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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 05.05.2025*

\+ **CRL.M.C. 3080/2025, CRL.M.A. 13645/2025 & 13644/2025**

DILSHAD HUSSAIN .....Petitioner

Through: Mr. Rajesh Kajla, Advocate

versus

PUSHPA DEVI .....Respondent

Through: None

CORAM: JUSTICE GIRISH KATHPALIA

J U D G M E N T (ORAL)

1. By way of this petition, brought under Section 528 BNSS (Section 482 CrPC), the petitioner seeks setting aside of order dated 20.11.2023 passed by the learned trial court in proceedings titled *Pushpa Devi vs Dilshad Hussain* under Section 138 Negotiable Instruments Act, whereby application of the petitioner under Section 311 CrPC was dismissed; and order dated 20.03.2025 of learned Court of Sessions in proceedings under Section 397 CrPC, refusing to interfere. Having heard, learned counsel for petitioner, I find it not a fit case to invoke inherent jurisdiction of this court in order to interfere with the impugned orders.

2. Briefly stated, circumstances leading to the present petition are as follows.

2.1 The petitioner, facing trial under Section 138 Negotiable Instruments Act filed an application under Section 311 CrPC before the Trial Court, seeking to summon records of another proceedings, titled *Pushpa Devi vs Lucky Singh Siddhu* under Section 138 Negotiable Instruments Act, contending that the said records would establish falsity of the case of the complainant. The application was strongly opposed by the counsel for complainant (*respondent herein*), contending that the application was a dilatory tactic and not maintainable since the record sought to be summoned pertained to different complaint case filed against different accused and pertained to different cheques. Further, it was contended on behalf of the present respondent that the present petitioner had not disclosed the reason to summon the said record. After referring to the judicial precedents flowing from the Supreme Court, the learned trial magistrate dismissed the application vide order dated 20.11.2023, observing that the present petitioner had not disclosed the reason as to why he wanted to summon those records and how those records are relevant in the present case.

2.2 The said order dated 20.11.2023 of the trial court was challenged by the present petitioner by way of revision proceedings before the learned

Court of Sessions. The learned Additional Sessions Judge, by way of order dated 20.03.2025 dismissed the revision petition, refusing to interfere after detailed discussion, holding the impugned order as an interlocutory order in the light of plethora of judicial pronouncements.

2.3 Hence, the present petition invoking the inherent powers of this court to interfere and set aside both the above mentioned orders of the learned trial court and the learned revisional court.

3. Learned counsel for petitioner contended that denial of opportunity to summon the records of the case titled *Pushpa Devi vs Lucky Singh Siddhu*, would seriously prejudice defence of the petitioner, so the application under Section 311 CrPC ought to have been allowed. As regards the impugned order of the revisional court, learned counsel for petitioner placed reliance on the judgments titled ***Honnaiah T.H. vs State of Karnataka & Ors.,*** 2022 SCC OnLine, SC 1001 and ***Satbir Singh vs State of Haryana & Ors.***, 2023 SCC OnLine 1086.

4. For the sake of ready reference, the provision under Section 438, Bharatiya Nagarik Suraksha Sanhita is quoted as follows:

> *"**438. 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 his own bond or bail 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 439.

(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) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

5. Noticeably, Section 438(1) BNSS is worded similar to the earlier provision under Section 397(1) CrPC, which confers on the High Court as well as the Court of Sessions very wide powers to examine the legality, correctness and propriety of any order passed by any "inferior criminal court". Sub-section (2) of Section 438 BNSS, like Section 397(1) CrPC operates as a check on those vast revisional powers and the purpose of the said check is to curb delays in decisions of criminal cases, in order to ensure fair and expeditious trial. The expression "interlocutory order" used in Section 397(2) CrPC has been subject of detailed analysis in various judicial precedents and is vital to understand the nature and extent of curtailment of revisional jurisdiction.

6. Basically, a judicial order passed by a criminal court can be either Final Order or Intermediate Order or Interlocutory Order. So far as final order is concerned, there can be no difficulty in the sense that an order of discharge or acquittal or conviction is a final order. The issue lies while distinguishing between an interlocutory order and an intermediate order, which distinction is necessary to understand, in order to analyze the statutory bar created by Section 397(2) CrPC, aimed to curtail the revisional powers of the High Court and the Court of Sessions.

