DIVISIONAL JUDICIAL SEMINAR

SARGUJA DIVISION

A PAPER ON

CRIMINAL REVISION – ADMISSION & ADJUDICATION

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UNDER THE GUIDANCE OF

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CHHATTISGARH

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INTRODUCTION

Revision is the process of examination of an order of a subordinate court by a higher court, so as to rectify any improper exercise of judicial power. The precise purpose of revision is to examine the correctness, legality or propriety of any proceedings before any subordinate court. Revision keeps the subordinate court within the bounds of their authority and makes them work according to well defined principles of law. Revisional jurisdiction is analogous to power of supervision and superintendence.

In instances where the Criminal Procedure Code does not explicitly provide for an avenue of appeal, the aggrieved party is not left without recourse. Instead, they have the option to seek redress by invoking the revisional jurisdiction of either the Sessions Court or the High Court, It is know criminal revision.

The revisional jurisdiction is enshrined in Sections 397 to 401 of the Criminal Procedure Code, delineating the powers conferred upon the Sessions Court and High Court. These provisions grant both the Sessions Court and the High Court concurrent jurisdiction to undertake the revision of a matter. Such concurrent authority ensures that individuals have multiple avenues for seeking revision.

NO REVISION OF INTERLOCUORY ORDERS

An interlocutory order passed in appeal in any inquiry, trial or other proceeding, no revision is allowed as per section 397(2) of CrPC. The matter involved in such an order passed in appeal can be challenged only at the end of the proceeding when the final order goes against the party.

WHAT IS AN INTERLOCUTORY ORDER

There are altogether three categories of order that a court can pass– final, intermediate and interlocutory. Interlocutory order is an order passed at some intermediate stage of a proceeding. It is not a kind of order that disallows the right of the parties. The expression 'interlocutory' is understood in contra-distinction to what is termed as final. A court usually disposes of many ancillary disputes raised by parties in a proceeding by issuing numerous orders. All such orders which do not finally dispose of a judicial proceeding are termed 'interlocutory' orders. Such interlocutory orders form part of the steps, taken towards the final adjudication of a proceeding. Every such interlocutory order may dispose of a particular point of controversy raised in a proceeding. An order would be an interlocutory order unless such

an order finally disposes of the controversy between the parties.

TEST OF INTERLOCUTORY ORDER

1. The order which does not finally concludes a proceedings is an interlocutory order.

2. The order which substantially affects rights of accused or decides certain rights of parties is not an interlocutory order.

Amarnath and ors. v. Sate of Haryana (1997) 4 SCC 137

In this case following view was taken by the Hon'ble Supreme Court-

(i) where a revision to the High Court against the order of the Subordinate Judge is expressly barred under sub-section (2) of Section 397 of the 1973 Code the inherent powers contained in Section 482 would not be available to defeat the bar contained in Section 397(2).

(ii) Interlocutary order denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order.

(iii) In a complaint case the order of the magistrate of summoning

the accused persons cannot be termed as being interlocutory as this order initiates the proceedings and the question of the appellants being put up for trial arise for the first time.

Madhu Limaye v. Sate of Maharashtra (1977) 4 SCC 551

Hon'ble Supreme court held that in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) Cr.PC. can limit or affect the exercise of the inherent power by the High Court.

V.C. Shukla v. CBI 1980 Supp SCC 92

In this case the order of framing a charge against the appellant was in question. The view taken by the Supreme Court- that order framing charges against an accused undoubtedly decides an important aspect of the trial and it is the duty of the court to apply its judicial mind to the materials and come to a clear conclusion that a prima facie case has been made out on the basis of which it would be justified in framing charges. Order of framing of charge is an interlocutory order.

FOLLOWINGS ARE INTERLOCUTORY ORDER

1. Order of grant or refusal of bail.

In the case of **Bhola v. State, 1979 SCC OnLine All 130** and in case of **Ram Naresh Singh Vs. State of M.P., 1995 Cri.LJ 2523**, it has been held that order granting bail is interlocutory order, hence no revision lies in the view of section 397 (2) of the cr.pc.

