
(2008) 05 AHC CK 0222
In the Allahabad High Court

Vinay Katiyar

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 12-05-2008

Acts Referred:

Criminal Law (Amendment) Act, 1932 — Section 7
Criminal Procedure Code, 1973 (CrPC) — Section 11, 173, 24, 417, 465
Penal Code, 1860 (IPC) — Section 120B, 147, 149, 153A, 153B

Citation : (2008) 05 AHC CK 0222

Hon'ble Judges : Alok K. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Alok K. Singh, J.—Under challenge in this revision is the order dated 04.12.2006 passed by Special Judicial Magistrate, Court No. 9, Rae Bareilly in Criminal Case No. 2252 of 2006 (State v. L. K. Advani and Ors.) arising out of Crime No. 198 of 1992, under Sections 153A, 153B, 505(1), 147, 149 I.P.C. Police Station Ram Janam Bhoomi Ayodhya, district Faizabad, rejecting the defence's application challenging the locus standi of Central Bureau of Investigation (hereinafter referred to as C.B.I.) to conduct the prosecution of the case.

2. At the outset it may be noted that the application challenging the locus standi of C.B.I. to conduct the prosecution was moved by 7 out of total 8 accused persons which has been rejected by the court below but this revision has been filed only by Sri Vinay Katiyar out of the aforesaid 7 accused.

3. Briefly stated some of the admitted facts are as under:

(a) In respect of alleged demolition of disputed structure (known as Babri Masjid - Ram Janam Bhoomi) on 06.12.1992 two separate F.I.Rs. were registered at Police Station Ram Janam Bhoomi, Ayodhya. The first F.I.R. was lodged on 06.12.1992 at 5.15 P.M. by Station Officer of the aforesaid police station Ram Janam Bhoomi against lacs of unknown Kar Sewaks u/s 395, 397, 332, 323, 337,

338, 295, 297, 153A I.P.C. and Section 7 of the Criminal Law Amendment Act, under Crime No. 197 of 1992. The time of occurrence in this report has been shown around 12.00 noon to 12.15 P.M. (annexure-1).

(b) The second F.I.R. was lodged on the same day by Sub-Inspector Ganga Prasad Tewari at Police Station Ram Janam Bhoomi Ayodhya at 5.25 P.M. saying that at about 10.00 A.M. while he was on duty near Kar Sewa organized by Vishwa Hindu Parishad he found that Sarvashri Lal Krishna Advani, Murli Manohar Joshi, Ashok Singhal, Vinay Katiyar, Giriraj Kishore, Vishnu Hari Dalmia, Uma Bharti and Sadhvi Ritambhara were sitting on the dias and were instigating the Kar Sewaks by delivering their lectures. As a consequence of that several Kar Sewaks got infuriated and demolished the disputed structure. This case was registered under Crime No. 198 of 1992 (annexure-2).

(c) The investigation of Crime No. 197 of 1992 was entrusted to C.B.I. vide Government Notification dated 13.12.1992 consequent whereupon the C.B.I. registered a case with them as R.C. No. 8 (S)/92-SIU.V-New Delhi. The investigation relating to Crime No. 198 of 1992 was entrusted to Crime Branch Criminal Investigation Department (hereinafter referred to as CBCID) vide D.G. Police's D.O. letter No. D.G.-3-96-(106)-92 dated 10.12.1992.

(d) The Government of Uttar Pradesh vide Official Gazette of Uttar Pradesh (Extraordinary) Part-II, Section Kha, dated 16.12.1992 established a Special Court of Judicial Magistrate 1st Class with sitting at Lalitpur u/s 11 of the Code of Criminal Procedure, to try the case relating to Crime No. 198 of 1992. The CBCID after completion of the investigation submitted a charge sheet against all the 8 accused persons on 27.02.1993 in the court of Special Court of Judicial Magistrate at Lalitpur upon which cognizance was also taken on 01.03.1993.

(e) Subsequently the Government of Uttar Pradesh vide another Notification dated July 8, 1993 (Notification No. 3123/VII-Nyaya-2-539-G-92-T.C.) modified the aforesaid notification dated 16.12.1992 and changed the place of sitting of the Special Court of Judicial Magistrate from Lalitpur to Rae Bareilly. Presently this case is pending there itself.

