Girish Kumar Suneja vs.cbi

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Court : Delhi

Decided On : Oct-27-2016

Appellant : Girish Kumar Suneja

Respondent : Cbi

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.M.C. 3847/2016 Reserved on:

24. h October, 2016 Decided on:

27. h October, 2016 GIRISH KUMAR SUNEJA .....

... Petitioner
Represented by: Mr. Gopal Subramaniam, Mr. Mohit Mathur, Sr. Advs. with Mr. Madhav Khurana, Mr. Amrit, Mr. Ankur Kashyap, Mr. Utkarsh Saxena, Advs. versus CBI ..... Respondent Represented by: Mr. R.S. Cheema, Sr. Adv. with Ms. Tarannum Cheema, Ms. Hiral Gupta, Mr. Harinder Bains, Advs. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA1 By the present petition under Section 482 Cr.P.C. read with Article 227 of the Constitution of India, the petitioner challenges the order dated 29th April, 2016 passed by the Special Judge in case titled as CBI Vs. Jindal Steel and Power Ltd. & Ors. in RC No.219/2013/E/0006 directing framing of charge against the petitioner for offence punishable under Sections 120- B/409/420 IPC and Sections 13(1)(c) and 13(1)(d) of the Prevention

of Corruption Act, 1988 (in short the PC Act).

2. When the matter came up before this Court for preliminary hearing on 18th October, 2016 this Court raised a query as to the maintainability of the present petition and arguments were heard on this issue. Learned Senior CRL.M.C. 3847/2016 Page 1 of 18 counsel for the petitioner brought to the notice of this Court the order of the Honble Supreme Court dated 25th July, 2014 in a batch of petitions relating to the Coal block allocations. Relevant paras 9 and 10 of the said order are as under: 9. All cases pending before different courts in Delhi pertaining to coal block allocation matters shall stand transferred to the court of Special Judge as afore-noted.

10. We also make it clear that any prayer for stay or impeding the progress in the investigation/trial can be made only before this Court and no other Court shall entertain the same. 3. Contention of learned senior counsel for the petitioner is three-fold, firstly that the order dated 25th July, 2014 passed by the Honble Supreme Court is an order both under Article 141 and 142 of the Constitution of India and a meaningful interpretation of the same would show that the main concern of the Honble Supreme Court was that there should be no impediment either in the investigation or trial and thus wherever trial or investigation was required to be stayed or hindered, no Court except the Supreme Court will hear the petitions against the order of the Special Judge. He states that the petitioner is neither seeking stay of the operation of the impugned order nor the proceedings before the Trial Court nor asking that the Trial Court Record be called for, which could result in delay of the trial. In the order passed by the Honble Supreme Court the emphasis was to strike a balance between speedy trial and procedure established by law and the nature of the remedy sought. In the present case the petitioner is challenging the order directing framing charge and the remedy available therein being CRL.M.C. 3847/2016 Page 2 of 18 substantive in nature besides being constitutional, the intent of the order passed by the Honble Supreme Court could never be to take away the substantive right as held by the Constitution Bench decision reported as in A.R. Antulay Vs. R.S. Nayak (1988) 6 SCC602 The Criminal Procedure Code, 1973 is a Code established by due process of law and the Honble Supreme Court did not intend to abrogate the

remedies available to the petitioner. There is a difference between a Court monitored investigation and a Court monitored trial and as per the order of the Honble Supreme Court it was only a Court monitored investigation, so the decision in the case of Vineet Narayan & Ors. Vs. UOI & Anr. (1998) 1 SCC226squarely applies to the present case. With respect to the speedy trial, the directions of the Supreme Court were specific as it directed appointment of a reputed lawyer as a Special Public Prosecutor and secondly requested the Chief Justice of Delhi High Court to appoint a Judge to try these matters exclusively. Beyond these two aspects the order of the Supreme Court did not interfere with the trial and it cannot be interpreted that no order of the Special Judge can be interfered by the High Court and the petitioner deprived of the due process of law and the constitutional remedies. The right of judicial review is part of basic structure of the Constitution and cannot be taken away. The order of the Supreme Court preserves the jurisdiction of the High Court to entertain petitions against the orders passed by the Special Judge. Reference is made to L. Chandra Kumar Vs. Union of India (1997) 3 SCC261 4. Referring to the Division Bench decision of this Court in Anur Kumar Jain Vs. CBI (2011) 178 DLT501(DB) it is contended that a self-imposed restriction of the High Court in interfering with the order of the Trial Court is CRL.M.C. 3847/2016 Page 3 of 18 different from the maintainability of a petition. Though this Court may not exercise discretion on merits but it cannot be held that the present petition is not maintainable. There being no exclusion of the remedies available in law and the petitioner entitled to a fair trial as per procedure established by law, his remedies available under Section 482 Cr.P.C. or Article 227 of the Constitution of India cannot be taken away. Referring to the decision reported as The State of West Bengal Vs. Anwar Ali Sarkar & Anr. AIR (39) 1952 SC75it is contended that no separate procedure of law can be prescribed for a class of persons. Learned senior counsel further contends that merely because some of the persons facing trial on similar allegations, aggrieved by the orders of the Special Court, on their own volition choose to approach the Supreme Court, would not be sufficient to denude the petitioner of his right to avail the remedies as per the procedure established by law. The argument of CBI that propriety demands that petition should be filed before the Honble Supreme Court is no explanation to contend that the present petition is not maintainable before this

Court.

