

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.943 OF 2008

State through CBI New Delhi .. Appellant

Versus

Jitender Kumar Singh .. Respondent

WITH

CRIMINAL APPEAL NO.161 OF 2011**J U D G M E N T****K. S. RADHAKRISHNAN, J.**

1. We are, in these cases, concerned with the interpretation of various sections that appear in Chapter II read with Chapter III of the Prevention of Corruption Act, 1988 (for short "the PC Act"), especially Sections 3, 4, 5 and other related provisions dealing with offences and penalties appearing in Chapter III of the PC Act.

2. We are, in Criminal Appeal No. 943 of 2008, concerned with the question whether the Special Judge, after framing charges against a Public Servant under 13(2) read with Section 13(1)(b) falling under Section 3(1) of the PC Act and against private persons for offences under Sections 120-B, 420, 467, 468, 471 IPC can go ahead with the trial of the case against the private persons for non-PC offences, even after the death of the sole public servant. In other words, the question is whether, on the death of the sole public servant, the Special Judge will cease to have jurisdiction to continue with the trial against the private persons for non-PC offences. Further question raised is that, assuming that the Special Judge has jurisdiction under sub-section (3) of Section 4 of the PC Act to proceed against the private persons, is the Special Judge duty bound to try any non-PC offence, other than the offences specified under Section 3 of the PC Act against the accused persons charged at the same trial.

3. In Criminal Appeal No. 161 of 2011, we are concerned with the question as to whether the Special

Judge has jurisdiction under Section 4(3) of the PC Act to try non-PC offences against private persons when no charges have been framed against public servants for trying a case for offences under Section 3(1) of the PC Act, since they died before framing of charges under the PC Act or IPC.

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

5. Delhi High Court seems to have taken the view that when public servants and non-public servants are arrayed as co-accused and some offences are under the PC Act coupled with other offences under IPC, on death of a public servant, the offences under the PC Act cannot be proceeded with and the trial Court has to modify and/or alter and/or amend the charges. Bombay High

Court has taken the view that once the jurisdiction is vested on a Special Judge, the same cannot be divested on the death of a public servant and that if a private person has abetted any offences punishable under the PC Act, he can be tried even without the public servant, in view of the separate charge levelled against such private person by the Special Judge.

6. We may first deal with the facts in Criminal Appeal No. 943 of 2008. The CBI, New Delhi registered a case No. RCSIG 2000/E0001 on 16.5.2000 against one P. K. Samal (A-1), Chief Manager SBI, Jaipur Road, J. K. Singh (A-2), Director M/s Mideast Integrated Steels Ltd. (MISL), New Delhi, Rita Singh (A-3), Director M/s MISL, Deepak Singh (A-4) and Proprietor Kesoram Refractory, New Delhi, under Section 120B read with Sections 420, 467, 471 IPC and Section 13(2) read with Section 13(1)(d) of the PC Act and substantive offences under Sections 420, 467, 468 and 471 IPC and Section 13(2) read with Section 13(1)(d) of the PC Act alleging that A-1, during 1996-97, was a party to a criminal conspiracy with A-2, A-3, A-4 and others with the object of cheating IDBI,

Mumbai and in pursuance thereof, A-1 abused his official position to cause undue pecuniary advantage to the accused persons A-2 and A-3 and corresponding loss to IDBI, to the tune of Rs.3,52,63,550/- by negotiating forged /fictitious invoices purportedly of M/s. Kesoram Refractories, a B.K. Birla Group Company, Calcutta, against L.Cs opened by SBI, Jaipur Road.

7. CBI, after completing the investigation, filed charge-sheet on 1.11.2001 before the Special Judge, New Delhi and the Special Judge, on 25.3.2003, after hearing the prosecution as well as the defence counsel, framed charges against the accused persons under Section 120B read with Sections 467, 471 and 420 IPC and also under Sections 13(1)(d) and 13(2) of the PC Act and substantive offences against the accused persons under Sections 420, 467, 471 IPC and also substantive offences under Sections 13(1)(d) and 13(2) of the PC Act against A-1. All the accused persons pleaded not guilty and claimed trial.

