
(2009) 05 DEL CK 0057

In the Delhi High Court

Case No : Criminal Rev. P. 340 of 2008 and Criminal M.A. 7751 of 2008

Dharambir Khattar

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Citation : (2009) 159 DLT 636 : (2010) 6 RCR(Criminal) 1733

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : S.K.Rungta, Pratiti Rungta, Rekha Dhakar, in Criminal Rev. P. 340/2008 and Criminal M.A. 7751/2008, Neelam Grover, in Criminal Rev. P. 371/2008 and Criminal M.A. 8085/2008, S.K. Saxena, Manisha Sharma, in CrI.Rev.P.380/2008 and H.P.Sharma, in Criminal Rev. P. 456/2008 and Criminal M.A. 9662/200, for the Appellant; Dayan Krishnan, Special Public Prosecutor and Gautam Narayan, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar J.

1. These four Criminal Revision Petitions u/s 397 read with Section 401 of the Code of Criminal Procedure, 1973 (CrPC) are directed against order on charge dated 8th April, 2008 and an order dated 16th April, 2008 passed by the learned Special Judge, Central Bureau of Investigation (CBI) framing charges against each of the petitioners, inter alia, for the offences u/s 120-B Indian Penal Code (IPC) read with Sections 8 and 12 of the Prevention of Corruption Act, 1988 (PCA), u/s 120B IPC read with Sections 7, 8, 13(2), 13(1) (d) PCA and for some of the accused for the substantive offence under Sections 13 (2) read with 13 (1) (d) PCA. Background of the Lift Case

2. The present batch of four revision petitions arise from a common charge sheet filed by the CBI in RC No. 25(A)/2003-CBI/ACB/New Delhi. This concerns the unauthorised construction of a lift at a commercial complex at Mahavira Towers, IIIrd Floor, Paschim Vihar and is hereafter referred to as the `lift case`. The FIR

in this case was registered on 3rd April 2003 under Sections 7, 13(2) read with 13(1) (d) PC Act. In this case Subhash Sharma ("Sharma"), the former Vice-Chairman of the Delhi Development Authority (DDA) is accused No. 1, Dharambir Khattar ("Khattar") who allegedly worked as a middleman between public servants and private individuals is accused No. 2, Ved Prakash Kaushik an individual and co-conspirator who helped in liaising with the DDA is accused No. 3, Pradeep Kapur husband of Kavita Kapur, a partner of a firm M/s APY Hoteliers and Developers is accused No. 4. Anil Wadhwa and Yashpal Manocha, the other two partners of the said firm are accused Nos. 5 and 6 respectively. The gist of the case is that the accused acted in criminal conspiracy to commit the aforementioned offences whereby Subhash Sharma used his official position to prevent the demolition of the unauthorised construction of the lift in the commercial complex and subsequently to get it authorized.

3. The charge sheet in the Lift Case was filed on 15th July 2004. According to the CBI, the facts and evidence gathered during the investigation revealed disclosed the commission by the accused of offences punishable u/s 120B IPC read with Sections 7, 8, 13(2) read with 13(1) (d) and Section 15 of PCA and substantive offences against some of them. By the impugned order on charge dated 8th April 2008, after discussing the materials gathered by the CBI, the learned Special Judge, CBI discharged accused Yashpal Manocha and held that charges for the aforementioned offences should be framed against the remaining accused. By the subsequent order dated 16th April 2008 the learned Special Judge framed charges against each of the petitioners for the aforementioned offences.

4. The submissions of Mr. S.K.Rungta, learned Advocate on behalf of Dharambir Khattar, Mr. S.K.Saxena, learned Advocate on behalf of Subhash Sharma, Mr. H.P.Sharma, learned Advocate on behalf of Ved Prakash Sharma, Ms. Neelam Grover, learned Advocate on behalf of Pradeep Kapur and Anil Wadhwa and Mr. Dayan Krishnan, learned Special Public Prosecutor appearing for CBI have been heard. Preliminary objection of the CBI as to maintainability.

5. A preliminary objection has been raised by the CBI about the maintainability of these revision petitions. It is submitted that in terms of Section 19 (3) (c) of PCA, no Court can exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings by the trial court. It is submitted that an order holding that charges are required to be framed against the accused and an order framing charges passed by the Special Court under the PCA are interlocutory orders against which no revision would lie to the High Court.

6. It is submitted that that while interpreting a similarly worded provision, viz., Section 11(1) of the Special Courts Act 1979 (SCA), a Bench of four Judges of Supreme Court in V.C. Shukla Vs. State through C.B.I., by a 3:1 majority held that an order framing charges against the accused was not a final order but an interlocutory one and, therefore, no appeal would lie against such order to the Supreme Court. A comparison is also drawn with a similarly worded provision,

Section 34 of the Prevention of Terrorism Act 2002 (POTA) which was interpreted in State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others, by the Supreme Court. It was held that in terms of the said provision an interlocutory order of the Special Court was not appealable to the High Court. It was further held that the High Court could also not exercise its powers under Articles 226 and 227 of the Constitution of India or Section 482 CrPC to entertain a petition challenging an interlocutory order of the Special Court under the POTA.

7. According to learned Counsel for the CBI, the opening words of Section 19(3) PCA indicate that it is a non-obstante clause and, therefore resort cannot be had to either the CrPC or Section 22 or Section 27 of the PCA to justify the High Court entertaining a revision petition. He places reliance on the decision of the Supreme Court in Satya Narayan Sharma Vs. State of Rajasthan, where in the context of a stay order passed by the Special Court under the PCA, the scope of Section 19 (3) (c) was explained and it was held that no stay of the proceedings before the Special Court could be granted even by the High Court by virtue of the said provision. Reliance is also upon the judgment of a Division Bench of this Court in Bachraj Bengani @ B.R. Jain Vs. State and Another, where it was held that an appeal could not be filed in terms of Section 34 POTA against an order framing charges. It was held that even a revision petition would not lie in the High Court. Submissions of the petitioners on maintainability

8. The submissions of the learned Counsel for the CBI have been countered by learned Counsel for the petitioners accused not only in the present batch of cases but also by counsel who appeared in the connected batch of cases which were heard along with the present case. While arguments in the lift case were addressed both on the issues of maintainability as well as on merits, the arguments in the connected cases were addressed only on the issue of maintainability.

9. Learned Counsel for the accused submit that the judgment in V.C.Shukla (supra) has no application to the present cases since it was rendered in the context of Section 11 SCA which is not, according to them, in pari materia Section 19 (3) (c) PCA. Likewise, it is submitted that the wording of Section 34 POTA is different. It bars appeals and revisions against interlocutory orders as understood in the context of the POTA. It is submitted that as far as the PCA is concerned, Section 19 deals essentially with the grant of sanction to prosecute and the remedy available to a person aggrieved by an order granting sanction. Thus, the scope of Section 19 (3) (c) PCA cannot be expanded to cover all orders passed by the trial court at the various stages of the trial. Referring to Section 22 and 27 of the PCA, it is submitted that each of these provisions has to be given full effect and the revision petition is, therefore, maintainable against an order on charge or an order framing charges passed by the Special Court under the PCA.

10. Counsel for the petitioners submit that in any event an order on charge or an order framing charge passed by the Special Court under the PCA is not an interlocutory order. Since the provisions of the CrPC apply to the Special Court

under the PCA, the nature of the order on charge has to be understood in the context of the CrPC. Such an order passed by the criminal court under the CrPC has been held by the Supreme Court in *Madhu Limaye Vs. The State of Maharashtra*, to be a final order that is revisable u/s 397 CrPC. It is submitted that Section 19 (3) (c) PCA is not intended to curtail the revisional power of the High Court, which in any event has been preserved by Section 27 PCA. Reliance is placed by learned Counsel for the petitioners on the judgments in *Jarnail Singh Vs. State of Rajasthan*, and two judgments of the learned Single Judge of the Madras High Court in *State Vs. Renuka Devi*, and *V.R. Nedunchezian Vs. State*, . Comparison of the statutes

11. The contentions of the learned Counsel for the CBI about the similarity of the provisions contained in Section 11 SCA, Section 34 POTA and Section 19 (3) (c) PCA requires to be first dealt with. The said provisions read thus:

The Special Courts Act, 1979 11. Appeal (1) Notwithstanding anything in the Code, an appeal shall lie as of right from any judgment, sentence or order, not being interlocutory order, of a Special Court to the Supreme Court both on facts and on law. (2) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order of a Special Court. (3) Every appeal under this section shall be preferred within a period of thirty days from the date of any judgment sentence or order of a Special Court: Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for non preferring the appeal within the period of thirty days. (emphasis supplied) The Prevention of Corruption Act, 1988 19. Previous sanction necessary for prosecution.-(1)xxxxxxxxxx (2)xxxxxxxxxx (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),- (a) No finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or any error, omission or irregularity in, the sanction required under Sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby; (b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice; (c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings. (4) In determining under Sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation.-For the purposes of this section,- (a) Error includes competency of the authority to grant sanction; (b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

27. Appeal and revision.-Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court as if the court of the Special Judge were a court of Session trying cases within the local limits of the High Court. Prevention of Terrorism Act, 2002 34. Appeal.-

(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or oral, not being an interlocutory order, of a Special Court to the High Court both on facts and on law. Explanation.-For the purposes of this section, "High Court" means a High Court within whose jurisdiction, a Special Court which passed the judgment, sentence or order, is situated.

