(2016) 03 PAT CK 0123

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1060 of 2012. (Arising Out of PS.Case No. 84 Year 2012 Thana-Chowk District- Patna)

Arun Kumar APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:
Bihar Finance Act, 1981 — Section 49, 51
Bihar Value Added Tax Act, 2005 — Section 56(4), 81, 83, 86, 86(a), 94
Criminal Procedure Code, 1973 (CrPC) — Section 154

Citation : (2016) 2 PLJR 759

Hon'ble Judges : Ashwani Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Birendra Kumar Singh and Mr. Manish Kumar, Advocates and Mr. Ramakant Sharma and Mr. Laxmikant Shamra, Advocates, for the Appellant; Mr. Raju Giri, G P-30, for the Respondent

Final Decision : Dismissed

Judgement

Ashwani Kumar Singh, J.—These writ applications raise common issues and as such they are being been disposed off by a common judgment. The writ applications mount a common challenge to the various First Information Reports instituted against the various petitioners by the Taxing Authority for serious violation of the provisions of Bihar Value Added Tax Act, 2005 (hereinafter referred to as "VAT Act") to be more precise for violation of Section 56(4) of the VAT Act read with various provisions of Indian Penal Code (hereinafter referred to as "IPC").

2. The common sliver that runs through the various applications under consideration is that the petitioners are being accused of violation of Section 56(4) of the VAT Act for reason that they were found to be either lacking in possession of Form D-IX (forms used for transportation of goods into the State) or Form X-VII (forms used for movement of goods through the State to another State) or they were found to be in possession of Form D-IX or D-VII which were

deficient in details or were alleged to have been forged or interpolated with details and it was alleged that goods accompanying the said Forms D-IX were being transported with intention to cheat the State Government of the revenue that would have accrued to it on account of proper documentation of the goods accompanying Form D-IX.

3. The main thrust of the argument of the petitioners revolve around the jurisdiction of the Taxing Authority to institute a First Information Report. The argument of the petitioners raise the following issues for consideration of the Court:

(a) Whether the State Police has the jurisdiction to entertain, institute and investigate offences under the VAT Act especially in view of Section 86(2)(a) read with Section 83 of the VAT Act ?

(b) Whether the VAT Act being the special Act, having made provisions for institution of offences under the VAT Act, would override and divest the police authority to institute and investigate cases under the Indian Penal Code - the latin maxim "generalia specialibus non-derogant", which means that when there is a conflict between a general and a special provision, the latter shall prevail - has been resorted to ?

(c) Whether the institution and investigation by the police can be termed as an abuse of the judicial process ?

4. It is the contention of the petitioners that section 83 of the VAT Act invests the Commissioner of Commercial Taxes to authorise any person subordinate to himself to investigate any offence punishable under the VAT Act and the person so authorised shall investigate the said offence and shall have the power of an Officer-in-Charge of a Police Station, for investigation of cognisable offence, as conferred by the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC"). It is further contended by the petitioners that the section 86 of the VAT Act invests the State Government with powers to constitute a Bureau of Investigation and the said Bureau of Investigation, by an order of the State Government, can be vested with the power of an Officer-in-Charge of a Police Station as is provided under the CrPC.

5. The petitioners have drawn attention of the court to provisions of Section 86 (2) (b) of the VAT Act which provides that the Commissioner may, by a Gazetted Order authorise the officer of the Bureau of Investigation to exercise power of an authority appointed under Section 10 of the VAT Act. It is the thrust of the argument of the petitioners that in view of the specific provision conferring the power on the Bureau of Investigation to conduct investigation with regard to the offences punishable under the VAT Act, the Police Officer/ Officer-inCharge of a Police Station stands divested of the authority to institute and investigate a First Information Report under Section 154 of the CrPC read with the power conferred under Chapter XII of the CrPC.

6. It is next contended by the petitioners that VAT Act being special Act would override the general Act- "Generalia specialibus non-derogant". It is urged on behalf of the petitioners that a provision similar to section 86 of the VAT Act was to be found in Section 51 of its predecessor Act being Bihar Finance Act, 1981 (Bihar Act 5 of 1981) and wherein similar power had been vested with the Bureau of Investigation where too the official of the Bureau of Investigation could have been vested with the power of an Officer-in-Charge of a Police Station. Based on the con-joint reading of Section 86 of the VAT Act and Section 51 of the repealed Bihar Finance Act, 1981 it has been urged, on behalf of the petitioners, that the power of the police to institute and investigate cases under the provisions of the VAT Act as also under corresponding provisions of the IPC stands ousted.

7. The petitioners have urged that the VAT Act and the Bihar Finance Act, 1981 being special Act, issues came to be agitated before this court as to whether in view of the special Act the police have the power to institute and investigate cases under the IPC. The petitioners have agitated, relying on several judgments of this Court, that for violation of provisions of the special Act - being in the nature of VAT Act or its erstwhile predecessor Bihar Finance Act, 1981 - no court shall take cognizance of the cases instituted by the police nor any investigation can be conducted by the police. It is thus submitted, by the petitioners, that offences under the IPC shall not be attracted and even if there is mention of infraction of the penal provisions under the IPC, the jurisdiction of the police to investigate such offence shall remain ousted.

8. It is also one of the contentions of the petitioners that the police authority being ill versed in matters of taxation they are incompetent to investigate offence relating to provisions of taxation laws.

9. Creating redoubts around the arguments that special Act ousts the general Act - and specially in view of the impugned controversy the provisions of VAT Act read with section 4 (2) of the CrPC exclude the operation of the general Act being the IPC - the petitioners have relied on various judgments being :

(a) 1997 BLJ 899 [Hindustan Lever Limited v. The State of Bihar & Ors.];

(b) Cr. Misc. No. 808 of 1998 [Om Prakash Sah v. the State of Bihar];

(c) 2015(3) PLJR 660 [M/s Torque Pharmaceuticals Pvt. Ltd. v. The State of Bihar];

(d) Cr. Misc. No. 11663 of 1992 and analogous case [Ganesh Kumar Agrawal v. The State of Bihar];

(e) 1993 (2) BLJ 318 [M/s. Regent Cinema, Patna v. The State of Bihar & Ors].

10. Per Contra, it has been argued by the State that the contentions of the petitioners are unsustainable and that the case laws referred to by the petitioners are not relevant for the purpose of impugned controversy. It has been

contended by the State that in view of the proposition of law as settled by the Hon''ble Supreme Court in the case of State of West Bengal v. Narayan K. Patodia reported in (2000) 4 SCC 447, the case laws cited by the petitioners are no longer relevant - especially with regard to interpretation of Sections 82, 83 and 86 of the VAT Act - and thus have no applicability to the present lis.

11. It is urged by the State that the provisions of law as were subjected to interpretation by the Hon''ble Supreme Court, in the case of Narayan K. Patodia (supra), is pari materia with Sections 83 and 86 of the VAT Act and therein it was held that institution of an FIR was not barred and that the provisions under the relevant Statute also do not prohibit institution and carrying out of investigation by the police under relevant provision of the IPC. In support of his contention, learned counsel for the State has also placed reliance on an unreported judgment of Nagpur Bench of the Bombay High Court passed in Criminal W. P. No. 396 of 2012 [G.S. Oils Ltd through Its M.D. Shri Manoj Kumar Shrigovind Agrawal and another v. The State of Maharashtra through PSO Wani, Dist. Yavatmal and others].

