Munna Singh @ Shivaji Singh and Others
v.
State of U.P. and Another
HIGH COURT OF JUDICATURE AT ALLAHABAD

Criminal Revision No. 4414 of 2004
Munna Singh @ Shivaji Singh & Ors. Vs. State of U.P. & Anr.

With

Criminal Revision No. 1045 of 2002
Smt. Murti Devi & Ors. Vs. State of U.P. & Ors.
And

Criminal Revision No. 5236 of 2004
Prem Narayan @ Prem Sagar Vs. State of U.P. & Ors.

And
Criminal Revision No. 5419 of 2004
Surya Pratap Singh @ Pappu Vs. State of U.P. & Ors.

And
Criminal Revision No. 5447 of 2004
Suresh Chandra Vs. State of U.P. & Ors.

And
Criminal Revision No. 5452 of 2006
Pramod Kumar Agrawal & Ors. Vs. State of U.P. & Ors.

And
Criminal Revision No. 5720 of 2006
Smt. Sharunnishan Vs. State of U.P. & Ors.
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Hon'ble Amar Saran, J.
Hon'ble A.P. Sahi, J.
Hon'ble Surendra Singh, J.

(Delivered by Hon'ble A.P. Sahi,J.)

Chronic disputes relating to immovable property involving claims to lawful possession, founded on complicated facts seeking legal review, often give rise to an apprehension of breach of peace that leads to initiation of steps for maintaining law and order, and preventing unwarranted situations, calling upon the authorities empowered under the Criminal Procedure Code to take action for attachment and pass orders under the provisions of Sections 145(1) and 146(1) of the Code. Such orders that may affect the

rights of the parties, whether can be subject matter of a revision under Sub Section (2) of Section 397 of the Code, is the main issue of reference before this Full Bench.
To be precise, it would be appropriate to gainfully reproduce the issue framed by the learned Single Judge after having noted the decisions relied upon by either of the parties which is as follows:-
"Whether the orders passed by the Magistrate under Section 145(1) and 146(1) of the Code are interlocutory orders simplicitor and no revision petition under Section 397 or 403 of the Code or petition under Section 482 of the Code is maintainable against the same."

The learned Single Judge was of the opinion that cases in which such proceedings are drawn have different facts and different implications. It has been further indicated that denial of the revisional jurisdiction to a litigant would be unjustified and for that the learned Single Judge has relied on his own judgment in the case of Gulab Chand Vs. State of U.P. & another, reported in 2004 (48) ACC 579. While proceeding to make the reference the learned Single Judge however expressed his opinion that the bar of Sub Section (2) of Section 397 of the Code would not apply uniformly and for that the opinions expressed in two Division Benches of this Court in the case of Indra Deo Pandey Vs. Smt. Bhagwati Devi, 1981 (18) ACC 316 and in the case of Sohan Lal Burman Vs. State of U.P., 1977 ACC 10 were considered, and then referring to the Supreme Court decisions given subsequently, particularly in the case of Ranbir Singh Vs. Dalbir Singh and others, 2002 (2) Allahabad Criminal Ruling 1457, referred this matter for a definite opinion on the law to be laid down by a larger bench. The learned Single Judge held that even orders of temporary nature may have far reaching consequences upon the rights or interest of the aggrieved party, and such a litigant cannot be rendered remediless as this was not the intention of the framers of the statute while creating the bar under Sub Section (2) of Section 397.

Sri R.C. Yadav while advancing his submissions in the leading case of Munna Singh (supra) has urged that a Civil Suit No. 111 of 1980, in which the respondent no. 2 Guru Ram Vishwakarma Madhukar is the plaintiff is still pending, and a status quo interim order is operating as such there was no occasion for the Magistrate to have passed the orders impugned herein. The submission is that the revision against preliminary orders passed under Section 145(1) Cr.P.C. and 146(1) Cr.P.C. are amenable to the revisional jurisdiction under the Code as they touch upon the rights of the parties and are therefore not mere interlocutory orders. Reliance has been placed on the judgments that have been referred to by the learned Single Judge in the referring order as follows:-
1.1978(15) ACC 183 SC Madhu Limaye Vs. State of Maharashtra.
2.AIR 1980 SC 962 V.C. Shukla Vs. State.
3.1985 ACC 45 SC, Ram Sumer Mahant Puri Vs. State of U.P.
4.2001(1) JIC 381 SC Mahant Ram Saran Das Vs. Harish Mohan & another.
5.2002 (2) ACr.R 1457 SC Ranbir Singh Vs. Dalbir Singh and others.
6.2000(1) ACr.R 514 Ram Lachchan and others Vs. State of U.P. and another.
7.2004(48) ACC 579 Gulab Chand Vs. State of U.P. & another.
8.1999 (39) ACC 649 Laxmi Kant Dubey Vs. Smt. Jamuni & others.

