Asian Resurfacing Of Road Agency P. Ltd. vs Central Bureau Of Investigation on 28 March, 2018

Equivalent citations: AIR 2018 SUPREME COURT 2039, 2018 (16) SCC 299, AIR 2018 SC (CRIMINAL) 663, (2017) 4 CIVILCOURTC 171, (2017) 5 ANDHLD 219, (2018) 1 ICC 620, (2018) 187 ALLINDCAS 38 (SC), (2018) 104 ALLCRIC 238, (2018) 187 ALLINDCAS 38, (2018) 248 DLT 244, (2018) 2 BOMCR(CRI) 770, (2018) 2 CGLJ 9, (2018) 2 CRILR(RAJ) 405, (2018) 2 CRIMES 225, (2018) 2 CURCC 159, (2018) 2 CURCRIR 55, (2018) 2 JLJR 320, (2018) 2 KANT LJ 610, (2018) 2 KER LT 158, (2018) 2 PAT LJR 329, (2018) 2 RECCIVR 404, (2018) 2 RECCRIR 415, 2018 (4) KCCR SN 375 (SC), (2018) 5 SCALE 269, (2018) 70 OCR 531, 2018 CRILR(SC MAH GUJ) 405, 2018 CRILR(SC&MP) 405, (2019) 8 ADJ 627 (SC), 2020 (1) SCC (CRI) 686, AIR 2018 SC(CRI) 663

Author: Adarsh Kumar Goel

Bench: Adarsh Kumar Goel, Rohinton Fali Nariman

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1375-1376 OF 2013

ASIAN RESURFACING OF ROAD AGENCY
PVT. LTD. & ANR. …Appellants

VERSUS

CENTRAL BURUEAU OF INVESTIVATION …Respondent

WITH

Criminal Appeal Nos.1383/2013, 1377/2013, 1382/2013, 1394/2013, 1384/2013, 1393/2013, 1386-1387/2013, 1385/2013, 1406/2013, 1396/2013, 1395/2013, 1391/2013, 1389/2013, 1388/2013, 1398/2013, 1397/2013, Special Leave Petition (Crl.) No.2610/2013, Criminal Appeal Nos. 1390/2013, 1399/2013, 1402/2013, 1400/2013, 1401/2013, 1404/2013, 1403/2013, 1405/2013, Special Leave Petition (Crl.) Nos. 6835/2013, 6834/2013, 6837/2013, Criminal Appeal No.388/2014, Special Leave Petition (Crl.) Nos.10050-10051/2013, 9652-9653/2013, Criminal Appeal No. 234/2014, Special Leave Petition (Crl.) Nos.

5678/2014, 1451/2014, 1399/2014, 2508/2014, 2970/2014, 2507/2014, 2939/2014, 2977/2014, 4709/2014, 6372/2014, 6391/2014, 6691-6692/2014 and 9363/2017.

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JUDGMENT

Adarsh Kumar Goel, J.

CRIMINAL APPEAL NOS.1375-1376 OF 2013

1. These appeals have been put up before this Bench of three Judges in pursuance of order of Bench of two Judges dated 9th September, 2013 as follows:

> “Leave granted.
>
> Learned counsel for the parties are agreed that there is considerable difference of opinion amongst different Benches of this Court as well as all the High Courts. Mr. Ram Jethmalani, learned Senior Counsel appearing for petitioner in Criminal Appeal arising out of Special Leave Petition (Criminal)No.6470 of 2012 submits that the subsequent decisions rendered by the two-judge Benches are per incuriam, and in conflict with the ratio of law laid down in the Constitution Bench decision in Mohanlal Maganlal Thacker v. State of Gujarat [(1968) 2 SCR 685].
>
> In this view of the matter, we are of the opinion that it would be appropriate if the matters are referred to and heard by a larger Bench. Office is directed to place the matters before the Hon’ble the Chief Justice of India for appropriate orders.
>
> In the meantime, further proceedings before

the trial Court shall remain stayed."

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b. Since the question of law to be determined is identical in all cases, we have taken up for consideration this matter. In the light of answer to the referred question this as well as all other matters may be considered for disposal on merits by the appropriate Bench.

3. Brief facts first. F.I.R. dated 7th March, 2001 has been recorded with the Delhi Special Police Establishment: CBI/SIU-VIII/New Delhi Branch under Section 120B read with Sections 420, 467, 468, 471 and 477A of IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (the PC Act) at the instance of Municipal Corporation of Delhi (MCD) against the appellant and certain officers of MCD alleging causing of wrongful loss to the MCD by using fake invoices of Oil Companies relating to transportation of Bitumen for use in "Dense Carpeting Works" of roads in Delhi during the year 1997 and 1998.

4. After investigation, charge sheet was filed against the appellant and certain employees of MCD by the respondent-CBI before the Special Judge, CBI, New Delhi on 28th November, 2002.

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The appellants filed an application for discharge with the Special Judge, CBI. On 1st February, 2007, the Special Judge, CBI directed framing of the charges after considering the material before the Court. It was held that there was a prima facie case against the appellant and the other accused. The appellants filed Criminal Revision No. 321 of 2007 before the Delhi High Court against the order framing charge. The Revision Petition was converted into Writ

Petition (Criminal)No.352 of 2010.

5. Learned Single Judge referred the following question of law for consideration by the Division Bench:

> "Whether an order on charge framed by a Special Judge under the provisions of Prevention of Corruption Act, being an interlocutory order, and when no revision against the order or a petition under Section 482 of Cr.P.C. lies, can be assailed under Article 226/227 of the Constitution of India, whether or not the offences committed include the offences under Indian Penal Code apart from offences under Prevention of Corruption Act?"

6. The learned Single Judge referred to the conflicting views taken in earlier two single Bench decisions of the High Court in Dharambir

Khattar versus Central Bureau of Investigation1and R.C. Sabharwal versus Central Bureau of Investigation 2. It was observed :

> "However, since there are two views, one expressed by the Bench of Justice Jain in R.C. Sabharwal's (supra) case and one held by the Bench of Justice Muralidhar in Dharamvir Khattar's case (supra) and by this Bench, I consider that it was a fit case where a Larger Bench should set the controversy at rest."

7. In Dharambir Khattar (supra), the view of learned Single Judge is as follows :

> "32. To conclude this part of the discussion it is held that in the context of Section 19(3)(c) the words "no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial..." includes an interlocutory order in the form of an order on charge or an order framing charge. On a collective reading of the decisions in V.C. Shukla and Satya Narayan Sharma, it is held that in terms of Section 19(3)(c) PCA, no

> revision petition would be maintainable in the High Court against order on charge or an order framing charge passed by the Special Court.
>
> 33. Therefore, in the considered view of this Court, the preliminary objection of the CBI to

1 159 (2009) DLT 636

2 166(2010) DLT 362

> the maintainability of the present petitions is required to be upheld....”

8. In R.C. Sabharwal (supra), another learned Single Judge held that even though no revision may lie against an interlocutory order, there was no bar to the constitutional remedy under Articles 226 and 227 of the Constitution. At the same time, power under Section 482 could not be exercised in derogation of express bar in the statute in view of decisions of this Court in CBI versus Ravi Shankar Srivastava3, Dharimal Tobacco Products Ltd. and Ors. versus State of Maharashtra and Anr. 4 , Madhu Limaye versus The State of Maharashtra 5, Krishnan versus Krishnaveni6 and State versus Navjot Sandhu 7.

9. It was observed :

> “37. In view of the authoritative pronouncement of the Hon'ble Supreme Court in the case of Navjot Sandhu (supra), coupled with its earlier decisions in the case of Madhu Limaye (supra), it cannot be disputed that inherent powers of the High Court, recognized

3 (2006)7 SCC 188

4 AIR 2009 SC 1032

5
(1977) 4 SCC 551

6
(1997) 4 SCC 241

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(2003) 6 SCC 641

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in Section 482 of the Code of Criminal Procedure, cannot be used when exercise of such powers would be in derogation of an express bar contained in a statutory enactment, other than the Code of Criminal Procedure. The inherent powers of the High Court have not been limited by any other provisions contained in the Code of Criminal Procedure, as is evident from the use of the words ?Nothing in this Code? in Section 482 of the Code of Criminal Procedure, but, the powers under Section 482 of the Code of Criminal Procedure cannot be exercised when exercise of such powers would be against the legislative mandate contained in some other statutory enactment such as Section 19(3)(c) of Prevention of Corruption Act."

