
(1996) 02 GUJ CK 0032
In the Gujarat High Court

Durgaprasad P. Dash

APPELLANT

Vs

State Bank of Saurashtra and Another

RESPONDENT

Date of Decision : 19-02-1996

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 173, 197, 197(1), 401
Evidence Act, 1872 — Section 114(e)
General Clauses Act, 1897 — Section 21
Industrial Disputes Act, 1947 — Section 10(1), 10(1)(d)
Prevention of Corruption Act, 1988 — Section 19
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 20(7), 25

Citation : (1997) 1 GLR 462

Hon'ble Judges : C.K.Thakker, J

Bench : Single Bench

Judgement

C.K. Thakker, J.—This petition is filed by the petitioner for an appropriate writ, direction and/or order quashing and setting aside the resolution of the first respondent-State Bank of Saurashtra dated June 26, 1995 according sanction to prosecute the petitioner being illegal, ultra vires, unconstitutional and violative of his fundamental rights guaranteed under the Constitution of India. Interim relief is also prayed to stay and suspend the operation and implementation of the above resolution and to direct the first respondent to consider the case of the petitioner for promotion.

2. It is the case of the petitioner that between June 1990 and May 1992, he was working as Chief Manager of the State Bank of Saurashtra-first respondent herein at Fort Branch, Bombay. Pursuant to the instructions received from the Central Office of the State Bank of India, the transactions dealt with by the Funds Management Cell during 1991-92 headed by one Mr. M.S. Shrinivasan were investigated and records of the Cell were scrutinised. Certain irregularities were observed in transaction of security and issuance of receipts. According to the department, there was pre-planning and connivance between Mr. Shrinivasan and one Mr. Harshad Mehta, who was broker of the Funds Management Cell.

During the investigation, it was found that Current Account No. 2230 was opened on June 18, 1991 in the name of M/s. Harshad Mehta (Sole proprietor Mr. Harshad Mehta) with Fort Branch at Bombay on introduction of Mr. Shrinivasan and various transactions put through that account indicated that a number of cheques for large amounts payable to the first respondent bank from various banks/financial institutions were credited to the broker's account. According to the petitioner, allegation against him, was that he permitted unauthorised credit in Current Account No. 2230 without instructions by issuing bank/financial institutions and thereby he also participated in conspiracy. A report was prepared to that effect by Central Bureau of Investigation ("C.B.I." in short), pursuant to which a request was made to the respondent bank to accord sanction to prosecute the petitioner u/s 19 of the Prevention of Corruption Act, 1988. The report was placed before the Executive Committee of the first respondent Bank. Since the petitioner was neither directly nor indirectly involved in the so-called irregularities, nor was incharge of Funds Management Cell which was independent branch of the first respondent, after careful consideration of the attendant circumstances, the Executive Committee of the first respondent concluded that there was no evidence to show that the petitioner was aware of irregularities or that there was sufficient material to suggest criminal conspiracy with the broker and, hence, by a resolution dated October 27, 1994 ("First Resolution" for short) the Executive Committee declined to accord sanction for prosecution of the petitioner. As per the practice of the Bank, the resolution was then sent to Central Vigilance Commission for intimation. The Vigilance Commission did not agree with the resolution of the Executive Committee of the first respondent Bank declining to accord sanction to prosecute the petitioner and the Commission directed the Bank to accord sanction as requested by C.B.I. A memorandum to that effect was placed before the Executive Committee of the first respondent Bank and the first respondent vide its resolution dated June 26, 1995 ("Second Resolution" for short), without considering earlier resolution, without affording opportunity of hearing to the petitioner and without applying mind, accorded sanction at the dictation and direction of Central Vigilance Commission. It is this second resolution which is challenged by the petitioner in this petition.

3. It may be necessary to state that originally the petition was filed only against the State Bank of Saurashtra as sole respondent. It was instituted on July 25, 1995. On August 31, 1995, effective hearing appears to have taken place for the first time and the following order was passed:

Heard K.S. Nanavati for the petitioner and Mr. A.S. Vakil for the respondent. The objection raised by the learned Counsel for the respondent, that it should be a criminal writ petition has no substance and the same is hereby overruled. Rule. Mr. A.S. Vakil waives service of Rule. In the meanwhile the operation and implementation of the impugned decision dated 26-6-1995 shall remain stayed.

4. From the above order, it is clear that a copy of the petition was served upon

the Counsel of the Bank who raised a preliminary objection that criminal writ petition (Special Criminal Application) ought to have been filed by the petitioner and not Special Civil Application. According to the Court, however, the contention had no substance and it was overruled. Thereafter the petition was admitted, Rule was issued and operation and implementation of the second resolution passed by the Bank on June 26, 1995 was stayed.

5. It may be appropriate to take into account subsequent events also. As stated above, originally the petitioner had joined only one respondent, i.e., State Bank of Saurashtra. Thereafter, Civil Application No. 2663 of 1995 was filed by C.B.I., since it was not joined as party in the main matter. It was the case of C.B.I. that C.B.I. was not only proper but necessary party in the light of the main principal relief sought by the petitioner for quashing and setting aside the resolution of the respondent Bank according sanction to prosecute the petitioner. After hearing the parties, by an order dated November 15, 1995, I allowed the said application and ordered to join C.B.I. as respondent No. 2 in the petition. At the time of hearing of this petition, a statement was made at the Bar that against the order passed by me, the petitioner filed Letters Patent Appeal No. 1133 of 1995 but it was dismissed by the Division Bench of this Court on December 15, 1995 and the order passed by me was confirmed. Thus, as on today, C.B.I. is party respondent No. 2.

6. A reference may also be made at this stage to Civil Application No. 2664 of 1995 filed by C.B.I. for vacating interim relief granted in this petition. The case of C.B.I. is that it is investigating agency who has registered Criminal Case No. RC 50(1)/92-Bom. (S.B.S. Bank Scam Case) on July 8, 1992 and thereafter prepared a charge-sheet after completing investigation. It is asserted that during the investigation, it was found that the petitioner was also involved in commission of various offences punishable under the Indian Penal Code as also under the Prevention of Corruption Act. C.B.I., therefore, requested the first respondent to accord sanction to prosecute the petitioner. Initially such sanction was not granted and the resolution (first resolution) was passed to that effect by the first respondent Bank on October 27, 1994. It was observed in the first resolution that though lapses committed by the petitioner were serious and actionable and it was decided to hold disciplinary proceedings for major penalty against him, there were no sufficient grounds for according sanction to prosecute the petitioner for criminal conspiracy as suggested by C.B.I. The Chief Vigilance Officer/ Managing Director was authorised to convey the decision taken by the Executive Committee to C.B.I. and to refer the case to Central Vigilance Commission for its advice alongwith requisite details. After the matter was referred to Central Vigilance Commission and after considering the matter "carefully", the first respondent felt that there were sufficient grounds for according sanction to prosecute the petitioner as suggested by C.B.I., and accordingly, by resolution, dated June 26, 1995, (second resolution), necessary sanction was accorded. The second resolution was thus legal and valid and stay requires to be vacated.

