

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 13.08.2015
Judgment Pronounced On: 23.12.2015

W.P.(CRL) 903/2013 & CRL. M.A. No. 8919/2013

CBI

..... Petitioner

Through: Ms. Sonia Mathur, Standing Counsel
for CBI with Mr. Sushil Dubey, Adv.

versus

R.K. YADAV

..... Respondent

Through: Mr. Satish Tamta, Advocate

W.P.(CRL) 1540/2014 & CrI. M.A. No. 17252/2014

CBI

..... Petitioner

Through: Ms. Sonia Mathur, Standing Counsel
for CBI with Mr. Sushil Dubey, Adv.

versus

DR. A.S. NARAYANA RAO

..... Respondent

Through: Mr. Dinesh Malik, Advocate

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J

1. The present petitions raise a common issue of law and are being disposed of by this common order. By way of the present writ petitions, the Central Bureau of Investigation (hereinafter referred to as ‘the CBI’) assails the orders passed by Special Judge, CBI dated 18.02.2013 and 07.05.2014 whereby the CBI was directed to conduct investigation and proceed with the complaint of the respondents herein.

2. The facts in brief pertaining to W.P.(CRL.) No. 903/2013 are as follows:-

“A. Mr. R.K. Yadav (the respondent in the instant petition) is the former General Secretary, Cabinet Secretariat (RAW) Employees Association (Regd.), an association of RAW employees. On 28.02.1996, the respondent filed a complaint under Section 156 (3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘the Code’) with a prayer to initiate action against Mr. A.K. Verma and his family members for misappropriation of secret

funds and possessing assets disproportionate to his known source of income.

B. The allegations in the complaint were on the basis of news published on 27.04.1992 in the Indian Express and Jansatta, that the then two serving Joint Secretaries of RAW, namely Mr. B. Raman and Mr. V. Balachandran at the behest of then Secretary, Mr. A.K. Verma floated a private limited finance company “Piyush Investment and Finance Pvt. Ltd.’ in violation of All India Service Conduct Rules. This company was allegedly used to embezzle secret funds of RAW for Mr. A.K. Verma’s personal gains. It was also alleged that many similar companies were floated in the name of his junior officers in many other States to siphon out secret funds of RAW for himself and his family members.

C. It was further alleged that the accused accumulated various properties, movable as well as immovable. The allegations of corruption and criminal conspiracy were thus levied against Mr. A.K. Verma.

- D. The afore-mentioned complaint was dismissed vide order dated 08.07.1996 *inter alia* on the ground of absence of substantial evidence. The allegations of diversion of secret funds of RAW to the accused persons' accounts were regarded baseless and without foundation by the Special Judge, CBI. Thereafter, the respondent moved this Court by filing a revision petition being Criminal Revision Petition No. 224/1996, which was dismissed vide order dated 10.09.1999 wherein this Court held that the Special Judge had assigned valid reasons for rejecting the application of the respondent.
- E. Thereafter, on 29.09.1999 the respondent filed another complaint with the CBI and the Central Vigilance Commission. Nine years thereafter, on 31.07.2008, the respondent filed an application under Right to Information Act, 2005 to the CBI enquiring therein the status of his complaint dated 29.09.1999 against Mr. A.K. Verma. The respondent was informed that the complaint was considered by the CBI and was not found worthy of

any enquiry. Hence, the same was dropped and the file pertaining to his complaint was not traceable.

F. The respondent then on 30.10.2009 approached the Special Judge, CBI by filing a complaint case being CC No. 01/2009 with similar set of allegations. The Special Judge vide order impugned herein dated 18.02.2013 directed the CBI to depute a senior Officer to carry out investigation regarding the ownership and value of properties allegedly owned by Mr. A.K. Verma and his family.

3. The facts in brief pertaining to W.P.(CRL.) No. 1540/2014 are as follows:-

A. The respondent was working as a Director (S & T), RAW, Cabinet Secretariat at the relevant time. An inter-ministerial working group (IMWG) was constituted by the Government of India to monitor and control the export licence of certain high risk commodities whose export would adversely affect the security and economy of the country, the respondent herein was one of the

members of IMWG representing the Cabinet Secretariat along with other members representing various Ministries and Departments.

