V. C. Shukla

Vs

State Through C. B. I.

Criminal Appeal No. 562 of 1979

(Fazal Ali JJ)

07.12.1979

JUDGMENT

FAZAL ALI J.

1. This appeal is directed against an order dated September 17, 1979 passed by Justice Joshi, Special Judge appointed under the Special Courts Act, 1979 (22 of 1979) (hereinafter to be referred as the 'Act') by which the learned Judge directed a charge to be framed against the appellant under Section 120-B of the Indian Penal Code read with Section 5(1)(d) and Section 5(2) of the Prevention of Corruption Act, 1947 and also under Section 5(2) read with Section 5(1) (d) of the said Act. This appeal has been filed by the appellant under Section 11(1) of the Act. The appeal was placed for preliminary bearing before a Division Bench of this Court where Mr. Soli J. Sorabjee, the Solicitor-General of India, put in appearance on behalf of the respondent and raised a preliminary objection to the maintainability of the appeal. The preliminary objection raised by the Solicitor-General was mainly on the ground that the order impugned being a purely interlocutory order within the meaning of Section 11(1) of the Act, no appeal lay to this Court. The Division Bench in view of the nature of the substantial question of law involved referred the case to a larger Bench even at the state of preliminary bearing because if the appeal was admitted for hearing, it would impliedly involve a decision on the question raised by the Solicitor-General by way of a preliminary objection.

2. We have heard the counsel for the parties at very great length on the various aspects of the respective points of view put forward by the counsel for the parties. It is manifest that if the preliminary objection raised by the respondent finds favour then the appeal has to be dismissed in limine as being not maintainable. If however, the preliminary objection is overruled and the contention of the appellant is accepted, the appeal will have to be admitted to hearing. In view of the limited nature of the scope of the appeal we find it wholly unnecessary to go into the facts, circumstances or the evidence on a consideration of which the Special Judge has based his order because that can be done only if the appeal is to be heard on merits.

3. The sheet-anchor of the argument of Mr. Mridul, counsel for the appellant, appears to be that the Special Courts Act being a statute in parimateria, the Criminal Procedure Code, the expressions used and the meaning of the words employed in the Act must have the same meaning and signification as used in the various provisions of the Criminal Procedure Code of 1973 (hereinafter to be referred to as the 'Code'). It was submitted in the first instance that on a proper construction of Section 11 of the Act, the word 'interlocutory order' has been used exactly in the same sense as the same word has been used in Section 397(2) of the Code. The argument merits serious consideration and has various phases and facets to be gone into after a proper examination of the scheme and object of the Code and the Act. To begin with, it would appear that the Code has made revolutionary

changes in the Criminal Procedure Code of 1898 and has inserted additional provisions with a view to ensure speedy justice without impeding fairness of the trial. In this connection, the relevant portions of the Statement of Objects and Reasons of the Code may be extracted :

> .... The amendments of 1955 were extensive and were intended to simplify procedures and speed up trials as far as possible. In addition, local amendments were made made by State legislatures, of which the most important were those made to bring about separation of the Judiciary from the Executive. Apart from these amendments, the provision of the Code of 1898 have remained practically unchanged through these decades and no attempt was made to have a comprehensive revision of this old code till the Central Law Commission was set up in 1955.
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> .... The main task of the Commission was to suggest measures to remove anomalies and ambiguities brought to light by conflicting decisions of the High Courts or otherwise, to consider local variations with a view to securing and maintaining uniformity, to consolidate laws wherever possible and to suggest improvement where necessary. Suggestions for improvements received from various sources were considered by the Commission.

3. The recommendations of the Commission were examined carefully by the government, keeping in view, among others, the following basic considerations :

> (i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;
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> (ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and
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> (iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community.

The occasion has been availed of the consider and adopt where appropriate suggestions received from other quarters, based on practical experience of investigation and the working of criminal courts.

> ..... In addition to ensuring fair deal to the accused, separation as provided for in the Bill would ensure improvement in the quality and speed of disposal as all Judicial Magistrates would be legally qualified and trained persons working under close supervision of the High Court.

5. Some of the more important changes proposed to be made with a view to speeding up the disposal of criminal cases are -

> (a) the preliminary inquiry which precedes the trial by a Court of Session, otherwise known as committal proceedings, is being abolished as it does not serve any useful purpose and has been the cause of considerable delay in the trial of offences;
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> #* * * * *##
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> (d) the powers of revision against interlocutory orders are being taken away, as it has

> been found to be one of the main contributing factors in the delay of disposal of criminal cases;

4. A perusal of the Objects and Reasons clearly shows that the Parliament wanted to implement the recommendation of the Law Commission as far as possible. In the instant case, we are mainly concerned with two important changes which have been made in the Code. In the first place, as para 5 of the Objects and Reasons shows that the preliminary inquiry which preceded the trial by a Court of Session known as committal proceedings has been abolished and the Magistrate before whom the charge-sheet is submitted has mainly to find out whether the offence is exclusive triable by a Sessions Court and, if so, to send the case to the Sessions Court. This was obviously done to cut down considerable delay and duplication in the trial of serious criminal offences. We have laid special stress on this part of the amendment because a serious argument was built up by the learned counsel for the appellant on the question as to when the trial in a warrant case starts. We shall deal with this aspect of the matter a little later. Secondly, para 5(d) of the Objects and Reasons emphasises the fact that powers of revision against interlocutory orders have been taken away as they were found to be the main contributing factor in the delay of the disposal of criminal cases. It may be mentioned here that in the Code of Criminal Procedure, prior to the Code of 1973, the word 'interlocutory' was not used at all and, therefore, it has to be interpreted for the first time only after the Code came into force. Section 397(2) of the Code which contains the powers of revision against interlocutory orders runs thus :

> (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,

5. It will important to note that the word 'interlocutory order' used in this sub-section relates to various stages of the trial, namely, appeal, inquiry, trial or any other proceeding. The object seems to be to cut down the delays in stages through which a criminal case passes before it culminates in an acquittal, discharge or conviction. So far as the Code of Criminal Procedure, 1973, is concerned, it has got a wide and diverse area of jurisdiction inasmuch as it regulates the procedure of trial not only of the large number of offences contained in the Indian Penal Code but also in other Acts and status which apply the Code of Criminal Procedure or which are statutes in pari materia the Code. Having regard, therefore, to the very large ambit and range of the Code, the expression 'interlocutory order' would have to be given a broad meaning so as to achieve the object of the Act without disturbing or interfering with the fairness of the trial. Fortunately, however, there are a few decisions which have interpreted the expression 'interlocutory order' as appearing in Section 397(2) of the Code. Before we come to the decisions, certain features may be noticed here. In the first place, the concept of appeal against interlocutory order seems to be by and large foreign to the scheme of the Code or for that matter the scheme of the Code of Criminal Procedure right from 1872 up-to-date. Appeal has been provided only against final orders and not against interlocutory orders. Instead of appeal, the Code of 1898 as also the Code of 1872 contained powers of revision which vested in the High Court to revise any order passed by a criminal court. In the previous Codes, the term 'interlocutory' was not used. Therefore, the revisional jurisdiction was wide enough to embrace within its scope any order whether interlocutory, intermediate or final, Secondly, by virtue of scores of decisions of the various High Courts in India and the Privy Council, it was well settled that the revisional jurisdiction possessed by the Sessions Judge and the High Court could be exercised only to examine the legality or propriety of the order impugned and more particularly the courts were to interfere only if there was an error of law or procedure. Previous to the Code, the powers of revision enjoyed by the Sessions Judge or the District Magistrate or the Chief Judicial

Magistrate through various amendments were rather limited whereas the power of the High Court was wide and unlimited Apart from the revisional power the High Court under the Code of 1898 possessed an inherent power to pass orders ex detento justitiae in order to prevent abuse of the process of the court. This was a special power which was to be exercised by the High Court to meet a particular contingency not expressly provided for in the Code of Criminal Procedure. Even in the present Code, the inherent power of the Court has been fully retained under Section 482 which runs thus :

> 482. Nothing is this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure to the ends of justice.

6. One of the questions that arose was to whether an interlocutory order which could be revised by the Sessions Judge, can be further revised under Section 482 of the Code by the High Court because Section 397(3) permitted the power of revision to be exercised only by the High Court or the Sessions Judge but not by both of them. The limitation contained in Section 397(3) runs as follows :

> (3) If an application under this section has been made by any persons 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.

Sub-section (3), however, does not limit at all inherent power of the High Court contained in Section 412, as mentioned above. It merely curbs the revisional power given to the High Court or the Sessions Judge under Section 397(1) of the Code. We need not dilate on this aspect because we are not called upon to consider the interpretation of Section 397(3) of the Code, although in one of the cases cited before us this aspect has been gone into and that is why we have indicated the same. Mr. Mridul contended that as the Special Courts Act has fully applied the procedure of the Code to the trial of the offences by the Special Judge, the expression 'interlocutory order' has been used exactly in the same sense as in Section 397(2). In other words, the contention was that Section 11 of the Act is modelled on Section 397 (2) of the code by telescoping sub-section (2) of the said section into Section 11(1) of the Act. In support of his contention reliance was placed on the case of Amar Nath v. State of Haryana ((1978) 1 SCR 222 : (1977) 4 SCC 137 : 1977 SCC (Cri) 585) and particularly on the following observations made by this Court : (SCC p. 142, para 6)

It seems to us that the term 'interlocutory order' in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. In merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain right of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witness, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.

In that case, one of us (Fazal Ali, J.) was a party to the decision and spoke for the court. It is no

doubt true that this Court held that an order summoning an accused was not an interlocutory order but being a matter of moment it decided an important aspect of the trial and was, therefore, in a sense a final order which could be revised by the Sessions Judge or the High Court under Section 397 of the Code. The observations made by this Court, however, have to be read in the light of the peculiar facts of the said case. What had happened in that case was that an FIR was lodged at Police Station Butana, District Karnal, mentioning a number of accused persons as having participated in the occurrence. The police, after holding investigations, submitted a charge-sheet against the other accused persons except the appellants before the Supreme Court against whom a final report under Section 173 of the Code was given by the police. The report was placed before a Judicial Magistrate First Class who, after perusing the same, accepted the report and released the appellants. Thereafter the complainant filed a revision before the Additional Sessions Judge against the order of the Judicial Magistrate releasing the appellants but the revision petition was dismissed by the Judge. Thereafter the informant filed a regular complaint before the Judicial Magistrate against all the accused including the appellants. The learned Magistrate after having examined the complaint found that no case against the appellants was established. A further revision was taken up before the Sessions Judge who accepted the revision and directed further inquiry, on receipt of which the Magistrate issued summons to the appellants straightway. Against this order the appellants went up in revision to the High Court which dismissed the petition in limine, obviously on the ground that the order passed by the Magistrate was an interlocutory one. That is how the matter came up by special leave before this Court. It would thus be seen that before the stage of trial of the case was reached the appellants had been released by the Magistrate who accepted the final report that no case was made against them. Even a complaint which was in the nature of a protest petition against the final report filed before the Magistrate was dismissed. When the Magistrate issued summons in pursuance of an order of further inquiry by the Sessions Judge cognizance was taken against the appellants who were ordered to be put on trial because the order summoning the appellants virtually amounted to asking the accused to face the trial. It was in the background of these circumstances that this Court held that such an order being a matter of moment affecting important rights of the parties, could not be said to be purely an interlocutory order. We have no doubt that the decision of this Court, referred to above, was absolutely correct. In fact this part of the decision was endorsed by a later decision of this Court in the case of Madhu Limaye v. State of Maharashtra ((1978) 1 SCR 749 : (1977) 4 SCC 551 : 1978 SCC (Cri) 10). The Court observed thus : (SCC p. 554, paras 6 and 7)

In Amar Nath case [(1977) 4 SCC 137], as in this, the order of the trial Court issuing process against the accused was challenged and the High Court was asked to quash to the Criminal proceeding either in excise of its inherent power under Section 482 of the 1973 Code corresponding to Section 561-A of the Code of Criminal Procedure, 1988 - hereinafter called 1898 Code or the old Code, or under Section 397(1) of the new Code corresponding to Section 435 of the old Code. Two points were decide in Amar Nath's case in the following terms :

> (1) While we fully agree with the view taken by the learned judge that where a revision to the High Court against to order of the Subordinate Judge is expressly barred under sub-section (2) of Section 397 of the 1973 Code the inherent powers contained in Section 482 would not be available to defeat the bar contained in Section 397(2).

(2) The impugned order of the Magistrate, however, was not an interlocutory order.

..... But we are going to reaffirm the decision of the Court on the second point.

A Division Bench consisting of three Judges held that an order framing a charge was not a interlocutory order and, therefore, a revision against such an order was competent before the Sessions Judge or High Court. In dwelling on the various shades and aspects of an interlocutory order, Untwalia, J, who spoke for the Court, referred to previous decision of the court regarding the scope and ambit of a final order in order to highlight the nature and signification of the term 'interlocutory order'. Before analysing the decision, it may be necessary to state the facts on the basis of which the aforesaid decision was rendered. The prosecution case was that in a press conference held at New Delhi on September 27, 1974, the appellant before the Supreme Court is said to have made certain statements and handed over a press handed-out containing allegedly some defamatory statements regarding Shri A. R. Antulay, the then Law Minister of the Government of Maharashtra. The State Government decided to prosecute the appellant for an offence under Section 500 of the Indian Penal Code after obtaining the necessary sanction under Section 199(4)(a) of the Code. Armed with the sanction, the Public Prosecutor field a complaint in the court of the Sessions Judge, Greater Bombay. The Sessions Judge took cognizance of the complaint and issued process against the appellant. At the time when the appellant was being heard in the Sessions Court, the allegation against him was resisted on three grounds :

> (1) that the Court of Sessions had no Jurisdiction to take cognizance of the offence without a formal commitment of the case to it;
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> (2) that the sanction given was bad inasmuch as it was not given by the appointing authority; and
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> (3) that the sanctioning authority had not applied its mind to the facts of the case and accorded sanction in a casual manner.

The Sessions Judge rejected all these contentions and framed charges against the appellant under Section 500, IPC. Thereafter, the appellant moved the High Court in revision against the order framing the charges. Before the High Court, a preliminary objection as to the maintainability of the revision application was taken. Before proceeding further, it may be observed that the objections taken by the appellant in the aforesaid case related to the root of the jurisdiction of the Sessions Judge and if accepted, would have rendered the entire proceeding void ab initio. The case before this Court was not one based on allegations of fact on which cognizance was taken by a trial Court and after having found that a prima facie case was made out, a charge was framed against the accused. Even so, the ratio decidendi in the aforesaid case was, in our opinion, absolutely correct and we are entirely in agreement with the learned Judges constituting the Bench that the order of the Sessions Judge framing charges, in the circumstances stances of the case, was not merely an interlocutory order but partook of the nature of a final order or, at any rate, an intermediate order so as to be taken out of the bar contained in Section 397(2) of the Code. In that case ((1978) 1 SCR 749 : (1977) 4 SCC 551 : 1978 SCC (Cri) 10), Untwalia, J., speaking for the court, observed as follows : (SCC p. 558, para 13; p. 560, para 15)

It is to be noticed that the test laid down therein was that if the objection of the accused succeeded, the proceeding could have ended but not vice versa. The order can be said to be a final order only if, in either event, the action will be determined. In our opinion, if this strict test were to be applied in interpreting the words 'interlocutory order' occurring in Section 397 (2), then the order taking cognizance of an offence by a court, whether it is so done illegally or without jurisdiction, will not be a final order and hence will be an interlocutory one.