2. Order under section 311 of summoning a material witness or examine person present

In **Sethuraman v. Rajamanickam 2009 SCC 5 153** it was held that the orders passed by the trial court refusing to call the documents and rejecting the application under Section 311 CrPC, were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) CrPC.

3. Search Warrant

In the case of ***Father Thomas v. State Of U.P And Others 2010 SCC ONLINE ALL 2438*** it was held that orders for investigation are only an ancillary step in aid of the investigation

or trial, and are clearly interlocutory in nature, similar to orders granting bail, or calling for records, or issuing search warrants, or summoning witnesses and other like matters which infringe no valuable rights of the prospective accused, and are not amenable to challenge in a criminal revision, in view of the bar contained in section 397(2) of the Code. The court reasoned that the provisions relating to investigation under Chapter XII of the Code do not confer any right of prior notice and hearing to the accused. Moreover, the accused will have all rights to be heard and to raise his defense pleas during the course of the trial. Here again no right of hearing has been conferred on an accused when the Magistrate decides to hear the informant on receipt of the report under section 173(2) of the Code, when he is of the opinion that no ground exists for proceeding against the accused.

He cannot be termed as an “aggrieved person” for purpose of section 397 of the Code. The accused does not have any right to be heard before he is summoned by the Court under the Code and that he has got no right to raise any objection till the stage of summoning and therefore he cannot be conferred with a right to challenge the order passed prior to his summoning.

4. Disallowing irrelevant question during evidence etc.

In ***Sunderlal Patwa v. Digvijay Singh 2002 SCC ONLINE MP 418*** During the recording of evidence, the learned Chief Judicial Magistrate disallowed two questions asked by the applicant's counsel, which were claimed to be in accordance with section 146 of the Evidence Act. As a result, the further cross-examination was stopped. issue was Whether the criminal revision on the question of maintainability itself should be rejected? The Court held, that sitting in revision, generally does not interfere with orders unless they would result in culminating or terminating the proceedings resulting in a miscarriage of justice. In this case, considering the facts and circumstances discussed above, the criminal revision on the question of maintainability was rejected.

5. Order of under section 156(3) Cr.P.C.

When the application is allowed then its interlocutory order,and when the application is not allowed then the order is revisionable. *In* ***Ayyub Ahmad v. State of M.P., 2009 SCC OnLine MP 865*** the Court held that seeking the quashment or setting aside of the impugned order passed under section 156 (3) of the Cr. P. C would be challenging an interlocutory under the circumstances and the revision would not be maintainable. The

petitioner ought to have filed an application under section 482 of the Cr. P. C, if at all he was aggrieved in this sense also.

In ***Amarnath Agarwal v. Jai Singh Agarwal & Ors., 2015 SCC OnLine Chh 14.***

The Hon'ble High Court of Chhattisgarh held that since a revision against registration of an FIR under Section 154(1) is not maintainable, therefore, an order passed by the Magistrate directing the police to investigate under Section 156(3) would also be not revisable. If a revision against such an order is held maintainable and allowed, the Court of Sessions would be vested with the power of quashing an FIR. Thus, what cannot be done directly, cannot be done indirectly.

In ***Jai Singh Agarwal vs State of C.G. 2020 SCC OnLine Chh 553*** The Special court has power to make an order under section 156(3) Cr.P.C. directing for registration of F.I.R.

6. Written complainant under section 201 CrPC.

7. Acceptance of Khatma report.

8. Closing of Evidence.

9. Order of Refuse to declare hostile.

10. Order under section 274 CrPC.

11. Order under section 251 CrPC.

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15. Calling for reports etc are interlocutory orders.

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INTERMEDIATE OR QUASI -FINAL ORDER & FINAL ORDER

There are some orders which are neither interlocutory nor final in nature. They are termed intermediate orders or quasi-final orders. Therefore 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 are an order taking cognizance of an offense 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.

