

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA****Cr.M.P(M) No.129 of 2026****Reserved on: 02.02.2026****Decided on: 06.02.2026****Lagnesh Verma****...Applicant/appellant****Versus****State of H.P & others****...Respondents.***Coram***Hon'ble Mr. Justice Jiya Lal Bhardwaj, Vacation Judge***Whether approved for reporting?¹ Yes.*

For the applicant/appellant: Mr. Tejasvi Verma, Advocate

For the respondents: Mr. Sidharth Jalta, Deputy Advocate
General for respondents No.1 and 2.**Jiya Lal Bhardwaj, Judge****Cr.M.P(M) No. 129 of 2026**

For the reasons enumerated in the application,
delay of 16 days' in filing the appeal is condoned. The
application stands disposed of.

Cr. Appeal No.3 of 2026

2. Be registered.
3. By way of present appeal, the appellant has laid

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

challenge to the order dated 23.09.2025, passed by the learned Special Judge, Kinnaur Sessions Division at Rampur Bushehar, whereby charges under Sections 115(2), 352 of the Bharatiya Nyaya Sanhita, 2023 (for short "BNS") and Section 3(2) (Va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "SC & ST (Prevention of Atrocities) Act, 1989), had been framed against him.

4. This Court had asked the learned counsel for the appellant as to how the appeal is maintainable against an order of framing of charge.

5. Learned counsel for the appellant has vehemently argued that the order framing the charge cannot be termed as an interlocutory order and, therefore, an appeal against framing of charge is maintainable. In support of his arguments, he placed reliance upon the following judgments:-

- (i) 1977 (4) SCC 137 titled ***Amar Nath and others vs. State of Haryana and another;***
- (ii) 1977 (4) SCC 551 titled ***Madhu Limaye vs. The State of Maharashtra;***
- (iii) 1980 (Supp.) SCC 92 titled ***V.C. Shukla vs. State through C.B.I.***

- (iv) 2017 (14) SCC 809 titled ***Girish Kumar Suneja vs. Central Bureau of Investigation;***
- (v) 2022 (15) SCC 720 titled ***Sanjay Kumar Rai vs. State of Uttar Pradesh and another; and***
- (vi) 2023 (15) SCR 1067 titled ***Shashikant Sharma and others vs. State of Uttar Pradesh and another.***

6. Learned counsel for the appellant has vehemently argued that as per Section 14A of the SC & ST Act, an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order to the High Court both on facts and on law.

Relevant provisions of the Act are reproduced hereunder:-

“14A. Appeals.--(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2). Notwithstanding anything contained in subsection (3) of Section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3). Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order

appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.”

7. Learned counsel for the appellant has further contended that since the ‘framing of charge’ is not an ‘interlocutory order’, as has been held by Hon’ble Supreme Court in **Madhu Limaye’s** case (supra), the appeal is maintainable.

8. On the other hand, learned Deputy Advocate General appearing for the respondents-State has vehemently contended that even if the order ‘framing of charge’ is not an ‘interlocutory order’, the same cannot be said to be a ‘final order’ and at the most, it can be construed as an intermediate order, which falls squarely within the ordinary and natural

meaning of the term "interlocutory order".

9. The learned Deputy Advocate General has further contended that in the judgments relied upon by the learned counsel for the appellant, especially in **V.C. Shukla's** case (*supra*), the majority view is to the effect that even if the charge is framed, it cannot be construed to be a "final order".

10. I have heard the learned counsel for the appellant and the learned Deputy Advocate General, appearing for the respondents-State.

11. The Hon'ble Supreme Court had the occasion to deal with the similar preposition of law as canvassed by the learned counsel for the appellant in **V.C. Shukla's** case (*supra*). In that case also, the person feeling aggrieved by the order of framing the charge had filed the appeal. The Hon'ble Supreme Court had considered the similar provision of providing the appeal contained in Section 11 of the Special Courts Act, 1979. In the present appeal too, since the question is regarding maintainability of appeal against order of framing the charge, Section 11 of the Special Courts Act, 1979, which is *pari materia* to Section 14A of the SC & ST Act, 1989,

is reproduced hereinunder:-

11. Appeal. "(1) Notwithstanding anything in the Code, an appeal shall lie as of right from any judgment, sentence or order, not being interlocutory order, of a Special Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order of a Special Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of any judgment sentence or order of a Special Court:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days."

12. Perusal of Section 11 of the Special Courts Act, 1979 and Section 14 (A) of the SC & ST Act, reveals that the aforesaid provision of law are pari materia. The phraseology used in Section 11 of the Special Courts Act, 1979 also shows that an appeal shall lie as of right from any judgment, sentence or order, not being interlocutory order of Special Court. Since the provisions under the aforesaid Acts are similar with respect to a right available to a person to file an appeal, the judgment rendered by the Hon'ble Supreme Court in **V.C. Shukla's** case

(*supra*) is applicable in all four.

