REVISION (CRIMINAL)

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1.1. Object of revisional jurisdiction u/s 397 CrPC : The object of the provisions of revision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders which upon the face of them bear a token of careful consideration and appear to be in accordance with law. Revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes but merely indicative. Each case would have to be determined on its own merits. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be exercised against an interim or interlocutory order. See : Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460 *(paras 12 & 13).*

1.2. Revisional jurisdiction u/s 397 CrPC when to be exercised ? : The object of the provisions of revision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders which upon the face of them bear a token of careful consideration and appear to be in accordance with law. Revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. There are not exhaustive classes but are merely indicative. Each case would have to be determined on its own merits. Another well-accepted norm is that the revisional jurisdiction of the higher court is a

very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be exercised against an interim or interlocutory order. The revisional jurisdiction of the Court u/s 397 CrPC can be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. See : Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460 (paras 12, 13 & 20).

1.3. Revisional jurisdiction u/s 397 CrPC very limited one : The revisional jurisdiction of the court u/s 397 of the CrPC is very limited one. See : Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460 *(para 20).*

1.4. Revisional jurisdiction to be exercised on question of law : Relying upon its earlier decision in the case of Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460 (para 18), the Hon'ble Supreme Court, in the cases noted below, has ruled thus : "*Normally, revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases."* See :

(i) Chandra Babu Vs. State, (2015) 8 SCC 774.

(ii) Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762 *(para 18)*

(iii) Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460 *(para 18).*

1.5. Revisional jurisdiction u/s 397 CrPC can be exercised to prevent abuse of process of court or to secure the ends of justice : The revisional jurisdiction of the Court u/s 397 CrPC can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though Section 397 CrPC does not specifically use the expression "prevent abuse of process of any court or otherwise to secure the ends of justice", the jurisdiction u/s 397 CrPC is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction u/s 397 CrPC but ultimately it also requires justice to be done. The jurisdiction can be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the

judicial discretion is exercised arbitrarily. See : Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460 *(para 20).*

1.6. Merits of the case not to be discussed when court has no jurisdiction: It is settled law that once court holds that it has no jurisdiction in the matter, it should not consider the merits of the matter.See: Jagraj Singh vs. Birpal Kaur, AIR 2007 SC 2083

2.1. Types of orders that a court can pass ? : A court can pass following three types of orders :

(i) final order :

(ii) intermediate order :

(iii) interlocutory order:See :Girish Kumar Suneja Vs. CBI, AIR 2017 SC 3620 (Three-Judge Bench)(Para 17)

2.2. "Interlocutory Order" & its meaning : In the case of Amar Nath Vs. State of Maharashtra, AIR 1977 SC 2185 *(in para 6)*, the meaning of the expression "interlocutory order" has been given by the Hon'ble Supreme Court thus: *"It seems to us that the term "interlocutory order" in section 397(2) of the CrPC 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 liabilities** *of the parties. Any order which substantially affects the rights of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision 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.*" There is no doubt that in respect of a final order, a court can exercise its revisional jurisdiction i.e. in respect of a final order of acquittal or conviction. There is equally no doubt that in respect of an interlocutory order, court cannot exercise its revisional jurisdiction. An interlocutory order is not revisable. The purpose of Section

397(2) of the CrPC is to keep such an order outside the purview of the power of revision so that the enquiry or trial may proceed without delay. This is not likely to prejudice the aggrieved party for it can always challenge it in due course if the final order goes against it. But it does not follow that if the order is directed against a person who is not a party to the enquiry or trial and he will have no opportunity to challenge it after a final order is made affecting the parties concerned, he cannot apply for its revision even if it is directed against him and adversely affects his rights. An interlocutory order, though not conclusive (being mere intermediary order) of the main dispute, may be conclusive as to the subordinate matter with which it deals. It may thus be conclusive with reference to the stage at which it is made and it may also be conclusive as to a person who is not a party to the enquiry or trial against whom it is directed. The bar u/s 397(2) CrPC against an interlocutory order does not operate when it affects adversely a person who is not a party to the proceedings. There is no doubt that in respect of a final order, a court can exercise its revisional jurisdiction i.e. in respect of a final order of acquittal or conviction. There is equally no doubt that in respect of an interlocutory order, court cannot exercise its revisional jurisdiction. See :

(i) Girish Kumar Suneja Vs. CBI, AIR 2017 SC 3620 (Three-Judge Bench)

(ii) Parmeshwari Devi vs. State, AIR 1977 SC 403

(iii) Mohan Lal Magan Lal Thaker vs. State of Gujarat, AIR 1968 SC 733.

2.3. Revision maintainable only in respect of final and intermediate orders: As far as an intermediate order is concerned, court can exercise its revisional jurisdiction since it is not an interlocutory order and the bar of Section 397(2) CrPC is not attracted against an intermediate order. See: Girish Kumar Suneja Vs. CBI, AIR 2017 SC 3620 (Three-Judge Bench)

2.4. Power by High Court u/s 482 CrPC cannot be exercised in respect of interlocutory orders as the bar of Section 397(2) CrPC applies to Section 482 CrPC also : When Section 397(2) CrPC prohibits interference in respect of interlocutory orders, Section 482 CrPC cannot be availed of to achieve the same objective. In other words, since Section 397(2) CrPC prohibits interference with the interlocutory orders, it would not be permissible to resort to Section 482 CrPC. To set aside an interlocutory order, prohibition in Section 397 CrPC will govern Section 482 CrPC. The power under Section 482 of the CrPC is to be exercised only in respect of

interlocutory orders to give effect to an order passed under the CrPC or to prevent abuse of process of any Court or otherwise to serve the ends of justice. Such power has to be exercised only in the rarest of rare cases and not otherwise. In such cases, resort to Article 226 and 227 of Constitution would be permissible perhaps only in most extraordinary cases. See : Girish Kumar Suneja Vs. CBI, AIR 2017 SC 3620 (Three-Judge Bench)

2.5. Duty of High Court while passing order u/s 482 CrPC : In the present case, an application was filed by the appellant-accused u/s 482 CrPC to quash the proceedings u/s 498-A and 304-B IPC and Section ¾ of the DP Act, 1961. The High Court dismissed the petition by quoting only the principles of law laid down by the Supreme Court regarding the powers of the High Court on interference u/s 482 CrPC but without referring to the facts of the case at hand with a view to appreciate the factual controversy. The Supreme Court held that such an order passed by the High Court was not proper and remanded the case to the High Court for decision afresh on merits. See: Sangeeta Agrawal and others Vs State of Uttar Pradesh and other (2019) 2 SCC 336

2.6. Complaint case involving dispute of only civil nature liable to be quashed u/s 482 CrPC : In the present case, the High Court quashed the complaint against the respondent-accused filed for the alleged offences u/s 420, 406 read with Section 34 IPC. Ingredients of offences of Sections 406 and 420 IPC were found not satisfied. Averments and allegations made in the complaint did not disclose any criminality on the part of the accused and civil dispute was tried to be converted into a criminal dispute. The Supreme Court held that the criminal proceedings were rightly quashed by the High Court u/s 482 CrPC. See: Vinod Natesan Vs State of Kerala and others (2019) 2 SCC 401

2.7. A revision against an interlocutory order should be dismissed *in limine* at threshold: A revisional court is under no obligation to entertain a revision petition against an interlocutory order. Such a revision petition can be rejected at threshold. If the revisional court is inclined to accept revision petition, it can do so only against a final order or an intermediate order, namely, an order which if set aside, would result in culmination of proceedings. See : Girish Kumar Suneja Vs CBI, AIR 2017 SC 3620 (Three-Judge Bench)

2.8. SLP before the Supreme Court under Article 136 of the Constitution can be filed against interlocutory order : The bar of Section 397(2) CrPC to entertain revision does not prohibit the party from approaching the Supreme Court under Article 136 of Constitution. Therefore, all that has

happened is that forum for ventilating grievance of the appellants has shifted from the High Court to the Supreme Court. Mere fact that the Supreme Court could dismiss the petition filed by the appellants under Article 136 of the Constitution without giving reasons does not necessarily lead to conclusion that the reasons will not be given or that some equitable order will not be passed. Thus, if an interlocutory order is not revisable due to the prohibition contained in Section 397(2) CrPC, that cannot be circumvented by resort to Section 482 CrPC. See : Girish Kumar Suneja Vs. CBI, AIR 2017 SC 3620 (Three-Judge Bench**)**

2.9. Revision not to lie against order calling for report : An order calling for report is an interlocutory order within the meaning of Sec. 397(2) CrPC and revision against such order is not maintainable. See :

(i) Amar Nath Vs. State of Maharashtra, AIR 1977 SC 2185 *(Para 6)*

(ii) Father Thomas Vs. State of UP, 2011 (72) ACC 564 (All--F.B.) *(Para 44)*

2.10. Revision against an order u/s 311 CrPC: Order summoning or refusing to summon witnesses u/s 311 CrPC is an interlocutory order within the meaning of Section 397(2) CrPC as it does not decide any substantive right of litigating parties. Hence no revision lies against such orders. See:

(i) Ajai Dikshit Vs. State of UP & another, 2011 (75) ACC 388(All-LB)

(ii) Sethuraman Vs. Rajamanickam, 2009(65) ACC 607(SC)

(iii) Hanuman Ram Vs. State of Rajasthan & others, 2009 (64) ACC 895 (SC)

(iv) Asif Hussain vs. State of U.P., 2007 (57) ACC 1036 (All- D.B.)

2.11. Revision not maintainable against order of summoning witnesses : An order summoning witnesses is an interlocutory order within the meaning of Sec. 397(2) CrPC and revision against such order is not maintainable. See :

(i) Amar Nath Vs. State of Maharashtra, AIR 1977 SC 2185 *(Para 6)*

(ii) Father Thomas Vs. State of UP, 2011 (72) ACC 564 (All--F.B.) *(Para 44)*

2.12. Revision against order adjourning case not maintainable : Revision does not lie against an order adjourning the case or proceedings as such an order does not decide any right or liability of the party. See : Amar Nath Vs. State of Maharashtra, AIR 1977 SC 2185 *(Para 6)*

2.13. Interlocutory & Final Orders : According to Section 397(2) CrPC, revision against an interlocutory order is not maintainable. It is well settled that in deciding whether an order challenged is interlocutory or not as for as Section 397(2) CrPC is concerned, the sole test is not whether such order was passed during the interim stage. If the order under challenge culminates the criminal proceedings as a whole or **finally decides the rights and liabilities of the parties** then the order passed is not interlocutory in spite of the fact that it was passed during any interlocutory stage. 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) CrPC. See:

(i) M/s. Bhaskar Industries Ltd. vs. M/s. Bhiwani Denim, 2001(2) JIC 685 (SC)
(ii) K.K. Patel vs. State of Gujarat, (2000) 6 SCC 195
(iii) Rajendra Kumar Sitaram Pande vs. Uttam, (1999) 3 SCC 134.
(iv) V.C. Shukla vs. State through CBI, 1980 SCC (Criminal) 695 (Four-Judge Bench)
(v) Madhu Limaye vs. State of Maharashtra, (1977) 4 SCC 551 (Three-Judge Bench)

2.14. Test of interlocutory or final order : It is now well settled that in deciding whether an order challenged is interlocutory or not as per Section 397(2) CrPC, the sole test is not whether such order was passed during the interim stage. The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceeding, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) CrPC. An **order which substantially affects the rights of the accused or decides certain rights of the parties** would not be an interlocutory order. If the order passed in any petition would result in culminating the proceeding, the order would not be "interlocutory order" in nature as envisaged in Section 397(2) CrPC. See:

(i) K.K. Patel vs. State of Gujarat, (2000) 6 SCC 195
(ii) Rajendra Kumar Sita Ram Pande vs. Uttam, AIR 1999 SC 1028
(iii) V.C. Shukla vs. State through CBI, 1980 SCC (Cri) 695
(iv) Madhu Limaye vs. State of Maharashtra, AIR 1978 SC 47
(v) Amar Nath vs. State of Haryana, AIR 1977 SC 2185

2.15. Distinction between interlocutory & final order: The term "interlocutory order" is used in a restricted sense. It denotes an order of purely interim or temporary nature. It is not always converse of the term "final order". **An order which overrides important rights and liabilities cannot be termed as interlocutory**. See : Amar Nath vs. State of Haryana, AIR 1977 SC 2185

2.16. Exercising original powers of trial court by revisional court disapproved by the Hon'ble Supreme Court : Where the Hon'ble Himachal Pradesh High Court had allowed the criminal revision by entering into merits (assuming original powers of the trial court) by re-appreciating entire evidence and forming opinion that there was no prima facie case against the accused for framing charge, it has been held by the Hon'ble Supreme Court that the order of the High Court was improper in as much as the High Court in its revisional jurisdiction cannot appraise the evidence. It is the trial court which has to decide whether evidence on record is sufficient to make out a prima facie case against the accused so as to frame charge against him. Pertinently, even the trial court cannot conduct roving and fishing inquiry into evidence. It has only to consider whether evidence collected by the prosecution discloses prima facie case against the accused or not. See: Ashish Chadha Vs. Smt. Asha Kumari & another, AIR 2012 SC 431

2.17. Exercising original powers of lower court by revisional court disapproved by the Hon'ble Allahabad High Court : Where in a revision filed before Sessions Judge against rejection of application by Magistrate u/s 156(3) CrPC, the Sessions Judge (by exercising original powers of the Magistrate) himself had directed the police for registration of FIR, it has been held that the Sessions Judge could not have directed the police to register FIR u/s 156(3) CrPC. See:

(i) Hari Prakash kasana vs. State of U.P., 2009 (5) ALJ 750 (All)

(ii) Nawal Kishor Gupta vs. State of U.P. 2010 (5) ALJ 338 (All)

3. Revision not a right: Sections 397 to 403 CrPC do not confer a right on a litigant to file revision but the revisional power is only discretionary with the court to see that justice is done in accordance with the recognized principles of criminal jurisprudence. See **:**

(i) Malti vs. State of U.P, 2000 CrLJ 4170 (All)

(ii) Iqram vs. State of U.P. 1988(2) crimes 414(All)

4. Revision can be preferred directly to High Court: Revision against an order passed by Magistrate can be filed directly before the High Court. See: CBI Vs. State of Gujarat, AIR SC 2522

5.1. "Admission": Meaning of ? : Admission of a case does not amount to a decision on merits. It only means a prima facie case for adjudication is made out. When the court has admitted the proceedings without going into the merits of the case and on question of its maintainability, its only an order in the nature of an interlocutory order, i.e., it is not a "case decided". No rights flow from the order of admission in favour of either of the parties. The question of maintainability of the proceeding (revision, appeal, writ or any other proceedings) may be examined by the court at any stage subsequent to the order passed regarding admission of the case. See: Brij Bala vs. Distt. Judge, Kanpur Nagar, 2006 (65) ALR 238 (Allahabad)

5.2. Duty of court while passing order of admission: The court should provide its own grounds and reasons for rejecting the claim/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever concise they may be. The requirement of stating reasons for judicial orders necessarily does not mean a very detailed or lengthy order but there should be some reasoning recorded by the court for declining or granting relief to the party. While dealing with the matter at the admission stage, even recording of concise reasons dealing with the merit of the contentions raised before the court may suffice, in contrast, a detailed judgment while the matter is being disposed of after final hearing, may be more appropriate. But in both events, it is imperative for the court to record its own reasoning however short it may be. See: CCT Vs. Shukla & Brothers, (2010) 4 SCC 875

5.3. Revisional order must be speaking: When the court has admitted the revision, then it implies that it raises some arguable point. Dismissal of revision on same day by cryptic unreasoned order is improper. Whatever may be the outcome of the pleas raised by the parties, the order disposing of the revision must indicate the application of mind to the case and some reasons must be assigned for negating or accepting such pleas. Dismissal of revision by non-reasoned order would be unsustainable. See:

