* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment pronounced on: 5th June, 2015*

\+ **CRL.M.C. 2254/2011**

PROMINENT HOTELS PVT LTD & ANR ..... Petitioners
Through Mr.Dhanesh Relan, Adv. with Mr.Arush Bhandari, Adv.

versus

STATE THROUGH CBI ..... Respondent
Through Ms.Sonia Mathur, Adv.

\+ **CRL.M.C. 1068/2014**

M/S PROMINENT HOTELS LTD & ANR ..... Petitioners
Through Mr.Dhanesh Relan, Adv. with Mr.Arush Bhandari, Adv.

versus

STATE ..... Respondent
Through Ms.Sonia Mathur, Adv.

\+ **CRL.M.C. 4153/2014**

M/S PROMINENT HOTELS LTD & ANR ..... Petitioners
Through Mr.Dhanesh Relan, Adv. with Mr.Arush Bhandari, Adv.

versus

STATE THR. CBI ..... Respondent
Through Ms.Sonia Mathur, Adv.

CORAM:

HON'BLE MR.JUSTICE MANMOHAN SINGH

<u>MANMOHAN SINGH,</u> J.

1. By this judgment, I shall decide the above mentioned three petitions.

a) The petition, being Crl.M.C. No.225/2011, is filed under Section 482 of the Cr.P.C. for quashing the order dated 18th May, 2011 passed by the Special Judge, CBI in the FIR bearing no.RC-DA1-1998-A-0025 dated 15th April, 1998 registered under Sections 477-A I.P.C. read with Section 13(1)(d)/15 (1) of the Prevention of Corruption Act, which is pending adjudication before the court of Special Judge, CBI whereby the applications of the petitioners for transfer of the matter to the court of the Chief Metropolitan Magistrate, was dismissed.

b) The second petition, being Crl.M.C. No.1068/2014, is filed under Section 482 of the Cr.P.C. for quashing the order dated 21st February, 2014 whereby the application of the petitioner seeking the similar prayer was dismissed despite of Supreme Court judgment.

c) The third petition, being Crl.M.C. No.4153/2014, is filed under Section 482 of the Cr.P.C. against the dismissal of the petitioners' application.

2. It is the case of the petitioner that despite of the judgment passed by the Supreme Court dated 5th February, 2014 in the matter of CBI vs. Jitender Kumar Singh being criminal appeal No.943 of 2008 and 161 of 2011, the trial court has ignored the prayer of the

petitioners application rather the issue raised by the petitioners was postponed at the stage of final arguments.

3. At the time when the incident in question is alleged to have taken place, the petitioner No.1 was the Company Secretary of M/s. Prominent Hotels Limited and the status of the Petitioner No.2 was the same i.e. M.D. of Prominent Hotels Pvt. Ltd.

4. The case of the prosecution is that on the basis of source information on 15th April, 1998 against Mr.V.P.S. Mann, the then Head Assistant (Estate)/NDMC, New Delhi, M/s Prominent Hotels Ltd, Shaheed Bhagat Singh Marg and unknown officials of M/s Prominent Hotels Ltd and others alleging therein that Mr.V.P.S. Mann while working as Head Assistant (Estate) in NDMC, New Delhi during the year 1991-1994 entered into a criminal conspiracy with M/s Prominent Hotels and in furtherance of criminal conspiracy, Mr.V.P.S. Mann falsified the books of accounts by making false/forged and bogus entries dated 23rd January, 1991, 14th February, 1991 and on 22nd February, 1991 amounting to Rs 4 lakh and Rs 3 lakh two times with the intent to cause undue pecuniary benefit to the said Prominent Hotels Ltd.

5. An F.I.R. was registered under Sections 420, All-A 471, 120-B and 511 I.P.C. and Section 13(2) read with Section 13(l)(d) of the P.C Act, 1988 on the 15th April, 1998, inter alia against the petitioner and a public servant Mr. V. P. S. Mann, who has since expired in the year 2010.

