*** HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

+ Criminal Revision Case Nos.175, 2235, 2584 and 2880 of 2018; 194, 621, 622 and 975 of 2019

% Dated 30-12-2019.

Crl.R.C.No.175 of 2018

Between:
Goli Satyanarayana Reddy

..... Petitioner

and

$ G.Mahesh & Anr.

..Respondents

! Counsel for the petitioners :

Sri K.J.V.N.Pundareekashudu, Sri Naga Praveen Vankayalapati, Sri S.Sridhar, Sri Karunakar Reddy, Sri K.Sai Mohan Rao, Sri Vutupalli Rajanna, and Sri V.Roopesh Kumar Reddy

^ Counsel for respondents :

Learned Additional Public Prosecutor and Sri D.Anil Kumar and Sri Sai Gangadhar Chamarthy

<GIST:

> HEAD NOTE:

? Cases referred

1. AIR 1977 SC 2185 = (1977) 4 SCC 137 = 1977 SCC (Cri) 585 = 1978 SCR(1) 222
2. AIR 1978 SC 47 = (1978) SCR(1) 749 = (1977) 4 SCC 551
3. (2017) 14 SCC 809
4. 2018(1) ALT (Cri) 97 (AP)
5. 2009 Cri.L.J. 2247
6. Order dated 24.08.2009 passed in Crl.O.P.(MD) No.4270 of 2009
7. 2017(3) ALT (Cri) 203
8. 2014 (3) AIR Kar 700 = 2014 (3) KCCR 2222
9. 1991 (0) SCJOnline (Raj) 188
10. (2012) 9 SCC 460
11. (2018) 16 SCC 299 = AIR 2018 SC 2039
12. Order dated 24.10.2018 in Crl.R.C.No.546 of 2011 of the common High Court of Judicature at Hyderabad
13. Judgment dt.17.03.2017 of the Madhya Pradesh High Court.
14. (2013) 15 SCC 624

IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH

Criminal Revision Case Nos.175, 2235, 2584 and 2880 of 2018; 194, 621, 622 and 975 of 2019

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Between:
Goli Satyanarayana Reddy

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JUDGMENT PRONOUNCED ON: 30-12-2019

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? ---
2. Whether the copies of judgment may be marked to Law Reporters/Journals -Yes-
3. Whether His Lordship wish to see the fair copy of the Judgment? -Yes-

JUSTICE CHEEKATI MANAVENDRANATH ROY

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

Criminal Revision Case Nos.175, 2235, 2584 and 2880 of 2018; 194, 621, 622 and 975 of 2019

COMMON ORDER:

All these Criminal Revision Cases arise out of the orders passed in the petitions filed under Section 45 of the Evidence Act to send the disputed documents in the *lis* to the expert for examination and for his opinion.

Since common question of law whether an order passed under Section 45 of the Evidence Act is an interlocutory order attracting the bar under sub-section (2) of Section 397 Cr.P.C. to maintain a revision under sub-section (1) of Section 397 Cr.P.C. is involved in all these Criminal Revision Cases, they are taken up together for consideration of the said preliminary question relating to maintainability of revision under Section 397(1) Cr.P.C., and these Criminal Revision Cases are being disposed of by this common order.

The petitioners in all these Criminal Revision Cases are the accused in complaints filed against them for the offence punishable under Section 138 of the Negotiable Instruments Act filed on the ground that the cheques issued by them towards discharge of legally enforceable debt or liability were dishonoured. During the pendency of the trial of the said cases, the revision petitioners have filed petitions in all the said cases respectively under Section 45 of the Evidence Act requesting the trial Courts to send the documents in question, whether the cheque or the promissory note, as the case may be, to the

expert for examination either to compare the disputed signatures on the document in question with the admitted signatures or to determine the age of the ink to establish their defence taken in the respective cases.

All the said petitions filed under Section 45 of the Evidence Act were dismissed by the trial Courts on various grounds on factual aspects.

Aggrieved by the impugned orders in dismissing the said petitions filed under Section 45 of the Evidence Act, filed during the pendency of the trial of the cases, the petitioners have preferred these Criminal Revision Cases under Section 397(1) Cr.P.C.

