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Judgment Reserved On 18.12.2025
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HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/s 482 No. - 15862 of 2024

Gopal Prasad Sharma

…..Applicant(s)

Versus

State of U.P. and another

…..Opposite Party(s)

Counsel for Applicant(s) : Rajesh Kumar Pandey
Counsel for Opposite Party(s) : G.A.

Along with :

1. **Application U/s 482 No. 12590 of 2024:**

   Rai Anoop Prasad

   Versus

   State of U.P. and another

2. **Application U/s 482 No. 12625 of 2024:**

   Rai Anoop Prasad

   Versus

   State of UP and another

3. **Application U/s 482 No. 13016 of 2024:**

   Rai Anoop Prasad

   Versus

   State of U.P. and another

4. **Application U/s 482 No. 12953 of 2024:**

   Rai Anoop Prasad

   Versus

   State of U.P. and another

5. **Application U/s 482 No. 12548 of 2024:**

Rai Anoop Prasad

Versus

State of UP and another

6. **Application U/s 482 No. 12968 of 2024:**

Rai Anoop Prasad

Versus

State of U.P. and another

7. **Application U/s 482 No. 12094 of 2024:**

Rai Anoop Prasad

Versus

State of U.P. and another

8. **Application U/s 482 No. 13020 of 2024:**

Rai Anoop Prasad

Versus

State of U.P. and another

Court No. - 78

HON'BLE AVNISH SAXENA, J.

1. This leading case alongwith the connected cases has been taken by this court on being nominated by Hon’ble the Chief Justice on 29.11.2025.

2. The leading case in this bunch is an application under Section 482 CrPC filed by the complainant (Gopal Prasad Sharma) against the accused opposite party no.2 (Ram Anoop Prasad @ Rai Anoop Prasad) for seeking direction of this Court to direct the speedy disposal of complaint filed twelve years back by the complainant for the offence under Section 138 Negotiable Instruments Act, 1881, P.S. Shahganj, District Agra. This application is particularly moved to seek direction in Complaint Case No. 74 of 2012 (Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad), though there are seven other complaints between the same parties arose out of same transaction. Before dealing with the issue, the crux of the matter in all the cases having genesis from the single incident needs to be mentioned.

3. Connected with the above application are eight other applications filed by accused/applicant (Ram Anoop Prasad @ Rai Anoop Prasad), against Gopal Prasad Sharma (complainant) to assail, **primarily**, the orders allowing the criminal revisions filed by the complainant against the accused/applicant for quashing the orders of the trial Magistrate acquitting the accused/applicant invoking Section 256 CrPC and **alternatively**, the summoning orders dated 25.02.2012 passed by the Magistrate, summoning the accused/applicant for offence under Section 138 Negotiable Instruments Act, 1881.

For the sake of brevity, comprehensiveness and clarity in the judgement the words used to represent the applicant and opposite party no.2, is taken as 'complainant', who has filed the case and 'accused', who is summoned in complaint; whereas, Negotiable Instruments Act, 1881 will be referred as 'NI Act' and The Code of Criminal Procedure, 1973 as 'CrPC'.

4. Heard, Sri Sushil Shukla, learned Senior Advocate assisted by Sri Ravitendra Pratap Singh, learned counsel for accused; Sri Rajesh Kumar Pandey, learned counsel for complainant; and Sri Raj Shekhar Srivastava, learned A.G.A. for the State.

5. The complaint has filed eight complaints in the year 2012 against the accused for offence under Section 138 NI Act before the Magistrate at Agra with alleged averments that the complainant and the accused were having close and cordial relations. In the last week of June 2011, the accused came to complainant's house at Shahganj, Agra and asked for some money and also insisted the complainant to purchase his flat situated at Ghaziabad for a consideration of Rs. 80,00,000/-. The complainant accepted the offer and in the first week of July, 2011, he gave Rs. 30,00,000/- as advance to the accused, in presence of three persons, whose names have been disclosed in the complaint. It was agreed between the parties that the remaining amount of Rs. 50,00,000/- would be made good at the time of execution of sale deed. Somehow the

deal could not be materialized and the accused has offered to return the advanced money, which was accepted by the complainant. The accused thereafter returned Rs. 30,00,000/- through eight cheques. Four cheques of Rs. 2,50,000/- each and four cheques of Rs. 5,00,000/- each. All these cheques were dishonored due to insufficiency of funds and led to eight criminal complaints.

6. In all the eight complaints the learned Magistrate has taken cognizance against the accused for offence under Section 138 NI Act and issued the summons to the accused. For continuous period of two years, the summons have been issued, but the accused did not appear. The Magistrate then issued bailable warrant, but even then the accused did not appear. On 29.09.2014, the complainant could not appear before the trial court due to the reason of death in his family and his counsel also did not turn up, consequently, the learned Magistrate has dismissed all the eight complaints and acquitted the accused invoking Section 256 CrPC It is this order of Magistrate, which was challenged by the complainant in revision before the court of Sessions and the revisional court has set aside the order of learned Magistrate in all the eight revision petitions. The learned Magistrate has again resorted to issuance of processes and till 24.01.2024, the summons, bailable warrants and non-bailable warrants have continuously been issued against accused, but he did not appear to proceed with the trial; else moved the connected eight applications under Section 482 CrPC for quashing the revisional court's order, alternatively, the cognizance order passed by the Magistrate. Now, it would be expedient to deal with all the eight applications, separately.

[1. Crl. Misc. Application U/S 482 CrPC No. 12094 of 2024 (Rai Anoop Prasad Vs. State of U.P. and Another)] :-

7. The **Complaint Case No. 80 of 2012** [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad] was filed for dishonor of **Cheque No. 598510** dated 26.09.2011 for Rs. 2,50,000/- drawn on South

Indian Bank Ltd, Chitranjan Park Branch, New Delhi, 110019. This cheque was deposited by the complainant in his Indian Overseas Bank, Kamla Nagar Agra on 27.09.2011 but the cheque returned unpaid by the Bank. The complainant has contacted the accused, who has asked for re-presentation of cheque, on which the cheque was again presented on 30.10.2011 and 23.11.2011 but again returned unpaid with the remarks that 'Funds Insufficient'. The information of dishonor of cheque was intimated by the Bank vide memo dated 24.11.2011. The legal notice dated 13.12.2011 has been sent and on 24.01.2012 the complaint was filed. The court of Additional Chief Judicial Magistrate-IV, Agra has taken into consideration the sufficiency of evidence regarding dishonour of cheque and took cognizance of the offence under Section 138 NI Act, consequently, issued summons to the accused by order dated 25.02.2012. From 30.03.2012 till 18.06.2014 summons have continuously been issued against the accused. On 14.08.2014, the bailable warrant for Rs. 5,000/- was issued against the accused. On 27.09.2014, the parties did not appear. The case was then fixed for further orders. On 29.09.2014 neither the complainant was present nor the accused, consequently, the complaint was dismissed and accused was acquitted under Section 256 CrPC. The orders is reiterated underneath:-

> "***29.09.2014—Called out. Complainant not present even on the last date of hearing also, complainant not present. It is 2:40 p.m. so, complaint is dismissed u/s 256 CrPC and accused is acquitted. File be consign to RR.***"

8. This order of learned Magistrate has been challenged in Criminal Revision No. 529 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another]. The revision was allowed by order dated 04.04.2018 setting aside the order dated 29.09.2014. It is directed in the revision that the learned Magistrate may dispose of the complaint on merit.

