(2001) 05 PAT CK 0027

In the Patna High Court

Case No : Criminal Reference Nos. 1, 2 of 2001

The C.B.I. (A.H.D.) APPELLANT

Vs

Braj Bhushan Prasad and Others RESPONDENT

Date of Decision : 04-05-2001

Acts Referred:

Citation : (2001) 05 PAT CK 0027

Judgement

Aftab Alam, J.—These two proceedings before the Full Bench are on reference made u/s 89(2) of the Bihar Re-organisation Act, 2000. The object of the reference is to determine whether by virtue of Section 89(1) of the Act the criminal cases, commonly known as the Animal Husbandry Scam cases, stand transferred to the Court in Jharkhand, the newly-created State of Jharkhand, or whether those cases would continue to proceed before the Special Court at Patna where they were instituted and where they have been hitherto proceeding. According to Section 89(1) of the Act upon the creation of the State of Jharkhand, every proceeding pending before a Court in this State shall stand transferred to the corresponding Court in Jharkhand if it is a proceeding relating exclusively to the territory of Jharkhand. Subsection (2) of Section 89 provides that if a question arises as to whether any proceeding should stand transferred under Sub-section (1), it would be referred to the Patna High Court and the decision of this Court would be final.

2. It is well known by an order passed by a bench of this Court, the investigation of all the Animal Husbandry cases was made over to the Central bureau of Investigation (C.B.I. for short). Further, by an order passed by the Supreme Court, the investigation by the C.B.I. was put under the over-all control and supervision'' of a bench of this Court. The matter, thus, periodically comes before the monitoring bench of this Court. On one such occasion, the matter came up before the monitoring bench on 10-11-2000, that is to say, five days before the new State of Jharkhand was to come into being under the Bihar Re-organisation Act. On that date the monitoring bench recorded an order simply adjourning the matter to 12-1-2000 with the direction to the agency to file the progress report

as usual. The C.B.I. then filed a petition before the Supreme Court seeking clarification of its order dated 19-3-1996 consequent upon re-organisation of the State of Bihar and stating that the petition was being filed ''pursuant to the oral observation made by the monitoring bench of the Patna High Court, monitoring the Animal Husbandry Department scams whereby the Bench on 10-11-2000 directed the Central bureau of Investigation to seek the clarification from the Hon''ble Court, the order of this Hon''ble Court, the order of this Hon''ble Court dated 19-3-1996 with regard to further monitoring. In paras 6 and 7 of that petition, it was represented before the Supreme Court as follows:

6. It is submitted that out of the 61 cases registered by Central bureau of Investigation (C.B.I.) so far 52 cases stand deemed to be transferred to the corresponding Courts in the new State of Jharkhand.

7. Thus, the monitoring bench has sought clarification as to whether the monitoring bench still have jurisdiction to monitor the investigation of the aforesaid 52 cases also or a separate monitoring bench will have to be constituted by Hon''ble High Court of Jharkhand for the aforesaid period.

3. It will be appropriate to indicate here that at that time out of the 52 cases which according to the C.B.I. stood transferred to Jharkhand by virtue of Section 89(1) of the Act, in 35 cases the Special Court at Patna had already passed orders taking cognizance on the basis of charge-sheets submitted by the C.B.I. in one case though charge-sheet was submitted by the C.B.I. the Court was yet to take cognizance and in the remaining 16 cases the C.B.I. was yet to submit charge-sheets.

4. The petition filed by the C.B.I. was disposed of by the Supreme Court by order dated 13-12-2000 and from that order, it appears that when the petition was taken up a dispute was raised on behalf of some of the accused, at least in respect of the number of cases suggested by the C.B.I. as having stood transferred to Jharkhand. It will be useful to reproduce here portions of the order of the Supreme Court in-so-far as relevant for the present:

It was the stand of the C.B.I. that out of 61 cases registered by the C.B.I. so far 52 cases stood transferred u/s 89(1). Mr. B.B. Singh, learned Counsel appearing for Mr. Lalu Prasad Yadav submitted that the said figure is not correct at all. We do not think it necessary to decide that dispute, for Section 89(2) provides a machinery to decide whenever any question arises as to whether any proceeding should stand transferred under Sub-section (1) or not. We leave that dispute to be determined in accordance with the sub-section.

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An apprehension is expressed by Mr. Kapil Sibbal, learned Senior Counsel appearing for the respondents that cases which have not really been transferred in accordance with Section 89(1) might as well figure in the list as having been transferred. To alleviate the said apprehension, Mr. Harish Salve, learned Solicitor-General submitted that a list has already been prepared showing the cases which are falling within the ambit of Section 89(1) of the Act and a copy of the said list will be supplied to Mr. Chitarranjan Singh, Advocate who is present today.

5. Following the order passed by the Supreme Court, the D.I.G. of Police, CBI. Patna Region, Patna addressed a letter, dated 30-11-2000 to the Registrar General of this Court, practically asking him to have the records of the 52 cases (a list of which was appended to the letter), pending before the designated Court at Patna, transferred to the Court of existing Special Judge, C.B.I. cases, Ranchi as stop-gap arrangement till the creation of designated Court(s) at Ranchi for the exclusive trial of AHD cases''. A list of the 52 cases, which according to the C.B.I. stand transferred to the Court(s) located in. the State of Jharkhand'' was also handed over to Shri C.R. Sinha, Advocate for one of the accused in those cases along with the letter of the S.P. C.B.I. (AHD) Patna, dated 14-12-2000. Shri Sinha by his letter, dated 18-12-2000 addressed to the Registrar-General of this Court disputed the stand of the C.B.I. and stated that in the light of the charge-sheets no case of the AHD Scam was exclusively triable in Jharkhand and no case was, therefore, required to be transferred to that State.

6. The matter came up for consideration before the Standing Committee of the High Court on 5-1-2001. It has evident to the Standing Committee that a dispute had arisen on the issue whether or not the 52 cases mentioned in the list appended to the letter of the D.I.G., C.B.I., dated 30-11-2000 were covered by Section 89(1) of the Act and, therefore, stood transferred by operation of law to the State of Jharkhand. The way to resolve such a dispute was provided in Sub-section (2) of Section 89 and this fact was also clearly noticed by the Supreme Court in its order dated 13-12-2000. The Standing Committee, therefore, resolved to refer the matter for a decision to the judicial side of the Court. This gave rise to the proceeding registered in the Court''s office as Criminal Reference No. 01/2001 which was taken up when the Full Bench assembled for the first time on 12-1-2001 On that date the Full Bench was informed that the issue under reference was also under consideration by Special Judge (C.B.I.) AHD, Patna and the hearing before the trial Court was likely to conclude shortly. On that date the Full Bench directed for issuance of notice to the parties concerned and adjourned the hearing, allowing time to the parties to file paper books etc.

7. Around the same time, while the C.B.I. gave its letter to the Registrar General of this Court, a petition was filed before the Special Judge, C.B.I. (AHD Cases), Patna on 3-1-2001 making a prayer to transfer the case records of the 52 cases to the Court of Special Judge, C.B.I. Ranchi. Before the Special Judge, 48 out of 51 accused filed separate petitions, raising objections to the prayer made on behalf of the prosecution. The trial Court heard the parties in R.C. No. 20-A/96:

Special Case No. 22/96. It may be stated here that in Special Case No. 22/96 the trial had started after framing of charges against the accused and 39 prosecution witnesses were already examined by that time. The trial Court disposed of the petition filed by the prosecution by order dated 17-1-2001. In paragraph 14 of the order, the trial Court recorded its finding:

...that instant proceeding does not fall into the category of proceeding relating to exclusively to the territory of State of Jharkhand. The document of prosecution itself to cut the root of the prayer of the prosecution. The prosecution has failed to make out a clear case to attract the word ''exclusively. Thus, the prosecution has got no legs to stand upon.

8. However, a dispute had arisen on the issue whether those cases stood transferred by virtue of Section 89(1) and as any decision on that dispute could only be made by the High Court in terms of Section 89(2) of the Act, the trial Court referred the issue in dispute to the High Court. This gave rise to Criminal Reference No. 02/2001 which also came up before the Full Bench hearing the matter and joined the earlier reference made at the instance of the Standing Committee of the High Court.

9. In these facts and circumstances, Mr. Jitendra Singh, Counsel appearing for one of the accused (namely, Dr. K.N. Prasad) sought to raise some preliminary objections. Mr. Singh submitted that this Full Bench should decline to answer the reference or in any event, it should answer the reference only in respect of Special Case No. 22/96 in which the reference was made by the trial Court. Learned Counsel submitted that Criminal Reference No. 01/2001 made at the instance of the Standing Committee of this Court was no reference in the eyes of law and the Full Bench was, therefore, obliged not to answer the ''reference''. Learned Counsel maintained that the only way a reference could come to this Court u/s 89(2) of the Act was on the basis of an order made by the trial Court before which alone a question could arise at the first instance.

10. I am unable to accept the submission. There is no basis in law to hold that a reference u/s 89(2) of the Act can be made in no other way but by an order passed by the trial Court and I have not the slightest doubt that the reference made on the basis of a resolution of the Standing Committee is a perfectly valid reference and there is no reason for this Court not to answer the reference. It is true that ordinarily a dispute arises between the parties in course of the proceeding before the trial Court and ordinarily a reference is made by an order passed by the trial Court but what might happen ordinarily cannot be held to be the only legal and valid course. Section 89(2) of the Act does not lay down any particular manner in which a reference is to be made. Hence, there was no legal bar precluding the Standing Committee from taking the decision that the issue in dispute should be decided by the judicial side of the Court and making a reference accordingly.

11. As regards the other reference coming on the basis of the order passed by

the trial Court, it may be noted that though after hearing the parties the trial Court passed the order in the records of Special Case No. 22/96, the petition filed on behalf of the prosecution was in respect of all the 52 cases. Hence, I am satisfied that though the trial Court recorded the reference order in Special Case No. 22/96, it would relate to all the cases for the transfer of which the prayer was made in the petition filed by the prosecution. I thus find no substance in this objection raised by Mr. Singh.

12. Mr. Singh then raised another objection stating that in the State of Jharkhand there was no Court, corresponding to the Special Court, C.B.I. (AHD), Patna and the cases, therefore, could not be transferred as provided u/s 89(1) of the Act. Mr. Singh pointed out that in the letter of the D.I.G., C.B.I., dated 30-11-2000, addressed to the Registrar General of this Court, it was stated that it seemed imperative to transfer the case records" to the Court of existing Special Judge, C.B.I. Cases, Ranchi as stop-gap arrangement till the creation of designated Court(s) at Ranchi for the exclusive trial of the AHD cases". According to Mr. Singh, this amounted to an admission that at least for the present there was no Court in Ranchi corresponding to the designated Court at Patna and, therefore, according to the submission, the provisions contained in Section 89(1) of the Act were unworkable and unenforceable.