13. The Hon'ble Supreme Court in **V.C. Shukla's** case (*supra*), had succinctly dealt with the issue with regard to the fact that whether the framing of charge is a final order or it is interlocutory order. The relevant paragraphs of the aforesaid judgment are reproduced as under:-

"24. To sum up, the essential attribute of an interlocutory order is that it merely decides some point or matter essential to the progress of the suit or collateral to the issues sought but not a final decision or judgment on the matter in issue. An intermediate order is one which is made between the commencement of an action and the entry of the judgment. Untwalia J. in the case of Madhu Limaye v. State of Maharashtra clearly meant to convey that an order framing charge is not an interlocutory order but is an intermediate order as defined in the passage, extracted above, in CORPUS JURIS SECUNDUM, Vol. 60. We find ourselves in complete agreement with the observations made in CORPUS JURIS SECUNDUM. It is obvious that an order framing of the charge being an intermediate order falls squarely with in the ordinary and natural meaning of the term 'interlocutory order' as used in Section 11(1) of the Act. Wharton's Law Lexicon (14th Edition, p. 529) defines interlocutory order thus:

An interlocutory order or judgment is one made

or given during the progress of an action, but which does not finally dispose of the rights of the parties.

Thus, summing up the natural and logical meaning of an interlocutory order, the conclusion is inescapable that an order which does not terminate the proceedings or finally decides the rights of the parties is only an interlocutory order. In other words, 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. This would be the result if the term interlocutory order is interpreted in its natural and logical sense without having resort to Criminal Procedure Code or any other statute. That is to say, if we construe interlocutory order in ordinary parlance it would indicate the attributes, mentioned above, and this is what the term interlocutory order means when used in Section 11(1) of the Act.

25. We shall, however, examine a number of English and Indian authorities that have been cited before us by the parties as to the true intent and import of an interlocutory order.

26. In the case of *In re Faithful : Ex Parte Moore* Lord Selborne while defining a final judgment observed as follows:

To constitute an order a final judgment nothing more is necessary than that there should be a proper *litis contestatio*, and a final adjudication between the parties to it on the merits.

Similarly, Brett, M.R. Observed as follows:

The question is whether in the Chancery Division there cannot be a "final judgment" when everything which has to be done by the Court itself is finished. Is that a final judgment which directs certain things to be done and certain inquiries to be made, and certain other things to be done on those inquiries being answered? If the Court ordered the result of the inquiries to be reported to itself before the judgment was given, it would not be a final judgment. But, if the Court orders something to be done according to the answer to the inquiries, without any further reference to itself, the judgment is final."

This authority therefore clearly indicates that a final order or a judgment would be one which amounts to a final adjudication between the parties on merits. Practically, the same view has been taken by Brett M.R. with whom Cotton, L.J. also concurred. In the case of *Salaman v. Warner*, Lord Esher propounded an important test to judge whether an order was interlocutory or final. In this connection, he observed as follows:

"The question must depend on what would be the result of the decision of the Divisional Court, assuming it to be given in favour of either of the parties. If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will

finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory. That is the rule which I suggested in the case of *Standard Discount Co. v. La Grange*, and which on the whole I think to be best rule for determining these questions; the rule which will be most easily understood and involves the fewest difficulties."

27. In other words, the test adopted by Lord Esher in this case has been consistently followed by this Court in later cases and appears to us to contain most valuable guidelines to judge whether an order is final or interlocutory. Applying this test to the present case it would follow that if the Special Judge did not frame a charge and discharged the accused, the proceedings would no doubt terminate but if it framed charges against the accused the proceeding would continue. Unless, therefore, an order results in a final termination of the proceeding in any way it is decided, the order is of an interlocutory nature. Fry, L.J. almost took the same view when he observed thus:

I think that the true definition is this. I conceive that an order is "final" only where it is made upon an application or other proceeding which must whether such application or other proceeding fail or succeed, determine the action. Conversely I think that an order is "interlocutory" where it cannot be affirmed that in either event the action will be determined."

Lopes, L.J. fully agreed with Lord Esher, M.R.

and observed:

I think the definition suggested by the Master of the Rolls in the case that has been referred to is the right definition for this purpose. I think that a Judgment or order would be final within the meaning of the rules, when, whichever way it went, it would finally determine the rights of the parties."

According to the test laid down by Lord Esher and other Lords, the order of the Special Judge impugned in the appeal is undoubtedly an interlocutory order and therefore falls within the mischief of Section 11 (1) of the Act.

28. Similarly, another test to determine whether or not an order is an interlocutory order was evolved by Lord Alverstone C.J. in the case of *Bozson v. Altrincham Urban District Council* who observed as follows;

It seems to me that the real test for determining this question ought to be this: Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then I think it ought to be treated as a final order; but if it does not it is then, in my opinion, an interlocutory order.

Sir Jeune P. concurred with Lord Alverstone while Lord Halsbury preferred to follow an earlier decision in the case of *Shubrook v. Tufnell*. In *Shubrook v. Tufnell* what happened was that an action was filed by the lessee against the lessor to recover damages caused to them by the defendant's making a drain through the adjoining land. By an order in Chambers the action was referred to

the arbitrator who sent the case to the Court for its opinion. In that case the position was that if the case was referred back to the arbitrator, the award had to be given by him, if not, then judgment was to be entered for the defendant. The question was whether an appeal lay to the Court of Appeal against the reference made by the arbitrator. In view of the peculiar circumstances of the case, *Jessel, M. R.* with whom Lord Lindley concurred, held that appeal lay as the order seeking the opinion of the court was not an interlocutory order. It is manifest that in this case the proceedings would have terminated. In any event if the case was referred back to the arbitrator, then the arbitrator would have to give his award and therefore the reference proceedings terminated. If, however, the reference was not made to the arbitrator, then the judgment was to be entered for the defendant. Thus, the order passed in this case undoubtedly could not be said to be an interlocutory order even in the widest sense of the term. At any rate, the preponderance of the authorities of the English Courts favour the view that an interlocutory order is one which (*sic* does not) finally disposes of the rights of the parties as observed by Lord Alverstone in the case of *Bozson v. Altrincham Urban District Council*, cited above. We might, however, state that although Lord Halsbury had expressed his dissent from *Salaman v. Warner's* case (*supra*) yet the Federal Court as also this Court appear to have followed and accepted the view taken by Lord Esher, as discussed above. We shall deal with the

authorities of the Federal Court and this Court on this point a little later.