(f) In addition to aforesaid Crime Nos. 197 of 1992 and 198 of 1992, 46 more F.I.Rs. of cognizable offences and one F.I.R. pertaining to non-cognizable offence were registered at the same police station as Crime Nos. 203/92 to 211/92, 213/92 to 215/92, 225/92 to 239/92, 247/92, 267/92, 268/92, 285/92, 318/92, 319/92, 320/92, 321/92, 322/92, 481/92, 482/92, 1/93, 2/93, 16/93, 27/93, 31/93 to 33/93, 61/93 and 70/93. The non-cognizable report was N.C.R. No. 57/92.

(g) The Government of Uttar Pradesh vide another Notification No. 4421/VII-Nyaya-2-739/87 dated September 9, 1993 established another court of Special Judicial Magistrate 1st Class with its place of sitting at Lalitpur to try or enquire into and commit to the Court of Sessions all the above referred cases except the case relating to Crime No. 198 of 1992.

(h) The investigation relating to 47 F.I.Rs. was also entrusted to C.B.I. on the request of the State Government.

(i) On the other hand though the investigation of the case relating to Crime No. 198 of 1992 was already completed by CBCID and charge sheet was submitted on 27.02.1993 wherein cognizance was also taken on 01.03.1993 as already said. On the request of the State Government this case was also entrusted to C.B.I. for further investigation vide Notification dated 26.08.1993 on the basis of which the C.B.I. registered a case with them on 27.08.1993 as R.C. No. 1 of 1993.

(j) Thereafter the C.B.I. under permission dated 10.09.1993 granted by the Special Judicial Magistrate, Rae Bareli started further investigation in the case relating to Crime No. 198 of 1992.

(k) The C.B.I. after conducting further investigation submitted its report u/s 173(8) Cr.P.C. before the Special Court at Lucknow on 04.10.1993 instead of submitting it to the court at Rae Bareli.

(l) The Special Court of Judicial Magistrate at Lucknow then committed the case relating to Crime No. 198 of 1992 and the case relating to Crime No. 197 of 1992 along with other connected cases relating to the same incident, to the Court of Sessions.

(m) The Court of Sessions then framed charges against all the 8 accused persons relating to case Crime No. 198 of 1992 as well as other accused persons relating to case Crime No. 197 of 1992 and other cases.

(n) Then few of the 8 accused persons of Crime No. 198 of 1992 filed Criminal Revision No. 201 of 1997 in the Allahabad High Court, Lucknow Bench, assailing the order of learned Special Sessions Judge, Ayodhya Prakaran, Lucknow. This Hon'ble Court decided the criminal revision upholding the impugned order dated 09.09.1997 passed by the learned Special Sessions Judge, Ayodhya Prakaran, Lucknow as far as 48 cases are concerned but set aside the impugned order with respect to case Crime No. 198 of 1992 being invalid.

(o) Ultimately the instant case relating to case Crime No. 198 of 1992 came before the Special Court of Judicial Magistrate at Rae Bareli where the accused persons are facing trial.

(p) Initially Sri S.S.Gandhi, Senior Advocate Delhi High Court was appointed as Special Public Prosecutor for conducting the case relating to Crime No. 198 of 1992 (No. RC-1S-93 (iv)/New Delhi) in the court of Judicial Magistrate Rae Bareli, its appeals, revisions etc. vide Notification No. 225/03 DSBE issued by the Government of India, Ministry of Public Grievances and Pensions (Department of Personnel and Training), New Delhi, u/s 24(8) Cr.P.C. Subsequently on 29.10.2004 Sri P. K. Chaube Advocate has been appointed u/s 24(8) Cr.P.C. as Special Public Prosecutor for conducting prosecution in both the aforesaid cases (pertaining to Crime Nos. 197 of 1992 and 198 of 1992) vide Notification No.

225/42/2004-AVDII-II (ii) issued by the Government of India, Ministry of Public Grievances and Pensions (Department of Personnel and Training), New Delhi, dated 29.10.2004. Its copy has been endorsed to the following six:

- (1) The Chief Secretary, Government of Uttar Pradesh, Lucknow.
- (2) The Registrar, Allahabad High Court, Lucknow Bench, Lucknow.
- (3) The Director, Central Bureau of Investigation, New Delhi.
- (4) The Director of Prosecution. CBI, CGO Complex, New Delhi.
- (5) Department of Legal Affairs, Shastri Bhavan, New Delhi.
- (6) DIG (Shri Lok Nath Behera), CBI, SCR-III, Yashwant Place, Chanakyapuri, New Delhi.

