* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 28th January, 2011**
Date of decision: 29th March, 2011

+ 1. W.P.(Crl.) No.80/2010

Shri Anur Kumar Jain … Petitioner
Through Mr.R.M. Bagai, Adv.

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

2. W.P.(Crl.) No.81/2010

Ziley Singh … Petitioner
Through None.

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

3. W.P.(Crl.) No.274/2010

Radhey Shyam … Petitioner
Through Mr.R.N. Mittal, Sr. Advocate with Mr. Puneet Mittal and Mr. Manoj Kumar, Advocates.[1]

Versus

State, CBI … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing

[1] Appearance inserted vide order dated 29.04.2011

counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

4. W.P.(Crl.) No.346/2010

O.P. Tomar & Ors. … Petitioners
Through None.

Versus

State of Delhi
Through CBI … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

5. W.P.(Crl.) No.347/2010

Ashok Kumar Singhal … Petitioner
Through Mr.R.N. Mittal, Sr. Advocate with Mr. Puneet Mittal and Mr. Manoj Kumar, Advocates.[2]

Versus

State of Delhi
Through CBI … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

6. W.P.(Crl.) No.348/2010

Jitender Pal Singh … Petitioner
Through None.

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

[2] Appearance inserted vide order dated 29.04.2011

7. W.P.(Crl.) No.349/2010

Ahmed Sayed & Ors. … Petitioners
Through None.

Versus

State of Delhi
Through CBI … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

8. W.P.(Crl.) No.350/2010

Rakesh Kumar Kohli & Ors. … Petitioners
Through Mr.S.P. Aggarwal, Mr.Rahul Garg, Advs.

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

9. W.P.(Crl.) No.351/2010

P.K. Jain … Petitioner
Through Mr.S.P. Aggarwal, Mr.Rahul Garg, Advs.

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

10. W.P.(Crl.) No.352/2010

Asian Resurfacing of Road
Agency P. Ltd. & Anr. … Petitioners

Through Mr.R.N. Mittal, Sr. Advocate with Mr. Puneet Mittal and Mr. Manoj Kumar, Advocates.[3]

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

11. W.P.(Crl.) No.353/2010

Rajesh Parashar & Anr. … Petitioners
Through None.

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

12. W.P.(Crl.) No. 354/2010

Satya Pal Gupta … Petitioner
Through Mr.R.N. Mittal, Sr. Advocate with Mr. Puneet Mittal and Mr. Manoj Kumar, Advocates.[4]

Versusc

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

[3] Appearance inserted vide order dated 29.04.2011
[4] Appearance inserted vide order dated 29.04.2011

13. W.P.(Crl.) No.355/2010

Satya Pal Gupta … Petitioner
Through Mr.R.N. Mittal, Sr. Advocate with Mr. Puneet Mittal and Mr. Manoj Kumar, Advocates.[5]

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

14. W.P.(Crl.) No.356/2010

Sh. Ram Bhaj Bansal & Ors. … Petitioners
Through Mr.Hrishikesh Baruah, Mr. Arjun Dewan, Mr. Nishant Das and Ms. Aditi Mital, Advs.

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

15. W.P.(Crl.) No.357/2010

R.N. Gupta & Ors. … Petitioners
Through None.

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

[5] Appearance inserted vide order dated 29.04.2011

16. W.P.(Crl.) No.358/2010

Rajesh Sharma … Petitioner
Through None.
Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

17. W.P.(Crl.) No.359/2010

Raju Gusia & Ors. … Petitioners
Through Mr.S.P. Aggarwal, Mr.Rahul Garg, Advs.
Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

18. W.P.(Crl.) No.360/2010

M.K. Gupta & Ors. … Petitioners
Through None
Versus

Central Bureau of Investigation
Through Director, CBI, New Delhi … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

19. W.P.(Crl.) No.361/2010

P.L. Gupta … Petitioner
Through None.
Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

20. W.P.(Crl.) No.362/2010

Aditya Nashier … Petitioner
Through Mr.Anil Goel, Adv.

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

21. W.P.(Crl.) No.363/2010

Dinesh Yadav … Petitioner
Through None.

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

22. W.P.(Crl.) No.364/2010

Kartar Singh Saukeen … Petitioners
Through None.

Versus

State of Delhi
Through CBI … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr.

Saurabh Soni, Advs.

23. W.P.(Crl.) No.365/2010

S.C. Chellani & Ors. … Petitioners
Through None.

Versus

State of Delhi
Through CBI … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

24. W.P.(Crl.) No.366/2010

Vijay Pal Shokeen … Petitioner
Through None.