29. Again in the case of *Isaacs & Sons v Salbstein* Lord Swinfen Eady followed the *Bozson's* case and particularly the observations of Lord Alverstone in that case. In this connection, Lord Eady observed as follows:

"Then there is *Salaman v. Warner* in which it was held that a final order was one made on such an application or proceeding that, for whichever side the decision might be given, it would, if it stood, finally determine the matter in litigation. Neither decision seems quite consistent with that in *Bozson v, Altrincham Urban Distt. Council* which puts the matter on the true foundation that what must be looked at is the order under appeal. In the present case the order is clearly an interlocutory order, and the appeal is properly in the interlocutory list."

Similarly, Lord Pickford who agreed with Lord Swinfen distinguished *Shubrook's* case (*supra*) and explained the view of Lord Halsbury thus:

"In the present case the order appealed from does not put a final end to the action, and this is an appeal from an interlocutory and not from a final, order."

Bankes L.J. concurred. In a later case *Hunt v. Allied Bakeries Ltd.*, it was held that an order striking out the whole or part of a claim on the ground that it was frivolous and vexatious and staying further

proceeding was merely an interlocutory order. In this connection, Lord Evershed observed thus:

"After consulting with the Chief Registrar and looking at the cases, and also after consultation with my colleagues, I am left in no doubt at all that, rightly or wrongly, orders dismissing actions-either because they are frivolous and vexatious, or on the ground of disclosure of no reasonable cause of action- have for a very long time been treated as interlocutory For these reasons (and this decision will now necessarily govern other cases) I hold that orders under R.S.C., Order 25, Rule 4, striking out the whole or part of a claim on the ground that it discloses no reasonable cause of action, or is frivolous and vexatious, or both, and staying all further proceedings, must be treated as interlocutor"

Lord Birket and Lord Romer agreed with Lord Evershed. This is rather important because even though the case was struck out on the ground that the action was frivolous and proceedings were stayed, the order was treated to be an interlocutory one although it had decided an important aspect of the case. In a recent decision in the ease of *Salter Rex & Co. v. Ghosh*, Lord Denning reviewed the entire case-law on the subject and ultimately preferred the view taken by Lord Alverstone in *Bozon's case* (supra) and Lord Esher in *Salaman's case*. In other words, both the *Salaman's* and the *Bozson's* cases were endorsed by Lord Denning. In this connection, Lord Denning observed as follows :-

"There is a note in the Supreme Court Practice (1970) under R.S.C. Order 59, Rule 4, from which it appears that different tests have been stated from time to time as to what is final and what is interlocutory.

In *Standard Discount Co. v. La Grange and Salaman v. Warner* Lord Esher M.R. said that the test was the nature of the application to the court and not the nature of the order which the court eventually made. But in *Bozson v. Altrincham Urban District Council*, the court said that the test was the nature of the order as made. Lord Alverstone C.J. said that the test is; "Does the judgment or order, as made, finally dispose of the rights of the parties." Lord Alverstone C.J. was right in logic but Lord Esher M.R. was right in experience. Lord Esher's test has always been applied in practice.".. .. "So I would apply Lord Esher's test to an order refusing a new trial. I took to the application for a new trial and not to the order made. If the application for a new trial were granted, it would clearly be interlocutory. So, equally, when it is refused, it is interlocutory."

30. This is the position so far as the English authorities are concerned. It may be noticed here that in all the English cases, referred to above, the word 'interlocutory' appears to have been used in its natural sense and giving the meaning attached to it in ordinary parlance. We now come to the authorities of the Federal Court and this Court on the subject. In the case of *Hori Ram Singh v. Emperor Sulaiman, J.* referred to *Salaman's case* and seems to have approved the test

laid down by Lord Esher which was quoted in extenso in the judgment. Similarly, a reference was also made to Bozson's case and the Judge quoted the observations of Lord Alverstone which have already been extracted above. After scrutinising these authorities, Sulaiman J. Observed as follows:-

"If the effect of the order from which it is sought to appeal is not finally to dispose of the rights of the parties, then even though it decides an important and even a vital issue in the case, it leaves the suit alive and provides for its trial in the ordinary way.

As the "final order" may be either in a civil or criminal case the definition given by their Lordships in the civil case must by analogy be applied to a criminal case as well. It is still to be finally decided by the Sessions Judge whether the accused was or was not guilty of the offences with which he had been charged. The question of want of consent, although vital for the purposes of the proceedings as it went to the root of the matter so far as their continuance is concerned, is after all a preliminary question as to whether the proceedings had been properly instituted or not. The criminal case is still a live case, and the innocence or the guilt of the accused has not been finally determined."