"29. The fact that the procedural aspect as regards the hearing of the parties has been incorporated in Section 22 does not really throw light on whether an order on charge would be an interlocutory order for the purposes of Section 19(3)(c) PCA. A collective reading of the two provisions indicates that in the context of order on charge an order discharging the accused may be an order that would be subject-matter of a revision petition at the instance perhaps of the prosecution. Since all provisions of the statute have to be given meaning, a harmonious construction of the three provisions indicates that the kinds of orders which can be challenged by way of a revision petition in the High Court is narrowed down to a considerable extent as explained in the case of Satya Narayan Sharma."

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Further, after referring to Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, AIR 1958 SC 398; Nihandra Bag v. Mahendra Nath Ghughu, AIR 1963 SC 1895; Sarpanch, Lonand

Grampanchayat v. Ramgiri Gosavi and Anr., AIR 1968 SC 222; Maruti Bala Raut v. Dashrath Babu Wathare and Ors., (1974) 2 SCC 615; Babhutmal Raichand Oswal v. Laxmibai R. Tarte and Anr., AIR 1975 SC 1297; Jagir Singh v. Ranbir Singh and Anr., AIR 1979 SC 381; Vishesh Kumar v. Shanti Prasad, AIR 1980 SC 892; Khalil Ahmed Bashir Ahmed v. Tufelhussein Samasbhai Sarangpurwala, AIR 1988 SC 184; M.C. Mehta v. Kamal Nath and Ors., AIR 2000 SC 1997 and Ranjeet Singh v. Ravi Prakash, AIR 2004 SC 3892, it was observed :

> "25. It is well known fact that trials of corruption cases are not permitted to proceed further easily and a trial of corruption case takes anything upto 20 years in completion. One major reason for this state of affairs is that the moment charge is framed, every trial lands into High Court and order on charge is invariably assailed by the litigants and the High Court having flooded itself with such revision petitions, would take any number of years in deciding the revision petitions on charge and the trials would remain stayed. Legislature looking at this state of affairs, enacted provision that interlocutory orders cannot be the subject matter of revision petitions. This Court for

reasons as stated above, in para No. 3 & 4 had considered the state of affairs prevalent and came to conclusion that no revision against the order of framing of charge or order directing framing of charge would lie. Similarly, a petition under Section 482 of Cr. P.C. would also not lie. I am of the opinion that once this Court holds that a petition under Article 227 would lie, the result would be as is evident from the above petitions that every order on charge which earlier used to be assailed by way of revision would be assailed in a camouflaged manner under Article 227 of the Constitution and the result would be same that proceedings before the trial court shall not proceed.

26. The decisions on a petition assailing charge requires going through the voluminous evidence collected by the CBI, analyzing the evidence against each accused and then

coming to conclusion whether the accused was liable to be charged or not. This exercise is done by Special Judge invariably vide a detailed speaking order. Each order on charge of the Special Judge, under Prevention of Corruption cases, normally runs into 40 to 50 pages where evidence is discussed in detail and thereafter the order for framing of charge is made. If this Court entertains petitions under Article 227 of the Constitution to re-appreciate the evidence collected by CBI to see if charge was liable to be framed or, in fact, the Court would be doing so contrary to the legislative intent. No court can appreciate arguments advanced in a case on charge without going through the entire record. The issues of jurisdiction and perversity are raised in such

9

petitions only to get the petition admitted. The issue of jurisdiction is rarely involved. The perversity of an order can be argued in respect of any well written judgment because perversity is such a term which has a vast meaning and an order which is not considered by a litigant in its favour is always considered perverse by him and his counsel. Therefore, entertaining a petition under Article 227 of the Constitution against an order on charge would amount to doing indirectly the same thing which cannot be done directly, I consider that no petition under Article 227 can be entertained."

(Emphasis added)

10. The Division Bench in the impugned judgment8 reframed the questions as follows:

"(a) Whether an order framing charge under the 1988 Act would be treated as an interlocutory order thereby barring the exercise of revisional power of this Court?

(b) Whether the language employed in Section 19 of the 1988 Act which bars the revision would also bar the exercise of power under Section 482 of the Cr.P.C. for all purposes?

(c) Whether the order framing charge can be assailed under Article 227 of the Constitution of India?"

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Anur Kumar Jain versus CBI 178(2011) DLT 501

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a1. After discussing the law on the point, the Bench concluded:

> "(a) An order framing charge under the Prevention of Corruption Act, 1988 is an interlocutory order.
>
> (b) As Section 19(3)(c) clearly bars revision against an interlocutory order and framing of charge being an interlocutory order a revision will not be maintainable.
>
> (c) A petition under Section 482 of the Code of Criminal Procedure and a writ petition preferred under Article 227 of the Constitution of India are maintainable.
>
> (d) Even if a petition under Section 482 of the Code of Criminal Procedure or a writ petition under Article 227 of the Constitution of India is entertained by the High Court under no circumstances an order of stay should be passed regard being had to the prohibition contained in Section 19(3)(c) of the 1988 Act.
>
> (e) The exercise of power either under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India should be sparingly and in exceptional circumstances be exercised keeping in view the law laid down in Siya Ram Singh [(1979) 3 SCC 118], Vishesh Kumar [AIR 1980 SC 892], Khalil Ahmed Bashir Ahmed [AIR 1988 SC 184, Kamal Nath and Ors. [AIR 2000 SC 1997 Ranjeet Singh [AIR 2004 SC 3892] and similar line of decisions in the field.
>
> (f) It is settled law that jurisdiction under Section 482 of the Code of Criminal Procedure or under

11

> Article 227 of the Constitution of India cannot be exercised as a "cloak of an appeal in disguise" or to re-appreciate evidence. The aforesaid proceedings should be used sparingly with great care, caution, circumspection and only to prevent grave miscarriage of justice."

12. It was held that order framing charge was an interlocutory order and no Revision Petition under Section 401 read with Section 397(2) Cr.P.C. would lie to the High Court against such order. Reliance was mainly placed on V.C. Shukla versus State through CBI 9 . Therein, Section 11A of the Special Courts Act, 1979 was interpreted by a Bench of four Judges of this Court. The Bench applied the test in S. Kuppuswami Rao versus the King 10. Reliance was also placed on Satya Narayan Sharma versus State of Rajasthan 11, wherein Section 19 (3)(c) of the Prevention of Corruption Act, 1988 was the subject matter of consideration.

13. It was, however, held that a petition under Section 482 Cr.P.C. will lie to the High Court even when there is a bar under Section 397 or some other provisions of the Cr.P.C. However, inherent power

9 (1980) Suppl. SCC 92

10 (1947) 2 SCR 685

11 (2001) 8 SCC 607

12 could be exercised only when there is abuse of the process of Court or where interference is absolutely necessary for securing the ends of justice. It must be exercised very sparingly where proceedings have been initiated illegally, vexatiously or without jurisdiction. The power should not be exercised against express provision of law. Even where inherent power is exercised in a rare case, there could be no stay of trial in a corruption case. Reliance in this regard was mainly placed on judgments of this Court in Satya Narayan Sharma (supra) and Navjot Sandhu (supra).

14. As regards a petition under Article 227 of the Constitution, it was held that the said power was part of basic structure of the Constitution as held in L. Chandra Kumar versus Union of India and Ors. 12 and could not be barred. But the Court would refrain from passing an order which would run counter to and conflict with an express intendment contained in Section 19(3)(c) of the PC Act. Reliance was also placed on Chander Shekhar Singh versus Siya Ram Singh13.

12 (1997) 3 SCC 261

13 (1979) 3 SCC 118

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a5. Learned counsel for the appellants submitted that the High Court was in error in holding that the order framing charge was an interlocutory order. In any case, since petition under Section 482 Cr.P.C. and under Article 227 of the Constitution has been held to be maintainable, there could be no prohibition against interference by the High Court or the power of the High Court to grant stay in spite of prohibition under Section 19(3)(c) of the PC Act.

16. Learned counsel for the CBI, however, supported the view of the High Court.

17. We have given due considerations to the rival submissions and perused the decisions of this Court. Though the question referred relates to the issue whether order framing charges is an interlocutory order, we have considered further question as to the approach to be adopted by the High Court in dealing with the challenge to the

order framing charge. As already noted in para 10, the impugned order also considered the said question. Learned counsel for the parties have also addressed the Court on this question.