- B. One M/s Titanium Tantalum Products Ltd., Chennai applied for an export licence for SCOMET Items to Qatar for FOB Value of Euro 268,528 vide their application dated 23.08.2008. Their export licence was approved by the IMWG in their meeting held on 09.01.2009 at Chennai and only an NOC from the Cabinet Secretariat was pending.
- C. The concerned file was sent to the respondent for his approval on NOC. It is alleged that, the respondent demanded a bribe of Rs. 8 Lacs from the complainant therein, Mr. V. Swaminathan, Joint Vice-President of M/s Titanium Tantalum Products Ltd. In this regard, a telephonic conversation was allegedly recorded on 29.01.2009 which established the fact of a demand of bribe of Rs. 8 Lacs.

- D. On 02.02.2009 at around 07.20 P.M., the respondent was arrested red-handed in a trap case while accepting the part bribe of Rs. 1 Lac at Room No. 101, Hotel India Place Guest House, Arya Samaj Road, Karol Bagh, Delhi.
- E. After obtaining necessary sanction, the CBI filed a charge-sheet against the respondent for trial under Section 7/13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988. During the search of the office of the respondent, the concerned file of M/s Titanium Tantalum Products Ltd. was also recovered.
- F. During investigation of the case, it was found that the meeting of IMWG was held in Chennai on 19.01.2009. The purpose of the said meeting was the inspection of the company of the complainant prior to the issuance of necessary clearances by the Director General of Foreign Trade (DGFT). Six Officers visited Chennai between 8th and 10.01.2009 and allegedly availed the hospitality of Mr. V. Swaminathan. One of the Officers went to Tirupati Balaji in a taxi provided by Mr. V.

Swaminathan. The CBI sent a report to the office of the DGFT for taking suitable action against these concerned Officers as their conduct was unbecoming. However, no action thereon was taken. This inaction by the DGFT against these Officers was the grievance of the respondent (complainant therein) in the complaint filed before the Special Judge, CBI seeking registration of an FIR against the concerned officers. According to the respondent, the conduct of the Officers amounted to offences under Sections 7/8/12/13 of the Prevention of Corruption Act, 1988.

- G. The Special Judge, CBI in the first instance disposed of the application of the respondent in view of **CBI vs State of Rajasthan & Another** reported as (2001) 3 SCC 333 and **Kashmeri Devi vs Delhi Administration** reported as 1988 SCC (Crl.) 864, holding that the Court of Special Judge has no jurisdiction under Section 156(3) of the Code to direct registration of an FIR and investigation into the alleged offences to the CBI.

H. Thereafter, the respondent filed Writ Petition being Writ Petition (Criminal) No. 1626/2011 before a single Judge of this Court impugning the aforesaid order passed by the Special Judge, CBI. Vide order dated 20.04.2012, this Court remanded back the matter to the Special Judge, CBI with a direction to consider as to whether the present case is a fit case for directing registration of an FIR under Section 156(3) of the Code to Anti Corruption branch or the CBI or to proceed in accordance with the complaint case procedure as the respondent claimed that he is in possession of the entire evidence. It was further directed that while directing registration of an FIR to CBI, the learned Special judge will bear in mind the law laid down by the Supreme Court in State of West Bengal and Ors. vs. Committee for Protection of Democratic Rights, West Bengal and Ors. reported as (2010) 3 SCC 571 and T.C. Thangaraj vs. V. Engammal and Ors., reported as (2011) 8 SCALE 488, that only in cases with national and international ramification or relating to Central Government Employees, the CBI will be directed to

register an FIR and in other cases, the direction can be issued to the Anti Corruption Branch for investigation. Consequently, on 07.05.2014, the Special Judge, CBI passed the impugned order directing the CBI to investigate into the alleged offence.