(i) Gowardhan Dass Bansal vs. State of Delhi, AIR 2009 SC 878 (Three-Judge Bench)
(ii) Jagtamba Devi vs. Hem Ram, 2008 CrLJ 1623 (SC)
(iii) Paul George vs. State, AIR 2002 SC 657
(iv) State of A.P. vs. Rajagopala Rao, (2000) 10 SCC 338
(v) Iqbal Bano vs. State of U.P., AIR 2007 SC 2215
(vi) State of A.P. vs. B. Satya Rao, (2004) 11 SCC 332
(vii) Atiq-ur-Rehman vs. Municipal Corpn. of Delhi, (1996) 3 SCC 37

6.1. Appreciation of evidence & extent of powers of revisional court :

(i) Appreciation/re-appreciation of evidence not to be done
(ii) Findings of fact not to be upset unless perverse
(iii) Findings of fact not to be substituted

While the appellate jurisdiction is co-extensive with the original court's jurisdiction as appreciation and re-appreciation of evidence is concerned, the revisional court has simply to confine to the legality and propriety of the findings and as to whether the subordinate court acted within its jurisdiction. A revisional court has no jurisdiction to set aside the findings of facts recorded by the Magistrate and impose and substitute its own findings. Sections 397 to 401 CrPC confer only limited power on revisional court to the extent of satisfying the legality, propriety or regularity of the proceedings or orders of the lower court and not to act like appellate court for other purposes including the recording of new findings of fact on fresh appraisal of evidence. See:

1. Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460 *(paras 12 & 18).*
2 Johar Vs. Mangal Prasad, AIR 2008 SC 1165
3. State farm Corpn. of India Ltd. vs. Nijjer Agro Foods Ltd., (2005) 12 SCC 502
4. State of Maharashtra vs. Jag Mohan Singh Kuldip Singh, 2004 (50) ACC 889 (SC)
5. Munna Devi vs. State of Rajasthan, AIR 2002 SC 107
6. Smt. Sheela Devi vs. Munnalal, 2000 (41) ACC 158 (Allahabad)
7. Ganga Prasad vs. State of U.P., 2000 (40) ACC 761 (Allahabad)
8. Sachidanand Singh vs. State of U.P., 1999 (39) ACC 681 (All)
9. Associated Cement Co. Ltd. vs. Keshvanand, 1998 (30) ACC 275 (SC)
10. Jamuna vs. State of U.P., 1997 (2) AWC 959 (Allahabad)

11. Akhlak Ahmad vs. Vahid Ali Ansari, 1987 (24) ACC 544 (All)
12. Dulichand vs. Delhi Administration, AIR 1975 SC 1960

6.2. Findings of facts recorded by lower court not to be altered by revisional court merely because another view on the same evidence is possible : Where in a case of maintenance filed by wife u/s 125 CrPC, the High Court had altered the findings of facts recorded by the Magistrate in its revisional powers u/s 401 CrPC even when the said findings of facts recorded by the Magistrate were neither perverse nor erroneous but based on proper appreciation of evidence on record, setting aside the order of the High Court, the Hon'ble Supreme Court has ruled that the High Court in its revisional powers could not have interfered with the findings of facts recorded by the lower court only because the High Court could have arrived at a different or another conclusion. See :

(i) State of T.N. Vs. Mariya Anton Vijay, (2015) 9 SCC 294 *(paras 65 & 66)*

(ii) Shamima Farooqui Vs. Shahid Khan, (2015) 5 SCC 705.

6.3. Findings of fact recorded by lower court to be disturbed by the revisional court only when the same are perverse: Normally, revisional jurisdiction u/s 397 CrPC should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the Court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases. See :

(i) Chandra Babu Vs. State, (2015) 8 SCC 774

(ii) Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460 *(para 18).*

(iii) Smt. Savitri Devi Vs. State of UP, 2014 (84) ACC 81 (All)

6.4. Revisional jurisdiction to be exercised when findings of fact recorded by lower court are perverse : Relying upon its earlier decision in the case of Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460 (para 18), the Hon'ble Supreme Court, in the case noted below, has ruled thus : "*Normally, revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no*

abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases." See : Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762 *(para 18)*

6.5. Revisional court can interfere with the findings of fact of the lower court only when the same is perverse and not merely when another view is also possible : Revisional court can interfere with the findings of fact of the lower court only when the same is perverse and not merely when another view is also possible. See : Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke & Others, (2015) 3 SCC 123.

6.6. When can a finding be said to be "perverse"?: The finding of fact recorded by a court can be held to be perverse if it has been arrived at by ignoring or excluding the relevant material or by taking into consideration irrelevant or inadmissible material. The finding may also be said to be perverse if it is against the weight of evidence or if the finding outrageously defies the logic as to suffer from the vice of irrationality. See:

(i). Anwar Ali Vs State of Himachal Pradesh, (2020) 10 SCC 166 (Three-Judge Bench)

(ii). Babu Vs State of Kerala, (2010) 9 SCC 189

6.7. Finding based on no evidence, material evidence ignored & interference by revisional court : When the findings recorded by the lower court are based on no evidence, material evidence has been ignored or judicial discretion has been exercised arbitrarily or perversely, the revisional court can interfere in exercise of its powers u/s 397 CrPC. See : Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460 *(para 12).*

6.8. Findings of fact recorded by Magistrate u/s 125 CrPC not to be altered by the revisional court : In revision against the order awarding maintenance by Magistrate u/s 125 CrPC, the revisional court has no power to re-assess the evidence and substitute its own findings. The questions whether the applicant is a married wife, the children are legitimate or illegitimate, being pre-eminently questions of fact, cannot be re-opened at the revisional stage and the revisional court cannot substitute its own views. See :

(i) Parvati Rani Sahoo Vs. Bishnupada Sahoo, (2002) 10 SCC 510

(ii) Bulakibai Vs. Gangaram, (1988) 1 SCC 537
(iii) Pathumma Vs. Muhammed, AIR 1986 SC 1436
(iv) Munesh Kumari Vs. Sheo Raj Singh, 2003 CrLJ 215 (All)
(v) Safiq Mohd. Vs. State of UP, 1999 (1) ALR 774 (All)
(vi) Rajmati Vs. Mithai, 1999 CrLJ 3378 (All)

6.9. Quantum of maintenance not to be questioned in revision : Finding of fact on quantum of maintenance cannot be ordinarily disturbed in revision (by High Court). See : Mst. Jagir Kaur Vs. Jaswant Singh, AIR 1963 SC 1521.

6.10. No fresh findings to be recorded in revision preferred against an order passed by Magistrate u/s 125 CrPC : Where the High Court in exercise of its revisional powers had set aside the findings of facts recorded by the lower court u/s 125 of the CrPC, it has been held by the Supreme Court that, "it is well settled that the Appellate or Revisional Court while setting aside the finding recorded by the Court below must notice those findings, and if the Appellate or Revisional Court comes to the conclusion that the findings recorded by the Trial Court are untenable, record its reasons for coming to the said conclusion. Where the findings are findings of fact it must discuss the evidence on record which justify the reversal of the findings recorded by the Court below. This is particularly so when findings recorded by the Trial Court are sought to be set aside by an Appellate or Revisional Court. One cannot take exception to a judgment merely on the ground of its brevity, but if the judgment appears to be cryptic and conclusions are reached without even referring to the evidence on record or noticing the findings of the Trial Court, the party aggrieved is entitled to ask for setting aside of such a judgment". See: Deb Narayan Halder Vs. Anushree Halder, 2003(47) ACC 897 (SC)

6.11. Summary of law regarding interference by revisional court with evidence and findings of fact recorded by lower Court : From the decisions of the Hon'ble Supreme Court discussed at various sub-heads noted above, the scope for interference by the revisional court with the findings of fact recorded by the lower Court may be summarized as under :

(i) findings of fact recorded by lower court on an evidence not available on record.

(ii) material evidence, which could have reflected on the merits and the decision of the case, has been ignored by the lower Court

(iii) finding of fact recorded on an evidence not admissible

(iv) material evidence discarded by treating it as inadmissible

(v) finding of fact being perverse in terms of law

(vi) but while disturbing the findings of fact recorded by the lower Court, the revisional court would not proceed to appreciate or re-appreciate the evidence itself. The revisional court would only make its observations on the illegality committed by the lower court in appreciating the evidence and recording of findings of fact and by setting right the mistakes of law committed by the lower court, revisional court would set aside the findings and the order of the lower court by directing it to re-appreciate the evidence, record fresh findings of fact as per law by keeping in view the observations made by the revisional court and pass fresh orders.

6.12. Rewriting overruled judgment amounts to judicial indiscipline : If a judgment is overruled by the higher court, the judicial discipline (on remand) requires that the Judge whose judgment is overruled must submit to the judgment (of the higher court). He cannot, in the same proceedings or in collateral proceedings between the same parties, rewrite the overruled judgment. See :

(i) Markio Tado Vs. Takam Sorang, (2013) 7 SCC 524 *(para 31)*

(ii) State of W.B. Vs. Shivananda Pathak, (1998) 5 SCC 513 *(para 28)*

6.13. Matter should not be remanded to the lower court when sufficient material for deciding the case finally is already there before the revisional/appellate court : In the case noted below, the Magistrate had convicted the revisionist for the offence u/s 138 of the Negotiable Instruments Act, 1881 and had sentenced him to undergo simple imprisonment for two months along with a fine of Rs. 5,000/- and in default of payment of fine, to undergo simple imprisonment for one month and also awarded a compensation of Rs. three lakhs payable to the

respondent/complainant. While deciding the criminal revision u/s 401 CrPC, the High Court remanded the matter to the Magistrate for fresh decision. The Supreme Court set aside the order of the High Court by observing that when sufficient material was there before the High Court, it ought to have finally decided the matter itself and remanding it to the Magistrate for fresh decision was not proper for the High Court. See: Susanta Dey Vs. Babli Majumdar, AIR 2019 SC 1661.

6.14. Second revision against fresh order passed by lower court after remand by revisional court maintainable : If a revisional court remands the case to the lower court for fresh considerations and a fresh order is passed by the lower court in compliance with the order of the revisional court, a fresh revision against the fresh order of the lower court would be maintainable and Section 397(3) CrPC would not bar such second revision. See: Indrajeet Roy vs. Republic of India, 1999 CrLJ 4727 (Orissa) (DB)

6.15. Power of Magistrate to take additional evidence after remand of case by revisional court : Where the revisional court u/s 398 CrPC had remanded the case to Magistrate to hold further enquiry, the direction does not necessarily oblige the Magistrate to record any further evidence. However, if prima facie case is made out, recording of further evidence by Magistrate will not vitiate the proceedings. See: 2011 CrLJ 87 (SC)

6.16. High Court has power in revision u/s 401 CrPC to alter finding of acquittal into that of conviction : High Court has power in revision u/s 401(1) & 401(3) CrPC and u/s 386(a) CrPC to alter finding of acquittal into that of conviction. See : Ganesha Vs. Sharanappa & Another, (2014) 1 SCC 87

7.1. Stay order when and how to be passed: The Supreme Court has issued following directions regarding the manner of passing of the stay orders and durations thereof in revisions and appeals filed against the orders of the trial courts:

(i). There must be a speaking order while granting stay of the proceedings

(ii). Once an stay order is passed, the challenge should be decided within two to three months and the matter should be taken up on a day today basis

(iii). Stay order should not be passed unconditionally or for indefinite period. Conditions may be imposed.

(iv). Stay order shall automatically **lapse after six months** if not extended further and the proceeding before the trial court shall automatically commence.

(v). Extension of stay order can be passed only by an speaking order showing extra-ordinary situation.

(vi). The above directions shall apply to both the civil as well as criminal matters.

(vii). The above directions shall apply to both civil and criminal appellate and revisional jurisdictions.See: Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299 (Three- Judge Bench)

Note: Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299 (Three- Judge Bench) **has now been overruled** by a Five-Judge Constitution Bench of the Hon'ble Supreme Court by its judgement dated 29.02.2024 passed in High Court Bar Association, Allahabad vs. State of U.P, 2024 SCC Online SC 207

7.2 No automatic expiration of interim stay order after six months: Overruling its previous Three-Judge Bench judgement in Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299, a

Five-Judge Constitution Bench of the Hon'ble Supreme Court has ruled that an **interim stay order would not expire after expiration of six months** from the date of passing of the stay order. See: High Court Bar Association, Allahabad vs. State of U.P, 2024 SCC Online SC 207

7.3. Interim stay order by Sessions Judge in appeal u/s 29 of the PWDV Act, 2005 staying execution of order of Magistrate awarding maintenance : Where an order of Magistrate granting Rs. 2.5 lacs per month as maintenance to the wife was challenged by the husband before the Sessions Court in appeal u/s 29 of the Protection of Women from Domestic Violence Act, 2005, it has been held by the Hon'ble Supreme Court that whether the Sessions Court in exercise of its jurisdiction u/s 29 of the Act has any power to pass interim orders staying the execution of the order appealed before it is a matter to be examined in appropriate case as the question of power of grant of interim order by the Sessions Judge was not pressed before the Hon'ble Supreme Court. See : Shalu Ojha Vs. Prashant Ojha, AIR 2015 SC 170

7.4. High Court u/s 482 CrPC should be slow in passing interim orders staying execution of order of Magistrate awarding maintenance under PWDV Act, 2005: Where an order of Magistrate granting Rs. 2.5 lacs per month as maintenance to the wife was challenged by the husband before the Sessions Court in appeal u/s 29 of the Protection of Women from Domestic Violence Act, 2005 and the same was not stayed by the Sessions Judge in appeal filed u/s 29 of the Act but the Hon'ble High Court u/s 482 of the CrPC had passed interim order staying execution of the order of the Magistrate awarding interim maintenance, it has been held by the Hon'ble Supreme Court that the High Court should be slow in granting interim

orders interfering with the orders by which maintenance was granted to the wife. See : Shalu Ojha Vs. Prashant Ojha, AIR 2015 SC 170.

7.5. When impugned order already executed: Where order passed by Magistrate u/s 167 CrPC **granting police custody** remand of the accused is already executed, neither the revision preferred against such order is maintainable nor the revisional court can grant any stay order against the operation or execution of the order of the Magistrate. See: State vs. N.M.T. Joy Immaculate, (2004) 5 SCC 729 (Three-Judge Bench)

7.6. Interim stay order in revision when to be passed: Under Section 397(1) CrPC, revisional court is empowered to order stay of the operation or the execution of the order of the lower court. But where the order against which revision is filed **has already been executed,** then no question arises to order stay of execution or operation of such an order. See: Kamlesh Kumar vs. Girish Kapoor, 1984 CrLJ 1680 (All)

8.1. Filing of certified copy of impugned order not always necessary : Exercise of revisional power is not barred on the ground that the certified copy of the impugned order has not been filed. See : Raj Kapoor Vs. State, AIR 1980 SC 258.

8.2. Routine summoning of original record in revision or appeal and bringing trial to grinding halt & delays deprecated by the Supreme Court : It is to look into and revisit the rules, practices and procedures being followed not only by this court but also by other superior courts requiring the routine summoning of the original records of a trial for no apparent reason except that the rules, practices and procedures provide for their requisitioning. This routine practice brings the trial to a grinding halt and delays the delivery of justice to an aggrieved litigant. It is time to decide on the customary summoning of the original records of a trial, particularly at an interlocutory stage of the proceedings. This appeal is an indicator that the disposal of some cases is delayed only because we follow some archaic rules, practices and procedures. If the original records had not been routinely summoned from the Chief Judicial Magistrate, we are confident that the trial could well have concluded many years ago, one way or another, and expeditious delivery of justice would not have been

converted into a mirage. We are mentioning this only so that our policy planners and decision makers wake up to some harsh realities concerning our criminal justice delivery system. See : G.N. Verma Vs State of Jharkhand, AIR 2014 SC 3549.