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a8. It is not necessary to refer to all the decisions cited at the Bar. Suffice it to say that a Bench of three Judges in Madhu Limaye (supra) held that legislature has sought to check delay in final disposal of proceedings in criminal cases by way of a bar to revisional jurisdiction against an interlocutory order under sub-Section 2 of Section 397 Cr.P.C. At the same time, inherent power of the High Court is not limited or affected by any other provision. It could not mean that limitation on exercise of revisional power is to be set at naught. Inherent power could be used for securing ends of justice or to check abuse of the process of the Court. This power has to be exercised very sparingly against a proceeding initiated illegally or vexatiously or without jurisdiction. The label of the petition is immaterial. This Court modified the view taken in Amarnath versus State of Haryana14 and also deviated from the test for interlocutory order laid down in S. Kuppuswami Rao (supra). We may quote the following observations in this regard:

> "6. The point which falls for determination in this appeal is squarely covered by a decision of this Court, to which one of us (Untwalia, J.) was a

14 (1977) 4 SCC 137

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party in Amar Nath v. State of Haryana. But on a careful consideration of the matter and on

hearing learned Counsel for the parties in this appeal we thought it advisable to enunciate and reiterate the view taken by two learned Judges of this Court in Amar Nath case but in a somewhat modified and modulated form. …..

xxxx xxxx xxxx xxxx

10. As pointed out in Amar Nath case the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding, is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub-section (2) in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include sub-section (2) of Section 397 also, “shall be deemed to limit or affect the inherent powers of the High Court”, But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is

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the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will

refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of, a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction. then the trial of the accused will be without jurisdiction and even after his acquittal a second trial after proper sanction will not be barred on the doctrine of Autrefois Acquit. Even assuming, although we shall presently

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show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order. does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused upto the end ? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure, the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.

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13. …..But in our judgment such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by Section 397(1). On such a strict interpretation,

only those orders would be revisable which are orders passed on the final determination of the action but are not appealable under Chapter XXIX of the Code. This does not seem to be the intention of the Legislature when it retained the revisional power of the High Court in terms identical to the one in the 1898 Code. In what

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cases then the High Court will examine the legality or the propriety of an order or the legality of any proceeding of an inferior criminal court? Is it circumscribed to examine only such proceeding which is brought for its examination after the final determination and wherein no appeal lies? Such cases will be very few and far between. …….

…There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppuswami case, but, yet it may not be an interlocutory order – pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in sub-section (2) of Section 397 is not meant to be attracted to such kinds of intermediate orders……"

18. Referring to the judgment in Mohanlal Maganlal Thacker v. State of Gujarat 15, it was held that the test adopted therein that if reversal of impugned order results in conclusion of proceedings, such order may not be interlocutory but final order. It was observed :

"15. …….In the majority decision four tests were culled out from some English decisions. They are found enumerated at p. 688. One of the tests is "if the order in question is reversed would the action have to go on?" Applying that test to the facts of the instant case it would be noticed that if the plea of the appellant succeeds and

15 (1968) 2 SCR 685 = AIR 1968 SC 733

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the order of the Sessions Judge is reversed, the criminal proceeding as initiated and instituted against him cannot go on. If, however, he loses on the merits of the preliminary point the

proceeding will go on. Applying the test of Kuppuswami case such an order will not be a final order. But applying the fourth test noted at p. 688 in Mohan Lal case it would be a final order. The real point of distinction, however, is to be found at p. 693 in the judgment of Shelat, J. The passage runs thus:

> "As observed in Ramesh v. Gendalal Motilal Patni[(1966) 3 SCR 198 : AIR 1966 SC 1445] the finality of that order was not to be judged by co-relating that order with the controversy in the complaint viz. whether the appellant had committed the offence charged against him therein. The fact that that controversy still remained alive is irrelevant."

19. The principles laid down in Madhu Limaye (supra) still hold the field and have not been in any manner diluted by decision of four Judges in V.C. Shukla versus State through CBI16 or by recent three Judge Bench decision in Girish Kumar Suneja versus Central Bureau of Investigation 17 . Though in V.C. Shukla (supra), order framing charge was held to be interlocutory order, judgment in Madhu

16 (1980) Supp. SCC 92

17 (2017) 14 SCC 809

20 Limaye (supra) taking a contrary view was distinguished in the context of the statute considered therein. The view in S. Kuppuswami Rao (supra), was held to have been endorsed in Mohanlal Maganlal Thacker (supra) though factually in Madhu Limaye (supra), the said view was explained differently, as already noted. Thus, in spite of the fact that V.C. Shukla (supra) is a judgment by Bench of four Judges, it cannot be held that the principle of Madhu Limaye (supra) does not hold the field. As

regards Girish Kumar Suneja (supra), which is by a Bench of three Judges, the issue considered was whether order of this Court directing that no Court other than this Court will stay investigation/trial in Manohar Lal Sharma versus Principal Secretary and ors. 18 [Coal Block allocation cases] violated right or remedies of the affected parties against an order framing charge. It was observed that the order framing charge being interlocutory order, the same could not be interfered with under Section 397(2) nor under Section 482 Cr.P.C. 19 It was further held that stay of

18 (2014) 9 SCC 516

19 Paras 24,25, 27

21 proceedings could not be granted in PC Act cases even under Section 482 Cr.P.C. 20 It was further observed that though power under Article 227 is extremely vast, the same cannot be exercised on the drop of a hat as held in Shalini Shyam Shetty versus Rajendra Shankar Patil21 as under :

> "37. … This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 of the Constitution is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above."

20. It was observed that power under Section 482 Cr.P.C. could be exercised only in rarest of rare cases and not otherwise.

> 38. The Criminal Procedure Code is undoubtedly a complete code in itself. As has already been discussed by us, the discretionary jurisdiction under Section 397(2) CrPC is to be exercised only in respect of final orders and intermediate orders. The power under Section 482 CrPC is to be exercised only in respect of interlocutory

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Para 32

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(2010) 8 SCC 329

> orders to give effect to an order passed under the Criminal Procedure Code or to prevent abuse of the process of any court or otherwise to serve the ends of justice. As indicated above, this power has to be exercised only in the rarest of rare cases and not otherwise. If that is the position, and we are of the view that it is so, resort to Articles 226 and 227 of the Constitution would be permissible perhaps only in the most extraordinary case. To invoke the constitutional jurisdiction of the High Court when the Criminal Procedure Code restricts it in the interest of a fair and expeditious trial for the benefit of the accused person, we find it difficult to accept the proposition that since Articles 226 and 227 of the Constitution are available to an accused person, these provisions should be resorted to in cases that are not the rarest of rare but for trifling issues.

21. Reliance was also placed on judgment by seven Judge Bench in Kartar Singh versus State of Punjab 22 laying down as follows :

> “40. …If the High Courts entertain bail applications invoking their extraordinary jurisdiction under Article 226 and pass orders, then the very scheme and object of the Act and the intendment of Parliament would be completely defeated and frustrated. But at the same time it cannot be said that the High Courts have no jurisdiction. Therefore, we totally agree with the view taken by this Court in Abdul Hamid Haji Mohammed [(1994) 2 SCC 664] that if the High Court is inclined to entertain any

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(1994) 3 SCC 569

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application under Article 226, that power should be exercised most sparingly and only in rare and appropriate cases in extreme circumstances. What those rare cases are and what would be the circumstances that would justify the entertaining of applications under Article 226 cannot be put in straitjacket."

22. It was further observed that no stay could be granted in PC Act cases in view of bar contained in Section 19(3)(c). The relevant observations are :

"64. A reading of Section 19(3) of the PC Act indicates that it deals with three situations: (i) Clause (a) deals a situation where a final judgment and sentence has been delivered by the Special Judge. We are not concerned with this situation. (ii) Clause (b) deals with a stay of proceedings under the PC Act in the event of any error, omission or irregularity in the grant of sanction by the authority concerned to prosecute the accused person. It is made clear that no court shall grant a stay of proceedings on such a ground except if the court is satisfied that the error, omission or irregularity has resulted in a failure of justice—then and only then can the court grant a stay of proceedings under the PC Act. (iii) Clause (c) provides for a blanket prohibition against a stay of proceedings under the PC Act even if there is a failure of justice [subject of course to Clause (b)]. It mandates that no court shall stay proceedings "on any other ground" that is to say any ground other than a ground relatable

24

to the error, omission or irregularity in the sanction resulting in a failure of justice.

