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

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Decided on : 28.05.2018

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CRL.M.C. 2464/2015 & CrI.M.A 8537/2015 (stay)

AJAY UPADYAY

..... Petitioner

Through: Mr. Siddharth Aggarwal, Ms. Aditi S. Pujari, Mr. Vaibhav Sethi, Mr. Nikhil Pillai and Mr. Gautam Varma, Advocates.

Versus

C B I

..... Respondent

Through: Mr. Anupam S. Sharma, Special Public Prosecutor for CBI with Mr. Prakash Airan, Advocate.

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W.P.(CRL) 531/2015, CrI.M.A 11253/2015 & 16331/2017

RAM NIWAS DHURIYA & ORS

..... Petitioners

Through: Mr. Ankur Gogia and Mr. Rishi Kapoor, Advs.

Versus

STATE THROUGH: C.B.I.

..... Respondent

Through: Mr. Nikhil Goel and Mr. Ashutosh Ghade, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (ORAL)

CRL.M.C. 2464/2015

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) the petitioner seeks the following relief:-

“Allow the present Petition and set aside the Order on Charge dated 15.11.2014 and formal charge framed dated 16.12.2014, by Sh. Alok Aggarwal, Ld. Special Judge (P.C. Act), Dwarka Court, Delhi (hereinafter called the "Ld. Trial Court"), in CBI Case No. 45/11 titled "C.B.I. vs. D.S. Rawat and others" .

2. The learned counsel for the petitioner relying upon the judgment of the Supreme Court in ***CBI, AHD, Patna Vs. Braj Bhushan Prasad (2001) 9 SCC 432***, argues that the Trial Court had no territorial jurisdiction to try the matter and frame charges because the Court concerned would be the one where the treasury of the Bank is situated. In the present case, the treasury of the bank is situated in NOIDA, Uttar Pradesh, hence, the Courts in Delhi would not have any jurisdiction to try the case. The FIR records the complaint against the public servant as under:-

“The Petitioner, Ajay Upadhyay, signed 19 finishing agreements with non-existent borrowers, and the proceeds of cheques issued in this regard by PNBHFL were deposited into his bank account. The Petitioner was looking after overall supervision of construction site and was handling all financial matters including liaising with the property dealers for the sale of flats. Keys of flats were also handed over by Ajay Upadhyay to Ram Mani Pandey. It is further alleged that the Petitioner Ajay Upadhyay was "looking after the overall supervision of the constructions site and was handling all financial matters including liaising with property dealers for sale of flats.", and that he had signed the Sale Deeds executed by VK Chadha with non-existent Vendees as a witness in the office of the Sub-Registrar, Seelampur, Delhi.”

3. Same allegations have been repeated in the chargesheet.
4. The learned counsel for the petitioner submits that at the stage of

framing of charge, the issue of jurisdiction was raised under section 4 of the Prevention of Corruption Act, 1988 (hereinafter to be referred as 'PC Act'). However, the contention was rejected, which is now impugned.

5. The learned counsel for the petitioner further submits that merely because the learned Trial Court found the petitioner's contention apropos the jurisdiction untenable, the progress of the trial cannot go on against the interests of the petitioners, because it goes to the root of the case.

6. The learned counsel appearing on behalf of the CBI submits that after the rejection of the challenge to jurisdiction, in the case of the co-accused, an appeal was filed regarding the jurisdiction of the Trial Court, but the said argument was rejected and his appeal was dismissed. He further submits that the Special Court CBI, Delhi, would have jurisdiction in the matter because a part of the criminal activity was undertaken within the jurisdiction of Delhi Courts. The impugned order records as under:-

"29. There is no dispute with the proposition that in a case under the Prevention of Corruption Act, even though, criminal conspiracy and acts of cheating and forgery etc. maybe parts of the allegations, the jurisdiction for conducting trial would vest in the courts situated at place where the offence under the PC Act is committed. The question would therefore be whether any part of the offence of "Misconduct" under section 13 (1) (d) of the act was committed in Delhi.

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33. The public servant, involved in the present case, is Vice President, PNBHEL which is a 100% subsidiary of PNB, a (Government Undertaking and therefore, he cannot claim exclusion on this ground."

7. The learned counsel for the respondent submits that primarily the offence was under the PC Act and that the Delhi Court would have the jurisdiction. In the present case, the charges have been made under sections 120-B Indian Penal Code, 1860 (IPC) read with sections 409/420/467/468/471 IPC. He further submits that the provisions of section 4(2) of the PC Act have no relevance whatsoever since it cannot be said that no part of the offence has been committed in Delhi. Section 4(2) of the PC Act reads as under:-

“4. Cases triable by special Judges

(1)

(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.”

