payment of stamp duty was perfectly in tune with the provisions of the Act. There is no merit in this appeal which fails and is hereby dismissed.

ILR 2003 KAR 883

H.N. NARAYAN, J

S. Sathyanarayana vs State of Karnataka, by Inspector of Police, Bangalore*

(A) CRIMINAL PROCEDURE CODE, 1973 (CENTRAL ACT NO. 2 OF 1974) — SECTIONS 397 AND 401 — Revision filed directly in High Court, without approaching Sessions Judge — Maintainability.

HELD: There is no bar for the High Court by way of Rule of Practice from exercising its revisional jurisdiction which is statutory in nature. The High Court cannot close its door under the guise of Rule of Practice. The Satutory Provision has precedence over Rule of Practice. Therefore, there is no bar for the High Court to entertain and exercise its revisional jurisdiction where it is not exercised by the Sessions Judge. (Paras 13, 14 and 15)

(B) CRIMINAL PROCEDURE CODE, 1973 (CENTRAL ACT NO. 2 OF 1974) — SECTION 102 — Jurisdiction of the Police Officer — Power to seize the property — Not being subject matter of crime or which may be recovered under the circumstances which do not create suspicion of the commission of offence.

HELD: Language of Section 102 of Cr.P.C. defines the powers of a Police Officer to seize the property specially where the allegation of Commission of an offence is alleged. The Police Officer has no authority or power to seize the property when it is neither suspected to be stolen nor found under the circumstances creating suspicion of

*Criminal Revision Petition No. 18/2003 dated 24th January 2003

any offence have been committed unless discovery of the property leads to a suspicion of offence having been committed. Unless the property so seized is not incriminating or if the property is not involved or incriminating in any offence nor any offence is disclosed after the seizure of the property. It is not open to the Police Officer to seize and keep the property to himself or when it is produced before the Magistrate, it shall be released at once in favour of the person from whom it is seized.

ON FACTS : The offences alleged against the petitioner are forgery and mis-appropriation of funds. While in service, the petitioner possessing a passport. Investigating Officer while investigating seized the passport also along with other documents and materials.

HELD : Possessing of a passport is not an incriminating circumstance. Hence, directed to return the passport. Revision allowed and order of learned Magistrate set aside.

CASES REFERRED:		**AT PARAS**
1. *AIR 1950 SC 97 - Ramgopal vs State*	*(Ref)*	*7*
2. *AIR 1959 SC 145 - Pranab Kumar*	*(do)*	*7*
3. *AIR 1979 SC 381 - Jagir Singh vs Ranbir Singh and Another*	*(do)*	*9*
4. *AIR 1962 SC 1530 - State of Kerala vs Narayani Amma Kamala Devi and Others*	*(do)*	*9*
5. *1975 (1) Crl.L.J. 139 - Puvvula Abbulu vs The State Station House Officer*	*(do)*	*10*
6. *1976 Crl.L.J. 1604 - Madhavlal Narayanlal Pittle vs Chandrashekhar Chaturvedi and Others*	*(do)*	*11*
7. *1997 Crl.L.J. 549 - State of Madhya Pradesh vs Khizar Mohammad and Others*	*(do)*	*11*
8. *1973 Crl.L.J. 832 - Mir Ghulam Ahmed vs Haji Abdul Rehman and Others*	*(do)*	*11*

9. Crl.P. 115 of 2000, D.D.31.3.2000 - Vishwanath Chetti vs Mrs. Vidya Ramdas Bijapur *(do)* *12*

Sri C.V. Nagesh, Advocate for Petitioner
Sri H.S. Chandramouli, SPP for Respondent

ORDER

Narayan, J

Admit.

This revision under Section 397 read with 401 Cr.P.C. is directed against the order of IV Additional Chief Metropolitan Magistrate, Bangalore who has rejected the request of the petitioner for return of the passport seized by the Investigating Officer in Crime No. 565 of 2001 of Ulsoor Gate Police Station.

2. This revision arises under the following background:

The petitioner who was an Officer in the Reserve Bank of India, Bangalore, till May 2001 took voluntary retirement from the service. After long lapse of time of his retirement, his former employer Reserve Bank of India filed a criminal complaint in Ulsoor gate police station alleging commission of offences punishable under Sections 409, 468 and 477-A IPC. During the course of investigation, the I.O. seized the passports of the petitioner and his wife and certain documents pertaining to the immovable property owned by his wife and a motor car along with the documents pertaining to it. The petitioner and his wife thereafter made an application before the learned Magistrate invoking his jurisdiction under Section 457/451 Cr.P.C. seeking return of passports, motor car and the documents pertaining to it as well as the documents pertaining to the property owned and possessed by his wife etc., Certain contentions were raised before the learned Magistrate for passing an order of interim custody of the property seized by the I.O.

