IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.907 of 2024

Arising Out of PS. Case No.-1038 Year-2023 Thana- WEST CHAMPARAN COMPLAINT District- West Champaran

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Laxmi Devi @ Suman Devi W/o- Jitendra Pandey, Village- Chhatraul, P.S.- Laukariya, PO- Harnatand, Distt.- West Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Pankaj Tiwari S/o- Late Awdhesh Tiwari, Village-Chatraul, Ps- Laukariya Po- Harnatand, Dist- West Champaran
3. Deepak Tiwari S/o- Late Awadhesh Tiwari, Village-Chatraul Ps- Laukariya Po- Harnatand Dist- West Champaran
4. Mini Devi W/o- Pankaj Tiwari, Village-Chatraul Ps- Laukariya Po- Harnatand, Dist- West Champaran
5. Dinesh Mishr S/o- Late Hajari Mishr Vill- ChakkiPakri Po-DK Shikarpur Ps-Shikarpur, Dist- West Champaran
6. Asha Devi W/o- Dinesh Mishr, Vill- Chakkipakri, Po- DK Shikarpur, Ps-Shikarpur, Dist- West Champaran
7. Sukant Mishr S/o- Dinesh Mishr Vill- Chakkipakri Po-DK Shikarpur Ps-Shikarpur Dist-West Champaran
8. Amarnath Upadhyay S/o- Manu Upadhyay, Village- Bhelai Po- Hartand Ps-Laukaria Dist- West Champaran
9. Manisha Devi S/o- Amarnath Upadhyay Village- Bhelai Po-Harnatad Ps-Laukariya Dist-West Champaran
10. Punam Devi W/o- Dhirendra Pandey, Village- Chatraul Po-Harnatad Ps-Laukariya Dist-West Champaran
11. Dhirendra Pandey S/o- Late Devendra Pandey,Village- Chatraul, Po-Harnatad, Ps-Laukariya Dist-West Champaran
12. Vishunmaya Devi W/o- Late Devendra Pandey, Village- Chatraul, Po-Harnatad, Ps-Laukariya Dist-West Champaran
13. Arun Kumar S/o- Late Parasnath Mahto, Village- Chatraul, Po-Harnatad, Ps-Laukariya, Dist-West Champaran
14. Kundan Pandey S/o- Late Bhagirath Pandey, Village- Chatraul, Po-Harnatad Ps-Laukariya ,Dist-West Champaran
15. Shikandar Prasad S/o- Manohar Bardhariya, Village- Chatraul, Po-Harnatad Ps-Laukariya Dist-West Champaran
16. Rajeshwar Mahto S/o- Late Sanichar Mahto, Village- Chatraul, Po-Harnatad Ps-Laukariya, Dist-West Champaran
17. Manoj Upadhyay S/o- Gopal Upadhyay, Village- Dohri Barhaj, Po + Ps-Dohri Barhaj Dist- Mau, U.P
18. Sudhir Kumar Tiwari S/o- ……., Vill- Neguiya Po + Ps- Kaptanganj, Dist-

Gorakhpur, U.P

19. Ramji Patwari S/o- late Sanichar Patwari, Village- Chatraul, Po-Harnatad Ps-Laukariya Dist-West Champaran
20. Shambhu Mardaniya S/o- Ramdhari Thakur, Village- Chatraul, Po-Harnatad Ps-Laukariya, Dist-West Champaran
21. Raj Kumar, S.H.O., Laukariya Bagha, West Champaran
22. Sushil Kumar Singh, S.I., Laukariya Bagha P.S., West Champaran

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Indradeo Prasad, Advocate
For the State : Mr. Mithlesh Kumar Khare, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 23-09-2025

The present petition has been preferred by the petitioner against the order dated 03.09.2024, passed by learned Judicial Magistrate, 1st Class, Bagaha, West Champaran in Complaint Case No. 1038-C of 2023, whereby learned Magistrate has taken cognizance of offence punishable under Sections 323 and 506/34 of the Indian Penal Code against only one accused namely, Pankaj Tiwari who is Respondent No. 2 herein. The criminal complaint bearing No. 1038-C of 2023 was filed by the petitioner herein against 23 accused persons including the Private Respondents herein for the alleged offences punishable under Sections 119, 143, 147, 166, 167, 207, 209, 217, 218, 219, 220, 228, 120B, 323, 448, 504 and 511 of the Indian Penal Code. However, by the impugned order, learned Magistrate has taken cognizance only against one

accused, namely, Pankaj Tiwary, who is Respondent No. 2 herein, for the offence punishable only under Sections 323 and 506/34 of the Indian Penal Code.

2. The present revision petition is at the stage of admission.

3. I heard learned counsel for the petitioner and learned APP for the State on the point of admission.

4. Learned counsel for the petitioner submits that as per the materials on record, *prima facie* case is made out not only under Sections 323 and 506 of the Indian Penal Code, but also under Sections 119, 143, 147, 166, 167, 207, 209, 217, 218, 219, 220, 228, 120B, 323, 448, 504 and 511 of the Indian Penal Code and not only against Respondent No. 2, but also against the rest Respondents herein. But, learned Judicial Magistrate has erroneously issued summons only against one accused, who is Respondent No. 2 herein, and only for the offence punishable under Sections 323 and 506 of the Indian Penal Code.