> ..... But in our judgment such an interpretation and the universal applicant of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by Section 397(1).
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> ...... On the one hand, the legislature kept intact the revisional power of the High Court and, on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a situation it appears to us that the real intention of the legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswami case (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625) but, yet it may not be an interlocutory order - pure or simple. Some kinds of order may fall in between the two. By rule of harmonious construction, we think that the bar in sub-section (2) of section 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purposes of Article 134 of the Constitution, yet it would not be corrected to characterise them as merely interlocutory orders within the meaning of Section 397(2)....
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> Yet for the reasons already alluded to, we feel no difficulty in coming to the conclusion, after due consideration, that an order rejecting the plea of the accused on a point which, when accepted, will concluded the particular proceeding, will surely be not an interlocutory order within the meaning of Section 397(2).

7. Reading the observations made by this Court in the aforesaid case as a whole we are unable to agree with the argument of Mr. Mridul that this Court in any way disapproved the tests of a final order or interlocutory order accepted by the Federal Court in the case of S. Kuppuswami Rao v. King (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625). This Court took care to explain that in a situation with which the Judges were dealing in that particular case, it would not be proper to treat the order framing charges as an interlocutory order pure and simple. Even though the order may be intermediate it could not be said to be final so as to bar the revisional jurisdiction of the High Court under Section 397(3) of the Code. We find ourselves in complete agreement with the exposition of the law by the learned Judges who decided the said case. We will deal with a broader and a wider aspect of the matter in a later part of our judgment when we deal with the scope and ambit of the Act. We might reicerate here even at the risk of repetition that the term 'interlocutory order' used in the Code of Criminal Procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial because the bar contained in Section 397(3) of the Code would apply to a variety of cases coming up before the courts not only being offences under the Penal Code but under numerous Acts. If, therefore, the right of revision was to be barred, the provision containing the bar must be confined within the four corners of the spirit and letter of the law. In other words, the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi-final. The same, however, in our opinion could not be said of the Special Courts Act which was meant to cover only specified number of crimes and criminals and the objective attained was quickest despatch and speediest disposal. Mr. Mridul further relied on a decision of this Court in the case of State of Karnataka v. L. Muniswamy ((1977) 3 SCR 113 : (1977) 2 SCC 699 : 1977 SCC (Cri) 404) and particularly on the following observations made by Chandrachud, J. as he then was : (SCC p. 704, para 10)

On the other hand, the decisions cited by learned counsel for the respondents in Vadilal Panchal v.

D. D. Ghadigaonkar (AIR 1960 SC 1113 : (1961) 1 SCR 1 : 1960 Cri LJ 1499) and Century Spinning & Manufacturing Co. v. State of Maharashtra (AIR 1972 SC 545 : (1972) 3 SCC 282 : 1972 SCC (Cri) 495) show that it is wrong to say that at the stage of framing charges the court cannot apply its judicial mind to the consideration whether or not there is any ground for presuming the commission of the offence by the accused. As observed in the latter case, the order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge. It cannot blindly accept the decision of the prosecution that the accused be asked to face a trial.

Great stress was laid by the learned counsel for the appellant on the fact that the court had observed that the state of framing of charges was a very important matter because it affected a persons, liberty substantially and, therefore, the court should consider judicially whether the materials warrant framing of charge. There can be absolutely no doubt regarding the correctness of the observations made by the Chandrachud, J. This decision, however, is no authority for holding that an order framing a charge is not an interlocutory order. In the aforesaid case, this Court was called upon to exercise its jurisdiction under Section 482 of the Code, that is to say, the inherent powers of the court were invoked to quash to proceedings in order to prevent abuse of the process of the court. The term 'interlocutory order' appearing in Section 397(2) of the Code did not arise for interpretation in that case. In these circumstances, therefore, we do not think that this case can be of any assistance to the appellant. Reference was also made to a decision of this Court in the case of Parmeshwari Devi v. State ((1977) 2 SCR 160 : (1977) 1 SCC 169 : 1977 SCC (Cri) 74). This case also depends on different fact and relates to the circumstances under which a summons could be issued under Section 94(1) of the Code of 1898. In the passing, however, this Court observed : (SCC 172, para 7)

The Code does not define a interlocutory order but it obviously is an intermediate order, made during the preliminary stage of an enquiry or trial. The purpose of sub-section (2) of Section 397 is to keep such an order outside the purview of the power of revision so that the enquiry or trial may proceed without delay. This is not likely to prejudice the aggrieved party for it can always challenge it an due course if the final order goes against it. But it does not follow that if the order is directed against a person who is not a party to the enquiry or trial, and he will have no opportunity to challenge it after a final order is made affecting the parties concerned, he cannot apply for its revision even if it is directed against him and adversely affects his rights.

Although this Court said that the Code does not define a interlocutory order, it does not include an intermediate order made during the preliminary stages of an inquiry or trial. This Court laid greater stress on the fact that an order which was directed against a person who was not a party to the inquiry or trial and had, therefore, no opportunity to place his point of view could not be bound by any order passed against him. This appears to be the ratio of that case. Reliance was also placed on a decision of this Court in the case of Century Spinning & Manufacturing Co. Ltd. v. State of Maharashtra (AIR 1972 SC 545 : (1972) 3 SCC 282 : 1972 SCC (Cri) 495) in order to urge that stage of framing of charges is matter of moment and an order framing a charge could not be termed as an interlocutory order. In the first place, the judgment of the aforesaid case was rendered before the Code of 1973 was passed and, therefore, the interpretation on interlocutory order as contained in Section 397(2) of the Code could not have arisen for consideration. Secondly, the decision was given on the scope and ambit of Section 251-A of the Code of 1898 as amended by the Act of 1955. Dealing with the scope of sub-sections (2) and (3) of Section 251-A of the Code of 1898, of this Court observed as follows : (AIR 1972 SC 545 : (1972 3 SCC 282 : 1972 SCC (Cri) 495) (SCC p. 291, para 17)

The argument that the court at the stage of farming the charges has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused is not supportable either on the plain language of the section or on its judicial interpretation or on any other recognised principle of law. The order framing the charges does substantially affect the person's liberty and it is not possible to countenance the view that the court must automatically frame the charge merely because the prosecuting authorities, by relying on the documents referred to in Section 173, consider it proper to institute the case. The responsibility of framing the charges is that of the court and it has to judicially consider the question of doing so. Without fully adverting to the material on the record it must not blindly adopt the decision of the prosecution.

8. There can be no doubt that the stage of framing of the charges is an important stage and the court before framing the charge has to apply its mind judicially to the evidence or the material placed before it in order to make up its mind whether there are sufficient grounds grounds for proceeding against the accused. But this case is not an authority for the proposition that once the court, after considering the materials, passes an order framing the charges, the order is a final which could be revised and would not be barred under Section 397(2) of the Code which, however, did not exist at the time when the decision was given. It follows therefore that an order framing a charge was clearly revisable by the High Court under Section 435 and 439 of the Code of 1898. We may, however, point out that we are in complete agreement with the principle, involved in the cases discussed above, that an order framing charges against an accused undoubtedly decided an important aspect of the trial and it is the duty of the court to apply its judicial mind to the materials and come to a clear conclusion that a prima facie case has been made out on the basis of which it would be justified in framing charges. The question, however, with which we are concerned in the present appeal is essentially different. The order of the Special Judge framing the charge is a reasoned order and not a mechanical or a casual order so as to vitiate the order of the Special Judge. In the instant case, we are concerned with a much larger question, viz., whether or not the term 'interlocutory order' used in Section 11(1) of the Act should be given the same meaning as this very term appearing in Section 397(2) of the Code. In other words, the question is whether Section 11(1) of the Act tightens or widens the scope of the term 'interlocutory order' as contained in Section 397(2) of the Code and as interpreted by this Court in the decisions referred to above.

9. This brings us to the discussion of the main preliminary objection by the Solicitor-General. The Solicitor-General submitted that Section 11, which is extracted below starts with a non obstante clause which completely excludes the application of the provisions of the Code of Criminal Procedure and therefore the decisions of this Court rendered on an interpretation of Section 397 (2) of the Code would have no application whatsoever in considering the scope and ambit of Section 11 :

> 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.
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> (2) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order of a Special Court.
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> (3) Every appeal under this section shall be performed 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.

It was further contended that even if the non obstante clause was not there, the aim and object of the Act being speediest disposal of cases, cutting down all possible delays, the term 'interlocutory order' should be so interpreted so as to advance the object of the Act rather than retard it. As against this, Mr. Mridul, counsel for the appellant, submitted that the non obstante clause does not change the complexion of the term 'interlocutory order' which is a term of well known significance and has been constructed by this Court in Section 397(2) of the Code and the same principle would apply in interpreting this expression particularly when the Act does not give any remedy by way of revision to the accused against an order which may not be purely interlocutory but which is undoubtedly a matter of moment and therefore an intermediate or a quasi-final order. It was further argued that as an order framing charges against the accused affects the liberty of the subject, the Act appears to have given a wider connotation to the terms so as to provide for appeal against that order to the highest court of the country.

10. In appreciating the respective arguments put forward by counsel for the parties we may have to consider the background, the aim, the object and scheme of the Act.

11. It may be mentioned here that before the Act was passed a Bill was moved in the Parliament which was adopted by the government and the President of India was requested to make a reference to this Court regarding the constitutional validity of the Act. The reference was heard by seven Judges particularly on the various constitutional aspects and we would have to advert to some important observations made by this Court in the Reference in order to highlight the main object of the Act.

12. To begin with we may glance through extracts of the speech of the Union Home Minister at the time of introduction of the Bill in the Lok Sabha. While introducing the Bill, the Hon'ble Home Minister laid stress on the dominant object of the Bill which is contained in the extract from his speech given below :

> It is the obligation of the state not only to prosecute persons involved in such crimes but also to make arrangements for the speedy judicial determination of such prosecutions. The ordinary criminal courts for a variety of reasons, cannot reasonably be expected to bring these trials to an early conclusion. Government, therefore, considers that only if special courts are established at a high level to deal exclusively with such offences, the trial of these cases until not be unduly protracted. (Lok Sabha Debates, Vol. XXII, No. 8, dated February 28, 1979, Sixth Series, p. 278)

13. The details of the aims and objects of the Act are further reflected in the Preamble of the Act which contains several clauses, the relevant portions of which may be extracted thus :

Whereas Commissions of Inquiry appointed under the Commissions of Inquiry Act, 1952 have rendered reports disclosing the existence of prima facie evidence of offences committed by persons who held high public or political offices in the country and others connected with the commission of such offences during the operation of the Proclamation of Emergency, dated June 25, 1975, issued under clause (1) of Article 352 of the Constitution :

> And whereas the offences referred to in the recitals aforesaid were committed during

the operation of the said Proclamation of Emergency, during which a grave emergency was clamped on the whole country, civil liberties were curtailed to a great extent, important fundamental rights of the people were suspended, strict censorship was imposed on the press, judicial powers were severely crippled and the parliamentary democratic system was emasculated :

And whereas the ordinary criminal courts due to congestion of work and other reasons cannot reasonably be expected to bring those prosecutions to a speedy termination :

And whereas it is imperative for the efficient functioning of parliamentary democracy and the institutions created by or under the Constitution of India that the commission of offences referred to in the recitals aforesaid should be judicially determined with the utmost dispatch :

And whereas it is expedient to make some procedural changes whereby avoidable delay in the final determination of the innocence or guilt of the persons to be tried is eliminated without interfering with the right to fair trial.

14. The effect of the speech given by the Home Minister and the recitals in the Preamble bring out the following special features of the Act :

(1) That the Act makes a distinct departure from the trial of ordinary offences by criminal courts in that the trial of offences is entrusted to a very high judicial dignitary who is sitting Judge of the High Court to be appointed by the Chief Justice concerned on the recommendations of the Chief Justice of India. This contains a built-in safeguard and a safety valve for ensuring the independence of judiciary on the one hand and a complete fairness of trial on the other. In appointing the Special, Judge, the Government has absolutely no hand or control so that the Special Judge is appointed on the recommendations of the highest judicial authority in the country, viz., the Chief Justice of India. This would naturally instil great confidence of the people in the Special Judge who is given a very elevated status.

(2) Secondly, whereas in ordinary cases the matter is straightway brought to the court after the investigation in completed, the Act requires certain preliminary safeguards before the matter is placed before the Special Court. In the first place, the allegations made against the accused have been scrutinised by a High Powered Commission, presided over by Mr. Justice Shah, a retired Judge of the Supreme Court, as indicated by the Home Minister in his speech while introducing the Bill. Secondly, the matter does not rest there but a thorough investigation has been made not by the ordinary police but by the C.B.I. Thirdly, after the investigation is made, the matter is placed before the Central Government which makes a declaration after being satisfied about existence of prima facie evidence of the commission of an offence alleged to have been committed by an accused. It is only after such a declaration is made that the matter is brought before the Special Court, designated by the Central Government. It thus appears that before a case comes to the court a three-tier system has already been adopted which eliminates any possibility of miscarriage of justice or any element of unfairness or foul play. Furthermore, although the Special Judge functions as a Sessions Judge for the purposes of the trial and follows a procedure provided for

> the trial of warrant cases, the fact remains that the Judge is a high judicial dignitary, being a sitting Judge, not subordinate in any way to the government. The Special Judge appointed, therefore, is a very experienced judicial officer who must be presumed to act in an extremely just and equitable manner keeping himself alive to the rules of natural justice and fair play.

15. In fact, this Court has held in a number of cases that where a power is vested in a very high authority, the abuse of the power is reduced to the minimum. In this connection, we may refer to two decisions of this Court. In the case of K. L. Gupte v. Bombay Municipal Corpn. ((1968) 1 SCR 274, 297 : AIR 1968 SC 303 : 70 Bom LR 337) this Court observed as follows :

The fact that no appeal from the decision under Section 13 was provided for is a matter of no moment for the authority under Section 13 is no less than the Municipal Commissioner himself or the Chief Officer of the Municipal Borough or a person exercising the power of an Executive Officer of any local authority. When the power had to be exercised by one of the highest officers of the local authority intimately connected with the preparation of the development plan in all its stages, it is difficult to envisage what other authority could be entrusted with the work of appeal or revision.

A similar view was taken by this Court in the case of Chinta Lingam v. Government of India ((1971) 2 SCR 871 : (1970) 3 SCC 768 :). This Court observed thus : (SCC p. 772, Para 4)

> In these circumstances the absence of a provision for appeal or revision can be of no consequence. At any rate, it has been point out in more than one decision of this Court that when the power has to be exercised by one of the highest officers the fact that no appeal has been provided for is a matter of no moment .... It was said that though the power was discretionary but it was not necessarily discretionary and abuse of power could not be easily assumed. There was moreover a presumption that public officials would discharge their duties honestly and in accordance with rules of law

16. Although these judgments were rendered in explaining the scope of Article 14 of the Constitution of India but the principle deduced from these decisions applies to the present case in order to show that fairness of the trial has to be presumed when a person of the status of a sitting High Court Judge tries the case against an accused. Another important feature of the Act is that unlike other cases, an appeal against the decision of a Special Court lies to the highest court of the Country, namely, the Supreme Court, and the appeal lies as a matter of right and both on facts and on law. In other words, any judgment rendered by the Special Court is to be examined by the highest court of the country which is bound to consider the diverse aspects of the materials, evidence and findings given by the Special Court without being fettered by any legal or factual restriction. Thus, an analysis of the aforesaid features clearly reveals that no accused can have any genuine grievance against the fairness of the trial that is meted out to him by the Act. If any error of fact or law is committed by the Special Judge that can be corrected by this Court.