Sri B.N. Rai on behalf of the respondent no. 2 submits that the revisionist herein Munna Singh, was not a party to the civil suit, and therefore there was no option but to proceed under Sections 145 and 146 Cr.P.C. against him. The action does not give any rise to a cause so as to make the orders revisable in the present case. Sri Rai contends that in the event of emergency, such powers can be invoked and along with his written submissions he has relied on the following decisions to substantiate his arguments:-

1 1969 Crl.LJ Page 13 (Vol. 75 C.N. 4) (SC) R.H. Bhutani Vs. Miss Mani J. Desai and others.
2. 1980 SCC (Cri) Page 9 Mathura Lal Vs. Bhanwar Lal & another.
3. 1980 SCC Page 116 Rajpati Vs. Bachan and another."

Sri V. Singh has advanced his submissions in Criminal Revision No. 1045 of 2002 (Smt. Murti Devi and others Vs. State of U.P. & others), contending that where an order under Sub Section (1) of Section 145 which involves the jurisdiction of the Magistrate to proceed or terminate the proceedings, may be revisable. An order under 146(1) Cr.P.C. cannot be according to him, subjected to a revision under Sub Section (2) of Section 397 Cr.P.C. In this case the learned Additional District Judge has set aside the order passed under Section 145 read with Section 146(1) on the ground that a civil suit in relation to the disputed property was pending for the past 10 years in which a status quo order had been passed on 23rd March, 1990 and therefore the Magistrate erroneously assumed jurisdiction to proceed in the matter. Sri Singh contends that where there is an apprehension of immediate breach of peace then an order passed under Sub Section (1) of Section 146 would be an interlocutory order and not an order of the nature as urged on behalf of the respondents. He therefore contends referring to almost the same decisions as relied on by the other counsel and referred to hereinabove, that an order passed under Section 145(1) Cr.P.C. would be revisable but not an order under Section 146(1) of the Code as it is only for a temporary purpose.

Sri S.B. Singh who has appeared for the opposite parties No. 2 and 3 Ram Lakhan and Mukut Dhari has also furnished his written submissions contending that parallel proceedings under the Criminal Procedure Code have to be avoided and multiplicity of litigation is against public interest. Therefore keeping in view the decisions cited at the bar, the impugned orders under Sections 145(1) and 146(1) of the Code have to be treated as intermediary orders and not mere interlocutory orders, hence revisable under Section 397(1) of the Criminal Procedure Code. Sri S.B. Singh has relied on the following decisions in support of his submissions:-

1.A.I.R. 2000 SC 1504 (Amresh Tiwari Vs. Lalta Pd. Dubey & Ors.)
2.2001 (1) JIC 381 (S.C.) (Mahant Ram Saran Das Vs. Harish Mohan and others)
3.1985 A.W.C. 128 S.C. (Ram Sumer Puri Mahant Vs. State and others)
4.2001 All JIC 95 S.C. (Laphinoris Shang Pling and others Vs. Hambay Shullai and another)
5.1999 (39) ACC 649 (Lakshmi Kant Dubey Vs. Smt. Jamuni and others)
6.1999 (39) ACC 678 (Vishwanath and another Vs. Addl. Session Judge, Basti and others)
7.2004 (48) ACC 579 (Gulab Chand Vs. State of U.P. and others)
8.1978 (15) ACC 183 (S.C.) (Madhu Limaye Vs. State of Maharashtra)
9.2002 Alld. JIC 378 (Ranbir Singh Vs. Dalbir Singh and others)
10.2000(40) ACC 738 (Ram Lachchan and others Vs. State of U.P. and others)
11.AIR 1980 SC 962 (V.C. Shukla Vs. State of U.P. and others).

