

**CRM-M-24290-2018****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CRM-M-24290-2018
Decided on : 10.07.2026**

Sarabjit Kaur

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTHPresent: Mr. Manjit Singh Uppal, Advocate
for the petitioner

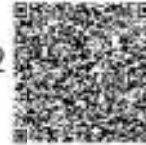
Mr. Neeraj Madaan, Sr. DAG Punjab

Mr. Imran Farooqi, Advocate
for respondent No. 2

SANJAY VASHISTH, J. (Oral)

1. Present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 18.04.2018 (Annexure P-3) passed by learned Addl. Sessions Judge, Ludhiana vide which the committal order dated 15.02.2017 (Annexure P-2) passed by learned JMIC, Ludhiana has been set aside and the case has been remanded back for trial by learned JMIC, Ludhiana.

2. Petitioner-Sarabjit Kaur, who was complainant in case FIR No. 45 dated 30.03.2013 registered under Sections 323, 324, 452, 148, 149 IPC registered at Police Station Sadar, District Ludhiana and after examining the record, Court of learned Area Magistrate vide its order dated 15.02.2017 passed a committal order for the offences to be triable by the Court of Sessions i.e. under Sections 459 and



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460 IPC. Relevant part of the order reads as under:

4. The perusal of the allegations and report of the investigating officer and medical record it is clear that prima facie offence under section 323, 324, 452, 459, 460 are made out against accused persons. And the accused under section 459 and 460 are exclusively triable by the court of Sessions. Hence, the present case is committed to the court of Learned District and Session Judge, Ludhiana for 02.03.2017. Ahlmad is directed to send the file to the Sessions Court complete in all respects before the said date. Accused shall appear before the Learned District and Session Judge, Ludhiana for the date fixed.

3. Challenging the said committal order dated 15.02.2017, respondents No. 2 and 3 i.e. the accused persons filed a revision petition before the Court of Sessions, who in exercise of the revisional power set aside the order by holding that the offences are triable by the Court of learned Magistrate and then remitted it back to the same Court. It was the complainant thereupon, who has assailed the order passed by the Court of Sessions by exercising its revisional jurisdiction.

4. At the very outset, learned counsel for the petitioner relies upon judgment passed by Hon'ble Court in ***State represented by Inspector of Police and others vs. N.M.T. Joy Immaculate, 2004(3) RCR(Criminal) 322***, and also by Single Bench of this Court in ***Sumesh Chand etc. vs. State of Haryana, 1978 PLR 109*** and submits that the order passed under Section 209 (committal order) is *interlocutory* in nature and, therefore, such order could be assailed by respondents No. 2 and 3 directly before the High Court, with the exercise of power under Section 482 Cr.P.C. (now Section 528 of BNSS).

5. Learned counsel for the petitioner relies upon paragraphs No. 9 and 13 of ***N.M.T. Joy Immaculate's case (supra)***, which reads as under:

“9. Ordinarily and generally, the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. In volume



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26 of Halsbury's Laws of England (Fourth Edition) it has been stated as under in para 504:

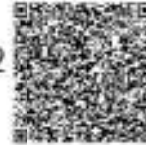
"..a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. It is impossible to lay down principles about what is final and what is interlocutory. It is better to look at the nature of the application and not at the nature of the order eventually made. In general, orders in the nature of summary judgment where there has been no trial of the issues are interlocutory."

In para 505 it is said that in general a judgment or order which determines the principal matter in question is termed "final".

In para 506 it is stated as under:

"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, even though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals."

13. [Section 167](#) Cr.P.C. empowers a Judicial Magistrate to authorise the detention of an accused in the custody of police. [Section 209](#) Cr.P.C. confers power upon a Magistrate to remand an accused to custody until the case has been committed to the Court of Sessions and also until the conclusion of the trial. [Section 309](#) Cr.P.C. confers power upon a Court to remand an accused to custody after taking cognizance of an offence or during commencement of trial when it finds it necessary to adjourn the enquiry or trial. The order of remand has no bearing on the proceedings of the trial itself nor it can have any effect on the ultimate decision of the case. If an order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings. A remand order cannot affect the progress of the trial or its decision in any manner. Therefore, applying the test laid down in [Madhu Limaye's](#) case (supra), it cannot be categorised even as an "intermediate order". The order is, therefore, a pure and simple interlocutory order and in view of the bar created by sub-section (2) of [Section 397](#) Cr.P.C., a revision against the said order is not maintainable. The High Court, therefore, erred in entertaining the revision against the order dated 6.11.2001 of the Metropolitan Magistrate granting police custody of the accused Joy Immaculate for one day."