13. I am satisfied that the objection raised by Mr. Singh does not constitute a ground to decline to answer the reference and to reject it on the threshold. It may, however, be stated here that the question regarding the appropriate Court where these cases could be instituted and tried has been dealt with in greater detail in the latter part of this judgment.

14. At this stage it would be appropriate to refer to another controversy arising in course of hearing of the reference. That controversy arose due to certain development taking place before the monitoring bench. As noted above, the investigation of the cases arising from the Animal Husbandry Scam was being conducted by the C.B.I. under the over-all control and supervision of a bench of this Court. Consequent upon the division of the State and after the order, dated 13-12-2000 passed by the Supreme Court (referred to hereinabove) the monitoring bench considered the question as to which of the cases, still under investigation, it would continue to minitor. At that stage, the position was that out of the total cases registered, charge-sheets were yet to be filed in 24 cases. In other words, in 24 out of the total number of cases investigation remained inconclusive. The monitoring bench took the view that on the basis of the order passed by the Supreme Court, it was required to oversee and control the investigation and once the investigation in a case was over that case went beyond its purview and into the realm of trial. The issue of transfer of cases in which investigations were completed, charge-sheets were submitted and orders of cognizance were passed by the trial Court were thus not the subject-matter of consideration by the monitoring bench and the issue of their transfer to the Court in Jharkhand would abide by the decision by this Full Bench. The monitoring

bench would only consider which of the cases, still under investigation, it would continue to monitor and which of the cases, still under investigation, it would stop monitoring The accused felt that an order by the monitoring bench that it would stop monitoring certain cases, in practical terms, would amount to transfer of those cases to Jharkhand and it was perhaps contended on their behalf that all the 52 cases, of which a list was submitted by the C.B.I., whether under investigation or whether at the stage of trial, should be considered on the issue of their transfer to Jharkhand in one package and at the same time. On 7-2-2001, the monitoring bench passed the order on the question as to the cases which it would continue to monitor and the cases which it would not monitor any longer. A copy of that order was produced before this Full Bench in course of hearing of this reference. In that order the monitoring bench divided the cases in two categories, one in which the investigation was still incomplete and charge-sheet was not submitted and the other in which investigation was over and charge-sheet was submitted. The monitoring bench held that investigation of an offence was not a proceeding within the meaning of Section 89(1) of the Act and, therefore, the cases in the first category were not covered by Section 89(1) of the Act and it was cases only in the second category which were covered by Section 89(1) of the Act and the issue of transfer of those cases will abide by the decision of this Full Bench. In that regard on the monitoring bench went to clarify as follows:

We may observe that by our present order what we are considering is not transfer of cases, as such, we are concerned only with the monitoring of the investigation.

15. The monitoring bench further went on to say as follows:

The C.B.I. has furnished list of cases, investigation of which, according to it, is to be monitored by the Patna High Court, and Jharkhand High Court respectively. The basis of identification being the place of occurrence. The cases having places of occurrence at Patna or other places within the territorial jurisdiction of this Court have been mentioned in one category, while those whose places of occurrence are at Dumka, Chaibasa, Ranchi and other places within the territorial jurisdiction of Jharkhand High Court have been mentioned in the second category. In our opinion, since the jurisdiction of this Court is limited to the control and supervision of investigation up to the stage of submission of charge-sheets, and we are not concerned with the question of transfer of cases i.e. proceedings after submission of charge-sheets, it would be appropriate to confine ourselves to the cases which were instituted by the State Police at the police Stations, within the territorial jurisdiction of this Court. In other words, the place of institution of the cases should determine the jurisdiction of the monitoring bench.

...Thus, the jurisdiction of this Bench will henceforth be limited to the cases which were originally instituted by the State Police at Police Stations falling within the territory of the truncated State of Bihar as well as the cases later instituted by the C.B.I. on its own on the basis of preliminary inquiry at its Patna Bench, in which place of occurrence falls within the truncated State of Bihar wholly or partly. C.B.I. shall identify those cases and submit progress reports regarding those cases as before by the next date.

We again clarify that so far as transfer of proceeding after submission of charge-sheets is concerned, it would abide by the principles laid down by the Special Bench.

16. It is thus to be seen that the monitoring bench meticulously confined itself to stating which of the cases, still under investigation, it would continue to monitor and which of the cases it would not monitor any longer. The monitoring bench did not say anything about the cases, still under investigation, which it declined to monitor any longer.

17. That order was passed by the monitoring bench on 7-2-2001 and on that date itself Mr. Rakesh Kumar, Counsel for the C.B.I. submitted before this Full Bench that though the reference was for 52 cases of which the list was submitted by the C.B.I. he would confine his prayer for transfer only in respect of 36 cases (in which charge-sheets were already submitted). This caused considerable resentment among the Counsel appearing for the different sets of accused. It was pointed out that the order passed by the monitoring bench, releasing certain cases (which were still under investigation) from its monitoring was plainly being taken by the C.B.I. as an order of transfer of those cases to Jharkhand. It was submitted that in doing so the C.B.I. was trying to over-reach this Full Bench before which the entire matter was open in respect of all the 52 cases of which the list was given by the C.B.I. The Counsel made the grievance that the observation made by the monitoring bench in its order, dated 7-2-2001 that cases still under investigation were not covered by Section 89(1) of the Act tended to take all those cases out of the purview of the Full Bench. In other words, the scope of the reference before the Full Bench was sought to be circumscribed even before the Full Bench got an opportunity to hear the parties on the question whether or not cases which were still under investigation were covered by the expression proceeding used in Section 89(1) of the Act. Counsel after Counsel appearing for the different sets of accused urged that the Full Bench should decide for itself whether or not Section 89(1) will take into its sweep cases still under investigation and a number of Counsel sought to advance submissions that a case under investigation was as much a ''proceeding'' as a case in which investigation was concluded and for the purpose of Section 89(1) it would be quite unreasonable and unwarranted to categorise cases on the basis whether investigation had concluded or not.

18. The Counsel were not exactly disallowed but they were certainly discouraged from making submission on the question whether the expression "proceeding" used in Section 89(1) of the Act would also include a case at the stage of investigation. This is because in the facts and circumstances as stated above, I am clearly of the view that this question does not require to be decided in this

reference. The position, as I see it, is like this. The C.B.I. though having given a list of 52 cases now wishes to confine its prayer for transfer of cases to the State of Jharkhand only in respect of 36 cases. The different sets of accused oppose the prayer. The parties are, thus in dispute in respect of those 36 cases only. As regards the remaining cases, still under investigation, those were subject to the control and supervision of the monitoring bench of this Court. The monitoring bench is in control and supervision of the investigation on the basis of the directions given by the Supreme Court. It is, therefore, not for this Full Bench to make any comment, much less to sit in appeal on an order passed by the monitoring bench, releasing some of the cases under investigation from its supervision and control.

19. Moreover, as noted above, the monitoring bench has taken care not to say anything in respect of the cases which it released from monitoring. In case any of the accused are aggrieved by any action of the C.B.I. purporting to Act on the basis of that order, such as submitting the final report in those cases before a Court which according to the accused may not be the appropriate Court, it will always be open to the person aggrieved to seek relief(s) in accordance with law. But, this Full Bench will certainly decline to enter into that controversy and to record a finding or issue a direction requiring the monitoring bench to continue to keep under its supervision and control the cases which it has released from monitoring by its order dated 7-12-2000.

20. I will, therefore, proceed to examine only the 36 cases in which the C.B.I. has already submitted charge-sheets after the conclusion of investigation and in respect of which the parties are in dispute as to whether these cases would stand transferred to Jharkhand by virtue of Section 89(1) of the Act.

21. The answer to the question whether these 36 cases should stand transferred u/s 89(1) naturally demands a correct understanding of that Section and it is now time to take a look at Section 89 of the Act:

Transfer of pending proceedings.-(1) Every proceeding pending immediately before the appointment (sic-appointed?) day before a Court (other than the High Court), Tribunal, authority or officer in any area which on that day falls within the State of Bihar shall, if it is a proceeding relating exclusively to the territory, which as from that day is the territory of Jharkhand State, stand transferred to the corresponding Court Tribunal authority or officer of that State.

(2) If any question arises as to whether any proceeding should stand transferred under Sub-section (1), it shall be referred to the High Court at Patna and the decision of that High Court shall be final.

(3) In this Section.-

(a) "proceeding" includes any suit, case or appeal; and

(b) "Corresponding Court, tribunal, authority or officer" in the State of Jharkhand means-

(i) the Court, tribunal, authority or officer in which or before whom, the proceeding would have laid if it had been instituted after the appointed date; or

(ii) in case of doubt, such Court tribunal, authority or officer in that State, as may be determined after the appointed day by the Government of that State or the Central Government, as the case may be, or before the appointed day by the Government of the existing State of Bihar to be the corresponding Court, tribunal, authority or officer.

22. For an easy understanding I propose to reduce Section 89(1) as follows:

Every proceeding pending... before a Court... within the State of Bihar shall, if it is a proceeding relating exclusively to the territory... of Jharkhand State, stand transferred to the corresponding Court... of that State.

23. Much arguments were made by Counsel appearing for the parties on the meaning of the expression ''a proceeding relating exclusively to the territory of Jharkhand State, occurring in Section 89(1) of the Act. Mr. Rakesh Kumar, Counsel for the C.B.I. submitted, with reference to the Black''s Law Dictionary, that ''larger portion and ''substantially'' were also among the different meanings of the word exclusive and, according to him, it was in that sense that the word exclusive, used in the Section, was to be understood. Mr. Jitendra Singh, and other Counsel appearing for the accused, on the other hand, maintained that the word exclusive appearing in Section 89(1) meant to the exclusion of all other'' and further submitted that giving to the word exclusive, the meaning suggested by Mr. Rakesh Kumar will only add to to uncertainly and confusion, as a question would then arise in the facts and circumstances of a given case what might make ''larger portion'' and what might comprise ''substantially. Though between the two stands I find the one being espoused by Mr. Singh to be on firmer grounds, I cannot help but feel that these submissions only scratch the surface and do not get to the root of the issue. I think that labouring over the meaning of the word exclusive would be hardly of any help unless one clearly understands how can a proceeding be said to relate to a territory. In this regard a suggestion was made at the bar that the proceeding would relate to the territory where the occurrence took place (in a criminal case) and where the disputed property was situated (in a civil case). But to make the place of occurrence or the citus of disputed property as the basis for judging whether a proceeding relates to a territory does not appear to me to be quite satisfactory as that would put the co-relation between the proceeding and the territory within unduly narrow confines. In criminal matters the place of occurrence is known definites only in certain kinds of offences, whereas in many kinds of offences the place of occurrence may be either unknown or uncertain or at more places than one. In civil matters similarly, the test based on the citus of the disputed property would fail to account for a very large number of civil litigation relating to contracts and other civil rights. Any direct nexus between territory and cases, either under civil law or under criminal law would be established only in a limited number of cases. And I, therefore, feel that a more satisfactory test must be found out for

determining whether or not a proceeding relates to a territory.

