
(2004) 09 P&H CK 0082

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 9410 of 2004

Parkash Singh Badal and another

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 02-09-2004

Acts Referred:

Citation : (2004) 4 AICLR 909 : (2004) 3 C.C.Cases 238 : (2005) 1 CLR 633 : (2004) 4 RCR(Criminal) 612

Hon'ble Judges : Swatanter Kumar, J and Amar Dutt, J

Advocate : Mr. H.S. Mattewal, Sr. Advocate with Mr. H.S. Sidhu, Advocate. Mr. Udey Lalit and Mr. H.S. Sandhu, Sr. Advocates with Mr. C.M. Munjal, Addl. A.G. and Mr. B.S. Chahal, A.A.G. Punjab., Advocates for appearing Parties

Judgement

Swatanter Kumar, J.

1. Shri Parkash Singh Badal, earlier the Chief Minister of Punjab and now the leader of the Opposition in the Legislative Assembly of State of Punjab and Mr. Sukhbir Singh Badal, Member of the Lok Sabha, on 16.1.2004 filed an application before the learned Special Judge (exercising powers under the Prevention of Corruption Act, 1988), Ropar, challenging the very jurisdiction of the Court to take cognizance and try the petitioners for the offences alleged to have been committed by them in the case FIR No. 15 of 24.6.2003, under Sections 420, 467, 468, 471, 120B IPC and Sections 7, 8, 9, 10, 13(1) read with Section 13(2) of the Prevention of Corruption Act, 1988, Police Station Vigilance Bureau FS1, Mohali, Distt. Ropar. In this application the petitioners also questioned the validity and legality of the notification dated 17.11.2003 issued by the Department of Home Affairs and Justice, State of Punjab. The petitioners pressed before the learned Special Judge, Ropar with some emphasis the need for disposal of the application at the very thresh hold and requested that no other further proceedings be taken by the Court till decision of the application. This application of the petitioners was dealt with and disposed of by the learned Special Judge, Ropar vide order dated 29.5.2004. The Court held that it had

necessary jurisdiction to take cognizance and try the case in accordance with law. The learned Judge also observed that notification dated 17.11.2003 did not suffer from any jurisdictional or legal infirmity. Accordingly, the Court held that the impugned notification empowers the special Police Station at Mohali to present the challans before the Court of the Special Judge at Ropar and also confers jurisdiction while empowering the said Court to deal with the trial of the cases so presented. Aggrieved from the order passed by the learned Special Judge, Ropar, dated 29.5.2004, the petitioners have approached this Court. They have also questioned the validity, legality and effect of the notification dated 17.11.2003 on the jurisdiction of the Court. In order to discernly analyse the rival contentions raised before the Court by the learned counsel appearing for the respective parties to this petition, reference to necessary facts would be inevitable.

2. Petitioner No. 1 Shri Parkash Singh Badal, after having already remained as Chief Minister of the State of Punjab on two occasions was elected as Member of the Legislative Assembly in 1997 and was again elected as Leader of the Ruling Party and consequently the Chief Minister of the State of Punjab. He occupied this august office till 2002 when again he was elected as Member of the Legislative Assembly in the State of Punjab from his constituency in District Muktsar and presently is the Leader of the Opposition in the State Assembly.

3. His son Shri Sukhbir Singh Badal is the General Secretary of the Shiromani Akali Dal. He remained a Minister of State in the Union Cabinet in the previous term and also remained a Member of both the Houses of the Parliament. In the elections held in May, 2004, he was again elected as Member of the Lok Sabha, the office of which he occupied even today.

4. The case pleaded on facts by both these petitioners is somewhat similar. According to them Capt. Amarinder Singh, presently the Chief Minister of Punjab, was also in their party i.e. Shiromani Akali Dal. He left the party because he was denied ticket to contest the Assembly Elections in 1997 and joined Congress Party. He became the President of the Punjab Pradesh Congress Committee. As President of the Punjab Pradesh Congress Committee on 4.9.2001 he wrote a letter to the petitioner No. 1 stating that the petitioner had amassed vast properties in India and abroad valuing more than Rs. 3,500/ crores and thanked the petitioner for accepting his request for exchange of properties between them. Further according to these petitioners, in the Assembly Elections held in 2002 Capt. Amarinder Singh lodged a highly defamatory campaign against the petitioners and made baseless allegations which compelled both the petitioners to file a suit for damages for the amount of Rs. 5 crores in the Courts at Chandigarh. Open threats were given in Press and otherwise that in the event he succeeded, he would put both the petitioners and their family members behind the bars. Even a criminal complaint was filed for defamation by petitioner No. 1 against the Chief Minister, Capt. Amarinder Singh, on 12.8.2002.

5. On 19.12.2002 a notification was issued by the State of Punjab extending the

jurisdiction of Superintendent of Police, Vigilance Bureau, FS1/CIA, Punjab, at S.A.S. Nagar (Mohali) over the entire State of Punjab. The said notification has been annexed to the writ petition as Annexure P/14, which reads as under :

"GOVERNMENT OF PUNJAB

DEPARTMENT OF HOME AFFAIRS AND JUSTICE

(HOME VI BRANCH)

NOTIFICATION

The 19th December, 2002.

6. No. 7.950/934HO/2004 In supersession of the Government of Punjab, Department of Home Affairs and Justice. Notification No. 3450/984165/670, dated the 31st October, 1994, and, in exercise of the powers conferred by clause (s) of Section 2 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to declare that the places specified in column 2 of the Schedule given below, to be Police Station and they shall have jurisdiction within the areas specified against each of them in column of the said Schedule, namely :

SCHEDULE

S.No. PL. Jurisdiction

1 2 3

1. Office of the Superintendent of Police, Vigilance Bureau, Jalandhar Range, Jalandhar. The Districts of Jalandhar, Kapurthala, Hoshiarpur and Nawanshahar.

2. Office of the Superintendent of Police, Vigilance Bureau, Ferozepur Range, Ferozepur. The Districts of Ferozepur, Moga and Muktsar.

3. Office of the Superintendent of Police, Vigilance Bureau, Patiala Range, Patiala. The Districts of Patiala, Sangrur and Fatehgarh Sahib.

4. Office of the Superintendent of Police, Vigilance Bureau, FS1/CIA, Punjab at S.A.S. Nagar (Mohali). Having jurisdiction over whole of Punjab.

5. Office of the Superintendent of Police, Vigilance Bureau, Amritsar. The Districts of Amritsar and Gurdaspur.

6. Office of the Superintendent of Police, Vigilance Bureau, Ludhiana. The Districts of Ludhiana and Ropar.

7. Office of the Superintendent of Police, Vigilance Bureau, Bathinda. The Districts of Bathinda, Mansa and Faridkot.

S.K. SINHA

PRINCIPAL SECRETARY TO THE GOVERNMENT OF PUNJAB, DEPARTMENT OF

HOME AFFAIRS AND JUSTICE."

7. On a complaint made by one Balwant Singh Dhaliwal, who is stated to be close to be Chief Minister Media Advisor without conducting any preliminary enquiry, a case was registered on 24.6.2003 under Sections 420, 467, 468, 471, 120B IPC read with Sections 7, 8, 9, 10, 13(1) and 13(2) of the Prevention of Corruption Act, 1988, hereinafter referred to as the Act, at Police Station, Vigilance Bureau, FS1/CIA, Mohali against both the petitioners. On 17.11.2003, the State of Punjab issued another notification. The said notification reads as under :

"GOVERNMENT OF PUNJAB

DEPARTMENT OF HOME AFFAIRS AND JUSTICE

(HOME VI BRANCH)

NOTIFICATION

The 17th November, 2003.

No. 1/58/891 Juld. (1)/4767. In exercise of the powers conferred by Section 3 of the Prevention of Corruption Act, 1988 and all other powers enabling him in this behalf, the Governor of Punjab is pleased to appoint the Sessions Judge and the Ist Additional Sessions Judge, Ropar (Both Special Judges under the Prevention of Corruption Act) for trial of offences specified in subsection (1) of Section 3 of the Act *ibid* in respect of all cases, registered in PS/VB/FS1, Mohali within the jurisdiction of that Flying Squad of the Punjab Vigilance Bureau, notwithstanding the jurisdiction of any other Special Judge in the State of Punjab.

S.K. SINHA

PRINCIPAL SECRETARY TO THE GOVERNMENT OF PUNJAB, DEPARTMENT OF HOME AFFAIRS AND JUSTICE."

8. The petitioners raise challenge to the *aforereferred* notification dated 17.11.2003 and the judgment of the learned Special Judge *inter alia* on the following grounds :

(a) The notification dated 17.11.2003 is invalid, inconsequential and is liable to be quashed for the following reasons :

(i) The notification dated 17.11.2003 has been issued without prior consultation with the High Court and, thus, offends Articles 50 and 235 of the Constitution of India;

(ii) The State of Punjab was incompetent to issue any notification in relation to allocation of the work and/or transfer of cases in the Courts of Special Judges. Notification in relation to allocation of work under Section 4(2) of the Act can be issued by the Central Government alone;

(iii) The cases must exist before issuance of such notification;

(iv) The State Government has no jurisdiction to transgress territorial jurisdiction by means of the notification which otherwise must vest in the Court having territorial jurisdiction over the area where crime is committed. Such exercise of power by the State is opposed to the provisions of the Criminal Procedure Code as well as the Act;

(v) By means of a notification the State Government could not vest jurisdiction in the Special Courts at Ropar as they have no territorial jurisdiction to try the offences which are alleged to have been committed at Chandigarh;

(vi) Notification dated 17.11.2003 was not published and gazetted in accordance with the provisions and as such is ineffective;

(b) The learned Special Judge at Ropar could not have taken cognizance and summoned the petitioners to face trial in absence of any sanction under Section 19 of the Act and Section 197 of the Criminal Procedure Code, as both the petitioners are public servants.