6. It was alleged in the FIR that Mr.V.P.S. Mann also did an illegal act of calculating the incorrect arrears of M/s Prominent Hotels Ltd

with the intention to give undue pecuniary advantage to the company and corresponding loss to NDMC but the same was detected. As per respondent, the investigation revealed that M/s Prominent Hotels Ltd and NDMC entered into an agreement dated 16th July, 1982 for construction, furnishing, providing facilities and commissioning/management of Youth Hostel by 30th April, 1984 in full and in all respect for the purpose of running the Youth Hostel to cater to low income group student community both within and outside India. Ramesh Kakkar is the Managing Director of M/s Prominent Hotels Ltd. The condition was that the petitioner hotel had to pay the guaranteed amount of Rs.21,08,400/- or 23% of the annual gross turn over of the Youth Hostel business whichever is more from the date of handing over of possession of the plot of land to the licensee. After finalization of the agreement between the company and NDMC the concerned file was to be sent to the account section of Estate Branch for making necessary entries in the demand and collection register with respect to the licence fee and other terms and conditions mentioned in agreement for the purpose of recovery of payment. The said file was not sent to the account section after finalization of the agreement and even after the finalization of supplementary agreement made afterwards. Hence, the mode of payments and the amount of installments, as agreed upon by both the parties, were not recorded in the Demand and Collection Register maintained in the account section, due to which the entries of amount received from M/s Prominent Hotels Ltd were not entered under proper head and all the amount was shown to have been received under head EXCESS.

6.1 Mr. V.P.S. Mann in criminal conspiracy with R. Venketesh, Company Secretary to M/s Prominent Hotels Ltd obtained letter dated 28th February, 1994 from him in which the company secretary made the request that a statement showing the payment made by M/s Prominent Hotels Ltd to NDMC for the period from 1988-89 to 1991-1992 be supplied upto 18th March, 1994 as the same is required for the purpose of filing an appeal in the Income Tax Department. This letter was sent to the account section with the signature of Asst Director. It was not brought in the knowledge of Director, Estate, NDMC.

6.2 In the account section, S.C. Mittal prepared the statement as per D& C Register and the three entries amounting to Rs 10 lakh were included under the head interest and put up the said statement before the accountant for cross checking. During cross checking with D&C register and Daily Cash register, General Allocation register, the accountant observed that all these three entries were false and bogus and he confirmed from the record that no such payment was made by M/s Prominent Hotels Ltd to NDMC. M/s Prominent Hotels Ltd produced the original statement dated 18th March, 1994 which shows that this statement was not used for the purpose of filing an appeal in the Income Tax Department as requested by the party.

6.3 Mr.V.P.S. Mann was working as a public servant in the capacity of Head Assistant dealing with the unit file of M/s Prominent Hotels Ltd during the period from 1991 to 1994. It is also established that V.P.S. Mann and R. Venkatesh were known to each other and Mr.

Mann used to deposit the payments of M/s Prominent Hotels Ltd in the cash branch.

6.4 R. Venkatesh, petitioner No.2/Company Secretary, M/s Prominent Hotels Ltd, Ramesh Kakkar, Managing Director, M/s Prominent Hotels Ltd and Mr.V.P.S. Mann agreed to do an illegal act of obtaining credit of Rs.10 lac in this account of M/s Prominent Hotels Ltd maintained in the account section of Estt. Branch of NDMC and for that Mr.Mann fraudulently and dishonestly made three false, forged and bogus entries amounting to Rs.10 lakhs in the D&C Register of account section of estate branch of NDMC on 23rd January, 1991, 14th February, 1991 and 23rd March, 1991 and R. Venkatesh wrote a letter dated 28th February, 1994 requesting for a statement showing the payments made by the M/s Prominent Hotels Ltd to NDMC for the period from 1988-1989 to 1991-1992 knowing well that Mr. Mann has made these entries during the financial year 1991-1992. Sh Ramesh Kakkar is the ultimate beneficiary.

7. After the completion of investigation CBI had filed chargesheet under Section 120B IPC, 420, 471, 477A &511 IPC read with Section 15, 13(2) read with 13(l)(d) PC Act and substantive offences in the Court of Spl. Judge, Tis Hazari on 24th July, 2001. The Court was pleased to take cognizance on 10th August, 2001.

8. CBI re-filed the challan where after notices were issued to the petitioners as also Mr. V.P.S. Mann who all were summoned by the Court of the Special Judge, CBI. On appearing before the Court of the Special Judge, CBI, the petitioners were admitted on bail whereafter the petitioners were supplied with the copies of the

challan. After scrutiny of the documents the matter was listed for the first time before the Court of the Special Judge, CBI for arguments on charge on 27th March, 2002. The Challan as filed by the CBI.