7. I have heard extensively Mr. B.R. Shah, Senior Counsel for Mr. K.S. Nanavati for the petitioner; Mr. A.S. Vakil, learned Counsel for respondent No. 1-State Bank of Saurashtra and Mr. H.M. Mehta, Senior Counsel instructed by Mr. B.B. Naik for respondent No. 2-C.B.I.

8. Mr. Shah raised the following contentions:

(1) The first respondent Bank is the final authority to grant or refuse to accord sanction to prosecute the petitioner. C.B.I. as well as Central Vigilance Commission are "foreign" to the point in issue, that is, grant of sanction to prosecute the petitioner. They have no power to instruct, direct or order grant of sanction to prosecute the petitioner. Their interference was, therefore, without jurisdiction and contrary to law.

(2) The power of review can be exercised only when such power is specifically conferred by a statute. There cannot be an inherent power of review. Since no power of review is granted by any statute empowering the first respondent Bank to review its first resolution, second resolution is bad in law and having no legal effect whatsoever.

(3) Even if it assumed that power of review is present and can be exercised by the first respondent Bank, since the first resolution was passed and sanction to prosecute the petitioner was refused, a limited right was created in the petitioner which could not have been taken away without issuing notice, calling for explanation and affording opportunity of being heard. In other words, the second resolution could not have been passed without observing the principles of natural justice.

(4) There is an error of law apparent on the face of the record committed by the first respondent Bank in not considering the fact that taking into account all the circumstances, the first resolution was passed by the Bank refusing to accord sanction. Without there being change in circumstances, the second resolution was made according sanction which is contrary to law and suffers from non-application of mind.

(5) The second resolution is bad also on the ground that it was passed by the first respondent Bank as per direction, order, command or dictation of C.B.I. It is settled law that the power must be exercised by the authority who is competent to take a decision and the authority cannot abdicate its power or function to any other authority. If there is abdication of power or the order is passed at the dictation of other authority, exercise of power would be bad.

(6) On merits also, the second resolution is contrary to law, improper and unjust as the petitioner has not committed any illegality. He has nothing to do with irregularities said to have been committed by Mr. Shrinivasan or Harshad Mehta in connivance of each other. Taking into account all the facts and circumstances and satisfying about total innocence of the petitioner, vide its first resolution the first respondent rightly refused to accord sanction to prosecute the petitioner and

that action ought not to have been reconsidered and reversed.

9. Mr. Mehta, learned Standing Counsel for respondent No. 2, on the other hand, supported the second resolution by making following submissions:

(1) A petition for quashing and setting aside a resolution according sanction to prosecute the petitioner is not maintainable as the petitioner has no locus standi to challenge such action.

(2) The petition is premature and is not tenable at law at this stage. Even if the petitioner has grievance against the resolution according sanction to prosecute, he has to wait till appropriate Court takes cognizance and only thereafter he can challenge the legality or otherwise of the action of taking cognizance.

(3) It would not be appropriate for this Court to presume or to infer that a Special Court, presided over by no less than a sitting Judge of the High Court of Bombay, appointed in consultation with no other than the Chief Justice of India will not consider the question regarding legality and validity of sanction accorded by respondent No. 1 Bank and to interfere with the resolution at this stage in exercise of extraordinary powers under Article 226 of the Constitution.

(4) The action to accord sanction is neither judicial nor quasi-judicial in nature but administrative-pure and simple. Such action can always be reviewed and there is no fetter on the power of the first respondent Bank to review its earlier order and to accord sanction even though earlier it was not granted.

(5) Since the action of according sanction to prosecute is administrative, and no lis is involved, observance of principles of natural justice is not necessary. The petitioner cannot, therefore, insist for notice or explanation or hearing at that stage.

(6) The first respondent has not exercised its power at the direction, mandate or dictation of the second respondent or Central Vigilance Commission. The first respondent Bank has acted in accordance with law and as per Vigilance Manual. Such action cannot be said to be contrary to law.

(7) The petitioner has not come with clean hands. Under the guise of getting relief of promotion, the petitioner has filed Special Civil Application against the State Bank of Saurashtra seeking relief of quashing resolution according sanction to prosecute him without making C.B.I. as party though prosecution is by C.B.I. The litigation is thus not bona fide.

(8) Powers under Article 226 of the Constitution are discretionary and can be exercised *ex-debito justitiae*. Considering serious allegations against the petitioner and involvement in scam of crores of rupees, if sanction is accorded by the first respondent Bank to prosecute him, this Court may not interfere with such action in exercise of its equitable jurisdiction by permitting fraud of public money to be perpetuated and perpetrated.

10. Mr. Vakil, learned Advocate for the first respondent supported the arguments

of Mr. Mehta.

Having given anxious and thoughtful consideration to the facts and attendant circumstances, in my opinion, the petition requires to be dismissed.

11. As is clear, the petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India, wherein a prayer is made to quash and set aside the resolution of the first respondent Bank granting sanction to prosecute him. There is no substantive prayer to give promotion to the petitioner as the said relief is in the nature of interim relief only. I am not oblivious of the fact that preliminary objection against maintainability of petition (Special Criminal Application) raised on behalf of the respondent Bank was overruled by the Court at the time of admission of the petition. At the same time, however, it cannot be overlooked that at the time of institution of the petition C.B.I. was not joined as party respondent. The first respondent Bank was the sole respondent who had not initiated criminal proceedings against the petitioner. The contention regarding maintainability or otherwise of the petition on behalf of the respondent Bank was in question before the Court at that stage. Much water has flown thereafter. C.B.I. approached this Court by filing a Civil Application, and requesting this Court to join it as party respondent which was allowed and as on to day, it is party respondent No. 2. It was respondent No. 2 who wanted to initiate criminal proceedings against the petitioner and for that sanction of the first respondent to prosecute the petitioner was sought, which was finally granted by the bank. In my opinion, this subsequent development cannot be ignored.