9. The learned Magistrate is again seized with the matter. From 10.04.2018 to 30.01.2019, the summons were continuously issued; from 15.03.2019 to 05.10.2019, the bailable warrants have been issued; and

from 09.12.2019 to 24.01.2024, the Non-bailable Warrants have been issued against the accused. It is thereafter that the present Application under Section 482 CrPC is filed.

[2. Crl. Misc. Application U/S 482 CrPC No. 12548 of 2024 (Rai Anoop Prasad Vs. State of U.P. and Another)] :-

10. The **Complaint Case No. 76 of 2012** [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad] was filed for dishonor of **Cheque No. 598509** dated 26.09.2011 for Rs. 2,50,000/- drawn on South Indian Bank Ltd, Chitranjan Park Branch, New Delhi, 110019. This cheque was deposited by the complainant in his Indian Overseas Bank, Kamla Nagar Agra on 27.09.2011 but the cheque returned unpaid by the Bank. The complainant has contacted the accused, who has asked for re-presentation of cheque, on which the cheque was again presented on 30.10.2011 and 23.11.2011 but again returned unpaid with the remarks that 'Funds Insufficient'. The information of dishonor of cheque was intimated by the Bank vide memo dated 24.11.2011. The legal notice dated 13.12.2011 has been sent and on 24.01.2012 the complaint was filed. The court of Additional Chief Judicial Magistrate-IV, Agra has taken into consideration the sufficiency of evidnce regarding dishonour of cheque and took cognizance of the offence under Section 138 NI Act, consequently, issued summons to the accused by order dated 25.02.2012. From 30.03.2012 till 18.06.2014 summons have continuously been issued against the accused. On 14.08.2014, the bailable warrant for Rs. 5,000/- was issued against the accused. On 27.09.2014, the parties did not appear. The case was then fixed for further orders. On 29.09.2014 neither the complainant was present nor the accused, consequently, the complaint was dismissed and accused was acquitted under Section 256 CrPC. The orders is reiterated underneath:-

> "***29.09.2014—Called out. Complainant not present even on the last date of hearing also, complainant was not present. It is 2:50 p.m. so, complaint is dismissed u/s 256 CrPC and accused is acquitted. File be consign to RR.***"

11. This order of learned Magistrate has been challenged in Criminal Revision No. 526 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another]. The revision was allowed by order dated 04.04.2018 setting aside the order dated 29.09.2014. It is directed in the revision that the learned Magistrate may dispose of the complaint on merit.

12. The learned Magistrate is again seized with the matter. From 10.04.2018 to 24.01.2019, the summons were continuously issued; from 15.03.2019 to 05.10.2019, the bailable warrants have been issued;and from 09.12.2019 to 24.01.2024, the Non-bailable Warrants have been issued against the accused. It is thereafter that the present Application under Section 482 CrPC is filed.

[3. Crl. Misc. Application U/S 482 CrPC No. 12590 of 2024 (Rai Anoop Prasad Vs. State of U.P. and Another)] :-

13. The **Complaint Case No. 79 of 2012** [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad] was filed for dishonor of **Cheque No. 598511** dated 26.09.2011 for Rs. 2,50,000/- drawn on South Indian Bank Ltd, Chitranjan Park Branch, New Delhi, 110019. This cheque was deposited by the complainant in his Indian Overseas Bank, Kamla Nagar Agra on 27.09.2011 but the cheque returned unpaid by the Bank. The complainant has contacted the accused, who has asked for re-presentation of cheque, on which the cheque was again presented on 30.10.2011 and 23.11.2011 but again returned unpaid with the remarks that 'Funds Insufficient'. The information of dishonor of cheque was intimated by the Bank vide memo dated 24.11.2011. The legal notice dated 13.12.2011 has been sent and on 24.01.2012 the complaint was filed. The court of Additional Chief Judicial Magistrate-IV, Agra has taken into consideration the sufficiency of evidence regarding dishonour of cheque and took cognizance of the offence under Section 138 NI Act, consequntly, issued summons to the accused by order dated 25.02.2012. From 30.03.2012 till 18.06.2014 summons have continuously been issued against the accused. On 14.08.2014, the bailable warrant for Rs.

5,000/- was issued against the accused. On 26.09.2014, the parties did not appear. The case was then fixed for further orders. On 29.09.2014 neither the complainant was present nor the accused, consequently, the complaint was dismissed and accused was acquitted under Section 256 CrPC. The orders is reiterated underneath:-

> "***29.09.2014—Called out. Complainant not present .It is 2:50 p.m. Even on the last date also complainaning was not present. so, complains is dismissed u/s 256 CrPC and accused is acquitted. File be consign to RR.***"

14. This order of learned Magistrate has been challenged in Criminal Revision No. 528 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another]. The revision was allowed by order dated 04.04.2018 setting aside the order dated 29.09.2014. It is directed in the revision that the learned Magistrate may dispose of the complaint on merit.

15. The learned Magistrate is again seized with the matter. From 10.04.2018 to 30.01.2019, the summons were continuously issued; from 15.03.2019 to 05.10.2019, the bailable warrants have been issued; and from 09.12.2019 to 24.01.2024, the Non-bailable Warrants have been issued against the accused. It is thereafter that the present Application under Section 482 CrPC is filed.