When these Criminal Revision Cases came up for hearing before this Court, this Court entertained a doubt regarding the maintainability of these revision cases under Section 397(1) Cr.P.C. in view of the express bar engrafted under Section 397(2) Cr.P.C. to entertain a revision under Section 397(1) Cr.P.C. against an interlocutory order passed during the pendency of the trial of the case. Therefore, this Court heard the learned counsel for the revision petitioners and also the learned counsel for the respondents and also the learned Additional Public Prosecutor for the respondent-State regarding maintainability of these Criminal Revision Cases.

Learned counsel appearing for the revision petitioners, while agreeing that the revision under Section 397(1) Cr.P.C. is not maintainable against an interlocutory order in view of the

bar contained in Section 397(2) Cr.P.C., would contend that revision is maintainable under Section 397(1) Cr.P.C. against an intermediate order. They would contend that the two-Judge Bench of the Apex Court in the case of **Amar Nath v. State of Haryana**[1] held that an order which substantially affect the right of the accused or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision under Section 397(1) Cr.P.C. and those orders touching the decision relating to rights or liabilities of the parties are to be termed as intermediate orders and revision against the said intermediate orders is maintainable under Section 397(1) Cr.P.C. They further contend that since the accused got right to seek examination of the disputed documents by an expert for his opinion to prove their defense that the said order passed under Section 45 of the Evidence Act is to be construed as an intermediate order against which revision is maintainable under Section 397(1) Cr.P.C. They would further contend that the said law laid down by the two-Judge Bench of the Apex Court in **Amar Nath**[1] was subsequently approved by the Apex Court in **Madhu Limaye v. The State of Maharashtra**[2], wherein the same proposition of law is laid down stating that revision against the order passed deciding the rights and liabilities of the parties, which is an intermediate order, is maintainable. They have also relied on the judgments of the other High Courts like

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[1] AIR 1977 SC 2185 = (1977) 4 SCC 137 = 1977 SCC (Cri) 585 = 1978 SCR(1) 222
[2] AIR 1978 SC 47 = (1978) SCR(1) 749 = (1977) 4 SCC 551

Madhurai Bench of the Madras High Court, Karnataka High Court etc. to prop up their contention. The ratio laid down in all those decisions of other High Courts is based on the law laid down in **Amar Nath**[1] and **Madhu Limaye**[2]. They would finally contend that orders which are of matters of moment dealing with the rights and liabilities of the parties in relation to the trial of the case cannot be termed as interlocutory orders and they are to be construed as intermediate orders against which revision is maintainable. Therefore, they emphatically contend that these revision cases are maintainable under Section 397(1) Cr.P.C.

Per contra, Learned Counsel for the respondents and the Learned Additional Public Prosecutor would contend that revision under Section 397(1) Cr.P.C. is maintainable only against final orders which terminate the proceedings of the main case by the said order once for all and revision against all other orders which are passed during the pendency of the trial, which are interlocutory orders, is not maintainable in view of the express bar contained in Section 397(2) Cr.P.C. They would then contend that although on account of the ratio laid down in the judgments of the Apex Court in **Amar Nath[1]** and **Madhu Limaye[2]**, a third order called as 'intermediate order' is carved out saying that order which is of matter of moment and which pertains to the important rights and liabilities of the parties in relation to the said case cannot be construed as an interlocutory order simplicitor and those orders are to be

construed as intermediate orders or quasi final orders against which revision under Section 397(1) Cr.P.C. is maintainable, that the said interpretation applies only to the orders though passed at interlocutory stage during pendency of the trial, ultimately have the effect of terminating the main proceedings of the case once for all. Therefore, they contend only those orders which result into culmination of the main proceedings alone are to be construed as intermediate orders and not the other orders. In support of the said contention, the Learned Counsel for the respondents placed strong reliance on the three-Judge Bench judgment of the Supreme Court in **Girish Kumar Suneja v. C.B.I.**[3] which has thrown light on the controversy to decide as to what is the order which is of a matter of moment as held in **Amar Nath**[1] and **Madhu Limaye**[2]. They would contend that as per the interpretation given in the above three-Judge Bench judgment of the Apex Court only the orders like taking cognizance of an offence and summoning an accused in the said case to face trial, an order framing charges or order discharging the accused etc alone are to be construed as an order that is of matter of moment or intermediate order or quasi final order against which revision is maintainable and other orders which are passed during the pendency of the trial are not intermediate orders. Therefore, they would contend that an order passed under Section 45 of the Evidence Act relating to the request to

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[3] (2017) 14 SCC 809

send the document in question for examination by expert and for his opinion do not decide anything finally and it will not terminate the proceedings of the main case once for all and as such the said order cannot be construed as an order that is of matter of moment or touching the rights and liabilities of the party. So, it does not fall within the ambit of the intermediate order so as to maintain a revision against the said order. Therefore, they would contend that these revision cases are clearly barred under Section 397(2) Cr.P.C. and they are not maintainable under law. So, they prayed to dismiss the revisions as not maintainable.