8.3. Requisition of lower court record not necessary: It is not a must for the revisional court to call for record of the inferior court before rejecting the revision summarily. See : Shankar Dhondiba vs. Janabi, 1978 CrLJ 888 (Bombay)(DB)

9.1. Time-barred revisions & condonation of delay: According to Article 131 of the Limitation Act, 1963, the limitation period for filing revision u/s 397 CrPC is **90 days** from the date of order under challenge. Revisional court can condone the delay **u/s 5 of the Limitation Act, 1963** if the delay is satisfactorily explained by the proposed revisionist. If the revisionist was not having knowledge of the order then the limitation period of 90 days to prefer revision would be computed from the date of knowledge of the order. In the cases, noted below, it has been held that a criminal revision cannot be dismissed on a technical ground like limitation otherwise if the order passed by the lower court is otherwise illegal, that illegality will perpetuate and survive if the power of revision is not exercised by the revisional court for the technical reasons like limitation. The revisional court should apply **liberal approach** while considering the question of limitation in regard to a time barred criminal revision. See:

1. Shilpa vs. Madhukar & others, 2001 (1) JIC 588 (SC)
2. State of U.P. vs. Gauri Shanker, 1992 ALJ 606 (All)(DB)
3. Paras Nath vs. State of U.P., 1982 ALJ 392 (All)
4. Municipal Corporation of Delhi vs. Girdharilal Sapuru, AIR 1981 SC 1169

9.2. Explanation for day to day delay not required: While considering the question of condonation of delay u/s 5 of the Limitation Act, 1963, the **court is not required to adopt a hyper technical or pedantic approach.** It should rather adopt a liberal approach and every day's delay should not be expected to be explained. If the party is expected to explain the delay for every day, then why not the delay for every hour, every minute and every second. **Substantial justice should be preferred over technical just**ice. See:

1. Sainik Security vs. Sheel Bai, 2008 (71) ALR 302 (SC)
2 State of Nagaland vs Lipok AO, 2005 (52) ACC 788 (SC)
3. Balkrishnan vs. M. Krishnamurthy, AIR 1998 SC 3222
4. State of Haryana vs. Chandra Mani, 1996 (3) SCC 132
5. Spl. Tehsildar vs. K.V. Ayisumma, AIR 1996 SC 2750
6. G. Ramagowda Major vs. The Special L.A.O. Bangalore, AIR 1988 SC 897
7. Collector L.A. Anentnag vs. Smt. Kitiji, AIR 1987 SC 1353
8. O.P. Kathpalia vs. Lakhmir Singh, 1984 (4) SCC 66

9.3. Relevant considerations for condoning delay: In the matter of condonation of delay in filing Criminal Revision u/s 397/401Cr PC, it has been held by the Supreme Court that the proof of sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the Court. What counts is not the length of delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The expression sufficient cause u/s 5 of the Limitation Act, 1963 should receive liberal construction. See: State (NCT of Delhi) Vs. Ahmed Jaan, 2009 (64) ACC 571 (SC)

9.4. "Sufficient Cause" shown by revisionist explaining delay should be given liberal interpretation : The expression "sufficient cause" appearing in Section 5 of the Limitation Act, 1963 as shown by the revisionist in explaining the delay behind not filing the revision within the period of limitation should be given a liberal interpretation. "Sufficient cause" is the cause for which the revisionist cannot be blamed for his absence or inaction or cause for which party cannot be said to have not acted diligently or remained inactive. See : Shri Basawaraj Vs. The Special Land Acquisition Officer, AIR 2014 SC 746.

9.5. 15 months delay in filing revision condoned: Where the criminal revision filed by the accused/revisionist after a **delay of 15 months** after his conviction u/s 452 of the IPC was dismissed by the Hon'ble Patna High Court, the Hon'ble Supreme Court set aside the order of the Hon'ble High Court by holding that the bar of limitation could not have been mechanically applied by the High Court particularly when the convict/revisionist had explained that he was caught in vortex of earning

daily bread and the delay was held liable to be condoned. See: Abdul Ghafoor & another Vs. State of Bihar, AIR 2012 SC 640.

9.6. Power of ASJ to decide limitation application alongwith revision: The expression "in respect of" as used in **Section 400 CrPC** is of wider connotation than the word "in" as used in Sec. 381 CrPC Sec. 400 CrPC, therefore, includes within its scope not only references and revisions (covered by Chap. XXX), but all other **incidental and ancillary matter also**. The application u/s 5 of the Limitation Act filed alongwith the revision (which is filed beyond time) is undoubtedly an ancillary matter and it is, therefore, open to the Sessions Judge to transfer that application and the defective revision to the Court of Additional Sessions Judge for disposal. If, therefore, the Addl. Sessions Judge decides that application and admits the revision, he has full jurisdiction to pass that order. See: Ram Newaz Vs. Chabi Nandan Pandey, 1978 CrLJ 632 (All)

9.7. Notice to respondent in time barred revision : Notice to respondent should be given when time barred revision application has to be admitted. See: Jaman Rai vs. Sonamaya Rai, 1980 CrLJ 500 (Sikkim)

10.1. Hearing of accused or his counsel not necessary when their absence is deliberate : Relying on its earlier Three-Judge Bench decision rendered in the case of Bani Singh & Others Vs. State of UP, AIR 1996 SC 2439, the Two-Judge Bench of the Hon'ble Supreme Court has, in the case noted below, declared its earlier Two-Judge Bench decisions in M.D. Sukur Ali Vs. State of Assam, AIR 2011 SC 1222 and in A.S. Mohammed Rafi Vs. State of Tamil Nadu, AIR 2011 SC 308 *per incuriam* by holding (in para 36) thus : "In view of the aforesaid annunciation of law, it can safely be concluded that the dictum in M.D. Sukur Ali Vs. State of Assam, AIR 2011 SC 1222 to the effect that the court cannot decide a criminal appeal in the absence of counsel for the accused and that too if the counsel does not appear deliberately or shows negligence in appearing, being contrary to the ratio laid down by the larger Bench in **Bani Singh & Others Vs. State of UP, AIR 1996 SC 2439 (Three-Judge Bench)** is per incuriam. We may hasten to clarify that barring the said aspect, we do not intend to say anything on the said judgment as far as engagement of amicus curiae or the decision rendered regard being had to the other factual matrix therein or the role of the Bar Association or the lawyers. Thus, the contention of the

learned counsel for the appellant that the High Court should not have decided the appeal on its merits without the presence of the counsel does not deserve acceptance. That apart, it is noticeable that after the judgment was dictated in open court, the counsel appeared and he was allowed to put forth his submissions and the same have been dealt with." See : K.S. Panduranga Vs. State of Karnataka, AIR 2013 SC 2164 (para 36).

Note : *In view of the larger Bench (Three-Judge Bench) decision in Bani Singh & Others Vs. State of UP, AIR 1996 SC 2439, the Division Bench decision of the Hon'ble Supreme Court in K.S. Panduranga Vs. State of Karnataka, AIR 2013 SC 2164 (para 36) has to be followed and not the other contrary smaller Bench decisions.*

10.2. Amicus curiae to be appointed in Criminal Revision/Appeal too: Relying upon earlier Supreme Court decisions rendered in the matters of (i) A.S Mohammed Rafi vs. State of T.N, AIR 2011 SC 308 (ii) Man Singh vs. State of M.P, (2008) 9 SCC 542 & (iii) Bapu Limbaji Kamble vs. State of Maharashtra, (2005) 11 SCC 413, it has been held by the Supreme Court in Md.Sukur Ali vs. State of Assam, 2011 CrLJ 1690 (SC), that "criminal case, whether trial, appeal or revision should not be decided against accused in absence of his counsel. Liberty of a person is the most important feature of our Constitution. Article 21 which guarantees protection to life and personal liberty is the most important fundamental right of citizens guaranteed by the Constitution. Art. 21 can be said to be the 'heart and soul' of the fundamental rights. It is only a lawyer who is conversant with law who can properly defend an accused in a criminal case. Hence, if a criminal case **(whether a trial or appeal/revision)** is decided against an accused in the absence of counsel, there will be violation of Art.21 of the Constitution. As such even if the counsel for the accused does not appear because of his negligence or deliberately, even then the court should not decide the criminal case against the accused in the absence of his counsel since the accused in a criminal case should not suffer for the fault of his counsel and in such a situation the court should appoint another counsel as **amicus curiae** to defend the accused. Even in the **Nuremberg trials of the Nazi war criminals** responsible for killing millions of persons were provided counsel. Therefore when we say that the accused should be provided counsel we are not bringing into existence a new principle but simply recognizing what already existed and which civilized people have long enjoyed. The founding fathers of our

Constitution were themselves freedom fighters who had seen civil liberties of our people trampled under foreign rule, and who had themselves been incarcerated for long period under the formula ***'Na vakeel, na daleel, na appeal'*** (no lawyer, no hearing, no appeal). Many of them were lawyers by profession and knew the importance of counsel, particularly in criminal cases. It was for this reason that they provided for assistance by counsel under Article 22(1), and that provision must be given the widest construction to effectuate the intention of the founding fathers." See : M.D. Sukur Ali Vs. State of Assam, 2011 CrLJ 1960 (SC)

10.3. Amicus curiae to be provided to the revisionist/appellant even if the absence of his counsel is deliberate : Relying upon earlier Supreme Court decisions rendered in the matters of (i) A.S Mohammed Rafi vs. State of T.N, AIR 2011 SC 308 (ii) Man Singh vs. State of M.P, (2008) 9 SCC 542 & (iii) Bapu Limbaji Kamble vs. State of Maharashtra, (2005) 11 SCC 413, it has been held by the Supreme Court in Md. Sukur Ali vs. State of Assam, 2011 CrLJ 1690 (SC), that "criminal case, whether trial, appeal or revision, should not be decided against accused in absence of his counsel. Liberty of a person is the most important feature of our Constitution. Art.21 which guarantees protection to life and personal liberty is the most important fundamental right of citizens guaranteed by the Constitution. Art. 21 can be said to be the 'heart and soul' of the fundamental rights. It is only a lawyer who is conversant with law who can properly defend an accused in a criminal case. Hence, if a criminal case **(whether a trial or appeal/revision)** is decided against an accused in the absence of counsel, there will be violation of Art.21 of the Constitution. As such, even if the counsel for the accused does not appear because of his negligence or deliberately, even then the court should not decide the criminal case against the accused in the absence of his counsel since the accused in a criminal case should not suffer for the fault of his counsel and in such a situation the court should appoint another counsel as **amicus curiae** to defend the accused. Even in the **Nuremberg trials of the Nazi war,** criminals responsible for killing millions of persons were provided counsel. Therefore when we say that the accused should be provided counsel, we are not bringing into existence a new principle but simply recognizing what already existed and which civilized people have long enjoyed. The founding fathers of our Constitution were themselves freedom fighters who had seen civil liberties of our people trampled under

foreign rule, and who had themselves been incarcerated for long period under the formula ***'Na vakeel, na daleel, na appeal'*** (no lawyer, no hearing, no appeal). Many of them were lawyers by profession and knew the importance of counsel, particularly in criminal cases. It was for this reason that they provided for assistance by counsel under Article 22(1), and that provision must be given the widest construction to effectuate the intention of the founding fathers." See : M.D. Sukur Ali Vs. State of Assam, 2011 CrLJ 1960 (SC).

10.4. Magistrate not providing assistance of lawyer to accused liable to disciplinary proceedings : Every accused unrepresented by a lawyer has to be provided a lawyer at the commencement of the trial, engaged to represent him during the entire course of the trial. Even if the accused does not ask for a lawyer or he remains silent, it is the constitutional duty of the Court to provide him with a lawyer before commencing the trial. Unless the accused voluntarily makes an informed decision and tells the Court, in clear and unambiguous words, that he does not want the assistance of any lawyer and would rather defend himself personally, the obligation to provide him with a lawyer at the commencement of the trial is absolute, and failure to do so would vitiate the trial and the resultant conviction and sentence, if any, given to the accused. But the failure to provide a lawyer to the accused at the pre-trial stage may not have the same consequence of vitiating the trial. It may have other consequences like making the delinquent Magistrate liable to disciplinary proceedings, or giving the accused a right to claim compensation against the State for failing to provide him legal aid. But it would not vitiate the trial unless it is shown that failure to provide legal assistance at the pre-trial had caused prejudice to the accused. That would have to be judged on the facts of each case. See : Mohammed Ajmal Mohammad Amir Kasab alias Abu Mujahid Vs. State of Maharashtra, 2012 Cri LJ 4770 (SC) *(Paras 487, 488)*

10.5. Assistance of lawyer to be provided to the accused even when he does not so ask : Every accused unrepresented by a lawyer has to be provided a lawyer at the commencement of the trial, engaged to represent him during the entire course of the trial. Even if the accused does not ask for a lawyer or he remains silent, it is the constitutional duty of the Court to provide him with a lawyer before commencing the trial. Unless the accused

voluntarily makes an informed decision and tells the Court, in clear and unambiguous words, that he does not want the assistance of any lawyer and would rather defend himself personally, the obligation to provide him with a lawyer at the commencement of the trial is absolute, and failure to do so would vitiate the trial and the resultant conviction and sentence, if any, given to the accused. But the failure to provide a lawyer to the accused at the pre-trial stage may not have the same consequence of vitiating the trial. It may have other consequences like making the delinquent Magistrate liable to disciplinary proceedings, or giving the accused a right to claim compensation against the State for failing to provide him legal aid. But it would not vitiate the trial unless it is shown that failure to provide legal assistance at the pre-trial had caused prejudice to the accused. That would have to be judged on the facts of each case. See : Mohammed Ajmal Mohammad Amir Kasab alias Abu Mujahid Vs. State of Maharashtra, 2012 CriLJ 4770 (SC) *(Paras 487, 488)*

10.6. Hearing or not hearing the party or his counsel is discretionary with the court : In a criminal revision, power of court to afford hearing to a party is discretionary and not a right of the parties to the revision. No Sections pertaining to exercise of revisional powers u/s 397 to 401 CrPC create any vested right of hearing in the litigants. See:

1. Jalaluddin Vs. State of U.P., 2012 (79) ACC 464 (All)
2. Smt. Malti vs. State of U.P., 2000 CrLJ 4170 (Allahabad)
3. K.C. Agarawal vs. State of U.P., 1996 CrLJ 927(Allahabad)

Note: As regards the issuance of notice and hearing of the opposite parties in criminal revisions, the **Allahabad High Court, vide Circular Letter No. 50/2007 Admin (G) : Dated : 13.12.2007**, has issued following directions to the Judicial Officers in the State of UP:

"It has been observed by the Hon'ble Court that in many cases, the criminal revisions may be decided without the compulsion of issuing notices to the opposite parties and the revisional power should be exercised when it is shown that there is legal bar against the continuance of the criminal proceedings or the framing of the charge or the facts as stated in FIR even if taken at the face value and accepted in their entirety, do not constitute offence which the accused has been charged with. In that situation, even without issuing notice to the opposite party the Court exercising revisional jurisdiction may make the disposal of that revision.

Therefore, in continuation of the earlier issued G.L. No. 15/X dated 20th September, 1951, it is directed that in abovenoted circumstances without issuing notice to the opposite party the Court concerned may proceed to decide the revision and summary disposal of the revision may also be made in accordance with the directions given by the Hon'ble Apex Court in Kanti Bhadra Shah vs. State of W.B., AIR 2000 SC 522 and Munna Devi vs. State of Rajasthan, AIR 2002 SC 107**"**

10.7. Complainant of FIR must be heard in revision filed by accused: Fairness in action demands that complainant of FIR should be given an opportunity of hearing in revision preferred by accused. In a juvenile case or in any other case, complainant of FIR is definitely an aggrieved person and he must be given an opportunity of hearing before passing an order in revision. Such complainant should even be impleaded as respondent in the revision. See : Nihal Vs. State of UP, 2013 (80) ACC 867 (All).

