

SANJAY KUMAR RAI

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v.

STATE OF UTTAR PRADESH & ANR.

(Criminal Appeal No. 472 of 2021)

MAY 07, 2021

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**[N. V. RAMANA, CJI, SURYA KANT AND
ANIRUDDHA BOSE, JJ.]**

Code of Criminal Procedure, 1973 – s.397 – Criminal revision – Judicial Magistrate declined to discharge appellant in a case u/ ss.504 and 506 IPC – Criminal revision against the order turned down by High Court on ground of lack of jurisdiction u/s.397 CrPC while citing a Supreme Court decision in Asian Resurfacing case – On appeal, held: The High Court apparently under-appreciated the decision in Asian Resurfacing case – One may say so at least for two reasons – Firstly, the said case dealt with a challenge to charges framed under the Prevention of Corruption Act, 1988 (POCA) which not only is a special legislation, but also contains a specific bar u/ s.19 thereof against routine exercise of revisional jurisdiction – Secondly, Supreme Court in Asian Resurfacing case while expressing concern regarding the need to tackle rampant pendency and delays in criminal law system, followed the ratio laid down in an earlier decision in Madhu Limaye wherein it is laid down that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of s.397(2) CrPC – That apart, 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 circumstances of individual cases – In the present case, the High Court committed jurisdictional error by not entertaining the revision petition on merits and overlooking the fact that ‘discharge’ is a valuable right provided to the accused – In line with the fact that the High Court and the court below did not examine the fairness of criminal investigation in this case and other related aspects concerning improvement of witness statements, the High Court is directed to decide the revision petition afresh – IPC – ss.504 and 506 – Revision.

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- A *Jurisdiction – Inherent Jurisdiction – Inherent Jurisdiction of the High Court – Ambit of – Held: 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 – However, the High Court, while exercising its afore-stated jurisdiction ought to be circumspect – Discretion vested in the High Court is to be invoked carefully and judiciously for effective and timely administration of criminal justice system – Nonetheless, a complete hands off approach is not recommended – Albeit, there should be interference, may be, in exceptional cases, failing which there is likelihood of serious prejudice to the rights of a citizen –*
- B *Abuse of Court – Prevention of – Administration of criminal justice.*

Remanding the matter to High Court, the Court

- HELD:1.1.** While limiting the scope of a criminal revision to jurisdictional errors alone, the High Court apparently under-appreciated the Judgment in *Asian Resurfacing case*. One may say so at least for two reasons. *First*, the material facts in the said case dealt with a challenge to the charges framed under the Prevention of Corruption Act, 1988 (POCA). The judgment itself enlightens that not only is POCA a special legislation, but also contains a specific bar under Section 19 against routine exercise of revisional jurisdiction. *Second*, this Court in *Asian Resurfacing* while expressing concern regarding the need to tackle rampant pendency and delays in our criminal law system, followed the ratio laid down in an earlier decision in *Madhu Limaye*. [Para 13][149-G-H; 150-A-B]
- 1.2.** The correct position of law as laid down in *Madhu Limaye*, 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 CrPC. That apart, 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.

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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. [Para 15][151-B-E]

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2. Further, it is well settled that the Trial court while considering the discharge application is not to act as a mere post office. The Court has to sift through the evidence in order to find out whether there are sufficient grounds to try the suspect. The court has to consider the broad probabilities, total effect of evidence and documents produced and the basic infirmities appearing in the case and so on. Likewise, the Court has sufficient discretion to order further investigation in appropriate cases, if need be. [Para 16][151-E-F]

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3. In the present case, the High Court committed jurisdictional error by not entertaining the revision petition on merits and overlooking the fact that 'discharge' is a valuable right provided to the accused. In line with the fact that the High Court and the court below have not examined the fairness of criminal investigation in this case and other related aspects concerning improvement of witness statements, it is necessary for the High Court to reconsider the entire matter and decide the revision petition afresh. [Para 18][151-G-H; 152-A-B]

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Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551:[1978] 1 SCR 749 and Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4: [1979] 2 SCR 229 – relied on.

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Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation (2018) 16 SCC 299: [2018] 2 SCR 1045 – referred to.

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Case Law Reference

[1978] 1 SCR 749	relied on	Para 13
[2018] 2 SCR 1045	referred to	Para 8
[1979] 2 SCR 229	relied on	Para 16

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- A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 472 of 2021

From the Judgment and Order dated 28.11.2018 of the High Court of Judicature at Allahabad in Criminal Revision Defective No. 325 of 2014.

- B Deepak Nargolkar, Sr. Adv., Mrs. Prerna Singh, Mrs. Divya Mishra, Shantanu Sagar, Advs. for the Appellant.