17. Coming back now to the question at issue, the dominant purpose of the Act is to achieve not only speedy determination with the utmost despatch. We may refer to certain observations made by this Court while deciding the Presidential Reference in order to emphasise the most expeditious disposal of the case, a goal which the Act seeks to subserve.

18. In In re The Special Courts Bill, 1978 ((1979) 2 SCR 476 : (1979) 1 SCC 380), Chandrachud,

C.J. speaking for the Court observed as follows : (SCC p. 426, Para 73; p. 429, para 80)

> ... in relation to the objective mentioned in the sixth paragraph of the Preamble that it is imperative for the functioning of parliamentary democracy and the institutions created by or under the Constitution of India that the commission of such offences should be judicially determined with the utmost dispatch; and the latter in relation to their status, that is to say, in relation to the high public or political office held by them in India... If it be true, and we have to assume it to be true that offences were committed by persons holding high public or political offices in India under cover of the declaration of emergency and in the name of democracy, there can be no doubt that the trial of such persons must be concluded with the utmost dispatch in the interest of the functioning of democracy in our country and the institutions created by our Constitution. Longer these trials will tarry, assuming the charges to be justified, greater will be the impediments in fostering democracy, which is not a plant of easy growth. If prosecutions which the Bill envisages are allowed to have their normal, leisurely span of anything between 5 to 10 years, no fruitful purpose will be served by launching them. Speedy termination of prosecutions under the Bill is the heart and soul of the Bill.

Similarly, Krishna Iyer, J. observed as follows : ((1979) 2 SCR 476 : (1979) 1 SCC 380) (SCC p. 440. para 107; p. 442, para 115)

> And so, to track down and given short shrift to these heavy-weight criminaloids who often mislead the people by public moral weight-lifting and multipoint manifestos is an urgent legislative mission partially undertaken by the Bill under discussion.... It is common knowledge that currently in our country criminal courts excel in slow-motion. The procedure is dilatory, the dockets are heavy, even the service of process is delayed and, still more exasperating, there are appeals upon appeals and revisions and supervisory jurisdictions, baffling and baulking speedy termination of prosecutions, not to speak of the contribution to delay by the Administration itself by neglect of the basic necessaries of the judicial process.

19. The aforesaid observations, therefore, clearly show that the heart and soul of the Act, is speedy disposal and quick dispatch in the trial of these cases. It is, therefore, manifest that the provisions of the Act must be interpreted so as to eliminate all possible avenues of delay or means of adopting dilatory tactics by plugging every possible loophole in the Act though which the disposal of the case may be delayed. Indeed if this be the avowed object of the Act, could it have been intended by the Parliament that while the Criminal Procedure Code gives a right of revision against an order which, though not purely interlocutory, is either intermediate or quasi-final, the Act would provide a full-fledged appeal against such an order. If the interpretation as suggestion by the counsel for the appellant is accepted, the result would be that this Court would be flooded with appeals against the order of the Special Court framing charges which will impede the progress of the trial and delay the disposal of the case which is against the very spirit of the Act. We are of the opinion that it was for this purpose that a non obstante clause was put in Section 11 of the Act so as to bar appeals against any interlocutory order whether it is of an intermediate nature or is quasi-final. The Act applies only to specified number of cases which fulfil the conditions contained in the provisions of the Act and in view of its special features, the liberty of the subject has been fully safeguarded by providing a three-tier system as indicated above.

20. Let us now examine the scheme of the Act. Under Section 4 a Special Court is to take cognizance or try cases as are instituted before it or transferred to it as hereinafter provided. Section 5 provided that if the Central Government is of opinion that there is a prima facie evidence of the commission of an offence and that in accordance with the guide-lines contained in the preamble, the said offence should be dealt with under this Act, the Central Government shall make a declaration to that effect. In other words, Section 5 imposes a further screening process by providing that the Central Government which is a very high authority should satisfy itself that a prima facie case is made out before making a declaration and sending the case to the Special Judge. Section 6 provides that after a declaration under Section 5 is made, notwithstanding anything in the Code the prosecution in respect of the offence which is the subject-matter of the declaration and any prosecution pending in any court shall stand transferred to a Special Court designated by the Central Government. Thus, we find that Section 6 makes a distinct departure from the provisions of the Code in entrusting the trial of the offence to a Special Judge, designated by it. We are not concerned with Section 7 which deals with the transfer of any revision or appeal pending in any Court of Appeal or Revision which would stand transferred for disposal to this Court. Section 8 provides for the joint trial of the offence against the accused in accordance with the Code. Thus, the provisions of the Code are for the first time applied by Section 8. Similarly, Section 9(1) enjoins that a Special Court shall in the trial of cases before if follow the procedure prescribed by the Code for trial of warrant cases before a Magistrate. Similarly, the provisions of the Code in respect of Section 307 and 308 are also applied by virtue of Section 9(2). Sub-section (3) appears to be the residuary cause which applies all the provisions of the Code which are not inconsistent with the provisions of this Act. Here also, a departure from the Code is indicated in that the provisions of the Code would apply where the same are either expressly or by necessary intendment excluded. Sub-section (3) of Section 9 further provides that a Special Court shall be deemed to be a Court of Session and shall have the powers of a Court of Session. This part of the section merely creates a legal fiction but does not reduce the status of a sitting High Court Judge. Section 10 empowers the Supreme Court in certain cases to direct any particular case to be transferred from one Special Court to another. Then we come to Section 11(1) which has already been extracted. The non obstante clause which starts with the words "Notwithstanding anything in the Code" excludes appeals from any interlocutory order of a Special Court. The reason for this exclusion is not far to seek. In the first place, such an exclusion is fully consistent with the object of the Act, viz., to secure the quicker dispatch and expeditious disposal of the case so as to cut down all delays which may be caused by providing for appeal against interlocutory orders also. As the non obstante clause expressly excludes the provisions of the Code of the Criminal Procedure, we cannot call into aid the provisions of Section 397(2) of the Code which would amount to frustrating the very object which Section 11 seeks to advance. Mr. Mridul realising the force of the non obstante clause has submitted a very attractive and ingenious argument. In the first place, he submitted that as the Act does not provide for any revision against intermediate or quasi-final orders, and as the object was to give a very fair trial to the accused, hence instead of a revision, an appeal has been provided. We are, however, unable to agree with this argument, which is not at all borne out by the plain language employed in Section 11(1). When the Act excludes the Code then it is obvious that it excludes an appeal against any type of an interlocutory order. The absence of revision is more than compensated by giving the accused a right of a appeal against any judgment or order of the Special Judge as of right and open on facts and law. There is one more reason why the power of revision has been excluded. The trial is held by a sitting High Court Judge who also would have the power of revision if he was sitting in a High Court. In these circumstances, it must be presumed that whenever a Special Judge passes any interlocutory order or an intermediate order like framing of charges, he would do so only with full and complete application of his mind and considering the various principles and guide-lines

indicated by this Court in several decisions, some of which have been discussed above, and, therefore, it would not be in keeping with the dignity, decorum and status of the Special Judge to provide for an appeal even against such an order which he is supposed to pass with full application of mind and due deliberation.

21. It was then contended by the learned counsel for the appellant that the non obstante clause should be interpreted according to the salutary principle laid down by this Court. In support of his submission, he relied on a decision of this Court in the case of Aswini Kumar Ghosh v. Arabinda Bose (1953 SCR 1, 21-22, 23, 43, 63 : AIR 1952 SC 369 : 1952 SCJ 568) where Patanjali Sastri, C.J. observed as follows :

> It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non obstante clause is to be understood as operating to set aside no longer valid anything contained in relevant existing laws which is in consistent with the new enactment ..... The true scope of the enacting clause must, as we have observed, be determined on a fair reading of the words used in their natural and ordinary meaning ....

Similar observations were made by Mukherjea, J. : (1953 SCR 1, 21-22, 23, 43, 63 : AIR 1952 SC 369 : 1952 SCJ 568)

> In my opinion, the section on its negative side eliminates so far as the Supreme Court Advocates are concerned, all disabling provisions existing under any law is regard to persons who are not enrolled as Advocates of any particular High Court. On the positive side, the section confers on Supreme Court Advocates the statutory privilege of practising as of right, in any High Court in India, no matter whether he is enrolled as an Advocate of that court or not.

Das. J. as he then was, observed as follows : (1953 SCR 1, 21-22, 23, 43, 63 : AIR 1952 SC 369 : 1952 SCJ 568)

> In short, there is no escape from conclusion that the ambit, scope and effect of the non obstante clause are to supersede the Indian Bar Councils Act and any other Act only insofar as they regulate the conditions referred to therein.

22. The observations of Das, J. clearly show that the effect of non obstante clause was to supersede the Indian Bar Councils Act and any other Act insofar as they regulate the conditions referred to therein. If we apply this test to the present case, then it is manifest that the non obstante clause would have the effect of overriding and excluding the provisions of the Code. Applying the test laid down by Sastri, C.J., we find that the position may be summed up as follows :

> (1) We should exclude the statute concerned from consideration; in the instant case 'The Code'.
>
> (2) We should construe the words used according to their natural and ordinary meaning instead of referring to the statute which is sought to be excluded.

23. We entirely agree with the approach indicated by Sastri, C.J. and which is also binding on us. Let us se what is the effect interpreting the non obstante clause according to the test laid down by

the decision, referred to above, and particularly the observations of Sastri, C.J. Let us for the time being forget the provisions of Section 397(2) of the Code or the interpretation put by this Court on the term 'interlocutory order' as appearing in the Code because the decisions were based purely on the interpretation of the provisions of the Code. We have, therefore, first to determine the natural meaning of expression 'interlocutory order'. To begin with, in order to construe the term 'interlocutory', it has to be construed in contradistinction to or contrast with a final order. We are fortified by a passage appearing in THE SUPREME COURT PRACTICE, 1976 (Vol. I, p. 853) where it is said that an interlocutory order is to be contrasted with a final order, referring to the decision of Salaman v. Warner ((1891) 1 QB 734 : 60 LJ QB 624). In other words, the words 'not a final order' must necessary mean an interlocutory order or an intermediate order. That this is so was pointed out by Untwalia, J. speaking for the court in the case of Madhu Limaye v. State of Maharashtra ((1978) 1 SCR 749 : (1977) 4 SCC 551 : 1978 SCC (Cri) 10), as follows : (SCC p. 557, para 12)

Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'.

Thus, the expression 'interlocutory order' is to be understood and taken to mean converse of the term 'final order'. Now let us see how this term has been defined in the dictionaries and the textbooks. In Webster's THIRD INTERNATIONAL DICTIONARY (Vol. II, p. 1179) the expression 'interlocutory order' has been defined thus :

> Not final or definitive : made or done during the progress of an action : INTERMEDIATE, PROVISIONAL.

Stroud's JUDICIAL DICTIONARY (Fourth Edition, Vol. 3, p. 1410) defines interlocutory order thus :

> "interlocutory order" Judicature Act, 1873 (Clause 66), Section 25(8) was not confined to an order made between writ and final judgment, but means an order than final judgment.

Thus according to Stroud, interlocutory order means an order other than a final judgment. This was the taken in the case of Smith v. Cowell ((1880) 6 QBD 75) and followed in Manchester & Liverpool Bank v. Parkinson ((1889) 22 QBD 175). Similarly, the term 'final order' has been defined in Volume 2 of the same dictionary (p. 1037) thus :

> The judgment of a Divisional Court on an appeal from a country court in an interpleader issue was a "final order" within the old R.S.C., Order 58, Rule 3 (Hughes v. Little ((1886) 18 QBD 32)); so was an order on further consideration (Cummins v. Herron (1877) 4 Ch D 787)), unless action was not thereby concluded .... But an order under the old R.S.C., Order 25, Rule 3, dismissing an action on a point of law raised by the pleading was not "final" within the Order 58, Rule 3, because had the decisions been the other way the action would have proceeded.
>
> HALSBURY'S LAWS OF ENGLAND (Third Edition, Vol. 22, pp. 743-744) describes an interlocutory or final order thus :

Interlocutory judgment or order. - An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is

merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed 'interlocutory'. An interlocutory order though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals ....

> In general a judgment or order which determines the principal after in question is termed 'final'.

At page 743 of the same volume, Blackstone says thus :

> Final judgments are such as at once put an end to the action by declaring that the plaintiff has either entitled himself, or has not, to recover the remedy he sues for .... Four different tests for ascertaining the finality of a judgment or order have been suggested : (1) Was the order made upon an application such that a decision in favour of either party would determine the main dispute ? (2) Was it made upon an application upon which the main dispute could have been decided ? (3) Does the order, as made, determine the dispute ? (4) If the order in question is reversed, would the action have to go on ?

CORPUS JURIS SECUNDUM (Vol. 49, p. 35) defines interlocutory order thus :

> A final judgment is one which disposes of the cause both as to the subject-matter and the parties as far as the court has power to dispose of it, while an interlocutory judgment is one which reserves or leaves some further question or direction for future determination .... Generally, however, a final judgment is one which dispose of the cause both as to the subject-matter and the parties as far as the court has power to oppose of it, while an interlocutory judgment is one which does not so dispose of the cause, but reserves or leaves some further question or direction for future determination .... The term "interlocutory judgment" is, however, a convenient one to indicate the determination of steps or proceedings in a cause preliminary to final judgment, and in such sense the term is in constant and general use even in code states.

Similarly, Vol. 60 of the same series at pate 7 seeks to draw a distinction between an interlocutory and a final order thus :

> The word "interlocutory", as applied to rulings and orders by the trial Court, has been variously defined. It refers to all orders, rulings, and decisions made by the trial Court from the inception of an action to its final determination. It means, not that which decides the cause, but that which only settles some intervening matter relating to the cause. An interlocutory order is an order entered pending a cause, deciding some point or matter essential to the progress of the suit and collateral to the issues formed by the pleadings and not a final decision or judgment on the matter in issue .... An intermediate order has been defined as one made between the commencement of an action and the entry of the judgment.

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 ((1978) 1 SCR 749 : (1977) 4 SCC 551 : 1978 SCC (Cri) 10) 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, within 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 statue. 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 ((1885) 14 QBD 627) 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 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 ((1891) 1 QB 734 : 60 LJ QB 624), 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 which 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 purpose 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 the 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 ((1877) 3 CPD 67 : 37 LT 372), and which on the whole I think to be the 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 consistently followed by this Court in later cases and appears to us to contain most valuable guide-lines 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" whether 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 Distt. Council ((1930) 1 KB 547 : 72 LJ KB 272) 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 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 ((1882) 9 QBD 621 : 46 LT 749). In Shubrook v. Tufnell ((1882) 9 QBD 621 : 46 LT 749) 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 ((1903) 1 KB 547 : 72 LJ KB 272), cited above. We might, however state that although Lord Halsbury had expressed his dissent from Salaman v. Warner case ((1891) 1 QB 734 : 60 LJ QB 624) yet the Federal Court as also this Court appear to have followed an 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 ((1916) 2 KBD 139 : 144 LT 924) Lord Swinfen Eady followed the Bozson case ((1903) 1 KB 547 : 72 LJ KB 272) and particularly the observations of Lord Alverstone in that case. In this connection, Lord Eady observed as follows :

> Then there is Salaman v. Warner ((1891) 1 QB 734 : 60 LJ QB 624) 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 ((1903) 1 KB 547 : 72 LJ KB 272) which puts the matter on the true foundation that what must be looked at it 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 case ((1882) 9 QBD 621 : 46 LT 749) 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. ((1956) 3 All ER 513, 514(H), 515(F) : (1956) 1 WLR 1326), 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 interlocutory.

