

**HIGH COURT OF JUDICATURE MADHYA  
PRADESH, JABALPUR**

**DIVISION BENCH:** Hon'ble Mr. Justice S.K.Gangele  
&  
Hon'ble Mr. Justice Subodh Abhyankar, JJ.

**CRIMINAL REVISION NO. 1640 OF 2015**

K.L. Sahu.

Vs.

State of Madhya Pradesh.

**CRIMINAL REVISION NO. 1642 OF 2015**

J.L. Sahu

Vs.

State of Madhya Pradesh.

**CRIMINAL REVISION NO. 1644 OF 2015**

Manoj Kumar Sahu

Vs.

State of Madhya Pradesh.

**CRIMINAL REVISION NO. 1647 OF 2015**

Smt. Anuja Sahu

Vs.

State of Madhya Pradesh.

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Shri A.P. Shroti, Advocate for the petitioners.  
Shri Piyush Bhatnagar, Advocate for the intervener.  
Shri Vivek Lakhera, Panel Lawyer for the  
respondent/ State.  
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**ORDER**

(Passed on this the 24<sup>th</sup> day of November, 2016)

**PER: Subodh Abhyankar, J.**

This order would also govern the disposal of CR.R .No.1642/2015 (J.L. Sahu Vs. State of Madhya Pradesh), CR.R. No.1644/2015 (Manoj Kumar Sahu vs. State of Madhya Pradesh) and CR.R. No.1647/2015 (Smt Anuja Sahu vs. State of Madhya Pradesh) as common question of facts and law are involved in these criminal revisions.

2. The sole question of law before this Court is whether a Special court constituted under S.3 of the Prevention of Corruption Act, 1988 (hereinafter referred to **“P.C.Act”**) can try a case against the persons other than public servants for offences falling under Indian Penal Code or for that matter under any other law for the time being in force, when it has already discharged the public servants from the offences alleged to have been committed under the P.C. Act and the IPC.

3. For the sake of convenience the facts relating to Criminal Revision No.1640 of 2015 are taken into consideration in order to decide the common issues in all these matters.

4. All these criminal revisions have been filed by the persons, who are accused in Special Case No.7/2011 wherein the charge sheet has been filed

by the Economic Offences Bureau, Bhopal. These cases are pending before the Special Judge, Prevention of Corruption Act, Bhopal (M.P.) who, vide impugned order Annexure P/14 dated 16.01.2014 has held that the charges are liable to be framed and vide order Annexure P/9 dated 4.7.2015 has held that the Special Court has the jurisdiction to try the case.

5. To understand the controversy, the brief facts of the case, shorn of the unnecessary details are that a charge sheet was filed against the petitioners of these criminal revisions who are non-public servants as also against the other accused persons including the public servants on the ground that on the basis of a complaint wherein it was alleged that petitioner K.L.Sahu, Secretary of the Awas Rahat Grih Nirman Sahakari Samiti Maryadit committed fraud with the members of the society and in the garb of the society, allotted plots contrary to the byelaws and in the process, accepted money by conspiring with other accused persons including public servants.

6. The Charge sheet was filed against: (1) K.L. Sahu S/o Late Mannilal Sahu (2) J.K. Sahu S/o K.L. Sahu (3) O.P. Rai S/o Late Radheshyam (4) Dr. L.P. Bajpayee S/o Gangacharan Bajpayee (5) A.R. Hasan S/o S.A. Hussain (6) Manoj Kumar S/o K.L. Sahu (7) Dinesh Kumar Jain (8) B.P. Verma S/o B.R.

Verma (9) Smt Anuja Sahu W/o Shri Sharad Sahu  
(10) Pradeep Kumar Gupta S/o Shivmurti Gupta  
(11) D.N. Shrivastava S/o Late R.S.Shrivastava (12)  
Yajyoj Kumar @ Yaggoj Kumar @ Y.K.Sahu S/o K.L.  
Sahu (13) R.B. Shrivastava (14) S.K. Shukla,  
(15) Smt. Sushila Sahariya (16) Dr.S.K.Saxena.  
Out of these 16 accused persons, only **accused  
No.13 - R.B. Shrivastava, Auditor, Co-operative  
Department** and **accused No.14 - S.K. Shukla,  
Senior Inspector, Co-operative Department are  
the public servants.**

7. Initially, vide order datd 29.08.2013 charges were framed against all of the aforesaid accused persons under Sections 120-B, 406, 420, 467, 468, 471 of IPC and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. Against the aforesaid order of framing of charges dated 29.8.2013, a Criminal Revision No.2171/2013 was preferred by K.L. Sahu, which was disposed of by this Court vide order dated 12.11.2013 whereby the order of framing of charge was set aside and the Trial Court was directed to pass appropriate orders on framing of charges. Similarly, the other accused- Y.K. Sahu also preferred Criminal Revision No.2321/2013. The aforesaid revision was also allowed and the order of framing of charge was set aside vide order dated 03.12.2013 and the Special Court was directed to consider afresh the question of framing of charge and frame specific charge

against each accused persons. The aforesaid order dated 03.12.2013 is filed along with this revision as Annexure P/11.