S.R. Singh, Sr. Adv., Ankur Prakash, Adv. for the Respondents.

The Judgment of the Court was delivered by

SURYA KANT, J,

- C 1. Leave granted.

2. This appeal emanates from the judgment dated 28.11.2018 passed by the High Court of Judicature at Allahabad whereby a criminal revision against the order dated 13.03.2014 of the Chief Judicial Magistrate, Sant Kabir Nagar refusing to discharge the appellant in

- D N.C.R. No.120/2012 under Sections 504 and 506 of Indian Penal Code, 1860 [hereinafter referred to as “IPC”], has been turned down.

3. A brief reference to the facts may be necessary for disposal of the present appeal. A complaint was lodged with the jurisdictional police by Respondent No.2 (Kuldeep Mishra), who claimed to be a newspaper

- E correspondent working for ‘The Pioneer’. It was alleged that he had conducted a journalistic investigation for malpractices against one gas agency, namely ‘Kalpana Indane Service’. He had also applied for certain information under the Right to Information Act 2005, so as to conduct investigation on alleged black marketing of gas cylinders by the aforesaid agency. The appellant herein is a partner in the aforesaid gas agency.

- F As per the NCR report it is stated that the appellant, while he was responding to the calls made by Respondent No.2, started calling him names and threatened to kill Respondent No.2. It is alleged that the appellant had threatened Respondent No.2 to pump numerous bullets in his face so that he may not even be recognized.

- G 4. On 08.05.2012 the complainant filed an application before the concerned Chief Judicial Magistrate (“CJM”) under Section 155 (2) Cr.P.C. for conducting investigation in the aforesaid allegations. The Court accordingly directed investigation and ordered the local police to submit the report.

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5. It may be noted that during the course of investigation statement of complainant was recorded by the police which forms part of the case diary. The material allegations as stated in the aforesaid statement are as follows:-

“.....The applicant had kept the speaker of his mobile on and from his mobile no. XXXX telephoned to Sanjay Rai’s mobile no. XXXX to enquire about the latest irregularities in the said gas agency. On mobile itself, Sanjay Rai started to give filthy abuses to the applicant and threatened to kill him. At the same he also told that your right to information and intellectual concerns shall be kept back in your hands. I will shot [sic.] such number of bullets that even your face could not be recognized. Mohd. Sharif Kahn and Umesh Kumar Bhatt had also heard the threatening given by Sanjay Rai.”

It is apparent that there is material change in the statement of the respondent – complainant wherein he introduced Mohd. Sharif Khan and Umesh Kumar Bhatt as witnesses for the call made by the appellant herein.

6. In any case, on 21.07.2012 a charge sheet came to be filed against the appellant/accused under Sections 504 and 506 IPC based on the statement of complainant and the affidavits of two witnesses. It may not be out of context to mention here that the Investigating Officer did not deem it necessary to take the version of the appellant on record or consider his side of story also.

7. The CJM took cognizance of the matter on 08.11.2012. However, well before for framing of the charges the appellant sought his discharge under Section 239 Cr.P.C. contending that the complainant has falsely implicated him and the allegation of telephonic threats does not constitute an offence under Sections 504 and 506 of IPC. It was further averred that the investigation was not fair and was unilateral in its approach wherein the investigating officer had made no efforts to find out the truth and had instead relied on the statement of the complainant and other planted witnesses to fasten a case against the appellant. The learned CJM did not agree with the appellant’s plea and rejected his discharge application observing as under:-

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- A *From perusal of record it is obvious that no affidavit or any documentary evidence has been filed by the applicant/accused in support of his discharge-application.*
- B *The fact that which word has been used as abuses and threatening by the applicant is a matter of evidence which can not be determined at this stage. [sic.]*
- C *From oral as well as documentary evidences on records, there are sufficient evidence on records to frame charges against the accused.*
- D *In view of the aforesaid facts and circumstances, the application dated 20.02.2014 filed by the applicant Shree Sanjay Kumar Rai, U/s-239, Cr.P.C. does not appear to be maintainable at this stage and therefore is liable to be rejected.*

xxx xxx xxx”

- D 8. The appellant aggrieved by the aforesaid order approached the High Court through a Criminal Revision Petition, seeking reversal of CJM's order. The High Court relying on the judgment of this Court in *Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation*¹ observed that interference in the order framing charges or refusing to discharge is called for in rarest of rare case only to correct the patent error of jurisdiction. Finding no such jurisdictional error in CJM's order the Criminal Revision Petition was dismissed.
- E 9. Dissatisfied with the aforesaid impugned order, the appellant-accused has approached this Court through Special Leave Petition.