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 case of Salter Rex & Co. v. Ghosh ((1971) 2 All ER 865, 866 : (1971) 2 QBD 597), Lord Denning reviewed the entire case-law on the subject and ultimately preferred the view taken by Lord Alverstone in Bozon case ((1903) 1 KB 547 : 72 LJ KB 272) and Lord Esher In Salaman case ((1891) 1 QB 734 : 60 LJ QB 624). In other words, both the Salaman ((1891) 1 QB 734 : 60 LJ QB 624) and the Bozson ((1903) 1 KB 547 : 72 LJ KB 272) cases were endorsed by Lord Denning. In this connection, Lord Denning observed as follows : ((1971) 2 All ER 865, 866 : (1971) 2 QBD 597)

There is a note in the SUPREME COURT PRACTICE, 1970 (Vol. 1, p. 779, para 59/4/2), under R.S.C. Order 59, Rule 4, from which it appears that different tests have been stated from time time as to what is final and what is interlocutory. In Standard Discount Co. v. La Grange ((1877) 3 CPD 67 : 37 LT 372) and Salaman v. Warner ((1891) 1 QB 734 : 60 LJ QB 624) 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 Distt. Council ((1903) 1 KB 547 : 72 LJ KB 272), 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 look 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 ((1939) 1 FCR 159 : AIR 1939 FC 43 : 40 Cri LJ 468) Sulaiman, J. referred to Salaman case ((1891) 1 QB 734 : 60 LJ QB 624) 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 case ((1903) 1 KB 547 : 72 LJ KB 272) 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 it 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 civil case or a criminal case and the definition given by the English Judges would apply to both. This case was noticed in S. Kuppuswami Rao v. King (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625) which, in our opinion, is a leading case on the subject or, if we may say so, it is 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. ((1939) 1 FCR 159 : AIR 1939 FC 43 : 40 Cri LJ 468) and also noticed the view of Lord Esher in Salaman v. Warner ((1891) 1 QB 734 : 60 LJ QB 624) 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 ((1891) 1 QB 734 : 60 LJ QB 624). 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 ((1891) 1 QB 734 : 60 LJ QB 624) and Bozson v. Altrincham Urban Distt. Council ((1903) 1 KB 547 : 72 LJ KB 272). 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 ((1939) 1 FCR 159 : AIR 1939 FC 43 : 40 Cri LT 468) 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 ((1933) 60 IA 76 : AIR 1933 PC 58) 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 case (Ramchand

Manjimal v. Goverdhandas Vishindas, (1920) 47 IA 124 : AIR 1920 PC 86 : 22 Bom LR 606 : 39 MLJ 27) 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 and Vol. IX of HALSBURY'S LAWS OF ENGLAND (Hailsham Edition) shows that the word "judgment" 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 of 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 proceedings brought to this Court under Section 205(1) of the Constitution Act.

31. This case was followed in the case of Mohd. Amin Bros. v. Dominion of India ((1949) XI FCR 842 : AIR 1950 FC 77, 78, 79 : 1950 SCJ 139) where it was held that so far as this Court is concerned the principles laid downin Kuppuswami case (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625) 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. King (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625), and the law on point, so far as this Court is concerned, seems to be well stated. In full agreement with the decisions of the Judicial

> Committee in Ramchand Manjimal v. Goverdhandas Vishandas (Ramchand Manjimal v. Goverdhandas Vishindas, (1920) 47 IA 124 : AIR 1920 PC 86 : 22 Bom LR 606 : 39 MLJ 27) and Abdul Rahman v. D. K. Cassim and Sons ((1933) 60 IA 76 : AIR 1933 PC 58) 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 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 (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625). We find ourselves in complete agreement with the view taken by Mukerjea, 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 case (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625) was endorsed by this Court in the case of Mohan Lal Magan Lal Thacker v. State of Gujarat ((1968) 2 SCR 685, 688, 689 : AIR 1968 SC 733 : 1968 Cri LJ 876) 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 principle 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 (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625) 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 Mohd. Amin Bros. Ltd. v. Dominion of India ((1949) XI FCR 842 : AIR 1950 FC 77, 78, 79 : 1950 SCJ 139) 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 propositions emerge :

> (1) that an order which does not determine the right 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 order 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 case ((1978) 1 SCR 749 : (1977) 4 SCC 551 : 1978 SCC (Cri) 10) which has been expressly stressed by us in an earlier part of the judgment. 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 tests 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 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 (AIR 1960 J & K 71, 76 : 1960 Cri LJ 584 (FB) 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 the 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 player 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 hereafter. 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 proceedings 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 in 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 & 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 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 Section 251 to 254 onwards which may be extracted thus :

> 251. Procedure in warrant case - The following procedure shall be observed by Magistrates in the trial of warrant cases.
>
> 252. Evidence for prosecution. - (1) When the accused appears or brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced as 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 251-A 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 Section 251-A 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 out 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. Realising 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 251-A (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 251-A 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 and without recording any evidence, was to examine the accused if he considered necessary, and after hearing the parties proceed either to frame 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 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 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 251-A in the previous Code and Section 238 in the Code of 1973, do not amount to an inquiry at all but amount to the stating of a trial straightway. 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 251-A 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 appears in Chapter XXV of 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 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 opinions 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 476-A is another provision which empowers a superior court to file a complaint in respect of the offences mentioned in Section 476 and Section 476-B 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 terminates 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 if given to a superior court under Section 476-A which also ends with the filing or refusal to file a complaint. Section 476-B 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 Section 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 ((1968) 2 SCR 685, 688, 689 : AIR 1968 Sc 733 : 1968 Cri LJ 876). 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 disposed of the controversy between the parties ands the proceedings 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 to 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 (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625) 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 v. State of Maharashtra ((1978) 1 SCR 749 : (1977) 4 SCC 551 : 1978 SCC (Cri) 10) and Amar Nath v. State of Haryana ((1978) 1 SCR 222 : (1977) 4 SCC 137 : 1977 SCC (Cri) 585) 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 exclude 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 guide-lines 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 Kuppuswami case (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625) 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.

Shinghal, J. (dissenting) - I am unable to agree with the decision of the court, for I believe the accused has been deprived of a right which is his by statute - the right of a full hearing of his appeal.

50. The case has come to this "Larger Bench" on reference by two of us. While it has been stated at one place that the "most important question to be decided is as to whether or not the concept or connotation of the word 'interlocutory' in Section 11 purports to convey the same meaning as given to it in Section 397(2) of the Code of Criminal Procedure", the two brother Judges have made a "further mention" as follows :

> .... although we would have normally admitted this appeal but as the admission of the appeal itself would imply a decision that the order under appeal is not an interlocutory one which has to be decided before admitting this appeal, hence we have considered it expedient to make a reference to a larger Bench even at the stage of preliminary hearing.

The question for consideration therefore is whether the impugned order of Judge, Special Court No. 1, New Delhi, dated September 17, 1979, directing the framing of a charge against appellant V. C. Shukla for the commission of offences under Section 120-B of the Indian Penal Code read with Sections 5(1)(d) and 5 (2) of the Prevention of Corruption Act and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act is not an "interlocutory order" within the meaning of section 11(1) of the Special Courts Act, 1979, hereinafter referred to as the Act.

51. In order to appreciate the controversy, it will be proper to refer, briefly, to the relevant provisions of the Act and to those provisions of the Code of Criminal Procedure, 1973, hereinafter referred to as the Code, which bear on it.

52. Section 9 of the Act provides that a Special Court shall, in the trial of cases falling within its jurisdiction, follow the procedure prescribed by the Code for the trial of warrant cases before a Magistrate. That procedure has been prescribed in Chapter XIX of the Code and, for convenience of reference, I shall take it that wherever reference has been made to a Magistrate in that chapter, it relates to the judge of the Special Court.

53. It is not disputed before us that the procedure mentioned under the rubric "A. - Cases instituted on a police report" has been followed by the judge in making the impugned order. The procedure with which he has been concerned so far, is that laid down in Section 238 to 240 of the Code. Section 238 requires that the judge shall satisfy himself about compliance with Section 207 of the Code for the supply of the copy of the police report and other documents to the accused. Then come Sections 239 and 240 which are both important. Section 239 provides that if, upon considering the police report and the documents sent with it under Section 173, and making such examination, if any, of the accused as the judge thinks necessary, and after giving the prosecution and the accused an opportunity of being heard, the judge considers the charge against the accused to be groundless, he shall discharge him. It is obligatory, in that eventuality, for the judge, to record his reasons for so doing. The accused is thus entitled to an order of discharge if the judge, after complying with the procedure prescribed by Section 239, reaches the conclusion that the charge against him is "groundless". The section is of great importance to the accused for it gives him an opportunity of making a statement, if the judge thinks it necessary to give him that opportunity, and it also gives him the opportunity of being heard at that early stage of the case, so that, in a proper case, he can look forward to an order of discharge at the threshold of the trial and be spared any further proceeding. In fact Section 239 envisages a careful and objective consideration of the question whether the charge against the accused is groundless or whether there is ground for presuming that he has committed an offence. What Section 239 prescribes is not, therefore, an empty or routine formality. It is a valuable provision, to the advantage of the accused, and its breach is not permissible under the law.

54. But if the judge, upon considering the record, including the examination, if any, and the hearing, is of the opinion that there is "ground for presuming" that the accused has committed the offence triable under the chapter he is required by Section 240 to frame, in writing, a charge against him. The order for the framing of the charge is also not an empty or routine formality. It is of a far-reaching nature, and it amounts to a decision that the accused is not entitled to discharges under Section 239, that there is, on the other hand, ground for presuming that he has committed an offence triable under Chapter XIX and that he should be called upon to plead guilty to it and be convicted and sentenced on that plea, or face the trial. So an order for the framing of the charge is a serious matter for the accused for he is thereafter no longer a free man as he is put to trial according to the procedure laid down in Sections 242 and 243, and consideration of the question whether he is to be

acquitted or convicted is deferred until the case reaches the stage envisaged by Section 248.

55. Unlike Section 9 of the Act which provides for following the procedure prescribed by the Code for the trial of cases referred to in Section 8, the Act does not provide that an against the order of the Special Court shall be heard and decided according to the procedure laid down in the Code. Section 11 of the Act with appeals. Sub-section (3) of that section relates to the period of limitation for the filing of the appeal and is of no relevance for purposes of the present controversy. The rest of the section provides as follows :

> 11. (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.

56. The section thus starts with a non obstante clause. I shall have occasion to refer to its meaning and significance in a while, but it may be mentioned here that Section 11 or, for the matter of that, any other section of the Act, does not say, in terms, that the Code shall apply to the hearing of an appeal, or in regard to the powers of the appellate Court. At any rate, the Code has no application insofar as the right of appeal and the forum of appeal are concerned. Both these matters are governed by Section 11 of the Act.

57. But even as it is, sub-section (1) of Section 11 provides that while an appeal shall lie "as of right" from "any" judgment, sentence or "order" of a Special Court, both on facts and on law, it states, at the same time, that the appeal shall lie against that order which is not an interlocutory order. There is therefore no right of appeal against an interlocutory order of the Special Court.

58. What then is an "interlocutory order" ? The expression has not been defined in the Act, or in the Code even though it has been used in Section 397(2), and has been the subject-matter of controversy both in this country and elsewhere. How uncertain is its meaning, will appear from the following observation of Lord Denning, M.R. in Salter Rex & Co. v. Ghosh ((1971) 2 All ER 865, 866 : (1971) 2 QBD 597) :

> This question of 'final' or 'interlocutory' is so uncertain, that the only thing for practitioners to do is to look up the practice books and see what has been decided on the point. Most orders have now been the subject of decision. If a new case should arise, must do the best we can with it. There is no other way.

I confess I am unable to do better. I shall therefore proceed to see what has been decided by this Court on the point.

59. I shall start with the decision in Mohan Lal Magan Lal Thacker v. State of Gujarat ((1968) 2 SCR 685, 688, 689 : AIR 1968 SC 733 : 1968 Cri LJ 876), which has been rendered by five Judges of this Court and relates to a criminal case. There the Magistrate, after enquiry under Section 476 of the Code of Criminal Procedure, 1898, ordered that the appellant may be prosecuted for offences under Sections 205, 467 and 468 read with Section 114, IPC. On appeal, the Additional Sessions Judge held that the complaint was justified, but only in respect of the offence under Section 205/114 IPC. The High Court dismissed the appellant's revision petition, but granted certificate under Article 134(1)(c) of the Constitution. The State urged in this Court that the High Court's order dismissing

the revision petition was not final as it did not determine the complaint filed by the Magistrate and did not decide the controversy whether the appellant had committed the offence. The trial had in fact still to begin.

60. Article 134(1)(c) as it stood at that time provided that an appeal shall lie to this Court from, inter alia, any "final order" in a proceeding of the High Court if it certified that the cases was a fit one for appeal. This Court referred to the decision in S. Kuppuswami Rao v. King (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625); Mohammad Amin Brothers Ltd. v. Dominion of India ((1949) XI FCR 842 : AIR 1950 FC 77, 78, 79 : 1950 SCJ 139); State of Orissa v. Madan Gopal Rungta (1952 SCR 1 : AIR 1952 SC 12 : 1951 SCJ 764); Ramesh v. Seth Gendalal Motilal Patm ((1966) 3 SCR 198 : AIR 1966 SC 1445 : 68 Bom LR 776) and other cases. It made a reference to HALSBURY'S LAWS OF ENGLAND (3rd edition), Volume 22, pages 742-743 and the four tests mentioned therein, including the test in Salaman v. Warner ((1891) 1 QB 734 : 60 LJ QB 624) and observed as follows :

> The question as to whether a judgment or an order is final or not has been the subject-matter of a number of decisions; yet no single general test for finality has so far been laid down. The reason probably is that a judgment or order may be final for one purpose and interlocutory for another or final as to part and interlocutory as to part. 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.

61. It may be mentioned that in reaching that conclusion this Court clearly mentioned that the test applied in Salaman case ((1891) 1 QB 734 : 60 LJ QB 624) as to whether the order made upon an application was such that a decision in favour of either party would determine the main dispute, was not followed even by Lord Halsbury in Bozson v. Altrincham Urban Distt. Council ((1903) 1 KB 547 : 72 LJ KB 272). It was pointed out in that case that there was an earlier decision of the Court of Appeal in Shubrook v. Tufnell ((1882) 9 QBD 621 : 46 LT 749) which was not cited in Salaman case ((1891) 1 QB 734 : 60 LJ QB 624) although it appeared to be in conflict with it. That was why Halsbury, L. C. preferred to follow the "earlier decision" and not the decision in Salaman ((1891) 1 QB 734 : 60 LJ QB 624). This Court observed in Mohan Lal Magan Lal case ((1968) 2 SCR 685, 688, 689 : AIR 1968 SC 733 : 1968 Cri LJ 876) that a so-called interlocutory order, "though not conclusive of the main dispute may be conclusive as to the subordinate matter with which it deals". In fact when the matter came up for consideration again in Salter Rex & Co. v. Ghosh ((1971) 2 All ER 865, 866 : (1971) 2 QBD 597), Lord Denning, M.R. referred to Salaman cases ((1891) 1 QB 734 : 60 LJ QB 624) and preferred to follow it only to the extent that the test whether an order was final or interlocutory was the "nature of the application to the court; and not the nature of the order which the court eventually made".

