C.B.I., A.H.D., Patna vs Braj Bhushan Prasad & Ors on 5 October, 2001

Equivalent citations: AIR 2001 SUPREME COURT 4014, 2001 (9) SCC 432, 2001 AIR SCW 3998, 2001 AIR - JHAR. H. C. R. 499, 2001 (6) SCALE 641, 2001 (4) LRI 19, 2002 SCC(CRI) 576, 2001 (10) SRJ 184, (2001) 8 JT 348 (SC), (2001) 3 BLJ 764, (2001) 3 EASTCRIC 174, (2001) 4 PAT LJR 107, (2001) 4 RECCRIR 482, (2001) 5 SCJ 290, (2001) 4 CURCRIR 159, (2001) 7 SUPREME 413, (2001) 3 ALLCRIR 2681, (2001) 6 SCALE 641, (2001) 2 UC 686, (2001) 43 ALLCRIC 1026, (2001) 4 ALLCRILR 315, (2001) 4 CRIMES 69

Bench: K.T. Thomas, Syed Shah Mohammed Quadri, U.C. Banerjee

CASE NO.:
Appeal (crl.) 1009-1010 of 2001
Appeal (crl.) 1013-1014 of 2001

PETITIONER:
C.B.I., A.H.D., PATNA

Vs.

RESPONDENT:
BRAJ BHUSHAN PRASAD & ORS.

DATE OF JUDGMENT: 05/10/2001

BENCH:
K.T. Thomas, Syed Shah Mohammed Quadri & U.C. Banerjee

JUDGMENT:

THOMAS, J.

Leave granted.

The question is short but the range of consideration got widened much. Answer to the question may be of advantage to some accused and disadvantage to some other accused who are involved in a large number of criminal cases which are compendiously styled with the sobriquet Bihar Fodder Scam Cases. These cases related to a series of orchestrated fraudulent acts by which a staggeringly huge amount of public money was plundered or looted after creating fake bills and other false

documents for the said purpose, with the active participation or connivance of several high ups in the administration of the State. Though it is unnecessary now to mention the whopping sum so plundered in each case, we are told that the aggregate of them exceeds Rs.720 crores. The persons arraigned in the cases include men who held high offices, besides the two former Chief Ministers of Bihar (Lalu Prasad Yadav and Dr. Jagannath Mishra).

The above indicated question winched to the fore on the midnight of 15th November, 2000, when the erstwhile State of Bihar got itself bifurcated into two States by the Act of Parliament called The Bihar Reorganisation Act, 2000 (for short the Act). One region of it became a new State called Jharkhand while the remaining region became the present State of Bihar.

We are told that 64 cases have been registered relating to fodder scam. All the cases were directed to be investigated by the Central Bureau of Investigation (CBI for short) pursuant to an order passed by the High Court of Patna which was affirmed by this Court, with some modifications as per the judgment in State of Bihar and anr. vs. Ranchi Zila Samta party and anr. {1996 (3) SCC 682}. It is not disputed that 52 cases, out of the above, involve withdrawal of huge sums of money from the government treasuries situated in the territories now falling within Jharkhand State. Out of those 52 cases, charge-sheets have been filed by the CBI before the appointed day i.e. 15.11.2000 in 36 cases before the Special Court situated at Patna. These appeals relate to those 36 cases.

It was submitted on behalf of the CBI that those 36 cases stood transferred to the State of Jharkhand soon after the midnight of 15.11.2000. That claim of the CBI was resisted by some of the accused in those cases (including Lalu Prasad Yadav and Dr. Jagannath Mishra) who contended that none of those cases has been transferred. Thus the simple question is whether all or any of those cases stood transferred to the courts situated in the State of Jharkhand on the midnight when the new State was born.

A Full Bench of three Judges of the Patna High Court considered the question. By the impugned judgment the learned Judges of the Full Bench of the High Court took the view that none of the 36 cases has been transferred to Jharkhand State, though one of the learned Judges of the Full Bench held that 23 cases (out of the said 36 cases) should have gone over to Jharkhand State. Thus the High Court discountenanced the claim of the CBI regarding the 36 cases as per the impugned judgment.