8. The Special Judge, later, posted the case for prosecution evidence on 10.4.2003 and, on that day, two witnesses were present, but the case was adjourned. Meanwhile, on 20.6.2003, the sole public servant A-1 died. A-3 then filed Criminal Revision No. 550 of 2003 before the High Court of Delhi on 22.7.2003 challenging the order framing the charges against him. The High Court, on 1.8.2003, directed the trial Court to record only the examination-in-chief of the witnesses. Accordingly, the examination-in-chief of 8 prosecution witnesses was recorded on different days. On 28.4.2004, A-2 filed an application before the Special Judge for dropping the charges in view of the death of A-1, the sole public servant. On 12.5.2004, A-2 filed an application before the High Court as Criminal M.C. No. 1395/2004 seeking stay of further proceedings before the trial Court, till charges are amended. The High Court, on 14.5.2004, directed the trial Court to dispose of the application filed by A-2 for modification, amendment or alteration of charges on account of death of A-1 and further directed

if the Court feels it necessary, it may add, alter or amend the charges and proceed in accordance with law.

9. CBI, however, filed objection to the above application before the Special Judge on 20.5.2004. A-2, on 12.7.2005, filed Criminal Revision No. 535 of 2005 before the High Court for calling of the case pending before the Special Judge, so as to consider the propriety of not passing any order on the application for dropping the charges, despite the directions issued by the High Court. He also prayed for setting aside the charges in view of the death of the sole public servant. CBI questioned the maintainability of the revision and also pointed out that there is no statutory provision vitiating the jurisdiction of the Special Judge on death of the public servant. The High Court, however, placing reliance on its earlier judgement in **Kartongen Kemi Ochforvaltning AB v. State through CBI** (2004) 1 JCC 218 (Bofors case) held that on the death of a public servant, the offences under the PC Act cannot be proceeded with and directed to modify and alter and/or amend the charges in view of the death of A-1, the

legality of which is under challenge in Criminal Appeal No. 943 of 2008.

10. We may now examine the facts in Criminal Appeal No. 161 of 2011. CBI (Banks Securities & Fraud Cell), Mumbai registered an FIR on 2.7.1996 which discloses that accused no. 1, the then Chairman and Managing Director of the Bank of Maharashtra, Pune, who was working as Deputy General Manager of Bank of Maharashtra along with accused nos. 9 and 10, the employees of the Bank of Maharashtra, entered into a criminal conspiracy with an intent to cheat the bank, with the appellant (accused no. 2) and accused Nos. 3 and 5, who were working as the Managing Director, General Manager of M/s Orson Electronics Limited respectively. It was also alleged in the FIR that, during 1986-88, A-2 and other accused persons entered into a criminal conspiracy with the officers of the Bank of Maharashtra and, in pursuance to the criminal conspiracy, obtained huge credit facilities to the tune of Rs.20 crore in favour of M/s Orson Electronics Limited and M/s Nihon Electronics Limited, of which A-2 was the

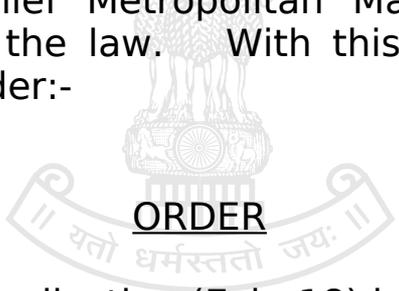
Managing Director/Director, knowing very well that both the companies were having very low capital and were new. It was also alleged in the FIR that those funds were not utilized for the purpose for which the same were obtained from the bank and were siphoned off through M/s Orson Electronics Limited and other fictitious firms. Consequently, accused persons failed to repay the funds of the bank, thereby the bank was cheated to the tune of Rs.20.64 crores. It was also alleged in the FIR that A-1 had abused his position as public servant and granted favour to A-2 to A-8 and thereby caused wrongful losses to the bank.