8. He also relies upon section 5(1) of the PC Act, which reads as under:-

“5. Procedure and powers of special Judge

(1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973. for the trial of warrant cases by Magistrates.”

9. He submits that consequently, provisions of sections 178 and 179 Cr.P.C. will also be applicable, which read as under:-

“Section 178-Place of inquiry or trial.—(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Section 179-Offence triable where act is done or consequence ensues.—When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.”

10. The respondent contends that in the present case, the treasury was situated in Delhi, cheques were issued and deposited for encashment in Delhi. Therefore, the entire alleged crime was committed in Delhi. For the accused to say that simply because the treasury of the Bank was located outside Delhi, it would not necessarily give jurisdiction to the other courts. Besides, the treasury of the complainant is not located in NOIDA, it is only a company, whose mandate is to process the loan. Instead the treasury of the bank is in Delhi. He further relies upon the judgment of this Court in Crl. M.C. No.2563/2007 titled as ***P.K. Thungon Vs. Central Bureau of Investigation***, decided on 20.02.2009, which *inter alia* reads as follows:-

*“10. An application was filed by P.K. Thungon in the Court of the learned Special Judge seeking discharge on the ground that the Court of Special Judge, CBI, New Delhi had no territorial jurisdiction to try the case. Reliance was placed by the petitioners on the judgment of the Supreme Court in **CBI, AHD, Patna v. Braj Bhushan Prasad (2001) 9 SCC 432** to contend that in terms of Section 4 (2) of the PC Act, the offence has to 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". It was contended that since the amounts in the instant case were all released through demand drafts in Nagaland, having been drawn on the SBI Branch, Ereie in Kohima, the jurisdiction to try these offences under the PC Act was only with the Special Judge at Nagaland and not at New Delhi. Mahesh Maheshwari also filed a similar application. His case was that the trial for the offences under Sections 419, 420, 468 and 471 IPC should be tried by the Court at Delhi whereas the trial of the offences under the PC Act should take place in Nagaland."

11. Therefore, the learned counsel for the respondent states that the Courts in Delhi would have jurisdiction in the present matter. The aforesaid judgment was appealed against, before the Supreme Court and it was held as under:-

"The appellant who is an accused for commission of offence under Sections 120-B, 409, 419, 420, 467, 468, 471 of I.P.C. as well as Sections 13(2), 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988, had prayed for his discharge before the learned Special Judge, Delhi, inter alia on the premise that Delhi Court has no jurisdiction to try the offences. The learned Special Judge as also the High Court have negated the said prayer.

Dr. Singhvi, learned senior counsel appearing on behalf of the appellant would contend that both the courts below have committed a serious error in so far as : (i) they have failed to take into consideration the fact that the main offence is under the Prevention of Corruption Act and the courts of Kohima alone have jurisdiction to try the case. There exist a distinction between an offence under Section 13(1)(c) and Section 13(1)(d) and 13(1)(e) of the Prevention of Corruption Act and thus, the High Court committed a serious error in having failed to take into consideration the same in its proper

perspective.

We have been taken through the First Information Report as also the judgment of the learned Trial Judge. In the facts and circumstances of the case, it is difficult to come to the conclusion that the main offence is only under the Prevention of Corruption Act. The accused persons have been charged with conspiracy of commission of a crime inter alia under Section 409 and other provisions of the Indian Penal Code as well. It is in the aforementioned premise that the High Court has recorded a distinction in relying in the case of CBI, AHD, Patna vs. Braj Bhushan Prasad and Ors., 2002 SCC (Crl.) 576, on which Dr. Singhvi has placed firm reliance stating :

"19. Shri P.S. Mishra, learned Senior Counsel appearing for Dr. Jagannath Mishra pointed out that the very fact that CBI laid the charge-sheets in the Patna court was on account of the position that the courts at Patna had jurisdiction to try the case. He also submitted that the question of jurisdiction must be considered in view of Sections 179 and 180 of the Code and that the word 'exclusively' in Section 89 of the Act cannot have a meaning other than 'to the exclusion of all others'. Shri Ajit Kumar Sinha, learned counsel arguing for some other respondents adopted the same contentions which have been put forward by the two senior counsel mentioned above.