4. Ms. Sonia Mathur, learned Standing Counsel appearing for the CBI contended that the orders impugned herein passed by the learned Special Judge, CBI are in complete violation of the principle of law laid down by the Hon'ble Supreme Court in **CBI vs. State of Rajasthan**, reported as (2001) 3 SCC 333 that a Special Judge, CBI cannot direct the CBI to register an FIR and investigate into the offence. Only the High Courts and the Supreme Court can so direct the CBI in rare and exceptional circumstances. It was further contended that no party can insist that an offence be investigated by a particular agency. It was urged that if the Special Judge, CBI after perusing the evidence would arrive at an opinion that there are other persons who *prima facie* appear to be guilty of an offence, they could be tried together with the respondents as per Section 319 of the Code.

5. It was further argued by Ms. Mathur, learned Standing Counsel appearing for the CBI that the CBI ought not be directed to conduct

investigation as the present case does not fall into the category of cases involving national and international ramification, and in view of the fact that the alleged complaints are not of such extraordinary and exceptional nature that no agency other than the CBI can be trusted upon to carry out investigation in a just and proper manner. It was urged that merely because the allegations pertain to Government officials does not make it a case that would have to be investigated by the CBI only. It was stated that if every case involving allegations of corruption by Government officials are assigned to the CBI, then there will be flood of cases to be investigated by the CBI and the latter with its limited manpower, would find it difficult to properly investigate cases involving serious allegations. In order to buttress her submissions, Ms. Mathur relied upon the decisions of the Supreme Court in State of West Bengal vs. Committee for Protection of Democratic Rights reported as (2010)3 SCC 571 and T.C. Thangaraj vs Engammal & Others reported as 2011 (8) SCALE 488.

6. *Per contra*, Mr. Satish Tamta and Mr. Dinesh Malik, learned counsel appearing on behalf of the respondents respectively stated that in view of the order passed by this Court in W.P.(CRL.) No. 1626/2011 decided on 20.04.2013, the Special Judge, CBI is empowered to direct the CBI to register an FIR and investigate into the offence. It was further stated that

reliance cannot be placed on decisions relating to investigation under Section 156(3) of the Code since the Special Judge, CBI has sought investigation under Section 202 of the Code in CC No. 01/2009 only to the extent of ascertaining the ownership and value of properties mentioned in the complaint. Further, the order of the Special Judge is arrived at only after a thorough perusal of the evidence on record.

7. I have considered the rival contentions and perused the record.

8. The focal point of controversy is centred on the question whether the Special Judge, CBI, PC Act is empowered to direct the CBI to register an FIR and investigate into a complaint filed before him?

9. The law laid down by the Supreme Court in *C.B.I. vs. State of Rajasthan* (*Supra*), is to the effect that magisterial power cannot be stretched beyond directing the officer in charge of a police station to conduct investigation. While drawing a line on the powers of the Magistrate the Apex Court held:-

“14. True, powers of the High Court under Article 226 of the Constitution and of the Supreme Court under Article 32 or Article 142(1) of the Constitution can be invoked, though sparingly, for giving such direction to the CBI to investigate in certain cases, [vide Kashmeri Devi vs. Delhi Administration and anr. 1988 CriLJ 1800 and Maniyeri Madhavan vs. Sub-Inspector of Police and ors., 1993 CriLJ 3063 . A two Judge Bench of this Court has by

an order dated 10.3.1989, referred the question whether the High Court can order the CBI to investigate a cognizable offence committed within a State without the consent of that State Government or without any notification or order having been issued in that behalf under Section 6 of the Delhi Act.

XXXX XXXX XXXX XXXX XXXX

XXXX XXXX XXXX XXXX XXXX

16. As the present discussion is restricted to the question whether a magistrate can direct the CBI to conduct investigation in exercise of his powers under Section 156(3) of the Code it is unnecessary for us to travel beyond the scope of that issue. **We, therefore, reiterate that the magisterial power cannot be stretched under the said sub-section beyond directing the officer in charge of a police station to conduct the investigation.”**

(Emphasis supplied)

10. The aforesaid decision was followed by the Supreme Court in **Sakiri Vasu vs. State of U.P.** reported as (2008) 2 SCC 409 wherein it was held as follows:-

“31. No doubt the Magistrate cannot order investigation by CBI vide *CBI v. State of Rajasthan* [(2001) 3 SCC 333 : 2001 SCC (Cri) 524] but this Court or the High Court has power under Article 136 or Article 226 to order investigation by CBI. That, however, should be done only in some rare and exceptional case, otherwise, CBI would be flooded with a large number of cases and would find it impossible to properly investigate all of them.”