It is admitted by both sides that the transfer of cases as a sequel to the bifurcation of the erstwhile State of Bihar is the result of the operation of a statutory provision incorporated in the Act. Section 89 of the said Act reads thus:

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

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

(3) In this section-

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

(b) corresponding court, tribunal, authority or officer' in the State of Jharkhand means-

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

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

Before the appointed day (i.e. 15.11.2000) the erstwhile State of Bihar comprised of all the territories now included in the State of Jharkhand as well as the territories retained with the present State of Bihar. Jharkhand State is comprised mainly of three regions- (1) North Chhotanagpur (2) South Chhotanagpur (3) Santhal Pargana.

Government treasuries situated at Dhanbad, Ranchi and Chaibasa were all located within Jharkhand area. The city of Patna which was the capital of the undivided State of Bihar falls within the region of the present State of Bihar. Patna is now the capital of the present State of Bihar. The above informations are useful for appreciating the rival contentions.

It is admitted by both sides that in all the 36 cases (involved here) the allegations pertained to the withdrawal of crores of rupees made from the treasuries located in the territories of Jharkhand area. Long before the division of the State of Bihar courts were established for the trial of offences under the Prevention of Corruption Act, 1988 (for short the PC Act). As per the notification issued by the Government of Bihar on 19.4.1994, three courts of Special Judges were created; one at Dhanbad, the second at Ranchi and the third at Patna. The court so created at Dhanbad was conferred with the jurisdiction over all areas under

the division of North Chhotanagpur. The court so created at Ranchi was given jurisdiction over all areas under the division of South Chhotanagpur. The court so created at Patna was given the jurisdiction over the remaining regions.

Another court of Special Judge was established at Patna by notification issued by the Government on 22.5.1996, as per which jurisdiction was given over all Patna areas

> barring north and south of Chhotanagpur. This means, there were two courts at Patna having territorial jurisdiction over the same areas. Yet another court of Special Judge was established at Patna itself by notification issued on 5.6.96. This court was conferred with the territorial jurisdiction over the entire area of the State of Bihar.

The court of Special Judge created by notification dated 5.6.1996 could thus exercise jurisdiction over the entire undivided State of Bihar at a time when a court created earlier (as per notification of 19.4.1994) could have exercised jurisdiction in the two regions which fell within Jharkhand area. In other words, the last created court was invested with the concurrent jurisdiction vis-à- vis the jurisdiction exercisable by all other courts. This last notification probably would have created problems for the investigating agencies for determining which of the courts to be chosen for filing charge-sheets under Section 4(2) of the PC Act, (where there are more Special Judges than one for such area the offences shall be tried by the Special Judge as specified in this behalf by the Central Government). But no such notification was issued by the Central Government.

It was in the above situation that the Registrar of the High Court sent a letter to the District and Sessions Judge, Patna on 13.6.1996 directing him to inform the Special Judge appointed as per the notification of 5.6.1996 to deal with all the cases pertaining to the Animal Husbandry Scam (same as Fodder Scam) without any restrictions of the area. The legal validity of the said letter of the Registrar was doubted by the Full Bench of the High Court in the impugned judgment. That letter was assailed before us also on the premise that only the Central Government has the power to specify, which out of the two courts, can try any particular class of cases. This is so provided in Section 4(2) of the PC Act.

Be that as it may, we would decide the present dispute de hors the validity or otherwise of the said letter.

It is not disputed before us that the courts of the Special Judges situated within Jharkhand area have jurisdiction to try all the 36 cases now involved. The High Court, as per the impugned judgment, considered the question whether the court at Patna also has the jurisdiction to try them. Various acts alleged against different accused in such cases were highlighted and it was found that the Special Court at Patna also had the jurisdiction to try the offence in view of Section 179 and Section 180 of the Code of Criminal Procedure (for short the Code). The former section enables that the offence involved may be enquired into or tried by a court within whose local jurisdiction such offence had been done or the consequence has ensued. Under the latter section offences can be enquired into or tried by a court within whose local jurisdiction either the main act was done or other acts related to the main act were done. Taking cue from those provisions learned Judges of the High Court found that since the jurisdiction of the court at Patna was not completely excluded (by virtue of certain allied acts having been done at Patna) those proceedings cannot be held to be exclusively relating to the Jharkhand State, and therefore the cases could remain in the present State of Bihar.