8. After the matter was remanded back to the Special Court, the Special Court, after hearing all the accused persons, on 16.1.2014 passed as many as three orders in respect of framing of charges. The first order is filed as **Annexure P/13** wherein it is mentioned that accused K.L.Sahu, J.K.Sahu, Anuja Sahu and Manoj Sahu are liable to be charged as decided by a **separate order** under Sections including 418, 420, 409 and 120-B of IPC whereas other accused persons viz. O.P. Rai, Dr. L.P. Bajpayee, A.R. Hasan, Dinesh Kumar Jain, B.P. Verma, Pradeep Kumar Gupta, D.N. Shrivastava, Yajyoj Kumar Sahu, R.B. Shrivastava, S.K. Shukla, Smt. Sushila Sahariya and Dr.S.K.Saxena have been altogether discharged under Sections 120-B, 406, 409, 420, 467, 468, 471 of IPC and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. In the same order sheet, the prosecution is also directed to submit a trial program and summon the witnesses accordingly for recording of their evidence for the prosecution. The **separate order** mentioned in Annexure-P/13 is filed as **Annexure P/14**, which was also passed on 16.01.2014 and after hearing each of the accused persons and by specifically dealing with the individual case, the learned Special Judge held that prima facie case is made out against

the petitioners for framing the charges under **Section 418, 420, 409 and 120-B of IPC** whereas other accused persons, including public servants as stated above were altogether discharged. On 16.01.2014 vide Annexure P/15 the charges were also framed against the accused persons under the provisions of IPC simpliciter as aforesaid.

9. Being aggrieved of the order framing of charges, the petitioner – K.L. Sahu preferred Criminal Revision No.243/2014, which was allowed by this Court vide its order dated 25.9.2014 wherein it was held that since the petitioner has raised the issue of jurisdiction for the first time before this Court, hence it would be appropriate if the matter is remanded back with a liberty to the petitioner to raise the issue of jurisdiction first before the concerned Special Judge.

10. In pursuance of the order passed by this Court, the Special Judge of the Trial Court has passed the impugned order Annexure-P/19 on 04.07.2015 whereby the learned Special Judge, relying upon the decision rendered by the Hon'ble Supreme Court in the case of New Delhi vs. Jitender Kumar Singh [reported in (2014)11 SCC 724 ] has held that since the charges were already framed against the petitioners/non-public servants before the public servants could be discharged, hence the Special court has the jurisdiction to try the case.

This order Annexure P/9 dated **04.07.2015** is also under challenge before this Court.

11. The petitioners have come before this court against the aforesaid orders viz. order dated 16.01.2014 viz. Annexure-P/13, Annexure-P/14 (whereby reasoning has been assigned to frame charges) and Annexure-P/15 (order framing charges) as also the order Annexure-P/19 dated 04.07.2015, confirming the aforesaid order Annexure-P/14 dated 16.01.2014. The challenge is primarily on two grounds, viz., firstly, that the learned Judge of the Special Court has erred in framing charges against the petitioner in as much as the said court had no jurisdiction to frame the charges against the petitioner- non-public servants on account of the fact that on the same day i.e. on 16.01.2014 itself the learned Judge of the special court had discharged the other co-accused persons including **accused No.13 - R.B. Shrivastava, Auditor** and **accused No.14 - S.K. Shukla, Senior Inspector** who were the public servants from the offences punishable inter alia under ss.13(1)(d) r/w.13(2)of the P.C. Act. Thus, according to the learned counsel for the petitioner after discharging the other accused persons who were also the public servants from the offences under the P.C. Act, the learned Judge had no jurisdiction to frame charges and to try the petitioners for offences punishable under the Indian Penal Code simpliciter. The second

ground of challenge is that even on merits no case for framing of charges under the provisions of IPC can be said to be made out against the petitioners.

12. On the other hand the learned counsel for the Lokayukt and the learned counsel for the objector have submitted that the impugned orders are just and proper and need no interference. It is their contention that before passing of the impugned order Annexure-P/15, the learned Judge had not discharged the other co-accused public servants and it is only after the charges were framed against the petitioners, that the other accused persons, including the public servants were discharged, hence the court had the jurisdiction to frame charges against the petitioners.

13. Heard the learned counsel for the parties and perused the record.

14. Before we proceed to deal with the legal aspect of the matter it would be germane to reproduce the relevant paragraphs of the impugned order dated 16.01.2014 to demonstrate the manner in which it was passed by the learned Special Judge as it has a bearing on the subject matter at hand.