(Emphasis supplied)

11. The Apex Court thus held that a Magistrate can only direct an officer in-charge of a Police Station to conduct investigation. Further, it is clearly enunciated that only under the plenary power of the High Court under Article 226 of the Constitution and of the Supreme Court under Article 32 and Article 142(1) of the Constitution, the CBI can be directed to conduct an investigation and that too sparingly in a rare and exceptional cases.

12. In view of the decision of the Supreme Court in A.R. Antulay vs. Ramdas Srinivas Nayak & Anr. reported as AIR 1984 SC 718, the court of Special Judge is a court of original criminal jurisdiction under administrative and judicial superintendence of the High Court. Thus, the status of the Special Judge is of a magistrate while dealing with an application under Section 202 or Section 156(3) of the Code. The powers of a Special Judge cannot be exaggerated so largely so as to include the power to direct the CBI to conduct an investigation for which only a High Court or the Supreme Court are empowered.

13. In view of the aforesaid, I agree with the view taken by the High Court of Gujarat in CBI through Superintendent of Police v. State of Gujarat, Crl Rev Application No. 138 of 2001, decided on 16.08.2001,

whereby the Court after specifically referring to the powers of Special Judge under Prevention of Corruption Act, observed as follows:

“8. In view of this clear verdict of the Apex Court, there remains little scope for holding to the contrary that a Special Judge can pass such an order. Shri BM Gupta, learned counsel for the respondent no.2 tried to distinguished this verdict of the Apex Court on the ground that in that case, the order was passed by a Magistrate, whereas in the case before me the order has been passed by the learned Special Judge and that the powers of a Special Judge cannot be equated with the powers of a Magistrate. This distinction cannot be accepted. No doubt, when allegation is for commission of an offence under sec.13(1)(3) or 13(2) of the Prevention of Corruption Act, the Special Judge has to conduct the trial and committal proceedings do not take place in such cases. But, for that matter, it cannot be said that the Special Judge, in the instant case, could not have acted as if a Magistrate was acting on a private complaint. Undisputedly, a private complaint was filed by the respondent no.2. It was not a case brought before the learned Special Judge by the Police. If, the Special Judge was to entertain a private complaint, he was to act in accordance with the provisions of secs. 200, 201, 202, 203 and 204 of the Code of Criminal Procedure. Under sec. 202 of the Code, the Special Judge could have directed for further inquiry if he thought that further inquiry was required. The order to make such further inquiry could be given to the Police and not to the CBI. While dealing with such complaint, a Special Judge could not have ignored the provisions of sec. 156(3) of the Code. Even, the impugned order shows that the first order passed on 31-7-2000 was directing the CBI, Gandhinagar to investigate the complaint under sec. 156(3) of the Code. Thus, if, jurisdiction was exercised under sec. 156(3) of the Code by the learned Special Judge, it cannot be said that his direction was given by another court and not by a Magistrate. Even, a Special Judge is

subordinate to the High Court. Shri BM Gupta, however, drew my attention to the definition of 'court' as enunciated by the Apex Court in Supreme Court Legal Aid Committee v. Union of India, JT 1994(6) S.C. 544. There is no controversy that the Special Court under the Prevention of Corruption Act is not a court under the Code of Criminal Procedure. This Court, in Indumati M Shah v. NarendraMujlibhaiAsra, has laid down that the subordinate court cannot entrust investigation to any authority except referred to in sec. 156 of the Code of Criminal Procedure. Thus, the view of this Court has earlier been that the subordinate courts cannot entrust investigation to any authority except referred to in sec. 156 of the Code, which means that the Magistrates, as well as, the Special Judges cannot entrust the investigation to the CBI or any other authority except referred to in sec. 156 of the Code.