12. In view of the aforesaid controversy it would be relevant to take note of various provisions of the VAT Act and the provisions of the repealed Bihar Finance Act, 1981 :-

VAT Act, 2005

"Section 82 - Cognizance of offences.- (1) Save as provided in section 81, the punishments inflicted under the said section shall be without prejudice to any penalty which may be imposed under the provisions of this Act.

(2) No court shall take cognizance of any offence under this Act except with the previous sanction of the Commissioner or any officer specially empowered in this behalf and no court inferior to that of a Magistrate of the first class shall try any such offence.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) all offences punishable under section 81 shall be cognisable and bailable.

Section 83 - Investigation of offences.- (1) Subject to such conditions as may be prescribed, the Commissioner may authorise either generally or in respect of a particular case or class of cases, any officer or person subordinate to him to investigate all or any of the offences punishable under this Act.

(2) Every officer so authorised shall, in the conduct of such investigation, exercise the powers conferred by the Code of Criminal Procedure, 1973, (2 of 1974) upon an officer in-charge of a police station for the investigation of a cognisable offence.

Section 86 - Bureau of Investigation.- (1) The State Government may, by an order published in the Official Gazette, constitute a Bureau of Investigation and it shall consist of such personnel and such number of officers and such hierarchy of supervision and control as may be specified by the State Government in the said order:

Provided that if authorities appointed under sub-section (1) of section 10 are specified as such they shall, without prejudice to the powers under sub- section (1) of section 10, exercise the powers of an authority under sections 55, 56, 57, 58, 59, 60, 61 and 62 for carrying out the purposes of this Act.

(2) (a) The State Government may, by an order published in the official Gazette, vest an officer of the Bureau of Investigation with the powers of an officer in-charge of a police station under the Code of Criminal Procedure, 1973, (2 of 1974) and with such other powers under different Act, as it may consider necessary.

(b) The Commissioner may, by an order published in the Official Gazette, authorise an officer of the Bureau of Investigation to exercise the powers of an authority appointed under section 10 in respect of such matters as may be specified in the order.

(3) The Bureau of Investigation shall function under the control and supervision of the Commissioner, and discharge such duties as may be assigned to it by the Commissioner, including investigation of offences under section 83 of this Act."

Bihar Finance Act, 1981

Section 51 - Bureau of Investigation - (1) The State Government may, by an order published in the Official Gazette, constitute a Bureau of Investigation and it shall consist of such personnel and such number of officers and such hierarchy of supervision and control as may be specified by the State Government in the said order:

[Provided that if authorities appointed under sub-section (1) of Section 9 are specified as such it shall without prejudice to the powers under sub-section (1) of Section 9, exercise the powers of an authority under Sections 31, 32, 33, 34 and 35 for carrying out the purpose of this part.]

(2) An officer of the Bureau of Investigation shall without prejudice to any powers vested in it under subsection (3) exercise the powers of an authority appointed under Section 9 for the purposes of Sections 33 and 35 of this part.

(3) (i) The State Government may, by an order published in the Official Gazette, vest an officer of the Bureau of Investigation with the powers of an officer incharge of a police-station under the Code of Criminal Procedure, 1973 and with such other powers under different Acts, as it may consider necessary.

(ii) The Commissioner may, by an order published in the Official Gazette, authorise an officer of the Bureau of Investigation to exercise the powers of an authority appointed under Section 9 in respect of such matters as may be specified in the order.

(4) The Bureau of Investigation shall function under the control and supervision of the Commissioner, and shall discharge duties as may be assigned to it by the Commissioner, including investigation of offences under Section 49 of this part."

13. In the course of argument it was queried - if any Bureau of Investigation has been constituted by the State Government in exercise of the powers conferred upon it under Section 86 of the VAT Act and if the same has been conferred powers, by the State Government, under Section 86(2)(a) of the VAT Act ? The court was surprised to see the attitude of either of the contesting parties to the lis who were unable to enlighten the court about the same - much less the conferment of powers under Section 83 of the VAT Act, this was even when the answer to the same had a bearing on the outcome of the case and the parties had advanced detailed arguments on the import of Sections 86 and 83 of the VAT Act. The court was left to undertake the inquiry on its own.

14. It has been brought to the notice of this court that no Bureau of Investigation has either been constituted under the provisions of Section 86(1) of the VAT Act - after the repeal of the Bihar Finance Act, 1981 by Act No. 27 of 2005 - much less the vesting of an officer of the said Bureau with the powers of the Officer-in-Charge of a Police Station under Section 86(2) of the VAT Act. Upon inquiry, it has been further brought to the notice of this court that there exists no notification authorising any officer-by the Commissioner - in terms of Section 83 of the VAT Act.

15. It is in this fact situation of the present lis needs to be resolved between the parties.

16. Upon inquiry it was brought to the light that under Section 51 of the Bihar Finance Act, 1981 certain notifications had been published by the State Government being notification no. SO 936 dated 16.07.1984. The said notification had been issued under sub-section (3) (ii) of Section 51 of Bihar Finance Act, 1981 whereby the Commissioner had authorised the officers of the Bureau to exercise the power of an authority appointed under Section 9 (1) of the Bihar Finance Act, 1981 for the purposes of Section 31 of the said Act. Further, under subsection (4) of Section 51 of the Bihar Finance Act, 1981 the State Government by Order No. 2775 dated 20.04.1983, had set up the Bureau of Investigation. In spite of all the inquiries, no notification had been brought to the notice of the court that had been published in the Official Gazette in terms of section 3(i) of Section 51 of the Bihar Finance Act, 1981, whereby the State Government had vested an officer of the Bureau of investigation with the powers of an Officer-in-Charge of a Police Station under the Code of Criminal Procedure, 1973.

17. The Bihar Finance Act, 1981 stood repealed upon promulgation of Bihar Value Added Tax Act, 2005 on 23.06.2005. Section 94 of the VAT Act provides for repeal and savings clause. To quote:-

"94. Repeal and savings.- (1) The Bihar Finance Act, (Bihar Act, 5 of 1981) (hereinafter referred to as "the repealed Act") is hereby repealed from the date of commencement of this Act.

(2) The repeal shall not affect,-

(a) ? ? ?.

(b) ? ? ?.

(c) ? ? ?.

3. All rules, orders and appointments made, notifications published, certificates granted, powers conferred and other things done under the said Act and in force on the commencement of this Act, shall, so far as they are not inconsistent with or until they are not modified, superseded or cancelled under this Act, be deemed to have been respectively made, published, granted, conferred or done under this Act.

4. ? ? ?..

5. (a) ? ? ?..

(b) ? ? ?.."