20. Section 89 of the Act deals with what should have happened on the appointed day, i.e., 15.11.2000 in respect of every proceeding 'relating exclusively to the territory' of Jharkhand State. Every such proceedings 'shall stand transferred to the corresponding Court, Tribunal, Authority or Officer' of Jharkhand State. Here the words 'relating exclusively to the territory of Jharkhand State' are the decisive words. What is meant by the word 'exclusively' in this context, has now to be determined."

It is in that view of the matter that the provisions of the Code of Criminal Procedure would clearly be applicable, in particular sub- section (4) of Section 181 thereof would clearly be applicable.

Furthermore, admittedly four witnesses have already been examined. We, therefore, are of the opinion that no case has been made out to interfere with the impugned judgment. The special leave petitions are dismissed.”

12. In rebuttal, the learned counsel for the petitioner submits that the misconduct of a Public Officer has to be seen by taking into consideration the place from where he allegedly misused his public office. He refers to the provisions of section 13(1)(d) of the PC Act, which reads as follows:-

“13. Criminal misconduct by a public servant

(1) A public servant is said to commit the offence of criminal misconduct,-

(a)

(b)

(c)

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;”

13. He also relies upon the decision of the Supreme Court in ***Braj Bhushan Prasad*** (*supra*), which held that the jurisdiction of the Court

would be determined by the Court where the offences were committed. It held:-

“36. The above acts were complete in the present cases when the money has gone out of the public treasuries and reached the hands of any one of the persons involved. Hence, so far as the offences under Section 13(1)(c) and Section 13(1)(d) are concerned the place where the offences were committed could easily be identified as the place where the treasury concerned was situated. It is an undisputed fact that in all these cases the treasuries were situated within the territories of Jharkhand State.

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42. Thus, if the PC Act has stipulated any place for trial of the offence under that Act the provisions of the Code would stand displaced to that extent in regard to the place of trial. We have, therefore, no doubt that when the offence is under Section 13(1)(c) or Section 13(1)(d) of the PC Act the sole determinative factor regarding the court having jurisdiction is the place where the offence was committed.”

14. The counsel for the petitioner also relies upon the judgment of this Court in ***Sanjay Tripathi Vs. CBI, ILR (2012) II Delhi 734***, wherein it was observed as follows:-

*“12. The principal contention of the Petitioners is that in a case for offence under the Prevention of Corruption Act 1988, the jurisdiction to try the offence would lie with the Court where the offence is committed. In view of Section 4(2) of the PC Act, the PC Act being a special enactment, the provisions relating to jurisdiction of the Trial Court would be governed by the Special Act and not by the provisions of the Criminal Procedure Code. In **CBI Vs. Braj Bhushan Prasad** 2001 9 SCC 432 similar question came up for consideration before the Hon'ble Supreme Court wherein trials pending in the State*

of Bihar were transferred to the State of Jharkhand, in view of Section 89 of the Bihar Reorganization Act 2000 as the offence under the PC Act were committed within the jurisdiction of the State of Jharkhand. Their Lordships held:

31. Section 4 of the PC Act relates to the jurisdiction of the court for trial of offences under that Act. The first sub-section of Section 4 declares that notwithstanding anything contained in the Code or in any other law, the offences punishable under the PC Act can be tried "only" by the Special Judge, appointed under Section 3(1) of the PC Act. Now sub-section (2) of Section 4 is the important provision and it is extracted below:

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.

32. Thus, the only court which has jurisdiction to try the offences under the PC Act is the court of Special Judge appointed for the areas within which such offences were committed. When such an offence is being tried subsection (3) enables the same Special Judge to try any other offence which could as well be charged against that accused in the same trial. So the pivot of the matter is to determine the area within which the offences was committed.

33. For that purpose it is useful to look at Section 3(1) of the PC Act. It empowers the Government to appoint Special Judge to try two categories of offences. The first is, "any offence punishable under this Act" and the second is, "any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified" in the first category. So when a court has jurisdiction to try the offence punishable under the PC Act on the basis of the place where such offence was committed, the allied offences such as conspiracy, attempt or abetment to

commit that offence are only to be linked with the main offence. When the main offence is committed and is required to be tried it is rather inconceivable that jurisdiction of the court will be determined on the basis of where the conspiracy or attempt or abetment of such main offence was committed. It is only when the main offence was not committed, but only the conspiracy to commit that offence or the attempt or the abetment of it alone was committed, then the question would arise whether the court of the Special Judge within whose area such conspiracy etc. was committed could try the case. For our purpose it is unnecessary to consider that aspect because the charge proceed on the assumption that the main offence was committed.