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

12. Accused nos. 9 and 10, though named in the charge-sheet, could not be sent for trial since they died before the charge-sheet came to be filed on 14.9.2001. On 18.2.2005, A-1, the sole public servant also expired. A-2, the appellant herein, then preferred an application before the Special Judge for sending the case to the Metropolitan Magistrate at Bombay for conducting the trial for offences under IPC, as the offence under the PC Act was not attracted due to the death of the public servant. It was pointed out that, in the charge-sheet, two public servants were joined as accused persons, but only one of them was alive when the charge-sheet was filed. Further, it was stated that when the charges were sought to be framed, no public servant was alive, hence, no charges under the PC Act could be framed. In the absence of any offence under the PC Act, the Special Judge could not have tried the offences levelled against the accused persons under the IPC. The application was, however, opposed by CBI stating that even though the sole public servant had died, the offence levelled against the accused persons could be tried by the Special Judge.

13. The Special Judge, after hearing the parties, passed the following order:

“9. On going through the above ratios, it can be said that the existence of public servant for facing trial before the Special Court is must and in his absence, private person cannot be tried by Special Court. In present case, the sole public servant died during the pendency of this case. The charge is not framed. The accused Nos. 2 to 8 are private persons facing trial for the offences punishable under Section 409 r/w 120-B of IPC. The said offences are triable by the Court of Chief Metropolitan Magistrate. Therefore, the case is required to be sent to Court of Chief Metropolitan Magistrate for trial as per the law. With this, I pass the following order:-



ORDER

Misc. Application (Exh. 18) is allowed.

Registrar (S) is directed to send case papers of Spl. Case No.88 of 2001 to Chief Metropolitan Magistrate for trial of accused according to law within period of four weeks from the date of this order.

Misc. Application (Exh.18) stands disposed of.

Sd/- 5.2.09
(S.P. Tavade)
Special Judge for CBI Cases
Greater Mumbai.”

14. CBI, aggrieved by the said order, preferred Criminal Revision Application No. 389/2009 before the Bombay High Court. The High Court took the view that the jurisdiction conferred on the Special Judge is not divested on the death of an accused. The High Court held that, upon death, the case against that public servant alone abates and the rest of them can be proceeded against by the Special Judge, since the Court, once vested with the jurisdiction, cannot be divested of it on the death of a public servant. Consequently, the order passed by the Special Judge was set aside and the Special Judge, CBI, Bombay was directed to continue with the trial of the case. Aggrieved by the same, Criminal Appeal No. 161 of 2011 has been preferred by A-2.

15. Shri P.P. Malhotra, learned Additional Solicitor General appearing for CBI in Criminal Appeal No. 943 of 2008, referred to Sections 3(1) and 4(1) of the PC Act and submitted that irrespective of whether the offence mentioned in Section 3(1) was committed by a public servant or a private person, individually or jointly, trial

could be conducted only by the Special Judge who is conferred with the jurisdiction by the Central Government or the State Government, as the case may be, under the PC Act. Shri Malhotra submitted that on the death of a public servant, the jurisdiction once vested on the Special Judge cannot be divested. Further, it was also pointed out that once the public servant dies, the charge against him alone would abate, but the jurisdiction of the Court would not be divested. It was stated that the direction issued by the High Court was contrary to the statutory provisions and settled principles of law and is liable to be set aside.

16. Shri K. Radhakrishnan, learned senior counsel appearing for the CBI in Criminal Appeal no. 161 of 2011, highlighted the objects and reasons of the PC Act and submitted that once the jurisdiction to try the offence under the PC Act, as well as the offence under IPC, has been conferred on a Special Judge, it cannot be divested by the act of parties, even on the death of a public servant.