15. In respect of the petitioner K.L.Sahu, J.K.Sahu, Anuja Kumari Sahu and Manoj Sahu the learned Judge held as under in sequence of the following paras:-

अभियुक्त के.एल.साहु –

"22. इस न्यायालय के अभिमत में अभियुक्त के.एल.साहु के विरुद्ध धारा 418, 420 एवं 409 एवं धारा 120-ख भा.द.सं. के अधीन दण्डनीय अपराध प्रथमदृष्टया गठित होता है अतः उक्त अपराध के संबंध में आरोप पत्र विरचित किया गया। अभियुक्त को आरोप पढ़कर सुनाया गया। अभियुक्त ने आरोपित अपराध अस्वीकार किया और विचारण किये जाने का दावा किया। अभियुक्त का अभिवाक लेखबद्ध किया गया।"

अभियुक्त जे.के.साहु-

"23. अभियुक्त जे.के.साहु के विरुद्ध आवास गृह निर्माण सहकारी समिति के तत्कालीन अध्यक्ष की हैसियत से समिति के सचिव के.एल.साहु के साथ मिलकर भूखण्डों के अनियमित आबंटन एवं पट्टा विलेख निष्पादन कर अवैध लाभ अर्जित करने संबंधी आपराधिक षडयंत्र किये जाने का अभियोजन है। जे.के. साहु के विरुद्ध इस न्यायालय के अभिमत में धारा 418 सहपठित धारा 120-ख, धारा 420 सहपठित धारा 120-ख एवं धारा 409 भा.द.सं. एवं धारा 409 सहपठित धारा 120-ख भा.द.सं. के अधीन दण्डनीय अपराध प्रथमदृष्टया गठित होता है। अतः उक्त अपराध के संबंध में आरोप पत्र विरचित किया गया। अभियुक्त जे.के. साहु को आरोप पढ़कर सुनाया गया। अभियुक्त ने आरोपित अपराध अस्वीकार किया और विचारण किये जाने का दावा किया। अभियुक्त का अभिवाक लेखबद्ध किया गया।"

अभियुक्त अनुजा कुमारी साहु एवं मनोज साहु-

"24. इन अभियुक्तों का प्रकरण एक समान है अतः इन पर एक साथ विचार किया जा रहा है। मुख्य आरोपी के.एल. साहु तत्कालीन सचिव एवं जे.के. साहु तत्कालीन अध्यक्ष पर यह अभियोजन है कि उनके द्वारा परिजनों को लाभ पहुंचाने के लिये सदस्यों की वरिष्ठता सूची में परिवर्तन किया गया। परिजनों को स्वीकृत अभिन्यास से अधिक क्षेत्रफल का भूखण्ड आबंटित कर पट्टा विलेख निष्पादित किया गया। अभियुक्त मनोज कुमार साहु, अनुजा साहु के विरुद्ध यह अभियोजन किये गये हैं कि उन्होंने समिति के संचालक होते हुए अवैध लाभ अर्जित करने हेतु मुख्य आरोपी के.एल. साहु को सचिव नियुक्त किया था और उक्त पद का दुरुपयोग कर समिति के भूखण्डों के अवैध आबंटन द्वारा लाभ अर्जित करने हेतु आपराधिक षडयंत्र किया। अभिलेख पर उपलब्ध सामग्री से इन दोनों अभियुक्तों के पक्ष में स्वीकृत अभिन्यास से अधिक क्षेत्रफल के भूखण्ड आबंटित कर अवैध लाभ अर्जित कराया जाना प्रथम दृष्टया प्रगट होता है। इस न्यायालय के

अभिमत में अभिलेख पर उपलब्ध सामग्री से अभियुक्त मनोज कुमार साहु, डा. अनुजा साहु के विरुद्ध धारा 418 सहपठित धारा 120-ख, धारा 420 सहपठित धारा 120-ख एवं धारा 409 सहपठित धारा 120-ख के अधीन दण्डनीय अपराध प्रथमदृष्टया गठित होते हैं। अतः उक्त अपराध के संबंध में आरोप पत्र विरचित किया गया। अभियुक्तों को आरोप पढकर सुनाया गया। अभियुक्तों ने आरोपित अपराध अस्वीकार किया और विचारण किये जाने का दावा किया। अभियुक्तों का अभिवाक लेखबद्ध किया गया।”

In the same order, in subsequent para 31, accused S.K.Shukla, the public servant was discharged in the following manner:-

अभियुक्त एस.के. शुक्ला –

“31. विवेचना के आधार पर अभियुक्त एस.के. शुक्ला को धारा धारा-406, 409, 467, 468, 471 सहपठित धारा 120 (ख) भा0दं0सं0 तथा धारा-13 (1) (डी) सहपठित 13 (2) भ्रष्टाचार निवारण अधिनियम एवं धारा- 120 (ख) भा0दं0सं0 के अधीन दंडनीय अपराध के आरोप से उन्मोचित कर स्वतंत्र किया जाता है। उक्त अभियुक्त की उपस्थिति संबंधी प्रतिभूति एवं बंधपत्र भारमुक्त एवं निरस्त किए जाते हैं। ”

In para 35, accused Sushila Sahariya, Dr.S.K.Saxena, Dinesh Kumar Jain and S.R.Hasan were discharged in the following manner:-