Shri Harish N. Salve, learned Solicitor General of India, who argued for the CBI submitted that the entire approach made by the High Court in the impugned judgment is fallacious because the

question whether the courts at Patna also had jurisdiction from the angle of Section 179 or Section 180 of the Code, is outside the purview of Section 89 of the Act. Learned Solicitor General submitted that the question has to be determined by reference to Section 4(2) of the PC Act and not any provision of the Cr.P.C. According to him, the test is this: If the same acts were committed after the appointed day and cases have to be instituted, would they have been filed in the courts situated within Jharkhand State. If the result of the above test is positive the operation of the statutory provisions of the Act would only have resulted in the present cases having been transferred to the State of Jharkhand on the appointed day, according to Shri Harish N. Salve.

Shri Anoop Choudhary, learned senior counsel (appearing for one of the respondents - accused in the criminal cases) while supporting the arguments of the Solicitor General further submitted that the legal concept of cause of action was not envisaged in Section 89 of the Act and as such the High Court fell into error by countenancing some of the acts having been done at Patna for the purpose of deciding that cause of action would have arisen in that place also. Shri Sushil Kumar, learned senior counsel appearing for another respondent - accused supported the contentions of the learned Solicitor General.

Shri Kapil Sibal, learned senior counsel who argued for Lalu Prasad Yadav, contended, inter alia, that the only test is whether the proceedings sought to be transferred related exclusively to the territory falling within the Jharkhand State and on the facts it cannot be said, by any stretch of imagination, that the cases related exclusively to that territory, in view of the acts narrated in the charge-sheets submitted in R.C. 20A, R.C.30 A and R.C. 64A. He also submitted that the principle enunciated in Sections 178 to 180 of the Code can be applied and the criminal misconduct alleged against Lalu Prasad Yadav cannot then be said to relate exclusively to the Jharkhand State. He pointed out that even according to the admitted position the acts done by the public servants located in Patna as well as in Jharkhand area have resulted in the commission of offences and consequently the test of exclusivity envisaged in Section 89 of the Act cannot absolve the courts in Patna from jurisdiction to try the cases involved in these appeals.

Shri P.S. Mishra, learned senior counsel appearing for Dr. Jagannath Mishra, pointed out that the very fact that CBI laid the charge-sheets in the Patna court was on account of the position that the courts at Patna had jurisdiction to try the case. He also submitted that the question of jurisdiction must be considered in view of Sections 179 and 180 of the Code and that the word exclusively in Section 89 of the Act cannot have a meaning other than to the exclusion of all others. Shri Ajit Kumar Sinha, learned counsel arguing for some other respondents, adopted the same contentions which has been put forward by the two senior counsel mentioned above.

Section 89 of the Act deals with what should have happened on the appointed day i.e. 15.11.2000 in respect of every proceeding relating exclusively to the territory of Jharkhand State. Every such proceedings shall stand transferred to the corresponding court, tribunal, authority or officer of Jharkhand State. Here the words relating exclusively to the territory of Jharkhand State are the decisive words. What is meant by the word exclusively in this context, has now to be determined.

In Blacks Law Dictionary, the word exclusively is shown to have multiple nuances or shades of meanings such as only or solely or substantially all or for the greater part. It also means to the exclusion of all others. Learned counsel who propounded the view in favour of the theory that the cases stood transferred to Jharkhand State submitted that among the above different meanings the word should be understood only as substantially all or for the greater part because that is the most befitting to this context. Learned counsel on the other side submitted that the meaning of the said word cannot be anything other than to the exclusion of all others.

