IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Reserved on | Pronounced on |
|---|---|
| 10.12.2019 | 19.12.2019 |

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. R.C. NOS. 222, 247, 251 & 373 OF 2019
AND
CRL. M.P. NOS. 2346, 2603, 2682 & 5495 OF 2019

Kalpagam Bhaskaran
.. Petitioner/Petitioner in Crl. R.C. No.222/2019

S.K.Dhawan .. Petitioner/Petitioner in Crl. R.C. No.251/2019

P.K.Deb Verman .. Petitioner/Petitioner in Crl. R.C. No.373/2019

M/s.Arihant Foundations &
Housing Ltd., rep. by the
Managing Director
Shri Kamal Lunawath
No.183, Poonamallee High Road
Kilpauk, Chennai - 10.
.. Petitioner/Petitioner in Crl. R.C. No.247/2019

- Vs -

State. Rep. By
Addl. Superintendent of Police
CBI - ACB, Chennai.
.. Respondent in the all revision petitions

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Criminal Revision Cases filed u/s 397 r/w 401 of the Code of Criminal Procedure, against the order dated 11th Jan., 2019, passed by the learned XIV Addl. Judge for CBI Cases, Chennai, in Crl. M.P. Nos.43/2018 , 6054, 6055 and 6056/2017 in C.C. No.29/2006.



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For Petitioners: Mr. B.Kumar, SC, for
Mr.S.Ramachandran in Crl. R.C. Nos.222 & 247/2019
Mr. Sukumar Nannan Oommen in Crl. R.C. No.251/2019
Mr. Nityesh Nataraj in Crl. R.C. No.373/2019

For Respondent : Mr. K.Srinivasan, Spl. P.P. (CBI)

COMMON ORDER

The present revision petitions have been filed challenging the orders dated 11.2.2019, passed by the XIV Addl. Special Judge (CBI Case), Chennai, in Crl. M.P. Nos.43/2018 , 6054, 6055 and 6056/2019, in and by which the learned trial Judge dismissed the petitions filed u/s 239 Cr.P.C. for discharge of the respective petitioners from the trial in C.C. No.29/2006. The present revision petitions have been filed by A-1 to A-4 in the said C.C. No.29/2006. For the sake of convenience, all the accused, along with the petitioners herein, will be referred to as A-1 to A-6.

2. The petitioner in Crl. R.C. No.222/2019 is A-1; the petitioner in Crl. R.C. No.251 of 2019 is A-2; the petitioner in Crl. R.C. No.373 of 2019 is A-3 and the petitioner in Crl. R.C. No.247 of 2019 is A-4 in C.C. No.29/2006. The above accused, viz., A-1 to A-4, along with two other accused, who were arrayed as A-5 & A-6, were charged for the offences u/s 120-B r/w 420 IPC, 420 IPC and u/s 13 (2) r/w 13 (1) (d) of the Prevention of Corruption Act, 1988. It is also informed that insofar as A-4 is concerned, the person representing A-4 is since dead and, therefore, his son would be representing the interest of A-4. The said submission is taken on record.

3. The brief facts, necessary for the disposal of these revisions, are as hereunder :-

A-1 and A-2 are officials of the Income Tax Department in the rank of Commissioner of Income Tax. During the year 2001, A-1 and A-2 were Member-1 and Member-2 of the Appropriate Authority of the Income Tax Department, while A-3 was Chief Engineer and posted as Member-3/Technical Member in the Appropriate Authority of the Income Tax Department. A-4 is a private individual and Managing Director of M/s.Arihant Foundations & Housing Ltd., a company involved in the developing and selling of commercial and residential properties, while A-5 is also a private individual and a Director of M/s. Sterling Infotech Ltd. A-6 is an employee of the Registration Department.

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4. It is the case of the prosecution that the property owned and developed by A-4 was intended to be purchased by A-5 and in pursuance of the same, agreements of sale and construction, dated 21.10.1999 were entered into between A-4 and A-5. Since the value of the said transaction was over and above the threshold limit of Rs.25 Lakhs, as contemplated u/s 269-UC of the Income Tax Act (for short 'IT Act'), falling under Chapter XX-C of the IT Act, which was in force till June, 2002, No Objection Certificate (for short 'NOC') was required to be obtained by A-4 and A-5 for the transfer of the said property. It is to be noted here that Section 269-UC was incorporated in the IT Act mainly for the purpose of curbing black money and also to realise the income tax due and payable from and out of the sale of the immovable property.

5. For obtaining NOC, application under Form 37-I needs to be submitted to the Appropriate Authority along with the agreement of sale and upon inspection of the property and making necessary enquiries, if the property had not been valued below 15% of the market value, the Appropriate Authority may grant NOC u/s 269-UC for the transaction to proceed, else, the Appropriate Authority may exercise the option of pre-emptive purchase by the Central Government u/s 269-UD of the IT Act. Section 269-UN stipulates that that the order passed u/s 269-UC shall not be called in question excepting for any mistake apparent on the face of the record and such of the amendments or corrections in the NOC issued shall be carried out within the period stipulated u/s 269-UJ of the IT Act.

6. An application in Form 37-I was submitted on 21.10.99 to the Appropriate Authority along with the agreement of sale and construction by A-4 and A-5, wherein the total sale consideration for the purchase of the undivided share of an extent of 25710 sq.ft. of land together with constructed area of 90500 sq.ft. along with A/c & Electricity power generating sets was valued at Rs.26,01,47,327/= . On receipt of the application, the Appropriate Authority, on inspection of the property, was to issue necessary NOC after satisfying itself that the value quoted for the sale and purchase of the property was not short valued to the extent of 15% below the market value. The application filed by A-4 and A-5 were returned for rectification of mistakes and was resubmitted on 12.11.99, 7.12.99 and finally on 10.12.99. On due compliance and rectification of the mistakes, inspection of the property was carried out by the Appropriate Authority and after ascertaining the market value of the property and after obtaining technical clearance from the technical member of the Appropriate Authority, viz., A-3, the Appropriate Authority, consisting of A-1 to A-3, chose against the pre-emptive purchase of the

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property by the Central Government as provided u/s 269-UC of the IT Act and, accordingly, issued NOC as mandated u/s 269-UC of the IT Act enabling A-4 and A-5 to go ahead with the transfer of the property by effecting necessary registration. In the said Form 37-I, mention has also been made about the amount payable to one Babu Vargheese to the tune of Rs.1,14,52,673/-, which is over and above the amount of Rs.26,01,47,327/-, which is in respect of a portion of the land and building in possession of the said Babu Vargheese. The NOC to transfer the property was issued by the Appropriate Authority on 8.3.2000, consisting of Mrs.R.Rajagopal, Mr.P.K.Sridharan and Mr.S.K.Dhawan, in respect of the agreement of sale of the immovable property dated 21.10.99 entered into between A-4 and A-5, which clearly details the apparent sale consideration at Rs.26,01,47,327/-. The Appropriate Authority had also extensively considered the materials in relation to the transfer of the property and had passed detailed order giving reasons for grant of NOC, which is annexed to the NOC.

7. However, after obtaining the NOC on 8.3.2000, A-4 and A-5 did not proceed to register the document using the NOC, but, instead wanted to sell the land and building separately, though for the same value as already accepted and stated in the Form 37-I. Therefore, on 19.3.00, A-4 approached the Appropriate Authority for grant of two NOC's, viz., one for the undivided share of land valued at Rs.11 Crores and the other towards the cost of construction, valued at Rs.16.16 Crores, which is alleged to include the cost of the share of land and building sold to one Babu Vargheese. In effect, the above process was adopted by A-4 and A-5 for the purpose of paying stamp duty and registration charges only to the extent of the value of the land. However, the said request of A-4 was rejected on 7.4.00 by Member-1 alone. The above request was reiterated once again by A-4 on 18.4.00 and the said request came to be rejected once again by Member-2 alone.