3. This was opposed by the State on the ground that the petitioner and his wife are likely to leave the country to escape the prosecution. The learned Magistrate upon consideration of the rival contentions, allowed the request of the petitioners in part and

ordered release of R.C. book, Insurance, Tax card, passport of the 2nd petitioner and other documents such as possession certificate, sanction plan, licence, estimate and tax paid receipts seized under P.F.No. 120 of 2001 to the interim custody of the accused on executing an indemnity bond subject to certain conditions. Insofar as the passport of the petitioner is concerned, the Magistrate rejected his prayer.

4. The impugned order is challenged essentially on the ground that the police officer has no power under Section 102 Cr.P.C. to seize any property which may be alleged or suspected to have been stolen. In view of this legal contention raised in this revision, the learned SPP is notified.

5. Heard the arguments of Sri C.V. Nagesh for the petitioner and Sri H.S. Chandramouli learned SPP of the State.

6. The learned SPP has taken a preliminary objection regarding maintainability of the revision before the High Court without approaching the learned Sessions Judge. He has relied upon an unreported judgment of this Court in VISHWANATH CHETTI vs VIDYA RAMDAS BIJAPUR (DD 31.3.2000). Sri C.V. Nagesh - learned Counsel for the petitioner in rebuttal of this contention of the learned SPP submitted that almost all the High Courts in the country and the Apex Court have laid down the law on this question holding that there is no prohibition or bar to approach the High Court directly under Section 397 Cr.P.C. The learned Counsel has also relied upon the judgments of the Apex Court, Allahabad High Court, Andhra Pradesh High Court, Jammu and Kashmir High Court and Bombay High Court. It is also his contention that though the I.O. of the crime is always empowered to seize the property which is incriminating in nature either in proof of the alleged offence or some other offence, he has no power of the seizure of the property unconnected with the alleged offence or where no offence is disclosed from the seizure of the said property. The learned SPP has not seriously disputed the substance of this argument. However, it is his contention that the powers of I.O. cannot be curtailed insofar as the seizure of the property is concerned, specially, where the property seized by him while investigating the crime.

7. Therefore, the controversy which crops up before this Court in this revision is of two fold:

(1) Whether the criminal revision filed under Section 397 read with 401 Cr.P.C. directly is maintainable before the High Court or whether the litigant is required to first approach the Sessions Judge invoking his jurisdiction under Section 397 Cr.P.C?

(2) Whether the Police Officer has power to seize the property which is not the subject of the crime or which may be found under the circumstances which do not create suspicion of the commission of any offence?

8. Re. point No.1:- The provisions of Section 397 of the Code reads as follows:-

> "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 on his own bond pending the examination of the record.
>
> Explanation: All Magistrates, whether Executive or Judicial and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.
>
> (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 any application under this section has been made by person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by either of them".

The High Court's power of revision is also provided under Section 401 Cr.P.C. Section 401 reads thus:

"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 the 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."

In RAMGOPAL vs STATE[1], the Apex Court held the series of Section 397-401 must be read together. Of these, Section 397 is the principal Section dealing with the grounds upon which revisional jurisdiction may ordinarily be exercised and Section 401 must be read along with and subject to the provisions of Section 397. It is also the settled proposition of law as held in PRANAB KUMAR[2] that the revisional powers of the High Court vested in it by Section 401, read with Section 397, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisdiction and that subordinate Courts do not exceed their jurisdiction or abuse their powers vested in them by the Code. In hearing and determining cases under Section 401, the High Court

1. AIR 1950 SC 97 2. AIR 1959 SC 145

discharges its statutory function .of supervising the administration of justice on the criminal side. High Court possesses a general superintendence over the action of Courts subordinate to it. On its administration side, the power is known as power of superintendence. On the judicial side it is known as the duty of revision.