34. What is the main offence in the charges involved in all these 36 cases? It is undisputed that the main offence is under Section 13(1)(c) and also Section 13(1)(d) of the PC Act. The first among them is described thus:

A public servant is said to commit the offence of criminal misconduct,-

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so.

The next offence is described like this:

A public servant is said to commit the offence of criminal misconduct,-

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for

himself or for any other person any valuable thing or pecuniary advantage; or
(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

35. We have no doubt in our mind that the hub of the act envisaged in first of those two offences is "dishonestly or fraudulently misappropriates". Similarly the hinge of the act envisaged in the second section is "obtains" for himself or for any other person, any valuable thing or pecuniary advantage by corrupt or illegal means.

36. The above acts were complete in the present cases when the money has gone out of the public treasuries and reached the hands of any one of the persons involved. Hence, so far as the offences under Section 13(1)(c) and Section 13(1)(d) are concerned the place where the offences were committed could easily be identified as the place where the treasury concerned was situated. It is an undisputed fact that in all these cases the treasuries were situated within the territories of Jharkhand State.

37. Thus, when it is certain where exactly the offence under Section 13 of the PC Act was committed it is an unnecessary exercise to ponder over the other areas wherein certain allied activities, such as conspiracy or preparation, or even the prefatory or incidental acts were done, including the consequences ensued.

38. In this context it is useful to refer to Section 181 of the Code which falls within Chapter XIII, comprising of provisions regarding jurisdiction of the criminal courts in inquiries and trials. Section 181 pertains to "place of trial in case of certain offences". Sub-section (4) thereof deals with the jurisdiction of the courts if the offence committed is either criminal misappropriation or criminal breach of trust. At least four different courts have been envisaged by the sub-section having

jurisdiction for trial of the said offence and anyone of which can be chosen. They are: (1) the court within whose local jurisdiction the offence was committed; (2) the court within whose local jurisdiction any part of the property which is the subject of the offence was received; (3) the court within whose local jurisdiction any part of the property which is the subject of the offence was retained; and (4) the court within whose local jurisdiction any part of the property which is subject of the offence was required to be returned or accounted for, by the accused.

39. Now, observe the distinction between Section 181(4) of the Code and Section 4(2) of the PC Act. When the former provision envisaged at least four courts having jurisdiction to try a case involving misappropriation the latter provision of the PC Act has restricted it to one court i.e. the Court of the Special Judge for the area "within which the offence was committed". No other court is envisaged for trial of that offence. We pointed out above that when the charge contains the offence or offences punishable under the PC Act as well as the offence of conspiracy to commit or attempt to commit or any abetment of any such offence, the court within whose local jurisdiction the main offence was committed alone has jurisdiction.

40. Shri Kapil Sibal, learned senior counsel contended that Section 4(2) of the PC Act does not override the provisions of the Code regarding jurisdiction because among the four sub-section included in Section 4 of the said Act, only first and the last sub-section are tagged with the non obstante words "notwithstanding anything contained in the code of Criminal Procedure". In his submission the fact that sub-section (2) is freed from the non obstante words would indicate that the provisions of the Code can as well be read with that sub-section. In that context learned Senior Counsel invited our attention to Section 178 to 180 of the Code, showing that different courts having domain over different local areas have concurrent jurisdiction to inquire into or try the offences and

hence the trial is permissible in any one of them.

41. Absence of a non obstante clause linked with Section 4(2) of the PC Act does not lead to a conclusion that the sub-section is subject to the provisions of the Code. A reading of Section 4(2) of the Code (not PC Act) gives the definite indication that the legal position is the other way round. Section 4 of the Code is regarding trial of offences under the Indian Penal Code and other laws. Sub-section (1) of it relates only to offences under the Indian Penal Code. Sub-section (2) relates to "all offences under any other law". It is useful to read the said sub-section at this stage: All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

42. Thus, if the PC Act has stipulated any place for trial of the offence under that Act the provisions of the Code would stand displaced to that extent in regard to the place of trial. We have, therefore, no doubt that when the offence is under Section 13(1)(c) or Section 13(1)(d) of the PC Act the sole determinative factor regarding the court having jurisdiction is the place where the offence was committed.

13. In view of the law laid down by the Hon'ble Supreme Court it is thus settled that cognizance of an offence under Section 12 PC Act and 120B IPC read with 12 PC Act will have to be taken by the Court within whose jurisdiction the offence under PC Act has been committed. Learned counsel for the CBI has strenuously contended that in the present case since the goods of Petitioner Sanjay Tripathi were transported to Delhi and unloaded at Vasant Kunj i.e. the consequences of the conspiracy ensued at Delhi, this Court will have jurisdiction to try the same. In Ajay Aggarwal (supra) the Hon'ble Supreme Court was dealing with offences under the IPC. In P.K. Thungon (supra) while dealing with an offence under PC Act,

this Court held that since receipt of illegal gratification which is the essence of the offence took place at Delhi, the Courts in Delhi had jurisdiction to try the offences.

