IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 26th OF OCTOBER, 2023

CRIMINAL REVISION No. 3036 of 2023

BETWEEN:-

RAGHVENDRA KUMAR S/O SHRI AWADHESH PRASAD SINHA, AGED ABOUT 41 YEARS, OCCUPATION: GOVT. JOB R/O RAM KRISHNA NAGAR MOTHER TERESA PATH P.S. RAM KRISHNA NAGAR PATNA (BIHAR)

.....PETITIONER

(BY SHRI KUNJAN MITTAL - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION KANWAN DISTRICT DHAR. (MADHYA PRADESH)**
2. **BINITA KUMARI W/O RAGHVENDRA KUMAR SINHA,AGED ABOUT 38YEARS, OCCUPATION: SERVICE IN BANK BANK OF INDIA KIDWAI NAGAR, KANPUR DISTRICT KANPUR (UTTAR PRADESH)**

.....RESPONDENTS

(MS. HARSHLATA SONI , G.A. FOR STATE AND SHRI SUPRIY MISHRA – ADVOCATE FOR RESPONDENT NO.2)

CRIMINAL REVISION No. 142 of 2023

BETWEEN:-

GOKUL CHAND MEENA S/O SHYORAJ MEENA, AGED ABOUT 38 YEARS, OCCUPATION: BRANCH MANAGER BANK

OF INDIA BHANPURA VILLAGE KARELA DISTRICT: SAWAI MADHOPUR (RAJ) AT PRESENT: SHIV DHAM COLONY BHANPURA, DISTRICT: MANDSAUR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ANSHUL SHRIVASTAVA - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION KANWAN DISTRICT DHAR (MADHYA PRADESH)**
2. **VINITA KUMARI SINHA W/O RAGHVENDRA KUMAR SINHA, AGED ABOUT 35 YEARS, OCCUPATION: ZONAL OFFICER BANK OF INDIA, KIDWAI NAGAR KANPUR, KANPUR DEHAT, DISTRICT KANPUR (UTTAR PRADESH)**

.....RESPONDENTS

(MS. HARSHLATA SONI, G.A. FOR STATE AND SHRI HIMANSHU JAIN, ADVOCATE FOR RESPONDENT NO.2)

Reserved on : 20.09.2023
Pronounced on : 26.10.2023

These revisions coming on for admission this day, the court passed the following:

ORDER

1] This order shall also govern the disposal of Criminal Revision Nos.3036/2023 and 142/2023 as both the revisions have arisen out of the order dated 19/10/2022 of framing of charges under Sections 420, 467, 468, 471, 409, 201 and 120-B of the IPC in connection with offence relating to FIR bearing Crime No.438/2021 registered at P.S. Kanwan, District Dhar (M.P.), which was lodged on 16.08.2021, in respect of the incident which took place on 13.01.2014.

2] In brief, the story of the prosecution is that the petitioner Raghvendra Kumar Sinha happens to be the husband of the complainant Binita Kumari, as their marriage was solemnized in the year 2009, when both of them were working in the Bank of India. In her FIR dated 16.08.2021 it is alleged by the complainant wife that on 13.01.2014, a sum of Rs.60,000/- was illegally debited from her account and credited into the account of the petitioner. After investigation, the charge-sheet was filed, and charges have been framed by the trial court as aforesaid. So far as the petitioner Gokul Chand Meena is concerned, the only charge framed against him is under Section 120-B of IPC.