8. The request of A-4 and A-5 not having been acceded to, it is the case of the prosecution that A-4 and A-5 in collusion with A-6, since deceased, an officer of the Registration Department, for registration by executing a sale deed for the land alone to an extent of 25,710 sq.ft., for a value of Rs.11 Crores. On 17.10.2001, A-1 and A-2 were inducted as Member-1 and Member-2 of the Appropriate Authority replacing Rukmani Rajagopalan and P.K.Sridharan, while the Technical Member, viz., Member-3 remained the same. Upon reconstitution of the Appropriate Authority, while the previous NOC issued was still in force, once again A-4 and A-5 presented a fresh Form-I along with sale agreement dated 20.11.01, wherein bifurcation of land cost and construction cost was specified and two separate NOC's were requested from the Appropriate Authority. On 11.2.02, the

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new Appropriate Authority, issued a NOC for transfer of land alone for a total consideration of Rs.11 Crores, though a fully constructed building was in existence on the said land, which is evident from the annexure to the 1st NOC given on 8.3.00. Even when the earlier NOC issued on 8.3.00 was still in force, the present NOC was issued, which in turn resulted in a wrongful loss of Rs.2,10,20,635/- as stamp duty to the Government of Tamil Nadu and as the illegal act of A-1 to A-3 resulted in loss, sanction orders were issued by the Central Government on 4.10.05 for prosecution of A-1 to A-3, while the State Government issued sanction order sanctioning the prosecution of A-6.

9. Pending the criminal prosecution, A-5 filed W.P. No.24015/03 in which this Court permitted registration and sale of the building by execution of separate sale deed on payment of necessary stamp duty, however, without prejudice to to the incidental proceedings, which fact is not in dispute.

10. Upon sanction granted for the prosecution, investigation of the case was taken up and on completion of the investigation, final report was filed before the Special Judge for CBI Cases, Chennai, on 24.9.06. After filing of the final report, discharge petitions in Crl. M.P. Nos.Crl. M.P. Nos.43/2018 , 6054, 6055 and 6056/2019, were filed by A-1 to A-4 before the CBI Court, which after contest, were dismissed vide separate but detailed orders and assailing the said orders, the present revision petitions have been filed.

11. Mr. B.Kumar, learned senior counsel appearing for A-1 and A-4 submitted that the expression "immovable property" defined u/s 269-UA (d) takes within its fold any land or any building or part of a building, and includes, where any land or any building or part of a building is to be transferred together with any machinery, plant, furniture, fittings or other things, such machinery, plant, furniture, fittings or other things also. Therefore, A-4 and A-5 were well within their rights to sell and purchase the land alone. Learned senior counsel, to further this proposition that the land or building could be sold and registered separately, relied on the decision in Park View Enterprises & Ors. - Vs - State of T.N. (AIR 1990 Mad 251) and submitted that prior to the amendment in the Tamil Nadu Stamp Act, which was amended only in the year 2012 by Amendment Act 29 of 2012, A-4 and A-5 were well within their rights to have the land and building registered separately.

12. It is the submission of the learned senior counsel that only in furtherance to the same, the previous NOC, issued on 8.3.00, was sought to be amended, which request having been rejected, led to the filing of a fresh Form 37-I along with a

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new sale agreement and construction agreement, with break up of the cost towards the sale and construction. It is the submission of the learned senior counsel that there was no fraudulent action on the part of the accused, as they have not quoted a fresh figure from what has been quoted earlier and the amount agreed to between the parties remained the same. This fact has been taken into consideration by the subsequent Appropriate Authority, and fresh NOC was issued on 11.2.02 by cancelling the previous NOC issued on 8.3.00. Therefore, in view of the decision of this Court in Park View's case (supra) as affirmed by the Supreme Court in Govt. of T.N. - Vs - Park View Enterprises & Ors. (2001 (1) SCC 742) the accused have not acted with any mala fide intention, but only within the frame work of law and, therefore, their act, could in no way be said to be illegal or perverse.

13. It is the submission of the learned senior counsel that no res judicata gets attached to the filing of subsequent Form 37-I. It is well open to the transferor and transferee to submit multiple Form 37-I and the only pre-condition required to be satisfied is the entering into an agreement and the submission of the said Form 37-I within the prescribed period and it is the further submission of the learned senior counsel that the period prescribed is only directory and not mandatory. Reliance was placed on the decision of the Delhi High Court in Ansal Properties & Industries Ltd. & Ors. - Vs - Appropriate Authority & Ors. (1998 SCC OnLine Del 963).

14. It is the further submission of the learned senior counsel that the act of the Appropriate Authority being quasi-judicial in nature, as evident from Section 269-UN of the IT Act, the members of the appropriate authority cannot be prosecuted for any irregularity or illegality in their order and they derive protection from Section 2 of the Judges (Protection) Act, 1985 and Section 197 of the Code of Criminal Procedure and their prosecution cannot be called into play as the provisions of the Special Act overrides the provisions of the Code of Criminal Procedure.

15. Learned senior counsel laid stress on the definition of 'Judge' as found in Section 2 of the Judges (Protection) Act, 1985 (for short 'the Act), and the additional protection to Judges as found in Section 3 of the Act and submitted that the courts are barred from entertaining or continuing any civil or criminal proceeding against any person, who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function. Therefore, it is the submission of the learned senior counsel that the continuance of the prosecution against A-1 to A-3, who

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had acted in their official capacity by passing the said order granting NOC, is bad in law and is in direct contrast to the protection granted u/s 2 and 3 of the Act. Reliance was placed on the decision of the decision of the Bombay High Court in E.S.Sanjeeva Rao – VS – Central Bureau of Investigation (C.B.I.), Mumbai & Ors. (2012 SCC OnLine Bom 1908), Anowar Hussain – Vs – Ajoy Kumar Mukherjee & Ors. (AIR 1965 SC 1651) and Rachapudi Subba Rao – Vs – Advocate General, Andhra Pradesh (1981 (2) SCC 577).

16. It is the further contention of the learned senior counsel that the act of the CBI is without jurisdiction, as the CBI has taken up the case in respect of Central Government Employees for the loss alleged to have been caused to the State Government under the Stamp Act. Learned senior counsel drew the attention of this Court to the letter of the Home Department of Government of India, dated 22.7.1992, in and by which Section 6 of the Delhi Special Police Establishment Act, 1946, more especially Section 6 of the said Act, which extended powers and jurisdiction to the CBI for taking cognizance of cases over the State of Tamil Nadu was made applicable on the acceptance of the State. Attention of this Court was invited to the fact that though consent has been given by the State Government, however, the categories of cases mentioned in the said letter for which consent has been given has not been stated and in the absence of the same, the act of the CBI in pursuing the case is prone to serious question. It is the submission of the learned senior counsel that in the absence of any explicit permission/consent given by the State Government for the CBI to take up cases of this nature, which is not part of the record, the act of the CBI in proceeding with the present case is per se not sustainable. Reliance was placed on the decision of the Apex Court in M.Balakrishna Reddy – Vs – Director, Central Bureau of Investigation, New Delhi (2008 (4) SCC 409) and Ms.Mayawati – Vs – Union of India & Ors. (2012 (8) SCC 106).

17. Learned senior counsel, in fine, contended that there being lack of jurisdiction for the CBI to venture into and conduct the prosecution and further the fact that the act of A-1 to A-3 stand squarely covered under the Judges (Protection) Act and, therefore, they being not liable for being prosecuted for any acts performed by them in the course of discharging their duties and the further act of A-4 and A-5 in filing the subsequent Form 37-I , for the purpose of getting a fresh NOC on the basis of the subsequent sale agreement entered into between A-4 and A-5 and the filing of the subsequent Form 37-I not being res judicata, the prosecution launched against A-1 to 3 as also A-4 and A-5 does not stand the test of legal scrutiny and, accordingly, A-1 to A-4 are entitled for discharge.