Thus, it was pointed out that the concomitant of a final order would be the same whether it is a civil case or a criminal case and the definition given by the English Judges would apply to both. This case was noticed in *S. Kuppaswami Rao v. King* which, in our

opinion, is a leading case on the subject or, if we may say so, it is the locus classicus so far as the nature of an interlocutory order is concerned. In this case, Kania C.J. speaking for the Court referred to the decision of Sulaiman J. and also noticed the view of Lord Esher in *Salaman v. Warner* as also the view of Lord Alverstone and observed as follows:

"The question then is what is the meaning of "judgment, decree or final order of a High Court" in this section? The expression "final order" has been judicially interpreted and its meaning is now well settled."

After referring to a number of decisions, the learned Chief Justice observed as follows:-

"The effect of those and other judgments is that an order is final if it finally disposes of the rights of the parties. The orders now under appeal do not finally dispose of those rights, but leave them to be determined by the Courts in the ordinary way." These observations show that the Judicial Committee considered that the words used in the above mentioned three English decisions gave the same meaning to the expression "final order", and adopted the definition as given by Lord Esher, M.R. in *Salaman* case. The Judicial Committee further held that when the effect of the order was to leave the rights to be determined by the Court in the ordinary way, the order was not a final order."

These observations clearly show that the Judicial Committee of the Privy Council accepted the view expressed in the case

of Salaman v. Warner and Bozson v. Altrincham Urban District Council. It is, therefore, pertinent to note that the view of Lord Halsbury does not appear to have been accepted either by the Privy Council or by the Federal Court either in Hori Ram Singh case or in the case cited above. Similarly, while examining the language of Section 205 of the Government of India Act, the Chief Justice observed as follows .-

"The words "final order" were used in Section 109 of the Civil Procedure Code. That section prescribes conditions under which an appeal lies to the Judicial Committee of the Privy Council from a decree or final order passed on appeal by a High Court. It was noticed that the words 'final order' were used in contrast with interlocutory order, The learned Judge took the view that in cases in which the decision of the Point in dispute either way did not result in finally disposing of the matter before the Court, the decision did not amount to a final order.

"Reference had also been made by the Chief Justice to the judgment of the Privy Council in Abdul Rahman v. D. K. Cassim & Sons where Sir George Lowndes stated that the test of finality was whether the order finally disposed of the rights of the parties. To the same effect was a decision of the Privy Council in Ramchand Manjimal's case where after examining the decisions of the English Court, it was held that the test of finality was whether the order finally disposes of the rights of the parties and held that the order in question was not a final Order because the rights of the parties were left to be determined by the courts in the

ordinary way. After a consideration of all the authorities the Chief Justice observed thus :

These and other English decisions make it clear that in England when the word judgment or decree is used, whether it is preliminary or final, it means the declaration or final determination of the rights of the parties in the matter brought before the Court. In criminal proceedings, an examination of the discussion in paras 260-64 of Vol. IX of Halsbury's Laws of England (Hailsham Edition) shows that the word "judgement" is intended to indicate the final order in a trial terminating in the conviction or acquittal of the accused....

In our opinion, the decisions of the Courts in India show that the word "judgment", as in England, means the determination of the rights of the parties in the matter brought before the Court."

Another important observation made by the Chief Justice which appears to be directly in point may be extracted thus:

In our opinion, the term "judgment" itself indicates a judicial decision given on the merits of the dispute brought before the Court. In a criminal case it cannot cover a preliminary or interlocutory order.

Thus, the Chief Justice clearly indicated that in a criminal case a final order cannot cover a preliminary or interlocutory order. Ultimately, the Chief Justice concluded by the following observations:

The words judgment and final order in connection with civil appeals have received a definite judicial interpretation. In connection with civil appeals to this Court therefore that interpretation has to be accepted. If so, the same interpretation has to be accepted in case of appeals from criminal proceeding brought to this Court under s. 205(1) of the Constitution Act"

31. This case was followed in the case of where it was held that so far as this Court is concerned the principles laid down in Kuppuswami case settled the law. In this connection, in the aforesaid case, Mukherjea, J., speaking for the Court observed as follows:

The expression "final order" has been used in contradistinction to what is known as "interlocutory order" and the essential test to distinguish the one from the other has been discussed and formulated in several cases decided by the Judicial Committee. All the relevant authorities bearing on the question have been reviewed by this Court in their recent pronouncement in S. Kuppuswami Rao v. The King, and the law on point, so far as this court is concerned, seems to be well settled. In full agreement with the decisions of the Judicial committee in Ram Chand Manjimal v. Goverdhandas Vishindas and Abdul Rahman v. D. K. Cassim and Sons, and the authorities of the English Courts upon which These pronouncements were based, it has been held by this court that the test for determining the finality of an order is, whether the judgment or order finally disposed of the rights of the parties.

Thus, the Federal Court in its decision seems to have accepted two principles, namely,-

(1) that a final order has to be interpreted in contradistinction to an interlocutory order; and

(2) that the test for determining the finality of an order is whether the judgment or order finally disposed of the rights of the parties.

32. These principles apply to civil as also to criminal cases as pointed out by Kania C.J. in the case of S. Kuppuswami Rao v. King. We find ourselves in complete agreement with the view taken by Mukherjea J. which is based on English cases as also the view taken by the Judicial Committee and the Federal Court.