[4. Crl. Misc. Application U/S 482 CrPC No. 12625 of 2024 (Rai Anoop Prasad Vs. State of U.P. and Another)] :-

16. The **Complaint Case No. 78 of 2012** [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad] was filed for dishonor of **Cheque No. 598508** dated 26.09.2011 for Rs. 2,50,000/- drawn on South Indian Bank Ltd, Chitranjan Park Branch, New Delhi, 110019. This cheque was deposited by the complainant in his Indian Overseas Bank, Kamla Nagar Agra on 27.09.2011 but the cheque returned unpaid by the Bank. The complainant has contacted the accused, who has asked for re-presentation of cheque, on which the cheque was again presented on

30.10.2011 and 23.11.2011 but again returned unpaid with the remarks that 'Funds Insufficient'. The information of dishonor of cheque was intimated by the Bank vide memo dated 24.11.2011. The legal notice dated 13.12.2011 has been sent and on 24.01.2012 the complaint was filed.The court of Additional Chief Judicial Magistrate-IV, Agra has taken into consideration the sufficiency of evidence regarding dishonour of chequeand took cognizance of the offence under Section 138 NI Act, consequently, issued summons to the accused by order dated 25.02.2012. From 30.03.2012 till 18.06.2014 summons have continuously been issued against the accused. On 14.08.2014, the bailable warrant for Rs. 5,000/- was issued against the accused. On 26.09.2014, the parties did not appear. The case was then fixed for further orders. On 29.09.2014 neither the complainant was present nor the accused, consequently, the complaint was dismissed and accused was acquitted under Section 256 CrPC. The orders is reiterated underneath:-

> "***29.09.2014—Called out complainant not present. It is 2:45 p.m. even on the last date of hearing also, complainant was not present. so, complaint is dismissed u/s 256 CrPC and accused is acquitted file be consign to RR.***"

17. This order of learned Magistrate has been challenged in Criminal Revision No. 334 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another]. The revision was allowed by order dated 08.02.2018 setting aside the order dated 29.09.2014. It is directed in the revision that the learned Magistrate may dispose of the complaint on merit.

18. The learned Magistrate is again seized with the matter. From 16.03.2018 to 20.06.2023, the summons were continuously issued; and from 18.09.2023 to 24.01.2024, the bailable warrants have been issued against the accused. It is thereafter that the present Application under Section 482 CrPC is filed.

[5. Crl. Misc. Application U/S 482 CrPC No. 12953 of 2024 (Rai Anoop Prasad Vs. State of U.P. and Another)] :-

18. The **Complaint Case No. 72 of 2012** [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad] was filed for dishonor of **Cheque No. 125833** dated 31.10.2011 for Rs. 5,00,000/- drawn on South Indian Bank Ltd, Chitranjan Park Branch, New Delhi, 110019. This cheque was deposited by the complainant in his Indian Overseas Bank, Kamla Nagar Agra on 04.11.2011 but the cheque returned unpaid by the Bank. The complainant has contacted the accused, who has asked for re-presentation of cheque, on which the cheque was again presented on 23.11.2011 but again returned unpaid with the remarks that 'Funds Insufficient'. The information of dishonor of cheque was intimated by the Bank vide memo dated 23.11.2011. The legal notice dated 13.12.2011 has been sent and on 24.01.2012 the complaint was filed. The court of Additional Chief Judicial Magistrate-IV, Agra has taken into consideration the sufficiency of evidence regarding dishonour of cheque and took cognizance of the offence under Section 138 NI Act, consequently, issued summons to the accused by order dated 25.02.2012. From 30.03.2012 till 18.06.2014 summons have continuously been issued against the accused. On 14.08.2014, the bailable warrant for Rs. 5,000/- was issued against the accused. On 26.09.2014, the parties did not appear. The case was then fixed for further orders. On 29.09.2014 neither the complainant was present nor the accused, consequently, the complaint was dismissed and accused was acquitted under Section 256 CrPC. The orders is reiterated underneath:-

> "***29.09.2014—Called out complainant not present .It is 2:50 p.m. even on the last date also, complainant was not present so, complaint is dismissed u/s 256 CrPC and accused is acquitted. File be consign to RR.***"

19. This order of learned Magistrate has been challenged in Criminal Revision No. 530 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another]. The revision was allowed by order dated 04.04.2018 setting aside the order dated 29.09.2014. It is directed in the revision that the learned Magistrate may dispose of the complaint on merit.

21. The learned Magistrate is again seized with the matter. From 10.04.2018 to 06.04.2019, the summons were continuously issued; on 22.06.2019, the bailable warrant has been issued; and from 22.08.2019 to 24.01.2024, the Non-bailable Warrants have been issued against the accused. It is thereafter that the present Application under Section 482 CrPC is filed.

[6. Crl. Misc. Application U/S 482 CrPC No. 12968 of 2024 (Rai Anoop Prasad Vs. State of U.P. and Another)] :-

22. The **Complaint Case No. 77 of 2012** [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad] was filed for dishonor of **Cheque No. 125830** dated 29.10.2011 for Rs. 5,00,000/- drawn on South Indian Bank Ltd, Chitranjan Park Branch, New Delhi, 110019. This cheque was deposited by the complainant in his Indian Overseas Bank, Kamla Nagar Agra on 04.11.2011 but the cheque returned unpaid by the Bank. The complainant has contacted the accused, who has asked for re-presentation of cheque, on which the cheque was again presented on 23.11.2011 but again returned unpaid with the remarks that 'Funds Insufficient'. The information of dishonor of cheque was intimated by the Bank vide memo dated 24.11.2011. The legal notice dated 13.12.2011 has been sent and on 24.01.2012 the complaint was filed. The court of Additional Chief Judicial Magistrate-IV, Agra has taken into consideration the sufficiency of evidence regarding dishonour of cheque and took cognizance of the offence under Section 138 NI Act, consequently, issued summons to the accused by order dated 25.02.2012. From 30.03.2012 till 18.06.2014 summons have continuously been issued against the accused. On 14.08.2014, the bailable warrant for Rs. 5,000/- was issued against the accused. On 26.09.2014, the parties did not appear. The case was then fixed for further orders. On 29.09.2014 neither the complainant was present nor the accused, consequently, the complaint was dismissed and accused was acquitted under Section 256 CrPC. The orders is reiterated underneath:-

"***29.09.2014—Called out. complainant not present .It is 2:50 p.m. even on the last date of hearing complainant was not present so, complaint is dismissed u/s 256 CrPC and accused is acquitted. File be consign to RR.***"

23. This order of learned Magistrate has been challenged in Criminal Revision No. 527 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another]. The revision was allowed by order dated 04.04.2018 setting aside and the order dated 29.09.2014. It is directed in the revision that the learned Magistrate may dispose of the complaint on merit.

24. The learned Magistrate is again seized with the matter. From 10.04.2018 to 24.01.2019, the summons were continuously issued; from 15.03.2019 to 05.10.2019, the bailable warrants have been issued; and from 09.12.2019 to 24.01.2024, the Non-bailable Warrants have been issued against the accused. It is thereafter that the present Application under Section 482 CrPC is filed.

