# Union Of India vs Prakash P. Hinduja & Anr on 7 July, 2003

## Equivalent citations: AIR 2003 SUPREME COURT 2612, 2003 (6) SCC 195, 2003 AIR SCW 3258, (2003) 8 ALLINDCAS 36 (SC), (2003) 5 JT 300 (SC), 2003 (8) ALLINDCAS 36, 2003 (5) JT 300, 2003 (3) ALL CJ 2068, (2003) 3 PAT LJR 354, 2003 (4) SLT 335, 2003 ALL CJ 3 2068, 2003 ALL MR(CRI) 1578, 2003 SCC(CRI) 1314, 2003 (5) SCALE 103, 2003 (5) ACE 687, 2003 CALCRILR 752, 2003 CRILR(SC MAH GUJ) 635, 2003 (2) UJ (SC) 1246, (2003) 26 OCR 243, (2003) 3 RAJ CRI C 603, (2003) 3 EASTCRIC 38, (2003) 2 CAL LJ 244, 2003 CHANDLR(CIV&CRI) 506, (2003) 1 GAU LR 614, (2003) 2 GAU LT 47, (2003) 8 ALLINDCAS 113 (GAU), (2003) SC CR R 971, (2003) 105 DLT 510, (2003) 3 RECCRIR 556, (2003) 3 CURCRIR 7, (2003) 4 SUPREME 466, (2003) 3 ALLCRIR 2001, (2003) 5 SCALE 103, (2003) 7 INDLD 49, (2003) 47 ALLCRIC 433, (2003) 2 CHANDCRIC 82, (2003) 3 ALLCRILR 662, (2003) 3 CRIMES 142, (2003) 2 CRIMES 468, 2003 (2) ALD(CRL) 199, 2003 (2) ANDHLT(CRI) 222 SC

## Author: G.P. Mathur

## Bench: G. P. Mathur

CASE NO.:
Appeal (crl.) 666 of 2002

PETITIONER:
Union of India

RESPONDENT:
Vs.

Prakash P. Hinduja & Anr.

DATE OF JUDGMENT: 07/07/2003

BENCH:
jendra Babu & G. P. Mathur

JUDGMENT:

JUDGMENT With Crl. A. 746 of 2002 G.P. Mathur, J.

1. Union of India through Central Bureau of Investigation (for short "CBI") and Central Vigilance Commission (for short "CVC") have preferred these appeals by special leave against the judgment and order dated 10.6.2002 of a learned Single Judge of Delhi High Court by which the petition preferred by Prakash Hinduja respondent No.1 has been allowed and the cognizance taken by the learned Special Judge and all consequential proceedings have been quashed. It has, however, been left open to the prosecution to file a fresh charge-sheet after following the procedure laid down by this Court in Vineet Narain & Ors. v. Union of India 1998 (1) SCC

226.

2. In order to appreciate the controversy raised it is necessary to briefly notice the relevant facts. A contract was entered between Government of India and M/s. AB Bofors on 24.3..1986 for supply of 400 FH 77-B gun systems along with vehicles, ammunition and other accessories at a total cost of SEK 8,410,660,984 (equivalent to about Rs.1437.72 crores as per exchange rate on 21.3.1986) and on 2.5.1986 advance payment equivalent to 20 per cent of the contract value was paid to M/s. AB Bofors. On 16.4.1987 Swedish Radio came out with a story that Bofors had managed to obtain the contract from Government of India after payment of large amounts as bribe. On 21.4.1987 the Government of India made a formal request to Government of Sweden for an investigation into the allegations. The CBI registered a case being RC 1A/90-ACU. IV on 22.1.1990 and proceeded to investigate the matter. Thereafter on 22.10.1999 the CBI submitted charge sheet No.01 under Section 120-B IPC read with 420 IPC and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 in the Court of Special Judge, Delhi wherein (1) S.K. Bhatnagar (2) W.N. Chaddha (3) Ottavio Quattrocchi (4) Martin Ardbo, former President of M/s AB Bofors, and (5) M/s. AB Bofors, Sweden (private company) were arrayed as accused. The charge-sheet is a long document and in para 62 thereof it was stated that the investigation relating to the further transfer of funds (details of which were given in paragraphs 55 to 57) routed through various countries is still continuing in order to find out the details of other beneficiaries and the Letters Rogatory issued by the Court of learned Special Judge, Delhi to Switzerland, Sweden, Panama, Luxembourgh, Bahamas, Jordan, Liechtenstein and Austria with a view to find out other beneficiaries of the commission amounts are still pending execution. It was also mentioned that investigations concerning the role of GP Hinduja, Prakash Hinduja, Srichand Hinduja, Harsh Chaddha and Maria Quattrocchi and some others are also continuing. The learned Special Judge took cognizance of the offence on 4.11.1999 and Crl. Case No.39/1999 was registered in his Court. In pursuance of Letters Rogatory issued by the Special Judge, the Swiss Government handed over a set of documents comprising 71 pages to CBI on 18.12.1999. Thereafter on 9.10.2000 the CBI submitted a supplementary charge sheet bearing No.03 against GP Hinduja, Prakash Hinduja and Srichand Hinduja. The charge sheet gives the details as to how M/s. AB Bofors transferred funds to the accounts opened by these accused and how they took up British nationality and obtained British passports and how they had opposed the handing over of documents by Swiss Government to the agencies of Government of India. The learned Special Judge thereafter summoned the three Hinduja brothers by the order dated 12.12.2000.