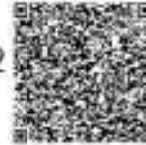


He also relies upon paragraphs No. 3 and 4 of ***Sumesh Chand etc. case (supra)***, which reads as under:

“(3) I think that there is considerable merit in the preliminary objection raised on behalf of the State. Provisions of section 227 of the 1973 Code are in the following terms :

“227. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this Sumesh Chand etc. v. State of Haryana (Tewatia, J.) behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

This provision is a new addition to the Criminal Procedure Code. In my way of looking at this provision, this provision invests the Sessions Court with a power which earlier in substance used to be exercised by the committing Court under the old Code. Under the new Code of 1973, the committing Court while exercising power under section 209 has no power whatsoever to go into the question as to whether any prima facie case is made out or not, which it used to do under the old Code under section 207-A. What the Magistrate under section 209 of the new Code has to see is as to whether the offence mentioned in the police report or otherwise is triable by the Sessions' Court and if it is so triable, then to submit the papers to the Sessions' Court along with the documents placed before it by the police. It is absolutely unnecessary for the committing Court to pass any detailed order or to go into the question as to whether a prima facie case is made out or not. That the committing Court has not to apply its mind to find out as to whether a prima facie case is made out is borne out from, the different phraseology used in section 207-A, sub-section (7) of the old Code and section 209, sub section (a) of the new Code. While under the old Code the committing Magistrate was required to commit the case for trial to the Court of Session on charges framed by him, but under the new Code he merely commits the case to the Court of Session and the question as to whether the person so committed is to be tried or not is to be decided by the Court of Session after applying its mind in the manner envisaged under section 227 of the new Code, with the result that under the old Code the accused was placed on trial by the order of the committing Court under section 207-A, while under the new Code the accused is not placed on trial but only the case is committed to the Court of Session which itself places the accused on trial if a prima facie case, is made out



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from the record and the documents submitted to it by the committing Court.

(4) In the light of the above, I am of the considered view that the order under section 209 of the new Code is in the nature of an Interlocutory order against which the revisional jurisdiction of this Court is expressly barred by sub-section (2) of section 397 of the new Code and where the new Code bars the revisional jurisdiction, it would be mere abuse of the process of the Court if a party is permitted to invoke its inherent jurisdiction, more particularly when 38 I.L.R. Punjab and Haryana (1978)1 the said party can get the desired relief nearer home under section 227 of the new Code from the Sessions' Court itself."

6. On the other hand, learned counsel for respondents No. 2 and 3 argues that by already exercising the revisional power, Court of Sessions has examined and gone through the same and thereupon held in specific that the offences to its mind are triable by the Court of learned Magistrate, therefore, nothing wrong has been sought by the revisional Court and the order requires to be upheld.

7. I have considered the submissions addressed by the respective counsel for the parties.

8. Undoubtedly, every committal order would be classified as *interlocutory* because it is passed at the stage of framing of charges under Section 227 Cr.P.C. in the Court of Sessions, when thorough cognizance of the case is taken by it and also after examining the record and applying its mind.

9. There are several instances, where exercising its power under Section 227 Cr.P.C., Court has realized that the offences actually are not triable by the Court of Sessions, and the matter has been sent back to the Court of Area Magistrate to be tried as a magisterial trial. Thus, it can safely be assumed that such order does not attain any finality by its nature. And obviously, such orders i.e. committal orders could be assailed by private respondents only under Section 482 Cr.P.C.

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10. In view of the observations made by Hon'ble Apex Court and then followed by this Court as well and additionally for the view expressed by this Court in the present order, I do agree with the contentions addressed by learned counsel for the petitioner, therefore, impugned order 18.04.2018 is set aside and parties are at liberty to avail remedy, if so permissible under law.

11. Petitions stands disposed of.

Pending misc. application(s), if any, also stand disposed of.

July 10, 2026*reena*

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No

**(SANJAY VASHISTH)
JUDGE**