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

25. W.P.(Crl.) No.372/2010

Sharda Singh … Petitioner
Through Mr.R.N. Mittal, Sr. Advocate with Mr. Puneet Mittal and Mr. Manoj Kumar, Advocates.[6]

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

[6] Appearance inserted vide order dated 29.04.2011

26. W.P.(Crl.) No.373/2010

P.K. Maheshwari … Petitioner
Through None.

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

27. W.P.(Crl.) No.383/2010

J.M. Sahai … Petitioner
Through Mr.D.C. Mathur, Sr. Adv. with Mr. Amardeep Singh, Mr. D.K. Mathur, Advs.

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

28. W.P.(Crl.) No.520/2010

J.B. Bhatia & Anr. … Petitioners
Through None.

Versus

State
Through Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

29. W.P.(Crl.) No.521/2010

Surinder Pal … Petitioner
Through None.

Versus

State
Through Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

30. W.P.(Crl.) No.522/2010

Prem Chand Meena & Ors. … Petitioners
Through None.

Versus

The Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

31. W.P.(Crl.) No.523/2010

J.B. Bhatia … Petitioner
Through None.

Versus

State
Through Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

32. W.P.(Crl.) No.524/2010

Surinder Pal … Petitioner
Through None.

Versus

State
Through Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

33. W.P.(Crl.) No.892/2010

Sh. Chander Prakash … Petitioner
Through Mr.Jatan Singh, Adv.
Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

34. W.P.(Crl.) No.990/2010

Shri Ram Bhaj Bansal & Ors. … Petitioners
Through None.
Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

35. W.P.(Crl.) No.991/2010

Shree Bhagwan Bhardwaj … Petitioner
Through None.
Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing

counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

36. W.P.(Crl.) No.992/2010

Shri Krishnan Mohan … Petitioner
Through None.

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

37. W.P.(Crl.) No.1026/2010

Shri Sudhir Mehta & Ors. … Petitioner
Through None.

Versus

Central Bureau of Investigation … Respondent
Through Mr. Gopal Subramanyam, Solicitor General with Mr. Vikas Pahwa, standing counsel with Mr. Devansh Mehta and Mr. Saurabh Soni, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

DIPAK MISRA, CJ

In this batch of writ petitions, we are required to answer the reference made by the learned Single Judge in respect of the following question:

> "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?"

2. Before dwelling upon the issue under reference, it would be apt to state under what circumstances the reference arose. For the said purpose, it is necessitous to have a brief advertence to the facts in the referral order. The petitioners had filed writ petitions for quashment of the orders of the learned Special Judge framing charges for the offence punishable under Prevention of Corruption Act, 1988 (for short 'the 1988 Act') along with or without charges for offence under India Penal Code (for short 'the IPC'). As the order of reference would reveal, the learned Single Judge has taken note of the fact that some of the petitions were filed under Articles 226 and 227 of the Constitution of India and some petitioners had filed criminal revisions which were converted to writ petitions on such a prayer being made and further some writ petitions were filed after dismissal of the revision petitions as this Court had held that the revision petition for quashing of the charge framed under the 1988 Act was not maintainable. The learned Single Judge took note of the decision in ***Dharambir Khattar v. Central Bureau of Investigation,*** **159 (2009) DLT 636**. In the said case, another learned Single Judge has opined thus:

> "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 the maintainability of the present petitions is required to be upheld……"

3. Thereafter, the learned Single Judge referred to the decision in ***R.C. Sabharwal v. Central Bureau of Investigation*, 166 (2010) DLT 362**, wherein another learned Single Judge has held thus:

> "56. I therefore hold that (i) Revision Petition is not maintainable against an order framing charge or directing framing of charge in a case attracting the provisions of Prevention of Corruption Act, 1988; (ii) Inherent Powers of the High Court cannot be invoked to challenge an order of the above-referred nature and; (iii) Writ Petition under Article 226/227 of the Constitution is maintainable against an order of the above-referred nature."

4. As Dhingra, J. did not agree with the view about the maintainability of a writ petition and also noticed that divergent views had been expressed by two other learned Judges he framed the question which has been reproduced

hereinabove and referred the matter to the larger Bench. Because of the said reference, the matter has been placed before us.

5. In the case of ***Dharambir Khattar*** (supra), it has been held that no revision petition under Section 397 read with Section 401 of the Criminal Procedure Code would lie in respect of an interlocutory order in the form of an order on charge or an order framing charge under the 1988 Act. In ***R.C. Sabharwal*** (supra), the learned Single Judge concurred with the view expressed in ***Dharambir Khattar*** (supra) wherein the other learned Single Judge expressed the opinion that "*no revision would lie in respect of an interlocutory order including an interlocutory order in the form of an order on charge or an order framing charge*" but proceeded to opine that the constitutional remedy under Articles 226 and 227 of the Constitution is not barred.