3. On 15.4.2002 accused Prakash Hinduja moved an application before the Special Judge praying that "the charge sheets submitted by the CBI be dismissed and the cognizance taken and the process

issued against the accused be revoked." The application was moved on the ground that the cases were never reported to CVC and the CVC has neither reviewed the cases nor had considered them fit for continuance of the prosecution and as such there was a non-compliance of the directions issued by this Court in the case of Vineet Narain. The application was opposed by the CBI by filing a written reply wherein it was stated, inter alia, that the allegations made by the accused to the affect that the case was never reported to the CVC was not correct; that a copy of the investigation report was sent to CVC on 14.7.1997 and further developments were also brought to the notice of CVC from time to time; that a special counsel for prosecuting the case had been appointed on the recommendation of Attorney General for India and that in para 62 of the first charge-sheet it was mentioned that investigation regarding the role played by Hinduja brothers was in progress; and that the supplementary charge sheet had been filed under Section 173 (8) Cr. P.C. which was co-related with the first charge sheet.

4. The learned Special Judge, after hearing counsel for the parties and noticing their contentions held that generally it was not in the province of the courts and particularly the Trial Court to see in what manner and to what extent the CBI is reporting the progress of investigation and this was within the province of CVC. It was further held that "the intent of the directions given in Vineet Narain is not to dismiss or throw the charge sheets when there is incomplete or partial compliance. The primary function of the Trial Court however is to proceed with expedition strictly on the merits of the accusations entirely in accordance with law uninfluenced by what happened during investigation and which counsel represent CBI". Learned Special Judge also observed that the Court was not powerless and if necessary, appropriate directions can be issued in terms of Vineet Narain to ensure a fair and efficient trial. The application was accordingly rejected by the order dated 18.4.2002.

5. Thereafter, Prakash Hinduja filed a petition under Section 482 Cr.P.C. in Delhi High Court praying for the reliefs asked for in the application moved before the learned Special Judge i.e. to revoke the cognizance taken, to revoke the process issued and to dismiss the charge sheets. The other prayer made was that notice be issued to the Attorney General and his views on the effect of non-compliance of the directions be ascertained and notice be also issued to the Chief Vigilance Commissioner to report to the Court as to his role in the filing of the two charge-sheets and the manner in which the directions of Supreme Court had been complied with in the case in hand. The petition was opposed and separate counter-affidavits were filed by CBI and CVC. The High Court has held that in terms of directions issued in Vineet Narain, CVC is entrusted with the responsibility of superintendence over the CBI's function. The CBI shall report to CVC about all cases taken up by it for investigation; progress of the investigation: cases in which charge-sheets are filed and their progress. The CVC cannot abdicate its functions nor CBI can violate the mandate and it was bound to place the final results of its investigation along with all material collected before the CVC for the purposes of review. It has been further held that in the present case CBI had not placed before the CVC the results of its investigations and had by-passed it by filing a charge-sheet before the Special Judge, while the CVC had abdicated its function which it was obliged to perform under the directives of the Supreme Court even if the Government Resolution restricted its powers. Finally, the High Court has held that in view of the mandate of the Supreme Court the Special Judge ought not to have entertained the charge-sheet filed in violation of the directives. On these findings the

petition was allowed and the cognizance taken by the learned Special Judge and all consequential proceedings were quashed.

6. Feeling aggrieved by the judgment of the High Court, Union of India through CBI and CVC through its Director have preferred separate appeals by special leave.

7. Shri Kirit N. Rawal, learned Solicitor General appearing for the appellants has submitted that in Vineet Narain this Court was dealing with the allegations of failure of the CBI to investigate freely and fairly commission of offences by persons holding high offices. In order to impart a degree of independence to the CBI and yet to maintain the power of superintendence (which is inevitably necessary in relation to any police force), the Court issued a mandamus based upon the suggestion which had also been made by the Independent Review Committee. It was with this object in view and having regard to the statutory provisions that the directions were issued to the effect that the Government shall remain answerable for the CBI's functioning which flowed from the power of the Government under Section 4 of Delhi Special Police Establishment Act (for short "DSPE Act") and in order to introduce visible objectivity in the mechanism to be established for over-viewing the CBI's working, the CVC was entrusted with the responsibility of superintendence. Learned counsel has also submitted that the duty to report the steps taken in the course of investigation cannot be equated with the duty to obtain prior approval or consent of any other authority. It has been urged that the contention of the accused in fact amounts to equating the role cast upon the CVC with the role of an authority empowered to sanction the institution of a criminal case in absence whereof the court lacks the jurisdiction to take cognizance on the report filed under Section 173 Cr.P.C. The acceptance of such a contention would result into introduction of a new provision of law which was never intended by this Court in Vineet Narain. The directions issued were never intended to provide additional safeguards in favour of an accused. It has thus been urged that the whole premise of the judgment of the High Court is fundamentally wrong and the same is liable to be set aside.

8. Shri Ram Jethmalani, learned senior counsel for the respondent has submitted that in Vineet Narain this Court cut down the power of the Government under Section 4 of the DSPE Act and within the hierarchy of CBI there is a power of superintendence as provided in Section 36 Cr.P.C. According to learned counsel, the judgment of this Court in Vineet Narain mandates the creation of a CVC with statutory powers and such CVC, while over-viewing the functioning of the CBI, will also have power to prevent or stop investigation or arrest or launching of frivolous prosecution wherever it considers it appropriate to do so. Learned counsel has further submitted that Vineet Narain did not change substantive law but ordains new safeguards which were not there earlier and they are in addition to and not in derogation of already existing safeguards. Learned counsel has also submitted that what Vineet Narain ordained was part of fair procedure as contemplated by Article 21 of the Constitution and the action of the CBI in submitting charge sheet against the respondent without reporting the matter to CVC has resulted in denial of his right of fair procedure leading to violation of Article 21.