[7. Crl. Misc. Application U/S 482 CrPC No. 13016 of 2024 (Rai Anoop Prasad Vs. State of U.P. and Another)] :-

25. The **Complaint Case No. 74 of 2012** [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad] was filed for dishonor of **Cheque No. 125832** dated 30.10.2011 for Rs. 5,00,000/- drawn on South Indian Bank Ltd, Chitranjan Park Branch, New Delhi, 110019. This cheque was deposited by the complainant in his Indian Overseas Bank, Kamla Nagar Agra on 04.11.2011 but the cheque returned unpaid by the Bank. The complainant has contacted the accused, who has asked for re-presentation of cheque, on which the cheque was again presented on 23.11.2011 but again returned unpaid with the remarks that 'Funds Insufficient'. The information of dishonor of cheque was intimated by the Bank vide memo dated 24.11.2011. The legal notice dated 13.12.2011 has been sent and on 24.01.2012 the complaint was filed. The court of Additional Chief Judicial Magistrate-IV, Agra has taken into consideration the sufficiency of evidence regarding the dishonour of

cheque and took cognizance of the offence under Section 138 NI Act, consequently, issued summons to the accused by order dated 25.02.2012. From 30.03.2012 till 18.06.2014 summons have continuously been issued against the accused. On 14.08.2014, the bailable warrant for Rs. 5,000/- was issued against the accused. On 26.09.2014, the parties did not appear. The case was then fixed for further orders. On 29.09.2014 neither the complainant was present nor the accused, consequently, the complaint was dismissed and accused was acquitted under Section 256 CrPC. The orders is reiterated underneath:-

> "***29.09.2014—Called out complainant not present .It is 2:45 p.m. even on the last date of hearing complainant was not present. so, complaint is dismissed u/s 256 CrPC and accused is acquitted. File be consign to RR.***"

26. This order of learned Magistrate has been challenged in Criminal Revision No. 532 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another]. The revision was allowed by order dated 04.04.2018 setting aside the order dated 29.09.2014. It is directed in the revision that the learned Magistrate may dispose of the complaint on merit.

27. The learned Magistrate is again seized with the matter. From 10.04.2018 to 10.08.2020, the summons were continuously issued; and from 31.03.2022 to 24.01.2024, the Non-bailable Warrants have been issued against the accused. It is thereafter that the present Application under Section 482 CrPC is filed.

[8. Crl. Misc. Application U/S 482 CrPC No. 13020 of 2024 (Rai Anoop Prasad Vs. State of U.P. and Another)] :-

28. The **Complaint Case No. 75 of 2012** [Gopal Prasad Sharma Vs. Ram Anoop Prasad @ Rai Anoop Prasad] was filed for dishonor of **Cheque No. 125831** dated 28.10.2011 for Rs. 5,00,000/- drawn on South Indian Bank Ltd, Chitranjan Park Branch, New Delhi, 110019. This cheque was deposited by the complainant in his Indian Overseas Bank,

Kamla Nagar Agra on 04.11.2011 but the cheque returned unpaid by the Bank. The complainant has contacted the accused, who has asked for re-presentation of cheque, on which the cheque was again presented on 23.11.2011 but again returned unpaid with the remarks that 'Funds Insufficient'. The information of dishonor of cheque was intimated by the Bank vide memo dated 24.11.2011. The legal notice dated 13.12.2011 has been sent and on 24.01.2012 the complaint was filed. The court of Additional Chief Judicial Magistrate-IV, Agra has taken into consideration the sufficiency of evidence regarding dishonour of cheque and took cognizance of the offence under Section 138 NI Act, consequently, issued summons to the accused by order dated 25.02.2012. From30.03.2012 till 18.06.2014 summons have continuously been issued against the accused. On 14.08.2014, the bailable warrant for Rs. 5,000/- was issued against the accused. On 26.09.2014, the parties did not appear. The case was then fixed for further orders. On 29.09.2014 neither the complainant was present nor the accused, consequently, the complaint was dismissed and accused was acquitted under Section 256 CrPC. The orders is reiterated underneath:-

> "***29.09.2014—Called out. complainant not present .It is 2:50 p.m. even on the last date of hearing also complainant was not present so, complaint is dismissed u/s 256 CrPC and accused is acquitted. File be consign to RR.***"

29. This order of learned Magistrate has been challenged in Criminal Revision No. 531 of 2017 [Gopal Prasad Sharma Vs. State of U.P. and Another]. The revision was allowed by order dated 04.04.2018 setting aside the order dated 29.09.2014. It is directed in the revision that the learned Magistrate may dispose of the complaint on merit.

30. The learned Magistrate is again seized with the matter. From 10.04.2018 to 10.05.2018, the summons were continuously issued; from 12.07.2018 to 10.08.2020, the bailable warrants have been issued; and from 31.03.2022 to 24.01.2024, the Non-bailable Warrants have been

issued against the accused. It is thereafter that the present Application under Section 482 CrPC is filed.

31. Learned Senior Advocate appearing for the accused submits that the revisional court (Additional Sessions court) has exercised the jurisdiction of revision, which is not applicable in the present matter, where the accused has been acquitted in the Complaint Case for an offence under Section 138 N.I. Act by the Magistrate. The proper remedy available to the complainant was to prefer Leave to Appeal under Section 378(4) CrPC. Further submits that Section 401(4) CrPC clearly bars the jurisdiction of revision where the provision of appeal is provided in the Code. Hence, submitted that the applications are liable to be allowed and the impugned order of revisional court, whereby the order of acquittal has been set aside by the revisional court, shall be quashed and consequently proceedings pending before the Magistrate shall also be quashed. Learned counsel has relied upon the pronouncements in cases of ***Abhishek Mishra @ Pintu Vs. State of U.P. and Anr.***[1], ***Vinay Kumar Vs. State of U.P. and Anr.***[2], ***Associated Cement Co. Ltd. Vs. Keshvanand***[3], ***S. Anand Vs. Vasumathi Chandrasekar***[4], ***S.Rama Krishna Vs. S.Rama Reddy (Dead) by His Lrs & Ors.***[5], ***BLS Infrastructure Ltd. Vs. Rajwant Singh & Ors.***[6], ***Anil Kumar Agarwal Vs. State of UP & Anr.***[7] and ***Shitala Baksh Singh Vs. State of U.P. through Secretary (Home) and Another***[8]. It is further submitted that the order passed by the revisional court is also bad in the eye of law, because no opportunity has been granted by the revisional court to the accused to defend the order of Magistrate passed in his favour for acquittal. This opportunity is provided under Section 401(2) CrPC. He relied upon the judgments of Hon'ble Supreme Court in the cases of ***Manharibhari Muljibhai Kakadia Vs. Shaileshbhai Mohanbhai Patel & Ors***[9], ***P.***

1 Application u/s 482 No. 3099 of 2024
2 2007 (58) ACC 500
3 (1998) 1 SCC 687
4 (2008) 4 SCC 67
5 (2008) 5 SCC 535
6 (2023) 4 SCC 326
7 Application u/s 482 No. 3171 of 2016
8 2023 SCC OnLine All 4652
9 (2012) 10 SCC 517

Sundarrajan & Ors Vs. R. Vidhya Sekar[10] and ***Subhash Sahebrao Deshmukh Vs. Satish Atmaram Talekar & Ors.***[11]***.*** It is further submitted that even otherwise the cognizance taking order passed by the Judicial Magistrate is bad in the eyes of law.