14. The abetment of an offence under Section 7 or 11 of the PC Act is a substantive offence under Section 12 of the PC Act for which no sanction is required. However, in view of Section 4(1) of the PC Act and 4(2) of the Indian Penal Code, the Court competent to enquire and try the offence under Section 12 of the PC Act would be the Court where the offence of abetment took place. There can be no dispute that transportation of goods from Bengaluru to Delhi is not an offence. The offence is the payment for the said transportation by the Petitioners Suresh M. Hegde and Prakash K. Shetty on behalf of the Videocon Industries Limited at Mumbai. The cheques were issued at Mumbai, received at Mumbai and encashed at Mumbai. It may be further noted that the Petitioners have not been charged for the substantive offence of conspiracy but with Section 120-B IPC read with 12 PC Act. Thus, the only Court which has the jurisdiction to try the offence under Section 12 PC Act read with 120B IPC and Section 12 PC Act is the Competent Court at Mumbai.”

15. The learned counsel for the respondent refers to paragraph 8 of the chargesheet, which notes that the substantial offences are to be considered under section 13(2) read with section 13(1)(d) of the PC Act apropos Mr. D.S. Rawat, the Assistant Vice President of PNBHL, NOIDA, and Mr. Sundaresan Vasu. It is his submission that but for the alleged misconduct of these two individuals, the aforesaid case could not have come about, therefore, a case falling under the PC Act would have to be tried at the place where the treasury is situated. The only test applicable in cases of the PC Act, is the decision taken in the case of **Braj Bhushan Prasad** (supra). He further submits that there is no bar to the jurisdictional Court to try cases of

the PC Act, that also tries the cases pertaining to other sections of IPC.

16. In support of his contention, counsel for the respondent relies upon the judgment of the Supreme Court in *State Through Central Bureau of Investigation, New Delhi Vs. Jitender Kumar Singh (2014) 11 SCC 724*, which held as under:-

“27. Thus, an offence under Sections 8, 9 or 12 can be committed by any person, who need not necessarily be a public servant. Such an offence can, therefore, be committed by a public servant or by a private person or by a combination of the two. It is thus clear that an offence under the PC Act can be committed by either a public servant or a private person or a combination of both and in view of the mandate of Section 4(1) of the PC Act, read with Section 3(1) thereof, such offences can be tried only by a Special Judge.

For example:

- A private person offering a bribe to a public servant commits an offence under Section 12 of Act. This offence can be tried only by the Special Judge, notwithstanding the fact that only a private person is the accused in the case and that there is no public servant named as an accused in that case.

- A private person can be the only accused person in an offence under Section 8 or Section 9 of the said Act. And it is not necessary that a public servant should also be specifically named as an accused in the same case. Notwithstanding the fact that a private person is the only accused in an offence under Section 8 or Section 9, it can be tried only by a Special Judge.

28. Thus, the scheme of the PC Act makes it quite clear that even a private person who is involved in an offence mentioned in Section 3(1) of the PC Act, is required to be tried only by a Special Judge, and by no other Court. Moreover, it is not necessary that in every offence under the PC Act, a public servant must necessarily be an accused. In other words, the existence of a public servant for facing the trial before the Special Court is not a must and even in

his absence, private persons can be tried for PC as well as non-PC offences, depending upon the facts of the case.

29. We, therefore, make it clear that it is not the law that only along with the junction of a public servant in array of parties, the Special Judge can proceed against private persons who have committed offences punishable under the PC Act.

30. Sections 3(1)(a) and (b), it may be noted, deal with only the offences punishable under the PC Act and not any offence punishable under IPC or any other law and Section 4(1) of the PC Act makes it more explicit.

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.