4. Heard Sri Kunwar Mridul Rakesh, Senior Advocate, assisted by Sri Vaibhav Kalia Advocate on behalf of the revisionist and Sri Jyotindra Mishra Advocate General assisted by Government Advocate and Additional Government Advocate on behalf the State of Uttar Pradesh (opposite party No. 1) and Sri P. K. Chaube Advocate (Special Public Prosecutor) assisted by Sri Bireshwar Nath, Advocate on behalf of Central Bureau of Investigation (opposite party No. 2) and perused the record.

5. Learned Counsel for the revisionist submitted that after completion of the investigation and submission of the charge sheet the role of C.B.I. has come to an end. It being a State case, cannot be prosecuted by the Central Government u/s 24(8) Cr.P.C. The provisions of Section 24 Cr.P.C. are extracted hereinbelow:

24. Public Prosecutors.--(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceedings on behalf of the Central Government or State Government, as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors, for the purpose of conducting any case or class of cases in any district or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor any may also appoint one or more Additional Public Prosecutors for the district:

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion, fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public

Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under Sub-section (4).

(6) Notwithstanding anything contained in Sub-section (5), where in a State there exists a regular cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre.

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under Sub-section (4).

[Explanation.--For the purposes of this sub-section, --

(a) "regular Cadre of Prosecuting Officers" means a Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post;

(b) "Prosecuting Officer" means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, an Additional Public Prosecutor or an Assistant Public Prosecutor under this Code.]

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under Sub-section (1) or Sub-section (2) or Sub-section (3) or Sub-section (6), only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

(9) For the purposes of Sub-section (7) and Sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.

6. The learned Counsel for the revisionist further submitted that the aforesaid section empowers both the State Government as well as the Central Government to get their cases conducted by appointing Special Public Prosecutor for their respective cases. Where Union of India is prosecuting an accused, the special public prosecutor has to be appointed by the Union of India or the Central Government and where the accused is being prosecuted by the State Government (as in the present case) the special public prosecutor has to be

appointed by the State Government and not by the Union of India u/s 24(8) of the Cr.P.C. He further submitted that the present case being State subject, the State should have appointed a Special Public Prosecutor which has not been done. He urged that this being an illegality can be pointed out at any point of time. He also submitted that it is not merely an irregularity and, therefore, the benefit of Section 465 Cr.P.C. cannot be claimed in this case. He conceded that C.B.I. being the investigating agency can watch the case upto its logical end but only through a validly appointed Special Public Prosecutor by the State Government u/s 24(8) Cr. P.C. and not in the present manner.

7. For the State of U.P., opposite party No. 1, learned Advocate General Sri Jyotindra Mishra submitted that the State Government has same stand which it has already taken in the court below that they have no objection in this case being prosecuted by the Special Public Prosecutor appointed for this purpose u/s 24(8) Cr.P.C.

8. Sri P.K. Chaube Special Public Prosecutor for C.B.I. submitted that in old Cr.P.C. u/s 49(2) such appointment used to be made by the District Magistrate but in the new Cr.P.C. the Central Government has also been given power to make such appointment. He emphasized that copy of his notification/appointment was endorsed to the Chief Secretary, Government of Uttar Pradesh, Lucknow way back in the year 2004 and, therefore, there is a tacit consent. Moreover, learned Advocate General has also strengthened his stand by submitting on behalf of the State before this Court that the State Government has no objection in this case being prosecuted by Special Public Prosecutor for C.B.I. appointed u/s 24(8) Cr.P.C. Therefore there is clear approval of the State Government in his favour.

9. Secondly he drew the attention of this Court towards the fact that earlier also this controversy was raised in Criminal Revision No. 217 of 2001 by 10 revisionists including the present revisionist, Sri Vinay Katiyar, wherein this Court decided the issue against them. He placed reliance on the following relevant extracts of the judgment dated 30.08.2006 passed in the above revision:

3. Opposite party No. 21, Sri Moreshwar Save, has raised a preliminary objection vide CrI. Misc. Application No. 8530/2001, on the maintainability of this revision by C.B.I. on the ground that C.B.I. has no locus standi to file any revision in the matter inasmuch as it was merely the investigating agency and was and cannot be the prosecutor. Only the Government Advocate can represent the prosecutor, only he or some Additional Government Advocate on his behalf can file Criminal Revision in the High Court, this revision is wholly unauthorized, counsel appointed by C.B.I. has no right to file revision or plead the matter, duty and function of C.B.I. came to an end with the filing of the charge sheet as the investigating agency in place of local police. Prosecution can be conducted only by a public prosecutor, neither the Central Government nor the C.B.I. has any role to play in this matter.