3] The following charges have been framed against the petitioner Raghvendra Kumar Sinha on 19/10/2022 :-

> "1. आपने दिनांक 13.01.2014 को समय 10.00 से 17.00 बजे के मध्य बैंक ऑफ इण्डिया शाखा कानवन पर फरियादी के बचत खाता क्रमांक 441011110000067 को रूपये 60,000/- से डेबिट कर उसके खाते से स्वयं के खाता क्रं 980026110000009 में कूटरचित दस्तावेजों के द्वारा रूपये 60,000/- से क्रेडिट कर आपराधिक न्यासभंग किया। इस प्रकार आपका उक्त कृत्य धारा 409 भारतीय दंड संहिता के अंतर्गत दंडनीय होकर इस न्यायालय के संज्ञान में है।
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> 2. आपने उक्त दिनांक, समय व स्थान पर बैंक ऑफ इण्डिया शाखा कानवन पर फरियादी के बचत खाता क्रमांक 441011110000067 को रूपये 60,000/- से डेबिट कर उसके खाते से स्वयं के खाता क्रं. 980026110000009 में कूटरचित दस्तावेजों के द्वारा रूपये 60,000/- से क्रेडिट कर फरियादी को बेईमानी से प्रवंचित कर छल कारित किया गया। इस प्रकार आपका उक्त कृत्य धारा 420 भारतीय दंड संहिता के अंतर्गत दंडनीय होकर इस न्यायालय के संज्ञान् में है।
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> 3. आपने उक्त दिनांक, समय व स्थान पर फरियादी बिनीता कुमारी के नाम का बैंक ऑफ इण्डिया शाखा कानवन डेबिट व्हाउचर दिनांक

13.01.2014 बनाकर साशय एवं ज्ञानपूर्वक कूटरचना की। इस प्रकार आपका उक्त कृत्य धारा 467 भारतीय दंड संहिता के अंतर्गत दंडनीय होकर इस न्यायालय के संज्ञान में है।

4. आपने उक्त दिनांक, समय व स्थान पर फरियादी बिनीता कुमारी के नाम का बैंक ऑफ इण्डिया शाखा कानवन डेबिट व्हाउचर दिनांक 13.01.2014 बनाकर साशय एवं ज्ञानपूर्वक कूटरचना इस आशय से की, उस दस्तावेज को छल के लिये उपयोग में लिया जाये। इस प्रकार आपका उक्त कृत्य धारा 468 भारतीय दंड संहिता के अंतर्गत दंडनीय होकर इस न्यायालय के संज्ञान में है।

5. आपने उक्त दिनांक, समय व स्थान पर फरियादी बिनीता कुमारी के नाम का बैंक ऑफ इण्डिया शाखा कानवन डेबिट व्हाउचर दिनांक 13.01.2014 जो कि एक कूटरचित दस्तावेज है, उसे कूटरचित जानते हुए या कूटरचित होने का विश्वास करने का कारण रखते हुए उपयोग में लिया। इस प्रकार आपका उक्त कृत्य धारा 471 भारतीय दंड संहिता के अंतर्गत दंडनीय होकर इस न्यायालय के संज्ञान में है।

6. आपने उक्त दिनांक, समय व स्थान पर फरियादी बिनीता कुमारी के नाम का डेबिट व्हाउचर दिनांक 13.01.2014 जो कि एक कूटरचित दस्तावेज है एवं उस दस्तावेज की रचना की जाने में जो कि एक अवैध कार्य है उसे करने या करवाने में सहमत हुए। इस प्रकार आपका उक्त कृत्य धारा 120-बी भारतीय दंड संहिता के अंतर्गत दंडनीय होकर इस न्यायालय के संज्ञान में है। अतएव में आदेशित करता हूँ कि इस न्यायालय द्वारा आपका विचारण उपरोक्त आरोपों हेतु किया जाये।“

4] Following charge has been framed against petitioner Gokul Chand Meena:-

"आपने दिनांक 13-01-2014 को समय 10.00 से 17.00 बजे के मध्य बैंक ऑफ इण्डिया शाखा कानवन पर फरियादी बिनीता कुमारी के नाम का डेबिट व्हाउचर दिनांक 13.01.2014 जो कि एक कूटरचित दस्तावेज है एवं उस दस्तावेज की रचना की जाने में जो कि एक अवैध कार्य है उसे करने या करवाने में सहमत हुए। इस प्रकार आपका उक्त कृत्य धारा 120-बी भारतीय दंड संहिता के अंतर्गत दंडनीय होकर इस न्यायालय के संज्ञान में है।