9. The petitioners submit that a perusal of the aforesaid statements read with the documents filed on record the following points are clear:

a. That in the year 1990-91, as per the books of accounts of the CBI nothing was payable by the applicants towards interest;

b. That the statement of payments made only, was asked in the year 1994, so as to file the same with the IT department, which fact is substantiated by the own statement of PW-12, as also from the perusal of the documents filed and relied upon by the CBI, which includes a copy of the Appeal filed by the hotel, with the IT department;

c. That the entries were pertaining to the year 1990-91, whereas the request was made in the year 1994 and after receipt of the statement no claim at all was lodged by the hotel with the NDMC, claiming the credit of Rs.10 lakhs;

d. That the very clause under which the hotel was liable to pay the amount of the license fees, had already been represented/challenged against by the hotel in the year 1988 itself;

e. That the register was not under any lock and key and was always kept in open, thus any person trying to malign the name of the hotel or frame the hotel in any allegation could have done so easily;

f. The allegation of the applicants working in connivance with Mr. Mann, is solely based on assumptions and presumptions, which presumptions are totally without any basis;

g. The hotel never made any payment in cash, the payments were always made by the hotel by cheque, which cheque was always with a covering letter and which payments were made to whomsoever who was available in the department and not only to Mr. Mann.

10. Before the charge was framed, the accused (AI) V.P.S. Mann expired on 24th September, 2010 as the Court of Spl. Judge, CBI after taking into consideration the entire evidence and documents placed on record passed an order on charge on 17th July, 2012 thereby framing charges against the petitioners under Section 120-B read with Section 477-A of IPC, Section 15 of PC Act, 1988 and under Section 1j(2) read with Section 13(l)(d) of PC Act, 1988 and charge was framed on 21st August, 2012. The current status of trial that many witnesses have already been examined.

11. Admitted position is that the petitioners have been named in the FIR/Challan as conspirators alongwith Mr. V.P.S. Mann. It is submitted by the petitioner that the petitioner and deceased as per the case of CBI are jointly in connivance and conspiracy with each other by attempting to cause wrongful loss to NDMC, but even no case was also at all made out against Mr. V.P.S. Mann, hence the

petitioners could not be named in the challan for having connived and conspired with the deceased to commit the alleged offences. Special Judge CBI, dismissed the application of the Petitioners for transfer of the matter by order dated 18th May, 2011. After dismissing the application of the petitioners, the Special Judge, CBI proceeded to charge the petitioners by order dated 17th July, 2012.

12. The aforesaid order dated 18th May, 2011 was challenged by the petitioners by way of Criminal Misc. (Main) being numbered as 2254/2011 titled as "Prominent Hotels and Anr. Vs. CBI". After the pleadings in the aforesaid matter were complete, the aforesaid matter came up for hearing before this Court on 24th October, 2013 when this Court was pleased to pass the following order:

> “Learned Senior counsel for petitioners submits that the matter as to whether trial of cases where accused ceases to be a public servant are to be tried by a special court or an ordinary court, is sub-judice before the Apex Court and this issue directly arises in this petition.
>
> This matter requires full-fledged hearing.
>
> Admit.
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> List in the category of Regulars in due course with liberty to parties to seek hearing as and when the issue raised, as aforesaid, is decided by the Apex Court".

13. The Crl. Misc. (Main) Petition No.2254/2011 was listed before this Court on 24th October, 2013 along with the Criminal Writ petition No.1018/2011 titled as "Prominent Hotels Ltd. & Anr. Vs. State through CBI" which was filed by the petitioners on the grounds of the

petitioners being entitled to the relief of quashing of the FIR inter alia on the grounds of violation of the fundamental rights of the Petitioner of Speedy justice; and Criminal Writ Petition No.1617/2012 also titled as "Prominent Hotels Ltd. & Anr. Vs. State through CBI", wherein the petitioners had challenged the order dated 17th July, 2012, whereby the charges against the petitioner had been framed. The Criminal Writ Petition No. 1617/2012 had been filed by the petitioners against the order of charge framed by the Trial Court. The aforesaid writ petition No.1617 of 2012 on 24th October, 2013 was adjourned to 19th December, 2013, when the same was dismissed by the following orders:

> "Impugned order of 17th July, 2012 puts petitioners on trial in FIR NO.RC-DA1-1998-A-0025 of 15th April, 1998. Quashing of impugned order (Annexure P-1) is sought on merits in this petition.
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> At the hearing, it was vehemently urged by learned Senior Counsel for petitioners that there was no meeting of mind between petitioners with co-accused and so, with the aid of Section 120-B of IPC., petitioners cannot be made to face trial in this FIR case.
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> Attention of this Court was drawn by learned Senior Counsel for petitioners to paragraphs No. 12 and 17 of the impugned order and it was submitted that an innocuous letter was written by petitioner No. 2 and petitioners have not taken any benefit out of the alleged transaction. Thus, it was submitted on behalf of petitioners that no case is made out against petitioners and so, they deserve to be discharged.
>
> Learned Standing Counsel for respondent-CBI submits that trial of this FIR case is at its fag end as deposition of 12 witnesses out of 16 witnesses has been recorded.

In view of stand taken by respondent-CBI, I am not inclined to exercise inherent jurisdiction under Section 482 of Cr.P.C. to quash the impugned orders at the fag end of trial. Instead thereof it is deemed appropriate to direct trial court to expedite the trial of this case. It is being so said as Apex Court in State of Orissa v. Ujjal Kumar Burdhan (2012) 4 SCC 547 has reiterated that inherent powers of this Court are to be exercised in exceptional cases. Pertinent observations of the Apex Court in Ujjal Kumar (supra) on this aspect are as under: -

"It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged.

It needs little emphasis that unless case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation".

Otherwise also, at this stage, a prima facie case only is to be seen and even on strong suspicion, an accused can be made to face trial. Such a view is being taken in view of dictum of Apex Court Amit Kapoor v. Ramesh Chander and Another (2012) 9 SCC 460 wherein the parameters which govern the framing of a charge have been reiterated. The pertinent observations made by the Apex Court in Amit Kapoor (supra) are as under:

“At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could

> prove him guilty. All that e court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at the stage."
>
> Upon hearing and on perusal of the impugned order, it cannot be said that no case for putting petitioners on trial is made out. In view thereof, impugned order is maintained and this petition is disposed of while not expressing any opinion upon merits of this case lest it may prejudice either side at trial. Liberty is granted to petitioners to urge the pleas taken herein before trial court at the appropriate stage.
>
> This petition and the application are accordingly disposed of.

14. Crl. Misc. Main No. 2254 of 2011, was dismissed for non prosecution on 30th January, 2014, by this court. It is contended on behalf of the petitioners that the non-appearance of the petitioners on 30th January, 2014, in Crl. Misc. Main No.2254/2011, was solely due to oversight as the petitioner belief the similar question had already been heard and judgment reserved by the Supreme Court, this court may not hear the present Criminal Mis. (Main) No. 2254 of 2011 as ordered on 17th October, 2013 by this court as the petitioners were even not aware about the dismissal at time. The petitioners did not take any step for restoration even when the matter came up before court from the Regular Matters, list was not checked up by the petitioner.

It is alleged that on 8th February, 2014 the petitioner became aware that the Supreme Court which had reserved its judgment in Criminal Appeals bearing the same issue had pronounced its judgment on 5th February, 2014.

15. It is submitted that petitioners were under the belief that till the time the Apex Court which was already ceased of the same issue as is in the Criminal Misc. (Main) No. 2254 of 2011, this Court shall not hear the present matter and the applicant/petitioner was also under the belief that as and when the Supreme Court passes any judgment, the applicant/petitioner shall file an appropriate application before this Court for hearings of the Crl. Misc. (Main) No.2254/2011 as ordered by this Court in its order dated 24th October, 2013. The petitioners were under the wrong belief that this Court shall not take up the present matter prior to Supreme Court pronouncing its judgment on the same issue, which is the issue in hand.

16. The contention of the petitioners is that once Supreme Court having pronounced the judgment on 5th February, 2014 and the said fact came to the knowledge of the petitioner on 8th February, 2014 the order dated 30th January, 2014 passed by this Court dismissing the Criminal Misc. (Main) No.2254/2011 titled as "Prominent Hotels Ltd. & Anr. Vs. State through CBI" needs to be restored in its original number and ought to have been decided in terms of the judgment of the Supreme Court in Criminal Appeal Number 943/2008 titled as State through CBI Vs. Jitender Kumar Singh and Criminal Appeal No.161/2011.