Learned A.G.A. on behalf of the State submits that a revision having been specifically barred against a interlocutory order by the legislature under Section 397 (1) Cr.P.C., this court while answering the reference will have to clarify the law in order to enable the Magistrates and the Revising Authorities to decipher the cases where such a bar would not operate. The learned A.G.A. has also invited the attention of the Court to the decisions and the relevant paragraphs that have already been cited on behalf of the learned counsel for the either side.

Having heard learned counsel for the parties, it would be appropriate to reproduce Sections 145, 146 and Section 397 of the Code of Criminal Procedure to understand the controversy:-

"145.Procedure where dispute concerning land or water is likely to cause breach of peace.-

(1) Whenever an Executive Magistrate is satisfied from a report of a police or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.
(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.
(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:
Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).
(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.
(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.
(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).
(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.
(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.
(10)Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107.
146.Power to attach subject of dispute and to appoint receiver.-
(1) If the Magistrate at any time after making the order under sub-section (1) of section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:
Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908:

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate-
(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;
(b) may make such other incidental or consequential orders as may be just."
397. Calling for records to exercise powers of revision:-(1)The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.
Explanation:- All Magistrates, whether Executive or Judicial and whether exercising original or appellate jurisdiction shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.
(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."
The legal wrangle began when different courts gave their interpretations in the absence of any precise definition of the words "interlocutory order" occurring in the Code. The same not having been either illustratively or exhaustively defined came to be given different shades on the facts of a case in which the said words were sought to be interpreted. We may gainfully refer to the locus classicus and magnum opus on this subject rendered by the apex court in the celebrated decision of Madhu Limaye Vs. State of Maharashtra, reported in AIR 1978 Supreme Court 47. This case has been referred to and followed as an illustration which in turn had relied on two earlier decisions in the case of Smt. Parmeshwari Devi Vs. The State & another, AIR 1977 Supreme Court 403 and the decision in the case of Mohan Lal Magan Lal Thacker Vs. State of Gujarat, AIR 1968 Supreme Court 733. The said decision is an authority for having coined the terminology of an intermediate order or intermediary order which can be subject to a revision under Sub Section (1) of Section 397 of the Code. While dealing with the issue of distinction between an interlocutory order and a final order their Lordships noticed the definition contained in the third Edition of Halsbury's Laws in England as follows in Paragraph 12 of the said judgment:-
"Para 12. Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order.' In volume 22 of the third edition of Halsbury's Laws of England at Page 742, however, it has been stated in para 1606:-
".....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 must therefore be considered separately in relation to the particular purpose for which it is required."
In para 1607 it is said:
"In general a judgment or order which determines the principal matter in question is termed 'final'."
In para 1608 at pages 744 and 745 we find the words:
"An order which does not deal with the final rights of the parties, but either (1) is made before judgment and gives no final decision on the matter in dispute but is merely on a matter of procedure or (2) is made

after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out is termed "interlocutory." An interlocutory order, through not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals."

An illustration that would be worth referring is in the case of Amar Nath and others Vs. State of Haryana and others, reported in AIR 1977 Supreme Court 2185 where the choice of the legislature to introduce the bar was traced out and explained in paragraph 6 of the said judgment as follows:-

6. ..... The main question which falls for determination in this appeal is as to what is the connotation of the term "interlocutory order" as appearing in sub-section (2) of Section 397 which bars any revision of such an order by the High Court. The term "interlocutory Order" is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure. Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. 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 revisional jurisdiction of the High Court."

In the case of Smt. Parmeshwari Devi (supra) the law laid down in Mohan Lal's case (supra) was explained as follows:-

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

8. A somewhat similar argument came up for consideration before this Court in Mohan Lal Magan Lal Thacker v. State of Gujarat (1968) 2 SCR 685 = (AIR 1968 SC 733). The controversy there centred round the meaning of Article 134(1) (c) of the Constitution and the Court examined the meaning of the words "final" and "interlocutory." It was held that the meaning "had to be considered separately in relation to the particular purpose for which it is required" to be interpreted. No single test can be applied to determine whether an order is final or interlocutory. Then it has been held by this Court in that case as follows- "An interlocutory order, though not conclusive of the main dispute may be conclusive as to the subordinate matter with which it deals." It may thus be conclusive with reference to the stage at which it is made, and it may also be conclusive as to a person, who is not a party to the enquiry or trial, against whom it is directed....."