10.8. Fresh vakalatnama in revision: As regards the question of fresh vakalatnama in revision, the Hon'ble Supreme Court has ruled thus: "In criminal cases also there should be a provision requiring the party to sign or put thumb mark on the power/memo of appearance/Parcha filed by the advocate except in those cases where accused is in jail so as to avoid taking of excuses by the accused/party in future alleging that the power filed by the advocate was not valid and that he had no knowledge of institution of the case. Even in those cases where the accused is in jail, the power in favour of the counsel must bear the signature/thumb mark of the pairokar with his full name and address with particulars of his relationship with the accused. The Registrar General of the Court is, therefore, directed to take necessary steps for making suitable amendments in assent of the Hon'ble Court." See:

(i) Ram Kishan vs. State of U.P., 2008 (61) ACC 838 (All)

(ii) Uday Shankar Triyar vs. Ram Kalewar Prasad Singh, 2006(1) ARC 1(SC) (Three-Judge Bench)

10.9. Hearing of parties in revision & ex-parte hearing :(Sec. 399(2), 401(2), 403 CrPC): **Hearing of counsel must in criminal revision:** Relying upon earlier Supreme Court decisions rendered in the matters of (i) A.S. Mohammed Rafi vs. State of T.N, AIR 2011 SC 308 (ii) Man Singh vs. State of M.P, (2008) 9 SCC 542 & (iii) Bapu Limbaji Kamble vs. State of

Maharashtra, (2005) 11 SCC 413, it has been held by the Supreme Court in Md. Sukur Ali vs. State of Assam, 2011 CrLJ 1690 (SC), that "criminal case, whether trial, appeal or revision, should not be decided against accused in absence of his counsel. Liberty of a person is the most important feature of our Constitution. Art. 21 which guarantees protection to life and personal liberty is the most important fundamental right of citizens guaranteed by the Constitution. Art. 21 can be said to be the 'heart and soul' of the fundamental rights. It is only a lawyer who is conversant with law who can properly defend an accused in a criminal case. Hence, if a criminal case **(whether a trial or appeal/revision)** is decided against an accused in the absence of counsel, there will be violation of Art.21 of the Constitution. As such, even if the counsel for the accused does not appear because of his negligence or deliberately, even then the court should not decide the criminal case against the accused in the absence of his counsel since the accused in a criminal case should not suffer for the fault of his counsel and in such a situation the court should appoint another counsel as **amicus curiae** to defend the accused. Even in the **Nuremberg trials of the Nazi war,** criminals responsible for killing millions of persons, were yet provided counsel. Therefore when we say that the accused should be provided counsel, we are not bringing into existence a new principle but simply recognizing what already existed and which civilized people have long enjoyed. The founding fathers of our Constitution were themselves freedom fighters who had seen civil liberties of our people trampled under foreign rule, and who had themselves been incarcerated for long period under the formula ***'Na vakeel, na daleel, na appeal'*** (No lawyer, no hearing no appeal). Many of them were lawyers by profession, and knew the importance of counsel, particularly in criminal cases. It was for this reason that they provided for assistance by counsel under Article 22(1), and that provision must be given the widest construction to effectuate the intention of the founding fathers." See : M.D. Sukur Ali Vs. State of Assam, 2011 CrLJ 1960 (SC)

11.1. Revision: No dismissal in default : After admission of criminal revision, there is no procedure for dismissing the same in default and even if the revisionist is absent, the revision cannot be dismissed in default but has to be decided on merits. See:

1. Santosh Vs. State of UP, (2010) 3 SCC (Cri) 307
2. Mithaee Lal vs. State of UP, 2009 (1) ALJ 158 (All)

3. Madan Lal Kapoor vs. Rajiv Thapar, 2007 (59) ACC 788 (SC)
4. Satin Chandra Pegu Vs. State of Assam, 2006 AIR SCW 5911
5. Bani Singh and others Vs. State of UP, (1996) 4 SCC 720
6. Sagar Vs. State of UP, 1983 ALJ 376 (Allahabad)

11.2. Revision when not pressed: Once a criminal revision is admitted for hearing u/s 397 CrPC, the same cannot be disposed of without examining the legality and correctness of the order against which revision was admitted. A revision cannot be dismissed as not pressed by the revisionist or his counsel but it has to be decided on merits. See: Sanat Kumar Patnaik vs. Binoy Kumar Nayak, 1999 CrLJ351 (Orissa).

11.3. No further proceeding for same relief when revision already dismissed as not pressed: When the revision filed u/s 397 CrPC had been dismissed as not pressed, it has been held that the accused cannot invoke powers of the High Court u/s 482 Cr PC for the grant of same relief merely because earlier revisional application u/s 397 Cr PC had been dismissed as not pressed. See: Rajinder Prasad Vs. Bashir, 2002 Cr LJ 90(SC).

11.4. No Withdrawal of revision : A criminal revision cannot be permitted to be withdrawn. See: Saijan Kumar vs. State, 1996 CrLJ 623 (Delhi)

11.5. Revision against order of withdrawal passed u/s 321 CrPC lies : An order of Magistrate granting permission u/s 321 CrPC for withdrawal of prosecution is not an interlocutory order and is subject to revisional jurisdiction. See :

(i) State of Maharashtra Vs. Murli Ramchand Puruswami, 2003 CrLJ 4152 (Bombay) (DB)

(ii) Ram Chander Vs. State of Haryana, 2003 CrLJ 2461 (P & H)

12.1. Revision against order dismissing proceeding in default maintainable: Where the proceeding u/s 145 CrPC was dismissed in default by the executive Magistrate, it has been held that revision u/s 397 Cr PC against such order is maintainable. See: Ram Yagya Vs. State of UP, 1983 CrLJ (NOC) 87 (All)

12.2. Application for recall or review of order dismissing revision in default not maintainable in the absence of any such provision in the CrPC :

Application for recall or review of order dismissing an application (revision) in default is not maintainable in the absence of any such provision in the CrPC. See :

(i) Badan Singh Vs. State of UP, 2016 (94) ACC 630(All)

(ii) Hari Singh Mann Vs. Harbhajan Singh Bajwa, 2001 (42) ACC 75 (SC)

(iii) Nazma Vs. Javed, 2013 (80) ACC 182 (SC).

13.1. Revision by third party or stranger: As the power of revision can be exercised by the revisional court *suo motu*, hence even an outsider, stranger or third party can question the legality of the order passed by the lower court and file criminal revision against the order. See:

1. K. Pandurangan vs. S.S.R. Velusamy, (2003) 8 SCC 625
2. Nadir Khan vs. The State of Delhi Administration, AIR 1976 SC 2205

13.2. Appeal by third party/private party when to be entertained ? : Court should be liberal in allowing any third party having bona fide connection with the matter to maintain appeal with a view to advance substantial justice. However, power of allowing third party to maintain appeal should be exercised with due care and caution. Persons unconnected with the matter under consideration or having personal grievance against accused should be checked. Strict vigilance is required to be maintained in such regard. See : Amanullah Vs. State of Bihar, (2016) 6 SCC 699.

14.1. Second Revision : In view of the provisions u/s 397(3) CrPC, a second revision against the same order with the same prayer is not maintainable. If the revision preferred against the order of the Magistrate is dismissed by the Sessions Judge, second revision before the High Court is not maintainable u/s 397(3), 399, 401 CrPC. The High Court and the Sessions Judge have got concurrent jurisdiction and a party can invoke the revisional jurisdiction of any one of the two courts but not of both. It is left to the party concerned to avail remedy from any of the two courts but not from both. The revisionist can file his revision in the High Court directly. It is not necessary that in the first instance the revision should be filed before the Sessions Judge. See:

(i) Kailash Verma vs. Punjab State Civil Supplies Corporation, (2005) 2 SCC 571

(ii) Laxmi Bai Patel vs. Shyam Kumar Patel, 2002 (44) ACC 1102 (SC)

(iii) Deepti alias Arati Rai vs. Akhil Rai, 1995 (5) SCC 751

(iv) Dharampal vs. Ramshri, AIR 1993 SC 1361

(v) Jagir Singh vs. Ranbir Singh, AIR 1979 SC 381

14.2. Second Revision against the same order when maintainable? : Where the Sessions Court had dismissed the application for maintenance on revision by husband, subsequent revision by wife before the High Court was found maintainable. See: Bakulabai vs. Gangaram, (1988) 1 SCC 537

14.3. Second revision against the same order by different party maintainable: A revision in High Court against order in revision in Sessions Court is maintainable if both revision applications are not by the same parties. See: Kailashnath vs. State of U.P, 2004(1) Crimes 459 (All)

14.4. Second revision against same order by different party maintainable : When Sessions Judge reverses the order of lower court in revision, then the defeated party who was not the applicant before the Sessions Judge in revision is not precluded from moving the matter in the High Court. See : Inayatullah Rizwi vs. Rahimatuallah, 1981 CrLJ 1398 (Bombay)(DB)

14.5. Second revision by son found not maintainable : Where the father had lost his first revision and could not have filed second revision, it has been held that his son having no order against him could not have maintained the revision. See: Preetpal Singh vs. Ishwari Devi, 1991 CrLJ 3015 (All)

14.6. Revision by one party to High Court and by another party to Sessions Court maintainable : Revision application by one party to Sessions Court and by other party to High Court is maintainable. See: Kailashnath vs. State of U.P, 2004 (1) Crimes 459 (All)

14.7. Second revision to High Court after disposal of first revision by Sessions Judge not maintainable : Since both the Sessions Judge and the High Court have concurrent powers of revision, therefore, in view of the provisions of Section 397(3) CrPC, second revision would not be maintainable before the High Court after disposal of the first revision by

the Sessions Judge. See : Asghar Khan Vs. State of UP, AIR 1981 SC 1697.

14.8. Remedy of revision bars remedy u/s 482 CrPC before High Court : Inherent power of the High Court can be exercised when there is no remedy provided in the CrPC for redressal of the grievance. It is well settled that inherent power of the High Court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged. See : Mohit Vs. State of UP, AIR 2013 SC 2248 *(Para 23)*

14.9. Remedy of revision not to bar power of High Court u/s 482 : The remedy of revision to Sessions Judge u/s 399 CrPC does not bar a person from invoking the power of the High Court u/s 482 CrPC but the High Court should not act as a second revisional court under the garb of exercising inherent powers u/s 482 CrPC. See: Ganesh Narayan Hedge vs. S. Bargarappa, (1995) 4 SCC 41

14.10. Remedy of Section 482 CrPC available despite option of revision: Only because revision petition u/s 397 CrPC is maintainable, an application u/s 482 CrPC is not barred. Even in cases where second revision before High Court after dismissal of first one by Court of Sessions is barred u/s 397(3) CrPC, the inherent power of High Court u/s 482 CrPC is available. See: Dhariwal Tobacco Products Ltd. vs. State of Maharashtra, AIR 2009 SC 1032.

14.11. Second revision by State u/s 397 (1) r/w 401 CrPC not barred : Under Section 397(3), revisional jurisdiction can be invoked by "any person" but the CrPC has not defined the word "person." As defined in Section 11 of the IPC, the word "person" would include not only the natural person but also juridical person in whatever form designated and whether incorporated or not. By implication, the "State" stands excluded from the purview of the word "person" for the purpose of limiting its right to avail the revisional power of the High Court under Section 397(1) of the CrPC for the reason that the State, being the prosecutor of the offender, is enjoined to conduct prosecution on behalf of the Society and to take such remedial steps as it deems proper. The object behind criminal law is to maintain law, public order, stability as also peace and progress in the

society. Ordinarily, when revision has been barred by Section 397(3) of the CrPC, a person, accused/complainant, cannot be allowed to take recourse to the revision to the High Court u/s 397(1) of the CrPC or under inherent powers of the High Court u/s 482 of the CrPC since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the CrPC. However, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the Court or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with the inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power u/s 397(1) read with Section 401 of the CrPC. It may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessarily delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see the trial is concluded expeditiously before the memory of the witness fades out. The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that its subordinate Courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior Criminal Courts or to prevent miscarriage of justice. The object of Section 482 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court, is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to meet out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process of miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its

juridical process or illegality of sentence or order. See: Krishnan Vs. Krishnaveni, AIR 1997 SC 987 (Three-Judge Bench). *(Paras 7, 8, 9 & 10).*

15. Death of revisionist & substitution of LRs: Where the respondent complainant had died pending revision, court (High Court) in exercise of its inherent power is competent to implead LRs of the deceased respondent and to afford them an opportunity of being heard in the interest of justice. See:Mohinder Dutt Sharma Vs. Bhagat Ram. 2002 Cr LJ 529 (HP)

16.1. Magistrate when to reject the final report received u/s 173(2) CrPC ? : If the police report received u/s 173(2) CrPC says that no case is made out, Magistrate is still free, nay, bound, if the case according to him is made out to reject the report and take cognizance. It is also open to him to order further investigation u/s 173(8) CrPC. Court is not bound by the report submitted by police u/s 173(2) CrPC. It is not the innocence but the involvement of the accused in the commission of the offence that is material at this stage. However, once legal requirements to constitute the alleged offence qua the accused or one of them are lacking, there is no point in taking cognizance and proceeding further as against him. See : Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke & Others, (2015) 3 SCC 123.

16.2. Revisional court not to interfere with the summoning order passed by Magistrate by rejecting final report unless the same is perverse or based on no material : Where the Magistrate while rejecting the final report submitted by the Investigating Officer had taken cognizance u/s 190(1)(b) of the CrPC of the offences u/s 302/34 & 201/34 IPC against the accused Dr. Rajesh Talwar and Dr. Nupur Talwar for committing murders of Arushi & Hem Raj and for tampering with the proofs and on revision being filed by the accused persons named above before the Hon'ble Allahabad High Court, the Hon'ble Revisional Court had interfered with the cognizance taking order passed by the Magistrate, it has been held by the Hon'ble Supreme Court that "Order whereby cognizance of offence has been taken by the Magistrate should not be interfered with unless it is perverse or based on no material. Superior Court should exercise utmost restraint and caution before interfering with an order of taking cognizance by the Magistrate, otherwise the holding of a trial will be stalled. The

superior courts should maintain this restraint to uphold the rule of law and sustain the faith of the common man in the administration of justice. See: Dr. Mrs. Nupur Talwar Vs. CBI Delhi & another, AIR 2012 SC 847.

16.3. Meaning of "charge-sheet" & "final report" u/s 173(2) CrPC : Neither charge-sheet nor final report has been defined in the CrPC. Charge-sheet or final report, whatever may be the nomenclature, only means a report u/s 173 CrPC which has to be filed by the police on completion of investigation. See **:** Srinivas Gundluri Vs. SEPCO Electric Power Corporation, (2010) 8 SCC 206

16.4. Issuing notice to informant by Magistrate on receipt of final report must : On receiving final report from investigating officer, it is mandatory duty of Magistrate to issue notice to the informant (or the injured person or the victim of the offence) to make his submissions against the final report. See :

(i) Bhagwant Singh Vs. Commissioner of Police, AIR 1985 SC 1285 (Three-Judge Bench)
(ii) Sanjay Bansal Vs. Jawajarla Vats, AIR 2008 SC 207

16.5. Final report & powers of Magistrate thereon : The Magistrate has following four options on receipt of a final report from investigating officer :

(i) to accept the final report
(ii) to take cognizance of the offences against a person, although a final report has been filed by the police, in the event the Magistrate is of the opinion that sufficient materials exist in the case diary itself therefor
(iii) in the event a protest petition is filed, to treat the same as a complaint petition and if a prima facie case is made out, to issue process to the accused
(iv) to direct further investigation into the matter. See:

(i) Popular Muthiah Vs. State, (2006) 7 SCC 296 *(para 54)*
(ii) Minu Kumari Vs. State of Bihar, (2006) 4 SCC 359

(iii) Abhinandan Jha Vs. Dinesh Mishra, AIR 1968 SC 117
(iv) Pakhando Vs. State of UP, 2001 (43) ACC 1096 (All--DB)
(v) 2013 CrLJ 2977 (SC)
(vi) Bhagwant Singh Vs. Commissioner of Police, AIR 1985 SC 1285 (Three-Judge Bench)

16.6. Final report & powers of Magistrate : On completion of investigation and after receiving a final report from investigating officer u/s 173(2) CrPC, the Magistrate is bound to issue notice to the informant of the FIR and may also issue notice to the injured person or relative of the deceased/victim of the offence to make his submissions on the final report. The Magistrate has following three powers on receipt of the final report :

(i) he may accept the final report and drop the proceedings or

(ii) he may disagree with the final report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offences and issue process to the accused or

(iii) he may direct further investigation to be made by the police u/s 156(3) CrPC. See : Bhagwant Singh Vs. Commissioner of Police, AIR 1985 SC 1285 (Three-Judge Bench**)** *(Para 4 & 5).*

16.7. Magistrate can take cognizance on protest petition/complaint even after acceptance of final report : Magistrate can take cognizance on protest petition/complaint even after acceptance of final report. See : Rakesh Vs. State of UP, AIR 2014 SC 3509.