In the case of *Girish Kumar Suneja v. CBI (2017) 14 SCC 809* it was held 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." 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. The basic test is that when an order rejecting a plea of the accused on a point when granted will conclude the particular proceeding it cannot be treated as an interlocutory order. In case of an intermediate order, the court can exercise its revision jurisdiction since it is not an interlocutory order. A final order denotes an order which finally decides any matter directly in issue. For example, an order on framing charge is not interlocutory hence final, the order on tendering pardon is a final order etc. However an interlocutory order issued without jurisdiction is a nullity and hence is revisonable.

FOLLOWINGS ARE NOT INTERLOCUTORY ORDER HENCE THEIR REVISION CAN BE DONE

1. Tender of Pardon

In ***State Of U.P. vs Kailash Nath Agarwal & Ors, 1973 AIR 2210***, it was held that the tender of pardon and its acceptance by the person concerned is a matter entirely between the court and the person to whom pardon is tendered and that a co-accused has no power to challenge the same, as it is a purely executive or administrative action and not a judicial decision. Tendering of pardon is only an exercise of one of the many prerogatives of the sovereign. After having held that the High Court's jurisdiction cannot be invoked under section 435, the learned Judge on merits held that the tender of pardon was legal. Hence the order of Tender of Pardon is revisionable.

2. Dismissal of Complaint under Section 204(4) of Cr.P.C.

In ***Bhupendra Singh vs Saket Kumar CRR.289/201*** it was held that where a complaint is dismissed for non- payment of process fee. The Court should in the first instance issue summons, then bailable warrant and in the last non-bailable warrant if the Court is satisfied that the accused is avoiding Court's proceedings

intentionally. Herein the complainant was not warned nor any peremptory order was passed for failing to pay process fee the complainant will be put to inconvenience and the case would be thrown away without being decided on merits. Therefore such orders are revisionable.

3. Order against a third party Extension of date of challan under section 473 Cr.P.C.

In ***G.D. Iyer And Others Petitioners v. State 1977 SCC ONLINE DEL 116*** While Condoning delay to present challan**.** There was some debate before Court that the order in question is an interlocutory order and, therefore, this court cannot exercise the power of revision under section 397 (1) or under section 482 of the code.

4. Order against a third party

In Case of ***Parmeshwari Devi v. State, (1977) 1 SCC 169*** Hon'ble Supreme court held that the order of the Magistrate against a third party could not be said to be an interlocutory order and the revisional courts erred in raising the bar of sub-section (2) of section 397 against it."

5. Dismissal of Complaint under Section 203 of Cr.P.C.

In ***Buddh Singh Kushwaha vs Umed Singh ILR 2018 MP 988*** it was held that the order dismissing the complaint under Section 203 of the Cr.P.C would not come within the connotation "acquittal" and the petition filed by the petitioner/complainant under Section 378(4) of the Cr.P.C seeking leave to appeal is not maintainable. The remedy is available to the petitioner to challenge the impugned order by filing a revision or a petition under section 482 of the Cr.P.C.

6. Section 204 Cr.P.C. Order of issuance of process against the Accused

In Case of ***Rajendra Kumar Sitaram Pande v. Uttam, (1999) 3 SCC 134*** The Supreme Court held that the High Court was not justified in coming to the conclusion that the Sessions Judge had no jurisdiction to interfere with the order in view of the bar under sub-section (2) of Section 397 of the Code. The Court observed that the Sessions Judge had the jurisdiction to interfere with the order of the Magistrate directing the issuance of process against the accused persons.

In Case of ***Amarnath and ors. v. Sate of Haryana and anr. (1997) 4 SCC 137*** The Supreme Court held that “In a complaint case the order of the magistrate of summoning the

accused persons cannot be termed as being interlocutory as this order initiates the proceedings and the question of the appellants being put up for trial arise for the first time."

7. Order of rejection of permission under section 321 of Cr.P.C.

In ***Sheonandan Paswan v. State of Bihar, (1987) 1 SCC 288*** it was held that the order of giving Consent under section 321 crpc is revisional. The power exercised by the High Court under section 397 is couched in words of the widest amplitude and in the exercise of this power can satisfy itself as to the correctness, legality, or propriety of any order passed by the Magistrate or as to the regularity of any proceedings of such Magistrate.

