions Court.

13. It is also argued by learned advocate Mr. J.A.Dave for the petitioners that revision was not maintainable since the learned Sessions Court was not

empowered for the same and also he has argued that after having acquittal, no leave to appeal is filed by the prosecution or by the complainant and

therefore, present petition is tenable, but in view of this Court, except this, there is no further reliance neither on the Code nor on any authority that the

order passed by the learned Sessions Court suffers from error of law.

14. Per contra, Mr. Sudhir M.Khanna, learned advocate for respondent No.2 placed heavy reliance upon the aspect that quashing under Section 482

of the Code is not tenable since neither there is abuse of process of law nor there is any prevention of ends of justice. On the contrary, learned

Sessions Judge has rightly decided to remand the matter to arrive at truthfulness of the matter. Further, if the petitioners would have been aggrieved

by that order, then they would have filed revision against the order, but relief under Section 482 of the Code is not tenable.

14.1 In support of his submissions, he has placed reliance upon the decision in case of Nazir Ahmed v. Emperor (supra) to submit that "The rule

which applies is that where a power is given to do a certain thing in a certain way the thing is to be done in that way or not at all. Other methods

of performance are necessarily forbidden." On that basis, it is argued that if the order of the learned Chief Judicial Magistrate is considered, in that

case, the revision was rightly decided by the learned Sessions Judge since it was not acquittal in toto, but merely on the basis of lack of evidence, it is

discharge of the accused and therefore, the learned advocate Mr. Khanna argued to disallow the petition.

15. In addition to the aforesaid discussion, it is also held in the case of Kavita v. State & Ors. [2000 CR.L.J. 315]that “the extra-ordinary power

under section 482 have to be exercised sparingly and should not be resorted to like remedy of appeal or revision”. In the present case also, as

discussed earlier, this Court is neither sitting as Appellate Court nor as Revision Court. Further, the remedy against the order passed by the learned

Sessions Judge is very well available. Therefore also, this is not a fit case to exercise the powers vested under Section 482 of the Code.

15.1 It was also held in case of Basudev Bhoi v. Bipadabhanjan Puhari [(1997) 2 Crimes 331 (Ori.)] that “it is well-settled that the inherent powers

under section 482 can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the

statute.” It was also held by Orissa High Court that “the power being an extraordinary one, it has to be exercised sparingly”. It is also held that

“If these considerations are kept in mind there will be no inconsistency between sections 397(2) and section 482 of the Code”.

15.2 It was held in the case of State of Bihar v. Murad Ali Khan [(1989) CR.L.J. 1005 : AIR 1989 SC 1 t]hat “in exercising jurisdiction under

section 482 High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not”.

Therefore, in the present case also, pursuant to such decisions, it makes clear that the petitioners have very well remedy under the Code and

therefore, this Court cannot exercise the jurisdiction under Section 482 of the Code.

15.3 Further, in the case of State of Andhra Pradesh v. Gourishetty Mahesh [2010 (6) SC 588: 2010 CR.L.J. 3844],it was held that “while

exercising jurisdiction under section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is

reliable or not or whether on a reasonable apprehension of it accusation would not be sustained. That is the function of the trial Judge/Court”. Here

in the present case also, this Court cannot go to inquire the merits of the case, including accusation upon the petitioners. Since it is the function of the

learned trial Court and therefore also, there is no merits in the petition.

15.4 It is also held in case of Hamida v. Rashid [(2008) 1 SCC 474] that “ends of justice would be better served if valuable time of the Court is

spent in hearing those appeals rather than entertaining petitions under section 482 at an interlocutory stage which after filed with some oblique motive

in order to circumvent the prescribed procedure, or to delay the trial which enable to win over the witness or may disinterested in giving evidence,

ultimately resulting in miscarriage of justice”. In the present case also, the original complaint is of the year 2007, the learned Chief Judicial Magistrate

passed order in the year 2011, learned Sessions Judge has passed order in the year 2015 and the present quashing petition is filed in the year 2015 and

therefore, this has caused delay in trial and therefore also, this Court is not required to exercise the jurisdiction vested under Section 482 of the Code.

15.5 Further, in case of Ashu Dhiman v. Smt. Jyoti Dhiman [Judgment of High Court of Uttarakhand at Nainital] in Criminal Misc. Application

No.483 of 2018 decided on 15.11.2018, it was held that:-

“17. In view of the definition of the interlocutory order and the ratio of the judgment 16 supra, this Court is of the view that an order passed under

Proviso to sub section (1) of Section 125 of Cr.P.C. rejecting or allowing an application for maintenance, pending proceedings, is not an interlocutory

order which adjudicates the rights of the parties to some extent. The revision under Section 397 of Cr.P.C. is maintainable. It has been held that such

an order is amenable to revisional jurisdiction of this Court. The powers of High Court under Section 482 of Cr.P.C. are inherent in nature and could

be exercised where statutory remedy of appeal and revision under the Cr.P.C. is not available. Thus, in view of the findings recorded above that

revision against such an order is maintainable, an application under Section 482 of Cr.P.C. would not be maintainable. The core issue framed by this

Court to deal with the controversy is answered accordingly. Since the criminal misc. applications filed by the petitioners(s) under Section 482 of

Cr.P.C. are not maintainable, the petitioners(s) would be at liberty to avail the remedy of filing revision, if so advised.”