The dispute is commonplace, facts are simple, law is well-settled, yet a combat. This Court is once again called upon to answer the vexed question as to what is an interlocutory order as contemplated under Section 397(2) Cr.P.C. and whether an order passed under Section 45 of the Evidence Act is an interlocutory order attracting the bar under Section 397(2) Cr.P.C. and whether a revision against the said order under Section 397(1) Cr.P.C. is maintainable or not.

Despite the fact that there is considerable precedential guidance on the question whether a particular order passed during the pendency of trial of a criminal case is a final order or an interlocutory order or an intermediate order, the vexed question of law whether revision against these orders under Section 397(1) Cr.P.C. is maintainable or not has been subject

matter of adjudication in many cases on many occasions and the present one is another such occasion.

Before adverting to answer the same, it is expedient to go through Section 397(1) and 397(2) Cr.P.C. and to consider the intention of the legislation in introducing this new provision under Section 397(2) Cr.P.C. in the year 1973 and also to consider the object of the said legislation. Section 397(1) and (2) Cr.P.C. reads thus:

> "**Section 397. Calling for records to exercise powers of revision.** (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.
>
> Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of Section 398.
>
> (2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
>
> (3) ....."

A plain reading of the aforesaid Section makes it manifest that Section 397(1) Cr.P.C. enables the aggrieved parties to question the correctness, legality or propriety of any finding, sentence or order recorded or passed by the inferior court before

the revisional court i.e. the High Court or the Sessions Judge as concurrent jurisdiction is conferred on the High Court and the Sessions Judge by the Section. Now, it is significant to note that Section 397(2) Cr.P.C. mandates that the power of revision conferred by sub-section (1) of Section 397 Cr.P.C. shall not be exercised in relation to any interlocutory order in any appeal, enquiry, trial or other proceeding. Therefore, express bar is created by the legislation under Section 397(2) Cr.P.C. to entertain revision against an interlocutory order.

This sub-section (2) of Section 397 Cr.P.C. is a new provision introduced in the year 1973. Earlier, prior to 1973, power of revision was conferred on the revisional Courts without any limitation or bar to maintain the said revision against any order. Prior to 1973, there is no bar to maintain revision against an interlocutory order. So, many interlocutory orders passed by the trial Courts are being questioned by invoking this power of revision and trial of the cases are either being protracted or stalled in the trial Courts on account of questioning the said interlocutory orders in revision. So, considering the Law Commission Report issued in this regard, to curb this practice of stalling or protracting the proceedings of the case in the trial Court by way of preferring revisions against interlocutory orders, this new provision under Section 397(2) Cr.P.C. was introduced whereunder an express bar is imposed on the revisional Courts to entertain any revision under sub-section (1) of Section 397 Cr.P.C. against interlocutory orders.

Therefore, considering this historical background in introducing sub-section (2) of Section 397 Cr.P.C. imposing an express bar to entertain revisions under Section 397(1) Cr.P.C. against an interlocutory order, any interpretation to be given to a particular order passed during the pendency of the trial to decide or ascertain whether it is a final order or an interlocutory order or an intermediate order for the purpose of maintaining a revision under Section 397(1) Cr.P.C. must be inconsonance with the object of the legislation in introducing and incorporating Section 397(2) Cr.P.C. imposing a bar to maintain revision against interlocutory order. It is well settled law that interpretation of any statute or any provision or section in a statute must always be made keeping in mind the object of the legislation and no effort should be made in the process to dilute the legislative intent. Therefore, bearing in mind the said well-established cardinal principle of law relating to an interpretation of a statute or a section in the statute, it has to be decided whether the order under Section 45 of the Evidence Act is an interlocutory order or an intermediate order/quasi final order or not as per the law laid down by the Apex Court in **Amar Nath**[1] and **Madhu Limaye**[2].