24. Having given my anxious consideration to the matter, I feel that the co-relationbetween a territory and a proceeding can be satisfactorily understood in the context of the Act only with reference to Courts''jurisdiction. That is to say, a proceeding can be said to relate to a territory if the Court established in that territory would have jurisdiction to try that proceeding under the relevant procedural laws. Consequently, a proceeding can be said to relate exclusively to a territory if the Court in that territory would have the exclusive jurisdiction to try that proceeding.

25. Having understood how a proceeding can be said to relate to a territory, I would further venture to say that the key to understand the true import of Section 89(1) lies in understanding what is unsaid and only implicit in that Section. What is implicit in Section 89(1) is that even in the unified State of Bihar, it was possible that proceedings relating exclusively to the territory now forming the State of Jharkhand could be instituted in Courts outside that territory and as a consequence on the date the new State came into being, certain proceedings relating exclusively to the territory of the new State may be found lying in courts which as a result of the division of the State may stand denuded of their jurisdiction to try those proceedings any longer. Section 89(1) was, therefore, clearly intended to take care of cases which were instituted in Courts beyond the territories to which the proceedings related in deviation of the normal rule of procedure which requires that a proceeding relating to a certain place should be instituted in the Court at that place.

26. A question, therefore, arises under that circumstances a proceeding relating to a territory may be instituted in a Court beyond that territory. And a further question arises, in the context of the present controversy, as to in what circumstances the present cases, which the C.B.I. insists relate exclusively to the territory of Jharkhand came to be instituted in the Court at Patna even while the State was undivided. The solution to the present controversy, to my mind, lies in the answer to these two questions.

27. Let us now examine how and why a proceeding arising from the territories now forming Jharkhand would come to Courts beyond those territories even while the State of Bihar was unified before its division by the Re-organisation Act.

28. Here it may be recalled that even before the division of the State of Bihar under the general law of procedure a proceeding relating exclusively to the territory now forming Jharkhand would normally be instituted in Courts established in those territories. (Section 16, C.P.C. and Section 177 of the Cr. P.C.) And proceedings relating to those territories could be instituted in Courts outside those territories broadly speaking, only under two circumstances. One that the proceedings did not exclusively relate to those territories inasmuch as at least some part of the cause of action arose outside those territories, with the result that jurisdiction was created also for courts established in areas where part

of the cause of action arose outside those territories. (See for example Sections 17, 18 and 20, C.P.C. and Sections 178, 180 and 181, Cr. P.C). Now, the proceedings falling in this category obviously cannot be described as ''relating exclusively to the territory of Jharkhand State'' for the simple reason that the relevant procedural law permitted their institution in Courts outside the territories now in Jharkhand even before the division of the State of Bihar. Therefore, all such proceedings, though relating to the territories of Jharkhand, the institution of which in Courts remaining in the truncated State of Bihar was lawful and valid because of the nature of offences or because of a part of the cause of action had arisen outside those territories will not be covered by Section 89(1) and shall therefore continue to be tried by the respective Courts in Bihar.

29. The only other circumstances in which a proceeding, though ''relating exclusively to the territory of Jharkhand State'' could be instituted in courts'' outside those territories would be that the proceedings arose under Special Acts, the Court. Tribunal, authority or officer under which had its seat outside those territories. The proceedings arising under certain special Act had to be instituted outside the territories now forming Jharkhand for the sole reason that the Court, Tribunal, authority or officer under those Acts had their seat mostly at the State capital at Patna Having jurisdiction alI over the undivided State. Thus a proceeding, though relating exclusively to the territory of the State of Jharkhand, could only come to Patna which was the seat of those courts. Tribunals, authorities and officers. Proceedings before the Central Administrative Tribunal revisional proceedings under the land ceiling law before the Board of Revenue revisional proceedings u/s 46 of the Bihar Finance Act, revisional proceeding u/s 8 read with Section 89(C) of the Bihar Excise Act, an appeal u/s 43A of the Wakf Act, 1954, etc. can be cited as illustration of the proceedings falling in the 2nd category. All the proceedings in this category would stand transferred u/s 89(1) of the Act, unless in case of a particular proceeding it could be shown that apart from the fact that the seat of the Court was at Patna the proceeding could still be maintained here as a part of the cause of action arose on this side of the State. But, such a case would naturally be few and far between.

30. On the basis of the discussions made above, it is to be seen that proceedings falling in the 1st category will not be covered by Section 89(1) and it is the proceedings under the 2nd category which alone would stand transferred to Jharkhand under the provision.

31. Having, thus, answered the larger and the general question, it now remains to be seen how and why the Animal Husbandry cases came to be instituted at Patna and in which of the two aforementioned categories these cases would fall.

32. It is contended on behalf of the C.B.I. that these cases relate exclusively to territories which now form part of the State of Jharkhand. If that be so, these cases should have been normally instituted in courts established in those Districts of the undivided Bihar. As all the cases included offences under the Prevention of Corruption Act, 1988, apart from various offences under the Penal

Code, normally, those cases should have been instituted before the Special Judge Dhanbad or the Special Judge Ranchi. But, those cases came to be instituted before the Special Judge, Patna; how and why?.

33. Before proceeding to examine this question, it would be necessary to clear a common misapprehension. It must be clearly borne in mind that the Court before whom a case would go for trial has got nothing to do with the agency which might have investigated the case. In other words, whether a case is investigated by the District police or any other State agency or the C.B.I. would not determine the Court before whom the case would go for trial. The Delhi Police Establishment Act does not contain any provision regarding any particular Court to try the offences investigated by the C.B.I. In common parlance, some special Courts are known as C.B.I. Courts but that is only a misnomer. Those special Courts are constituted u/s 3 of the Prevention of Corruption Act and as the cases investigated by the C.B.I. mostly include offences under that Act, those cases go before those special Courts which for that reason commonly acquire the name of the C.B.I. Courts.

34. It is, therefore, clear that it is not the agency investigating the offence which would determine the Court where the case would be instituted and proceed for trial. What, would determine the Court where the case would go for trial is the nature of the offence. [See Sections 3 and 4 of the Prevention of Corruption Act, Section 12A of the Essential Commodities Act, Section 14 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, Sections 9 and 11 of the Territorist and Disruptive Activities (Prevention) Act, 1987, etc.]

35. Keeping this legal position in mind, let us examine certain undisputed facts regarding the institution of these cases. Following the directions issued by the Finance Department, Government of Bihar, a number of cases were instituted in the months of February and March 1996 regarding fraudulent withdrawals over a certain period of time from the Government treasuries in different districts of the State, All these cases were instituted by the District Police in the District of Chaibasa, Godda, Ranchi, Hazaribagh, Dumka, Sahebganj, Lohardagga, etc. all of which now form part of the newly created State of Jharkhand. Soon thereafter a bench of this Court in a P.I.L. in Sushil Kumar Modi and Others Vs. State of Bihar and Others, directed that the investigation of all these cases, termed as the Animal Husbandry Scam cases be made over to the C.B.I. The operative portion of the judgment as contained in paras 53 and 54 is as follows:

53... It is a fit case/therefore, in which direction should be issued for enquiry and investigation of the entire episode by the Central bureau of Investigation for the period in question. According to the State, excess drawals in the department has been taking place since 1977-78. I am of the view that the proposed inquiry and investigation should cover the entire period from 1977-78 to 1995-96.

54. I would, accordingly, direct the Central bureau of Investigation (C.B.I.) through the Director to inquire and scrutinize all cases of excess drawals and

expenditure in the Department of Animal Husbandry in the State of Bihar during the period 1977-78 to 1995-96 and lodge cases where the drawals are found to be fraudulent in character, and take the investigation in those cases to its logical end, as early as possible, preferably, within four months. The investigations by the State police in cases already instituted shall remain suspended in the mean time.

36. The order passed by this Court was affirmed by the Supreme Court with slight modification by its judgment and order in State of Bihar and another Vs. Ranchi Zila Samta Party and another, . The Supreme Court directed that the entire investigation would stand entrusted to the C.B.I. which was directed to take over the investigation already made by the State Police inclusive of the F.I.R. arrests and attachments and to that extent the order of this Court directing the investigation by the State Police to remain suspended was modified. Further, the Supreme Court, in order to alleviate the apprehension of the State about the control of the investigation by the C.B.I. put the investigation under the over-all supervision and control of the Chief Justice of this Court or of a bench constituted for this purpose by the Chief Justice.

37. Here it must be noted that neither in the order passed by this Court nor in the order of the Supreme Court, there was any mention of the Court where those cases were to be instituted.

38. Following the orders passed by this Court and the Supreme Court, the C.B.I. re-registered the F.I.Rs. initially instituted by the local police in the different Districts of the State, at its Patna office mainly during the period 16-4-1996 to 20-12-1996. The re-registered F.I.Rs. were then produced before the Special Judge at Patna.

39. As an illustration, let us examine Special Case No. 22 of 1996 in its initial stages of institution. This case was instituted as Chaibasa PS Case No. 12 of 1996 and the F.I.R. instituted by the local police was produced before the C.J.M. Chaibasa on 22-2-1996. As the case included offences under the Prevention of Corruption Act, the C.J.M., Chaibasa on 11-3-1996 sent the record of the case to Special (Vigilance) Judge, being the 1st Addl. Sessions Judge, Ranchi. Following the orders passed by this Court and the Supreme Court, the C.B.I. re-registered the case at its Patna office, as R.C. 20(A)/96-PAT and on 29-3-1996 submitted the re-registered F.I.R. in the Court of Special Judge (South) Patna where it was registered as Special Case No. 22 of 1996. On 27-4-1996 the C.B.I. filed a petition before the Special Judge, Patna making a prayer for calling the records of Chaibasa PS Case No. 12 of 1996 from the Court of C. J .M. Chaibasa and to tag it with the record of RC 20(A): Special Case No. 22 of 1996. The prayer was apparently allowed and a requisition was sent by the Special Judge, Patna to the CJ.M., Chaibasa asking for the records of Chaibasa PS Case No. 12/1996. On 1-5-1996, the C.J.M., Chaibasa informed the Special Judge, Ranchi that the records were called for by the Special Judge, Patna, where-upon on 24-5-1996, the records of Chaibasa PS Case No. 12/1996 were sent by the Special Judge,

Ranchi to the Special Judge, Patna. More or less the same pattern is discernible in all other cases.