(2) Every appeal under Sub-section (1) shall be heard by a Bench of two Judges of the High Court.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in Sub-section (3) of Section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from: Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

12. A bare perusal of the above provisions reveals their apparent similarity. While Section 11 SCA and Section 34 POTA bar appeals against an interlocutory order of the trial court, Section 19 (3) (c) PCA prohibits the entertaining of revision petitions by the High Court against interlocutory orders of the Special Court. The second similarity is that each of the provisions begins with the non obstante clause "Notwithstanding anything contained in the Code of Criminal Procedure." Clearly the said provision will prevail over any contrary or inconsistent provision in the CrPC. A look at Section 27 PCA shows that it is a provision concerning the revisional power of the High Court and it has been made "subject to the other provisions of the Act". Therefore Section 27 PCA is subject to Section 19 (3) PCA which in turn is unaffected by any contrary provision in the CrPC. The third similarity is that in none of the statutes is there a definition of the words 'interlocutory order.' The said words are not defined even under the CrPC. This Court is therefore unable to accept the submission of the learned Counsel for the accused that Section 11 SCA and Section 34 POTA are not in pari materia Section 19 (3) PCA. Is the order on charge and an order framing charge under the PCA an interlocutory order?

13. The principal question that arises in the context of the preliminary objection is whether in terms of Section 19 (3) (c) PCA, an order on charge and an order

framing charge is an interlocutory order? In *V.C.Shukla* the Supreme Court was called upon to answer a similar question in the context of a similarly worded Section 11 SCA. Under the SCA the trial court was a Special Court presided over by a Judge of the High Court. The question was whether an appeal would lie to the Supreme Court against an order framing charge passed by the Special Court under the SCA. The question was answered in the negative by a 3:1 majority, with Fazl Ali J., writing the majority opinion for himself and Sen. J. with Desai J. writing a separate concurring opinion. Singhal, J. dissented.

14. The sheet anchor of the argument on behalf of the appellant in *V.C.Shukla* was that the SCA "being a statute in pari materia the Criminal Procedure Code, the expression used and the meaning of the words employed in the Act must have the same meaning and signification as used in the various provisions of the Criminal Procedure Code of 1973..." It was further submitted in that case, as it is here, that "on a proper construction of Section 11 of the Act, the word "interlocutory order" has been used exactly in the same sense as the same word has been used in Section 397(2) of the Code." Fazl Ali, J. for the majority (with Desai, J. concurring) first went on to discuss the decisions in *Amar Nath and Others Vs. State of Haryana* and *Another*, ; *Madhu Limaye Vs. The State of Maharashtra*, and AIR 1949 1 (Federal Court) and observed that (SCC, p.104):

the term "interlocutory order" used in the Code of Criminal Procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial because the bar contained in Section 397(3) of the Code would apply to a variety of cases coming up before the courts not only being offences under the Penal Code but under numerous Acts" and that "the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi-final." However, it qualified this by saying: "The same, however, in our opinion, could not be said of the Special Courts Act which was meant to cover only specified number of crimes and criminals and the objective attained was quickest despatch and speediest disposal." The majority then observed (SCC, p.106): "we are in complete agreement with the principle, involved in the cases discussed above, that an order framing charges against an accused undoubtedly decides an important aspect of the trial and it is the duty of the court to apply its judicial mind to the materials and come to a clear conclusion that a prima facie case has been made out on the basis of which it would be justified in framing charges. The question, however, with which we are concerned in the present appeal is essentially different. The order of the Special Judge framing the charge is a reasoned order and not a mechanical or a casual order so as to vitiate the order of the Special Judge. In the instant case, we are concerned with a much larger question viz. whether or not the term "interlocutory order" used in Section 11(1) of the Act should be given the same meaning as this very term appearing in Section 397(2) of the Code. In other words, the question is whether Section 11(1) of the Act tightens or widens the scope of the term "interlocutory order" as contained in Section 397(2) of the Code and as interpreted by this Court in the decisions,

referred to above.

15. While dealing with the said question, the objects of the SCA were examined and it was concluded that (SCC, p. 111):

the heart and soul of the Act is speedy disposal and quick dispatch in the trial of these cases. It is, therefore, manifest that the provisions of the Act must be interpreted so as to eliminate all possible avenues of delay or means of adopting dilatory tactics by plugging every possible loophole in the Act through which the disposal of the case may be delayed. Indeed if this be the avowed object of the Act, could it have been intended by the Parliament that while the Criminal Procedure Code gives a right of revision against an order which, though not purely interlocutory, is either intermediate or quasi-final, the Act would provide a full-fledged appeal against such an order. If the interpretation as suggested by the counsel for the appellant is accepted, the result would be that this Court would be flooded with appeals against the order of the Special Court framing charges which will impede the progress of the trial and delay the disposal of the case which is against the very spirit of the Act. We are of the opinion that it was for this purpose that a non obstante clause was put in Section 11 of the Act so as to bar appeals against any interlocutory order whether it is of an intermediate nature or is quasi-final. The Act applies only to specified number of cases which fulfil the conditions contained in the provisions of the Act and in view of its special features, the liberty of the subject has been fully safeguarded by providing a three-tier system as indicated above.

16. Next, the law on the effect of the non obstante clause in Section 11 SCA, "notwithstanding anything in the Code..." was analysed. The judgment of the Supreme Court in *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, and in particular the following opinion of Patanjali Sastri, CJ was noticed (SCC, p. 113):

(1) We should exclude the statute concerned from consideration; in the instant case "The Code.

(2) We should construe the words used according to their natural and ordinary meaning instead of referring to the statute which is sought to be excluded.

17. Next, the interpretation of the words "interlocutory order" independent of the interpretation of those words in the context of Section 397 CrPC, was taken up. In doing so it was noticed that there was a species of an "intermediate order." It was observed in para 24 (SCC, p.115):

the essential attribute of an interlocutory order is that it merely decides some point or matter essential to the progress of the suit or collateral to the issues sought but not a final decision or judgment on the matter in issue. An intermediate order is one which is made between the commencement of an action and the entry of the judgment. *Untwalia, J.* in the case of *Madhu Limaye v. State of Maharashtra* clearly meant to convey that an order framing charge is not

an interlocutory order but is an intermediate order as defined in the passage, extracted above, in CORPUS JURIS SECUNDUM, Vol. 60. We find ourselves in complete agreement with the observations made in CORPUS JURIS SECUNDUM. It is obvious that an order framing of the charge being an intermediate order falls squarely within the ordinary and natural meaning of the term "interlocutory order" as used in Section 11(1) of the Act. WHARTON'S LAW LEXICON (14th Edn., p. 529) defines interlocutory order thus: "An interlocutory order or judgment is one made or given during the progress of an action, but which does not finally dispose of the rights of the parties." Thus, summing up the natural and logical meaning of an interlocutory order, the conclusion is inescapable that an order which does not terminate the proceedings or finally decides the rights of the parties is only an interlocutory order. In other words, in ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not however conclude the trial at all. This would be the result if the term interlocutory order is interpreted in its natural and logical sense without having resort to Criminal Procedure Code or any other statute.

18. In para 34 of the majority opinion of Fazl Ali, J., the following propositions were laid down on determining whether an order is an interlocutory or a final order SCC, p.122):

34. Thus, on a consideration of the authorities, mentioned above, the following propositions emerge: (1) that an order which does not determine the right of the parties but only one aspect of the suit or the trial is an interlocutory order; (2) that the concept of interlocutory order has to be explained in contradistinction to a final order. In other words, if an order is not a final order, it would be an interlocutory order; (3) that one of the tests generally accepted by the English courts and the Federal Court is to see if the order is decided in one way, it may terminate the proceedings but if decided in another way, then the proceedings would continue, because, in our opinion, the term `interlocutory order` in the Criminal Procedure Code has been used in a much wider sense so as to include even intermediate or quasi-final orders; (4) that an order passed by the Special Court discharging the accused would undoubtedly be a final order inasmuch as it finally decides the rights of the parties and puts an end to the controversy and thereby terminates the entire proceedings before the court so that nothing is left to be done by the court thereafter; (5) that even if the Act does not permit an appeal against an interlocutory order the accused is not left without any remedy because in suitable cases, the accused can always move this Court in its jurisdiction under Article 136 of the Constitution even against an order framing charges against the accused. Thus, it cannot be said that by not allowing an appeal against an order framing charges against the accused. Thus, it cannot be said that by not allowing an appeal against an order framing charges, the Act works serious injustice to the accused.

19. Applying the above tests it was held in Para 35 as under (SCC, p.123):

Applying these tests to the order impugned we find that the order framing the charges is purely an interlocutory order as it does not terminate the proceedings but the trial goes on until it culminates in acquittal or conviction. It is true that if the Special Court would have refused to frame charges and discharged the accused, the proceedings would have terminated but that is only one side of the picture. The other side of the picture is that if the Special Court refused to discharge the accused and framed charges against him, then the order would be interlocutory because the trial would still be alive. Mr. Mridul tried to repel the argument of the Solicitor-General and explained the decisions, referred to above, on the ground that the English decisions as also the Federal Court's decisions made the observations while interpreting the provisions of the Government of India expressly used. It was urged that the same construction would not apply to the present case where the word `order` is not qualified by the word `final`. With due respect to the learned Counsel, in our opinion, the distinction sought to be drawn is a distinction without any difference. This Court as also the Federal Court have clearly pointed out that so far as the tests to be applied to determine whether an order is final or interlocutory, apply as much to a civil case as to a criminal case. Furthermore, as already indicated, it is impossible to spell out the concept of an interlocutory order unless it is held in contradistinction to or in contrast with a final order. This was held in a number of cases a number of cases referred to, including Madhu Limaye case which has been expressly stressed by us in an earlier part of the judgment. For these reasons, therefore, the contention of the learned Counsel for the appellant on this aspect of the matter fails and is hereby overruled.