Before embarking upon the same, at the outset, it is pertinent to note that as per the fundamental principle of law, revision is maintainable only when right of appeal is not provided against a particular final order. If the right of appeal is provided by the statute against a particular final order, then the

aggrieved party has to question or challenge the said final order only by way of preferring an appeal against the said order. If right of appeal is not provided against any particular final order by the statute, then only the power of revision under Section 397(1) Cr.P.C. is to be invoked by the aggrieved party. For instance, a final order passed under Section 125 Cr.P.C. granting or refusing to grant maintenance to a destitute wife is not an appealable order. Similarly, when an accused is convicted in any criminal case by a Court of Session or a Metropolitan Magistrate and if he is sentenced to undergo imprisonment for less than three months and if a Magistrate imposes only a fine not exceeding one hundred rupees etc. they are not appealable orders under Section 376 Cr.P.C. No right of appeal is provided against these final orders by the statute. Therefore, the party aggrieved by the final orders passed in any such cases can invoke Section 397(1) Cr.P.C. to question the legality, correctness or propriety of the said finding, sentence or orders before the revisional Courts. Now on account of the ratio laid down in **Amar Nath**[1] and **Madhu Limaye**[2] by the Apex Court, an order called as intermediate order has been carved out which can also be termed as a quasi final order. If right of appeal is not provided against the said intermediate or quasi final order then also the parties can invoke the revisional jurisdiction under Section 397(1) Cr.P.C. However, an order which is pure and simple interlocutory order which do not decide anything finally is to be considered as interlocutory order

and no revision against that interlocutory order is maintainable under Section 397(1) Cr.P.C. in view of the express bar imposed under Section 397(2) Cr.P.C.

Now, the seminal question that arises for determination in this batch of criminal revision cases is what are the orders that can be construed as intermediate or quasi final orders and whether the order passed under Section 45 of the Evidence Act is an interlocutory order or intermediate order and whether revision against the said order is maintainable or not.

Undoubtedly, the impugned orders under Section 45 of the Evidence Act were passed by the trial Courts during the pendency of the trial of the main cases. Irrespective of the fact whether the said petition filed under Section 45 of the Evidence Act is allowed or dismissed, the proceedings of the main criminal case still subsists and continues. So, it does not decide anything finally relating to the main case. The said order will not have the effect of terminating the proceedings of the main case. So, in the usual course, therefore, they are to be held to be pure and simple interlocutory orders clearly attracting the bar under Section 397(2) Cr.P.C. for the purpose of maintaining a revision under Section 397(1) Cr.P.C.

However, as noticed supra, the revision petitioners sought to contend that since the order passed under Section 45 of the Evidence Act pertains to the right of the accused in relation to the trial of the case to prove his deference in the case, it is to be construed as an intermediate order or a quasi final order in view

of the law laid down by the Apex Court in **Amar Nath[1]** and **Madhu Limaye[2]** and as such revision is maintainable against the said order.

Obviously, the idea that is sought to be conveyed by the said contention is that in view of the law laid down by the Apex Court in **Amar Nath[1]** and **Madhu Limaye[2]** that when an order affects the right of the accused in relation to the trial of the case that it is to be considered as an intermediate order or a quasi final order and revision against the same is maintainable under Section 397(1) Cr.P.C. So, this contention calls for the interpretation as to what is meant by an order which substantially affects the right and liabilities of the accused in relation to the main aspect of the trial of the case as held in **Amar Nath[1]** and **Madhu Limaye[2]**. Therefore, having regard to the importance attached to the contention raised by the petitioners and as the interpretation that may be given to the above expression would have far reaching consequences, I have given my anxious and thoughtful consideration to the said contention. In my considered view the said submission is wholly misconceived and it is completely misplaced.

No doubt, after Section 397(2) Cr.P.C. was introduced and incorporated in Cr.P.C. in the year 1973, the question as to what are interlocutory orders came up for consideration before the Apex Court in the year 1977 in **Amar Nath[1]**. Since the expression “interlocutory order” is not defined in the Code, the said expression has fallen for interpretation before the Apex

