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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 1366/2024

SUJATA PANDA

.....Petitioner

Through: Mr. Yajur Bhalla and Mr. Ashutosh
Tiwari, Advocates.

versus

UDIT OBEROI & ANR.

.....Respondent

Through: Nemo.

CORAM:

HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

ORDER

29.10.2025

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1. The present criminal revision petition has been filed by the petitioner assailing the impugned order dated 12.08.2024, passed by the learned Metropolitan Magistrate, Patiala House Courts, New Delhi, in Complaint Case No. 6155 of 2019, instituted under Section 138 of the Negotiable Instruments Act, 1881 (hereafter 'NI Act').

2. Briefly stated, the facts necessary for adjudication are that the petitioner had invested an amount of ₹4,30,000/- in the accused company, namely Swag Media Production Pvt. Ltd., on the basis of representations made by its directors regarding assured high returns. It is stated that the petitioner initially received part payments towards interest on the said investment; however, thereafter, the accused company defaulted in making further payments, including repayment of the principal amount. It is further stated that despite repeated requests made by the petitioner, the accused



company failed to honour its commitment, whereafter it issued Cheque No. 000016 dated 17.12.2018 for a sum of ₹4,76,967/-, drawn on its account. The said cheque, when presented for encashment, was returned dishonoured with the remarks “*insufficient funds.*” Thereafter, in accordance with the provisions of Section 138 of the NI Act, the petitioner issued a legal demand notice to the directors of the accused company, calling upon them to pay the cheque amount within the statutory period. Upon their failure to do so, the petitioner filed the aforesaid complaint before the learned Magistrate.

3. Initially, only the directors of the company were arrayed as accused. On 05.01.2024, the learned Magistrate observed as under:

“ CW1 examined in chief. Cross examination is deferred at request of Ld. Counsel for the accused.

Today, certain more clarifications have been sought from the Ld. Counsel for the complainant as per which it appears that one more accused i.e., “Swag Media Pvt. Ltd.” who appears to have committed the offence which is being tried by this court, has not been made a party in the present complaint.

Fair grounds are found to take cognizance against the aforementioned accused company u/s 319 CrPC.

An opportunity is granted to the complainant to argue upon this aspect and satisfy the court about the applicability of Section 319 CrPC in the matter at this stage.

Re-notify for arguments on 04.03.2024.”

4. Subsequently, on 02.04.2022, the petitioner moved an application and filed an amended memo of parties, seeking to implead Swag Media Production Pvt. Ltd. as an accused, on the ground that the cheque in question had been issued by the company itself and that the directors had acted on behalf of the company. Objection was, however, taken by the accused Udit Oberoi, contending that the complaint was not maintainable



against the company in the absence of service of a separate statutory notice under Section 138 of the NI Act upon it.

5. The learned Magistrate, *vide* impugned order dated 12.08.2024, held that since no legal demand notice had been addressed or served upon the company, one of the essential ingredients of the offence under Section 138 of the NI Act remained unfulfilled. Accordingly, the learned Magistrate declined to summon the company as an accused. It was further observed that the provisions of Section 319 Cr.P.C. could not be invoked at that stage to implead the company as an additional accused. The relevant portion of the impugned order reads as under:

“ Vide this order I shall state my opinion upon the aspect of taking cognizance against the company “Swag Media Pvt. Ltd.” u/s 319 CrPC.

To recapitulate, *vide* order dt. 05.01.2024, the court granted an opportunity to the complainant to argue upon and satisfy the court about the applicability of the Section 319 CrPC in the matter at this stage. As the decision also involved the substantive rights of the accused persons, the accused persons were also granted an opportunity to advance their submissions upon the aspect.

Thus, as per the plain language of Section 319 CrPC, any person who is not an accused in a matter and appears to have committed an offence for which such person could be tried together with the accused, on the basis of evidence on record, may be proceeded against by the court.

However, I am satisfied that in the facts of the present matter, Section 319 CrPC is not attracted for the following reasons:-

1. Firstly, the offense u/s 138 NI Act is not complete until and unless a legal demand notice has been sent by the complainant to the accused. In the present matter, no legal demand notice has been sent to the company “Swag Media Pvt. Ltd.”. In the absence of one of the necessary ingredients i.e., Legal Demand Notice, The Company cannot be at this stage made a party to the present matter.
2. Secondly, the Limitation prescribed for taking cognizance of the offense u/s 142 NI Act has expired and no circumstances or reason has been pointed out to enable the court to exercise the power conferred by proviso to Section 142 NI Act R/w Section 319 CrPC.



On coming to the above mentioned conclusions, reliance can be placed upon the judgments of Himanshu Vs. B. Shivamurthy & Anr. In Criminal Appeal No. 1465/2009 and Pawan Kumar Goel vs. State of U.P. & Another in Criminal Appeal No. 1999/2022.

Accordingly, matter be now listed for CE on 13.11.2024.”