40. At this stage, it will be essential to clearly understand the nature of the Special Courts and the system of special Courts as were in existence in Bihar at the material time. It has been noted that cases involving offences under the Prevention of Corruption Act can only be tried by Special Judges appointed in terms of Section 3 of the Act. It will be useful here to take a look at Sections 3 and 4 of the Prevention of Corruption Act which are re-produced below:

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

(a) Any offence punishable under this Act; and

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

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

4. Cases triable by Special Judges.-Notwithstanding any thing contained in the Code of Criminal Procedure. 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in Sub-section (1) of Section 3 shall be tried by Special Judge only.

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

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

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

41. Coming now to the system of Special Judge as were in existence in Bihar at that time, it may be noted that prior to 1990, the practice was to appoint Special Judges by name. This practice caused some dislocation because there used to be some delay in nominating the successor in place of the transferred officer. Hence, the Standing Committee of this Court in its meeting of 3-8-1990 accepted the stand of the Central Government that Special Judges for the trial of cases

investigated by the C.B.I. and the State Anti-Corruption bureau, be notified by designation instead of by name and further resolved that the Court of 1st Addl, Sessions Judge, Patna, Ranchi and Dhanbad be designated as Special Courts for the trial of cases investigated by the C.B.I. and the State Anti-Corruption bureau.

42. At the material time, when the Animal Husbandry cases surfaced the notification under which Special Judges were appointed under the Prevention of Corruption Act was the one dated 19-4-1994. This notification was issued in supersession of all previous notifications and it appointed three Special Courts for the entire State of Bihar assigning them jurisdictions in the following manner:

(1) Addl. Dist. & Sessions Judge I, Dhanbad: Jurisdiction-entire region of North Chhotanagpur Division.

(2) Addl. Dist. & Sessions Judge I, Ranchi: Jurisdiction-entire region of South Chhotanagpur Division.

(3) Addl. Dist. & Sessions Judge I, Patna: Jurisdiction-entire region except North and South Chhotanagpur.

43. This was the position of Special Courts in April, 1996 when the C.B.I. started getting the cases re-registered and having then instituted before the Special Judge, Patna.

44. On 22-5-1996 another notification came by which Shri S.K. Lal, Additional District & Sessions Judge was appointed Special Judge under the Prevention of Corruption Act, 1988 and was given the following territorial jurisdiction;

(i) One Shri Sudhanshu Kumar Lal, Additional District & Sessions Judge, Patna:

Jurisdiction-Patna region (all regions excluding North & South Chhotanagpur)

45. Shortly thereafter another notification was issued on 5-6-1996 by which the territorial jurisdiction given to Shri S.K. Lal was extended for the entire area of Bihar in the following manner:

(1) Shri Sudhanshu Kumar Lal, Additional District & Sessions Judge, Patna: Entire area of Bihar.

46. The two notifications, dated 2-5-1996 and 5-6-1996 did not supersede or rescind the earlier notification, dated 6-5-1994.

47. Thus, what follows from the three notifications can be summarised as follows:

(i)Till the issuance of the notification dated 5-6-1996 the territorial jurisdictions of the three Additional Judges at Patna, Dhanbad and Ranchi (and of Shri Sudhanshu Kumar Lal with effect from 22-5-1996) were well defined and well demarcated and there was no way those cases could be lawfully instituted before the Special Court at Patna unless it was said that some part of the offences were committed at Patna and, therefore, the Patna Court equally had jurisdiction over those cases.

(ii) When the Animal Husbandry cases cropped up in large numbers, the need was perhaps felt for appointing additiona Special Court to handle those cases. Though Section 3 of the Prevention of irruption Act made it possible to appoint a Special Judge for a case or a group of cases and though appointing a Special Judge for Animal Husbandry cases might have better served the purpose, that course was not adopted. What was done instead, whether intentionally or unintentionally was to appoint an Additional Special Judge in Shri Sudhanshu Kumar Lal and to define his jurisdiction with reference to territory and not with reference to a group of cases. By notification, dated 22-5-1996, he was given exactly the same territorial jurisdiction as available from before to the 1st Additional District & Sessions Judge, Patna, by virtue of the notification, dated 19-4-1994. This achieved nothing and only created confusion in the respective jurisdictions of the Special Courts.

(iii) Then by notification, dated 5-6-1996 the territorial jurisdiction of Shri Lal was extended all over Bihar. The result was that at no stage the jurisdiction of the Special Judges at Ranchi and Dhanbad was cancelled in respect of the Animal Husbandry cases. But, Shri Sudhanshu Kumar Lal came to have additional, parallel jurisdiction over those cases. A situation was, thus, created where there are more than one Special Judge for the area within which the offences were committed and in terms of Section 4(2) of the Prevention of Corruption Act, it was now left to the Central Government to specify the Court which would try those cases.

48. No decision or order, issued by the Central Government, specifying the Court (between Shri Sudhanshu Kumar Lal and the two Special Judges, one at Dhanbad and the other at Ranchi) which would try the Animal Husbandry cases was brought to the notice of the Court. What, however, came to the notice of the Court was something quite odd. It appears that in response to a letter from the District Judge, Patna seeking instructions in the matter, a letter dated 13-6-1996 was issued to him by the Registrar-General of this Court. This letter is reproduced below in its entirely:

From,

Nirmalesh Chandra Lal,

Registrar-General,

High Court of Judicature at Patna.

To,

The District and Sessions Judge, Patna.

Dated, Patna the 13th June, 1996.

Sir,

With reference to your letter No. 2612 dated the 7th June, 1996, I am directed to inform you that Shri Sudhanshu Kumar Lal, Additional District & Sessions Judge, Patna who has been appointed as a Special Judge for disposal of the cases investigated by the Delhi Police Establishment, as per the State Government''s Notification No. 5693 dated the 6th June, 1996 (copy enclosed), may be asked to deal with all cases pertaining to the Animal Husbandry scam without any restriction of Area.

So far as the question of designating the A.D.J. 1st, Patna is concerned, I am directed to invite your attention to Court''s letter Nos. 1712 dated 27-1-1996 and No. 5539-79 dated 28-4-1995 and to request you to act accordingly.

Your faithfully,

Sd/-N.C. Lal,

Registrar-General,

13-6-1996.

49. On the basis of this letter, the District & Sessions Judge, Patna issued order, dated 14-6-1996 whereby all the cases investigated by the Delhi Police Establishment pertaining to the Animal Husbandry scam (without any restriction on area) pending in the Court of Additional District & Sessions Judge I, Patna were recalled and transferred to the Court of Shri Sudhanshu Kumar Lal, Additional District & Sessions Judge XII, Patna for disposal. It was further directed in that order that from that date all papers connected with those cases will be received from the C.B.I. in the Court of the XII Additional District & Sessions Judge, Patna.

50. From the material on record, it is evident that even before the appointment of Shri S.K. Lal as an Special Judge, the C.B.I. had got some cases instituted before the 1st Additional Sessions Judge, Patna who was appointed as Special Judge by notification dated 19-4-1994. Later all the Animal Husbandry cases were transferred/ instituted before Shri S.K. Lal as directed in the letter issued by the High Court.

51. Here I am constrained to observe that I am unable to find any sanction in law for the letter, dated 13-6-1996 issued by the High Court on its administrative side directing that Shri Sudhanshu Kumar Lal be asked to deal with all cases pertaining to the Animal Husbandry scam without any restriction of area. It seems that in the absence of any direction issued by the Central Government in that regard, the High Court stepped in and assumed the authority vested in the Central Government alone by virtue of Section 4(2) of the Prevention of Corruption Act. It may be difficult to justify the direction given by the High Court even with reference to the Supreme Court decision in J. Jayalalitha Vs. U.O.I. and Another, as that decision was rendered in a totally different set of facts, it may, however, be stated here that there was no inherent lack of jurisdiction in the Special Court of Shri S.K. Lal and the direction issued by the High Court may be considered as an irregularity which was not incurable.

52. The legal position that plainly emerges from the aforesaid facts and circumstances is that at no stage the Special Courts at Dhanbad and Ranchi appointed under notification, dated 19-4-1994 were lawfully divested of their jurisdiction and authority to try those cases which related to fraudulent withdrawals made within the territorial jurisdiction of those Courts and yet those cases got to be instituted at Patna where they proceeded for more than four years. It was before the Special Court at Patna that the C.B.I. got those cases instituted, it was from the Special Court at Patna that the C.B.I. got on remand the accused in those cases, it was before the Special Court at Patna that the C.B.I. opposed the prayer for bail made on behalf of the accused, it was here that the C.B.I. submitted its final report of investigation and it was before the Special Court at Patna that the C.B.I. proceeded with the trial of R.C. 20-A/96; Special Case No. 22/96 and examined 39 prosecution witnesses. And all this was fully within the knowledge of not only the monitoring bench but also the administrative side of this Court. The inference clearly is that the C.B.I. believed and this Court found and held that the Patna Court equally had jurisdiction in this matter because part of the offences were committed at Patna.

53. Let us here examine a hypothetical question. Supposing, long before the division of the State, any of the accused had raised an objection regarding the institution of the cases at Patna contending that the courts where the cases could be lawfully instituted were the Special Courts at Dhanbad and Ranchi because the fraudulent withdrawals were made in those Districts, the cases were originally instituted in those Districts and the proceedings related exclusively to the territory of those Districts. I have not the slightest doubt in my mind that such an objection raised by the accused was liable to be rejected in no time and the accused raising the objection would have been told that in referring to the fraudulent withdrawals from the District treasuries, he was only alluding to the branches of the massive tree of the scam, the roots of which lay in Patna and. that a substantial part of the offences, specially of criminal-conspiracy having been committed at Patna, the Special Court at Patna equally had the jurisdiction to try those cases. All those same arguments and all those same materials which would have been used to reject the hypothetical objection raised by the accused would now confront the C.B.I. against its plea that the proceedings in these cases relate exclusively to the territory of Jharkhand and these cases must, therefore, be held to have been transferred to that State by virtue of Section 89(1) of the Act.

54. On the basis of the discussions made above, I come to the definite conclusion that these cases were instituted by the C.B.I. at Patna not due to any compulsion in law in the sense that the Special Court at Patna was the only available Court but on the basis that the Special Court at Patna equally had jurisdiction to try those cases along with the jurisdiction vested in the Special Courts at Dhanbad and Ranchi.

55. The Animal Husbandry cases, thus, clearly fall in the 1st category in respect

of which it is shown that those cases are not covered by Section 89(1) of the Act and would remain unaffected by the division of the State.

56. The conclusion is re-inforced as one refers to the relevant materials relating to those cases such as the charge-sheets statements of witnesses recorded u/s 164 of the Code of Criminal Procedure and other similar materials on record.