Court in **Amar Nath**[1]. That was a case where the learned Magistrate has taken cognizance of the case on a complaint filed by the complainant therein against the accused and issued summons to the accused. The said order of taking cognizance of the case and issuing summons to the accused was challenged by the accused by way of filing revision under Section 397(1) Cr.P.C. Therefore, while considering the maintainability of revision against the said order, the Apex Court held that an order which relates to taking cognizance of the case and thereby issuing summons to the accused for his appearance cannot be construed as a pure interlocutory order as ultimately if the challenge to the said order is accepted and if the Court finds that taking cognizance of the case against the accused itself is bad under law and if the said order is set aside, it would have the effect of terminating the main proceedings of the case itself once for all. Therefore, it is held that such orders though passed during pendency of the case, since the order would have the effect of terminating the main proceedings of the case itself once for all, it is to be construed as an intermediate order or a quasi final order against which revision is maintainable under Section 397(1) Cr.P.C. In the said process of interpretation, the Apex Court in **Amar Nath**[1] held that interlocutory order in Section 397(2) Cr.P.C. has been used in a restricted sense and merely denotes orders of a purely interim or temporary in nature which do not decide or touch important rights or liabilities of the parties. So, it is held that any order which

substantially affect the right of the accused or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision. It is held that, for instance, **order summoning witnesses**, adjourning cases, passing orders for bail, calling for reports, and such other steps in the aid of the pending proceeding may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) Cr.P.C. But, the order which is of matter of moment and which affects or adjudicate the right of the accused, on 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. The said ratio laid down in the **Amar Nath[1]** was subsequently approved by the three-Judge Bench judgment of the Apex Court in **Madhu Limaye[2]**. That was a case where framing a charge against the accused was challenged in revision. So, the question that arose before the three-Judge Bench judgment of the Apex Court in **Madhu Limaye[2]** is whether an order framing a charge is interlocutory order or not. Relying on the ratio laid down in **Amar Nath[1]**, it is held in **Madhu Limaye[2]** that if the challenge to the order of framing charge is accepted and the said order is set aside, it would have the effect of terminating the main proceedings of the case itself once for all, since, if the accused is discharged from the case, it would put an end to the main case itself. Therefore, it is held that the said order cannot be construed as an interlocutory

order and it is to be construed as intermediate order or quasi final order against which revision is maintainable.

Therefore, a careful consideration of the law laid down in **Amar Nath**[1] and **Madhu Limaye**[2], which has introduced the concept of intermediate order or the quasi final order, shows that if an order though passed during the pendency of the trial of the case, either at the initial stage or at any stage of the trial of the case, if ultimately the said order has the effect of terminating the main proceedings of the case once for all and decides the case finally once for all and puts an end to the case, then those orders though passed during the pendency of the trial of the case, are to be construed as quasi final orders or intermediate orders against which revision is maintainable.

In the context while understanding the purport of the said two judgments, it is to be noticed that as the right of the accused to question the order taking cognizance of the case against him without any valid legal basis, is a substantial right conferred on him, as it touches the liability of the accused to face the trial, and if the challenge to the order is ultimately accepted and the order is set aside, as it would have the effect of terminating the main proceedings of the case itself against him, the said order is held to be intermediate order or quasi final order by the Apex Court in **Amar Nath**[1]. Similarly, in **Madhu Limaye**[2] also if the accused who is aggrieved by the order of framing charge against him challenges the said order of framing charge on the ground that without there being any valid legal

basis for framing charge that a charge was framed against him and that the said charge is groundless and if ultimately the said challenge is accepted and the order is set aside, as it would also have the effect of terminating the main proceedings of the case once for all against him and puts an end to the proceedings of the case against him, it is held that the said order is to be construed as an intermediate order. As the said right to question the validity of the charge of the accused is a valuable right, which touches his right or liability in relation to the trial of the said case, it is construed as an intermediate order. Thus, the concept of intermediate or quasi final order is predicated on the above logic and ratiocination. The Parliament missed its attention to the said contingency that there may be certain orders though passed during interim stage of the case, but would culminate the entire proceedings of the case by the said orders, while imposing the bar under Section 397(2) Cr.P.C. The Apex Court noticed the said contingency and christened the said orders as intermediate orders and kept them out of the purview of the bar contained under Section 397(2) Cr.P.C. Therefore, in the said circumstances, it is held by the Apex Court that it is an order of matter of moment though passed during pendency of the trial of the case and revision against the said order is maintainable.