15.6 Further, in case of Dr. Dilip Kumar v. State of Bihar in Criminal Misc. No.6740 of 2016 decided on 2.9.2019, it was held that:-

“16. Whether the High Court can exercise such power of superintendence only when no appeal or revision has been provided under the Code

against orders passed by such criminal courts or even in cases where the persons concerned have availed the remedy provided under the Code for

setting aside such orders? It may be urged that in the aforesaid two Full Bench decisions of this Court and in the case of Chandra Shekhar Singh &

Another (supra) before the Supreme Court, no internal remedy by way of appeal or revision had been provided, rather there was a bar so far exercise

of appellate or revisional power of this Court under the old Code is concerned, in my view whether a bar has been placed or not on exercise of the

appellate or revisional power under the Code itself is not of much consequence so far as the power of this Court under Article 227 of the Constitution

is concerned. But there may be three situations under which the power under Article 227 may be invoked. Firstly, where no appeal or revision has

been provided against the order in question, secondly, where the person aggrieved has already filed a revision application before Sessions Judge and

his revision application to this Court against the order passed by the Sessions Judge is barred under Section 397(3) of the Code. The third eventuality

may be where although a revision application or an application under Section 482 of the Code is maintainable before this Court, still an application

under Article 227 is filed. In my view, there is no question exercise of power under Article 227 in the third category of cases, the remedy being

available to petitioner under the provisions of the Code itself. So far the cases falling in the first category i.e., where no appeal or revision has been

provided as has been said by the Supreme Court, it will require an exceptional case before power under Article Patna High Court CR. MISC.

No.6740 of 2016 dt.02-09-2019 12/32 227 is to be exercised. In respect of the cases coming under second category i.e., the revision application have

already been dismissed by the Sessions Judge, and bar under Section 397(3) is applicable for interference under Article 227, very exceptional

circumstances must exist in view of the judgment of the Supreme Court in the case of Jagir Singh(Supra)"".

15.7 Further, recently the Hon'ble Supreme Court has held in the case of Rajeev Kourav v. Baisahab & Ors. [Criminal Appeal No.232 of 2020

decided on 11.2.2020] that:-

â??6. It is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the

FIR or the charge sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to

prevent the abuse of process of any Court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his

defence cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that

the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal

proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged

against the accused, the Court cannot quash a criminal proceeding.â??

Scope of Article 226 and 227

16. Further the petitioners have prayed Constitutional remedies before this Constitutional Court especially under Articles 226 and 227 of the

Constitution of India. Therefore, it would be appropriate to discuss in brief that Sessions Court has remanded the matter for fresh trial in Revision

Jurisdiction wherein remedies are very well available before the learned Trial Court, petitioners can file discharge application as well as petitioners can

very well defend his case before learned Trial Court. Therefore, whenever there is alternative efficacious remedy available with the petitioners,

petitioners is not entitled for Constitutional remedies.

17. This Court has referred to decision of Authorized Officer, State Bank of Travancore and Anr. V/s. Mathew K.C. in Civil Appeal No.1281 of 2018

(arising out of S.L.P. (C) No.24610 of 2015, judgment of Honâ??ble Supreme Court passed on 30.01.2018, held at paragraph no.43 as under:-

â??43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the

Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of

taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions

involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by

Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure

for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all

such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available

under the relevant statute.â??

18. In the latest judgement of Honâ??ble Supreme Court in the case of Radhey Shyam & Anr. vs. Chhabi Nath & Ors. in Civil Appeal No.2548 of

2009 dated 26.2.2015, the Honâ??ble Supreme Court has discussed the scope of Article 226 and 227 of the Constitution of India as under:

â??18. Thus, it has been clearly laid down by this Court that an Order of civil court could be challenged under Article 227 and not under Article 226.

19. We may now come to the judgment in Surya Dev Rai. Therein, the appellant was aggrieved by denial of interim injunction in a pending suit and

preferred a writ petition in the High court stating that after CPC amendment by Act 46 of 1999 w.e.f. 1 July, 2002, remedy of revision under Section

115 was no longer available. The High Court dismissed the petition following its Full Bench Judgment in Ganga Saran to the effect that a writ was not

maintainable as no mandamus could issue to a private person. The Bench considered the question of the impact of CPC amendment on power and

jurisdiction of the High Court to entertain a writ of certiorari under Article 226 or a petition under Article 227 to involve power of superintendence.

The Bench noted the legal position that after CPC amendment revisional jurisdiction of the High Court against interlocutory order was curtailed. The

Bench then referred to the history of writ of certiorari and its scope and concluded thus :

18. Naresh Shridhar Mirajkar case was cited before the Constitution Bench in Rupa Ashok Hurra case and considered. It has been clearly held: (i)

that it is a well-settled principle that the technicalities associated with the [pic]prerogative writs in English law have no role to play under our

constitutional scheme; (ii) that a writ of certiorari to call for records and examine the same for passing appropriate orders, is issued by a superior court

to an inferior court which certifies its records for examination; and (iii) that a High Court cannot issue a writ to another High Court, nor can one

Bench of a High Court issue a writ to a different Bench of the High Court; much less can the writ jurisdiction of a High Court be invoked to seek

issuance of a writ of certiorari to the Supreme Court. The High Courts are not constituted as inferior courts in our constitutional scheme.