9. The question - whether the High Court is precluded from interfering with the order of the Magistrate in the exercise of its revisional jurisdiction by reasons of the provisions of Section 397(3) of the Cr.P.C. came up for consideration before the Apex Court in JAGIR SINGH vs RANBIR SINGH AND ANOTHER[3]. While answering this contention canvassed for its consideration, the Apex Court held at para 4 of the judgment as follows:

> "The first question for consideration is whether the High Court was precluded from interfering with the order of the Magistrate in the exercise of its revisional jurisdiction by reason of the provisions of Section 397(3) of the Criminal Procedure Code (1974), Section 397 which corresponds to Section 435 of the Criminal Procedure Code 1898 invests the High Court and the Sessions Judge with concurrent revisional jurisdiction over inferior Criminal Courts within their jurisdiction. The District Magistrate who also had revisional jurisdiction under Section 435 of the Code of Criminal Procedure 1898 is now divested of such jurisdiction. In addition, there are, in the 1974 Code two important changes both of which are apparently designed to avoid delay and to secure prompt rather than perfect justice. The first change is that introduced by Section 397(2) which bars the exercise of revisional power in relation to any interlocutory order passed in any appeal, enquiry, trial or other proceeding. The second is that introduced by Section 397(3) which provides that if an application under the 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. We are concerned with this provision in this appeal. The object of Section 397(3) is clear. It is to prevent a multiple exercise of revisional powers and to secure early finality to orders. Any person aggrieved by an order of an inferior Criminal Court is given the option to approach either the Sessions Judge

3. AIR 1979 SC 381

or the High Court and once he exercises the option he is precluded from invoking the revisional jurisdiction of the other authority. The language of Section 397(3) is clear and peremptory and it does not admit of any other interpretation. We may also mention here that even under Section 435 of the previous Code of Criminal Procedure, while the Sessions Judge and the District Magistrate had concurrent jurisdiction, like present Section 397(3) previous Section 435(4) provided that if an application under the Section had been made either to the Sessions Judge or District Magistrate no further application shall be entertained by the other of them."

In STATE OF KERALA vs NARAYANI AMMA KAMALA DEVI AND OTHERS[4], the Apex Court held that the revisional jurisdiction can be exercised by the High Court by being moved either by the convicted person himself or by any other person or suo motu, on the basis of its own knowledge derived from any source whatsoever without being moved by any person at all. The conditions for the exercise of the power of revision are laid down in the opening clauses of Section 439 while the next clause that the High Court may exercise any of the powers conferred on a Court of appeal under Section 423, Section 426, Section 427 and Section 428 of the Code define the extent of the power.

10. A Division Bench of the Andhra Pradesh High Court in PUVVULA ABBULU vs THE STATE STATION HOUSE OFFICER[5] had an occasion to discuss the power of revision under Section 397 of the old Code. The Court observed the effect of Section 397(3) and 399(3) with choice to move High Court or Sessions Judge Court under Section 397 if he chooses to go before the Sessions Judge he cannot thereafter go before the High Court even if the Sessions Judge rejects his revision application. This is quite unlike the position under the 1893 Code. Under the 1893 Code the dismissal by the Sessions Judge of a revision petition filed by a person did not bar that person from moving the High Court to exercise its revisional powers. Such being the situation, under the present Code, an insistence by a rule of practice that a person should approach the Sessions Judge and not the High Court would result in the destruction of the right of that person to move the High Court under section 397. The High Court can no longer follow

4. AIR 1962 SC 1530 5. 1975 (1) Crl.L.J. 139

the rule of practice and refuse to entertain a petition under Section 397(1) on the ground that the Sessions Judge has not been moved because once the Sessions Judge is moved, the High Court's jurisdiction will stand ousted by Sections 398(3) and 399(3).

11. A Division Bench of Bombay High Court in MADHAVLAL NARAYANLAL PITTLE vs CHANDRASHEKHAR CHATURVEDI AND OTHERS[6] expressed a similar view. The proposition of law is extracted at Head Note A is as follows:

> "A party can file a revision application against an order of a Magistrate either to the High Court or to the Sessions Judge. If the High Court's jurisdiction to entertain a revision application directly from the order of the magistrate was to be barred a specific provision to that effect could have been made in the code itself. On the contrary the power has been given to both the Courts simultaneously and on the wording of Section 397, a party is not precluded from invoking the powers of any of them. It is left to the party concerned to avail of any of the two remedies but he cannot avail of both the remedies once he has chosen his course".

A Division Bench of the Madhya Pradesh High Court has also laid down the similar proposition of law. In STATE OF MADHYA PRADESH vs KHIZAR MOHAMMAD AND OTHERS[7] it is held that the direct criminal revision petition is maintainable in the High Court. The option contained in Section 397(1) is with the aggrieved party and the High Court cannot insist that the party should first approach the Sessions Court before its powers of revision are invoked.