The lexicographer of Blacks Law Dictionary has referred to the phrase exclusively used and quoted from Salvation Army v. Hoehn (Mo., 354, Mo.107, 188 SW 2d 826) as follows:

> The phrase in provision exempting from taxation properties exclusively used for religious worship, for schools or for purposes purely charitable, has reference to primary and inherent as over against a mere secondary and incidental use.
>
> Learned Solicitor General invited our attention to the observations made by Devancy, J. of the Minnesota Supreme Court, in Anoka County v. City of St. Paul (1999 American Law Reports 1137). In that case learned Judges were dealing with Article 9 Section 1 of the Minnesota Constitution which exempted public property used exclusively for any public purpose from taxation. It was argued that since the city was in part, at least engaging in a private business, the land upon which the water works were located were not used exclusively for a public purpose and hence the entire water works should be taxed. The said argument was repelled by the following words:
>
> We do not agree. The word exclusively as here used means substantially all or for the greater part. This word must be a given a practical construction.
>
> We may point out that the aforesaid observation has been profitably used by the editors of Corpus Juris Secundum (vide Page 113 of Volume 33). In Words and Phrases an extract from American Management Association vs. Assessors of Town of Madison (406 NYS 583) has been reproduced thus:
>
> Term exclusively, as used in provision of Real Property Tax Law exempting from taxation real property owned by a corporation organized or conducted exclusively for educational purposes and used exclusively for such purpose, means primarily.
>
> Yet another extract from Klamath Irrigation Dist. v. Employment Division (534 P.2d 190) has also been quoted like this:
>
> Word exclusively within statutory provision defining agricultural labor exempt from payment of unemployment compensation taxes as including all services performed in connection with operation or maintenance of ditches, canals, reservoirs or waterways not owned or operated for profit used exclusively for supplying and storing water for farming purposes, operates to relieve an irrigation district of its burden of paying tax

> if none of its water is sold for a profit and if organization is devoted primarily or principally or in large part to delivering water for farm purposes, and if nonfarm purposes to which water is put are not substantial.
>
> We pointed out the above different shades of meanings in order to determine as to which among them has to be chosen for interpreting the said word falling in Section 89 of the Act. The doctrine of Noscitur a sociis (meaning of a word should be known from its accompanying or associating words) has much relevance in understanding the imports of words in a statutory provision. The said doctrine has been resorted to with advantage by this Court in a number of cases vide Bangalore Water Supply & Sewerage Board vs. A Rajappa {1978 (2) SCC 213}, Rohit Pulp and Paper Mills Ltd.

vs. CCE {1990 (3) SCC 447}, Oswal Agro Mills Ltd. vs. CCE {1993 Supp.(3) SCC 716, K. Bhagirathi G. Shenoy & ors. vs. K.P. Ballakuraya & anr. {1999 (4) SCC 135}, Lokmat Newspapers (P) Ltd. vs. Shankarprasad {1999 (6) SCC 275}.

If so, we have to gauge the implication of the words proceeding relating exclusively to the territory from the surrounding context. Section 89 of the Act says that proceeding pending prior to the appointed day before a court (other than the High Court), tribunal, authority or officer shall stand transferred to the corresponding court, tribunal, authority or officer of the Jharkhand State. A very useful index is provided in the section by defining the words corresponding court, tribunal, authority or officer in the State of Jharkhand as this:

> The court, tribunal, authority or officer in which or before whom the proceeding would have laid if it had been instituted after the appointed day.
>
> Look at the words would have laid if it had been instituted after the appointed day. In considering the question as to where the proceeding relating to the 36 cases involved in these appeals would have laid, had they been instituted after the appointed day, we have absolutely no doubt that the meaning of the word exclusively should be understood as substantially all or for the greater part or principally.
>
> We cannot overlook the main object of Section 89 of the Act. It must not be forgotten that transfer of criminal cases is not the only subject covered by the section. The provision seeks to allocate the files or records relating to all proceedings, after the bifurcation if they were to be instituted after the appointed day. Any interpretation should be one which achieves that object and not that which might create confusion or perplexity or even bewilderment to the officers of the respective States. In other words, the interpretation should be made with pragmatism, not pedantically or in a stilted manner. For the purpose of criminal cases, we should bear in mind the subject matter of the case to be transferred. When so considering, we have to take into account further that all the 36 cases are primarily for the offences under the PC Act and hence they are all triable before the courts of Special Judges. Hence, the present question can be determined by reference to the provisions of PC Act.