9. Under sec. 202 of the Code of Criminal Procedure, the Magistrate or for that purpose the Special Judge can postpone issue of process, if he thinks fit to do so and he may either inquire into the case himself or direct an investigation to be made by a Police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. The words "such other person as he thinks fit" exclude reference to the CBI, more particularly in view of the Apex Court's verdict in Central Bureau of Investigation, Jaipur v. State of Rajasthan (supra)."

14. Similarly, the Kolkata High Court following the decision of the Supreme Court in *CBI vs. State of Rajasthan* (Supra) in *Kishwar Jahan vs. State of West Bengal*, reported as 2008 (3) CHN 857 whilst dealing with the powers of a magistrate, held as follows:

“136. No Magistrate discharging duties under the Code has the power to direct investigation of any particular

offence by the CBI. It is only the Court of Writ exercising powers under Articles 32 and 226 of the Constitution or the Apex Court under Article 142 thereof that can direct investigation by the CBI if the circumstances of the case so warrant.”

15. Further, on the issue as to whether the CBI comes under the definition of ‘officer in charge of a police station’ as mentioned under Section 156(3) of the Code, the High Court of Gauhati in **Atul Chandra Buragohain vs. State of Assam**, reported as (2007) 1 GLR 707 in light of the decision of Apex Court in **CBI vs. State of Rajasthan** (*supra*) expressly excluded the CBI from the purview of ‘officer in charge of a police station’ under Section 156(3) of the Code. The relevant paragraph of the decision is as reproduced below:

“18. What logically follows from the above discussion is that a police personnel, whether from a CBI or from any other department, who does not fall within the definition of the officer-in-charge of a police station, cannot be directed to investigate any case under Section 156(3). Considered, thus, it is clear that a magistrate cannot direct anyone including the CBI to investigate or further investigate a case, for, a magistrate's power to direct investigation, if I may reiterate, must necessarily remain confined to the officer-in-charge of a police station. In no uncertain words, therefore, concluded the Supreme Court, in **CBI vs. State of Rajasthan**, thus: "As the present discussion is restricted to the question whether a magistrate can direct CBI to conduct investigation in exercise of his

powers under Section 156(3) of the Code it is unnecessary for us to travel beyond the scope of that issue. We, therefore, reiterate that the magisterial power cannot be stretched under the said Sub-section beyond directing the officer-in-charge of a police station to conduct the investigation.”

16. No police personnel, whether from CBI or any other department, who does not fall within the meaning of the officer-in-charge of a police station can be directed to investigate any case by the Special Judge, CBI. In the present case, it is observed that the Special Judge, CBI exceeded its jurisdiction whilst directing the CBI to investigate into the alleged offence. The CBI is not an investigating agency of the Court presided over by the Special Judge under Prevention of Corruption Act, 1988. The status of the CBI cannot be de-escalated to that of an “officer- in-charge of the police station” under Section 156(3) of the Code.

17. In view of the afore-stated, the impugned orders dated 18.02.2013 and 07.05.2014 passed by the Special Judge, CBI are erroneous. The Special Judge has been designated to try the offences under The Prevention of Corruption Act, 1988 which are investigated by the CBI by virtue of Delhi Special Police Establishment Act, 1946. The Special Judge takes the seat of a magistrate as a court of original criminal jurisdiction while dealing with an

application under Section 156(3) or 202 of the Code and does not have the power to direct the CBI to investigate into a matter. Further, nothing has been brought to my notice to establish that the present case is exceptional and extra ordinary in nature which requires to be investigated by a specialized agency like the CBI. Merely because the allegations pertain to government officials, does not make it a case which should be investigated by the CBI. The power to direct investigation to the CBI is to be exercised with caution and in select few recherche cases, keeping in mind that the CBI should not be overburdened with matters that do not require such expertise.