Now, it is significant to note that the three-Judge Bench of the Apex Court in the case of **Girish Kumar Suneja**[3], had an occasion to consider what is an intermediate order and what is

an order that is of matter of moment as held in **Amar Nath**[1] and **Madhu Limaye**[2]. Para Nos.15 to 18, 20, 21, 22 and 23 of the said judgment in **Girish Kumar Suneja**[3] are relevant in the context to consider and they read as follows:

> "15. While the text of sub-section (1) of Section 397 of the Cr.P.C. appears to confer very wide powers on the court in the exercise of its revision jurisdiction, this power is equally **severely curtailed** by sub-section (2) thereof. There is a complete prohibition in a court exercising its revision jurisdiction in respect of interlocutory orders. Therefore, what is the nature of orders in respect of which a court can exercise its revision jurisdiction?
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> 16. There are three categories of orders that a court can pass – final, intermediate and interlocutory. There is no doubt that in respect of a final order, a court can exercise its revision jurisdiction – that is in respect of a final order of acquittal or conviction. There is equally no doubt that in respect of an interlocutory order, the court cannot exercise its revision jurisdiction. As far as an intermediate order is concerned, the court can exercise its revision jurisdiction since it is not an interlocutory order.
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> 17. The concept of an intermediate order first found mention in Amar Nath v. State of Haryana7 in which case the interpretation and impact of Section 397(2) of the Cr.P.C. came up for consideration. This decision is important for two reasons. Firstly it gives the historical reason for the enactment of Section 397(2) of the Cr.P.C. and secondly considering that historical background, it gives a justification for a restrictive meaning to Section 482 of the Cr.P.C.
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> 18. As far as the historical background is concerned, it was pointed out that the Criminal Procedure Code of 1898 and the 1955 Amendment gave wide powers to the High Court to interfere with orders passed in criminal cases by the subordinate courts. These wide powers were restricted by the High Court and this Court, as matter of prudence and not as a matter of law, to an order that "suffered from any error of law

or any legal infirmity causing injustice or prejudice to the accused or was manifestly foolish or perverse." (Amar Nath case (1977) 4 SCC 137 = 1077 SCC (Cri) 585). This led to the courts being flooded with cases challenging all kinds of orders and thereby delaying prosecution of a case to the detriment of an accused person.

19. ....

20. As noted in Amar Nath ((1977) 4 SCC 137 = 1077 SCC (Cri) 585)) the purpose of introducing Section 397(2) Cr.P.C. was to curb delays in the decision of criminal cases and thereby to benefit the accused by giving him or her a fair and expeditious trial. Unfortunately, this legislative intendment is sought to be turned topsy turvy by the appellants.

21. The concept of an intermediate order was further elucidated in Madhu Limaye v. State of Maharashtra ((1977) 4 SCC 551 : 1978 SCC (Cri) 10) by contradistinguishing a final order and an interlocutory order. This decision lays down the principle that an intermediate order is one which is interlocutory in nature but when reversed, it has the effect of terminating the proceedings and thereby resulting in a final order. Two such intermediate orders immediately come to mind – an order taking cognizance of an offence and summoning an accused and an order for framing charges. Prima facie these orders are interlocutory in nature, but when an order taking cognizance and summoning an accused is reversed, it has the effect of terminating the proceedings against that person resulting in a final order in his or her favour. Similarly, an order for framing of charges if reversed has the effect of discharging the accused person and resulting in a final order in his or her favour. Therefore, an intermediate order is one which if passed in a certain way, the proceedings would terminate but if passed in another way, the proceedings would continue.

22. The view expressed in Amar Nath ((1977) 4 SCC 137) and Madhu Limaye ((1977) 4 SCC 551) was followed in K.K. Patel v. State of Gujarat ((2000) 6 SCC 195 : 2001 SCC (Cri) 200) wherein a revision petition was filed challenging the

taking of cognizance and issuance of a process. It was said:(K.K. Patel case ((2000) 6 SCC 195 : 2001 SCC (Cri) 200), SCC p. 201, para.11):

"11. .....It is now well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage (vide Amar Nath v. State of Haryana ((1977) 4 SCC 137), Madhu Limaye v. State of Maharashtra ((1977) 4 SCC 551), V.C. Shukla v. State (1980 Supp SCC 92 : 1980 SCC (Cri) 695) and Rajendra Kumar Sitaram Pande v. Uttam ((1999) 3 SCC 134 : 1999 SCC (Cri) 393). *The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated.* Hence, as per the said standard, the order was revisable." (Emphasis supplied).

23. We may note that in different cases, different expressions are used for the same category of orders – sometimes it is called an intermediate order, sometimes a quasi-final order and sometimes it is called an order that is a matter of moment. Our preference is for the expression 'intermediate order' since that brings out the nature of the order more explicitly."