Thus, in view of the aforesaid decisions, it is clear that no exclusive or exhaustive singular test can be framed in a straight jacket formula to determine as to whether an order would be final or interlocutory. The meaning of the words have to be understood in the light of the facts of each particular case in relation to the particular purpose for which the word is required to be interpreted. This in our opinion is reflected in

the decision in the case of Ranbir Singh (supra) where while upholding the order of the High Court it was clearly indicated that where the parties have already entered into a litigation before the Civil Court then such proceedings should be avoided.

Before proceeding to express our opinion on the connotation of the words interlocutory orders, final orders and intermediary orders, it would be appropriate to refer to the decisions of this Court which have impelled the learned single Judge to refer the matter for a definite pronouncement. The Division Bench in the case of Sohan Lal Burman (supra) was held to be no longer good law by the Division Bench in the case of Indra Deo Pandey (supra). The case of Indra Deo Pandey went on to hold that an order passed under Sub Section (1) of Section 146 for attachment during the pendency of the proceedings of Section 145 even if improper, is an error of purely temporary and intermediate in nature which does not purport to decide any legal rights of the parties. It was further held that such an order is passed for the purpose of effective final adjudication of the proceedings and it does not amount to any disposal of any part of the controversy between the parties.

This aspect of the matter came to be considered in a case by a full bench of the Jammu and Kashmir High Court pertaining to an order passed under Section 145(1) of the Code read with the amendments brought about in the criminal procedure code as applicable in the State of Jammu & Kashmir under the Amending Act No. 37 of 1978 in the case of Brij Lal Chakoo Vs. Abdul Ahmad, 1980 Cr.L.J. Pg. 89. The Full Bench was called upon to resolve the issue about the maintainability of a revision in relation to an interlocutory order of a similar nature as involved herein.

The decision went on to hold that the assumption of jurisdiction by the Magistrate under Section 145 Cr.P.C. and the making of a preliminary order cannot be termed as a mere interlocutory order, inasmuch as, the very foundation upon which the Magistrate proceeds is based on a satisfaction that there is a dispute relating to possession of immovable property and there is an apprehension of breach of peace. Whether the Magistrate had the jurisdiction to proceed or not was held to be not a mere interlocutory order and therefore revisable if the ingredients of jurisdiction are missing. The decision further went on to hold that the attachment of the property under Sub Section (4) of Section 145 in such a situation would also be without jurisdiction as it affects the possessory right of a party. It was further held that even though the order of attachment is made at an interim stage of the proceedings nevertheless "it is an order of moment which has the effect on the right of the party in possession and cannot therefore be said to be a mere interlocutory order so as to bar the revisional jurisdiction of the high court".

The Court further went on to hold that there are cases where Magistrates invoke such provisions arbitrarily in a routine manner which has the effect of dispossessing a person already in possession. In such a situation the aggrieved party can always demonstrate before the revisional court that no such emergent circumstance existed justifying the invoking of such powers or that the Magistrate had no jurisdiction to make such an order regardless of the procedure laid down under Section 145 Cr.P.C. Relying on the decision in the case of Smt. Parmeshwari Devi (supra) in Paragraph 17 held as follows:-

Para 17. It is worthy to mention here that the orders of the category as mentioned above though not conclusive of the main dispute are, undoubtedly, conclusive as to the subordinate matter. That such an order is amenable to the revisional jurisdiction of the High Court cannot be gainsaid."

This full bench decision has been followed by a learned Single Judge of the Gauhati High Court in the case of Indrapuri Primary Co-operative Housing Society Ltd. and another Vs. Sri Bhabani Gogoi, reported in 1991 Cri.LJ. 1765.