11. Law grows and develops with the society, the gigantic strides of development of society has compelled to cover new fields and to move in new directions. Now it does not remain the sole duty of the State alone to see and ensure that justice is delivered to the citizen, various agencies have been created and duty has been cast upon them also to ensure that justice is ensured, in view of it in this context one should not be allowed to say that since it is an investigating agency, hence it cannot be a prosecuting agency, it cannot be represented by a prosecutor appointed by it, to prosecute proceedings. The aim and object being the same that guilty does not go unpunished and justice is not denied, on extraneous reasons, the court too has not been made and cannot be a silent spectator to all the happenings and cannot allow a guilty person to go free on grounds of technicalities.

12. The only intention behind framing the provisions regarding appointment of prosecutor, in view of the above, seems that it was to be ensured that no confusion is created and unauthorized persons do not usurp the powers and functions of the prosecutor to the detriment of authorized prosecutor. If the prosecutor for some reason is not so willing, interested or neglects its duties the investigating agency or prosecutor appointed by investigating agency cannot be stopped or shut by saying look here you have no locus, after all court also owe some duty, they can help the court so that court does not become prosecutor also, in the welfare State, they all have to ensure that guilty does not go unpunished specially on technical grounds or on the ground that prosecutor or lawyer was not duly appointed in a manner authorized by procedural law.

13. Hence the objections being raised regarding prosecutor appointed by C.B.I. cannot prosecute are ill founded and are devoid of merits.

14. The revision is maintainable.

15. Regarding prosecuting the proceedings by prosecutor appointed by C.B.I. besides the above it may be mentioned here that in the counter affidavit to the petition challenging the maintainability of criminal revision, plea taken in para 9 is worth mentioning, the state police should have investigated the case and should have prosecuted the guilty, it did not investigate, investigation was done by CBI and since then and till filing of the charge sheet and till date State of U.P. has not pursued with the prosecution, before the trial court and every issue pertaining to the same had duly been presented and pursued by CBI which duly appointed a special public prosecutor for he same. These very objections now being raised were raised earlier, before Special Judge and by a judicial order dated 09.02.2000, the objections were rejected. This order has become final as it has not been challenged. Central Government u/s 24(8) of the Cr.P.C. had a right to appoint special public prosecutor, it was appointed by the investigating agency and as such CBI, the investigating agency, in furtherance to achieve the ends of justice, and court may not become prosecutor also, as the role of the court had to remain different and distinct, had appointed a special public prosecutor to prosecute proceedings. In view of the fact that this objection now being raised

had already been decided and has become final, and till that order is in existence this objection cannot be looked into, so the prosecutor appointed by CBI has every right to prosecute the proceedings."

16. Learned Special Public Prosecutor further submitted that this criminal revision is still pending and this issue being subjudice it could not have been raised by the present revisionist before the lower court. He also submitted that this order has also not been challenged and, therefore, it has attained finality.

17. He further submitted that on earlier occasion also the Special Court has decided this matter on 09.02.2000 which was also not challenged and therefore also it became final and cannot be challenged now. He also placed reliance on the following case laws:

(i) Suraj Singh v. The State of Bihar, Criminal Misc. No. 6254 of 2004, decided by Patna High Court on 27.04.2006 as under:

This application has been filed for quashing the order dated 24.01.2004 passed by the Additional Sessions Judge, IVth Patna in Sessions Trial No. 613 of 2002, whereby the plea of the petitioner that Special Public Prosecutor of the Central Bureau of Investigation cannot conduct the case against the petitioner, has been rejected.

Short facts giving rise to the present application are that on the basis of a report given to the police, Gardanibagh (Shastrinagar) P.S. case No. 336 of 1998 was registered u/s 302, 307/34, 120B and 379 of the Indian Penal Code and 27 of the Arms Act. The State police investigated the case and submitted charge sheet against the petitioner and other accused persons. On the submission of the charge sheet, the learned Magistrate took cognizance of the offence and transferred the case to another Magistrate. The Central Bureau of Investigation filed application before the Judicial Magistrate entrusted with the C.B.I. cases seeking permission for further investigation of the case. After investigation, the Central Bureau of Investigation submitted charge sheet against two accused persons and the trial of all the accused persons is being conducted by he Special Public Prosecutor of the Central Bureau of Investigation.

Mr. Ajay Kumar Thakur, appearing on behalf of the petitioner submits that the petitioner is facing trial on the basis of the charge sheet submitted by the local police and hence the C.B.I. is not competent to prosecute him and he has to be prosecuted by the prosecuting agency of the State police.