57. However, before proceeding to refer to those materials, it must be stated that ? no attempt was made by the C.B.I. to present the relevant materials before the Court in order to support its claim that the cases related exclusively to the territories forming part of Jharkhand. The C.B.I. seems to have taken it for granted that all the cases of which it had given a list had stood transferred to Jharkhand and all that was argued on its behalf was that the offences were committed ''substantially'' and in ''larger portion'' in Jharkhand as the fraudulent withdrawals were made from the treasuries situate there. The proceedings were, therefore, covered by the expression "exclusively" occurring in Section 89(1) of the Act and the proceedings, therefore, stood transferred to Jharkhand by operation of law.

58. Whatever materials from the records of the case were brought to the notice of the Court were by Counsel appearing for the different sets of the accused and those materials go a long way to show that according to the prosecution, offences were committed in equal if not in greater measures, on this side of the State.

59. In RC38(A) 96-PAT (Special Case No. 39/1996), the C.B.I. submitted charge-sheet against a large number of known and unknown accused. In column No. 5 of the charge-sheet, under the marginal heading ''result of investigation'' it is stated as follows:

Investigation has revealed that during 1988-96 the accused, shown in Annexure-1 and other unknown, had entered into a criminal conspiracy and agreed to do or caused to be done illegal act or acts which are not legal by illegal means, at Dumka, Patna and other places of Bihar and in pursuance of the said criminal conspiracy during December 1995 and January 1996 an amount of Rs. 3,42,37,601/-was illegally withdrawn by the Regional Director......From Dumka Treasury....

60. In the same charge-sheet, a number of acts of omission and commission are attributed against Lalu Prasad Yadav, who is accused No. 12 and who was the Chief Minister of the State at the material time. Almost all those acts could only be committed at Patna.

61. In the same charge-sheet, it is further stated:

Investigation has unearthed a deep rooted conspiracy, pursuant to which crores of rupees over and above the budgetary provisions of Animal Husbandry Department were withdrawn fraudulently year after year by A.H.D. officials in collusion with the suppliers/ transporters. Government officials, politicians of different political parties. Minister concerned and the Chief Minister of the State of Bihar.

It is further stated:

Investigation has further disclosed that on 17-6-1997 a mobile phone No. 9834001749 was recovered by the local administration from the possession of the co-accused Dr. R.K. Rana (A/47) who was then in judicial custody in Beur jail in Patna in connection with the A.H.D. Scam cases. The print outs/call details of the said mobile phone shown that repeated calls were made from the said mobile phone on the P & T telephone numbers installed at the official residence of the Ex-Chief Minister Shri Lalu Prasad and further on mobile phone number with the P.A. to the Ex-Chief Minister Shri Lalu Prasad....

Thus, co-accused Dr. Rana (A/47) while in jail remained in constant touch with the co-conspirator Shri Lalu Prasad."

62. In RC 64(A) 96-Patna (Special Case No. 65/1996), a charge-sheet was submitted which has a similar passage under the heading ''result of investigation''. This is as follows:

Investigation has revealed that during 1988-96 the accused-persons from serial No. 1 to 34 and unknown others entered into a criminal conspiracy and agreed to do or caused to be done illegal Act or acts which were not legal by illegal means at Deoghar, Dumka, Patna, Ranchi and other places of Bihar and outside Bihar in other State....

63. Under the heading ''modus operandiadopted in this case'' reference is made to persons and bodies which were operating from the seat of the State Government. The following passage is to be found under the head of ''modus operandi'':

Investigation has further revealed that sub-allotment, vide letter No. 1343, dated 18-7-1991 for Rs. 6 lakh was also made to DAHO, Deoghar prior to 16-11-1991 and was utilised in making fraudulent withdrawals by A-2. As per the CNC register, one fake allotment letter vide No. 4615, dated 1-6-1991, for Rs. 5 lakh was also received by Dr. Vinay Kumar (A-2) and utilised in making fraudulent withdrawals from the Deoghar treasury. Thus, 11 fake allotment letters in all figure in this case. These were not issued from the Directorate from the allotment files of the budget Section. Investigation has revealed that the letter numbers put on the 11 fake allotment letters do not pertain at all to the budget section or the allotment files. However, the despatch register A.H.D. Directorate shows that the different letters bearing the same letter numbers (as written the forged allotment letters) were issued from the Directorate as under,

64. In that charge-sheet a reference is made to File No. BS23/94 of Vigilance Department from which it transpires that the alleged criminal actions were taking place at the level of the Chief Minister at Patna. In the same charge-sheet under the marginal heading "knowledge of excess withdrawals in A.H.D.", it is stated as

follows

Investigation has revealed that the different accused persons of the A.H.D. Directorate, Secretariat, Finance Department, Vigilance Department PAC, A.G. Office, Treasury Office, Income Tax Department, other bureaucrats and politicians including the then Chief Minister (A-25) himself were knowing about the excess fraudulent withdrawals for a very long time but no action was taken by them, rather the higher ups sheltered the accused persons directly responsible for the drawals before the scam broke out. By their willful inaction, they allowed the loot to continue with increasing intensity.

65. Again under the heading no action taken on the letter of the DAG. regarding irregularities at A.H.D., Ranchi'', the illegal actions of the accused at Patna is discussed.

66. In RC 20(A) 96-PAT (Special Case No. 22/96), a charge-sheet was submitted wherein under the marginal heading ''result of investigation'' it is stated as follows:

Investigation has revealed that during 1988-96 the accused, shown in column 1 and others unknown had entered into a criminal conspiracy and agreed to do or caused to be done legal act or acts which are not legal by illegal means at Chaibasa, Patna and other places of Bihar.

67. In this case, a number of accused occupied very high offices in the State Government, such as Chief Minister Finance Minister, Minister for Animal Husbandry Department, Government of Bihar, Minister of State for Animal Husbandry Department, Chairman of the Public Accounts, Committee, Finance Commissioner, Secretary of Animal Husbandry Department, Government of Bihar, etc. and according to the prosecution case being part of the conspiracy the accused abused and misused their official positions. The allegations against all these accused are mostly referable to Patna.

68. In the charge framed by the Court against a number of accused in Special Case No. 22/96, it is stated as follows:

That you all amongst yourselves ... during the period 1988-96 at Chaibasa, Patna, Ranchi, Bhagalpur and other places of Bihar, Calcutta and Delhi, etc. were party to criminal conspiracy and agreed to do or caused to be done illegal acts or acts which are not legal by illegal means, namely, creation of allotment letters, creation of falseos supply orders, creation and submission of false supply 11s....

69. In the same case, the charge framed against the accused Lalu Prasad Yadav reads as follows:

That you being a public servant while functioning as M.L.A., M.P. and thereafter as Chief Minister/Finance Minister of the State of Bihar during the period from 1988-96-97 by corrupt and illegal means or by otherwise abusing your position as such to be public servant, dishonestly and fraudulently recommended for the promotion/elevation of Dr. Ram Raj Ram, co-accused....

70. A perusal of the charge framed against Lalu Prasad Leaves no room for doubt that the alleged acts attributed to him are referable at Patna.

71. In the supplementary petition filed by one of the accused Krishna Mohan Prasad (Petition at Flag A/1 in the Court''s brief) a reference is made to the statements of a number of witnesses recorded by the C.B.I. u/s 164 of the Code of Criminal Procedure. According to those statements, Dr. Shyam Bihari Sinha (since deceased) one of the main accused in the cases used to come to Patna where he stated at Hotel Patliputra and it was here that he got fake allotment letters manufactured and made arrangements for transfer of convenient officers to North Chhotanagpur and South Chhotanagpur Directorates. It was at Hotel Patliputra at Patna that meetings were held amongst the different accused-persons being party to the conspiracy and it was here that part of the defalcated amount was distributed among his minions.

72. The above cited materials have been taken purely at random and numerous such illustrations can be found in the thousands of pages comprising the records of these cases. It is also to be noted that the prosecution case in all these cases is over-lapping and to a certain degree repetitive.

73. On going through the materials of all these cases one is left in no doubt that according of the prosecution case the fountain head to the conspiracy and of the criminal acts flowing from the conspiracy, was at Patna. I have, therefore, no hesitation in holding that part of the alleged offences, rather a substantial part of the alleged offences, were committed at Patna and the Special Court at Patna equally had jurisdiction to try these cases. Consequently, it must be held that these cases do not relate exclusively to the territory now forming part of the State of Jharkhand and, therefore, these cases cannot be said to have been transferred to the Court in Jharkhand as provided u/s 89(1) of the Bihar Re-organisation Act, 2000. These cases will, therefore, continue to proceed before the Special Judge at Patna.

74. The reference is answered accordingly.

Nagendra Rai, J.

75. I have had the advantage of going through the judgment rendered by my learned Brother (Hon''ble Aftab Alam, J.). I agree with him with regard to the maintainability of Criminal Reference No. 1 of 1996 and also on the point that now the controversy between the parties is as to whether 36 cases as mentioned in the petition of the Central bureau of Investigation (for short ''C.B.I.'') are to be transferred to the new created State of Jharkhand or not. I do not find myself in agreement with his other conclusions, for which I am indicating the reasons hereinafter.

76. A hue and cry was raised by the public as well as by the Press with regard to loot and plunder of huge amount of public money by the public servants and

suppliers in connivance and conspiracy with high-ups\\men in power in the Animal Husbandry Department. The State Government, by way of eye-wash, in situated 41 cases in the beginning of the year 1996. In the meantime, a number of writ applications in the nature of Public Interest Litigation were filed in the High Court at Patna as well as at its Ranchi Bench (now Jharkhand High Court and all the cases were disposed of by a Division bench of this Court on 11.3.1996 vide Sushil Kumar Modi and Others Vs. State of Bihar and Others, . This Court directed the Central bureau of Investigation (for short the C.B.I.) to enquire and scrutinise all cases of excess drawals and expenditure in the department of Animal Husbandry in the State of Bihar during the period 1977-78 to 1995-96 and lodge cases where prima-facie case was made out to investigate. The investigations by the State Police in cases already instituted were ordered to remain suspended in the meantime.