18. It would be apparent from sub-section (3) of Section 94 of the VAT Act that "rules, orders and appointments made, notifications published, certificates granted, powers conferred and other things" done under the Bihar Finance Act, 1981 shall continue to be in force and would be deemed to have been "made, published, granted, conferred or done" under the VAT Act. It would thus be apparent that the Notifications and Orders published under the provisions of section 51 of the Bihar Finance Act, 1981 are to remain in force unless they are "inconsistent with or until they are not modified superseded or cancelled" under the VAT Act.

19. It has been brought to the notice of the court that no fresh notifications have been published either under Section 83 or Section 86 of the VAT Act and as such notifications and orders as published under the Bihar Finance Act, 1981 would continue to govern the field and scope of Sections 83 and 86 of the VAT Act as they would be saved by the provision of Section 94(3) of the VAT Act.

20. A conjoint reading of sections 83 and 86 of the VAT Act and 51 of the Bihar Finance Act, 1981 along with the notifications published thereunder makes it apparent that the Bureau of Investigation constituted under sub-section 51(4) of the Bihar Finance Act, 1981 (corresponding to section 86 (1) of the VAT Act) has been constituted - by Government Order No. 2775 dated 20.04.1983 - to investigate offences under Section 49 of the Bihar Finance Act, 1981 (corresponding to section 81 of the VAT Act) and by Notification No. SO 936 dated 16.07.1984 - issued under section 3(ii) of the Bihar Finance Act, 1981 (corresponding to section 86(2)(b) of the VAT Act) - it has been conferred with the power of the authority appointed under Section 9 of the Bihar Finance Act,

1981.

21. One may profitably refer to Government Order No. 2775 dated 20.04.1983 :-

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22. It is thus clear that no authority as appointed under Section 9 of the Bihar Finance Act, 1981 (corresponding to section 10 of the VAT Act) has been conferred powers of an Officer-in-Charge of a Police Station for investigation of a cognisable offence as has been brought under CrPC. Further, no notification as published under Section 3 (i) of the Bihar Finance Act, 1981 (corresponding to Section 86 (2) (a) of the VAT Act) has been brought to the notice of the court nor has it come to the notice of the court - upon its own inquiry.

23. It has been argued on the part of the petitioners that in view of section 51 of the Bihar Finance Act, 1981 read with Notifications and the Government Orders published thereunder, the Bureau of Investigation has been conferred with the power of the Officer-in-Charge of the Police Station for investigation of cognisable offence and that the said powers have been saved under Section 94 of the VAT Act and thus the Police Authorities stand divested of the powers to investigate offences which constitute an offence under the VAT Act as well as the IPC. The said argument cannot be countenanced in absence of any notification having been published under Section 51(3)(i) of the Bihar Finance Act, 1981 conferring the Bureau of Investigation with the power of an Officer-in-Charge of a Police Station. The only notification being Government Order No. 2775 dated 20.04.1983, constituting the Bureau of Investigation, also does not support the argument of the petitioners.

24. The claim of the petitioners that the Bureau of Investigation was vested with the powers of the Officer-in-Charge of the Police Station does not stand substantiated in absence of any specific notification issued by the State Government in exercise of its powers as provided under section 51(3)(i) of the Bihar Finance Act, 1981 or under Section 86(2)(a) of the VAT Act.

25. The powers that have been vested with the Bureau of Investigation is the power to investigate offences as provided under Section 49 of the Bihar Finance Act, 1981 and the corresponding Section 81 of the VAT Act but in absence of any power of Officer-in-Charge of a Police Station having been vested with the Bureau of Investigation it would not be possible for the Bureau of Investigation to inquire into the offences that would constitute an offence both under the Indian Penal Code as well as the VAT Act.

26. It is also of salience to note that in so far as the writ petitions are concerned they seek quashing of First Information Reports which have been registered under Sections 420, 467, 468, 471, 409 and 120 B of the IPC and Sections 81(1)(c), 81(2)(a) and 81(4) of VAT Act. In none of these cases the alleged offences fall within the province of power that has been vested with the Bureau of Investigation - to investigate offence under Section 81 of the VAT Act. All these cases are neither saved by Section 4(2) or Section 5 of the CrPC or by the principles of "Generalia specialibus non-derogant". A more detailed discussion with regard to circumstances under which the section 4 or section 5 of the CrPC would be attracted and circumstance under which principles of "Generalia specialibus non-derogant" would come into play would follow in succeeding paragraphs.

27. The next issue that would be all relevance to be addressed would be - if an FIR can at all be registered for the offences under the IPC where there is an alleged infraction of provision of the VAT Act?

28. It has been argued, on the strength of Sections 4 and 5 of the CrPC that the VAT Act being special Act, it ousts the jurisdiction of CrPC and thus the procedure of investigation as provided under the CrPC and inter alia the registration of the First Information Reports was bad in law and thus the same needs to be quashed.

29. As noted above the petitioners have relied upon some of the previously decided cases as a precedent to fortify the said argument and of the prominence is the judgment passed in the case of Hindustan Lever Limited (supra) and as approved by a Division Bench passed in Om Prakash Sah (supra). A further reference has been made to the case of M/s Torque Pharmaceuticals (supra). There appears to be a basic fallacy in reliance of the petitioners upon these set of judgments to argue that VAT Act would oust the jurisdiction of the police to institute and investigate an FIR as the VAT Act is a special Act and as the same is a complete Code in itself to institute and investigate a case relating to infraction of its provisions - as such no First Information Report can be instituted for the offences under the IPC and vest power in the police to investigate offences. To substantiate the argument that VAT Act is a complete Code with regard to investigation of the offence, it has been argued that the Bureau of Investigation has been vested with powers of an Officer-in-Charge of Police Station - without there being any documentary proof to support the said argument. The petitioners have missed out that while the judgments passed in the cases of Hindustan Lever (supra); Om Prakash Sah (supra) and Torque Pharmaceuticals (supra)

were under provisions of Drugs and Cosmetics Act, 1940 and this Court, upon reviewing the provisions of the said Act had concluded that the said Drugs and Cosmetics Act, 1940 was a complete Code as it provided not only for the method of collecting samples by the Drug Inspector but it also provided as to how the Drug Inspector was to proceed in getting the sample tested and set the criminal judicial process in motion. The entire spectrum of institution of the complaint to investigation and filing of memorandum of prosecution was covered and had been vested with the authorities prescribed under the Drugs and Cosmetics Act, 1940 and was thus a complete Code in itself - unlike the VAT Act. The court, while quashing the institution of the FIR, had concluded that the provisions of the Act were specific that the criminal judicial process shall be set in motion only upon institution of a "Complaint" and thus the same could not have been set in motion by instituting an FIR. Unlike the provisions of the Drugs and Cosmetics Act, 1940 the VAT Act is not a complete Code in itself to oust the jurisdiction of the police to institute and investigate an offence, especially when the offence alleged constitute an offence both under the VAT Act and the IPC.

30. Section 4 and section 5 of the CrPC may be profitably referred to understand the contours of the legal proposition that a special Act (VAT Act in the present case) shall override the provisions of the general Act (CrPC in the present case) and would thus oust the jurisdiction of the police to investigate an offence.