(c) The prosecution conducted no preliminary enquiry and has not afforded any opportunity to the petitioners to explain their conduct prior to the filing of the chargesheet under Section 173 Cr.P.C. Consequently, the entire prosecution of the petitioners is vitiated in law.

(d) The prosecution has filed incomplete challan during the pendency of the investigation and admittedly when investigation is even going on, which is not permissible within the scope of provisions of Section 173 of the Code.

(e) The entire prosecution of the petitioners has been launched and notification issued mala fide and arbitrarily to take political vengeance against the petitioners, particularly keeping in mind the fact that litigation between the petitioners and the Chief Minister is pending.

(f) The learned Special Judge has erred in law in deciding the above issue against the petitioners and, thus, the order dated 29.5.2004 is also liable to be set aside and prosecution of the petitioners be quashed or stayed.

9. The respondent State of Punjab, denied the allegations of mala fide and arbitrariness. According to the prosecution it is a bona fide exercise of power and is intended to deal with the petitioners under the provisions of the Act for possessing disproportionate assets to their known sources of income. According to prosecution, Balwant Singh son of Sukhdev Singh resident of village Dhalewan, District Mansa, Punjab, had addressed a letter to the Chief Minister, Punjab, stating therein that Shri Parkash Singh Badal and his family had conspired during their tenure and had gathered abundance of properties. Details of the properties and misuse of their office has been stated under ten different heads in this letter with further details and FIR No. 15 dated 24.6.2003 was registered at Police Station, Vigilance Bureau FS1, Mohali, District Ropar. Some correspondence was exchanged and a questionnaire was served upon the petitioners who even gave a reply during the period 29.9.2003, copies whereof

are placed on this record as Annexures P6/6 to P7. Thereafter chargesheet under Section 173 of the Code was filed before the Special Judge, Ropar on 22.11.2003. However, the State Government had already issued notification dated 19.12.2002 specifying the places, and the police stations having jurisdiction over such places. Thereafter another notification, as noticed above, was published on 17.11.2003 declaring that all cases registered at Police Station, Vigilance Bureau, FS1, Mohali, within the jurisdiction of that flying squad, would be triable by the Special Judges at Ropar.

10. Prior and after the issuance of these notifications, chargesheet under Section 173 of the Code was filed in different cases by the prosecution before the Special Judge at Ropar. It has been stated in the challan that the petitioners at the relevant time were not the public servants within the scope of law. There is no need for taking sanction of the concerned authorities either under Section 19 of the Act or Section 197 of the Code. However, they had taken the approval of the Speaker of Punjab Legislative Assembly in regard to the prosecution of the petitioners under the provisions of the Act. Copies of such approval have been placed on record though they are dated 2.8.2004 in some cases.

11. The investigating agency conducted the investigation and filed the challan in the Court of Special Judge, Ropar under the above said offences. According to the prosecution Shri Parkash Singh Badal and Sukhbir Singh Badal had family income of Rs. 38,00,000/ for the year 1997-98 and after giving benefit of that income the total amount for which, according to the prosecution, there was no explanation and was in excess of the known sources of their income, was calculated by the prosecution at Rs. 78,01,52,503/. The details of the properties, moveable and immoveable, which were acquired by the petitioners as a result of illgotten money have been stated in the challan itself. One of the specific allegations in the challan is that Sukhbir Singh Badal being son of the Ex-Chief Minister of Punjab, abused the office of his father and consequently the huge money was collected by them collectively and properties built from that money. The prosecution has also taken a specific stand that there is no need to get the permission to prosecute the case against the accused Shri Parkash Singh Badal, Member of Legislative Assembly, but still permission of the Hon'ble Speaker, Punjab Vidhan Sabha was taken separately. The misuse of office and corruption practised by these persons including the fact that they also were connected with Mr. Sidhu, the Chairman of the Punjab Public Service Commission, who was also facing a criminal prosecution on similar lines. On these premises, as per the case of the prosecution, the accused were liable to be prosecuted and were challaned for the offences aforesaid.

12. Arguing the case on behalf of the State of Punjab, the learned counsel stated that the notification dated 17.11.2003 does not suffer from any error of jurisdiction, legislative competence or palpable error of law. In fact the notification only transfers particular class of case/cases to the jurisdiction of the Courts already existing and established. The notification being purely

administrative in nature, consultation of the High Court was not essential. The other arguments questioning the validity of the notification were also repelled by the argument that in law the State Government is competent to issue such a notification. It is not mandatory that there has to be a preliminary enquiry preceding the filing of report under Section 173 of the Code before the Court of competent jurisdiction, but in any case, the petitioners were granted sufficient opportunity before filing the charge sheet. Complete challan against the accused has been filed, thus, the question of investigation being pending would not accrue any advantage to the petitioners as the prosecution agency always has the right to file supplementary chargesheet with the leave of the Court. It is also argued on behalf of the State that the question of preliminary enquiry, mala fides and arbitrariness on the part of the State was never pressed by the petitioners before the trial Court and they had agreed that the same should be postponed before the trial Court. As such there was no occasion for the Court to determine these two questions.

13. An attempt is made by the petitioners to challenge the very initiation of proceedings by the prosecuting enquiry or some alike enquiry is condition precedent to the registration of F.I.R. and filing of the chargesheet. It is contended on behalf of the petitioners that as there was no preliminary enquiry, the F.I.R. and the chargesheet itself are liable to be quashed. In support of their arguments, learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court in the cases of *P. Sirajuddin etc. v. The State of Madras etc.*, AIR 1971 SC 520 and *State of Haryana and others v. Ch. Bhajan Lal and others*, 1991(1) RCR(CrL.) 383 (SC) : AIR 1992 SC 604 with particular reference to the provisions of Section 13(1) of the Act. The petitioners also seek to derive attention and support from the provisions of Section 173 of the Code to raise an ancillary submission that filing of challan during pendency of an enquiry or incomplete challan would also have the effect of vitiating the institution of criminal proceedings against the petitioners. Reliance in this regard can also be made to the cases of *Ram Lal Narang v. State (Delhi Administration)*, AIR 1979 SC 1791 and *K. Chandrasekhar v. State of Kerala*, 1998(2) RCR(CrL.) 719 (SC). The petitioners have been charged for different offences under the provisions of the Prevention of Corruption Act of which one of the offences is relatable to the provisions of Section 13 of the Act. The provision of this section does not contain any language which would suggest that a substantive enquiry is condition precedent to the filing of a challan or registration of a case under the provisions of this Act. Section 19 of the Act places a restriction or a bar only in regard to sanctions necessary for prosecution. The purpose of holding any enquiry preregistration has been spelled out by the Supreme Court in the case of *P. Sirajuddin (supra)* to state that before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amounts to serious misdemeanour or misconduct of corruption, there must be some suitable enquiry into the allegations by a responsible officer. This principle was further clarified by the Court with approval in *Ch. Bhajan Lal's case (supra)*, where their Lordships

also referred to the judgment of the Supreme Court in the case of State of Uttar Pradesh v. Bhagwant Kishore Joshi, 1964(3) SCR 71 held as under :

"In the absence of any prohibition in the Code, express or implied, I am of opinion that it is open to a police officer to make preliminary enquiries before registering an offence and making a full scale investigation into it."

14. Apparently there is no prohibition in the Act which would restrict the scope of an enquiry which an investigating officer may conduct in accordance with law preregistration and/or before filing of the report under Section 173 of the Code. On the other hand, holding of such enquiry is not prohibited under the provisions of the Act and as such is not mandatory. It is in the larger public interest and maintenance of dignity of public servant that it has been considered in judicial pronouncements that holding of such an enquiry would be appropriate. The settled canons of criminal jurisprudence have been moulded by judicial pronouncements so as to achieve a larger public interest and making it somewhat obligatory upon the investigating officer to scrutinise proper material and arrive at a conclusion that the public servant concerned has prima facie committed the offence spelled out under the provisions of the Act. There is no requirement of law that a public servant should be granted a personal hearing before such registration or that registration of an FIR without affording him an opportunity of personal hearing or showing cause would violate principles of natural justice. The stage where a public servant can claim right of hearing so as to repel the allegations against him that he is possessed of such means which are not explainable and are disproportionate to his known sources of income under the provisions of Section 13(1)(e) of the Act, their Lordships of the Supreme Court in the case of State of Maharashtra v. Ishwar Piraji Kalpatri and others, 1996(2) RCR(Cr.) 844 (SC) : 1996(1) SCC 542, analysed this concept in great elaboration and held as under :

"In our opinion, there is a complete misreading of the aforesaid provision by the High Court. It is, no doubt true that a satisfactory explanation was required to be given by the delinquent officer. But this opportunity is only to be given during the course of the trial. It is no doubt true that evidence had to be gathered and a prima facie opinion found that the provisions of Section 5(1)(e) of the Act are attracted before a first information report was lodged. During the course of gathering of the material, it does happen that the officer concerned or other person may be questioned or other queries made. For the formation of a prima facie opinion that an officer may be guilty of criminal misconduct leading to the filing of the first information report, there is no provision in law or otherwise which makes it obligatory of an opportunity of being heard to be given to a person against whom the report is to be lodged. That such satisfactory account had to be rendered before a court is also borne out from the judgment of this Court in Veeraswami case where referring to Section 5(1)(e) of the Act at page 713 of the said judgment, it was observed as follows : (SCC pp. 71314, para 72)

"Clause (e) creates a statutory offence which must be proved by the prosecution.

