

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 03RD DAY OF SEPTEMBER, 2022

R

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.19019 of 2021 (GM-RES)

BETWEEN:

SAYYED SOHEL TORVI
S/O SAYYED RASOOL
AGED ABOUT 28 YEARS
R/AT TOWER NO.10
17TH FLOOR, FLAT NO.6
NIKOO HOMES, BHARTIYA CITY
THANNISANDRA MAIN ROAD
BENGALURU – 560 077.

... PETITIONER

(BY SRI MOHAMMED TAHIR, ADVOCATE)

AND:

NATIONAL INVESTIGATING AGENCY
MINISTRY OF HOME AFFAIRS (GOI)
BRANCH OFFICE HYDRABAD
REP. BY THEIR STANDING COUNSEL
OFFICE AT HIGH COURT COMPLEX
OPP TO VIDHAN SABHA
BENGALURU – 560 001.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.P.P.,)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE IMPUGNED ORDER

DATED 30.09.2021 WHICH IS ARISING OUT OF THE SPECIAL CC.NO.141/2021 PENDING BEFORE THE BY THE XLIX ADDL.CITY CIVIL AND SESSIONS JUDGE, (SPECIAL COURT FOR NIA CASES) AT BANGALORE FOR THE ALLEGED OFFENCES UNDER SECTION 120(B), 143, 145, 147 AND 188 R/W 34 AND 149 OF IPC AT ANNEXURE F, CONSEQUENTLY APPRECIATE THE APPLICATION FILED BY THE PETITIONER UNDER SECTION 20 R/W 8 OF NIA ACT AT ANNEXURE D.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 26.07.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question order dated 30-09-2021 passed by the XLIX Additional Civil and Sessions Judge (Special Court for NIA Cases) at Bangalore in Spl.C.C.No.141 of 2021 by which the application filed by the petitioner seeking transfer of his case from the Special Court trying cases under the National Investigation Agency Act, 2008 ('the Act' for short) to the Court having jurisdiction to try IPC offences is rejected.

2. Brief facts that lead the petitioner to this Court in the subject petition, filtering out unnecessary details, are as follows:-

On 11-08-2020 at around 8-45 p.m. it is alleged, that a group of 25 to 30 people gathered in front of Kadugondana Halli

('KG Halli' for short) Police Station and started shouting slogans demanding arrest of one Naveen, nephew of Shri Akhanda Srinivasa Murthy, MLA who had posted certain derogatory message on his face-book account, which had generated such insult to the religious faith to those 25 to 30 people who belonged to a particular religion. At about 8.50 p.m. another group of people under the leadership of one Syed Ikramuddin entered KG Halli Police Station demanding registration of a case against the said Naveen and others. The police accepted the complaint and registered an NCR in the light of a preliminary enquiry being conducted for a crime registered in FIR No.195 of 2020 on the same set of fact by Devarajeevana Halli ('DJ Halli' for short) Police Station on 11.08.2020 itself.

3. The gathering at KG Halli Police Station increased tenfold and the mob alleged to have indulged in certain acts which resulted in registration of FIR against all those who were involved in the untoward incident that happened on that date. The Allegations initially made against several members of the mob including the petitioner were the ones punishable under Sections 120B, 143, 145, 147 and 188 r/w 34 and 149 of the IPC. After registration of crime, it appears that the police while

investigating recorded statements of several witnesses. Pending filing of a final report, the Ministry of Home Affairs, Government of India by its order dated 21-09-2020 transferred the case to National Investigation Agency ('NIA' for short) and the NIA conducted fresh investigation or further investigation as the case would be and filed a charge sheet, in which the present petitioner is arrayed as accused No.137 for the offences punishable as afore-quoted.

4. The case does not concern merit of accusations or the facts that led to registration of crime. In the said proceedings before the NIA Court, the petitioner files an application in terms of Section 20 r/w Section 8 of the Act seeking transfer of the case pertaining to him to the Court having jurisdiction to try general IPC offences and that he should not be tried before the NIA Court as there was no allegation that would touch upon the offences punishable under the Unlawful Activities (Prevention) Act, 1967 ('UAPA' for short) for the NIA Court to get jurisdiction to try non-UAPA offences. The Special Court by its order dated 30-09-2021 rejects the application on the ground that the Court did have power to try the offences both arising out of the IPC and that of UAPA if they arise of the same transaction or the

same incident. It is this order that drives the petitioner to this Court in the subject petition.