"Section 4. Trial of offences under the Indian Penal Code and other laws.- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Section 5. Saving.- Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

31. It is apparent from section 4 of the CrPC that the provisions of the CrPC shall be applicable whenever an offence under the IPC or under any other law is committed and the CrPC shall regulate the mode of investigation, enquiry or trial. A conjoint effect of Section 4(2) read with Section 5 of CrPC is that all offences, whether under IPC or under any other law, have to be investigated, inquired into, tried and otherwise dealt with according to the provisions of CrPC, unless there be an enactment regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. In which case an enactment will prevail over those of CrPC unless there is specific provision to the contrary in CrPC.

32. The jurisdiction under Section 4 of CrPC is comprehensive and to the extent that till no valid machinery is set up under any Act for investigation or trial the jurisdiction of the machinery provided under CrPC cannot be said to have been excluded.

33. In the case of Bhim Sen v. State of U. P. reported in AIR 1955 SC 435 their lordships have held:

"The jurisdiction of the regular criminal court in respect of such a case cannot be taken away by the operation of Section 55 of the Act. It is to be remembered that the jurisdiction of the criminal courts under Section 5 of the Criminal Procedure Code is comprehensive.

That section enjoins that all offences under the Penal Code shall be investigated, enquired into, tried and otherwise dealt with "according to the provisions hereinafter contained". To the extent that no valid machinery is set up under the U. P. Panchayat Raj Act for the trial of any particular case the jurisdiction of the ordinary criminal court under Section 5, Criminal P. C., cannot be held to have been excluded. Exclusion of jurisdiction of a court of general jurisdiction, can be brought about by the setting up of a court of limited jurisdiction, in respect of the limited field, only if the vesting and the exercise of that limited jurisdiction is clear and operative. Where, as in this case, there is no adequate machinery for the exercise of this jurisdiction in a specific case, we cannot hold that the exercise of jurisdiction in respect of such a case by the Court of general jurisdiction is illegal".

34. One may also refer to some other judgments with regard to scope of Section 4 and Section 5 of the CrPC vis-à- vis special Act. In the case of Vishwa Mitter of M/s Vijay Bharat Cigarette Stores v. O. P. Poddar and Ors. reported in (1983) 4 SCC 701 the Supreme Court has emphasised the import of Section 4(2) of the CrPC and has stated thus:

"Section 190 thus confers power on any Magistrate to take cognizance of any offence upon receiving a complaint of facts which constitute such offence. It does not speak of any particular qualification for the complainant. Generally speaking, anyone can put the criminal law in motion unless there is a specific provision to the contrary. This is specifically indicated by the provision of sub-section (2) of Section 4 which provides That all offences under any other law - meaning thereby law other than the Indian Penal Code - shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions in the Code of Criminal Procedure, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. It would follow as a necessary corollary that unless in any statute other than the Code of Criminal Procedure which prescribes an offence and simultaneously specifies the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences, the provisions of the Code of Criminal Procedure shall apply in respect of such offences and they shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure."

35. In A.R. Antulay v. Ramdas Srinivas Nayak reported in AIR 1984 SC 718, a Constitution Bench of the Supreme Court while examining the same question with regard to applicability of Section 4 with reference to the Prevention of Corruption Act has laid down the law thus :

" in the absence of a specific provision made in the Statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Criminal Procedure Code. In other words, Criminal Procedure Code is the parent statute which provides for investigation, inquiring into and trial of cases by criminal Courts of various designations."

36. In the light of the above discussion with regard to Section 4(2) and Section 5 of CrPC that the provisions of Sections 83 and 86 of the VAT Act is to be analysed to see if the same provides for any special procedure for investigation of offences under the Tax law which also or exclusively constitutes an offence under the IPC. A reading of Sections 83 and 86 of the VAT Act along with Government Order No. 2775 dated 20.04.1983 would make it apparent that no power under the special Act vesting them with the powers of a police officer qua investigation of an offence under Chapter XII of the CrPC. A deeper reading of Chapter XII and Chapter XIV of the VAT Act would further show that no procedure of investigation has been prescribed for offences under the VAT Act or such offences which also constitute offence under the IPC to oust the jurisdiction of the police to register and investigate the offence.

37. The word "investigation" is defined under Section 2(h) of the CrPC and it "includes all proceedings under this Code for collection of evidence conducted by a Police Officer or by any person (other than Magistrate) who is authorised by a Magistrate in this behalf." What constitutes an investigation has been succinctly dealt with by Hon''ble Supreme Court in the case of Directorate of Enforcement v. Deepak Mahajan and Anr. reported in (1994) 3 SCC 440 thus:

"The word ''Investigation'' is defined under Section 2(h) of the present Code (which is an exact reproduction of Section 4(l)(b) of the old Code) which is an inclusive definition as including all the proceedings under the Code for the collection of evidence conducted by a police officer or any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. The said word ''investigation'' runs through the entire fabric of the Code. There is a long course of decisions of this Court as well as of the various High Courts explaining in detail, what the word ''investigation'' means and is? It is not necessary for the purpose of this case to recapitulate all those decisions except the one in H.N. Rishbud v. State of Delhi,(AIR 1955 SC 196). In that decision, it has been held that:

"under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the commission of various persons (including the accused) and the reduction of their statement into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173."

38. The VAT Act is silent with regard to the procedure that has to be followed by the Bureau of Investigation while making any investigation with regard to any of the offence and as such it cannot be emphasised that the jurisdiction of the Police Station stands ousted by virtue of Section 4(2) and Section 5 of the CrPC and more so when no power of Officer-in-Charge of a Police Station has been conferred upon any of the officers under section 83 of the VAT Act or upon the Bureau of Investigation under Section 86 of the VAT Act. The contention thus that the Bureau of Investigation constituted under the VAT Act is only competent authority to investigate in respect of any offence under the VAT Act, which means no other authority can carry out investigation or hold inquiry into any case of alleged or suspected evasion of tax as well as malpractices connected therewith cannot be countenanced and more so when the alleged infraction would also constitute a penal offence under any other statute.

39. At this juncture one would gainfully refer to the judgment of Supreme Court in the case of State of West Bengal v. Narayan K. Patodia (supra) - relied upon by the State. The case involved impersonation by the Respondent therein who obtained registration under the West Bengal Sales Tax (Registration and Turnover) Rules declaring himself to be one Mohan Agrawal - a businessman dealing with in spices under the trade name "Parbati Traders." Based on the said Registration the dealer obtained forms/permits to import spices and for which there would be tax liability of Rs.2.73 lacs. An information was secreted to the Bureau of Investigation, constituted under the West Bengal Sales Tax Act about the fraudulent Act of the so called Mohan Agrawal. Upon investigation it was found that said dealer had obtained another registration on 01.12.1997 in the fictitious name of Suredra Luhariwala and had defrauded the State Government of Tax worth Rs.32 lacs. A complaint was presented by the Assistant Commissioner of Commercial Taxes to the Deputy Superintendent of Police attached to the Bureau of Investigation of West Bengal Sales Tax Act. The said complaint was forwarded to Hare Street Police Station, Calcutta and the same was treated as First Information Report and an FIR was registered under Sections 403, 409, 465, 468, 471, 419, 420 read with Section 120-B of the IPC and Sections 88(1)(b), (6) and (7) of the Sales Tax Act, 1994. Upon Challenge, the High Court quashed the FIR stating thus :