It is for the prosecution to prove that the accused or any person on his behalf, has been in possession of pecuniary resource or property disproportionate to his known sources of income. When that onus is discharged by the prosecution, it is for the accused to account satisfactorily for the disproportionality of the properties possessed by him. The section makes available statutory defence which must be proved by the accused. It is a restricted defence that is accorded to the accused to account for the disproportionality of the assets over the income. But the legal burden of proof placed on the accused is not so onerous as that of the prosecution. However, it is just not throwing some doubt on the prosecution version. The legislature has advisedly used the expression 'satisfactorily account'. The emphasis must be on the word 'satisfactorily'. That means the accused has to satisfy the Court that his explanation is worthy of acceptance. The burden of proof placed on the accused is an evidential burden though not a persuasive burden. The accused however, could discharge that burden of proof 'on the balance of probabilities' either from the evidence of the prosecution and/or evidence from the defence." (emphasis added)

The aforesaid passage leaves no manner of doubt that the opportunity which is to be afforded to the delinquent officer under Section 5(1)(e) of the Act of satisfactorily explaining about his assets and resources is before the court when the trial commences and not at an earlier stage. The conclusion arrived at by the learned Single Judge that principles of natural justice had been violated, as no opportunity was given before the registration of the case, is clearly unwarranted and contrary to the aforesaid observations of this Court in K. Verraswami case."

15. In view of the above enunciated law it is not necessary for us to deliberate any further on this issue. In fact applying these principles to the facts of the present case after the filing of a complaint by Balwant Singh, the special investigating officer had written letters to the petitioners and also served a questionnaire upon them. Those letters were duly responded to by the petitioner No. 1 and he even justified his position to some extent while some of the answers were vague. He took up the plea of mala fides even in these replies. In the letter dated 29.9.2003 the petitioner No. 1 clearly stated that he had written a letter to Capt. Amarinder Singh explaining to him that whatever he possessed is out of his hard honest labour and ancestral properties. It was a detailed letter written by the petitioner to the authorities and he cautioned the investigating officer that he was master of his case and he should take a decision on the material before him whether the case was made out against him or not. The said reply was concluded by the petitioner as under :

"Though I was keen to make myself available even earlier, but because of my pressing prior engagements this is the earliest that I have been able to manage."

According to the prosecution, after detailed investigation, the chargesheet was presented before the Court of competent jurisdiction on 22.11.2003.

16. The facts on record show that there was investigation conducted by the

prosecution between 6.6.2003 to 24.6.2003, the investigation preregistration and detailed investigation conducted in which even to reasonable extent the petitioners were associated prior to filing of report by the prosecution under Section 173 of the Code. In any case, the petitioners have not been able to show as to what prejudice they had suffered as a result of their non association even if so accepted in the enquiry preregistration FIR. It is a settled principle of law that to take advantage of a procedural irregularity, the accused normally must show the prejudice which has resulted from such breach of any procedure or irregularity. We may note here that the learned counsel appearing for the petitioners was not able to substantiate his arguments in this regard and show from the records before us as to what prejudice has been caused to the petitioners as in any case they had submitted detailed replies to the investigating agency even after the registration of the first information report.

17. Coming to the second limb of the submissions made on behalf of the petitioners in relation to filing of incomplete challan (chargesheet) during the pendency of investigation. Learned counsel for the petitioners placed emphasis on the language used by the Legislature in subsection (2) of Section 173 of the Code, "As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government" to contend that report has to be complete in all respects and the investigating agency has no option to file the report contemplated in this section if the enquiry or investigation is incomplete. In such a situation, according to the counsel, the Court cannot take cognizance in accordance with the provisions of Section 13 of the Act, the order of summoning passed by the Court would be ineffective in law. In this regard reliance has been placed upon the cases of Ram Lal Narang (supra), Fouzia Hassan (supra) and State of Haryana v. Mehal Singh and another, AIR 1978 Punjab and Haryana 341.

18. The legislative scheme contemplated under Section 173 of the Code, examined in all its reasonable limits of interpretation, does not apparently support the contentions raised on behalf of the petitioners. The language relied upon by the petitioners in subsection (2) of Section 173 refers to the essentials which must be contended and specified in the police report submitted to the Court, but neither by necessary implication nor by use of language excluded the power of the Court to take cognizance where investigation may be pending or the police requests the Court for leave to file a further or supplementary challan. The scope of further investigation is contemplated in express language under subsection (3) of Section 173 of the Code at the stage of investigation itself and under subsection (8) of Section 173 when the matter is before the Court. Essential consequence of further investigation would be filing supplementary challan before the Court. That alone would complete the scheme and intent of these provisions of the Code. The competent Court can take cognizance of the offence, under Section 190 of the Code, upon a police report of such facts which it is competent to enquire at trial. To read a prohibition of the kind suggested by

the counsel for the petitioners into these provisions may not be permissible on any known canons of statutory interpretation. In the present case the report under Section 173 of the Code has been filed and according to the prosecution it contains all the essential ingredients as spelled out in Section 173(2). However, they inform the Court that investigation was still going on. Such a request can be traced in the challan or application submitted by the prosecution.

19. At this stage it may be appropriate to even refer to the judgments relied upon by the petitioners themselves. We are also unable to persuade ourselves that the judgments relied upon by the petitioners in any way further their cause. In fact these judgments clearly enunciate the principles which we have aforenoticed. In the case of Ram Lal Narang (*supra*) where the Court was concerned with filing of a subsequent case in relation to conspiracy and withdrawal of the initial case and Magistrate having taken cognizance thereof, the Hon^{ble} Supreme Court held as under :

"Notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigation is not exhausted and the police can exercise such right as often as necessary when fresh information comes to light. There was no provision in the Code of Criminal Procedure (1898) which, expressly or by necessary implication barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead to say that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permits repeated investigations on discovery of fresh facts."

Furthermore, in the case of Fouzia Hassan (*supra*) their Lordships held as under :

"From a plain reading of the above section it is evident that even after submission of police report under subsection (2) on completion of investigation, the police has a right of 'further investigation' under sub section (8) but not 'fresh investigation' or 'reinvestigation'. That the Government of Kerala was also conscious of this position is evident from the fact that though initially it stated in the Explanatory Note of their notification dated June 27, 1996 (quoted earlier) that the consent was being withdrawn in public interest to order a 'reinvestigation' of the case by a special team of State police officers, in the amendatory notification (quoted earlier) it made it clear that they wanted a 'further investigation of the case' instead of 'reinvestigation of the case'. The dictionary meaning of 'further' (when used as an adjective) is 'additional', more supplemental. 'Further' investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that subsection (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a 'further' report or reports and not fresh

report or reports regarding the `further" evidence obtained during such investigation."

20. The Full Bench of this Court in the case of Mehal Singh (supra) clearly stated that a police report is required to contain only such facts as are mentioned in subsection (2) of Section 173 of the Code and within the meaning of these provisions if such facts are stated in the police report, the investigation would normally be completed. Their Lordships held that even if statements under Section 161(3) of the Code were not accompanying the police report, the power of the Magistrate to take cognizance is not taken away and even if copy of the report of the expert was not annexed, it would no way vitiate the institution of the proceedings against the accused on a police report.

21. We may notice here the latest judgment of the Hon"ble Supreme Court in the case of Zahira Habibullah H. Sheikh and another v. State of Gujarat, 2004(3) RCR(Cr.) 347 (SC) : 2004(4) SCC 158, where, in the Best Bakery Case keeping in view the facts and circumstances of that case the Court even directed the reinvestigation of the offences during the pendency of the trial itself. The fairness in criminal trial was given new dimensions by the Court so as to prevent miscarriage of justice. The right of the prosecution to file supplementary chargesheet was held to be a right available to the prosecution by the Supreme Court in the case of State of West Bengal v. Salap Service Station and others, 1994(3) SCC 318 where their Lordships, in no uncertain terms, observed that the Court which took cognizance of the offence cannot reject supplementary report outright since it is only a supplementary report in support of the earlier report. The right to present further evidence of the prosecution cannot be frustrated. Even if the materials incorporated in the supplementary chargesheet do not make out any offence, the question of framing any other charge on the basis of that may not arise, but in the case the Court frames a charge, it is open to the accused persons to seek discharge in respect of that offence also, but the Court cannot reject the report. Reference can also be made to the judgment of the Supreme Court in the case of State of Maharashtra v. Sharadchandra Vinayak Dongre and others, 1994(3) RCR(Cr.) 657 (SC) : 1995(1) SCC 42 where their Lordships specifically noticed that after submission of the chargesheet still the Magistrate of competent jurisdiction can take cognizance of the offence and grant requisite leave, the basis being that jurisdiction of the Magistrate under Section 190(1)(b) of the Code is not controlled by the investigating agency. The filing of an application would no way obstruct the jurisdiction of the Magistrate to take cognizance of the report filed before him in so far as it satisfied the ingredients of Section 173(2) of the Code, these being canons of criminal jurisprudence controlling the filed of administration of criminal justice in regard to preparation of a report and the power of the Court to take cognizance and the right of the prosecution to file a supplementary charge sheet. We hardly find any substance in the submissions made on behalf of the petitioners. The petitioners again would have still another obstacle to cross and that is, that they have not been able to show before the Court on the basis of the record produced that there has been

any failure of justice.