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18. It is the ancillary submission of the learned senior counsel that there being no saving clause provided for in Chapter XX-C to carry on the investigation after 2002, the continuance of the prosecution does not have legal sanction.

19. Mr.Sukumar Nainan Oommen, learned counsel appearing for A-3, while reiterated the submissions advanced by the learned senior counsel appearing for A-1 and A-4, further drew the attention of this Court to Section 269-UL of the IT Act, which mandates that it is the duty of the registering authority to register the document on being provided with the requisite NOC prescribed u/s 269-UC of the IT Act mandating the transfer of the immovable property for an amount equal to the apparent consideration stated therefor in the agreement for transfer. It is the submission of the learned counsel that the initial NOC was granted on 8.3.00 by the appropriate authority, which is a committee comprising of three members. However, curiously, twice request was made by A-4 and A-5 for grant of split NOC for transfer of land and building separately, but the same was rejected by a single member of the appropriate authority, which does not have the backing of law, as the rejection has to be done only by the appropriate authority and not by a single member. Therefore, the above act of the appropriate authority prompted A-4 and A-5 to enter into a sale agreement once again 20.11.01 and file a fresh Form 37-I seeking split NOC for the transfer of land and building separately, which has been duly granted by the appropriate authority, however consisting of different members barring the third member, which cannot be found fault with.

20. It is the submission of the learned counsel that the earlier Form 37-I does not act as res judicata for filing the fresh Form 37-I as the present Form 37-I is based on the new agreement entered into between A-4 and A-5 on 20.11.2001 and further the sale value of the land and building given in the present Form 37-I is identical to the one given in the previous Form 37-I and, therefore, there is no suppression of any materials on the part of A-4 and A-5. In view of the above, the appropriate authority has thought it fit to grant NOC delineating the cost of the value of the undivided share of land and the construction cost, as requested for by A-4 and A-5. Attention of this Court was also drawn to the order of the appropriate authority cancelling the previous NOC dated 8.3.2000, which is reflected in the present NOC dated 11.02.02.

21. It is the further submission of the learned counsel for A-3 that as per Section 269-UD of the IT Act, the course open to the appropriate authority on receipt of statement under sub-section (3) of Section 269-UC is either to exercise the option of pre-emption by ordering purchase of the immovable property by

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the Central Government on the property being valued 15% below the market value, else, the only other course open to the appropriate authority is to grant the NOC. The appropriate authority, on being satisfied that the immovable property has not been undervalued and further there being no material discrepancy between the apparent consideration stated in the earlier Form 37-I and the present Form 37-I, except for a request to grant split NOC's, one pertaining to the value of the undivided share of land and the other for the cost of construction, thought it fit to accede to the request of A-4 and A-5. The said act of the appropriate authority could in no unceremonial terms be construed as an act falling within the scope of Section 13 (1) (d) of the PC Act. The appropriate authority has acted in a manner as provided for u/s 269-UC and 269-UD and no mala fide intentions could be attributed to the said act. However, the above aspect has not been considered in proper light by the trial court while considering the petition for discharge. Learned counsel drew the attention of this Court to the scope and ambit of Section 227 and 228 of the Code of Criminal Procedure and placed reliance on the decision of the Apex Court in Central Bureau of Investigation, Hyderabad – Vs – K.Narayana Rao (2012 (4) Crimes 181 (SC)), wherein the Supreme Court has laid down the principles that need to be followed. Reliance was also placed on the decision of the Delhi High Court in Tanvi Trading & Credits (P) Ltd. - Vs – Appropriate Authority (1991 (188) ITR 623).

22. Learned counsel appearing for A-3 laid much emphasis on the similarity in the value as quoted in the former Form 37-I and the latter Form 37-I and submitted that there being no material discrepancy, submission of the latter Form 37-I will in no way vitiate the sale. Learned counsel drew the attention of this Court to the term 'agreement for transfer' appearing in clause (c) of sub-rule (2) and submitted that the seller and purchaser are not barred from changing the agreement, as the term 'agreement for transfer' would only mean the statement in Form 37-I. Reliance was placed on the decision in DLF Universal Ltd. - Vs – Appropriate Authority & Ors. (2000 (5) SCC 552).

23. Mr.Nityesh Nataraj, learned counsel appearing for A-2 while adopted the arguments advanced by the learned senior counsel and submitted that form 37-I itself is to be treated as the agreement by the appropriate authority, which is evident from the reading of Form 37-I and, therefore, the judgment in DLF's case (supra) stands squarely applicable to the facts of the present case.

24. Countering the arguments advanced on behalf of the petitioners, Mr.Srinivasan, learned Special Public Prosecutor appearing for the respondent, at the outset submitted that

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sanction orders dated 4.10.05 and 28.3.06 were obtained for prosecution of the accused, whereinafter the final report was filed against the accused on 24.9.06. Therefore, there is no procedural irregularity in the prosecution launched against the accused.

25. It is the contention of the learned Special Public Prosecutor that the 2nd NOC was issued on 11.2.02 to transfer the land measuring about 25,710 sq.ft., for a consideration of Rupees Eleven Crores, inspite of the fact that the earlier request for split NOC for land and building from A-4 and A-5 were rejected by the earlier members of the Appropriate Authority on 7.4.00 and 2.5.00. The earlier members of the Appropriate Authority, after necessary personal inspection and verification of the property, which revealed the existence of basement, ground floor plus 13 floors of constructed building, had issued the composite NOC on 8.3.00 for the total value of the land and building. However, without any rhyme or reason, the subsequent Appropriate Authority, had granted the split NOC, as sought for by A-4 and A-5, which act of collusion of of A-1 to A-3 with A-4 and A-5 in granting the 2nd NOC dated 11.2.02 had caused a wrongful loss of more than Rupees Two Crores to the Government of Tamil Nadu in the form of reduction in stamp duty.

26. It is the submission of the learned Special Public Prosecutor that Chapter XX-C does not clothe the Appropriate Authority with any power to issue a 2nd NOC when the 1st NOC was very much in force and the act of the members of the Appropriate Authority in issuing the 2nd NOC was only to enable A-4 and A-5 to sell the entire land and building by registering only the land for a value of Rs.11 Crores and thus evading stamp duty towards the cost of the building. It is further pointed out by the learned Special Public Prosecutor that the Technical Member of the Appropriate Authority, who is the 3rd member, is the same in both the Appropriate Authorities, i.e., in the former as well as the latter Appropriate Authorities, who has given technical clarification with regard to the market value of the property and its construction. Therefore, knowing fully well that the construction of the building is complete and that the immovable property has to be sold as land and building together, after having approved the grant of 1st NOC as a composite one, it is not right on the part of the 3rd member to deviate from his stand taken while issuing the 1st NOC by taking a divergent view while granting the 2nd NOC.

27. It is the further contention of the learned Special Public Prosecutor that Section 269 -UC of the IT Act puts an embargo on the sale of immovable property by entering into an agreement for transfer between the transferor and the transferee and that such agreement shall be atleast four months from the

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intended date of transfer. It is the submission of the learned Special Public Prosecutor that a cursory perusal of Form 37-I, which was submitted for the issuance of the 2nd NOC and the NOC dated 11.2.02, it is clear that the date on which the agreement was entered into between the transferor and transferee is shown as 20.11.01 and the date of NOC is 11.2.02. That being the case, the mandatory period of four months between the date of agreement and the date of intended transfer not being fulfilled, the issuance of 2nd NOC is in violation of Section 269-UC of the IT Act.