"Under Section 7 of the West Bengal Sales Tax Act, the Bureau of Investigation constituted under the said Act is the only competent authority to investigate in respect of any offence under the said Act which means no other authority can carry out investigation or hold inquiry into any case of alleged or suspected evasion of tax as well as malpractices connected therewith. It also appears that under the provisions of Section 7(3) no complaint is required to be presented before any authority as has been done in the instant case but only a report is required to be submitted before the Commissioner. Section 7(3) of the West Bengal Sales Tax Act, 1994 clearly says that the Bureau may, on information or of its own motion, or when the State Government or the Commissioner so directs, carry out investigation or hold inquiry into any case of alleged or suspected evasion of tax as well as malpractices connected therewith and send a report in respect thereof to the Commissioner. In the instant case, as it appears, the Bureau of Investigation on its own accord and information carried out investigation but instead of sending a report to the Commissioner on the basis of the said investigation, sent a complaint before the Deputy Superintendent of Police, Bureau of Investigation "against clear provisions of law" and the said Deputy Superintendent of Police Forwarded the same to Hare Street Police Station .. ."

40. Upon challenge by the State of West Bengal before the Supreme Court, the said order was reversed. The Hon''ble Supreme Court opined:

"14. We did not come across any provision in the Sales Tax Act which inhibits the powers of the police as conferred by the Code. Chapter X of the Act deals with "Offences and penalties." Section 88 falls within the said chapter. Sub-section (1) (c) reads thus:

"88.(1) Whoever-

* * *

(c) fails to make payment of interest payable under Section 31 or Section 32; or

* * *

shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both? ."

15. Sections 88 (6) and (7) are also extracted below:

"88. (6) Whoever wilfully attempts in any manner to evade or defeat any tax imposed under this Act, shall, in addition to any other penalty provided by any law for the time being in force, be liable also for the offence of dishonest misappropriation of property under Section 403 of the Indian Penal Code, and shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years or with fine not exceeding ten thousand rupees or with both.

(7) Whoever knowingly produces incorrect accounts, registers or documents, or

knowingly furnishes incorrect information or suppresses material information shall be punishable with imprisonment of either description which shall not be less than three months but which may extend to two years or with fine not exceeding ten thousand rupees or with both."

16. The offence envisaged in sub-section (6) is specifically created as supplemental to any other penalty provided by any law for the time being in force. This means, offences falling under the Indian Penal Code and committed by a person while committing the offence contemplated in sub-section (6) cannot get displaced for the sole reason that the accused has committed the offence falling under sub-section (6) of Section 88.

17. Section 7(1) of the Sales Tax Act empowers the State Government to constitute a Bureau of Investigation for discharging the functions referred to in sub-section (3) thereof. It empowers the Bureau to carry on the investigation or hold enquiry into any case or alleged or suspected case of evasion of tax or malpractice created thereof and send a report of it to the Commissioner. A reading of Section 7 makes it clear that creation of a Bureau of Investigation is for the purpose of discharging the function envisaged in sub-section (3) which, of course, includes investigation also. But there is nothing in Section 7 that such investigation can be carried on "only" by the Bureau and not any other investigating agency. It is open to the Bureau to get the assistance of any other legally constituted investigating agency for effectively inquiring into all the ramifications of the offence. As in this case if offences falling under the Indian Penal Code or any other enactment are also detected during the course of investigation conducted by the Bureau there is no inhibition to pass over the investigation to the regular police.

18. If the view of the learned single Judge gets approval it would lead to startling consequences. The consequences of such an interpretation would be that if the person who commits the offence under Section 88 of the Act also commits other serious offences falling under Indian Penal Code as part of the same transaction neither the regular police nor any special police force nor even the Central Bureau of Investigation can be authorised to conduct investigation. The accused in such cases would then be well ensconced insulated from the legal consequences of a proper and effective investigation. Criminal justice would be the serious casualty then.

19. That apart, how could the FIR be quashed if the investigating agency should have been different ? By lodging FIR alone no investigation is conducted by the police. It is the first step towards starting investigation by the police. If High Court was of the opinion that investigation has to be conducted by the Bureau then also there was no need to quash the FIR. Any way we take view that as offences under the Indian Penal Code are also involved, efficacious investigation can be conducted by entrusting it to the police investigating agency. The inherent powers of the High Court as recognised in Section 482 of the Code are reserved to be used "to give effect to any orders under the Code, or to prevent abuse of

the process of any Court or otherwise to secure the ends of justice." It is quite unfortunate that learned single Judge overlooked the reality that by quashing the FIR in the case the High Court did not achieve any one of the above factors. On the contrary, the result of quashing the FIR had rendered the allegations of offences made against a person to remain consigned in stupor perennially. Hence, instead of achieving ends of criminal justice, the impugned order would achieve the reverse of it."

41. It is thus evident as a day of light that in absence of a power of an Officer-in-Charge of a Police Station having been vested with the Bureau of Investigation or the designated officer under Section 86(2)(a) and Section 83(2) of the VAT Act, respectively, it is not open to the petitioners to allege lack of jurisdiction in the police to investigate the offence.

42. One may also refer to celebrated judgment of Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others reported in AIR 1978 SC 851 for the proposition that a mere silence of the Statute has no exclusionary effect. To quote:

"76. We have been told that wherever the Parliament has intended a hearing it has said so in the Act and the rules and inferentially where it has not specificated it is otiose. There is no such sequatur. The silence of a statute has no exclusionary effect except where it flows from necessary implication? ? ?.".

43. A mere fact that VAT Act speaks of investigation by the Bureau of Investigation or an officer as designated under Section 83 of the VAT Act and that it does not refer to any investigation by the Police would thus oust the jurisdiction of Police is also not an argument that would pass the muster of the test of legality.

44. Thus it cannot but be stated that the reliance of the State upon an unreported judgment of Nagapur Bench of Bombay High Court passed in the case of G. S. Oils Ltd (supra) is appropriate. The Division Bench has relied upon the judgment passed in the case of Narayan K. Patodia (supra). An attempt to distinguish the case of Narayan K. Patodia (supra) on the ground that the said judgment had been passed under the facts particular to that case and specifically on the ground that the West Bengal Act provided that the provisions under the Sales Tax Act was "supplemental to any other penalty provided by any law for the time being". The said argument was repelled stating thus:

"15. The said case has been tried to be distinguished by Shri Jaiswal on the ground that sub-section (6) of Section 88 also provides that the accused shall also be liable for prosecution under Section 403 and, therefore, on facts the said case would not be applicable to the facts of the present case. With great respect to the arguments advanced by the learned counsel, we are unable to accept the same. Para 16 of the said judgment would be relevant to consider the submission in that regard.

16. The Apex Court has in clear terms has held that merely because the accused has committed an offence falling under the special statute would not mean that the offences under the Indian Penal Code would get displaced. As already discussed herein above, the accused are also charged additionally for the offence punishable under Sections 465 and 471 of IPC which are not common with any of the offences as provided under the VAT Act."