8. Order of framing of charge.

When order discharge is made then it is interlocutory. Hon'ble Supreme Court in the case of ***Madhu Limaye v. Sate of Maharashtra (1977) 4 SCC 551*** held that "In case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. "

9. Rejection of application under section 320 Cr.P.C.

When an application is rejected under section 320 CRPC then revision lies against such order.

10. Rejection of bail order under section 167(2) Cr.P.C.

11. Order of issuance of process to accused u/s 319 of Cr.P.C.

12. Dismissal of Protest Petition in closure report.

13. Order of disposal of property u/s 451 and 457 of Cr.P.C.

14. Rejection of application u/s 320 of Cr.P.C.

15. Order under section 258 of Cr.P.C.

- When the evidence is not taken then the order is revisable.
- When the evidence is taken then its not revisable.

16. Order under section 249 of Cr.P.C.

17. Order of Confiscation under Special Act.

i.e- Excise Act, Forrest Act, C.G. Agriculture Cattle Preservation Act

18. Rejection of bail order under section 437(6) Cr.P.C.

In **Atul Bagga (In Jail) v. State Of Chhattisgarh 2009 SCC ONLINE CHH 211** it was held that The Magistrate does not have jurisdiction under Sub-section (1) of Section 437 of the Code to grant bail to the accused under Sections 409 and 467 of the Indian Penal Code which punishable is with imprisonment for life.

19. Dismissal of complaint under section 256 Cr.P.C.

ASPECTS TO REMEMBER

- **Revision against an order of Juvenile Justice Board lies in High Court**

In ***Master X th. Shah Wali Vs State of J&K 2023 LiveLaw (JKL) 59*** Explaining the mandate of Section 102 of the Juvenile Justice Act the court said that the revisional powers in terms of Section 102 have been vested with the High Court and no such power is vested with the Court of Sessions or Children's Court as Section 1(4) of Juvenile Justice Act gives an overriding effect to the provisions contained in said Act.

- **Effect of Death of Revisionist**

In case of ***Pranab Kumar Mitra v. State of W.B., 1959 Supp (1) SCR 63: AIR 1959 SC 144*** Court held Revision does not abate on death of Revisionist. It is not bound the other way, namely, to treat a pending application in revision as having abated by reason of the fact that there was a composite sentence of imprisonment and fine, the Court has been left with complete discretion to deal with a pending matter on the death of the petitioner in accordance with the requirements of justice.

In the case of ***Suresh Tiwari v. State Of Chhattisgarh 2014 SCC ONLINE CHH 84*** Hon'ble High Court of

Chhattisgarh Held “If a person is sentenced to pay a fine and dies, their executors or administrators may continue or initiate an appeal to save or recover the fine for the benefit of the deceased's estate. In the present case, the deceased applicant was convicted under Section 380 of the IPC and sentenced to imprisonment and a fine. Based on the legal precedents, the legal heirs of the deceased applicant were entitled to pursue the revision application.”

- **Non- appearance of Revisionist**

In ***Bani Singh v. State of U.P., (1996) 4 SCC 720 : 1996 SCC (Cri) 848*** A three-Judge Bench of Supreme Court held that a criminal appeal should not be dismissed in default but should be decided on merits. If despite notice neither the appellant nor his counsel is present, the court should decide the appeal on merits. The law clearly expects the appellate court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial court are consistent with the material on record. The law, therefore, does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after

perusal of the record.

In case of ***Madan Lal Kapoor v. Rajiv Thapar, (2007) 7 SCC 623*** The learned Single Judge dismissed the criminal revision petition filed by the appellant, where nobody appears for the petitioner. SC held, a criminal matter cannot be dismissed for default and it must be decided on merits.

On the basis of the law laid down by the Hon'ble Supreme Court, the following is an interlocutory order:

1. An order of a purely interim or temporary nature which does not decide or touch the important rights or the liabilities of the parties. On the basis of the law laid down by the various pronouncements, the following are not interlocutory orders:

1. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order.

