



2025:DHC:9142



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 13.10.2025*+ **CRL.M.C. 4267/2019 & CRL. M.A. 34550/2019**

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.....Petitioner

Through: Mr. Sahil Gupta and Mohd.
Ranu, Advocates

versus

STATE OF NCT & ANR.

.....Respondents

Through: Mr. Manoj Pant, APP for State
along with SI Neetu
Mr. Sunil Dalal, Senior
Advocate with Mr. B. S.
Jakhar, Mr. Vikram Singh
Jakhar, Ms. Bhawna Jakhar,
Mr. Neeraj Jakhar, Mr. Viraj
Rathee and Mr. Nikhil
Beniwal, Advocates**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. The petitioner-complainant has challenged, by way of present petition, the order dated 27.05.2019 [hereafter '*impugned order*'] passed by the learned Additional Sessions Judge-03, South East, Saket Courts, Delhi [hereafter '*Sessions Court*'] in CR No. 204631/2016 wherein the learned Sessions Court was pleased to set aside the order dated 09.02.2016 passed by the learned Metropolitan Magistrate-01, Mahila Court, South East, Saket Courts, Delhi



[hereafter '*Magistrate*'], taking cognizance of offences punishable under Sections 354/354(D)/323/342/509/365 of the Indian Penal Code, 1860 [hereafter '*IPC*'] against the accused i.e. respondent 2 herein and summoning him, despite a cancellation report having been filed by the police authorities *qua* him, in case arising out of FIR bearing no. 151/2014, registered at Police Station CR Park, Delhi for the commission of aforesaid offences.

2. This judgment, however, is confined to deciding the maintainability of the revision petition filed by the respondent no. 2 under Section 397 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'] before learned Sessions Court, impugning the summoning order passed by learned Magistrate.

3. At the outset, it would be apposite to briefly recapitulate the factual background in which the present proceedings have arisen. The case of the petitioner-complainant is that she had met the accused/respondent no. 2 while both were students at a university in Noida, Uttar Pradesh. They are stated to have entered into a close relationship which continued for about two years. Thereafter, as alleged, the relationship soured since respondent no. 2 began to avoid the petitioner on the pretext that she used to converse with other male students. It is further alleged that an altercation took place between the two within the university premises, which prompted the petitioner to lodge complaints against respondent no. 2 – first with the university authorities, and thereafter before P.S. Sector-39, Noida,



Uttar Pradesh, as well as before P.S. Chittaranjan Park, Delhi. The latter ultimately resulted in the registration of the FIR in question.

4. During investigation of the said FIR, the police did not find sufficient material connecting respondent no. 2 with the alleged offences. Consequently, a cancellation report was filed before the learned Magistrate. Upon such filing, the learned Magistrate issued notice to the petitioner for submission of a protest petition, but the petitioner initially did not raise any objection to the cancellation report. Subsequently, however, she opposed the cancellation report.

5. Eventually, the learned Magistrate was pleased to take cognizance of offences punishable under Sections 354/354(D)/323/342/509/365 of IPC against the respondent no. 2 and issue summons to him.

6. It was against the aforesaid order that the respondent no. 2 had preferred a revision petition under Section 397 of Cr.P.C. before the learned Sessions Court, which came to be allowed *vide* impugned order dated 27.05.2019, holding that no case was made out against respondent no. 2 for commission of the alleged offences.

7. The issue of maintainability of revision petition before the learned Sessions Court was highlighted by the Predecessor Bench of this Court in order dated 12.09.2024, which is set out below:

“1. The learned counsel for the petitioner submits that the impugned order has been passed erroneously relying upon the judgments which are not applicable to the facts of the present case.

2. He submits that the learned Additional Sessions Judge (ASJ) held that the order taking cognizance is not interlocutory in



nature by relying upon the judgement, wherein the issue was in regard to the cognizance taken in a complaint and not pursuant to the report filed under Section 173 of the CrPC. He submits that notice framed in a complaint is in the nature of order framing the charge and is, therefore, not interlocutory in nature.

3. He submits that, however, when the cognizance is taken pursuant to the report filed under Section 173 of the CrPC, the accused gets an opportunity to address arguments at the stage of Section 239 of the CrPC and, hence the order taking cognizance is clearly interlocutory in nature.

4. The learned counsel for Respondent No. 2 requests for a short adjournment in order to enable him to address arguments by being physically available.