17. The petitioner thereafter filed a Crl.M.A No.2726/2014 for setting aside the order dated 30th January, 2014 and which criminal Crl.M.A. No.2726 was listed before this Court on 17th February, 2014 when this Court was pleased to list the matter for hearing on 13th March, 2014.

18. The petitioner in the meanwhile also filed two applications before the Court of the Special Judge, CBI. The First application was moved by the petitioner on 18th February, 2014 when the court of the Special Judge CBI had listed the application on 21st February, 2014 when the matter was already listed for recording of evidence of the witnesses. On 21st February, 2014 the petitioners moved another application in terms of the judgment of the Supreme Court dated 5th February, 2014 inter alia praying that in terms of the judgment dated 5th February, 2014 the matter be remanded to the Court of CMM for marking it to the court of the appropriate Metropolitan Magistrate. The following reliefs were prayed for by the Petitioners in the said two applications are as under :

<u>1st Application</u> :

i. Adjourn the present matter to a date after 13.03.2014 which is the date fixed by the High Court of Delhi; and

<u>2nd Application</u>

i. Allow the present application and transferred to the court of the CMM, for marking it to the court of a MM, in terms of the judgment of the Apex court dated 5.02.2014; and the applications are annexed hereto as ANNEXURE P-8.

19. As appeared from the prayer of application made before the trial court for transfer of the case to the court of CMM in view of judgment of Apex Court dated 5th February, 2014 passed in State through CBI vs. Jitender Kumar Singh in Crl. Appeal No. 161/2011 as the only public servant Mr.V.P.S. Mann had expired on 18th September, 2010, but the trial court after hearing the parties passed

the order on 21st February, 2014 that the question as sought to be raised in the application for trial of the case by the court of CMM to be considered at the time of final disposal.

20. Aggrieved by the order dated 21st February, 2014 passed by the Trial court petitioners preferred Crl. M.C. No 1068/2014 before this court. The petitioners had also filed Crl. MC 4153/14 being aggrieved by the order dated 14th August, 2014 whereby the application of the petitioners for transfer of the case to the Court of CMM was dismissed.

21. It is submitted by the respondent that the judgment of Supreme Court in the case of State through CBI New Delhi Vs Jitender Kumar Singh relied upon by the petitioner is not applicable in the facts and circumstances of instant case as the charges framed against the two accused is of criminal conspiracy under Section 120B read with 477A IPC, Section 15 and 13(2) read with 13(I)(d) PC Act and because of death of the accused V.P.S. Mann the only public servant in this case before framing of charge will not make any difference in this case once the court has framed the charge of criminal conspiracy and has proceeded with the trial. The respondent has relied upon the observation made in the said judgment are reproduced herein below:-

> "An accused person, either a public servant or non-public servant, who has been charged for an offence under section 3(1) of the PC Act, could also be charged for an offence under IPC, in the event of which, the Special Judge has got the jurisdiction to try such offences against the public servant as well as against a non-public servant. The legal position is also settled by the judgment of this Court in Vivek Gupta Vs CBI &Another (2008) 8SCC 628, wherein this court held that

> a public servant who is charged of an offence under the provisions of the PC Act may also be charged by the Special Judge at the same trial of any offence under IPC if the same is committed in a manner contemplated under section 220 of the code. This court also held, even if a non-public servant, though charged only of offences under section 420 and section 120B read with section 420 IPC, he could also be tried by the Special Judge with the aid of sub-section (3) of section 4 of the PC Act."

22. It is stated that the essence of criminal conspiracy is an agreement to do an illegal act and such agreement can be proved either by direct evidence or by indirect evidence or by circumstantial evidence or by both. The circumstances proved before, during and after the occurrence have to be considered to decide the complicity of the accused persons. Since there is a direct evidence of conspiracy available, the same has to be inferred from the circumstances attending the case. Therefore, the present matter is a matter of criminal conspiracy as alleged by CBI. The judgment referred by the petitioners are not applicable to the facts of the present case as in the case of ***State of Haryana Vs Bhajan Lai & Ors*** 1992 SCC Supp. (1) 335 wherein Supreme Court held that for the purpose of exercising its power under Section 482 Cr.P.C. to quash a FIR or a complaint the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has no jurisdiction to examine the correctness or otherwise of the allegations.

