

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

+ **Crl.Rev.P. 293/2006**

% Reserved on : 18th December, 2009

Pronounced on: 6th January, 2010

R.C. Sabharwal Revisionist
! Through: Mr. Harish K. Sharma,
Adv.

versus

\$ Central Bureau of Investigation Respondent
! Through: Mr. Vikas Pahwa, ASC
with Mr. Biswajit Kumar Patra, Adv.

Crl.Rev.P. 294/2006

Puneet Sabharwal Revisionist
! Through: Mr. Harish K. Sharma,
Adv.

versus

\$ Central Bureau of Investigation Respondent
! Through: Mr. Vikas Pahwa, ASC
with Mr. Biswajit Kumar Patra, Adv.

Crl.Rev.P. 352/2006

Rekha Anand Petitioner
! Through: Mr. Tripurari Rai, Adv.

versus

\$ Central Bureau of Investigation Respondent
! Through: Mr. Vikas Pahwa, ASC
with Mr. Biswajit Kumar Patra, Adv.

Crl.Rev.P. 580/2006

Shafiquur Rehman Khan Petitioner
! Through: Mr. Islam Khan, Adv.

versus

\$ Central Bureau of Investigation Respondent
! Through: Mr. Vikas Pahwa, ASC
with Mr. Biswajit Kumar Patra, Adv.

W.P. (Crl.) No. 1419/2009

Rajeshwar Bansal & Ors. Petitioners
! Through: Mr. Mohit Mathur with
Mr. D.S. Kohli, Adv.

versus

\$ State (through CBI) Respondent
! Through: Mr. Vikas Pahwa, ASC
with Mr. Biswajit Kumar Patra, Adv.

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

: **V.K. JAIN, J.**

1. These petitions involves a common questions of law as to (i) whether an order directing framing of charge or framing charge, in a case attracting the provisions of Prevention of Corruption Act, 1988 is an interlocutory order and (ii) whether

such an order can be challenged by way of (a) Revision Petition or (b) petition under Section 482 of the Code of Criminal Procedure or (c) petition under Article 226/227 of the Constitution.

2. Section 19(3)(c) of the Prevention of Corruption Act provides as under:

“(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.”

3. In '**Dharambir Khattar & Ors vs. CBI**' 2009 IV AD (Delhi) 657, four criminal revision petitions directed against the Order on Charge, passed by the learned Special Judge under Section 120B of the IPC, read with various provisions of Prevention of Corruption Act, 1988, were filed by the accused persons, against whom charges were framed. Relying upon the provisions of Section 19(3)(c) of the Prevention of Corruption Act, a preliminary objection was raised by CBI disputing maintainability of the petitions.

In support of its contention, CBI referred to the decisions of the Hon'ble Supreme Court in '**State vs. Navjot Sandhu**, 2003 (6) SCC 641 and '**Satya Narayan Sharma vs. State of Rajasthan**' AIR 2001 (8) SCC 607. It also placed reliance upon the decision of the Hon'ble Supreme Court in '**V.C. Shukla vs.**

CBI 1980 (Suppl.) SC 921 in support of the contention that Order on Charge in a corruption case is an interlocutory order.

4. After examining the provisions of Section 19(3)(c) of Prevention of Corruption Act, 1988, Section 11 of Special Courts Act, 1979 and Section 34 of Prevention of Terrorism Act, the Court was of the view that they are *pari materia* with each other and held that the Order on Charge is an interlocutory order. It was further held that in view of the embargo placed by Section 19(3)(c) of the Prevention of Corruption Act, no revision petition would be maintainable in the High Court against Order on Charge or an order framing charge, passed by the Special Judge.

5. During the course of arguments, it was contended before this Court that notwithstanding the provision of Section 19(3)(c) of the Act, the power of the High Court under Article 226 and 227 of the Constitution and Section 482 of the Code of Criminal Procedure, remain untrammelled and could be invoked in appropriate case. The argument was rejected, holding that it does not survive after the pronouncement of the Supreme Court in **Navjot Siddhu** (*supra*) and **Satya Narayan Sharma's** case (*supra*).

6. The following contentions have primarily been made by the learned counsels for the petitioners (i) an order framing charge or directing framing of charge even in a case attracting the provisions of Prevention of Corruption Act, 1988 is not an

interlocutory order and therefore revision against such an order is not barred and the judgment of this Court in **Dharambir Khattar's** case (supra) holding therein that a Revision Petition against such an order is not maintainable needs reconsideration by a larger Bench; (ii) the power of this Court under Section 482 of the Code of Criminal Procedure have not been taken away by Section 19(3)(c) of Prevention of Corruption Act and in suitable cases such powers can be invoked, when an order framing charge or directing framing of charge in a corruption case is challenged, by a person aggrieved from such an order; (iii) the constitutional power of this Court under Article 226 and 227 of the Constitution have not been and cannot be taken away by a statutory enactment, including Section 19(3) (c) of Prevention of Corruption Act, 1988. This is also their contention that the observations of this Court in the case of **Dharambir Khattar** (supra) to the effect that neither powers under Section 482 of the Code of Criminal Procedure nor the power under Article 226 and 227 of the Constitution can be invoked in such cases are by way of obiter and do not constitute the ratio decidendi of the case.

Interlocutory Order

7. The term 'interlocutory order' has not been defined in the Code of Criminal Procedure. Ordinarily, the expression 'interlocutory order' is taken to mean as a converse of the term

'final order'. A judgment or order, which determines the principal matter in question, is generally termed as 'final'. Normally, an order which does not deal with the final rights of the parties, is made before the judgment, gives no final decision on the matters in dispute, but is merely on a matter of procedure, is termed as 'interlocutory'. Though not conclusive of the main dispute an interlocutory order may be conclusive as to the subordinate matter with which it deals.

In **S. Kuppuswami Rao v. The King**, 1947 FCR 180: AIR 1949 FC 1, the Federal Court referred to the following observations made in **Salaman vs. Warner** (1891) 1 QB 734:

"If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory."

8. The expression 'interlocutory order' used in Section 397 of the Code of Criminal Procedure came up for consideration before the Hon'ble Supreme Court in **Amar Nath vs. State of Haryana and Anr.**(1977) 4 SCC 137. The Hon'ble Supreme Court, inter alia, observed as under:

"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 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 re-visional jurisdiction of the High Court.”

Applying the aforesaid proposition of law, the Hon’ble Supreme Court held that the order, whereby the appellants were summoned as accused, in the facts and circumstances of the case before it, was not an interlocutory order, since it was only with the passing of such an order that the criminal proceedings started and the question of the appellants being put up for trial arose for the first time. It was noticed by the Hon’ble Court that a valuable right of the appellants had been taken away by the Magistrate, in passing an order *prima facie* in sheer mechanical fashion, without applying his mind. It was observed that had the appellants not been summoned, they would not have faced trial at all, by compelling them to face a trial without proper

application of mind, and such an order could not be held to be an interlocutory matter.

In **K.K. Patel & Anr. Vs. State of Gujarat & Anr.** 2000 (6) SCC 195, the Hon'ble Supreme Court, inter alia, observed as under:

“The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable.”