28. It is further submitted by the learned Special Public Prosecutor that any amendment in the NOC should be made within a period of six months from the end of the month in which such order sought to be amended is made, whereinafter, amendment is impermissible, as mandated in Section 269-UJ of the IT Act. It is therefore submitted that the 1st NOC having been granted on 8.3.00, the six months period as stipulated u/s 269-UJ of the IT Act comes to an end at the close of the month on 30.9.00. However, the 2nd NOC has been issued on 11.2.02, which is more than a year and four months from the stipulated period of six months, which is in clear violation of Section 269-UJ of the IT Act.

29. It is the further submission of the learned Special Public Prosecutor that the apparent consideration as found in Section 269-UL of the IT Act for transfer of the immovable property is not the one as reflected in the statement filed under Sub Section (iii) of Section 269-UC and the apparent consideration in the agreement is clearly at variance from the statement filed u/s 269-UC of the IT Act. Further, there are material variations between the Form 37-I, which was submitted while applying for the 1st NOC and the Form 37-I, which was submitted while applying for the 2nd NOC.

30. It is pointed out by the learned Special Public Prosecutor that two of the members of the Appropriate Authority, viz., Rukmani Rajagopalan and Sridharan, have turned down the request for split NOC and have confirmed the NOC issued on 8.3.00. A-1 and A-2 having been inducted as members of the Appropriate Authority along with A-3, who was in the Appropriate Authority, even before, had permitted A-4 and A-5 to submit revised application in Form 37-I for issuance of fresh NOC with split figures in construction cost and cost of land as requested for by the transferor and transferee. The NOC already issued to A-4 and A-5 not having been cancelled in a manner known to law and the same not having been challenged before the appropriate forum, viz., the High Court, it is not open to A-1 to A-3 to issue a fresh split NOC, knowing fully well that the

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construction has been completed and, therefore, there is no scope for selling the land and building separately.

31. It is submitted by the learned Special Public Prosecutor that the issuance of NOC would not amount to a judgment passed and, therefore, the protection under the Judicial Officers Protection Act and Judges Protection Act, 1985 will not be available to the members of the Appropriate Authority. Further, it is submitted that the issuance of 2nd NOC itself being impermissible and also hit by the limitation period of six months prescribed, the protection envisaged u/s 197 Cr.P.C., would also not be attracted, as the acts complained of has no connection with the discharge of official duties by A-1 to A-3.

32. The pre-emptive purchase order was not passed by the Appropriate Authority on the ground that the apparent consideration quoted, while issuing the 1st NOC on 8.3.00, was not below the 15% value, as the value quoted for the land and building together was Rs.26,01,47,327/=. However, the 2nd NOC, issued on 11.2.02 was a split NOC for land and building separately, the land being valued at Rs.11 Crores, for which alone stamp duty gets attracted, but the land and building are being transferred by evading stamp duty. The 1st NOC was issued for the purpose of land and building put together, which is evident from the sale deed whereby the property in Schedule-B, viz., the building along with mutation of records was being transferred. This clearly shows that the sale was being effected both for the land and building together, but the land value alone is being quoted for the purpose of lower stamp duty.

33. Insofar as the jurisdiction of the CBI to investigate the matter is concerned, it is the submission of the learned Special Public Prosecutor that the Government of India, Ministry of Home Affairs, in their Notification dated 6.11.1956, has specified certain offences and class of offences, which includes offences u/s 420 IPC and also the offences under the Prevention of Corruption Act. The said notification takes within its fold attempts, abetments and conspiracies in relation to or in connection with offences mentioned in clauses (a) to (h) for which the Government of Tamil Nadu has given its consent vide their letter MS No.188 dated 23.1.1957 for exercise of powers and jurisdiction by the Delhi Special Police Establishment within the State of Madras, which has been extended from time to time, the last of it being by letter dated 22.7.1992, in and by which cases involving Central Government Servants or Officers belonging to Public Sector Undertakings were permitted to be taken up by the respondent within the State. A combined reading of the notifications clearly clothe the CBI with jurisdiction to investigate the present case. Further, A-1 to A-3, being

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employees of the Central Government, CBI is competent to investigate . Further, the offence committed by A-6 being part of the same transaction for which the State Government has granted sanction to prosecute A-6, it cannot be said that CBI has no jurisdiction to investigate the case.

34. Learned Special Public Prosecutor drew the attention of this Court to the statement of V.Udaya Bhaskar, Inspector of Income Tax, which clearly reveals that the entire construction has already been put up by A-4 and also speaks about the valuation report. Statement of P.K.Sridharan, the Chief Commissioner of Income Tax, who was then Member-2 of the Appropriate Authority when the 1st NOC was issued, clearly reveal the request made for grant of split NOC, which was turned down by the members of the Appropriate Authority. The subsequent request for grant of split NOC has been rejected by Mrs.Rukmani Rajagopal, Member-I of the appropriate Authority, wherein direction was given to the Income Tax Officers to inform the transferor that NOC has been issued as per Form 37-I filed by the party and, therefore, no modification is possible. Even though the building has been put up on the land, the transferor and transferee wish to register only the land for a total sale consideration of Rs.11 Crores, which is impermissible.

35. Learned Special Public Prosecutor dealt in detail the statement of P.K.Sridharan, Chief Commissioner of Income Tax with regard to the issuance of NOC and the necessity for the issuance of the NOC and the further act of the assessing officers once the property is transferred. The statement of P.Radhakrishnan, Income Tax Officer is also relied upon as to the various procedures relating to submission of form 37-I and issuing of the NOC. The statement of V.K.Govindarajan, then DIG Registration is also referred to for the purpose of explaining the fraudulent act of the transferor and transferee in trying to obtain split NOC's for registering the land and building separately. The direction of the Inspector General of Registration for initiating prosecution u/s 27 & 64 of the Stamp Act is also relied upon.

36. It is further contended by the learned Special Public Prosecutor that the stand of the prosecution gets vindicated by the act of A-5 in acceding to pay the differential stamp duty in the writ petition filed by it before this Court in W.P. No.24015/2003, wherein, this Court, disposed of the writ petition directing A-5 to pay the differential stamp duty and other charges as per the revised proceedings, without prejudice to the incidental proceedings, if any. Therefore, the above act of A-5, is an additional factor, which aids the case of the prosecution.

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37. In fine, it is the submission of the learned Special Public Prosecutor that the act of A-1 to A-3 in issuing a 2nd NOC knowing fully well the subsistence of the 1st NOC to enrich A-4 and A-5 to the detriment of the Government definitely puts the entire act of A-1 to A-3 within the purview of Section 420 IPC and also u/s 13 (1) (d) of the PC Act and, therefore, the Government, after careful consideration has granted sanction for prosecution and, therefore, it is just and necessary that the trial has to be taken to its logical end and it should not be tried to be thwarted under the guise of discharge of the accused, more so when the prosecution has established a prima facie case, which has been accepted by the trial court. Learned Special Public Prosecutor placed reliance on the decision of the Supreme Court in Amit Kapoor - Vs - Ramesh Chander & Anr. (2012 (9) SCC 460).

38. Heard the respective learned counsel appearing for the petitioners and the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record and also the judgments to which this Court's attention was drawn. Though reliance was placed on very many decisions by the learned counsel appearing for the parties, however, in view of the circumference within which this Court intends to proceed, the decisions that have a bearing on the said issues will be taken note of at the specified places.

39. Before adverting to the points raised by the respective learned counsel for the petitioners in support of their petition for discharge, it would be apposite to refer to the ratio laid down by the Supreme Court while considering the petition for discharge of an accused u/s 227 Cr.P.C.