62. The aforesaid view taken by this Court in Mohan Lal Magan Lal ((1968) 2 SCR 685, 688, 689 : AIR 1968 SC 733 : 1968 Cri LJ 876) is therefore significant, for it does not approve of the view taken in Salaman case ((1891) 1 QB 734 : 60 LJ QB 624) and lays down at least two clear propositions of law : (i) an order may be final for one purpose and interlocutory for another, and (ii) it may be final as to part and interlocutory as to part, and that the meaning of the two words has to be determined in relation to the particular purpose for which it is required to be given. As I shall show, both these propositions are significant in this case for while an order framing the charge against the accused does not conclude his trial, it is "final" in the sense that his right to an order of discharge is refused to him once for all and he is put on trial.

63. The above observations in Mohan Lal Magan Lal ((1968) 2 SCR 685, 688, 689 : AIR 1968 SC 733 : 1968 Cri LJ 876) have been followed by this Court in Parmeshwari Devi v. State ((1977) 2 SCR 160 : (1977) 1 SSC 169 : 1977 SCC (Cri) 74) to which one of us was a party. There, during the course of the trial of a criminal case, the complainant made an application under Section 94 of the Code of Criminal Procedure, 1898, praying that Smt. Parmeshwari Devi, who was not a party to the case, may be directed to produce a document. The Magistrate made an order summoning her with the document. Smt. Parmeshwari Devi professed ignorance not be document, and stated that as she was a "pardanashin" lady she may not be summoned by the court. The Magistrate thereupon passed an order directing her to attend the court so that if she made a statement on oath that she was not in possession of the document, the court may get a chance to put her a few questions for satisfying itself regarding the whereabouts of the document. Smt. Parmeshwari Devi applied for revision of that order to the Sessions Court and the High Court, but to no avail. When she obtained special leave for appeal to this Court, it was argued that the Magistrate's order was interlocutory and the power of revision conferred by Section 397(1) of the Code could not be exercised in relation to it by virtue of sub-section (2). It was held that an order "may be conclusive with reference to the stage at which it is made" and that such an order could not be said to be an interlocutory order so as to bar a revision petition under Section 397 (2). The stage at which the order under challenge is made, is therefore significant for deciding its true nature.

64. The next cases which bears on the controversy is State of Karnataka v. L. Muniswamy ((1977) 3 SCR 113 : (1977) 2 SCC 699 : 1977 SCC (Cri) 404) to which also one of us was a party. It was alleged in that case that accused 1 and 8 to 20 conspired to commit the murder of the complaint, and that in pursuance of that conspiracy accused 1, 8 and 10 hired accused 2 to execute the object of the conspiracy. Accused 2 in turn engaged the services of accused 3 to 7, and eventually accused 1 and 6 were alleged to have assaulted the complainant with knives thereby committing offences under Sections 324, 326 and 307 read with Section 34, IPC etc. The Magistrate directed all the 20 accused to take their trial before the Sessions Court for offences under Sections 324, 326 and 307 read with Section 34. The Sessions Judge discharged accused 11, 12 and 16, and observed that there was some material to hold that the remaining accused had something to do with the incident. He adjourned the case to September 1, 1975, for framing specific charges against them. Two revision petitions were filed by the accused, one by accused 10, 13, 14 and 15 and the other by accused 17 to 20. They were allowed by the High Court on the view that there was no sufficient ground for proceeding against them, and the proceedings for the framing of the charge were quashed. The matter then came to this Court in appeal. After considering Section 227 of the Code, which is substantially similar to Section 239 of the Code, this Court upheld the revisional order of the High Court, although the controversy here referred to the scope of Section 482 of the Code, and it was observed that "the ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature."

65. Then comes Amar Nath v. State of Haryana ((1978) 1 SCR 222 : (1977) 4 SCC 137 : 1977 SCC (Cri) 585) to which one of us was a party. It was a case of alleged murder, where an FIR was lodged by the complainant. The police sent a final report, and the Magistrate set all the accused at liberty. The complainant filed a revision petition against that order, but it was dismissed by the Additional Sessions Judge. He then filed a regular complaint before the Magistrate against all the accused, but it was also dismissed. The complainant again went in revision to the Sessions Judge and he remanded the case to the Magistrate for "further enquiry". The Magistrate accordingly issued summons to the accused, who moved the High Court under Sections 397 and 482 of the Code for quashing the order of the Magistrate. The High Court dismissed the petition on the ground that as the order of the Magistrate was interlocutory, a revision to it was barred by sub-section (2) of

Section 397 and that consequently the case could not be taken up under Section 482.

66. The matter came to this Court. It proceeded to examine the question whether the impugned order was interlocutory so as to justify the view that it was barred under sub-section (2) of Section 397 and held as follows :

> It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.

It has to be appreciated that the order of the Sessions Judge on the revision petition of the complainant for "further enquiry", left no option to the petition of the complainant for "further enquiry", left no opinion to the Magistrate but to summon the accused and proceed with their trial after framing a charge against them, but it was nevertheless held by this Court as follows :

> It is difficult to hold that the impugned order summoning the appellants straightaway was merely an interlocutory order which could not be revised by the High Court under sub-sections (1) and (2) of Section 397 of 1973 Code ... We are, therefore, satisfied that the order impugned was one which was a matter of moment and which did involve a decision regarding the rights of the appellants.

The contrary order of the High Court refusing to entertain the revision petition on its interpretation of sub-section (2) of Section 397 was set aside and it was asked to decide it on the merits. This view was taken even though it was appreciated that Section 397(2) had been incorporated in the Code" with the avowed purpose of cutting out delays".

67. This Court has therefore taken the view in Amar Nath case ((1978) 1 SCR 222 : (1977) 4 SCC 137 : 1977 SCC (Cri) 585) that the expression "interlocutory order" has been used in Section 397(2) of the Code in a restricted sense, that it "denotes" orders of a purely interim temporary nature which do not decide or touch the important rights liabilities of the parties and that any order which substantially affects rights of the accused is not an interlocutory order. On that reasoning, an order for the framing of a charge against the accused in this case cannot be said to be an interlocutory order.

68. The matter again came up for consideration in Madhu Limaye v. State of Maharashtra ((1978) 1 SCR 749 : (1977) 4 SCC 551 : 1978 SCC (Cri) 10) where one of us was a member of the Bench which heard the case, and one of the other two judges was a party to the decision in Amar Nath case

((1978) 1 SCR 222 : (1977) 4 SCC 137 : 1977 SCC (Cri) 585). The case arose on a complaint by the Public Prosecutor in the Court of Session, after obtaining sanction under Section 199(4)(a) of the Code, as the alleged offence was under Section 500, IPC for defaming a Minister. Process was issued against the accused. After the Chief Secretary had been examined to prove to sanction of the State Government, the accused filed an application for the dismissal of the complaint on the ground that the allegations were made in relation to what the Minister had done in his personal capacity and not as a Minister. The accused made two other contentions and challenged the legality and validity of the trial. The Sessions Judge rejected an the contentions and framed a charge under Section 500, IPC. The accused challenged that order by a revision petition to the High Court. A preliminary objection was raised there to the maintainability of the revision petition with reference to the bar under sub-section (2) of Section 397 of the Code. The High Court upheld the objection, and the matter came in appeal to this Court at the instance of the accused. The question for whether the order of the Sessions Judge framing the charge under Section 500, IPC was interlocutory.

69. Untwalia, J., who spoke for the court, referred to the two points which arose for consideration in Amar Nath case ((1978) 1 SCR 222 : (1977) 4 SCC 137 : 1977 SCC (Cri) 585), to which reference has already been made, and reaffirmed the decision on the second point that the impugned order of the Magistrate in that case was not an interlocutory order. He however thought it advisable to "enunciate and reiterate the view taken by the two learned Judges of this Court in Amar Nath case ((1978) 1 SCR 222 : (1977) 4 SCC 137 : 1977 SCC (Cri) 585) but in a somewhat modified and modulated form".

70. Their Lordships considered S. Kuppusami Rao (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625) and Salaman ((1891) 1 QB 734 : 60 LJ QB 624) cases and examined the question whether the test that if the decision whichever way it was given, would, if it stood, finally dispose of the matter in dispute, was a proper test for deciding whether an order was interlocutory, and disapproved it. They went on to hold as follows : (SCC p. 558, para 13)

> But in our judgment such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by Section 397(1). On such a strict interpretation, only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code. This does not seem to be the intention of the legislature when it retained the revisional power of the High Court in terms identical to the one in the 1898 Code.

After referring to the rule of interpretation of statutes, their Lordships further stated that : (SCC pp. 558-559, para 13)

On the one hand, the legislature kept intact the revisional power of the High Court and, on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a situation it appears to us that the real intention of the legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswami case (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625), but, yet it may not be an interlocutory order - pure or simple. Some kinds of orders may fall in between the two. By a rule of harmonious construction, we think that the bar in sub-section (2) of Section 397 is not meant to be attracted to such kinds of

interlocutory orders. They may not be final orders for the purposes of Article 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders with in the meaning of Section 397(2). It is neither advisable, nor possible, to make a catalogue of orders to demonstrate which kinds of orders would be merely, purely or simply interlocutory and which kinds of orders would be final, and then to prepare an exhaustive list of those types of orders which will fall in between the two. The first two kinds are well known and can be culled out from many decided cases. We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of sub-section (2) of Section 397. In our opinion it must be taken to be an order of the type falling in the middle course.

71. Their Lordships made a reference to Mohan Lal Magan Lal ((1968) 2 SCR 685, 688, 689 : AIR 1968 SC 733 : 1968 Cri LJ 876) and added that even though the case under their consideration might not be said to be squarely covered by that decision.

Yet for reasons already alluded to, we feel no difficulty in coming to the conclusion, after due consideration, that an order rejecting the plea of the accused on a point which, when accepted will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of Section 397(2). (SCC p. 560, para 16)

They also pointed out an

obvious, almost insurmountable, difficulty in the way of applying literally the test laid down in Kuppuswami Rao case (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625), and in holding that an order of kind under consideration being not a final order must necessarily be an interlocutory one. (SCC p. 561, para 17)

72. This decision is directly in point in the present case, and I have no hesitation in following it, for otherwise the revisional power of the court concerned under sub-section (1) of Section 397 of the Code will be rendered nugatory on the mere plea that an order framing or directing the framing of a charge against the accused is an interlocutory order and is beyond the reach of that sub-section by virtue of sub-section (2). The nature of that order cannot be determined merely with reference to the eventuality that the accused may ultimately be acquitted on the completion of the trial. There is in fact no reason why Section 397 of the Code should be so narrowly construed and why the real nature of the order framing the charge should be taken to be a merely interlocutory order, beyond the reach of the revisional power allowed to the court concerned under Section 397 when it cannot be denied that if the contention of the accused against the order framing the charge against him were allowed, that would, by itself, have concluded the proceeding against him. It is hardly necessary to say that the object of sub-section (1) of Section 397 of the Code is to provide relief to the aggrieved party where it is deserved, if only the order complained of is not of an interlocutory nature. As it happens, Section 11 of the Act is, in that respect, quite similar in purpose and content to Section 397 of the Code and there is no reason why the same meaning and effect should not be given to it.

73. I have made a reference to the decision in S. Kuppuswami Rao (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625) and Mohd. Amin Brother Ltd. ((1949) XI FCR 842 : AIR 1950 FC 77, 78, 79 : 1950 SCJ 139), on which considerable reliance has been placed by learned Solicitor-General while dealing with this Court's decisions mentioned above, and it will be sufficient to say that they have been adequately dealt with in those cases. They both relate to the right of appeal under Section 205(1) of the Government of India Act, 1935 from, inter alia, any "final order". In S. Kuppuswami

Rao (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625) there were two preliminary objections, one on the ground that consent of the government was necessary under Section 270(1) but was not obtained, and the other on the ground that the proceedings were against Section 197 Code of Criminal Procedure read with Section 271 of the Constitution Act. It appears that reliance was placed by their Lordships on Salaman case ((1891) 1 QB 734 : 60 LJ QB 624), to which also I have made a reference; and in arriving at the decision in Mohd. Amin Brothers Ltd. case ((1968) 2 SCR 685, 688, 689, : AIR 1968 SC 733 : 1968 Cri LJ 876), reliance was placed on S. Kuppuswami Rao case (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625) for taking the view that the law on the point, so far as the Federal Court was concerned, seemed to have been "well settled". These two decisions cannot therefore avail the learned Solicitor-General.

74. So on looking up and seeing what has been decided on the question of "final" or "interlocutory" order, I have no doubt that the impugned order is not an interlocutory order and is clearly appealable under Section 11 of the Act.

75. But even if it were a "new case", the answer, as I shall presently show, will not be different.

76. Sub-section (1) of Section 11 of the Act, it will be realised, expressly states that an appeal shall lie "as of right" from "any" judgment, sentence or "order" not being an interlocutory order, to this Court both on "facts" and on "law". The words to which emphasis has been supplied are significant, or are, at any rate, not without significance. They provide that if "any" "order" of the Special Court is not of an interlocutory nature, it is the "right" of the aggrieved party to prefer an appeal against it to this Court, Sub-section (2) provides that except as mentioned in sub-section (1), no appeal or revision shall lie to any court from any judgment, sentence or order of Special Court. The significance of these provisions can be better appreciated with reference to provisions like those contained in Sections 372 to 379 of the Code which place some restrictions on the right of appeal from a judgment or order of a criminal court. These restrictions are not there in the case of an appeal under Section 11 of the Act. The section no doubt prohibits an appeal from an interlocutory order, but a corresponding restriction in that respect is to be found in sub-section (2) of Section 397 of the Code which deals with the revisional power of the High Court or the Court of Session, so that, in sum, the provision in Section 11 is clearly more liberal than the provisions in the Code.

77. It has to be appreciated that an appeal, in substance, is in the nature of a judicial examination of a decision by a higher court of a decision of an inferior court. The purpose is to rectify any possible error in the order under appeal. In that sense the revisional jurisdiction is regarded as a part and parcel of the appellate jurisdiction : Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat ((1970) 1 SCR 322 : (1969) 2 SCC 74 : AIR 1970 SC 1). Moreover, it is well settled that statutes pertaining to a right of appeal should be liberally construed. The position has been stated as follows in CRAWFORD ON THE CONSTRUCTION OF STATUTES, paragraph 336, with particular reference to interlocutory orders :

> 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. In a few states, however, where the statute pertains to appeals from interlocutory orders, the rule of strict construction has been applied. But, there seems to be no real justification for this departure from the general rule in accord with which a liberal construction would be given by the court.

Any doubt regarding the right of appeal should therefore be resolved in favour of the right.

78. There is another reason for this view. Section 11 of the Act gives a right of appeal against "any" order of a Special Court, and not merely from its "final" order. The significance of such a dispensation came up for consideration in this Court in Bharat Bank Ltd., Delhi v. Employees (1950 SCR 459 : AIR 1950 SC 188 : 1950 LLJ 921) and it was observed by Fazal Ali, J., after comparing the language of Article 136 of the Constitution, which, inter alia, provides for special leave to appeal to Court from "any" order in any cause or matter passed or made by any court or tribunal, with the provision in Articles 132, 133 and 134 which provide for appeal from a "final order", that the use of the words "any order" along with the other difference of language had "greatly widened" the scope of Article 136 in regard to the appeal thereunder. It has also to be appreciated that Section 11 of the Act not only grants that remedy in the case, inter alia, of "any order", but allows it as matter of right, whereas the remedy under Article 136 is, in terms, discretionary. Further, Section 11 takes care to state categorically that the appeal thereunder shall relate both the facts and the law. It is therefore a liberal and beneficial provision in favour of the aggrieved party and excels the remedy under Section 397 of the Code.