9. The statement of law enunciated in the case of **Amar Nath** (supra) again came up for consideration before the Hon'ble Supreme Court in **Madhu Limaye vs. The State of Maharashtra'** (1977) 4 SCC 551. The Hon'ble Supreme Court, inter alia, observed as under:

“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 Kuppaswami's case (supra), but, yet it may not be an interlocutory order—pure or

simple. Some kinds of order 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 intermediate 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 within 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.”

In this case, charge was made against the appellant under Section 500 of IPC. The appellant challenged the order of Sessions Judge in a Revision Petition before Bombay High Court. The Revision Petition was rejected on the ground that it was not maintainable in view of the provisions contained in sub-Section (2) of Section 397 of the Code.

10. If the interpretation given by the Hon'ble Supreme Court to an interlocutory order in the case of **Madhu Limaye** is applied, an order framing charge or directing framing of charge cannot be said to be an interlocutory order. Therefore, the question

that comes up for consideration is as to whether the term 'interlocutory order', as used in Section 19(3) (c) of Prevention of Corruption Act, needs to be given a meaning different from the meaning given to it by the Hon'ble Supreme Court in the context of the Code of Criminal Procedure.

11. The provisions of Section 19(3)(c) of Prevention of Corruption Act, to the extent it provides that no Court shall exercise the power of revision in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings are pari materia with Section 397 (2) of the Code of Criminal Procedure. The Prevention of Corruption Act was enacted in the year 1988, much after the Code of Criminal Procedure, 1973 came into force and the provisions of Section 19(3)(c) have been given overriding effect over the provisions contained in Code of Criminal Procedure. Had the intention of the Legislature been to give the same meaning to the term 'interlocutory order' in Section 19(3)(c) of Prevention of Corruption Act, as had been given to this term in the context of Section 397 (2) of the Code, there would have been no necessity of incorporating a specific provision to this effect in Prevention of Corruption Act. Even in the absence of such a provision in Prevention of Corruption Act, revisional powers could not have been used in respect of an interlocutory order, in view of the embargo placed by Section 397(2) of the Code. The Acts of the Legislature are not intended to be superfluous, and the Legislature is presumed to be aware

and conscious of all other statutory enactments when it passes a particular legislation. Hence, if the Legislature, despite pre-existence of similar provision in the Code of Criminal Procedure, chose to make a specific provision in Prevention of Corruption Act so as to take interlocutory orders out of the purview of revisional jurisdiction of the Court, it could not have intended to give same meaning to the expression 'interlocutory order' as had been given to this term in the context of the Section 397(2) of the Code. It would also be pertinent to note here that the decision of the Hon'ble Supreme Court in the case of **Madhu Limaye** (supra), interpreting the expression 'interlocutory order' in the context of Section 397(2) of the Code, had come many years before Prevention of Corruption Act was enacted in the year 1988. Therefore, the legislative intent obviously was to give a different meaning to this expression in the context of Prevention of Corruption Act and that is why the provisions of Section 19(3)(c) were given overriding effect over the provision of the Code of Criminal Procedure. Therefore, I am of the considered view that the term 'interlocutory order', as used in Section 19(3)(c) of Prevention of Corruption Act, cannot be given the same meaning as was given to it by the Hon'ble Supreme Court in the case of **Amar Nath** (supra) and **Madhu Limaye** (supra). The meaning to be assigned to the expression 'interlocutory order' in the context of Section 19(3)(c) of Prevention of Corruption Act has to be derived considering the **Crl.Rev.P. 293,294,352,580 of 2006 and W.P.(Crl.) 1419/2009** **Page 11 of 55**

objective behind enactment of Prevention of Corruption Act, 1988, including the mischief which the Legislature intended to do away with by this enactment. This rule, known as 'purposive construction', enables consideration of the following matter while construing an Act (i) what was the law before making of the Act; (ii) what was the mischief for which the earlier law did not provide; (iii) what is the remedy the Act has provided; (iv) what is the reason of the remedy. This rule requires the Court to adopt a construction which will suppress the mischief and advance the remedy. Before enactment of Prevention of Corruption Act, 1988, orders such as order framing charge or directing framing of charge having been held to be intermediate orders came within the purview of revisional jurisdiction of the High Court and resulted in delay of trial by filing revision petitions or petitions under Section 482 of the Code of Criminal Procedure, obtaining stay orders, summoning the Trial Court Record and thereby thwarting progress of the trial. This defect in the law was sought to be remedied by taking away the revisional jurisdiction of the High Court in respect of interlocutory orders and by prohibiting stay of proceedings on any ground whatsoever. The Court must, therefore, give such a construction as would advance the legislative intent, instead of perpetuating the defect which existed in the law before enactment of Prevention of Corruption Act, 1988.

12. One main object behind replacing Prevention of Corruption Act, 1947 by a new Act in the year 1988 was to expedite the proceedings initiated under Prevention of Corruption Act by providing for day to day trial of cases and incorporating prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory order. It has been experienced that those who are arraigned for trial under the provisions of Prevention of Corruption Act, try to delay the trial, using one or the other method and availing all possible remedies available to them in law, presumably in the hope that with the passage of time, the evidence that can be used against them during trial may not remain available, if they are able to delay the progress of the case, to the extent they can possibly do. Not only final or intermediate orders even interlocutory orders used to be and are still challenged despite the accused knowing it fully well that such orders cannot be subject matter of challenge in revisional jurisdiction. Though there is an absolute bar on stay of proceedings, it is not uncommon for the accused in such cases to seek stay of proceedings on the ground that they are likely to be seriously prejudiced and failure of justice is likely to be occasioned, unless the proceedings are stayed. Even if the Court is not inclined to stay the proceedings, considering the embargo placed by Section 19(3)(b)(c), the accused persons insist upon the record of the trial being summoned, contending that examination of the record would be necessary for the

purpose of deciding the petition filed by them. Section 22(d) of Prevention of Corruption Act, 1988 provides that where the powers under Section 397(1) of the Code are exercised, the Court shall not ordinarily call for the record of the proceedings without giving the other party an opportunity of showing cause why the record should not be called for, or if the Court is satisfied that examination of the record of the proceedings may be made from the certified copies. But it has been experienced that the record is requisitioned in many cases, entertaining the submission of the petitioners to the effect that scrutiny of the original record would be necessary for the purpose of proper and complete appreciation of the controversy involved in the case. As a result, even if there is no stay of proceedings, the trial comes to be stalled on account of the record having been requisitioned by the Superior Court. In fact, Trial Court Record has actually been summoned in Crl.Rev.P. No. 293/2006, 352/2006 and 294/2006 being disposed of this order, which shows that despite legislative restriction, the record of Trial Court continues to be summoned by the Superior Courts. Ordinarily, the accused in such cases command vast material resources and are in a position to have access to the best legal assistance for the purpose of their defence. If an order framing charge or directing framing of charge is held to be an interlocutory order, the inevitable result would be a flood of Revision Petitions challenging such orders, coupled with request

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for either staying the proceedings in exercise of inherent powers of the Court or seeking summoning of the Trial Court record, thereby staying the trial for all practical purposes. This is yet another reason why the expression 'interlocutory order' used in Section 19(3)(c) of the Prevention of Corruption Act needs to be interpreted differently from the interpretation given to it in the context of Section 397 of the Code of Criminal Procedure.