To the contrary however a pure order under Section 146(1) was held to be an interlocutory order by the Full Bench of the Punjab & Haryana High Court in the case of Kartar Singh and others Vs. Smt. Pritam Kaur and another, 1984 Cr.L.J. 248. The said decision however went on to deal with the matter on the footing that the issue revolved around the composite provisions of Sections 145 and 146 Cr.P.C. and unequivocally held that these proceedings do not substantially call for being subjected to a revision. In Paragraph 12 of the decision the Division Bench judgment of this Court in the case of Indra Deo Pandey (supra) was approved as follows:-

"Para 12. Apart from the judgments of this Court, the recent Division Bench decision in Indra Deo Pandey Vs. Smt. Bhagwati Devi, 1981 All LJ 687, renders a complete answer to most of the contentions raised on behalf of the petitioner. After an exhaustive examination of the matter (with which I entirely concur), it was held that the earlier Division Bench view of the same High Court in Sohan Lal Burman Vs. State of U.P., 1977 Cri LJ 1322, was in fact no longer good law after the authoritative pronouncement in Mathuralal's case (1980 Cri LJ 1) (SC) (supra)."

Nonetheless, it is necessary to refer to Paragraph 4 of the same Full Bench judgment of Kartar Singh's case (supra) where the Court has expressed its difficulty in attempting a precise and conclusive definition so as to draw a distinction between an interlocutory order and a final order or any other order falling in between. Paragraph 4 of the said judgment is gainfully reproduced herein under:-

"Para 4. It is plain that the specific question herein is but a limb of the larger yet perennial controversy as to what constitutes a final as against a merely interlocutory order and the penumbral area lying betwixt the two extremes. In view of the mass of conflicting case law on the point, it would appear that these two terms are not capable of a precisely exclusive definition for each and it would be a vain attempt to define what seems to be inherently undefinable. One cannot help commenting that the erudite attempts to confine each of the terms to a procrustean bed of the precise legal definition is reminiscent of the somewhat tautologist definition of a circle as one, that is, circular. Therefore, without launching into a dissertation as to what are the precise legal attributes of a final order as against an interlocutory one and attempting to draw a razor-sharp line betwixt the two, I propose to confine myself to the limited focal question - whether in the peculiar context of Section 146 (1) of the Code, the attachment of immovable property is broadly interlocutory in nature and that too for the specific purposes of S. 397 (2) thereof."

However while proceeding to answer the reference as noted above, the Court went on to take into consideration the provisions of Section 145 as well. But while answering the reference the recital contained in Paragraph 16 of the judgment is as follows:-

"Para 16. To conclude, the answer to the question posed at the very outset, is rendered in the affirmative and it is held that an order of attachment of an immovable property under Section 146 (1) of the Code is interlocutory in nature within the meaning of Section 397 (2) of the Code and consequently no revision against the same is maintainable."

Then came the decision in the case of Ram Sumer Puri Mahant Vs. State of U.P & others, reported in 1985 (1) SCC 427 as explained in the later decision of the apex court in the case of Jhummamal Vs. State of Madhya Pradesh (1988) 4 SCC 452 and later on dealt with in the case of Amresh Tiwari Vs. Lalta Prasad Dubey and another reported in (2000) 4 SCC 440. The outcome of these three decisions was to the effect that where an injunction order passed by a competent court of civil jurisdiction existed, then proceedings initiated under Section 145 Cr.P.C. deserved to be dropped. The Apex Court however in the case of Ranbir Singh (supra) held that even though the orders of the High Court setting aside the orders under Section 145(1) and 146(1) were unsustainable, yet in the circumstances of the case, the order of the High Court quashing the preliminary order under Section 145 (1) and 146(1) Cr.P.C. were maintained leaving it open to the parties to approach the civil court for an appropriate interim order where the dispute was pending without being influenced by the findings recorded by the High Court. The emphasis therefore again was laid on the principle that where a civil proceeding has been initiated and the matter is pending between the parties, then the Magistrate should be slow in invoking the jurisdiction of attaching or taking into possession of a property involved in such a dispute.

In a matter of reference before the Madhya Pradesh High Court a Division Bench went on to hold that an order passed under Section 146 (1) Cr.P.C. is not an interlocutory order and would therefore be revisable. The said decision is reported as Keshav Prasad Bhatt Vs. Ramesh Chandra 1990 Cr.L.J. 1541.