Mr. Rakesh Kumar, appearing on behalf of the Central Bureau of Investigation, however, submits that the State police charge sheeted the petitioner but kept the investigation pending and thereafter the State Government entrusted the matter for investigation to the Central Bureau of Investigation which submitted the supplementary charge sheet and, as such, it is the Central Bureau of Investigation which is competent to conduct the trial. He emphasizes that in the facts of the present case, when the Central Bureau of Investigation had

investigated the case and submitted charge sheet against few accused persons, petitioner's challenge to his prosecution by the Special Public Prosecutor of the C.B.I. is absolutely misconceived.

Having heard learned Counsel for the party, I do not find any substance in the submission of Mr. Thakur.

It is not disputed that the case was later on investigated by the Central Bureau of Investigation which had submitted charge sheet against few accused persons. In such circumstance, the grievance made by the petitioner that the trial cannot be conducted by the counsel appointed by the Central Bureau of Investigation is absolutely misconceived.

In the result, I do not find any merit in the application and it is dismissed accordingly.

(ii) Vineet Narain and Ors. v. Union of India and Anr. reported in 1998 SCC (Cri) 307. The relevant paragraphs of this case law upon which reliance has been placed are as under:

16. Everyone against whom there is reasonable suspicion of committing a crime has to be treated equally and similarly under the law and probity in public life is of great significance. The constitution and working of the investigating agencies revealed the lacuna of its inability to perform whenever powerful persons were involved. For this reason, a close examination of the constitution of these agencies and their control assumes significance. No doubt, the overall control of the agencies and responsibility of their functioning has to be in the executive, but then a scheme giving the needed insulation from extraneous influences even of the controlling executive, is imperative. It is this exercise which became necessary in these proceedings for the future. This is the surviving scope of these writ petitions.

30. It is useful to refer at this stage to the history of the CBI. The Special Police Establishment was formed during the Word War II when large sums of public money were being spent in connection with the War and there arose enormous potential for corruption amongst the officers dealing with the supplies. An executive order was made by the Government of India in 1941 setting up the Special Police Establishment (SPE) under a DIG in the then Department of War. The need for a Central Government agency to investigate cases of bribery and corruption by the Central Government servants continued and, therefore, the Delhi Special Police Establishment act was brought into force in 1946. Under this Act, the superintendence of the Special Police Establishment was transferred to the Home Department and its functions were enlarged to cover all departments of the Government of India. The jurisdiction of the SPE extended to all the Union Territories and could also be extended to the States with the consent of the State Governments concerned. Then the SPE was put under the charge of the Director, Intelligence Bureau. Later in 1948, a post of Inspector General of Police, SPE was created and the organization was placed under his charge. The Central Bureau of

investigation was established on 1.4.1963 vide Government of India's Resolution No. 4/31/61-T.MHA. This was done to meet the felt need of having a Central police agency at the disposal of the Central Government to investigate into cases not only of bribery and corruption but also those relating to the breach of Central fiscal laws, frauds in government departments and PSUs and other serious crimes. On enlargement of the role of CBI an Economic Offences Wing was added to the existing Divisions of the CBI. In 1987 two Divisions were created in the CBI known as Anti-Corruption Division and Special Crimes Division, the latter dealing with cases of conventional crimes besides economic offences. In 1994 due to increased workload relating to bank frauds and economic offences a separate Economic Offences Wing was established in CBI with the result that since then the CBI has three Investigation Divisions, namely, Anti-Corruption Division, Special Crimes Division and Economic Offences Division.

31. We are informed that almost all the State Governments have given concurrence for extension of the jurisdiction of the Delhi Special Police Establishment in their States with the exception of only a few. The result is that for all practical purposes, the jurisdiction in respect of all such offences is exercised in the consenting States only by the CBI and not by the State police. This is the significance of the role of the CBI in such matters and, therefore, technically the additional jurisdiction under the general law of the State Police in these matters is of no practical relevance.

37. The Delhi Special Police Establishment Act, 1946 is an Act to make provision for the constitution of a special police force in Delhi for the investigation of certain offences in the Union Territories for the superintendence and administration of the said force and for the extension to other areas of the powers and jurisdiction of members of the said force in regard to the investigation of the said offences. Section 6 of the Act requires consent of the State Government to exercise powers and jurisdiction under the Act by the Delhi Special Police Establishment.

39. There can be no doubt that the overall administration of the said force, i.e. CBI vests in the Central Government, which also includes by virtue of Section 3, the power to specify the offences or class of offences which are to be investigated by it.