अभियुक्त सुशीला सहारिया, डा0 एस0के0 सक्सेना, दिनेश कुमार जैन एवं एस0आर0 हसन –

“35. समिति के प्रस्ताव का पूर्वोक्त उल्लेख स्वयंमेव यह स्पष्ट कर देता है कि तत्कालीन संचालक मंडल द्वारा अभियुक्त के0एल0 साहू को संस्था का अवैतनिक सचिव नियुक्त करते हुए उन्हें अध्यक्ष और प्रबंध कार्यकारिणी के निर्देशों में बैंक से आहरण एवं जमा संबंधी कार्य के लिए अधिकृत किया गया था। अभियुक्त के0एल0 साहू का आवास राहत गृह निर्माण सहकारी समिति के भूखंडों के अनियमित आवंटन द्वारा अवैध लाभ अर्जित किया जाना, इस प्रकरण का आधारभूत अभियोजन है। वर्ष 1988 की प्रबंध कार्यकारिणी समिति द्वारा अभियुक्त के0एल0 साहू को

भूखंड आवंटन के संबंध में अधिकृत किए जाने का कोई उल्लेख बैठक की कार्यवाही में नहीं है। वस्तुतः आवास राहत गृह निर्माण सहकारी समिति को वर्ष 2003 में प्रथमतः म0प्र0 शासन राजस्व विभाग के पत्र दिनांक 04.03.2003 द्वारा स्थाई पट्टे पर भूमि का आवंटन प्राप्त हुआ था, जिसका सदस्यों को उपपट्टे पर अंतरण वर्ष 2007 में प्रारंभ हुआ। स्पष्टतः वर्ष 1988 में वह भूमि ही अस्तित्व में नहीं थी, जिसके अनियमित आवंटन द्वारा अवैध लाभ अर्जित करने संबंधी अभियुक्त के0एल0साहू के विरुद्ध अभियोजन संस्थित किया गया। अभिलेख पर ऐसा कोई प्रमाण नहीं है, जिससे प्रथम दृष्ट्या यह दर्शित होता हो कि वर्ष 1988 की प्रबंध कार्यकारिणी समिति द्वारा अभियुक्त के0एल0 साहू को बैंक में जमा और आहरण के लिए अधिकृत करने पर अभियुक्त के0एल0 साहू द्वारा समिति की बैंक में जमा राशियों के संबंध में आपराधिक न्यास भंग अथवा कपटपूर्ण कूटकरण किया गया है अंकेक्षण में इस आशय की कोई अंकेक्षण रिपोर्ट, लेखा अथवा अन्य प्रलेखीय प्रमाण एकत्रित नहीं किये गये। मात्र दूरस्थ कोई संभावना या विवेचक की परिकल्पना के आधार पर, वर्ष 1988 में अभियुक्त के0एल0 साहू को अवैतनिक सचिव के पद पर नियुक्त किए जाने और बैंक की कार्यवाहियों के लिए अधिकृत किए जाने मात्र से अभियुक्त सुशील सहारिया, डा0 एस0के0 सक्सेना, दिनेश कुमार जैन एवं एस0आर0 हसन के विरुद्ध ऐसी कोई उपधारणा नहीं की जा सकती कि उनके द्वारा 15 वर्ष के बाद वर्ष 2003 में आवंटित होने वाली संभावित भूमि के आवंटन में अनियमितता एवं अवैध लाभ अर्जित करने को सुकर बनाने की दृष्टि से अभियुक्त के0एल0साहू के साथ आपराधिक षडयंत्र किया गया था और उसी आपराधिक षडयंत्र के तहत के0एल0साहू को अवैतनिक सचिव नियुक्त किया गया था। फलतः उक्त अभियुक्तों के विरुद्ध अभियोजन प्रलेखों को यथावत स्वीकार कर लिए जाने की दशा में भी अभियुक्त सुशीला सहारिया, डा0 एस0के0 सक्सेना, दिनेश कुमार जैन एवं एस0आर0 हसन के विरुद्ध अन्य अभियुक्त के0एल0 साहू के साथ मिलकर आपराधिक न्यास भंग, कपट अथवा आपराधिक अवचार का षडयंत्र किए जाने संबंधी अपराध प्रथम दृष्ट्या गठित नहीं होते।

**तदनुसार अभियुक्त सुशीला सहारिया, डा0 एस0के0 सक्सेना, दिनेश कुमार जैन एवं एस0आर0 हसन को धारा-406, 409, 467, 468, 471 सहपठित धारा 120 (ख) भा0दं0सं0 तथा**

धारा-13 (1) (डी) सहपठित 13 (2) भ्रष्टाचार निवारण अधिनियम एवं धारा-120 (ख) भा0दं0सं0 के अधीन दंडनीय अपराध के आरोप से उन्मोचित कर स्वतंत्र किया जाता है। उक्त अभियुक्तों की उपस्थिति संबंधी प्रतिभूति एवं बंधपत्र भारमुक्त एवं निरस्त किए जाते हैं। ”

In para 46, accused L.P.Bajpai, B.P.Verma, Padeep Gupta, O.P.Rai and D.N.Shrivastava were discharged in the following manner:-

अभियुक्त एल.पी. बाजपेयी, बी.पी. वर्मा, प्रदीप गुप्ता, ओ. पी. राय एवं डी. एन. श्रीवास्तव –