18. The respondents heavily relied on the order passed by a Coordinate Bench of this Court in Writ Petition (Criminal) No. 1626/2011 decided on 20.04.2014, wherein this court held as follows:-

“6. The issue before this Court is whether the learned Special Judge is competent to give a direction under Section 156(3) Cr.P.C. to the CBI for registration of FIR and to investigate thereon. The Court of Special Judge is constituted under Section 3 of the PC Act & enjoys all powers which a Court of original jurisdiction enjoys. The Hon’ble Supreme Court in A.R. Antulay (supra) held as under:

“27. It is, however, necessary to decide with precision and accuracy the position of a special Judge and the Court over which he presides styled as the Court of a special Judge because unending confusions have arisen by either assimilating him with a Magistrate or with a Sessions Court. The Prevention of Corruption Act, 1947 was enacted for more effective prevention of

bribery and corruption. Years rolled by and experience gathered showed that unless a special forum for the trial of such offences as enumerated in the 1947 Act is created, the object underlying the 1947 Act would remain a distant dream. This led to the enactment of the Criminal Law Amendment Act, 1952. The Statement of Objects and Reasons accompanying the Bill refers to the recommendations of the Committee chaired by Dr. Bakshi Tek Chand appointed to review the working of the Special Police Establishment and to make recommendations for improvement of laws relating to bribery and corruption. To take the cases of corruption out of the maze of cases handled by Magistrates, it was decided to set up special courts. Section 6 conferred power on the State Government to appoint as many special Judges as may be necessary with power to try the offences set out in Clauses (a) and (b). Now if at this stage a reference is made to Section 6 of the CrPC which provides for constitution of criminal courts, it would become clear that a new court with a new designation was being set up and that it has to be under the administrative and judicial superintendence of the High Court. As already pointed out, there were four types of criminal courts functioning under the High Court. To this list was added the court of a special Judge. Now when a new court which is indisputably a criminal court, because it was not even whispered that the Court of special Judge is not a criminal court, is set up, to make it effective and functionally oriented, it becomes necessary to prescribe its powers, procedure, status and all ancillary provisions. While setting up a court of a special Judge keeping in view the fact that the high dignitaries in public life are likely to be tried by such a court, the qualification prescribed was that the person to be appointed as special Judge has to be either a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge. These three dignitaries are above the level of a Magistrate. After prescribing the qualification, the Legislature proceeded to confer power upon a special Judge to take cognizance of offences for the trial of which a special court with exclusive jurisdiction was

being set up. If a special Judge has to take cognizance of offences, ipso facto the procedure for trial of such offences has to be prescribed. Now the Code prescribes different procedures for trial of cases by different courts. Procedure for trial of a case before a Court of Sessions is set out in Chapter XVIII; trial of warrant cases by Magistrates is set out in Chapter XIX and the provisions therein included catered to both the types of cases coming before the Magistrate, namely, upon police report or otherwise than on a police report. Chapter XX prescribes the procedure for trial of summons cases by Magistrates and Chapter XXI prescribes the procedure for summary trial. Now that a new criminal court was being set up, the Legislature took the first step of providing its comparative position in the hierarchy of courts under Section 6 Cr.P.C. by bringing it on level more or less comparable to the Court of Sessions, but in order to avoid any confusion arising out of comparison by level, it was made explicit in Section 8(1) itself that it is not a Court of Sessions because it can take cognizance of offences without commitment as contemplated by Section 193 Cr.P.C. Undoubtedly in Section 8(3) it was clearly laid down that subject to the provisions of Sub-section (1) and (2) of Section 8, the Court of special Judge shall be deemed to be a Court of Sessions trying cases without a jury or without the aid of assessors. In contra-distinction to the Sessions Court this new court was to be a court of original jurisdiction. The Legislature then proceeded to specify which out of the various procedures set out in the Code, this new court shall follow for trial of offences before it. Section 8(1) specifically says that a special Judge in trial of offences before him shall follow the procedure prescribed in the CrPC for trial of warrant cases by Magistrates. The provisions for trial of warrant cases by the Magistrate are to be found in Chapter XXI of 1898 Code. A glance through the provisions will show that the provisions therein included catered to both the situations namely, trial of a case initiated upon police report (Section 251A) and trial of cases instituted otherwise than on police report (Section 252 to 257). If