6. Aggrieved by the said order, the petitioner has preferred the present revision petition before this Court, seeking to set aside the impugned order and for a direction permitting the petitioner to proceed against the company under Section 138 of the NI Act.
7. It is pertinent to note that notice has not yet been issued in the present revision petition, as the matter was initially listed for arguments on the maintainability of the petition.
8. The learned counsel appearing on behalf of the petitioner has argued that the impugned order is not interlocutory in nature, as it conclusively determines the petitioner’s right to prosecute the accused company under Section 138 of the NI Act. It has been contended that the order affects the substantive rights and liabilities of the parties and, therefore, cannot be treated as a mere procedural direction. Accordingly, the present revision petition is maintainable before this Court under Section 397 of Cr.P.C.
9. Arguments addressed on behalf of the petitioner have been **heard**, and record has been perused.
10. At the outset, since Section 397(2) of the Cr.P.C. expressly bars the exercise of revisional jurisdiction in respect of “*interlocutory orders*”, it becomes necessary for this Court to determine whether the impugned order dated 12.08.2024 falls within that category. The expression “interlocutory order” has not been defined in the Code; however, its scope and import have been judicially settled by a series of decisions of the Hon’ble Supreme



Court. In ***Amar Nath & Ors. v. State of Haryana***: (1977) 4 SCC 137, the Hon'ble Supreme Court clarified that the term “*interlocutory order*” used in Section 397(2) Cr.P.C. is to be understood in a *restricted sense* and not in any broad or artistic manner. It was observed:

“...the term ‘interlocutory order’ has been used in Section 397(2) in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or liabilities of the parties. An order which substantially affects the rights of the accused or the prosecution and which decides certain rights of the parties cannot be said to be interlocutory so as to bar a revision to the High Court against that order...”

11. This principle was elaborated upon in ***Madhu Limaye v. State of Maharashtra***: (1977) 4 SCC 551, wherein the Hon'ble Supreme Court introduced the concept of “intermediate orders” – orders which, though not final, are not purely interlocutory either, and which substantially affect the rights of the parties. The Court held that the bar under Section 397(2) applies only to orders which are purely interlocutory and do not determine any aspect of the rights or liabilities of the parties.

12. Turning to the facts of the present case, the impugned order passed by the learned Magistrate has refused to summon and implead the accused company, Swag Media Production Pvt. Ltd., as an accused in the complaint under Section 138 of the NI Act. The reasoning adopted by the learned Magistrate rests on two specific findings – *firstly*, that no legal demand notice was served upon the company, and *secondly*, that the limitation prescribed under Section 142 of the NI Act had expired. The effect of such findings is that the petitioner's right to prosecute the company, which is the drawer of the cheque and principal offender under Section 138 of the NI



Act, stands foreclosed. Thus, the order directly and finally determines the complainant's right to maintain proceedings against one of the principal accused persons, thereby substantially affecting the course and scope of the trial.

13. It is well settled that an order which terminates proceedings against one or more parties or determines a substantive issue in the case cannot be treated as interlocutory. In ***Mohit v. State of U.P.***: (2013) 7 SCC 789, while considering whether an order rejecting an application under Section 319 Cr.P.C. was interlocutory, the Hon'ble Supreme Court held:

“25. In the light of the ratio laid down by this Court referred to hereinabove, we are of the considered opinion that the order passed by the trial court refusing to issue summons on the application filed by the complainant under Section 319 of Cr.P.C. cannot be held to be an interlocutory order within the meaning of sub-section (2) of Section 397 of Cr.P.C. Admittedly, in the instant case, before the trial court the complainant's application under Section 319 of Cr.P.C. was rejected for the second time holding that there was no sufficient evidence against the appellants to proceed against them by issuing summons. The said order passed by the trial court decides the rights and liabilities of the appellants in respect of their involvement in the case. As held by this Court in Amar Nath's case (supra), an order which substantially affects the rights of the accused or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order as contemplated under Section 397(2) of Cr.P.C.”

14. The rationale in the above case squarely applies to the facts of the present case, since the impugned order, under Section 319 of Cr.P.C., similarly deprives the complainant of the right to prosecute the accused company. Therefore, the order is not merely procedural or in aid of the progress of trial, but one that adjudicates and determines the substantive rights of the complainant as against the principal accused.



15. In view of the above discussion, this Court finds that the impugned order dated 12.08.2024 cannot be treated as a purely interlocutory order within the meaning of Section 397(2) Cr.P.C. as it adjudicates upon and affects the substantive rights of the petitioner-complainant to prosecute the accused company. Accordingly, the bar under Section 397(2) of Cr.P.C. would not apply, and the present revision petition is held to be maintainable.

16. Thus, in view of the aforesaid, upon petitioner taking steps, issue notice of this petition to the respondents, returnable on 19.02.2026.

17. The order be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

OCTOBER 29, 2025/vc