79. Section 11 of the Act starts with a non obstante clause, and it is necessary to examine its meaning and significance also for deciding whether it really enlarges or circumscribes the right of appeal granted by it.

80. Both Mr. Mridul and Mr. Sorabjee agree, and I think rightly, that the correct way to interpret a provision of law with a non obstante clause has been stated by Patanjali Sastri, C.J., in Aswini Kumar Ghosh v. Arabinda Bose (1953 SCR 1, 21-22, 23, 43, 63 : AIR 1952 SC 369 : 1952 SCJ 568) as follows :

> It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment.

It has therefore to be ascertained what the enacting part of Section 11 provides. There can be no doubt that it provides that an appeal shall lie as of right from any judgment, sentence or order, not being an interlocutory order, of a Special Court. As this could not have been permissible, in respect of certain judgments, sentences and orders of a criminal court under the Code, e.g. in cases falling under Sections 375 and 376, the non obstante clause operates to rid the aggrieved party of any such limitation or disability and gives him an unfettered right of appeal so log as the judgment, sentence or order is not of an interlocutory nature.

81. It has to be remembered that Section 372 of the Code categorically states that no appeal shall lie from any judgment or order of a criminal court except as provided by the Code or any other law for the time being in force. So in respect of such judgments and orders from which the Code does not provide a right of appeal, Section 397 provides for a revision of the incorrect order. But a reading of the section shows that the revisional power cannot be invoked by the aggrieved party as of right, and all that it does is to empower the High Court or any Sessions Judge to call for and examine the record of any proceeding before any inferior criminal court for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, and as to the correctness, legality of any proceeding of such inferior court. The revisional power is therefore

discretionary and is, at any rate, not available to the aggrieved party as of right. Moreover the remedy by way of a revision petition has been hedged round with certain limitations and restrictions, whereas Section 11 ensures a right of appeal "both on facts and on law". In fact what Section 11 of the Act does is to do away with the power of revision under the Code [sub-section (2)], and to substitute for it an unlimited right of appeal against any judgment, sentence or order of the Special Court so long as the impugned order is not of an interlocutory nature. The aggrieved party has, thereby, really lost nothing to which it would have been entitled under the Code, for sub-section (2) of Section 397 also specifically states that the power of revision conferred by sub-section (1) shall not be exercised in relation to an interlocutory order. So the net effect of the non obstante clause in Section 11 is to widen the remedy available under the Code. On the view taken by this Court in South India Corpn. (P) Ltd. v. Secy., Board of Revenue, Trivandrum ((1964) 4 SCR 280 : AIR 1964 SC 207 : 15 STC 74), the phrase "notwithstanding anything in the Code" is equivalent to saying that in spite of the provisions of the Code, Section 11 shall prevail, insofar as the right of the aggrieved party to obtain redress of its grievance against any judgment, sentence of order (not being an interlocutory order) is concerned.

82. Sub-section (2) of Section 11 of the Act does not provide anything which may detract from the view I have expressed for all that it says is that except as mentioned in sub-section (1), no appeal or revision shall lie to any court from any judgment, sentence or order of a Special Court. As has been stated, Section 372 of the Code is equally emphatic that no appeal shall lie from any judgment or order of a criminal court except as provided by the Code or by any other law for the time being in force; and it will be recalled that the exercise of the revisional jurisdiction under Section 397 of the Code is entirely in the discretion of the superior courts mentioned in that section, with the further prohibition in sub-section (2) thereof that the power of revision shall not be exercised in relation to an interlocutory order. So while under the Code two correctional remedies are open to the aggrieved party - one by way of an appeal and the other by way of a petition for revision which however is a remedy within the discretion of the High Court or the Sessions Judge - Section 11 of the Act makes any and every judgment, sentence or order appealable so long as the order is not of an interlocutory nature. In respect of an interlocutory order, however, no remedy by way of appeal or revision is permissible under the Code, and the position in that respect is not worse under Section 11 of the Act. The right of appeal under Section 11 is therefore wider than the appellate and revisional remedies provided by the Code.

83. What then has happened in this case ? The Central Government has made a declaration under Section 5(1) of the Act that the offence alleged to have been committed by the accused ought to be dealt with under the Act. It has designated, under Section 6, Special Court No. 1, New Delhi, to be the court where the prosecution for the offence shall be instituted, and it is not disputed that court has acquired the jurisdiction to try the accused for offence in respect of which the declaration has been made. That court, as has been stated, is required to try the case by following the procedure prescribed by the Code for the trial of a warrant case before a Magistrate. The accused appeared before the Judge of the Special Court, and it has not been disputed before us that the Judge followed the procedure laid down for cases instituted on a police report. He accordingly satisfied himself, as required by Section 238 of the Code, that he had complied with the provisions of Section 207 which require the supply to the accused of a copy of the police report and the other documents i.e., the first information report, statements recorded under Section 161(3) of all persons whom the prosecution proposes to examine as its witnesses, the confessions and statements (if any) recorded under Section 164 and any other document or relevant extract thereof forwarded with the police report under Section 173(5). All the relevant record was thus available to the court as well as the accused, and under Section 239 of the Act it was the duty of the judge to consider it. He had also to consider

whether, looking to the nature of the case and the aforesaid evidence, it was necessary for him to examine the accused. We are told that the judge did not consider it necessary to examine the accused. He therefore heard the prosecution and the accused as required by Section 239, and we take it that, in view of the contents of the impugned order, he did not consider the charge against the accused to be "groundless" and there was no occasion for him to record the reasons for his discharge. On the other hand, he formed the opinion that there was ground for presuming that the accused had committed an offence triable as a warrant case, and he ordered the framing of a charge or charges against him in writing. It is hardly necessary to say that all this had to be done objectively, and the judge must have done so. He thus reached the conclusion that the charge against the accused was not groundless, that he was therefore not entitled to an order of discharge, that, on the other hand, there was ground for presuming that he had committed the offence or offences triable by him, that he should frame in writing a charge against him for that offence, that he should read out and explain the charge to the accused, that he should ask him whether he pleads guilty to the offence or claims to be tried, that he should record the plea and convict the accused if he pleads guilty or fix a date for the examination of witnesses and proceed to try him according to the other procedure provided by the Code. The decision which the judge took in making the impugned order thus clearly dealt with at least one important stage and aspect of the case against the accused finally, and once for all. That order clearly put him to a full course of trial, and there is no reason why it should not be treated as "any order" against which he is entitled to appeal under Section 11 of the Act and why it should be considered to be a merely interlocutory order. It can not be gainsaid that the position of an accused against whom an order has been made for the framing of a charge for the commission of serious offences like those referred to in the impugned order, is far worse than that of a person against whom no such order has been made and who is looking forward to an order of discharge, for, insofar as he is concerned, his argument that the charge against him is groundless has not been rejected and he has the expectation that he will not be put on trial at all.

84. Reference in this connection may be made to Century Spinuing and Manufacturing Co. Ltd. v. State of Maharashtra (AIR 1972 SC 545 : (1972) 3 SCC 282 : 1972 SCC (Cri) 495) where it has been held by this Court that an order framing a charge against the accused "does substantially affect the person's liberty". The gravity of the charge and the responsibility of the court in that respect have been stated as follows in that case : (SCC p. 291, para 17)

> The argument that the court at the stage of framing the charges has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused is not supportable either on the plain language of the section or on its judicial interpretation or on any other recognised principle of law. The order framing the charges does substantially affect the person's liberty and it is not possible to countenance the view that the court must automatically frame the charge merely because the prosecuting authorities, by relying on the documents referred to in Section 173, consider it proper to institute the case. The responsibility of framing the charges is that of the court and it has to judicially consider the question of doing so.

85. Reference may also be made to this Court's decision in Muniswamy ((1977) 3 SCR 113 : (1977) 2 SCC 699 : 1977 SCC (Cri) 404) to which, as has been stated, one of us was a party. There Chandrachud, J., as he then was, while speaking for the court, followed the view expressed in Century Spinning and Manufacturing Company (AIR 1972 SC 545 : (1972) 3 SCC 282 : 1972 SCC (Cri) 495) and reiterated the importance of an order framing a charge with reference to the liberty of the accused as follows : (SCC p. 704, para 10)

> As observed in that latter case, the order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge.

86. It is therefore the view of this Court and, if I may say so, rightly, that an order framing a charge is of great importance to the accused for it substantially affects his liberty. I am in fact unable to think that it is merely an interlocutory order and is not open to correction by appeal under Section 11 of the Act. It has to be appreciated that it is permissible for the accused not to plead guilty to the charge and claim that he should be tried for it. And if he does so, he has to undergo the full procedure for the trial and there is no reason why he should not be heard to say, in his appeal under Section 11 of the Act, that the charge against him is wholly groundless and he is entitled to an order of discharge straightway.

87. An attempt was made to argue that the impugned order should be held to be interlocutory because it was no less an authority than the Central Government which made the declaration referred to in Section 5(1) of the Act on forming the opinion that there was prima facie evidence of the commission of the offence by the accused, and the impugned order was made by no less a court than the Special Court. The argument does not deserve any serious consideration for, as is well known, there are many decisions in which no such importance has been attached to sanctions given by the Central Government under Section 197, CrPC for the prosecution of Public servants, and, as is equally well known, this Court quite often interferes with discretionary orders of High Courts even in matters like grant or refusal of bail or temporary injunction etc.

88. To say that an appeal against an order directing the framing of a charge against the accused should be refused on the ground that such an order is interlocutory, is to misunderstand the meaning of an interlocutory order. After all, the question whether an order is "final" or "interlocutory" has not to be determined merely from the character of the proceedings in which it is entered, but from the character of the relief granted or refused. For instance, if in a given case a serious point of law relating to the bar of limitation, or the jurisdiction of the court, or a material irregularity in the procedure adopted by it, and/or the framing of a wholly untenable charge, is raised, but is rejected by an order of the court dealing with the case, it does not require much argument to hold that it will certainly not be permissible to contend that such an order is interlocutory merely because its decision against the accused has not concluded the case. It will not therefore be permissible to contend that such an order is not revisable under the Code, or appealable under Section 11 of the Act, as the case may be. The dictionary meaning of "interlocutory" cannot be conclusive of the true nature of an order for, after all, you cannot make a fortress out of a dictionary.

89. An argument has however been made that we should hold the impugned order to be interlocutory for otherwise the trial of such cases will be held up and will be delayed by the appeals which the accused may file under Section 11 of the Act as a part of their dilatory tactics and the very purpose of passing the Act will be defeated. That this was not the view of those who introduced the Bill, will appear from the fact that it contained a clause providing for a right of appeal, inter alia, against all orders, not excluding the interlocutory orders. That in fact continued to be the position even when the Bill was passed by the Lok Sabha. It was not therefore the view, until after that late stage of the Bill, that providing for the right of appeal against every order (not excluding an interlocutory order) would defeat the purpose of the statute to determine the trial of such offences with "utmost dispatch", cannot be allowed to interfere with the right to fair trial, for that is of the very essence of the fundamental right of protection of personal liberty guaranteed by Article 21 of the Constitution, and it has been noticed in the ninth paragraph of the preamble of the

Act. It is not permissible to whittle it down on the pretext of mere expedition, which, in its true sense and meaning, should not be equated to a hurried trial, at the cost of the personal liberty of the citizen and in derogation to his right under the very special Act under which he is put to trial as an accused out of the ordinary.

90. I have no hesitation therefore in holding that the impugned order is to "interlocutory" and the accused is entitled of right to prefer the present appeal.

Desai J. (concurring) - While I concur in the final order proposed by Fazal Ali, J. this separate opinion has become a compelling necessity to focus attention on the central issue avoiding the unnecessary side issues.

92. A preliminary objection was raised on behalf of the respondent urging that in view of the provision contained in Section 11(1) of the Special Courts Act, 1979 ('Act' for short), the present appeal which is directed against an order framing charge by the judge presiding over Special Court No. 1 set up under the Act, the order being an interlocutory order, is incompetent. The question that needs to be answered is : Whether framing of charge in a trial conducted according to the procedure prescribed for trial of warrant case filed on police report is an interlocutory order within the meaning of Section 11(1) of the Act. If it is an interlocutory order, it cannot be gain said that the present appeal would be incompetent.

93. Section 11 may be extracted :

> 11. (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 any 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.

94. Section 11(1) starts with a non obstante clause. In order to arrive at the true import, the content - the width and breadth of appellate jurisdiction, it would be advantageous not excluded the non obstante clause and ascertain what has been provided for by the substantive provision contained in Section 11 (1). Obliterating the non obstante clauses and shorn of it, Section 11(1) provides for an appeal from any judgment, sentence or order, not being interlocutory order, of a Special Court to the Supreme Court both on facts and on law and this appeal lies as a matter of right. The expression 'not being interlocutory order' carves out from the orders made appealable under the section a class or category of orders which would not be appealable. In other words, an order which if it can be styled as an interlocutory order made by a Special Court in a proceeding before it, no appeal would lie against it to the Supreme Court. This becomes clear from the provision in sub-section (2) which in terms provides that except as otherwise provided in sub-section (1) no appeal or revision would lie to any court from any judgment, sentence or order of a Special Court. The substantive provision contained in Section 11(1) provides for an appeal from any judgment, sentence or order, not being

interlocutory order, as a matter of right, to this Court both on facts and on law.

95. It is, therefore, necessary to ascertain the true import of what can be styled as an interlocutory order which would not be appealable under Section 11 of the Act.

96. Ordinarily speaking, the expression 'interlocutory' in legal parlance is understood in contradistinction to what is styled as final. In the course of a judicial proceeding before a court, for judicially determining the main dispute brought to the court for its resolution, a number of situations arise, where that court goes on disposing of ancillary disputes raised by parties to the proceeding by making orders and unless the order finally disposes of a proceeding in a court, all such orders during the course of a trial would be broadly designated 'interlocutory' orders. Such interlocutory orders are steps, taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding. They regulate the procedure only and do not affect any right or liability of the parties (see Central Bank of India v. Gokal Chand (AIR 1967 SC 799 : (1967) 1 SCR 310 : (1967) 2 SCJ 828)). Every such interlocutory order may, for the time being, dispose of a particular point of controversy raised in the proceeding, yet nonetheless the order would be an interlocutory order unless by such an order the controversy between the parties is finally disposed of. Again, in legal parlance such an order finally disposing of a dispute between the parties would be a judgment in a civil proceeding. In a criminal proceeding when either the accused is acquitted or convicted and sentence is pronounced upon, the order would be a judgment disposing of case before the court trying the accused. Till this situation is reached, a number of orders may have to be made, during the progress of adjudication of main dispute; such orders can appropriately and legally be styled as 'interlocutory orders'.

