Though it is neither possible, nor advisable to lay down any inflexible rules to regulate that jurisdiction one thing, however, appears clear that it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute, or, spell out any offence and that resort to criminal proceedings, would, in the circumstances, amount to an abuse of the process of the court or not."

"Proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint, as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482", as held in *Municipal Corporation of Delhi* v. *Ram Kishan Rohtagi and others* (3).

(10) For the foregoing reasons, the impugned F.I.R. is not liable to be quashed, and, this petition is, accordingly, dismissed. The trial Court would proceed with, and, dispose of the case on merits. It is, however, clarified that nothing observed herein for the disposal of this petition, shall, in any manner, be construed by the trial Court to affect the merits of the case.

(11) In case the petitioner finds any difficulty, or, has reasonable apprehension that undue influence would be exerted on her, in order to prevent her from making true application for transfer of the case.

R.N.R.

Before G. C. Mital & S. S. Sodhi, JJ.

CHARANJIT SINGH AND OTHERS,—*Petitioners.*

versus

GURSHARAN KAUR,—*Respondent.*

Criminal Misc. No. 8199-M of 1987.

6th October, 1989.

Code of Criminal Procedure, 1973 (2 of 1974)—Ss. 397(3) and 482—Inherent power of High Court under section 482—S. 397(3) of the Code does not bar High Court from exercising inherent jurisdiction.

(3) A.I.R. 1983 S.C. 67.

Held, that the provisions of S. 397(3) of the Code of Criminal Procedure do not constitute or operate as a bar to the exercise by the High Court of its inherent powers under Section 482 of the Code. The limitation here is self-restraint and no more. Where however an order is amenable to revision, the order of the revisional court should be interferred with very sparingly and that too only for the purposes as envisaged by Section 482 of the Code.

(Para 14)

Balwant Singh Sekhon *vs.* Devinder Singh Shergill, 1989(1), Chandigarh Law Reporter, 103.

Maldeep Sekhon and others *vs.* Mrs. Navneet Sekhon, 1988(2) Recent Criminal Reports 369.

(*OVERRULED*)

This case was referred to a larger Bench by Hon'ble Mr. Justice S. S. Grewal on 14th February, 1989 for decision of an important question of law involved in this case. The Division Bench (Consisting of Hon'ble Mr. Justice G. C. Mital and Hon'ble Mr. Justice S. S. Sodhi), constituted under order, dated 7th August, 1989 of Hon'ble the Chief Justice, has since decided the reference and ordered that the matter be now remitted to the learned Single Judge for disposal of the petition, on merits.

Petition under section 482 of the Criminal Procedure Code praying that this Hon'ble High Court may be pleased to:—

(a) *Quash and set aside the impugned summoning order (Annexure P. 5) as also all the proceedings taken thereafter in this case, and*

(b) *also dismiss the complaint.*

It is further prayed that during the pendency of this petition, further proceedings before the Trial Court be stayed.

G. S. Grewal, Sr. Advocate with H. S. Nagra Advocate, *for the Petitioners.*

Parveen Goyal, Advocate as Legal Aid Counsel, *for Respondent.*

S. S. Kang, A.A.G. Punjab, *for A.G. Pb.*

S. V. Rathee, Advocate, *for A.G. Haryana.*

JUDGMENT

S. S. Sodhi, J.

The matter here concerns the scope and ambit of the inherent powers of the High Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), in the context of the provisions of Section 397(3) thereof. It comes up on a reference to a larger Bench by S. S. Grewal, J. The substantial question of law, of undoubted public importance raised being :—

> "Whether the provisions of Section 397(3) would operate, or, constitute a total, or, complete bar to the exercise or inherent jurisdiction by the High Court under Section 482 of the Code of Criminal Procedure even in cases, where, it is necessary to give effect to any order under this Code, to prevent the abuse of process of any Court, or, otherwise to secure the ends of justice ?"

The legislature while providing for revision under Section 397 of the Code and conferring jurisdiction thereby upon the High Court as also the Court of Sessions, proceeded to enact a specific bar against a second revision by the provisions of sub-section (3) thereof, which reads as under :—

> "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."

There are, at the same time, vested in the High Court, inherent powers preserved for it by Section 482 of the Code, which is in these terms :—

> "*Saving of inherent powers of High Court* :—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

This clear and apparent legislative intent, as expressed by the opening words of Section 482. "Nothing in this Code ———" of the inherent powers of the High Court thereunder, not in any manner

being curtailed or affected by the bar contained in Section 397, has, however got dragged into the arena of controversy by some judicial pronouncements tending to express a somewhat contrary view.