5. Heard Sri. Mohammed Tahir, learned counsel appearing for the petitioner and Sri P.Prasanna Kumar, learned Special Public Prosecutor for the respondent.

6. The learned counsel representing the petitioner taking this Court through the provisions of the Act would contend that the Special Court is created to hear offences under the Act, it can try only offences scheduled thereto. What is alleged against the petitioner is not a scheduled offence under the UAPA or the scheduled offence under the Act and therefore, the case ought to have been transferred to the concerned Court having jurisdiction to try the IPC offences notwithstanding the fact that they arose out of the very same incident. He would submit trial by the Special Court is without jurisdiction.

7. On the other hand, the learned counsel representing NIA would refute the submissions of the learned counsel for the petitioner to contend that if a case arising out a particular incident gets ingredients that would become offences under two enactments, one particular Court is empowered to try both those

offences. In the case at hand, the incidents that have happened on 11-08-2020 gave rise to two sets of offences against all the accused – one under the UAPA and the other under the IPC. Therefore, the NIA Court in terms of Sections 14 and 20 of the Act r/w Section 223 of the CrPC is empowered to try those offences. The learned counsel would seek to place reliance upon the following judgments of the Apex Court to buttress his submission that the NIA Court is empowered to adjudicate upon the offences under the IPC as well which arise out of the same transaction:

- (i) **VIVEK GUPTA v. CBI** – (2003) 8 SCC 628;
- (ii) **ESSAR TELEHOLDINGS LIMITED v. REGISTRAR GENERAL, DELHI HIGH COURT** – (2013) 8 SCC 1;
- (iii) **STATE THROUGH CBI v. JITENDER KUMAR SINGH** – (2014) 11 SCC 724; and
- (iv) **HCL INFOSYSTEM LIMITED v. CBI** – (2016) 9 SCC 281.

8. In reply to the said submissions, the learned counsel for the petitioner would contend that the scheduled offences include specific enactments that can be tried, but the IPC offence is not the one that is included in the schedule. Therefore, those scheduled offences can be tried by the NIA Court and as such, the NIA Court has no jurisdiction to try any of the IPC offences.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record. In furtherance thereof, the only issue that falls for my consideration is:

'Whether the NIA Court is empowered to conduct trial of offences alleged, which are the ones punishable under the IPC as well, in the facts of the case?'

10. The afore-quoted facts that led to registration of the crime being a matter of record are not reiterated. For consideration of the aforesaid issue, it is germane to notice the provisions of the NIA Act, UAPA and the CrPC. The petitioner is alleged of offences punishable under Section 120B IPC or of the other offences that are relating to formation of an unlawful assembly. Section 8 of the Act reads as follows:

"8. Power to investigate connected offences.— While investigating any Scheduled Offence the Agency may also investigate any other offence which the accused is alleged to have committed if the offence is connected with the Scheduled Offence."

(Emphasis supplied)

Section 8 directs that if an offence is connected with the scheduled offence appended to the Act, such offence can be

investigated by the NIA, as Section 8 deals with power to investigate connected offences. Therefore, the offence that is alleged should have been committed by the accused and the other offence i.e., the general offence should be in connection with the alleged offence under the Act.

Section 13 of the Act deals with jurisdiction of the Special Court and reads as follows:-

"13. Jurisdiction of Special Courts. —

(1) Notwithstanding anything contained in the Code, every Scheduled Offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed.

(2) If, having regard to the exigencies of the situation prevailing in a State if,—

- (a) it is not possible to have a fair, impartial or speedy trial; or*
- (b) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor or a judge of the Special Court or any of them; or*
- (c) it is not otherwise in the interests of justice,*

the Supreme Court may transfer any case pending before a Special Court to any other Special Court within that State or in any other State and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State.

(3) The Supreme Court or the High Court, as the case may be, may act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the applicant is the Attorney-General for India, be supported by an affidavit or affirmation."