13. With a view to expedite the trial of cases, involving offences under Prevention of Corruption Act 1988, the Legislature has made a number of changes in the regular procedure prescribed in the Code of Criminal Procedure for trial of criminal cases. Special Courts have been constituted for trial of such cases. The Special Judges are required, as far as practicable, to hold the trial on day to day basis. A specific provision has been made placing embargo upon stay of proceedings under Prevention of Corruption Act not only on the ground of any error, omission or irregularity in the sanction unless such error, omission or irregularity has resulted in a failure of justice, but also on any other ground. Section 243(1) of the Code has been amended so as to require the accused in a corruption case, to give in writing, a list of the persons to whom he proposes to examine as his witnesses and the documents on which he proposes to rely. Another provision made in Section 22(b) of the Act provides that the proceedings shall not be adjourned or postponed merely on the ground that an

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application under Section 397 has been made by a party to the proceedings. This provision was necessitated since it was experienced that after filing a petition under Section 397 of the Code of Criminal Procedure, the accused would seek adjournment or postponement of proceedings on the ground that the Revision Petition filed by him was pending before the superior Court, and therefore, the trial Court should keep its hands off the proceedings. A specific provision has been made in Section 317 of the Code providing that the Judge may, for reasons to be recorded by him and if he so thinks fit, proceed with the inquiry or trial in the absence of accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witnesses for cross-examination. This provision was necessitated experiencing that either accused or his pleader would be absent when the material witnesses are present and that would necessitate adjournment of the case to another date, thereby not only delaying the trial, but also causing inconvenience to the witnesses and putting pressure on them to get tired and exhausted on account of frequent visits to the Court. The objective behind all these provisions is to expedite trial of the cases instituted under Prevention of Corruption Act. If an order framing charge or directing framing of charge in such cases is held to be an interlocutory order, the legislative objective behind enactment of Prevention of Corruption Act, 1988 is likely to be substantially defeated. The

virus of corruption continues to eat into the vitals of our character and strength. With Government entering into large commercial contract and making huge purchases with increased expenditure on social welfare schemes and infrastructural projects, the scope for corrupt practices has increased manifold as the schemes and projects of the Government and its instrumentalities are executed only through public servants which gives considerable scope for misconduct on their part. Misuse of powers by those who occupy posts in Government is capable of causing considerable damage to the image and reputation of our country. We, therefore, need to curb and control the growing temptation to make a fast buck and get rich overnight by indulging in corrupt practices. This is possible only if those who indulge in such activities are given swift and deterrent punishment, which, in turn, is possible only if they are tried promptly and expeditiously, unhindered by unnecessary interference from superior Courts. It is with this objective in mind, Section 19(3)(c) of Prevention of Corruption Act has been enacted so as to take away the revisional powers of the High Court in the cases involving corruption by public servants.

14. Section 11 of Special Courts Act, 1979, to the extent it is relevant, read as under:

“The Special Courts Act, 1979

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.....

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

In **V.C. Shukla's** case (supra), the question that came up for consideration before the Hon'ble Supreme Court was as to whether the expression 'interlocutory order' used in Section 11(i) of Special Courts Act, 1979, needs to be given same interpretation as was given by the Court in the context of Section 397 (2) of the Code. The Hon'ble Supreme Court was of the view that speedy disposal of trial being the heart and soul of the Act, its provisions need to be interpreted in a manner that would eliminate all possible avenues of delay by adopting dilatory tactics. It was observed that if an order framing charge is held to be an interlocutory order, the Supreme Court would be flooded with appeals against the orders of Special Courts framing charges and that would impede the progress of the trial and delay the disposal of the case, which was against the very spirit of the Special Courts Act. It was noted that the Act applied only to specified number of cases which fulfilled the conditions contained in the Act. After considering its earlier decisions in the cases of **Madhu Limaye, Amar Nath, S. Kuppuswami Rao** and applying the non obstante contained in Section 11(i) of Special Courts Act, the Hon'ble Court held that the expression 'interlocutory order' in Special Courts Act had been used in its natural sense and not in a special or wider

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sense, as used in Section 397(2) of the Code of Criminal Procedure. The Hon'ble Court felt that the view taken by it was in complete consonance with the object of the Act to provide for a most expeditious trial and quick dispatch of the cases tried by the Special Courts, which was the paramount intention in passing the Act.

15. The legal proposition on interpretation of the expressions 'interlocutory order' and 'final order' was summarized by the Hon'ble Court as under

"34. 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 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.”

16. It was contended by the learned counsel for the petitioners that the interpretation given by the Hon'ble Supreme Court to the expression 'interlocutory order' in the context of Section 11(i) of Special Courts Act cannot be applied for interpreting it in the context of Section 19(3)(c) of the Prevention of Corruption Act for the reasons that (i) Special Courts constituted under Special Courts Act, 1979, was to be manned by a sitting Judge of the High Court who is presumed to frame the charges only after considering the various principles and guidelines laid down by other High Courts and the Supreme Court on the subject, whereas the trial under Prevention of Corruption Act is to be conducted by a Sessions Judge or Additional Sessions Judge who is designated as a Special Judge; (ii) the appeal from the order of Special Court constituted under Special Courts Act, 1979 was provided directly to Supreme Court, whereas the revisions from the order of the Special Judge lie to the High Court and not to the Supreme Court; and (iii) the Special Courts Act dealt with

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only a few cases, pertaining to crimes committed by a particular class of people, who were holding high public or political offices.

17. In my view, the above referred distinctions by themselves are not good enough to interpret the term 'interlocutory order' in a wider sense, giving it the same meaning as has been given in the context of the Code of Criminal Procedure, since the main reason which persuaded the Hon'ble Supreme Court to give a natural meaning as compared to a wider meaning given in the context of Section 397(2) of the Code, was the object behind enactment of Special Courts Act, which was to plug all possible loopholes that could be used to delay the trial of such cases and to ensure a quick dispatch in the trial of such cases. Since the main object behind enactment of Section 19(3)(c) of the Prevention of Corruption Act is to ensure a speedy trial of corruption cases by eliminating delays, which frequently occur on account of filing revision petitions against orders framing charge or orders directing framing of charge, there is no reason to give an interpretation different from the one given in the case of **V.C. Shukla** (supra). While interpreting the term 'interlocutory order' used in Section 11(i) of Special Courts Act, the Hon'ble Supreme Court was conscious that this would result in neither an appeal nor a revision being maintainable against an order framing charge or directing framing of charge. Despite that, the Hon'ble Court gave natural interpretation of the expression 'interlocutory order' so as to sub-serve the purpose

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behind the enactment of Special Courts Act. For the very same reason, the interpretation given by the Hon'ble Supreme Court in the case of **V.C. Shukla** (supra) needs to be given in the context of use of the expression 'interlocutory order' in Section 19(3)(c) of Prevention of Corruption Act.