”46. ऐसी दशा में अभियुक्त एल.पी. बाजपेयी, बी. पी. वर्मा एवं प्रदीप गुप्ता, ओ. पी. राय एवं डी. एन. श्रीवास्तव के विरुद्ध अन्य अभियुक्त के.एल. साहू के साथ मिलकर आपराधिक न्यास भंग एवं कपटपूर्ण अवैध लाभ अर्जित करने के आपराधिक षडयंत्र का प्रथम दृष्टया अपराध गठित नहीं होता है। फलतः उक्त अभियुक्त एल.पी. बाजपेयी, बी.पी. वर्मा एवं प्रदीप गुप्ता को धारा-406, 409, 467, 468, 471 सहपठित धारा 120 (ख) भा0दं0सं0 तथा धारा-13 (1) (डी) सहपठित 13 (2) भ्रष्टाचार निवारण अधिनियम एवं सहपठित धारा-120 (ख) भा0दं0सं0 के अधीन दंडनीय अपराध के आरोप से उन्मोचित कर स्वतंत्र किया जाता है। उक्त अभियुक्तों की उपस्थिति संबंधी प्रतिभूति एवं बंधपत्र भारमुक्त एवं निरस्त किए जाते हैं। ”

In para 48, accused Y.K.Sahu @ Yajyoj Kumar Sahu was discharged in the following manner:-

अभियुक्त वाय.के. साहू –

“48. अभियोजन द्वारा प्रस्तुति प्रलखों में वर्ष 91-92 के अंकेक्षण अनुलग्न पी-36 में श्री वाय0कुमार क्लर्क को मासिक वेतन रूपये 400/- पर स्थाई कर्मचारी के रूप में नियुक्त किए जाने का उल्लेख है, परंतु अभिलेख पर इस संबंध में लेशमात्र प्रमाण नहीं है कि अंकेक्षण प्रतिवेदन में जिस वाय0कुमार क्लर्क का उल्लेख है, वही अभियुक्त यजयोज कुमार साहू है। इस संबंध में भी कोई प्रमाण उपलब्ध नहीं है कि यजयोज कुमार साहू को ही डमी कर्मचारी के रूप में उक्त रूपये-400/- मासिक वेतन का भुगतान किया जाता

रहा था। वस्तुतः उक्त भुगतान के संबंध में अभिलेख पर संस्था के रजिस्टर, रसीद अथवा लेखे प्रस्तुत नहीं हैं। इन परिस्थितियों में अभिलेख पर उपलब्ध सामग्री को यथावत स्वीकार कर लिया जावे तो भी यह तथ्य प्रमाणित नहीं होता कि अभियुक्त के 0ए0साहू द्वारा उसके पुत्र यजयोज कुमार साहू को डमी कर्मचारी के रूप में समिति में नियुक्त कर रूपये-400/- प्रतिमाह का भुगतान कर अवैध लाभ अर्जित किया गया था। अभियुक्त यजयोज कुमार साहू के पक्ष में पात्रता के बिना अथवा वरिष्ठता से परे भूखण्ड के आबंटन के माध्यम से अवैध लाभ अर्जित करने संबंधी कोई अभियोजन नहीं है फलतः अभियुक्त यजयोज साहू के विरुद्ध अभियुक्त के.एल.साहू के साथ मिलकर अवैध लाभ अर्जित करने के उद्देश्य से आपराधिक न्यास भंग और कपट के आपराधिक षडयंत्र का अपराध प्रथम दृष्ट्या भी गठित नहीं होता। **विवेचना के आधार पर अभियुक्त यजयोज कुमार साहू को धारा-406, 409, 467, 468, 471 सहपठित धारा 120 (ख) भा0दं0सं0 तथा धारा-13 (1) (डी) सहपठित 13 (2) भ्रष्टाचार निवारण अधिनियम एवं सहपठित धारा- 120 (ख) भा0दं0सं0 के अधीन दंडनीय अपराध के आरोप से उन्मोचित कर स्वतंत्र किया जाता है। उक्त अभियुक्तों की उपस्थिति संबंधी प्रतिभूति एवं बंधपत्र भारमुक्त एवं निरस्त किए जाते हैं।”**

**(emphasis supplied)**

In para 50, accused R.B. Shrivastava, the public servant was discharged in the following manner:-

**अभियुक्त आर.बी. श्रीवास्तव :-**

“50. .... अभियोजन द्वारा प्रस्तुत प्रलेखीय प्रमाणों को यथावत स्वीकार कर लेने की दशा में भी अभियुक्त आर. बी. श्रीवास्तव के विरुद्ध अवैध लाभ अर्जित करने के उद्देश्य से अन्य अभियुक्त के.एल. साहू के साथ आपराधिक षडयंत्र किये जाने अथवा अंकेक्षक के रूप में पदीय कर्तव्य निर्वहन में अवैध लाभ अर्जित करने के उद्देश्य से उपेक्षा कर आपराधिक अवचार किया जाना प्रथम दृष्ट्या दर्शित नहीं होता है। फलतः **अभियुक्त आर.बी. श्रीवास्तव को धारा-406, 409, 467, 468, 471 सहपठित धारा 120 (ख) भा0दं0सं0 तथा धारा-13 (1) (डी) सहपठित 13 (2) भ्रष्टाचार निवारण अधिनियम एवं सहपठित धारा- 120 (ख) भा0दं0सं0 के**

