

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**CrIA (S) No. 13/2022
CrIM No. 1506/2022**

Reserved on: 09-02-2023
Pronounced on: 16.02.2023.

Ayaz Ahmad and anr.

..... Appellant(s)

Through: Mr. I. H. Bhat, Advocate.

Versus

Union Territory of J&K

.....Respondent(s)

Through: Mr. Rahul Sharma, Dy.AG.

**CORAM: HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE PUNEET GUPTA, JUDGE**

JUDGEMENT

Sanjeev Kumar, J.

1. In the appeal on hand the appellants have challenged the order of framing charge dated 25.10.2019 as also the order dated 26.08.2022 whereby the request of the appellants for alteration of the charge has been rejected. The appeal is preferred under Section 21 of the National Investigating Agency Act, 2008, (NIA Act for short). Mr. Rahul Sharma appearing for the respondent has raised a preliminary objection with regard to the maintainability of the appeal on the ground that, in terms of Section 21 of the NIA Act, the interlocutory orders passed by the Special Judge are not appealable and that the order of framing of charge or refusing to alter the charge are interlocutory in nature and, therefore, not appealable.

2. Having heard the learned counsel for the parties and gone through the scheme of the NIA Act, we deem it necessary to first set out Section 21 of the NIA Act, which reads thus:-

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

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(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.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

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

Provided further that no appeal shall be entertained after the expiry of period of ninety days.”

3. From plain reading of Section 21, it would transpire that the Section begins with a non-obstante clause i.e. “Notwithstanding anything contained in the Code” which would mean that any provision contained in the Code of Criminal Procedure which is not consistent with the provisions of Section 21 of the NIA Act, will give way and the provisions of Section 21 shall prevail and have over-riding effect. Insofar as the order of framing charge is concerned, same is already held to be not an interlocutory but an intermediate order in terms of the expression ‘the interlocutory order’ used in Section 397 (2) Cr.P.C.

4. It is pertinent to note that this Court in **S. K. Mahajan and ors v. Municipality, 1982 Cr.L.J 646** had taken the view that an order framing charge would not be revisable in view of the provisions of Sub-Section (2) of Section 435 of the Code of Criminal procedure Smvt 1989, which provision is in *pari materia* with Section 397(2) of the Code of Criminal Procedure 1973 which is now applicable to the Union Territory of Jammu and Kashmir. This view, which was taken by a Division Bench in

S.K.Mahajan (*supra*), was consistently followed for long till we witnessed a shift in the recent past. The Courts took the view that framing of charge decides a vital right of an accused to be put on trial and, therefore, cannot be termed as a mere interlocutory order. The controversy was laid to rest by Hon'ble the Supreme Court in 3-Judge Bench judgment in the case of **Sanjay Kumar Rai v. State of U.P.**, **AIR 2021 SC 2351**, wherein the Apex Court, after referring to the earlier judgments in the case of **Asian Resurfacing of Road Pvt. Ltd. And anr v. Central Bureau of Investigation**, **2018 (16) SCC 299** and **Madhu Limaye v. State of Maharashtra**, **1997 (4) SCC 551**, concluded that the order framing charge or refusing discharge are neither interlocutory nor final in nature and therefore not affected by the bar of Section 397(2) of the Code. Insofar as the position with regard to meaning and import of expression 'interlocutory order' used in Sub-Section (2) of Section 397 is concerned, it is now trite law that the order framing charge is neither a final order nor an interlocutory order but would fall somewhere in between and, therefore, can be appropriately termed as intermediate order. However, on the question raised as to whether we can give similar meaning to the term 'interlocutory order' used in Sub-Section (1) of Section 21 of the NIA Act, as well, the answer would be complete no in view of the legal position enunciated in **V. C. Shukla v. State through C.B.I.**, **1980 (Supp) SCC 92**. The Bench of Hon'ble the Supreme Court which decided *V.C.Shukla (supra)* was a 4-Judge Bench and the case was decided by three Judges taking a unanimous view with one Judge dissenting. In the aforesaid case, Hon'ble the Supreme Court was construing the term 'interlocutory order' as used in Section 11 of the Special Courts Act, 1979 ["1979, Act"] which was in *pari materia* with

Section 21 of the NIA Act. As per the majority opinion, the order framing charge was held to be an interlocutory order. The Hon'ble Supreme Court resorted to the principle of contextual interpretation and having had regard to the object of 1979, Act, which *inter alia* aimed at securing speedy disposal of the cases under the said Act, interpreted the expression 'interlocutory order' in a sense more restrictive than it has been interpreted in the context of Code of Criminal Procedure, 1973. To understand the issue decided in *V. C. Shukla (supra)* it would be appropriate to reproduce Section 11 of the Special Courts Act 1979 herein below:-

“ 11. Appeal.