45. In so far as the reliance of the petitioner on an unreported decision of this Court passed in the case of Ganesh Kumar Agrawal (supra) is concerned, it has to be noted that a Single Judge Bench of this Court quashed the order taking cognizance for the offences punishable under Sections 420, 467, 468 and 471 of the IPC and Sections 49(2)(c)(h) and 49(3)(a) of the Bihar Finance Act, 1981 placing reliance on the decision of this court in the case of Hindustan Lever Limited (supra) wherein it was held that if there is special provision for investigation and prosecution provided in any special Act, it would exclude the application of the provisions of the IPC as per Section 4 (2) and Section 5 of the CrPC. In the light of the above discussion with regard to Section 4(2) and Section 5 of the CrPC as also the discussion made with regard to the different provisions of the Bihar Finance Act, 1981 and the VAT Act and by virtue of the later judgment of the Apex Court in the matter of Narayan K. Patodia (supra), the earlier judgment of this Court in the matter of Ganesh Kumar Agrawal (supra), which had declared the law differently, would no longer be treated as good law as Article 141 of the Constitution of India enacts that the law declared by the Supreme Court shall be binding on all courts within the territory of India.

46. In the case of M/s. Regent Cinema, Patna v. The State of Bihar & Ors (supra) relied upon by the petitioners, the petitioners therein had filed writ application for quashing the order passed by the District Magistrate by which he had directed the Licensee of the Regent Cinema to pay a fine of Rs.1000/- under Section 7(1) of the Bihar Cinema (Regulation) Act, 1954. The argument advanced by the petitioners was that since no provision had been prescribed under the Bihar Cinema (Regulation) Act, 1954 for the trial of the offences under the Act, the provision for trial as provided under the CrPC would apply for the trial of the offences under the Bihar Cinema (Regulation) Act, 1954 and in that view of the matter District Magistrate was not a competent authority to hold trial and impose fine on the petitioner and accordingly the order passed by him was without jurisdiction. The State tried to justify the impugned order on the ground that the District Magistrate was the competent authority to impose fine under Section 7(1) of the Bihar Cinema (Regulation) Act. After the examining provision of the Act, it was held by a Division Bench of this Court that as no provision had been made for the trial of offences under the Bihar Cinema (Regulation) Act, 1954 the offences will be tried by the courts as mentioned in Section 26 (b) (i) and (ii) of the CrPC. The Bench held that since the District Magistrate is not one of the courts under the CrPC and as such he had no jurisdiction under the Bihar Cinema (Regulation) Act, 1954. From going through the above judicial pronouncement, it is clear that the same is of no help to the case of the petitioners in these writ

applications as the facts and the law involved in these cases are clearly distinguishable from that of the case relied upon.

47. The last issue that this Court needs to deal with is the issue of "Generalia specialibus non-derogant" . It has further been argued by the petitioners that the jurisdiction of the police to investigate the offence should be repelled by this Court for the reason that the VAT Act constitutes a Special Act and would thus oust the mode and manner of investigation under the general Act namely, CrPC. The argument that has been advanced on the strength of Latin Maxim "Generalia specialibus non-derogant" and it is argued that justification for the maxim is to be found within the conjoint reading of Section 4 and Section 5 of the CrPC.

48. This Court has already repelled the argument that by virtue to Section 4 and Section 5 of the CrPC the jurisdiction of the police to investigate does not stand ousted. It would still be relevant to deal with the contours of the doctrine "Generalia specialibus non-derogant". What the doctrine states is if there is a conflict between a general provision and special provision, it is the special provision that shall prevail. The doctrine is not only applicable vis-à-vis two statutes or provisions within a Statute or even within the legal instruments. But the said doctrine is to be invoked only as to whether there is a special conflict between the two provisions of which one is specific with regard to a subject matter while the other is general and covers the same subject-matter apart from other subject matter. "The general/specific canon does not mean that the existence of a contradictory specific provision voids the general provision. Only its application to cases covered by the specific provision is suspended; it continues to cover all other cases" (Blacks? Law Dictionary).

49. "Generalia specialibus non-derogant" - the specific would govern the general is not an absolute rule of statutory interpretation. An overview of various judgments would show that to invoke the said doctrine one will have to not only examine the subject matter involved in the two statutes/provisions/legal instruments but also if the nature of the Statute is comprehensive and was intended to be a complete code in itself with regard to the subject-matter. Further, one also will have to see if the special Statute or the provision has been introduced with a specific aim to alleviate a mischief that was pre-existing and only then the said doctrine can be invoked. A review of some of the judgments passed by the Apex Court is called for at this juncture.

50. In the case of Commissioner of Income-Tax, Patiala and Ors. v. M/s. Shahzada Nand and Sons and others reported in AIR 1966 SC 1342 their lordships have dealt with the doctrine of "Generalia specialibus non-derogant" thus:

"8. ? To this may be added a rider : in a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. But even so, the fundamental rule of construction is the same for all statutes, whether fiscal or otherwise. "The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the Court as to what is just or expedient." The expressed intention must guide the Court. Another rule of construction which is relevant to the present enquiry is expressed in the maxim, generalia specialibus non derogant, which means that when there is a conflict between a general and a special provision, the latter shall prevail. The said principle has been stated in Craies on Statute Law, 5th Edn., at p. 205, thus :

"The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply."

But this rule of construction is not of universal application. It is subject to the condition that there is nothing in the general provision, expressed or implied, indicating an intention to the contrary; see Maxwell on Interpretation of Statutes, 11th Edn., at pp. 168-169. When the words of a section are clear but its scope is sought to be curtailed by construction, the approach suggested by Lord coke in In re; Heydon''s case, (1584) 3 Co. Rep. 7a, yields better results :

"To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope, and object of the whole Act; to consider, according to Lord Coke : 1. What was the law before the Act was passed; 2. What was the mischief or defect for which the law had not provided; 3. What remedy Parliament has appointed; and 4. The reason of the remedy."

51. The Apex Court considered a plethora of judgment on the said doctrine of "generalia specialibus nonderogant" in the case of Commercial Tax Officer, Rajasthan v. Binani Cements Limited and Another, reported in (2014) 8 SCC 319 and then concluded ? "construction that special governs the general is not an absolute rule but is merely a strong indication of statutory meaning that can be overcome by textual indication that point in the other direction. This rule is particularly applicable where the legislature has enacted comprehensive scheme and has deliberately targeted specific problems with specific solutions." One may profit from the discussion made with regard to the said doctrine "Generalia specialibus non-derogant" in the case of Binani Cement (supra) thus :

"31. At the outset, we would observe that the High Court has erred in reaching its conclusion by holding that :

(a) the respondent Company would fall into all the three categories of industries referred to in the Scheme, that is to say it is a new unit which is a "large-scale unit", a "prestigious new unit" and also a "very prestigious unit"

(b) the classification of a new unit, viz. small scale, medium scale and large scale under Item 1-E on the basis of scale of investment does not denude a new industrial unit of any type of the special status of "pioneer", "prestigious" and "very prestigious" unit under Items 4 and 5 to also exclude operation of General entry; and

(c) the special entry would not exclude the applicability of general entry in context of the Scheme so as to exclude the operation of items 4, 6 and 7. Thereby implying that though there exists an overlap between the general and special provision, the general provision would also be sustained and the two would co-exist.