12. It was mentioned in the application made by C.B.I. that First Information Report was filed regarding Current Account No. 2230 opened on June 18, 1991 in the name of M/s. Harshad Mehta in State Bank of Saurashtra, Fort Branch, Bombay in which various high value cheques payable to State Bank of Saurashtra were deposited/credited and against said credits, bankers cheques were issued by State Bank of Saurashtra on the instructions of M/s. Harshad Mehta in favour of other banks to camouflage the source of payment. The allegation of C.B.I. is that the petitioner was Chief Manager in the said Branch where account was opened and operated. Investigation fully established that the petitioner allowed unauthorised credits of several cheques in favour of State Bank of Saurashtra, respondent No. 1, to Harshad Mehta which he was not entitled to receive. During the investigation, the premises of the petitioner were searched on August 26, 1992 on the basis of search warrant issued by Special Court of Hon"ble Mr. Justice S.N. Variava and the investigation prima facie established commission of various offences punishable under the Indian Penal Code and also under the Prevention of Corruption Act. The petitioner was, therefore, arrested alongwith other accused on April 11, 1994 and was produced before the Special Court and at present he is on bail.

12A. If in the light of above allegations which are indeed of a serious nature, C.B.I. sought sanction to prosecute the petitioner and it is granted, can it be said

that no such sanction could have been accorded against the petitioner? In my opinion, the action of according sanction to prosecute the petitioner by the first respondent Bank can neither be said to be unlawful, nor improper and the action does not require interference by this Court.

13. Now, let us see the first resolution passed by the Bank on October 27, 1994. It reads as under:

The Executive Committee carefully examined the matter relating to the alleged involvement of Shri D.P. Dash, Officer, SMGS-V in irregular transactions in the Current Account of Harshad Mehta with Fort Bombay Branch of the bank for which sanction for prosecution has been sought by C.B.I. and observed that:

(i) The action of Shri D.P. Dash in allowing credits of cheques drawn in Bank's favour to the account of Harshad Mehta and/or acting on his disposal instructions was violative of the Bank/RBI's instructions. The pleas of market practice or being influenced by the Chief Manager, Funds Management Cell cannot be accepted.

(ii) The argument that cheques were brought by account holders' agent alongwith disposal instructions, does not in any way diminish the gravity of the lapses.

(iii) The amounts involved being so substantial, there was sufficient reason for Shri D.P. Dash to be put on enquiry and go deeper into the nature of the transactions, which he has failed to do.

2. The above lapses are serious and actionable and the Executive Committee decided that departmental disciplinary proceedings for major penalty be initiated against Shri Dash.

3. In this regard it was, however, noted that:

(i) Dealings in respect of securities transactions were undertaken by Funds Management Cell, whereas the transactions were put through at Fort Branch, Bombay as an accounting unit.

(ii) There is no evidence to show that Shri Dash was aware of the details of the underlying transactions, which were being undertaken by Funds Management Cell.

(iii) There is no prima facie material to suggest that Shri D.P. Dash had dishonest intention and participated in the transactions with an intent to give effect to any criminal conspiracy.

(iv) There is nothing on record indicating the meeting of minds between Harshad Mehta and Shri D.P. Dash to establish the charge that the transactions carried out were due to dishonest intentions and criminal conspiracy.

In view of the above, the Executive Committee felt that there are no sufficient grounds for according sanction for prosecution for criminal conspiracy as

suggested by C.B.I.

5. In this regard it is also recorded that the R.B.I, nominee Director, Shri K.K. Soman having been signatory to the relative instructions regarding credit of cheques in favour of Banks to third parties, which have been violated by Shri D.P. Dash did not want to be associated with decision in para No. 4 above.

6. The Executive Committee further resolved that Chief Vigilance Officer/ Managing Director be and are hereby authorised to convey the decision to the C.B.I. and refer the case to the Central Vigilance Commission, for their advice along with requisite details.

Place : Bombay Sd/- Date : 27-10-1994. Chairman Executive Committee.
(Emphasis supplied)

14. From the above resolution, it is clear that the first respondent Bank itself was satisfied about (i) lapses; (ii) which were of a serious nature; (iii) they were actionable; and (iv) they were such that departmental and disciplinary proceedings were required to be initiated; (v) for imposition of major penalty.

15. Having said so, the first respondent Bank observed that-"(a) there was no evidence to show that the petitioner was aware of the details of underlying transactions undertaken by the Funds Management Cell; (b) there was no prima facie material to suggest dishonest intention on the part of the petitioner that he participated in transactions with intent to give effect to any criminal conspiracy; and (c) there was nothing on record indicating the meeting of minds between Harshad Mehta and the petitioner to establish a charge that transactions carried out were due to dishonest intention or criminal conspiracy."

16. Now, it is settled law that at the time of according sanction to prosecute, what is required to be seen is whether there is sufficient material to accord sanction so that an accused can be dealt with in accordance with law and not whether there is sufficient evidence or enough material to show "dishonest intention and participation" to establish the charge or to prove the guilt. That question can be decided only at the stage of trial.

17. According to me when the first respondent was satisfied that there were lapses on the part of the petitioner, which were of a serious nature; and they called for holding of departmental proceedings against the petitioner for major penalty, this was eminently a fit case to accord sanction to prosecute him. In my judgment, no reasonable man in the facts and circumstances of the case, could have refused sanction to prosecute the petitioner in the light of prima facie opinion formed by the first respondent regarding serious lapses committed by the petitioner. I, therefore, could not persuade myself inspite of valiant efforts by Mr. Shah that the action of refusal to accord sanction by the first respondent Bank was lawful, proper and within four corners of law.

18; Mr. Shah, however, contended that the first respondent Bank had no power, authority or jurisdiction to review its earlier resolution and to grant sanction to

prosecute the petitioner at a later stage. In this connection, it was submitted that the power of review is not an inherent power. Such power must be conferred by a relevant statute and only then it can be exercised. Reliance was placed on the decision of the Supreme Court in *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, . In that case, a quasi-judicial order passed by a statutory Tribunal came to be reviewed by the Tribunal and the said action was challenged. In the light of those facts, the Hon'ble Supreme Court observed:

It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order.

19. The above principle has been reiterated by the Supreme Court in a number of cases thereafter. It is not necessary to refer to all these decisions.