5. The Respondent No. 2 is also at liberty to file short note of his arguments in regard to maintainability of the petition under Section 397 of the Code of Criminal Procedure, 1973 ('CrPC') challenging the order of cognizance taken by the learned Metropolitan Magistrate pursuant to the report filed by the Police under Section 173 of the CrPC.

6. List on 25.10.2024.”

8. It is the case of the petitioner, as argued by the learned counsel, that the impugned order passed by the learned Sessions Court – reversing the order of learned Magistrate – is legally untenable as the order passed by the learned Magistrate is an ‘interlocutory order’ as it only issues summons in a warrant case, and thus the revision petition against such an order would be barred under Section 397(2) of Cr.P.C. It is contended that the learned Magistrate merely sought to summon the respondent no. 2 upon finding a *prima facie* case against him, which is only a preliminary step in the proceedings, and did not *per se* decide anything valuable as regards him. It is submitted that in a warrant case before a Magistrate, instituted upon a police report, the valuable rights of a person are affected, when charges are framed



under Section 240 of Cr.P.C., and the trial commences against the accused. It is argued that the respondent no. 2 in the present case had a right to be heard in his defence by arguing for discharge under Section 239 of Cr.P.C. at a later stage. It is also contended that the judgments relied upon by the learned Sessions Court, qua the maintainability of revision petition, were in context of summons being issued in complaint cases, and not pursuant to the report filed under Section 173 of Cr.P.C.

9. The learned senior counsel appearing for the respondent no. 2, on the other hand, argues that the revision petition filed before the learned Sessions Court was maintainable, as also rightly held in the impugned order. It is contended that an order summoning an accused is not an interlocutory order, and it has been held by the Hon'ble Supreme Court as well as various High Courts in a catena of judgments that revision petition can be filed against a summoning order since it is an 'intermediate order'. It is also argued that the learned Magistrate erroneously took cognizance of offence against the respondent no. 2, despite there being no *prima facie* evidence emerging against him and the police having specifically filed a cancellation report in that regard after conducting a full-fledged investigation. Moreover, it is contended that subsequent to the filing of the cancellation report, the petitioner herself did not object thereto and also did not choose to file any protest petition, and thus, the order of the learned Magistrate was untenable and was rightly set aside by the learned Sessions Court by exercising its revisional jurisdiction.



10. This Court has **heard** arguments addressed on behalf of the petitioner as well as the respondent no. 2, and has perused the material placed on record, including case laws relied upon by either side.

11. As already noted above, the sole issue for consideration before this Court is – whether the order of the learned Magistrate, *vide* which the respondent no. 2 herein had been summoned as an accused despite a cancellation report being filed under Section 173(2) of Cr.P.C., is an ‘interlocutory order’ so as to be outside the scope of revisional jurisdiction of the learned Sessions Court under Section 397 of Cr.P.C.?

12. Section 397 of Cr.P.C. provides for the revisional jurisdiction of the High Court as well as that of a Sessions Court, but sub-section (2) thereof makes it clear that exercise of such jurisdiction is barred in respect of an interlocutory order.

13. It is also well-settled through judicial pronouncements that there are three kinds of orders which a Court may pass, i.e., final orders, intermediate orders, and interlocutory orders. It would be first apposite to refer to the observations of Hon’ble Supreme Court, in respect of Section 397(2) of Cr.P.C. and as to what constitutes as an interlocutory order, in ***Amar Nath v. State of Haryana: (1977) 4 SCC 137***, which are extracted hereunder:

“6.It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or 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 so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.”

14. In *K.K. Patel v. State of Gujarat: (2000) 6 SCC 195*, the Hon’ble Supreme Court held as under:

11. That apart, the view of the learned Single Judge of the High Court that no revision was maintainable on account of the bar contained in Section 397(2) of the Code, is clearly erroneous. 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 Pandev 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 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 added)

15. Further, the distinction between the three categories of orders, and also the concept of ‘intermediate order’, has been clearly



explained by the Hon'ble Supreme Court in ***Girish Kumar Suneja v. Central Bureau of Investigation***: (2017) 14 SCC 809, the relevant observations of which are extracted hereunder:

“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.