32. Before we deal with the fact situation in the present appeal, we reiterate the settled legal position in law, that is, if in a statutory rule or statutory notification, there are two expressions used, one in general terms and the other in special words, under the rules of interpretation, it has to be understood that the special words were not meant to be included in the general expression. Alternatively, it can be said that where a Statute contains both a general provision as well as specific provision, the later must prevail.

33. We are mindful of the principle that the Court should examine every word of a statute in its context and must use context in its widest sense. We are also in acquaintance with the observations of this Court in RBI v. Peerless General Finance and Investment Co. Ltd., (1987) 2 SCR 1 wherein Chinnappa Reddy, J. noting the importance of the context in which every word is used in the matter of interpretation of statutes held thus:

"33. Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

34. It is well established that when a general law and a special law dealing with some aspect dealt with by the general law are in question, the rule adopted and applied is one of harmonious construction whereby the general law, to the extent dealt with by the special law, is impliedly repealed. This principle finds its origins in the latin maxim of generalia specialibus non derogant, i.e., general law yields to special law should they operate in the same field on same subject. (Vepa P.

Sarathi, Interpretation of Statutes, 5th Ed., Eastern Book Company; N. S. Bindra''s Interpretation of Statutes, 8th Ed., The Law Book Company; Craies on Statute Law, S.G.G. Edkar, 7th Ed., Sweet & Maxwell; Justice G.P. Singh, Principles of Statutory Interpretation, 13th Ed., Lexis Nexis; Craies on Legislation, Daniel Greenberg, 9th Ed., Thomson Sweet & Maxwell, Maxwell on Interpretation of Statutes, 12th Ed., Lexis Nexis).

35. Generally, the principle has found vast application in cases of there being two statutes: general or specific with the latter treating the common subject - matter more specifically or minutely than the former. Corpus Juris Secundum, 82 C.J.S. Statutes ? 482 states that when construing a general and a specific statute pertaining to the same topic, it is necessary to consider the statutes as consistent with one another and such statutes therefore should be harmonized, if possible, with the objective of giving effect to a consistent legislative policy. On the other hand, where a general statute and a specific statute relating to the same subject-matter cannot be reconciled, the special or specific statute ordinarily will control. The provision more specifically directed to the matter at issue prevails as an exception to or qualification of the provision which is more general in nature, provided that the specific or special statute clearly includes the matter in controversy.

Edmond v. United States., 520 U.S. 651 (1997), Warden v. Marrero, 417 U.S. 653 (1974)

36. The maxim generalia specialibus non derogant is dealt with in Volume 44 (1) of the 4th ed. of Halsbury''s Laws of England at paragraph 1300 as follows :

"The principle descends clearly from decisions of the House of Lords in Seward v. Vera Cruz, (1884) 10 App Cas 59 and the Privy Council in Barker v Edger, [1898] AC 748 and has been affirmed and put into effect on many occasions If Parliament has considered all the circumstances of, and made special provision for, a particular case, the presumption is that a subsequent enactment of a purely general character would not have been intended to interfere with that provision; and therefore, if such an enactment, although inconsistent in substance, is capable of reasonable and sensible application without extending to the case in question, it is prima facie to be construed as not so extending. The special provision stands as an exceptional proviso upon the general. If, however, it appears from a consideration of the general enactment in the light of admissible circumstances that Parliament''s true intention was to establish thereby a rule of universal application, then the special provision must give way to the general."

37. The question in Seward v. Vera Cruz (1884) 10 A C 59 was whether Section 7 of the Admiralty Court Act of 1861, which gave jurisdiction to that Court over "any claim for damage done by any ship" also gave jurisdiction over claims for loss of life which would otherwise come under the Fatal Accidents Act, 1846. It was held that the general words of Section 7 of the Admiralty Court Act did not

exclude the applicability of the Fatal Accidents Act and therefore, the Admiralty Court had no jurisdiction to entertain a claim for damages for loss of life.

38. The adoption of the aforesaid rule in application of principle of harmonious construction has been explained by Kasliwal J. while expressing his partial dissent to the majority judgment in St. Stephen''s College v. University of Delhi, (1992) 1 SCC 558 as follows:

"140. ?The golden rule of interpretation is that words should be read in the ordinary, natural and grammatical meaning and the principle of harmonious construction merely applies the rule that where there is a general provision of law dealing with a subject, and a special provision dealing with the same subject, the special prevails over the general. If it is not constructed in that way the result would be that the special provision would be wholly defeated. The House of Lords observed in Warburton v. Loveland (1824-34) All ER Rep 589(HL) as under:

"No rule of construction can require that, when the words of one part of statute convey a clear meaning ? it shall be necessary to introduce another part of statute which speaks with less perspicuity, and of which the words may be capable of such construction, as by possibility to diminish the efficacy of the[first part]."

[(Anandji Haridas and Co. (P) Ltd. v. S.P. Kasture, (1968) 1 SCR 661, Patna Improvement Trust v. Lakshmi Devi, 1963 Supp. (2) SCR 812, Ethiopian Airlines v. Ganesh Narain Saboo, (2011) 8 SCC 539, Usmanbhai Dawoodbhai Memon v. State of Gujarat, (1988) 2 SCC 271, South India Corpn. (P) Ltd. v. Board of Revenue, Trivandrum, (1964) 4 SCR 280, Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, (1984) 4 SCC 27.]

39. In J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. State of U.P., (1961) 3 SCR 185, this Court has clarified that not only does this rule of construction resolve the conflicts between the general provision in one statute and the special provision in another, it also finds utility in resolving a conflict between general and special provisions in the same legislative instrument too and observed that [AIR pp. 1174-75, paras 9-10]:

"9. ?We reach the same result by applying another well- known rule of construction that general provisions yield to special provisions. The learned Attorney-General seemed to suggest that while this rule of construction is applicable to resolve the conflict between the general provision in one Act and the special provision in another Act, the rule cannot apply in resolving a conflict between general and special provisions in the same legislative instrument. This suggestion does not find support in either principle or authority. The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and Judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. In Pretty v. Solly (1859) 26 Beav 606 (quoted in Craies on Statute Law at p.. 206, 6th Edn.) Romilly, M.R., mentioned the rule thus: (ER p. 1034)

"The rule is, that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply."

The rule has been applied as between different provisions of the same statute in numerous cases some of which only need be mentioned: De Winton v. Brecon Corpn., (1859) 26 Beav 533, Churchill v. Crease, (1828) 5 Bing 177, United States v. Chase 34 L ED 117 and Carroll v. Greenwich Ins. Co. 50 L Ed 246.

10. Applying this rule of construction that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision, we must hold that clause 5(a) has no application in a case where the special provisions of clause 23 are applicable."