33. The view taken in Kuppuswami's case was endorsed by this Court in the case of Mohan Lal Magarl Lal Thacker v. State of Gujarat where it was held that generally speaking a judgment order which determines the principal matter in question is termed final. The English decisions as also the Federal Court decisions were referred to in this case and after considering the decisions, this Court observed as follows :

The meaning of the two words "final" and "interlocutory" has, therefore, to be considered separately in relation to the particular purpose for which it is required. However, generally speaking, a judgment or order which determines the principal matter in question is termed final....An interlocutory order, though not conclusive of the main dispute may be conclusive as to the subordinate matter with which it deals..

* * * *

If the decision on an issue puts an end to the suit, the order is undoubtedly a final one but if the suit is still left alive and has yet to be tried in the ordinary way, no finality could attach to the order.... This test was adopted in *S. Kuppuswami Rao v. King* where the court also held that the words 'judgment' and 'order' have the same meaning whether the proceeding is a civil or a criminal proceeding. In *Mohammad Amin Bros Ltd. v. Dominion of India* the Federal Court following its earlier decision adopted against the test, viz., whether the judgment or order finally disposed of the rights of the parties."

34. There is yet another aspect of the matter which has to be considered so far as this decision is concerned, to which we shall advert when we deal with the last plank of the argument of the learned counsel for the appellant. Suffice it to say at the moment that the case referred to also fully endorses the view taken by the Federal Court and the English decisions, viz., that an order is not a final but an interlocutory one if it does not determine or decide the rights of parties once for all. Thus, on a consideration of the authorities, mentioned above, the following proposition emerge:-

- (1) that an order which does not determine the rights of the parties but only one aspect of the suit or the trial is an interlocutory order;
- (2) that the concept of interlocutory order has to be explained in contradistinction to a final order. In other

words, if an order is not a final order, it would be an interlocutory order;

(3) that one of the tests generally accepted by the English Courts and the Federal Court 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; because, in our opinion, the term 'interlocutory order' in the Criminal Procedure Code has been used in a much wider sense so as to include even intermediate or quasi- final orders;

(4) that an order passed by the Special Court discharging the accused would undoubtedly be a final order inasmuch as it finally decides the rights of the parties and puts an end to the controversy and thereby terminates the entire proceedings before the court so that nothing is left to be done by the court thereafter;

(5) that even if the Act does not permit an appeal against an interlocutory order the accused is not left without any remedy because in suitable cases, the accused can always move this Court in its jurisdiction under Article 136 of the Constitution even against an order framing charges against the accused. Thus, it cannot be said that by not allowing an appeal against an order framing charges, the Act, works serious injustice to the accused.

35. Applying these tests to the order impugned we find that the order framing of the charges is purely an interlocutory order as it does not terminate the proceedings but the trial goes on until it culminates in acquittal or conviction. It is true that if the Special Court would have

refused to frame charges and discharged the accused, the proceedings would have terminated but that is only one side of the picture. The other side of the picture is that if the Special Court refused to discharge the accused and framed charges against him, then the order would be interlocutory because the trial would still be alive. Mr. Mridul tried to repel the argument of the Solicitor General and explained the decisions, referred to above, on the ground that the English decisions as also the Federal Court's decisions made the observations while interpreting the provisions of the Government of India Act or the provisions of the Constitution where the word "final" order was expressly used. It was urged that the same construction would not apply to the present case where the word 'order' is not qualified - by the word 'final'. With due respect to the learned counsel, in our opinion, the distinction sought to be drawn is a distinction without any difference. This court as also the Federal Court have clearly pointed out that so far as the tests to be applied to determine whether an order is final or interlocutory, apply as much to a civil case as to a criminal case. Furthermore, as already indicated, it is impossible to spell out the concept of an interlocutory order unless it is understood in contradistinction to or in contrast with a final order. This was held in a number of cases referred to, including Madhu Limaye's case which has been expressly stressed by us in an earlier part of the judgement. For these reasons, therefore, the contention of the learned counsel for the appellant on this aspect of the matter fails and is hereby overruled.

36. The last argument advanced by the learned counsel for the appellant, which also appears to be very attractive, is that accepting the theists referred to above and applying to the facts of the present case, the order impugned should be construed as a final order inasmuch as the order completely terminates the proceedings preceding the trial. In other words, it was contended that until the charge is actually framed the trial does not start and all proceedings up to the framing of the charges are in the nature of an inquiry or a sort of a pre-trial proceeding which finally culminates either in the order of discharge or in the order framing of charges. Thus, in any event, an order framing charges must necessarily be held to be a final order and not, an interlocutory one. In support of this contention the learned counsel relied on a decision of a Full Bench of the Jammu & Kashmir High Court in the case of State v. Ghani Bandar in which the leading judgment was delivered by one of us (Fazal Ali J.). It is true that the Jammu & Kashmir High Court on a consideration of a large number of authorities of the various High Courts in India, observed as follows:

On a careful consideration, therefore, of the authorities and analysis of the various provisions of the Code I am of the opinion that 'trial' in a warrant case commences only when the charge is read to the accused and he is called upon to answer the charge and until the proceedings have reached , this stage proviso (a) to clause (1) of Section 350 does not come into play and the accused has no right to ask the Court to resummon the witnesses. In the present case, it appears, the case is yet at an inquiry stage, and therefore,

the Magistrate was not right in acceding to the prayers of the accused."