20. The above legal position has been accepted and conceded even by the learned Counsel for the respondents. But as observed in *R.R. Verma and Others Vs. Union of India (UOI) and Others*, , *Patel Narshi* (supra) was the case of exercise of quasi-judicial power. *R.R. Varma* (supra) related to exercise of administrative power and change of policy. The Government changed its earlier policy and in relaxation of rules and regulations an action was taken. The validity thereof was challenged relying upon the ratio laid down in *Patel Narshi* (supra). Dealing with the contention, the Supreme Court stated:

The last point raised by Shri Garg was that the Central Government had no power to review its earlier orders as the rules do not vest the Government with any such power. Shri Garg relied on certain decisions of this Court in support of this submission: *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, , *D.N. Roy and S.K. Bannerjee and Others Vs. The State of Bihar and Others*, and *State of Assam and Another Vs. J.N. Roy Biswas*, . All the cases cited by Shri Garg are cases where the Government was exercising quasi-judicial powers vested in them by statute. We do not think that the principle that the power to review must be conferred by statute either specifically or by necessary implication is applicable to decisions purely of an administrative nature. To extend the principle to pure administrative decisions would indeed lead to untowards and startling results. Surely, any Government must be free to alter its policy or its decision in administrative matters. If they are to carry on their daily administration they cannot be hide-bound by the rules and restrictions of judicial procedure though of course they are bound to obey all statutory requirements and also observe the principles of natural justice where rights of parties may be affected. Here again, we emphasise that if administrative decisions are reviewed, the decisions taken after review are subject to judicial review on all grounds on which an administrative decision may be questioned in a Court. We see no force in this submission of the learned Counsel.

(Emphasis supplied)

21. The question, therefore, is: What is nature of an order of according sanction to prosecute a person? If it is a quasi-judicial function, once the decision is taken, order is made or resolution is passed, in absence of power granted by a statute either expressly or by necessary implication, an order cannot be reviewed. If, on the other hand, the action is administrative or executive, absence of statutory provision would not deprive the authority in reviewing an earlier decision.

22. Mr. Shah did not contend and rightly that an action to accord sanction to prosecute is a quasi-judicial function. Obviously, such action is an administrative one. An ingenious argument, however, is that if at initial stage such sanction is accorded, a person cannot make grievance as it is open to the authority to grant such sanction, but if at initial stage, sanction is refused, a limited right is created in favour of that person and he can challenge the action if subsequently sanction to prosecute is accorded without affording opportunity of hearing to him.

23. In *The State of Bihar Vs. D.N. Ganguly and Others*, , an order was passed by appropriate Government u/s 10(1)(d) of the Industrial Disputes Act, 1947 and industrial dispute was referred to a Tribunal for adjudication. By a subsequent order, however, earlier order was cancelled. The legality of the second order was challenged. Appropriate Government defended the action, inter alia, placing reliance on the provisions of Section 21 of the General Clauses Act, 1897 which enabled the authority to add, amend, vary or rescind any notification, order, rule or bye-laws issued by the authority. Repelling the contention, considering the relevant provisions of the Industrial Disputes Act and holding that the provisions of Section 21 of the General Clauses Act would not apply to the facts of the case, the Supreme Court stated:

Apart from these provisions of the Act, on general principles it seems rather difficult to accept the argument that the appropriate Government should have an implied power to cancel its own order made u/s 10(1). If on the representation made by the employer or his workmen the appropriate Government considers the matter fully and reaches the conclusion that an industrial dispute exists or is apprehended and then makes the reference u/s 10(1), there appears to be no reason or principle to support the contention that it has an implied power to cancel its order and put an end to the reference proceedings initiated by itself. In dealing with this question it is important to bear in mind that power to cancel its order made u/s 10(1) which the appellant claims, is an absolute power; it is not as if the power to cancel implies the obligation to make another reference in respect of the dispute in question; it is not as if the exercise of the power is subject to the condition that reasons for cancellation of the order should be set out. If the power claimed by the appellant is conceded to the appropriate Government it would be open to the appropriate Government to terminate the proceedings before the Tribunals at any stage and not to refer the industrial dispute to any other Industrial Tribunal at all. The discretion given to the

appropriate Government u/s 10(1) in the matter of referring industrial disputes to Industrial Tribunal is very wide; but it seems the power to cancel which is claimed is wider still and it is claimed by implication on the strength of Section 21 of the General Clauses Act. We have no hesitation in holding that the rule of construction enunciated by Section 21 of the General Clauses Act in so far as it refers to the power of rescinding or cancelling the original order cannot be invoked in respect of the provisions of Section 10(1) of the Industrial Disputes Act.

24. Mr. Shah submitted that it cannot be disputed that the order u/s 10(1)(d) of the Industrial Disputes Act is administrative in nature. In spite of that, in D.N. Ganguly (supra), the Supreme Court held that once reference is made by appropriate Government, it is not open to the Government to revoke or cancel or substitute the said order. Though, it was a case of administrative order, power of review was not granted by the Supreme Court to appropriate Government to revoke reference.

25. In my opinion, the observations extracted hereinabove in D.N. Ganguly (supra), must be understood in the fact-situation in which initially a decision was taken to make reference to Labour Court and then by a subsequent order, it was revoked or cancelled. In various cases, it has been held that the power u/s 10(1) of the Industrial Disputes Act is administrative and even if a decision is taken, it is open to appropriate Government to reconsider it and to pass a fresh order in accordance with law. (Vide State of Madras Vs. C.P. Sarathy and Another, ; Western India Match Co. Ltd. Vs. The Western India Match Co. Workers Union and Others, ; Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, .

26. In C.P. Sarathy (supra), the Supreme Court observed that "in making a reference u/s 10(1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character".

27. In Western India Watch Co. (supra), a prayer to make reference was earlier rejected, but thereafter the reference was made. The question before the Court was whether it was open to appropriate Government to make reference and what was the effect of earlier refusal by Government to make reference. Making distinction between administrative and judicial function and the effect of making and refusing to make reference, Shelat J. stated:

In fact, when the Government refuses to make a reference it does not exercise its power; on the other hand, it refuses to exercise its power and it is only when it decides to refer that it exercises its power. Consequently, the power to refer cannot be said to have been exhausted when it has declined to make a reference at an earlier stage. There is thus a considerable body of judicial opinion according to which so long as an industrial dispute exists or is apprehended and

the Government is of the opinion that it is so, the fact that it had earlier refused to exercise its power does not preclude it from exercising it at a later stage.

(Emphasis supplied)

Dealing with argument that such decision may cause inconvenience to the parties, the Court stated:

It is true that where a Government reconsiders its previous decision and decides to make the reference, such a decision might cause inconvenience to the employer because the employer in the meantime might have acted on the belief that there would be no proceedings by way of adjudication of the dispute between him and his workmen. Such a consideration would, we should think, be taken into account by the Government whenever, in exercise of its discretion, it decides to reopen its previous decision as also the time which has lapsed between its earlier decision and the date when it decides to reconsider it. These are matters which the Government would have to take into account while deciding whether it should reopen its former decision in the interest of justice and industrial peace but have nothing to do with its jurisdiction u/s 4-K of the Act. Whether the intervening period may be short or long would necessarily depend upon the facts and circumstances of each case, and therefore, in constructing the expression "at any time" in Section 4-K it would be impossible to lay down any limits to it.