20. Ultimately it was held in paras 45, 46 and 47 as under (SCC, pp128-129):

45. On a true construction of Section 11(1) of the Act and taking into consideration the natural meaning of the expression `interlocutory order`, there can be no doubt that the order framing charges against the appellant under the Act was merely an interlocutory order which neither terminated the proceedings nor finally decided the rights of the parties. According to the test laid down in Kuppuswami case the order impugned was undoubtedly an interlocutory order. Taking into consideration, therefore, the natural meaning of interlocutory order and applying the non obstante clause, the position is that the provisions of the Code of Criminal Procedure are expressly excluded by the non obstante clause and therefore Section 397(2) of the Code cannot be called into aid in order to hold that the order impugned is not an interlocutory order. As the decisions of this Court in the case of Madhu Limaye v. State of Maharashtra and Amar Nath v. State of Haryana were given with respect to the provisions of the code, particularly Section 397(2), they were correctly decided and would have no application to the interpretation of Section 11(1) of the Act, which expressly excludes the provisions of the Code of Criminal Procedure by virtue of the non obstante clause.

46. We feel that one reason why no appeal was provided against an interlocutory

order like framing of the charges, as construed by us so far as the Act is concerned, may have been that it would be against the dignity and decorum of the very high status which the Special Judge under the Act enjoys in trying the case against an accused in that the Judge is a Sitting Judge of a High Court and therefore must be presumed to frame the charges only after considering the various principles and guide-lines laid down by other High Courts and this Court in some of the cases referred to above.

47. Thus, summing up the entire position the inescapable conclusion that we reach is that given the expression "interlocutory order" its natural meaning according to the tests laid down, as discussed above, particularly in Kuppuswami case and applying the non obstante clause, we are satisfied that the Act is concerned, it has been used in the natural sense and not in a special or a wider sense as used by the Code in Section 397(2). The view taken by us appears to be in complete consonance with the avowed object of the Act to provide for a most expeditious trial and quick dispatch of the case tried by the Special Court, which appears to be the paramount intention in passing the Act.

21. It may be noticed that in his concurring opinion Desai, J. too concluded that an order framing charge "would not be an order other than an interlocutory order. It would be unquestionably an interlocutory order."

22. Coming to the present case, this Court has no hesitation in holding that the ruling in V.C.Shukla in the context of the words "interlocutory order" in Section 11 SCA would apply on all fours. As already noticed, there is very little distinction between Section 11 SCA and Section 19 (3) (c) PCA. The opening words of Section 19 (3), like Section 11 SCA, constitutes a non obstante clause that keeps out the CrPC entirely. It evidences the legislative intent not to permit a revision petition against interlocutory orders passed by the Special Court notwithstanding the position to the contrary under the CrPC. When the legislature expressly excludes the applicability of the CrPC by a non obstante clause, it would not be possible for a Court to overlook it and examine whether the order on charge is in the context of Section 397 CrPC an order that is subject to revision. In other words, if one were to accept the arguments of learned Counsel for the accused, then the non obstante portion of Section 19 (3) of the PCA would be rendered redundant. It must be remembered that this is not a petition challenging constitutional validity of Section 19 (3) of the PCA. On the other hand the petitioners are only seeking to interpret Section 19 (3) (c) PCA to permit a revision petition against an order on charge by the Special Court.

23. The effect of the non-obstante clause in the opening part of Section 19 (3) was considered by the Supreme Court in Satya Narayan Sharma Vs. State of Rajasthan, . There the Court was concerned with the question whether the High Court could have stayed the proceedings before the Special Court under the PCA in exercise of its powers u/s 482 CrPC notwithstanding Section 19 (3) (c) of the Act. An argument was advanced by the accused in that case that Section 19 (3) (c) PCA which reads "no court shall stay the proceedings under this Act on any

other ground" would apply only to proceedings concerning grant of sanction and not to an order granting stay of the trial itself. It was further argued that the prohibition u/s 19 (3) (c) applied only to the revisional powers of the High Court u/s 397 CrPC and not to the powers of the High Court u/s 482 CrPC. These arguments were negated by the Supreme Court. A reference was made to Section 397 CrPC as well as to the non obstante clause. It was explained, thus, in Para 14 of the said judgment (SCC, pp.612-613):

It is thus to be seen that this section provides: (a) that no court should stay the proceedings under the Act on any ground, and (b) that no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings. To be noted that (b) above is identical to Section 397(2) of the Criminal Procedure Code which deals with the revisional power of the court. If Section 19 was only to deal with revisional powers then the portion set out in (b) above, would have been sufficient. The legislature has, therefore, by adding the words "no court shall stay the proceedings under this Act on any other ground" clearly indicated that no stay could be granted by use of any power on any ground. This therefore would apply even when a court is exercising inherent jurisdiction u/s 482 of the Criminal Procedure Code.

24. In the present petitions it was urged that notwithstanding the above legal position, the powers of this Court under Article 226 and 227 of the Constitution and Section 482 CrPC remained untrammelled. In other words, it was submitted that in appropriate cases, the said provisions could be invoked notwithstanding the statutory bar to challenge an order on revision passed by the Special Court. In the considered view of this Court, this argument although attractive also does not survive after the authoritative pronouncement of the Supreme Court in *State v. Navjot Sandhu* (supra). There a similar argument raised in the context of Section 34 POTA was negated. An order by the Special Judge POTA regarding call interception was challenged in the High Court by a petition under Articles 226 and 227 of the Constitution read with Section 482 CrPC. The Supreme Court held that the High Court ought not to have entertained the petition at all. It noticed the judgments in *Madhu Limaye v. State of Maharashtra* and *Satya Narayan Sharma v. State of Rajasthan*. It was held (SCC, p.657):

Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court u/s 482 of the Criminal Procedure Code can be exercised even when there is a bar u/s 397 or some other provisions of the Criminal Procedure Code. However as is set out in *Satya Narayan Sharma* case this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which

require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out hereinabove fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment.

25. In *Satya Narayan Sharma* too a similar argument was rejected. There the Supreme Court explained (SCC, p.613): 15. There is another reason also why the submission that Section 19 of the Prevention of Corruption Act would not apply to the inherent jurisdiction of the High Court, cannot be accepted. Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent power can be exercised even if there was a contrary provision in the Criminal Procedure Code. Section 482 of the Criminal Procedure Code does not provide that inherent jurisdiction can be exercised notwithstanding any other provision contained in any other enactment. Thus if an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar. As has been pointed out in the case of *Madhu Limaye v. State of Maharashtra*; *Janata Dal v. H.S. Chowdhary* and *Indra Sawhney v. Union of India* the inherent jurisdiction cannot be resorted to if there was a specific provision or there is an express bar of law.

16. We see no substance in the submission that Section 19 would not apply to a High Court. Section 5(3) of the said Act shows that the Special Court under the said Act is a Court of Session. Therefore the power of revision and/or the inherent jurisdiction can only be exercised by the High Court.

17. Thus in cases under the Prevention of Corruption Act, there can be no stay of trials. We clarify that we are not saying that proceedings u/s 482 of the Criminal Procedure Code cannot be adapted. In appropriate cases proceedings u/s 482 can be adapted. However, even if petition u/s 482 of the Criminal Procedure Code is entertained, there can be no stay of trials under the said Act. It is then for the party to convince the court concerned to expedite the hearing of that petition. However, merely because the court concerned is not in a position to take up the petition for hearing would be no ground for staying the trial even temporarily.

26. In arriving at the above conclusions the Supreme Court took note of the Statement of Objects and Reasons of the PCA in which it was explained that: In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included." This completely answers the argument advanced on behalf of the petitioner *Jagdish Chandra* in the connected batch of petitions that Section 19 PCA was to be viewed only in

the context of an order granting or refusing sanction as its heading indicates. In other words, merely because the heading of Section 19 says "previous sanction necessary for prosecution," it cannot be understood as permitting revision petitions to be filed against an order on charge. The scope of Section 19 (3) (c) does not get limited on account of the heading of the Section.

27. In this context, it may also be noticed that there could be in the context of Section 27 PCA certain orders of the trial court which could be challenged by way of a revision petition in the High Court. For instance, an order discharging an accused would be finally determinative of the culpability of the accused. Such an order cannot be construed to be an interlocutory order. In this context, it may be recalled that in *V.C.Shukla* the Supreme Court observed:

that an order passed by the Special Court discharging the accused would undoubtedly be a final order inasmuch as it finally decides the rights of the parties and puts an end to the controversy and thereby terminates the entire proceedings before the court so that nothing is left to be done by the court thereafter.

28. Further, the opening words of Section 27 PCA are "subject to the provisions of this Act...." Clearly, therefore, Section 27 PCA would be subject to Section 19 (3) (c). Section 22 only talks of the context in which CrPC would apply subject to certain modifications. Section 22 (d) PCA reads as under:

22 (d) in Sub-section (1) of Section 397, before the Explanation, the following proviso had been inserted, namely:- "Provided that where the powers under this section are exercised by a court on an application made by a party to such proceedings, the court shall not ordinarily call for the record of the proceedings, (a) without giving the other party an opportunity of showing cause why the record should not be called for; or (b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies.

29. The fact that the procedural aspect as regards the hearing of the parties has been incorporated in Section 22 does not really throw light on whether an order on charge would be an interlocutory order for the purposes of Section 19 (3) (c) PCA. A collective reading of the two provisions indicates that in the context of order on charge an order discharging the accused may be an order that would be subject-matter of a revision petition at the instance perhaps of the prosecution. Since all provisions of the statute have to be given meaning, a harmonious construction of the three provisions indicates that the kinds of orders which can be challenged by way of a revision petition in the High Court is narrowed down to a considerable extent as explained in the case of *Satya Narayan Sharma*. The overall objective of the PCA is to ensure that multifarious challenges at various stages which have the effect of slowing down the trial itself should not be permitted.