22. One of the accepted precepts which the Courts would keep in mind while examining the validity or otherwise of such defaults alleged to have been committed by the prosecution is that the accused necessarily must show failure of justice or a serious prejudice to their right of, defence or fair trial as contemplated in Article 21 of the Constitution of India. Firstly, there are hardly any pleadings in that behalf in the writ petition and, secondly, there is nothing to support such an averment on record at least at this stage. In absence of both these twin essentials for raising such a ground of attack, we are unable to accept the contention raised by the petitioners in this regard. The Supreme Court in the case of *State of Karnataka v. Kuppaswamy Govinder and others*, 1987(2) SCC 74 held as under :

"As regards the case being withdrawn and made over to another Sessions Judge after the plea of the accused was recorded and charge framed, the irregularity is covered by Sections 465 and 462 Cr.P.C. Reading both these sections shows that the scheme of the Code of Criminal Procedure is that where there is no inherent lack of jurisdiction then merely either on the ground of lack of territorial jurisdiction or on the ground of any irregularity of procedure an order or sentence awarded by a competent court could not be set aside unless a prejudice is pleaded and proved which will mean failure of justice. But in absence of such a plea merely on such technical ground the order or sentence passed by a competent court cannot be quashed.

In the present case the plea of prejudice or failure of justice is neither pleaded nor proved. Not only that, even the judgment of the High Court does not indicate any possibility of prejudice or failure of justice. The respondent here also did not suggest any possibility or prejudice or failure of justice. The order of remand by the High Court therefore cannot be sustained. Appeals are therefore remitted back to be heard and disposed of on merits."

23. In the writ petition emphasis have been placed on arbitrariness and mala fides, which ground in fact was even left open while filing the submissions before the trial Court. During the course of hearing of its petition earlier the counsel for the parties had agreed that they would not invite the findings of the Court on the issue of arbitrariness and mala fide at this stage as it has been deferred before the learned Special Judge for the trial stage. However, subsequently, an halfhearted attempt was made by learned counsel for the petitioners that he would like to raise this issue as well. We are of the considered view that mala fide and arbitrariness as pleaded in the present petition is entirely a matter which falls in the realm of factual controversies and would require oral and documentary evidence on either side before the Court can adjudicate upon this issue. In any case, we are of the considered view that it would be in the interest of all concerned that this issue of mala fide and arbitrariness in the action of the State in directing prosecution of the petitioners, should be left open and has rightly been deferred even by the trial Court.

VALIDITY AND LEGALITY OF SANCTION :

24. The petitioners challenge taking of cognizance by the learned Special Judge of the chargesheet filed against them and continuation of the criminal proceedings thereupon for lack of proper sanction of the competent authority under Section 19 of the Act and/or Section 197 of the Code. It is not even disputed by the learned counsel for the State of Punjab that no sanctions have been obtained or placed on the record of the trial Court except that approval of the Speaker of Punjab Legislative Assembly, in case of petitioner No. 1. The law imposes no obligation upon the prosecution to place any sanction on record from the competent authority as far as petitioner No. 1 is concerned. Furthermore, no sanction or approval was required to be obtained and filed on record of the trial Court along with or subsequent to the filing of charge sheet under Section 173 of the Code as the role attributed to petitioner No. 2 is not in relation to misuse of his public office which he held as a Member of Parliament, but the offences are committed and relatable to amassing the properties as son of petitioner No. 1 and his acting in collusion with his father in misusing the office of his father for ulterior motives and collection of wealth in that manner.

25. In order to analyse these submissions in light of the settled principles of law we will have to revert back to some of the essential facts necessary for determination of this controversy. There is no dispute to the fact that Shri Parkash Singh Badal was three times the Chief Minister. His last tenure was from 1997 to 2002 when on holding of the elections he was again elected as continues to hold that status and is even the Leader of the Opposition in the House presently. As for as Shri Sukhbir Singh Badal is concerned, he also remained Member of either of the Houses of Parliament and is a sitting Member of Lok Sabha to which he was elected in the elections of May, 2004. The chargesheet against these two petitioners was filed in the Court of Special Judge on 22.11.2003 and vide order of even date the trial Court applied its mind and summoned the accusedpetitioners.

26. The first and the foremost question that we must answer at the very out set while discussing this aspect of the case is what is the relevant date for the purposes of grant of sanction. According to the counsel appearing for the petitioner the prosecution has been launched without sanction and compliance to the provisions of Section 19 of the Act and Section 197 of the Code, as such the Special Court had no jurisdiction to take cognizance. It is further stated that such sanction would be necessary prior to filing of the challan. According to the petitioners both of them are public servants and were holding the office of M.L.A. and Leader of the Opposition and Member of Parliament respectively. On the other hand the contention on behalf of the respondents before us is that when the learned Court has taken cognizance of the offences none of the petitioners was a public servant and holding a status which would make it obligatory upon the part of the prosecution to take sanction of an authority competent to remove or terminate the petitioners. Despite this, the prosecution is stated to have got

permission of the Speaking against petitioner No. 1 to initiate the prosecution under the provisions of the Act.

27. As for as the case of Shri Sukhbir Singh Badal is concerned, according to the prosecution, there was no need for them to obtain any sanction or permission from any authority including the Speaker of Lok Sabha. It is not in dispute that no sanction or permission to prosecute has been obtained by the prosecution till date. The reason given is that in terms of the chargesheet filed in Court, the said petitioner had been prosecuted amongst others, for committing an offence punishable under Sections 8 and 9 of the Act. Provisions of Section 19 do not contemplate any sanction if a person is being prosecuted under these provisions. Shri Sukhbir Singh Badal is being prosecuted not for misusing the "public office" he was holding at the relevant time for amassing the huge wealth and the illgotten money but has been charged of helping, taking gratification and illegal means to influence a public servant as a motive or reward and/or gratification of various amounts as a motive or reward for inducing by exercising personal influence (public servant his father Shri Parkash Singh Badal). During the course of hearing, learned counsel appearing for the prosecution conceded that the prosecution is pressing the charge against the petitioner only under Sections 8 and 9 of the Act and not under Section 13 of the Act. If the charge under Section 13 is not pressed, obviously, Section 19 does not make it mandatory for the prosecution to obtain sanction and/or permission of any authority before taking cognizance of the offences. The bar provided under Section 19 of the Act operates in a limited field. In terms of subsection (1) of Section 19 the bar in relation to the Court not to take cognizance without prior sanction operates only where offences committed by the public servant relate to Sections 7, 10, 11, 13 and 15 of the Act. A bare reading of this section shows that if a person is being prosecuted only under Sections 8 and 9 of the Act, the bar specified there would be of no consequence. This argument of the prosecution we have accepted on the basis which they shall abide by that Shri Sukhbir Singh Badal has been challaned and the prosecution would press the offences against him only relatable to Sections 8 and 9 of the Act. It was argued with some emphasis that in the challan allegations have been made to demonstrate that prima facie this petitioner had committed an offence punishable under Sections 8 and 9 of the Act. No doubt reference has been made in the challan to the petitioner misusing his personal relationship with the then Chief Minister petitioner No. 1 and collecting huge amounts. We are of the considered opinion that it is not the proper stage for this Court to comment on the rival contentions in regard to the contents of the challan and whether such contents would squarely fall under Sections 8 and 9 of the Act. It is for the learned trial Court to consider the matter at the time of framing of the charge or thereafter when the parties lead evidence in support of the challan. In order to avoid prejudice to either of the parties, we have restricted ourselves from discussing the merits or otherwise of the averments made in the challan including the following :

"... Then we met Sukhbir Singh who was sitting in the adjoining room. Kuldeep

talked to Sukhbir Singh regarding my transfer and Sukhbir asked to Kuldeep that he will get Rs. 4 lac for this transfer and also added that he will depute him at some big city and he will recover his money. Kuldeep asked to Sukhbir Sardar ji we are your strong supporter and make some less and we settled the matter in two lacs. Kuldeep handed over Rs. one lac to Sukhbir and said that remaining will be paid after transfer. We again met Sh. Parkash Singh Badal and Kuldeep asked to Badal Sahib that we had talked to Sukhbir and matter has been settled. Then Badal Sahib asked if you have settled with Kaka ji, you do not worry your work will be done."

".... similarly, Rs. 1 crore 48 lacs got from the above persons and Sh. Sukhbir Singh Badal received 10 lacs three times with one instalment and received three times Rs. 15 lacs from Sh. Hardeep Singh OSD to Sh. Parkash Singh Badal ExC.M. Punjab and received Rs. 60 lacs in two instalments of 30 lacs each from Major Bhjupinder Singh being sleeping partner who is a relative of Sh. Parkash Singh Badal."

"To get her promotion and posting on our own choice station I talked to Sh. Amolak Singh s/o Balbir Singh village Sahoke Distt. Moga, who was known to me. He told me that he is known to Sukhbir Singh Badal and we shall go to see Sukhbir Singh Badal. I, along with Amolak Singh went to Sukhbir Singh Badal's ancestral house at village Badal in June 1997 and requested to Sukhbir Singh for the promotion and posting of my wife at Patiala. After listening our talk Sukhbir Singh told us that he will get Rs. 2 lac for this work. In our presence he talked phonicallly to Parkash Singh Badal and asked us to come after 10 days. Again after 10 days I along with Amolak Singh went to Sukhbir Singh at his residence kothi No. 256, Sector 9, Chandigarh. He told us regarding the transfer and promotion of my wife. He has talked and you give me Rs. 2 lacs and your work will be done. We requested Sukhbir Singh to accept Rs. 1,50,000/ and handed the money to Sukhbir Singh as bribe, which we collected from here and there."

