the University to withdraw the candidature of the applicant has worked itself out and the candidate cannot be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear. Now, there was a specific regulation permitting withholding of the candidature which had exhausted itself out by the inaction of the University. Here, there is no such regulation. What is being confronted against the petitioner is that even if her result is declared, her result is capable of being quashed on the ground that she was ineligible to appear in the examination. If her result can be quashed after its declaration, I fail to see the reason why it cannot be withheld on that ground and the result cancelled. This seems to be the power innate in the regulations. The Board can certainly take recourse to that method. The regulations of eligibility must tilt in this case in favour of the Board and accordingly I hold that the petitioner is not entitled to have her result declared or any other relief.

(8) For the foregoing discussion, this petition fails and is hereby dismissed. Since both the parties are responsible for their mistakes, there shall be no order as to costs.

S.C.K.

Before Ujagar Singh, J.

SUMER CHAND,—*Petitioner.*

versus

SANDHURAN RANI and another,—*Respondents.*

Criminal Misc. No. 2500-*M of* 1987

May 11, 1987.

Code of Criminal Procedure (II of 1974)—*Sections* 125 and 397—*Petition for maintenance under Section* 125—*Application for grant of interim maintenance—Order granting interim maintenance—Such order—Whether an interlocutory order—Revision against such order—Whether competent.*

Held, that under the Code of Criminal Procedure there is no provision for filing an application for granting interim maintenance during the pendency of main application under Section 125

of the Code. After the Supreme Court judgment holding the right of the petitioner under Section 125 of the Code to get interim maintenance almost in all cases applications for interim relief are being made. This application for interim maintenance is by itself a separate matter and it has to be disposed of separately much earlier than the final order in the main case. By an order of interim maintenance, the rights of the parties are affected and decided finally in respect of that subject matter and by no stretch of imagination such an order can be called an interlocutory order and, therefore, the revision before the Sessions Court was competent. (Para 5).

Petition under section 482 of Cr.P.C. praying that the order dated 31st January, 1987 passed by the Additional Sessions Judge, Ludhiana, and order dated 7th May, 1987 passed by the Judicial Magistrate 1st Class, Ludhiana, be set aside with cost and further proceedings be stayed during the pendency of the petition.

C. M. Chopra, Advocate, *for the Petitioner.*

K. S. Brar, Advocate, *for the Respondents.*

JUDGMENT

Ujagar Singh, J.—

(1) The petitioner has filed Criminal Revision No. 410 of 1987 and Criminal Miscellaneous No. 2500-M of 1987 and both these petitions are being disposed of in this order.

(2) Sunduran Rani, wife of Sumer Chand and Anju Bala, his daughter, the present respondents filed an application under section 125 of the Code of Criminal Procedure for grant of maintenance allowance against Sumer Chand, the present petitioner. During the pendency of that petition, an application was made on behalf of the respondents for interim maintenance and after the whole matter was gone into by the trial Court, Sunduran Rani, respondent was held to be not entitled to any interim maintenance and so far as her application was concerned, it was declined. The trial Court, however, allowed interim maintenance to Anju Bala, respondent No. 2 at the rate of Rs. 200 per month. Sunduran Rani, respondent No. 1 filed a revision petition before the Sessions Court which came up for hearing before the Additional Sessions Judge. The present petitioner also went in revision against the order of the trial Court granting interim maintenance to respondent No. 2 and both those revision petitions were heard finally by the Additional Sessions Judge.

(3)Both the aforesaid revision petitions were decided by a single order dated 31st January, 1987. The revision petition filed by the present petitioner Sumer Chand was dismissed and in the revision petition filed by Sunduran Rani, respondent No. 1, the Additional Sessions Judge remanded the case back to the trial Court after holding that Sunduran Rani, respondent No. 1 was also entitled to interim maintenance and the trial Court was also directed to re-consider the quantum of interim maintenance granted to Anju Bala and also adjust equities between the parties while ordering interim maintenance to Sunduran Rani.

(4) Counsel for the petitioner has argued that the order passed by the trial court granting interim maintenance was an interlocutory order and, therefore, according to the provisions of section 397 of the Code of Criminal Procedure, 1973 (No. 2 of 1974) (for short the code), powers of revision are not to be exercised in relation to any interlocutory order passed in any appeal, enquiry, trial or other proceedings and, therefore, the revision filed by respondent No. 1 before the Sessions Court was not competent. He has relied upon a judgment reported in *Messrs Moolji Jaitha and Co.* vs. *The Khandesh Spinning and Weaving Mills Co. Ltd.* (1), which was a case under the Code of Civil Procedure regarding the issuance of a certificate by the High Court and it lay down that order of the High Court was not a final order and no appeal lay before the Federal Court under the provisions of that Code. He has laid stress that the revision could lie only against a final order and this order granting interim maintenance being an interlocutory order, no revision was competent.