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.”**

(Emphasis added)

16. In conclusion, the settled position of law that emerges is as under:



- *Final orders* are those orders which conclusively decide the rights of the parties, leaving nothing further to be adjudicated.
- *Interlocutory orders* are those which are purely temporary or procedural orders which do not touch upon or decide the substantive rights or liabilities of the parties. A revision petition against such orders is barred under Section 397(2) of Cr.P.C.
- *Intermediate orders* are orders which fall between the above two categories. Though interlocutory in form, they assume the character of finality if reversed. The crucial test is whether the reversal of such an order would bring the proceedings to an end.
- Thus, while purely interlocutory orders cannot be assailed by way of revision petitions, final and intermediate orders fall within the revisional jurisdiction of the High Court or the Sessions Court.

17. Insofar as the issue of whether an order taking cognizance of an offence and summoning the accused passed by the learned Magistrate is an interlocutory order or not is concerned, this Court notes that it has been consistently held by the Hon'ble Supreme Court that such an order is not interlocutory in nature. Rather, it falls within the category of intermediate or quasi-final orders, and therefore can be assailed by way of a revision petition under Section 397 of the Cr.P.C.



18. Pertinently, the Hon'ble Supreme Court, in ***Amar Nath v. State of Haryana*** (*supra*), observed as under:

“10.It is difficult to hold that the impugned order summoning the appellants straightaway was merely an interlocutory order which could not be revised by the High Court under subsections (1) and (2) of Section 397 of the 1973 Code. The order of the Judicial Magistrate summoning the appellants in the circumstances of the present case, particularly having regard to what had preceded, was undoubtedly a matter of moment, and a valuable right of the appellants had been taken away by the Magistrate's passing an order prima facie in a mechanical fashion without applying his mind. We are, therefore, satisfied that the order impugned was one which was a matter of moment and which did involve a decision regarding the rights of the appellants. If the appellants were not summoned, then they could not have faced the trial at all, but by compelling the appellants to face a trial without proper application of mind cannot be held to be an interlocutory matter but one which decided a serious question as to the rights of the appellants to be put on trial.”

19. In ***Rajendra Kumar Sitaram Pande v. Uttam:*** (1999) 3 SCC 134, the Hon'ble Supreme Court held as under:

“6.This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same. The High Court, therefore, 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.

20. In ***Dhariwal Tobacco Products Ltd. v. State of Maharashtra:*** (2009) 2 SCC 370, the Hon'ble Supreme Court held that:

“6. Indisputably issuance of summons is not an interlocutory order within the meaning of Section 397 of the Code.”



21. In *Girish Kumar Suneja v. Central Bureau of Investigation* (*supra*) also, while elaborating upon the distinction between interlocutory and intermediate orders, the Hon'ble Supreme Court specifically cited the example of an order taking cognizance of an offence and summoning an accused. It was observed that although such an order may appear interlocutory in form, its reversal would result in termination of proceedings qua the accused, and therefore it must be regarded as an intermediate order, revisable under Section 397 of Cr.P.C.
22. Moreover, the legal position in this regard was summed up by the Hon'ble Supreme Court in *Urmila Devi v. Yudhvir Singh: (2013) 15 SCC 624*. The relevant observations are set out below:

“21. Having regard to the said categorical position stated by this Court in innumerable decisions resting with the decision in Rajendra Kumar Sitaram Pandel, as well as the decision in K.K. Patel, it will be in order to state and declare the legal position as under:

21.1. The order issued by the Magistrate deciding to summon an accused in exercise of his power under Sections 200 to 204 CrPC would be an order of intermediary or quasi-final in nature and not interlocutory in nature.

21.2. Since the said position viz. such an order is intermediary order or quasi-final order, the revisionary jurisdiction provided under Section 397, either with the District Court or with the High Court can be worked out by the aggrieved party.

21.3. Such an order of a Magistrate deciding to issue process or summons to an accused in exercise of his power under Sections 200 to 204 CrPC, can always be subject-matter of challenge under the inherent jurisdiction of the High Court under Section 482 CrPC.



