



MAJESTY LEGAL
Advocates & Solicitors

**CHARGE-FRAMING ORDER BY NIA SPECIAL COURT IS APPEALABLE, NOT
INTERLOCUTORY**

“SATENDRA SIWAL VERSUS STATE OF U.P. THRU. PRIN. SECY. HOME LKO. AND 2 OTHERS”

Hon’ble Allahabad High Court in case of *Satendra Siwal Versus State of U.P. Thru. Prin. Secy. Home Lko. and 2 others.*¹, held that an order framing charges passed by a Special Court under the National Investigation Agency (NIA) Act cannot be treated as an interlocutory order. The ruling came in a petition under Article 227 of the Constitution challenging the framing of charges against the petitioner under Section 121-A IPC.

The State opposed the petition on the ground that it was not maintainable in view of Section 21 of the NIA Act, which provides a statutory appeal against any judgment, sentence or order of a Special Court, except an interlocutory order. Referring to Section 21, Hon’ble Court observed that the provision expressly permits an appeal against orders of a Special Court other than interlocutory orders. Hon’ble Court also distinguished the NIA Act from the erstwhile Special Courts Act, 1979, under which Special Courts were presided over by sitting High Court Judges and appeals lay before the Supreme Court. In contrast, under the NIA Act, Special Courts are presided over by Sessions Judges, with appeals provided before a Division Bench of Hon’ble High Court.

Hon’ble Court held that permitting a petitioner to invoke Article 227 jurisdiction before a Single Judge when a statutory appeal lies before a Division Bench would amount to bypassing the appellate mechanism prescribed under the NIA Act. Accordingly, Hon’ble Court declined to entertain the Article 227 petition.

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¹ MATTERS UNDER ARTICLE 227 No. - 4289 of 2026

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A.F.R.

2026:AHC-LKO:56814

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

MATTERS UNDER ARTICLE 227 No. - 4289 of 2026

Satendra Siwal

.....Petitioner(s)

Versus

State of U.P. Thru. Prin. Secy. Home Lko. and 2 others

.....Respondent(s)

Counsel for Petitioner(s) : Prashant Tiwari,

Counsel for Respondent(s) : G.A., A.S.G.I.

Court No. - 14

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Sri Prashant Tiwari, the learned counsel for the petitioner, Sri Shiv Nath Tilhari, the learned A.G.A.-I appearing on behalf of the opposite parties no.1 and 3 (State of U.P. and U.P. Anti-Terrorist Squad), Ms. Hina Naqvi, Advocate holding brief of Sri Varun Pandey, the learned Central Government Counsel appearing on behalf of the opposite party no. 2 (Union of India) and perused the records.

2. By means of the instant petition filed under Article 227 of the Constitution of India the petitioner has challenged the validity of an order dated 10.10.2024, passed by the learned Special Judge, NIA, Lucknow in Sessions Trial No. 2126 of 2024, arising out of Case Crime No. 2 of 2024,

under Section 121-A of IPC and Sections 3/5/9 of the Official Secrets Act 1923, Police Station ATS, District Lucknow, to the extent that it frames charges under Section 121-A IPC against the petitioner.

3. Sri Shiv Nath Tilhari, the learned AGA-I has raised a preliminary objection that the petitioner has got a statutory remedy of filing an appeal under Section 21 of the National Investigation Agency Act, 2008 (hereinafter referred to as '*the NIA Act*') and therefore, the petition filed under Article 227 of the Constitution of India is not maintainable in view of the availability of the statutory remedy of appeal.

4. Sri Tilhari has placed reliance on the decisions of the Hon'ble Supreme Court in the cases of **Madhu Limaye v. State of Maharashtra**: (1977) 4 SCC 551, **Sanjay Kumar Rai vs. State of U.P.**: 2022 (15) SCC 720 and **Asian Resurfacing of Road Agency Private Limited and Another vs. Central Bureau of Investigation**: (2018) 16 SCC 299.