6. As far as the exercise of power under Section 482 is concerned, the learned Single Judge referred to the decisions in ***CBI v. Ravi Shankar Srivastava***, **(2006) 7 SCC 188,** ***Dharimal Tobacoo Products Ltd. & Ors. v. State of Maharashtra & Anr***., **AIR 2009 SC 1032**; ***Madhu Limaye v. The State of Maharashtra***, **(1977) 4 SCC 551,** ***Krishnan v. Krishnaveni*****, (1997) 4 SCC 241** and ***State vs. Navjot Sandhu*****, (2003) 6 SCC 641** and held thus:

> "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 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."

7. However, the learned Single Judge in ***R.C. Sabharwal*** (supra) proceeded to hold, as has been indicated earlier, that a writ petition under Articles 226 and 227 of the Constitution of India would be maintainable.

8. Be it noted, the learned referral Judge, before framing the question, has opined thus:

> "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."

The aforesaid observation has come because of what the learned Single Judge has stated in ***Dharambir Khattar case*** (supra). We think it appropriate to reproduce the same:

> "28. … the opening words of Section 27 PCA are "subject to the provisions of this Act…." Clearly, therefore, Section 27 PCA would be subject to Section 19 (3) (c). Section 22 only talks of the context in which CrPC would apply subject to certain modifications. Section 22 (d) PCA reads as under:
>
> > "22 (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."
>
> 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."

9. The learned referral Judge has perceived a difference of opinion in ***Dharambir Khattar*** (supra) and ***R.C. Sabharwal*** (supra) on the basis of the perception that in ***Dharambir Khattar*** (supra), the learned Single Judge has dealt with the submission of the prosecution that invocation of inherent power under Section 482 of the Cr.P.C. and the exercise of power under Article 227 does not survive after the authoritative pronouncement in the case of ***Navjot Sandhu*** (supra), whereas in the ***R.C. Sabharwal*** (supra), it has been clearly held that apart from the constitutional remedy all statutory remedies are barred. It is worth noting that the learned Judge in ***Dharambir Khattar*** (supra) though has noted the submissions and taken note of the pronouncement in the case of ***Navjot Sandhu*** (supra) had really not opined with regard to maintainability of an application under Section 482 of the Code of Criminal Procedure or the maintainability of a writ petition under Article 227 of the Constitution of India.

10. At this juncture, it is worth noting, in the order under reference various paragraphs of ***R.C. Sabharwal*** (supra) have been quoted in extenso wherein emphasis has been laid on curbing of corruption, expeditious trial and the curtailment of the revisional power. Thereafter, the learned Single Judge

referred to the decisions in ***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 & Another*, AIR 1968 SC 222**; ***Maruti Bala Raut v. Dashrath Babu Wathare & Others*, (1974) 2 SCC 615**; ***Babhutmal Raichand Oswal v. Laxmibai R. Tarte & Another*, AIR 1975 SC 1297**; ***Jagir Singh v. Ranbir Singh & Another*, 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 & Others*, AIR 2000 SC 1997** and ***Ranjeet Singh v. Ravi Prakash*, AIR 2004 SC 3892** and expressed the view as under:

> "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 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)

11. As the learned Single Judge in the order of reference, apart from framing the question, has also observed, to put the controversy raised by the decisions in ***Dharambir Khattar*** (supra), ***R.C. Sabharwal*** (supra) to rest, we think is appropriate to advert to three facets which emanate for consideration:

(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?

12. To answer the first issue, it is appropriate to refer to Section 19(3) of the 1988 Act. It reads as follows:

> "19(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-
>
> (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 or 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 any 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."

[Emphasis added]

13. Section 19(3)(c) uses the word 'any interlocutory order passed in any inquiry, trial, appeal or other proceedings'. Learned counsel for the petitioners would submit that the expressions interlocutory order and final order have been the subject matter of number of decisions and in fact the interpretation of the said expression has been partly borrowed from the interpretation given to the said expression by the English court. Reference has been made to ***Shubrook v. Tufnell***, 1882 (IX) QB 621, wherein it has been opined thus:

"…The first clause of the head note is too wide, the Court

> did not decide the general proposition there laid down, but only held that where the decision of the Court on the point submitted to it could not in any event necessitate the entering of final judgment for either party, the decision was interlocutory…"

14. Learned counsel for the petitioners have also referred to ***Salaman v. Warner and others***, 1891 (1) QB 734 and ***Bozson v. Altrincham Urban District Council***, (1903) 1 KB 547. After referring to the said decisions, learned counsel for the petitioners have placed reliance on a paragraph from ***Salter Rex & Co. v. Ghosh***, [1971] 2 Q.B. 597. Lord Denning MR speaking for Court of Appeal observed as follows:

> "There is a note in the Supreme Court Practice, 1970, under R.S.C. Order 59, Rule 4, from which it appears that different tests have been stated from time to time as to what is final and what is interlocutory. In *Standard Discount Co. Vs. La Grange and Salaman Vs. Warner Lord Esher M.R.* said that the test was the nature of the *application* to the Court and not the nature of the *order* which the court eventually made. But in *Bozson v. Altrincham Urban Distt. Council*, the court said that the test was the nature of the order as made. Lord Alverstone, C.J said that the test is: "Does the judgment or order, as made, finally dispose of the rights of the parties?" Lord Alverstone, C.J was right in logic but Lord Esher M.R. was right in experience. Lord Esher's test has always been applied in practice… So I would apply Lord Esher's test to an order refusing a new trial. I took to the application for a new trial and not to the order made…."

15. Reliance has also been placed on ***White v. Brounton***, (1984) 3 WLR 105

where the Court of Appeal has held thus:

> "More recently in Steinway & Sons v. Broadhurst-Clegg (unreported) 21 February 1983, this court followed Salter Rex & Co. v. Ghosh [1971] 2 Q.B. 597 and, applying the application approach to a judgment in default of defence, held that it was an interlocutory judgment."

16. It is urged that in the courts of England, the "application approach" is to see the effect of which a decision is in vogue. Reference has been made to the approach in the United States of America which is similar to the application approach which is prevalent in India. Inspiration has been drawn from Corpus Juris Secundum [Volume Nos. 49 and 60]. In Volume 60 at page 7, wherein the expression 'interlocutory order' has been defined as an order pending a cause, deciding some point or matter essential to the progress of the suit. The learned counsel for the petitioners have submitted that the concept of interlocutory order was dealt with by the Federal Court in the case of ***S. Kuppuswami Rao v. The Governor General of India***, AIR 1949 FC 1, wherein the Federal Court after referring to ***Salaman's*** case (supra) has opined as it is also not a final order, as the order is not on a point which, decided either way, would terminate the matter before the Court finally. In the said case the Federal Court was construing the expression 'final order' in the Government of India Act, 1935. Thereafter, the expressions 'final order' and 'interlocutory order' came up for consideration before the Constitution Bench in ***Mohan Lal Magan Lal Thakkar***

(supra) wherein the majority view was an interlocutory order, though not conclusive of the main dispute may be conclusive as to the subordinate matter with which it deals. In the case of ***Amar Nath v. State of Haryana***, (1977) 4 SCC 137 while dealing with the expression 'interlocutory order' in the context of Section 397 of the Code opined that the interlocutory order as used under Section 397(2) of the Code is in a 'restricted sense and not in any broad or artistic sense' and it only denotes orders of a purely interim or temporary nature which does not touch upon any important rights or liabilities of the parties. In ***Parmeshwari Devi v. State***, (1977) 1 SCC 169 the Apex Court has opined that the test to determine whether an order is an interlocutory or not was whether the order affected any rights of the parties. Similarly, view has been expressed in ***Sitaram Pande v. Uttam***, (1999) 3 SCC 134, ***K.K. Patel v. State of Gujarat***, (2000) 6 SCC 195, ***Poonam Chand Jain v. Fazru***, (2005) SCC (Cri.) 190.

17. Relying on the aforesaid pronouncements, it is propounded by learned counsel for the petitioners that framing of charge under the 1988 Act cannot have the character of an interlocutory order as it substantially affects the rights of a party. Learned counsel would further submit that the interpretation placed on interlocutory order which was done in the context of Section 397(2) of the Code of Criminal Procedure in the cases of ***Madhu Limaye*** (supra), ***Amar Nath*** (supra) and the same line of cases has to be followed inasmuch as the language used in Section 19(3)(c) of the 1988 Act is pari materia with Section 397(2) of

the Code. On the issue of pari materia learned counsel for the petitioners have commended us to the decisions rendered in ***Tribeni Prasad Singh v. Ramasray Prasad***, AIR 1931 Pat 241 [FB], ***Mohindra Supply Co v. Governor General in Council***, AIR 1954 PH 211 [FB], ***State of Madras v. Vaidyanathan Iyer***, AIR 1958 SC 61, ***Shah & Co. v. State of Maharashtra***, AIR 1967 SC 1877, ***Sankarayarayanan Nair v. P.V. Balakrishnan***, (1972) 1 SCC 318, ***Shri Kishan v. Mahabir Singh***, ILR (1975) 1 Del 575, ***Lila Gupta v. Laxmi Narian***, (1978) 3 SCC 258, ***TDM Infrastructure P. Ltd. v. UE Development India***, (2008) 14 SCC 271 and ***Lalu Prasad Yadav v. State of Bihar***, (2010) 5 SCC 1. Relying on the same, it is canvassed that Section 19(3)(c) of 1988 Act and Section 397(2) relate to the same subject matter that is statutory provision to maintain revision petition and the operation and scope of the same and the language used in the said two provisions has the character of 'pari materia'. It is also urged that in the case of ***Satya Narayan Sharma v. State of Rajasthan***, (2001) 8 SCC 607 the Apex Court has held that the operative portion of Section 19(3)(c) of 1988 Act is identical to Section 397(2) of the Code.