44. The law does not classify offenders differently for treatment thereunder, including investigation of offences and prosecution for offences, according to their status in life.

50. There is another aspect of rule of law which is of equal significance. Unless a proper investigation is made and it is followed by an equally proper prosecution, the effort made would not bear fruition. The need for a strong and competent prosecution machinery and not merely a fair and competent investigation by the CBI can hardly be overemphasised. This is the occasion to take the view that a suitable machinery for prosecution of the cases filed in court by the CBI is also

essential to ensure discharge of its full responsibility by the CBI. Unless a competent prosecution follows a fair and competent investigation, the exercise in the ultimate analysis would be futile. Investigation and prosecution are interrelated and improvement of investigation without improving the prosecution machinery is of no practical significance.

55. The holder of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law.

(iii) K. Chandrashekhar v. The State of Kerala and Ors. reported in 1998 4 AD(S.C.) 657. In this case the State of Kerala u/s 6 of the Delhi Special Police Establishment Act, 1946 requested the C.B.I. to investigate the case but subsequently the relevant notification was withdrawn. The question was placed before the Hon'ble Apex Court as to whether such notification withdrawing consent is valid and can be sustained or not. The Apex Court found that once the investigation was transferred and entrusted to C.B.I. for investigation pursuant to the consent given u/s 6 of the Act and the C.B.I. has not only started it but completed the investigation with the consent and submitted report u/s 173 Cr.P.C. it cannot be stopped midway by withdrawing the consent, particularly under mala fide exercise of power. The Apex Court quashed the notification on the ground of mala fide exercise of power.

(iv) Khemraj Vs. State of Madhya Pradesh, The learned Special Public Prosecutor relied upon the following paragraphs/extracts of this case:

1. In this appeal by special leave the only point that arises for consideration is whether the appeal filed by the State of Madhya Pradesh in the High Court against the order of acquittal of appellant u/s 465 read with Section 471 of the Indian Penal Code was competent under the law.

para 2. The accused (appellant) secured an appointment of Senior Operator Trainee in Bhilai Steel Project by submitting two forged certificates. The first certificate was regarding his passing the Bachelor of Science examination with Mathematics, Physics and Chemistry, in 2nd Division from the University of Sagar. The second document was an attested copy of his Matriculation certificate in proof of age where his date of birth was shown as August 21, 1941.

Para 5. That, as it transpired prosecution was launched against the accused on the complaint of the Superintendent of Police, Delhi Special Police Establishment, Jabalpur, and a case was registered against him under Sections 182, 471 and 420 I.P.C. In due course a charge-sheet was submitted against the accused and

he was tried u/s 465/471 and 420 I.P.C. According to the prosecution the accused was born on August 21, 1936 and he had not passed his B.Sc. examination at all and after tendering the forged certificates procured the employment.

Para 6. The accused was tried by the Special Magistrate, First Class, Jabalpur, for offences u/s 465 read with Section 471 and under 420 I.P.C. The trial court acquitted the accused u/s 465 read with Section 471 I.P.C. and convicted him u/s 420 I.P.C. and sentenced him to rigorous imprisonment for one year and to pay a fine of Rs. 500/-. The learned Additional Sessions Judge on appeal maintained the conviction but reduced the sentence to six months" rigorous imprisonment maintaining the fine.

Para 7. The State of Madhya Pradesh preferred an appeal to the High Court against the acquittal of the accused u/s 465 read with Section 471 I.P.C. The accused also preferred a revision application against his conviction u/s 420 I.P.C. Both the matters were heard together and by a common judgment the High Court dismissed the revision application of the accused and allowed the State's appeal and convicted the accused u/s 465 read with Section 471 and sentenced him to rigorous imprisonment for one year. Hence this appeal by special leave.

Para 8. It is submitted on behalf of the appellant that the appeal to the High Court was not competent in view of the provisions of Section 417(2) of the Criminal Procedure Code.

Para 9. It is admitted that this case is governed by the old Criminal Procedure, 1898. We may, therefore, at once read Section 417, Criminal Procedure Code, so far as it is relevant for our purpose.

Para 10. Section 417, Criminal Procedure Code, prior to the Amendment Act XXVI of 1955 provided for presentation of appeals by the public prosecutor on the direction of the State Government. The 1955 Amendment introduced several changes and provided for appeals at the instance of the complainant as also on the direction of the Central Government in cases investigated by the Delhi Special Police Establishment.