5. Replying to the aforesaid preliminary objection, Sri Prashant Tiwari, the learned counsel for the petitioner has submitted that in **V.C. Shukla v. State**: 1980 Supp SCC 92, a larger bench consisting of four Hon'ble Judges of the Supreme Court has held that an order framing charges is an interlocutory order and therefore, no appeal would lie against an order framing charges. The judgment in the case of **V.C. Shukla** (supra) has been followed by a Division Bench of the Delhi High Court in **Shahid Yusuf v. NIA** (2025) SCC OnLine Del 9449, a Division Bench of the Jammu & Kashmir and Ladakh High Court in **Ayaz Ahmad v. Union Territory of J&K: CrIA (S) No.13/2022** and a Division Bench of the Gauhati High Court in **Londhoni Devi v. State through National Investigating Agency**: (2013) SCC OnLine Gau 407. Sri Tiwari submits that in view of the aforesaid judgments, an order framing a charge is an interlocutory order and Section 21 of the NIA Act provides that no appeal shall lie against an interlocutory order. For this reason, the petition under Article 227 of the Constitution of India is maintainable.

6. The question to be decided in this petition is whether an order passed by a Special Court under the NIA Act, framing a charge under Section 121-

A IPC against the petitioner, is an interlocutory order within the meaning of the expression used in Section 21 of the NIA Act.

7. In **Madhu Limaye v. State of Maharashtra**: (1977) 4 SCC 551, while considering the meaning of the expression ‘interlocutory order’ used in Section 397(2) of the Code of Criminal Procedure 1973, the Hon’ble Supreme Court was dealing with the situation where in most of the cases decided during several decades, the inherent power of the High Court has been invoked for the quashing of a criminal proceeding on one ground or the other. Sometimes the revisional jurisdiction of the High Court had also been resorted to for the same kind of relief by challenging the order taking cognizance or issuing processes or framing a charge on the grounds that the Court had no jurisdiction to take cognizance and proceed with the trial, that the issuance of process was wholly illegal or void or that no charge could be framed as no offence was made out on the allegations levelled or on the basis of the evidence adduced in Court. In the background as aforesaid, the Hon’ble Supreme Court examined as to what is the correct position of law after the introduction of a provision like sub-section (2) of Section 397 in the 1973 Code and held that :-

“10. ... the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial, after proper sanction will not be barred on the

doctrine of autrefois acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused up to the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.

* * *

17. Before we conclude we may point out an obvious, almost insurmountable, difficulty in the way of applying literally the test laid down in Kuppuswami Rao case and in holding that an order of the kind under consideration being not a final order must necessarily be an interlocutory one. If a complaint is dismissed under Section 203 or under Section 204(4), or the Court holds the proceeding to be void or discharges the accused, a revision to the High Court at the instance of the complainant or the prosecutor would be competent, otherwise it will make Section 398 of the new Code otiose. Does it stand to reason, then, that an accused will have no remedy to move the High Court in revision or invoke its inherent power for the quashing of the criminal proceeding initiated upon a complaint or otherwise and which is fit to be quashed on the face of it? The Legislature left the power to order further inquiry intact in Section 398. Is it not then, in consonance with the sense of justice to leave intact the remedy of the accused to move the High Court for setting aside the order adversely made against him in similar circumstances and to quash the proceeding? The answer must be given in favour of the just and reasonable view expressed by us above."

8. In **V. C. Shukla v. State through CBI**: 1980 Supp SCC 92, the question was regarding maintainability of an appeal under Section 11(1) of the Special Courts Act, 1979 (Act 22 of 1979) against an order passed by a Single Judge of the High Court, while acting as the Special Judge appointed under the Act, by which the learned Judge had directed a charge to be framed against the appellant. The Solicitor-General of India had raised a preliminary objection against the maintainability of the appeal on the ground that the order impugned being a purely interlocutory order within the meaning of Section 11(1) of the Act, no appeal lay to this Court. The

Division Bench referred the case to a larger Bench of four Hon'ble Judges. Hon'ble S. Murtaza Fazal Ali J. delivered a judgment for himself and for Hon'ble A. P. Sen J. A separate concurring judgment was delivered by Hon'ble D. A. Desai J. Hon'ble P. N. Shinghal J. delivered a dissenting judgment. Hon'ble A. P. Sen J. held in the majority judgment, that: -