28. Under Section 197 of the Code the previous sanction of the Central Government or the State Government, as the case may be, is a condition precedent to the taking of cognizance of an offence which is stated to have been committed by a public servant not removable from his office save by or with the sanction of the Government of any alleged offence is discharge of his official duties. The above extracted portion of the challan/chargesheet accuses petitioner No. 2 of influencing and misusing the position of his father in relation to discharge of his public functions punishable under the said provisions of the Act. The stand of the prosecution in unambiguous term even before this Court is that the prosecution has not chargesheeted nor it intends to press before Special Judge to frame any charge under Section 12 or any other provisions except Sections 8 and 9 of the Act. In other words, Mr. Sukhbir Singh Badal is not being prosecuted of misusing his public office as Member of the Parliament but all the prosecution intends to establish is exploitation and inducement of his relationship with the then Chief Minister of the State.

29. With the help of the learned counsel appearing for the parties we have perused the contents of the chargesheet filed against this petitioner and in the report under Section 173 of the Code there is hardly any allegation against this petitioner to show that he has misused his public office as Member of the Parliament. Even if there is some reference to his status, it has already been rendered ineffective and inconsequential in the stand taken by the respondents before us. No prejudice is being caused to the petitioner in terms of the stand taken by the prosecution and the offence alleged to have been committed by this petitioner is limited to the satisfaction of the ingredients specified in Sections 8 and 9 of the Act. We may also notice here that factual analysis of a chargesheet would not be permissible in law at this stage of the proceedings. For the purposes of determination of the controversy arising in the present case, we would have to proceed on the basis of the record and without questioning its correctness or otherwise unless it suffers, on its plain language from an infirmity of law which would render the very initiation of the proceedings bad in law.

30. We may now proceed to discuss the legal niceties of the respective submissions in regard to this petitioner and leave for sanction. In the case of P.V. Narasimha Rao v. State (CBI/SPE), 1998(4) RCR(Cr.) 260 (SC) : JT 1998(3) SC 318 : AIR 1998 SC 2120, the Hon'ble Supreme Court considered the questions at great length in relation to whether Member of Parliament would cease to be a public servant because the President of India cannot be termed as sanctioning authority. Rather than to refer to certain observations made by their Lordships of the Supreme Court in that case, it will be more appropriate for us to refer to certain paragraphs of the judgment which are bound to have effect on the controversies in issue before us.

"We may now come now come to the question whether a Member of Parliament is a public servant for the purposes of the 1988 Act. Prior to the enactment of the 1988 Act the law relating to prevention of corruption was governed by Prevention of Corruption Act, 1947 (hereinafter referred to as the 1947 Act)."

"Having regard to the provisions of the Constitution and the Representation of the People Act, 1951 as well as the Salary, Allowances and Pension of Members of Parliament Act, 1954 and the meaning that has been given to the expression "office" in the decision of this Court, we are of the view that Membership of Parliament is an `office" inasmuch as it is a position carrying certain responsibilities which are of a public character and it has an existence independent of the holder of the office. It must, therefore, be held that the Member of Parliament holds an `office".

"We are, therefore, of the view that a Member of Parliament holds an office and by virtue of such office he is required or authorised to perform duties and such duties are in the nature of public duties. A Member of Parliament would, therefore, fall within the ambit of subclause (viii) of clause (c) of Section 2 of the 1988 Act."

"On the basis of the aforesaid discussion, we arrive at the following conclusion :

1. A Member of Parliament does not enjoy immunity under Article 105(2) or under Article 105(3) of the Constitution from being prosecuted before a criminal court for an offence involving offer or acceptance of bribe for the purpose of speaking or by giving vote in Parliament or in any committees thereof.

2. A member of Parliament is a public servant under Section 2(c) of the Prevention of Corruption Act, 1988.

3. Since there is no authority competent to remove a Member of Parliament and to grant sanction for his prosecution under Section 19(1) of the Prevention of Corruption Act 5, 1988, the court can take cognizance of the offences mentioned in Section 19(1) in the absence of sanction but till provision is made by Parliament in that regard by suitable amendment in the law, the prosecuting agency, before filing a chargesheet in respect of an offence punishable under Sections 7, 10, 11, 13 and 15 of the 1988 Act against a Member of Parliament in a criminal court, shall obtain the permission of the Chairman of the Rajya Sabha/ Speaker of the Lok Sabha, as the case may be."

"When cognizance of the charges against them was taken, Buta Singh and N.M. Ravanna (accused Nos. 7 and 9) were not public servants. The question of sanction for their prosecution, does not, therefore, arise and the trial on all charges against them must proceed."

"P.V. Narasimha Rao, Satish Sharma, V. Rajeswar Rao, Ram Linga Reddy, M. Veerappa Moily and Bhajan Lal (accused Nos. 1, 2, 8, 10, 11 and 14) were public servants, being either members of Parliament or a State legislature, when cognizance of the charges against them was taken. They are charged with substantive offences under Section 120B of the Indian Penal Code and Section 12 of the said Act. Since no prior sanction is required in respect of the charge under Section 12 of the said Act, the trial on all charges against them must proceed."

31. In the case of *S. Balakrishnan Pillai v. State of Kerala*, 1996(1) SCC 478, their Lordships of the Supreme Court held as under :

"We may mention that the Law Commission in its 41st Report in paragraph 15.123 while dealing with Section 197, as it then stood, observed, "it appears to us that protection under the section is needed as much after retirement of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by Section 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecutions. It should be left to the Government to determine from that point of view the question of the expediency of prosecuting any public servant." It was in pursuance of this observation that the expression `was' came to be employed after the expression `is' to make the sanction applicable even in

cases where a retired public servant is sought to be prosecuted."

Still in another case of Bakhshish Singh Brar v. Smt. Gurmej Kaur and another, 1988(1) RCR(CrL.) 35 (SC) : AIR 1988 SC 257, their Lordships while even deferring the question of sanction and permitting the trial to continue, held as under :

"The facts subsequently coming to light during the course of the judicial enquiry or during the course of the prosecution evidence at the trial might establish the necessity for sanction, it was observed. This Court noted that it might be possible for the said respondent to place materials on record during the course of the trial for showing what his duties were and also that the acts complained of were so interrelated with his official duty, so as to attract the protection afforded by Section 197 Cr.P.C. This Court reiterated that the question whether sanction was necessary or not might have to depend upon from stage to stage having regard to the facts and circumstances of the case. This Court allowed the appeal and allowed the trial to proceed without the sanction."

"We, however, direct that the trial should proceed as expeditiously as possible. We further record that if necessary the question of sanction under Section 197 Cr.P.C. may be agitated after some evidence have been noted by the learned Additional Sessions Judge."

32. In view of the facts as appeared on record as of now and the law enunciated by the Hon"ble Supreme Court as aforenoticed, particularly when the prosecution has taken a definite stand of not even requesting the Court of framing of charge against Shri Sukhbir Singh Badal, under any other provisions except Sections 8 and 9 of the Act, we are of the considered view that no sanction and/or permission is needed for continuation of this trial and no error of law or otherwise can be traced with the order of the trial Court in taking cognizance of this offence at least on this score.

33. In the case of petitioner No. 1 it is a conceded position that no sanction has been obtained from any authority. However, permission of the Speaker of the State Legislative Assembly has been taken and copy thereof has been placed even on record before us. It is the case of the prosecution that no sanction is required despite the fact that the petitioner is a public servant within the meaning and expression of subsection (c) of Section 2 of the Act. The submission is based on the principle enunciated by the Supreme Court in the case of P.V. Narasimha Rao (supra) where it has been categorically held that Member of Parliament or Legislative Assembly is a public servant but the President is not the authority who can remove or terminate them in law and as such, the sanction contemplated under Section 19 of the Act is not the sanction of the President of India. Their Lordships of the Supreme Court further directed that till the Legislature enact appropriate law in that regard, it was directed that the prosecution can take permission of the Speaker of the respective House while prosecuting a public servant like the petitioners.

34. Petitioner No. 1 was Chief Minister of the State of Punjab for the period 1997 to 2002. The period referred to in the chargesheet for which he is stated to have misused his public office in amassing the wealth legally is also the same. After 2002 petitioner No. 1 was again elected as Member of Legislative Assembly and is presently Leader of the Opposition in the House. The challan was filed in the Court on 22.11.2003 on which date the petitioner No. 1 was holding the same status and the Court had taken cognizance of the offence stated to have been committed by the petitioners and they were summoned. Leader of the Opposition is not a public office, but is merely a status conferred upon the Leader elected by the opposition party and which is primarily an internal management of the political party not in power at the relevant time. From the status of Member of the Legislative Assembly this petitioner cannot be removed by the Government or the Speaker for that matter. As such the prosecution cannot obtain sanction of the competent authority for institution and continuation of criminal proceedings against the petitioners, date of taking cognizance by the Court being the relevant and material date for determining such a status. Status of Leader of Opposition is not an office which can be termed as a public office and the person holding it a public servant per se. The nomenclature of Leader of Opposition is primarily a conferment of status for the purposes of convenience of a political party which sits in opposition in the State Assembly. It is also not the case of the prosecution before us that the petitioner had ever misused the office of the Leader of Opposition in any manner to invite mischief of the provisions of the Act. In these circumstances no error can be traced in the filing of the chargesheet for want of sanction of the Government where he was not removable from his office save by order with the sanction of that Government.