अधीन दंडनीय अपराध के आरोप से उन्मोचित कर स्वतंत्र किया जाता है। उक्त अभियुक्त की उपस्थिति संबंधी प्रतिभूति एवं बंधपत्र भारमुक्त एवं निरस्त किए जाते हैं। अवशेष कार्यवाही मूल आदेश पत्रिका में की गई।”

It appears from the above that the learned Judge has passed the aforesaid order in such a manner as if after holding that the charge is liable to be framed against the accused persons, he stopped in the middle of the order, framed the charges against them in a separate order-sheet, recorded their plea and then proceeded further to pass the order of discharge in respect of the other accused persons.

16. In the light of the aforesaid order dated 16.01.2014, the learned special judge has passed the impugned order Annexure P/19 dated 04.07.2015 in the following terms:-

“पूर्वोक्त परिस्थिति को देखते से यह सुव्यक्त है कि हस्तगत मामले में इस न्यायालय ने भ्रष्टाचार निवारण अधिनियम की धारा 4 (3) के तहत प्रदत्त शक्तियों का प्रयोग करते हुए अभियुक्तगण के विरुद्ध भा.द.सं. के अपराध का आरोप विरचितकर प्रकरण अभियोजन साक्ष्य हेतु नियत कर दिया। इसके पश्चात लोक सेवक, जिनके विरुद्ध भ्रष्टाचार निवारण अधिनियम के अपराध का आरोप था, उसमे उन्मोचित किया गया तब न्यायालय इससे पीछे अब नहीं जा सकती है। माननीय सर्वोच्च न्यायालय के (राज्य सीबीआई) द्वारा उक्त मामले में क्रीमिनल अपील नं. 943/08 में जो विधि सिद्धांत सुस्थापित किया है वही सिद्धांत हस्तगत मामले में प्रयोज्य होता है इस कारण हस्तगत मामले का विचारण इस न्यायालय द्वारा अग्रसर जारी रहेगा।

हस्तगत मामले में आरोप विरचित करने से पूर्व लोकसेवक की मृत्यु अर्थात लोकसेवक को अभिकथित अपराध से उन्मोचित नहीं किया गया है ऐसी स्थिति में अभियुक्तगत के विद्वान अभिभाषक का यह तर्क कि अभियुक्तगत को अभिकथित अपराध से उन्मोचित किया जाये, मान्य किये जाने योग्य नहीं है। वैसे भी हस्तगत मामले में इस न्यायालय द्वारा यदि आरोप विरचित नहीं किया जाता और लोकसेवक की मृत्यु हो जाती और केवल प्रायवेट व्यक्ति

जीवित रहता जिसके विरुद्ध केवल भा.द.सं. के अपराध का आरोप रहता तब अभियुक्तगण जोकि अधिनियम के अपराध का आरोप नहीं है उनको आरोप से उन्मोचित नहीं किया जाता बल्कि उस मामले को सक्षम न्यायालय में विचारण हेतु अभियोग पत्र को वापिस किया जाता। उस दशा में क्रीमिनल अपील नं. 161/11 में माननीय सर्वोच्च न्यायालय द्वारा सुस्थापित विधि सिद्धांत हस्तगत मामले के तथ्य एवं परिस्थितियों में प्रयोज्य नहीं हैं। ऐसी स्थिति में अभियुक्तगण के विद्वान अभिभाषक का तर्क मान्य किये जाने योग्य नहीं है तदनुसार उसे अमान्य किया जाता है।”

(emphasis supplied)

17. In order to appreciate the rival contentions of the parties, it would be germane to reproduce Sections 3 and 4 of the PC Act which read as under:-

**“3. Power to appoint special Judges.**

— (1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification **to try the following offences**, namely:—

(a) **any offence punishable under this Act;** and

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974).

**4. Cases triable by special Judges.—**

(1) Notwithstanding anything

contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or, where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

**(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.**

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis.”

(emphasis supplied)

18. In the impugned order dated 04.07.2015, the learned judge has considered the jurisdictional aspects of the aforesaid order dated 16.01.2014 passed by his predecessor and after testing it on the anvil of the order passed by the Hon'ble Apex court in the case of ***Sate through Central Bureau of Investigation, New Delhi vs. Jitender Kumar Singh [reported in (2014)11 SCC 724 ]*** held that

the present case falls under the category of Cr.A.No.943 of 2008 as observed by the Hon'ble Supreme Court in the aforesaid case. The Hon'ble Apex court has dealt with the Cr.A.No.943 of 2008 and Cr.A. No.161 of 2011 from para 37 to 46 in the following manner:

“37. Exclusion of the jurisdiction of ordinary Criminal Court, so far as offences under the PC Act are concerned, has been explicitly expressed under Section 4(1) of the PC Act, which does not find a place in respect of non-PC offences in sub-section (3) of Section 4 of the PC Act. Further, it is not obligatory on the part of a Special Judge to try non-PC offences. The expression “may also try” gives an element of discretion on the part of the Special Judge which will depend upon the facts of each case and the inter-relation between PC offences and non-PC offences.