97. Where some facet or aspect of a controversy in the course of adjudication of the main dispute between the parties is disposed of by an order but the order has not the effect of finally disposing of the dispute which the parties brought to the court, the order would nonetheless be an interlocutory order and it would not cease to be an interlocutory order merely because it disposed of a certain aspect of the controversy between the parties. That is why in some statutes prescribing procedure for trial of cases - civil or criminal, a provision is made that except where an appeal is provided for against an interlocutory order, all such interlocutory orders would be open to question while hearing an appeal against the final judgment finally disposing of the dispute between the parties. It is in this sense that the expression 'final order' in Section 205(1) of the Government of India Act, 1935 was interpreted by the Federal Court in S. Kuppuswami Rao v. King (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625). Approving the observation of Sir George Lowndes in Abdul Rahman v. D. K. Cassim & sons ((1933) 60 IA 76 : AIR 1933 PC 58), it was held that the test of finality was whether the order finally disposed of the rights of the parties. The finality must be a finality in relation to the suit. If after the order the suit is still a live suit and the rights of the parties are still to be determined, no appeal lies against it under Section 109(a) Civil Procedure Code. Even if the order decides an important and even a vital issue in the case but it left the suit alive and provided for its trial in the ordinary way, it would still not be a final order. When the question again came up before the Federal Court in Mohd. Amin Bros. Ltd. v. Dominion of India ((1949) XI FCR 842 : AIR 1950 FC 77, 78, 79 : 1950 SCJ 139), a larger Bench of the Federal Court unanimously approved the aforementioned interpretation of the expression 'final order' in 205(1). The court observed thus :

> 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 ((1978) 1 SCR 222 : (1977) 4 SCC 137 : 1977 SCC (Cri) 585), and the law on the 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 (Ramchand Manjimal v. Goverdhandas Vishindas, (1920) 47 IA 124 : AIR 1920 PC 86 : 22 Bom LR 606 : 39 MLJ 27) Abdul Rahman v. D. K. Cassim and Sons ((1933) 60 IA 76 : AIR 1933 PC 58) 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 order is, whether the judgment or order finally disposed of the rights of the parties. To quote the language of Sir George Lowndes in Abdul Rahman v. D. K. Cassim & Sons ((1933) 60 IA 76 : AIR 1933 PC 58), the finality must be a finality in relation to the suit. If after the order the suit is still a live suit in which the rights of the parties have still to be determined, no appeal lies against it. The fact that the order decides an important and even a vital issue is by itself not material. If the decision on an issue puts an and to the suit, order will undoubtedly be a final one, but if the suit is still left alive and has got to be tried in the ordinary way, no finality could attach to the order.

98. In the aforementioned two decisions Salaman v. Warner ((1891) 1 QB 734 : 60 LJ QB 624), Bozson v. Altrincham Urban Distt. Council ((1903) 1 KB 547 : 72 LJ KB 272) and Isaacs v. Salbstein ((1916) 2 KBD 139 : 114 LT 924) were referred to and relied upon but it was urged that a different note was sounded by Lord Halsbury in the Bozson case ((1903) 1 KB 547 : 72 LJ KB 272) when he preferred the view expressed in Shubrook v. Tufnell ((1882) 9 QBD 621 : 46 LT 749) and therefore the aforesaid two decisions particularly approving the ratio in the cases of Ramchand Manjimal (Ramchand Manjimal v. Goverdhandas Vishindas, (1920) 47 IA 124 : AIR 1920 PC 86 : 22 Bom LR 606 : 39 MLJ 27) and Abdul Rahman ((1933) 60 IA 76 : AIR 1933 PC 58) would not provide a reliable test. It is not necessary to examine all the decisions in details to find out whether there was some conflict in the view taken in the above-mentioned decisions and one taken by Lord Halsbury in view of a recent decision in Salter Rex & Co. v. Ghosh ((1971) 2 All ER 865, 866 : (1971) 2 QBD 597) wherein Lord Denning after examining the earlier decisions and the apparent conflict as mentioned herein above observed that the view of Lord Alverstone in Bozson case ((1903) 1 KB 547 : 72 LJ KB 272) was right in logic but one of Lord Esher in Salaman case ((1891) 1 QB 734 : 60 LJ QB 624) was right in experience and Lord Easher's test was always been applied in practice. It is to the effect that the decision whichever way is given, if it finally disposes of the matter in dispute, it is final. While, on the other hand, if the decision if given in one way, will finally dispose of the matter in dispute, but, if given in other will allow the action to go on, it was not final but interlocutory.

99. It was, however, said that the test herein indicated is the one in the context of the expression 'final order' in Section 205(1) of the Government of India Act, which expression has been bodily retained in Articles 132, 133 and 134 of the Constitution. It was further said that the test that the expression 'interlocutory order' has to be understood in contradistinction to the expression 'final order' has not been subsequently accepted by this Court, but in fact it has been departed from and, therefore, the later decisions specifically rendered in the context of the expression 'interlocutory order' as used in Section 397(2) of the Code of Criminal Procedure, would hold the field.

100. In Amar Nath v. State of Haryana ((1978) 1 SCR 222 : (1977) 4 SCC 137 : 1977 SCC (Cri) 585) the matter came before this Court against an order of the Magistrate issuing summons upon a complaint filed by the complainant which the High Court declined to quash in a petition filed by the accused under Sections 482 and 397 of the Criminal Procedure Code ('Code' for short). The contention was that the Magistrate had issued the summons in a mechanical manner without applying his judicial mind to the facts of the case. The High Court dismissed the petition in limine

and refused to entertain it on the ground that as the order of the Magistrate dated November 15, 1976 was an interlocutory order, a revision to the High Court was barred by sub-section (2) of Section 397 of the 1973 Code. The learned Judge further held that as the revision was barred, the court could not take up the case under Section 482 in order to quash the very order of the Judicial Magistrate. The observation of this Court which was subject-matter of rival interpretation may be extracted :

> The order of the Judicial Magistrate summoning the appellants in the circumstances of the present case, particularly having regard to what had preceded, was undoubtedly a matter of moment, and a valuable right of the appellants had been taken away by the Magistrate's passing an order prima facie in a mechanical fashion without applying his mind. We are, therefore, satisfied that the order impugned was one which was a matter of moment and which did involve a decision regarding the rights of the appellants. If the appellants were not summoned, then they could not have faced the trial at all, but by compelling the appellants to face a trial without proper application of mind cannot be held to be an interlocutory matter but one which decided a serious question as to the rights of the appellants to be put on trial.

101. The test formulated by the court was that any order which substantially affects the rights of the accused or decides certain rights of the parties cannot be said to be an interlocutory order. The fact that the controversy still remains alive was considered irrelevant. The attention of the court was not drawn to either Kuppuswami case (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625) or Mohammad Amin Brothers case ((1949) XI FCR 842 : AIR 1950 FC 77, 78, 79 : 1950 SCJ 139). In fact, the court relied upon Mohan Lal Magan Lal Thacker v. State of Gujarat ((1968) 2 SCR 685, 688, 689 : AIR 1968 SC 733 : 1968 Cri LJ 876).

102. The ratio of Mohan Lal case ((1968) 2 SCR 685, 688, 689 : AIR 1968 SC 733 : 1968 Cri LJ 876) has to be understood in the light of the proceeding from which the matter came to this Court. A Judicial Magistrate had made an inquiry under Section 446 of 1898 Code against appellant Mohan Lal whether it was expedient in the interest of justice to file a complaint against him for impersonation and false identification of a surety in a criminal case. This has to be a separate and independent proceeding started by the court suo motu as the offence appeared to be committed in relation to a criminal proceeding in a court. No one except the court in such a situation has locus standi to file a complaint which could be filed by the court, but before such a complaint was filed it was necessary to hold an inquiry to ascertain whether it was expedient in the interest of justice to file the complaint. A party against whom a complaint is ordered to be filed has a statutory right of appeal. The Judicial Magistrate directed a complaint ... to be filed and this order was upheld by the Additional Sessions Judge in appeal. Appellant Mohan Lal preferred a revision petition which was dismissed by the High Court and when he prayed for a certificate under Article 134, a question arose whether the order direction a complaint to be filed was a final order or interlocutory order for the purpose of Article 134 which provides for an appeal to this Court in a criminal proceeding. It is in the background of these facts that this Court approving the ratio in Kuppuswami Rao case (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625) and Mohd. Amin Bros. case ((1949) XI FCR 842 : AIR 1950 FC 77, 78, 79 : 1950 SCJ 139) held that an interlocutory order, though not conclusive of the main disputed may be conclusive as to the subordinate matter with which it deals. If the decision on issue puts an end to the suit, the order is undoubtedly final one but if the suit is still alive and yet to be tried in the ordinary way, no finality could attach to the order. On behalf of the appellant it was said that Mohan Lal case ((1968) 2 SCR 685, 688, 689 : AIR 1968 SC 733 : 1968 Cri LJ 876) is an authority for the proposition that interlocutory order, though not conclusive of the main dispute,

may conclusive as to the subordinate matter with which it deals and such an order could not be said to be an interlocutory order. This observation has to be read in the context of the controversy in that case especially the context of two independent proceedings - one leading to filing of a complaint which will be over when complaint is filed and another independent one of a trial upon the complaint so filed. At any rate, a proceeding before the Magistrate commenced to find out whether it is expedient in the interest of justice to file a complaint concludes finally when an order the complaint to be filed is made and the statute provides for an appeal against such an order. After the complaint is filed, it cannot be urged that the complaint ought not to have been filed. The complaint would tried in an ordinary way. Therefore, the first proceeding independent itself, came to a final end and it is in this sense that the order was held by this Court.

103. Now, in Amar Nath case ((1978) 1 SCR 222 : (1977) 4 SCC 137 : 1977 SCC (Cri) 585) the Magistrate directed a summons to be issued on a private complaint thereby taking cognizance of the case. The case had a zigzag journey. Earlier the Magistrate had declined to take cognizance and dismissed the complaint. As far as the accused were concerned, the matter came to an end. After the remand by the Sessions Judges in a revision application filed by the complainant, the Magistrate directed to issue the summons. In a way, the proceeding was reopened. It is in this context that the court held the order not to be interlocutory within the meaning of Section 397 of the Code. What particular order was treated final in this case is hardly relevant. The test to determine the nature of order - interlocutory or final - is boding unless departed from. The test formulated by the court is extracted hereinbefore. Accepting the test without demur for the time being, though is runs counter to the decision in S. Kuppuswami (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625) and Mohd. Amin Brothers Ltd. ((1949) XI FCR 842 : AIR 1950 FC 77, 78, 79 : 1950 SCJ 139) cases, it may be determined whether framing of a charge under Section 239 of the Code is a matter of moment and whether it disposes of any vital aspect of the case so as not to be interlocutory.

104. In Madhu Limaye v. State of Maharashtra ((1978) 1 SCR 749 : (1977) 4 SCC 551 : 1978 SCC (Cri) 10) this Court was concerned with a question whether an order repelling a challenge to the jurisdiction of the court was an interim order not amenable to the revisional jurisdiction of the High Court under Section 397. There is some dispute as to what was the order challenged before the High Court in this case. The Public Prosecutor filed a complaint in the court of the Sessions Judge, Greater Bombay, complaining that the accused Madhu Limaye was guilty of defamation of Shri Antulay, the then Law Minister of Maharashtra, punishable under Section 500 of the Indian Penal Code. The complaint was filed after the government granted sanction in accordance with Section 199(4)(a) of the Code as it was of the view that the Law Minister was defamed in respect of his conduct in the discharge of his public functions. After the Chief Secretary to the Government of Maharashtra was examined as a witness in the Sessions Court, an application was filed on behalf of the accused to dismiss the complaint on the ground that the court had no jurisdiction to entertain the complaint. It must be made clear at this stage that a complaint by the person defamed alone for an offence of defamation is maintainable and is triable by the Judicial Magistrate or the Metropolitan Magistrate as the case may be, and the Sessions Judge is not the court of original jurisdiction for entertaining a complaint alleging defamation punishable under Section 500, IPC. However, in view of the provisions contained in section 199(2), jurisdiction is conferred upon the Sessions Judge to take cognizance of the offence of defamation if it is alleged to have been committed against a person who amongst others at the time of commission was a Minister of the State and was defamed in discharge of his public function if the complaint in writing is made by the Public Prosecutor after obtaining sanction of the State Government. The application given by accused Madhu Limaye was that the Court of Session had no jurisdiction to entertain the complaint presented by the Public Prosecutor because the allegations made against Shri. Antulay, the then Law Minister, were in

relation to what he had done in his personal capacity and not in his capacity of discharging his public functions as a Law Minister. It must, therefore, be clearly borne in mind that the challenge was to the jurisdiction of the court to entertain the complaint. This will also be clear from what is stated in the judgment at page 751 that chiefly on the aforementioned ground and some other ground, the jurisdiction of the court to proceed with the trial was challenged by the appellant. The court negatived the challenge and framed the charges. Accused Madhu Limaye preferred a revision petition in the High Court which was dismissed, observing that the order sought to be revised was an interlocutory order not amenable to the revisional jurisdiction under Section 397(1) of the Code. Against the refusal of the High Court to entertain the petition the matter came to this Court. It is therefore, incorrect to contend that the decision in Madhu Limaye case ((1978) 1 SCR 749 : (1977) 4 SCC 551 : 1978 SCC (Cri) 10) is an authority for the proposition that framing of the charge is not an interlocutory order but it is such an intermediate order as not to fall within the ambit of interlocutory order. There was no challenge to the framing of the charge but there was a challenge to the jurisdiction of the court to entertain the complainant. Now, where a challenge is to the court entertaining the complainant, the decision on the question will go to the root of the matter inasmuch as if the challenge is accepted, the complaint must fail. That again, however, is not the test of the order being something other than an interlocutory order. Undoubtedly, affirming the ratio in Amar Nath case ((1978) 1 SCR 222 : (1977) 4 SCC 137 : 1977 SCC (Cri) 585), this Court observed that the order may be neither an interlocutory order nor final but may be an intermediate order. In trying to illustrate what can be an intermediate order, it was illustrated that where a defendant raises a plea before a particular court to try the suit or bar of limitation and succeeds, then the action is determined finally in that court, but if the point is decided against him, the suit proceeds. The order deciding such a point may not be interlocutory yet it may not be final either. For the purpose of Section 115 of the CPC it will be a case decided. Then the court observed as under : (SCC p. 559, para 14)

> We think it would be just and proper to apply the same kind of test for finding out the real meaning of the expression 'interlocutory order' occurring in Section 397(2)

This Court by process of judicial activism putting a pragmatic interpretation or the word 'interlocutory' occurring in Section 397(2) provided for a judicial supervisory umbrella over subordinate courts. However, the decision is not an authority for the proposition that framing of a charge by itself is not an interlocutory order.

105. The last case in this context to which attention was drawn is Parmeshwari Devi v. State ((1977) 2 SCR 160 : (1977) 1 SCC 169 : 1977 SCC (Cri) 74). In that case a complaint was filed on behalf of Parmeshwari Devi against three persons accusing them of committing under Sections 182, 193, 197, 199, 200, 465, 466, and 471 of the Indian Penal Code, in the course of the trial complainant made an application court under Section 94 of the Code of 1898 for a direction to the accused to file the original deed of dissolution of partnership, an attested copy of which was filed by accused 2 in the court. The accused contended that the original was not in their possession. The court made an order Smt. Parmeshwari Devi to appear before the court with the document. She contended before the court that she did not know anything about the document and that she was a purdahnashin lady living in Calcutta and need be summoned in the court. Her request was rejected and she was directed to forthwith attend the court and produce the document if it is in her possession. Smt. Parmeshwari Devi moved an application for revision before Additional Sessions Judge and then before the High Court, both of which were rejected. In her appeal to this Court a contention was raised that the of the Magistrate was an interlocutory order and the power of conferred by sub-section (1) of Section 397 of the Code could not be exercised in relation to by virtue of sub-section

(2). This Court allowing the appeal held that : (SCC p. 172, para 7)

> The Code does not define an interlocutory order, but obvious is an intermediate order, made during the preliminary stages of enquiry or trial. The purpose of sub-section (2) of Section 397 is to keep such an order outside the purview of power of the revision so that the inquiry or trial may proceed without delay. This is not likely to prejudice the aggrieved party for it can always challenge it in due course if the final order goes against it. But it does not follow that if the order is directed against a person who is not a party to the inquiry or trial, and he will have no opportunity to challenge it after a final order is made affecting the parties concerned, he cannot apply for its revision even if it is directed against him and adversely affects his rights.