32. He further submits that the Magistrate has committed error in issuing the summons and taking cognizance of offence under Section 138 of N.I.Act against the accused because the cheque has been issued by a company and without impleading the company or taking cognizance against the Director of the company the accused has been summoned in personal capacity. Further submits that the cognizance order is also bad in the eyes of law as the complaint does not disclose that the account from which the cheque was issued was in the name of accused and therefore, the cognizance taking order as well as the summons issued against the accused is bad in the eyes of law and on this count as well, the summoning order issued by the Magistrate shall be quashed. In substantiation of arguments, the learned counsel has relied on the judgments of Hon'ble Supreme Court in the cases of ***Jugesh Sehgal Vs. Shamsher Singh Gogi***[12]*,* ***PJ Agro Tech Limited and others Vs. Water Base Limited***[13] *and* ***Aneeta Hadra Vs. Godfather Travels Pvt. Limited***[14].

33. **Per contra**, learned counsel for the complainant and learned AGA have submitted that larger Bench in ***Abhishek Mishra @ Pintu Vs. State of U.P. and Anr.***[15] by order dated 05.04.2025 has opined that the reference needs no deliberation and does not deserve to be answered. Learned counsel further submits that Hon'ble Supreme Court in the case of ***In Re:- Expeditious Trial of Cases under Section 138 of N.I. Act 1881***[16] has issued general directions for expeditious disposal of the cases pertaining to dishonour of cheque. Further submits that the accused has

10 (2004) 13 SCC 472
11 (2020) 6 SCC 625
12 (2009) 14 SCC 683
13 (2010) 12 SCC 146
14 (2012) 5 SCC 661
15 Application u/s 482 No. 3099 of 2024 (Order dt. 05.04.2025)
16 (2021) 16 SCC 116

willfully not appeared in the cases of dishonour of cheque and it is in the absence of the accused that the Magistrate has dismissed the complaint invoking Section 256 CrPC, against which the complainant has file the revision petitions, which were rightly allowed by the revisional court. Further submits that the conduct of accused throughout the case about deceiving the summons, on one pretext or the other is with the motive of not returning the money advanced, given for the purchase of flat to the accused which has not been advanced to any company, therefore, impleading of a company or invoking of Section 141 of N.I.Act is not required and therefore, the complaint was filed against the accused in personal capacity. Further submits that the cheques have been issued by the accused to pay the debt, which were dishonoured hence, the complaint, as the notice was not complied. The intention of accused is still clear and explicit that he does not want to return the money even after fourteen long years have elapsed. The accused is an unscrupulous litigant, hence the applications filed by the accused shall be dismissed.

34. This Court has taken into consideration the rival submissions made by the parties and perused the record.

35. The factual matrix of the case requires reiteration for deliberations to ponder on the legal perspective. The complainant has filed eight complaints under Section 138 N.I.Act against the accused for dishonour of cheque in which learned Magistrate has issued processes under Section 204 CrPC on 25.02.2012. The processes (summons and bailable warrants) have been issued for two years, but the accused did not appear. On 29.09.2014, the Magistrate, in absence of complainant and accused has dismissed the complaint, specifically mentioning acquittal of accused under Section 256 CrPC. At the very threshold, it is required to be pointed out that learned counsel for the accused has not placed any judgment, wherein this fact has been considered by either Hon’ble the Supreme Court or by the High Court regarding the remedy in appeal under Section 378 CrPC or revision under Section 397 read with Section 401 CrPC.

36. It is an admitted fact that the complainant has filed criminal revision invoking Section 397 read with Section 401 CrPC before the court of Sessions to assail the order dated 29.09.2014 passed by the Magistrate, acquitting the accused by dismissing the complaint and the Additional Sessions Court, while invoking revisional jurisdiction has allowed the revision petitions, setting aside the orders dated 29.09.2014 passed by the Magistrate.

37. The record reflects that the complainant was continuously appearing before the court of Magistrate, taking steps for service of summons and bailable warrants for procuring the presence of accused, as is provided under Section 204(4) Cr.P.C., reiterates "***When by any law for the time being in force any process- fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.***"

38. The record further reveals that the Magistrate has continuously issued summons to the accused from 25.02.2012 till 18.06.2014. On 14.08.2014, the complainant was present and bailable warrant of Rs. 5000/- was issued against the accused fixing 27.09.2014 as the next date. On 27.09.2014 the case was fixed for further orders, revealing therein that the parties were not present, there is no satisfaction of the court as to the service of bailable warrant upon the accused. It is also a point to be considered that on 27.09.2014, the court has fixed 29.09.2014, after the gap of a day, on which date, the Magistrate has dismissed the complaint in absence of the complainant and acquitted the accused.

39. Thus the points of concern are :-

> ***(i) Whether the complainant has not taken the steps for service of summons and processes, as is required under Section 204(4) CrPC which provides power to the Magistrate to dismiss the complaint?***

(ii) Whether the accused could be acquitted without appearing in a complaint?

(iii) Whether the requirement of section 256 CrPC has been complied by the Magistrate, which requires the presence of complainant on the date of adjourned hearing?

(iv) Whether the Magistrate was having any evidence on record at post cognizance stage, subsequent to the passing of cognizance taking order dated 25.02.2012, till dismissing the complaint on 29.09.2014, which could be considered for the acquittal of accused?

(v) Whether the order of Magistrate 'acquitting the accused, who is not before the court or facing trial' is patently an illegal and erroneous order, which requires to be dealt with in revision under Section 397 read with section 401 CrPC? OR Merely dismissal of the complaint and acquitting the accused under Section 256 CrPC makes the order appealable under Section 378 CrPC? AND if the application under Section 378(4) CrPC is moved for seeking leave to appeal in such a situation, whether the appellate court could exercise the appellate jurisdiction without the evidence on record at the post cognizance stage because the complainant had no occasion to adduce it?

40. Sections 200-203 CrPC provides for complaints to Magistrate (Chapter XV), which deals with entertaining a complaint, examination of complainant and witnesses on oath and the dismissal of complaint under Section 203 CrPC. After considering the statement of complainant and witnesses on oath and result of inquiry or investigation carried out under Section 202 CrPC, if any, the Magistrate does not found sufficient ground to proceed, the complaint is dismissed under Section 203 CrPC but if sufficient ground to proceed then Section 204 CrPC provides for taking of cognizance of offence and issuance of processes upon the accused. In the present case, the Magistrate has taken cognizance of the offence in all the eight cases of dishonour of cheque, separately on 25.02.2012.

41. The complainant has taken required steps for issunace of summons and bailable warrant, which have been issued against the accused, but the accused did not appear. The orders dated 29.09.2014, reiterated herein before clearly reveals that the complaint has not been dismissed for the reasons of non-taking of processes as is provided under Section 204(4) CrPC. Thus, **point (i)** is accordingly dealt with and decided.