“45. On a true construction of Section 11(1) of the Act and taking into consideration the natural meaning of the expression “interlocutory order”, there can be no doubt that the order framing charges against the appellant under the Act was merely an interlocutory order which neither terminated the proceedings nor finally decided the rights of the parties. According to the test laid down in Kuppuswami case [AIR 1949 FC 1] the order impugned was undoubtedly an interlocutory order. Taking into consideration, therefore, the natural meaning of interlocutory order and applying the non obstante clause, the position is that the provisions of the Code of Criminal Procedure are expressly excluded by the non obstante clause and therefore Section 397(2) of the Code cannot be called into aid in order to hold that the order impugned is not an interlocutory order. As the decisions of this Court in the cases of Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551] and Amar Nath v. State of Haryana [(1977) 4 SCC 137] were given with respect to the provisions of the Code, particularly Section 397(2), they were correctly decided and would have no application to the interpretation of Section 11(1) of the Act, which expressly excludes the provisions of the Code of Criminal Procedure by virtue of the non obstante clause.

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

9. In a separate concurring judgment, Hon'ble D. A. Desai J. held in **V.C. Shukla** (supra) that the order framing a charge is an interlocutory order within the meaning of Section 11(1); the appeal against such an order is incompetent in view of the provision contained in Section 11(2).

10. However, in the dissenting judgment delivered in **V.C. Shukla** (supra), Hon'ble P. N. Shinghal J. observed that: -

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

* * *

*64. The next case which bears on the controversy is **State of Karnataka v. L. Muniswamy** [(1977) 2 SCC 699] ... it was observed that “**the ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature**”.*

* * *

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

* * *

*71. Their Lordships made a reference to **Mohan Lal Magan Lal** [AIR 1968 SC 733] and added that even though the case under their consideration might not be said to be squarely covered by that decision*

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

(emphasis provided)

They also pointed out an

*“obvious, almost insurmountable, difficulty in the way of applying literally the test laid down in **Kuppuswami Rao case** and in holding*

that an order of the kind under consideration being not a final order must necessarily be an interlocutory one.”

* * *

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

11. The learned Counsel for the petitioner has submitted that the aforesaid judgment has been followed by three Division Benches of three different High Courts - (1) in **Londhoni Devi v. State**: 2013 SCC OnLine Gau 407, by the Gauhati High Court, (2) in **Ayaz Ahmad and another versus Union Territory of J&K**: CrIa (S) No. 13/2022, decided on 16.02.2023 by the High Court of Jammu & Kashmir and Ladakh at Jammu and (3) in **Shahid Yousuf v. National Investigation Agency**: 2025 SCC OnLine Del 9449 decided by the Delhi High Court. All the aforesaid three High Courts have held that an order framing charges is an interlocutory order and, therefore, an appeal filed under Section 21 of the NIA Act against such an order is not maintainable.

12. What is significant to note is that in **V.C. Shukla** (supra), the question was regarding maintainability of appeal under Section 11(1) of the Special Courts Act, 1979 (Act 22 of 1979) before the Hon’ble Supreme Court, against an order passed by a Single Judge of the High Court, while acting as the Special Judge appointed under the Act, by which the learned Judge had directed a charge to be framed against the appellant. The question of maintainability of an appeal before the High Court under Section 21 of the NIA Act against an order passed by a Special Court under NIA Act was not involved in **V.C. Shukla** (supra). It is well known that a judgment is an authority for what it decides and not what may even logically be deduced therefrom.

13. In **P.S. Sathappan v. Andhra Bank Ltd.**: (2004) 11 SCC 672, a Constitution Bench consisting of five Hon’ble Judges held that: -

“144. While analysing different decisions rendered by this Court, an attempt has been made to read the judgments as should be read under

the rule of precedents. A decision, it is trite, should not be read as a statute.