40. In Narayana Rao's case (supra), the Supreme Court had occasion to deal with the scope and ambit of discharge application filed u/s 227 Cr.P.C. and in that context, held as under : -

> 13. Discharge of the accused under Section 227 of the Code was extensively considered by this Court in P. Vijayan [(2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488] wherein it was held as under:
>
> "10. … If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post office to frame the charge at the behest

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of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

14. While considering the very same provisions i.e. framing of charges and discharge of the accused, again in Sajjan Kumar [(2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371], this Court held thus:

"19. It is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

20. A Magistrate enquiring into a case under Section 209 CrPC is not to act as a mere post office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of

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Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case. It is also clear that in exercising jurisdiction under Section 227 CrPC, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Exercise of jurisdiction under Sections 227 and 228 CrPC

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved

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beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

15. From the above decisions, it is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, in that event, it is not open to the court to say that there is no sufficient ground for proceeding against the accused. A Judicial Magistrate enquiring into a case under Section 209 of the Code is not to act as a mere post office and has to arrive at a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. On the other hand, if the Magistrate finds that there is no prima facie evidence or the evidence placed is totally unworthy of credit, it is his duty to discharge the accused at once. It is also settled law that while exercising jurisdiction under Section 227 of the

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Code, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. This provision was introduced in the Code to avoid wastage of public time and to save the accused from unavoidable harassment and expenditure. While analysing the role of the respondent herein (A-6) from the charge-sheet and the materials supplied along with it, the above principles have to be kept in mind."

(Emphasis Supplied)

41. From the above proposition of law as postulated by the Supreme Court, it is unambiguously and categorically clear that the endeavour of the trial court, at the initial point of considering a petition u/s 227 Cr.P.C., for discharge, is to find out whether a prima facie case for trial has been made out by the prosecution. The trial court has to merely sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused and the trial court is not required to go in depth into the evidence to find out whether the evidence would lead to the acquittal or conviction of the accused seeking discharge. In the above backdrop of the law laid down, this Court is assigned with the task of determining whether the dismissal of the discharge petition, filed by the accused, viz., A-1 to A-4 herein, warrants any interference.

42. The pivotal submissions of Mr.B.Kumar, learned senior counsel, who advanced arguments on behalf of the accused, ably supported by the other counsel, who appear for the respective accused, is threefold, viz.,

i) that A-4 and A-5 are not prevented from selling/registering the land and building separately in view of the decision in Park View Enterprises case (supra) and for that purpose, A-4 and A-5 are not precluded or prevented from filing multiple Form 37-I for the purpose of obtaining split NOC's;

ii) that the act of A-1 to A-3, being a quasi-judicial function, they are protected under the Judges Protection Act, 1985, insofar as any function/act discharged by them in the course of their official duties;

iii) that the respondent/CBI has no jurisdiction to investigate the case in exercise of powers conferred under the Delhi Special Police Establishment Act, as the State Government has not consented to their exercising

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powers and jurisdiction within the State insofar as the act performed by A-1 to A-3, as they are employees of Central Government and the evasion of stamp duty, complained of, falls within the purview of the State.

43. Before adverting to the contentions advanced by the learned counsel for the parties, as noted above, the relevant sections of the Income Tax Act, which is of relevance in deciding the issue and on which emphasis has been laid, are quoted hereunder for better clarity :-

"269UA. In this Chapter, unless the context otherwise requires-

(a) "agreement for transfer" means an agreement, whether registered under the Registration Act, 1908 (16 of 1908) or not, for the transfer of any immovable property ;

(b) "apparent consideration",—

(1) in relation to any immovable property in respect of which an agreement for transfer is made, being immovable property of the nature referred to in sub-clause (i) of clause (d), means,—

(i) if the immovable property is to be transferred by way of sale, the consideration for such transfer as specified in the agreement for transfer ;

* * * * * * * *

269UB. (1) The Central Government may, by order, publish in the Official Gazette,—

(a) constitute as many appropriate authorities, as it thinks fit, to perform the functions of an appropriate authority under this Chapter ; and

(b) define the local limits within which the appropriate authorities shall perform their functions under this Chapter.

(2) An appropriate authority shall consist of three persons, two of whom shall be members of the Indian Income-tax Service, Group A, holding the post of Commissioner of Income-tax or any equivalent or higher post, and one shall be a member of the Central Engineering Service, Group A, holding the post of Chief Engineer or any equivalent or higher post.

* * * * * * * *

Restrictions on transfer of immovable property.

269UC. (1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (4 of 1882), or in any other law for the time being in

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force, [no transfer of any immovable property in such area and of such value exceeding five lakh rupees, as may be prescribed], shall be effected except after an agreement for transfer is entered into between the person who intends transferring the immovable property (hereinafter referred to as the transferor) and the person to whom it is proposed to be transferred (hereinafter referred to as the transferee) in accordance with the provisions of sub-section (2) at least [four] months before the intended date of transfer.

(2) The agreement referred to in sub-section (1) shall be reduced to writing in the form of a statement by each of the parties to such transfer or by any of the parties to such transfer acting on behalf of himself and on behalf of the other parties.

(3) Every statement referred to in sub-section (2) shall,—

(i) be in the prescribed form ;

(ii) set forth such particulars as may be prescribed ; and

(iii) be verified in the prescribed manner, and shall be furnished to the appropriate authority in such manner and within such time as may be prescribed, by each of the parties to such transaction or by any of the parties to such transaction acting on behalf of himself and on behalf of the other parties.

(4) Where it is found that the statement referred to in sub-section (2) is defective, the appropriate authority may intimate the defect to the parties concerned and give them an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the appropriate authority may, in its discretion, allow and if the defect is not rectified within the said period of fifteen days, or as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Chapter, the statement shall be deemed never to have been furnished.

* * * * * * * *

Immovable property.

269UD. (1) 61[Subject to the provisions of sub-sections (1A) and (1B), the appropriate authority], after the receipt of the statement

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under subsection (3) of section 269UC in respect of any immovable property, may, notwithstanding anything contained in any other law or any instrument or any agreement for the time being in force, make an order for the purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration :

* * * * * * * *

Powers of the appropriate authority.

269UI. The appropriate authority shall have, for the purposes of this Chapter, all the powers that a 75[Chief Commissioner or Commissioner] of Income-tax has for the purposes of this Act under section 131.

Rectification of mistakes.

269UJ. With a view to rectifying any mistake apparent from the record, the appropriate authority may amend any order made by it under this Chapter, either on its own motion or on the mistake being brought to its notice by any person affected by the order :

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person a reasonable opportunity of being heard :

Provided further that no amendment shall be made under this section after the expiry of six months from the end of the month in which the order sought to be amended was made.

* * * * * * * *

Restrictions on registration, etc., of documents in respect of transfer of immovable property.

269UL. (1) Notwithstanding anything contained in any other law for the time being in force, no registering officer appointed under the Registration Act, 1908 (16 of 1908), shall register any document which purports to transfer immovable property exceeding the value prescribed under section 269UC unless a certificate from the appropriate authority that it has no objection to the transfer of such property for an amount equal to the apparent consideration therefor as stated in the agreement for transfer of the immovable property in respect of which it has received a statement under sub-section (3) of section 269UC, is furnished along with such document.

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Order of appropriate authority to be final and conclusive.

269UN. Save as otherwise provided in this Chapter, any order made under sub-section (1) of section 269UD or any order made under sub-section (2) of section 269UF shall be final and conclusive and shall not be called in question in any proceeding under this Act or under any other law for the time being in force."

Filing of Multiple Form 37-I & Registering of Land & Building separately :-

44. It is the contention of the learned counsel for the accused that the IT Act does not prevent filing of multiple Form 37-I and, therefore, the act of A-4 and A-5 in filing the 2nd Form 37-I for the purpose of issuance of split NOC by the Appropriate Authority, consisting of A-1 to A-3, cannot be termed to be illegal or perverse or with an intent to defraud the exchequer.