16.8. Affidavits of witnesses accompanying protest petition against final report not to be considered by the Magistrate : Protest petition with accompanying affidavits of complainant and his witnesses filed against the final report received from the investigating officer cannot be considered by the Magistrate for taking cognizance of the offences. Procedure of complaint case has been provided under Chapter XV of the CrPC. No statement of complainant and his witnesses who had filed their affidavits

was recorded by Magistrate u/s 200 & 202 CrPC. Magistrate should have either passed the order on the protest petition on the basis of the material in the case diary or should have treated the protest petition as complaint but he could not have taken cognizance of offence on the basis of affidavits. Magistrate has thus considered extraneous material i.e. the protest petition and the affidavits while taking cognizance and, therefore, his cognizance taking order was declared illegal. See :

(i) Dinesh Kumar Soni Vs. State of UP, 2010 (5) ALJ 719 (All)
(ii) Ramakant Vs. State of UP, 2010 (5) ALJ (NOC) 611 (All)
(iii) Pakhando Vs. State of UP, 2001 (43) ACC 1096 (All--DB)
(iv) 2009 (1) JIC 956 (All)
(v) 2007 (3) JIC 485 (All)
(vi) Dharam Pal Vs State of Haryana, AIR 2013 SC 3018(Five-Judge Bench**)** *(Paras 24 & 25)*

17.1. Impleadment of parties in Revision: Where the proceedings initiated u/s 133 CrPC before the executive Magistrate for the removal of unauthorized construction by Gaon Sabha/complainant terminated against the opposite party who feeling aggrieved by the said order filed a revision before the Sessions Judge, the Allahabad High Court, interpreting the provisions of Sec. 397 and 403 CrPC, has held that the Gaon Sabha/complainant being necessary party was required to be impleaded in revision and was also required to be afforded an opportunity of hearing. Non-joinder of a necessary party in revision may deprive him of his rights without being heard. See:

(i) Shyamsunder Radheshyam Agarwal Vs. State of Maharashtra, 2013 CrLJ (NOC) 371 (Bombay)(DB)
(ii) Gram Sabha vs. Ram Dev, 1993 CrLJ 3277 (Allahabad)

17.2. State of UP when not impleaded as party: Where the revision was preferred u/s 397 CrPC against summoning order without impleadment of the State as party in the revision, disposal of the revision on merits by the ASJ has been held proper. See: Zahiruddin Vs. Kabiruddin, 1997 (35) ACC 403 (All)

18.1. Correction/amendment in revision application: In the cases noted below, it has been held that though there is no specific provision in the CrPC for amendment of errors etc. in the memo of appeal or application in a criminal proceeding, but courts need not apply hyper technical approach in allowing the accidental and bona fide mistakes to be corrected. The courts may permit correction of bona fide errors and omissions in the applications etc. in the criminal proceedings. See:

1. Dashnami vs. State of U.P., 1999 Criminal Reporter (Hindi) 68 (Allahabad)
2. Shaikh Salim Haji vs. Kumar, 2006(1) ARC 334(SC)

18.2. Amendment of formal nature in complaint or petition to be allowed if the same is not prejudicial to the other side : An amendment of formal nature in complaint or petition should be allowed if the same does not cause any prejudice to the other side. See : S.R. Sukumar Vs. S. Sunaad Raghuram, (2015) 9 SCC 609.

18.3. Court can permit amendment in a complaint filed u/s 200 CrPC r/w Sections 26 & 28 of PWDV Act : Court can permit amendment in a complaint filed u/s 200 CrPC r/w Sections 26 & 28 of PWDV Act for offence u/s 498 of the IPC. Kunapareddy alias Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari, AIR 2016 SC 2519.

18.4. Revisional court can make amendments or any consequential or incidental order : Under Section 401 Cr PC, a revisional court can make any amendment or any consequential or incidental order that may be just or proper. In this connection provisions of Sec. 401 (1) and 386 (e) Cr PC can be referred to. See : Chandrapal Vs. Smt. Harpyari, 1991 Cr LJ 2847 (All).

19.1. Production of document/evidence in revision: In the cases noted below, the Allahabad High Court has held that a revisional court, exercising

jurisdiction u/s 397, 399 and 401 CrPC, can take additional evidence in criminal revision. See :

1. Bhagwan Swaroop Vs. State of UP, 2015 (88) ACC 454 (All).
1. Vinod Kumar vs. Smt. Mohrawati, 1990 Cr LJ 2068(All)
2. Darshan Lal vs. Indra Kumar Mehta, 1980 ALJ 217 (All--DB)
3. Saghir Ahmad vs. Smt. Shakina Begum, 2005(3) JIC 247 (All.)
4. Ratilal Bhanji vs. State of Maharashtra, 1971(1) SCC 523

19.2. Photocopy of documents not to be admitted at the revisional stage : A photostat copy of document (relied on by the accused) cannot be entertained at the stage of revision. See: Helios & Matheson Information Technology Ltd. Vs. Rajeev Sawhney, 2012 (76) ACC 341 (SC)

19.3. Revisional court may consider material evidence: In the following case of the Director of a company who had not issued the cheque and had resigned from the company much before the date of issue of the cheque but even then he was prosecuted by the complainant for offences u/s 138 read with 141 of the Negotiable Instruments Act, 1881 by filing a complaint before the Magistrate, quashing the criminal proceedings initiated against the Director/ accused, the Hon'ble Supreme Court has held that criminal prosecution is a serious matter. It affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. Public documents or material relied upon by the accused which is beyond suspicion can be taken into consideration by the Court (High Court) while exercising revisional powers u/s 397 or 482 CrPC.See: Harshendra Kumar D. Vs. Rebatilata Koley, 2011 CrLJ 1626 (SC),

19.4. Evidence not to be admitted at revisional stage: A revisional court, while exercising revisional jurisdiction, must not admit further evidence which was not the basis of the view taken by the trial court. See: State Vs. Siddarth Vashisth alias Manu Sharma, 2001 Cr LJ 2404 (Delhi)

20.1. Conversion of revision into appeal and vice-versa: In the case noted below, the Allahabad High Court has held that there is nothing in CrPC to bar a revision application being treated as an appeal or vice-versa. The purpose of all rules of procedure obviously is to enable justice to be done. As such every procedure which advances the dispensation of justice should be considered permissible unless it is prohibited. Even assuming that the

Sessions Court does not have the power to treat the revision as an appeal, the High Court has power u/s 482 to direct to do so in order to secure the ends of justice. See: Mahesh Kumar vs. State of U.P., 1978 CRILJ390 (All.)

20.2. Conversion of appeal into revision & vice-versa: As regards the question of conversion of revision into appeal and appeal into revision, Sections 399(2) CrPC and 401(4) & 401(5) CrPC are also relevant which read as under:

"**Sec. 399(2) CrPC:** Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of Section 401 shall, so far as may be, apply to such proceedings and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge."

"**Sec. 401(4) CrPC:** Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed."

"**Sec. 401(5) CrPC**: Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

20.3. Conversion of revision against acquittal in state case into appeal when to be done?: Where an FIR was lodged against certain accused persons and after investigation charge-sheet was submitted by the IO for offences u/s 147, 148, 308, 323, 325, 427, 504 ,506 IPC r/w Sec. 149 IPC & on committal of the case by the Magistrate to the court of Sessions, the ASJ Jaunpur recorded acquittal and thereafter the informant/complainant preferred revision u/s 397/401 Cr PC to the Allahabad High Court, the Hon'ble Supreme Court on the question of maintainability of the revision has observed thus " Sec. 401(3) CrPC prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of private complainant **(1)** where the Trial Court has wrongly shutout evidence which the prosecution wished to produce, **(2)** where the admissible evidence is wrongly brushed aside as inadmissible, **(3)** where

the Trial Court has no jurisdiction to try the case and has still acquitted the accused, **(4)** where the material evidence has been overlooked either by the Trial Court or the Appellate Court or the order is passed by considering irrelevant evidence, and **(5)** where the acquittal is based on the compounding of the offence which is invalid under the law. By now, it is well-settled that the revisional jurisdiction, when invoked by a private complainant against an order of acquittal, cannot be exercised lightly and that it can be exercised only in exceptional cases where the interest of public justice requires interference for correction of manifest illegality or the prevention of gross miscarriage of justice. In these cases, or cases of similar nature, retrial or rehearing of the appeal may be ordered. See: Sheetala Prasad Vs. Sri Kant, 2010 (68) ACC 271 (SC)

21.1. Revision against police custody remand u/s 167 CrPC: An order passed by Magistrate u/s 167 CrPC granting police custody remand of the accused is only interlocutory order within the meaning of Sec. 397(2) CrPC and no revision lies against such order. See: State vs. N.M.T. Joy Immaculate, AIR 2004 SC 2282

21.2. Police remand u/s 167(2) CrPC can be sought even after filing of charge-sheet : Police remand u/s 167(2) CrPC can be sought even after filing of charge-sheet. See : Central Bureau of Investigation Vs. Rathin Dandapath, AIR 2015 SC 3285.

21.3. Order rejecting police custody remand not interlocutory: Order rejecting police custody remand is not interlocutory order but a final order. But police custody may be granted only during first 15 days after arrest or detention and not thereafter. Order refusing to grant police custody remand is a final order. Revision against said order is maintainable. See :

(i) 2011 CrLJ 515 (Bombay)

(ii) Kandhal Sarman Jadeda Vs. State of Gujarat, 2012 CrLJ 4165 (Gujarat)(DB)

21.4. Revision against order of remand passed by Magistrate during investigation not maintainable : An order of judicial custody remand passed u/s 167 of the CrPC by the court during the pendency of investigation or trial is an interlocutory order and as such is not open to

revision. See: Manoj Kumar Agrawal Vs. State of UP, 1995 CrLJ 646 (All).

22.1. Revision against bail order : A bail order being an interlocutory order within the meaning Sec. 397(2) CrPC, revision does not lie against bail orders. Grant or refusal of bail is only interlocutory order. Proper remedy is to move for cancellation of bail or to file petition u/s. 482 CrPC to the High Court. See:

1. State of U.P. vs. Karam Singh, 1988 CRI. LJ 1434 (All.)
2. Bhola vs. State of U.P., 1979 CRI.L.J. 718 (All---DB)
3. Amar Nath vs. State of Haryana, AIR 1977 SC 2185
4. Radhey Shyam vs. State of U.P., 1995 CRI. L.J. 556 (All.)

22.2. Revision against order cancelling bail is maintainable: An order passed by the Judicial Magistrate cancelling the bail is revisable before the Sessions Judge. See: pandit Dnyanu Khot vs State of Maharashtra, 2002 (45) ACC 620 (SC).

23.1. Revision against order u/s 133 CrPC: Revision against an order of executive magistrate passed u/s 133 CrPC for the removal of public nuisance is maintainable. See:

1. Budhwa vs. State of U.P., 2006(54) ACC 519 (All)
2. State of MP vs. Dedia Leather & Liqor Ltd., AIR 2003 SC 3236
3. Gram Sabha vs. Ram Dev, 1993 CRLJ 3277(All)

23.2. Revision against order of SDM passed u/s 133 CrPC for removal of encroachment not maintainable: An order passed by SDM u/s 133 CrPC for removal of encroachment over public path is only interlocutory order. Revision against such order is not maintainable. See: Ram Kripal Vs. State of UP, 2016 (93) ACC 899 (All).

24.1. Revision challenging jurisdiction of the court: Where the application challenging jurisdiction of the court to proceed with the trial was rejected by the court, it has been held by the Supreme Court that even though such an order may not be final in one sense but it is surely not an interlocutory order so as to attract the bar of Sec. 397(2) CrPC and revision against such order is maintainable u/s 397 CrPC See:

1. Sheetala Prasad Vs. Sri Kant, 2010 (68) ACC 271(SC)

2. Madhu Limaye vs. State of Maharashtra, AIR 1978 SC 47

24.2. Revision against issue of process like BW/NBW : In the cases noted below, a detailed guideline has been issued by the Hon'ble Supreme Court regarding issue of BW or NBW. Issuing BW or NBW contrary to the said guidelines has been declared by the Hon'ble Supreme Court to be violative of fundamental right as to personal liberty of the person concerned conferred on him by Article 21 of the Constitution. An order issuing BW or NBW in the breach of the guidelines of the Hon'ble Supreme Court would be revisable u/s 397/401 CrPC. See:

(i) Raghuvansh Dewan Chand Bhasin Vs. State of Maharashtra & Another, 2011 (75) ACC 574 (SC)

(ii) Inder Mohan Goswami Vs. State of Uttaranchal, AIR 2008 SC 251

24.3. Revision not to lie against order issuing search warrant : An order issuing search warrant is only an interlocutory order u/s 397(2) CrPC and revision against such order does not lie. See : Father Thomas Vs. State of UP, 2011 (72) ACC 564 (All)(F.B.) *(para 44)*

25.1. Revision against cognizance taking order u/s 190(1)(b) CrPC: Where after investigation of the FIR, the I.O. submitted police report (charge sheet) u/s. 173(2) CrPC and the cognizance taking order passed by Magistrate u/s 190(1)(b) CrPC was challenged before the Sessions Judge in revision u/s 397 CrPC and the Sessions Judge concerned opined that the order of the Magistrate was not covered within the ambit of "case decided" and the revision was dismissed at the time of admission as being not maintainable, the Allahabad High Court not only set aside the order of the Sessions Judge by recording **severe strictures** against the Sessions Judge concerned but, quoting several apex court rulings, also declared that a criminal revision against the cognizance taking order passed by Magistrate u/s 190(1)(b) CrPC upon receiving police report u/s 173(2) CrPC was legally maintainable u/s 397 CrPC. See: Arvind Kumar Tewari vs. State of U.P., 2005 CrLJ 1952 (Allahabad).

25.2. Order of Magistrate refusing to take cognizance is revisable : Order of Magistrate refusing to take cognizance u/s 190 CrPC is revisable u/s 397, 399 CrPC. See : Balveer Singh Vs. State of Rajasthan, AIR 2016 SC 2266.

25.3. Cognizance taking order on charge-sheet is revisable : An order taking cognizance (on charge-sheet) is not an interlocutory one and revision against such order lies u/s 397 CrPC. See:

(i) Dev Narain Dev vs. State of U.P., 2001 CrLJ 357 (All)

(ii) Rajendra Kuamr Sita Ram Pande vs. Uttam, (1999) 3 SCC 134

26.1. Revision against summoning order passed in complaint case maintainable: Summoning order passed by Magistrate in a complaint case is not an interlocutory order within the meaning of Sec. 397(2) CrPC as order issuing summons u/s 204 CrPC is indisputably not an interlocutory order. See:

(i) Dhariwal Tobacco Products Ltd. vs. State of Maharashtra, AIR 2009 SC 1032

(ii) Jag Narain vs. State of U.P., 2009 (5) ALJ 84 (All)

(iii) Shiv Prasad Shakyawar vs. State of U.P., 2009 (67) ACC 154 (All)

(iv) Rajendra Kumar vs. Uttam, 1999 (38) ACC 438 (SC).

Note: In the case of Dhariwal, the Hon'ble Supreme Court has discussed the earlier Three-Judge Bench decision of the Supreme Court rendered in Adalat Prasad vs. Rooplal Jindal, (2004) 7 SCC 338 (Three-Judge Bench). It has also been held in Dhariwal's case that even in cases where a second revision u/s 397(3) CrPC is barred before the High Court after dismissal of first one by the Sessions Court, inherent power of High Court u/s 482 CrPC is available for the scrutiny of the order.

26.2. Revision against summoning order passed in complaint case not maintainable: In the cases noted below, the Supreme Court has declared that a summoning order passed by Magistrate in a complaint case is interlocutory order and criminal revision against such interlocutory/ summoning order is not maintainable u/s 397 CrPC. The remedy of the accused against a summoning order passed by the Magistrate in a complaint case is a petition u/s 482 CrPC before the High Court. See:

(i) Poonam Chand Jain vs. Fazru, 2005 (1) L.P. 58 (SC)

(ii) Subramanium Sethuraman vs. State of Maharashtra & others, (2004) 6 SCC 662.