17. The learned counsel for the petitioner submits that **P.K. Thungon’s** case can be distinguished on a vital aspect as in this case, a public servant was himself charged to have committed the other offences as well. He relies upon para 20 of the said judgment, wherein the Court had held that either of the offences i.e. under the IPC or the PC Act are not the main offences. In fact, each of the offences would be the ‘main offences’. The same reads as follows:-

*“20. The judgment in **Braj Bhushan Prasad** (supra) does not assist the case of the petitioners. No comparison can be drawn with the transactions that formed the subject matter of the fodder feed scam in Bihar. Ultimately, each case will have to be examined on its own facts. As rightly pointed out by the learned trial judge, the substantive offences in the instant case*

*include the offences under Section 120B read with 409/419/420/467/468/471 IPC. The transaction of an opening bank account in a false name through impersonation with a view to siphoning of monies from one account to the another after encashing the drafts, are all offences which are substantive in nature and have occurred within the territorial jurisdiction of the court in Delhi. Equally, as far as P.K. Thungon is concerned, his role in the criminal conspiracy was during the period that he served as a Union Minister of State in Delhi. Mahesh Maheshwari was a part of this criminal conspiracy. According to the prosecution, the accounts in question were opened with the active help and connivance of Mahesh Maheshwari. Therefore, both these petitioners were part of the criminal conspiracy for committing the offences under the PC Act and the IPC. Unlike the facts that form the subject matter of the decision in **Braj Bhushan Prasad** (supra), it is not possible in the present case to hold that either sets of offences, i.e., IPC offences and PC Act offences are not the main offences. In fact each of these offences would be the "main offence".*

18. Hence, the learned counsel for the petitioner submits that the aforesaid judgment of **P.K. Thungon** would have no application to the present case. He submits that the rejection of the appeal of a co-accused apropos the jurisdiction of the Trial Court at the pre-trial stage would be of no consequence. In any case, the case was dismissed in default without reasoning, the appropriate stage is the one before the commencement of the trial, which is the present stage.

19. Although the counsel for CBI contends that the appeal apropos the jurisdiction has not been preferred by the public servant but by a private individual, however, he fairly concedes that it would not debar the appellant from raising this issue now.

20. The learned counsel for the respondent submits that the head office of

the petitioner is in Delhi, hence, ***P.K. Thungon's*** case does not come to the aid of the petitioner because the jurisdiction was invoked by the petitioner in ***P.K. Thungon's*** case at the appellate stage, which was rejected. The case of ***Sanjay Tripathi (supra)*** would not be applicable in the case at hand because in the said case law is relevant apropos the PC Act and not IPC. He also contends that objection to jurisdiction should have been raised in the first instance i.e. the moment notice was issued and appearance was entered on behalf of the accused. In the present case, the issue of jurisdiction having been determined with respect to the co-accused, the same would be binding upon the petitioner.

W.P.(CRL) 531/2015

21. Mr. Nikhil Goel, the learned counsel appearing on behalf of the CBI adopts the arguments already advanced by the counsel for CBI in CRL.M.C. No. 2464/2015. He submits that out of the 143 witnesses, currently the 89th witness – the Investigating Officer is being examined. Many of the other witnesses have either passed away or are otherwise are untraceable. Ordinarily, the Investigating Officer is the last witness in the prosecution case, therefore, the prosecution evidence is nearing completion and the defence evidence shall begin soon. He refers to section 464 IPC and submits that there is no failure of justice in the present case. In support of his contentions, he relies upon the judgment of ***Ram Chandra Prasad Vs. State of Bihar, (1962) 2 SCR 50***, wherein the Supreme Court held as under:-

“8. In view of s. 531 of the Code of Criminal Procedure, the order of the Special Judge, Patna, is not to be set aside on the ground of his having no territorial jurisdiction to try this case, when no failure of justice has actually taken place. It is

contended for the appellant that s. 531 of the Code of Criminal Procedure is not applicable to this case in view of sub-s. (1) of s. 7 and s. 10 of the Criminal Law Amendment Act. We do not agree. The former provision simply lays down that such offences shall be triable by special Judges and this provision has not been offended against. Section 10 simply provides that the cases triable by a special Judge under s. 7 and pending before a Magistrate immediately before the commencement of the Act shall be forwarded for trial to the special Judge having jurisdiction over such cases. There is nothing in this section which leads to the non-application of s. 531 of the Criminal Procedure Code.

9. We are therefore of opinion that the order of the special Judge convicting the appellant cannot be quashed merely on the ground that he had no territorial jurisdiction to try this case.”

22. The learned counsel for the petitioner submits that **Braj Bhushan Prasad** (*supra*) dealt only with the government coffers being emptied under the PC Act, whereas the present case extends beyond that to the utilisation of such illegitimately derived monies for the purchase of flats elsewhere, therefore, ramifications of the case i.e. the limb for section 120-B IPC, is not limited only to the PC Act.