18. In **Mohan Lal's** case (supra), the Hon'ble Supreme Court, *inter alia*, observed as under:

"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. However, generally speaking, a judgment or order which determines the principle matter in question is termed final. It may be final although it directs enquiries or is made on an interlocutory applications or reserves liberty to apply. In some of the English decisions where this question arose, one or the other of the following four tests was applied.

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?"

In **Madhu Limaye's** case (supra) also, the Hon'ble Supreme Court, observed as under:

“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)”

It was contended by the learned counsels for the petitioners that if the revision filed by an accused against whom charge has been framed is allowed, that would terminate the proceedings initiated against him, and therefore, the order framing charge cannot be said to be an interlocutory order. The contention was that an order cannot be interlocutory when it results in framing charge and final when it results in discharge of the accused. I find that not only the judgment in **Mohan Lal's** case and in **Madhu Limaye's** case were considered, this argument also was dealt with and repelled by the Hon'ble Supreme Court in the case of **V.C. Shukla**. Rejecting the contention, the Hon'ble Supreme Court, inter alia, observed as under:

“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”

Therefore, I am unable to agree that the judgment of this Court in **Dharambir Khattar's** case (supra) to the extent it holds that an order framing charge or directing framing of

charge is an interlocutory order, is per incuriam, and therefore, has no precedent value.

19. It was contended by the learned counsels for the petitioners that since trial under Special Courts Act was conducted by the High Court, as provided in Section 474 of the Code of Criminal Procedure, revisional powers could not have been conferred against an order passed in such a trial. In my view, the contention is misconceived. Merely because the Presiding Judge of Special Courts was to be a High Court Judge did not convert it into a trial by the High Court within the meaning of Section 474 of the Code of Criminal Procedure. In any case, nothing prevented the Legislature, if it so intended, from providing a revision directly to the Supreme Court against an order passed by the Special Court, constituted under Special Courts Act, 1979.

20. It was contended by the learned counsels for the petitioners that speedy trial is the objective not only behind the enactment of Section 19(3)(c) of Prevention of Corruption Act, but also behind various provisions contained in the Code of Criminal Procedure which are aimed at curtailing delays and expediting disposal of criminal cases, and therefore, there is no reason to interpret the expression 'interlocutory order' in Section 19(3)(c) of Prevention of Corruption Act differently from the interpretation given to it by the Hon'ble Supreme Court in the context of Code of Criminal Procedure. In my view, the

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contention is devoid of any merit. Despite the provisions contained in the Code of Criminal Procedure, the Hon'ble Supreme Court, in the case of **V.C. Shukla** took the view that an order framing charge is an interlocutory order. The reasons given by the Hon'ble Supreme Court for giving a natural meaning and not a wider meaning to the term 'interlocutory order' in Section 11(i) of the Special Courts Act equally apply to its interpretation in the context of Section 19(3)(c) of Prevention of Corruption Act. As noted earlier, the Legislature, despite the provisions contained in the Code, chose to make a specific provision taking away revisional jurisdiction of the Court in respect of the interlocutory orders and the legislative intent needs to be respected and given effect to by the Courts, while interpreting a statutory provision.

21. The learned counsels for the petitioners have also relied upon the decision of the Hon'ble Supreme Court in **State of Madhya Pradesh vs. Sheetla Sahay and Ors.** 2009 (8) SC 617 in support of their contention that the revision petition against order framing charge in a case under Prevention of Corruption Act is maintainable. In the case before the Hon'ble Supreme Court, the Special judge framed charge against the respondents in the case under Prevention of Terrorism Act, 1988. On a revision filed by them, the impugned order was set aside by the High Court. The appeal preferred by the State against the order of the High Court was dismissed by the Hon'ble Supreme Court. **Crl.Rev.P. 293,294,352,580 of 2006 and W.P.(Crl.) 1419/2009** *Page 25 of 55*

A perusal of this judgment would show that no contention was raised by the Hon'ble Supreme Court that the High Court could not have set aside the charge in exercise of its revisional jurisdiction. The arguments on behalf of the appellant find incorporation in para 34 of the judgment and the contention before the Hon'ble Supreme Court was that the sanction in terms of Section 197 of Cr.P.C. was not required since respondents 1 to 4 were no longer holders of public office and that while exercising its revisional jurisdiction, the High Court could not have appreciated evidence and probative value of the material brought on record. Since neither the expression 'interlocutory order' came up for consideration before the Hon'ble Supreme Court nor the extent of revisional power of the High Court in a corruption case came to be considered before the Hon'ble Supreme Court in this case, it cannot be said that by dismissing the appeal filed by the State, the Hon'ble Supreme Court had taken a view that the Revision Petition against charge framed under Prevention of Corruption Act was maintainable before the High Court.

22. The learned counsel for the petitioner has relied upon the decisions of Orissa High Court in **Jasobant vs. State of Orissa** 2009 (1) Crimes 143 where a learned Single Judge of Orissa High Court, after considering a number of decisions, including the decision of the Hon'ble Supreme Court in the case of **Madhu Limaye** held that an order framing charge under Section 12 of CrI.Rev.P. 293,294,352,580 of 2006 and W.P.(Cri.) 1419/2009 *Page 26 of 55*

Prevention of Corruption Act and Section 201 of IPC was not an interlocutory order and consequently, revision against such an order was not maintainable.

Since the order of this court in the case of **Dharambir Khattar**(supra) is based primarily upon the decision of the Hon'ble Supreme Court in **V.C. Shukla's** case and comparing the provisions of Section 19(3)(c) of Prevention of Corruption Act with those contained in Section 11(i) of Special Courts Act and Section 34 of Prevention of Terrorism Act, 2002 and I feel that holding such an order to be a final or intermediate order and those by allowing Revision Petition against such an order would defeat the legislative object behind Section 19(3)(c) of Prevention of Corruption Act. I therefore have not been able to persuade myself to agree with the view taken by the Orissa High Court.

23. It was also contended by the learned counsel for the petitioners that if neither revisional jurisdiction nor inherent jurisdiction of this Court is available against an order framing charge or directing framing of charge, that would deprive the petitioners of a statutory remedy otherwise available to them under the Code of Criminal Procedure and would be discriminatory vis-à-vis those who are tried for committing other offences and such a view would be violative of Article 14 of the Constitution. In support of their contention, they have relied upon the decision of a Division Bench of this Court in **A.S. Crl.Rev.P. 293,294,352,580 of 2006 and W.P.(Crl.) 1419/2009** *Page 27 of 55*

Impex vs. Delhi High Court 2003 (8) A.D. 189, where an Administrative Order of this Court, transferring the complaints under Section 138 of Negotiable Instruments Act, pending as on 31st December, 2001 from the Courts of Metropolitan Magistrates to the Courts of Additional Sessions Judges came to be challenged by way of some Writ Petitions. Quashing the Administrative Order, passed by this Court, a Division Bench, inter alia, observed as under:

“Therefore, the object of speedy trial would include the remedies as provided under the Code which also include the remedy of revision and denial of that remedy, to our mind, would hit Article 21 of the Constitution. We also find force in the submission of Mr. Anil Kumar Sharma that in case of petitioners two ladders of remedy have been taken away by the impugned order. The first is of filing an appeal to the Court of Sessions and second revision to the High Court. Whereas the persons against whom cases are filed after 31.12.2001 they would continue to avail two ladders of the remedy. This is not permissible under the law. Section 482 of the Code is a safeguard available by which the High Court exercises superintendence over the Courts below and prevents any miscarriage of justice. By taking away this right of the petitioners the safeguard provided under the Code has also been taken away which violates the right of the petitioners under Articles 21 and 41 of the Constitution.”

