IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD CRIMINAL WRIT PETITION NO. 1848 OF 2019

Hitendra s/o Vinayakrao Upadhyay, Age 60 years, Occupation Agriculture, R/o Sahakar Nagar, parbhani Tq. And Dist. Parbhani. ...Petitioner. (Ori.Complainant) Versus 1) Shankar s/o Rajaram Gaud, Age 53 years, Occupation Business, R/o Om Niwara Complex, "Niwara" Niwas Housing Society, Takali Naka, Ner Cement House, At Post : Kopargaon Tq. Kopargaon Dist. Ahmednagar. 2) The State of Maharashtra. ...Respondents. (Ori.Respondents) ….. Advocate for Petitioner : Mr. R. K. Ashtekar. Advocate for Respondent No.2 : Ms. P. V. Diggikar. ….. CORAM : SMT.VIBHA KANKANWADI. J. DATE : 11-12-2019. JUDGMENT : 1. Rule. Rule made returnable forthwith. By consent, heard finally. 2. Present petition has been filed under Article 226 and 227 of Constitution of India challenging the order passed by learned Additional Sessions Judge, Parbhani in Criminal Revision Petition 2 CriWP 1848-2019 No.132 of 2019, dated 01-11-2019. 3. The factual matrix leading to the present petition are that, the petitioner is the original complainant who has filed private complaint bearing Summary Criminal Case No.930 of 2017 before learned Judicial Magistrate, First Class, Parbhani, alleging that the present respondent No.1 has committed offence punishable under Section 138 of the Negotiable Instruments Act. The present petitioner filed application at Exhibit 52 before the learned Judicial Magistrate, First Class, Parbhani with a prayer to direct the accused to pay/ deposit 20 % of the amount of the cheque in view of provisions under Section 143-A of the Negotiable Instruments Act. The said application was partly allowed by the learned Magistrate on 19-07- 2019 to the extent of directing accused to deposit 10 % of the cheque amount. 4. The respondent No.1 herein challenged the said order passed by the learned Magistrate dated 19-07-2019 by filing Criminal Revision Petition No.132 of 2019. The present petitioner had filed written arguments and raised objection about the maintainability of the revision, however according to the petitioner those objections have not been considered, and the revision petition was allowed on 01-11-2019, hence this petition. 5. Heard learned advocate Mr. R. K. Ashtekar for the petitioner – 3 CriWP 1848-2019 original complainant. It is not even necessary to issue notice to the respondent No.1. Heard learned Additional Public Prosecutor who waived service for respondent No.2. 6. It has been vehemently submitted on behalf of the petitioner that, the order that was passed by learned Magistrate below Exhibit 52 was purely interlocutory in nature as the trial is still pending and only direction was given in pursuant to the amendment brought by the Central Government under Section 143-A of the Negotiable Instruments Act. The cheque amount is Rs.25,00,000/- and, therefore, the complainant had prayed that direction should be issued to the accused to deposit 20 % of the said cheque amount. The learned Magistrate had allowed the said application to the extent of 10 % of the cheque amount. The learned Additional Sessions Judge relied on the decision of Hon'ble Apex Court in G. J. Raja v. Tejraj Surana reported in (2019 Cri.L.J. (4267)) and held that the said Section i.e. Section 143-A of the Negotiable Instruments Act was not applicable to the complaint filed by the complainant and, therefore, learned Magistrate erred in issuing directions. The learned Additional Sessions Judge failed to consider that the said order which was passed by the Magistrate was interlocutory in nature and, therefore, the revision itself was barred under Section 397 (2) of Code of Criminal Procedure, hence to this effect the present writ petition has been filed. 4 CriWP 1848-2019 7. At the outset it is to be noted that, the complaint was filed by the present petitioner in the year 2017 on the day when he had filed application Exhibit 52. It appears that, the evidence of witness No.2 was in progress. The cross examination was partly