अतएव मैं आदेशित करता हूं कि इस न्यायालय द्वारा आपका विचारण उपरोक्त आरोंपों हेतु किया जाये।"

5] Learned counsel for the petitioner has submitted that the dispute arose between the petitioner/husband and his wife Binita Kumari Sinha, the complainant, in the year 2014 itself, and the complainant has already lodged two criminal cases against the petitioner, one under the Protection of Women from Domestic Violence Act, 2005, and another Section 498-A of IPC, and the third one is the present case, whereas, the petitioner had also filed an application under Section 9 of the Hindu Marriage Act, but the same was withdrawn, and subsequently a case for divorce under Section 13 of the Hindu Marriage Act has been filed. It is further submitted that the petitioners have been falsely implicated in the case, and it is a clear case of an afterthought, as in the FIR there is no reason assigned for lodging the complaint after a lapse of seven years and seven months. It is also submitted that in the charge-sheet, the only document relied upon by the prosecution is the authority letter filed along with charge-sheet at page No.20, and the debit voucher dated 13.01.2014 from which, the amount has been transferred.

6] Counsel for the petitioner has not denied that amount was credited in the account of the petitioner from the account of the complainant, however, it is submitted that the aforesaid transaction was in respect of purchasing a Maruti Car by the petitioner. The documents in this regard have also been filed on record, that on the same day, i.e. on 13.01.2014, when the offence is alleged to have been committed, a loan of Rs.4,47,000/- was also sanctioned to the petitioner on which the complainant wife had also signed as the Guarantor. It is submitted that

it is well within the knowledge of the complainant that the aforesaid amount was transferred from her account to the account of the petitioner for the aforesaid transaction of loan, obtained to purchase a car for them, as her account was already having the SMS facility It is also submitted that the original document of the authority letter from which the complainant had allowed the aforesaid sum of **Rs.60,000/-** to be credited in her husband's account is not available and thus, only on the basis of the photocopy of the same, coupled with the debit voucher, no offence as charged are made out and no conviction can be recorded, as the debit voucher in itself is not sufficient to establish that the petitioner has committed any offence. In support of his submissions that the photocopy cannot be admitted in evidence, counsel has relied upon the decision rendered by the Punjab and Harayana High Court in the case of ***Surjit vs. Prem Kumar Khera and others 1995(1)CurLJ 365***.

7] It is also submitted that the documents filed by the petitioner can also be relied upon at this stage and for this purpose he has placed reliance upon the judgment delivered by the apex Court in the case of **Rukmani Narvekar Vs. Vijay Satardekar and Others reported in 2008 (14) SCC 1**.

8] He has further placed reliance upon the judgment delivered by the Supreme Court in the case of **Hasmukhlal D. Vora and Another Vs. State of Tamil Nadu** reported as **2022 SCC OnLine 1732,** and **to** buttress his arguments that the photocopies of the documents cannot be relied upon **Rashid Khan Vs. State of M.P.** reported in **2011(3) MPLJ 575**. Lastly, it is also submitted that the petitioner was the Assistant Branch Manager in Bank of India, already drawing a handsome salary

at the time of incident, and had no reasons to resort to such embezzlement of a paltry sum of Rs.60,000/-.

9] Shri Anshul Shrivastava, learned Counsel appearing for the petitioner Gokul Chand Meena in CR.R.No. Cr.R.No.142/2023, has submitted that the petitioner has been charged only with Section 120-B of IPC, and the dispute was between the complainant Binita Kumari Sinha and her husband, the co-accused Raghvendra Kumar Sinha, and the petitioner had only signed the voucher in the capacity of a Branch Manager of Bank of India, at the instance of co-accused Raghvendra Kumar, who was the then Assistant Branch Manager of the said Bank. It is submitted that no offence can be attributed to the present petitioner who is caught in a domestic dispute between the complainant and the co-accused Raghvendra Kumar. In support of his submissions, learned counsel has also relied upon judgment delivered by the apex Court in the case of **Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra** reported in **(2008) 10 SCC 394**.