The above referred judgment, in my view, does not apply as those who are accused of having committed offences punishable under Prevention of Corruption Act, 1988 form a class altogether different from those who are accused of having committed

offences punishable under other Acts such as Indian Penal Code. By their very nature, these offences need to be treated differently from the offences punishable under other statutory provisions, such as the Penal Code. The menace of corruption in our society has now reached such alarming proportions that it is eating into the vitals of our economy that we cannot afford to treat such offences at par with general offences. It is an imperative need of the hour to try such offenders as expeditiously as is possible so as to punish the guilty at the earliest. In the case of **A.S. Impex** (supra), a differential treatment was given to those against whom cases were filed prior to 3rd December 2001 though they were similarly situated to those against whom the cases were filed after 31st December 2001, despite the fact that all of them were accused of having committed offences punishable under Section 138 of Negotiable Instruments Act. Since the accused in corruption cases form an altogether different class of offenders and the classification is based on an intelligible differentia, it cannot be said that there will be violation of their constitutional right of equality, incorporating in Article 14 of the Constitution, if they are not allowed to avail revisional or inherent jurisdiction of the Court for redressal of their grievances. It would be noteworthy in the case of **V.C. Shukla**(supra), the Hon'ble Supreme Court upheld denial of appeal or revision against an interlocutory order to those who were to be tried under Special Courts Act since only

those could be tried under the Special Courts Act who fulfilled the requirements laid down in the Act. Similarly, Section 34 of POTA also denies right of appeal or revision against an interlocutory order to those who are accused of having committed offence punishable under Prevention of Terrorism Act. As the accused in corruption case constitute a separate class altogether different from other offenders, it would not be a violation of any constitutional right of equality if they are denied access to the revisional and inherent jurisdiction of this Court, since remedy of approaching this Court under Article 226 and 227 of the Constitution and the Hon'ble Supreme Court under Article 136 of the Constitution would still be available to them, and therefore, they cannot be said to be altogether remediless.

24. For the reasons given in the preceding paragraphs, I am in full agreement with the view taken in **Dharambir Khattar's** case as regards the interpretation of the expression 'interlocutory order' used in Section 19(3)(c) of Prevention of Corruption Act, 1988.

Inherent powers of the High Court

25. It was contended on behalf of the petitioners that even if it is held that an order framing charge or directing framing of charge being an interlocutory order is not revisable in view of the bar created by Section 19(3)(c) of Prevention of Corruption Act, inherent powers of the Court, recognized in Section 482 of the Code of Criminal Procedure can be used, in appropriate

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cases, to interfere with such an order, despite its being an interlocutory order.

26. In '**CBI vs. Ravi Shankar Srivastava**' 2006, 7 SCC 188, the Hon'ble Supreme Court inter-alia hold that Section 482 of the Code does not confer any new powers on the High Court. It only saves the inherent power, which the Court possessed before the enactment of the Code. It was observed that no legislative enactment dealing with the procedure can provide for all cases that may possibly arise and the Courts, therefore, have inherent powers apart from express provisions of law, which are necessary for the proper discharge of functions and duties imposed upon them by law and this doctrine finds expression in Section 482, which merely recognizes and preserves inherent powers of the High Court.

27. In **Dharimal Tobacco Products Ltd. & Ors. vs. State of Maharashtra & Anr.** AIR 2009 SC 1032, the Hon'ble Supreme Court, inter alia, observed as under:

“Inherent power of the High Court is not conferred by statute but has merely been saved thereunder. It is, thus difficult to conceive that the jurisdiction of the High Court would be held to be bared only because the revisional jurisdiction could also be availed of.”

The issue before the Hon'ble Supreme Court in the case of **Dharimal** (supra) was as to whether a petition under Section 482 of Cr.P.C. was maintainable against an order issuing process

since such an order was also revisable under Section 397 of the Code.

28. In **Raj Kapoor vs. State** 1980 (1) SCC 43, the question before the Hon'ble Supreme Court was whether inherent powers of the High Court under Section 482 is excluded when the revisional power under Section 397 overlaps. The Hon'ble Supreme Court rejected the contention that inherent powers of the High Court under Section 482 stands repelled when the revisional power under Section 397 overlaps. It was held that there is no total ban on the exercise of inherent powers where abuse of the process of the Court or other extraordinary situation excites the Court's jurisdiction. It was however observed that the policy of law was clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay.

29. In the case of **Madhu Limaye** (supra), a Three-Judges Bench of the Hon'ble Supreme Court held that:-

“11. the bar on the power of revision was put in order to facilitate expedient disposal of the cases but in Section 482 it is provided that nothing in the Code, which would include Section 397(2) also, shall be deemed to limit or affect the inherent powers of the High Court. On a harmonious construction of the said two provisions in this behalf, it was held that though the High Court has no power of revision in an interlocutory order, still the inherent power will come into play when there is no provision for redressal of the grievance of the aggrieved party.”

The Hon'ble Supreme Court further observed as under:

“At the outset the following principles may be noticed in relation to the exercise of the inherent powers of the High Court which have been" followed ordinarily and generally, almost invariably, barring a few exceptions:

(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party ;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code (emphasis supplied)”

30. In the case of **V.C.Shukla vs. State**(supra), a Four-Judges Bench per majority held that sub-Section (3) of Section 397 does not at all limit the inherent powers of the High Court contained in Section 482. It merely curbs the revisional powers given to the High Court or to the Court of Sessions (under Section 397(1) of the Code).

31. However, in **Amar Nath's** case (supra), the Hon'ble supreme Court agreed with the view taken by a learned Single Judge of Punjab and Haryana High Court, that where a Revision to the High Court against the order of the Subordinate Judge is expressly barred under sub-Section (2) of Section 397 of the Code, the inherent powers contained in Section 482 would not

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be available to defeat the bar contained in Section 397(2) which does not confer any new powers but preserves the powers which the High Court already possessed.

32. In **Krishnan vs. Krishnaveni**, (1997) 4 SCC 241, the issue before the Hon'ble Supreme Court was whether, considering the embargo raised by Section 397(3) of the Code of Criminal Procedure on filing of a second revision petition before the High Court, after dismissal of the first one by the Court of Sessions, inherent powers of the High Court is still available under Section 482 of the Code. The Hon'ble Supreme Court, inter alia, held as under:-

“10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person – accused/complainant – cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be

justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings.”