The Full Bench of Jammu and Kashmir High Court in MIR GHULAM AHMED vs HAJI ABDUL REHMAN AND OTHERS[8] observed at para 4 of the judgment as follows:

> "There is no doubt that there is a long-standing practice prevailing in almost all the High Courts in India by which the litigant was compelled to move the lower Courts before invoking the revisions jurisdiction of the High Court. It was only in rare and exceptional cases that the applicant was allowed to move the High Court direct and his application was entertained for extraordinary reasons".

6. 1976 Crl.L.J. 1604 7.1997 Crl.L.J. 549 8. 1973 Crl.L.J. 832

However, commenting upon the scope of Section 397 Cr.P.C. the Bench observed at para 13 and 16 as follows:

> "When no bar is placed by the legislature on the right of the High Court to entertain revision petitions direct the High Court should not insist on the practice of insisting on the litigant to approach the lower Courts first which though convenient for the Courts is extremely onerous and burdensome to the litigants. The object of the legislature will be better served if the High Court do not insist on the enforcement of this long-standing practice but leave it to tne litigant to move the High Court direct or though the lower Courts".

12. An unreported judgment rendered by the learned Single Judge of this Court is produced for my perusal. In VISHWANATH CHETTI vs MRS. VIDYA RAMDAS BIJAPUR[9] His Lordship while disposing of a Criminal Petition filed under Section 397 Cr.P.C. held that maintainability of a proceeding is one thing and entertaining a revision is another. The opinion that a revision is not a statutory right of a litigant, but it is a matter of discretion of the Court having revisional jurisdiction is an approved and settled proposition of law. Commenting upon the concurrent jurisdiction of the High Court and the Sessions Court under Section 397 Cr.P.C. His Lordship observed as follows:

> "When the proceeding is maintainable by two different Courts, one being inferior or subordinate to the other, then it is certainly a question of propriety particularly for the superior Court as to whether it should entertain such a proceeding which could have been filed in the lower Court".

His Lordship held that a revision petition filed by the petitioner can be maintainable before this Court and is not barred under Section 397 Cr.P.C. However, His Lordship found no special or exceptional circumstances which in any way justifying the filing of the revision directly before the High Court by passing the forum of Sessions Judge, thereby His Lordship stick to the rule of practice that a litigant must approach the lower Court before approaching the High Court.

9. Crl.P. 115 of 2000, D.D.31.3.2000

13. Commenting upon the rule of practice and convenience of the Bar, Sri C.V. Nagesh-learned Counsel for the petitioner has contended that the universal opinion so to say is not to deny a right vested in a litigant by a statute by putting forth an obstacle by way of rule of practice which has no force of law. I find some force in this argument. The very language used in Sections 397 and 401 empowers the High Court at any stage, of its own motion if it so desires, and certainly when illegalities or irregularities resulting in injustice are brought to its notice, call for the records and examine them. The High Court cannot obviate its revisional powers to correct the illegalities or irregularities in a criminal proceeding that is brought to its notice by directing a party to approach the lower Court. It is not even a case of electing the forum when a party brings to the notice of the High Court as to the correctness, legality and propriety of any order etc., or as to the irregularity of any proceeding for interference by the Court, to close its eyes and direct him to go back to the lower Court. It is the statutory compulsions which directs the High Court to verify the records and satisfy itself as to the legality and propriety of those proceedings pending before the Trial Court.

14. The object of conferring concurrent powers both on the High Courts and the Sessions Courts at the District level for the litigant public is not to drive every aggrieved person to go to the distant place and move the High Court. The revisional powers of the High Court under Section 401 Cr.P.C. empowers it to exercise its discretion specially where such an illegality comes to its knowledge and the High Court can always exercise suo motu revisional powers provided under Sections 397 and 401 of the Code.