37. This decision, however, in our opinion, does not appear to be of any assistance to the appellant for the reasons that we shall give here after. In the first place, the decision was rendered not on the provisions of the Code of 1973 but under the provisions of the Criminal Procedure Code of the Jammu & Kashmir State which were quite different from the provisions of the Code of 1973 which does not apply to that State. Secondly, it would appear that the Criminal Procedure Code of 1872 (Act X of 1872) expressly contained a definition of the word trial which was defined thus:

"Trial" means the proceedings taken in Court after a charge has been drawn up, and includes the punishment of the offender:

It includes the proceedings under chapters XVI and XVIII, from the time when the accused appears in Court."

Thus, the word 'trial' clearly meant the proceedings after charges had been drawn up and included even the punishment of the offender. Furthermore, the definition was wide enough even to include proceeding right from the time when the accused appeared in Court to the culmination of the proceedings. This definition is to be found in Section 4 of the Act X of 1872. The said Act defined 'inquiry' thus:

"Inquiry" includes any inquiry which may be conducted by a Magistrate or Court under this Act."

38. Both the definition of the word 'trial' as also that of 'inquiry' underwent a radical change in the Code of 1898. The Code of 1898 completely dropped the definition of the word 'trial' and instead widened the definition of the term 'inquiry'. Under Section 4(j) of the Code of 1898, 'inquiry' was defined thus:

"Inquiry"- "inquiry" includes every inquiry other than a trial conducted under this Code by a Magistrate or Court."

Thus, the position was that under the Code of 1898, trial was not defined at all but all proceedings except the trial were held to be inquiry within the meaning of Section 4(j). So far as the Code of 1973 is concerned, with which we are dealing, while the definition of inquiry is retained, trial has not been defined at all. In the instant case, Section 9(1) of the Special Courts Act clearly provides that the Special Court shall in the trial of cases before it follow the procedure prescribed by the Court for trial of warrant cases before a Magistrate. Let us examine the position and the various aspects of the procedure laid down for the trial of warrant cases under the Code as also under the Code of 1898, as amended in 1955. So far as the decision of the Jammu and Kashmir High Court, referred to above, is concerned it was given under the Criminal Procedure Code of Jammu & Kashmir prior to the amendment of 1955 which, though passed by the State Legislature, was enforced sometime after 1964. Prior to the amendment of 1955, under the Code of 1898, the procedure for trial of warrant cases by a Magistrate was the same

whether the case was instituted on a police report or otherwise than on a police report. The procedure is found in the unamended Sections 251 to 254 onwards which may be extracted thus:

"251. **Procedure in warrant cases**-The following procedure shall be observed by Magistrates in the trial of warrant cases.

252. **Evidence for prosecution**-(1) When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution;

Provided that the Magistrate shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.

(2) The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

253. **Discharge of accused**-(1) If, upon taking all the evidence referred to in section 252 and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if for reasons to be recorded by such Magistrate, he considers the charge to be groundless. ◊

254. Charge to be framed when offence appears proved -If, when such evidence and examination have been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter which such Magistrate is competent to try, and which, in his opinion could be adequately punished by him he shall frame in writing a charge against the accused."

39. It is therefore, clear that under the provisions extracted above, There was no question of the trial starting until the charges were framed because under Section 252 when the accused appeared or was brought before the Magistrate, the Magistrate had to hear the complainant and take evidence as may be produced by him. After summoning the witnesses under Section 252(2), the Magistrate had to take the evidence and after examining the same he had to determine whether a case was made out by the prosecution which, if unrebutted, would warrant the conviction of the accused. If the Magistrate was of the opinion from the examination of the evidence taken at the earlier stage that the accused had committed an offence triable under the said Chapter, then only charge was to be framed. By the amendment of 1955, however, the procedure of the trial of warrant cases was split up into two parts. By the first part a different procedure was indicated, (which is contained in

Section 251) in cases starting on the basis of a complaint whereas under Section 251A a separate procedure was evolved for cases triable on the basis of a police report. We are, however, not concerned with either Section 251 or 251A as amended in 1955. So far as the decision of the Jammu & Kashmir High Court is concerned, that was given on the basis of the Code of 1898 before the amendment of 1955 and was quite correct having regard to Sections 251, 252 and 253 of the Code of 1898, prior to the amendment of 1955, because under that procedure there could be no question of there being any trial until the charge was framed, because the court had to hear the complainant, record evidence even before the charge was framed. In these circumstances, therefore, the decision of the Full Bench of the Jammu & Kashmir High Court cannot be called into aid in deciding the present issue. As regards the argument that the trial preceded an inquiry which culminated in framing of the charges or discharge of an accused, we are of the opinion that this argument is also without any substance. Under the Code, the commitment inquiry preceding the trial has been completely abolished as indicated while referring to the objects and reasons of the Code. Under the code the Magistrate is not to record any evidence or hold any inquiry but only to find out as to whether a case put up before him is exclusively triable by a Sessions Court and once this is so, he is to send the case to the Court for trial. Thus, there being no inquiry as was the case in the Code of 1898, there is no room for acceptance of the argument of the counsel for the appellant that an inquiry