42. At the post cognizance stage, no evidence could be adduced by the complainant because the accused never appeared in the complaint.

43. Section 143 of N.I.Act provides that the power of court is to try the case summarily, the relevant extract is reiterated, "***(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all the offence under this Chapter shall be tried by a Judicial Magistrate of first class or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 CrPC (both inclusive) of the said Code shall, as far as may be, applied to such trial."*** Moreover, Sub-section (1) of Section 262 CrPC provides that the procedure for summary trial is the same as provided in this Code for the trial of summons-cases, if not otherwise excepted.

44. Whereas, the trial of summons-case is provided in Chapter XX (Sections 251-259) CrPC. It is through this analogy that the provision of Section 256 CrPC is applicable for the cases of N.I.Act. The provision of Section 256 CrPC is reiterated underneath:-

> "***256. Non-appearance or death of complainant.***
>
> ***(1)If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:***
>
> ***Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the***

Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2)The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death."

45. In the present Complaint Case, the accused never appeared for trial and the case was not fixed for hearing, which connotes the presence of parties for trial. Though, the Magistrate invoked Section 256 CrPC. Now the legal pronouncements be taken into consideration.

46. Hon'ble the Supreme Court in the case of ***Associated Cement Co. Ltd. (supra)*** while dealing with Section 247 of the Code of Criminal Procedure, 1898, as applicable to the State of Jammu & Kashmir, the coordinate Section is Section 256 of CrPC considered two requirements, which are to be taken into consideration by the Magistrate while acquitting the accused and found that the Magistrate has not taken into consideration those requirements and passed the order of acquittal under section 247 of the old Code (Section 256 of the CrPC) and considered that the Magistrate while invoking Section 256 CrPC must keep in mind that the attendance of complainant is essential on the date fixed. The relevant paragraphs 16 and 17 are reiterated underneath:-

"*16. What was the purpose of including a provision like Section 247 in the old code (or section 256 in the new Code). It affords some deterrence against dilatory tactics on the part of a complainant who set the law in motion through his complaint. An accused who is per force to attend the court on all posting days can be put to much harassment by a complaint. An accused who is per force to attend the court on all posting days can be put to much harassment by a complainant if he does not turn up to the court on occasions when his presence is necessary. The Section, therefore, affords a protection to an accused against such tactics of the complainant. But that does not mean if the complainant is absent, court has a duty to acquit the accused in invitum.*

17. Reading the Section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the magistrate shall not acquit the accused. Second is, when the magistrate considers that personal attendance of the complainant is not necessary on that

day the magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for progress of the case and also whether the situation does not justify the case being adjoined to another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice."

47. In the case of ***S.Anand (supra)*** Hon'ble Supreme Court has again considered the applicability of Section 256 CrPC and the exercise of power by the Magistrate, in the light of argument that an application under Section 311 CrPC moved by the accused was pending, when the complaint was dismissed by the Magistrate invoking Section 256 CrPC. The relevant paragraphs 13, 14 and 15 are reiterated underneath:-

"*13. The date was fixed for examining the defence witnesses. Appellant could have examined witnesses, if he wanted to do the same. In that case, the appearance of the complainant was not necessary. It was for her to cross-examine the witnesses examined on behalf of the defence.*

14. The accused was entitled to file an application under Section 311 of the Code of Criminal Procedure. Such an application was required to be considered and disposed of by the learned Magistrate. We have noticed hereinbefore that the complainant did not examine herself as a witness. She was sought to be summoned again for cross-examination. The said prayer has not yet been allowed. But, that would not mean that on that ground the court would exercise its discretionary jurisdiction under Section 256 of the Code of Criminal Procedure at that stage or the defence would not examine his witnesses.

15. Presence of the complainant or her lawyer would have been necessary, as indicated here-in-before, only for the purpose of cross- examination of the witnesses examined on behalf of the defence. If she did not intend to do so, she would do so at her peril but it cannot be said that her presence was absolutely necessary. Furthermore, when the prosecution has closed its case and the accused has been examined under Section 311 of the Code of Criminal Procedure, the court was required to pass a judgment on merit of the matter."

48. In the case of ***S. Rama Krishna (supra)***, the complainant has passed away, the counsel moved application for substitution, the accused moved objection, thereafter, one year none appeared for complainant and the Magistrate has dismissed the complaint and acquitted accused. On which, the Hon'ble the Supreme Court has considered the ingredients of Section 256(1) CrPC in paragraph 9. The same is reiterated underneath:-

> "***The ingredients of Section 256(1) are: (i) that summons must have been issued on a complaint, (ii) the Magistrate should be of the opinion that for some reasons, it is not proper to adjourn the hearing of the case to some other date; and (iii) the date on which the order under Section 256(1) can be passed is the day appointed for appearance of the accused or any day subsequent thereto, to which the hearing of the case has been adjourned.***"

49. In the case of ***BLS Infrastructure Ltd.(supra)***, the Hon'ble Supreme Court has considered the scope of Section 256 CrPC, the powers exercised by the Magistrate and considered that if the complainant, who has moved an applications under Section 311 CrPC does not appear before the court for pressing the application, the Magistrate is not justified in straightway dismissing the complaint. The relevant paragraphs 12 and 16 of the aforesaid judgement are reiterated underneath:-

> "*12. A plain reading of the proviso to sub-section (1) of Section 256 would indicate that where the Magistrate is satisfied that the personal attendance of the complainant is not necessary, he can dispense with the attendance of the complainant and proceed with the case. Such a situation may arise where complainant's/prosecution's evidence has been recorded and to decide the case on merits, complainant's presence is not necessary.*
>
> *13. xxxxxx*
>
> *14. xxxxxx*
>
> *15. xxxxxx*
>
> *16. Further, if the complainant had not appeared to press the application under Section 311 of the Code, the learned Magistrate could have rejected the application under Section 311 of the Code and proceeded with the case on basis of the available evidence. We are, therefore, of the considered view that the learned Magistrate was not justified in straight away dismissing the*

> ***complaint(s) and ordering acquittal of the accused on mere non-appearance of the complainant. The High Court too failed to take notice of the aforesaid aspects. Thus, the orders impugned are liable to be set aside.***"

50. In all the judgments cited for the accused/applicant, the fact in common is the presence of accused in the complaint, who were facing trial when the complainant did not appear and the Magistrate has dismissed the complaint wrongly or rightly invoking Section 256 CrPC. It is also the point of discussion and deliberation in the case of ***Anil Kumar Agarwal (supra)***, which has been decided by a larger Bench on reference that complainant/victim has got a right to file an appeal under sub- section (4) and (5) of Section 378 CrPC against the order of acquittal. The difference in the present case and the above dealt cases is presence of accused facing trial. If the accused did not appear to face trial, whether he could be acquitted? The scheme of summons trial provided under Chapter XX of CrPC starts from appearance of accused. Section 251 CrPC provides that when in a summons-case the accused appear the substance of accusation shall be stated to him by the Magistrate to know whether he plead guilty or has defense to make. If the accused pleads guilty, the Magistrate may convict him under Section 252 CrPC, otherwise, the procedure is laid down under Section 254 CrPC where the accused is pleaded not guilty. This procedure is reiterated underneath:-