Para 12. Investigation under the Delhi Act is, therefore, a central investigation and the officers concerned are under the superintendence of the officer appointed by the Central Government. The Central Government, therefore, is concerned with the investigation of the cases by the Establishment and its ;ultimate result.

Para 13. This, however, does not bar the jurisdiction of the State Government also to direct presentation of appeals when it is moved by the Establishment. The Establishment can move either the Central Government or the State Government. It will be purely a matter of procedure whether it moves the State Government directly or through the Central Government or in a given case moves the Central Government alone. It will again be a matter of procedure

when the Central Government decides to appeal it requests the State Government to do the needful through the public prosecutor appointed under the Code.

Para 15. In the present case we find from the documents produced before us that the move was made by the Superintendent, Delhi Special Police Establishment, by requesting the Secretary, Law Department of the Government of Madhya Pradesh and the decision was taken by the State Government as it appears from the letter of the Under Secretary dated January 28, 1969, to the Advocate General, Madhya Pradesh. The appeal was therefore filed in the name of the State of Madhya Pradesh. No objection, therefore, can be taken about the competency of the appeal being filed by the State of Madhya Pradesh in this case.

Para 16. As a matter of procedure it will be even permissible for the appeal against acquittal to be filed by the public prosecutor under the direction of the State Government or the Central Government without impleading either as a party.

Para 17. The objection of the appellant is, therefore, devoid of substance. We may mention that no such objection was taken in the High Court. In the result the appeal fails and is dismissed.

(v) State of Punjab Vs. Surjit Singh and Another, This case pertains to old Code of Criminal Procedure in respect of withdrawal from prosecution. But the principle laid down is of significance. The Hon'ble Apex Court opined that u/s 494 (old) Cr.P.C. only the Public Prosecutor Incharge of particular case and is actually conducting prosecution can file application seeking permission to withdraw from prosecution.

18. There is no quarrel on the point that in the present case the investigation of Crime No. 197 of 1992 was entrusted to C.B.I. from the very beginning while the investigation of case Crime No. 198 of 1992 was initially entrusted to Crime Branch Criminal Investigation Department (CBCID) which submitted a charge sheet upon which cognizance was also taken on 01.03.1993 by the court concerned. Then on the request of the State Government this case was also entrusted to C.B.I. for further investigation. Thereafter the C.B.I. under permission granted by the court concerned on 10.09.1993 started further investigation in respect of that crime number (198 of 1992) also and ultimately submitted its report. There is no dispute that over all administration of the C.B.I. vests in the Central Government which also includes by virtue of Section 3 of Delhi Special Police Establishment Act, the power to specify the offences or class of offences which are to be investigated by it. It is true that the disputed structure being situated in one of the districts of Uttar Pradesh, was basically a State subject. But it was a matter of national importance affecting so many persons. Moreover at times lacunas are found in the investigation made by the State investigating agency allegedly benefitting powerful accused persons. Therefore the State Government appears to have made a request to the Central

Government for getting these cases investigated by C.B.I. which still has a reputation of being well equipped, efficient and impartial investigating agency. There is also an aspect of the rule of law which is significant. Unless a proper investigation is made and it is followed by an equally proper prosecution it would be meaningless. Unless a competent prosecution follows a fair and competent investigation, the exercise in the ultimate analysis would be futile. The investigation and prosecution are inter related and improvement in the investigation without improving the prosecution machinery is of no practical significance. It is indeed the duty of the judiciary to enforce the rule of law and to guard against erosion of rule of law, if any. In the present case the investigation was assigned to C.B.I. (through Central Government) and, therefore, for the same reasons it was expedient to have also its prosecution conducted by it. In practice also normally cases charge sheeted by C.B.I. are prosecuted by it. Therefore, the Central Government bonafidely and in anticipation of the consent of the Government of Uttar Pradesh appointed Sri P. K. Chaube Advocate as Special Public Prosecutor u/s 24(8) Cr.P.C. vide notification dated 21.10.2004 for conducting both the C.B.I. cases [R.C. (s)/1992/SIU-V/SIC-II/New Delhi and R.C. 1 (S)/1993 to 48 (S)/1993/SIC-IV/New Delhi] and as such he is appearing in both the cases. At the time of issuance of the notification its copy was endorsed to the Chief Secretary, Government of Uttar Pradesh, Lucknow along with 5 more concerned authorities. Never any objection was raised by the State Government. It was not an act done by default. It cannot be believed that the copy of this notification addressed to Chief Secretary was lying unnoticed. The State Government could not have afforded to ignore such an important matter. Therefore it can be safely inferred that the Government of Uttar Pradesh consciously made no objection. Subsequently the Government of Uttar Pradesh also took a positive and clear stand on this matter through learned Advocate General before the court below as well as this Court. Therefore, I have no doubt in holding that without being stated there was a conscious and "tacit consent" of the Government of Uttar Pradesh at the time of issuance of relevant notification in favour of Sri P. K. Chaube to conduct these cases.