17. Shri V. Giri, learned senior counsel and amicus curiae, submitted that once jurisdiction is conferred on a Special Judge, it cannot be divested by the subsequent events and on death of the public servant only the charge against him will abate, but the jurisdiction of the Special Judge will not be divested.

18. Shri Kawal Nain, learned counsel appearing for the respondents in Criminal Appeal No. 943 of 2008, also traced the legislative history of the PC Act as well as the jurisdiction of the ordinary Criminal Court under the Code, with specific reference to Section 3 of the PC Act read with Section 13(1)(d)(i)(ii) of the PC Act and Section 120B of the IPC. Learned counsel pointed out that the charge against public servant under Section 13(1)(d)(i)(ii) has abated on his death, consequently, it would not be possible for the Special Judge to try any offence as against the respondents, since both are intrinsically interlinked. Learned counsel pointed out that to establish an offence of conspiracy, there must be two or more persons as stated in Section 120A IPC.

19. Shri R. Basant, learned senior counsel appearing for the appellant in Criminal Appeal No. 161 of 2011, has taken the stand that the Special Judge has no jurisdiction under Section 4(3) of the PC Act to try the offences punishable under Section 409 read with Section 120B IPC against the appellant, since there is no public servant in the array of accused persons. Learned senior counsel submitted, assuming that the Special Judge has jurisdiction under Section 4(3) of the PC Act, still the Special Judge has the discretion to decide as to whether he should try any offence, other than the offence specified in Section 3 of the PC Act. It was pointed out that the jurisdiction of the Special Judge to try offences specified under Sections 3(a) and (b) is not only in respect of offences punishable under the PC Act, but also non-PC offences in view of Section 4(3) of the PC Act, which is only an enabling provision. Further, it was also pointed out that when exclusive jurisdiction is conferred on the Special Judge, while trying offences under Section 3(1)(a) and (b) against public servant as well as the private persons, the discretion is also

conferred on the Special Judge under Section 4(3) to try non-PC offences as well against private persons. On the basis of the above legal premises, learned senior counsel pointed out that, in the instant case, since no charges have been framed against the public servant under Section 3(1) of the PC Act and that the public servant is no more, the discretion exercised by the Special Judge under Section 4(3) of the PC Act should not have been interfered with by the High Court.

20. We may, before examining the rival contentions raised by the parties, deal with the objects and reasons for enacting the PC Act. The Indian Penal Code has provided for punishment for the offence of bribery and corruption even against the public servants. Parliament, in its wisdom, noticed that the Penal Code was not adequate to meet the exigencies of time and a need was felt to introduce a special legislation with a view to eradicate the evil of bribery and corruption from the society. Consequently, the Prevention of Corruption Act, 1947 was enacted, which was amended in the year 1964, based on the recommendations of the Santhanam

Committee. Parliament still felt that the anti-corruption laws should be made more effective, by widening their coverage and enhancing penalties and to expedite the proceedings and hence the 1988 Act was enacted.

21. Chapter II of the PC Act deals with the appointment of Special Judges and Chapter III deals with the offences and penalties. Section 3 of the PC Act deals with the power to appoint Special Judges, which is extracted hereunder for an easy reference:

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

(a) any offence punishable under this Act; and

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

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

Section 4 of the PC Act deals with the cases triable by Special Judges. The same is also extracted below:

“4. Cases triable by special Judges.-

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

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

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

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

Section 5 of the PC Act deals with the procedure and powers of Special Judge. The same also has some relevance and is extracted below for an easy reference:

“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 (2 of 1974), for the trial of warrant case by Magistrates.

(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition

of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under section 307 of that Code.

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974 .), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for the purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 457 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

(5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

(6) A special Judge, while trying an offence punishable, under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944).”