77. The State of Bihar challenged the aforesaid order before the apex Court and the order of this High Court was upheld by order dated 19-3-1996 with only one modification that the entire investigation stood entrusted to the C.B.I. and it was further directed to take over the investigations already made by the State Police, inclusive of the F.I.Rs., arrests and attachments mentioned in the order and real appropriately therewith and the order of this Court to suspend the investigation by the State Police, thus, was modified to that extent. The Apex Court also directed that the investigation by the C.B.I. should be under the overall control and supervision of the Chief Justice of the Patna High Court and the C.B.I. Officers entrusted with the investigation shall, apart from the concerned criminal Court, inform the Chief Justice of the Patna High Court from time to time of the progress made in the investigation and may, if need any directions in the matter of conducting the investigation, obtain them from him. The learned Chief Justice may either post the matter for directions before a Bench presided over by him or constitute any other appropriate Bench. The Apex Court also directed that the High Court and the State Government shall cooperate in assigning adequate number of Special Judges to deal with the cases expeditiously so that no evidence may be lost. Thereafter, the C.B.I. registered cases by lodging F.I.Rs. with regard to the 41 cases; which have been instituted earlier by the State Police and also registered few new cases at Patna. The total number of cases registered by the C.B.I., as informed at the Bar, is 61, out of which according to the C.B.I. 52 cases comes from a territory, which was now fallen in the State of Jharkhand. Later on, the C.B.I. requested that only 36 cases are to be transferred to the Jharkhand State. Thirty-three cases out of them were registered by it on the basis of cases registered by the State Police at different Police Stations which, admittedly, fail within the territorial jurisdiction of the Jharkhand State. Three cases, namely RC-64(A)/96-PAT (Special Case No. 65/96), RC-77(A)/96-PAT (Special Case No. 69/96) and RC-2(A)/98-AHD/PAT (Special Case No. 2/98) were registered by the C.B.I. itself on 15-5-1996,28-11-1996 and 22-5-1998, respectively. R.C. Case No. 64-(A)/96-PAT relates to an offence alleged to have been committed at Deoghar, R.C. Case

No. 77-(A)/96-PAT relates to an offence alleged to have been committed at Dumka and Godda and R.C. Case No. 2(A)/98-AHD/PAT has been registered against accused Krishna Mohan Prasad under the provisions of the Act of the allegation of having acquired property disproportionate to his income while he was posted as the Regional Director, Animal Husbandry Department, South Chhotanagpur, Ranchi, Bihar.

78. The offences punishable under the Prevention of Corruption Act, 1988, (for short ''the Act'') are tried by the Special Courts constituted under the provisions of the Act. Section 3 of the Act contains a provision with regard to power to appoint special Judges and Section 4 of the Act provides for cases triable by Special Judges notwithstanding any contrary provisions contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law. These provisions have been quoted in the judgment of my learned Brother and as such I am not reproducing the same. Subsection (1) of Section 3 of the Act empowers the Central Government or the State Government, by notification in the Official Gazette, to appoint as many Special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the offences as mentioned therein. Subsection (2) of Section 4 of the Act provides that every offence as enumerated in Section 3(1) shall be tried by the Special Judge for the area within whose jurisdiction it was committed, or by the Special Judge appointed for the case, or, were there are more specially Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

79. The aforesaid provisions were considered by the Apex Court in the case of J. Jayalalitha Vs. U.O.I. and Another, . While interpreting Section 3(1) of the Act, the Apex Court said that the competent authority can appoint special Judge for an area or areas or for such case or group of cases and within that area or areas it can also appoint Judges for a particular case. The word ''or'' used in the said Section cannot be interpreted to mean that the power conferred upon the Government is in the alternative, that is to say that the State Government may appoint Special Judges either for an area or areas or for such case or group of cases. Regarding Section 4(2) of the Act, it was held that it visualises three situations; firstly every offence specified in Section 3(1) shall be tried by the Special Judge for the area within whose jurisdiction the offence is committed; secondly every case or group of cases shall be tried by the Special Judge appointed for such case or group of cases and thirdly if there are more special Judges than one appointed fora particular area then the Central Government has to specify as to which one of them will try the case. It was further held that once a Special Judges has been appointed to do a case or group of cases then he is alone competent to proceed with the case or group of cases. The power u/s 4(2) given to the Central Government to decide as to which one of the Special Judges will try the case when there are more Special Judges than one for an area, has to be exercised only when it is necessary and while exercising the power u/s 4(2), the guideline as provided u/s 3(1) will be applied by the Central Government.

80. Thus, it is clear that the Central Government or the State Government has power to issue notification appointing Special Judge for a case or group of cases or even a Special Judge will be appointed for a particular area and a special Judge can also be appointed for cases failling within that area. Once a Special Judge is appointed for a case or group of cases then he alone is competent to proceed with the trial. The exercise of power by the Central Government tinder Section 4(2) arises only when there are more Special Judges than one for an area or areas or even that power is to be exercised not in a routine manner but only when it becomes necessary.

81. The State Government in exercise of power u/s 3 of the Act issued a notification on 19-4-1994 appointing three Special Judges to try cases under the Prevention of Corruption Act, one for the North Chhotanagpur, second for the South Chhotanagpur and the third one for the area excepting the aforesaid two areas. The 1st Additional District and Sessions Judges by designation were appointed as Special Judges. By Notification, issued on 22-5-1996, the State Government appointed Shri S.K. Lal Additional District and Sessions Judge, Patna, as a Special Judge to deal with the C.B.I. cases of Patna region, excluding the areas of South and North Chhotanagpur. Thereafter, another notification was issued by the State Government on 5-6-1996, whereby the jurisdiction of Shri S.K. Lal to try cases under the Act was extended to the entire State of Bihar.

82. Thus, it is clear that by earlier notification dated 22-5-1996, the 1st Additional District and Sessions Judge was notified to try cases under the Act with regard to entire area excluding North and South Chhotanagpur. Later on, by notification dated 5-6-1996, his jurisdiction was extended to the entire State. The District and Sessions Judge, Patna, having received the notice dated 22-5-1996 notifying Shri S.K. Lal to try cases of the area excepting North and South Chhotanagpur, sought clarification from this Court as to whether in view of the aforesaid notification both the Courts, namely, Court of the 1st Additional Sessions Judge, Patna and the Court of Shri S.K. Lal will work as Special Judge and if so then what nature of the cases to be tried by the said Courts. The Registrar-General of this Court informed the District and Sessions Judge, Patna, that this Court has taken a decision that Shri S.K. Lal, who has been notified by notification dated 5-6-1996 to exercise jurisdiction over the entire State of Bihar, shall deal with all cases pertaining to the Animal Husbandry Scam without any restriction of area.

83. The C.B.I. has been constituted under the Delhi Police Special Establishment Act, 1946, by resolution dated 1-4-1963 to investigate cases including economic offences and corruption in public services, particularly where the interests of the Central Government are involved. Different Divisions have been created in C.B.I. to deal with different types of cases. Relevant extract of the C.B.I. Manual have been produced during the course of hearing, which show that the territorial jurisdictions of the various Branches of the C.B.I. to deal with all types of cases have been provided therein. The C.B.I. Branch, Patna is located at Patna and it

deals with the cases of the entire State of Bihar. The C.B.I. Branch, Ranchi deals with the cases of State of Bihar, West Bengal, Orissa and Madhya Pradesh in respect of specified Public Sector Undertakings and the C.B.I., Dhanbad Branch, deals with the cases of State of Bihar, West Bengal in respect of specified Public Section Undertakings.

84. Thus Branch of C.B.I. at Patna deals with all cases registered in the State of Bihar, which do not pertain to Public Undertakings and the C.B.I. Branches at Dhanbad and Ranchi deal with the cases in respect of only Public Undertakings. In case of alleged offences under the Act having been committed in any part of the State of Bihar, except in cases of Public Undertakings, as specified therein, the investigation has to be carried out by the Patna Branch of the C.B.I. Only because a case has been registered at Patna by the C.B.I. neither it can be presumed nor can it be inferred that the C.B.I. believe that the part of action has been committed within the jurisdiction at Patna.

85. As stated above, the C.B.I. was entrusted with the investigation and the investigation was put under the overall control and supervision of the Chief Justice of this High Court, who was directed by the Apex Court to monitor the investigation of cases either by himself or by constituting any other appropriate Court. The Chief Justice constituted a Division Bench having its sitting at Patna. The State Government notified Shri S.K. Lal to deal with the cases under the Act for the entire State of Bihar and this Court, as is evident from the letter of the Registrar-General Dated 13-6-1996, directed that Shri S.K. Lal would deal with all cases arising out of Animal Husbandry Scam. The direction given by the said letter to Shri S.K. Lal to deal with the Animal Husbandry Scam cases does not mean that this Court has come to a conclusion that the Patna Court has equal jurisdiction to deal with the matter as part of the offences having been committed at Patna. On the other hand, it appears that the said direction was issued by the Court taking into consideration the fact that as monitoring of the cases was being done at Patna, it would be better to confer power to try cases on the Special Judge stationed at Patna.

86. At this stage, I would like to clarify that I am not in agreement with the view of my learned Brother that the letter issued by the High Court under the signature of the Registrar-General dated 13-6-1996, on its administrative side, directing Mr. S.K. Lal to deal with the Animal Husbandry Scam cases, has no sanction in law. Though power to issue notification is vested in the State or Central Government but that is done with the effective consultation with the High Court concerned and the appointment of the Special Judge and allocation of area or cases is done by the High Court and only a formal notification is issued in this behalf by the State Government (See Jayalalita''s Case (supra).

87. In that view of the matter, non-issuance of formal notification in accordance with the decision taken by this Court on administrative side regarding allocation o cases can only be an irregularity and that will not render the aforesaid direction o this Court to be ineffective.

88. In view of the magnitude of the crime and the observation made by this Cour while allowing the P.I.L. that there should be centralised investigation, the C.B.I registered all the cases at Patna and proceeded with the investigation. In terms of it Manual also, the institution and investigation with regard to the offences committei in the State of Bihar, except the offences pertaining to the specified Public Undertakings, were to be done by the Patna Branch of the C.B.I. Thus, the lodging c the cases by the C.B.I., proceeding with the investigation and submitting report to the Special Court do not mean that the C.B.I. believed that the part of action ha: taken place at Patna.

89. The Court of Shri S.K. Lal was constituted to deal with all Animal Husbandn Scam cases instituted in any part of the State. Submission of the F.I.R. and relevan papers before him by the C.B.I., issuance of warrant and disposal of bail matters by him in no way lead to a conclusion that he was dealing with the matter only because the offences have been committed at Patna. This Court also never issued any direction at any point of time indicating that it has found that the offence has been committee at Patna for the simple reason that there was no occasion for this Court to come to the aforesaid conclusion, on the other hand, in the light of the observation made by the Apex Court to expedite the matter, this Court constituted a special Court of Shr S.K. Lal to deal with all the Animals Husbandry Scam cases.

90. Thus, I find myself unable to agree with the view taken by my learned Brother that the only inference that emerges from the facts of the case is that the C.B.I believed and this Court found that the Patna Court has equal jurisdiction because of part of the offences having been committed at Patna.