5. However, *per contra*, learned APP for the State takes preliminary objection that the present Revision petition filed by the complainant is misconceived. As per law, Criminal Revision does not lie against the impugned order in the light of Section 397(2) Cr.PC/438(2) B.N.S.S., because the impugned

order is interlocutory one for the complainant, because even if the plea of the petitioner is allowed, the proceeding before the court below would not get terminated/concluded. Only for the accused, the impugned summoning order is revisable. The remedy of the complainant lies in invoking the inherent jurisdiction of this Court, as provided under Section 482 Cr.PC/528 B.N.S.S. Hence, the present Criminal Revision petition, is not maintainable.

6. I considered the submissions advanced by both the parties and perused the materials on record.

7. In view of the rival submissions of the parties regarding the maintainability of the present revision petition, the question which arises for consideration of this Court is whether the present Criminal revision petition filed by the complainant is maintainable and not hit by Section 397(2) Cr.PC/438(2) B.N.S.S. In other words, whether the impugned order is interlocutory one and the present revision petition is barred under Section 397(2)Cr.PC/438(2) B.N.S.S.

8. I find that the impugned order is a summoning order against accused person/Respondent No. 2 herein passed by learned Judicial Magistrate, after inquiry under Section 200 Cr.PC/223 B.N.S.S.

9. Hence, undisputedly, the impugned order is not a final one. But the question is whether it is an interlocutory order and the criminal revision filed against it by the complainant is barred under Section 397(2) Cr.PC/Section 438(2) B.N.S.S.

10. Section 397(2) Cr.PC/438(2) B.N.S.S. bars criminal revision against interlocutory orders. But what is interlocutory order is nowhere defined in the Cr.PC or B.N.S.S. But it has been deliberated by Hon'ble Apex Court on several occasions.

11. In **Amar Nath Vs. State of Haryana, (1977) 4 SCC 137** and **Madhu Limaye Vs. State of Maharashtra**, **(1977) 4 SCC 551**, Hon'ble Supreme Court has pointed out that all orders, other than final orders, are not interlocutory ones. Some of them are intermediate or quasi final orders. They refer to such orders which terminate the Proceedings if passed in a certain way. But if they are passed in another way, the Proceeding continues. Orders taking cognizance, summoning Accused, framing charge etc. are some examples of such orders.

12. The relevant part of **Amar Nath case** (supra) reads as follows:

> "**6**……It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the

> important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revison to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court."
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> (Emphasis supplied.)

13. The concept of interlocutory order was further elucidated in **Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551**, where Hon'ble Supreme Court has held as follows:

> "**15**……an order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of Section 397(2)."

14. In **V.C. Shukla v. State through CBI, 1980 Supp SCC 92**, Hon'ble Supreme Court has further explained interlocutory and intermediate orders, holding as follows:

> "**23**…… We have, therefore, first to determine the natural meaning of the expression "interlocutory order". To begin with, in order to construe the term "interlocutory", it has to be construed in contradistinction to or in contrast with a final order. We are fortified by a passage appearing in The Supreme Court Practice, 1976 (Vol. I, p. 853) where it is said that an interlocutory order is to be contrasted with a final order, referring to the decision of Salaman v. Warner [(1891) 1 QB 734 : 60 LJ QB 624]. In other words, the words "not a final order" must necessarily mean an interlocutory order

> or an intermediate order……
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> **24.** To sum up, the essential attribute of an interlocutory order is that it merely decides some point or matter essential to the progress of the suit or collateral to the issues sought but not a final decision or judgment on the matter in issue. An intermediate order is one which is made between the commencement of an action and the entry of the judgment……..
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> Thus, summing up the natural and logical meaning of an interlocutory order, the conclusion is inescapable that an order which does not terminate the proceedings or finally decides the rights of the parties is only an interlocutory order. In other words, in ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not however conclude the trial at all……"
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> (Emphasis supplied.)

15. In **K.K. Patel v. State of Gujarat, (2000) 6 SCC 195**, Hon'ble Supreme Court has laid down the principle to know whether a particular order passed during interim stage is interlocutory or intermediate order. The relevant part of the judgment reads as follows :

> "**11**……It is now well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage (vide *Amar Nath* v. *State of Haryana* (1977) 4 SCC 137, *Madhu Limaye* v. *State of Maharashtra* (1977) 4 SCC 551, *V.C. Shukla* v. *State through CBI* 1980 Supp SCC 92 and *Rajendra Kumar Sitaram Pande* v. *Uttam* (1999) 3 SCC 134. The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable.

> **12.** Therefore, the High Court went wrong in holding that the order impugned before the Sessions Court was not revisable in view of the bar contained in Section 397(2) of the Code."
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> (Emphasis supplied.)