When, in the first instance, the Supreme Court had occasion to consider the provisions of Section 482 of the Code in the light of the bar to revision against an interlocutory order, as prescribed by Section 397(2) in *Amar Nath* v. *State of Haryana* (1), Fazal Ali J. observed :—

> "——A harmonious construction of Sections 397 and 482 would lead to the irresistible conclusion that where a particular order is expressly barred under Section 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of Section 482 would not apply.——".

(2) Not long thereafter, however, the Supreme Court was constrained to change course, so to say, when in *Madhu Limaye* v. *State* of *Maharashtra* (2), it was remarked that the view as expressed in *Amar Nath's case* (supra), namely; that where revision under Section 397(2) is expressly barred, the inherent powers under Section 482 could not be availed of to defeat such bar "was not quite accurate and needs some modulation." After recognizing that 'Nothing in this Code' in Section 482 would include sub-section (2) of Section 397 too, Untwalia, J. speaking for the Court observed :—

> "——In our opinion, a happy solution of this problem, would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings

(1) A.I.R. 1977 S.C. 2185.
(2) A.I.R. 1978 S.C. 47.

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 of the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction....."

(3) The Court then went on to hold that the scope of the inherent powers of the Court for quashing criminal proceedings, as pointed out by Gajendragadkar, J. in *R. P. Kapur* v. *The State of Punjab* (3), still holds good, in accordance with Section 482 and was not affected by Section 397 (2) of the Code. The observations of Gajendragadkar, J. as recalled, in this behalf, being:—

"Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations to the First Information Report or the complaint, even if

(3) A.I.R. 1960 S.C. 866.

they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases, it is important to bear in mind the distinction between a case where there is no legal evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

(4) The turn of bar contained in Section 397(3) to be specifically considered by the Supreme Court came in *Raj Kapoor and others* v. *State (Delhi Administration) and others* (4), where, it was held that the inherent powers of the High Court under Section 482 do not stand repelled even when the revisional power under Section 397 overlaps as the opening words of Section 482 ordain that 'nothing in this Code' not even Section 397 can affect the amplitude of the inherent powers preserved there by the language of Section 482. It was, however, added, "even so, a general principle pervades this

(4) A.I.R. 1980 S.C. 258.

branch of law; when a specific provision is made, easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction, but that inherent power should not invade areas set apart for specific power under the same Code..."

(5) Further, it was held that *Madhu Limaye's case* (supra) had 'correctly discussed and delineated the law beyond mistake'. Krishna Iyer, J. went on to observe :—

> "In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more..."

(6) The controversy, that has now arisen stems from the observations of Ranganath Misra, J. in *Rajan Kumar Manchanda* v. *State of Karnataka* (5), namely, "Merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome. If that was to be permitted every revision application facing the bar of Section 397(3) of the Code could be labelled as one under Section 482..."

(7) The matter in *Rajan Kumar Manchanda's case* (supra) pertained to an order of the Magistrate regarding the release of a truck. This order was challenged in revision before the Sessions Judge. Later, aggrieved by the order of the Sessions Judge, in revision, the respondent—State moved the High Court by branding its application as being one under Section 482. The High Court reversed the order of the Sessions Judge. Before the Supreme Court, counsel for the State did not dispute that the application made to the High Court was really one for revision of the order of the magistrate releasing the truck. This, it was observed, was exactly what was prohibited under Section 397 of the Code and it was thus, in this context, that the observations quoted came to be made.

(8) Later, this Court, by a short judgment in *Mukesh Kumar and others* v. *M. L. Kejriwal* (6), following *Rajan Kumar Manchanda's case* (supra), up-held the preliminary objection to the maintainability of a petition under Section 482 by observing, ".....it will be seen

(5) 1987 (4) Judgments Today (S.C.) 637.

(6) 1988 (1) Recent Criminal Reports 528.

that the present petition is found upon the very grounds which had been taken by the petition in the revision petition filed before the Sessions Judge. This is thus, in effect, a second revision petition." It was consequently held that this being so, the specific bar to it, as prescribed by Section 397 could not be side tracked by merely labelling the petition to be one under Section 482 of the Code.