22. Section 3(1) of the PC Act confers power on the Central Government or the State Government to appoint

as many Special Judges as may be necessary, for such area or areas or for such cases or group of cases as will be specified in the notification to be issued in the Official Gazette. The Special Judge is so empowered to try any offence punishable under Section 3(1)(a) of the PC Act. The Special Judge is also empowered to try under Section 3(1)(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a). To make it more precise, following offences would come within the scope of Section 3(1) of the PC Act:

- (1) Any offence punishable under the PC Act.
- (2) Any conspiracy to commit any offence punishable under the PC Act.
- (3) Any attempt to commit any offence punishable under the PC Act.
- (4) Any abetment of any offence punishable under the PC Act.

23. Let us examine what are the offences specified in Clause (a) of Section 3(1) of the PC Act, for which reference has to be made to Chapter III of the PC Act.

24. Section 7 of the PC Act refers to offences dealing with public servant taking gratification, other than the legal remuneration in respect of an official act. Section 10 deals with punishment for abetment by a public servant of offences defined in Sections 8 and 9. Section 11 of the PC Act refers to an offence of a public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant. Offences under Sections 7, 10 and 11 can be committed only by the public servant, though an offence under Section 7 can also be committed by a person expected to be a public servant. An offence under Section 7 or 11 could also be abetted by a non-public servant, for which punishment has been prescribed under Section 12 of the PC Act. Section 8 deals with the taking gratification, by corrupt or illegal means, to influence public servant. Section 9 deals with taking gratification, for exercise of personal influence with public servant. Offences under Sections 8 and 9 can be committed by a person who need not necessarily be a public servant. An offence under Sections 8, 9 or 12 can

be committed by a public servant or by a private person or by combination of both. Section 13 deals with the criminal misconduct by a public servant, which is exclusively an offence against the public servant relating to criminal misconduct. An offence under Sections 13 is made punishable under Section 15 of the PC Act. The above discussion would indicate that a public servant as well as a non-public servant can commit offences punishable under the PC Act.

25. A Special Judge appointed under Section 3(1) of the PC Act has got jurisdiction to proceed exclusively against a public servant and exclusively against a non-public servant as well, depending upon the nature of the offence referred to in Chapter III of the PC Act. Junction of a public servant is not a must for the Special Judge to proceed against a non-public servant for any offence alleged to have been committed by him under Chapter III of the PC Act. As already indicated, an offence under Section 8 or Section 9 can be committed by non-public servant and he can be proceeded against under the PC Act without joinder of any public servant. For example:

- Section 7 of the Act uses the words “Whoever, being, or expecting to be a public servant....”
- Sections 10 and 11 of the Act use the words “Whoever, being a public servant....”.
- Section 13 uses the words “A public servant is said to commit.....”.

26. Thus, offences under Sections 7, 10, 11 and 13 of the PC Act can be committed by a public servant though an offence under Section 7 can be committed also by a “person expected to be a public servant”. On the other hand:

- Section 8 uses the words “whoever...”, simpliciter, without using any other qualifying words.
- Likewise, Sections 9 and 12 also use the words “whoever...” simpliciter.

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.

31. Section 4(1) of the PC Act has used a *non-abstante* clause. It says, “notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, the offences specified in sub-section (1) of Section 3 shall be tried by special Judges only”. Consequently, the offences referred to in Section 3(1) cannot be tried by the ordinary criminal court, since jurisdiction has been specifically conferred on a Special Judge appointed under Section 3(1) of the PC Act. Sub-section (2) of Section 4 also makes it clear, which says that 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. A conjoint reading of Section 3(1) along with Sections 4(1) and (2) would make it amply clear that only the Special Judge has got the jurisdiction to try the offences specified in sub-section (1) of Section 3

committed by a public servant or a non-public servant, alone or jointly.