33. In the case of **Dharambir Khattar** (supra), this Court rejected the contention that notwithstanding the provisions contained in Section 19(3)(c) of Prevention of Corruption Act, the powers of the High Court under Article 226 and 227 of the Constitution and Section 482 of the Code of Criminal Procedure of the Code of Criminal Procedure remain untrammelled, relying upon the decision of the Hon’ble Supreme Court in **Navjot Sandhu** and **Satya Narayan Sharma’s** case (supra). It was contended by the learned counsels for the petitioners that the Hon’ble Supreme Court did not hold in the case of **Satya Narayan Sharma** (supra) that the power under Section 482 of the Code of Criminal Procedure could not be invoked in a case attracting the provisions of Prevention of Corruption Act, 1988. A perusal of the judgment of the Hon’ble Supreme Court in the case of **Satya Narayan Sharma** (supra) would show that in the case before the Hon’ble Supreme Court, the appellant filed miscellaneous petition in the High Court against the order, whereby cognizance was taken for the offences punishable under the provisions of IPC and Section 5(2) of Prevention of Corruption Act, 1947 and got a stay of trial. On his petition

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being dismissed, he approached the Hon'ble Supreme Court by way of a Special Appeal and claimed that the inherent jurisdiction of the High Court was not circumscribed by the limitations imposed upon its revisional powers and that the power to pass an interlocutory order, like a stay order, was part of the inherent power of the Court. It was also contended by him that inherent powers could be invoked to quash proceedings even under Prevention of Corruption Act and it was absolutely necessary to stay the trial during pendency of such proceedings as, in the absence of stay of proceedings, the trial may conclude before the High Court examines the legality of charge. On behalf of the State, it was contended that inherent jurisdiction of the Court could not be exercised against an express bar of law engrafted in any other provision. The Hon'ble Supreme Court held that the legislative mandate against stay of proceeding would apply even where a Court is exercising inherent powers under Section 482 of the Code of Criminal Procedure. During the course of judgment, the Hon'ble Supreme Court, *inter alia*, observed as under:

“Section 482 of the Criminal Procedure Code does not provide that inherent jurisdiction can be exercised notwithstanding any other provision contained in any other enactment. Thus if an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar. As has been pointed out in the cases of *Madhu Limaye vs. The State of Maharashtra*, *Janata Dal vs.* and in *Indra Sawhney vs. Union of India*, the

inherent jurisdiction cannot be resorted to if there was a specific provision or there is an express bar of law.”

34. However, in para 17 of the judgment, the Hon’ble Court further observed as under:

“We clarify that we are not saying that proceedings under Section 482 of the Criminal Procedure Code cannot be adapted. In appropriate cases proceedings under Section 482 can be adapted. However, even if petition under Section 482 Criminal Procedure Code is entertained, there can be no stay of trials under the said Act.”

Relying upon the above referred observations, the learned counsel for the petitioners contended that the Hon’ble Supreme Court recognized in the case of **Satya Narayan Sharma**(supra), that in appropriate cases, the powers of the High Court under Section 482 of the Code of Criminal Procedure can be used. Per contra, it was contended by the learned counsel representing CBI that by making the above referred observations, the Hon’ble Court did not intend to say that the powers under Section 482 of the Code of Criminal Procedure could be adopted even to set aside an interlocutory order despite the embargo placed by Section 19(3)(c) of Prevention of Corruption Act and that, in fact, these observations would apply to proceedings in which an order other than an interlocutory order is challenged by way of proceedings under Section 482 of the Code of Criminal Procedure. It was further contended by learned counsel for the respondent that issue before the Hon’ble Supreme Court in the **Crl.Rev.P. 293,294,352,580 of 2006 and W.P.(Crl.) 1419/2009** *Page 37 of 55*

case of **Satya Narayan Sharma** (supra) was as to whether there could be stay of trial in exercise of powers of the High Court under Section 482 of the Code of Criminal Procedure and not whether an interlocutory order could be challenged by way of a petition under Section 482 of the Code of Criminal Procedure.

35. Section 34 of Prevention of Terrorism Act, 2002 to the extent it is relevant provides as under:

“34. Appeal.- (1)**Notwithstanding anything contained in the Code**, an appeal shall lie from any judgment, sentence or oral, **not being an interlocutory order**, of a Special Court to the High Court both on facts and on law....

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

In the case of **Navjot Sandhu** (supra), the Hon’ble Supreme Court ruled against exercise of inherent powers of the High Court, in respect of an interlocutory order, in view of the bar engrafted in Section 34 of Prevention of Terrorism Act against entertaining any appeal or revision against an interlocutory order passed by the Special Courts. Section 19(3)(c) of Prevention of Corruption Act also takes away the revisional jurisdiction of the Court in respect of interlocutory orders passed by the Special Judge. Therefore, the decision of the Hon’ble Supreme Court in the case of **Navjot Sandhu** (supra) squarely applies while deciding as to whether inherent

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powers of the High Court can be invoked or not, to challenge an interlocutory order, passed by the Special Courts.

36. In the case of **Navjot Sandhu** (supra), the Hon'ble Supreme Court was considering an appeal against an order passed by this Court in a petition challenging an interlocutory order passed by the Special Judge. As regards the scope of powers under Section 482 of the Code of Criminal Procedure, the Hon'ble Supreme Court, *inter alia*, observed as under:

"Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However as is set out in Satya Narayanan Sharma's case this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific

provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment.

(emphasis supplied)”

37. In view of the authoritative pronouncement of the Hon’ble Supreme Court in the case of **Navjot Sandhu** (supra), coupled with its earlier decisions in the case of **Madhu Limaye** (supra), it cannot be disputed that inherent powers of the High Court, recognized in Section 482 of the Code of Criminal Procedure, cannot be used when exercise of such powers would be in derogation of an express bar contained in a statutory enactment, other than the Code of Criminal Procedure. The inherent powers of the High Court have not been limited by any other provisions contained in the Code of Criminal Procedure, as is evident from the use of the words “Nothing in this Code” in Section 482 of the Code of Criminal Procedure, but, the powers under Section 482 of the Code of Criminal Procedure cannot be exercised when exercise of such powers would be against the legislative mandate contained in some other statutory enactment such as Section 19(3)(c) of Prevention of Corruption Act.

38. Taking a realistic view, if it is held that inherent powers of the Court can be invoked to challenge an interlocutory order, this Court would be flooded with such petitions since the petitions being presently filed in exercise of revisional

jurisdiction of this Court would be labelled as petitions under Section 482 of the Code of Criminal Procedure and would, almost invariably, be accompanied by request for stay of proceedings and/or summoning of the Trial Court Record. The legislative intent behind enactment of Section 19(3)(c) of Prevention of Corruption Act would thereby be effectively defeated only by changing the label of the petition. In fact, this precisely was the concern of the Hon'ble Supreme Court in **Rajan Kumar Manchanda vs. State of Karnataka** 1990 (suppl.) SCC 132, wherein while holding that a second revision did not lie before the High Court, after dismissal of the first revision before the Court of Sessions, the Hon'ble Supreme Court observed that if that was to be permitted, every revision application facing the bar of Section 397 (3) of the Code would be labelled as one under Section 482 of the Code of Criminal Procedure.