145. A decision is an authority for the questions of law determined by it. While applying the ratio, the court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration. A judgment, as is well known, must be read in its entirety and the observations made therein should receive consideration in the light of the questions raised before it. [See Haryana Financial Corpn. v. Jagdamba Oil Mills [(2002) 3 SCC 496], Union of India v. Dhanwanti Devi [(1996) 6 SCC 44], Nalini Mahajan (Dr.) v. Director of Income Tax (Investigation) [(2002) 257 ITR 123 (Del)], State of U.P. v. Synthetics and Chemicals Ltd. [(1991) 4 SCC 139], A-One Granites v. State of U.P. [(2001) 3 SCC 537] and Bhavnagar University v. Palitana Sugar Mill (P) Ltd. [(2003) 2 SCC 111]]

146. Although decisions are galore on this point, we may refer to a recent one in State of Gujarat v. Akhil Gujarat Pravasi V.S. Mahamandal [(2004) 5 SCC 155] wherein this Court held:

“It is trite that any observation made during the course of reasoning in a judgment should not be read divorced from the context in which it was used.”

147. It is further well settled that a decision is not an authority for the proposition which did not fall for its consideration.”

14. Therefore, **V.C. Shukla** (supra) has to be read and understood in light of the provisions of the Special Courts Act, 1979, which received the President's assent on 16.05.1979, was published on 17.05.1979 and was repealed by the Special Courts (Repeal) Act, 1982 (Act no. 34 of 1982) with effect from 17.08.1982. The statement of aims and objects of the Special Courts Act stated that: -

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

And whereas investigations conducted by the Government through its agencies have also disclosed similar offences committed during the period aforesaid;

And whereas the offences referred to in the recitals aforesaid were committed during the operation of the said Proclamation of Emergency, during which a grave emergency was clamped on the whole country, civil liberties were curtailed to a great extent, important fundamental rights of the people were suspended, strict censorship was imposed on the press, judicial power were severely crippled and the Parliamentary democratic system was emasculated;

*And whereas **all powers being a trust, and holders of high public or political offices are accountable for the exercise of their powers in all cases where Commissions of Inquiry appointed under the Commissions of Inquiry Act, 1952 or investigations conducted by Government through its agencies disclose offences committed by such holders;***

And whereas it is the constitutional, legal and more obligation of the State to prosecute persons involved in the said offences;

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

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

And whereas it is necessary for the said purpose to establish additional Courts presided over by sitting Judges of High Courts;

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

Be it enacted by Parliament in the Thirtieth Year of the Republic of India as follows: -”

15. Section 3 of the Special Courts Act provided for the establishment of Special Court and sub-Section (2) of Section 3 provided that: -

“3. (2) A Special Court shall consist of a sitting Judge of a High Court nominated by the Chief Justice of the High Court within the local limits of whose jurisdiction the Special Court is situated, with the concurrence of the Chief Justice of India.”

16. Section 5 of the Special Courts Act provided for declaration by Central Government of cases to be dealt with under the said Act and it read as follows:-

*“(1) If the Central Government is of opinion that **there is prima facie evidence of the commission of an offence alleged to have been committed by a person who held high public or political office in India** and that in accordance with the guidelines contained in the Preamble here to the said offence ought to be dealt with under this Act, the Central Government shall make a declaration to that effect in every case in which it is the aforesaid opinion.*

(2) Such declaration shall not be called in question in any Court.”

17. Section 11 of the Special Courts Act provided for Appeals as follows:

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*“(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.”

18. Thus it is clear that the Special Courts Act, 1979 was enacted in view of the reports of Commissions of Inquiry disclosing the existence of prima facie evidence of offences committed by persons who held high public or political offices in the country and others connected with the commission of such offences during the operation of the Proclamation of Emergency dated 25.06.1975, as holders of high public or political offices are accountable for the exercise of their powers in all cases where Commissions of Inquiry or investigations conducted by Government through its agencies disclosed offences committed by such holders. The Special Courts Act constituted Special Courts presided over by sitting Judges of High Courts and it made some procedural changes to avoid delay in the final determination of the

matter. It is also relevant to note that the Special Courts Act, 1979 was repealed by the Special Courts (Repeal) Act, 1982 (Act no. 34 of 1982) with effect from 17.08.1982.

19. To understand the differences between Section 11 of the repealed Special Courts Act, 1979 and Section 21 of the NIA Act, both the provisions are being quoted below in the tabular form: -

Section 11 of the Special Courts Act	Section 21 of the NIA Act
“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.	“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) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, sentence or order of a Special Court.	(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) 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.”	(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.”