Section 14 of the Act deals with powers of Special Courts with respect to other offences and reads as follows:

"14 Powers of Special Courts with respect to other offences.—(1) When trying any offence, a Special Court may also try any other offence with which the accused may, under the Code be charged, at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorised by this Act or, as the case may be, under such other law."

(Emphasis supplied)

Section 14(1) directs that the Special Court may also try any other offence with which the accused under the Code is charged at the same trial if the offence is connected with other offences that the accused is charged with.

Section 20 of the Act deals with power to transfer cases to regular courts and reads as follows:

"20. Power to transfer cases to regular courts.—
Where, after taking cognizance of any offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offence to any court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence."

Section 20 empowers NIA Court to transfer cases which are before the Special Court to regular Courts. The application filed by the petitioner is under Section 20 of the Act.

Section 18 of the UAPA which deals with conspiracy reads as follows:

"18. Punishment for conspiracy, etc. – Whoever conspires or attempts to commit, or advocates, abets, advises or incites, directs or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine."

Section 18 (*supra*) deals with punishment for conspiracy. The petitioner is not charged of conspiracy under UAPA but the allegation against the petitioner is the one punishable under Section 120B of the IPC which deals with punishment for criminal conspiracy.

It is now germane to notice Section 223 of the CrPC which deals with what persons may be charged jointly and reads as follows:

***"223. What persons may be charged jointly.—
The following persons may be charged and tried together, namely:—***

- (a) persons accused of the same offence committed in the course same transaction;**
- (b) person accused of an offence and persons accused of abetment of, or attempt to commit, such offence;**
- (c) person accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;**
- (d) persons accused of different offences committed in the course of the same transaction;*
- (e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last-named offence;*
- (f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;*
- (g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:*

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate or Court of Session may, if such persons by an application in writing, so desire, and if he or it is satisfied that such

persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together."

(Emphasis supplied)

If a particular offence concerns two or more people which arise out of the same transaction, they can be tried together in terms of Section 223 of the CrPC. This is the broad framework of the provisions of law involved to arrive at a resolution of the dispute in the *lis*.

11. It is not in dispute that the petitioner is not charged with Section 18 of the UAPA which deals with punishment for conspiracy but is charged under Section 120B read with Sections 143, 145 and 147, 188 and 34 of the IPC. Therefore, all the offences against the petitioner are the ones punishable under the IPC. It is no doubt true that the NIA Court can try only the offences that are appended to its schedule. Schedule appended to Section 2(1)(f) of the Act depicts offences falling under the following Acts to be triable by the NIA Court and it reads as follows:-

"THE SCHEDULE

[See section 2(1) (f)]

1. *The Explosive substances Act, 1908 (6 of 1908);*
- 1-A. *The Atomic Energy Act, 1962 (33 of 1962);*
2. *The Unlawful Activities (Prevention) Act, 1967 (37 of 1967);*
3. *The Anti-Hijacking Act, 1982 (65 of 1982);*

4. *The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 (66 of 1982);*
5. *The SAARC Convention (Suppression of Terrorism) Act, 1993 (36 of 1993);*
6. *The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002);*
7. *The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005);*
8. *Offences under—*
 - (a) *Chapter VI of the Indian Penal Code (45 of 1860) [sections 121 to 130 (both inclusive)];*
 - (b) *Sections 489-A to 489-E (both inclusive) of the Indian Penal Code (45 of 1860);*
 - (c) *Sections 489A to 489E (both inclusive) of the Indian Penal Code (45 o 1860);*
 - (d) *Sib-section (1-AA) of Section 25 of Chapter V of the Arms Act, 1959 (54 of 1959); and*
 - (e) *Section 66-F of Chapter XI of the Information Technology Act, 2000 (21 of 2000)."*

The offences under the UAPA are one of the provisions that become triable before the NIA Court. Admittedly, the petitioner is not charged with the offences under the UAPA and is charged with the offences under the IPC. Therefore, the question is whether the petitioner can be tried by the NIA Court for the IPC offences.