39. Therefore, I am in full agreement with the view taken in the case of **Dharambir Khattar** (supra) that inherent powers of the High Court cannot be used to interfere with an order framing charge or directing the framing of charge in case attracting the provisions of Prevention of Corruption Act.

Powers under Article 226 and 227 of the Constitution.

40. In the case of **Dharambir Khattar** (supra), this Court also observed that in view of the decision of the Hon'ble Supreme

Court in the case of **Navjot Sandhu**(supra), the power of the Court under Article 226 and 227 of the Constitution cannot be used to interfere with an order of this nature. I have carefully gone through the decision of the Hon'ble Supreme Court in the case of **Navjot Sandhu**(supra) and I find that in this case, the Hon'ble Supreme Court did not rule out invoking of writ jurisdiction of the High Court, in appropriate cases, even in respect of interlocutory orders. The Hon'ble Supreme Court noticed that the order of this Court challenged before it did not indicate as to whether the Court was exercising its power of superintendence under Article 226 of the Constitution or its inherent powers under Section 482 of the Code of Criminal Procedure. It was noted that the respondent Geelani had not invoked Article 227 of the Constitution and it was contended by Dr. Dhawan that the order was passed in exercise of inherent jurisdiction under Section 482 of the Code of Criminal Procedure. The Hon'ble Supreme Court found it difficult to accept the submission of Mr. Shanti Bhushan that the order of this Court was under Article 227 of the Constitution. Thus, Court felt, on the facts of the case before it, that neither the power under Article 227 of the Constitution nor inherent jurisdiction under Section 482 of the Code of Criminal Procedure should have been exercised, even if such powers were available. In para 28 of the judgment, the Hon'ble Supreme Court held as under:

“Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate Tribunal's within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order...

(emphasis supplied)

It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate Courts and Tribunal's within the bounds of their authority and not to correct mere errors. Further where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised ‘as the cloak of an appeal in disguise’.”

41. Thus, in the case of **Navjot Sandhu**(supra), the Hon'ble Supreme Court expressly recognized the powers of the High Court to interfere even with an interlocutory order in exercise of jurisdiction under Article 227 of the Constitution though it cautioned that such powers should be exercised sparingly and only with a view to keep subordinate Courts within the limits of their authority and only in very exception circumstances, warranting interference in exercise of these extraordinary

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powers. Therefore, the judgment of the Hon'ble Supreme Court in the case of **Navjot Sandhu**(supra) does not rule out invoking and exercise of constitutional powers of this Court in appropriate cases.

42. In **State of Gujarat vs. Vakhatsinghji Vajesinghji Vaghela**, AIR 1968 SC 1481, it was contended before the Hon'ble Supreme Court that Section 12 of Bombay Taluqdari Abolition Act, 1849 made the decision of Bombay Revenue Tribunal final and conclusive and the High Court had no jurisdiction to interfere with that decision. Rejecting the contention, the Hon'ble Supreme Court observed as under:

“Article 227 of the Constitution gives to High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law.”

43. In **Chandershekhar Singh vs. Siya Ram Singh**, (1979) 3 SCC 118, the scope of jurisdiction under Article 227 of the Constitution came up for consideration before the Supreme Court in the context of Section 435 and 439 of Criminal Procedure Code, 1898 which prohibited a second revision to the High Court vested against decision in first revision rendered by the Sessions Judge. A Three-Judges Bench summed up the position of law as under:-

(i) That the powers conferred on the High Court under Article 227 of the Constitution cannot, in any way, be curtailed by the provisions of the Code of Criminal Procedure;

(ii) the scope of interference by the High Court under Article 227 is restricted. The power of superintendence conferred by Article 227 is to be exercised sparingly and only in appropriate cases, in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors;

(iii) that the power of superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as the court of appeal; the High Court cannot, in exercise of its jurisdiction under Article 227, convert itself into a court of appeal.

44. In **Jagir Singh vs. Ranbir Singh** 1979 (1) SCC 560, the question before the Hon'ble Supreme Court was as to whether a Revision Application to the High Court could be maintained under Article 226 of the Constitution even after rejection of an earlier Revision Petition by the Court of Sessions. The Hon'ble Supreme Court observed that Where the statute banned the exercise of revisional powers by the High Court, it would indeed require very exceptional circumstances to warrant interference under Article 227 of the Constitution, since the power of Superintendence was not meant to circumvent statutory law. Thus, the Hon'ble Supreme Court did not rule out exercise of power under Article 227 of the Constitution though in exceptional circumstances.

45. In **Industrial Credit and Investment Corporation of India Limited vs. Grapco Industries Limited**, 1999 (4) SCC 710, the Hon'ble Supreme Court, inter alia, observed as under:

“There was no bar on the High Court to itself examine the merits of the case in the exercise of its jurisdiction under Article 227 of the Constitution if the circumstances so require. There is no doubt that High Court can even interfere with interim orders of the courts and tribunals under Article 227 of the Constitution if the order is made without jurisdiction.”

46. In **Surya Dev Rai vs. Ram Chander Rai & Others**, (2003) 6 SCC 675, the appellant whose prayer for ad-interim injunction was rejected by the trial court as well as by the Appellate Court and who could not have availed the remedy under Section 115 of CPC, after its amendment, filed a petition in the High Court labeling it as one under Article 226 of the Constitution. The High Court summarily dismissed the petition holding that the same was not maintainable. Allowing the appeal, the Hon'ble Supreme Court held that amendment of the Code of Civil Procedure does not take away and could not have taken away the constitutional jurisdiction of the High Court to issue a writ of Certiorari to a Civil Court nor is the power of the Superintendence averred on the High Court under Article 227 of the Constitution taken away or whittled down. It was held that the power exists untrammelled by the amendment in Section 115 of CPC and is available to be exercised subject to rules of his

self-discipline and during the course of judgment, the Hon'ble Supreme Court, inter alia, observed as under:-

“26. In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have enactments where the legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction, though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise the power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded.”

Referring to the decision of the Constitution in **Rupa Ashok Hurra** case, (2002) 4 SCC 388, it was held that the orders and proceedings of a judicial court subordinate to the

High Court are amenable to writ jurisdiction of the High Court under Article 226 of the Constitution, by issuing a writ of certiorari. While upholding the constitutional powers of the High Court under Article 226 & 227 of the Constitution, the Hon'ble Court inter alia cautioned as under:

“(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar

and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.”

47. It has thus been consistently held by the Hon’ble Supreme Court that the Writ Jurisdiction of the High Court under Article 226 and 227 of the Constitution can, in appropriate cases, be invoked even if there is a statutory prohibition against exercise of such power and irrespective of limitation, if any, imposed by an Act of State Legislature or even Parliament.

48. In fact, Writ Jurisdiction of High Court conferred by Article 226 and 227 of the Constitution being a part of its basic structure cannot be taken away even by way of a constitutional amendment. In **L.Chandra Kumar vs. Union of India** 1997 (3) SCC 261, a Constitution Bench of the Supreme Court held that:-

“29. the jurisdiction conferred on the Supreme Court under Article 32 of the Constitution on the High Courts under Articles 226 and 227 of the Constitution is a part of the basic structure of the Constitution, forming its integral and essential feature, which cannot be tampered with much less taken away even

by constitutional amendment, not to speak of a parliamentary legislation.”