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

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

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of any judgment sentence or order of a Special Court: Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.”

5. Sub-Section (1) of Section 11 of the Special Courts Act is in *pari materia* with Sub-Section (1) of Section 21 of the NIA Act. Both the Sections deal with appellate jurisdiction over the Special Courts constituted under the two special legislations i.e. Special Courts Act, 1979 and NIA Act, 2008. Therefore, what is held in *V. C. Shukla (supra)* in respect of expression 'interlocutory order' used in Section 11(1) of the Special Courts Act, 1979 would apply on all fours to the construing of term 'interlocutory order' as used in Sub-Section (1) of Section 21 of the NIA Act. What is held

by Hon'ble the Supreme Court in *V. C. Shukla (supra)* in this regard is contained in paragraph nos. 45, 46, 47 and 48, which, for facility of reference, is reproduced below:-

“ 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 through 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 suggested 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 s. 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.

45. On a true construction of [s. 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's case (*supra*) 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 [s. 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'(*supra*) and Amarnath & Ors. v. State of Haryana & Ors. (*supra*) were given with respect to the provisions [of the Code](#), particularly [s. 397\(2\)](#), they were correctly decided and would have no application to the interpretation of [s. 11\(1\)](#) of the Act, which expressly excludes the provisions [of the Code](#) of Criminal Procedure by virtue of the non obstante clause.

46. We feel that one reason why no appeal was provided against an interlocutory order like framing of the charges, as construed by us so far as the Act is concerned, may have been that it would be against the dignity and decorum of the very high status which the Special Judge under the Act enjoys in trying the case against an accused in that the Judge is a sitting Judge of a High Court and therefore must be presumed to frame the charges only after considering the various principles and guidelines laid down by other High Courts and this Court in some of the cases referred to above.

47. Thus, summing up the entire position the inescapable conclusion that we reach is that giving the expression 'interlocutory order' its natural meaning according to the tests laid down, as discussed above, particularly in Kuppuswamy's (*supra*) case and applying the non obstante clause, we are

satisfied that so far as the expression 'interlocutory order' appearing in [s. 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 [s. 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.

6. The judgment of Hon'ble the Supreme Court rendered in *V. C. Shukla* (*supra*) has been followed by a Division Bench of Gauhati High Court in the case of **Londhoni Devi v. State through National Investigating Agency, 2013 (4) Gauhati Law Reports, 897**. Paragraphs 61, 62, 63, 64 and 65 of the judgment are relevant and are, therefore, set out below:-

“61. In the case at hand, too, the heart and soul of the NIA Act, 2008 is speedy disposal and quick dispatch in the trial of these cases. It is, therefore, clear that the provisions of the NIA Act, 2008, must be interpreted in such a way that it eliminates all possible avenues of delay or means of adopting dilatory tactics by plugging every possible loophole in the NIA Act, 2008, through which the disposal of the case may be delayed.

62. In short, thus, the sole object and the scheme of the NIA Act, 2008, is to achieve speedy trial as well as speedy judicial determination.

63. If the above objects, embodied in the NIA Act, 2008, are kept in mind, it is not difficult to conclude that interlocutory order, which appears in section 21, cannot be construed as an intermediate order as is done in the context of the Code and the term, interlocutory order, in the context of NIA Act, 2008, has to be construed to mean an order passed during the progress of the trial and against which no special remedy has been provided.

64. It is, no doubt, true, as has been pointed out by the learned amicus curiae, that under the Special Courts Act, 1979, a sitting Judge of the High Court was to preside over the trial; whereas the Special Court, constituted under the NIA Act, can be presided over by an Additional Sessions Judge. We are, however, unable to persuade ourselves to hold that the fact that the Presiding Judge of the Court under the Special Courts Act, 1979, was a sitting Judge of the High Court was the only reason for holding, as has been held in *V. C. Shukla* (*supra*),

that an order, framing charge, is not an interlocutory order. Undoubtedly, the fact that it was a sitting Judge of the High Court, who was to preside over the trial under the Special Courts Act, 1979, was an important factor, but not the only factor inasmuch as a close and dispassionate analysis of the various observations made, the inferences drawn and conclusions reached in V. C. Shukla's case (supra), clearly demonstrates that the court came to the conclusion that the Special Courts Act, 1979, meant to deal with cases expeditiously and with great dispatch and if that be so, the appeal shall not be allowed to be hindered by entertaining revision against interlocutory order including an order framing charge. Considered in this light, it is not difficult to construe, and we do construe, that the NIA Act, 2008, aims at expeditious and fair investigation by the NIA and also early and effective disposal of case by the trial held by a Special Court.

65. In the circumstances indicated above, there is no reason to attribute to the term, interlocutory order, a meaning other than the one, which we have done above.”