After referring to Mohan Lal Thacker case ((1968) 2 SCR 685, 688, 689 : AIR 1968 SC 733 : 1968 Cri LJ 876), it was held that the order under challenge adversely affected the appellant who was not a party to the inquiry or trial as it was solely directed against her and she would not have opportunity to challenge it after a final order is made because such a belated challenge would have been purposeless for it would have given her no relief. It is in this context that the court held that the order under appeal was not an interlocutory order within the meaning of Section 397(2) of the Code.

106. Can it be said that the tests formulated in Kuppuswami case (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625) and Mohammad Amin case ((1949) XI FCR 842 : AIR 1950 FC 77, 78, 79 : 1950 SCJ 139) have been either overruled or departed from in the last mentioned three cases. As has been laid in Madhu Limaye case ((1978) 1 SCR 749 : (1977) 4 SCC 551 : 1978 SCC (Cri) 10) ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as converse of the term 'final order.' This statement of law in terms approves and affirms the ratio of Kuppuswami case (1947 FCR 180 : AIR 1949 FC 1 : 49 Cri LJ 625) and Mohd. Amin Brothers case ((1949) XI FCR 842 : AIR 1950 FC 77, 78, 79 : 1950 SCJ 139). But undoubtedly in the context of Section 397(2) read with Section 482 of the Code, this court with a view to providing a judicial umbrella of active supervision for reaching possible correctible injustice by activist attitude and pragmatic interpretation found a third class of orders neither interlocutory nor final but intermediate and therefore outside the bar of Section 397(2) of the Code of Criminal Procedure. But the test remains unaltered that every interlocutory order merely because it disposes of an aspect, nay a vital aspect in the course of a pending proceeding even adversely affecting a party for the time being would not be something other than interlocutory. To be specific the earlier test is not departed from but the power of supervision sought to be constricted was widened by ascertaining a third class of orders, namely, intermediate orders which are neither interlocutory nor final.

107. Having said this can it be said that framing of a charge is an order which would be something other than interlocutory. For that purpose, it is necessary to keep in view the procedure prescribed for trial of warrant cases instituted on a police report as contained in Part A of Chapter XIX of the Code. Section 238 provides that when in a warrant case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of Section 207 which casts an obligation on the Magistrate to furnish to the accused, free of cost, copies of the documents therein set out. This is to be done at the commencement of the trial which would mean that when this statutory duty cast by Section 207 is performed by the Magistrate, the trial commences. The trial cannot commence unless the accused is furnished with copies of requisite documents. And the duty is cast on the Magistrate to ascertain at the commencement of the trial that Section 207 is complied with and if it is not done, as part of trial furnish the requisite copies. Then follow Sections 239 and 240. Under Section 239

the court after considering the police report and the accompanying documents submitted to the court under Section 173 and after giving the prosecution and the accused an opportunity of being heard if the Magistrate is of the opinion that the charge against the accused is groundless, he must discharge the accused by a speaking reasoned order. If on the other hand after proceeding with the trial as prescribed in Section 239, if the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX 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. This is to be done after the trial commences at the stage of Section 238. Indisputably, therefore, it is an order made in the course of proceeding conducted according to procedure prescribed in Chapter XIX. Without anything more it would be an interlocutory order.

108. The contention is that framing of a charge is a matter of moment and of such vital importance that it concludes an inquiry anterior to the framing of the charge and that it is a matter of a moment which is likely to result in the deprivation of the liberty of the accused because he is asked to face the trial. There are two limbs of the submission and both may be separately examined.

109. What is the purpose or object in framing a charge ?

110. When the accused is brought before a court, he is supplied with copies of documents referred to in Section 207. Now, these documents may contain a number of matters and the accused may be at large as to what is the specific accusation, he is supposed to meet. Charge serves the purpose of notice or intimation to the accused, drawn up according to specific language of law, giving clear and unambiguous or precise notice of the nature of accusation that the accused is called upon to meet in the course of a trial. Section 211 clearly prescribes what the charge should contain and a bare reading of it would show that the accused must be told in clear and unambiguous terms allegations of facts constituting the offence, that law which creates offence with a specific name, if given to it, and the section which is alleged to be violated with the name of the law in which it is contained. The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case. It is thus an intimation or notice to the accused what precise offence or what allegations of facts he is called upon to meet. The object of a charge is to warn an accused person of the case he is to answer. It cannot be treated as if it was a part of a ceremonial. (B. N. Srikantiah v. State of Mysore, AIR 1958 SC 672 : 1959 SCR 496 : 1958 Cri LJ 1251) If this be the purpose of the charge, reference to the provisions contained in Chapter XVII as to the various forms and modes of framing a charge joinder of charges and joinder of persons to be tried at one trial are beside the point. The importance of framing the charge need not be overemphasised and that this should be shunned becomes apparent from the observations of Bose, J. in William Slaney v. State of M.P. ((1955) 2 SCR 1140, 1165 : AIR 1956 SC 116 : 1956 Cri LJ 291), which reads under :

> We see no reason for straining at the meaning of these plain emphatic provisions unless ritual and from are to be regarded as of the essence in criminal trials. We are unable to find any magic or charm in the ritual of a charge. It is the substance of these provisions that count and not their outward form. To hold otherwise is only to provide avenues of escape for the guilty and afford no protection to the innocent.

111. It was, however, said that framing of a charge is a matter of moment as has been held by this Court in State of Karnataka v. L. Muniswamy ((1977) 3 SCR 113 : (1977) 2 SSC 699 : 1977 SCC (Cri) 404) and Century Spinning and Mfg. Co. Ltd. v. State of Maharashtra (AIR 1972 SC 545 :

(1972) 3 SCC 282 : 1972 SCC (Cri) 495) and therefore the order framing the charge would be an intermediate order and not an interlocutory order and not an interlocutory order. These two cases only emphasize the application of judicial mind by the court at the stage of framing the charge. The question never arose in these two cases about the nature and character of the order framing the charge. In a criminal trial or for that matter in any any judicial proceeding, there is no stage at which the court can mechanically dispose of the proceeding. An active judicial mind must always operate at every stage of the proceeding because any stage of it if mechanically disposed of may cause an irreparable harm. To wit a rejection of an application for summoning witnesses may shut out the whole case; even a rejection of an application for adjournment may cause irremediable harm. Therefore, in the course of a trial of a civil or criminal proceeding, it is difficult to conceive of a stage where an order can be made without bringing to bear on the subject an active judicial mind judicially determining the dispute. Any such dispute if mechanically disposed of may warrant an interference. Therefore, emphasis was laid on the court expecting it to seriously apply its mind at the stage of framing the charge. It does not make the order framing the charge. It does not make the order framing the charge anything other than an interlocutory order. There is no decision since the Code of 1973 is in operation, which introduced a concept of commencement of trial at the stage anterior to framing of charge and, eliminating an inquiry before the charge as was the requirement prior to the amendment of 1898 Code in 1955 which would show that court has treated order framing the charge other than interlocutory. However, reference in this context was made to a decision of a Full Bench of the Jammu and Kashmir High Court in State v. Ghani Bandar (AIR 1960 J&K 71, 76 : 1960 Cri LJ 584 (FB) wherein the court after exhaustively examining various decisions of different High Courts bearing on the subject came to the conclusion that on framing the charge the inquiry anterior to trial of the case is concluded. Let it be recalled that the decision is under a Code which prescribed examination of witnesses prior to framing the charge and the word 'trial' was defined to mean the proceeding taken under the Code after a charge has been drawn up and included a punishment of the offender. This procedure is wholly omitted included a punishment of the offender. This procedure is wholly omitted in the Code of 1973 and the stage of commencement of trial is specifically demarcated in Section 238 and therefore this decision would not render any assistance in deciding the point under discussion. Merely because emphasis is laid on the court seriously applying its judicial mind at the stage of framing charge, and therefore, it can be said to be an important stage, the order framing the charge even after applying the ratio of the later decisions would not be an order other than an interlocutory order. It would be unquestionably an interlocutory order.

112. If framing of a charge is an interlocutory order excluding the non obstinate clauses no appeal would lie against such an order under Section 11 because there is a specific provision in sub-section (2) of Section 11 that except as provided in Section 11(1) no appeal or revision shall lie to any court from any judgment, sentence or order of a Special Court. It is a well settled proposition of law that there is no inherent or common law right of appeal in a subject and the appeal is the creature of statute and therefore the right of appeal can only be enjoyed within the strictly demarcated limits conferring such right of appeal (see Shankar Kerba Jadhav v. State of Maharashtra ((1969) 2 SCC 793 : (1970) 2 SCR 227). The order under challenge being one passed by the Special Court set up under the Act, an appeal from such an order would only be competent if it squarely falls within Section 11(1). The controversy is not that an appeal would lie even against an interlocutory order within the meaning of Section 11(1). Therefore, there is no gainsaying the fact that if the order sought to be appealed against is an interlocutory order, excluding the non obstante clause, by the main provision of Section 11(1), the present appeal would be incompetent.

113. On behalf of the appellant it was contended that the non obstante clause enlarges the scope of

appeal while on behalf of the respondent, it was urged that non obstante clause excludes the operation of the Code with reference to the provision of the appeals in the Code and provides for an appeal as fossilised in the substantive provision of Section 11(1).

114. What is the effect of non obstante clause is no more res integra. In fact, in Aswini Kumar Ghosh v. Arabinda Bose (1953 SCR 1, 21-22, 23, 43, 63 : AIR 1952 SC 369 : 1952 SCJ 568), it was observed :

> It should first be ascertained what the enacting part of the section provides on a fair construction or the words used according to their natural and ordinary meaning, and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment.

115. Applying this test, it would appear that the substantive provision of Section 11(1) while providing for an appeal against any judgment, sentence or order made by a Special Court, circumscribed the right to appeal against the orders by excluding therefrom orders which are interlocutory orders. If this is the substantive provision in Section 11(1), the question is whether the non obstante clause enlarges the provision or restricts it with reference to the substantive provision of appeals in the Code itself. It is necessary to bear in mind at this stage a fundamental fact. Unlike the provision contained in Order XLVII of the Code of Civil Procedure, there is not provision in the Code of Criminal Procedure, either the present or the earlier one which ever provided for any appeal against any interlocutory order. The very concept of an appeal against an interlocutory order was wholly foreign to the Code of Criminal Procedure. There is an understandable difference between an appeal and a revision. Till the prohibition contained in Section 397(2) of the Code was enacted for the first time, interlocutory orders were amenable to the revisional jurisdiction of the Sessions Court or the High Court under the Code of Criminal Procedure. But the notion or idea of an appeal against an interlocutory order in any Criminal Procedure Code was foreign to the criminal jurisprudence. If this was the statutory position at the time of enactment of the Act, it would be interesting to find out whether the Parliament wanted to make a radical departure by providing an appeal against every interlocutory order - which is wider than even an intermediate order as spelt out in the case of Amar Nath ((1978) 1 SCR 222 : (1977) 4 SCC 137 : 1977 SCC (Cri) 585) and Madhu Limaye ((1978) 1 SCR 749 : (1977) 4 SCC 551 : 1978 SCC (Cri) 10), by incorporating the non obstante clause with a view to widening the substantive provision contained in Section 11(1). If such was the object of the Parliament there was no necessity of cutting down the operation of the word 'order' by excluding therefrom interlocutory orders. Again, when the non obstante clause provides for 'notwithstanding anything in the Code' in expression as per grammatical construction would mean that something contained in the Code is to be excluded while examining the scope and content of the substantive provision of Section 11(1). However, there is nothing in the Code providing for an appeal against an interlocutory order. While enacting the Act, the Parliament was conscious of appeals and revisions under the Code and that is manifest from the language incorporated in sub-section (2) of Section 11 of the Act. Now, if there was no provision in the Code providing for an appeal against any interlocutory order in any proceeding under the Code, it is inconceivable that excluding that non-existent provision a wider jurisdiction of appeal was sought to be enacted under the substantive provision of Section 11(1).

116. Before concluding on the question of construction it is necessary also to bear in mind the purpose behind enacting the Special Courts Act. The preamble of the Act consists of 9 paragraphs. It inter alia provides that the ordinary criminal courts due to congestion of work and other reasons

cannot reasonably be expected to bring those prosecutions to a speedy termination and that commission of offences referred to in the various recitals in the Preamble should be judicially determined with the utmost dispatch, the Parliament enacted the Act. If this was the object and motive and purpose in enacting the Act, the construction of its provisions must receive such interpretation as would facilitate the achievement of the object underlying it and not frustrate it. If the object was speedy determination of cases with utmost dispatch, it would stand thwarted, if against every interlocutory order, and they can be plenty and galore, an appeal to the highest court as a matter of right both on law and fact can be filed. In this connection, it is better to bear in mind the observation of this court in In re The Special Courts Bill, 1978 ((1979) 2 SCR 476 : (1979) 1 SCC 380) (p. 542) that the paramount object and purpose of the Act is the trial of persons proceeded against under the Act should be concluded with utmost dispatch. Speedy termination of prosecutions is the heart and soul of the Act. The provisions of the Act should therefore receive such construction as would advance the object for which the Act is enacted and not stultify or frustrate the same. This is a well known canon of construction and need not be embellished by any authority.

117. It was, however, said on behalf of the appellant that by denying the accused a trial by ordinary courts a right to challenge an intermediate order by revision is denied to him and, therefore, in order to obviate any unfairness in procedure guaranteed by Article 21 as interpreted in Maneka Gandhi v. Union of India ((1978) 1 SCC 248) the expression 'interlocutory order should receive such construction as would enable the appellant not to feel the tinge of denial of opportunity to seek correction of an order by a revision petition by enabling him to file an appeal under Section 11(1). This alleged apparent unfairness in procedure is utterly unreal because her the trial is by a Sitting Judge of the High Court to be appointed with the concurrence of the Chief Justice of India. Such a highly placed judicial mind will pass interlocutory orders, which, as stated earlier, are steps leading towards final adjudication of the dispute and that the absence of any revisional jurisdiction may hardly introduce any unfairness in the procedure. However, it must not be forgotten that the Special Court always be amenable to the jurisdiction of this Court under Article 136 and Article 136 permits a challenge to any order interlocutory or final of any court or tribunal in the territory of India with the special leave of his court. Therefore, there is no substance in the contention in narrowly interpreting the expression 'interlocutory order' in Section 11(1), door may not be thrown open for introduction of a procedure possibly lacking in fairness and likely to result in deprivation of personal liberty.

118. In view of the conclusion that the order framing a charge is an interlocutory order within the meaning of Section 11 (1), the appeal against such an order is incompetent in view of the provision contained in Section 11(2), and therefore the preliminary objection must be upheld and the appeal is dismissed.

ORDER OF THE COURT##

119. In accordance with the opinion of the majority the appeal is dismissed.

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