18. The learned Solicitor General would submit that whether a charge under the 1988 Act is not an interlocutory order in view of the decision rendered in the case of ***V.C. Shukla v. CBI***, 1980 (Suppl.) SC 921 as a similar provision in Section 11A of the Special Courts Act, 1979 (for short 'the 1979 Act') has been interpreted in the case of ***V.C. Shukla*** (supra). The relevant part of Section 11A

is reproduced below:

> "Appeal (1) Notwithstanding anything in the Code, an appeal shall lie as of right from any judgment, sentence or order, not being interlocutory order, of a Special Court to the Supreme Court both on facts and on law…
>
> (3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order of a Special Court."

19. While interpreting sub-section (1) which has used the words 'interlocutory order' it has been opined that the expression 'interlocutory order' in the 1979 Act had been used in its natural sense and not in a special or wider sense, as used in Section 397(2) of the Code of Criminal Procedure.

20. Their Lordships referred to the decisions in ***Madhu Limaye*** (supra), ***Amar Nath*** (supra) and pose the question whether or not the term 'interlocutory order' used in Section 11(1) of the 1979 Act should be given the same meaning as the very term appearing in Section 397(2) of the Code. Regard being had to the aims and objects of the Act being speediest disposal of cases, cutting down all possible delays, terms their Lordships opined that the term 'interlocutory order' should be so interpreted so as to advance the object of the Act rather than retard it. In paragraph 19 of the decision their Lordships have held thus:

> "19. The aforesaid observations, therefore, clearly show that the heart and soul of the Act is speedy disposal and quick dispatch in the trial of these cases. It is, therefore, manifest that the provisions of the Act must be interpreted

so as to eliminate all possible avenues of delay or means of adopting dilatory tactics by plugging every possible loophole in the Act through which the disposal of the case may be delayed. Indeed if this be the avowed object of the Act, could it have been intended by the Parliament that while the Criminal Procedure Code gives a right of revision against an order which, though not purely interlocutory, is either intermediate or quasi-final, the Act would provide a full-fledged appeal against such an order. If the interpretation as suggested by the counsel for the appellant is accepted, the result would be that this Court would be flooded with appeals against the order of the Special Court framing charges which will impede the progress of the trial and delay the disposal of the case which is against the very spirit of the Act. We are of the opinion that it was for this purpose that a non obstante clause was put in Section 11 of the Act so as to bar appeals against any interlocutory order whether it is of an intermediate nature or is quasi-final. The Act applies only to specified number of cases which fulfil the conditions contained in the provisions of the Act and in view of its special features, the liberty of the subject has been fully safeguarded by providing a three-tier system as indicated above."

21. Eventually, in paragraphs 45 to 47 it has been opined thus:

"45. 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 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 Section 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 is the cases of Madhu Limaye (supra) and Amarnath (supra) were given with respect to the provisions of the Code, particularly Section 397(2), they were correctly decided and would have no application to the interpretation of Section 11(1) of the Act, which expressly excludes the provisions of the Code of Criminal Procedure by virtue of the non obstante clause.

46. We feel that one reason why no appeal was provided against an interlocutory order like framing of the charges, as construed by us so far as the Act is concerned, may have been that it would be against the dignity and decorum of the very high status which the Special Judge under the Act enjoys in trying the case against an accused in that the Judge is a sitting Judge of a High Court and therefore must be presumed to frame the charges only after considering the various principles and guide-lines laid down by other High Courts and this Court in some of the cases referred to above.

47. Thus, summing up the entire position the inescapable conclusion that we reach is that giving the expression 'interlocutory order' its natural meaning according to the tests laid down, as discussed above, particularly in Kuppuswamy (supra) and applying the non obstante clause, we are satisfied that so far as the expression 'interlocutory order' appearing in Section 11(1) of the Act is concerned, it has been used in the natural sense and not in a special or a wider sense as used by the Code in Section 397(2). The view taken by us appears to be in complete consonance with the avowed object of the Act to provide for a most expeditious trial and quick dispatch of the case tried by the Special Court, which appears to be the paramount intention in passing the Act."