45. There is no embargo on registering of land and building separately during the period in question, as held in Park View Enterprises case (supra) and this Court is in respectful agreement with the same. However, it is the case of the prosecution that the building has been fully constructed on the land sought to be sold and, therefore, in that backdrop, it is impermissible for A-4 to sell the land alone to A-5 and at the same time, give away the building in favour of A-5 for consideration as shown in the Form 37-I.

46. It is the contention on behalf of the accused that res judicata doesn't get attracted insofar as filing of multiple Form 37-I. In this context, reliance was placed on the decision in Ansal Properties and Industries Ltd. v. Appropriate Authority (1998 SCC OnLine Del 963), wherein, the Delhi High Court held as under:-

"43. There is no res judicata so far as filing of Form No. 37-1 is concerned. One form having been rejected, another could be filed so long as the parties are agreeable with each other and are prepared to honour the agreement. If a new agreement could be entered into by the parties and filed before the appropriate authority within 15 days from the date of entering into thereof why not permit an agreement already entered into being filed, though beyond 15 days."

(Emphasis Supplied)

47. Reliance was placed on the abovesaid decision by the accused to drive home the point that the subsequent Form 37-I,

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which is identical in all aspects, be it the amount of sale consideration or the extent of area sought to be sold or the property to be sold, but for giving split figures insofar as the value of the land and building separately is concerned and request being made for issuance of split NOC's so as to register the land and building separately and, therefore, no criminality can be attached to the said Form 37-I and in turn to fasten the criminality on A-1 to A-5 by an act of collusion.

48. There is no dispute with regard to the sale consideration or the extent of area sought to be sold or the property to be sold, but the entire gamut of the prosecution case lies in the way the 1st Form 37-I and the 2nd Form 37-I are couched, more especially, the particulars of the property sought to be transferred, which is reflected in Sl. Nos.3 & 5 of form 37-I. In the earlier Form 37-I, submitted on 21st Oct., 1999, in Sl. Nos.3 and 5 it is specified as under:-

> "Sl. No.3
> 25710 sq. ft. of constructed area (B+G+13 floors) 10 grounds and 2275 sq. ft. as per Annexure enclosed separately.
> A/c & Electricity power generating sets Rs.1.75 Crores."
>
> "Sl. No.5
>
| | | |
|---|---|---|
| Land | - | Rs.11,00,00,000.00 |
| Constructed Area | - | Rs.16,16,00,000.00 |
| | | Rs.27,16,00,000.00 |
| Less : Payable to Babu Vergheese | - | Rs. 1,14,52,673.00 |
| | | Rs.26,01,47,237.00 |

(Emphasis supplied)

49. The above details, which is reflected in the 1st Form 37-I application, dated 21.10.1999, reveals that the land along with constructed area, which are valued as above, are being transferred by A-4 to A-5. Further, while issuing NOC with respect to the earlier Form 37-I, the then Appropriate Authority has given detailed reasons for issuance of NOC. More particularly, it is to be noted that reasons for issue of NOC has been annexed along with the NOC granted, which is available in the typed set of documents, in which at para-2 therein, it is found as under :-

> "2. Members inspected the property on 11.1.2000. The subject property was found to be a very special building having 14 storeyes with very high specifications like glazed curtain

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walls, granite flooring, high capacity capsule lift, centralised AC, fire alarm system, wet riser system, sprinkler system, etc. ....."

50. Therefore, it is unambiguously clear that the construction has already been completed on the property, which is sought to be sold, which is also further evident from the fact that the value of the A/c and Electricity Power generating sets have been valued. Therefore, the total value has been quoted by A-4 and A-5 towards the sale and purchase of the above property by way of transfer. The then Appropriate Authority, on a careful scrutiny of the documents and on personal inspection of the property and upon obtaining valuation report, which has been spoken to in the statement of V.Udaya Bhaskar, Inspector of Income Tax, has thought it fit to give a composite NOC, dated 8.3.00, for the total value of Rs.26,01,47,327/-, which is the apparent consideration as stated in the agreement for transfer of the immovable property. Further, detailed reasons are annexed along with the NOC issued by the Appropriate Authority.

51. Subsequent to the issue of the 1st NOC on 8.3.00, two applications were filed seeking amendment of the said NOC by A-4, which have been rejected by Member-I and Member-II and, accordingly, the request for amendment as sought for by A-4 was rejected stating that no modification is possible in the said NOC.

52. A-4 and A-5, thereafter, on the reconstitution of the Appropriate Authority with its new members, viz., A-1 and A-2, along with the already existing member, viz., A-3, filed the revised Form 37-I, requesting for reissuance of split NOC, for land and building cost separately on 20.11.2001. In the said Form 37-I, in Sl. Nos.3 & 5, it is specified as under :-

"Sl. No.3
25710 sq. ft. undivided share of land
Same as above
25710 sq.ft. Undivided share of land"

"Sl. No.5

Undivided Share of Land - Rs.11,00,00,000
Construction Cost - Rs.15,01,47,327"

53. On a careful analysis of the particulars in the earlier Form 37-I and the subsequent Form 37-I, which are quoted above, it is seen that the cost of A/c and Electricity Power Generation sets, as also the value of the piece of property with Babu Vargheese, which found place in the earlier Form 37-I are

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conspicuously absent in the subsequent/revised Form 37-I. Similarly, while in the earlier Form 37-I, at Sl. No.5, an amount of Rs.16,16,00,000/- has been shown as the value towards the constructed area, however, in the subsequent/revised Form 37-I, an amount of Rs.15,01,47,327/- has been shown as the construction cost. Further, while in the earlier Form 37-I, it is stated that the building has been constructed and, therefore, it is shown as constructed area, curiously in the subsequent Form 37-I, it is mentioned as cost of construction, which is ambiguous, not revealing as to whether construction has already been put up or the area is yet to be constructed. The 2nd Form 37-I pursuant to which the subsequent NOC has been issued on 20.11.01 is not clear as to whether the cost of construction is towards the building to be put up or the building already put up.

54. Though it is the contention of the accused that there is no ambiguity in the amounts reflected in the earlier Form 37-I and the subsequent Form 37-I, however, the details culled out from the two Form 37-I clearly reveal a slightly different picture and definitely the same is a triable issue rather than adjudicating on the same at this point of time. There is definitely a prima facie discrepancy in the Form 37-I, which cannot be gone into at the stage of discharge. The difference in the amounts as also the wordings relating to constructed area and construction cost are definitely distorted, which has definitely weighed in the mind of the trial court raising a strong suspicion and in coming to a conclusion that there is sufficient ground for proceeding against the accused.

55. Though it is the contention of the respective learned counsel for the accused that there is no res judicata so far as filing of Form 37-I is concerned by placing reliance on the decision in Ansal Properties case (supra), however, it has to be pointed out that the Delhi High Court, in the said decision, has also given a categorical finding that "One form having been rejected, another could be filed so long as the parties are agreeable with each other and are prepared to honour the agreement".

56. The above decision was cited by the learned senior counsel, who at the same breath cited the decision in Tanvi Trading case (supra). However, in the said decision, the scope and ambit of Section 269-UD of the IT Act was analysed, and the Delhi High Court, in the said decision, held as under :-

> "11. As we read section 269UD, it is clear that the only right which it confers on the appropriate authority is to enable it to make an order for purchase of the immovable property at an amount equal to the amount of the apparent consideration. Furthermore, the first proviso

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stipulates the time within which such an order can be passed. Section 269UD, therefore, contains the pre-emptive right of purchase by the Central Government. The said provision does not give jurisdiction to the appropriate authority to adjudicate upon the legality of the transaction which is proposed to be entered into by the applicant. It is to be remembered that Chapter XX-C was incorporated in an effort to curb sales of immovable properties for apparent consideration which would be less than the actual consideration. In other words, the effort was to see that immovable property is not transferred by taking sale consideration in black. Section 269UD was not concerned with the validity of the sale. If there was any impediment or defect in the title of the transferor or if there was any other law which was violated by such a sale, the same was to be of no consideration to the appropriate authority except that it could take all such factors into consideration while making up its mind whether to exercise the pre-emptive right of purchase or not. The appropriate authority cannot, on grounds of alleged infringement of law, exercise its right of purchase and, at the same time, refuse to grant the certificate sought by the seller.