While carving out a distinction between the orders of a final nature and interlocutory nature the apex court in the case of V.C. Shukla Vs. State, AIR 1980 Supreme Court 962 gave the nomenclature of an "intermediate order" to be between a final order and the initiation of a proceeding which may be affecting the interest of either of the parties, and could not be termed as a pure and simple interlocutory order. This

view came to be followed by a learned Single Judge of this Court earlier who has made the present reference in the case of Gulab Chand Vs. State of U.P. 2004 (48) ACC 579 and again by a learned single Judge of this Court in the case of Lakshmi Kant Dubey Vs. Smt. Jamuni & others, reported in 1999 (39) ACC 649.

In the aforesaid background this Court has therefore to proceed to first give an indication as to meaning of the words final order, interlocutory order and an intermediate or intermediary order and the distinction between them.

The term "final order" means a decision finally affecting the rights of the contending parties. It is an issue which goes to the foundation of a trial and can be never questioned if it has been allowed to stand. It would therefore be final. The test of such finality would depend upon the facts of a case indicating termination of proceedings and ultimately affecting the fate of the parties. A final order is one which leaves nothing more to be decided by its own force.

The word 'Final' connotes that which comes at the end. It marks the last stage of a process leaving nothing to be looked for or expected. It is something ultimate in nature. It puts to an end to something or in other words, it brings to a close any strife or uncertainty. It is the conclusion of an event, that which comes last. It connotes the finishing of some act and completion of some beginning. It does not allow the inclusion of anything or something that might be possible thereafter. A decisive stroke that cannot be reversed or altered is final.

The word "interlocutory order" as defined in the Law Lexicon by P. Ramanatha Aiyar 1997 Edition, is an order made pending the cause and before a final hearing is concluded on merits. Such an order is made to secure some end and purpose necessary and essential to the progress of the litigation, and generally collateral to the issues formed by the pleadings and not connected with the final judgment. It has been termed as a purely interim or temporary nature of an order which does not decide the important rights or liabilities of the parties.

An interlocutory stage is an intermediate moment before the happening of the main event. It is something during the course of an action in the shape of a pronouncement which is not finally decisive of a dispute. It is provisional but not final touching some incident or emergent question.

Then comes the third category of the orders which fall in between. In our opinion it is this aspect which was left out in the decision of the Punjab & Haryana High Court in the case of Kartar Singh (supra) which deserves to be adverted to. The word intermediate order as defined in the law Lexicon (supra) is an order granted before entry of judgment, made between the commencement of an action and the final pronouncement.

The word 'Intermedium' means between or in the middle. It is something intermediate in position or an intervening action or performance before the final conclusion. That which is situated or occurring between two things is intermediate. It holds the middle place or degree between two extremes interposed in between.

There is no doubt about what are final orders and the controversy stands narrowed down to the difference between an interlocutory order and an intermediate/intermediary order.

The distinction between the two, interlocutory and intermediary would be that the former does not bring about any consequence of moment and is an aid in the performance of the final Act. It does not affect any existing rights finally or to the disadvantage of either extremes. An intermediate order can touch upon the rights of the parties or be an order of moment so as to affect any of the rival parties by its operation. Such an order affecting the rights of a person or tending to militate against either of the parties even at the subordinate stage can be termed as an intermediate or an intermediary order.

The invoking of the emergent powers under Section 146(1) Cr.P.C. is dependant on the satisfaction of the Magistrate that it is a case of emergency and none of the parties are in possession or the Magistrate at that stage unable to decide as to which of the parties was in possession. It is only then that attachment can be resorted to. An emergency is an unforeseen occurrence or a crisis with a pressing necessity which demands immediate action. An emergent situation is one that suddenly comes to notice and is almost

unexpected or unapprehended. It is a situation that requires prompt attention impelling immediate action. The action to be taken would however be dependant on the satisfaction of a Magistrate recorded under Section 145(1) Cr.P.C. that there exists an apprehension of breach of peace either on the basis of a police report or upon other information received. The order of attachment on such a dispute being brought to the notice of the Magistrate therefore is clearly linked with the right of a party to retain lawful possession. The aforesaid ingredients have to exist to allow the Magistrate to exercise his authority within his jurisdiction. Accordingly the assumption of jurisdiction is dependant on the contingency that may arise in a dispute referable to the said provisions and hence what necessarily follows that if there is an exercise for want of jurisdiction or erroneous exercise of jurisdiction, then the order on the given facts of a case may not be a mere interlocutory order. If the exercise of a power and passing of an order is questionable to the extent of touching the rights of the parties or are orders of moment, depending on the peculiar facts of individual cases, then the order in our opinion would be an intermediate nature of an order that can be subjected to a revision under Section 397 Cr.P.C.