30. The judgment of the Full Bench of the Rajasthan High Court in *Jarnail Singh* (supra), referred to by the counsel for the petitioners, was rendered in the

context of maintainability of a revision petition before the High Court against an order framing charges passed by the trial court. It was not a case under the PCA. The question referred for consideration by the Full Bench was "whether u/s 397 of the CrPC the expression "interlocutory order" covers the framing of charge during the trial or not." It was in that context that the Full Bench of Rajasthan High Court distinguished the judgment in V.C.Shukla to hold that an order on charge in the context of CrPC would not be an interlocutory order and can be subject-matter of a revision petition u/s 397(2) CrPC. In the considered view of this Court, this decision cannot help the petitioners. As already pointed out hereinbefore, the question in the present cases is whether Section 19 (3) (c) excludes the applicability of the CrPC. In the considered view of this Court, it does.

31. The learned Single Judge of the Madras High Court held in State Vs. Renuka Devi, , that an interlocutory order under the PCA is not to be confused with an intermediate order which can be passed during the course of trial or inquiry. Unfortunately even though the attention of the Court was drawn to the decision in V.C.Shukla, there is no discussion in the entire judgment of the said. The Court therefore also did not notice the similarity between Section 19 (3) (c) PCA and Section 11 SCA. A month later the same learned Single Judge of the Madras High Court delivered the judgment in V.R. Nedunchezian v. State (supra). This time the learned Judge quoted a passage from the judgment in V.C.Shukla (supra) but merely observed that the said interpretation was given by the Supreme Court in the context of the object of the SCA. The learned Single Judge again failed to notice the similarity in the wording of Section 11 SCA with Section 19 (3) PCA. Instead after referring to the decision in Madhu Limaye it was concluded by the learned Single Judge that an order on charge under the PCA cannot be held to be an interlocutory order. With respect to the learned Single Judge, the judgment in V.R.Nedunchezian v. State is contrary to V.C.Shukla in terms of which the words `interlocutory order" in Section 19 (3) (c) would include an order on charge and an order framing charge. In the considered view of this Court, the said two judgments of the learned Single Judge of the Madras High Court therefore do not help the petitioners.

32. To conclude this part of the discussion it is held that in the context of Section 19 (3) (c) the words "no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial..." includes an interlocutory order in the form of an order on charge or an order framing charge. On a collective reading of the decisions in V.C.Shukla and Satya Narayan Sharma, it is held that in terms of Section 19 (3) (c) PCA, no revision petition would be maintainable in the High Court against order on charge or an order framing charge passed by the Special Court.

33. Therefore, in the considered view of this Court, the preliminary objection of the CBI to the maintainability of the present petitions is required to be upheld. Nevertheless, this Court proposes to discuss the submissions in the Lift Case on

merits as well since it was argued at length. Case of the prosecution

34.1 The case of the CBI is that Anil Wadhwa, Yashpal Manocha and Kavita Kapur, wife of co-accused Pradeep Kapur entered into a partnership agreement for undertaking the business of running hotels and restaurants in the name of M/s A.P.Y.Hoteliars & Developers. The principal place of business was 756, CA Apartments, Paschim Vihar, Delhi. The said firm took on licence basis an office space No. RMTT-30A on the third floor (above the 2nd floor and below the terrace) of Rajendra Mahavira Tower-II situated on Plot Nos. 32 and 33, Community Centre, A-Block, Paschim Vihar, New Delhi -110 063 from M/s Jaina Properties & Finance Ltd. and others.

34.2 As per the terms of the licence deed, the total monthly rent was Rs. 32,500/- and the deed was valid for 33 months. It appears that even at the time of executing the licence deed, it was acknowledged that the licensee proposed to erect a lift. This is evident from the following clause in the Licence Deed dated which reads as under:

The Licensor had already clarified that there was no permission for the lift to be installed at any place in the building, from any Authority whatsoever. Therefore, in case the Licensee desires to install and operate a lift as mentioned above, for the use of the premises being licenced, in that event, the Licensee should be solely responsible to procure all the requisite permission/sanctions/NOC's etc. at its own risks and costs and should always keep the Licensor and the Owner/ Builder harmless and indemnified in his respect. All expenses incurred for the installation/operation/maintenance of the said lift or arising out of the installation/operation of the said lift, should be borne exclusively by the Licensee only.... The Licensee should also ensure that no area belonging to any third party/owner/ builder is used for installing the said lift....

34.3 As per terms of the licence deed, the licensee was also not entitled to carry out any addition, alteration or construction in the premises. The licensee also agreed "not to encroach on any common passages, public corridors and the terrace."

34.4 M/s A.P.Y.Hoteliars & Developers entered into an agreement dated 2nd November, 2002 with EISA Lifts Pvt. Ltd. for the purpose of erecting the lift at the cost of Rs. 6.70 lakhs and an advance amount of Rs. 30,000/- was given to EISA Lifts Pvt. Ltd. by cheque dated 2nd November, 2002. According to the CBI, in April 2003 a further sum of Rs. 2.50 lakhs was paid. In the second week of December 2002, M/s A.P.Y.Hoteliars & Developers commenced construction work for the installation of the lift. The structural and unit work i.e. fabrication and erection of M.S. lift well which comprised of work up to the platform level excluding platform machinery was given to M/s Engineers and Contractors. The videography and photographs taken by the CBI on site in April 2003 revealed the existence of a lift structure erected on the pavement adjacent to Plot No. 32-33, Paschim Vihar, Delhi.

34.5 It appears that on 14th December, 2002, soon after the work on the construction of the lift commenced, a complaint was made to the SHO, Police Station Paschim Vihar by M/s Surya Estates Pvt. Ltd. having its office at 30 & 31, Community Centre, Paschim Vihar, New Delhi. A copy of the said complaint was also endorsed to the Vice Chairman, Delhi Development Authority (DDA) and Director (Buildings), DDA. On the receipt of the said complaint the Officer on Special Duty (OSD) to the Vice Chairman, DDA marked the complaint to the Director (Buildings) (DDA) on 17th December, 2002. An inspection of the site was undertaken by the DDA Officials on 23rd December, 2002. The said Inspection Report, inter alia, noted:

1. The elevation of the building on plot. 33 is being changed.
2. Projected steel blade on outside of the boundary of the plot at 2nd and 3rd floor.
3. Foundation of columns being erected in front of plot no 32 and 33 unauthorisedly on public land to erect some heavy structure on that, in future.

34.6 In terms of Section 31 of the Delhi Development Authority Act (DD Act), action was initiated and a `stop construction notice` was issued by the DDA on 3rd January, 2003. A copy of the said notice was pasted on the building of M/s Jaina Properties (P) Ltd. on 8th January, 2003. It must be mentioned at this stage that the interception of the calls on the phones used by the accused Subhash Sharma, Vice-Chairman DDA, commenced on 20th December 2002. The first call to be intercepted, as regards the lift case, was on 14th February, 2003.

34.7 After receipt of the report by the Director (Commercial Land) (CL) along with photographs, the matter was discussed by Subhash Sharma, with the Director (Building) and the Director (CL) on 4th and 6th February, 2003. An order was passed on 6th February, 2003 by Subhash Sharma for removal of the encroachment. Thereafter the file was sent to the Land Management (LM) Section when the Deputy Director (DDA) (LM) and his officers took a decision on 13th February, 2003 that the demolition should be carried out on 27th February, 2003.

34.8 When M/s A.P.Y. Hoteliers & Developers learnt in the second week of February 2003 of the proposed demolition, they discussed the matter with one Ved Prakash Kaushik, a co-accused, who was also known as `Panditji`. Panditji claimed that he knew Subhash Sharma and that he could help them. According to the CBI, although Panditji was an employee of the NDMC, he knew Subhash Sharma and had access to him in the DDA. Panditji visited the DDA Office on 14th February, 2003. He informed Subhash Sharma that there was a party who was willing to spend Rs. 20 to 25 lakhs for regularizing the unauthorized construction in Paschim Vihar. Subhash Sharma is stated to have noted the name and mobile number of Pradeep Kapur given to him by Panditji.

34.9 On the same day, Subhash Sharma telephonically informed co-accused

Dharambir Khattar, a property dealer, about Panditji's visit to him as well as the willingness of the party to pay Rs. 20 to 25 lakhs for regularization of the unauthorized construction of the lift at Paschim Vihar. He also passed on to Khattar the name and mobile number of Pradeep Kapur. It appears that Dharambir Khattar had provided to Subhash Sharma the mobile telephone of his wife Smt. Nirmal Rani with the office address of Dharambir Khattar at 431, Mathura Road.

34.11 On 14th February, 2003 itself at about 9 pm, Khattar contacted Pradeep Kapur and gave his address to the latter. Between 15th to 20th February, 2003, Pradeep Kapur spoke frequently to Panditji. On 20th February, 2003, Pradeep Kapur, Yashpal Manocha and Anil Wadhwa proceeded to DDA Office with Panditji in Pradeep Kapur's vehicle. However, they were unable to meet Subhash Sharma. Nevertheless, Panditji met Subhash Sharma at the latter's office and reiterated to him that the party was willing to spend at least Rs. 20 to 25 lakhs to get the unauthorized construction regularized. Subhash Sharma then informed Panditji that the engineers involved would do the work only after taking some bribe money and claimed that he could not help. It is stated that on the night of 20th February, 2003, Subhash Sharma called Dharambir Khattar informing him of Panditji's visit and their conversation. Khattar was advised to contact one Ahuja who was the concerned Executive Engineer of the area and to offer him Rs. 2 to 4 lakhs to give a favourable report. It is stated that the diary recovered from Panditji shows an entry on 21st February, 2003 to the effect that "in the evening Pradeep Kapur also visits to discuss about the DDA land but assures to do so in this way we settled account."