9. Section 482 Cr.P.C. saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The power can therefore be exercised to quash the criminal proceedings. The grounds on which the prosecution

initiated against an accused can be quashed by the High Court in exercise of power conferred by Section 482 Cr.P.C. has been settled by a catena of decisions of this Court rendered in R.P. Kapoor v. State of Punjab AIR 1960 SC 866; Madhu Limaye v. State AIR 1978 SC 47; Delhi Municipality v. Ram Kishan AIR 1983 SC 67; Raj Kapoor v. State AIR 1980 SC 258. The matter was examined in considerable detail in State of Haryana v. Bhajan Lal AIR 1992 SC 604 and after review of practically all the earlier decisions, the Court in para 108 of the Reports laid down the grounds on which power under Section 482 Cr.P.C. can be exercised to quash the criminal proceedings and basically they are (1) where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, (2) where the uncontraverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused, (3) where there is an express legal bar engrafted in any of the provisions of Code of Criminal Procedure or the concerned Act to the institution and continuance of the proceedings. But this power has to be exercised in a rare case and with great circumspection. There are some statutes which create a bar on the power of the Court in taking cognizance of an offence in absence of a sanction by the competent authority like Section 6 of Prevention of Corruption Act, 1947 or Section 19 of Prevention of Corruption Act, 1988. Similar provision is contained in Section 196 Cr.P.C. which mandates that no Court shall take cognizance of the offences enumerated in the Section except with the previous sanction of the Central Government or of the State Government. Section 197 Cr.P.C. also creates an embargo on the power of the Court to take cognizance of an offence alleged to have been committed by any person who is or was a Judge or a Magistrate or a public servant not removable from his office save by or with the sanction of the government. But the proceedings in the present case have not been quashed on any one of the above mentioned grounds. The High Court has not examined the nature of the allegations made in the FIR or the evidence by which the prosecution seeks to establish the charge against the accused during the trial. There is not even a whisper in the impugned order of the High Court that the FIR does not disclose a cognizable offence. Similarly, there is no reference to any statutory bar like want of valid sanction etc. to the taking of the cognizance of the offence. In fact the respondent Prakash Hinduja is not a public servant and consequently no sanction is required from any authority for his prosecution. The only ground on which the High Court has proceeded and has quashed the cognizance taken by the learned Special Judge and all consequential proceedings is that the CBI had filed the charge sheet without placing the same before the CVC and therefore an illegality had been committed in the course of investigation which entitled the High Court to quash the cognizance taken by the Special Judge and all proceedings of the case.

10. The principal question which, therefore, requires consideration is whether the Court can go into the validity or otherwise of the investigation done by the authorities charged with the duty of investigation under the relevant statutes and whether any error or illegality committed during the course of investigation would so vitiate the charge-sheet so as to render the cognizance taken thereon bad and invalid.

11. We will first examine the statutory provisions made in that regard. Section 2(h) Cr.P.C. defines "investigation" and it includes all the proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a

Magistrate in this behalf. It ends with the formation of the opinion as to whether on the material collected, there is a case to place the accused before a Magistrate for trial and if so, taking the necessary steps for the same by filing of a charge-sheet under Section 173 (See State of U.P. v. Bhagwant Kishore Joshi AIR 1964 SC 221 (Para 8) and H.N. Rishbud & Inder Singh v. The State of Delhi 1955 (1) SCR 1150 at 1157). Chapter XII of the Code of Criminal Procedure deals with "Information To The Police And Their Powers To Investigate". Section 154 provides that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Sub-section (1) of Section 156 lays down 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. Sub-section (2) of this Section provides that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. Section 157 lays down that if, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall proceed in person or shall depute one of his subordinate officers to proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender. Sections 160 to 163 deal with the power of the police officer making an investigation under Chapter XII to require the attendance of all witnesses, and their examination. Sections 165 and 166 confer power upon a police officer making investigation to search or cause search to be made. Section 169 authorises a police officer to release a person from custody on his executing a bond, to appear, if and when so required, before a Magistrate in case upon an investigation under Chapter XII it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate. Section 170 empowers the officer in charge of a police station to forward the accused under custody to a competent Magistrate or to take security from the accused for his appearance before the Magistrate in case where the offence is bailable, if after investigation it appears that there is sufficient evidence or reasonable ground for doing so. Section 173 and sub-section (2) thereof is important and it lays down that after the investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government giving details of the matters enumerated in clauses (a) to (g) of this sub-section.

12. Chapter XIV of the Code of Criminal Procedure deals with "Conditions Requisite For Initiation Of Proceedings". Section 190 deals with cognizance of offences by Magistrate and it provides that a Magistrate may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence, (b) upon a police report of such facts, or (c) upon information received from any person other than a police officer or upon his own knowledge, that such offence has been committed.