(5) After considering the whole matter, I am of the view that the argument has no force. Under the Code there is no provision for filing an application for granting interim maintenance during the pendency of main application under section 125 of the Code. After the Supreme Court judgment holding the right of the petitioner under section 125 of the Code to get interim maintenance, almost in all cases applications for interim relief are being made This application for interim maintenance is by itself a separate matter and it has to be disposed of separately much earlier than the final order in the main case. By an order of interim maintenance, the rights of the parties are affected and decided finally in respect of that subject matter and by no stretch of imagination such

(1) AIR 1950 Federal Court 83.

an order can be called an interlocutory order. In *Madhu Limaya* v. *State of Maharashtra,* (2), it was laid down as under :—

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

It was further laid down :—

> "The order can be said to be a final order only if, in either event, the action will be determined. In our opinion if this strict test were to be applied in interpreting the words "interlocutory order" occurring in Section 397(2), then the order taking cognizance of an offence by a Court,

(2) AIR 1978 S.C. 47.

whether it is so done illegally or without jurisdiction, will not be a final order and hence will be an interlocutory one. Even so, as we have said above, the inherent power of the High Court can be invoked for quashing such a criminal proceeding. But in our judgment such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If, it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by Section 397(1). On such a strict interpretation, only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code. This does not seem to be the intention of the Legislature when it retained the revisional power of the High Court in terms identical to the one in the 1898 Code. In what cases then the High Court will examine the legality or propriety of an order or the legality of any proceeding of an inferior Criminal Court ? Is it circumscribed to examine only such proceeding which is brought for its examination after the final determination and wherein no appeal lies ? Such cases will be very few and far between. It has been pointed out repeatedly,—*vide*, for example. *The River Wear Commissioners* v. *William Adamson*, (1876-77)2 *AC* 743 *and R.M.D. Chamarbaugwalla* v. *The Union of India*, 1957 *SCR* 930 : (AIR 1957 SC 628) that although the words occurring in a particular statute are plain and unambiguous, they have to be interpreted in a manner which would fit in the context of the other provisions of the statute and bring about the real intention of the legislature. On the one hand, the legislature kept intact the revisional power of the High Court and, on the other, it put a bar on the exercise of that power in relation to any interlocutory order. In such a situation it appears to us that the real intention of the legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswami's case (AIR 1949 FC-1) (supra), but, yet it may not be an interlocutory order — pure or simple. Some kinds of order may fall

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

In this view of the matter the impugned order cannot be treated as interlocutory order and, therefore, the revision before the Sessions Court was competent.

(6) The learned counsel for the petitioner has further argued that the learned Additional Sessions Judge has used the following words in its order dated 31st January, 1987.

> "The trial Court would be at liberty to reconsider the quantum of interim maintenance allowed to Anju Bala also and adjust equities between the parties while ordering interim maintenance to Sandhuran Rani."

This direction, he submits, if allowed to stand, the trial court may not reconsider the quantum of interim maintenance allowed to Anju Bala respondent No. 2, because the trial court has been given absolutely liberty in that respect. The argument is without merit. The trial court will adjust the equities between the parties while ordering interim maintenance to Sandhuran Rani. The word "parties" includes Anju Bala also. In any case the direction given in the above observations will certainly be interpretted by the trial Court which will refix the interim maintenance to be allowed to

both the respondents Sandhuran Rani and Anju Bala irrespective of the fact that in his earlier order a sum of Rs. 200 P.M. was granted to Anju Bala. While adjusting equities between the parties, interim maintenance of Rs. 200 granted to Anju Bala can certainly be modified.

(7) With these observations and modifications these petitions stand disposed of accordingly. Parties have been directed to appear before the trial Court on 12th May, 1987, the date already fixed in that court.

S.C.K.

Before I. S. Tiwana, J.

R. I. CHADHA and others,—*Petitioners.*

versus

INCOME TAX OFFICER,—*Respondent.*

Criminal Misc. No. 6503-*M of* 1986.

May 12, 1987.

Income Tax Act (XLIII of 1961)—Sections 245(C), (D), (F) and 279—Application by assessee before the Settlement Commission for settlement and grant of immunity from prosecution during the pendency of such application—Prosecution launched by the Income Tax Commissioner—Validity of such prosecution—Jurisdiction of Income Tax Commissioner.

Held, that during the pendency of proceedings before the Commission, the Commission alone had the exclusive jurisdiction under Section 245(F) (ii) of the Income Tax Act, 1961 to exercise the powers or to perform the functions under the Act in relation to the matter pending before it. The Commissioner of Income Tax could not direct or authorise the filing of the complaint against the petitioners during the course of pendency of proceedings before the Settlement Commission. The Settlement Commission alone had the exclusive jurisdiction to launch or not to launch any prosecution of the petitioners. If the Income Tax Commissioner is also held entitled to initiate these criminal proceedings in exercise of its jurisdiction under Section 279 of the Act then the exclusive jurisdiction of the Settlement Commission hardly has any meaning. To permit the Income Tax Commissioner to do so would be a complete negation of Sub-Section (11) of Section 245(F). (Paras 5 and 6).