28. In *Grindlays Bank Ltd.* (supra) also, the Supreme Court held that if a party is prevented from appearing at the hearing due to sufficient cause, and is faced with an ex parte award, it can be reviewed and set aside on sufficient ground being shown. The Tribunal does not become functus officio in such cases.

29. In the instant case, we are concerned with the question of grant of sanction to prosecute. An identical question arose before the Supreme Court in *State of Bihar and Another Vs. P.P. Sharma, IAS and Another*, . In that case, proceedings were initiated against some Government servants for committing offences punishable under the Indian Penal Code as also under the Essential Commodities Act, 1955. Sanction to prosecute the accused was granted u/s 197 of the Code of Criminal Procedure, 1973. The accused filed a writ petition in the High Court of Patna for quashing the First Information Report. The matter was adjourned from time to time. Meanwhile investigation was over. Two police reports were submitted before the Court. Special Judge, Patna heard the arguments of the parties on the question whether there was sufficient material in police report to take cognizance of offences projected therein. Hearing was over, arguments were concluded and the matter was reserved for orders. At that stage, the High Court of Patna granted stay of further proceedings in the Court of the Special Judge, Patna in a petition filed by the accused. The Court thereafter heard the petition, quashed F.I.R. and criminal proceedings against the accused. The State approached the Supreme Court. It was contended by the State that the High Court had committed an error of law in entertaining petition and in quashing the proceedings. On the other hand, on behalf of the accused, the order passed by

the High Court was sought to be supported, inter alia, on the ground that the order granting sanction u/s 197 of the Code of Criminal Procedure, 1973 and Section 15 of the Essential Commodities Act was vitiated due to non-application of mind on the part of the competent authority. Dealing with the question of sanction, Kuldeep Singh, J. observed:

The sanction u/s 197, Cr. P.C. is not an empty formality. It is essential that the provisions therein are to be observed with complete strictness. The object of obtaining sanction is that the authority concerned should be able to consider for itself the material before the investigating officer, before it come to the conclusion that the prosecution in the circumstances be sanctioned or forbidden. To comply with the provisions of Section 197 it must be proved that the sanction was given in respect of the facts constituting the offence charged. It is desirable that the facts should be referred to on the face of the sanction. Section 197 does not require the sanction to be in any particular form. If the facts constituting the offence charged are not shown on the face of the sanction, it is open to the prosecution, if challenged, to prove before the Court that those facts were placed before the sanctioning authority. It should be clear from the form of the sanction that the sanctioning authority considered the relevant material placed before it and after a consideration of all the circumstances of the case it sanctioned the prosecution.

30. According to the Hon''ble Supreme Court, there must be application of mind by the competent authority before granting such sanction. Relevant materials must be placed before it and only after considering all relevant circumstances, sanction can be accorded for prosecution. The Court, however, observed that the High Court had committed patent illegality in quashing F.I.R. and prosecution against the accused. His Lordship stated:

Finally, we are at a loss to understand as to why and on What reasoning the High Court assumed extraordinary jurisdiction under Articles 226 & 227 of the Constitution of India at a stage when the Special Judge was seized of the matter. He had heard the arguments on the question of cognizance and had reserved the order. The High Court did not even permit the Special Judge to pronounce the orders.

It was further observed:

We are of considered view that at a stage when police report u/s 173 Cr. P.C. has been forwarded to the Magistrate after completion of investigation and the material collected by the Investigating Officer is under the gaze of judicial scrutiny, the High Court would do well to discipline itself not to undertake quashing proceedings at that stage in exercise of its inherent jurisdiction.

After considering various leading decisions on the point, K. Ramaswamy, J. proceeded to state:

It is equally well settled that "before granting sanction the authority or the

appropriate Government must have before it the necessary report and the material facts which prima facie establish the commission of offence charged for and that the appropriate Government would apply their mind to those facts". The order of sanction only is an administrative act and not a quasi-judicial nor a lis involved. Therefore, the order of sanction need not contain detailed reasons in support thereof as was contended by Shri Jain. But the basic facts that constitute the offence must be apparent on the impugned order and the record must bear out the reasons in that regard. The question of giving an opportunity to the public servant at that stage as was contended for the respondents does not arise. Proper application of mind to the existence of a prima facie evidence of the commission of the offence is only a pre-condition to grant or refuse to grant sanction. When the Government accorded sanction, Section 114(e) of the Evidence Act raises presumption that the official acts have been regularly performed. The burden is heavier on the accused to establish the contra to rebut that statutory presumption. Once that is done then it is the duty of the prosecution to produce necessary record to establish that after application of mind and consideration thereof to the subject the grant or refusing to grant sanction was made by the appropriate authority. At any time before the Court takes cognizance of the offence, the order of sanction could be made. It is settled law that issuance of the process to the accused to appear before the Court is sine qua non of taking cognizance of the offence. The emphasis of Section 197(1) or other similar provisions that "no Court shall take cognizance of such offence except with the previous sanction" posits that before taking cognizance of the offence alleged, there must be before the Court the prior sanction given by the competent authority. Therefore, at any time before taking cognizance of the offence it is open to the competent authority to grant sanction and the prosecution is entitled to produce the order of sanction. Filing of charge-sheet before the Court without sanction per se is not illegal, nor a condition precedent.