12. An authority constituted under the Act can exercise only those powers which are, expressly or by necessary implication, conferred on it. The only power which is conferred on the appropriate authority under section 269UD is the power to decide whether to purchase the property or not. Of course, in exercise of this power, the authority will have other implied powers which will make such a power effective. The authority would be entitled to see material and documents like documents of title, agreements, etc., in order to satisfy itself whether the apparent consideration is proper or not in order to come to the conclusion whether to purchase the property or not. The investigation which will be undertaken by the appropriate authority is only with a view to determine whether the pre-emptive right of purchase should be exercised or not.

13. If the appropriate authority has reservations or doubts with regard to the legality of the proposed sale, it is open to the

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authority not to exercise its right to purchase. Section 269UD, however, does not contemplate the rejection of any statement by the appropriate authority. ....."

(Emphasis Supplied)

57. From the above, it is evident that if the Appropriate Authority does not exercise its pre-emptive right of purchase, the only other order that can be passed is an order granting NOC. This Court is agreement with the proposition adumbrated above as Section 269-UD, in unceremonious term states that the only course open to the Appropriate Authority, if not exercising the pre-emptive right of purchase, is to grant NOC. However, the issue in the present case is not non-grant of NOC, but grant of NOC when a NOC is already subsisting.

58. In the present case, it is not the case of the A-4 and A-5, nor it is the case of A-1 to A-3 that the earlier Form 37-I was rejected, which prompted A-4 and A-5 to file a fresh Form 37-I. But based on the earlier Form 37-I, NOC was granted by way of a detailed and reasoned order and the amendments sought for to the said NOC alone was rejected and, therefore, for all purposes, the earlier NOC granted was still subsisting on the date when the subsequent Form 37-I was filed. This is even clear from the 2nd NOC issued on 20.11.2001, wherein the following noting is seen, handwritten :-

"The earlier NOC issued on 8.3.2000 vide our file No.10 (195)/99-2000 is hereby cancelled."

59. From the above, it is categorically clear that on the date when the subsequent Form 37-I was submitted, i.e., on 20.11.01, an earlier NOC, dated 8.3.00, was subsisting, which had not been cancelled in a manner known to law, nor was it challenged before any judicial forum. Further, only on issuing a fresh NOC, the earlier NOC dated 8.3.00 was cancelled. Further, while the schedule of property to be transferred in the earlier Form 37-I is annexed with detailed reasons for issuance of NOC, however, no such detailed reasoning for giving the split NOC, as sought for by A-4 and A-5, has been given in the subsequent NOC and no reason for cancelling the earlier NOC and reissuing the fresh NOC has been given. Therefore, on a prima facie consideration of the above materials, the trial court has thought it fit that there are sufficient grounds to proceed against the accused and, therefore, had rejected their petition for discharge, which, in the considered opinion of this Court, cannot be found fault with. Further, at the questioning of this Court, even the learned senior counsel fairly submitted that leaving aside these issues, there are issues, which are triable issues, however, subject to this Court deciding to sustain the orders passed by the trial court. In the above backdrop, as

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there are issues that emanate from this case, which are triable in nature, this Court is of the considered view that once a prima facie case has been made out and that there are sufficient grounds for proceeding against the accused, it would not be prudent on the part of this Court to shut the door on the face of the prosecution by discharging the petitioners from the rigor of prosecution and facing the trial.

Function of Appropriate Authority – Quasi Judicial in Nature :-

60. While it is the contention of the learned counsel for the petitioners that the function of the Appropriate Authority is quasi-judicial in nature, it is countered by the learned Special Public Prosecutor stating that the act of the Appropriate Authority is merely an administrative act and that grant of NOC would not amount to being a judgment passed and, therefore, the protection under the Judges Protection Act would not be available to the members of the Appropriate Authority.

61. To address whether the members of the Appropriate Authority would stand covered by the provisions of the Judges (Protection) Act, for the duties discharged by them, which is contended to be quasi-judicial in nature, it would to be relevant to have a bird's eye view of Section 2 and 3 of the said Act, which is quoted hereunder, for clarity :-

> "2. Definition. - In this Act, "Judge" means not only every person who is officially designated as a Judge, but also every person-
>
> (a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or
>
> (b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in clause (a).
>
> 3. Additional protection to Judges. - (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.
>
> (2) Nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in

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force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge."

62. Under Section 269-UC, the Central Government is empowered to constitute the Appropriate Authorities defining their local limits within which they can perform. Further the Appointing Authorities shall consists of three persons, two of whom shall be members of the Indian Income-Tax Service Group A holding the post of Commissioner of Income-Tax or any equivalent or higher post and one shall be a member of the Central Engineering Service, Group A, holding the post of Chief Engineer or any equivalent or higher post. Section 269-UI defines the powers of the Appropriate Authority, which will be as that of a Commissioner of Income Tax. The main function of the Appropriate Authority is to find out whether the value of the immovable property, where NOC is applied for, is below 15% of the market value so as to exercise the option of pre-emptive purchase. The exercise carried out by the authority is more in the nature of ascertainment rather than in the nature of dispute resolving mechanism. Only where the function of the appropriate authority is in the nature of dispute resolving mechanism, could the act of the appropriate authority be termed as quasi judicial in nature. For example, under the Patta Passbook Act, the Tahsildar or the District Revenue Officer, as the case may be, exercise powers, quasi-judicial in nature, for granting or rejecting issuance of patta in respect of private lands, on which they exercise their quasi-judicial function. Similarly, under the Stamp Act, the District Collector (Stamps), exercises judicial power for valuation of the instruments as against which appeal lies before the appropriate authority.

63. Though it is contented by the learned counsel for the accused/Appropriate Authority that the issue of NOC is quasi-judicial in nature, however, the said contention is liable to be rejected for the very simple reason that the examples quoted above, show that the authorities therein are vested with the power and can either grant or reject the request of the parties; however, in the case of the Appropriate Authority, in case the Appropriate Authority does not think it fit to exercise their pre-emptive right of purchase, the only course open to the Appropriate Authority is to grant NOC and, as pointed out by the learned counsel for the petitioners themselves and there is no scope for rejection. The act of the Appropriate Authority is rather one-way and not two way for it to be treated as a quasi-judicial function. Further, even as per Section 269-UN of the IT Act, any order made under sub-section (1) of Section 269-UD and sub-section (2) of Section 269-UF shall be final and conclusive and shall not be called in question in any proceeding

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under this Act or under any other law for the time being in force. Therefore, the right of appeal as against the act/decision of the Appropriate Authority does not exist and, therefore, in the absence of the same, the same could at best be termed as an administrative function, which could be put to test on the judicial side and could by no stretch of imagination be called as quasi-judicial in nature.

64. Therefore, the Appropriate Authority cannot claim protection for their act u/s 2 of the Judges (Protection) Act and more so, sub-section (2) to Section 3 of the Judges (Protection) Act, will come to the aid of the prosecution, as power is vested with the Central Government or the State Government to take such action against any person, be it civil, criminal or departmental proceedings or otherwise. Further, the members of the Appropriate Authority, though act in unison, however, their act is in the nature of "persona designata" and as such they act as private person devoid of capacity as a Judge. Had the Legislature/Parliament wanted the members of the Appropriate Authority to act as Judges, they would have empowered the Appropriate Authority with the powers of the Court/Tribunal. However, such power has not been granted to the Appropriate Authority/(ies). Once the Appropriate Authority has not been clothed with such powers as that of the Court, they cannot claim protection under the Judges (Protection) Act for the act performed by them in the course of their normal duties. Therefore, in such a scenario, the Central Government, exercising such power as envisaged u/s 3 (2) of the Judges (Protection) Act, has granted sanction of prosecution to prosecute A-1 to A-3, which cannot be found fault with. Therefore, the claim of the petitioners that they would get the immunity attached with Sections 2 and 3 (1) of the Judges (Protection) Act, for any act performed by them cannot be countenanced.