(9) The other judicial precedents to note are the two identical judgments of K. S. Bhalla, J. in *Balwant Singh Sekhon* vs. *Navneet Singh Shergill,* (7) and *Maldeep Sekhon and Ors.* vs. *Mrs. Navneet Sekhon,* (8) where, it was observed, "Any person aggrieved by an order of inferior criminal Court is given the option to approach either the Sessions Judge or the High Court and once he exercises the option, he is precluded from invoking the revisional jurisdiction of either of them. Where a bar of Section 397(3) of the Code is effectively attracted, the same cannot be circumvented through invoking the inherent powers. What may not be done directly cannot be allowed to be done indirectly and that would naturally be an evasion of the statute. Thus so far as bar under sub-section (3) of Section 397 of the Code is concerned, it is not a case of absence of any express provision on the subject matter, i.e. the assessment with regard to illegality, impropriety and irregularity in the orders of a Magistrate." In other words, it was ruled that an order passed by the Sessions Judge, in revision, was by virtue of the provisions of Section 397(3) taken beyond the purview of the inherent powers of the High Court under Section 482. Further, the learned Judge went on to observe, "The bar provided under Sub-Section (3) cannot possibly be put at par with the bar provided under sub-section (2) of Section 397 of the Code which completely rules out any revisional power and for that reason can possibly embrace a situation where impugned order may clearly bring about an abuse of the process of Court and in really hard cases, it may be absolutely necessary for the High Court to interfere to secure the ends of justice, although, there also, such cases would be few and far between. ."

(10) It must, with respect, be observed that the passage from *Rajan Kumar Manchanda's* (supra) as quoted earlier, does not appear to have been considered or understood in its true context.

(7) 1989(1) Chandigarh Law Reporter 103.
(8) 1988(2) Recent Criminal Report, 369.

To begin with, it deserves note that neither *Madhu Limaye's case* nor *Raj Kapoor's case* (supra) were either cited or noticed. Further, it will be seen that the decision was founded upon the concession of counsel that the application under Section 482 was really one for revision of the order of the Magistrate, which had earlier been examined in revision, by the Sessions Judge. The bar of Section 397(3) was thus clearly attracted to it and no wonder, therefore, it could not be over-come by merely labelling the application as being one under Section 482.

(11) Similarly, in *Mukesh Kumar's case* (supra) too Madhu *Limaye's* and *Raj Kapoor's case* (supra) were not adverted to and that too proceeded on the basis that the application, though purporting to be one under Section 482 was in effect a second revision petition.

(12) Turning to *Balwant Singh Sekhon's case* (supra), here too, *Raj Kapoor's case* (supra) was not brought to the notice of the Court. *Madhu Limaye's case* (supra) was no doubt cited and considered, but it must respectfully be stated that some observations therein appear to have been mis-read. One of the principles governing the exercise of its inherent powers by the High Court mentioned there was "——that it should not be exercised as against the express bar of law engrafted in any other provision of the Code." This was the principle sought to be relied upon in holding that the provisions of Section 482 could not be invoked to overcome the bar of Section 397(3). A reading of the judgment in *Madhu Limaye case* (supra) would, however, show that it was after setting out this and the other principles regarding the exercise by the High Court of its inherent powers that it was held that Section 397(2) could not limit or effect the inherent powers of the High Court where the impugned order was an abuse of the process of law or interference with it was necessary for securing the ends of justice. Further, the distinction that the learned Judge sought to draw between the bar contained in sub-section (2) and sub-section (3) of Section 397, it must be observed, is more imaginary than real in the context of the inherent powers of the High Court under Section 482 of the Code. A plain reading of the law, as laid down in *Raj Kapoor's case* (supra) would show that notwithstanding the bar contained in either of these provisions, the High Court is empowered in appropriate cases to interfere with the impugned order in the exercise of its inherent powers under Section 482 of the Code.

(13) The correct view, in the matter finds expression in the judgment of this Court in *Mukhtiar Singh* v. *Sarwan Singh and another* (9) where it was held that bar contained in sub-section (3) of Section 397 could not bar this Court from interfering in an order of the lower court where it amounts to an abuse of the process of law. The matter there concerned a complaint under Section 182 of the Code by a private individual. It was not disputed that it was not maintainable, but an objection was raised that the power under Section 482 of the Code could not be exercised in view of the provisions of sub-section (3) of Section 397 of the Code. It was held that the Court cannot shut its eyes to this patent illegality and allow the lower court to waste its time when the result would inevitably be dismissal of the complaint on the ground that it was barred. The complaint was accordingly held to be not maintainable and therefore, dismissed.

(14) The legal position that thus emerges is that the provisions of Section 397 of the Code do not constitute or operate as a bar to the exercise by the High Court of its inherent powers under Section 482 of the Code. The limitation here, as observed in *Raj Kapoor's case* (supra) is self-restraint and no more. It must, of course, be observed that where an order is amenable to revision, the order of the revisional court should be interferred with very sparingly and that too only for the purposes as envisaged by Section 482 of the Code. Such cases would clearly be few and far between.

(15) This reference is thus answered accordingly. The matter is now remitted to the learned Single Judge for disposal of the petition, on merits.

R.N.R.

(9) 1988(2) P.L.R. 477.