

**Buta Ram Moti Ram Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/889975](http://sooperkanoon.com/889975)

**Court :** Himachal Pradesh

**Decided On :** Jul-27-1976

**Reported in :** 1977CriLJ630

**Judge :** Chet Ram Thakur, J.

**Appellant :** Buta Ram Moti Ram

**Respondent :** The State

**Judgement :**

ORDER

**Chet Ram Thakur, J.**

1. The learned Advocate General has taken a preliminary objection in this revision petition that the same is not maintainable and is barred under the provisions of Section 397(2) of the Code of Criminal Procedure, 1973 (shortly called the Code of 1973), inas-much as it is an interlocutory order.

2. The petitioner was arrested for an alleged offence under Sections 302/201 of the Indian Penal Code. The accused-petitioner filed an application before the Additional Sessions Judge that during the course of investigation, the investigating Officer while taking the dead body of Smt. Lila took in possession two letters written in the hand of the deceased and which letters were in the possession of the police and that the same be produced in the court, but according to the

prosecution, no such letters were found or were taken into possession while the dead body of Smt. Lila Was taken into possession by the police. The Additional Sessions Judge rejected this application holding that the application and the affidavit of the accused did not make out any case how those two alleged letters were material for the purpose of framing the charge in the case. Further that the police officer had denied the existence of any such letters or to have taken into possession any such letters when the dead-body was recovered. It is against this order that the accused-petitioner has filed this revision petition.

3. Learned Counsel for the petitioner contends that this is a revision petition arising out of an order passed in a case which was pending in the courts below before the enforcement of the Code of 1973 in which this new provision has been inserted that no revision petition shall lie against the interlocutory order. According to him, it is the old Code which would apply in the present case. He has tried to support his contention from *Narain Mahton v. Mahesh Prasad Singh* 1975 Cri LJ 1400 (Pat) in which the interlocutory order was passed in proceedings under Section 145 of the old Code before coming into force of the new Code and a revision petition was directed after the commencement of the new Code and the objection raised by the opposite party was that the revision petition was not maintainable being directed against an interlocutory order in view of provisions of Section 397(2) of the new Code and it was observed:

This objection cannot be taken to be well founded. This proceeding having commenced in 1070, which, was much before coming into force of this new Code, its disposal was to be effected under the old Code as provided in Section 484 of the new Code. That being the position, there seems no legal objection against the entertainability of this revision on that score.

But, in my opinion, if I may say so with respect this observation of the learned Judge does not appear to be correct because Sub-section (2) of Section 484 of the new Code says that if there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1,898 as in force

immediately before such commencement, as if this Code had not come into force. From the bare perusal of this sub-section it is evident that if any such proceedings as mentioned therein are pending on the commencement of the new Code then those proceedings shall be continued and disposed of in accordance with provisions of the old Code of 1898 and this does not say that if any appeal, revision, etc. is to be filed after the commencement of the new Code arising against any proceeding which had been filed in the trial court before coming into force of the new Code then that appeal, revision, etc. is to be governed under the old Code of 1998. In this behalf reference may be made to *Firm Chironji Lal Ramjibhai & Co. v. Chunarmal Motiram & Co.* 1976 Cri LJ 437 Madh Pra, which says that Section 484 on its plain construction says that old Code shall apply to appeals, applications, trials, inquiry or investigation pending immediately before the date on which the New Code came into force. It does not save the old Code for the purposes of appeals or revision to be filed after the commencement of the New Code against the order passed in those pending proceedings.

4. The second submission made by the learned Counsel for the petitioner is that it is not interlocutory order so as to be hit by the provisions of Sub-section (2) of Section 397 of the new Code. But, in my opinion, the rejection of an application for summoning a particular document is not a final and conclusive order but it is purely an interlocutory order and more so the learned Additional Sessions Judge has found that it is not established how this document is material for purposes of framing of the charge and that; being so it is purely an interlocutory order which does not decide the matter finally between the parties. In these circumstances, this petition, in my opinion, has got no substance and is, therefore, dismissed on this preliminary ground that it being an interlocutory order no revision lies against the same.