precedes the trial in such a case. This contention, therefore appears to be without substance. Realizing this difficulty, the learned counsel for the appellant, put forward an alternative argument, viz., that Section 238 of the Code itself consists of two separate stages- one starting from Section 238 and ending up to Section 240 and the other starting from Section 242 and ending up to Section 248. We are, however, unable to agree with this argument because it appears that the enactment of Section 251A (*sic*) by virtue of the amendment of 1955 the words 'commencement of trial' were introduced for the first time which clearly denote that the trial starts in a warrant case right from the stage when the accused appears or is brought before the court. This appears to us to be the main intent and purpose of introducing the words 'commencement of trial' by the amendment Act of 1955 which did not appear in the Code of 1898 or in the various amendments made before the Act of 1955 to the Code. Thus, if the trial begins at that stage, it cannot be said that the proceedings starting with Section 251A onwards amount to an inquiry within the meaning of Section 2(j) of the Code. Furthermore, it would appear that the amendment of 1955 in fact simplified the entire procedure for trial of warrant cases by a Magistrate by not requiring the Magistrate to record any evidence before framing of the charge or discharging the accused. All that the Magistrate had to do was to satisfy himself that the documents referred to in Section 173 had been furnished to the accused and if that had not been done, to direct that the documents should be furnished. Thereafter, the Magistrate on consideration of the

documents referred to in Section 173 only without recording any evidence, was to examine the accused if he considered necessary, and after hearing the parties proceed either to frame the charge or to discharge the accused. In other words, the simplified procedure introduced by the amendment of 1955, which is now retained by the Code in Sections 238 to 240, amounts to a trial from beginning to end. The fact that no evidence is to be recorded before framing of the charge and the Magistrate has to proceed only on the documents referred to under Section 173, i.e., the statement recorded in the case diary, and other papers or materials collected by the police, clearly shows that these proceedings are not an inquiry at all because the scheme of the Code generally appears to be that whenever an inquiry is held, evidence or affidavits have to be recorded by the court before passing an order. This, therefore, is an additional reason to hold that the proceedings starting from Section 251A in the previous Code and Section 238 in the Code of 1973, do not amount to an inquiry at all but amount to the starting of a trial straightaway. Contrasted with the procedure which prevailed under the Code of 1898, prior to the amendment of 1955, there was express provision for recording of evidence before the charge and that procedure undoubtedly amounted to an inquiry which has now been dropped by the amendment of 1955 and retained by the Code. For these reasons, therefore, we are satisfied that the proceedings starting with Section 238 of the Code including any discharge or framing of charges under Section 239 or 240 amount to a trial. The question of a pre-trial, as

suggested by the counsel for the appellant, does not arise on a plain interpretation of the language of Sections 238 and 239 which were the same as Section 251A under the Code of 1898 as amended by the Act of 1955.

40. Similarly, counsel for the appellant drew analogy from the provisions of Section 476 to illustrate that the order in question was a final order. Section 476 appears in Chapter XXV of the Code of 1898 which is equivalent to Chapter XXVI of the Code. The Chapter relates to proceeding in a case of offence affecting the administration of justice. The provisions contained in this Chapter amount to a separate and independent proceeding which deals with specific offences affecting administration of justice. The relevant portion of Section 476 runs thus:

476. Procedure in cases mentioned in Section 195-

(1) When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in section 195, sub-section (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so

to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate.

Section 476A is another provision which empowers a superior court to file a complaint in respect of the offences mentioned in Section 476 and Section 476B provides for appeals to the higher court concerned. Thus, these three provisions provide a separate and self-contained procedure which starts with an inquiry and terminate with an order of filing a complaint or refusing to do so. This Chapter is, therefore, restricted only to offences mentioned in Section 195 (1)(b) and (c) of the Code. Thus, in view of the independent nature of the procedure contained in these sections, it is manifest that any order under Section 476 either filing a complaint or refusing to file a complaint becomes a final order in any event as such an order completely terminates the proceedings and brings the matter to an end so far as the First Court is concerned the same power is given to a superior court under Section 476A which also ends with the filing or refusal to file a complaint. Section 476B provides for appeal as indicated above. It is true that separate proceedings are taken when a complaint is filed but these proceedings are fresh proceedings starting with the complaint and ending with the conviction or acquittal of the accused. In other words, once the Court decides to file a complaint forming an opinion whether or not it is expedient in the interest of justice to do so the procedure spends itself out. In these circumstances, therefore, the analogy drawn by the counsel for the

appellant cannot apply to a trial of warrant case under sections 238 onwards.

41. In this connection, reliance was placed by the counsel for the appellant on the decision of this Court in the case of Mohan Lal Magan Lal Thacker v. State of Gujarat. In this case, it appears that after inquiry under Section 476 the Magistrate ordered filing of a complaint against which an appeal was taken to the Additional Sessions Judge who held that the complaint was justified. A revision was taken to the High Court which dismissed the revision. The High Court, however, gave a certificate under Article 134(1) (c) and that is how the appeal came before this Court. It was in the background of these provisions that it was urged before this Court that the order passed by the High Court, not being final, the certificate ought not to have been given. This Court, however, pointed out that an order may be final for one purpose and interlocutory for another. The main question which arose in that case was whether the High Court could entertain a revision application against that order. This Court pointed out that as the appellant in that case filed a revision in respect of the complaint for the remaining offence under Section 205 read with Section 114, the order of dismissal dispose of the controversy between the parties and the proceeding regarding the question as to whether the complaint in that regard was justified or not was not finally decided and the Court held that the order passed by the High Court in revision was a final order within the meaning of Article 134(1) (c). This case is, therefore, distinguishable

and does not deal with the situation with which we are confronted in the present case.

