

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 8225/2024

1. Heera Lal S/o Kishnaram, R/o Dariba, Police Station Neem-Ka-Thana, District Sikar.
2. Rameshwar S/o Kishnaram, Aged About 58 Years, R/o Dariba, Police Station Neem-Ka-Thana, District Sikar.
3. Babulal S/o Kishnaram, Aged About 50 Years, R/o Dariba, Police Station Neem-Ka-Thana, District Sikar.

----Petitioners

Versus

1. State Of Rajasthan, Represented Through Public Prosecutor.
2. Banshi S/o Prabhu Mali, R/o Dariba, Police Station Neem-Ka-Thana, District Sikar.

----Respondents

For Petitioner(s)	:	Mr.Rinesh Kumar Gupta with Mr.Saurabh Pratap Singh
For Respondent(s)	:	Mr.Shree Ram Dhankar, PP

JUSTICE ANOOP KUMAR DHAND
Order

10/12/2024

Reportable

1. The legal issues in this petition are (i) "Whether order of framing of charge is interlocutory or final in nature? & (ii) Whether against the order of framing of charge, the Revisional Court, i.e., the High Court or the Court of Sessions, should be approached?" It is in this background, the issues involved in this petition are required to be decided.
2. By way of filing of this petition, a challenge has been made to the FIR No.818/2010 registered at Police Station Neem Ka Thana, District Sikar and also against the impugned order dated 17.09.2024 passed by the Additional Chief Judicial Magistrate



No.2, Neem Ka Thana, District Sikar in criminal case No.604/2011 by which the charges have been framed against the petitioner under Sections 467, 468, 471 & 120-B of IPC.

3. Learned counsel for the petitioner submits that for the alleged incident occurred in the year 1989, a report was registered against the petitioner in the year 2010, i.e., after a delay of more than 21 years. Counsel submits that there is a civil dispute pending between the parties for which the false FIR was registered against the petitioner after a great delay to give it a colour of a criminal case. Counsel submits that the aforesaid FIR resulted in negative final report, as the investigating agency was also of the same view that the matter is of civil nature.

4. Counsel submits that subsequently, a protest petition was submitted by the complainant, cognizance was taken against the petitioner and now, charges have been framed against him for the offences under Sections 467, 468, 471 & 120-B of IPC. Counsel submits that under these circumstances, interference of this Court is warranted.

5. Counsel submits that the order of framing of charge is interlocutory in nature and the same is not revisable under Section 397 Cr.P.C. In support of his contention, he has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Asian Resurfacing of Road Agency Pvt. Ltd. and Ors. Vs. Central Bureau of Investigation** reported in **2018 (16) SCC 299**.

6. *Per contra*, learned Public Prosecutor opposed the prayer.

7. Heard and considered the submissions made at Bar and perused the material available on the record.



8. Perusal of the record indicates that FIR bearing No.818/2010 was registered against the petitioner at Police Station Neem Ka Thana, District Sikar which has resulted in negative final report in the year 2010 itself and thereafter, cognizance was taken against the petitioner and he is facing trial before the Court below and now, charges have been framed against the petitioner for the above offences. Against the said order, the petitioners have approached this Court challenging the validity of the same and entire proceedings.

9. In the case of **Asian Resurfacing of Road Agency Pvt. Ltd. and Ors.** (supra), the Hon'ble Apex Court has held that the order of framing of charge is neither purely an interlocutory order nor a final order and the same can be challenged before the High Court in a petition under Sections 397 or 482 Cr.P.C. or under Article 227 of the Constitution of India. It has been further held that challenge to the order of charge should be entertained in a rarest of the rare case, only to correct a patent error of jurisdiction and not to re-appreciate the matter. It has been held in Para 27 as under:-

"Thus, even though in dealing with different situations, seemingly conflicting observations may have been made while holding that the order framing charge was interlocutory order and was not liable to be interfered with under Section 397(2) or even under Section 482 CrPC, the principle laid down in Madhu Limaye still holds the field. Order framing charge may not be held to be purely an interlocutory order and can in a given situation be interfered with under Section 397(2) CrPC or 482 CrPC or Article 227 of the Constitution which is a constitutional provision

but the power of the High Court to interfere with an order framing charge and to grant stay is to be exercised only in an exceptional situation."

10. The principle of this law has been laid down by the Hon'ble Apex Court in the case of **Madhu Limaye Vs. State of Maharashtra** reported in **(1977) 4 SCC 551** and the same still holds the field and it has been held that the orders of framing of charge or refusing discharge are neither interlocutory nor final in nature and therefore, not affected by the bar of Section 397(2) Cr.P.C. Hence, it is clear that revision petition under Section 397 Cr.P.C. against the order of framing of charge is maintainable.