34.12 On 24th February, 2003, Subhash Sharma spoke to Dharambir Khattar on the telephone enquiring if there had been any negotiation with Pradeep Kapur. Khattar informed Subhash Sharma that Pradeep Kapur was not interested in negotiating. Subhash Sharma then informed Dharambir Khattar that 27th February, 2003 had been fixed for demolition pursuant to the orders passed to that effect on 6th February, 2003. On the advice of Subhash Sharma, Khattar called up Pradeep Kapur immediately and informed him about the demolition programme fixed for 27th February, 2003. This led to Pradeep Kapur speaking to Panditji soon thereafter. On the night of 25th April, 2003, Subhash Sharma told Khattar that Panditji had informed him Khattar that Pradeep Kapur was not willing to negotiate. After collecting Panditji's mobile number from Subhash Sharma, Dharambir Khattar called him up informing him of the impending demolition fixed for 27th February, 2003. He wanted a meeting on the 26th February, 2003 but Panditji declined as he said he was busy for one or two days. Panditji visited the DDA Office on 26th February, 2003 and spoke to Subhash Sharma. During the meeting, Subhash Sharma warned Panditji that either party should negotiate else the structure would be demolished the next day i.e. 27th February, 2003. This was followed by various calls between Panditji, Dharambir Khattar, Pradeep Kapur, Anil Wadhwa and Yashpal Manocha in support of which the mobile telephone records are being relied upon by CBI.

34.13 On 27th February, 2003 at about 11.15 am, a demolition team of LM Section, DDA headed by Assistant Engineer, Jiten Puri reached Police Station Paschim Vihar. On learning this, Pradeep Kapur called up Panditji on his mobile but learnt that the latter was out of station. Pradeep Kapur then called up the Junior Engineer and requested for Subhash Sharma's telephone number. Thereafter, Pradeep Kapur rang up Subhash Sharma at around 1.44 pm informing him of the arrival of the demolition team. Subhash Sharma is stated to have rebuked Pradeep Kapur stating that despite a man being sent, no interest was shown in negotiating. When Pradeep Kapur informed Subhash Sharma that no one had contacted him, Subhash Sharma informed Pradeep Kapur that someone would contact him soon. Thereafter, Pradeep Kapur was asked to hand over the phone to the in-charge of the demolition team and inform him that the Vice Chairman was on line. Subhash Sharma then directed Jiten Puri to return with the demolition team and therefore defer the day's programme. Jiten Puri then immediately called up the DD (LM) to confirm that he had, in fact, been called by Vice Chairman. One Israr Khan, UDC confirmed the same from Kishore Singh, Private Secretary to the Vice Chairman. Pradeep Kapur then called up Subhash Sharma again and informed him that the officials of the demolition team needed the order to be confirmed from their Supervisory Officer i.e. DD (LM). On this, Subhash Sharma asked Pradeep Kapur to request the DD (LM) to talk to him. The message was passed on DD (LM) who then informed his Commissioner (LM) Dharmender, PW-14. In turn, DD (LM) has ordered by his Commissioner to confirm from Subhash Sharma himself that he had issued orders for the withdrawal of the demolition party. On such confirmation, DD (LM) directed Jiten Puri and the demolition team to return. Subhash Sharma had called up the Commissioner (LM) informing him that he had recalled the demolition team on the request from Panditji. On returning to the headquarters, the Assistant Engineer Jiten Puri placed the above facts on file and submitted the same to the DD (LM) and Commissioner (LM) who further sent the file to the Vice Chairman for confirmation. The DD entries in the police station also confirmed the Jiten Puri along with his team had gone to Police Station Paschim Vihar on 27th February, 2003 for demolition and had returned on that day itself without carrying out the demolition.

34.14 The call intercept showed that after receiving the first call from Pradeep Kapur, Subhash Sharma immediately called up Dharambir Khattar at around 1.45 pm informing him that 'liftwala man' had called and was begging for their lives to be saved and that he had told Pradeep Kapur that someone would speak to Pradeep Kapur right away .

34.15 Pradeep Kapur realized that it was Dharambir Khattar who was functioning as an agent on behalf of Subhash Sharma and called him up and apologized Dharambir Khattar on the same day at 5.00 pm along with Yashpal Manocha and Anil Wadhwa at the 431, Mathura Road Office. Dharambir Khattar informed them that there were 11 or 12 officials of the DDA who had to be paid Rs. 2 lakhs each since the file had to go to two offices and that the total deal would work out

between Rs. 25 to 30 lakhs. On hearing about the huge amount, Pradeep Kapur, Anil Wadhwa and Yashpal Manocha refused to negotiate saying that they did not have the capacity for paying such a huge amount and that they could only pay between Rs. 2 to 3 lakhs. They left soon thereafter. Khattar then called Subhash Sharma and apprised him of the developments. Later, Panditji offered to go and negotiate for reduction of the amount with the Vice Chairman and on 4th March, 2003, he met the Vice Chairman accompanied by Anil Wadhwa. Subhash Sharma then explained that the money had to be distributed among 11 to 12 officers and that even if each was to be paid Rs. 1 lakh, the total sum worked out between Rs. 12 to 13 lakhs. However, on persuasion of Panditji, the amount was finalized at Rs. 10 lakhs. The above information was passed on to Subhash Sharma by Khattar on the same day. Khattar then contacted Pradeep Kapur and asked that the aforementioned amount was finalized with Panditji should be paid so that work could be done to ensure the regularization of the unauthorized construction as well as allotment of DDA land for the purposes of the said construction. Commissioner (LM) and DD (LM) were summoned to the office of the Vice Chairman, DDA on 6th March, 2003 and were told by Subhash Sharma that the case of M/s APY Hoteliers and Developers recommended by Panditji and they were asked if anything could be done with the unauthorized construction. The DD (LM) told him that in a similar case, many people had lost their lives and that it was unsafe. Subhash Sharma then rang up Khattar and informed him that a case had been made out that the lift was unsafe and, therefore, M/s APY Hoteliers and Developers should submit an application that the lift would be used only for the purpose of the building and that the land adjacent to the building should be allotted. The lift was to be built adjoining the building so that safety could be ensured. Khattar assured Sharma that the application would reach the DDA by 7th March, 2003. On this, Sharma gave an assurance that he would allot space adjacent the building on receiving the application. The CBI has collected the details of the call intercepts on 6/7th March, 2003 of the calls between Pradeep Kapur and Dharambir Khattar. Pradeep Kapur met Dharambir Khattar on 8th March, 2003 to submit the application along with other papers and also the money which had been arranged. Khattar assured him that the application would be submitted by 10th March, 2003. A note was initiated in the file on 11th March, 2003 by Subhash Sharma addressed to the Commissioner (LD) enclosing the application of M/s APY Hoteliers and Developers in connection with the allotment of land adjoining the building for the purpose of installation of the lift. Subhash Sharma desired that the case would be examined and sought information whether DDA could consider his request. The certificate obtained by Pradeep Kapur from the lift maker assuring the safety of the lift was also enclosed.

34.16 On 17th March, 2003, Subhash Sharma discussed the lift matter with Director (CL) and Director (Building) alongwith JD(Building). They informed Subhash Sharma that the space could not be allotted to M/s A.P.Y.Hoteliers & Developers on licence basis. The DDA (CL) submitted his report on the note initiated by Subhash Sharma. This report dated 11/12th March, 2003 mentioned

that the construction was on public land without prior permission and for specific personal use which was illegal and may set a precedent for the future. He recommended immediate removal of the construction. With this note, he apprehended that he may be posted out since the note was not favourable to M/s APY Hoteliers and Developers. With such a note, Subhash Sharma could not find any grounds to regularize the unauthorised structure. He had to agree to removal of the structure on 26th March, 2003.

35. The RC was registered by the CBI in the Lift Case on 3rd April 2003 on the basis of "source information." The charge sheet was filed on 15th July 2004 along with the documents. A question arose whether the accused would be entitled to be supplied the copies of the call intercepts on the hard discs of the computers in the CBI's office. This issue came to be decided by a judgment dated 11th March 2008 passed by this Court in CrI.M.C. No. 1775 of 2006 Dharambir Vs. Central Bureau of Investigation, directing supply of the copies of the call records and playing of the original recording from the hard discs. A time schedule was also set down in the said judgment for the completion of the arguments and orders on charge. The learned Special Judge has pronounced the impugned orders on charge within the time schedule stipulated by this Court. This Court has already held the revision petitions not to be maintainable and is proceeding to consider the arguments on merits hereafter. Submissions on merits on behalf of the petitioners

36. As regards, Dharambir Khattar, the arguments advanced by learned Counsel were as under:

(i) The procedure outlined in CBI Manual as regards `source information` has not been complied with in the present case. Accordingly, it submitted that the entire investigation is flawed. The registration of the FIR without following the prescribed procedure and the consequent filing of a charge sheet stands vitiated. Reliance was placed on the decisions of the Supreme Court in Vineet Narain and Others Vs. Union of India (UOI) and Another, ; A. Nallasivan Vs. State of Tamil Nadu and others, and P. Sirajuddin, etc. Vs. State of Madras, etc., .

(ii) The FIR was registered belatedly. If in fact the CBI knew of the commission of the offence from the date of interception of the first call in the lift case on 14th February 2003, it ought not to have waited till April, 2003 to register the FIR. Reference was made to the decision in P. Sirajuddin, etc. Vs. State of Madras, etc., .

(iii) The intercepted calls do not indicate any criminal conspiracy between the parties. The statement of the Investigating Officer Shri M.C.Kashyap also showed `beyond doubt` that the CD containing the calls "were doctored to the disadvantage of the petitioner". Reliance was placed on the judgment in Mahabir Prasad v. Surinder Kaur AIR 1982 SC 1043 and the judgment of the Division Bench of this Court in State Vs. Ravi @ Munna, to contend that a duplicate copy of the recorded conversation could not be a valid piece of evidence and ought not

to be relied upon for framing charges against the accused. It was submitted that reliance placed by the learned Special Judge on the CFSL report also was erroneous. The judgments of this Court in Rakesh Bisht v. Central Bureau of Investigation in Crl. Rev. P. 461/2006 and of the Supreme Court in Union of India (UOI) Vs. Prakash P. Hinduja and Another, and State of Haryana v. Jagbir Singh JT 2003 (Supp) 2 SC 393 were referred to.