35. As for as the matter in relation to obtaining a sanction of the competent Government while he was Member of the Legislative Assembly is concerned, in view of the law explained above the Member of the Legislative Assembly is neither removable nor can his status be dispensed with by the Governor or for that matter by the Speaker of the House. As such the requirement of sanction in its strictosensu is not applicable to the facts and circumstances of the present case. The prosecution has sought permission of the Speaker and that permission was placed before the learned Special Judge and which has been taken note by the Court in its impugned order as well. Thus, there is obvious and substantial compliance of the provisions of the Act in light of the judgment of the Supreme Court in the case of P.V. Narasimha Rao (supra).

36. The allegations against the petitioner No. 1 are that he misused his office to secure pecuniary advantages for himself and his family members and accepted illegal gratification. Learned counsel for the petitioners relied upon the judgment of the Supreme Court in the case of Abdul Wahab Ansari v. State of Bihar, 2000(4) RCR(CrL.) 572 to contend that the Court must consider the plea of sanction even prior to framing of the charge and that the act must bear such relation to the duty that accused could lay a reasonable claim but not a pretended or fanciful claim that he did it in the course of performance of his

official duty. Thus, the sanction was necessary before the prosecution could even place the challan and requested the Court to take cognizance of the offence alleged to have been committed by the respondents. He also placed reliance upon the case of S. Balakrishnan Pillai (supra) in this regard.

37. In the case of R.S. Nayak v. Abdul Rehman Antulay and another, 1984(2) SCC 183 their Lordships of the Supreme Court while dealing with the case of the Chief Minister of Maharashtra enunciated the principle that once he ceases to hold the said office it was not obligatory for the State to obtain sanction of the authorities under Section 6 of the Act. The following dictum of the Supreme Court can be noticed with some emphasis :

"The relevant date with reference to which a valid sanction is sine qua non for taking cognizance of an offence committed by a public servant as required by Section 6 is the date on which the court is called upon to take cognizance of the offence of which he is accused. If, therefore, when the offence is alleged to have been committed, the accused was a public servant but by the time the court is called upon to take cognizance of the offence committed by him as public servant, he has ceased to be a public servant, no sanction would be necessary for taking cognizance of the offence against him. This approach is in accord with the policy underlying Section 6 in that a public servant is not to be exposed to harassment of a frivolous or speculative prosecution."

"In the present case on the date on which the cognizance was taken i.e. August 9, 1982, the accused respondent had ceased to hold the office of the Chief Minister and thus ceased to be a public servant. Therefore, no sanction under Section 6 of the Act was necessary before cognizance of the offence could be taken against the accused for offences alleged to have been committed in his former capacity as a public servant."

38. The conclusion of the Supreme Court that Member of the Legislative Assembly was said to be not a public servant, however, this view has not been accepted by the Apex Court in its subsequent decisions particularly in reference to P.V. Narasimha Rao's case (supra). The purpose of obtaining a sanction has a paramount consideration of providing a protection to a public servant against frivolous prosecution and dignity of the office that he is holding. Such sanction is and can be granted only by the authority which is competent to remove him in the event, as is true in the present case, that a person ceases to hold a public office of Chief Minister on the date of taking cognizance of the offence the sanction was not required. Permission of the Speaker has been obtained and resultantly it cannot be said that the learned Special Judge has erred in law in taking the cognizance of the offence on the plea of want of sanction either under Section 19 of the Act or Section 197 of the Code.

Validity of the Notification dated 17.11.2002 and Jurisdiction of the Special Judge to take cognizance to deal with the case :

39. These two questions are not only interlinked but are intermingled in their

substance and content and thus can be conveniently discussed by us commonly. It is undisputed that vide notification dated 17.11.2003 which was obviously issued after consultation with the High Court, the Sessions Judge of each district and the first Additional Sessions Judge were empowered and authorised to be the Special Judges under the provisions of the Act and to deal with the cases arising therefrom. The learned Sessions Judge, Ropar and the first Additional Sessions Judge thus were notified as Special Judges to try the offences punishable under this Act. These notifications were published in furtherance to the Sections 3 and 4 of the Act. Thus, Courts of Special Judges at Ropar were constituted and appointed by the above notifications for prosecution of such cases. Another notification was issued by the State of Punjab on 19.12.2002, wherein the places were specified in column No. 2 of the notification to be the police stations which will have the jurisdiction within the areas specified against each of them in the column of the notification afirereferred. Under Clause 4 of the said notification office of the Superintendent of Police Vigilance Bureau, FS1/ CIA, Punjab at S.A.S. Nagar (Mohali) was given jurisdiction over whole of the Punjab. This notification was never questioned. In furtherance of this notification, the Superintendent of the said Police Station can exercise jurisdiction over the entire State of Punjab and can file challans/reports before the Court of competent jurisdiction. Thereafter the State of Punjab issued a further notification dated 17.11.2003 stating therein that the offences specified in subsection (1) of Section 3 of the Act ibid in respect of all cases registered at the said Police Station of Mohali within the jurisdiction of Flying Squad of Punjab Vigilance Bureau, notwithstanding the jurisdiction of any other Special Judge in the State of Punjab, would be tried by Sessions Judge and Ist Additional Sessions Judge, Ropar, both the Special Judges under the provisions of the Prevention of Corruption Act. This is the notification the validity of which has been questioned by the petitioners on the ground aforenoticed. To summarise the contentions already noticed in great detail, challenge to the notification is that it is not in consultation with the High Court, has the effect of changing the limits of territorial jurisdiction specified under the Act and the Code of Criminal Procedure and also transgressing legislative competency of the State. Of course, challenge is also on the ground that the said notification is arbitrary.

40. On the other hand the contention on behalf of the respondents before the Court is that it does not in any way infringe upon the power of the High Court under Article 235 of the Constitution of India and the provisions of the Act. It is only transfer of cases within the competence of the police station which is further to aid the purpose of the notification issued on 19.12.2002. It is further contended that when the notification is seen in the light of the provisions of Sections 3 and 4 of the Act it does not suffer from lack of jurisdiction, legislative authority or otherwise and the learned Special Judge at Ropar has the territorial jurisdiction as well as the competence to take the cognizance of the offence and try the same in accordance with law.

41. Reliance by the petitioners upon the judgment of the Supreme Court in the

case of State of A.P. and others v. K. Mohanlal and another, 1985(5) SCC 468, to contend that the appointment of a Special Judge cannot be made by the State without specific consultation with the High Court, is the binding principle. But the question that requires determination by the Court is whether vide notification dated 17.11.2003 there is constitution of the Court or appointment of Special Judges or it is the notification to mere regulate the work of the police. Under the provisions of Section 3 of the Act, the government is competent and can issue a notification for appointment of as many Special Judges as may be necessary for such area or areas or for such cases or for group of such cases, as may be specified in the notification. So far as the notification relates to the appointment of a Special Judge or creation of a Court is concerned, it has been settled by catena of judgments that such notification must be issued by the State only upon consultation with the State Government. It is not necessary for us to refer to the various judgments in this regard. Suffice it to note that the above judgment of the Supreme Court in the case of K. Mohanlal (supra), such consultation would obviously be necessary in the face of the mandate of Article 235 of the Constitution of India and the provisions of Section 3 of the Act. However, Sections 3 and 4 of the Act operate in different fields and thus there is no dispute before us that the notifications dated 19.12.2002 and 17.11.2003 were issued in consultation with the High Court. The notification which constitutes the Courts and deals with the predominant aspect of administration of criminal justice would essentially require consultation with the High Court unless such notifications are primarily of administrative nature and intends to deal with the regulation of work of the police or investigating agency including filing of challans in the Court of competent jurisdiction. Such notifications may be primarily intended to require a police station to file challans in a specified given Court which otherwise is designated as the Court of Special Judge for trying offences punishable under the provisions of the Act. We are not quite in agreement with the contention raised on behalf of the petitioners that the notification dated 17.11.2003 tantamounts to making appointment of Special Judges and establishment of the courts contemplated under Section 3 of the Act. This notification in fact does not deal with the creation or establishment of any additional Court to purely confer jurisdiction and powers in the existing Special Judges in relation to the cases registered by the police station at Mohali. The competency of the State Government to issue a notification defining the cases or group of cases to be tried by the Special judges cannot be questioned on the ground of legislative incompetency. In fact under subsection (2) of Section 4 of the Act, the Special Judge could try even the cases specified to be tried by him.