The charge-sheets in all these cases were filed in the court of the Special Judge at Patna when the State of Bihar remained undivided prior to 15.11.2000. By the notification dated 5.6.1996 (supra) that court was conferred with the territorial jurisdiction to try all cases falling under the PC Act. Added to it when the Registrar of the High Court of Patna directed (rightly or wrongly) the District and Sessions Judge to see that all cases relating to Animal Husbandry Scam (same as Bihar Fodder Scam cases) should be filed in that court, the CBI had no option in the matter except to file all those cases before the court at Patna. There is no dispute that on 15.11.2000 the court at Patna was divested of its jurisdiction over the territories falling within the Jharkhand State.

Section 4 of the PC Act relates to the jurisdiction of the court for trial of offences under that Act. The first sub-section of Section 4 declares that notwithstanding anything contained in the Code or in any other law, the offences punishable under the PC Act can be tried only by the Special Judge, appointed under Section 3(1) of the PC Act. Now sub-section (2) of Section 4 is the important provision and it is extracted below:

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

Thus, the only court which has jurisdiction to try the offences under the PC Act is the court of Special Judge appointed for the areas within which such offences were committed. When such an offence is being tried sub-section (3) enables the same Special Judge to try any other offence which could as well be charged against that accused in the same trial. So the pivot of the matter is to determine the area within which the offence was committed.

For that purpose it is useful to look at Section 3(1) of the PC Act. It empowers the Government to appoint Special Judge to try two categories of offences. The first is, any offence punishable under this Act and the second is, any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in the first category. So when a court has jurisdiction to try the offence punishable under the PC Act on the basis of the place where such offence was committed, the allied offences such as conspiracy, attempt or abetment to commit that offence are only to be linked with the main offence. When the main offence is committed and is required to be tried it is rather inconceivable that jurisdiction of the court will be determined on the basis of where the conspiracy or attempt or abetment of such main offence was committed. It is only when the main offence was not committed, but only the conspiracy to commit that offence or the attempt or the abetment of it alone was committed, then the question would arise whether the court of the Special Judge within whose area such conspiracy etc. was committed could try the case. For our purpose it is unnecessary to consider that aspect because the charges proceed on the assumption that the main offence was

committed.

What is the main offence in the charges involved in all these 36 cases? It is undisputed that the main offence is under Section 13(1)(c) and also Section 13(1)(d) of the PC Act. The first among them is described thus:

> A public servant is said to commit the offence of criminal misconduct,-
>
> (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so.

The next offence is described like this:

> A public servant is said to commit the offence of criminal misconduct,-
>
> (d) if he,-
>
> (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
>
> (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
>
> (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

We have no doubt in our mind that the hub of the act envisaged in first of those two offences is dishonestly or fraudulently misappropriates. Similarly the hinge of the act envisaged in the second section is obtains for himself or for any other person, any valuable thing or pecuniary advantage by corrupt or illegal means.

The above acts were completed in the present cases when the money has gone out of the public treasuries and reached the hands of any one of the persons involved. Hence, so far as the offences under Section 13(1)(c) and Section 13(1)(d) are concerned the place where the offences were committed could easily be identified as the place where the treasury concerned was situated. It is an undisputed fact that in all these cases the treasuries were situated within the territories of Jharkhand State.

Thus, when it is certain where exactly the offence under Section 13 of the PC Act was committed it is an unnecessary exercise to ponder over the other areas wherein certain allied activities, such as conspiracy or preparation, or even the prefatory or incidental acts were done, including the consequences ensued.