65. A conjoint reading of clause (b) and clause (c) of Section 19(3) of the PC Act makes it is clear that a stay of proceedings could be granted only and only if there is an error, omission or irregularity in the sanction granted for a prosecution and that error, omission or irregularity has resulted in a failure of justice. There is no other situation that is contemplated

> for the grant of a stay of proceedings under the PC Act on any other ground whatsoever, even if there is a failure of justice. Clause (c) additionally mandates a prohibition on the exercise of revision jurisdiction in respect of any interlocutory order passed in any trial such as those that we have already referred to. In our opinion, the provisions of clauses (b) and (c) of Section 19(3) of the PC Act read together are quite clear and do not admit of any ambiguity or the need for any further interpretation."

23. We may also refer to the observations of the Constitution Bench in Ratilal Bhanji Mithani versus Asstt. Collector of Customs, Bombay and Anr.23 about the nature of inherent power of the High Court:

> "The inherent powers of the High Court preserved by Section 561-A of the Code of Criminal Procedure are thus vested in it by "law" within the meaning of Art. 21. The procedure for invoking the inherent powers is regulated by rules framed by

23 [1967] 3 SCR 926

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> the High Court. The power to make such rules is conferred on the High Court by the Constitution. The rules previously in force were contained in force by Article 372 of the Constitution."

24. As rightly noted in the impugned judgment, a Bench of seven Judges in L.Chandra Kumar (supra) held that power of the High Court to exercise jurisdiction under Article 227 was part of the basic structure of the Constitution.

25. Thus, even though in dealing with different situations, seemingly conflicting observations may have been made while holding that the order framing charge was interlocutory order and was not liable to be interfered with under Section 397(2) or even under Section 482 Cr.P.C., the principle laid down in Madhu Limaye (supra) still holds

the field. Order framing charge may not be held to be purely a interlocutory order and can in a given situation be interfered with under Section 397(2) Cr.P.C. or 482 Cr.P.C. or Article 227 of the Constitution which is a constitutional provision but the power of the High Court to interfere with an order framing charge and to grant stay is to be exercised only in an exceptional situation.

26

b6. We have thus no hesitation in concluding that the High Court has jurisdiction in appropriate case to consider the challenge against an order framing charge and also to grant stay but how such power is to be exercised and when stay ought to be granted needs to be considered further.

27. As observed in Girish Kumar Suneja (supra) in the PC Act cases, the intention of legislature is expeditious conclusion of trial on day-to-day basis without any impediment through the stay of proceedings and this concern must be respected. This Court also noted the proviso to Section 397(1) Cr.P.C. added by Section 22(d) of the PC Act that a revisional court shall not ordinarily call for the record of proceedings. If record is called, the Special Judge may not be able to proceed with the trial which will stand indirectly stayed. The right of the accused has to be considered vis-à-vis the interest of the society. As already noted, the bench of seven Judges in Kartar Singh (supra) held that even constitutional power of the High Court under Article 226 which was very wide ought to be used with circumspection in accordance with judicial consideration and well

established principles. The power should be exercised sparingly in rare and extreme circumstances.

28. It is well accepted that delay in a criminal trial, particularly in the PC Act cases, has deleterious effect on the administration of justice in which the society has a vital interest. Delay in trials affects the faith in Rule of Law and efficacy of the legal system. It affects social welfare and development. Even in civil or tax cases it has been laid down that power to grant stay has to be exercised with restraint. Mere prima facie case is not enough. Party seeking stay must be put to terms and stay should not be incentive to delay. The order granting stay must show application of mind. The power to grant stay is coupled with accountability 24.

30. Wherever stay is granted, a speaking order must be passed showing that the case was of exceptional nature and delay on account of stay will not prejudice the interest of speedy trial in a

24 Siliguri Municipality vs. Amalendu Das (1984) 2 SCC
Collector of Central Excise, Chandan Nagar, West Bengal vs. Dunlop India Ltd. and Ors. (
Union Territory of Pondicherry and Ors. vs. P.V. Suresh and Ors. (1994) 2 SCC 70 para 15
Bengal and Ors. vs. Calcutta Hardware Stores and Ors. (1986) 2 SCC 203 para 5

corruption case. Once stay is granted, proceedings should not be adjourned and concluded within two-three months.

31. The wisdom of legislature and the object of final and expeditious disposal of a criminal proceeding cannot be ignored. In exercise of its power the High Court is to balance the freedom of an individual on the one hand and security of the society on the other.

Only in case of patent illegality or want of jurisdiction the High Court may exercise its jurisdiction. The acknowledged experience is that where challenge to an order framing charge is entertained, the matter remains pending for long time which defeats the interest of justice.

32. We have already quoted the judicial experience as noted in the earlier judgments in Para 9 above that trial of corruption cases is not permitted to proceed on account of challenge to the order of charge before the High Courts. Once stay is granted, disposal of a petition before the High Court takes long time. Consideration of the challenge against an order of framing charge may not require meticulous examination of voluminous material which may be in the

nature of a mini trial. Still, the Court is at times called upon to do so inspite of law being clear that at the stage of charge the Court has only to see as to whether material on record reasonably connects the accused with the crime. Constitution Bench of this Court in Hardeep Singh versus State of Punjab 25 observed :

> 100. However, there is a series of cases wherein this Court while dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 CrPC, has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is

to be applied. The court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further. (Vide State of Karnataka v. L. Muniswamy[(1977) 2 SCC 699], All India Bank Officers' Confederation v. Union of India[(1989) 4 SCC 90] Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia [(1989) 1 SCC 715] State of M.P. v. Krishna Chandra Saksena [(1996) 11 SCC 439] and State of M.P. v. Mohanlal Soni [(2000) 6 SCC 338]

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(2014) 3 SCC 92

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a01. In Dilawar Balu Kurane v. State of Maharashtra [(2002) 2 SCC 135] this Court while dealing with the provisions of Sections 227 and 228 CrPC, placed a very heavy reliance on the earlier judgment of this Court in Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4] and held that while considering the question of framing the charges, the court may weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out and whether the materials placed before the court disclose grave suspicion against the accused which has not been properly explained. In such an eventuality, the court is justified in framing the charges and proceeding with the trial. The court has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but the court should not make a roving enquiry into the pros and cons of the matter and weigh evidence as if it is conducting a trial.

102. In Suresh v. State of Maharashtra[(2001) 3 SCC 703], this Court after taking note of the earlier judgments in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya[(1990) 4 SCC 76] and State of Maharashtra v. Priya Sharan Maharaj[(1997) 4 SCC 393], held as under: (Suresh case, SCC p. 707, para 9)

> "9. … at the stage of Sections 227 and 228 the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face

value disclose the existence of all the ingredients constituting the alleged offence. The court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as the gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the court has to

31

consider the material with a view to find out if there is ground **for presuming that the accused has committed the offence** or that there is not sufficient ground for proceeding against him and** not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction**. (Priya Sharan case, SCC p. 397, para 8)"

(emphasis in original)

103. Similarly in State of Bihar v. Ramesh Singh[(1997) 4 SCC 39], while dealing with the issue, this Court held: (SCC p. 42, para 4)

"4. … If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."

33. If contrary to the above law, at the stage of charge, the High Court adopts the approach of weighing probabilities and re-appreciate the material, it may be certainly a time consuming exercise. The legislative policy of expeditious final disposal of the trial is thus, hampered. Thus, even while reiterating the view that there is no bar to jurisdiction of the High Court to consider a challenge against an order of framing charge in exceptional situation for correcting a patent error of lack of jurisdiction, exercise

32

of such jurisdiction has to be limited to rarest of rare cases. Even if

a challenge to order framing charge is entertained, decision of such a petition should not be delayed. Though no mandatory time limit can be fixed, normally it should not exceed two-three months. If stay is granted, it should not normally be unconditional or of indefinite duration. Appropriate conditions may be imposed so that the party in whose favour stay is granted is accountable if court finally finds no merit in the matter and the other side suffers loss and injustice. To give effect to the legislative policy and the mandate of Article 21 for speedy justice in criminal cases, if stay is granted, matter should be taken on day-to-day basis and concluded within two-three months. Where the matter remains pending for longer period, the order of stay will stand vacated on expiry of six months, unless extension is granted by a speaking order showing extraordinary situation where continuing stay was to be preferred to the final disposal of trial by the trial Court. This timeline is being fixed in view of the fact that such trials are expected to be concluded normally in one to two years.