19. Thus, there is no manner of doubt that the orders and proceedings of a judicial court subordinate to the High Court are amenable to writ jurisdiction of the High Court under Article 226 of the Constitution.

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24. The difference between Articles 226 and 227 of the Constitution was well brought out in *Umaji Keshao Meshram v. Radhikabai* [1986 Supp. SCC

401]. Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the

Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act,

1915 excepting that the power of superintendence has been extended by this article to tribunals as well. Though the power is akin to that of an

ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the

subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases

occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have,

(ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being

exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

25. Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of

certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the

distinction between the two jurisdictions stands almost obliterated in [pic]practice. Probably, this is the reason why it has become customary with the

lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some

judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the

two jurisdictions. Firstly, the writ of certiorari is an exercise of its original

jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate, revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, maybe, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.

20. It is the above holding, correctness of which was doubted in the referring order already mentioned above.

21. It is true that this Court has laid down that technicalities associated with the prerogative writs in England have no role to play under our constitutional scheme. There is no parallel system of King's Court in India and of all other courts having limited jurisdiction subject to supervision of King's Court. Courts are set up under the Constitution or the laws. All courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under Article 227. Writ jurisdiction is constitutionally conferred on all High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of Tribunals or authorities or courts other than judicial courts. There are no precedents in India for High Courts to issue writs to subordinate courts. Control of working of subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts. While appellate

or revisional jurisdiction is regulated by statutes, power of superintendence under Article 227 is constitutional. The expression ""inferior court"" is not referable to judicial courts, as rightly observed in the referring order in paras 26 and 27 quoted above.

22. The Bench in Surya Dev Rai also observed in para 25 of its judgment that distinction between Articles 226 and 227 stood almost obliterated. In

para 24 of the said judgment distinction in the two articles has been noted. In view thereof, observation that scope of Article 226 and 227 was

obliterated was not correct as rightly observed by the referring Bench in Para 32 quoted above. We make it clear that though despite the curtailment

of revisional jurisdiction under Section 115 CPC by Act 46 of 1999, jurisdiction of the High Court under Article 227 remains unaffected, it has been

wrongly assumed in certain quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions

including Waryam Singh and another vs. Amarnath and anotherst, Ouseph Mathai vs. M. Abdul Khadir^[12], Shalini Shyam Shetty vs. Rajendra

Shankar Patil^[13] and Sameer Suresh Gupta vs. Rahul Kumar Agarwal^[14]. In Shalini Shyam Shetty, this Court observed :

64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of

pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant

and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such

disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as

writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ

court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory

authority.

66. We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by terming them

as writ petitions. This is sought to be justified on an erroneous appreciation of

the ratio in *Surya Dev* and in view of the recent amendment to Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.

67. As a result of frequent interference by the Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, the Hon'ble High Court will follow the time honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their jurisdiction will adhere to them strictly.

(emphasis added)

23. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.â??

19. From the aforesaid discussion, it is undisputed fact that pursuant to the original complaint before the learned Chief Judicial Magistrate under Section 138 of the N.I.Act as well as under Section 420 of the I.P.C., the process were issued against the accused on 17.8.2007. Subsequently, it appears from the record that the learned Chief Judicial Magistrate has passed the order on 18.6.2011 wherein the then learned Chief Judicial Magistrate has observed that there is no sufficient evidence so far as the ingredients under Section 420 of the

I.P.C. is concerned, but ingredients under Section 138 of the N.I.Act is clearly available, and therefore, in the interest of justice, the accused were

directed to record the plea under Section 138 of the N.I.Act. Subsequently, it appears that on 10.9.2014, on the basis of the purshis of the complainant

at Exh.142, the accused were discharged, against which revision before learned

Sessions Judge was filed and learned Sessions Judge allowed and directed the learned Chief Judicial Magistrate for fresh trial.

19.1 Upon considering the order passed by the learned Sessions Judge, it transpires that he has discussed each and every aspects from the commencement of the criminal trial till the discharge. Pursuant to that reasons, though this court is not sitting in appeal, but it appears that there is no abuse of process of law. Simultaneously, there is nothing on record which can convince this Court that if the powers are not exercised under Section 482 of the Code in present proceedings, then it would not meet the ends of justice and therefore, there is no substance in the petition.

19.2. It is made clear that the petitioner has very well remedy available before the learned trial Court and, therefore, also this Court does not find any reason or any substance to exercise the extraordinary powers including under Section 482 of the Code of Criminal Procedure as well as Constitutional powers under Articles 226 and 227 of the Constitution of India. Resultantly, in fleri, the petition is devoid of merits and hence, disallowed. Rule is discharged. Interim relief, granted earlier, stands vacated.