22. Desai, J. in his concurring opinion after scanning the anatomy of Section 11(1) of the 1979 Act and referring to the various decisions in the context of Code of Criminal Procedure concurred with the view expressed by Fazal Ali, J.

for himself and A.P. Sen, J. The learned counsel appearing for the petitioners would submit that the expression 'interlocutory order' found in Section 19(3)(c) of the 1988 Act has to be given a broad meaning. To bolster the said submissions, they have referred to certain paragraphs from Maxwell's, "The Interpretation of Statutes", Craies on 'Statute Law' and the decision in ***Sirsilk Ltd. v. Textiles Committee***, 1989 Supp. (1) SCC 168. They have also drawn inspiration from the observations in ***Satya Narayan Sharma*** (supra) that the language employed in Section 19(3)(c) of the 1988 Act is identical to Section 397(2). It is also urged that if the same is treated as an interlocutory order, an anomalous situation would come into existence. Reference has been made to Sections 22 and 27 of the 1988 Act. The said provisions read as under:

> "22. **The Code of Criminal Procedure, 1973 to apply subject to certain modifications** – The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if, -
>
> X X X X
>
> 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 (2 of 1974) on a High Court as if the court of the Special Judge were a court of Session trying cases within the local limits of the High Court."

23. Relying on the said provision, it is contended that the procedure provided

under the Code of Criminal Procedure, 1973 has been incorporated by the legislature to an offence under the 1988 Act and, therefore, any amendment in the legislation to the Code would not be read into the 1988 Act. Pyramiding the said submission, it is urged when there is a dictum the revision can be filed against an interlocutory order framing charge, the same would be permissible. The aforesaid submissions, in our considered opinion, really do not merit consideration as in the case of ***V.C. Shukla*** (supra) the Apex Court had made a clear distinction between the framing of charge to be an interlocutory order in the statutory backdrop of Section 397(2) of the Code of Criminal Procedure and the 1979 Act. Their Lordships have given a natural meaning to the interlocutory order and not a wider meaning in the context of the said enactment. The very purpose of the trial under the 1988 Act is the speedy disposal and to curb corruption there is justification to hold that the interpretation placed by the Lordships on the term of interlocutory order in the context of 1979 Act to apply to the 1988 Act. The submission that under the 1979 Act the trial is held by the sitting Judge of the High Court and had the trial been by a court of Session makes immense difference is totally immaterial. In our considered opinion, the order of framing of charge under the 1988 Act is an interlocutory order and once it is held to be an interlocutory order no revision petition under Section 401 read with Section 397(2) would lie to the High Court.

24. The next issue that emerges for consideration whether a petition for an application on the Section 482 would lie to the High Court. Learned counsel for the petitioners would submit that inherent power of this Court under Section 482 of the Code is not ousted. It is seemly to note that learned counsel for both sides have placed reliance on the decisions rendered in ***Satya Narayan Sharma*** (supra), ***Navjot Sandhu*** (supra) and ***State v. K. Rajendran***, **(2008) 8 SCC 673**. In the case of ***Satya Narayan Sharma*** (supra) the question arose with regard to grant of stay in exercise of power under Section 482 of the Code. His Lordship S.N. Variava after referring to the decisions in ***Madhu Limaye*** (supra), ***Janata Dal v. H.S. Chowdhary,*** **(1992) 4 SCC 305,** ***Indra Sawhney v. Union of India,*** **(2000) 1 SCC 168** and scanning the anatomy of Section 19(3)(c) of the 1988 Act came to hold that in view of the language employed in Section 19(a) and (b) and the prohibition contained in Section 19(3)(c) of the Act a court is exercising inherent jurisdiction under Section 482 of the Code of Criminal Procedure Code is not entitled to pass an order of stay. Thereafter, his Lordship in paragraphs 15 to 17 opined thus:

> "15. There is another reason also why the submission that Section 19 of the Prevention of Corruption Act would not apply to the inherent jurisdiction of the High Court, cannot be accepted. Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent power can be exercised even if there was a contrary provision in the Criminal Procedure Code. Section 482 of the Criminal Procedure Code does not provide that inherent jurisdiction can be exercised notwithstanding any

other provision contained in any other enactment. Thus if an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar. As has been pointed out in the cases of Madhu Limaye (supra), Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305, Indra Sawhney v. Union of India, (2000) 1 SCC 168 the inherent jurisdiction cannot be resorted to if there was a specific provision or there is an express bar of law.

16. We see no substance in the submission that Section 19 would not apply to a High Court. Section 5(3) of the said Act shows that the Special Court under the said Act is a Court of Session. Therefore the power of revision and/or the inherent jurisdiction can only be exercised by the High Court.