(Emphasis supplied)

Dealing with powers of a High Court under Article 226, His Lordship indicated the limitations thus:

Another crucial question is whether the High Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution would interfere and quash the charge-sheet. The High Court found that the documents relied on by the respondents/accused were not denied by the State by filing the counter-affidavit. Therefore, they must be deemed to have been admitted. On that premise the High Court found that no prima facie case was made out on merits and chances of ultimate conviction are "bleak". The Court is not passive spectator in the drama of illegalities and injustice. The inherent power of the Court under Article 226 of the Constitution of India is permitted to be resorted to. When the documents relied on by the respondents "demonstrate that no prima facie offence is made out on the face value of those materials, then the

criminal prosecution should not be allowed to continue and so it should be quashed", and "in such a situation and circumstances the petitioners who had got a right under the Constitution for the protection of their liberty have rightly approached this Court and this Court in these circumstances has no option but to grant the relief by quashing the F.I.R. and both the charge-sheets". Accordingly, it quashed them. If this decision is upheld, in my considered view startling and disastrous consequence would ensue. Quashing the charge-sheet even before cognizance is taken by a criminal Court amounts to "killing a still born child". Till the criminal Court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit on the guise of prima facie evidence to stand on accused for trial amounts to pre-trial of a criminal trial under Articles 226 & 227 even before the competent Magistrate or the Sessions Court takes cognizance of the offence. Once the proceedings are entertained the further proceedings get stayed. Expeditious trial of a criminal case is the cardinal rule. Delay feeds injustice to social order and entertaining writ petitions would encourage to delay the trial by diverse tricks. It is not to suggest that under no circumstances a writ petition should be entertained. As was rightly done by Rajasthan High Court in this case at the instance of the Directors of the company, wisdom lies to keep the hands back and relegate the accused to pursue the remedy under the Code. In several cases, this Court quashed the criminal proceedings on the sole ground of delay. In a case, F.I.R. filed in 1954 for violation of the provisions of the Customs Act and Foreign Exchange Regulation Act as challenged in the Allahabad High Court. It was deliberately kept pending in the High Court and in this Court till 1990. The accusation was violation of law by named persons in the name of non-existing firm. The F.I.R. was quashed in the year 1990 by another Bench to which I was a Member solely on the ground of delay. He achieved his object of avoiding punishment. This would show that an accused with a view to delay the trial, resorts to writ proceedings, raises several contentions including one on merit as vehemently persisted by Shri Jain to consider this case on merits and have the proceedings kept pending. The result would be that the people would lose faith in the efficacy of rule of law. Documents relied on by the respondents are subject to proof at the trial and relevancy. If proved to be true and relevant that they may serve as a defence for the respondents at the trial. The State quite legitimately and in my view rightly did not choose to file the counter-affidavit denying or contradicting the version of the respondents, in those documents. The commission of offence cannot be decided on affidavit evidence. The High Court has taken short course "in annihilating the still born prosecution" by going into the merits on the plea of proof of prima facie case and adverted to those facts and gave findings on merits. Grossest error of law has been committed by the High Court in making pre-trial of a criminal case in exercising its extraordinary jurisdiction under Article 226.

(Emphasis supplied)

31. For the foregoing reasons, decisions in *State of Madhya Pradesh Vs. Ajay Singh and others*, and *Dr. Kashinath G. Jalmi and another Vs. The Speaker and others*, cannot carry the case of the petitioner any further.

32. Mr. Shah, however, relying upon a decision of the High Court of Punjab and Haryana in *Surjit Singh v. State of Punjab and Ors.* ILR 1980 Punjab 11 contended that once the power u/s 197 of the Code of Criminal Procedure, 1973 is exercised by the State Government and sanction to prosecute is refused, the Government cannot change its mind and reviewing its earlier order cannot grant sanction.

33. In *Surjit Singh (supra)*, speaking for the Division Bench, Mittal, J. stated:

It may be mentioned that before us the Counsel for the State has not relied on the provisions of the General Clauses Act to support the power of the State Government to review its earlier order, but argued purely on the basis of Government's administrative or executive power to pass orders on the same matter from time to time, and no fetter can be placed on such a power of the State Government according to the argument raised. With this broad argument of the learned Counsel for the State, we are not impressed and we are unable to uphold the same. The Government does not act in administrative capacity while passing an order u/s 197 of the Code and we say that the Government is exercising a statutory power and that power can be exercised by it only once in whatever way it chooses to do, but later on it cannot change its mind and pass a fresh order taking a different view, otherwise there will be no end to the exercise of this power.

(Emphasis supplied)

34. Certain decisions were considered in *Surjit Singh (supra)* and heavy reliance was placed on the observations of Vivian Bose, J. in *Venkatesh Yeshwant Despande v. King Emperor* AIR 1938 Nagpur 513. In *Venkatesh Yeshwant (supra)*, in exercise of powers u/s 401 of the Code of Criminal Procedure, 1898, the State Government passed an order unconditionally remitting the sentence of the accused, but later on, the Government rescinded its previous order. The subsequent order was challenged before the High Court and the Full Bench held that in absence of fraud or mistake, it was not open to the Government after remitting a sentence unconditionally to cancel the order and restore the sentence. Vivian Bose, J. while agreeing with the majority view, delivered a separate concurring judgment wherein His Lordship observed:

I do not say that an order of remission is never open to recall. It may be in certain circumstances; fraud and mistake for example might justify such action. But I am clear that it cannot be done arbitrarily. The matter vitally affects the liberty of the subject and so, if such power exists at all, it can in my opinion only be exercised in circumstances which a Court of justice would uphold on general

grounds of justice, equity and good conscience, and of public policy.

(Emphasis supplied)

35. The High Court of Punjab and Haryana interpreted the above observations of Vivian Bose, J. thus:

According to this decision, the Government has no power to recall its previous order in the absence of a specific provision to that effect in respect of the provision of the Code which was being considered by the Full Bench. Even before the Full Bench, Section 21 of the General Clauses Act was brought in aid for rescinding the previous order but it was held that provision is a legislative provision and does not empower the doing of such an act. This case would be of great help in interpreting the section with which we are concerned here.

(Emphasis supplied)

36. With respect, in my considered view, the observations of Vivian Bose, J. in Venkatesh Yeshwant (supra) have not been properly understood and applied by the High Court of Punjab and Haryana. Apart from the fact that the circumstances in Venkatesh Yeshwant (supra) were altogether different it was not observed by Vivian Bose, J. in Venkatesh Yeshwant (supra) that "the Government has no power to recall its previous order in absence of a specific provision to that effect" as understood in Surjit Singh (supra). On the contrary, the observations of Vivian Bose, J. quoted with approval specifically, clearly and unequivocally stated that there might be certain circumstances in which an action could be justified. Thus, the observations of Vivian Bose, J. had not been properly perceived and ratio was not correctly grasped by the High Court of Punjab and Haryana in Surjit Singh (supra).

37. Moreover, the High Court of Punjab and Haryana has held that while granting or refusing to accord sanction "the Government does not act in administrative capacity", which is not in consonance with the view of the Supreme Court in State of Bihar v. P.P. Sharma (supra). In any case, this Court is not bound by the law laid down by the High Court of Punjab and Haryana in Surjit Singh (supra). For all these reasons, in my opinion, the contention raised by Mr. Shah cannot be upheld.