42. The provisions of Section 3 deal with the power of the State to issue a notification in regard to appointment of Special Judges for area or areas or for cases, as may be specified in the notification in relation to the trial of offences under subsection (1) of Section 3 shall be tried only by Special Judges, notwithstanding anything contained in the Code of Criminal Procedure. The language of subsection (2) of Section 4 specify that offences shall be tried by the

Special Judge for the area within which it is committed or by the Special Judge appointed for the case and also where there are more than one Special Judge appointed for such area, as may be specified in this behalf by the Central Government. The very purpose of two sections is different and they operate in different sphere. The effect of the provisions of these sections has to be examined in light of the mandate of Articles 233 and 235 of the Constitution of India. If the matter relates to appointment, promotion and control over the judicial administration for such Courts, it is obligatory upon the State to have effective consultation with the High Court and opinion of the High Court is normally binding upon the State, but where the matter falls beyond the scope of appointment, promotion, the conditions of service and Constitution and judicial administration of criminal justice, it may not be mandatory for the State to issue an administrative notification without consulting the High Court. The notification dated 17.11.2002 is a notification to supplement and give complete effect to the earlier notification issued by the State in consultation with the High Court. It could be considered that the notification dated 17.11.2003 is not worded happily but a cumulative reading, spirit and contents of the same shows that it is more administrative in its nature and is intended to require the Police Station at Mohali to file the report under Section 173 Cr.P.C. before the Special Judge already appointed and constituted on 5th September, 2000. The notification on its plain reading directs that the cases registered at Mohali, Police Station within the jurisdiction of that Flying Squad of Punjab Vigilance Wing, which in terms of notification dated 19th December, 2000 has jurisdiction all over the State of Punjab to file reports before the Sessions Judge and Ist Additional Sessions Judge, at Ropar, who were already and admittedly appointed and constituted as Special Judges under the provisions of the Act. Thus, in our opinion, this notification does not for the first time or even subsequent time appointed or constituted Special Courts but only has the effect of administrative act requiring the police station and give powers to the existing Courts to entertain such cases.

43. It has been rightly contended that the requirements of Articles 233 to 235 and the concept of prior effective consultation with the High Court would have to be read into the provisions of Sections 3 and 4 of the Act, in so far as the notification issued by the State relates to establishment of Courts, appointment and conditions of service of the learned Judges and in relation to administration of justice involving the role of the Courts in that regard. Where the notification is merely administrative in its effect and does not interfere with the administration of justice, there prior consultation with the High Court may not be mandatory to the extent that it would vitiate the notification or its effect on the investigating agency and working and jurisdiction of the police stations being maintained by the State. We are of the opinion that in the present case notification would not be liable to be quashed on the plea of nonconsultation with the High Court, per se but we would certainly observe that it would always be better for the State to consult the High Court in all matters including the notification of the present kind, prior to its issuance. Such consultative and positive approach would help in

achieving the principal object of better, expeditious and fair administration of criminal justice delivery system.

44. Learned counsel appearing for the State of Punjab contended that the notification in question was primarily an administrative act of the State to regulate functioning of the police stations in regard to investigation and presentation of report. The issuance of such a notification would be an act of subordinate regulatory legislation which has only administrative consequences. It is contended that provisions of Section 3 and Section 4(2) of the Act need to be construed harmoniously to achieve the object of expeditious trial of cases under this special Act. This notification does not affect any substantive right of the petitioners much less it would cause any prejudice to them if they are called upon to face trial at Ropar in furtherance to this notification.

45. We are not impressed with the contention of the petitioners that the State Government was not competent to issue any notification under Section 4(2) of the Act and it could be issued by the Central Government alone. As per the entire scheme of Section 4, seen in the light of the provisions of Section 3 Act, the State Government would be competent to issue the notification as subsection (1) of Section 3 refers to both the Governments while the earlier part of subsection (2) of Section 4 also does not restrict exercise of such powers by the Central Government only. The provisions of Section 4(2) of the Act make it obligatory that the offences would be tried by the Special Judge having jurisdiction over the area where offence is committed. This provision does not deal with a situation where the offence constitutes a chain of acts of omission and commission in the jurisdiction of various Courts. For the purpose, we have to look into the provisions of the Criminal Procedure Code, are mutatis mutandi applicable to the provisions of the Act except where a specific overriding effect is provided by the Legislature to the provisions of the Act relating to enquiry, investigation and trial. The FIRs were registered and challans presented in the Court of competent jurisdiction. When the notification dated 17.11.2003 was issued the cases had already been registered and investigation progressed to quite advance states as the challans itself were presented before the Special Judge, Ropar on 22.11.2003. We have already noticed that the notification is administrative act and was in fact direction to the police station of Mohali to present cases before the Special Judges at Ropar. Therefore, the contentions raised by the petitioners are without any substance.

46. We can even examine this aspect of the case from another point of view. Even if, for the sake of arguments, it is assumed that the Special Court at Ropar, at the time of presentation of report under Section 173 of the Code, had no territorial jurisdiction to take cognizance and decide the cases, even then it would be an irregularity curable and not an illegality, which would vitiate the trial. Learned Special Judge, while hearing the arguments, if notices that it had no territorial jurisdiction then it is competent under the Code of Criminal Procedure to deal with the matter and direct its transfer to the court of

competent jurisdiction under whose area the offence or part thereof was committed. But this argument is merely academic one. In the present case, notification dated 17.11.2003 specifically vests the jurisdiction in the Special Court at Ropar and requires the Police Station at Mohali to file report under Section 173 of the Code before that Court. Thus, notification gives exclusive jurisdiction to Special Judges to deal and try that case under this Act.

47. It was subsequently argued by the learned counsel appearing for the petitioners that this tantamounts to choosing their own Court. We are unable to appreciate this argument in any form. It is not disputed before us that in the Ropar District itself the learned Sessions Judge as well as the First Additional Sessions Judge are designated Courts as Special Judges for trying offences under the provisions of this Act. As per the well established practice which is duly supported by the rules, it is for the learned Sessions Judge to retain a criminal trial commenced on a police report either himself or allocate the same to the other Court of competent jurisdiction. As such this argument raised on behalf of the petitioners is without any substance.

48. Now we shall proceed to discuss the factual aspects of the case which have a bearing on this controversy. According to the prosecution there are specific allegations against the petitioners in the challan like that they have received illegal gratification and have amassed wealth which, in turn, they invested amongst other places at Mohali falling within the territorial jurisdiction of the special Courts at Ropar. The illgotton money was invested even in immoveable properties. As per case of the prosecution, the petitioners have committed different acts within the jurisdiction of the concerned Court which constitute offences punishable under the provisions of the Act. Amongst other allegations, specific reference is made to the poultry farm purchased by the petitioners at village Pallanpur on which loan of Rs. 48,24,250/ was outstanding. This amount was repaid and cleared by the petitioners during the period when petitioner No. 1 was the Chief Minister. These amounts were paid in connivance and collusion with his family members. It is also averred that these amounts were cleared to the extent of Rs. 25,00,000/ through bank transactions at Ropar. Correctness or otherwise of this allegation is not to be examined by this Court at this stage, and in any case in these proceedings. Suffice it to note that according to the prosecution offences or part thereof having been committed within the territorial jurisdiction of Special Courts at Ropar they had correctly presented the challan before the Court. We find no reason to outrightly reject this contention of the prosecution, at this stage of the proceedings. Detailed investigation has been conducted and report presented before the Special Judge, Ropar under Section 173 of the Code which prima facie show that some offence in the chain of offences alleged to have been committed by the petitioners at Ropar within the territorial jurisdiction of the said Special Court. As such, de hors the notification, the order taking cognizance of the offences alleged to have been committed by the petitioners, by the Special Judge at Ropar cannot be said to be without jurisdiction. It will be for the learned Special Judge to examine these matters at

length and on the basis of the evidence which may be led by the parties during the course of trial if a charge is framed against them. These are the questions which are mixed questions of law and fact. A complete and final adjudication thereupon would be possible and parties would be free to urge in regard to their correctness or otherwise, at a subsequent stage. As yet, even charge has not been framed against the petitioners. In the proceedings before this Court it will be entirely a premature stage to travel into the factual matrix of the case which in our opinion is not even permissible in law.

49. The Prevention of Corruption Act is a special legislation and, thus, would have an overriding effect in relation to the provisions of the Criminal Procedure Code. In fact subsection (1) of Section 4 of the Act gives an overriding effect to the provisions of the Code and specifies that the cases under the Act would be triable only by Special Judges notwithstanding anything contained in the Code or in any other law. In terms of Section 4(2) of the Act, jurisdiction to try offences under subsection (1) of Section 3 would vest in the Special Judge of the area within which it was committed, unless the case was otherwise marked to a Special Judge, where there were more than one Special Judges for such an area. There is apparently no conflict between the provisions of Sections 177 to 180 of the Code and they can be applied to the given facts of a case on their plain reading. Section 4(2) of the Act can be read in conjunction with Section 178 of the Code and where the offence consists of several acts done in different local areas, it could be enquired or tried by a Court having jurisdiction over any of such local areas. By virtue of judicial pronouncements it has been indicated that normally the Court, where major part of the offence(s) is committed, it will be more appropriate in such situation that enquiry and trial are conducted before the Court which has jurisdiction over that area. Such approach *ex facie* does not take away the jurisdiction of the Court or prohibits institution of report in the Court which has jurisdiction over other areas. This approach is more based upon the principle of public policy and convenience. To read into these provisions an absolute bar on the jurisdiction of the Court under whose territorial jurisdiction the lesser acts of offence(s) have been committed, would not be permissible.