32 We may now examine the scope of sub-section (3) of Section 4 of the PC Act, which indicates that “when trying any case”, which means trying any case relating to the offences referred to in Section 3(1)(a) and (b) of the PC Act for which exclusive jurisdiction is conferred on the Special Judge. A Special Judge, while exercising, exclusive jurisdiction, that is, when trying any case relating to offences under Sections 3(1)(a) and (b) of the PC Act, may also try any offence other than the offence specified in Section 3, with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial. An accused, in a given case, may be charged under the Code of Criminal Procedure on an offence being committed under the IPC and the offence specified in Section 3 of the PC Act. Criminal cases that can be tried by a Special Judge are under the PC Act and also for the charges under IPC or any other legislation. Conspiracy to commit any offence either under the PC Act or under the IPC is a separate offence, has to be

separately charged and tried. For example, the conspiracy to commit offence punishable under the PC Act itself is an offence to be tried only by a Special Judge. In **Ajay Aggarwal v. Union of India** (1993) 3 SCC 609, the Court held as follows:

“....Conspiracy to commit a crime itself is punishable as a substantive offence and every individual offence committed pursuant to the conspiracy is separate and distinct offence to which individual offenders are liable to punishment, independent of the conspiracy.”

33. Reference may also be made to the judgments of this Court in **Sanichar Sahni v. State of Bihar** (2009) 7 SCC 198 and **Mohd. Arif v. State (NCT of Delhi)** (2011) 13 SCC 621.

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.

35. We are, however, in Criminal Appeal No.161 of 2011, concerned with a situation where no charge has been framed against the public servant, while he was alive, under Section 3(1) nor any charge was framed against a private person for any offence under Section 3(1) of the PC Act. The Special Judge, therefore, had no occasion to “try any case” under Section 3(1) of the PC Act, either against a public servant or a private person, so as to try any offence other than an offence specified

in Section 3, meaning thereby, non-PC offences against private person, like the appellant.

36. The Special Judge appointed under Section 3(1) could exercise the powers under sub-section (3) to Section 4 to try non-PC offence. Therefore, trying a case by a Special Judge under Section 3(1) is a *sine-qua-non* for exercising jurisdiction by the Special Judge for trying any offence, other than an offence specified in Section 3. “Trying any case” under Section 3(1) is, therefore, a jurisdictional fact for the Special Judge to exercise powers to try any offence other than an offence specified in Section 3.

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

Judge which will depend upon the facts of each case and the inter-relation between PC offences and non-PC offences.

38. A Special Judge exercising powers under the PC Act is not expected to try non-PC offences totally unconnected with any PC offences under Section 3(1) of the PC Act and in the event of a Special Judge not trying any offence under Section 3(1) of the PC Act, the question of the Special Judge trying non-PC offences does not arise. As already indicated, trying of a PC offence is a jurisdictional fact to exercise the powers under Sub-section (3) of Section 4. Jurisdiction of the Special Judge, as such, has not been divested, but the exercise of jurisdiction, depends upon the jurisdictional fact of trying a PC offence. We are, therefore, concerned with the exercise of jurisdiction and not the existence of jurisdiction of the Special Judge.

39. The meaning and content of the expression “jurisdictional fact” has been considered by this Court in ***Carona Ltd. v. Parvathy Swaminathan & Sons***

(2007) 8 SCC 559, and noticed that where the jurisdiction of a Court or a Tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collective to the merits of the issue. Existence of a jurisdictional fact is thus a *sine qua non* or condition precedent to the assumption of jurisdiction by a Court. In **Ramesh Chandra Sankla v. Vikram Cement & Ors.** (2008) 14 SCC 58, this Court held that by erroneously assuming existence of the jurisdictional fact, a Court cannot confer upon itself jurisdiction which otherwise it does not possess.