40. Lord Cooke of Thorndon pointed out, however, in Effort Shipping Co Ltd. v. Linden Management, SA [1998] AC 605 that the maxim is not a technical rule peculiar to English statutory interpretation, rather it represents simple common sense and ordinary usage". Bennion, Statutory Interpretation, 5th ed. (2008), p. 1155 states that it is based, like other linguistic canons of construction, "on the rules of logic, grammar, syntax and punctuation, and the use of language as a medium of communication generally. As Lord Wilberforce observed in Associated Minerals Consolidated Ltd v. Wyong Shire Council [1975] AC 538, AC p. 554, that it is still a matter of legislative intention, which the courts endeavour to extract from all available indications.

41. In Waverly Jute Mills Co. Ltd. v. Raymon & Co. (India) (P) Ltd., (1963) 3 SCR 209 and Union of India v. India Fisheries (P) Ltd., AIR 1966 SC 35. this Court has observed that when there is an apparent conflict between two independent provisions of law, the special provision must prevail. In CCE v. Jayant Oil Mills (P) Ltd., (1989) 3 SCC 343 this Court has accepted the aforesaid rule as "the basic rule of construction" that is to say "a more specific item should be preferred to one less so." In Sarabjit Rick Singh v. Union of India, (2008) 2 SCC 417 this Court has in fact followed the aforesaid precedents thus: (SCC p. 438, para 58)

"58. The Act is a special statute. It shall, therefore, prevail over the provisions of a general statute like the Code of Criminal Procedure."

42. This Court has noticed the application of the said rule in construction of taxing statutes along with the proposition that the provisions must be given the

most beneficial interpretation in CIT v. Shahzada Nand & Sons, (1966) 3 SCR 379:

"8. ?The classic statement of Rowlatt, J., in Cape Brandy Syndicate v. IRC, (1921) 1 KB 64, 71 still holds the field. It reads: (KB p.71)

"?. in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

To this may be added a rider: in a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. But even so, the fundamental rule of construction is the same for all statutes, whether fiscal or otherwise. "The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just or expedient." The expressed intention must guide the court. Another rule of construction which is relevant to the present enquiry is expressed in the maxim, generalia specialibus non derogant, which means that when there is a conflict between a general and a special provision, the latter shall prevail. The said principle has been stated in Craies on Statute Law, 5th Edn., at p. 205, thus:

"The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply."

?When the words of a section are clear, but its scope is sought to be curtailed by construction, the approach suggested by Lord Coke in Heydon case, (1584) 3 Co. Rep 7a, yield better results:

"To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope, and object of the whole Act: to consider, according to Lord Coke: (1) What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4) The reason of the remedy."

(emphasis supplied)

43. In LIC v. D.J. Bahadur, (1981) 1 SCC 315 this Court was confronted with the question as to whether the LIC Act is a special legislation or a general legislation and while considering the rule in discussion, this Court observed thus: (SCC page 349, para 49)

"49. ?the legal maxim generalia specialibus non derogant is ordinarily attracted where there is a conflict between a special and a general statute and an argument of implied repeal is raised. Craies states the law correctly:

"The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior enactment is special and the subsequent enactment is general, the rule of law being, as stated by Lord Selbourne in Sewards v. Vera Cruz, (1884) LR 10 AC 59 "that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. There is a well-known rule which has application to this case, which is that a subsequent general Act does not affect a prior special Act by implication. That this is the law cannot be doubted, and the cases on the subject will be found collected in the third edition of Maxwell is generalia specialibus non derogant - i.e. general provisions will not abrogate special provisions.? When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject matter and its own terms."

(emphasis supplied)

44. In Ashoka Marketing Ltd. v. Punjab National Bank, (1990) 4 SCC 406 this Court has placed reliance upon Bennion, Statutory Interpretation and J.K. Cotton Spig. & Wvg. Mills case, AIR 1961 SC 1170, amongst others, and explaining the rationale of this rule has reiterated the law as under:

"52. In U.P. SEB v. Hari Shanker Jain, (1978) 4 SCC 16, this Court has observed: (SCC p. 27, para 9)

"9. ? In passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former special Act unless it appears that the special Act again received consideration from Parliament."

53. In LIC v. D.J. Bahadur (1981) 1 SCC 315 Krishna Iyer, J. has pointed out :

"52. In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law."

45. In U.P. SEB v. Hari Shankar Jain, (1978) 4 SCC 16, this Court has concluded that if Section 79(c) of the Electricity Supply Act generally provides for the making of regulations providing for the conditions of service of the employees of the Board, it can only be regarded as a general provision which must yield to the special provisions of the Industrial Employment (Standing Orders) Act in respect of matters covered by the latter Act, and observed that: (SCC p. 27, para 9)

"9. The reason for the rule that a general provision should yield to a specific provision is this: In passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former Special Act unless it appears that the Special Act again received consideration from Parliament. Vide London and Blackwall Railway v. Limehouse District Board of Works, (1856) 3 K & J 123: 69 ER 1048 and Thorpe v. Adams. (1871) LR 6 CP 125"

46. In Gobind Sugar Mills Ltd. v. State of Bihar, (1999) 7 SCC 76 this Court has observed that while determining the question whether a statute is a general or a special one, focus must be on the principal subject-matter coupled with a particular perspective with reference to the intendment of the Act. With this basic principle in mind, the provisions must be examined to find out whether it is possible to construe harmoniously the two provisions. If it is not possible then an effort will have to be made to ascertain whether the legislature had intended to accord a special treatment vis-à-vis the general entries and a further endeavour will have to be made to find out whether the specific provision excludes the applicability of the general ones. Once we come to the conclusion that intention of the legislation is to exclude the general provision then the rule "general provision should yield to special provision" is squarely attracted.

47. Having noticed the aforesaid, it could be concluded that the rule of statutory construction that the specific governs the general is not an absolute rule but is merely a strong indication of statutory meaning that can be overcome by textual indications that point in the other direction. This rule is particularly applicable where the legislature has enacted comprehensive scheme and has deliberately targeted specific problems with specific solutions. A subject specific provision relating to a specific, defined and descriptable subject is regarded as an exception to and would prevail over a general provision relating to a broad subject."

(emphasis is mine)

52. Thus the judgments relied upon by the writ petitioners in no way furthers their case for quashing the First Information Report as they are all distinguishable or have been passed under the statutes which are complete code in themselves or are no longer good law in view of the proposition of law as settled by the Hon''ble Supreme Court in a later judgment in the case of Narayan K. Patodia (supra).

53. In view of the aforesaid discussions, the argument for quashing the First Information Reports on account of lack of jurisdiction in the police authorities to investigate an offence - which is punishable both under the VAT Act and under the IPC - as the special Act (VAT Act) ousts the jurisdiction of CrPC does not commend to this Court. The reason is simple, there is neither any conflict between the provisions of two statutes nor does there appears to be any attempt

to cover the filed of CrPC with regard to investigation. In fact, to the contrary, where there was even an avenue available to cover the said field of grant of police powers to the authorities/ Bureau of Investigation - under the VAT Act has voluntarily and consciously been not taken by the State Government.

54. Thus the institution of the FIR cannot be urged to be an abuse of the judicial process.

55. In view of the aforesaid, the writ applications fail on all grounds.

56. All the writ applications are dismissed, accordingly.