17. Thus in cases under the Prevention of Corruption Act, there can be no stay of trials. We clarify that we are not saying that proceedings under Section 482 of the Criminal Procedure Code cannot be adapted. In appropriate cases proceedings under Section 482 can be adapted. However, even if petition under Section 482 Criminal Procedure Code is entertained there can be no stay of trials under the said Act. It is then for the party to convince the Court concerned to expedite the hearing of that petition. However, merely because the Court concerned is not in a position to take up the petition for hearing would be no ground for staying the trial even temporarily."

25. Hon'ble Thomas, J. in his concurring view has opined thus:

"28. The mere fact that yet another prohibition was also tagged with the above does not mean that the legislative ban contained in clause (c) is restricted only to a situation when the High Court exercises powers of revision. It would be a misinterpretation of the enactment if a court reads into clause (c) of Section 19(3) a power to grant stay in exercise of the inherent powers of the High Court."

26. In ***Navjot Sandhu*** (supra) the Apex Court was dealing with an order passed by the learned Single Judge in a petition under Article 227 of the Constitution of India read with Section 482 of the Code against an interlocutory order of the Special Court regarding admissibility of the intercepted communications as evidence. Their Lordships referred to Section 34 of the Prevention of Terrorism Act, 202 (for short 'the POTA'). The said provision which deals with appeal reads as follows:

> "34. Appeal - (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.
>
> Explanation- For the purposes of this section, 'High Court' means a High Court within whose jurisdiction, a Special Court which passed the judgment, sentence or order, is situated.
>
> (2) Every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court.
>
> (3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.
>
> (4) Notwithstanding anything contained in sub-section (3) of Section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.
>
> (5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:
>
> Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not

preferring the appeal within the period of thirty days."

27. In the backdrop of the aforesaid provision, the Apex Court opined thus:

> "28. Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise.
>
> 29. Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However as is set out in Satya Narayanan Sharma case (supra) this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of

> revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment."
>
> (Emphasis supplied)

28. Their Lordships examined Section 34 of POTA in the light of this legal position. It was held that order dated 11.7.2002 permitting reception of evidence was clearly an interlocutory order and Section 34 of POTA clearly provides that no appeal or revision would lie to any court from an order which was interlocutory order and clearly the High Court could not have interfered at this stage. The High Court has not indicated that it was exercising powers of superintendence under Article 227. Such power being discretionary power, it was difficult to attribute to the order of the High Court such a source of power. Their Lordships held that on the facts of the case the effect of the impugned order was that the statutory provision of Section 34 of POTA has been

circumvented. The impugned order also led to a very peculiar situation where under Section 34 of POTA the appeal was to be heard by a bench of two Judges of the High Court. The appeal was being heard in the said case by a bench of two Judges of the High Court. An appeal under Section 34 of the POTA was both on facts and on law. The correctness of the interlocutory order could by virtue of Section 34 of POTA have been challenged only in the appeal filed against the final judgment. The order of the learned Single Judge of the High Court deprived a party of an opportunity of canvassing an important point of law in the statutory appeal before the Division Bench. The peculiar situation which arose was that the Division Bench hearing the statutory appeal (both on law and facts) was bound / constrained by an order of a Single Judge. The Special Judge had decided the issue by interpreting the various provisions of POTA. The Special Judge undoubtedly had authority and jurisdiction to interpret the various provisions of POTA and other laws. The Special Judge had jurisdiction to decide whether the evidence collected by interception could be used for proving the charge under POTA. The Special Judge was acting within the limits of his authority in passing the impugned order. Neither the power under Article 227 nor the power under Section 482 enabled the High Court to correct an error in interpretation, even if the High Court felt that the order dated 11.7.2002 was erroneous. Even if the High Court did not agree with the correctness of the order, the High Court should have refused to interfere as

the order could be corrected in the appeal under Section 34 of POTA. Thus, there was no abuse of process of Court which could then be prevented. Even the ends of justice did not require interference at that stage. In fact, the ends of justice required that the statutory intent of Section 34 of POTA be given effect to. If in the appeal the Division Bench felt that the order was not correct or that it was erroneous it would set aside the order, eschew the evidence and not take the same into consideration. At that stage there was no miscarriage of justice or palpable illegality which required immediate interference. Thus, their Lordships were of the opinion that even if powers under Article 227 or under Section 482 could have been exercised that was a case where the High Court should not have exercised those powers.