10] On the other hand, learned counsel for the respondent no.2 Smt. Binita Kumari Sinha has vehemently opposed the prayer, and submitted that the complainant has already been examined in the court, and at this stage no case for interference is made out. It is submitted that the judgments submitted by the petitioner(s) cannot be relied upon at this stage, and even otherwise there is sufficient material available on record to connect the petitioners with the offence.

11] Counsel for the State has also opposed the prayer.

12] Heard counsel for the parties and perused the record.

13] From the record it is apparent that the date of the alleged

transaction is 13.01.2014, whereas, the FIR has been lodged only on 16.08.2021. The FIR is totally silent about the delay of 7 years and 7 months in lodging the same and the transaction is not denied by the petitioners/accused persons. On perusal of the FIR also reveals that the complainant has only alleged that a fraud has been played on her by her husband and she has also obtained the Bank Statement, debit and credit voucher from the said Bank. It is surprising as to how the concerned police station has straight away lodged the FIR, in a case of documentary evidence, relating to a dispute between a wife and a husband, after a period of 7 years and 7 months. This itself gives reasonable doubt as to the veracity of the case.

14] It is also found that the documents on which the prosecution has relied upon to bring the charges framed are under Sections 420, 467, 468, 471, 409, 201 and 120-B of the IPC at home, include a photocopy of the authority letter in the name of the complainant, which, according to the complainant, is not signed by her, and is forged by the petitioner Raghvendra Kumar, however, it is an admitted fact that only a photocopy of the same is available as its original is already lost.

15] It is also a trite law that a photocopy of the document is not admissible in evidence and thus**,** in the absence of the original authority letter dated 13.01.2014, it can never be found out whether it actually bore the signatures of the complainant, or they have been forged by the petitioner Raghvendra. So far as the debit and credit vouchers are concerned, they do not require the signatures of the complainant, hence they are hardly of any use to the prosecution and cannot be used to convict the petitioners. In such circumstances, in the considered

opinion of this court, the petitioners cannot be charged with the offences alleged against them viz 420 (Cheating and dishonestly), 467 (Forgery of a valuable security), 468 (forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall be liable to fine), 471 (fraudulently or dishonestly), 409 (criminal breach of trust by a public servant, banker, merchant, or agent), 201(Causing disappearance of evidence of offence, or giving false information to screen offender) and 120-B (criminal conspiracy to commit an offence punishable with death) of the IPC, 1860, only on the basis of debit/credit vouchers which are not disputed by the petitioners.

16] On perusal of the Charge sheet, this court is also of the considered opinion that the aforesaid transaction is being used by the complainant wife only as a tool to settle her personal score with the petitioner Raghvendra Kumar, whereas the co-accused Gokul Chand Meena is embroiled in their matrimonial dispute for signing the debit voucher more than seven years and seven months earlier.

17] It is also found that in the document relied upon by the petitioner regarding the Car loan dated 14.12.2013, the complainant has stood as a Guarantor under the ‘Staff Vehicle Loan’ scheme of the Bank of India, and has signed the same on its each page on the same day, i.e., 13.01.2014, when the amount was debited from the account of the complainant and credited in the account of the petitioner Raghvendra Kumar. So far as the consideration of the documents filed by the petitioner by this court is concerned, the Supreme Court, in the case of

Rukmani Narvekar (supra), has held as under:-

> *29. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstance can the Court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. We agree with Shri Lalit that in some very rare cases the Court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted.*

18] This documents is not disputed by the complainant in the written arguments submitted on her behalf, in such circumstances, when both of them were posted in the same branch of Bank of India, at Zonal Office, Indore, and purchased a car in the name of the petitioner by obtaining a car loan from the same Bank, with the complainant being the Guarantor of the loan, it cannot be believed that the complainant was not aware of this transaction at that time that her account has been wrongly or fraudulently debited by her husband for which she could easily have raised a complaint to the Bank authorities at that time only.