Thus, from the rational observations made in the above extracted paragraphs of the three-Judge Bench judgment of the Apex Court in **Girish Kumar Suneja[3]**, and particularly from the observations made in paragraphs 21 and 22 of the judgment, the legal position is made very clear stating that only when the impugned order though passed during interim stage would result in culminating the proceedings of the main case once for

all, then only it is to be called as an intermediate or quasi final order that is of matter of moment or as an order that touches the important right or liability of the party in relation to the trial of the case. All other orders, which do not result in terminating the proceedings of the main case, cannot be construed as an order that is of matter of moment to hold that a revision against the said order is maintainable. This judgment of the three-Judge Bench of the Apex Court in **Girish Kumar Suneja**[3] holds authority for the said proposition of law.

Relying on this judgment in **Girish Kumar Suneja**[3], the common High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in the case of **Repalle Krishna Murthy v. Uppalla Nagendramma**[4] and also after considering the other judgments on the point, held that an order passed under Section 45 of the Evidence Act is purely an interlocutory order and revision against the said order is not maintainable under Section 397(1) Cr.P.C.

Therefore, from the survey of law made as to what orders can be construed as intermediate orders or quasi final orders on the principle that it is an order which is of matter of moment or that it touches the substantial rights and liabilities of the parties in relation to the trial, the legal position is now clear from the precedential guidance given in the three-Judge Bench judgment of the Apex Court in **Girish Kumar Suneja**[3] that

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[4] 2018(1) ALT (Cri) 97 (AP)

those orders which have the effect of terminating the proceedings of the main case once for all though passed at interlocutory stage are alone to be construed as an intermediate or quasi final order. **That is the only feasible test to decide whether a particular order is an interlocutory order or an intermediate or quasi final order for the purpose of maintaining revision under Section 397(1) Cr.P.C.** Therefore, in the considered opinion of this Court, the said concept of intermediate order cannot be stretched to that extent so as to take within its fold all other interlocutory orders which are passed during the trial of the case relating to summoning of witnesses and sending the document to experts for examination etc. on the ground that it touches the rights and liabilities of the party in relation to trial of the case. They are only the orders passed as step in aid of the trial of the pending cases. If the contention of the petitioners is accepted and every order passed during the trial of the case is construed as an intermediate order on the ground that it touches the right or liability of the party in relation to trial of the case, it amounts to defeating the object of Section 397(2) Cr.P.C. and diluting the legislative intent.

Though the learned counsel for the petitioners strenuously contended and made an effort to convince the Court that an order passed in a petition filed under Section 45 of the Evidence Act pertains to or touches the right of an accused to prove his defence taken in the case and as such it is to be held to be an

intermediate order, I am unable to persuade myself to countenance the said contention for the aforementioned reasons and in view of the interpretation given to the said concept of intermediate order in **Amar Nath**[1] and **Madhu Limaye**[2] and finally in **Girish Kumar Suneja**[3]. For that matter, on the said analogy, even an order summoning a witness under Section 311 Cr.P.C. or calling for a document under Section 91 Cr.P.C. to prove the case of the complainant or the defence of an accused as the case may be which also relates to the right of the accused in one way or the other to prove his defence is to be held as an intermediate order. The Supreme Court did not agree with the said contention. It is significant to note in this context that it has been consistently held right from **Amar Nath**[1] in 1977 till **Girish Kumar Suneja**[3] in 2017 and subsequently also that an order to summon a witness is an interlocutory order against which a revision is not maintainable. In fact, in the case of **Sethuraman v. Rajamanickam**[5], the Apex Court clearly held in unequivocal terms that an order passed under Section 311 Cr.P.C. to summon a witness or an order passed under Section 91 Cr.P.C. to call for the documents are pure and simple interlocutory orders which do not decide anything finally and as such a revision under Section 397(1) Cr.P.C. is clearly barred under Section 397(2) Cr.P.C. Therefore, in view of the dictum laid down by the Apex Court in the above judgment, an order

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[5] 2009 Cri.L.J. 2247

passed under Section 311 Cr.P.C. to summon a witness or an order passed under Section 91 Cr.P.C. to call for a document cannot be construed as an order touching the right and liability of the accused or the complainant, as the case may be, in relation to the trial of the case, as they do not decide anything finally and result into culmination of the proceedings of the main case once for all. The Apex Court did not consider the said orders as intermediate or quasi final orders. The same analogy applies to an order passed under Section 45 of the Evidence Act also. Therefore, the said contention of the learned counsel for the revision petitioners holds no water and it cannot be countenanced.