19. Besides, it also amounts to an "expost facto consent" of the Government of Uttar Pradesh. All along during the trial of these cases before the court(s) below the State Government, which is also a party in these cases, has never raised any objection in the cases being prosecuted by Mr. Chaube, Special Public Prosecutor, appointed by the Central Government. Not only this it has rather clearly and expressly has taken a positive stand before the court below as mentioned in the impugned order itself. This has been reiterated on behalf of the State Government through Advocate General of the Government of Uttar Pradesh, Sri Jyotindra Mishra, before this Court also saying that the State Government continues to have the same stand which it had taken in the court below that they have no objection in these cases being prosecuted by the Special Public Prosecutor appointed by the Central Government. This no objection amounts to its clear and positive consent.

20. The learned Counsel for the revisionist also submitted that u/s 24(8) Cr.P.C. the Central Government or the State Government may appoint Special Public Prosecutor in respect of their domain only not vice versa and, therefore, in this case the appointment of Sri Chaube as Special Public Prosecutor is illegal. I regret in not accepting this argument. This sub-section is reproduced hereinbelow:

24(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

Some of the guiding principles of the statutory interpretation are that the language of the statute should be read as it is, avoiding addition or substitution of words. There is also rule of literal construction. Another rule is to have regard to subject and object. Words are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strict grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained. The court may decline "to be bound by the letter, when it frustrates the patent purposes of the statute". The court should adopt an object oriented approach keeping in mind the principle that legislative futility is to be ruled out so long as interpretative possibility permits. There is another rule which takes care of the consequences, hardship, inconvenience. Absurdity and anomaly has to be avoided. A careful reading of the aforesaid sub-section shows that there is no prescription that the Central Government or the State Government can appoint Special Public Prosecutor in respect of cases pertaining to their subjects only. The words ""any case" or ""class of cases" have not been qualified. Had there been such an intention behind this legislation it would have been simply provided that the Central Government or the State Government may, as the case may be, appoint in respect of their cases a Special Public Prosecutor. It appears that the main object was to enable the Central or State Government to appoint an experienced person having a standing/practice of not less than ten years so that important cases may be prosecuted more efficiently. Even for a moment if the argument of the learned Counsel for the revisionist is accepted then also there was no illegality. As the investigation of the subject having national importance was got done by the C.B.I. on a specific request made by the State Government to the Central Government, therefore, the Central Government in anticipation, good faith and bona fide conduct, to uphold the rule of law and to take the case to its logical end, issued the notification under the aforesaid provisions. Therefore, from any stretch of imagination it cannot be said to be illegal. If it was an irregularity then it is curable u/s 465 Cr.P.C. This section reads as under:

465. Finding or sentence when reversible by reason of error, omission or irregularity. - (1) Subject to the provisions hereinbefore contained, no finding,

sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

21. This matter may be looked into from another angle also. It is a settled law that an accused cannot choose an investigating agency for himself. Broadly speaking on the same analogy the accused cannot have choice in respect of prosecuting agency particularly when he is not able to demonstrate that any substantial prejudice is going to be caused to him. Here it could not be shown that any prejudice would be caused to the revisionist (accused) if the prosecution is conducted by the C.B.I. through Special Public Prosecutor appointed by the Central Government. The C.B.I. has been prosecuting this case for the last several years and obviously such type of objections are now being raised only with a view to protract the trial. Earlier this type of objection was raised in the year 2000 before the trial court which was rejected vide order dated 09.02.2000. That order was never challenged and as such the same has become final. It was further raised in Criminal Revision No. 217 of 2001 by 10 accused persons including Sri Vinay Katiyar, the present revisionist in the shape of a preliminary objection which too was rejected vide order dated 30.08.2006 passed by this Court. The aforesaid criminal revision is said to be still pending and this issue being sub-judice, could not have been probably raised by the present revisionist before the lower court.

22. In view of the discussion made hereinabove I do not find any embellishment in the order in question. There does not appear to be any thing wrong either against the correctness or propriety or legality of the finding recorded by the learned lower court.

23. Finally, therefore, this revision deserves to be and is accordingly dismissed.