19] Although, this court is aware that question of limitation would not arise in the present case, but the question is whether the complainant, a senior bank officer herself, can be allowed to allege in the year 2021, that she was cheated by her husband in the year 2014, in a bank transaction of her own bank, where she and her husband both were posted as Bank officers? And the answer is an emphatic no. This court is of the considered opinion that after the complainant wife allowed the said car loan transaction to take place on 13.01.2014, and did not raise any objection at that time, she cannot be allowed to cry

wolf after seven years and seven months of the said transaction. It is apparent that the complainant was well aware of the subtleties of this transaction all along but kept it to herself, only to be used in case any occasion arises, and, the occasion did arise when a matrimonial dispute took place between the parties as the complainant has already lodged cases under the Protection of Women from Domestic Violence Act, 2005, and under Section 498-A of IPC.

20] So far as **delay** in lodging a criminal case is concerned, the Supreme Court, the case of **Hasmukhlal D. Vora (supra),** has held as under:-

> **"24.** There has been a gap of more than four years between the initial investigation and the filing of the complaint, and even after lapse of substantial amount of time, no evidence has been provided to sustain the claims in the complaint. As held by this Court in *Bijoy Singh* v. *State Of Bihar*, inordinate delay, if not reasonably explained, can be fatal to the case of the prosecution. The relevant extract from the judgment is extracted below:—
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> "*Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn, but failure to explain the delay would require the Court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if reasonable, plausible and sufficient explanation is tendered, no adverse inference can be drawn against it."*
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> **25.** In the present case, the Respondent has provided no explanation for the extraordinary delay of more than four years between the initial site inspection, the show cause notice, and the complaint. In fact, the absence of such an explanation only prompts the Court to infer some sinister motive behind initiating the criminal proceedings.
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> **26.** While inordinate delay in itself may not be ground for quashing of a criminal complaint, in such cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint.
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> **27.** While this court does not expect a full-blown investigation at the stage of a criminal complaint, however, in such cases where the accused has been subjected to the anxiety of a potential initiation of criminal proceedings for such a length of time, it is only reasonable for

> the court to expect bare-minimum evidence from the Investigating Authorities."
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> **(*emphasis supplied*)**

21] This court is of the considered opinion that the process of the court cannot be used to settle the personal scores of the private parties. The present case is apparently an offshoot of a matrimonial dispute, and the complainant wife cannot be allowed to keep the alleged offence in hibernation, for years together, only to be used it as a leverage over her husband and the other accused person, who are clearly at a disadvantage in contesting the case due to lapse of time. This court is also of the considered opinion that the courts are meant for serious litigants only, who are seeking redressal of their genuine problems, and not for those who use it at their leisure and pleasure, at the expense of needy and victims of serious crimes.

22] This court can also fruitfully rely upon the decision rendered by the Supreme Court regarding the misuse of the process of the court in the case of ***Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd., (2008) 13 SCC 678 in which it is*** held as under:-

> ***"17.*** *The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of the well-known legal principles involved in the matter.*
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> ***18.*** *It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure should be exercised, but some attempts have been made in that behalf in some of the decisions of this Court as for example State of Haryana v. Bhajan Lal, Janata Dal v. H.S. Chowdhary, Rupan Deol Bajaj v. Kanwar Pal Singh Gill and Indian Oil Corpn. v. NEPC India Ltd.*
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> ***19.*** *In* ***Bhajan Lal*** *this Court held: (SCC pp. 378-79, para 102)*
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> *"102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their 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 first information report 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 uncontroverted allegations made in the FIR or complaint 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 without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person 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 Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide 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 personal grudge."