(iii) Adalat Prasad vs. Rooplal Jindal and others, (2004) 7 SCC 338 (Three-Judge Bench)

26.3. Summoning order passed by Magistrate in complaint case must reflect application of mind: Summoning order passed by Magistrate in complaint case must reflect application of mind. **See:** M/S GHCL Employees Stock Option Trust Vs. M/S India Infoline Ltd., AIR 2013 SC 1433

26.4. Recording of reasons by Magistrate in summoning order u/s 204 CrPC not required: In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of enquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. There is no legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order. Section 204 CrPC does not mandate the Magistrate to explicitly state the reasons for issuance of summons. See:

(i). Bhushan Kumar Vs. State NCT of Delhi, AIR 2012 SC 1747
(ii). Nupur Talwar Vs. CBI, AIR 2012 SC 1921
(iii). Dy. Chief Controller Vs. Roshanlal Agarwal, AIR 2003 SC 1900
(iv). Kanti Bhadra Shah Vs. State of WB, AIR 2000 SC 522

26.5. Summoning order passed by Magistrate in complaint case must reflect application of mind to the facts and the law applicable and the summoning order can be set aside if no reasons are recorded : Indisputably, judicial process should not be an instrument of oppression or needless harassment. The court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process test it would be an instrument in the hands of private complainant as vendetta to harass the persons needlessly..... It is equally well settled that summoning of an accused in a criminal case is a serious matter and the order taking cognizance by the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. Section 482 CrPC empowers the High Court to exercise its inherent powers to prevent abuse of the process of court and to quash the

proceeding instituted on the complaint but such power could be exercised only in cases where the complaint does not disclose any offence or is vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of power under Section 482 CrPC. See :

(i) Sunil Bharti Mittal Vs. CBI, AIR 2015 SC 923 (Three-Judge Bench)

(ii) P.S. Meherhomji Vs. K.T. Vijay Kumar & Others, (2015) 1 SCC 788 (paras 13 & 14)

26.6. Disclosure of reasons by Magistrate in summoning order passed in complaint case not required : Where in a complaint case the Magistrate had taken cognizance of offences u/s 406, 420, 408, 409, 477-A, 120-B read with Section 34 of the IPC without discussing the reasons behind taking cognizance of the offences and passing of the summoning order, it has been held by the Hon'ble Allahabad High Court that it may be presumed that the Magistrate was satisfied that there was sufficient material for taking cognizance. Detailed discussion was not required. Once the Magistrate issues process, even without writing words "cognizance", it is presumed that he has taken cognizance. Writing of words "cognizance is taken" is not necessary. See : Ms. Sonia Gobind Gidwani & Another Vs. State of UP & Others, 2013 (83) ACC 312. (All).

26.7. Defence evidence and defence arguments not to be considered at the time of summoning of accused u/s 204 CrPC : At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not. See : Sonu Gupta Vs. Deepak Gupta & Others, (2015) 3 SCC 424.

26.8. Truth of allegations in complaint not to be gone into at the stage of cognizance: At the stage of taking cognizance of offences in a complaint case, it is impermissible to go into the truthfulness or otherwise of the

allegations made in the complaint and one has to proceed on a footing that the allegations made are true. See: Gambhirsinh R.Dekare Vs. Fhalgunbhai Chimanbhai Patel, AIR 2013 SC 1590.
(*In this case Editor of the news paper and the journalist both were held guilty in complaint case for publishing defamatory matter and provisions of Press and Registration of Books Act, 1867 were involved therein*).

26.9. High Court u/s 482 CrPC cannot quash complaint by questioning correctness of allegations in complaint: High Court u/s 482 CrPC cannot quash the complaint by questioning the correctness of the allegations made in the complaint. Criminal complaint cannot be quashed at the initial stage of issuance of process only on the ground that the allegations made therein appear to be only of civil nature. See: Sau Kamal Shivaji Pokarnekar Vs. State of Maharashtra, AIR 2019 SC 847.

26.10. Duty of magistrate in passing summoning order in complaint case : As regards the duty of a Magistrate while passing summoning order in a complaint case, the Hon'ble Supreme Court has ruled thus : "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then

examine if any offence is prima facie committed by all or any of the accused." See : Pepsi Foods Ltd. Vs. Special Judicial Magistrate, (1998) 5 SCC 749 *(para 10)*

26.11. Recording of detailed reasons while taking cognizance on charge-sheet and summoning accused not required: When the cognizance is taken on the basis of the police report (charge-sheet), the Magistrate is not obliged to pass a detailed reasoned order because submission of charge-sheet is considered as sufficient ground for proceeding at the stage of taking cognizance and issuing process under section 204 CrPC. See:

(i) Bhushan Kumar and others Vs. State(NCT of Delhi), (2012) 5 SCC 424

(ii) Pradeep S. Wodeyar Vs. State of Karnataka, AIROnline2021 SC 1108(Three Judge-Bench)

(iii) Vijay kumar Pandey Vs. State of U.P., 2022 (1) All. LJ 788

26.12. "Cognizance"- Meaning of ?: The expression "cognizance" was explained by the Supreme Court as "it merely means '**become aware of** ' and when used with reference to a court or a Judge, it connotes **'to take notice of judicially'**. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone." It is entirely a different thing from initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons under Section 190 of the CRPC. It is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of

enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the CrPC.

See: Chief Enforcement Officer Versus Video con International Ltd. (2008) 2 SCC 492.

26.13. Revision against acquittal by Magistrate in complaint case not to lie: In view of the provisions u/s 378(4) and 401(4) CrPC, no revision lies against order of acquittal passed by Magistrate in a complaint case. These twin Sections read as under---

Sec. **378(4) CrPC:** If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complaint in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

Sec. 401(4) CrPC: Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

26.14. Revision against acquittal by magistrate in complaint case not to lie : Criminal revision against the judgment and order of acquittal passed by judicial magistrate is barred by Sec 401(4) CrPC as appeal u/s 378(4) CrPC lies to the High Court in such matter. See:

(i). Vinay Kumar Vs. State of UP, 2007 CrLJ 3161 (All)
(ii). Jhantoo Vs. State of U.P, 2010 (69) ACC 450 (All)
(iii). Dharmveer Vs. Nemwati, 2001 (43) ACC 453 (All)

26.15. Revision against acquittal in state-case by private complainant when to lie? : Where an FIR was lodged against certain accused persons and after investigation charge-sheet was submitted by the IO for offences u/s 147, 148, 308, 323, 325, 427, 504 ,506 IPC r/w Sec. 149 IPC & on committal of the case by the Magistrate to the court of Sessions, the ASJ Jaunpur recorded acquittal and thereafter the informant/complainant preferred revision u/s 397/401 Cr PC to the Allahabad High Court, the Hon'ble Supreme Court on the question of maintainability of the revision has observed as under--- " Sec. 401(3) Cr PC prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at

the instance of private complainant **(1)** where the Trial Court has wrongly shutout evidence which the prosecution wished to produce, **(2)** where the admissible evidence is wrongly brushed aside as inadmissible, **(3)** where the Trial Court has no jurisdiction to try the case and has still acquitted the accused, **(4)** where the material evidence has been overlooked either by the Trial Court or the Appellate Court or the order is passed by considering irrelevant evidence, and **(5)** where the acquittal is based on the compounding of the offence which is invalid under the law. By now, it is well-settled that the revisional jurisdiction, when invoked by a private complainant against an order of acquittal, can not be exercised lightly and that it can be exercised only in exceptional cases where the interest of public justice requires interference for correction of manifest illegality or the prevention of gross miscarriage of justice. In these cases, or cases of similar nature, retrial or rehearing of the appeal may be ordered. See:Sheetala Prasad Vs. Sri Kant, 2010 (68) ACC 271 (SC).

26.16. Finding of acquittal cannot be converted into conviction by revisional court: Finding of acquittal recorded by subordinate court cannot be converted into conviction by High Court in exercise of revisional jurisdiction u/s 401(3) Cr PC. See: Binda Prasad Karya Nirikshak Railway Banda Vs. Om Prakash, 2010 (5) ALJ (NOC) 565(All.)

26.17. Cognizance of Offence taken by Magistrate not having jurisdiction not bad: Magistrate who is not empowered by law if takes cognizance of offence u/s 190(1)(a)(b) CrPC erroneously, though in good faith, proceedings will not be set aside merely on the ground that the Magistrate was not so empowered. For vitiating the proceedings, something more than mere lack of authority has to be established. See: Pradeep S. Wodeyar Vs. State of Karnataka, AIROnline2021 SC 1108(Three-Judge Bench)

26.18. **Effect of irregularity in taking cognizance of offences punishable under Special Act as well as IPC :** In the case noted below, a Single Judge of the High Court of Karnataka dismissed two petitions instituted by the appellants for quashing the criminal proceedings initiated against them in Special CC No.599/2015 (arising out of Crime No.21/2014) for offences punishable under the provisions of Sections 409 and 420 read with Section 120B IPC, Sections 21 and 23 read with Sections 4(1) and 4(1)(A) of the

Mines and Mineral (Development and Regulation) Act 1957 and Rule 165 read with Rule 144 of the Karnataka Forest Rules 1969. Upholding the cognizance taking order passed by the Special Judge by setting aside the order of the High Court, the Hon'ble Supreme Court ruled as under:

(i) The Special Court does not have, in the absence of a specific provision to that effect, the power to take cognizance of an offence under the MMDR Act without the case being committed to it by the Magistrate under Section 209 CrPC. The order of the Special Judge dated 30 December 2015 taking cognizance is therefore irregular;

(ii) The objective of Section 465 is to prevent the delay in the commencement and completion of trial. Section 465 CrPC is applicable to interlocutory orders such as an order taking cognizance and summons order as well. Therefore, even if the order taking cognizance is irregular, it would not vitiate the proceedings in view of Section 465 CrPC;

(iii) The decision in **Gangula Ashok** (supra) was distinguished in **Rattiram** (supra) based on the stage of trial. This differentiation based on the stage of trial must be read with reference to Section 465(2) CrPC. Section 465(2) does not indicate that it only covers challenges to pre-trial orders after the conclusion of the trial. The cardinal principle that guides Section 465(2) CrPC is that the challenge to an irregular order must be urged at the earliest. While determining if there was a failure of justice, the Courts ought to

address it with reference to the stage of challenge, the seriousness of the offence and the apparent intention to prolong proceedings, among others;

(iv) In the instant case, the cognizance order was challenged by the appellant two years after cognizance was taken. No reason was given to explain the inordinate delay. Moreover, in view of the diminished role of the committal court under Section 209 of the Code of 1973 as compared to the role of the committal court under the erstwhile Code of 1898, the gradation of irregularity in a cognizance order made in Sections 460 and 461 and the seriousness of the offence, no failure of justice has been demonstrated;

(v) It is a settled principle of law that cognizance is taken of the offence and not the offender. However, the cognizance order indicates that the Special Judge has perused all the relevant material relating to the case before cognizance was taken. The change in the form of the order would not alter its effect. Therefore, no ‗failure of justice' under Section 465 CrPC is proved. This irregularity would thus not vitiate the proceedings in view of Section 465 CrPC;

(vi) The Special Court has the power to take cognizance of offences under MMDR Act and conduct a joint trial with other offences if permissible under Section 220 CrPC. There is no express provision in the MMDR Act which indicates that Section 220 CrPC does not

apply to proceedings under the MMDR Act;

(vii) Section 30B of the MMDR Act does not impliedly repeal Section 220 CrPC. Both the provisions can be read harmoniously and such an interpretation furthers justice and prevents hardship since it prevents a multiplicity of proceedings;

(viii) Since cognizance was taken by the Special Judge based on a police report and not a private complaint, it is not obligatory for the Special Judge to issue a fully reasoned order if it otherwise appears that the Special Judge has applied his mind to the material;

(ix) A combined reading of the notifications dated 29 May 2014 and 21 January 2014 indicate that the Sub-Inspector of Lokayukta is an authorized person for the purpose of Section 22 of the MMDR Act. The FIR that was filed to overcome the bar under Section 22 has been signed by the Sub-Inspector of Lokayukta Police and the information was given by the SIT. Therefore, the respondent has complied with Section 22 CrPC; and

(x) The question of whether A-1 was in-charge of and responsible for the affairs of the company during the commission of the alleged offence as required under the proviso to Section 23(1) of the MMDR Act is a matter for trial. There appears to be a *prima facie* case against A-1, which is sufficient to arraign him as an accused at this stage. See: Judgment dated 29.11.2021 of the Hon'ble Supreme

Court delivered in Criminal Appeal No. 1288 of 2021, Pradeep S. Wodeyar Vs. The State of Karnataka.

27.1. Revision not maintainable against order granting application u/s 156(3) CrPC : An accused does not have any right to be heard before he is summoned by the Court under the Code of Criminal Procedure and he has got no right to raise any objection till the stage of summoning and resultantly he can not be conferred with a right to challenge the order passed against him u/s 156(3) CrPC prior to his summoning. If the Magistrate has allowed an application u/s 156(3) CrPC directing the police to register FIR and investigate, revision against such order is not maintainable u/s 397 CrPC. See:

(i) Father Thomas vs. State of UP, 2011 (72) ACC 564 (Allahabad) (Full Bench)
(ii) Uma Shankar Pandey Vs. State of UP, 2012 (76) ACC 484 (All)
(iii) Gulam Mustafa @ Jabbar vs. State of U.P., 2008 (61) ACC 922 (All)
(iv) Prof. Ram Naresh Chaudhary vs. State of U.P., 2008 (60) ACC 476 (All)
(v) Rakesh Kumar vs. State of UP, 2007(57) ACC 489(All)
(vi) Smt. Gulista vs. State of UP, 2007 (59) ACC 876 (All)
(vii) Manish Tiwari vs. State of UP, 2007 (59) ACC 599 (All)
(viii) Union of India vs. W.N. Chaddha, 1993 SCC (Cri) 1171
(ix) Ram Dhani vs. State of U.P., 2009 Cr.L.J. (NOC) 754 (All)
(x) Chandan vs. State of UP, 2007 (57) ACC 508 (All).

27.2. Revision maintainable against order of Magistrate rejecting application u/s 156(3) CrPC : A Full Bench of the Lucknow Bench of the Hon'ble Allahabad High Court comprising Hon'ble the Chief Justice Dr. D Y Chandrachud, Justice Dr. D.K. Arora & Justice D.K. Upadhyay has ruled thus : "*The decision in* Father Thomas Vs. State of UP, 2011 (72) ACC 564 (Allahabad) (Full Bench) *does not decide the issue as to whether the rejection of an application under Section 156(3) CrPC would be amenable to a revision under Section 397 CrPC by the complainant or the informant whose application has been rejected. An order of the Magistrate rejecting an application under Section 156(3) CrPC for registration of a*

case by the police and for investigation is not an interlocutory order. Such an order is amenable to the remedy of a criminal revision under Section 397 CrPC. In proceedings in revision under Section 397 CrPC, the prospective accused or, as the case may be, the person who is suspected of having committed the crime is entitled to an opportunity of being heard before a decision is taken in the criminal revision." See : Jagannath Verma Vs. State of UP, AIR 2014 All 214 (Full Bench).

Note : *But the Full Bench in the above case of* **Jagannath Verma Vs. State of UP**, **AIR 2014 All 214 (Full Bench)** *has not disturbed the earlier Full Bench decision reported in Father Thomas Vs. State of UP, 2011 (72) ACC 564 (Allahabad) (Full Bench) on the point of non-maintainability of revision u/s 397 CrPC against an order of Magistrate granting application u/s 156(3) CrPC for registration of FIR*.

27.3. Revision not maintainable against order of Magistrate rejecting application u/s 156(3) CrPC : Relying upon the Full Bench decision of the Hon'ble Allahabad High Court in Father Thomas Vs. State of UP, 2011 (72) ACC 564 (All…FB) and Aleque Padamsee Vs. Union of India, 2007 (59) ACC 247 (SC)(Three-Judge Bench), it has been held by the Uttaranchal High Court that when an application u/s 156(3) CrPC is rejected by the Magistrate, the remedy of the informant lies not in filing a Writ Petition or revision or petition u/s 482 CrPC but in filing a complaint u/s 190(1)(b) read with Section 200 of the CrPC. See :

(i) Preeti Srivastava Vs. State of UP, 2014 (84) ACC 224 (All) (LB).