38. **A Special Judge exercising powers under the PC Act is not expected to try non-PC offences totally unconnected with any PC offences under Section 3(1) of the PC Act and in the event of a Special Judge not trying any offence under Section 3(1) of the PC Act, the question of the Special Judge trying non-PC offences does not arise.** As already indicated, trying of a PC offence is a jurisdictional fact to exercise the powers under Sub-section (3) of Section 4. The jurisdiction of the

Special Judge, as such, has not been divested, but the exercise of jurisdiction, depends upon the jurisdictional fact of trying a PC offence. We are, therefore, concerned with the exercise of jurisdiction and not the existence of jurisdiction of the Special Judge.

39. The meaning and content of the expression “jurisdictional fact” has been considered by this Court in *Carona Ltd. v. Parvathy Swaminathan & Sons*, and noticed that where the jurisdiction of a Court or a Tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of the issue. The existence of a jurisdictional fact is thus a sine qua non or condition precedent to the assumption of jurisdiction by a Court. In *Ramesh Chandra Sankla v. Vikram Cement*, this Court held that by erroneously assuming existence of the jurisdictional fact, a Court cannot confer upon itself jurisdiction which otherwise it does not possess.

40. We have already indicated that the jurisdictional fact so as to try non-PC offences is “trying any case” under the PC Act. As noticed by this Court in *Ratilal Bhanji Mithani v. State of Maharashtra*, the trial of a warrant case starts with the framing of charge. Prior to that the proceedings are only an inquiry. The Court held as follows:-

“28. Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. After the framing of the charge if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in Sections 254 to 258 to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Sections 349 and 562 of the Code of 1898 (which correspond to Sections 325 and 360 of the Code

of 1973).”

41. We may now examine whether, in both these appeals, the above test has been satisfied.

42. First, we may deal with Criminal Appeal No. 943 of 2008. CBI, in this appeal, as already indicated, submitted the charge-sheet on 1.11.2001 for the offences against A-1, who was a public servant, as well as against non-public servants. Learned Special Judge had, on 25.3.2003, framed the charges against the accused persons under Section 120-B read with Sections 467, 471 and 420 IPC and also under Sections 13(1)(d) and 13(2) of the PC Act and substantive offences under Sections 420, 467 and 471 IPC and also substantive offences under Sections 13(1)(d) and 13(2) of the PC Act against the public servants. Therefore, charges have been framed against the public servants as well as non-public servants after hearing the prosecution and defence counsel, by the special Judge on 25.3.2003 in respect of PC offences as well as non-PC offences. As already indicated, under sub-section (3) of Section 4, when trying any case, a Special Judge may also try any offence other than the offence specified in Section 3 and be charged in the same trial. The Special Judge, in the instant case, has framed charges against the public servant as well as against the non-public servant for offences punishable under Section

3(1) of PC Act as well as for the offences punishable under Section 120B read with Sections 467, 471 and 420 and, therefore, the existence of jurisdictional fact, that is “trying a case” under the PC Act has been satisfied.

43. The Special Judge after framing the charge for PC and non-PC offences posted the case for examination of prosecution witnesses, thereafter the sole public servant died on 2.6.2003. Before that, the Special Judge, in the instant case, has also exercised his powers under sub-section (3) of Section 4 of the PC Act and hence cannot be divested of the jurisdiction to proceed against the non-public servant, even if the sole public servant dies after framing of the charges. On death, the charge against the public servant alone abates and since the special Judge has already exercised his jurisdiction under sub-section (3) of Section 4 of the PC Act, that jurisdiction cannot be divested due to the death of the sole public servant.

44. We can visualize a situation where a public servant dies at the fag end of the trial, by that time, several witnesses might have been examined and to hold that the entire trial would be vitiated due to death of a sole public servant would defeat the entire object and purpose of the PC Act, which is enacted for effective combating of corruption and to expedite cases related to corruption

and bribery. The purpose of the PC Act is to make anti-corruption laws more effective in order to expedite the proceedings, provisions for day-to-day trial of cases, transparency with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been provided under the PC Act. Consequently, once the power has been exercised by the Special Judge under sub-section (3) of Section 4 of the PC Act to proceed against non-PC offences along with PC offences, the mere fact that the sole public servant dies after the exercise of powers under sub-section (3) of Section 4, will not divest the jurisdiction of the Special Judge or vitiate the proceedings pending before him.

45. We are, therefore, inclined to allow Criminal Appeal No. 943 of 2008 and set aside the order of the High Court and direct the Special Judge to complete the trial of the cases within a period of six months.