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c4. In Imtiaz Ahmad versus State of U.P. 26 this Court after considering a report noted:

> “(a) As high as 9% of the cases have completed more than twenty years since the date of stay order.
> (b) Roughly 21% of the cases have completed more than ten years.
> (c) Average pendency per case (counted from the date of stay order till 26-7-2010) works out to be around 7.4 years.
> (d) Charge-sheet was found to be the most prominent stage where the cases were stayed with almost 32% of the cases falling under this

> category. The next two prominent stages are found to be 'appearance' and 'summons', with each comprising 19% of the total number of cases. If 'appearance' and 'summons' are considered interchangeable, then they would collectively account for the maximum of stay orders."

After noting the above scenario, the Court directed :

> "55. Certain directions are given to the High Courts for better maintenance of the rule of law and better administration of justice:
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> While analysing the data in aggregated form, this Court cannot overlook the most important factor in the administration of

26

(2012) 2 SCC 688

34

justice. The authority of the High Court to order stay of investigation pursuant to lodging of FIR, or trial in deserving cases is unquestionable. But this Court is of the view that the exercise of this authority carries with it the responsibility to expeditiously dispose of the case. The power to grant stay of investigation and trial is a very extraordinary power given to the High Courts and the same power is to be exercised sparingly only to prevent an abuse of the process and to promote the ends of justice. It is therefore clear that:

(i) Such an extraordinary power has to be exercised with due caution and circumspection.

(ii) Once such a power is exercised, the High Court should not lose sight of the case where it has exercised its extraordinary power of staying investigation and trial.

(iii) The High Court should make it a point of finally disposing of such proceedings as early as possible but preferably within six months from the date the stay order is issued.

56. It is true that this Court has no power of

superintendence over the High Court as the High Court has over District Courts under Article 227 of the Constitution. Like this Court, the High Court is equally a superior court of record with plenary jurisdiction. Under our Constitution the High Court is not a court subordinate to this Court. This Court, however, enjoys appellate powers over the High Court as also some other incidental powers. But as the last court and in exercise of this Court's power to do complete justice which includes

35

within it the power to improve the administration of justice in public interest, this Court gives the aforesaid guidelines for sustaining common man's faith in the rule of law and the justice delivery system, both being inextricably linked."

35. In view of above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy this, situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing

36

the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced.

36. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 Cr.P.C. or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to re-appreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time limit may be fixed, the decision may not

exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e. the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or

other courts relating to PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on above parameters. Same course may also be adopted by civil and criminal appellate/revisional courts under the jurisdiction of the High Courts. The trial courts may, on expiry of above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced.

37. The High Courts may also issue instructions to this effect and monitor the same so that civil or criminal proceedings do not remain pending for unduly period at the trial stage.

38

c8. The question referred stands answered. The matter along with other connected matters, may now be listed before an appropriate Bench as first matter, subject to overnight part-heard, on Wednesday, the 18th April, 2018.

A copy of this order be sent to all the High Courts for necessary action.

……..J.
(Adarsh Kumar Goel)

……..J.
(Navin Sinha)

New Delhi;
March 28, 2018.

Note: Highlighting in quotations is by us

39

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1375-1376 OF 2013

ASIAN RESURFACING OF
ROAD AGENCY PVT. LTD. & ANR. …APPELLANTS

VERSUS

CENTRAL BUREAU OF INVESTIGATION ...RESPONDENT

WITH

CRIMINAL APPEAL NO.1383 OF 2013

CRIMINAL APPEAL NO.1377 OF 2013

CRIMINAL APPEAL NO.1382 OF 2013

CRIMINAL APPEAL NO.1394 OF 2013

CRIMINAL APPEAL NO.1384 OF 2013

CRIMINAL APPEAL NO.1393 OF 2013

CRIMINAL APPEAL NO.1386-1387 OF 2013

CRIMINAL APPEAL NO.1385 OF 2013

CRIMINAL APPEAL NO.1406 OF 2013

CRIMINAL APPEAL NO.1396 OF 2013

CRIMINAL APPEAL NO.1395 OF 2013

1

CRIMINAL APPEAL NO.1391 OF 2013

CRIMINAL APPEAL NO.1389 OF 2013

CRIMINAL APPEAL NO.1388 OF 2013

CRIMINAL APPEAL NO.1398 OF 2013

CRIMINAL APPEAL NO.1397 OF 2013

SPECIAL LEAVE PETITION (CRL.) No.2610 OF 2013

CRIMINAL APPEAL NO.1390 OF 2013

CRIMINAL APPEAL NO.1399 OF 2013

CRIMINAL APPEAL NO.1402 OF 2013

CRIMINAL APPEAL NO.1400 OF 2013

CRIMINAL APPEAL NO.1401 OF 2013

CRIMINAL APPEAL NO.1404 OF 2013

CRIMINAL APPEAL NO.1403 OF 2013

CRIMINAL APPEAL NO.1405 OF 2013

SPECIAL LEAVE PETITION (CRL.) No.6835 OF 2013

SPECIAL LEAVE PETITION (CRL.) No.6834 OF 2013

SPECIAL LEAVE PETITION (CRL.) No.6837 OF 2013

CRIMINAL APPEAL NO.388 OF 2014

SPECIAL LEAVE PETITION (CRL.) NOS.10050-10051 OF 2013

SPECIAL LEAVE PETITION (CRL.) NOS.9652-9653 OF 2013

2

CRIMINAL APPEAL NO.234 OF 2014

SPECIAL LEAVE PETITION (CRL.) No.5678 OF 2014

SPECIAL LEAVE PETITION (CRL.) No.1451 OF 2014

SPECIAL LEAVE PETITION (CRL.) No.1399 OF 2014

SPECIAL LEAVE PETITION (CRL.) No.2508 OF 2014

SPECIAL LEAVE PETITION (CRL.) No.2970 OF 2014

SPECIAL LEAVE PETITION (CRL.) No.2507 OF 2014

SPECIAL LEAVE PETITION (CRL.) No.2939 OF 2014

SPECIAL LEAVE PETITION (CRL.) No.2977 OF 2014

SPECIAL LEAVE PETITION (CRL.) No.4709 OF 2014

SPECIAL LEAVE PETITION (CRL.) No.6372 OF 2014

SPECIAL LEAVE PETITION (CRL.) No.6391 OF 2014

SPECIAL LEAVE PETITION (CRL.) NOS.6691-6692 OF 2014

SPECIAL LEAVE PETITION (CRL.) No.9363 OF 2017

JUDGMENT

R.F. Nariman, J. (Concurring)

1. The cancer of corruption has, as we all know, eaten into the vital organs of the State. Cancer is a dreaded disease which, if not nipped in the bud in time, causes death. In British India, the Penal Code dealt with the cancer of corruption by public servants in Chapter IX thereof. Even before independence, these provisions were found to be inadequate to deal with the rapid onset of this disease as a result of which the Prevention of Corruption Act, 1947, was enacted. This Act was amended twice – once by the Criminal Law (Amendment) Act, 1952 and a second time by the Anti-Corruption Laws (Amendment) Act, 1964, based on the recommendations of the Santhanam Committee. A working of the 1947 Act showed that it was found to be inadequate to deal with the disease of corruption effectively enough. For this reason, the Prevention of Corruption Act, 1988 was enacted (hereinafter referred to as "the Act"). The Statement of Objects and Reasons for the Act is revealing and is set out hereinbelow:

"STATEMENT OF OBJECTS AND REASONS

1. The Bill is intended to make the existing anti-

corruption laws more effective by widening their coverage and by strengthening the provisions.

2. The Prevention of Corruption Act, 1947, was amended in 1964 based on the recommendations of the Santhanam Committee. There are provisions in Chapter IX of the Indian Penal Code to deal with public servants and those who abet them by way of criminal misconduct. There are also provisions in the Criminal Law Amendment Ordinance, 1944, to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. The Bill seeks to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants.