(ii) Anil Vs. State of Uttarakhand, 2013 (81) ACC 513 (Uttarakhand High Court).

Note : *The decisions in the cases of Preeti Srivastava and Anil, noted above, now stand overruled by the Full Bench decision dated 23.09.2014 of the Lucknow Bench rendered in* Jagannath Verma Vs. State of UP, AIR 2014 All 214 (Full Bench).

27.4. Proposed accused in an application u/s 156(3) CrPC not to be heard in Revision: The proposed accused in an application u/s 156(3) CrPC and on rejection of the same by the Magistrate is not covered within the expression "accused" and not entitled to any hearing in both the courts i.e. the court of the Magistrate and the revisional court. See :

(i) Ramwati vs. State of U.P., 2008 (61) ACC 884 (All)

(ii) Chandan vs. State of UP, 2007(57) ACC 508(All)
(iii) Islam Bhondu vs. State of U.P.,2006 (5)ALJ (NOC) 956(All)
(iv) Union of India vs. Win Chaddha, 1993 SCC (Cri.) 1171

Note : *In view of the larger bench (Three-Judge Bench) decision in Manharibhai Muljibhai Kakadia Vs. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517, the smaller bench decisions mentioned above at 1, 2, 3 & 4 are no longer good laws.*

27.5. Magistrate competent to treat an application u/s 156(3) CrPC as complaint : A Magistrate is not to order registration and investigation of FIR upon an application moved u/s 156(3) CrPC even if the commission of cognizable offence is disclosed out of the contents of such application and he can treat the application moved u/s 156(3) CrPC as complaint and proceed onward in accordance with the procedure laid down for complaint cases (in Sections 200, 202 and onward in CrPC). See:

(i) Ram Babu Gupta vs. State of U.P., 2001 (43) ACC 50 (All)(F.B.)
(ii) Mohd. Yusuf vs. Smt. Afaq Jahan, 2006 (54) ACC 530 (SC)
(iii) Shiv Narayan Jaiswal vs. State of U.P., 2007 (57) ACC 7 (All)
(iv) Nathulal Gangwar vs. State of U.P., 2008 (61) ACC 792 (All)
(v) Sukhwasi vs. State of U.P., 2007 (59) ACC 739 (All)(D.B.)

Note: The Division Bench decision in the case of Sukhwasi has been circulated amongst the judicial officers of the State of U.P. for compliance.

27.6. Hearing of the proposed accused u/s 156(3) CrPC in criminal revision mandatory : Where an application u/s 156(3) CrPC was rejected by the Magistrate and the revision against the order of the Magistrate was decided by the revisional court (High court) by not hearing and issuing notice to the (proposed) accused, referring the provisions of sections 397, 399, 401(2) CrPC, it has been held by the Hon'ble Supreme Court that the principles of *'audi alteram partem'* are applicable in criminal revisions and the(proposed) accused must be made party along with the State and heard. Revisional court should give opportunity of hearing to the party against whom it proposes to pass some adverse order. See:

(i) Jagannath Verma Vs. State of UP, AIR 2014 All 214 (Full Bench)
(ii) Raghuraj Singh Rousha Vs. M/s Shivam Sundaram Promoter Pvt., Ltd. 2009 (65) ACC 629(SC)
(iii) P. Sundarrajan vs. R. Vidhya Sekar, (2004) 13 SCC 472

(iv) R.K.Mishra Vs. State of U.P., 2010(70)ACC 81(All--L.B)
(v) Bhola Nath Sahu, 2011 (2) ALJ (NOC) 147 (All).

27.7. Impleadment of the proposed accused in revision must after rejection of application u/s 156(3) CrPC : Where an application u/s 156(3) CrPC was rejected by the Magistrate and the revision against the order of the Magistrate was decided by the revisional court (High court) by not hearing and issuing notice to the (proposed) accused, referring the provision of sections 397, 399, 401(2) CrPC, it has been held by the Hon'ble Supreme Court that the principles of *'audi alteram partem'* are applicable in criminal revisions and the(proposed) accused must be made party along with the State and heard. Revisional court should give opportunity of hearing to the party against whom it proposes to pass some adverse order. See:Raghuraj Singh Rousha Vs. M/s Shivam Sundaram promoter Pvt., Ltd. 2009 (65) ACC 629(SC).

27.8. No right of hearing to an accused on an application u/s 156(3) CrPC : A proposed accused in an application under 156(3) CrPC has got no right to be heard either on the application before the Magistrate or in revision before the revisional court. See:
(i) Islam Bhondu vs. State of U.P., 2006(5) ALJ (NOC) 956 (All)
(ii) Union of India vs. WIN Chaddha, 1993 SCC (Criminal) 1171

28.1. Revision against an order u/s 319 CrPC maintainable : An order rejecting application u/s 319 CrPC to summon additional accused in not an interlocutory order. Revision lies against such an order passed u/s. 319 CrPC. See:
(i) Mohit Vs. State of UP, AIR 2013 SC 2248 *(paras 21 & 22)*
(ii) Khanna vs. Chief Secretary, AIR 1983 SC 595.

28.2. Issuing of notice to the proposed accused for hearing in revision filed against an order rejecting application u/s 319 CrPC mandatory : Where a criminal revision was filed before the sessions court against an order rejecting application u/s 319 CrPC to summon additional accused, relying upon its earlier decision in Manharibhai Muljibhai Kakadia Vs. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517 (Three-Judge Bench), it has been ruled by the Hon'ble Supreme Court that a right of hearing in revision had accrued in favour of the person proposed as accused before

the lower court in the application moved u/s 319 CrPC and the revision ought not to be decided without issuing notice and hearing to such person. See: Mohit Vs. State of UP, AIR 2013 SC 2248 *(para 29)*

29. Revision against commitment order u/s 208/209 CrPC: A revisional court cannot set aside the order of commitment of the case by Magistrate to the Sessions by re-appreciating the material available on the record of the case before the Magistrate. Order of committal of the case is interlocutory in nature and revision against such an interlocutory order is not maintainable. See:

(i) Ambika Prasad vs. State of U.P., 1992 CrLJ 1478 (All)

(ii) Supdt. Legal Affairs, W.B. vs. Md. Samsuddin, AIR 1975 SC 146

30.1. Revision against framing of charge : Revisional power cannot be exercised to quash charge framed by lower court. See :

(i) State of Maharashtra vs. Salman Salim Khan, 2004 (48) ACC 606 (SC)

(ii) Nemichand Jain vs. Roshanlal, (2004) 13 SCC 461

(iii) Munna Devi vs. State of Rajasthan, AIR 2002 SC 107

(iv) State of U.P vs. Man Mohan, AIR 1986 SC 1652

30.2. An order of framing of charge not interlocutory order : An order of framing of charge is not interlocutory order. See:

(i) Madhu Limaye vs. State of Maharashtra, (1977) 4 SCC 551 (Three-Judge Bench)

(ii) Mukhtar Ali Vs. State of UP, 1999 CrLJ 311(All)

30.3. Charge framed by trial court when can be quashed either u/s 397 or u/s 482 CrPC ? : Kindly see the 17 grounds enumerated by the Hon'ble Supreme Court in the case of Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460 *(paras 25, 26 & 27)*

31.1. Revision against order of discharge of accused : Revision u/s 397 CrPC is maintainable where the accused has been discharged by the Magistrate u/s 239 or 245 of the CrPC. See:

(i) Haryana Land Reclamation and Development Corporation Ltd. vs. State of Haryana, (1990) 3 SCC 588

(ii) Municipal Corporation of Delhi vs. Girdharilal Sapuru, AIR 1981 SC 1169

31.2. Revision against order rejecting application for discharge moved in complaint case u/s 245 (2) CrPC not maintainable : Where the accused was summoned by the Magistrate in a complaint case for offences under Section 147, 148, 327, 504, 506, 302 IPC & Section 3(2) (v) of the SC/ST Prevention of Atrocities Act, 1989 and his application for discharge moved under Section 245(2) CrPC was rejected by the Magistrate and then criminal revision by the accused was filed against the said order of the Magistrate, it has been held (in para 7) by the Hon'ble Allahabad High Court that the revision against such an order was itself not maintainable. Since the revisional court/ASJ, Deoria, while dismissing the revision, had observed that the application for discharge shall be considered by the Magistrate after recording evidence under section 244 CrPC, therefore, it has been further observed by the Hon'ble High Court that the **learned ASJ appears to be ignorant** about the procedure relating to cases triabal by Court of Sessions. Since the case was not triabal by the Magistrate. There was no question of recording any evidence under Section 244 CrPC & therefore the revision was dismissed on erroneous grounds but the order of the revisional court still did not call for any interference because the revision itself was not maintainable. See : Lalu Yadav & others Vs. State of UP & another, 2011 (75) ACC 393 (All)

32.1. Revision against an order passed u/s 145(1) or 146(1) CrPC may lie depending on facts of each case : Orders passed by the Executive Magistrate u/s 145(1) or 146(1) CrPC do not fall within the exact nature of an interlocutory order. Such orders may not be prohibited from being subjected to a revision in larger public interest. Orders passed u/s 145(1) or 146(1) CrPC are not orders simplicitor in every circumstance. A revision against such order would be maintainable depending on facts of each case. See : Munna Singh Vs. State of UP, 2011 (75) ACC 797 (All)(FB) (paras 35, 36, 37, 38, 40 & 41)=2012 (1) ALJ 493 (All) (FB).

32.2. Revision against an order passed u/s 145(1) or 146(1) CrPC may lie depending on facts of each case : Relying on Munna Singh Vs. State of UP, 2011 (75) ACC 797 (All)(FB), it has been held by the Lucknow Bench of the Hon'ble Allahabad High Court that it will depend on the facts and

circumstances of each individual case where the revising authority will have to examine as to whether the Magistrate has proceeded to exercise his judicious discretion well within his jurisdiction or has travelled beyond the same and thus the revision would not barred u/s 397(1) CrPC if the order impugned before the revising authority falls within the tests indicated in the cases reported in Ram Sumer Mahant Puri Vs. State of UP & Others, 1985 (22) (ACC) 45 (SC) and Sajjan Kumar Vs. CBI, 2010 (71) ACC 611 (SC). See : Smt. Binda Devi Vs. State of UP, 2014 (84) ACC 528 (All)(LB)

32.3. Revision against order u/s 145(1) CrPC : In the cases noted below, it has been repeatedly held that the preliminary order passed by executive magistrate u/s 145(1) CrPC and 146(1) CrPC is only interlocutory order and revision u/s 397 CrPC against such interlocutory orders is not maintainable. See:

(i) Revati Raman Vs. State of UP, 2007(1) ALJ 448 (All)
(ii) Maan Babu Dubey vs. State of UP, 2006(55) ACC 489(All)
(iii) Satya Pal Singh vs. State of UP, 2005(52) ACC 922 (All)
(iv) Jai Prakash vs. Rajeshwar Prasad, 2003(1) J Cr. C 88 (Uttaranchal)
(v) Bhrigunath vs. Parmeshwar, 1996 JIC 232 (All)
(vi) Laxman vs. Handal, 1995 JIC 32 (All)
(vii) Kunj Behari vs. State of U.P., 1996 Suppl. AWC 353 (All)
(viii) Sai Ram vs. Guru Dutt, 195(32) ACC 336 (All)
(ix) Indra Dev Pandey vs. Smt. Bhagwati Devi, 1981 ALJ 687(All)(D.B.)
(xi) G.D. Mukerji vs. Shyam Lal Tewari, 1978 ALJ 1331 (All)

32.4a. Continuation of proceedings and passing of orders by Executive Magistrate u/s 145 and 146(1) CrPC is not permissible during the pendency of civil suit to decide questions of title and possession: Continuation of proceedings and passing of orders by Executive Magistrate u/s 145 CrPC and u/s 146(1) CrPC was not permissible during the pendency of civil suit before the civil court to decide the dispute of title and entitlement to possession. The Executive Magistrate should have dropped the proceedings pending before him by advising the parties to move to the civil court for adjudication of their rights and title. See: Judgment dated 28.01.2025 of Patna High Court passed in Criminal Misc. Petition no. 41314 of 2016, Ram Pradhan Singh Vs. State of Bihar.

32.4b. Revision against order u/s 146(1) CrPC : In the cases noted below, it has been repeatedly held that the preliminary order passed by executive magistrate u/s 145(1) CrPC and 146(1) CrPC is only interlocutory order and revision u/s 397 CrPC against such interlocutory orders is not maintainable. See:

(i) Revati Raman Vs. State of UP, 2007(1) ALJ 448 (All)
(ii) Maan Babu Dubey vs. State of UP, 2006 (55) ACC 489(All)
(iii) Satya Pal Singh vs. State of UP, 2005(52) ACC 922 (All)
(iv) Jai Prakash vs. Rajeshwar Prasad, 2003(1) J Cr. C 88 (Uttaranchal)
(v) Bhrigunath vs. Parmeshwar, 1996 JIC 232 (All)
(vi) Laxman vs. Handal, 1995 JIC 32 (All)
(vii) Kunj Behari vs. State of U.P., 1996 Suppl. AWC 353 (All)
(viii) Sai Ram vs. Guru Dutt, 195(32) ACC 336 (All)
(ix) Indra Dev Pandey vs. Smt. Bhagwati Devi, 1981 ALJ 687(All)(D.B.)
(x) G.D. Mukerji vs. Shyam Lal Tewari, 1978 ALJ 1331 (All)

32.5. Revision against order of attachment u/s 146(1)Cr PC maintainable: An order passed by executive magistrate attaching the property u/s 146(1) Cr PC when there was absolutely no material before the magistrate to record his satisfaction regarding likelihood of breach of peace being imminent is not interlocutory order and revision u/s 397 Cr PC against such order is maintainable. See: Gulabchand vs. State of UP, 2004 Cr LJ 2672 (All)

32.6. Mere apprehension of breach of peace not sufficient to initiate proceedings u/s 145 & 146(1) CrPC : Relying on the Supreme Court decision in **Ashok Kumar Vs. State of Uttarakhand, 2013 (80) ACC 599 (SC),** it has been held by the Hon'ble Allahabad High Court that if there is no dispute regarding possession and the possession of one of the parties has been admitted in the police report then there remains no dispute regarding possession and the Executive Magistrate cannot proceed u/s 145 and 146(1) CrPC merely on apprehension of breach of peace. See : Sharad Yadav Vs. State of UP, 2013 (82) ACC 832 (All).

32.7. Civil suit not to operate as bar against the jurisdiction of Executive Magistrate u/s 145 and 146(1) CrPC : Relying on **Sajjan Kumar Vs. CBI, 2010 (71) ACC 611 (SC),** it has been held by the Lucknow Bench of the Hon'ble Allahabad High Court that civil suit cannot operate as bar against the jurisdiction of Executive Magistrate u/s 145 and 146(1) CrPC

for performing his function for preventing breach of peace. See : Smt. Binda Devi Vs. State of UP, 2014 (84) ACC 528 (All)(LB).

33. Revision against order passed u/s 107/111 CrPC : An order passed by executive Magistrate u/s. 107/111 CrPC is an interlocutory order and in view of the bar u/s 397(2) CrPC no revision lies against such interlocutory order. See: Bindbasni vs. State of U.P., 1976 Cr.L.J.1660 (Allahabad)(D.B.)

34.1. Revision against an order u/s 311 CrPC: Order summoning or refusing to summon witnesses u/s 311 CrPC is an interlocutory order within the meaning of Sec. 397(2) CrPC as it does not decide any substantive right of litigating parties. Hence no revision lies against such orders. See:

(i) Ajai Dikshit Vs. State of UP & another, 2011 (75) ACC 388(All-LB)
(ii) Sethuraman Vs. Rajamanickam, 2009(65) ACC 607(SC)
(iii) Hanuman Ram Vs. State of Rajasthan & others, 2009 (64) ACC 895 (SC)
(iv) Asif Hussain vs. State of U.P., 2007 (57) ACC 1036 (All)(D.B.)