40. We have already indicated that the jurisdictional fact so as to try non-PC offences is “trying any case” under the PC Act. As noticed by this Court in **Ratilal Bhanji Mithani v. State of Maharashtra** (1979) 2 SCC 179, the trial of a warrant case starts with the framing of charge. Prior to that the proceedings are only an inquiry. The Court held as follows:-

“Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code to cancel the charge, and reverse

the proceedings to the stage of Section 253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. After the framing of the charge if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in Sections 254 to 258 to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Section 349 and 562 of the Code of 1898 (which correspond to Sections 325 and 360 of the Code of 1973)."

41. We may now examine whether, in both these appeals, the above test has been satisfied. First, we may deal with Criminal Appeal No. 943 of 2008. CBI, in this appeal, as already indicated, submitted the charge-sheet on 1.11.2001 for the offences against A-1, who is a public servant, as well as against non-public servants. Learned Special Judge had, on 25.3.2003, framed the charges against the accused persons under Section 120B read Sections with 467, 471 and 420 IPC and also under Sections 13(1)(d) and 13(2) of the PC Act and substantive offences under Sections 420, 467 and 471 IPC and also substantive offences under Sections 13(1)

(d) and 13(2) of the PC Act against the public servants. Therefore, charges have been framed against the public servants as well as non-public servants after hearing the prosecution and defence counsel, by the special Judge on 25.3.2003 in respect of PC offences as well as non-PC offences. As already indicated, under sub-section (3) of Section 4, when trying any case, a Special Judge may also try any offence other than the offence specified in Section 3 and be charged in the same trial. The Special Judge, in the instant case, has framed charges against the public servant as well as against the non-public servant for offences punishable under Section 3(1) of PC Act as well as for the offences punishable under Section 120B read with Sections 467, 471 and 420 IPC and, therefore, the existence of jurisdictional fact that is “trying a case” under the PC Act has been satisfied.

42. The Special Judge after framing the charge for PC and non-PC offences posted the case for examination of prosecution witnesses, thereafter the sole public servant died on 2.6.2003. Before that, the Special Judge, in the instant case, has also exercised his powers under sub-

section (3) of Section 4 of the PC Act and hence cannot be divested with the jurisdiction to proceed against the non-public servant, even if the sole public servant dies after framing of the charges. On death, the charge against the public servant alone abates and since the special Judge has already exercised his jurisdiction under sub-section (3) of Section 4 of the PC Act, that jurisdiction cannot be divested due to the death of the sole public servant.

43. We can visualize a situation where a public servant dies at the fag end of the trial, by that time, several witnesses might have been examined and to hold that the entire trial would be vitiated due to death of a sole public servant would defeat the entire object and purpose of the PC Act, which is enacted for effective combating of corruption and to expedite cases related to corruption and bribery. The purpose of the PC Act is to make anti-corruption laws more effective in order to expedite the proceedings, provisions for day-to-day trial of cases, transparency with regard to grant of stay and exercise of powers of revision on interlocutory orders

have also been provided under the PC Act. Consequently, once the power has been exercised by the Special Judge under sub-section (3) of Section 4 of the PC Act to proceed against non-PC offences along with PC offences, the mere fact that the sole public servant dies after the exercise of powers under sub-section (3) of Section 4, will not divest the jurisdiction of the Special Judge or vitiate the proceedings pending before him.

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

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

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

appeal is concerned, so as to exercise jurisdiction by the Special Judge to deal with non-PC offences.

46. Consequently, we find no error in the view taken by the Special Judge, CBI, Greater Mumbai in forwarding the case papers of Special Case No. 88 of 2001 in the Court of Chief Metropolitan Magistrate for trying the case in accordance with law. Consequently, the order passed by the High Court is set aside. The competent Court to which the Special Case No. 88 of 2001 is forwarded, is directed to dispose of the same within a period of six months. Criminal Appeal No. 161 of 2011 is allowed accordingly.

यतो धर्मस्ततो जयः

JUDGMENT.....J.
(K. S. Radhakrishnan)

.....J.
(A.K. Sikri)

New Delhi,
February 05, 2014.