In this context it is useful to refer to Section 181 of the Code which falls within Chapter XIII, comprising of provisions regarding jurisdiction of the criminal courts in inquiries and trials. Section 181 pertains to place of trial in case of certain offences. Sub-section (4) thereof deals with the jurisdiction of the courts if the offence committed is either criminal misappropriation or criminal breach of trust. At least four different courts have been envisaged by the sub-section having jurisdiction for trial of the said offence and any one of which can be chosen. They are: (1) the court within whose local jurisdiction the offence was committed; (2) the court within whose local jurisdiction any part of the property which is the subject of the offence was received; (3) the court within whose local jurisdiction any part of the property which is the subject of the offence was retained; and (4) the court within whose local jurisdiction any part of the property which is subject of the offence was required to be returned or accounted for, by the accused.

Now, observe the distinction between Section 181(4) of the Code and Section 4(2) of the PC Act. When the former provision envisaged at least four courts having jurisdiction to try a case involving misappropriation the latter provision of the PC Act has restricted it to one court i.e. the Court of the Special Judge for the area within which the offence was committed. No other court is envisaged for trial of that offence. We pointed out above that when the charge contains the offence or offences punishable under the PC Act as well as the offence of conspiracy to commit or attempt to commit or any abetment of any such offence, the court within whose local jurisdiction the main offence was committed alone has jurisdiction.

Shri Kapil Sibal, learned senior counsel contended that Section 4(2) of the PC Act does not override the provisions of the Code regarding jurisdiction because among the four sub-sections included in Section 4 of the said Act, only first and the last sub-sections are tagged with the non obstante words notwithstanding anything contained in the Code of Criminal Procedure. In his submission the fact that sub-section (2) is freed from the non obstante words would indicate that the provisions of the Code can as well be read with that sub-section. In that context learned Senior Counsel invited our attention to Section 178 to 180 of the Code, showing that different courts having domain over different local areas have concurrent jurisdiction to inquire into or try the offences and hence the trial is permissible in any one of them.

Absence of a non obstante clause linked with Section 4(2) of the PC Act does not lead to a conclusion that the sub-section is subject to the provisions of the Code. A reading of Section 4(2) of the Code (not PC Act) gives the definite indication that the legal position is the other way round. Section 4 of the Code is regarding trial of offences under the Indian Penal Code and other laws. Sub- section (1) of it relates only to offences under the Indian Penal Code. Sub-section (2) relates to all offences under any other law. It is useful to read the said sub-section at this stage:

> All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

> Thus, if the PC Act has stipulated any place for trial of the offence under that Act the provisions of the Code would stand displaced to that extent in regard to the place of trial. We have, therefore, no doubt that when the offence is under Section 13(1)(c) or Section 13(1)(d) of the PC Act the sole determinative factor regarding the court having jurisdiction is the place where the offence was committed.
>
> A decision of the Kerala High Court, among the various decisions cited before us, has been relied upon by both sides highlighting the observations therein. In Banwarilal Jhunjhunwalla and ors. vs. Union of India (AIR 1959 Kerala
>
> 311) P.T. Raman Nayar, J. (as the learned Chief Justice then was) had to consider the question of jurisdiction of a court regarding the offence under Section 5(2) of the PC Act of 1947 in junction with a few other penal code offences. The facts in that case were that two accused entered into contracts at New Delhi for the supply of timber for the Central Railways Administration. But the consignees of the timber were at Bombay, Hyderabad and Jhansi. For the supply of timber, bills were passed and payments were made at New Delhi as per cheques which were encashed at Bombay. But the supply of low quality of timber was made within the State of Kerala. Certificate for good quality of such timber was issued at different places situated in the State of Kerala by one Thomson, Inspecting Officer of the Railway Board, Bombay. The said officer, along with other accused were prosecuted before the court of a Special Judge at Kerala for the above-mentioned offences. The main accused - Thomson - raised the question regarding jurisdiction of that court situated at Kerala.

Learned Judge held that taking the first offence under Section 5(2) of the PC Act, alleged to have been committed by Thomson, there can be little doubt that it was committed within the State of Kerala where he passed inferior jungle wood as timber of the contract quality and issued false certificates to that effect.