13. The provisions referred to above occurring in Chapter XII of the Code show that detail and elaborate provisions have been made for securing that an investigation takes place regarding an

offence of which information has been given and the same is done in accordance with the provisions of the Code. The manner and the method of conducting the investigation are left entirely to the officer in charge of the police station or a subordinate officer deputed by him. A Magistrate has no power to interfere with the same. The formation of the opinion whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to a Magistrate or not as contemplated by Sections 169 and 170 is to be that of the officer in charge of the police station and a Magistrate has absolutely no role to play at this stage. Similarly, after completion of the investigation while making a report to the Magistrate under Section 173, the requisite details have to be submitted by the officer in charge of the police station without any kind of interference or direction of a Magistrate and this will include a report regarding the fact whether any offence appears to have been committed and if so, by whom, as provided by clause (d) of sub-section (2)(i) of this Section. These provisions will also be applicable in cases under Prevention of Corruption Act, 1947 by virtue of Section 7A thereof and Prevention of Corruption Act, 1988 by virtue of Section 22 thereof.

14. The Magistrate is no doubt not bound to accept a final report (sometimes called as closer report) submitted by the police and if he feels that the evidence and material collected during investigation justifies prosecution of the accused, he may not accept the final report and take cognizance of the offence and summon the accused but this does not mean that he would be interfering with the investigation as such. He would be doing so in exercise of powers conferred by Section 190 Cr. P.C. The statutory provisions are, therefore, absolutely clear that the Court cannot interfere with the investigation.

15. The question whether the High Court can exercise its inherent powers under Section 561A of Code of Criminal Procedure, 1908, which was similar to Section 482 of 1973 Code, was considered by the Privy Council in Emperor v. Nazir Ahmad AIR 1945 PC 18. It will be useful to reproduce the relevant part of the observations made by Their Lordships as this decision has been approved and has been referred to in several decisions of this Court:

> " In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case when moved under Section 491, Criminal P.C., to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then."

16. In H.N. Rishbud v. The State of Delhi 1955 SCR 1150 the Court was called upon to consider the effect of investigation having been done by a police officer below the rank of a Deputy Superintendent of Police contrary to the mandate of Section 5(4) of Prevention of Corruption Act,

1947. While examining the scheme of Chapter XIV of the Code of Criminal Procedure , 1908 (same as Chapter XII of 1973 Code) it was held that the investigation primarily consists in the ascertainment of the facts and circumstances of the case and by definition it includes "all the proceedings under the Code for the collection of evidence conducted by a police officer." It was further observed that the final step in the investigation viz., the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in charge of the police station. In State of West Bengal v. SN Basak AIR 1963 SC 447 this Court approved the view taken by the Privy Council in Nazir Ahmad (supra) and held as under

> in para 3 of the reports:
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> ".....The powers of investigation into cognizable offences are contained in Chapter XIV of the Code of Criminal Procedure. Section 154 which is in that Chapter deals with information in cognizable offences and Section 156 with investigation into such offences and under these sections the police has the statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and this statutory power of the police to investigate cannot be interfered with by the exercise of power under Section 439 or under the inherent power of the court under Section 561-A of the Criminal Procedure Code."

17. This question was again considered in Abhinandan Jha & Ors. v. Dinesh Mishra AIR 1968 SC 117 and after examining the scheme of the Act and the decision of the Privy Council in Nazir Ahmad (supra) and the earlier decision of this Court in H.N. Rishbud and S.N. Basak (supra) it was held as under:

> "The investigation under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether , on the material covered and collected, a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge sheet or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority."

Vineet Narain has also relied upon this decision.

18. In State of Bihar & Anr. v. JAC Saldanha & Ors. 1980 (1) SCC 554 the same principle was reiterated and was succinctly stated in the following words in para 25 of the report:

> "There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the

> offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173 (8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This had been recognised way back in King Emperor v. Khwaja Nazir Ahmad (AIR 1945 PC 18) where the Privy Council observed as under:
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> " ..... ....."

(Omitted as already quoted in para 15) In para 26 it was observed that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary.

19. Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer in charge of police station in court under Section 173(2) Cr.P.C., this field being exclusively reserved for the investigating agency.

20. An incidental question as to what will be the result of any error or illegality in investigation on the trial of the accused before the Court may also be examined. Section 5-A of the Prevention of Corruption Act, 1947 provided that no police officer below rank of a Deputy Superintendent of Police shall investigate any offence punishable under Section 161, Section 165 and Section 165-A IPC or under Section 5 of the said Act without the order of a Magistrate of the First Class. In H.N. Rishbud (supra) the investigation was entirely completed by an officer of the rank lower than the Deputy Superintendent of Police and after permission was accorded a little or no further investigation was made. The Special Judge quashed the proceedings on the ground that the investigation on the basis of which the accused were being prosecuted was in contravention of the provisions of the Act, but the said order was set aside by the High Court. The appeal preferred by the accused to this Court assailing the judgment of the High Court was dismissed and the following principle was laid down:-

> "The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not

> concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in section 190 of the Code of Criminal Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190 of the Code of Criminal Procedure is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings." The language of this section is in marked contrast with that of the other sections of the group under the same heading, i.e. sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, clauses (a),(b) and (c) of section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (a) or
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> (b) of section 190(1) (whether it is one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial."

The Court after referring to Prabhu v. Emperor AIR 1944 SC 73 and Lumbhardar Zutshi v. The King AIR 1950 PC 26 held that if cognizance is in fact taken on a police report initiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial, which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice and that an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial. This being the legal position, even assuming for the sake of argument that the CBI committed an error or irregularity in submitting the charge sheet without the approval of CVC, the cognizance taken by the learned Special Judge on the basis of such a charge sheet could not be set aside nor further proceedings in pursuance thereof could be quashed. The High Court has clearly erred in setting aside the order of the learned Special Judge taking cognizance of the offence and in quashing further proceedings of the case.