6A. In the case of ***Amar Nath & Others vs State Of Haryana & Others***, 1977 CrLJ 1891, a Bench of two Hon'ble Judges of the Supreme Court dealt with the provisions under Sections 397(2) and 482 CrPC and held that an interlocutory order is that order which does not decide rights or liabilities of the parties; that an order which affects rights of the parties cannot be called an interlocutory order; and that orders which are procedural steps, like summoning of witnesses, adjournments, bail and calling for report etc., which are steps in the aid of pending proceedings are interlocutory orders; and that subsection (2) was inserted in Section 397 CrPC in order to protect right of the accused so that trials do not get delayed.

6B. The concept of "intermediate order" was elucidated in the case of

Madhu Limaye vs State of Maharashtra, (1977) 4 SCC 551 by a Bench of three Hon'ble Judges of the Supreme Court of India while distinguishing a final order from an interlocutory order. The Hon'ble Supreme Court of India laid 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. 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 Hon'ble Supreme Court after analyzing various judicial precedents held that the view expressed in the case of ***Amar Nath*** (supra) needs to be modulated and modified on one part and needs to be reaffirmed on the other part. The view taken in the case of ***Amar Nath*** (supra) that where bar of Section 397(2) CrPC applies, inherent powers under Section 482 CrPC cannot be invoked by the High Court was modulated by the Hon'ble Supreme Court holding that bar of Section 397(2) CrPC shall not obstruct the inherent powers of the High Court if the High Court finds it necessary to intervene and prevent abuse of process of court. The other point of the case of ***Amar Nath*** (supra) was reaffirmed that the interlocutory order is not converse of the final order and that order on charge is not an interlocutory order. The Hon'ble Supreme Court held that the feasible test is whether upholding the objections raised by a party would result in culminating the proceedings, and if so, any order passed on such objections would not be an interlocutory order as envisaged

in Section 397(2) CrPC.

6C. In the case of ***K.K. Patel & Anr vs State Of Gujarat***, (2000) 6 SCC 195, another Bench of two Hon'ble Judges of the Supreme Court held that in deciding whether an order is interlocutory or not, the sole test is not whether such order was passed during the interim stage, but the feasible test is as to whether by upholding the objections raised by a party, it would result in culminating the proceedings and if so, such order would not be merely interlocutory order as envisaged by Section 397(2) CrPC and consequently such order would be amenable to the revisional jurisdiction. The Hon'ble Supreme Court elaborated thus:

> *"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, Madhu Limaye v. State of Maharashtra, V. C. Shukla v. State through CBI and Rajendra Kumar Sitaram Pande v. Uttam).* ***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 objections 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."*
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> *(emphasis supplied)*

6D. In the case of ***Girish Kumar Suneja vs CBI***, (2017) 14 SCC 809, a Bench of three Hon'ble Judges of the Supreme Court had an occasion to

examine the provisions under Section 397(2) CrPC. The Hon'ble Supreme Court held thus:

> *"16. 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?*
> *17. 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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> *20. As noted in Amar Nath the purpose of introducing Section 397(2) of the CrPC 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.*
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> *21. The concept of an intermediate order was further elucidated in Madhu Limaye v State of Maharashtra 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 and Madhu Limaye was followed in K.K. Patel vs. State of Gujarat wherein a revision petition was filed challenging the taking of cognizance and issuance of a process.....

27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition – such a petition can be rejected at the threshold. ***If the High Court is inclined to accept the 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 the culmination of the proceedings.*** *As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 of the CrPC.*

28. However, this does not mean that the appellants have no remedy available to them - paragraph 10 of the order does not prohibit the appellants from approaching this Court under Article 136 of the Constitution. Therefore all that has happened is that

the forum for ventilating the grievance of the appellants has shifted from the High Court to this Court."