23. However, relying upon the decision in **V. K. Puri Vs. Central Bureau of Investigation (2007) 6 SCC 91**, the learned counsel for the respondent states that the Delhi Courts would have the jurisdiction because of composite allegations under the PC Act and the IPC Act. Para 21 of the same reads as follows:-

“21. Each Court, where a part of the offence has been committed, would, therefore, be entitled to try an accused. The 1988 Act does not bar application of Section 178 of the Code of Criminal Procedure. If application of the provision of

Section 178 of the Code of Criminal Procedure is not barred, the fact that the appellant has a part of his known source of income at Delhi, in our opinion, would confer jurisdiction upon the Delhi Courts. It is one thing to say that only the Special Courts will have jurisdiction to try the offence, but for the purpose of arriving at a decision as to the Special Judge of which place shall have the requisite jurisdiction, the situs of the property may or may not have any relevance. Once the situs of the property is held to have relevance for the purpose of ascertaining his known source of income and consequent acquisition of disproportionate assets, in our opinion, the Special Judge concerned will also have the requisite jurisdiction to try the case. For the said purpose, purport and object for which the 1988 Act has been enacted must be taken into consideration. The doctrine of purposive construction therefore must be taken recourse to.”

24. Finally, he submits that the decision in ***Jitender Kumar Singh*** (*supra*) itself goes against the petitioner inasmuch as jurisdictional issue on the basis of charge of the offence and the gravity of the offence is concerned. The relevant portion thereof reads as under:-

“34. In other words, 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 v. CBI and another (2003) 8 SCC 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. We fully endorse that view.”

25. Lastly, the counsel for the respondent submits that the order apropos the jurisdiction was a reasoned order on merits and the appeal preferred against the same has also been dismissed in default. Therefore, it was not as if there was no order in that case.

26. The learned counsel for the petitioner submits that the judgment in **V. K. Puri** (*supra*) relied upon by the CBI is apropos an offence under sections 13(2) and 13(1) (e) of the PC Act, a distinction that has been duly noted by the Supreme Court in the same judgment. He further submits that the petitioner has approached the court with alacrity apropos the issue of jurisdiction and it is not as if the petitioner has sat over his rights and has let the matter proceed apropos recording of prosecution evidence. Indeed, he has appealed to this Court even before the first witness was examined by the Trial Court.

27. In support of his submissions, learned counsel for the petitioner relied upon the decision of **Hardeep Singh v. State of Punjab 2009 16 SCC 785**, which held that the trial commences once the charges have been framed. The relevant portion reads as under:-

“32. In Raj Kishore Prasad (Supra), this Court said that as soon as the prosecutor is present before the court and that court hears the parties on framing of charges and discharge, trial is said to have commenced and that there is no intermediate stage between committal of case and framing of charge.

33. In Re: Narayanaswamy Naidu v. Unknown 1 Ind Cas 228, a Full Bench of the Madras High Court held that “Trial begins when the accused is charged and called on to

*answer and then the question before the Court is whether the accused is to be acquitted or convicted and not whether the complaint is to be dismissed or the accused discharged.” A similar view has been taken by Madras High Court subsequently in *Sriramulu v. Veerasalingam*, (1914) I.L.R. 38 Mad. 585.*

34. However, the Bombay High Court in *Dagdu Govindshet Wani v. Punja Vedu Wani* (1936) 38 Bom.L.R. 1189 referring to *Sriramulu* (Supra) held:

*“There is no doubt that the Court did take the view that in a warrant case the trial only commences from the framing of the chargeBut, according to my experience of the administration of criminal justice in this Presidency, which is not inconsiderable, the Courts here have always accepted the definition of trial which has been given in *Gomer Sirda v. Queen-Empress*, (1898) I.L.R. 25 Cal. 863, that is to say, trial has always been understood to mean the proceeding which commences when the case is called on with the Magistrate on the Bench, the accused in the dock and the representatives of the prosecution and, defence, if the accused be defended, present in Court for the hearing of the case.” A similar view has been taken by the Lahore High Court in *Sahib Din v. The Crown*, (1922) I.L.R. 3 Lah. 115, wherein it was held that for the purposes of Section 350 of the Code, a trial cannot be said to commence only when a charge is framed. The trial covers the whole of the proceedings in a warrant case. This case was followed in *Fakhruddin v. The Crown*, (1924) I.L.R. 6 Lah. 176; and in *Labhsing v. Emperor*, (1934) 35 Cr.L. J. 1261.*

35. In view of the above, the law can be summarised to the effect that as ‘trial’ means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the ‘trial’ commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being

taken”.