(iv) It was contended that offence of criminal conspiracy was not even prima facie made out as far as Dharambir Khattar is concerned. Calls were made to Khattar by Subhash Sharma and not the other way round. Therefore, the argument meeting of minds for the purposes of entering into a criminal conspiracy was absent. Reference was made to the judgments of the Division Bench of the Himachal Pradesh High Court Hari Ram Vs. State of Himachal Pradesh, and K.R. Purushothaman Vs. State of Kerala, .

37. The contentions on behalf of the Subhash Sharma were as under:

(1) The FIR covered incidents up to 27th February 2003 and the last telephonic call was dated 20th March 2003 and the FIR was registered on 3rd April 2003. It is stated that the demolition order was passed on 26th March 2003 and there were certain developments after 27th March 2003 which were in the knowledge of the CBI but not disclosed in the FIR. It is pointed out that there were three more cases against Subhash Sharma, namely, DLF case, Shameet Mukerjee case and the Modern School case. The FIRs were registered at three different branches of the CBI. The question posed was if the branches of the CBI are a police station, then there is no explanation why four cases have been registered at 4 police stations when the offence in fact emanates under the territorial jurisdiction of the police station under which the DDA office falls.

(2) The last of the FIRs was registered on 29th April 2003. In the Shameet Mukerjee case, the hard disc was required to be sealed immediately following the procedure outlined in the CBI Manual as the evidence would otherwise become suspect. Reliance is placed on the judgment in Chandrakant Ratilal Mehta and others Vs. The State of Maharashtra, . The hard disc was sealed only on 7th June 2003 whereas the sample voice of the petitioner was taken in April 2003. Therefore, it is possible that the voice attributed to the petitioner "may have been planted/fed from the sample voice available." The Andhra Pradesh Forensic Science Laboratory (APFSL) did not give any certificate that the hard disc was undoctored and unedited or not tampered.

(3) The transcript of the alleged telephonic conversations between Subhash Sharma and the Dharambir Khattar indicate that there was no agreement to accept any bribe or cause any pecuniary advantage either to the Subhash Sharma or anyone else. u/s 10 Evidence Act anything said done or written by one conspirator against the other would become admissible only if there were reasonable grounds to believe that two or more persons have conspired together. The reasonable ground can be established or inferred from any evidence/

circumstance other than the disputed one. Since no such evidence or circumstance exists, the telephonic conversation between the accused persons cannot be read against the petitioner and therefore the charge of criminal conspiracy u/s 120B IPC should fail. Reliance is placed upon the judgment in L.K. Advani Vs. Central Bureau of Investigation, and State through Superintendent of Police, CBI/SIT Vs. Nalini and Others, .

(4) It is further submitted that there is no physical manifestation of the conspiracy. Although the petitioner has been charged with having accepted a pecuniary advantage of Rs. 10 lakhs from APY Hoteliers, there is no evidence to establish the same and therefore the charge u/s 13(2) read with 13 (1)(d) PC Act is also not made out. Reliance is placed on the judgment in Alpana Das Vs. C.B.I., .

38. On behalf of Pradeep Kapur and Anil Wadhwa, it was submitted as under:

(a) APY Hoteliers and Developers were only tenants in the property for a limited period of 33 months. The total cost of installation of the lift was for a sum of Rs. 6.70 lakhs and therefore the question of paying Rs. 10 lakhs as bribe was highly improbable.

(b) The learned Special Judge has discharged Yashpal Manocha the co-accused in the case. Pradeep Kapur is in the same position as Yashpal Manocha.

(c) The intercepted calls did not show the involvement of the petitioner at all and the particular conversations between the petitioner No. 1 and other co-accused do not show him as being part of any criminal conspiracy. The conversations on the other hand show that the petitioner has never agree to join the conspiracy and showed no keenness in contacting accused Nos. 1 and 2, i.e., Subhash Sharma and Dharambir Khattar. On the other hand it was Subhash Sharma and Khattar who were pursuing the petitioner for a bribe and not vice-versa.

(e) There was no telephonic conversation between Subhash Sharma and Pradeep Kapur and also no transcript of the same. The petitioners are alleged to have telephoned R.S. Yadav, Junior Engineer of the DDA to take the telephone number of Subhash Sharma and that is on 27th February 2003. This itself shows that they could not have been in conspiracy with Subhash Sharma. The manner of recording of the telephonic conversation and non-supply of the hard disc on which they were copied are secondary evidence and not admissible u/s 65B Evidence Act. Further there were discrepancies in the duration of the calls shown in the transcript submitted by the telephone companies.

(f) It is submitted that Section 5(2) read with Rule 419A of the Indian Telegraph Act have not been complied with in letter and spirit and in any event the provisions are themselves unconstitutional and violative of Articles 14, 19 and 21 of the Constitution of India.

(g) Although the prosecution has relied upon 26 calls in the charge sheet, CDs delivered to the petitioner contained only 25 calls. The call dated 4th March 2003

is missing.

(h) It is submitted that the learned Special Judge has erred in framing charging against the petitioners u/s 8 PC Act when they were not instrumental in obtaining/accepting illegal gratification from the firm.

(i) It is submitted that the entire case of the prosecution is based on the intercepted telephone calls which by themselves could not form the basis for conviction. It is submitted that there is no other corroborative piece of evidence that can link the petitioners with the crime.

(j) It is submitted that if there was any conspiracy as alleged then Subhash Sharma would not have given orders on 26th March 2003, for the second time for demolition of the lift.

39. The contentions on behalf of Ved Prakash are as under:

(a) It is not in dispute that the Ved Prakash (Pandit ji) was himself not an employee of the DDA and was perhaps helping out Subhash Sharma in some of his private religious matters. He was in close with the Dharambir Khattar as well.

(b) The sanction order had been issued without any application of mind.

(c) Just like Subhash Sharma, it is argued by learned Counsel for Ved Prakash that his voice on the tapes could have been doctored. It is submitted that the entire prosecution against him is mala fide object of which among the intercepted telephonic conversations are those between Subhash Sharma on the one hand and Dharambir Khattar on the other and then the petitioner and Khattar.

(d) Reliance is placed on the judgment of Century Spinning and Manufacturing Co. Ltd. and Others Vs. State of Maharashtra, ; State of U.P. Thru CBI Vs . Dr. Sanjay Singh and Anr. to contend that there is nothing to charge the petitioner with the offence of criminal conspiracy involving the other accused.

40. On the call intercepts, although a separate writ petition is stated to have been filed by Khattar and, therefore, arguments were not addressed on that aspect by his counsel, the other accused did raise the grounds to that effect in their respective memorandum of revision petition but did not urge this point during the course of arguments. Be that as it may, this Court has in Dharambir Vs. Central Bureau of Investigation, already dealt with the question of the certification needed in terms of Section 65B Evidence Act for the purposes of authentication of the copies of the call intercepts. It may be noticed that it was not suggested in the present petitions that the sanction for carrying out the call intercept was wrongly granted or in violation of the provisions of Telegraph Act. Submissions on merits by the CBI 41.1 In reply, it is submitted on behalf of the CBI that the scope of interference by the Court with an order framing charges is limited. At the stage of charge the Special Court was only to determine if the material brought on record made out a case of strong suspicion against each of

the accused and in the present case there were sufficient materials on record to enable the court to come to such conclusion. Reference is made to the judgments in *Indu Jain Vs. State of Madhya Pradesh and Others*, ; *Bharat Parikh Vs. C.B.I. and Another*, ; *Hem Chand Vs. State of Jharkhand*, ; *Soma Chakravarty Vs. State through CBI*, ; *State of Maharashtra Vs. Salman Salim Khan and Another*, ; *State of Bihar Vs. Ramesh Singh*, ; *Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others*, .

41.2 As regards the question of previous sanction necessary for prosecuting the accused, it is submitted that the absence of sanction and the effect it has on the validity of the trial, are matters that are to be examined at the time of a trial itself. The trial need not wait only because of want of sanction. Reliance is placed on the judgment in *Parkash Singh Badal and Another Vs. State of Punjab and Others*, and *Lalu Prasad @ Lalu Prasad Yadav Vs. State of Bihar through CBI (AHD), Patna*, . Reliance is also placed on the judgment in *Paul Varghese Vs. State of Kerala and Another*, which holds that even if the wrong authority granted sanction that would not call for interference unless there was a failure of justice. The expression `failure of justice` as explained by the Supreme Court in *State by Police Inspector Vs. Sri T. Venkatesh Murthy*, would not cover a situation comparable with that on hand.

41.3 On behalf of the CBI, it is pointed out that the question as to when the prosecution should register an FIR is entirely in the discretion of the prosecution itself. The FIR is not to be read as an encyclopedia and therefore all ingredients of the offence need not be mentioned therein. Reference has been made to the judgment in *Superintendent of Police, C.B.I. and Others Vs. Tapan Kr. Singh*, . As regards the delay in registering the FIR, the CBI refers to the judgment in *Apren Joseph alias Current Kunjukunju and Others Vs. The State of Kerala*, wherein it has been held that the mere delay in lodging the FIR with the police is not always fatal to the prosecution. As to whether the delay was reasonable or not would depend on the facts of every case.

41.4 As regards the tapes and transcripts, it is submitted that the allegation that the voice of any of the petitioners may have been planted from the sample voice is one of sheer desperation. At the present stage of the case when the trial is yet to commence, this Court is only called upon to examine if there was material on record which created a strong suspicion against the petitioner. With reference to the roles of Khattar, Subhash Sharma, Pradeep Kapur and Ved Prakash the call intercepts clearly indicate that they were in criminal conspiracy to commit the offences in question. It is submitted that the conversations recorded in the tapes constituted sufficient material. Whether in fact the tapes have been doctored as alleged by the accused can only be demonstrated at the trial. The reliability of the evidence need not be gone into at this stage.