F **CONTENTIONS:**

- F 10. Learned Counsel for the appellant urged that *prima facie*, the story of the complainant seems dubious, for he himself initiated the phone call, put it on speaker and had two witnesses ready to listen to the conversation. No call records had been sought by the police, affidavits of the witnesses were blindly accepted and no attempt was made to record their statements under Section 161 of CrPC. The Investigating Officer proceeded with a closed mind and casually overlooked the credentials of the complainant who is involved in seven criminal cases including under Sections 323, 504 and 506 of IPC. A letter from the Resident Editor of

H ¹(2018) 16 SCC 299

'The Pioneer' was also produced, showing that the complainant was not employed with their newspaper around the time of the alleged incident. A

11. On the other hand, learned State Counsel urged that the allegations make for a clear case under Sections 504 and 506 of IPC and that no error was committed by the High Court or the CJM. In addition to the judgment of this Court which the High Court relied upon, he buttressed his submissions citing *State of Karnataka v. M.R. Hiremath*² which held that the Court ought not to enter into questions of evidentiary value of the material adduced at the stage of considering discharge, and *Srilekha Sentelkumar v. CBI*³ whereby this Court opined that it was impermissible to look into the merits of the case while exercising powers under Section 239 CrPC. B
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ANALYSIS :

12. At the outset, we may note that the High Court has dismissed the Criminal Revision on the ground of lack of jurisdiction under Section 397 of Cr.P.C. The High Court did not examine the issue in detail to find out whether the continuation of proceedings will amount to abuse of process of law in this case. The impugned order cites the decision of this Court in *Asian Resurfacing (supra)* wherein it was noted as under:- D

“...Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 CrPC or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to re-appreciate the matter.” E
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13. It appears to us that while limiting the scope of a criminal revision to jurisdictional errors alone, the High Court apparently under-appreciated the Judgment in *Asian Resurfacing (supra)*. We say so at least for two reasons. First, the material facts in the above-cited case dealt with a challenge to the charges framed under the Prevention of Corruption Act, 1988 ("POCA"). The cited judgment itself enlightens G

² (2019) 7 SCC 515

³ (2019) 7 SCC 82

- A that not only is POCA a special legislation, but also contains a specific bar under Section 19 against routine exercise of revisional jurisdiction. *Second*, This Court in *Asian Resurfacing (Supra)* while expressing concern regarding the need to tackle rampant pendency and delays in our criminal law system, followed the ratio laid down in an earlier decision in *Madhu Limaye v. State of Maharashtra*⁴ as can be seen from the following extract:
- B “27. *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 [Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551: 1978 SCC (Cri) 10] 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 a exceptional situation.”*
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(emphasis supplied)

- E 14. In *Madhu Limaye (supra)*, this Court authoritatively held:
- F “9... Sometimes the revisional jurisdiction of the High Court has also been resorted to for the same kind of relief by challenging the order taking cognizance or issuing processes or framing charge on the grounds that the Court had no jurisdiction to take cognizance and proceed with the trial, that the issuance of process was wholly illegal or void, or that no charge could be framed as no offence was made out on the allegations made or the evidence adduced in Court..
- G 10. ... Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused up to the end? **The answer is**
- H ⁴(1977) 4 SCC 551

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. A

(emphasis supplied)

15. 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 CrPC. 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. E

16. Further, it is well settled that the trial court while considering the discharge application is not to act as a mere post office. The Court has to sift through the evidence in order to find out whether there are sufficient grounds to try the suspect. The court has to consider the broad probabilities, total effect of evidence and documents produced and the basic infirmities appearing in the case and so on. [**Union of India v. Prafulla Kumar Samal⁵**]. Likewise, the Court has sufficient discretion to order further investigation in appropriate cases, if need be. F

17. This brings us to the present case wherein the High Court has not gone into the merits of the case and did not analyze the case in light of the settled law referred to above. G

18. The High Court has committed jurisdictional error by not entertaining the revision petition on merits and overlooking the fact that 'discharge' is a valuable right provided to the accused. In line with the

⁵ (1979) 3 SCC 4 H

- A fact that the High Court and the court below have not examined the fairness of criminal investigation in this case and other related aspects concerning improvement of witness statements, it is necessary for the High Court to reconsider the entire matter and decide the revision petition afresh. Accordingly, we set aside the impugned order dated 28.11.2018 and remand the case back to the High Court for its reconsideration in accordance with law.
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19. The appeal is disposed of in the aforesaid terms.

All the pending application(s), if any, also stands disposed of accordingly.

Bibhuti Bhushan Bose

Matter remanded to High Court.