> "***254. Procedure when not convicted.***
>
> ***(1)If the Magistrate does not convict the accused under Section 252 or Section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.***
>
> ***(2)The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing.***
>
> ***(3)The Magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court.***"

51. Section 255 provides for acquittal or conviction, the same is reiterated underneath:-

> "***255. Acquittal or conviction.***
>
> ***(1)If the Magistrate, upon taking the evidence referred to in Section 254 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal.***
>
> ***(2)Where the Magistrate does not proceed in accordance with the provisions of Section 325 or Section 360, he shall, if he finds the accused guilty, pass sentence upon him according to law.***
>
> ***(3)A Magistrate may, under Section 252 or Section 255, convict the accused of any offence triable under this Chapter, which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons, if the Magistrate is satisfied that the accused would not be prejudiced thereby***."

52. Thus, the scheme of trial provides the presence of accused to face trial, recording of his statement of pleading guilty or has a defense to make, conviction on pleading guilty and proceeding with the trial for adjudication.

53. The scope and applicability of Section 256 CrPC is again considered by Hon'ble Supreme Court in the case of ***Ranjeet Sarkar Vs. Ravi Ganesh Bhardwaj***[17], wherein it is observed that Section 256 CrPC could be invoked for acquitting the accused, if the acquittal of accused would follow as its logical result of absence of complainant. The relevant paragraph 23 is reiterated underneath:-

> "***23. What, therefore, assumes importance for invoking Section 256, Cr. PC is the purpose for which the case is fixed. If the date is not appointed for appearance of the accused but for some other purpose, like in the present case, acquittal of the accused does not necessarily follow as the logical result of absence of the complainant. Also, the words "on any day subsequent thereto" must be understood in reference to the words preceding, namely, "the day appointed for the appearance of the accused". Say, for instance, if a date is fixed by the magistrate for bringing an order from a superior court or for showing cause why an order of***

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dismissal should not be passed for continuous absence of the complainant or for producing any material, which is not intrinsically connected with any step towards progress of the lis, and the complainant is found to be absent, a dismissal of the complaint can be ordered but the provision for acquitting the accused may not be attracted unless it happens to be the date appointed for appearance of the accused and they do appear personally or through an advocate; also, without the magistrate recording a clear acquittal along with the order of dismissal of the complaint, acquittal need not be read into every such order of dismissal of a complaint owing to absence of the complainant."

54. In the present case, the non-appearance of complainant on the date fixed would not lead to acquittal of accused at any stretch of imagination, because the accused was not appearing in the trial. Section 256 CrPC contemplates acquittal of accused, who is before the court and not when he is absconding the trial. Therefore, point no. ***(ii) & (iii)*** are accordingly decided in the light of judgment of the Hon'ble Supreme Court considered here-in-above and the provisions of law that acquittal cannot be recorded where the requirement of presence of complainant is not necessary for hearing of the complaint. Hence the order passed by the Magistrate on 29.09.2014 is patently illegal order.

55. So far as the point no. ***(iv)*** is concerned it is an admitted position that the evidence recorded at the pre-cognizance stage is the only evidence available on record. At the post-cognizance stage there is no evidence because after taking of cognizance there was no opportunity for the complainant to adduce the evidence, as complaint case was continuously being fixed for appearance of accused, till 29.09.2014 when the order dismissing the complaint was passed. Hence, the point no.***(iv)*** is accordingly replied.

56. The above discussions made it clear that the complainant has taken steps for service of summons and processes as required under Section 204 (4) CrPC and the accused has been acquitted without his facing trial in the complaint proceeding and there is no evidence available with the Magistrate after the post cognizance stage, which could warrant acquittal of the accused. Now, the points of concern is

elaborated at point no. ***(v).*** To deal with this issue, the first and foremost point of concern is the scope of criminal revision provide under Section 397 to 402 CrPC, which deals with the power and scope of revisional jurisdiction exercised by the High Court and the Sessions Court. The revisional jurisdiction of Sessions court is required to be considered, because the revision has been filed before the Sessions Court and exercised by Additional Sessions Judge as per the provisions of Section 400 CrPC, which provides the exercise of all the powers under Chapter XXX(Reference and Revision) of CrPC by Additional Sessions Judge that could be exercised by the Sessions Judge. The provisions of Section 397, 398, 399 and 401 CrPC are reiterated underneath:-

> "*397. Calling for records to exercise powers of revision:-*
> *(1)The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.*
> *(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.*
>
> *398. Power to order inquiry:-*
> *On examining any record under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under Section 203 or sub-section (4) of Section 204, or into the case of any person accused of an offence who has been discharged:*
> *Provided that no Court shall make any direction under this Section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.*

399.Sessions Judge's powers of revision:-
(1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of Section 401.
(2) Where any proceedings by way of revision is commenced before a sessions Judge under sub-section (1), the provisions of sub-sections (2),(3),(4) and (5) of Section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.
(3)Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

401. High Court's powers of revision:-
(1)In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.
(2)No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.
(3)Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.
(4)Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.
(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

57. The scope of revisional jurisdiction is considered by Hon'ble Supreme Court in ***Amit Kapoor Vs. Ramesh Chandra***[18], (relevant paragraph 12 and 13), wherein it is held that the provisions of revision is to examine by a superior court when the order is grossly erroneous and

18 (2012) 9 SCC 460

intervention of superior revisional court is necessitated to prevent the abused of process of law, wherein the point of law is the prime concern of revisional court. Paragraph 12 and 13 are reiterated underneath:-