The legislature in its wisdom will be presumed to have curtailed the revisional jurisdiction to the extent as spelt out under Sub Section (2) of Section 397 Cr.P.C. in order to prevent any delays or unnecessary impediments in proceedings relating to trials under the Criminal Procedure Code. As noticed above, the orders which do not fall within the exact nature of an interlocutory order may therefore not be prohibited from being subjected to a revision in larger public interest. A litigant who is aggrieved by an action which does not involve immediate urgency can always knock the doors of the revisional court, dependant on the facts of each individual case as explained hereinabove.

We would also like to add that there were divergent views with regard to the jurisdiction of the Magistrate proceeding after attachment under 146(1) Cr.P.C. but the said issue came to be resolved by the apex court in the case of Mathuralal Vs. Bhanwarlal, 1979 (4) SCC 665.

In view of what has been expressed hereinabove, we find ourselves in respectful agreement with the views expressed by the various courts and this Court to the effect that there is a third category of order which falls in between an interlocutory and a final order that does touch upon the rights of the parties and is an order of moment. An order under Section 145(1) followed by an order under Section 146(1), or even passed simultaneously, brings to the forefront the primary question of the assumption of jurisdiction by the Magistrate to proceed in a matter. If the facts of a particular case do not warrant the invoking of such a jurisdiction, for example, in cases where civil disputes are pending and orders are operating, then in view of the law laid down by the apex court in the decisions referred to hereinabove following Ram Sumer Puri Mahant's case (supra), an order ignoring such proceedings will have to be curtailed for which a revision would be maintainable under Sub Section (1) of Section 397 as, such an order, would not be a mere interlocutory order and would touch upon the rights of the parties.

We have also come across an unreported judgment of the apex court in the case of Gyatri & others Vs. Ranjit Singh & others, Special Leave to Appeal (Crl) No. 3584 of 2006 decided on 13.2.2008 where the same view has been reiterated.

The difficulty again is that can such a list of illustrations be catalogued so as to confine the revisional jurisdiction in relation to such intermediate orders. Our obvious answer is in the light of what has been said in the case of Mohan Lal's case (supra) by the apex court that the determination of such an issue as to whether a revision would be maintainable or not would in turn depend upon the nature of the order and the circumstances in which it came to be passed. Thus it would depend on the facts and circumstances of each separate individual case where the revising authority will have to examine as to whether the Magistrate has proceeded to exercise his judicious discretion well within his jurisdiction or has travelled beyond the same, keeping in view the various shades of litigation in such matters where the apex court and this Court has held that an intermediate order, which is not necessarily an interlocutory order, could be subjected to revision. An order not conclusive of the main dispute between the parties, but conclusive of the subordinate matters with which it deals is not a purely interlocutory order even though it may not finally adjudicate the main dispute between the parties. In our opinion therefore a revision would not be

barred under Sub Section (1) of Section 397 of the Code if the orders impugned before the revising authority fall within the tests indicated hereinabove.

Our answer to the question referred would be therefore in the negative, and we hold that orders passed under Sections 145(1) and 146(1) of the Code are not in every circumstance, orders simplicitor, and therefore a revision would be maintainable in the light of the observations made in this judgment depending on the facts involved in each case.

Coming to the issue as to whether a petition under Section 482 would be maintainable or not, the same has been dealt with by a Full Bench of our court in the case of H.K. Rawal and another Vs. Nidhi Prakash and another reported in 1990 Cr.L.J. 961. We having gone through the said decision, do not find it necessary to answer the same as the question under reference before this Court is primarily relating to the maintainability of a revision that has been dealt with hereinabove.

Let the papers be now placed before the learned Single Judge for proceeding to decide the revisions in accordance with the principles indicated hereinabove.