7. We also had an advantage of the view taken by a Single Bench of this Court on similar lines in CRM(M) No. 247/2021 titled Waheed Ur Rehman Parra vs. UT of J&K (Counter Intelligence Kashmir) decided on 04.12.2021. The Division Bench of Gauhati High Court in *Londhoni Devi (supra)* has taken note of the object of the scheme of NIA Act, 2008 to compare it with Special Courts Act, 1979, Section 11 (1) whereof was subject matter of interpretation in *V. C. Shukla's case (supra)*. We, however, wish to add that the National Investigating Agency at the national level was constituted under the NIA Act, 2008 to investigate and prosecute offences affecting sovereignty, security and integrity of India, security of State, friendly relations with foreign States etc. etc. The enactment of the NIA Act was also necessitated with a view to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organizations. Section 3 deals with constitution of National Investigating Agency. Section 6 provides for

investigation of scheduled offences. Section 11 deals with power of Central Government to constitute Special Courts and Section 22 deals with similar powers of the State Governments to constitute Special Courts for the trial of offences under any or all the enactments specified in the Schedule of NIA Act.

8. There are certain special attributes to the NIA Act, which we must notice to conclude that the NIA Act is an enactment which *inter alia* aims at securing expeditious disposal of the cases investigated by the National Investigating Agency under the NIA Act. Section 12 gives power to the Special Court constituted under the Act to sit for any of its proceedings at any place other than its ordinary place of sitting. This could be done by the Special Court either on its own motion or on an application made by the Public Prosecutor. The power to transfer a case pending before the Special Court to another Special Court within that State or to any other State is vested with the Supreme Court whereas the High Court is invested with the power to transfer any case pending before the Special Court constituted in that State to another Special Court within the State. In terms of Section 16, which deals with the procedure and powers of the Special Courts, if an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the same can be tried in a summary way in accordance with the procedure prescribed in the Code of Criminal Procedure, notwithstanding anything contained in Sub-Section (1) of Section 260 or Section 262 of the Criminal Procedure Code. Section 19 of the Act makes an important provision which provides for precedence of the trial by a Special Court over the trial of any other case against the accused in any other Court. Section 19, which is relevant for our

purpose, is reproduced hereunder:-

“ 19. Trial by Special Court to have precedence.—The trial under this Act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall, if necessary, remain in abeyance.”

9. Section 19 reproduced above leaves no manner of doubt that the legislature while enacting the NIA Act has treated the trial under the Act as a special category trial which must be concluded expeditiously by avoiding all possible dilatory procedures. Not only the trial by a Special Court is required to be conducted on day to day basis but shall also be given precedence over the trial of any other case against the accused in any other Court. Similarly, under sub-Section (2) of Section 21 of the NIA Act, an appeal against any judgment, sentence or order (not being an interlocutory order) passed by the Special Court to the High Court is required to be disposed of as far as possible within a period of three months from the date of admission of the appeal. To the similar extent is the intent of proviso appended to Section 21, which provides for limitation for filing an appeal. Sub-Section (5) fixes a period of 30 days from the date of judgment, sentence or order appealed against for filing an appeal and confers upon the High Court discretion to entertain an appeal after expiry of said period of 30 days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of 30 days. By adding second proviso to Section 21 of the NIA Act, it has been provided that unless there are exceptional circumstances, the appeal shall not be entertained after expiry of 90 days.

10. In view of the aforesaid provisions and having regard to the avowed object of the enactment, the provisions of the NIA Act are required to be

interpreted in such a way that it achieves the object of the legislature and all possible means and all possible loopholes, which may be exploited by an interested party to adopt dilatory tactics, are eliminated. In is in the context of object and scheme of the Special Courts Act, 1979, the Hon'ble Supreme Court in V. C. Shukla's case (*supra*) interpreted the term 'interlocutory order' differently and in more restrictive sense than it had been interpreted by the Courts in reference to Section 397 (2) of the Code of Criminal Procedure.

11. To sum up, we hold that the order framing charge or an order altering or refusing to alter the charge passed by the Special Court under the NIA Act, is an interlocutory order not appealable under sub-section (1) of Section 21 of the NIA Act. We, therefore, hold this appeal not maintainable.

12. We are, however, inclined to accept the request of learned counsel for the appellants to convert these proceedings in a petition under Section 482 Cr.P.C. Whether or not the appellants have made out a case for invoking Section 482 Cr.P.C can be considered and dealt with by the learned Single Bench. We thus order this appeal to be converted into proceedings under Section 482 Cr.P.C. The Registry shall register the petition accordingly and list it on **27th March, 2023** before the Single Bench according to roster.

(Puneet Gupta)
Judge

(Sanjeev Kumar)
Judge

JAMMU

16.02.2023

Anil Raina, Addl. Reg/Secy

Whether the order is speaking: Yes
Whether the order is reportable: Yes