> "*12. The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or proprietary of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under Section 397 is a very limited one. The legality, proprietary or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex liquid alicuiconcedit, conceder videtur id quo res ipsa esse non protest, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused.*
>
> *13. It may be somewhat necessary to have a comparative examination of the powers exercisable by the Court under these two provisions. There may be some overlapping between these two powers because both are aimed at securing the ends of justice and both have an element of discretion. But, at the same time, inherent power under Section 482 of the Code being an extraordinary and residuary power, it is inapplicable in regard to matters which are specifically provided for under other provisions of the Code. To put it simply, normally the court may not invoke its power under Section 482 of the Code where a party could have availed of the remedy available under Section 397 of the Code itself. The inherent powers under Section 482 of the Code are of a wide magnitude and are not as limited as the power under Section 397. Section 482 can be invoked where the order in question is neither an interlocutory order within the meaning of Section 397(2) nor a final order in the strict sense. Reference in this regard can be made to Raj Kapoor & Ors. v. State of Punjab & Ors. [AIR 1980 SC 258 : (1980) 1 SCC 43]. In this very case, this Court has observed that inherent power under Section 482 may not be exercised if the bar under Sections 397(2) and 397(3) applies, except in extraordinary situations, to prevent abuse of the process of the Court. This itself shows the fine distinction between the powers exercisable by the Court under these two provisions. In this very case, the Court also considered as to whether the inherent powers of the High Court under Section 482 stand*

repelled when the revisional power under Section 397 overlaps. Rejecting the argument, the Court said that the opening words of Section 482 contradict this contention because nothing in the Code, not even Section 397, can affect the amplitude of the inherent powers preserved in so many terms by the language of Section 482. There is no total ban on the exercise of inherent powers where abuse of the process of the Court or any other extraordinary situation invites the court's jurisdiction. The limitation is self-restraint, nothing more. The distinction between a final and interlocutory order is well known in law. The orders which will be free from the bar of Section 397(2) would be the orders which are not purely interlocutory but, at the same time, are less than a final disposal. They should be the orders which do determine some right and still are not finally rendering the Court functus officio of the lis. The provisions of Section 482 are pervasive. It should not subvert legal interdicts written into the same Code but, however, inherent powers of the Court unquestionably have to be read and construed as free of restriction."

58. While dealing the issue, this Court has already considered that there is no evidence on record, which had its logical end in acquittal of accused in absence of complainant, because the accused has never appeared for commencement of trial, which would be commenced, in the present case after putting the substance of accusation before the accused in pursuant to Section 251 CrPC, which provides "***when in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge***."

59. The judgments of the Hon'ble Supreme Court and the High Court dealt here-in-above specifically speaks about the filing of appeal for acquittal, invoking Section 378(4)CrPC, but the facts of present case is different from the facts of those cases, which are dealt with in the preceding paragraphs. Section 378 CrPC that deals with the appeal in case of acquittal is reiterated underneath:-

"*378.Appeal in case of acquittal :-*
(1) Save as otherwise provided in Sub-Section (2) and subject to the provisions of Sub-Sections (3) and (5),-

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;
(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision."
(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may, subject to the provisions of Sub-Section (3), also direct the Public Prosecutor to present an appeal—
(a)to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;
(b)to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a) or an order of acquittal passed by the Court of Session in revision.
(3) No appeal under Sub-Section (1) or Sub-Section (2) shall be entertained except with the leave of the High Court.
(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.
(5) No application under Sub-Section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.
(6) If, in any case, the application under Sub-Section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under Sub-Section (1) or under Sub-Section (2)."

60. The meaning and definition of word 'acquittal' is not provided in CrPC, but the wordly meaning of the word connotes that a formal finding by a court that the accused is not guilty of the offence charge. The acquittal could only be recorded when the prosecution fails to prove the case. In the present case, neither the accused appeared for hearing on charge nor the complainant was ever provided opportunity of producing the evidence. In such a situation, if the complainant is resorted to move

an application for leave to appeal under Section 378(4) CrPC and the leave is granted by the court, that what would be before the appellate court for considering the justifiable evidence or material before the Magistrate for acquitting the accused?

61. Hence, the perception of this Court after deliberation of the entire facts and law on the point of preferring a revision or appeal in the present set of facts is right of preferring revision and not an appeal because the accused never appear for trial and acquittal of accused under Section 256 CrPC is an abuse of process of law and exercise of discretion which is not applicable to the Magistrate. Thus, point no. ***(v)*** is accordingly deliberated and decided.

61. As this Court has found that revision under Section 397 read with Section 399 and 401 CrPC is rightly invoked by the complainant, now the point of concern is whether the order passed by revisional court (Additional Sessions Judge), bad in the eye of law due to non-compliance of Section 401(2) CrPC, which deals with an opportunity of hearing to the accused, reiterates as "***no order under this section shall be made to the prejudice of the accused or other persons unless he has had an opportunity of being heard either personally or by pleader in his own defence***." It is apparent from the face of revisional order that the accused did not appear, but the accused has not annexed the copy of order sheet of the revisional court on the point of issuance of notice and satisfaction of the court. However, the subsequent order sheet of Magistrate court is annexed, which reveals that from 10.04.2018 to 24.01.2024 continuous processes means, summons, bailable warrant and non-bailable warrant have been issued but accused did not appear and directly approach this Court invoking Section 482 CrPC. This shows that the accused is an unscrupulous litigant, whose main purpose is to ignore the processes of court and delay the proceedings of the case to any stretch.

62. The last point of argument of learned counsel for the accused is for quashing of the summoning order dated 25.02.2012 on the ground

that the account is not maintained in the name of accused, which has been acknowledged by the complainant in his complaint and ignored by the Magistrate at the time of issuance of summons and relied upon the cases of ***Jugesh Sehgal(supra) and P.G.Agro Tech Ltd. (supra)*** but the plain reading of complaint does not show that the account is not maintained in the name of accused/applicant. Further, the complaint shows transaction between the parties with no involvement of the Company to invoke Section 141 NI Act.

63. Therefore, ***(1) Application U/s 482 No. 12094 of 2024 (Rai Anoop Prasad Vs. State of U.P. and another), (2) Application U/s 482 No. 12548 of 2024 (Rai Anoop Prasad Vs. State of U.P. and another), (3) Application U/s 482 No. 12590 of 2024 (Rai Anoop Prasad Vs. State of U.P. and another), (4) Application U/s 482 No. 12625 of 2024 (Rai Anoop Prasad Vs. State of U.P. and another), (5) Application U/s 482 No. 12953 of 2024 (Rai Anoop Prasad Vs. State of U.P. and another), (6) Application U/s 482 No. 12968 of 2024 (Rai Anoop Prasad Vs. State of U.P. and another), (7) Application U/s 482 No. 13016 of 2024 (Rai Anoop Prasad Vs. State of U.P. and another)*** and ***(8) Application U/s 482 No. 113020 of 2024 (Rai Anoop Prasad Vs. State of U.P. and another)*** are hereby ***dismissed*** with cumulative cost of Rs. 50,000/- payable by accused to complainant within ***30 days*** whereas, the application moved by the complainant in ***Application U/s No. 15862 of 2024 (Gopal Prasad Shamra Vs. State of U.P. and another)*** is hereby ***allowed*** with direction to the Additional Civil Judge (Junior Division)/Additional Chief Judicial Magistrate, Court No.4, Agra or trial Magistrate to speed up the trial of all cases detailed above in accordance with the directions issued by the Hon'ble Supreme Court ***In-Re Expeditious Trial of Cases Under Section 138 NI Act, 1881***.

(Avnish Saxena,J.)

February 11, 2026
Abhishek Sri.