(emphasis supplied)

6E. In the case of ***Neelam Mahajan vs State***, Crl.MC No.2242/2014 decided on 08.04.2016, a coordinate bench of this court held thus:

"16. The main question arises for consideration is whether the order passed under Section 311 of Cr.P.C. is an interlocutory order or not? In this regard catena of judgments of Hon'ble Supreme Court has settled the legal principle while holding that the meaning of the two words "final" and "interlocutory" has to be considered separately in relation to the particular purpose for which it is required. However, ***generally speaking, a judgment or order which determines the principal matter in question is termed final and simultaneously, an interlocutory order, though not conclusive of the main dispute may be conclusive as to the subordinate matter with which it deals. Therefore, in the considered opinion of this Court, if the decision on an issue puts an end to the suit, the order is undoubtedly a final one but if the suit is still left alive and has yet to be tried in the ordinary way, no finality could be attached to the order****.*

17. In ***V.C. Shukla vs. State through CBI****, 1999 SCC (Cri.) 393, the following propositions were laid:*

(1) that an order which does not determine the rights of the parties but only one aspect of the suit or the trial is an interlocutory order;

(2) that the concept of interlocutory order has to be explained in contradistinction to a final order. In other words, if an order is not a final order, it would be an interlocutory order;

(3) that one of the tests generally accepted by the English Courts and the Federal Court is to see if the order is decided in one way,

it may terminate the proceedings but if decided in another way, then the proceedings would continue; because, in our opinion, the term 'interlocutory order' in the Criminal Procedure Code has been used in a much wider sense so as to include even intermediate or quasi final orders;

(4) that an order passed by the Special Court discharging the accused would undoubtedly be a final order inasmuch as it finally decides the rights of the parties and puts an end to the controversy and thereby terminates the entire proceedings before the court so that nothing is left to be done by the court thereafter;

(5) that even if the Act does not permit an appeal against an interlocutory order the accused is not left without any remedy because in suitable cases, the accused can always move this Court in its jurisdiction under Art.136 of the Constitution even against an order framing charges against the accused. Thus, it cannot be said that by not allowing an appeal against an order. framing charges, the Act. works serious injustice to the accused.

18. Applying these tests to the impugned order, this Court finds that ***the order permitting the re-examination of the petitioners is purely an interlocutory order as it does not terminate the proceedings but the trial goes on until it culminates in acquittal or conviction****. Furthermore, it is impossible to spell out the concept of an interlocutory order unless it is understood in contradistinction to or in contrast with a final order."*

(emphasis supplied)

7. So far as the judicial precedents referred by the learned counsel for petitioner are concerned, the same are distinguishable from the present case. The case of ***Satbir Singh*** (supra) dealt with only the scope of Section 311 CrPC and not the scope of interference under Section 397 CrPC. In the case of ***Honnaiah T.H.*** (supra), the major issue involved was the *locus standi* of

the complainant *de facto* to file a revision petition; however, the Hon'ble Supreme Court reiterated the test as to whether upholding the objections raised by a party would result in culminating the proceedings, and if so any order passed on such objections would not be merely interlocutory in nature.

8. Falling back to the present case, to recapitulate, in the case titled *Pushpa Devi vs Dilshad Hussain,* the present petitioner sought to summon under Section 311 CrPC the records of case titled *Pushpa Devi vs Lucky Singh Siddhu.* Admittedly, the present petitioner is not a party to the case, records whereof were sought to be summoned by the present petitioner. Also admittedly, the cheques involved in these two cases are completely different cheques. That being so, the learned Trial Court was not wrong in arriving at a finding that the present petitioner aimed only to protract the trial. Further, perusal of cross-examination of CW1 (*filed by the petitioner as Annexure P-4*) clearly shows that the said witness admitted having filed the case titled *Pushpa Devi vs Lucky Singh Siddhu,* involving cheque amount of Rs.6,00,000/-. In view of that testimony also, there was no necessity for the petitioner to summon the said records, so the learned trial court was not wrong in arriving at a conclusion that the petitioner simply aimed to protract the proceedings by taking resort to Section 311 CrPC.

9. That application under Section 311 CrPC filed by the petitioner, if

allowed, would not have culminated the prosecution. Rather, had the said application been allowed, the prosecution would have continued with the summoning and testimony of the official witness producing the summoned records of the completely distinct case. That being so, order dated 20.11.2023 was clearly an interlocutory order as held by the learned revisional court after detailed discussion, referring to a number of judicial pronouncements apart from those discussed above.

10. In view of the aforesaid, I am unable to find any infirmity in either of the impugned orders, so both impugned orders are upheld. The present petition and the accompanying applications are dismissed.

GIRISH KATHPALIA

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GIRISH KATHPALIA, J

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