38. The question raised in this petition regarding grant of sanction by a subsequent resolution after refusal to grant it at earlier occasion is also no more res integra. In this connection, it would be appropriate to refer to a decision of the Hon'ble Supreme Court in Parmanand Dass Vs. State of Andhra Pradesh, . In that case, the petitioner was serving as Clerk in Hyderabad Municipal Corporation. An allegation was levelled against him that he had received some amount by way of illegal gratification. Commissioner of Municipal Corporation accorded sanction for prosecution of the accused, which was granted. The accused questioned the validity of the sanction on the ground that the Commissioner was not competent to accord sanction. The Special Judge accepted

the contention and held that the Standing Committee of the Municipal Corporation alone could have granted sanction. The Commissioner had no power to accord sanction and hence it was contrary to law. The accused was thereafter reinstated. The Commissioner then requested the Standing Committee to accord fresh sanction but the Standing Committee resolved to drop the proceeding on the ground that it was an old case. Again, a request was made to the Standing Committee to consider and take fresh decision according sanction to prosecute the accused, which was granted. The second decision was objected by the accused contending that once the sanction was refused, it was not open to the Standing Committee to grant sanction on the same facts. Repelling the contention and upholding the second decision, the Court observed:

It was submitted that having once declined to grant sanction, the subsequent Standing Committee cannot grant sanction, on the same facts. It was contended that grant of sanction by the Special Officer was not bona fide and was due to ulterior motive. We do not see any merit in any of these submissions. Sanction given by the Commissioner was rightly rejected by the Special Judge on the ground that the Commissioner was not competent to grant the sanction. This could not prevent a subsequent sanction being given by the Competent Authority, but plea of the learned Counsel was that the Standing Committee again considered the question but decided to drop the proceedings on the ground that it was an old case and the accused had already been reinstated in service. There could be no objection to the Standing Committee again reconsidering its decision. The validity of the sanction can only be considered at the time when it is filed before the Special Judge. We find that there could be no legal bar to the sanctioning authority revising its own opinion before the sanction order is placed before the Court.

(Emphasis supplied)

39. It was then contended by Mr. Shah that there is abdication of power by the first respondent Bank either in favour of C.B.I. or in favour of Vigilance Commission. Relying upon the provisions of Section 197 of the Code of Criminal Procedure, 1973, as also Section 19 of the Prevention of Corruption Act, 1988, it was argued that appropriate authority in case of the petitioner to accord sanction for prosecution is the first respondent Bank alone. It has full and absolute power either to accord or to refuse sanction. Any person aggrieved can take appropriate proceedings in accordance with law, but "third party" or "foreign element" cannot direct the first respondent to accord sanction nor it is open to the first respondent Bank to surrender its discretion or fetter its absolute power by abdicating its function or jurisdiction to outside agency to accord sanction. In my opinion, however, submission of Mr. Mehta is well founded that the first respondent Bank has no absolute power to refuse sanction. Mr. Mehta, for the said purpose, placed reliance on various provisions of the State Bank of India (Subsidiary Bank) Act, 1959 and also on the State Bank of India Act, 1955.

40. In the former Act "subsidiary bank" is defined in Clause (k) of Section 2 as

including "Saurashtra Bank". "Saurashtra Bank" is defined in Clause (i) as State Bank of Saurashtra constituted under Saurashtra State Banks (Amalgamation) Ordinance, 1950. The "State Bank" is defined as "State Bank of India". My attention was drawn to Section 24 of the Subsidiary Bank Act which provides that the State Bank may from time to time give directions and instructions to a subsidiary bank in regard to any of its affairs and business and that Bank shall be bound to comply with the directions and instructions so given.

(Emphasis supplied)

41. Reliance was also placed on Section 18 of the latter Act which enacts that in the discharge of its functions including those relating to a subsidiary bank, the State Bank shall be guided by such directions in matters of policy involving public interest as the Central Government may, in consultation with the Governor of the Reserve Bank and the Chairman of the State Bank, give to it. All directions given by the Central Government shall be given through the Reserve Bank and if any question arises whether a direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.

42. Now, the instructions have been incorporated in Vigilance Manual. Chapter VII speaks of "prosecution". It provides for need for sanction, authority competent to sanction prosecution, form of sanction, fresh sanction after reinvestigation, etc. The provisions have also been made in the Manual regarding investigation by C.B.I. and procedure is prescribed for obtaining sanction from Competent Authority. In my opinion, therefore, neither Vigilance Commission nor C.B.I. can be said to be "foreign element" or outside agency. Considering the provisions of both the Acts in the light of instructions in Vigilance Manual, the action of referring the matter to Vigilance Commission or obtaining opinion and/or report either from C.B.I. or guidance from Vigilance Commission cannot be termed as contrary to law. Mr. Shah, no doubt, contended that there is nothing on record to show that the instructions incorporated in Vigilance Manual are statutory in nature or that such Manual was prepared in consultation with the Reserve Bank of India or with State Bank. In my opinion, such questions cannot be decided at this stage. As and when the question will arise before an appropriate Court, it will be open to the petitioner to take all contentions and appropriate Court will deal with and decide the same in the light of evidence adduced. Presumably the first respondent Bank was aware of this position and hence it was rightly argued by Mr. Mehta that when initially it was not inclined to accord sanction, it did not pass final order to that effect. Instead, after observing that it was not a fit case in which sanction to prosecute the petitioner was required to be accorded, the matter was referred to Central Vigilance Commission for its advice alongwith requisite details. Central Vigilance Commission then considered the case, obtained report of C.B.I. and forwarded it to the first respondent Bank, who by the second resolution, dated June 26, 1995 accorded sanction to prosecute the petitioner. For all practical and legal purposes, therefore, it cannot be said that at initial stage, final decision was

taken by the first respondent Bank which was reviewed thereafter. Hence, the decisions of the Hon"ble Supreme Court in The Scheduled Caste and Weaker Section Welfare Association (Regd.) and anothers Vs. State of Karnataka and others, and State of Kerala and Others Vs. K.G. Madhavan Pillai and Others, cited by Mr. Shah have no application to the case on hand. If an authority takes final decision in favour of a person and that decision is sought to be cancelled, superseded or revoked, in a given set of circumstances, the question of observance of the principles of natural justice may arise. In the instant case, however, no final decision could have been taken and was in fact not taken, and hence, the question of affording opportunity to the petitioner did not arise. It also cannot be said that there was abdication of function by the first respondent Bank in favour of Vigilance Commission or C.B.I. In fact, C.B.I. is the authority which has initiated criminal proceedings against Harshad Mehta as well as against the petitioner for offences of serious nature and if considering the report as well as opinion of C.B.I., the first respondent Bank has accorded sanction to prosecute the petitioner, in my opinion, such an action cannot be said to be arbitrary, unreasonable or unlawful.