23. No doubt, it is a settled law that the power of quashing a criminal proceeding should be exercised very sparingly and with

circumspection and that too in the rarest of rare cases. It is submitted that at this stage of proceedings the Court would not embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint in exercise of its extraordinary or inherent powers.

It is true that where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceeding even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance to the requirements of the offence.

24. The argument addressed on behalf of CBI has no force that in the present case as there were allegations against the petitioners and public servant which are of the nature of criminal conspiracy. The decision of Supreme Court has discussed the two matters of distinct nature. It is incorrect to allege by the respondent that the aspect of criminal conspiracy was not dealt in criminal appeal No.161/2011. In fact the same very issue has determined in the said judgment. Therefore, the submission of the respondent cannot be accepted.

25. The Supreme Court has first recorded all relevant facts including the similar issue in the concerned matter in para 2 to 5 of the judgment which may be read as under :

> "2. We are, in Criminal Appeal No. 943 of 2008, concerned with the question whether the Special Judge, after framing charges against a Public Servant under 13(2) read with Section 13(1)(b) falling under Section 3(1) of the PC Act and against private persons for offences under Sections 120-B, 420, 467, 468, 471 IPC can go ahead with the trial of the case against the private persons for non-PC offences, even

after the death of the sole public servant. In other words, the question is whether, on the death of the sole public servant, the Special Judge will cease to have jurisdiction to continue with the trial against the private persons for non-PC offences. Further question raised is that, assuming that the Special Judge has jurisdiction under sub-section (3) of Section 4 of the PC Act to proceed against the private persons, is the Special Judge duty bound to try any non-PC offence, other than the offences specified under Section 3 of the PC Act against the accused persons charged at the same trial.

3. In Criminal Appeal No. 161 of 2011, we are concerned with the question as to whether the Special Judge has jurisdiction under Section 4(3) of the PC Act to try non-PC offences against private persons when no charges have been framed against public servants for trying a case for offences under Section 3(1) of the PC Act, since they died before framing of charges under the PC Act or IPC.

4. We have two conflicting judgments, one rendered by the Delhi High Court, which is impugned in Criminal Appeal No. 943 of 2008 filed by the State through Central Bureau of Investigation (CBI), New Delhi and the other rendered by the Bombay High Court, which is challenged by a private person in Criminal Appeal No. 161 of 2011.

5. Delhi High Court seems to have taken the view that when public servants and non-public servants are arrayed as co-accused and some offences are under the PC Act coupled with other offences under IPC, on death of a public servant, the offences under the PC Act cannot be proceeded with and the trial Court has to modify and/or alter and/or amend the charges. Bombay High Court has taken the view that once the jurisdiction is vested on a Special Judge, the same cannot be divested on the death of a public servant and that if a private person has abetted any offences punishable under the PC Act, he can be tried even without the public servant, in

view of the separate charge levelled against such private person by the Special Judge."

26. Thereafter, the Supreme Court has discussed the issue of criminal conspiracy in the subject matters of criminal appeal No.161/2011 where the final finding arrived in para 45 and 46 of the judgment. Para 10 and 11 of the Supreme Court judgment read as under :

"10. We may now examine the facts in Criminal Appeal No. 161 of 2011. CBI (Banks Securities & Fraud Cell), Mumbai registered an FIR on 2.7.1996 which discloses that accused no. 1, the then Chairman and Managing Director of the Bank of Maharashtra, Pune, who was working as Deputy General Manager of Bank of Maharashtra along with accused nos. 9 and 10, the employees of the Bank of Maharashtra, entered into a criminal conspiracy with an intent to cheat the bank, with the appellant (accused no. 2) and accused Nos. 3 and 5, who were working as the Managing Director, General Manager of M/s Orson Electronics Limited respectively. It was also alleged in the FIR that, during 1986-88, A-2 and other accused persons entered into a criminal conspiracy with the officers of the Bank of Maharashtra and, in pursuance to the criminal conspiracy, obtained huge credit facilities to the tune of Rs.20 crore in favour of M/s Orson Electronics Limited and M/s Nihon Electronics Limited, of which A-2 was the Managing Director/Director, knowing very well that both the companies were having very low capital and were new. It was also alleged in the FIR that those funds were not utilized for the purpose for which the same were obtained from the bank and were siphoned off through M/s Orson Electronics Limited and other fictitious firms. Consequently, accused persons failed to repay the funds of the bank, thereby the bank was cheated to the tune of Rs.20.64 crores. It was also alleged in the FIR that A-1 had abused his position as public servant and granted favour to A-2 to A-8 and thereby caused wrongful losses to the bank.