3. The Bill, inter alia, envisages widening the scope of the definition of the expression "public servant", incorporation of offences under Sections 161 to 165-A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already

been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included.

4. Since the provisions of Sections 161 to 165-A are incorporated in the proposed legislation with an enhanced punishment, it is not necessary to retain those sections in the Indian Penal Code.

Consequently, it is proposed to delete those sections with the necessary saving provision.

5. The notes on clauses explain in detail the provisions of the Bill." (Emphasis Supplied)

2. Section 2(c) defines "public servant". The definition is extremely wide and includes within its ken even arbitrators or other persons to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority – (See Section 2(c)(vi)). Also included are office bearers of registered co-operative societies engaged in agriculture, industry, trade or banking, who receive financial aid from the Government – (See Section 2(c)(ix)). Office bearers or employees of educational, scientific, social, cultural or other institutions in whatever manner established, receiving financial assistance from the Government or local or other public authorities are also included (see Section 2(c)(xii)). The two explanations to Section 2(c) are also revealing - whereas Explanation 1 states that in order to be a public servant, one need not be appointed by Government, Explanation 2 refers to a de facto, as opposed to a de jure, public servant, discounting whatever legal defect there may be in his right to hold that "situation".

3. Section 4(4) is of great importance in deciding these appeals, and is set out hereinbelow:

> "4. Cases triable by special Judges.— (1) - (3) xxx xxx xxx (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis." Section 22 applies the Code of Criminal Procedure, 1973, subject to modifications which ensure timely disposal of cases, under this special Act. Section 22 reads as under:
>
> "22. The Code of Criminal Procedure, 1973 to apply subject to certain modifications.— The provisions of the Code of Criminal Procedure 1973, shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if,—
>
> (a) in sub-section (1) of Section 243, for the words "The accused shall then be called upon," the words "The accused shall then be required to give in writing at once or within such time as the court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon" had been substituted;
>
> (b) in sub-section (2) of Section 309, after the third proviso, the following proviso had been inserted, namely: — "Provided also that the proceeding shall not be

> adjourned or postponed merely on the ground that an application under Section 397 has been made by a party to the proceeding.";
>
> (c) after sub-section (2) of Section 317, the following sub-section had been inserted, namely:— "(3) Notwithstanding anything contained in sub-

section (1) or sub-section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination.";

(d) in sub-section (1) of Section 397, before the Explanation, the following proviso had been inserted, namely:— "Provided that where the powers under this section are exercised by a court on an application made by a party to such proceedings, the court shall not ordinarily call for the record of the proceedings—

(a) without giving the other party an opportunity of showing cause why the record should not be called for; or

(b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies." Under Section 27, powers of appeal and revision, conferred by the Code of Criminal Procedure, are to be exercised "subject to the provisions of this Act". Section 27 reads as follows:

> "27. Appeal and revision.— Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973, on a High court as if the Court of the special Judge were a Court of Session trying 12 cases within the local limits of the High Court."

4. The bone of contention in these appeals is the true interpretation of Section 19(3)(c) of the Act, and whether superior constitutional courts, namely, the High Courts in this country, are bound to follow Section 19(3)(c) in petitions filed under Articles 226 and 227 of the Constitution of India. An allied question is whether the inherent powers of High Courts are available to stay proceedings under the Act under Section 482 of the Code of Criminal Procedure. Section 19 reads as follows:

> "19. Previous sanction necessary for prosecution.—

(1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013] —

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any 9 other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 —

(a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission, irregularity in, the sanction required under sub- section (1), unless in the opinion of that court, a failure of justice has, in fact, been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation. — For the purposes of this section, —

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

5. On a reference made to a 2-Judge Bench in the Delhi High Court, the learned Chief Justice framed, what he described as, "three facets which emanate for consideration", as follows:

> "(a) Whether an order framing charge under the 1988 Act would be treated as an interlocutory order thereby barring the exercise of revisional power of this Court?

(b) Whether the language employed in Section 19 of the 1988 Act which bars the revision would also bar the exercise of power under Section 482 of the Cr.P.C. for all purposes?

(c) Whether the order framing charge can be assailed under Article 227 of the Constitution of India?" Answers given to the "three facets" are in paragraph 33 as follows:

"33. In view of our aforesaid discussion, we proceed to answer the reference on following terms:

(a) An order framing charge under the Prevention of Corruption Act, 1988 is an interlocutory order.

(b) As Section 19(3)(c) clearly bars revision against an interlocutory order and framing of charge being an interlocutory order a revision will not be maintainable.

(c) A petition under Section 482 of the Code of Criminal Procedure and a writ petition preferred under Article 227 of the Constitution of India are maintainable.

(d) Even if a petition under Section 482 of the Code of Criminal Procedure or a writ petition under Article 227 of the Constitution of India is entertained by the High Court under no circumstances an order of stay should be passed regard being had to the prohibition contained in Section 19(3)(c) of the 1988 Act.

(e) The exercise of power either under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India should be sparingly and in exceptional circumstances be exercised keeping in view the law laid down in Siya Ram Singh (supra), Vishesh Kumar (supra), Khalil Ahmed Bashir Ahmed (supra), Kamal Nath & Others (supra) Ranjeet Singh (supra) and similar line of decisions in the field.

(f) It is settled law that jurisdiction under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India cannot be exercised as a "cloak of an appeal in disguise" or to re- appreciate evidence. The aforesaid proceedings should be used sparingly with great care, caution, circumspection and only to prevent grave miscarriage of justice."

6. The arguments on both sides have been set out in the judgment of brother Goel, J. and need not be reiterated.

7. A perusal of Section 19(3) of the Act would show that the interdict against stay of proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority is lifted if the Court is satisfied that the error, omission or irregularity has resulted in a

failure of justice.

Having said this in clause (b) of Section 19(3), clause (c) says that no Court shall stay proceedings under this Act on any other ground. The contention on behalf of the Appellants before us is that the expression "on any other ground" is referable only to grounds which relate to sanction and not generally to all proceedings under the Act. Whereas learned counsel for the Respondents argues that these are grounds referable to the proceedings under this Act and there is no warrant to add words not found in sub-section (c), namely, that these grounds should be relatable to sanction only.

8. We are of the view that the Respondents are correct in this submission for the following reasons:

> (i) Section 19(3)(b) subsumes all grounds which are relatable to sanction granted. This is clear from the word "any" making it clear that whatever be the error, omission or irregularity in sanction granted, all grounds relatable thereto are covered.
>
> (ii) This is further made clear by Explanation (a), which defines an "error" as including competency of the authority to grant sanction.
>
> (iii) The words "in the sanction granted by the authority" contained in sub-clause (b) are conspicuous by their absence in sub-clause(c), showing thereby that it is the proceedings under the Act that are referred to.
>
> (iv) The expression "on any other ground", therefore, refers to and relates to all grounds that are available in proceedings under the Act other than grounds which relate to sanction granted by the authority.
>
> (v) On the assumption that there is an ambiguity, and that there are two views possible, the view which most accords with the object of the Act, and which makes the Act workable, must necessarily be the controlling view. It is settled law that even penal statutes are governed not only by their literal language, but also by the object sought to be achieved by Parliament. (See Ms. Eera through Dr. Manjula Krippendorf v. State (Govt. of NCT of Delhi) and Anr., 2017 SCC Online SC 787 at paragraphs 134-140).
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> (vi) In Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 at 558, this Court held, "It has been pointed out repeatedly, vide for example, The River Wear Commissioners v. William Adamson (1876-

77) 2 AC 743 and R.M.D. Chamarbaugwalla v. The Union of India, AIR 1957 SC 628, that although the words occurring in a particular statute are plain and unambiguous, they have to be interpreted in a manner which would fit in the context of the other provisions of the statute and bring about the real intention of the Legislature". As the Statement of Objects and Reasons extracted hereinabove makes it clear, Section 19(3)(c) is to be read with Section 4(4) and Section 22, all of which make it clear that cases under the Act have to be decided with utmost despatch and without any glitches on

the way in the form of interlocutory stay orders. 1 Under Section 22(a), Section 243(1) of the Code of Criminal Procedure is tightened up by requiring the accused to give in writing, at once or within such time as the Court may allow, a list of persons whom he proposes to examine as witnesses and documents on which he proposes to rely, so as to continue with the trial with utmost despatch. Similarly, in sub-clause (b) of Section 22, under Section 309 a fourth proviso is inserted