21. The sheet anchor of the plea raised by the accused-respondent for dismissing the charge sheets and revoking the cognizance and the process issued against him is based upon certain directions issued by this Court in Vineet Narain. The High Court has accepted this plea and has quashed the cognizance taken by the learned Special Judge and all consequential proceedings in the case on the ground that the CBI had not placed before the CVC the result of the investigation and had by passed it by filing a charge sheet before the court which in its opinion was a violation of the directions issued by this Court in Vineet Narain. In fact Shri Jethmalani also tried to support the judgment of

the High Court by placing extensive reliance upon the observations made in this case. Shri Rawal, learned Solicitor General has, however, submitted that the High Court has completely misunderstood the judgment and in fact it does not give any kind of a right to an accused to challenge the charge sheet on account of any alleged non-observance or violation of the directions issued regarding the functioning and responsibility of CVC. The contention is that the directions relate to inter-departmental working and the manner in which the power of superintendence has to be exercised by CVC over the working of CBI, the entire object being to insulate the CBI from any kind of external influence or pressure so that it may perform its duty as enjoined in Delhi Special Police Establishment Act (DSPE Act). The question is whether Vineet Narain really meant to lay down as a principle of law that in every case the result of investigation done by CBI had to be placed before the CVC and further before submission of the charge sheet in Court the same was also to be examined by the CVC which was to give some sort of approval or concurrence and if the same was not done, the charge sheet so submitted would be a nullity in the eyes of law or would be of such a nature on which cognizance could not be taken or if the cognizance was taken by the court the same would be illegal and could not form the basis for trial of the accused.

22. In view of the contentions raised it becomes necessary to examine the judgment in Vineet Narain in little detail so as to understand its real content and import. A terrorist belonging to Hizbul Mujahideen organisation was arrested in Delhi on 25.3.1991 and after his interrogation the CBI conducted raids on the premises of SK Jain, his brothers, relatives and businesses. Besides Indian and foreign currency, two diaries and notebooks were seized which contained detailed accounts of vast payments made to certain persons who were identified by initials only which corresponded to high ranking politicians and bureaucrats. The CBI did not investigate the matter of Jains or the contents of their diaries for more than two and a half years. It was in these circumstances that a writ petition was filed under Article 32 of the Constitution by way of a public interest litigation.

23. It will be convenient and useful to reproduce certain parts of the judgment which are as under:-

> "5. The gist of the allegations in the writ petitions is that government agencies like the CBI and the Revenue authorities had failed to perform their duties and legal obligations inasmuch as they had failed to investigate matters arising out of the seizure of the "Jain Diaries"; that the apprehension of terrorists had led to the discovery of financial support to them by clandestine and illegal means using tainted funds obtained through "havala" transactions; that this had also disclosed a nexus between politicians, bureaucrats and criminals, who are recipients of money from unlawful sources, given for unlawful consideration; that the CBI and other government agencies had failed to investigate the matter, take it to its logical conclusion and prosecute all persons who were found to have committed an offence; that this was done with a view to protect the persons involved, who were very influential and powerful; that the matter disclosed a nexus between crime and corruption at high places in public life and it posed a serious threat to the integrity, security and economy of the nation; that probity in public life, the rule of law and the preservation of democracy required that the government agencies be compelled to duly perform their legal obligations and to proceed in accordance with law against

every person involved, irrespective of where he was placed in the political hierarchy. The writ petitions prayed, inter alia, for the following reliefs :

"(a) that the abovesaid offences disclosed by the facts mentioned in the petition be directed to be investigated in accordance with law;

(b) that this Hon'ble Court may be pleased to appoint officers of the police or others in whose integrity, independence and competence this Hon'ble Court has confidence for conducting and/or supervising the said investigation;

(c) that suitable directions be given by this Hon'ble Court and orders issued to ensure that the culprits are dealt with according to law.

* * *

(f) that directions be given so that such evil actions on the part of the investigating agencies and their political superiors are not repeated in future."

24. The Court instead of issuing a writ of mandamus considered it proper to keep the matter pending and the investigation was monitored and in that connection several orders were passed from time to time reference of which has been made in para 7 of the judgment. Para 8 of the judgment shows that the Court came to the conclusion that the CBI and other governmental agencies had not carried out their public duty to investigate the offences disclosed and the investigation was monitored till the point of time when charge sheet was filed and thereafter ordinary process of law was to be followed. In para 9 of the judgment it is mentioned that even after the matter had been brought to the Court complaining of the inertia of the CBI and the other agencies to investigate into the offences because of the alleged involvement of several persons holding high officers in the executive, the disinclination of the agencies to proceed with the investigation was apparent. It is further mentioned that the accusation, if true, revealed a nexus between high ranking politicians and bureaucrats who were alleged to have been funded by a source linked with the source funding the terrorists. Some other paragraphs which have a bearing on the controversy are being reproduced below.

15. Inertia was the common rule whenever the alleged offender was a powerful person. Thus, it became necessary to take measures to ensure permanency in the remedial effect to prevent reversion to inertia of the agencies in such matters.

19. Before we refer to the report of the Independent Review Committee (IRC), it would be appropriate at this stage to refer to the Single Directive issued by the Government which requires prior sanction of the designated authority to initiate the investigation against officers of the Government and the Public Sector Undertakings (PSUs), nationalised banks above a certain level.
.....

