



2026:DHC:8191



2. On 07.01.2026, in the course of preliminary hearing, a *prima facie* view was recorded that the present petition is not maintainable in view of the bar enacted under Section 438(3) BNSS, insofar as what is prohibited by law cannot be allowed backdoor entry by invoking inherent powers under Section 528 BNSS. However, this principle is subject to an exception where the petitioner establishes a case of gross injustice. On this aspect, learned counsel for petitioner took time to examine. On 16.09.2026, I heard learned counsel for petitioner on the issue of maintainability of this petition and reserved the matter for orders.

3. The circumstances relevant for present purposes are that the petitioner filed an application under Section 156(3) CrPC along with a complaint under Section 200 CrPC against the present respondents. By way of detailed and well reasoned order dated 28.08.2023, the learned magistrate dismissed the application under Section 156(3) CrPC and posted the matter for recording pre-summoning evidence under Section 200 CrPC. The petitioner challenged order dated 28.08.2023 by way of criminal revision proceedings before the Court of Sessions. By way of order presently impugned, the learned Court of Sessions dismissed the criminal revision petition. Hence, the present petition.

4. Briefly stated, the allegations levelled against the present respondents by the petitioner in his complaint are as follows. On 23.04.2021, by way of pathological examination, wife of the petitioner was found to be suffering with Covid-19. On 25.04.2021, at about 10:00am, she started feeling

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difficulty in breathing, so on advise of Dr. P.N. Seth and Dr. Vijay Arora, petitioner took her along with her oxygen cylinder to Max Super Speciality Hospital, but they refused to admit her for want of beds. Thereafter, petitioner took his wife to the present respondent no.1/hospital, where after initial check-up, the present respondent no.3 demanded Rs.1,00,000/- in cash to arrange bed and on fervent request of petitioner, his wife was admitted by the present respondents no.3 & 4 after accepting an advance payment of Rs.50,000/-. The present respondent no.4 prescribed Remdesivir injection, costing Rs.25,000/- each on two prescriptions. Later, upon change of shift of doctors, the present respondent no.6 changed the prescription and asked the petitioner to deposit Rs. 20,000/-. On 27.04.2021 at about 11:30am, oxygen supply to wife of the petitioner was stopped, but the same was restored on objection being raised. In the evening on that day, the present respondent no.4 advised the petitioner to shift his wife to some other hospital as they did not have ICU beds; and the present respondents no.3 & 4 threatened to discharge her, if she was not shifted out. At about 06:00pm on that day, oxygen supply was again stopped and the present respondents did not attend to her, so she passed away at about 07:27pm. Since the local police failed to register FIR, he filed the complaint with application for directions to register FIR.

5. On the above complaint of the petitioner, the learned magistrate called for Action Taken Report from the local police. In the status report, version of the present respondents also was recorded and as per the same, wife of the petitioner expired as her oxygen saturation was not stable and unfortunately many patients lost their lives due to Covid-19 despite best efforts of the

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9. Learned counsel for petitioner contended that the scope of revision proceedings under Section 438 BNSS (*the erstwhile Section 397 CrPC*) is distinct from the scope of inherent powers under Section 528 BNSS (*the erstwhile Section 482 CrPC*). Learned counsel for petitioner contended that present is a clear case of homicide as well as forgery of prescription, so a fit case to direct registration of FIR. As regards maintainability of this petition, learned counsel for petitioner placed reliance on two judicial precedents, flowing from the Supreme Court, which are **Krishnan & Anr. vs Krishnaveni & Anr.**, (1997) 1 SCR 511; and **Dhariwal Tobacco Products Ltd. & Ors. vs State of Maharashtra & Anr.**, Criminal Appeal No.2055/2007, decided on 17.12.2008. It was contended by learned counsel for petitioner that merely because a litigant has availed remedy of criminal revision, he cannot be barred from seeking invocation of inherent powers of the High Court.

10. The core issue in the present case, thus, pertains to the interplay of Section 438(3) BNSS and Section 528 BNSS. It would be significant to note that the erstwhile provisions under Section 397 CrPC and Section 482 CrPC have in no manner been altered by Section 438 BNSS and Section 528 BNSS respectively. Therefore, the judicial precedents dealing with the interplay of Section 397(3) CrPC and Section 482 CrPC would hold field also as regards the interplay of Section 438(3) BNSS and Section 528 BNSS.