41.5 It is pointed out by the learned Counsel for the CBI that the submission of the petitioners based on Section 10 Evidence Act is erroneously premised on the footing that there is no evidence other than the telephonic conversations to bring

home the charge. Reference is made to the notings in the file which themselves would show that the petitioner Subhash Sharma took undue interest in the case and interfered in the demolition action concerning the lift. The officers of the DDA examined by the CBI have spoken of the circumstances under which the petitioner interfered with the decision taken to demolish the lift.

41.6 As regards Pradeep Kapur and Anil Wadhwa it is submitted that these petitioners knew very well that the licence agreement with the landlord did not permit APY Hoteliers to erect a lift on public land and that too without prior sanction of the DDA. It is plain that without waiting for the sanction of the DDA to erect a lift in the commercial complex which would be undoubtedly an encroachment/taking over of public land, APY Hoteliers went ahead with the construction of the lift. The petitioners therefore knowingly committed an illegal act and therefore could not escape the consequences.

41.7 As regards Ved Prakash, it is submitted that whether in fact he was involved in the negotiations that took place between Subhash Sharma on the one hand and Dharambir Khattar on the other will emerge only during the trial when evidence is led by the prosecution. As of now, the court has only to see whether there is sufficient material to draw a strong suspicion against the petitioner for the commission of the offence. Scope of the petitions challenging the order on charge

42.1 The scope of the present proceedings which invoke the revisional jurisdiction of this Court to examine the validity of an order on charge on merits is fairly well settled. The trial court has, at the stage of the charge, to satisfy itself whether there is sufficient ground for proceedings against the accused. The veracity and the effect of the evidence which the prosecution proposes to adduce, is not to be meticulously examined at this stage. In other words, the probative value of the material on record cannot be looked into. The trial judge should proceed on the footing that the material brought on record by the prosecution "has to be accepted as true at that stage." see Soma Chakravarty Vs. State through CBI, .

42.2 In State of Bihar Vs. Ramesh Singh, it was observed as under (SCC @ p.41):

At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

42.3 The above position has been reiterated in several judgments including Indu Jain Vs. State of Madhya Pradesh and Others, ; Bharat Parikh Vs. C.B.I. and Another, ; Hem Chand Vs. State of Jharkhand, ; State of Maharashtra Vs. Salman

Salim Khan and Another, ; Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, .

42.4 Further in Sheonandan Paswan Vs. State of Bihar and Others, it was observed in para 88 as under (SCC @ p. 355):

88. While considering the legality, propriety or the correctness of a finding or a conclusion normally, the revising court does not dwell at length upon the facts and evidence of the case. The court in revision considers the materials only to satisfy itself about the correctness, legality and propriety of the findings, sentence or order and refrains from substituting its own conclusion on an elaborate consideration of evidence.

42.5 Therefore, in the present petitions this Court is only to determine whether the impugned orders of the learned Special Judge framing charges against the petitioners satisfies the above requirement of the law. Sanction to prosecute

43.1 On behalf of Subhash Sharma and Ved Prakash submissions were made about the absence of sanction u/s 197 CrPC to prosecute them. It was also submitted that the order granting sanction u/s 19 PCA was without application of mind.

43.2 u/s 19(1)(a) no court can take cognizance of an offence punishable under Sections 7, 10, 11 and 13 PCA alleged to be have been committed by a public servant except with the previous sanction of either the Central Government or the State Government or the competent authority as the case may be.

43.3 It requires to be noticed that in Parkash Singh Badal and Another Vs. State of Punjab and Others, it was pointed out that "there is a distinction between the absence of sanction and the alleged invalidity on account of non application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial."

43.4 In Lalu Prasad @ Lalu Prasad Yadav Vs. State of Bihar through CBI (AHD), Patna, , the question as to the sanction u/s 197 CrPC and the one u/s 19 PCA was explained in para 10 (SCC @ p. 54):

10. It may be noted that Section 197 of the Code and Section 19 of the Act operate in conceptually different fields. In cases covered under the Act, in respect of public servants the sanction is of automatic nature and thus factual aspects are of little or no consequence. Conversely, in a case relatable to Section 197 of the Code, the substratum and basic features of the cases have to be considered to find out whether the alleged act has any nexus with the discharge of duties. Position is not so in case of Section 19 of the Act.

43.5 In the present case applying the tests propounded by the Supreme Court in the aforementioned judgments, it cannot be said that the acts performed either by Subhash Sharma or Ved Prakash had any nexus with the discharge of their official duties. As far as Ved Prakash is concerned, he was not an employee of the

DDA but of the NDMC. The question of his discharging any official function on behalf of the NDMC simply did not arise as far as the facts of the present case are concerned. In the considered view of this Court, there was no need for the prosecution to have obtained any previous sanction either u/s 19 PCA or Section 197 CrPC as far as Ved Prakash was concerned.

43.6 As regards Subhash Sharma, as Vice Chairman, DDA he was entrusted with the responsibility of ensuring that the objectives of the DD Act are not contravened. His attempt at stopping the demolition of an unauthorised lift was contrary to the very object of the DD Act which was to prevent unplanned development and the construction of buildings in contravention of the Master Plan for Delhi (MPD) or the lay-out or sanctioned building plan as the case may be. Clearly, the acts with which he is charged, were not performed in the discharge of his official duties as Vice Chairman, DDA. This Court has perused the sanction granted u/s 19 PCA to prosecute Subhash Sharma. It adverts to the materials available to the authority. It cannot be said that the said order granting sanction is vitiated by non-application of mind.

43.7 It was submitted on behalf of the CBI that no ground has been raised by Subhash Sharma that since the authority not empowered to do so has granted sanction, there has been a failure of justice. The position has been explained in Paul Varghese Vs. State of Kerala and Another, as under:

8. The effect of Sub-sections (3) and (4) of Section 19 of the Act is of considerable significance as noted in Parkash Singh Badal and Another Vs. State of Punjab and Others, . In Sub-section (3) the stress is on "failure of justice" and that too "in the opinion of the Court". In Sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the "failure of justice" is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is considered fatal unless it has resulted in failure of justice or has been occasioned thereby. Section 19(1) is a matter of procedure and does not go to root of jurisdiction. Sub-section (3)(c) of Section 19 reduces the rigour of prohibition. In Section 6(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as the "Old Act") corresponding to Section 19(2) of the Act, question relates to doubt about authority to grant sanction and not whether sanction is necessary.

43.8 As regards the non-application of mind by the sanctioning authority, the Supreme Court has in State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, has held that this is really a question of evidence by examining as a witness the authority who passed the order.

43.9 There is merit in the contention of the learned Counsel for the CBI that the sanction u/s 197 CrPC is actually not required when the offences committed are under the PCA. It is submitted that a criminal conspiracy to commit an offence under the PCA cannot be cloaked with any immunity by requiring prior sanction to be obtained u/s 197 CrPC for prosecuting a public servant accused for such

offences. In AIR 1948 128 (Privy Council) , it was observed in para 30 as under:

30. A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act: nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office. Applying such a test to the present case, it seems clear that Gill could not justify the acts in respect of which he was charged as acts done by him by virtue of the office that he held. Without further examination of the authorities their Lordships, finding themselves in general agreement with the opinion of the Federal Court in the case cited think it sufficient to say that in their opinion no sanction under s. 197, Criminal P.C., was needed.

43.10 Likewise in Harihar Prasad, etc. Vs. State of Bihar, it was held in para 66 as under:

As far as the offence of criminal conspiracy punishable u/s 120-B read with Section 409, Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act, are concerned they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction u/s 197 of the Code of Criminal Procedure is, therefore, no bar.

43.11 The matter can be looked at from another angle as well. The petitioners have been charged with the offence of criminal conspiracy u/s 120B IPC. u/s 3 PCA, the Special Judge is empowered to try not only "any offence punishable under this Code" but u/s 3(1)(b) "any conspiracy to commit or attempt to commit or any abetment of the offences specified in Clause (1)."

43.12 u/s 40 IPC, it has been mentioned that in Chapter VA and in Sections 109, 110 IPC the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined." u/s 41 IPC, a special law has been defined as "a law applicable to a particular subject." Therefore, in terms of Sections 40 and 41 IPC, the PCA would be a special law. The offence u/s 120B in Chapter VA IPC would therefore also become punishable under the PCA which is a special enactment for that purpose. Once the sanction u/s 19 PCA has been obtained, there is no need to obtain a separate sanction u/s 197 CrPC for prosecuting the petitioners for the offence u/s 120B IPC.

43.13 The learned Counsel for the CBI has made a reference to the judgment of the Full Bench of the Allahabad High Court dated 25th January 2006 passed in Crl. Rev. (P) No. 2282/04 (titled Neera Yadav v. CBI) where the Court negated the contention of the accused in those cases that the sanction both u/s 197 CrPC

as well as u/s 19 PCA was necessary for prosecuting them u/s 13 PCA. A reference was made by the Full Bench of the Allahabad High Court to the decisions of the Supreme Court in Harihar Prasad, etc. Vs. State of Bihar, and Kalicharan Mahapatra Vs. State of Orissa, .

43.14 For all of the aforementioned reasons, there is no merit in the contention that there is any defect in the order granting sanction to prosecute Subhash Sharma or Ved Prakash. Delay in registering the FIR 44.1 This Court finds merit in the contention of the CBI that it is entirely up to the CBI to decide when it should register FIR. After the decision in P. Sirajuddin, etc. Vs. State of Madras, etc., , it cannot be said that the time taken by the CBI to make some sort of a preliminary enquiry before proceeding to register an FIR can be fatal to the prosecution itself. As regards the allegations concerning the functioning of a public servant, it is entirely up to the CBI to take a decision as to when it should move in to register the FIR. In the facts of the present case, it cannot be said that the CBI acted mala fide in registering the FIR only in April 2003. It has been held in Tapan Kumar Singh in para 20 as under (SCC @ p.183):

20. It is well settled that a First Information Report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered u/s 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the

manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can.