42. Once the jurisdiction is conferred on the CBI to investigate an offence by virtue of notification under Section 3 of the Act, the powers of investigation are governed by the statutory provisions and they cannot be estopped or curtailed by any executive instruction issued under Section 4(1) thereof. This result follows from the fact that conferment of jurisdiction is under Section 3 of the Act and exercise of powers of investigation is by virtue of the statutory provisions governing investigation of offences. It is settled that statutory jurisdiction cannot be subject to executive control.

43. There is no similarity between a mere executive order requiring prior permission or sanction for investigation of the offence and the sanction needed under the statute for prosecution. The requirement of sanction for prosecution being provided in the very statute which enacts the offence, the sanction for prosecution is a prerequisite for the court to take cognizance of the offence. In the absence of any statutory requirement of prior permission or sanction for investigation, it cannot be imposed as a condition precedent for initiation of the investigation once jurisdiction is conferred on the CBI to investigate the offence by virtue of the notification under Section 3 of the Act. The word "superintendence" in Section 4(1) of the Act in the context must be construed in a manner consistent with the other provisions of the Act and the general statutory powers of investigation which govern investigation even by the CBI. .....

48. In view of the common perception shared by everyone including the Government of India and the Independent Review Committee (IRC) of the need for insulation of the CBI from extraneous influence of any kind, it is imperative that some action is urgently taken to prevent the continuance of this situation with a view to ensure proper implementation of the rule of law. This is the need of equality guaranteed in the Constitution. The right to equality in a situation like this is that of the Indian polity and not merely of a few individuals. The powers conferred on this Court by the Constitution are ample to remedy this defect and to ensure enforcement of the concept of equality.

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 recent experience in the field of prosecution is also discouraging. .....

58. As a result of the aforesaid discussion, we hereby direct as under :-

> I. CENTRAL BUREAU OF INVESTIGATION (CBI) AND CENTRAL VIGILANCE COMMISSION (CVC)
>
> 1. The Central Vigilance Commission (CVC) shall be given statutory status.
>
> 2. .....
>
> 3. The CVC shall be responsible for the efficient functioning of the CBI. While Government shall remain answerable for the CBI's functioning, to introduce visible objectivity in the mechanism to be established for overviewing the CBI's working, the CVC shall be entrusted with the responsibility of superintendence over the CBI's

functioning. The CBI shall report to the CVC about cases taken up by it for investigation; progress of investigations; cases in which charge-sheets are filed and their progress. The CVC shall review the progress of all cases moved by the CBI for sanction of prosecution of public servants which are pending with the competent authorities, specially those in which sanction has been delayed or refused.

..... ..... IV. PROSECUTION AGENCY

1. .....

2. Every prosecution which results in the discharge or acquittal of the accused must be reviewed by a lawyer on the panel and, on the basis of the opinion given, responsibility should be fixed for dereliction of duty, if any, of the officer concerned. In such cases, strict action should be taken against the officer found guilty of dereliction of duty.

25. The facts and circumstances in which the writ petition was filed, the allegations made and the relief claimed therein would show that the CBI and other Government Agencies had not performed their statutory duty for a very long time to investigate commission of offences as the accused involved were holding high offices. The Single Directive issued by the Government created an embargo on the power of the CBI in registering or investigating cases against officers of the Government, Public Sector Undertakings and Nationalised Banks above a certain level without prior sanction of the designated authority. The proceedings of the case revealed that there was a complete disinclination on the part of the CBI to proceed with investigation of offences against persons holding high offices even after the matter had been brought to Court. The Court came to the conclusion that wherever the alleged offender was a powerful person, the CBI remained a silent spectator and practically took no steps to investigate the matter. After examination of the statutory provisions, the Court came to the conclusion that the Single Directive had the effect of restraining the recording of FIR and initiation of investigation, which could not be issued in exercise of power under Section 4(1) of the DSPE Act as the powers of investigation are governed by statutory provisions. It was therefore considered expedient that the CBI should be insulated from extraneous influence of any kind. The Court also came to the conclusion that in order to establish rule of law, it was necessary that proper investigation is made which is followed by equally proper prosecution. It was in these circumstances that various directions were issued with regard to the functioning of CBI and CVC, Enforcement Directorate, Nodal Agencies and Prosecution Agencies. The entire emphasis in the judgment is that as no one is above the law, the persons holding high offices are not able to escape either on account of inertia or inaction of the CBI to investigate the commission of offence or on account of incomplete or improper investigation or faulty prosecution in Court. A duty has been cast on the CVC to review the progress of all cases moved by the CBI for sanction of prosecution, specially those in which sanction has been delayed or refused. The judgment nowhere says that the CBI will have to take concurrence or sanction from the CVC before filing charge sheet in Court. No right of any kind has been conferred upon the alleged offender or the accused to approach the CVC or to challenge the action of CBI in submission of charge-sheet in Court on the ground of some purported irregularity in making a report to the CVC regarding progress of investigation.

26. The view taken by the High Court that as the CBI submitted the charge-sheet without reporting and taking approval or consent from the CVC, the same was illegal and no cognizance could be taken thereon is, therefore, wholly erroneous and does not at all follow from the judgment.