34.2. Revision not maintainable against order of summoning witnesses : An order summoning witnesses is an interlocutory order within the meaning of Sec. 397(2) CrPC and revision against such order is not maintainable. See :

(i) Amar Nath Vs. State of Maharashtra, AIR 1977 SC 2185 *(Para 6)*
(ii) Father Thomas Vs. State of UP, 2011 (72) ACC 564 (All)(F.B.) *(para 44)*

34.3. Revision against order refusing recall of witness for further cross examination when not to be allowed: where application u/s 311 CrPC was moved by the accused on the ground that the PW has to be cross examined on some important points but the important points were not mentioned in the application, the revision against order rejecting the application by trial court u/s 311 CrPC was dismissed. See : Anurag Srivastava vs. State of U.P. 2010 (71) ACC 504 (All) .

34.4. Closure of evidence: revision lies: Where the trial court has wrongly shutout evidence which the prosecution wished to produce, revision u/s

397 CrPC lies . See : Sheetla Prasad Vs. Sri Kant, 2010 (68) ACC 271 (SC)

34.5. Cause of justice (by closure of opportunity) must not be allowed to be sacrificed to achieve expeditious disposal of case: While the anxiety to bring the trial to its earliest conclusion has to be shared, it is fundamental that in the process, none of the well-entrenched principles of law that have been laboriously built by illuminating precedents are sacrificed or compromised. In no circumstances, can the cause of justice be made to suffer, though, undoubtedly, it is highly desirable that finality of any trial is achieved in the quickest possible time. Expeditious disposal is undoubtedly required in criminal matters and that would naturally be part of guarantee of fair trial. However, the attempts to expedite the process should not be at the expense of the basic elements of fairness and the opportunity to the accused, on which postulates, the entire criminal administration of justice is founded. In the pursuit for expeditious disposal, the cause of justice must never be allowed to suffer or be sacrificed. What is paramount is the cause of justice and keeping the basic ingredients which secure that as a core idea and ideal, the process may be expedited. But fast tracking of process must never ever result in burying the cause of justice. See:

(i) Anokhilal Vs State of MP, (2019) 20 SCC 196

(ii) V K Sasikala Vs State, (2012) 9 SCC 771

34.6. Closure of evidence by public prosecutor when not to be accepted by court ?: The court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued, they are actually served on the witnesses. If the court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the

prosecution may not examine all the material witnesses, but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the court that it does not intend to cite the witnesses. The Public Prosecutor who conducts the trial has a statutory duty to perform. He cannot afford to take things in a light manner. The court also is not expected to accept the version of the prosecution as if it is sacred. It has to apply its mind on every occasion. Non-application of mind by the trial court has the potentiality to lead to the paralysis of the conception of fair trial. See **:** Bablu Kumar Vs. State of Bihar, (2015) 8 SCC 787 *(para 17 to 22*).

34.7. Duty of revisional court in scrutinizing the lower court's order refusing to summon witnesses : Section 243(2) CrPC confers discretionary jurisdiction upon the trial judge to refuse to summon witnesses at the instance of the defence, inter alia, on the ground that it was made for the purpose of vexation or delay or for defeating the ends of justice. Such an order is required to be recorded in writing. When the trial Judge assigned reasons in support of his judgment, the High Court, therefore, while exercising its revisional jurisdiction under Section 397 read with Section 401 CrPC was required to assign reason in support of its conclusions as to how the reasons assigned by the trial judge were untenable and/or were otherwise insufficient and how and to what extent, if any, it intended to differ with the order of the trial Judge. In the present case, a large number of witnesses are sought to be examined by the defence. They are from as many as ten different countries. Some witnesses are also from India. If the summons are sought to be obtained to examine the said witnesses, ordinarily, the defence is required to satisfy the court as to how examination of the said witnesses would be in aid of its defence. The witnesses need not be summoned only because the defence wishes the court to do so. As the High Court in exercise of revisional jurisdiction has not adverted to this aspect of the matter, the impugned judgment taking a contrary view cannot be sustained. See : Central Bureau of Investigation Vs Tuncay Alankus, (2013) 9 SCC 611.

34.8. Order of closure of evidence revisable : An order closing the evidence of a witness of a party is not an interlocutory order and revision against such order lies. See : 2002 (4) Crimes (Gujarat)

34.9. Wrong rejection of evidence---revision Lies : Where the admissible evidence is wrongly brushed aside as inadmissible, revision u/s 397 Cr PC lies . See: Sheetla Prasad Vs. Sri Kant, 2010 (68) ACC 271 (SC)

34.10. Revision against order of adjournment not maintainable : An order of adjournment is an interlocutory order within the meaning of Sec. 397(2) CrPC and revision against such order is not maintainable. See :

(i) Amar Nath Vs. State of Maharashtra, AIR 1977 SC 2185 *(Para 6)*

(ii) Father Thomas Vs. State of UP, 2011 (72) ACC 564 (All--F.B.) *(para 44)*

35. Revision against an order passed u/s 173(8) CrPC: Revision is not maintainable against an order passed by Magistrate u/s 173(8) CrPC for further investigation. See:

(i) Chhotey Lal vs. State of U.P., 2007 (59) ACC 25 (Allahabad)

(ii) Samardha Sreepada Vallabha Vishwadaha Maharaj vs. State of A.P., J.T. 1999 (4) SC 537

(iii) Union of India vs. Win Chadha, 1993 SCC (Criminal) 1171

36.1. Revision against dismissal of complaint u/s CrPC: Revision against order of Magistrate dismissing the complaint u/s 203 CrPC is maintainable. See:

(i) Jatinder Singh vs. Ranjit Kaur, 2001 Cr.L.J. 1015 (SC)

(ii) Chandra Deo Singh vs. Prakash Chandra Bose, AIR 1963 SC 1430

(iii) Raj Narain Rai vs. State of U.P., 1990 (27) ACC 26 (Allahabad)

36.2. Accused or person suspected to have committed crime has right to be heard in a revision filed against dismissal of complaint u/s 203 CrPC : In a case where the complaint has been dismissed by the Magistrate under Section 203 CrPC either at the stage of Section 200 CrPC itself or on completion of inquiry by the Magistrate under Section 202 CrPC or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. The dismissal of complaint by the Magistrate under Section

203 CrPC although it is at preliminary stage nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed crime. Once a challenge is laid to such order at the instance of the complaint in a revision petition before the High Court or Sessions Judge, by virtue of Section 401 (2) of the Code, the suspects get right of hearing before revisional Court although such order was passed without their participation. The right given to "accused" or "the other person" under Section 401(2) of being heard before the revisional court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Section 200, 202, 203 and 204 CrPC. In the revision petition before the High Court or the Sessions Judge at the instance of complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of express provision contained in Section 401(2) CrPC. The stage is not important whether it is pre-process stage or post process stage. It is, therefore, clear that upon challenge to the legality of the order under Section 203 CrPC dismissing a complaint being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. But the accused/suspect cannot claim any right of hearing before the Magistrate before the issuance of process u/s 204 CrPC. See :

(i) Subhash Sahebrao Deshmukh Vs. Satish Atmaram Talekar, (2020) 6 SCC 625

(ii) Gurdev Singh Vs. Surinder Singh, (2015) 3 SCC 773.

(iii) Manharibhai Muljibhai Kakadia & Another Vs. Shaileshbhai Mohanbhai Patel and Ors, (2012) 10 SCC 517=2013 CrLJ 144 (Three-Judge Bench).

(iv) Mohit Vs. State of UP, AIR 2013 SC 2248 *(para 30)*

37.1. Revision against Order u/s 451, 452, 457 CrPC: Revision against an order passed by court u/s 451, 452, 457 CrPC regarding disposal/custody of property is maintainable as the power under these sections is to be exercised judiciously. See:

(i) Prdeep Kumar Rastogi vs. State of U.P., 2008(62) ACC 62 (All)

(ii) Sunder Bhai Ambalal Desai vs. State of Gujarat, AIR 2003 SC 638

37.2. Order of Magistrate rejecting release of vehicle seized under Indian Forest Act, 1927 not revisable : In view of the bar u/s 52-D of the Indian Forest Act, 1927, revision u/s 397/401 CrPC does not lie against an order passed by Magistrate u/s 451, 457 CrPC rejecting release of vehicle seized under the Indian Forest Act, 1927. See : Mohd. Aslam Vs. State of UP, 2013 (80) ACC 895 (All).

38. Revision against order summoning or production of documents: An order passed by a criminal court summoning or refusing to summon a document (u/s 91 CrPC) or permitting production of document in a criminal case is only an interlocutory order within the meaning of Sec.397(2) CrPC and revision against such an order is not maintainable. See :

(i) Sethuraman Vs. Rajamanickam, (2009) 5 SCC 153
(ii) State of U.P. vs. Col. Sujan Singh, AIR 1964 SC 1897
(iii) Father Thomas Vs. State of UP, 2011 (72) ACC 564 (All)(F.B.) *(para 44)*

39.1. Revision maintainable against order of maintenance u/s 125 CrPC: Revision against an order passed by Magistrate u/s 125 CrPC awarding or refusing maintenance is maintainable u/s 397 CrPC. See :

(i) Smt. Rita Lal vs. Addl. Principal Judge, Family Court, Lucknow, 2006 (64) ALR 436 (L.B.—D.B.)
(ii) Smt. Kasturi Devi vs. Prahlad Singh, 2006 (54) ACC 921 (All)
(iii) Smt. Munesh Kumari vs. Sheo Raj Singh, 2002 (45) ACC 848 (All)
(iv) V.S. Yadava vs. Smt. Sharda Devi, 2001 (43) ACC 510 (All)
(v) Rakesh Kumar Gupta vs. State of U.P., 2001 (42) ACC (H) 81 (All)
(vi) Rakesh Kumar Dikshit vs. Jayanti Devi, 1999 (39) ACC 4 (All)
(vii) Ashutosh Tripathi vs. State of U.P., 1992 (2) JIC 763 (All)

39.2. Revision maintainable against an order granting interim maintenance u/s 125 CrPC : Order granting interim maintenance u/s 125 CrPC is not an interlocutory order. Revision against such interim order is maintainable u/s 397 CrPC. See : Sunil Kumar Sabharwal vs. Neelam Sabharwal, 1991 CrLJ 2056 (P & H – D.B.) Rulings relied upon ……..

(a) Amar Nath vs. State of Haryana, AIR 1977 SC 2185

(b) Smt. Pushpa @ Pooja vs. State of U.P., AIR 2005 All 187----Interim maintenance awarded u/s. 24, Hindu Marriages Act, 1955

39.3. Revision not maintainable against an order granting interim maintenance u/s 125 CrPC : An order passed by Magistrate u/s 125 CrPC granting interim maintenance is clearly an interlocutory order passed at an interim stage and revision against such an order is not maintainable. See : Udai Narain Awasthi Vs. Stage of UP, 2016 (93) ACC 222 (All).

40.1. Revision against order u/s 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 : An order passed by Magistrate u/s. 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 is not an interlocutory order within the meaning of Sec. 397(2) CrPC and revision against such an order is maintainable. See :

(i) Suman Ismail vs. Rafiq Ahmad, 2002 CrLJ 3648 (All- DB)

(ii) Shafaat Ahmad vs. Fahmida Sardar, 1990 CrLJ 1887 (All)

40.2. Sec. 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 applies only when the Muslim woman is already divorced otherwise Sec. 125 CrPC would apply. See : Iqbal Bano vs. Sate of U.P., AIR 2007 SC 2215

40.3. Revision lies by women even after acceptance of amount of maintenance u/s 125 CrPC: Acceptance of Meher amount by the counsel of wife awarded by the trial court would not stop the wife from challenging the order passed by the trial court before the revisional court. See : Selina Akhtar vs. Matiur Rahaman, (2006) 12 SCC 281.

40.4. Ex-parte order passed u/s 126 CrPC is revisable : An ex-parte order passed u/s 126 CrPC is revisable. See :

(i) Loganathan vs. Dhanelakshmi, 1996 CrLJ 1896 (Madras)

(ii) Balan Nair vs. Bhavani Amma, 1987 CrLJ 399 (Kerala—FB)

41.1. Compounding of offences at revisional stage permissible : Section 320(6) CrPC provides thus **:** *"A High Court or Court of Session acting in the exercise of its powers of revision u/s 401 CrPC may allow any person*

to compound any offence which such person is competent to compound under this Section." A Full Bench of the Bombay High Court, in the case of Abasaheb Vs. State of Maharashtra, 2008 (2) MAH LJ 856 (Bombay)(Full Bench) has held that compounding of offence u/s 320 CrPC is permissible only when the case is pending before the Trail Court, Appellate Court or Revisional Court.

41.2. Wrong compounding of offence: Revision lies : Where the acquittal is based on the compounding of the offence which is invalid under the law, revision lies. See : Sheetala Prasad Vs. Sri Kant, 2010 (68) ACC 271 (SC)

41.3. Distinction between power of High Court and the Sub-Ordinate Court u/s 320 & 482 CrPC for allowing compounding of offences : Power of compounding of offences conferred on a court u/s 320 CrPC is materially different from power conferred on High Court u/s 482 CrPC. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 CrPC. See : State of Rajasthan Vs. Shambhu Kewat, (2014) 4 SCC 149.

42. Cost in Revision : In appropriate cases, the revisional court has power to award cost. See :

(i) Natesha Securities vs. Vinayak Waman Mokashi, 2008 CrLJ 1115 (Bombay)

(ii) Rohit vs. Gujarat State Fertilizer Co. Ltd, 2004 CrLJ 2298 (Gujarat).

43. POCSO Court to try both the cases where accused charged under SC/ST Act also : A perusal of Section 20 of the SC/ST (Prevention of Atrocities) Act, 1989 and Section 42-A of the Protection of Children from Sexual Offences Act, 2012 reveals that there is a direct conflict between the two non obstante clauses contained in these two different enactments. If Section 20 of the SC/ST Act is to be invoked in a case involving offences under both the Acts, the same would be triable by a Special Court

constituted under Section 14 of the SC/ST Act and if provisions of Section 42-A of the POCSO Act are to be applied, such a case shall be tried by a Special Court constituted under Section 28 of the POCSO Act. Dealing with an issue identical to the case on hand, the Apex Court in Sarwan Singh Vs. Kasturi Lal, AIR 1977 SC 265 held thus : "When two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. For resolving such inter se conflicts, one other test may also be applied though the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Bearing in mind the language of the two laws, their object and purpose, and the fact that one of them is later in point of time and was enacted with the knowledge of the non-obstante clauses in the earlier. In KSL & Industries Limited Vs. Arihant Threads Limited & Others, AIR 2015 SC 498, the Apex Court held thus :In view of the non obstante clause contained in both the Acts, one of the important tests is the purpose of the two enactments. It is important to recognize and ensure that the purpose of both enactments is as far as possible fulfilled. A perusal of both the enactments would show that POCSO Act is a self contained legislation which was introduced with a view to protect the children from the offences of sexual assault, harassment, pornography and allied offences. It was introduced with number of safeguards to the children at every stage of the proceedings by incorporating a child friendly procedure. The legislature introduced the non obstante clause in Section 42-A of the POCSO Act with effect from 20.06.2012 giving an overriding effect to the provisions of the POCSO Act

though the legislature was aware about the existence of non obstante clause in Section 20 of the SC/ST Act. Applying the test of chronology, the POCSO Act, 2012 came into force with effect from 20.06.2012 whereas SC/ST Act was in force from 30.01.1990. The POCSO Act being beneficial to all and later in point of time, it is to be held that the provisions of POCSO Act have to be followed for trying cases where the accused is charged for the offences under both the enactments." See :

(i) State of A.P. Vs. Mangali Yadgiri, 2016 CrLJ 1415 (Hyderabad High Court)(AP) *(paras 14, 15, 16, 17, 19 & 20).*

(ii) KSL & Industries Limited Vs. Arihant Threads Limited & Others, AIR 2015 SC 498.

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