16. In **Girish Kumar Suneja v. CBI, (2017) 14 SCC 809** also, Hon'ble Apex Court has also held that there are three kinds of orders- final, intermediate and interlocutory and revision lies not only against final orders but also against intermediate orders. The relevant part of the judgment reads as follows:

> "**16.** There are three categories of orders that a court can pass—final, intermediate and interlocutory. There is no doubt that in respect of a final order, a court can exercise its revision jurisdiction—that is in respect of a final order of acquittal or conviction. There is equally no doubt that in respect of an interlocutory order, the court cannot exercise its revision jurisdiction. As far as an intermediate order is concerned, the court can exercise its revision jurisdiction since it is not an interlocutory order."

17. The concept of an intermediate order has been beautifully explained by Hon'ble Apex Court in **Girish Kumar Suneja case** (supra) holding as follows:

> "**21.** …….. an intermediate order is one which is interlocutory in nature but when reversed, it has the effect of terminating the proceedings and thereby resulting in a final order. Two such intermediate orders immediately come to mind—an order taking cognizance of an offence and summoning an accused and an order for framing charges. Prima facie these orders are interlocutory in nature, but when an order taking cognizance and summoning an accused is reversed, it has the effect of terminating the proceedings against that person resulting in a final order in his or her favour. Similarly, an order for framing of charges if reversed has

> the effect of discharging the accused person and resulting in a final order in his or her favour. Therefore, an intermediate order is one which if passed in a certain way, the proceedings would terminate but if passed in another way, the proceedings would continue."
>
> (Emphasis supplied.)

18. Similar view was expressed by Hon'ble Apex Court in **Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401**, holding as follows:

> "**8.** The interdict contained in Section 397(2) of the Code of Criminal Procedure (for short "the Code") is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test laid down by this Court through a series of decisions is this: if the contention of the petitioner who moves the superior court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If they would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage."
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> (Emphasis supplied)

19. Hence, it clearly emerges that all orders other than the final orders are not interlocutory ones. Some of them are intermediate or quasi final orders. The intermediate order is one which is passed at intermediate stage, but when reversed, it has the effect of terminating the proceedings and thereby resulting in a final order. In other words, if the contention/objection of the petitioner, who moves the superior Court in revision against the an impugned order, is upheld and the criminal proceeding as a

whole gets concluded/terminated, the impugned order is an intermediate and not interlocutory order, despite the fact that it was passed during an interlocutory stage. It also implies that the order may be intermediate for accused but interlocutory for the complainant/informant/State. The case at hand is one of such situations.

Present Case

20. In the present case, I find that it is the complainant and not the accused who has preferred the present criminal revision against the impugned order and the complainant is aggrieved on the ground that out of 23 proposed accused persons, only one accused has been summoned by learned Judicial Magistrate, and only for the offences punishable under Sections 323 and 506 of the Indian Penal Code, whereas in the complaint, the complainant, who is petitioner herein, has claimed that all the accused persons have committed offences punishable under Sections 119, 143, 147, 166, 167, 207, 209, 217, 218, 219, 220, 228, 120B, 323, 448, 504 and 511 of the Indian Penal Code. In other words, the complainant, who is petitioner herein, is seeking addition of 22 other accused persons. He is also seeking cognizance of additional offences punishable under Sections 119, 143, 147, 166, 167, 207, 209,

217, 218, 219, 220, 228, 120B, 448, 504 and 511 of the Indian Penal Code.

21. Here it would be pertinent to note that even if all the pleas/objections taken by the complainant/petitioner against he impugned order are accepted and the petition is allowed by this Court, the Proceedings before the court below would not get terminated or concluded, though, there would be addition of accused persons and offences. But if the test as laid down by Hon'ble Apex Court as discussed above is applied, the impugned order is interlocutory and not intermediate one for the complainant. Hence, the revision petition filed by him is barred under Section 397(2) Cr.PC/438(2) B.N.S.S.

22. However, the impugned order would have been intermediate order for the accused and he could have preferred revision petition against the summoning order, because in case of setting aside the summoning order, the whole proceeding before the Court below would get terminated.

23. Hence, I find that the present Criminal Revision petition filed by the complainant/petitioner is misconceived and not maintainable in view of Section 397(2) Cr.PC/438(2) B.N.S.S. The remedy of the complainant lies in invoking inherent jurisdiction of this Court as provided under Section 482

Cr.PC/528 B.N.S.S.. The petitioner has also remedy at later stage of the trial after recording of evidence of the prosecution. The complainant may summoning of additional accused under Section 319 Cr.PC/ Section 358 B.N.S.S., or addition/alteration of charge under Section 216 Cr.PC/ Section 239 B.N.S.S., if so advised.

24. Accordingly, the present petition stands dismissed as not maintainable, with liberty to the petitioner to move appropriate applications at appropriate stage.

(Jitendra Kumar, J.)

shoaib/S.Ali

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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