27. Shri Jethmalani has strenuously urged that as the CVC has been entrusted with the responsibility of superintendence over the CBI's functioning, the CVC can as well direct CBI not to submit a charge sheet in a given case. The accused can bring to the notice of the CVC that either there was not sufficient material or it was not a fit case where prosecution should be launched and if the CVC is satisfied with the plea of the accused, it will have the right to give a direction to the CBI not to submit a charge- sheet against the accused. According to learned counsel the power with the CVC is akin to Section 36 Cr.P.C. which lays down that police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station and, therefore, the CVC has the authority to direct the CBI not to submit charge sheet in a given case just as a Superintendent of Police can give this type of direction to an officer incharge of a police station. We are unable to accept the contention raised. The directions issued cannot be interpreted in abstract but have to be read and understood in the context of the facts and circumstances leading to the filing of the writ petition. The facts which were revealed and were brought to light during the course of hearing showed that the CBI had failed to perform its statutory duty and legal obligation of investigating offences and after completing the investigation taking it to its logical conclusion of launching prosecution against all those who were found to have committed offences. The direction issued never meant to create or confer some kind of additional rights in favour of the accused as held by the High Court. The accused has absolutely no right to approach the CVC for taking any steps to stop the CBI from either proceeding against him or from launching prosecution against him by filing a charge sheet. Further, the directions issued do not confer any kind of a right upon the accused to assail the charge sheet on the ground that the CBI had not reported the progress of investigation to the CVC or had not taken some kind of approval or concurrence from it before submission of the charge sheet in Court.

28. Shri Jethmalani has contended that the directions issued in Vineet Narain have not been complied by the Union of India in as much as the CVC has not been given a statutory status and strict compliance of other directions has also not been made. Seeking analogy from Section 19(2)(c) of Contempt of Courts Act, learned counsel has urged that the appellant Union of India has committed contempt of the order passed by this Court in the case of Vineet Narain and therefore it should not be heard. Learned Solicitor General has controverted this argument by submitting that Central Vigilance Commission Ordinance 15 of 1998 was promulgated on 25.8.1998 and on 27.10.1988 Central Vigilance Commission (Amendment) Ordinance, 1998 was promulgated. Thereafter, CVC Bill 1998 was introduced in the Lok Sabha on 7.12.1998 but the matter was referred to the Standing Committee. On 8.1.1999 CVC Ordinance 4 of 1999 was promulgated to continue the provisions of earlier Ordinances. The Lok Sabha passed CVC Bill 1999 on 15.3.1999 and thereafter it was listed in the Rajya Sabha but could not be taken up. On 4.4.1999 the Government of India Resolution No.371/20/99 - AVD (III) was published in the Gazette to continue the Central Vigilance Commission as the Parliament being in session no fresh Ordinance could be issued and Ordinance No.4 of 1999 was going to expire on 5.4.1999. The Lok Sabha dissolved on 26.4.1999 and

consequently CVC Bill 1999 pending consideration in the Rajya Sabha also lapsed. On 20.12.1999, CVC Bill 1999 was introduced in Lok Sabha which passed the same on 26.2.2003 and on 5.3.2003 notice was sent to Secretary General, Rajya Sabha for consideration of CVC Bill 2003 as passed by the Lok Sabha. These facts show that the appellant has been taking steps to comply with the directions issued in Vineet Narain.

29. Under our constitutional scheme the Parliament exercises sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In Supreme Court Employees' Welfare Association v. Union of India (1989) 4 SCC 187 (para 51) it has been held that no Court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority. This view has been reiterated in State of J&K v. AR Zakki & Ors. AIR 1992 SC 1546. In AK Roy v. Union of India AIR 1982 SC 710 it was held that no mandamus can be issued to enforce an Act which has been passed by the legislature. Therefore, the direction issued regarding conferment of statutory status on CVC cannot be treated to be of such a nature, the non-compliance whereof may amount to contempt of the order passed by this Court.

30. Shri Jethmalani has also referred to some correspondence which ensued between the Embassy of India and Federal Office for Police Matters of the Federal Department of Justice and Police, Bern, Switzerland and has laid emphasis on the following sentence occurring therein - "The requesting authority has examined those documents in detail and has reached at the conclusion that the documents transmitted are unfortunately too limited to sustain a charge sheet against Hinduja brothers and do not correspond to the mission of its request for assistance dated 23.01.1990." Learned counsel has submitted that as the CBI itself was of the opinion that the documents transmitted could not sustain a charge against Hinduja brothers, there was no justification for submitting a charge sheet and the trial would be abuse of the process of the Court. It has been further urged that the evidence sought to be relied upon by the CBI is wholly deficient and can under no case establish any charge against accused-respondent No.1. According to learned counsel the charge sheet has been submitted only on account of political vendetta and to malign the name of the Prime Minister, who was in office at the time when the contract was signed. It may be stated at the very outset that the letter, reliance on which has been placed by Shri Jethmalani, was written by the Federal Office of Police to the Investigating Judge in Switzerland in connection with execution of Letters rogatory in Switzerland. This letter has not been written either by the CBI or by any authority in India. Therefore, it cannot form the basis for assailing any action of the CBI. That apart we are not concerned here with the merits of the allegations and the nature of the evidence which the prosecution would produce in Court to establish the charge as this was not the plea of the accused before the High Court nor the High Court has examined the same. The High Court has proceeded on entirely different grounds for quashing the cognizance taken by the learned Special Judge.