29. In view of the aforesaid analysis, we are of the considered opinion that in the said decision it has been stated that the inherent power is to be used only in cases where there is an abuse of the process of the court or where interference is absolutely necessary for securing the ends of justice. Their Lordships have opined that the inherent power is required to be exercised where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. It is worth noting that Section 34 of POTA has excluded appeal or revision and also required the appeal to be heard by a Division Bench. Their Lordships cautioned that power under Article 227 would not be exercised as the cloak of an appeal in disguise. On a reading of the

aforesaid two decisions, it cannot be stated that a petition under Section 482 is not maintainable. What their Lordships have stated is with regard to the exercise of power and not lack of inherent jurisdiction. There is a distinction between exercise of jurisdiction and lack of jurisdiction. In this context, we may refer with profit to the decision in ***Budhia Swain and others v. Gopinath Deb and others*, (1999) 4 SCC 396** wherein the Apex Court has held thus:

> "9. A distinction has to be drawn between lack of jurisdiction and a mere error in exercise of jurisdiction. The former strikes at the very root of the exercise and want of jurisdiction may vitiate the proceedings rendering them and the orders passed therein a nullity. A mere error in exercise of jurisdiction does not vitiate the legality and validity of the proceedings and the order passed thereon unless set aside in the manner known to law by laying a challenge subject to the law of limitation. In Hira Lal Patni v. Kali Nath, AIR 1962 SC 199 it was held :-
>
> > "The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it."

Thus analyzed we are of the considered opinion an application under Section 482 of the Code of Criminal Procedure would be maintainable.

30. Presently, we shall advert to the maintainability of a writ petition under

Article 227 of the Constitution of India. The learned referral Judge has referred to number of decisions which we have mentioned hereinbefore but all the authorities relate to exercise of power under Article 227 of the Constitution of India. In the case of ***L. Chandra Kumar v. Union of India and others,*** **AIR 1997 SC 1125,** their Lordships have held thus:

> "78. The legitimacy of the power of Courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict

> standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary are not available to the Judges of the subordinate judiciary or to those who man Tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Articles 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.
>
> 79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided."

31. From the aforesaid, it is clear as day that the judicial review under the Constitution is a part of the basic structure of the Constitution and it cannot be said to be ousted by any statutory bar of revision in the 1988 Act. In the case of ***Navjot Sandhu*** (supra) the Apex Court have not opined that there cannot be invocation of the writ jurisdiction of the High Court in appropriate cases even in respect of interlocutory orders but their Lordships have clearly said that the High Court as a constitutional court would refrain from passing an order which would run counter and conflict with an express intendment contained in Section

19(3)(c) of the 1988 Act. In this context, we may refer to a passage from ***Chander Shekhar Singh v. Siya Ram Singh*, (1979) 3 SCC 118** wherein a three-Judge Bench has expressed thus:

> "11. …that the powers conferred on the High Court under Article 227 of the Constitution cannot in any way be curtailed by the provisions of the Criminal Procedure Code. Therefore, the powers of the High Court under Article 227 of the Constitution can be invoked in spite of the restrictions placed under Section 146(1-D) of the Criminal Procedure Code. But the scope of interference by the High Court under Article 227 is restricted. This Court has repeatedly held that "the power of superintendence conferred by Article 227 is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors vide Waryam Singh v. Amar Nath, AIR 1954 SC 215. In a later decision, Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, AIR 1958 SC 398, the view was reiterated and it was held that the power of judicial interference under Article 227 of the Constitution is not greater than the power under Article 226 of the Constitution, and that under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority. In a recent decision, Babhutmal Raichand Oswal v. Laxmibai R. Tarta, (1975) 1 SCC 866 this Court reiterated the view stated in the earlier decisions referred to and held that the power of superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as the court of appeal and that the High Court cannot in exercise of its jurisdiction under Article 227 convert itself into a court of appeal."

32. From the aforesaid pronouncement in the field, there can be no scintilla of doubt that the constitutional remedy under Article 227 of the Constitution of

India would be available but the exercise has to be extremely limited. The power of supervisory jurisdiction by the High Court is to be exercised very sparingly and only in appropriate cases where judicial conscience of the writ court commands that it has to act lest there would be gross failure of justice or grave injustice would usher in. If we allow ourselves to say so, care, caution and circumspection have to be the pyramidical structure while exercising the inherent and the supervisory jurisdiction. The exercise of jurisdiction should not be one by which there would be an obstruction in carrying on of a criminal trial to its logical end. There may be cases where the writ court may feel inclined to interdict or intervene where it is felt that if the error is not corrected at the very inception the same would cause immense injustice and correction at a later stage may not be possible and further refusal to intervene would ensue in travesty of justice. The writ court, under no circumstances can assume the role of appellate authority and re-appreciate the evidence.

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.

34. Reference is answered accordingly. The writ petitions be listed before the appropriate Bench.

CHIEF JUSTICE

MANMOHAN, J

MARCH 29, 2011
Pk/dk