20. Section 21 of the NIA Act provides that notwithstanding anything contained in Cr.P.C., an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court. Section 11 of the NIA Act provides that Special Courts will be presided over by Sessions Judges and the appeals lie to Division Benches of the High Courts. Section 11 of the repealed Special Courts Act provided for Special Courts to be presided over by a sitting Judge of the High Court and the appeals lay before the Hon’ble Supreme Court as this Act was enacted to deal with certain offences committed by politically influential persons during the operation of Emergency imposed in the year 1975 only. In no other statute, including the NIA Act, a Special Court to conduct trials is constituted by a sitting Judge of the High Courts.

21. The majority judgment delivered in **V.C. Shukla** (supra) has taken into consideration the aforesaid peculiar situation while interpreting the term ‘interlocutory order’, as is evident from the observations made in paragraph 46 of the judgment, that: -

*“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.”*

22. Therefore, there are substantial differences in the provisions of the Special Courts Act, 1979 which was enacted to deal with the offences committed by persons who held high public or political offices in the country and others connected with the commission of such offences during the operation of the Proclamation of Emergency, dated 25.06.1975 which was repealed in the year 1982 and the provisions of the NIA Act and in view of the law laid down by the five-Judge Constitution Bench in **P.S.**

Sathappan v. Andhra Bank Ltd. (supra), the interpretation of the term ‘interlocutory order’ used in Section 11 of the repealed Special Courts Act, 1979 will not apply to interpretation of the same term used in Section 21 of the NIA Act, which is worded differently from Section 11 of the repealed Special Courts Act, 1979.

23. The judgment in the case of **V.C. Shukla** (supra) was considered by a three-Judge Bench in **Asian Resurfacing of Road Agency (P) Ltd. v. CBI:** (2018) 16 SCC 299 in the following passage: -

“21. The principles laid down in Madhu Limaye still hold the field and have not been in any manner diluted by the decision of four Judges in V.C. Shukla v. State or by the recent three-Judge Bench decision in Girish Kumar Suneja v. CBI [(2017) 14 SCC 809]. Though in V.C. Shukla, order framing charge was held to be interlocutory order, judgment in Madhu Limaye taking a contrary view was distinguished in the context of the statute considered therein. The view in S. Kuppuswami Rao [S. Kuppuswami Rao v. R., 1947 SCC OnLine FC 13], was held to have been endorsed in Mohanlal Maganlal Thakkar [Mohanlal Maganlal Thakkar v. State of Gujarat, AIR 1968 SC 733] though factually in Madhu Limaye, the said view was explained differently, as already noted. Thus, in spite of the fact that V.C. Shukla is a judgment by Bench of four Judges, it cannot be held that the principle of Madhu Limaye does not hold the field...

* * *

37. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order....”

24. The learned Counsel for the petitioner submitted that the judgment in the case of **V.C. Shukla** (supra) holding that an order framing charges is an interlocutory order and is not appealable, was decided by a Bench consisting of four Hon’ble Judges whereas the judgment in the case of **Asian Resurfacing of Road Agency (P) Ltd.** (supra) was decided by a Bench consisting of three Hon’ble Judges. As there is an inconsistency between the two judgments, the earlier judgment of the larger bench will prevail over the subsequent judgment of a bench of smaller strength.

25. The principles applicable in such a situation, have been clarified by the Hon’ble Supreme Court in **Iveco Magirus Brandschutztechnik**

GMBH v. Nirmal Kishore Bhartiya: (2024) 2 SCC 86, wherein it has been held that: -

*“55. What applies to the Judges of the High Courts faced with decisions of this Court where a cleavage of opinion is discernible, and particularly when the High Courts are technically bound by both decisions, ... , Ordinarily, the decision of a larger Bench has to be preferred unless of course a Bench of lesser strength doubts an earlier view, formulates the point for answer and refers the matter for further consideration by a larger Bench in accordance with law. If, however, the decisions taking divergent views are rendered by the Benches of co-equal strength, the next course to be adopted is to attempt to reconcile the views that appear to be divergent and to explain those contrary decisions by assuming, to the extent possible, that they applied to different facts. **The other course available is to look at whether the previous decision has been noticed, considered and explained in the subsequent decision; if not, the earlier decision continues to remain binding whereas if the answer is in the affirmative, the subsequent decision becomes the binding decision.** We add a caveat that if the subsequent Bench, instead of deciding the matter before it finally upon consideration of the decision of the earlier Bench, formulates the point of difference and makes a reference for a decision by a larger Bench, it is the former decision that continues to govern the field so long the larger Bench does not decide the reference.”*