43. The matter can be looked at from a different angle. As submitted by Mr. Mehta, the Special Court is presided over by a sitting Judge of the High Court of Bombay, appointed in consultation with the Chief Justice of India. It cannot be gainsaid that powers under Article 226 are conferred on this Court by the Constitution and they cannot be curtailed or taken away by a legislation. At the same time, however, this Court will not be oblivious of the fact that the petition at this stage is premature as no cognizance is taken by the Special Court against the petitioner. As and when cognizance will be taken, it will be open to the petitioner to take all the contentions including the one which is taken before this Court that no sanction could have been granted or that grant of sanction is contrary to law. While exercising extraordinary powers, this Court will indeed bear in mind this important aspect.

44. In this connection, it may be profitable to refer to Kartar Singh v. State of Punjab . Under the Terrorists and Disruptive Activities (Prevention) Act, 1987 (TADA) only the "designated Court" had jurisdiction to try cases. An order passed by the designated Court could be challenged by approaching the Supreme Court. A High Court had no jurisdiction under the Act to interfere with any order passed by a designated Court. In some cases, accused persons were not enlarged on bail by designated Courts. They approached High Courts by invoking provisions of Article 226 of the Constitution of India. Some High Courts in exercise of jurisdiction under Article 226 of the Constitution entertained bail applications and enlarged accused on bail holding that powers under Article 226 could not be taken away or whittled down. In Kartar Singh (supra), it was argued by the State that a High Court ought not to have enlarged accused persons on bail in exercise of powers under Article 226 of the Constitution. Dealing with that submission and approving the observations in State of Maharashtra Vs. Abdul Hamid Haji Mohammed, , the Supreme Court observed:

Though the High Courts have very wide powers under Article 226, the very vastness of the powers imposes on it the responsibility to use them with circumspection and in accordance with the judicial consideration and well established principles. The legislative history and the object of TADA Act indicate that the special Act has been enacted to meet challenges arising out of terrorism and disruption. Special provisions are enacted in the Act with regard to the grant of bail and appeals arising from any judgment, sentence or order (not being an interlocutory) of a Designated Court etc. The overriding effect of the provisions of the Act (i.e., Section 25 of TADA Act) and the Rules made thereunder and the non-obstante clause in Section 20(7) reading, "Notwithstanding anything contained in the Code..." clearly postulate that in granting of bail, the special provisions alone should be made applicable. If any party is aggrieved by the order, the only remedy under the Act is to approach the Supreme Court by way of an appeal. If the High Courts entertain bail applications invoking their extraordinary jurisdiction under Article 226 and pass orders, then the very scheme and object of the Act and the intendment of the Parliament would be completely defeated and frustrated. But at the same time, it cannot be said that the High Courts have no jurisdiction. Therefore, we totally agree with the view taken by this Court in Abdul Hamid Haji Mohammed (supra) that if the High Court is inclined to entertain any application under Article 226, the power should be exercised most sparingly and only in rare and appropriate cases in extreme circumstances. What those rare cases are and what would be the circumstances that would justify the entertaining of applications under Article 226 cannot be put in strait-jacket. However, we would like to emphasise and re-emphasise that the judicial discipline and comity of Courts require that the High Courts should refrain from exercising their jurisdiction in entertaining bail applications in respect of an accused indicated under the special Act since this Court has jurisdiction to interfere and correct the orders of the High Courts under Article 136 of the Constitution.

(Emphasis supplied)

45. From the above observations, it is clear that according to the Supreme Court, even though every High Court can exercise powers under Article 226 of the Constitution, notwithstanding the fact that a special legislation excluded jurisdiction of all Courts, the fact that a statute does not permit an aggrieved party to approach a High Court under the Act is indeed a relevant factor which cannot be lost sight of. If in exercise of power under Article 226 of the Constitution, a High Court passes an order and enlarges accused persons on bail against an order refusing bail by the designated Court, virtually the provisions of the Act would become nugatory. Ordinarily, therefore, if any person feels aggrieved by an order passed by a designated Court, he has to approach the Supreme Court and except in exceptional circumstances, a High Court would not extend its jurisdiction by interfering with the order passed by a designated Court by exercising extraordinary powers under Article 226 of the Constitution.

46. In my opinion, the above observations of the Supreme Court in Kartar Singh (supra) would apply with equal force in the present case also. It is not disputed and cannot be disputed that this Court has jurisdiction to entertain a petition. At the same time, however, it cannot be forgotten that till to-day, no cognizance is taken against the petitioner by any Court. A remedy is provided by law and it is open to the petitioner to take all contentions as and when cognizance of an offence will be taken by special Court. In these circumstances, in my opinion, submission of the learned Counsel for C.B.I. is well founded that it would not be appropriate to exercise extraordinary powers under Article 226 of the Constitution at this stage.

47. There is yet another reason to reject this petition. It is well settled that jurisdiction under Article 226 of the Constitution is equitable and discretionary. Such jurisdiction can be exercised *ex debito justitiae*, i.e., in the larger interest of justice. Even if the Court is of the view that there is some irregularity in proceedings, the Court may refuse equitable relief if it is satisfied that there is no miscarriage of justice. Looking to seriousness of the allegations levelled against the petitioner, the first respondent Bank has accorded sanction to prosecute him. The said action cannot be said to be improper which may result in miscarriage of justice if it is not interfered with. On the contrary, in my view, interference with such action at this stage would amount to denial of justice which may not be in larger public interest. Before more than five decades the Privy Council in AIR 1945 18 (Privy Council) posited that investigation of an offence is exclusive field of police and a Court should not interfere with the said power. That principle strongly applies to the instant case particularly when instead of waiting till an appropriate Court takes cognizance, the petitioner has approached this Court by invoking extraordinary jurisdiction under Article 226 of the Constitution.

48. For all these reasons, in my opinion, the petition requires to be dismissed and is accordingly dismissed. Interim relief granted earlier against the resolution dated June 26, 1995 by which the sanction is accorded to prosecute the petitioner stands vacated. In the facts and circumstances of the case, however, there shall be no order as to costs.

The learned Counsel for the petitioner prays that interim relief granted earlier may be continued for some time so as to enable him to approach higher forum. It is strongly opposed by the learned Counsel for the respondents. It is also contended that the petition is premature and the said contention is upheld by this Court. No cognizance is taken by an appropriate Court so far. Hence, interim relief granted earlier may not be extended. In my opinion, this is not a fit case in which interim relief requires to be extended. Hence, the prayer is rejected.