11. CBI completed the investigation and the chargesheet was filed on 14.9.2001 against the accused persons for offences punishable *inter alia* under Section 120B read with Section 420 IPC and Section 5(2) read with Section 5(1)(b) of the Prevention of Corruption Act, 1947, corresponding to Section 13(2) read with Section 13(1)(d) of the PC Act, in the Court of Special Judge, Mumbai."

27. The final finding of the Supreme Court in para 45 and 46 have arrived to the following effect**:**

"45. We may now examine Criminal Appeal No. 161 of 2011, where the FIR was registered on 2.7.1996 and the chargesheet was filed before the Special Judge on 14.9.2001 for the offences under Sections 120B, 420, I.P.C. 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 offences.
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> 46. Consequently, we find no error in the view taken by the Special Judge, CBI, Greater Mumbai in forwarding the case papers of Special Case No. 88 of 2001 in the Court of Chief Metropolitan Magistrate for trying the case in accordance with law. Consequently, the order passed by the High Court is set aside. The competent Court to which the Special Case No.88 of 2001 is forwarded, is directed to dispose of the same within a period of six months. Criminal Appeal No. 161 of 2011 is allowed accordingly".

28. The facts in the present case are similar in Criminal Appeal No.161/2011 decided by the Supreme Court. In the present case also the charges were framed during the lifetime of the public servant. The Supreme Court has held that in case the public servant dies before the charges are framed the matter cannot be heard by the Special Court and the matter has to be remanded to the court of the concerned magistrate. In view of similar situation, case of the petitioner is covered by the Judgment of the Supreme Court the impugned orders are liable needs to be set aside as in the present case also the only public servant had died much before the framing of the charges by the court of the Special Judge CBI**.** It cannot be disputed that Trial court has framed charges against petitioners on the grounds of criminal conspiracy also.

29. The Special Judge while passing the impugned order has overlooked its own orders passed in the matter of CBI vs. R.K. Kaushik dated 23rd March, 2013 when the Supreme Court stayed the operation of the Judgment of the Delhi High Court in the matter of

"Jitendar Kumar Sharma Vs. CBI". The finding of Special Judge CBI in adjourning the hearing of the present applications of at the final stage are not legally correct order as after passing of the judgment by the Supreme Court, I am of the considered opinion that Special Judge CBI should not have posted the application for hearing at the final stage and should have allowed the application of the petitioners. But despite of judgment of the Supreme Court, the trial court continued with the trial after noticing the judgment, the Special Judge, CBI had no jurisdiction to continue with the trial in the present matter, due respect ought to have been given. Further, the Special judge did not considered the order dated 19th December, 2013, passed by this court while completely ignoring order passed by this court in the Crl. Mis. (Main) No. 2254 of 2011 on 24th October, 2012, which by the Special Judge, while passing the order on 21st February, 2014.

30. The Special Judge should have considered the fact that after the death of the only public servant none of the offences as mentioned in the challan i.e. the offences under Sections 477A I.P.C. read with Section 13(l)(d) read with Section 15 of the PC Act are neither made out nor the petitioners can be charged under any of the aforesaid offences as for all the aforesaid offences the presence of the public servant is mandatory is an essential ingredient in case the public servant died prior to the date of framing of charges.

31. In view of above referred reasons, facts and circumstances, the order dated 21st February, 2014 passed by Special Judge, CBI, in case FIR bearing No. RC-DA1-1998-A-0025 are quashed. The prayer made in the applications of the petitioners for transfer of the present

case to the court of the concerned Magistrate is allowed. It is directed that the FIR bearing No. RC-DA1-1998-A-0025 dated 15th April, 1998 are remanded back/transferred to the Court of CMM for onward forwarding the same to the concerned Metropolitan Magistrate.

32. All the three petitions and all the pending applications are disposed of. No costs. Dasti.

(MANMOHAN SINGH)
JUDGE

JUNE 5, 2015