10.1 The purpose behind enactment of sub Sections (2) and (3) to Section 438 BNSS was to prevent delays in trial caused by accused by taking every

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the High Court to prevent the abuse of process or miscarriage of justice or to correct irregularities/incorrectness committed by the inferior criminal court in its juridical process or illegality of sentence or order. The Supreme Court specifically held thus:

*“10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person — accused/complainant — cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, **when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when trial is conducted expeditiously.**”*

(emphasis supplied)

10.3 In the case of **Dhariwal Tobacco** (supra), relied upon by learned counsel for petitioner the question framed by the Supreme Court was as to whether a petition under Section 482 CrPC can be dismissed only on the



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premise that an alternative remedy of filing a revision petition under Section 397 CrPC is available. That is not the question involved in the present case. The question involved in the present case is as to whether a person having already availed of the remedy of revision under Section 397 CrPC unsuccessfully can re-agitate the same issue by approaching the High Court under Section 482 CrPC. However, in ***Dhariwal Tobacco*** (supra) also, the Supreme Court referring to the earlier precedents reiterated the legal position that when the High Court comes to conclusion that allowing the impugned proceedings to continue would be an abuse of process of the court and that the ends of justice require that the proceedings should be quashed, it would not hesitate to do so.

10.4 In the case titled ***Exclusive Capital Ltd. vs State, Government of NCT Delhi***, 2026:DHC:6742, I had an occasion to examine the same issue as involved in the present case. After recapitulating the relevant judicial pronouncements in the cases titled ***Amar Nath vs State of Haryana***, (1977) 4 SCC 137; ***Madhu Limaye vs The State of Maharashtra***, (1977) 4 SCC 551; ***State of Haryana vs Bhajan Lal***, 1992 SCC (Cri) 426; and ***Girish Kumar Suneja vs Central Bureau of Investigation***, (2017) 14 SCC 809, it was held thus:

“9. For present purposes, the legal position culled out of the above cited judicial pronouncements is as follows. The provision under Section 397(3) CrPC, which is now replaced by Section 438(3) BNSS stipulates an explicit prohibition that if a revision petition has been preferred by any party to the High Court or to the Court of Sessions, no further revision petition shall be entertained by the said party. It is trite that what is explicitly prohibited by law cannot be allowed backdoor entry by invoking inherent powers, but this principle is subject to a harmonious understanding that where the High Court, called upon to invoke

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inherent powers is satisfied that the impugned order is clearly without jurisdiction or abuse of process or there is gross injustice, the High Court would be justified in rarest of rare cases to invoke inherent powers and interfere. Such invocation of inherent powers has to be done sparingly and not in routine.”

11. In the present case, what is to be seen is as to whether the petitioner has been able to set up a case which satisfies the above noted parameters for invocation of inherent powers, in the sense as to whether dismissal of the revision petition and the consequent upholding of dismissal of the application under Section 156(3) CrPC can be treated as “rarest of rare case” or of gross injustice or miscarriage of justice that would call for invoking the inherent powers, which powers have to be invoked sparingly. The gross injustice can be tested in a situation of the present nature by ascertaining as to whether the petitioner has been rendered remediless after dismissal of his revision petition, in the sense that the petitioner has no remedy other than taking recourse to Article 126 of the Constitution of India, in which case the decision of the Supreme Court need not be a reasoned decision; and if the petitioner is left remediless, this Court would be justified to invoke inherent powers and interfere to meet the ends of justice. I am of the considered view that in the present case, the petitioner is not rendered remediless after dismissal of his revision petition, because as mentioned above, his complaint is already pending before the magisterial court for recording pre summoning evidence.

11.1 Similar to the present case, the circumstances in the ***Exclusive Capital*** (supra) also were that the order impugned before this court was the order passed by the Court of Sessions in the revisional jurisdiction, upholding the

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is already before a court of competent jurisdiction, where his complaint is already pending for pre summoning evidence. Consequently it is not a fit case where inherent powers of the High Court be invoked in order to interfere with the detailed and well reasoned orders passed by the learned Magistrate and the learned Court of Sessions. Therefore, the present petition is dismissed as not maintainable.

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(JUDGE)**

SEPTEMBER 23, 2026/ry