12. It now becomes germane to notice the judgments rendered by the Apex Court which consider amalgam of offences emanating from two different enactments being tried by one common Court *qua* the offences arising out of the same

transaction or facts. The Apex Court right from the case of **VIVEK GUPTA**¹ (*supra*) has considered this very issue. The Apex Court in the said judgment has held as follows:

"13. Section 223 of the Code of Criminal Procedure has not been excluded either expressly or by necessary implication nor has the same been modified in its application to trials under the Act. The said provision therefore is applicable to the trial of an offence punishable under the Act. The various provisions of the Act which we have quoted earlier make it abundantly clear that under the provisions of the Act a Special Judge is not precluded altogether from trying any other offence, other than offences specified in Section 3 thereof. A person charged of an offence under the Act may in view of sub-section (3) of Section 4 be charged at the same trial of any offence under any other law with which he may, under the Code of Criminal Procedure, be charged at the same trial. Thus a public servant who is charged of an offence under the provisions of the Act may be charged by the Special Judge at the same trial of any offence under IPC if the same is committed in a manner contemplated by Section 220 of the Code.

14. The only narrow question which remains to be answered is whether any other person who is also charged of the same offence with which the co-accused is charged, but which is not an offence specified in Section 3 of the Act, can be tried with the co-accused at the same trial by the Special Judge. We are of the view that since sub-section (3) of Section 4 of the Act authorizes a Special Judge to try any offence other than an offence specified in Section 3 of the Act to which the provisions of Section 220 apply, there is no reason why the provisions of Section 223 of the Code should not apply to such a case. Section 223 in clear terms provides that persons accused of the same offence committed in the course of the same transaction, or persons accused of different offences committed in the course of the same transaction may be charged and tried together. Applying the provisions of Sections 3 and 4 of the Act and Sections 220 and 223 of the Code of Criminal Procedure, it

¹ (2003) 8 SCC 628

must be held that the appellant and his co-accused may be tried by the Special Judge in the same trial.

15. This is because the co-accused of the appellant who have been also charged of offences specified in Section 3 of the Act must be tried by the Special Judge, who in view of the provisions of sub-section (3) of Section 4 and Section 220 of the Code may also try them of the charge under Section 120-B read with Section 420 IPC. All the three accused, including the appellant, have been charged of the offence under Section 120-B read with Section 420 IPC. If the Special Judge has jurisdiction to try the co-accused for the offence under Section 120-B read with Section 420 IPC, the provisions of Section 223 are attracted. Therefore, it follows that the appellant who is also charged of having committed the same offence in the course of the same transaction may also be tried with them. Otherwise it appears rather incongruous that some of the conspirators charged of having committed the same offence may be tried by the Special Judge while the remaining conspirators who are also charged of the same offence will be tried by another court, because they are not charged of any offence specified in Section 3 of the Act.

16. Reliance was placed by the respondent on the judgment in *Union of India v. I.C. Lala* [(1973) 2 SCC 72 : 1973 SCC (Cri) 738 : AIR 1973 SC 2204] but the counsel for the appellant distinguished that case submitting that the facts of that case are distinguishable inasmuch as in that case apart from the two army officers, even the third appellant who was a businessman, was charged of the offence punishable under Section 120-B IPC read with Section 5(2) of the Act. Such being the factual position in that case, Section 3(1)(d) of the relevant Act was clearly attracted. In the instant case he submitted, there was no charge against the appellant of having conspired to commit an offence punishable under the Act. The aforesaid judgment refers to an earlier decision of this Court in the case of *State of A.P. v. Kandimalla Subbaiah* [AIR 1961 SC 1241 : (1961) 2 Cri LJ 302] . The learned counsel for the appellant distinguishes that case also for the same reason, since in that case as well the respondent was charged of conspiracy to commit an offence punishable under the Act.

17. We are, therefore, of the view that in the facts and circumstances of this case, the Special Judge while trying the co-accused of an offence punishable under the provisions of the Act as also an offence punishable under Section 120-B read with Section 420 IPC has the jurisdiction to try the appellant also for the offence punishable under Section 120-B read with Section 420 IPC applying the principles incorporated in Section 223 of the Code. We, therefore, affirm the finding of the High Court and dismiss this appeal."

(Emphasis supplied)

The Apex Court in the said judgment holds that the appellant therein, though is charged of offences under a particular enactment, is to be tried with other persons who are alleged to have incurred offences under two enactments as they are arising out of the same transaction. Later the Apex Court in the case of **ESSAR TELEHOLDINGS LIMITED**² (*supra*) has held as follows:

"17. A mere perusal of Section 3 read with Section 4 of the PC Act clearly mandates that apart from an offence punishable under the PC Act, any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified under the PC Act can also be tried by a Special Judge. Sub-section (3) of Section 4 specifies that when trying any case, a Special Judge can also try any offence, other than an offence specified in Section 3, with which the accused may, under CrPC, be charged at the same trial.