44.2 Likewise in *Apren Joseph v. State of Kerala*, it has been held in para 11 as under (SCC @ p.11):

11. Now first information report is a report relating to the commission of an offence given to the police and recorded by it u/s 154, Cr. PC. As observed by the Privy Council in AIR 1945 18 (Privy Council) , the receipt and recording of information report by the police is not a condition precedent to the setting in motion of a criminal investigation. Nor does the statute provide that such information report can only be made by an eye witness. First information report u/s 154 is not even considered a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in court. But this information when recorded is the basis of the case set up by the informant. It is very useful if recorded before there is time and opportunity to embellish or before the informant's memory fades. Undue or unreasonable delay in lodging the F.I.R., therefore, inevitably gives rise to suspicion which puts the court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version. In our opinion, no duration of time in the abstract can be fixed as reasonable for giving information of a crime to the police, the question of reasonable time being a matter for determination by the court in each case. Mere delay in lodging the first information report with the police is, therefore, not necessarily, as a matter of law, fatal to the prosecution. The effect of delay in doing so in the light of the plausibility of the explanation forthcoming for such delay accordingly must fall for consideration on all the facts and circumstances of a given case.

44.3 Consequently it is held that there is no merit in the contention that the delay in the FIR being registered renders the investigation invalid. Tapes and transcripts

45.1 This Court does not find any merit in the contention that the tapes and transcripts are unreliable and therefore should not be considered to be as admissible piece of evidence. As already pointed out hereinbefore, at the present stage, the Court is not required to go into the veracity of the contents of these tapes or even the question whether the tapes have been doctored as alleged by the accused.

45.2 This Court has itself listened to the conversations played in the court by the learned Counsel for the CBI. It cannot be said on listening to these taped conversations that they prima facie are either doctored or that the voice of any of the petitioners available in the sample has been planted therein. This is really

the defence of the accused which cannot be considered at this stage. The accused would have to lead evidence to show that the tapes or the recording of the conversations was in fact doctored as alleged by them.

45.3 On the admissibility or the validity of the telephonic interceptions, it may be mentioned that the orders sanctioning the interception have been passed u/s 5(2) of the Telegraph Act read with Rule 419A thereof. It is submitted that inasmuch as the present case pertains to the offence of corruption of senior public servants and therefore jeopardizes the national interests and public safety, the order for intercepting the telephonic conversations was perfectly justified. In any event, the present stage is not the one where the validity or justifications of the authorizations given for intercepting the telephonic calls can be examined. In *N. Sri Rama Reddy, etc. Vs. V.V. Giri*, it was held that the tape was primary and direct evidence admissible to show what had been said and picked up by the recorder. Sufficient material against each of the accused

46. It is not possible to agree with the submissions made on behalf of Khattar that the intercepted calls do not reflect his involvement in the criminal conspiracy. The contention that there is no meeting of minds since all the calls emanated from Subhash Sharma is misconceived. It is also not possible to agree with the submissions regarding the procedure set out in the CBI manual not having been followed. Whether in fact any provision of the manual has been violated would again be a matter of evidence. This certainly cannot vitiate the trial particularly when CBI has come across solid evidence which raises a strong suspicion against each of the accused.

47. It is not possible to agree that as soon as the first intercepted call occurred, the CBI became aware of the entire criminal conspiracy and therefore should not have waited for registering the RC. It is inconceivable that the CBI would have known the existence of the conspiracy after the first intercepted call. Clearly Subhash Sharma had to relent and not persist that withholding of the demolition after the note on file by the Commissioner (LM). It was only thereafter that the RC could be registered.

48. As regards the role of Subhash Sharma, this Court has perused the notings on the file. A note was written by the Assistant Engineer stating that he needed orders for issuing a crane for removal of the unauthorised lift. However, it was followed by a noting on 27th February 2003 confirming that "telephonic directions were received from the VC, DDA by me to defer today's programme till further orders. Hence the programme was withdrawn in consultation with DD (LM) W." The noting of 10th March 2003 shows that the file was placed before the VC since "the VC desires to discuss this issue." It is plain therefore that Subhash Sharma was taking undue interest in the case. The noting on 24th March 2003 is very categorical when the Dy. Director (CL) noted that permission to allow the lift to come up could be illegal and set the precedent for future and therefore the DDA should immediately remove the unauthorised construction. It is not surprising therefore that Subhash Sharma ultimately could not stop the

demolition of the lift in question. That in any event does not dilute the evidence that is already on record to show that he evinced unusual interest in preventing the unauthorised lift from being demolished.

49. As regards the physical manifestation of the offence of conspiracy this again would be a matter for evidence since at this stage all that has to be seen is whether there is sufficient material to draw a strong suspicion.

50. In the considered view of this Court, there is material to draw such strong presumption against the Petitioners Pradeep Kapur and Anil Wadhwa. They cannot claim ignorance of the MPD which did not permit the construction of the lift on a land not belonging to them. According to the CBI Pradeep Kapur wanted to present the DDA with a *fait accompli* to somehow regularize the construction of the lift. He went ahead with the construction without waiting for any approval. These are the factors that work against Petitioners in entertaining their plea for discharge. The petitioners' case cannot be compared with that of Yashpal Manocha. These two petitioners were active in pursuing the matter of installation of the lift and therefore do not stand on the same footing.

51. It was submitted that in the charge framed by the learned Special Judge there is an obvious error inasmuch as it has been observed therein that "you accused Pardeep Kapur looking after the affairs on behalf of your wife Kavita Kapur (partner of M/s APY Hoteliers & Developers) during the period February/March 2003 at Delhi obtained/accepted illegal gratification from the firm M/s APY Hoteliers & Developers as a motive for inducing Subash Sharma, Vice Chairman, DDA, Delhi by corrupt or illegal means to show favour for stopping demolition proceedings/regularizing unauthorized constructed lift at Hotel M/s APY Hoteliers and Developers, Paschim Vihar Delhi and thereby committed an offence punishable u/s 8 of the PC Act and within the cognizance of this Court."

52. As far as this submission is concerned, it does appear that the wording of the charge is erroneous and contrary to what the case of the prosecution is. However, this defect in the framing of the charge need not vitiate the trial itself. u/s 464 CrPC whenever it appears to the court that the charge has been erroneously framed that court can alter the charge to make it consistent to what the case of the prosecution is. By this judgment the CBI is permitted to draw the attention of the trial court to the error in the charge framed against the petitioners Pradeep Kapur and Anil Wadhwa and ask for appropriate correction.

53. On merits, this Court is not able to come to the conclusion that Pradeep Kapur or Anil Wadhwa were not involved in the criminal conspiracy to stop the demolition of the unauthorised lift. Although it may be true that the stand taken by the APY Hoteliers initially was that the bribe amount demanded was unreasonable. However, later on it appears that they were desperately looking to stop the demolition of the unauthorised lift. Pradeep Kapur was certainly in touch with Ved Prakash (Pandit ji) who in turn was in touch with the other accused. Merely because there was no alleged conversation between Subhash Sharma on

the one hand and Pradeep Kapur on the other, that cannot lead to the conclusion that he was not part of the criminal conspiracy.

54. As regards Ved Prakash, the telephonic conversations between him and Dharambir Khattar, and his meeting with Subhash Sharma put paid to the contention that he never was and never intended to be the part of the criminal conspiracy. As regards the actual content of these telephone conversations and whether they point to the role of the petitioners, this will have to be determined at the trial. What should be the evidentiary value of these intercepted conversations is the question that cannot be gone into at the stage of charge. For this, the evidence will have to be led to show that the petitioner was not part of the criminal conspiracy at all. Summary of conclusions

55. To summarise the conclusions:

(a) In the context of Section 19 (3) (c) PCA, the words "no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial..." includes an interlocutory order in the form of an order on charge or an order framing charge. Therefore, in terms of Section 19 (3) (c) PCA, no revision petition would be maintainable in the High Court against order on charge or an order framing charge passed by the Special Court.

(b) There is no merit in the contention that there is a defect in the orders granting sanction to prosecute Subash Sharma or Ved Prakash. There was no need for the prosecution to have obtained any previous sanction either u/s 19 PCA or Section 197 CrPC as far as Ved Prakash was concerned. As regards Subash Sharma the acts with which he is charged, were not performed in the discharge of his official duties as Vice Chairman, DDA. The said order granting sanction to prosecute him is not vitiated by non-application of mind.

(c) There is no merit in the contention that the delay in the FIR being registered renders the investigation invalid.

(d) The questions concerning the validity of the tapes and transcripts of the intercepted conversations, or their admissibility cannot be decided at this stage and will necessarily have to be determined only at the stage of trial.

(e) The defect in the framing of the charge against Pradeep Kapur and Anil Wadhwa does not vitiate the trial. u/s 464 CrPC it is possible for such defect to be rectified. The CBI is permitted to draw the attention of the trial court to the above error in the charge framed and ask for it to be corrected.

(f) On merits, there is sufficient material on record to hold that there is grave suspicion against each of the petitioners for the commission of the offences with which they have been charged.

56. The observation made in this judgment on merits is in the context of examining whether there is sufficient material against each of the accused to raise a strong suspicion of their having committed the offences in question. The

said observations are not intended to influence the findings to be arrived at by the trial court upon an independent assessment of the evidence at the conclusion of the trial.

57. Each of these four criminal revision petitions (in the Lift Case) are accordingly dismissed with costs of Rs. 25,000 each which will be paid by each of the petitioners to the CBI within four weeks. Applications also stand dismissed.