22. When we declare the above legal position without any ambiguity, we also wish to draw support to our above conclusion by referring to some of the subsequent decisions. In a recent decision of this Court in *Om Kumar Dhankar v. State of Haryana*, the decisions in *Madhu Limaye, V.C. Shukla, K.M. Mathew, Rakesh Kumar Mishra v. State of Bihar* ending with *Rajendra Kumar Sitaram Pandel*, was considered and by making specific reference to para 6 of the judgment in *Rajendra Kumar Sitaram Pande*, this Court has held as under in para 10: (*Om Kumar Dhankar case*, SCC p. 255)

“10. In view of the above legal position, we hold, as it must be, that revisional jurisdiction under Section 397 CrPC was available to Respondent 2 in challenging the order of the Magistrate directing issuance of summons. The first question is answered against the appellant accordingly.”

(Emphasis added)

23. Thus, it can be concluded that an order of a Magistrate issuing process or summoning an accused under Sections 200 to 204 Cr.P.C. does not fall within the bar of Section 397(2) Cr.P.C. Such an order is intermediate or quasi-final in nature, and therefore amenable to the revisional jurisdiction of the learned Sessions Court or the High Court.

24. The primary contention raised by the learned counsel for the petitioner is that there ought to be a distinction between an order issuing process or summoning an accused in a complaint case or summons case on the one hand, and in a warrant case instituted before a Magistrate upon a police report on the other. It is further urged that in the present case, the accused would in any event be heard under Section 239 of Cr.P.C. and may also secure discharge at that stage, and therefore, no valuable rights of the accused can be said



to be affected by an order taking cognizance and issuing summons. This contention, however, is wholly misconceived and unmerited.

25. In this regard, this Court is of the considered view that the argument advanced requires to be rejected for the simple reason that the Hon'ble Supreme Court in **Urmila Devi v. Yudhvir Singh** (*supra*) has categorically held that an order issuing process under Section 204 of Cr.P.C. is not an interlocutory order. It is significant to note that Section 204 of Cr.P.C. contemplates issuance of process – both in summons cases as well as in warrant cases. The judicial precedents, which have consistently characterised an order taking cognizance of offence and issuing process as an intermediate order and not interlocutory, do not draw any distinction between summons cases and warrant cases. Consequently, the attempt of the petitioner to introduce such a differentiation is clearly artificial and devoid of merit.

26. Equally untenable is the submission that since the accused would be entitled to be heard at a later stage of proceedings, such as while considering discharge under Section 239 of Cr.P.C., the order summoning the accused does not affect any valuable right. The classification of an order as final, interlocutory, or intermediate is not dependent upon the possibility of a future opportunity of hearing. The test for an interlocutory order is whether reversal of such order would result in culmination of proceedings; if yes, then the order is not interlocutory. It is for this reason that an order issuing process/summons is treated as an intermediate order – since if the



same is reversed by a higher court, the inevitable consequence is termination of the criminal proceedings against the accused. The present case is also an illustration of the same, since when the summoning order of the learned Magistrate was challenged by respondent no. 2 before the learned Sessions Court and was set aside, the entire proceedings against him were nullified.

27. In the factual backdrop of the instant case, it further merits consideration that the order of the learned Magistrate taking cognizance and issuing process was passed despite the police having filed a cancellation report on the ground that no material supporting the complainant's allegations could be unearthed against the accused. Pertinently, the petitioner-complainant had neither raised objections to the cancellation report initially nor filed a protest petition in response thereto, though had later addressed oral arguments against the cancellation report. Viewed in this context, the act of taking cognizance on the basis of the material annexed with the chargesheet and proceeding to summon the accused assumes greater significance, as it sets into motion criminal proceedings against respondent no. 2 though the police had found no material to chargesheet the accused. Such an order, therefore, substantially and directly affects the rights of the accused by subjecting him to criminal proceedings.

28. Accordingly, this Court is of the view that in circumstances such as the present, where the learned Magistrate has taken cognizance and issued process despite the filing of a cancellation report by the police, the order cannot by any means be termed



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interlocutory. Moreover, in light of the test laid down by the Supreme Court, the summoning order passed by the learned Magistrate is an intermediate order, which if reversed, has the effect of terminating the entire criminal proceedings.

29. Such an order, therefore, falls within the ambit of scrutiny by a revisional court and thus, the respondent no. 2 was not barred from filing a revision petition under Section 397 of Cr.P.C. before the learned Sessions Court.

30. In view of aforesaid observations, the contentions raised on behalf of the petitioner qua the maintainability of revision petition filed by the respondent no. 2 before the learned Sessions Court, are rejected.

31. List on 07.02.2026 for arguments on merits of the case.

32. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J.

OCTOBER 13, 2025/vc