...

...

...

19. Section 22 of the PC Act provides that provisions of CrPC, shall in their application to any proceeding in relation to an offence punishable under the Act to apply subject to certain modifications. It is, therefore, apparent

² (2013) 8 SCC 1

that the provisions of CrPC are to be applied to trials for offence under the PC Act, subject to certain modifications.

... ..

25. Admittedly, the co-accused of 2G Scam case charged under the provisions of the Prevention of Corruption Act can be tried only by the Special Judge. The petitioners are co-accused in the said 2G Scam case. In this background Section 220 CrPC will apply and the petitioners though accused of different offences i.e. under Sections 420/120-B IPC, which alleged to have been committed in the course of 2G Spectrum transactions, under Section 223 CrPC they may be charged and can be tried together with the other co-accused of 2G Scam cases."

(Emphasis supplied)

The Apex Court in the case of **JITENDER KUMAR SINGH**³

(supra) has held as follows:

"33. We may now examine the scope of sub-section (3) of Section 4 of the PC Act, which indicates that "when trying any case", which means trying any case relating to the offences referred to in Sections 3(1)(a) and (b) of the PC Act for which exclusive jurisdiction is conferred on the Special Judge. A Special Judge, while exercising, exclusive jurisdiction, that is, when trying any case relating to offences under Sections 3(1)(a) and (b) of the PC Act, may also try any offence other than the offence specified in Section 3, with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial. An accused, in a given case, may be charged under the Code of Criminal Procedure on an offence being committed under IPC and the offence specified in Section 3 of the PC Act. Criminal cases that can be tried by a Special Judge are under the PC Act and also for the charges under IPC or any other legislation. Conspiracy to commit any offence either under the PC Act or under IPC is a separate offence and has to be separately charged and tried. For

³ (2014) 11 SCC 724

example, the conspiracy to commit offence punishable under the PC Act itself is an offence to be tried only by a Special Judge. In Ajay Aggarwal v. Union of India [(1993) 3 SCC 609 : 1993 SCC (Cri) 961] , the Court held as follows : (SCC p. 618, para 11)

"11. ... Conspiracy to commit a crime itself is punishable as a substantive offence and every individual offence committed pursuant to the conspiracy is separate and distinct offence to which individual offenders are liable to punishment, independent of the conspiracy."

Reference may also be made to the judgments of this Court in Sanichar Sahni v. State of Bihar [(2009) 7 SCC 198 : (2009) 3 SCC (Cri) 347] and Mohd. Arif v. State (NCT of Delhi) [(2011) 13 SCC 621 : (2012) 2 SCC (Cri) 766] .

34. *In other words, an accused person, either a public servant or non-public servant, who has been charged for an offence under Section 3(1) of the PC Act, could also be charged for an offence under IPC, in the event of which, the Special Judge has got the jurisdiction to try such offences against the public servant as well as against a non-public servant. The legal position is also settled by the judgment of this Court in Vivek Gupta v. CBI [(2003) 8 SCC 628 : 2004 SCC (Cri) 51] , wherein this Court held that a public servant who is charged of an offence under the provisions of the PC Act may also be charged by the Special Judge at the same trial of any offence under IPC if the same is committed in a manner contemplated under Section 220 of the Code. This Court also held, even if a non-public servant, though charged only of the offences under Section 420 and Section 120-B read with Section 420 IPC, he could also be tried by the Special Judge with the aid of sub-section (3) of Section 4 of the PC Act. We fully endorse that view."*

(Emphasis supplied)

Following the said judgments, the Apex Court in the case of **HCL**

INFOSYSTEM LIMITED⁴ (*supra*) has held as follows:

⁴ (2016) 9 SCC 281

"10. As already stated, the High Court held that the Special Judge could continue proceedings against the appellants even after the death of public servant and even if there was no charge under the PC Act. The High Court duly considered the effect of death of the sole public servant. The contention raised by the appellant in the first case was that the charges against it were under Section 120-B read with Sections 409 and 420 IPC and Section 13(1)(d) read with Section 13(2) of the PC Act. There is no independent PC Act charge against it. Thus, only for non-PC Act charges, proceedings could not continue before the Special Judge. On this aspect, it was observed that the charge could be amended and challenge was premature apart from the fact that the Special Judge was competent to deal with the non-PC Act cases relating to the NRHM Scam. The relevant observations in this regard are : (HCL Infosystem Ltd. case [HCL Infosystem Ltd. v. CBI, 2015 SCC OnLine All 6522] , SCC OnLine All paras 39-40 & 43-44)

"39. There is one thing which deserves mention at this very stage is that the possibility of amendment in the charges and addition thereto keeping in view the nature of the allegations cannot be ruled out in future. This, therefore, would be a premature stage to presume that no other offence can be tried by the Special Court. The offences in relation to a non-government servant which connect him with the conspiracy of misappropriation of public funds with the aid of a government servant, would not vanish merely because the government servant has died. This would clearly depend upon the evidence and the facts of the case that would ultimately determine the framing of the charge and its consequential trial. Not only this, the Court has ample powers to add charges even during the course of the trial.

40. From a perusal of the FIR, charge-sheet and cognizance order, it may not be said at this stage that no offence under the Prevention of Corruption Act has been committed by the applicant. The cognizance is taken of the offence and not of the person. The charges are framed in relation to the offence committed which are tried. The question is of the link of a non-government servant to such an offence which may be relatable to the Prevention of Corruption Act, 1988. In the instant case, the material

on record does indicate prima facie such connection whereas in *State v. Jitender Kumar Singh* [*State v. Jitender Kumar Singh*, (2014) 11 SCC 724 : (2014) 3 SCC (Cri) 512 : (2014) 2 SCC (L&S) 843] which has been relied upon by the learned counsel for the applicant, the Apex Court came to a conclusion that there was no offence under the Prevention of Corruption Act for being tried as against the non-government servants involved therein that arose out of the Bombay case [*CBI v. Sham B. Bhatia*, 2009 SCC OnLine Bom 2331] as discussed in the said judgment. In the circumstances, it would be absolutely premature to presume on the facts of the present case of there being no evidence or linkage as suggested by the learned counsel for the petitioner when prima facie a charge-sheet and the cognizance order do disclose such links.

43. Applying the aforesaid principles on the facts of the present case, it is clear that there are clear allegations and also evidence prima facie collected to indicate conspiracy that connect the acts and omissions of late Shri G.K. Batra, the government servant, with the applicant company and its officials and agents who got themselves introduced in the manner indicated in the charge-sheet along with the active aid of late Shri G.K. Batra. Consequently, all arguments that have been advanced by Shri Chaturvedi on the strength of the judgment in *State v. Jitender Kumar Singh* [*State v. Jitender Kumar Singh*, (2014) 11 SCC 724 : (2014) 3 SCC (Cri) 512 : (2014) 2 SCC (L&S) 843] do not come to his aid as the facts of the present case are not identical except for the similarity of the death of the government servant. Consequently, the second argument also does not hold water.

44. In view of the conclusions drawn hereinabove, the order impugned dated 28-2-2015 is upheld and the proceedings before Shri Atul Kumar Gupta are treated to be well within his jurisdiction in all NRHM cases. In order to remove any doubt in this regard it is further directed that Shri Atul Kumar Gupta would continue to have jurisdiction over such cases till his successor joins on the said post. It may also be put on record that according to the annual list

of transfer and posting Shri Atul Kumar Gupta is under orders of transfer, but on account of no fresh notification for the Court occupied by him, his transfer order is under abeyance till his successor joins."

11. *The only contention raised by Shri C.U. Singh, learned Senior Counsel for the appellant is that public servant having died before framing of the charge, the appellant could not be tried by the Special Judge. He did not challenge any other finding in the impugned order except those relevant to this contention. Shri Singh submits that the case of the appellant M/s HCL Infosystem Ltd. is fully covered by the judgment of this Court in State v. Jitender Kumar Singh [State v. Jitender Kumar Singh, (2014) 11 SCC 724 : (2014) 3 SCC (Cri) 512 : (2014) 2 SCC (L&S) 843] . Particular reliance was placed on para 46 of the judgment. It was submitted that the trial in a warrant case commenced on framing of the charge which has not yet happened and the public servant had died. The appellant could be tried only during the lifetime of the public servant. Having regard to the fact that the public servant has died before the framing of the charge, this Court upheld the view of the Special Judge, CBI, Greater Mumbai in forwarding the papers of the case to the Chief Judicial Magistrate.*

...