**46. We may now examine Criminal Appeal No. 161 of 2011, where the FIR was registered on 2.7.1996 and the charge-sheet was filed before the Special Judge on 14.9.2001 for the offences under Sections 120B, 420, IPC read with Sections 13(2) and 13(1) of the PC Act. Accused 9 and 10 died even before the charge-sheet was sent to the Special Judge. The charge against the sole public servant under the PC Act could also not be framed**

since he died on 18.2.2005. The Special Judge also could not frame any charge against non-public servants. As already indicated, under sub-section (3) of Section 4, the special Judge could try non-PC offences only when “trying any case” relating to PC offences. In the instant case, no PC offence has been committed by any of the non-public servants so as to fall under Section 3(1) of the PC Act. Consequently, there was no occasion for the special Judge to try any case relating to offences under the PC Act against the Appellant. The trying of any case under the PC Act against a public servant or a non-public servant, as already indicated, is a *sine qua non* for exercising powers under sub-section (3) of Section 4 of PC Act. In the instant case, since no PC offence has been committed by any of the non-public servants and no charges have been framed against the public servant, while he was alive, the Special Judge had no occasion to try any case against any of them under the PC Act, since no charge has been framed prior to the death of the public servant. The jurisdictional fact, as already discussed above, does not exist so far as this appeal is concerned, so as to exercise jurisdiction by the Special Judge to deal with non-PC offence. ”

(emphasis supplied)

19. The learned Special Judge has relied upon

the ratio of the aforesaid judgment of the Hon'ble Apex court passed in Cr.A. No.943 of 2008 wherein the accused-public servant had died after framing of the charges but before evidence could be led. Thus, by drawing analogy from Cr.A. No.943 of 2008 the learned Special Judge has held that since the charges were already framed by his predecessor on 16.01.2014 (Annexure-P/15) hence there is no gainsaying that the Special Court had no jurisdiction. The learned Judge also observed that a detailed order (Annexure-P/14) has been passed by his predecessor in respect of the framing of charges, and in that common order which is reproduced above, he first held that charges under IPC are liable to be framed against the non-public servants and then in subsequent paras of the same order discharged the public servants from all the charges. Thus, according to the learned Special Judge, when the charges were being framed against the petitioners/non-public servants, the Special Court had the jurisdiction to try the case because by that time the public servants were not discharged. In our considered opinion, the learned Judge has not only wrongly interpreted the ratio laid down in the case of **Jitendra Kumar Singh** (supra) but has miserably failed to analyze the import of PC Act itself.

20. Admittedly, no charge of any conspiracy was framed against any of the non-public servant accused coupled with any of the sections of the P.C.

Act. It is also not a case where the public servant had died after framing of charges against all accused persons, in fact in the present case the public servants were found to have not committed any offence at all including any offence under the P.C. Act. The learned Judge has erred in not considering the fact that the observations made in para 46 of the **Jitendra Kumar's** case (supra) are applicable in the present case as well.

21. It is beyond our faculties as to how the learned judge of the Special Court has decided the fate of parties on the ground of having written one paragraph prior to another. Learned Special Judge erred in holding that the case is triable by Special Judge only on the ground of sequencing of the paragraphs in the order Annexure P/14 dated 16.01.2014. It is difficult to envisage a scenario where a party's rights can be decided on sequencing of the paragraphs and not by the material on record and its merit. To allow sequence of paragraphs in a judgment to dictate the jurisdiction of a court would be a travesty of legal system. A judgment has to be read as a whole and the sequence of its paragraphs is not at all relevant. A judgment/order which affects the rights of the contesting parties only because of the manner in which it is written would also defeat the very principle of equity and equality enshrined under Art. 14 of the Constitution of India hence the impugned orders are liable to be quashed.

22. In the considered opinion of this Court, the reasoning adopted by the learned Trial court was un-warranted, unjust and without application of mind. The learned Special Judge, while passing the impugned order lost sight of the purpose of the PC Act which, as described in para 44 of the **Jitendra Kumar Singh's** case (supra) is, “***to make anti-corruption laws more effective in order to expedite the proceedings, provisions for day-to-day trial of cases, transparency with regard to grant of stay and exercise of powers of revision on interlocutory orders***”. Thus, once a person is tried by a Special Court under special Act, he is faced with stringent provisions of law and the remedies as are available to an offender under the common law are restricted hence, prosecution of a person by a Special Court cannot be said to be a mere formality or an inconsequential event as it causes substantial prejudice to his rights.

23. In the result, all the criminal revisions are **allowed** and the impugned orders dated **16.01.2014** (filed as Annexures-P/13, P/14 & P/15 in Criminal Revision No.1640/2015; as Annexures P/11, P/12 & P/13 in Criminal Revision No.1642/2014; and as Annexures-P/8, P/9 & P/10 in Criminal Revision Nos.1644/2015 & 1647/2015) as also the order dated **04.07.2015** (filed as Annexure- P/19, P/17, P/13 & P/14 in Criminal Revision Nos.1640/2015, 1642/2014, 1644/2015 &

1647/2015 respectively) **are hereby quashed**. The learned Judge of the Special Court is directed to remit the charge sheet to the Chief Judicial Magistrate, Bhopal to proceed in accordance with law. It is made clear that this Court has not passed any order on the merits of the case and the competent Court shall proceed with the case afresh and expeditiously, in accordance with law and without being influenced by the earlier proceedings which took place before the Special Court or this High Court.

**(S.K.Gangele)**

**Judge**

24/11/2016

**(Subodh Abhyankar)**

**Judge**

24/11/2016