a special Judge is en-joined with a duty to try cases according to the procedure prescribed in foregoing provisions he will have to first decide whether the case was instituted upon a police report or otherwise than on police report and follow the procedure in the relevant group of sections. Each of the Sections 251A to 257 of 1898 Code which are in pari materia with Sections 238 to 250 of 1973 Code refers to what the Magistrate should do. Does the special Judge, therefore, become a Magistrate? This is the fallacy of the whole approach. In fact, in order to give full effect to Section 8(1), the only thing to do is to read special Judge in Sections 238 to 250 wherever the expression 'Magistrate' occurs. This is what is called legislation by incorporation. Similarly, where the question of taking cognizance arises, it is futile to go in search of the fact whether for purposes of Sections 190 which conferred power on the Magistrate to take cognizance of the offence, special Judge is a Magistrate? What is to be done is that one has to read the expression 'special Judge' in place of Magistrate, and the whole thing becomes crystal clear. The Legislature wherever, it found the grey area clarified it by making specific provision such as the one in Sub-section (2) of Section 8 and to leave no one in doubt further provided in Sub-section (3) that all the provisions of the CrPC shall so far as they are not inconsistent with the Act apply to the proceedings before a special Judge. At the time when the 1952 Act was enacted what was in operation was the CrPC, 1898. It did not envisage any Court of a special Judge and the Legislature never wanted to draw up an exhaustive Code of Procedure for this new criminal court which was being set up. therefore, it conferred power (taking cognizance of offences), prescribed procedure (trial of warrant cases by a Magistrate) indicated authority to tender pardon (Section 338) and then after declaring its status as comparable to a Court of Sessions proceeded to prescribe that all provisions of the CrPC will apply in so far as they are not inconsistent with the provisions of the 1952 Act. The net outcome of this position is that a new court of original jurisdiction was set up and

whenever a question arose as to what are its powers in respect of specific questions brought before it as court of original criminal jurisdiction, it had to refer to the CrPC undaunted by any designation claptrap. When taking cognizance, a Court of special Judge enjoyed the powers under Section 190. When trying cases, it is obligatory to follow the procedure for trial of warrant cases by a Magistrate though as and by way of status it was equated with a Court of Sessions. The entire argument inviting us to specifically decide whether a court of a special Judge for a certain purpose is a Court of Magistrate or a Court of Sessions revolves round a mistaken belief that a special Judge has to be one or the other, and must fit in in the slot of a Magistrate or a Court of Sessions. Such an approach would strangle the functioning of the court and must be eschewed. Shorn of all embellishment, the court or a special Judge is a court of original criminal jurisdiction. As a court of original criminal jurisdiction in order to make it functionally oriented some powers were conferred by the statute setting up the court. Except those specifically conferred and specifically denied, it has to function as a court of original criminal jurisdiction not being hide-bound by the terminological status description of Magistrate or a Court of Sessions. Under the Code it will enjoy all powers which a court of original criminal jurisdiction enjoys save and except the ones specifically denied.”

7. Thus, as held by their Lordships the Special Judge has all powers under the Code, which are vested in the Court of original jurisdiction except the ones specifically prohibited. Thus since the jurisdiction under Section 156(3) Cr.P.C. is not specifically denied, the Special Judge has the jurisdiction to direct registration of FIR under Section 156(3) Cr.P.C. as a Court of original jurisdiction which the Magistrate has. However, the moot question in view of the decision of CBI Vs. State of Rajasthan(supra) is whether the Special Judge can direct registration of FIR to CBI and whether the officer of CBI would be an officer in-charge of Police Station within the territorial jurisdiction of the Special Judge concerned. Their Lordships in CBI Vs. State of Rajasthan(supra) held that a

Magistrate under Section 156(3) Cr.P.C. has no jurisdiction to order CBI to register FIR and investigate thereon. This was the predicament before the Learned Special Judge. According to him, since CBI was not a Police Station within its jurisdiction it could not direct registration of FIR under Section 156(3) Cr.P.C. in view of the decision of the Hon'ble Supreme Court in CBI Vs. State of Rajasthan(supra).