***20.** We may also place on record that criminal proceedings should not be encouraged when it is found to be mala fide or otherwise abuse of process of court.*

***21.** In All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain it was opined: (SCC pp. 781-82, para 16)*

"16. We are of the opinion that the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. For the said purpose, this Court may not only take into consideration the admitted facts but it is also permissible to look into the pleadings of Respondent 1-plaintiff in the suit. No allegation whatsoever was made against the appellants herein in the notice. What was contended was negligence and/or breach of contract on the part of the carriers and their agent. Breach of contract simpliciter does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefore. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding

out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice."

22. *Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable."*

(emphasis supplied)

23] Similarly, in the case of ***Prabhu Chawla v. State of Rajasthan, (2016) 16 SCC 30*** the Supreme Court has reflected upon the situation where powers u/s.482 and s.397 of Cr.P.C. overlaps, it has been held as under:-

"5. Mr Goswami also placed strong reliance upon the judgment of Krishna Iyer, J. in a Division Bench in *Raj Kapoor* v. *State*. Relying upon the judgment of a Bench of three Judges in *Madhu Limaye* v. *State of Maharashtra* and quoting therefrom, Krishna Iyer, J. in his inimitable style made the law crystal clear in para 10 which runs as follows : (*Raj Kapoor case,* SCC pp. 47-48)

"*10.* The first question is as to whether the inherent power of the High Court under Section 482 stands repelled when the revisional power under Section 397 overlaps. The opening words of Section 482

contradict this contention because nothing of the Code, not even Section 397, can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made : easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. In *Madhu Limaye* v. *State of Maharashtra* this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that Section 482 is pervasive it should not subvert legal interdicts written into the same Code, such, for instance, in Section 397(2). Apparent conflict may arise in some situations between the two provisions and a happy solution 'would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction'. (SCC pp. 555-56, para 10)

In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the Court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is a *tertium quid*, as Untwalia, J. has pointed out as for example, where it is more than a purely interlocutory order and less than a final disposal. The

present case falls under that category where the accused complain of harassment through the court's process. Can we state that in this third category the inherent power can be exercised? In the words of Untwalia, J. : (SCC p. 556, para 10)

'*10.* … The answer is obvious that the bar will not operate to prevent the abuse of the process of the court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.'

I am, therefore clear in my mind that the inherent power is not rebuffed in the case situation before us. Counsel on both sides, sensitively responding to our allergy for legalistics, rightly agreed that the fanatical insistence on the formal filing of a copy of the order under cessation need not take up this Court's time. Our conclusion concurs with the concession of counsel on both sides that merely because a copy of the order has not been produced, despite its presence in the records in the court, it is not possible for me to hold that the entire revisory power stands frustrated and the inherent power stultified."

6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of the High Court under Section 482 CrPC is unwarranted. We would simply reiterate that Section 482 begins with a non obstante clause to state:

"**482.** ***Saving of inherent powers of High Court***.—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."

A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J.

"abuse of the process of the court or other extraordinary situation excites the Court's jurisdiction. The limitation is self-restraint, nothing more". (*Raj Kapoor case*, SCC p. 48, para 10)

We venture to add a further reason in support. Since Section 397 CrPC is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 CrPC only to petty interlocutory orders! A situation wholly unwarranted and undesirable.

24] In the light of the aforesaid discussion and the decisions, this court has no hesitation to hold that to allow the criminal proceedings against the petitioner would be sheer misuse of the process of the court. Thus, this court is inclined to allow these petitions and the impugned orders dated 19.10.2022 of framing of charges are hereby set aside and the petitioners are discharged under Sections 420, 467, 468, 471, 409, 201 and 120-B of the IPC in connection with offence relating to FIR bearing Crime No.438/2021.

26] Accordingly, the Criminal Revisions stand ***allowed.***

(**SUBODH ABHYANKAR**)
JUDGE

Shilpa