2. 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 orders. Note for Points 1 and 2 : Orders which are steps in aid of the pending proceeding, and which are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in a pending proceeding and which regulate the procedure only are considered not to affect any rights or liabilities of parties.

3. Orders rejecting the plea of a party on a point which, when accepted, will conclude the particular proceeding.

4. Orders passed against a stranger to the case who would have no opportunity of challenging it after a final order is made affecting the parties concerned provided the order adversely affects the stranger's rights. Rider : The term interlocutory order used in the new Act has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial (as per the law laid down by the four-Judge Bench in ***V.C. Shukla V. CBI, 1980 Supp SCC 92***.

- **Inherent power of High Court under section 482 vis-a-vis bar created by sub- section (2) of Section 397 of CrPC**

This issue came before the first time before the Hon'ble Supreme Court in the case of ***Amarnath and ors. v. Sate of Haryana and anr. (1997) 4 SCC 137*** wherein the Hon'ble Supreme Court held that "where a revision to the High Court against the order of the Subordinate Judge is expressly barred under sub-section (2) of Section 397 of the 1973 Code the inherent powers contained in Section 482 would not be available to defeat the bar contained in Section 397(2)."

But, taking a different view the Hon'ble Supreme Court in the case of ***Madhu Limaye v. Sate of Maharashtra (1977) 4 SCC 551*** held that "In case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. "

ADMISSION & ADJUDICATION

- **Meaning of "Admission"**

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, it's 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.

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.

Uma Nath Pandey And Others v. State Of Uttar Pradesh And Another

In this case Supreme court held that in revision petition accused was not served notice which was in violation of the principles of natural justice. Hence it both the parties must be heard while deciding revision petition.

- **Meaning of “Adjudication”**

The adjudication of a criminal revision under the Code of Criminal Procedure (CrPC) refers to the process of reviewing and deciding on a revision petition filed before a higher court challenging an order passed by a lower court in a criminal case. In the context of the Indian legal system, a criminal revision is a remedy available to a party aggrieved by an order of a subordinate court. The revision petition is filed before the higher court, which has the power to examine the legality, propriety, or correctness of the order passed by the lower court. The higher court may either confirm, modify, or set aside the order passed by the lower court, depending on the merits of the case. The adjudication of a criminal revision involves a thorough examination of the record, including the order passed by the lower court, relevant evidence, and legal arguments presented by both parties. The higher court may also hear oral arguments from the parties or their legal representatives before arriving at a decision. It is important to note that the scope of adjudication in a criminal revision is limited to reviewing the order passed by the lower court and ensuring that it is in accordance with the provisions of the CrPC and the principles of natural justice. The

higher court does not re-evaluate the evidence or conduct a full-fledged trial. Its role is to correct any errors or irregularities in the order passed by the lower court

- **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, 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.

- **Impleadment of Parties in Revision**

Sarbajeet Singh v. Ram Bhog Mishra And Anr. Criminal revision No. - 2784 of 2011 High court held that

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 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.

LIMITATION PERIOD FOR FILING A REVISION PETITION UNDER SECTION 397 Cr.P.C.

As per Article 131 of the Limitation Act, 1963, the time limit for filing a revision under Section 397 of the Criminal Procedure Code (CrPC) is 90 days from the date of the order being challenged. However, if there is a satisfactory explanation provided by the proposed revisionist for the delay, the revisional court has the authority to condone the delay under Section 5 of the Limitation Act, 1963.

CONCLUSION

The purpose of revisional jurisdiction is not to re-examine the trial proceedings extensively. Rather, the revisional court evaluates the correctness, legality, and suitability of a decision within an order, ensuring consistency in the subordinate court's procedures. During this assessment, the revisional court does not extensively delve into the case's facts and evidence. Instead, it briefly reviews the material solely to verify the legality and appropriateness of the conclusions, sentences, and orders, refraining from forming its own conclusions based on an exhaustive examination of evidence.