It was argued before the learned Judge that the conspiracy took place outside the State of Kerala and hence Section 180 of the Code would apply. Repelling the said contention learned Judge said thus:

> The application of S.180, Criminal Procedure Code is even more certain. A conspiracy like an abetment is not an act which is inherently an offence. It is its relation to the other act which is its object that makes it an offence. Taking this particular case, it is by reason of the relation of the conspiracy to the act contemplated, namely, the commission of an offence under S.5(2) of the Prevention of Corruption Act, that makes the conspiracy an offence; and that is so whether that other act is done or not. For one act to be related to another it is enough if that other act is in contemplation, it is not necessary that it should be actually committed.
>
> The said decision relied on by both sides would thus support the proposition that the place of jurisdiction would be determinative by reference to the place where the main offence was committed. The fact that other allied acts were committed at different

places would be hardly sufficient to change the venue of the trial to such other places.

Shri Kapil Sibal, learned senior counsel cited the decisions in Dhaneshwar Narain Saxena vs. The Delhi Administration {1962 (3) SCR 259}, M. Narayanan Nambiar vs. State of Kerala {1963 Supple.(2) SCR 724}, The State of Gujarat vs. Manshankar Prabhashankar Dwivedi {1972 (2) SCC 392}, Major S.K. Kale vs. State of Maharashtra {1977 (2) SCC 394} and Union of India vs. Maj. I.C. Lala etc. etc. {1973 (2) SCC 72}. In all these decisions the consideration was focussed on the different ingredients needed for constituting the offence. But in none of those cases a question dealing with the situation like the present one had to be considered. In K. Bhaskaran vs. Sankaran Vaidhyan Balan and anr., {1999 (7) SCC 510} (cited by the learned senior counsel) the question considered was whether a particular court has jurisdiction to try the offence under Section 138 of the Negotiable Instruments Act. That decision also is not of any help in reaching an answer to the crucial question involved in these appeals.

Shri P.S. Mishra, learned senior counsel cited the decisions in Purushottamdas Dalmia vs. The State of West Bengal {1962 (2) SCR 101} and L.N. Mukherjee vs. The State of Madras {1962 (2) SCR 116}. In the former it was held that the court which has jurisdiction to try the offence of conspiracy could also deal with the overt acts done pursuant to the conspiracy. The latter decision is concerned with the converse position. In the light of the discussions made above it is immaterial whether such other court would also have jurisdiction in the circumstances of those cases.

Shri P.S. Mishra, learned senior counsel invited our attention to the decision of this Court in Banwari lal Jhunjhunwala and ors. vs. Union of India and anr. {1963 Supple.(2) SCR 338}. We may point out that this is the same case in which the Kerala High Court had decided the question of jurisdiction in the decisions cited supra. When an offshoot of the said case reached this Court the question focussed here was whether different bills created for the purpose of cheating would have been treated as relating to distinct offences warranting separate charges to be framed. We do not find any aid from the said decision for the question involved in the present cases.

We are now coming to the final conclusion. In our considered view all the 36 cases involved in these appeals stood transferred to the corresponding courts situated within the territories of the Jharkhand State on the appointed day (i.e. 15.11.2000) by the operation of Section 89 of the Act. We therefore, direct the Registrar of the High Court of Patna to instruct the officers concerned for despatching the records of all these 36 cases, to the corresponding courts at Jharkhand State forthwith. We also direct the Registrar of the High Court of Jharkhand to do whatever is needed for reaching such records in the appropriate courts.

To avoid the confusion and repetition of the exercise, we make it clear that the evidence already recorded in any of the 36 cases will be treated as evidence recorded by the proper court having

jurisdiction. In other words, the Special Judge need not call the witnesses already examined over again for repetition of what has already come on record.

The impugned judgments are set aside and the appeals are disposed of accordingly.

J [K.T. Thomas] J [Syed Shah Mohammed Quadri] J [U.C. Banerjee] October 5, 2001.