...

..

15. *In the present case, the Special Court in question has been constituted not only to deal with the cases of the PC Act but also other cases relating to the NRHM Scam. The procedure of the Code of Criminal Procedure is applicable to trial before the Special Judge and there is no prejudice to trial that is taking place before the Special Judge duly appointed to deal with non-PC cases when the object of doing so was to try connected cases before the same court. Undoubtedly, while the Special Judge alone could deal with cases under the PC Act, non-PC Act could also be allowed to be tried by the Special Judge under Section 26 of the Code of Criminal Procedure. There is no legal bar to do so, as held by this Court in Essar Teleholdings Ltd. [Essar Teleholdings Ltd. v. Delhi High Court, (2013) 8 SCC 1: (2013) 3 SCC (Cri) 744: (2014) 1 SCC (L&S) 51]."*

(Emphasis supplied)

Long before the afore-quoted judgments of the Apex court, the Apex Court in the case of **KADIRI KUNHAHAMMAD v. STATE OF MADRAS**⁵ has held as follows:

*"5. Mr Purshottam then argues that even if the joint trial may be justified it was not open to the prosecution to charge the appellant at such a joint trial with the commission of a specific act of breach of trust as alleged in charge six. **This argument is wholly untenable. Under Section 235(1), if, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for, every such offence. Whereas Section 239(d) allows a joinder of persons at a criminal trial, Section 235(1) allows joinder of charges subject to the conditions mentioned respectively in the said two provisions. In other words, these provisions constitute an exception to the provisions of Section 233 as well as those under Section 234(2). There is, therefore, no doubt that, in a case of conspiracy, if specific offences are committed in pursuance of the said conspiracy, all persons who are parties to that conspiracy and are also concerned in the specific offences thus committed can be lawfully tried jointly at the same trial. (Vide: Rash Behari Shaw (Handa) v. Emperor [AIR 1936 Cal 753].)"***

(Emphasis supplied)

13. On a coalesce of the judgments rendered by the Apex Court in the aforesaid judgments what would unmistakably emerge is that Section 223 of the CrPC which was Section 239(d) of the old Code allows joinder of persons at a criminal trial and

⁵ **AIR 1960 SC 661**

Section 235(1) allows joinder of charges subject to the conditions mentioned in the two provisions.

14. In the case at hand, it is not in dispute that the petitioner is part of the mob that had indulged in acts which become punishable under the IPC and UAPA. Therefore, under Section 223 of the CrPC, the two offences would become triable by the NIA Court. Section 14 of the Act empowers the Court to try any other offence with which the accused may, under the Code be charged, at the same trial, if the offence is connected with such other offence. If, in the course of any trial under the Act of any offence, it is found that the accused person has committed any other offence under the Act or any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorized by the Act.

15. On a conjoint reading of Section 14 of the Act, Section 223 of the CrPC and the judgments rendered by the Apex Court, what would unmistakably emerge is that the petitioner can also be tried by the NIA Court, notwithstanding the fact that the offences alleged against the petitioner are the ones under the

Code, in the light of the fact that they arose out of the very same transaction. The contention in the case at hand is akin to what was contended before the Apex Court in the aforequoted judgments. The Apex Court having negated those submissions made by those appellants covers the contentions advanced by the learned counsel appearing for the petitioner in the case at hand. Though in the first blush the submission of the learned counsel for the petitioner would sound acceptance, on a deeper delving into the matter and the fact that the Apex Court has answered similar issues, I decline to accept the contention of the learned counsel for the petitioner.

16. In the result, I do not find any error in the order of the Special Court declining to transfer the case from its hands to the jurisdictional Court that would be trying IPC offences owing to the peculiar facts of the case.

The petition is accordingly dismissed.

**Sd/-
JUDGE**

bkp