91. u/s 154 of the Code of Criminal Procedure (for short ''the Code''), once an information relating to commission of a cognizable offences given to the Officer-in-Charge of a Police Station, he shall reduce the same into writing even if he has no territorial jurisdiction over the place of crime. In such a case, he can forward the same to the Police Station having jurisdiction over the same in which the crime is alleged to have been committed. However, so far as the investigation is concerned, the matter is different. The investigation can be conducted by the Police Officer concerned only when he has territorial jurisdiction over the place of crime. Section 156 of the Code provides that any Officer-in-Charge of a Police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII of the Code. Thus, the jurisdiction of the Police Officer depends upon the fact as to whether the Court, within whose jurisdiction the area of the Police Station falls, has power to inquire or try the case under the provisions of the Code or not. Therefore, it cannot be said that the question of investigation has no relevancy to the question of inquiry and trial by a Court.

92. All the 33 cases, as stated above, were registered at the local Police Stations, which fall within the territory of State of Jharkhand. Investigations were taken

over by the C.B.I. by the order of the Court and the C.B.I. Branch at Patna, as stated above, has jurisdiction to investigate all the cases registered by it having taken place anywhere in the State of Bihar and the Court of the Special Judge Shri S.K. Lal was vested with the jurisdiction to try all the Animal Husbandry Scam cases even if they relate to the areas, which fall within the territory of State of Jharkhand.

93. In that view of the matter, after bifurcation of the erstwhile State of Bihar and creation of State of Jharkhand, Shri S.K. Lal ceased to have any jurisdiction with regard to the area falling within the territory of Jharkhand State and, thus, all the aforesaid 36 cases, with which Mr. Lal was dealing by virtue of his being the special Judge of entire State of Bihar from the appointment day, shall stand transferred to the corresponding Court in the Jharkhand State. I would have taken the aforesaid view but there are difficulties in coming to the aforesaid conclusion for two reasons; firstly that with regard to the pending cases, specific provision has been made u/s 89 of the Bihar Re-organisation Act (for short the Re-organisation Act) and secondly that the observation has been made by the Apex Court in the Order dated 13-12-2000 that the controversy as to whether these cases should be transferred or not is to be disposed of in terms of the provisions contained in Section 89(2) of the Re-organisation Act. Section 89 of the said Act runs as follows:

89. Transfer of pending proceedings.-(1) Every proceeding pending immediately before the appointment day before a Court (other than the High Court). Tribunal, authority or officer in any area which on that day falls within the State of Bihar Shall, if it is a proceeding relating exclusively to the territory, which as from that day is the territory of Jharkhand State, stand transferred to the corresponding Court, Tribunal, authority or officer of that State.

(2) If any question arises as to whether any proceeding should stand transferred under Sub-section (1), it shall be referred to the High Court at Patna and the decision of that High Court shall be final.

(3) In this Section-

(a) "Proceeding" includes any suit, case or appeal; and

(b) "Corresponding Court, Tribunal authority or officer" in the State of Jharkhand.

(i) the Court, Tribunal, authority or officer in which, or before whom the proceeding would have laid if it had been instituted after the appointed day; or

(ii) in case of doubt, such Court, Tribunal, authority, or officer in that State, as may be determined after the appointment day by the Government of that State or the Central Government, as the case may be, or before the appointed day by the Government of the existing State of Bihar to be the corresponding Court, Tribunal, authority or officer.

94. Sub-section (1) of Section 89 of the Re-Organisation Act provides, inter alia,

provides that every proceeding pending immediately before the appointed day before a Court other than the High Court in any area, which was a part of the undivided State of Bihar shall stand transferred to the corresponding Court of the Jharkhand State from the appointed day if the proceeding exclusively relates to the territory, which forms part of the Jharkhand State. Sub-section (2) Section 89 provides that in case of there being any dispute as whether the proceedig is to be transferred in terms of Sub-section (1), the same shall be referred to the High Court for deciding the controversy. The case shall stand transferred only to the newly-created Jharkhand State if the proceeding exclusively relates to a territory, which from the appointed day falls within the jurisdiction of Jharkhand State.

95. The general principle is that the Court dealing with a case has no extra territorial jurisdiction. Ordinary place of inquiry and trial is the place where an offence has been committed. This principle is embodied in Section 177 of the Code of Criminal Procedure (for short ''the Code"). However, there are exceptions to the said principle for the reason that the offences may be committed at different places, offences may be committed at one place, the consequences may follow at other places, difficulty may arise as to whether offences having been committed at one place or the other place. Sections 178 to 189 of the Code contain provisions dealing with exceptions or special provisions with regard to inquiry and trial in the circumstances where the offence has taken place at more than one places or trial of the specific offence or where an offence has been committed outside India. In case of criminal breach of trust, Sub-section (4) of Section 181 of the Code provides that with regard to offence of criminal breach of trust, misappropriation, etc. inquiry or trial may be held by the Court within whose local jurisdiction either the offence was committed or any part of the property, which is subject-matter of dispute, was received or retained, or was required to be retained or accounted for, by the accused-persons. In a case where an offence of conspiracy took place, the Court has jurisdiction to try not only that case of conspiracy but also the offences committed in pursuance of that conspiracy even beyond its jurisdiction. Thus, under the scheme of the Code, elaborate provisions have been made to decide the forum of enquiry and trial with regard to the offences committed at different places or with regard to the different types of offences.

96. Section 89 of the Re-organisation Act postulates that only those cases, which exclusively pertain to the territorial jurisdiction of Jharkhand, shall stand transferred after the appointed day to the corresponding Court of Jharkhand State.

The Legislature has purposely mentioned the word ''exclusively'' in the said Section, which, according to the Law Lexicon, Rama Natha Aiyar Reprinted Edition 1987, means "to the exclusion of all others; without admission to any others to participation."

97. Any word used in the Statute has to be given a meaning in the context in

which it is used. The words of the Statute in case of doubt, are to be understood in the sence in which they best harmonise with the subject of the enactment and the object which the legislature has in view. It may be given a wider meaning or restricted meaning depending upon the relevant factors including the Legislature''s object for which the provisions have been made.

98. Learned Counsel for the C.B.I. vehemently submitted that word ''exclusively'' used in Section 89 of the Re-organisation Act means substantial or greater part, and thus, where the substantial or greater part of the offence has taken place in the territory, which forms part of the Jharkhand State after the appointed day then the corresponding Courts at that place have jurisdiction to try the offences and not the State of Bihar.

99. The word ''exclusively'' used in Section 89 of the Re-organisation Act has to be given a wider rneaning. There is a reason to take the aforesaid view. If the offences have been committed in different territories, part of which now falls in the State of Jharkhand and part of which also falls in the State of Bihar then under the law, as discussed above, the cases may be tried by the Courts located at the places falling within the territories of both the States. If the cases can be tried by the Courts situate in both the States then there will be no use of transferring the cases from the Courts falling within the territory of one State to the Court falling within the territory of other State. Thus, the word ''exclusively'' used in Section 89 of the Re-organisation Act means exclusion of all others. In other words, only those cases, which exclusively belong to the territory of State of Jharkhand shall alone be transferred. If place of crime of a particular case of proceeding falls in the territory of State of Bihar as well as the territory of Jharkhand State after the appointed day then if the case/proceeding is pending in the Court falling in the territory of State of Bihar, the said case cannot be transferred to the Court in the State of Jharkhand for the simple reason that it cannot be said that the proceeding relates exclusively to the territory of Jharkhand State.

100. Thus, the question as to whether all the said 36 cases or some of them would be transferred to the State of Jharkhand or not, has to be decided in the light of the aforesaid principle. Brief facts leading to the filing of the cases have to be stated to arrive at a right conclusion at this stage. The Animal Husbandry Department, Government of Bihar, had three wings, namely, Husbandry Section, Fishery Section and Dairy Section. The main function of the said department is to improve the livestocks, milk, meat and egg products and also to develop the genetic quality of the cattle of the State including the cattle maintained by the general public. There is a Directorate in the Animal Husbandry Department, which is headed by the Director of Patna. The Animal Husbandry Department in the erstwhile State of Bihar headed by the Director of Patna, was divided in 11 regions. The Regional Offices are headed by the Regional Directors, South Chhotanagpur Region Ranchi was having a Regional Joint Director in addition to the Regional Director. The District Offices are headed by the District Animal

Husbandry Officers and the Sub-Divisional Offices are headed by the Sub-divisional Animal Husbandry Officers. There are veterinary Hospitals in the Districts and Sub-divisions, which function under the control of the Regional Directors.

101. The allegations, in brief, are that from the Directorate of Animal Husbandry Department, several fake allotment letters were issued showing allotment of amount to the different regions. The said allotments were given in excess of the budgetary provisions. These fake allotment letters are some times alleged to have been issued in an unauthorised manner by Braj Bhushan Prasad, who was posted as Budget and Accounts Officer at the Directorate at Patna and sometimes the letters are alleged to have been created in the Chhotanagpur region by the officers concerned. On the basis of the said fake letters, the field officers are alleged to have entered into conspiracy with the suppliers, Ministers, M.L.As. and contractors and have issued supply orders for supply of different articles namely, fodder, medicines, instruments and either without supply or less supply, amount has been paid to them. The officers belonging to the Indian Administrative Service at that time posted mainly in Chhotanagpur Region and the Treasury Officers are also alleged to have conspired with aforesaid persons brought into collusion and in this way more than rupees one thousand crores had been misappropriated by them. At this stage, I would like to mention that so far as the issuance of fake allotment orders from the Directorate at Patna is concerned, R.C. 42(A)/96 against Braj Bhushan Prasad has been registered under Sections 120B, 467, 468, 471, 472 of the I.P.C. and under the provisions of the Prevention of Corruption Act and that is going on. The other cases are registered with regard to creation of documents as well as the falsification of accounts, misappropriation etc. having taken place either at District Headquarters or Divisional offices or Hospitals, etc. of the Department, The question is as to whether all the offences committed in the field offices by the officials of the Regions or Districts with regard to which separate cases have been registered, were in pursuance of a single conspiracy entered into between them and the officers at the Headquarters at Patna or different conspiracies had taken place with different object and design. If as a result of single conspiracy entered into at Patna, different offences have been committed by different sets of the accused-persons with a view to achieving object, design and purpose of the said conspiracy then it may be said that the cases filed in the different Districts, which now fall in the territory of Jharkhand State, can be said to be the branches of massive tree of the scam, root of which lay in Patna. But if the different or unconnected conspiracy has been entered by the accused-persons at different places, not part of the main conspiracy, then it cannot be said that the offences, which nave been committed by the different sets of accused-persons at different places are as a result of conspiracy entered into at Patna or those are part of the offences, which have taken place at Patna.

102. The gist of conspiracy is an agreement, by two or more persons, to do, or cause to be done, an illegal act, or an act, which is not illegal, by illegal means.