49. Even the learned counsel representing CBI fairly conceded that Writ Jurisdiction of this Court could be invoked even in respect of an interlocutory order, though such constitutional power would be exercised by this Court only in very rare and exceptional cases warranting interference by this Court. I, therefore, have no hesitation in holding that irrespective of the embargo placed by Section 19(3)(c) of Prevention of Corruption Act, an interlocutory order, including an order framing charge or directing framing of charge in a case attracting the applicability of Prevention of Corruption Act, can be challenged by way of a Writ Jurisdiction under Article 226 and 227 of the Constitution. Since neither revisional powers conferred by the Code of Criminal Procedure, nor inherent powers, recognized by Section 482 of the Code of Criminal Procedure, can be invoked to challenge an interlocutory order such as order framing charge or directing framing of charge in a corruption case, invoking under Article 226 and 227 of the Constitution is the only remedy available to an accused against whom charge is framed or is ordered to be framed, besides extraordinary jurisdiction of the Hon'ble Supreme Court under Article 136 of the Constitution. If it is held that even constitutional remedy under Article 226 and 227 of the Constitution cannot be invoked against such an order, the accused will become almost remediless even if the order

passed by the Special Judge in a given case is totally without jurisdiction and causes grave miscarriage of justice or results in gross abuse of the process of law, and therefore, needs interference and correction by a superior Court. There may be a genuine apprehension that if the petitions under Article 226/227 of the Constitution are entertained against an interlocutory order such as an order framing charge or directing framing of charge under the Prevention of Corruption Act, the petitions challenging such an order may be labelled as writ petitions though the facts and circumstances of the case may not exercise of writ jurisdiction of the Court conferred by Article 226/227 of the Constitution. But, then the remedy does not lie in denying access to the writ jurisdiction of the High Court which is a Fundamental Right of every citizen and thereby leave an accused almost without remedy even in a case that would justify invocation of the constitutional powers conferred upon this Court. The guidelines for exercise of jurisdiction conferred upon the High Court by Article 226/227 of the Constitution have been well laid down in a number of authoritative pronouncements of the Hon'ble Supreme Court and needs to be strictly adhered to whenever such a jurisdiction is invoked. As reminded by the Apex Court, from time to time, these powers needs to be exercised cautiously, sparingly and only in exceptional circumstances, their objective being to keep the subordinate Courts under check and within the legal authority conferred

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upon them. The Courts cannot use revisional powers in the cloak of the writ powers conferred upon them. Appreciation of evidence and examination of its probative value is not permissible nor can the Courts exercising writ jurisdiction. Interference under Article 226/227 of the Constitution is warranted only in a case where gross injustice or failure of justice would be occasioned by refusing to exercise such powers. Therefore, the solution lies in self-restriction and not in denial of the constitutional remedy available to an accused.

50. In the case of **Dharambir Khattar** (supra), the proposition of law laid down by this Court was summarized as under:

“To conclude this part of the discussion it is held that in the context of Section 19 (3) (c) the words “no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial” includes an interlocutory order in the form of an order on charge or an order framing charge. On a collective reading of the decisions in V.C.Shukla and Satya Narayan Sharma, it is held that in terms of Section 19 (3) (c) PCA, no revision petition would be maintainable in the High Court against order on charge or an order framing charge passed by the Special Court.”

51. **Black’s Law Dictionary** defines obiter dictum as under:

“Words of an opinion entirely unnecessary for the decision of the case. Noel v. Olds, 78 U.S. App. D.C. 155, 138 F., 2d 581, 586. A remark made, or opinion expressed, by a judge, in his decision upon a cause, “by the way,” that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily

involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. Such are not binding as precedent.”

52. In **MCD vs. Gurnam Kaur** 1989 (1) SCC 101, the Hon’ble Supreme Court, inter alia, observed as under:

“Quotability as 'law' applies to the principle of a case, its ratio decidendi. The only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative.”

53. As noted earlier, the petitions before this Court in the case of **Dharambir Khattar** (supra) were Revisions Petitions and not petitions under Article 226 and 227 of the Constitution, though it was urged before the Court that the power of the Court under Article 226 and 227 of the Constitution remains untrammelled even if the revisional powers could not be exercised in view of the embargo placed by Section 19(3)(c) of Prevention of Corruption Act. This contention was not accepted observing that the same does not survive after the pronouncement of the Supreme Court in the case of **Navjot Sandhu**(supra). The observations of this Court, to the extent that the contention regarding constitutional powers of the Court remaining untrammelled, does not survive in view of the decision of the Supreme Court in the case of **Navjot Sandhu** (supra), are therefore obiter and do not constitute the law laid down by this **Crl.Rev.P. 293,294,352,580 of 2006 and W.P.(Crl.) 1419/2009** *Page 53 of 55*

Court in that case. The matter therefore does not need to be referred to a larger Bench.

54. In **Pepsi Foods Ltd. vs. Special Judicial Magistrate** 1998 (5) SCC 749, the Hon'ble Supreme Court observed that nomenclature under which petitions filed is not quite relevant and does not debar the Court from exercising its jurisdiction with otherwise possesses unless there is a special procedure prescribed which procedure is mandatory.

55. In **Shiv Shakti Coop. Housing Society vs. Swaraj Developers and Ors.** 2003 (6) SCC 659, while interpreting Section 115 of the Code of Civil Procedure, the Hon'ble Supreme Court held that if the impugned order is interim in nature or does not finally decide the lis, the revision will not be maintainable. It was contended before the Hon'ble Supreme Court that even if revisions are no maintainable, there should not be a bar on challenge being made under Article 227 of the Constitution and an opportunity may be taken to the appellants to avail that remedy. The Hon'ble Supreme Court observed that if any remedy is available to a party under any statute, no liberty is necessary to be granted for availing the same. In any case, no request has been made to this Court by any of the revisionists to treat the revision petition filed by them as a petition under Article 226 and 227 of the Constitution or seeking leave to file a petition under Article 226/227 of the Constitution. In the absence of such a prayer, the Revision Petitions cannot be

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considered as petitions invoking jurisdiction of this Court under Article 226 and 227 of the Constitution.

56. I therefore hold that (i) Revision Petition is not maintainable against an order framing charge or directing framing of charge in a case attracting the provisions of Prevention of Corruption Act, 1988; (ii) Inherent Powers of the High Court cannot be invoked to challenge an order of the above-referred nature and; (iii) Writ Petition under Article 226/227 of the Constitution is maintainable against an order of the above-referred nature.

57. For the reasons given in the preceding paragraphs, Revision Petitions 293/2006, 294/2006, 352/2006 and 580/2006 are hereby dismissed. Since the provisions of Article 226 and 227 of the Constitution have been invoked in Writ Petition 1419/2009, this petition be listed for hearing on merits on 14th January, 2010.

(V.K.JAIN)
JUDGE

JANUARY 6, 2010
AG/BG