8. Section 3, 4 & 5 of the PC Act provide for the power to appoint Special Judges, cases triable by the Special Judge and the procedure and power of the Special Judge. Sub-section 3 & 4 of Section 5 provides as under:

“5. Procedure and powers of special Judge .

XXXXX

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973, shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for the purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of Sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.”

9. The jurisdiction of the Special Judge is to try cases committed within its jurisdiction whether investigated by the local Police or the CBI. Thus, the officer of the CBI files a report under Section 173 Cr.P.C. before the Special Judge as an officer in-charge of the Police Station. Once the officer of the CBI files the charge-sheet under Section 173 Cr.P.C.

before the learned Special Judge as an officer in-charge, he would be deemed to be the officer in-charge of the Police Station to whom under Section 156(3) Cr.P.C. the learned Special Judge can give directions to register FIR. Thus, to this extent, the finding of the learned Special Judge that in view of the decision of the Hon'ble Supreme Court in *CBI Vs. State of Rajasthan* the Special Court has no jurisdiction to direct registration of FIR under Section 156(3) Cr.P.C. to the CBI in a case of corruption is erroneous."

19. In my respectful view, in the order cited above, the Coordinate Bench did not consider or rather failed to appreciate the dictum of the Apex Court in *CBI vs State of Rajasthan* (*Supra*) as reiterated in *Sakiri Vasu* (*Supra*) in the correct perspective. The Supreme Court has clearly delineated that only the Supreme Court of India and the High Courts in their inherent jurisdiction can issue such a direction to the CBI. Hence this order, in my considered view, does not come in aid to the Respondents, inasmuch as, it runs contrary to the ratio of the decisions of the Hon'ble Supreme Court in *CBI vs. State of Rajasthan* (*supra*) and *Sakiri Vasu* (*supra*).

20. Under Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India. It is impermissible for this court to ignore the clear dictum as contained in the decisions of the Apex court. In the case of conflict between a decision of the High Court and the decisions of the Supreme Court, the latter to state the

obvious must prevail. In **Suganthi Suresh Kumar vs Jagdeeshan** reported as (2002) 2 SCC 420, it was held as follows:

“9. It is impermissible for the High Court to overrule the decision of the apex Court on the ground that Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India, it is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India.”

21. Further, whilst considering the decision of this court in Writ Petition (Criminal) No. 1626/2011 decided on 20.04.2014 , The Punjab and Haryana High Court in **Central Bureau of Investigation vs Harsimranjit Singh & Others**, CRM-M-6758-2015 decided on 16.09.2015 observed as under:

“In view of clear enunciation of law by Hon'ble Supreme Court, judgment of the single bench of Delhi High Court in A.S.Narayana Rao's case (supra) can be of no help to the petitioner. CBI Manual lays down elaborate procedure for conducting the investigation. In considered view of this court, Special Court is created only to conduct trial of cases which have already been investigated by CBI in cases of corruption as well as in special crime. It is specialised agency created for investigating crimes which may be repercussions in several States. Central Bureau of Investigation is required to conduct investigation pertaining to serious cases of bribery and corruption

and intricate matters of special crime, besides cases having inter-State or international ramifications. There can, thus, be no doubt that entrustment of such crimes to Central Bureau of Investigation can be only by the High Courts and Hon'ble Supreme Court in their inherent jurisdiction.”

22. I am in complete agreement with the above enunciation of law, particularly, in view of the cogent reasons propounded therein.

23. In view of the foregoing, the impugned orders dated 18.02.2013 and 07.05.2014 passed by the Special Judge, CBI whereby the CBI was directed to conduct investigation and proceed with the complaints of the respondents are untenable and without jurisdiction. The impugned orders are liable to be set aside and quashed.

24. Ordered accordingly.

25. The writ petitions are allowed. Pending applications, if any, also stand disposed of.

SIDDHARTH MRIDUL, J.

DECEMBER 23, 2015

dn