(vii) It has been argued on behalf of the Appellants that sub-section (4) of Section 19 would make it clear that the subject matter of Section 19, including sub-

section (3), is sanction and sanction alone. This argument is fallacious for the simple reason that the subject matter of sub-section (4) is only in the nature of a proviso to Section 19(3)(a) and (b), making it clear that the ground for stay qua sanction having occasioned or resulted in a failure of justice ensuring that there shall be no adjournment merely on the ground that an application under Section 397 has been made by a party to the proceedings. Under sub-clause (c) of Section 22, a Judge may, notwithstanding anything contained in Section 317(1) and (2), if he thinks fit and for good reason, proceed with the enquiry or trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination. This again can be done so that there is no delay in either the enquiry or trial proceedings under the Act. Insofar as sub-clause (d) is concerned, this Court in Girish Kumar Suneja v. C.B.I., (2017) 14 SCC 809 at 847 has held:

> "By adding the proviso to Section 397(1) CrPC, Parliament has made it clear that it would be appropriate not to call for the records of the case before the Special Judge even when the High Court exercises its revision jurisdiction. The reason for this quite clearly is that once the records are called for, the Special Judge cannot proceed with the trial. With a view to ensure that the accused who has invoked the revision jurisdiction of the High Court is not prejudiced and at the same time the trial is not indirectly stayed or otherwise impeded, Parliament has made it clear that the examination of the record of the Special Judge may also be made on the basis of certified copies of the record. Quite clearly, the intention of Parliament is that there should not be any impediment in the trial of a case under the PC Act." should be taken at the earliest, and if not so taken, would be rejected on this ground alone.
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> (viii) Section 19(3)(c) became necessary to make it clear that proceedings under the Act can be stayed only in the eventuality of an error, omission or irregularity in sanction granted, resulting in failure of justice, and for no other reason. It was for this reason that it was also necessary to reiterate in the language of Section 397(2) of the Code of Criminal Procedure, that in all cases, other than those covered by Section 19(3)(b), no court shall exercise the power of revision in relation to interlocutory orders that may be passed. It is also significant to note that the reach of this part of Section 19(3)(c) is at every stage of the proceeding, that is inquiry, trial, appeal or otherwise, making it clear that, in consonance with the object sought to be achieved, prevention of corruption trials are not only to be heard by courts other than ordinary courts, but disposed of as expeditiously as possible, as otherwise corrupt public

> servants would continue to remain in office and be cancerous to society at large, eating away at the fabric of the nation.

9. The question as to whether the inherent power of a High Court would be available to stay a trial under the Act necessarily leads us to an inquiry as to whether such inherent power sounds in constitutional, as opposed to statutory law.

First and foremost, it must be appreciated that the High Courts are established by the Constitution and are courts of record which will have all powers of such courts, including the power to punish contempt of themselves (See Article 215). The High Court, being a superior court of record, is entitled to consider questions regarding its own jurisdiction when raised before it.

In an instructive passage by a Constitution Bench of this Court in In re Special Reference 1 of 1964, (1965) 1 SCR 413 at 499, Gajendragadkar, C.J. held:

> "Besides, in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a Court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction. "Prima facie", says Halsbury, "no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court" [Halsbury's Law of England, Vol. 9, p. 349]."

10. Also, in Ratilal Bhanji Mithani v. Assistant Collector of Customs, 1967 SCR (3) 926 at 930-931, this Court had occasion to deal with the inherent power of the High Court under Section 561-A of the Code of Criminal Procedure, 1898, which is equivalent to Section 482 of the Code of Criminal Procedure, 1973. It was held that the said Section did not confer any power, but only declared that nothing in the Code shall be deemed to limit or affect the existing inherent powers of the High Court. The Court then went on to hold:

> "The proviso to the article is not material and need not be read. The article enacts that the jurisdiction of the existing High Courts and the powers of the judges thereof in relation to administration of justice "shall be" the same as immediately before the commencement of the Constitution. The Constitution confirmed and re-vested in the High Court all its existing powers and jurisdiction including its inherent powers, and its power to make rules. When the Constitution or any enacted law has embraced and confirmed the inherent powers and jurisdiction of the High Court which previously existed, that power and jurisdiction has the sanction of an enacted "law" within the meaning of Art. 21 as explained in A. K. Gopalan's case (1950 SCR 88). The inherent powers of the High Court preserved by Sec. 561-A of the Code of Criminal Procedure are thus vested in it by "law" within the meaning of Art.

> 21. The procedure for invoking the inherent powers is regulated by rules framed by the High Court. The power to make such rules is conferred on the High Court by the Constitution. The rules previously in force were continued in force by Article 372 of the Constitution. The order of the High Court canceling the bail and depriving the appellant of his personal liberty is according to procedure established by law and is not violative of Art. 21."

11. It is thus clear that the inherent power of a Court set up by the Constitution is a power that inheres in such Court because it is a superior court of record, and not because it is conferred by the Code of Criminal Procedure. This is a power vested by the Constitution itself, inter alia, under Article 215 as aforestated. Also, as such High Courts have the power, nay, the duty to protect the fundamental rights of citizens under Article 226 of the Constitution, the inherent power to do justice in cases involving the liberty of the citizen would also sound in Article 21 of the Constitution. This being the constitutional position, it is clear that Section 19(3)(c) cannot be read as a ban on the maintainability of a petition filed before the High Court under Section 482 of the Code of Criminal Procedure, the non-obstante clause in Section 19(3) applying only to the Code of Criminal Procedure. The judgment of this Court in Satya Narayan Sharma v. State of Rajasthan, (2001) 8 SCC 607 at paragraphs 14 and 15 does not, therefore, lay down the correct position in law. Equally, in paragraph 17 of the said judgment, despite the clarification that proceedings can be "adapted" in appropriate cases, the Court went on to hold that there is a blanket ban of stay of trials and that, therefore, Section 482, even as adapted, cannot be used for the aforesaid purpose.

This again is contrary to the position in law as laid down hereinabove. This case, therefore, stands overruled.

12. At this juncture it is important to consider the 3-Judge bench decision in Madhu Limaye (supra). A 3-Judge bench of this Court decided that a Section 482 petition under the Code of Criminal Procedure would be maintainable against a Sessions Judge order framing a charge against the appellant under Section 500 of the Penal Code, despite the prohibition contained in Section 397(2) of the Code of Criminal Procedure.

This was held on two grounds. First, that even if Section 397(1) was out of the way because of the prohibition contained in Section 397(2), the inherent power of the Court under Section 482 of the Code of Criminal Procedure would be available.

This was held after referring to Amar Nath v. State of Haryana, (1977) 4 SCC 137, which was a 2-Judge Bench decision, which decided that the inherent power contained in Section 482 would not be available to defeat the bar contained in Section 397(2). The 3-Judge referred to the judgment in Amar Nath (supra) and said:

> "7. For the reasons stated hereinafter we think that the statement of the law apropos Point No. 1 is not quite accurate and needs some modulation. But we are going to reaffirm the decision of the Court on the second point." (at page 554) This Court, in an important paragraph, then held:

"10. As pointed out in Amar Nath case the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding, is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub-section (2) in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include sub-section (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court", But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial, after proper sanction will not be barred on the doctrine of autrefois acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused up to the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not

accepting, that invoking the revisional power of the High Court is impermissible.

(at pages 555-556)

13. The second ground on which this case was decided was that an order framing a charge was not a purely interlocutory order so as to attract the bar of Section 392(2), but would be an "intermediate" class of order, between a final and a purely interlocutory order, on the application of a test laid down by English decisions and followed by our Courts, namely, that if the order in question is reversed, would the action then go on or be terminated. Applying this test, it was held that in an order rejecting the framing of a charge, the action would not go on and would be terminated and for this reason also would not be covered by Section 397(2).