11. The above reasoning has been further reiterated in the case of **Sanjay Kumar Rai Vs. State of Uttar Pradesh & Anr.** reported in **2022 (15) SCC 720** and it has been held in para 14 as under:-

"14. The correct position of law as laid down in *Madhu Limaye* (supra), thus, is that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of Section 397(2) of Code of Criminal Procedure. That apart, this Court in the above-cited cases has unequivocally acknowledged that the High Court is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice having regard to the facts and circumstance of individual cases. As a caveat it may be stated that the High Court, while exercising its afore-stated jurisdiction ought to be circumspect. The discretion vested in the High Court is to be invoked carefully and judiciously for effective and timely administration of criminal justice system. This Court, nonetheless, does not recommend a complete hands

off approach. Albeit, there should be interference, may be, in exceptional cases, failing which there is likelihood of serious prejudice to the rights of a citizen. For example, when the contents of a complaint or the other purported material on record is a brazen attempt to persecute an innocent person, it becomes imperative upon the Court to prevent the abuse of process of law."

12. Now the next question is "Whether the revision petition would lie before this Court or before the Court of Sessions?"

13. Before proceeding further, it would be relevant to refer the provision contained under Section 397 Cr.P.C., which reads as under:-

"397. Calling for records to exercise powers of revision. (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, -recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

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

(3) If an application under this section has been made by any person either to the High Court or to



the Sessions Judge, no further application by the same person shall be entertained by the other of them."

14. The scope and ambit of Section 397 Cr.P.C. confers concurrent powers to the High Court as well as to the Sessions Court with regard to calling for the records and to examine the proceedings of inferior Courts as to its correctness, legality or propriety.

15. In **Pranab Kumar Mitra v. State of West Bengal and another** reported in **AIR 1959 SC 144**, the Hon'ble Supreme Court while dealing with the revisional powers of the High Court inter-alia held that it is a discretionary power which has to be exercised in aid of justice. It was further inter alia held that whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon the facts and circumstances of that case. The revisional powers of the High Court vested in it by Section 439 Cr.P.C. do not create any right in favour of the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that subordinate criminal courts do not exceed their jurisdiction or abuse their powers vested in them by the Code. The High Court is not bound to entertain an application in revision, or having entertained one, to order substitution in every case.

16. This Court considers that in the instant case, there are no special circumstances which required the petitioner to by-pass the forum of the Sessions Judge and rush directly to the High Court. The petitioner could have very well filed the revision even before

the Sessions Judge. It is pertinent to mention that exercise of revisional powers is not a matter of course but it is a matter of rare and sparing use of powers. Hence, if two forums are available to the petitioner for getting redressal of the alleged wrong, then it will certainly be more appropriate for him to first approach the lower forum. It is certainly within the discretion of the higher forum, that is, this Court to consider whether it should entertain or not such revision petition which can lie before the Sessions Judge.

17. Further in **Natwar Lal v. State** reported in **2008 Cr LJ 3579 (3583) (Raj)**, the High Court of Rajasthan while placing reliance on **Shri Padmanabh Keshav Kamat Vs. Shri Anup R. Kantik & Ors.** reported in **1998 (5) Bom. Cr. 546** inter-alia held as under:

"In view of the above discussion, the approach taken by the Bombay High Court in Padmanabh Keshav Kamat's case (supra), which is based on the judgment of the Hon'ble Supreme Court in Pranab Kumar Mitra's case (supra) is a correct proposition of law with regard to the scope and ambit of Section 397 of the Code and on the basis of this, I have no hesitation in coming to the conclusion that when the two forums are available, then certainly it is a matter of propriety for the party to first approach the lower forum, except in rare and special circumstances. By doing this, the party getting order from Magistrate will get double remedy, firstly he will approach the court of Sessions in revision, which is a highest court of criminal trial and after examining the legality, propriety and correctness of the order of sentence, the Sessions Court comes to the conclusion that the

order requires no interference under Section 397 of the Code, then the party has still second remedy to approach the High Court under Section 482 Cr.P.C."

18. Therefore, it can be inferred from the above judgments that in the case of concurrent jurisdiction between two courts, if a revision petition is preferred before High Court, the said petition is maintainable, however, whether the petition can be entertained or not depends on discretion of the High Court, after taking into account the facts of the given case. Preferably, the revisional court would be Sessions Court, which would be duty bound to entertain the revision petition and can call for the record of any inferior court to look into the correctness, legality or propriety of the order or sentence including regularity of proceedings under Section 397 of Cr.P.C. Thus, this Court considers that the revision petition should have been filed before the Sessions Court against the order of Magistrate as this Court finds that no special and exceptional reasons have been assigned for filing the revision petition directly in this Court.

19. This Court is already flooded with lot of Criminal Miscellaneous Petitions under Section 482 Cr.P.C. Hence one cannot be allowed to by-pass the revisional jurisdiction of the Sessions Court only because this Court can entertain a petition under Section 482 Cr.P.C. or both the High Court and the Sessions Court have concurrent jurisdiction under Section 397 Cr.P.C. No exceptional case has been made out by the petitioner for invoking the inherent jurisdiction of this Court to entertain a petition against the order of framing of impugned charges against him.



20. Taking in view the above dictum and catena of judgments of the Hon'ble Apex Court and this Court, the present petition is dismissed with liberty to the petitioner to file the petition before the learned Sessions Court in accordance with the law. However, the delay which has occasioned on account of the fact that the instant revision petition remained pending before this court shall be condoned by the Sessions Court.

21. It is made clear that this Court has not gone into the merits of the case and no expression made herein shall tantamount to be an expression on the merits of the case.

22. Stay application and all application(s), pending if any, also stand disposed of.

(ANOOP KUMAR DHAND),J