15. Sri C.V. Nagesh has also brought to the notice of the Court a similar concurrent jurisdiction conferred under the Code on the High Courts and the Sessions Courts in the matter of bail. It is contended by the learned Counsel that insofar as the provisions of bail provided under Sections 438 or 439 Cr.P.C., the discretionary power of the District Court does not come in the way of the High Court for exercise of similar discretionary power in the matter of bail. But in the case of revisional powers, there is a bar of the second revision under Section 398(3) Cr.P.C. Once the Sessions Judge exercises his revisional powers. It is now settled proposition

of law that a second revision powers cannot be exercised by invoking the jurisdiction of the High Court under Section 482 Cr.P.C. The object is to give a finality to the dispute, if any. It is unnecessary for me at this stage to enter into the discussion of inherent jurisdiction of the High Court under Section 482 Cr.P.C. Suffice it to say that there is no bar for the High Court by way of rule of practice from exercising its revisional jurisdiction which is statutory in nature. Therefore, with great respect to the learned Single Judge it is difficult to consent with the opinion expressed in Criminal Petition No. 115 of 2000 that a litigant has to show special or exceptional circumstance to come to the High Court in revision and ordinarily he should approach the Sessions Court by invoking his revisional jurisdiction.

16. It is not a new law which is laid down herein which has opened a flood gate to the litigant public, but where the Statute provides a forum, the High Court cannot close its door under the guise of rule of practice. The statutory provisions takes precedence over the rule of practice. Therefore, I find enough force in the argument of Sri C.V. Nagesh - learned Counsel for the petitioner and hold that there is no bar for the High Court to entertain and exercise its revisional jurisdiction where it is not exercised by the Sessions Judge. The point is answered accordingly.

17. Re. Point No. 2:- The power of the police officer to seize certain property is laid down in Section 102 of the Code. Section 102 of the Code reads thus:

> "(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.
>
> (2) Such police officer, if subordinate to the officer in charge of a police station shall forthwith report the seizure to that officer;
>
> (3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give

effect to the further orders of the Court as to the disposal of the same".

The language used in Section 102 of the Code defines the powers of a police officer to seize the property specially where the allegation of commission of an offence is alleged. The police officer may seize any property which may be alleged or suspected to have been stolen or which may be found under the circumstances which create suspicion of commission of any offence. In other words, if there is no allegation or where there is no suspicion of commission of theft or where the circumstances do not create any suspicion for commission of offence, there is no occasion in such a case for a Police Officer to seize any property. Section 102 speaks of any offences and is so wide enough to cover offences either under IPC or under any special statute. Hence, the police officer has no authority or power to seize the property when it is neither suspected to be stolen nor found under the circumstances creating suspicion of any offence having been committed unless discovery of a property leads to suspicion of offence having been committed. Hence, unless the property so seized is not incriminating or if the property is not involved or incriminating in any offence nor any offence is disclosed after the seizure of the property, it is not open to the police officer to seize and keep the property to himself or when it is produced before the Magistrate it shall be released at once in favour of the person from whom it is seized.

18. In this case, the I.O. who conducted raid seized certain properties including the passport of the petitioner and his wife which is neither the subject of theft nor seizure of the passport has created any suspicion of the commission of offence. The offences alleged against the petitioner are forgery and misappropriation of funds. Possessing a passport is not an incriminating circumstance at all. This Court has already enlarged the petitioner on bail and has imposed certain stringent conditions. Therefore, the seizure of passport in this case is not legal though the police officer has power to seize any property subject to the provisions of Section 102 Cr.P.C. The Trial Judge is not right in rejecting the request of the petitioner for return of passport. Hence, the order of the Trial Magistrate rejecting the prayer of the petitioner for return of passport is not sustainable in law.

19. In the result, this revision is allowed. The impugned order is set aside. The learned Magistrate is directed to return the passport of the petitioner seized in this case.

ILR 2003 KAR 896

P. VISHWANATHA SHETTY, J

Martandappa B. Hosalli and Others vs The State of Karnataka, by its Secretary, Department of Education (Universities) Bangalore and Others*

KARNATAKA STATE UNIVERSITIES ACT, 1976 (KARNATAKA ACT NO. 28 OF 1976) — Proviso to sub-section 8 of Section 8 — Order of the State Government — Nullified the Resolutions passed by the Syndicate — University was heard before passing the Order — But the affected persons were not heard — Whether affected persons are required to be Heard.

Principles of Natural justice demands persons who are affected should be heard. (Para 8)

Question for consideration is whether the Order passed by the State Government is liable to be quashed on the ground that the same came to be passed in disregard of the principles of natural Justice ? (Para 6)

HELD : Since the order in question affects the service conditions and individual rights of the petitioners notice and hearing must be given.

Writ Petitions are allowed extending the benefit of the Order to the persons similarly situated like petitioners even if they have not approached the High Court making a grievance of the impugned order. (Paras 7,8,9)

---

*Writ Petition Nos. 16618 to 16691 of 2000(S) dated 11th December 2002