For the aforesaid reasons, particularly in view of the interpretation given by the three-Judge Bench judgment of the Apex Court in **Girish Kumar Suneja**[3], the judgment of the Madhurai Bench of the Madras High Court in the case of **Kalyanaraman v. K.S. Janakiraman**[6] that an order passed under Section 45 of the Evidence Act is the order which is of matter of moment which affects the rights of the accused on a particular aspect of the trial cannot be said to be an interlocutory order and it is to be construed as an intermediate order, with due respect, cannot be held to be laying down a correct law on the point. Similarly, for the aforementioned reasons, the judgment of the common High Court of Judicature

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[6] Order dated 24.08.2009 passed in Crl.O.P.(MD) No.4270 of 2009

at Hyderabad for the State of Telangana and the State of Andhra Pradesh, in **T.Rajalingam @ Sambam v. State of Telangana**[7] and also the judgment of the Karnataka High Court in the case of **N.Muniswamy Reddy v. M.Narayanaswamy**[8], wherein it is also held that an order passed under Section 45 of the Evidence Act is not interlocutory in nature and the revision against the same is maintainable, cannot also said to be laying down the correct proposition of law. This Court is in complete agreement with the law laid down by the common High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in **Repalle Krishna Murthy**[4] wherein it is held that an order under Section 45 of the Evidence Act is an interlocutory order against which revision is not maintainable which was held on the basis of the ratio laid down in three-Judge Bench judgment of the Apex Court in **Girish Kumar Suneja**[3].

The other judgments relied on by the learned counsel for the revision petitioners in **Jarnail Singh v. State of Rajasthan**[9]**; Amit Kapoor v. Ramesh Chander**[10] and **Asian Resurfacing of Road Agency Pvt. Ltd. v. C.B.I.**[11] are all cases relating to order framing of charge. There is no quarrel relating to the legal position that an order relating to framing of a charge or discharge of accused is an intermediate or quasi final order

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[7] 2017(3) ALT (Cri) 203
[8] 2014 (3) AIR Kar 700 = 2014 (3) KCCR 2222
[9] 1991 (0) SCJOnline (Raj) 188
[10] (2012) 9 SCC 460
[11] (2018) 16 SCC 299 = AIR 2018 SC 2039

against which revision is maintainable. So, these judgments are of no avail to the revision petitioners.

The other judgments relied on by some of the learned counsel for the revision petitioners in **Ponnuru Ramesh v. The State of Andhra Pradesh**[12] of the common High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh and the judgment of the Madhya Pradesh High Court in **Mohit Sharma v. Anil Maheswari**[13] are not relating to the maintainability of revisions under Section 397 Cr.P.C.

In the judgment in **Urmila Devi v. Yudhvir Singh**[14] the order of Magistrate directing issuance of process is under challenge in the said judgment. There is no dispute relating to the legal position that an order issuing process after taking cognizance of the case is an intermediate order against which revision is maintainable. So, this judgment is also of no avail to the case of the revision petitioners.

To sum-up, after considering the law enunciated by the Apex Court in **Amar Nath**[1], **Madhu Limaye**[2] and **Girish Kumar Suneja**[3], as discussed supra, it is held that since the order passed under Section 45 of the Evidence Act do not decide anything finally and results into culminating the main proceeding of the case, in any way, it cannot be construed as an

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[12] Order dated 24.10.2018 in Crl.R.C.No.546 of 2011 of the common High Court of Judicature at Hyderabad
[13] Judgment dt.17.03.2017 of the Madhya Pradesh High Court.
[14] (2013) 15 SCC 624

order which is of matter of moment or as an intermediate or quasi final order so as to maintain revision against the said order. It is held that on par with the law laid down in **Sethuraman**[5] that an order summoning a witness or calling for a document is an interlocutory order against which revision is barred, the order passed under Section 45 of the Evidence Act is also a pure and simple interlocutory order against which revision is barred under Section 397(2) Cr.P.C.

Therefore, all the Criminal Revision Cases are dismissed as not maintainable under law.

Consequently, miscellaneous applications, pending if any, shall also stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date:30-12-2019.

Note:
L.R. Copy to be marked.
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