(emphasis added)

26. As the three-Judge Bench, while deciding **Asian Resurfacing of Road Agency (P) Ltd. v. CBI** (supra), has noticed, considered and explained the earlier four-Judge Bench decision in the case of **V.C. Shukla** (supra), the subsequent judgment in the case of **Asian Resurfacing of Road Agency (P) Ltd. v. CBI**: (supra) holds the field now as per the principles explained in **Iveco Magirus Brandschutztechnik GMBH v. Nirmal Kishore Bhartiya** (supra). Therefore, I am unable to accept the submission of the learned Counsel for the petitioner that the judgment in the case of **V.C. Shukla** (supra), will govern the field in spite of the subsequent judgment in the case of **Asian Resurfacing of Road Agency (P) Ltd. v. CBI**: (supra) and this submission is turned down.

27. The legal position as clarified in **Asian Resurfacing of Road Agency (P) Ltd. v. CBI** (supra) has been followed by another three-Judge Bench in

the case of **Sanjay Kumar Rai v. State of U.P.**: (2022) 15 SCC 720, wherein the Hon'ble Supreme Court held that: -

“14. The correct position of law as laid down in Madhu Limaye, thus, is that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are, therefore, not affected by the bar of Section 397(2)CrPC. That apart, this Court in the abovesaid cases has unequivocally acknowledged that the High Court is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice having regard to the facts and circumstance of individual cases.”

28. The Division Bench judgments of Gauhati High Court in **Londhoni Devi v. State**: 2013 SCC OnLine Gau 407, High Court of Jammu & Kashmir and Ladakh at Jammu in **Ayaz Ahmad and another versus Union Territory of J&K**: CrIa (S) No. 13/2022, decided on 16.02.2023 and the Delhi High Court in **Shahid Yousuf v. National Investigation Agency**: 2025 SCC OnLine Del 9449 have been rendered by relying upon the judgment in the case of **V. C. Shukla** (supra) as to hold that an order framing charges is an interlocutory order and an appeal under Section 21 of the NIA Act against such an order would not lie, without appreciating that the judgment in **V.C. Shukla** (supra) has been noticed, considered and explained by a three-Judge Bench in **Asian Resurfacing of Road Agency (P) Ltd. v. CBI** (supra), which has been followed by another three-Judge Bench in the case of **Sanjay Kumar Rai v. State of U.P.** (supra), wherein the Hon'ble Supreme Court has categorically held that the correct position of law as laid down in **Madhu Limaye** (supra), is that orders framing charges or refusing discharge are not interlocutory in nature. For this reason, I am not persuaded to follow the non-binding precedents of the High Court of Gauhati, Jammu & Kashmir and Ladakh and Delhi relied upon by the learned Counsel for the petitioner.

29. The legal position is well settled beyond any doubt that an order framing charges is not an interlocutory order. It is not necessary to examine whether it is a final order or not as Section 21 of the NIA Act merely prohibits filing of appeals against interlocutory orders and it does not provide that appeals would lie only against the final orders.

30. In these circumstances, this Court does not deem it proper to entertain this petition under Article 227 of the Constitution of India filed before a Single Judge Bench of this Court invoking the power of superintendence of this Court over the Courts subordinate to it, when a statutory appeal lies before a Division Bench of this Court, as entertaining this petition under Article 227 of the Constitution of India would result in the validity of the impugned order being examined by a Single Judge Bench in spite of the statutory appeal being maintainable before a Division Bench of this Court and this would amount to a breach of judicial discipline.

31. In view of the foregoing discussion, the petition under Article 227 is **dismissed** leaving it open for the petitioner to challenge the impugned order by filing an appeal under Section 21 of the NIA Act before a Division Bench of this Court.

(Subhash Vidyarthi,J.)

Whether the judgment is speaking – Yes
Whether the judgment is reportable – Yes

(Subhash Vidyarthi, J.)

August 13, 2026

Ram.