14. This judgment was affirmed by a 4-Judge Bench in V.C. Shukla v. State through C.B.I. (1980) Supp. SCC 92 at 128-

129, where it was held that under Section 11 of the Special Courts Act, 1979, the scheme being different from the Code of Criminal Procedure, and the Section opening with the words "notwithstanding anything in the Code", the "intermediate" type of order would not obtain, and an order framing a charge would, therefore, not be liable to be appealed against, being purely interlocutory in nature. While holding this, this Court was at pains to point out:

"On a true construction of Section 11(1) of the Act and taking into consideration the natural meaning of the expression 'interlocutory order', there can be no doubt that the order framing charges against the appellant under the Act was merely an interlocutory order which neither terminated the proceedings nor finally decided the rights of the parties. According to the test laid down in Kuppuswami's case the order impugned was undoubtedly an interlocutory order. Taking into consideration, therefore, the natural meaning of interlocutory order and applying the non obstante clause, the position is that the provisions of the Code of Criminal Procedure are expressly excluded by the non obstante clause and therefore s. 397(2) of the Code cannot be called into aid in order to hold that the order impugned is not an interlocutory order. As the decisions of this Court in the cases of Madhu Limaye v. State of Maharashtra and Amar Nath & v. State of Haryana were given with respect to the provisions of the Code, particularly s. 397(2), they were correctly decided and would have no application to the interpretation of s. 11(1) of the Act, which expressly excludes the provisions of the Code of Criminal Procedure by virtue of the non obstante clause." In Poonam Chand Jain and another v. Fazru, (2004) 13 SCC 269 at 276-279, this Court was at pains to point out that the judgment in V.C. Shukla (supra) was rendered in the background of the special statute applicable (See paragraph

13).

15. It is thus clear that Madhu Limaye (supra) continues to hold the field, as has been held in V.C. Shukla (supra) itself.

How Madhu Limaye (supra) was understood in a subsequent judgment of this Court is the next bone of contention between the parties.

16. In Girish Kumar Suneja v. C.B.I., (2017) 14 SCC 809, a 3-Judge Bench of this Court was asked to revisit paragraph 10 of its earlier order dated 25th August, 2014, passed in the coal block allocation cases. While transferring cases pending before different courts to the Court of a Special Judge, this Court, in its earlier order dated 25th August, 2014, had stated:

> "10. We also make it clear that any prayer for stay or impeding the progress in the investigation/trial can be made only before this Court and no other Court shall entertain the same." Several grounds were argued before this Court stating that paragraph 10 ought to be recalled. We are concerned with grounds (i), (ii) and (vii), which are set out hereinbelow:
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> "(i) The right to file a revision petition under Section 397 of the Code of Criminal Procedure, 1973 or the Cr.P.C. as well approaching the High Court under Section 482 of the Cr.P.C. has been taken away;

(ii) The order passed by this Court has taken away the right of the appellants to file a petition under Articles 226 and 227 of the Constitution and thereby judicial review, which is a part of the basic structure of the Constitution, has been violated which even Parliament cannot violate;

(vii) The prohibition in granting a stay under Section 19(3)(c) of the PC Act is not absolute and in an appropriate case, a stay of proceedings could be granted in favour of an accused person particularly when there is a failure of justice. Any restrictive reading would entail a fetter on the discretion of the High Court which itself might lead to a failure of justice." This Court referred to the judgment in Amar Nath (supra) and then to the Statement of Objects and Reasons for introducing 397(2) of the Code of Criminal Procedure which, inter alia, stated as follows:

> "(d) the powers of revision against interlocutory orders are being taken away, as it has been found to be one of the main contributing factors in the delay or disposal of criminal cases;" After referring to Madhu Limaye (supra) and the difference between interlocutory and intermediate orders, this Court held in paragraphs 25, 29, 30 and 32 as follows:
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> "25. This view was reaffirmed in Madhu Limaye when the following principles were approved in relation to Section 482 of the Cr.P.C. in the context of Section 397(2) thereof. The principles are:
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> "(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code." Therefore, it is quite clear that the prohibition in Section 397 of the Cr.P.C. will govern Section 482 thereof. We endorse this view.

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29. This leads us to another facet of the submission made by learned counsel that even the avenue of proceeding under Section 482 of the Cr.P.C. is barred as far as the appellants are concerned. As held in Amar Nath and with which conclusion we agree, if an interlocutory order is not revisable due to the prohibition contained in Section 397(2) of the Cr.P.C. that cannot be circumvented by resort to Section 482 of the Cr.P.C. There can hardly be any serious dispute on this proposition.

30. What then is the utility of Section 482 CrPC? This was considered and explained in Madhu Limaye [Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 : 1978 SCC (Cri) 10] which noticed the prohibition in Section 397(2) CrPC and at the same time the expansive text of Section 482 CrPC and posed the question: In such a situation, what is the harmonious way out? This Court then proceeded to answer the question in the following manner: (SCC pp. 555-56, para 10) "10. ... In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly." xxx xxx xxx

32. In Satya Narayan Sharma v. State of Rajasthan this Court considered the provisions of the PC Act and held that there could be no stay of a trial under the PC Act. It was clarified that that does not mean that the provisions of Section 482 of the Cr.P.C. cannot be taken recourse to, but even if a litigant approaches the High Court under Section 482 of the Cr.P.C. and that petition is entertained, the trial under the PC Act cannot be stayed. The litigant may convince the court to expedite the hearing of the petition filed, but merely because the court is not in a position to grant an early hearing would not be a ground to stay the trial even temporarily. With respect, we do not agree with the proposition that for the purposes of a stay of proceedings recourse could be had to Section 482 of the Cr.P.C. Our discussion above makes this quite clear." (at pages 832-834) However, thereafter, this Court stated the law thus in paragraph 38:

"38. The Criminal Procedure Code is undoubtedly a complete code in itself. As has already been discussed by us, the discretionary jurisdiction under Section 397(2) of the Cr.P.C. is to be exercised only in respect of final orders and intermediate orders. The power under Section 482 of the Cr.P.C. is to be exercised only in respect of interlocutory orders to give effect to an order passed under the Cr.P.C. or to prevent abuse of the process of any Court or otherwise to serve the ends of justice. As indicated above, this power has to be exercised only in the rarest of rare cases and not otherwise. If that is the position, and we are of the view that it is so, resort to Articles 226 and 227 of the Constitution would be permissible perhaps only in the most extraordinary case. To invoke the constitutional jurisdiction of the High Court when the Cr.P.C. restricts it in the interest of a fair and expeditious trial for the benefit of the accused person, we find it difficult to accept the proposition that since Articles 226 and 227 of the Constitution are available to an accused person, these provisions should be resorted to in cases that are not the rarest of rare but for trifling issues." (at pages 835-836)

17. According to us, despite what is stated in paragraphs 25, 29 and 32 supra, the ratio of the judgment is to be found in paragraph 38, which is an exposition of the law correctly setting out what has been held earlier in Madhu Limaye (supra). A judgment has to be read as a whole, and if there are conflicting parts, they have to be reconciled harmoniously in order to yield a result that will accord with an earlier decision of the same bench strength. Indeed, paragraph 30 of the judgment sets out a portion of paragraph 10 of Madhu Limaye (supra), showing that the Court was fully aware that Madhu Limaye (supra) did not approve Amar Nath (supra) without a very important caveat – and the caveat was that nothing in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. We, therefore, read paragraph 38 as the correct ratio of the said judgment not only in terms of the applicability of Section 482 of the Code of Criminal Procedure, but also in terms of how it is to be applied.

18. Insofar as petitions under Articles 226 and 227 are concerned, they form part of the basic structure of the Constitution as has been held in L. Chandra Kumar v. Union of India and others, (1997) 3 SCC 261 at 301. Here again, the judgment of a Constitution Bench in Kartar Singh v. State of Punjab, (1994) 3 SCC 569 at 714, puts it very well when it says:

"Though it cannot be said that the High Court has no jurisdiction to entertain an application for bail under Article 226 of the Constitution and pass orders either way, relating to the cases under the Act 1987, that power should be exercised sparingly, that too only in rare and appropriate cases in extreme circumstances. But the judicial discipline and comity of courts require that the High Courts should refrain from exercising the extraordinary jurisdiction in such matters." This aspect of Kartar Singh (supra) has been followed in Girish Kumar Suneja (supra) in paragraph 40 thereof and we respectfully concur with the same. In view of the aforesaid discussion, it is

clear that the Delhi High Court judgment's conclusions in paragraph 33 (a), (b) and (d) must be set aside.

19. I agree with Goel, J. that the appeals be disposed of in accordance with his judgment.

.....J. (R.F. Nariman) New Delhi;

March 28, 2018.