50. With an intention to challenge the validity of the notification, the petitioners heavily relied upon the judgment of the Madras High Court in the case of Ms. J. Jayalalitha which was affirmed by the Supreme Court in the case titled as J. Jayalalitha v. Union of India, 1999(3) RCR(CrL.) 216 (SC) : 1999(5) SCC 139. In this case their Lordships of the Supreme Court were examining the judgment of the High Court vide which the petition filed by Ms. J. Jayalalitha, questioning the issuance of the notifications dated 17.4.1997 and 30.4.1997 and other ancillary matters thereto. The right of the Government to appoint a Special Judge for an area or areas or for a group of cases within that area, was upheld and it was stated that the word "or" as used in Section 3 of the Act would mean that the Government had power to do both the things. It was also held in this case that allocation or distribution of cases amongst the Special Judges is purely an administrative act and could be done by the Acting Chief Justice alone. Amongst

other findings recorded by the Supreme Court, the following conclusions can be usefully noticed at this stage. It will be useful to refer to the following conclusions of the Supreme Court, which would certainly have a bearing on the present case :

"The proposal to establish three more Courts of Additional Sessions Judges and to appoint them as Special Judges for trying the cases specified in the notification was approved by the High Court. Initially, the proposal was examined by a Committee of Judges appointed by the High Court in that behalf and thereafter the Full Court had approved the same. Even the posting of Sessions Judges as Special Judges for those three Additional Courts was approved by the Full Court. Only the allocation or distribution of those cases amongst those three Special Judges was done by the Acting Chief Justice. That being a purely administrative act could have been performed by the Acting Chief Justice alone and even if it is considered as an irregularity it is not of such a magnitude as would require us to invalidate that part of the notification whereby cases have been allocated to those three Special Judges." (emphasis applied by us)

51. In this case their Lordships of the Supreme Court were primarily dealing with the question relating to appointment of three Special Judges for trying the cases specified in the notification which were against the Chief Minister and her Cabinet. Also was the ancillary question raised with regard to allocation of work. As a matter of fact their Lordships found that proposal to establish three more Courts of Additional Sessions Judges and to appoint them as Special Judges for trying the cases specified in the notification was approved by the High Court, firstly by the Committee and then by the Full Court. Distribution of work between them being administrative function was taken to have validly performed even by the Acting Chief Justice alone. The above observations of their Lordships have to be seen in the light of the facts of that case. In the present case neither we are concerned with establishment of Special Courts, constitution and/or appointment of Judges as Special Courts Judges, nor it is the case of vesting of jurisdiction or a performance of duties by the Special Judges where they were more than one. All that has been done by the impugned notification is that administrative direction to the police to file cases of the State of Punjab registered in the Police Station at Mohali before the Special Judges at Ropar i.e. before the learned Sessions Judge, who in turn, would be competent to take up the trial himself or allocate to the first Additional Sessions Judge. Thus, in these circumstances even if the irregularity has been committed in issuance of notification, the same cannot be stated to be of such a magnitude that it would adversely affect the order passed by the learned Special Judge taking cognizance of the offences alleged to have been committed by the petitioners.

52. We have already noticed above that there is challenge to this notification on the ground of mala fides. This ground was not apparently pressed before the learned Special Judge and it was agreed that this question may be examined during the subsequent stages. Initially there was unanimity in this regard

between Shri H.S. Mattewal, Senior Advocate, appearing for the petitioners and Mr. U.D. Lalit, Senior Advocate, appearing for the respondents, but at subsequent stage, the petitioner wishes to raise argument even in that regard. We have already held that it is not for this Court to examine the question of mala fides and patent arbitrariness as it can be appropriately considered only after there is proper evidence on record as the facts averred by the petitioners are not admitted by the respondents. It is not a case of legal mala fides simplicitor, but reference has been made and reliance placed on various controverted documents and facts. At the cost of repetition we may notice that it is not for this Court to examine controverted facts in exercise of writ jurisdiction under Article 226 of the Constitution of India, particularly where challenge is to administrative notification on question of law as well as to the order taking cognizance of the report presented before the Special Judge. Thus, we have no hesitation in rejecting the contentions raised on behalf of the petitions in this regard, however, leaving the question of mala fides open for the parties to contend before the appropriate Court at the proper stage.

53. The learned counsel appearing for the State argued that the present writ petition was not even maintainable and writ jurisdiction of this Court cannot be invoked while an order taking cognizance of the offences is passed by the Court of the Special Judge. In this regard he placed reliance upon the cases of Bhajan Lal (supra) and Suryadev Rai v. Ramchander Rai and others, 2003(6) SCC 675. It is not necessary for us to delve upon detailed discussion on this aspect of the case. No doubt, while this Court exercises powers conferred upon it under Article 226 read with Article 227 of the Constitution of India, the scope of such power is a limited one. Distinct from original jurisdiction is the supervisory jurisdiction of this Court. If an order passed by the learned Special Judge is palpably erroneous, contrary to law and cause grave injustice or failure of justice, the High Court can interfere in such order. The questions which go to the very root of the matter and are jurisdiction related, were raised in these petitions. Furthermore, the validity and legality of the notification dated 17.11.2003 issued by the State of Punjab was also questioned with vehemence on grounds of law and competence of the Government to issue such a notification. Having answered all the contentions raised before us, we are of the considered view that the present writ petition is not liable to be dismissed on the ground of untenability.

54. Before an alleged irregularity or error on the part of the State or prosecution could vitiate an investigation or a trial, such act must essentially be for lack of inherent jurisdiction or patently contrary to the law and the accused must show element of prejudice to his substantive rights. In order to claim a relief for quashing of notification of administrative consequences or a mere procedure, the petitioner must satisfy twin ingredients. A simple irregularity or violation of a circular or guideline per se may not result in invalidation of a notification or trial. In the case of State by Central Bureau of Investigation v. S. Bangarappa, 2000(4) RCR(Cr.) 818 (SC) : 2000 AIR SCW 4111 : 2001(1) SCC 369 the Supreme Court was concerned with the question whether investigation conducted

by an officer of a rank lower than the Deputy Superintendent of Police in face of instructions or legislative insistence as contemplated under Section 17 of the Act, that investigation should be conducted by an officer not below the rank of a Superintendent of Police, the Court held as under :

"When there is such an order, any inspector of police attached to the CBI can conduct the investigation. Learned single Judge unnecessarily quoted extracts from the decision of this Court in *State of Haryana v. Bhajan Lal*, 1992 Suppl (1) SCC 335 : 1992 AIR SCW 237 : AIR 1992 SC 604 perhaps being misled in believing that even when the investigation was conducted by CBI the requirement contained in Clause (c) of Section 17 of the Act has to be followed. The word "elsewhere" in that clause is clear indication that the insistence for Deputy Superintendent of Police can have application only if it does not fall under Clauses (a) and (b). We do not wish to delve more into this aspect as Shri Kapil Sibal, learned senior counsel for the respondent, has fairly conceded that the High Court has gone wrong on that aspect."

".... That apart, if the High Court found that XXI City Civil and Sessions Judge, Bangalore is not empowered to try such cases, how could that be a ground to quash the criminal proceedings ? At the worst that would be a ground to transfer the case from that Court to the Court having jurisdiction to try the offence, and if no Court has been empowered till then, the criminal proceedings can be kept in abeyance till the Government issues a notification conferring such power on any other Court. Any way, since the Court which ordered framing of charge against the respondent was legally empowered to try the offence alleged against the respondent it is not necessary to keep the criminal proceedings in abeyance so far as this case is concerned. We may point out that on this aspect also Shri Kapil Sibal, learned senior counsel did not dispute the stand adopted by the Solicitor General of India."

55. We may also appropriately refer to the above observations of the Supreme Court read in conjunction with the decision in the case of *Bakhshish Singh Brar* (supra) to reflect the consequences that will flow even if the Court had taken cognizance of an offence in absence of an appropriate sanction to prosecute or notification empowering that Court to try such an offence. The cumulative effect of these decisions of the Supreme Court clearly shows that taking cognizance of the offences by the Special Court at Ropar cannot be vitiated in law on the basis of the submissions made by the petitioners.

56. Linchpin to the administration of Criminal Justice is speedy conclusion of criminal trials. Obligation of the different wings of this criminal justice delivery system is that each one of them should discharge its role with sincerity and utmost expedience. This concept is legislatively recognised in the provisions of the Act. The provisions of Section 19(3) of the Act sufficiently indicate the legislative intent for expeditious disposal of trials under the Act as well as the need for least interference by the higher Courts. It indicates that the Courts while exercising revisional jurisdiction would also not grant stay of the

proceedings. Whereever a stay is to be granted on the ground of any error, omission or irregularity in the sanction granted by the authority, the Court would not do so unless it was satisfied that such error or omission or irregularity has resulted in failure of justice. In addition to these provisions the Legislature laid specific emphasis in Section 4(4) of the Act by stipulating therein that notwithstanding anything contained in the Code of Criminal Procedure, a special Judge shall, as far as practicable, hold the trial of an offence on daytoday basis. This legislative intent was clearly spelled out by the Courts in various judicial pronouncements with definite emphasis on need for expeditious disposal. Even in the case of Ms. J. Jayalalitha (supra) their Lordships observed that these provisions sufficiently indicate the intention of the Legislature and also the object of the Act that cases of corruption shall be tried speedily and completed as early as possible. This is the policy of the Act and it underlies Section 3 also.

57. Acceptance of the contentions raised by the petitioners at this stage would tantamount to giving a very microcosm approach to the legislative scheme of the Act and their application in relation to offences triable under this special Act. Such offences are not misdemeanour that they could be ignored merely on the ground of inconvenience or motivated institution, understood in its vague terms. The Court should adopt pervasive approach which would further the cause and object of the Act and require an offender to face the process of law. In our detailed discussion above, we have already noticed that the contentions raised on behalf of the petitioners before us are without merit. Above are the conclusions which we have recorded prima facie and obviously we would expect the learned Special Judge not to be influenced by them during the course of trial.

58. Argo and for the reasons stated above, we dismiss this petition hoc intuitu that the learned special Judge would conclude the trial as expeditiously as possible and in any case not later than a year from the date of pronouncement of this judgment.