28. The criminal proceedings are against the petitioner and the other co-accused apropos allegations that during the years 2001 and 2002, Devendra Singh Rawat–(A1), who was Assistant Vice President with M/s PNB Housing Finance Limited (PNBHFL) owned by the Punjab National Bank, and was responsible for sanctioning housing loan to the applicants, had committed ‘criminal misconduct’ in conspiracy with the co-accused, to defraud his company by using forged documents. He had disbursed 32 housing loans in the name of the employees totalling to Rs. 288 lacs. It is alleged that Ajay Upadyay had signed as a witness to the sale deeds apropos 56 flats before the Office of the Sub-Registrar, Seelampur, Delhi, and handed over the keys of 32 flats to the co-accused, Ram Mani Panday, in the presence of one Sukhdev Singh @ Soni. Further allegations are that all the accused, conspired with each other, cheated and caused pecuniary gains to themselves and corresponding wrongful loss to PNBHFL. Hence, proceedings under the PC Act as well as IPC were initiated against them.

29. The Trial Court was of the view that the allegations against Devendra Singh Rawat, Ram Mani Panday, Vinod Kumar Chadda, Sundaresan Vasu @ Sunder, Ajay Upadhyay, Ram Niwas Dhuriya and Sanju Panday constituted substantive offences punishable under sections 420, 467, 468 and 471 IPC.

30. In the peculiar facts of the case, the impugned order has found jurisdiction of Delhi courts to try the same, for the following reasons:-

“28. Even otherwise, the allegations in this case pertain to misconduct by a public servant for abusing the official position for obtaining not for himself, but for some other person. Pecuniary advantage in terms of housing loans, have been granted to A2 though in fictitious names of Delhi and property in the form of 32 flats constructed on 2 plots which are situated in Delhi. Sale Deeds for these flats are alleged to have been fraudulently registered and advantage in terms of the property been delivered to A2 at Delhi. Only because the public servant being at that time himself located at Noida, does not, in my view, bar the jurisdiction of the courts at Delhi.

29. There is no dispute with the proposition that in a case under the Prevention of Corruption Act, even though criminal conspiracy and acts of cheating and forgery etc. may be parts of the courts situated at place where the offence under the PC Act is committed. The question would therefore be whether any part of the offence of “Misconduct” under section 13 (1) (d) of the act was committed in Delhi.

30. In the case of **CBI Vs. Brij Bhushan Prasad**, (2001) 9 SCC 432 page 444, which heavily relied upon by the accused persons themselves. It has been held in paras 34 & 35 as follows:

“34. What is the main offence in the charges involved in all these 36 cases? It is undisputed that the main offence is under Section 13 (1) (c) and also Section (1) (d) of the PC Act. The first among them is described thus:

“13.(1) A public servant is the said to commit the offence of criminal misconduct, - ...

35. We have no doubt in our mind that the hub of the act envisaged in the first of those two offences is “dishonestly or fraudulently misappropriates”. Similarly, the hinge of the act envisaged in the second section is “obtains” for

himself or for any other person, any valuable thing or pecuniary advantage by corrupt or illegal means.”

31. In case the ‘pecuniary advantage’ and ‘valuable thing’ have been obtained for some other person, there can be no doubt that the place where they are so obtained would govern the territorial jurisdiction both for the purpose of investigation and for trial. The jurisdiction of CBI to investigate matter or of the Special Court at Delhi to try the case cannot therefore be challenged.”

31. The jurisdiction for conducting trial would vest in the courts situated where the offence under the PC Act is committed. The issue to be examined for determination of jurisdiction was whether any part of the offence of “misconduct” under section 13 (1) (d) of the Act, was committed in Delhi.

32. According to the prosecution, sale deeds were fraudulently registered and pecuniary advantage apropos the said properties was delivered to A-2 in Delhi in connivance with the petitioners and the other co-conspirators. At that time, the public servant was located in Noida.

33. According to the prosecution, the ‘criminal misconduct’ resulted in pecuniary advantage and valuable thing being obtained for other persons and the location of the other persons and co-conspirators was in Delhi. Therefore, the Delhi courts would have a jurisdiction to try the case. Allthemore because the allegations are composite in nature regarding the role of Devendra Singh Rawat - the public servant, and the other co-accused mentioned hereinabove, being the key persons in facilitating the creation of false documents and effectuating fraudulent transactions.

34. The Court would also note that the recording of prosecution's evidence is nearing its completion.

35. In view of the above, the Court does not find any reason to interfere with the impugned order. The petitions are without merit and are accordingly dismissed. The pending applications stand also dismissed.

NAJMI WAZIRI, J.

MAY 28, 2018

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