Jurisdiction of CBI to investigate the matter :-

65. The last of the contention advanced on behalf of the petitioners is that the respondent/CBI does not have jurisdiction to investigate the matter, as consent of the State Government has not been given for the respondent to exercise the powers and jurisdiction of the Delhi Special Police Establishment. Reliance placed on the decision of the Apex Court in Balakrishna Reddy's case (supra) adverts mainly to Section 5 & 6 of the Delhi Special Police Establishment Act.

> **"66. Therefore, before adverting to the legality of the prosecution initiated by the respondent, it would be useful to refer to Sections 5 and 6 of the Delhi Special Police Establishment Act, which is quoted hereunder :-**

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"5. Extension of powers and jurisdiction of special police establishment to other areas.—(1) The Central Government may by order extend to any area (including Railway areas) [in [a State, not being a Union territory]] the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under section 3.

(2) When by an order under sub-section (1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.

(3) Where any such order under sub-section (1) is made relation to any area, then, without prejudice prejudice to the provisions of sub-section (2), any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.

6. Consent of State Government to exercise of powers and jurisdiction.—Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in [a State, not being a Union territory or railway area], without the consent of the Government of that State.]"

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**67. From the above provision of law, it is clear that the Central Government may extend the powers and jurisdiction of the Special Police Establishment to other areas, subject only to the consent of the respective State Government with reference to the areas under the jurisdiction and control of the State. Therefore, it is evident that subject to consent of the Government of the State, the Special Police Establishment could exercise powers and jurisdiction over the area and not otherwise.**

**68. A-1 to A-3, no doubt, are employees of the Central Government, however, it is the contention of the learned counsel for the petitioners that the jurisdiction falling within the State of Tamil Nadu, A-1 to A-3 being officers of Central Government establishment, without the consent of the State Government, the respondent cannot exercise powers and jurisdiction and conduct the investigation. Learned counsel for the petitioners laid much emphasis on the communication dated 22nd July, 1992, in and by which consent is said to have been given for the members of the Special Police Establishment to exercise power and jurisdiction in the State. Particular reference is drawn to the last paragraph of the said letter, wherein the list of the kinds of offences which are generally taken up for investigation by the Central Bureau of Investigation is said to have been indicated in the list annexed to the letter addressed by the Central Government in D.O. Letter No.321/5/72-AVD (III) dated 5.6.1972, for which the State Government has given its consent. However, it is submitted the said list having not been placed by the respondent, either before the trial court or before this Court, in the absence of the same, adverse inference alone has to be drawn to the effect that the State Government has not given consent for the offences with which the petitioners are charged."**

69. At first blush, the above argument of the learned counsel for the petitioners look attractive, but on a critical examination of the entire materials available on record, it transpires that A-6 (since deceased) was an employee of the Registration Department against whom the State Government has sanctioned prosecution, which is not in dispute. Similarly, A-1 to A-3 are employees of the Central Government and sanction for their prosecution has been given by the Central Government. Further, Section 6A empowers the Special Police Establishment to conduct inquiry or investigation into any offence alleged to have been committed under the PC Act with the approval of the

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Central Government. A conjoint reading of Section 6 and 6A coupled with the sanction for prosecution given in respect of A-6 would unequivocally go to show that the State Government has given consent for the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in the State of Tamil Nadu insofar as offences related to the case on hand. The petitioners have to succeed or fail based on their case and cannot prick holes in the case of the prosecution to further their cause, more so at the stage of discharge. It is not the case of the petitioners that consent has not been given by the State Government to the Special Police Establishment to exercise powers and jurisdiction; the contention of the petitioners is only to the limited extent that the list of the kinds of offences, which have been detailed by the Central Government on which investigation would be taken up by the Central Government for which consent has been given by the State Government has not been placed either before the court below or before this Court and, therefore, the offences for which the petitioners are charged does not find place in the list and an adverse inference has to be drawn, is too extravagant an argument to be accepted. If such an argument is accepted, that too at the stage of discharge in a case like this, the law enforcing agency would be left in a quandary and would not be in a position to proceed forward in any criminal investigation, which would be to the detriment of the law enforcing agency and not what the Legislature/Parliament had in mind. Therefore, the above contention addressed on behalf of the petitioners definitely deserve to be negatived.

70. Insofar as the ancillary contention raised by the learned senior counsel relating to the absence of saving clause in Chapter XX-C insofar as prosecution which are taken up beyond the period of operation of Chapter XX-C is concerned, it is to be pointed out that Chapter XX-C has not been repealed. Further, Section 269-UP mandates that Chapter XX-C shall not apply to, or in relation to, the transfer of any immovable property effected on or after the 1st day of July, 2002. The transaction relating to the immovable property being pre July, 2002, the provisions of Chapter XX-C would definitely not stand attracted and there being no repealment of Chapter XX-C, the relevance of saving clause does not arise.

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71. Though very many contentions, apart from the above pivotal contentions, have been addressed by the learned counsel for the petitioners, however, at the risk of repetition, it is to be pointed out that on a specific query as to whether a negative verdict against the petitioners would render their case precarious, it was submitted that a negative decision as against the petitioners would not render the case against the

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petitioners precarious, as there are many triable issues in the case. In such a backdrop, this Court is not inclined to venture into all the other gray areas, as any observation that may made by this Court would have a telling impact on the outcome of the trial. Therefore, the contentions raised herein as also the other issues, which are conceivable, are left open for the parties to agitate before the trial court at the time of trial.

72. For the reasonings aforesaid, these criminal revisions fail and the same are dismissed. However, as seen from the record, the final report has been laid before the trial court as early as on 24.9.06 and the same has been taken on file. Almost a decade and a half has passed since the laying of the final report. It is also informed that the petitioners, viz., A-1 to A-3 are more than 70 years old and, therefore, they should be relieved from the clutches of the trial by fast tracking the trial proceedings. In such view of the matter, this Court directs that the trial court shall take up the case on a day to-day basis and complete the same within a period of six months from the date of receipt of a copy of this order, without in any way being influenced by the order passed by this Court above or any of the observations made in the above order. The petitioners and respondent are directed to co-operate with the trial court for the early completion of trial. Further, taking into consideration the fact that petitioners, viz., A-1 to A-3 are aged more than 70 years, their appearance before the trial court is dispensed with except for their receiving the copy of the proceedings u/s 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of A-1 to A-3 is necessary, the trial court, at its wisdom, shall direct their appearance, however, keeping in mind their age and the necessity for their appearance. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS VIII)
(08/01/2020)

***Deleted and Substituted order as per order of this Court dt.28/1/2020 made hearing.**
**//True Copy//**
**Assistant Registrar(CS-IX)**
**29.01.2020**

//True Copy//

Sub Assistant Registrar

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GLN

To

1. The XIV Additional Judge,
   CBI Cases, Chennai.

**Corrected order to be sent for the order already despatched on 08/01/2020**

2. The Special Public Prosecutor,
   CBI Cases
   High Court, Madras.

3.The Additional Superintendent of Police,
  CBI, ACB, Chennai.

+2cc to Mr.S.Ramachandran, Advocate Sr.105524
+1cc to Mr.B.Shuruthan, Advocate Sr.105525
+2cc to Mr.E.Lakshmi, Advocate Sr.106672

CRL. R.C. NOS. 222, 373, 247 & 251 OF 2019

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srg 08/01/2020
CB(03/02/2020)

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