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MCRC-46353-2021

IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJESH KUMAR GUPTA

ON THE 16<sup>th</sup> OF DECEMBER, 2025MISC. CRIMINAL CASE No. 46353 of 2021*KANHAIYA JHA**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Ashok Jain - Advocate for the petitioner.

Shri Shiv Pratap Singh Kushwah- Advocate for the respondents No. 2  
to 5.

Shri Abhishek Bhadoriya - PP for the State.

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ORDER

1. The instant petition has been filed under Section 482 of the Cr.P.C. for quashing/setting aside the order dated 09.08.2021 passed by the Additional Sessions Judge, Ambah District Morena, in Criminal Revision No.268/2021 and also the order dated 22.10.2020 passed by the JMFC, Ambah, district Morena in Criminal Complaint No.501/2020.

2. The brief facts of the case are that the son of the petitioner namely- Himanshu Jha (now deceased) has gone to attend a Lagan ceremony at his friend's house namely- Rahul Singh Tomar on 19.02.2020. He attended the ceremony on 20.2.2020 and on the request of his friend Rahul, he stayed there to attend the marriage also to be held on 26.02.2020. The deceased son of the petitioner was going to return home on 28.02.2020. But, in the night of



27.02.2020, the accused Rahul Singh Tomar along with other other co-accused persons under the conspiracy and with common intention to kill him, committed murder of the deceased and thereafter they made a concocted story that the deceased son of the petitioner was found in suspicious condition in a park. The deceased was admitted in the hospital. But, after long treatment he died.

3. Thereafter, the petitioner/complainant filed a complaint under Section 200 of the Cr.P.C. accompanied with the application under Section 156(3) of the Cr.P.C. seeking direction for registration of FIR bearing criminal complain No.501/2020. But, the JMFC, dismissed his application filed under Section 156(3) of the Cr.P.C vide order dated 31.10.2020. The JMFC dismissed under Section 156(3) of the Cr.P.C. with observations that the present complaint can be examined by this Court to find conclusion of the incident, hence, no police investigation or inquiry is required by the police.

4. Being aggrieved by the order dated 31.10.2020, the petitioner filed a revision before the Sessional Court under Section 397 of the Cr.P.C. and the Sessions Court after hearing the parties, dismissed the revision holding the impugned order challenged therein is an interlocutory order and therefore the revision against the interlocutory order is not maintainable. Being aggrieved by the aforesaid, the petitioner has filed this petition.

5. Learned counsel for the petitioner submitted that the order passed by the sessions courts is arbitrary and contrary to the law and facts. The aforesaid order has been passed without application of judicial mind.



6. In the case of Raghu Raj Singh Rausha Vs. Shiva Sundaram Promoters Private Ltd Manu/Sc 357/2009, it has been held that “ The Criminal Revision is maintainable against an order rejection of the application u/s 156(3) Cr.P.C. He also placed reliance on the case Sakiri Vs. State of UP 2007 AIOL 1861.

7. Learned counsel for the petitioner further submitted that the trial court also committed grave error in rejecting the application filed by the petitioner under Section 156(3) of the Cr.P.C. wrongly holding that present complaint can be examined by this Court to find conclusion of the incident, hence, no police investigation or inquiry is required by the police. The trial court committed error because in the present case, police investigation and custodial interrogation is very much required to collect the evidence and find the truth of the case. The mens rea and intention can only be proved by the police investigation. The accused persons have committed the murder of the son of the petitioner under a conspiracy and in a planned way. The accused persons also in connivance with the competent police authorities have tried to erase the important evidence, therefore, police intervention is necessary.

8. Registration of FIR is mandatory under Section 154 of the Cr.P.c., if the information discloses commission of cognizable offence and no preliminary inquiry is permissible in such a situation. ” The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed.

9. In the case of Devarapali Laxminarayan Reddy Vs. V. Narayana Reddy, 1976 (3) SCC 252, the Hon'ble Apex Court has held that :-



10. If on a reading of the ‘complaint, he finds that the allegations therein “disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate. Learned counsel for the petitioner submits that the revisional court has **misdirected itself in law** by treating the impugned order as interlocutory, though the same **substantially affects the valuable rights of the applicant**. Hence, the instant petition be allowed and the impugned orders be set aside.

11. Learned counsel for the respondents/State as well as counsel for the respondents No.2 to 5 opposed the prayer and prayed for its rejection by supporting the impugned orders.

12. Heard counsel for the rival parties and perused the entire record with due care.

13. The present application under Section 482 of the Cr.P.C. has been filed for quashing the order dated 09.08.2021 passed by the learned Sessions Judge, Morena, whereby the criminal revision preferred by the petitioner was dismissed as not maintainable, holding that the order of the trial court was an interlocutory order, attracting the bar contained under Section 397(2) Cr.P.C.

14. During the pendency of the proceedings, the learned trial court passed an order dated 22.10.2020. Aggrieved by the said order, the applicant preferred a Criminal Revision before the Sessions Court, which came to be dismissed solely on the ground that the order impugned was interlocutory in



nature.

15. Now the primary question arises before this Court is Whether the order passed by the trial court can be treated as an interlocutory order so as to bar revision under Section 397(2) Cr.P.C.?

16. The expression “interlocutory order” has not been defined under the Cr.P.C.. However, the scope of Section 397(2) Cr.P.C. has been authoritatively settled by judicial pronouncement.

17. In *Amar Nath v. State of Haryana*, (1977) 4 SCC 137, the Hon’ble Supreme Court held:

“An interlocutory order is one which is purely interim or temporary in nature and does not decide or touch the important rights or liabilities of the parties.”

18. Subsequently, in the judgment of *Madhu Limaye v. State of Maharashtra*, (1977) 4 SCC 551, the Hon’ble Supreme Court clarified:

“Some orders may not be final orders and yet they may not be interlocutory orders. Such orders fall in the category of **intermediate orders**, against which revision is maintainable.”

19. The test of finality depends upon whether the order affects the rights of the accused or decides an important aspect of the trial.

20. Applying the aforesaid principles, this Court finds that the order passed by the trial court **cannot be termed as a purely interlocutory order**, as **it has serious consequences on the rights of the petitioner and the continuation of criminal proceedings.**

21. The learned Sessions Judge, therefore, committed a jurisdictional



error in dismissing the revision as not maintainable, without examining whether the impugned order was an intermediate order.

22. Such an approach defeats the very purpose of revisional jurisdiction and results in miscarriage of justice, which warrants interference by this Court in exercise of its inherent powers vested under Section 482 of the Cr.P.C.

23. In view of the above discussion, the present petition is **allowed**. The impugned order dated 09.08.2021 passed by the Sessions Judge Ambah District Morena is hereby set aside. The matter is **remanded to the revisional court** to decide the criminal revision **afresh on merits**, in accordance with law. It is made clear that this Court has **not expressed any opinion on the merits** of the case.

24. With the aforesaid, this petition is disposed of.

(RAJESH KUMAR GUPTA )  
JUDGE

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