conducted. Section 143-A (5) was inserted in the statute book with effect from 01-09-2018 by Amendment Act 20 of 2018. In G. J. Raja's case (Supra) it has been specifically held in para No.24 of the case that, "24. In the ultimate analysis, we hold Section 143-A to be prospective in operation and that the provisions of said Section 143-A can be applied or invoked only in cases where the offence under Section 138 of the Act was committed after the introduction of said Section 143-A in the statute book." 8. The money deposited in the said matter pursuant to the similar order of deposit of 20 % of the cheque amount ordered by the Court, the Apex Court directed that, it shall be returned to the appellant along with interest accrued. Thus, the said provision under which the complainant was seeking relief in Exhibit 52 was in fact not available to the complainant and, therefore, the learned Additional Sessions Judge, Parbhani was justified in allowing the revision petition on the basis of G. J. Raja's case (Supra). 9. Now coming to the submissions that, the said revision which was entertained by the learned Additional Sessions Judge was 5 CriWP 1848-2019 interlocutory in nature i. e. the revision was barred under Section 397 (2) of Code of Criminal procedure is concerned, it will be helpful to consider some decisions, firstly in Madhu Limaye v. the State of Maharashtra, reported in (1977) 4 Supreme Court Cases 551, wherein it has been observed that, "(2) The order of the Sessions Court in the present case is, however, not an interlocutory order pure and simple. The test laid down in S. Kuppuswami Rao v. The King (1947 FCR 180 : AIR 1949 FC 1) was that if the objection of the accused succeeded the proceeding could have ended but not vica-versa and that the order can be said to be a final order only if in either event the action will be determined. On this test an order taking cognizance of an offence by a court whether it was done illegally or without jurisdiction will not be a final order and hence would be an interlocutory order. The High Court in such a case can certainly exercise its inherent power but it is wrong to held that the test in Kuppuswami Rao's case, that what is not a final order must always be an interlocutory order, is neither warranted nor justified. It is not the intention of the Legislature when it retains the revisional powers of the High Court that only those orders would be revisable which are passed on the final determination of the action but which are not appealable under the Code. The Legislature on the one hand has kept intact the revisional power of the High Court and on the other put a bar on the exercise of that power in relation to an interlocutory order. The real intention of the Legislature 6 CriWP 1848-2019 was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of the proceeding which may not be final but yet it may not be an interlocutory order pure and simple. By a rule of harmonious construction of sub-sections (1) and (2) of Section 397 it must be held that the bar in sub-section (2) is not meant to be attracted to such kinds of intermediate orders. It is neither advisable nor possible to make a catalogue of orders to demonstrate which kinds of orders would be interlocutory and which would be final and then prepare an exhaustive list of those types of orders which would fall between the two." 10. The same view was thereafter upheld in V. C. Shukla v. State Through C. B. I., reported in 1980 Sup Supreme Court Cases 92. What emerges from the decision in V. C. Shukla's case is, "If an order is not a final order, it would be an interlocutory order. An interlocutory order merely decides some point or matter essential to the progress of the suit or collateral to the issues sought but is not a final decision or judgment on the matter in issue. So that in ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not, however, conclude the trial at all. One of the tests is to see if the order is decided in one way, it may terminate the proceedings but if decided in another way, then the proceedings would continue. A final

order finally disposes of the 7 CriWP 1848-2019 rights of the parties." In order that an order would be "interlocutory order", it will have to be seen as to whether the rights of a person are affected. 11. Here in this case, the learned Magistrate applied that provision of law which was not at all applicable to the case in hand before him, therefore, definitely it had affected the right of the accused. Consequently it cannot be said that, the order which was passed by the learned Magistrate was purely "interlocutory order" as contemplated under Section 397 (2) of Code of Criminal Procedure. The learned Additional Sessions Judge was justified in setting aside the said order by exercising his power under Section 397 (1) of Code of Criminal Procedure. There is no merit in the present writ petition much less to invoke the constitutional powers of this Court under Article 226 and 227, hence the writ petition is hereby dismissed. Rule is discharged. (SMT. VIBHA KANKANWADI) JUDGE