In order to constitute a single conspiracy, there should be a common object, design or purpose for which different sets of accused-persons may commit different offences at different places at different intervals. While committing crime, some of the accused-persons may leave the group and others may join. There may bigger conspiracy and there may be similar consperary formed by some of the persons of the bigger conspiracy with the help of outsiders. In such a case, it cannot be said that similar conspiracy entered into by some of the persons of the main conspiracy and other accused-persons are part of the bigger conspiracy. In this connection, I would like to refer to the judgment of the Apex Court in the case of Mohd. Husain Umar Kochra etc. Vs. K.S. Dalipsinghji and Another etc., , wherein it has been held as follows:

The agreement is the gist of the offence. In order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be prompted by a few some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be a general plan to accomplish the common design by such means as may from time to time be found expedient. New techniques may be invented and new means may be devised for advancement of the common plan. A general conspiracy must be distinguished from a number of separate conspiracies having a similar general purpose. Where different groups of persons co-operative towards their separate ends without any privity with each other, each combination constitutes a separate conspiracy. The common intention of the conspirators then is to work for the furtherance of the common design of his group only. The cases illustrate the distinction between a single general conspiracy and a number of unrelated conspiracies.

103. In the present case, several cases have been registered and according to the stand of the C.B.I., the bigger conspiracy was entered into at Patna consisting of accused-persons including high officials, contractors, suppliers, politicians, and, thereafter, when the money was allotted in excess of the budgetary provision to the different Regions and Districts, there the accused persons along with some of the accused-persons who were part of the bigger conspiracy at Patna with other accused-persons conspired to withdraw the money by creating forged documents as well as by falsifying documents. In my view, on the basis of the materials on record, at this stage, it cannot be said that the offences which have been committed in the different Regional Offices, District Headquarters, Sub-divisional Headquarters, Hospitals, Farms, etc. have been committed in pursuance of the bigger conspiracy, which was entered into at Patna.

104. Facts of each case with regard to which prayer has been made, have to be considered to find out as to whether they exactly relate to the area, which exclusively alls within the territory of State of Jharkhand or not. While deciding the said question, it has to be kept in mind that so far as the cases, which are at the stage of investigation, are concerned, the question as to whether they exclusively belong to the territory of State of Jharkhand or not is to be decided with regard to the allegations made in the F.I.R, and if the place of occurrence according to the allegation falls exclusively within the territory of State of Jharkhand, then the cases are to be ransferred. However, we are not concerned with the cases, which are pending investigation in view of the subsequent stand of the C.B.I. Later on, the learned Counsel for the C.B.I. stated that only 36 cases are to be transferred, in which investigations have been completed and charge-sheets have been submitted or charges have been framed. In such cases, the allegations in the F.I.R. and the facts collected during investigation have to be looked into for the purpose of deciding as to whether such cases should be transferred to the corresponding Courts of State of jharkhand in terms of the provision contained in Section 89(1) of the Act.

105. From a perusal of the F.I.Rs., materials collected during investigation and one voluminous charge-sheets, which have been filed by the C.B.I. during the course of argument, it appears that in the 23 cases, which are detailed below, the materials collected show that the officers of the Animal Husbandry Department, posted in the District of Dumka and Ranchi Region in connivance with other employees of the said departments, suppliers, contractors and other administrative officials, falsified documents, created documents and issued supply orders and made payment even in case of no supply or less supply. In some cases, there is mention of creation of take allotment orders which were issued on the requisition made by the officers either posted in the Districts or the Regional Offices falling in that State of Jharkhand. is also alleged that these allotment letters were either created in the territory now ailing within the State of Jharkhand or fake allotment letters were created by Braj'' Bhushan Prasad, Budget and Accounts Officer, Patna, but there is no mention either in the F.I.Rs. or in the materials collected during investigation that the said fake Allotment letters were created either at Patna or at any place falling within the State of Bihar. There is no allegation in the aforesaid cases that the conspiracy, alleged to have been hatched up, was either entered into at Patna or at any place falling in the state of Bihar, on the other hand, the materials show that there is specific statement with regard to the allegations of commission of the offences at places, which, admittedly, fall within the territory of Jharkhand State. Thus, in the twenty-three cases mentioned below, no part of occurrence has taken place within the territory of State of Bihar and as such the same, in my view, shall stand transferred to the State of Jharkhand in terms of the provisions contained in Section 89(1) of the Reorganisation Act-

(1) RC-21 (A)/96-PAT (Special Case No. 23/96), arising out of Godda P.S. Case No. 38/96.

(2) RC-22(A)/96-PAT (Special Case No. 24/96), arising out of Godda P.S. Case No. 39/96.''

(3) RC-25(A)/96-PAT (Special Case No. 27/96), arising out of Hazaribagh Sadar P.S. Case No. 80/96.

(4) RC-31 (A)/96-PAT (Special Case No. 32/96), arising out of Doranda P.S. Case No. 65/96.

(5) RC-32(A)/96-PAT (Special Case No. 33/96), arising out of Ranchi Sadar P.S. No. 16/96.

(6) RC-33(A)/96-PAT (Special Case No. 34/96), arising out of Godda Town P.S. Case No. 29/96.

(7) RC-35(A)/96-PAT (Special Case No. 36/96), arising out of Doranda P.S. Case No. 41/96.

(8) RC-39(A)/96-PAT (Special Case No. 41/96) arising out of Dumka Town P.S. Case No. 21/96.

(9) RC-40(A)/96-PAT (Special Case No. 40/96), arising out of Dumka Town P.S. Case No. 15/96.

(10) RC-41(A)/96-PAT (Special Case No. 42/96), arising out of Sahebganj P.S. Case No. 11/96.

(11) RC-43(A)/96-PAT (Special Case No. 44/96), arising out of Ranchi Sadar P.S. Case No. 15/96.

(12) RC-44(A)/96-PAT (Special Case No. 45/96), arising out of Ranchi Sadar P.S. Case No. 21/96.

(13) RC-50(A)/96-PAT (Special Case No. 53/96), arising out of Chaibasa P.S. Case No. 13/96.

(14) RC-51 (A)/96-PAT (Special Case No. 54/96), arising out of Doranda P.S. Case No. 14/96.

(15) RC-53(A)/96-PAT (Special Case No. 56/96), arising out of Doranda P.S. Case No. 42/96.

(16) RC-54(A)/96-PAT (Special Case No. 57/96), arising out of Doranda P.S. Case No. 79/96.

(17) RC-56(A)/96-PAT (Special Case No. 60/96), arising out of Godda P.S. Case No. 20/96.

(18) RC-57(A)/96-PAT (Special Case No. 59/96), arising out of Godda P.S. Case No. 53/96.

(19) RC-58(A)/96-PAT (Special Case No. 61/96), arising out of Simdega (Gumla) P.S. Case No. 25/96.

(20) RC-59(A)/96-PAT (Special Case No. 62/96), arising out of Lohardaga P.S. Case No. 10/96.

(21) RC-66(A)/96-PAT (Special Case No. 66/96), arising out of Chaibasa P.S. Case No. 4/96.

(22) RC-77(A)/96-PAT (Special Case No. 69/96), registered by C.B.I.

(23) RC-2(A)/98 AHD/PAT (Special Case No. 2/98), registered by C.B.I.

106. So far as the remaining thirteen cases as detailed below, are concerned from the perusal of the materials available on the record, it is clear that either there is allegation that the conspiracy has taken place at Patna or part of the substantive offences are alleged to have taken place in Patna, Bhagalpur and other places falling within the State of Bihar and as such those cases cannot be said to be related exclusively to the territory of State of Jharkhand and as such the said cases, in my view, cannot be transferred in terms of the provisions contained in Section 89(1) of the Re-organisation Act:

(1) RC-19(A)/96-PAT (Special Case No. 21/96), arising out of Chaibasa P.S. Case No. 4/96.

(2) RC-20(A)/96-PAT (Special Case No. 22/96), arising out of Chaibasa P.S. Case No. 12/96.

(3) RC-23(A)/96-PAT (Special Case No. 25/96), arising out of Mango P.S. Case No. 30/96.

(4.) RC-24(A)/96-PAT (Special Case No. 26/96), arising out of Ranchi Sadar P.S. Case No. 19/96.

(5) RC-26(A)/96-PAT (Special Case No. 28/96), arising out of Hazaribagh Sadar P.S. Case No. 81/96.

(6) RC-27(A)/96-PAT (Special Case No. 29/96), arising out of Hazaribagh Sadar PS. Case No. 82/96.

(7) RC-28(A)/96-PAT (Special Case No. 30/96), arising out of Hazaribagh Sadar P.S. Case No. 35/96.

(8) RC-29(A)/96-PAT (Special Case No. 31/96), arising out of Hazaribagh Sadar P.S. Case No. 43/96.

(9) RC-34(A)/86-PAT (Special Case No. 35/96), arising out of Godda Town P.S. Case No. 40/96.

(10) RC-38(A)/96-PAT (Special Case No. 39/96), arising out of Dumka Town P.C. Case No. 16/96.

(11) RC-55(A)/96-PAT (Special Case No. 58/96), arising out of Doranda P.S. Case No. 60/96.

(12) RC-64(A)/96-PAT (Special Case No. 65/96), registered by the C.B.I.

(13) RC-78(A)/96-PAT (Special Case No. 70/96), arising out of Pakur P.S. Case No. 245/96.

107. In the result, twenty-three cases as mentioned in paragraph 105 shall stand transferred to corresponding Court of Jharkhand State and thirteen cases as mentioned in paragraph 106 shall remain in the State of Bihar and to that extent for the reasons stated above, I am in agreement with Brother Aftab Alam, J.

Shiva Kirti Singh, J.

108. I agree with the order proposed by Brother Aftab Alam, J. Even after going through the charge-sheets and other conclusions of the C.B.I. arrived in course of investigation, I do not find that any of the cases relates exclusively to the territory of Jharkhand in the sense that only the Courts in Jharkhand can have jurisdiction to try those cases. The money fraudulently withdrawn from different treasuries such as Ranchi, Jamshedpur, Dumka, etc. now located in Jharkhand was beyond the budgetary allocation and was not lawfully allotted to those treasuries. The unlawful loss was a direct loss of money lawfully belonging to the Government of Bihar. The transfer of such money was through forged and fraudulent allotment letters, alleged to have been created and handed over at Patna. The illegal gain is alleged to have been shared at different levels including officials and politicians at the State capital at Patna. The charges of corruption under the Prevention of Corruption Act, 1988 are levelled in all the cases against public servants who were employees of the State of Bihar and they allegedly made illegal acquisitions as such officials. It may be emphasised here that learned Counsel for the C.B.I. did not refer to the facts of any particular case and did not Contend that any particular case on account of its peculiar facts would lie within the jurisdiction of Courts at Jharkhand only.

109. In such circumstances, I find myself in complete agreement with Brother Aftab Alam, J. The Reference is answered accordingly.