42. The learned counsel for the appellant then finally submitted that the present statute which gives a right of appeal, should be liberally construed in favour of the accused so as not to deprive him of the right of appeal. The counsel relied on the observations of Crawford THE CONSTRUCTION OF STATUTES (pp. 692-693) which may be extracted thus :-

S. 336. Appeals-...Moreover, statutes pertaining to the right of appeal should be given a liberal construction in favour of the right, since they are remedial. Accordingly, the right will not be restricted or denied unless such a construction is unavoidable.

43. "There can be no dispute regarding the correctness of the proposition mentioned in the statement extracted above, but here as the right of appeal is expressly excluded by providing that no appeal shall lie against an interlocutory order, it is not possible for us to stretch the language of the section to give a right of appeal when no such right has been conferred. Even the statement extracted above clearly says that "the right will not be restricted unless such a construction is unavoidable". In the instant case in view of the non obstante clause, Section 11(1) of the Act cannot be construed to contain a right of appeal even against an interlocutory order and, therefore, the present clause falls within the last part of the statement of Crawford, extracted above. Thus this argument of the learned counsel also is wholly devoid of any substance.

44. For the reasons given above, therefore, all the contentions raised by the learned counsel for the appellant fail.

45. On a true construction of Section 11(1) of the Act and taking into consideration the natural meaning of the expression 'interlocutory order', there can be no doubt that the order framing charges against the appellant under the Act was merely an interlocutory order which neither terminated the proceedings nor finally decided the rights of the parties. According to the test laid down in Kuppuswami case the order impugned was undoubtedly an interlocutory order. Taking into consideration, therefore, the natural meaning of interlocutory order and applying the non obstante clause, the position is that the provisions of the Code of Criminal Procedure are expressly excluded by the non obstante clause and therefore Section 397(2) of the Code cannot be called into aid in order to hold that the order impugned is not an interlocutory order. As the decisions of this Court in the cases of Madhu Limaye vs. State of Maharashtra and Amarnath v. State of Haryana were given with respect to the provisions of the Code, particularly Section 397(2), they were correctly decided and would have no application to the interpretation of Section 11(1) of the Act, which expressly excludes the provisions of the Code of Criminal Procedure by virtue of the non obstante clause.

46. We feel that one reason why no appeal was provided against an interlocutory order like framing of the charges, as construed by us so far as the Act is concerned, may have been that it would be against the dignity and

decorum of the very high status which the Special Judge under the Act enjoys in trying the case against an accused in that the Judge is a sitting Judge of a High Court and therefore must be presumed to frame the charges only after considering the various principles and guidelines laid down by other High Courts and this Court in some of the cases referred to above.

47. Thus, summing up the entire position the inescapable conclusion that we reach is that giving the expression 'interlocutory order' its natural meaning according to the tests laid down, as discussed above, particularly in Kuppuswamy case and applying the non obstante clause, we are satisfied that so far as the expression 'interlocutory order' appearing in Section 11(1) of the Act is concerned, it has been used in the natural sense and not in a special or a wider sense as used by the Code in Section 397(2). The view taken by us appears to be in complete consonance with the avowed object of the Act to provide for a most expeditious trial and quick dispatch of the case tried by the Special Court, which appears to be the paramount intention in passing the Act.

48. **In these circumstances, therefore, we hold that the order passed by the Special Judge was an interlocutory order and the appeal filed against that order in this Court is clearly not maintainable. We, therefore, uphold the preliminary objection taken by the Solicitor General and dismiss the appeal as being not maintainable."**

14. The Hon'ble Supreme Court with a view to avoid prolongation of the trial, had held that no appeal is provided against an interlocutory order, like framing of charge and thus held that appeal is not maintainable.

15. The other judgments, which have been relied upon by the learned counsel for the appellant have only interpreted that the "framing of charge", if not to be construed as an "interlocutory order", it can be said to be an "intermediate order". None of the judgments relied upon by the learned counsel for the appellant had the occasion to deal with the issue to the effect that against the framing of charge, an appeal is maintainable.

16. Once the Hon'ble Supreme Court had held that framing of charge cannot be construed as final order, the appeal is not maintainable. The aggrieved party can avail the remedy of revisional jurisdiction or inherent jurisdiction of this Court under the BNSS or other laws if permissible. However, the appeal filed by the appellant is not maintainable against the order of framing the charge.

17. Even if assumingly the order of framing of charge

would not construed to be an interlocutory order but an intermediate order, even then the appeal is not maintainable.

The appeal shall lie only from any judgment, sentence or order not being an interlocutory order. Since the charge is neither the judgment nor sentence, the appeal is not maintainable.

18. The Hon'ble Supreme Court in **Madhu Limaye's** case (*supra*) as well as in **Sanjay Kumar Rai 's** case (*supra*) had held that the High Court can entertain the petition either filed under Sections 397 or 482 of the Cr.P.C., but it has not held that the order of framing of charge can be questioned by way of an appeal. The other judgments cited are also not applicable and none of the judgments had dealt with the proposition that the appeal is maintainable against an order of framing the charge.

19. Consequently, in view of the above, in my considered opinion, the appeal against the order of framing of charge is not maintainable and hence is dismissed. However, the appellant is at liberty to avail any other remedy available under law.

20. Pending applications, if any, also stand disposed of accordingly.

(Jiya Lal Bhardwaj)
Vacation Judge

6th February, 2026
(Priti)

High Court of HP