31. In reply to the petition filed by respondent Prakash Hinduja in the High Court, separate counter-affidavits on behalf of CBI and CVC were filed. In the counter-affidavit filed by CBI in para 5

the details of the Ordinances issued are given and it is stated that the Bill is pending before the Parliament and consequently no statutory power of superintendence had as yet been conferred upon the CVC and its role in relation to investigation of offences under the Prevention of Corruption Act was governed by the Government Resolution dated 4.4.1999 which was issued as the Ordinance was going to lapse. The Resolution provided that CVC shall have the power to inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant above a particular level has committed an offence under the Prevention of Corruption Act and to review the progress of applications pending with the competent authorities for sanction of prosecution under the aforesaid Act. The CVC shall exercise superintendence over the vigilance, administration of various Ministries of the Central Government or Corporations established by or under any Central Act and shall tender advice to them. In para 7 of the counter-affidavit it is stated that under the existing administrative directions the CBI has a practice of reporting to the CVC all developments in cases involving public servants. Accordingly, well before filing of the first charge sheet, an investigation report was sent to the CVC and the CVC was apprised of the developments in the case. It is further stated that the name of G.P. Hinduja is mentioned in the FIR itself and since in the first charge sheet it was mentioned that further investigations are being carried out to unearth the full details of the commission paid by Bofors and the papers received in December 1999 revealed with sufficient particularity receipt of commissions by Hinduja brothers, a supplementary charge sheet was filed against them. The counter-affidavit on behalf of the CVC was filed by Shri RK Bajaj, Director in the Central Vigilance Commission. In para 3 of the affidavit it is categorically stated that the statements made in the counter-affidavit filed by CBI as to the presentation of the investigation report to the CVC are correct. It is further stated that CVC has no role in filing of the charge sheets and the conduct of cases as pleaded by the accused and the directions of the Supreme Court in Vineet Narain only require the CVC to function in a supervisory character. Investigation of cases, filing of charge sheets and then prosecution of such cases are essentially for the CBI, the duty of the CVC being to ensure that the CBI discharges its duties without any interference and without undue favour to any person. In para 7 it is stated that the CVC holds review meetings with the CBI to review the progress of cases and the meetings are held on monthly basis and in this manner the CVC is discharging its duties under the Government Resolution dated 4.4.1999 as well as the directions of this Court. It is also specifically stated that the registration of cases and its investigation is primarily the duty of CBI and filing of charge sheet does not in any manner require any approval of the CVC. The averments made in these affidavits clearly show that the investigation report was sent to the CVC by the CBI before filing of the first charge sheet and the CVC was also apprised of the developments in the case. As mentioned earlier, in para 62 of the first charge sheet, it was clearly mentioned that the investigation regarding further transfer of the funds routed through various countries was continuing and investigation regarding the role played by three Hinduja brothers was also continuing. On account of the fact that CVC Bill could not be passed by the Rajya Sabha, the functioning of the CVC was being regulated by the Government Resolution dated 4.4.1999 and this nowhere provided for taking any concurrence or approval from the CVC before filing of the charge sheet. The CVC having filed an affidavit stating that investigation report had been submitted to it by the CBI and that it had no role in the filing of the charge-sheet and the conduct of the cases, the plea raised by the accused fell to the ground and the petition filed by him ought to have been dismissed straight away. The High Court committed serious error in not giving due consideration to the counter affidavits filed by the CBI and CVC and especially to the fact that

on account of non-passing of the CVC Bill by the Rajya Sabha and lapsing of the Ordinance, the duties and functions of the CVC are to be performed in accordance with the Government of India Resolution dated 5.4.1999, which nowhere provided for taking any kind of a concurrence or approval from the CVC before submission of the charge sheet.

32. In para 31 of the judgment, the High Court has placed reliance on Gokul Chand Dwarka Das Morarka v. King AIR 1948 PC 82. But here the conviction was set aside as the sanction granted to prosecute the accused, which was a requirement of the statute, was found to be invalid. As discussed earlier there is no requirement of any sanction by the CVC either under any statute or even under the directions of Vineet Narain and, therefore, the ratio of this case can have no application at all. In para 34 of the judgment the High Court has placed reliance on Prabhu Dayal Deorah v. District Magistrate AIR 1974 SC 183, wherein the detention order passed under Maintenance of Internal Security Act was set aside on the finding that one of the grounds communicated to detenu was vague. We fail to understand how the principle laid down in a case where challenge is made to preventive detention can have any application whatsoever to the case in hand.

33. With respect we find the High Court judgment to be quite confusing and self contradictory. In para 18(c) it is observed that "there is no requirement to seek clearance before charge sheets are filed" and in para 19 it is said that "the only requirement in this regard is of reporting and the role of the CVC on this would be to give its comments in its annual report." In para 20 it is said that "the direct power of review granted to the CVC is only of pending applications for sanction" and "the CVC is not cast with the role of reviewing as such the steps taken in the course of investigation and thereafter." In para 21 it is said that "the duty to report of the steps taken in the course of investigation is not and cannot be equated with the duty to obtain prior approval or consent of any other authority to these steps." Again in para 24 it is said that "the contention of the petitioner that a breach of these directions would render the action of the CBI void since the directions are to be rigidly complied with is equally misconceived." It is further said that "even the rigid compliance with these directions cannot go beyond the CVC over-viewing CBI's working and the CBI's reporting to the CVC."

34. The High Court having arrived at the aforesaid findings, the only result which could logically follow was to dismiss the petition. There was absolutely no occasion for allowing the same and quashing the cognizance and further proceedings in the case.

35. In view of the discussion made above the appeals are allowed and the judgment and order dated 10.6.2002 of the High Court is set aside. The learned Special Judge shall proceed with the trial of the case. While framing the charge he shall carefully scrutinise the material on record and other circumstances of the case in accordance with law.