5. Per contra learned Special Public Prosecutor for the CBI referring to the order dated 25th July, 2014 passed by the Honble Supreme Court in the batch of petitions relating to Coal block allocations and similar orders passed by the Supreme Court dated 11th April, 2011, 3rd September, 2013 and 3rd November, 2015 in similar circumstances passed in the 2-G Spectrum case contends that even if as per the procedure established by law a petition under Section 482 Cr.P.C. and Article 227 of the Constitution of India challenging the order directing framing charge would be maintainable before this Court in view of the decisions of the Supreme Court, this Court will not entertain the same as the directions of the Supreme Court are binding on this Court CRL.M.C. 3847/2016 Page 4 of 18 and all other Courts in the country. Learned senior counsel contends that no hair splitting exercise of the orders of the Supreme Court can be done by contending that in the present petition since the petitioner is neither seeking stay of the proceedings or the impugned order or calling for the records, the present petition will not fall within the ambit of the order dated 25th July, 2014 passed by the Honble Supreme Court as noted in Para 2 above. Since the Supreme Court has already clarified its earlier order, no further exercise is required to be done and only against a final judgment passed by the Special Judge, the High Court would be entitled to entertain an appeal. Thus there is a complete restriction for entertaining a petition whether under Section 482 Cr.P.C. or 397 Cr.P.C. or Article 227 or 226 of the Constitution of India except a final judgment. Further in relation to the present trial two applications filed by two accused seeking clarification that they have a right to approach the High Court against the orders passed by the Special Judge are pending before the Honble Supreme Court and hence this Court will not entertain the present petition. Moreover similarly situated accused against whom order directing framing of charge has been passed have already approached the Honble Supreme Court challenging the said order, thus there is no denial of the right to challenge the order only the forum is different and hence there is no violation of the due procedure established by law.

6. This Court has already noted the order dated 25th July, 2014 passed by the Honble Supreme Court in Coal block allocation matters wherein in Para 10 the

Supreme Court directed that any prayer for stay or impeding the progress in the investigation/ trial can be made only before the Supreme Court and no other Court shall entertain the same. Before adverting to the CRL.M.C. 3847/2016 Page 5 of 18 rival contentions it would be appropriate to note similar orders passed by the Honble Supreme Court in 2G Spectrum case. In the decision reported as (2012) 3 SCC117Centre for Public Interest Litigation & Ors. Vs. Union of India & Ors. vide the order dated 11th April, 2011 the Supreme Court after appointing an eminently suitable Public Prosecutor for a fair prosecution noted in Para 30 as under: it clear that any objection about We also make the appointment of the Special Public Prosecutor or his assistant advocates or any prayer for staying or impeding the progress of the trial can be made only before this Court and no other Court shall entertain the same. The trial must proceed on a day-to- day basis. After this order was passed by the Honble Supreme Court, on a 7. challenge to the Court monitored investigation in the decision reported as (2014) 2 SCC687Shahid Balwa Vs. Union of India & Ors. it was held as under that there was no error in the order dated 11th April, 2011 or 9th November, 2012 even on the principles laid down by the Supreme Court in A.R. Antulays case (supra): 31. We also, therefore, find no basis in the contention of the petitioners that the orders dated 11-4-2011 and 9-11-2012 have the effect of monitoring the trial proceedings. No court, other than the court seized of the trial, has the power to monitor the proceedings pending before it. The order dated 11-4-2011 [Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC117: (2012) 2 SCC (Cri) 61]. only facilitates the progress of the trial by ordering that the trial must proceed on a day-to-day basis. Large backlog of cases in the courts is often an incentive to the litigants to misuse the courts' system by indulging in unnecessary and fraudulent litigation, thereby delaying the entire trial process. Criminal justice system's procedure guarantees and elaborateness sometimes give, create CRL.M.C. 3847/2016 Page 6 of 18 openings for abusive, dilatory tactics and confer unfair advantage on better heeled litigants to cause delay to their advantage. Longer the trial, witnesses will be unavailable, memories will fade and evidence will be stale. Taking into consideration all those aspects, this Court felt that it is in the larger public interest that the trial of 2G Scam be not hampered. Further, when larger public interest is involved, it is the bounden duty of all, including the accused persons, who are

presumed to be innocent, until proven guilty, to cooperate with the progress of the trial. Early disposal of the trial is also to their advantage, so that their innocence could be proved, rather than remain enmeshed in criminal trial for years and unable to get on with their lives and business.

32. We fail to see how the principle laid down by this Court in A.R. Antulay case[A.R. Antulay v. R.S. Nayak, (1988) 2 SCC602:

1988. SCC (Cri) 372]. would apply to the facts of these cases. We have found no error in the orders passed by this Court on 11-4-2011 or on 9-11-2012. Therefore, the question of rectifying any error does not arise. On the other hand, as we have already indicated, the purpose and object of passing those orders was for a larger public interest and for speedy trial, that too on day-to-day basis which has been reflected not only in the various provisions of the PC Act, 1988 but also falls within the realm of judicial accountability. 8. Subsequently a three Judge Bench of the Honble Supreme Court in W.P.(CRL) 120/2013 and W.P.(CRL) 205/2013 declining to modify the orders dated 10th February, 2011 and 11th April, 2011 clarified that aggrieved by the order of the Special Judge, the petitioners therein will be entitled to approach the High Court only against the final judgment. In the order dated 3rd November, 2015 it was held: 1. We have heard learned counsel for the parties to the lis.

2. We decline to entertain the writ petitions, which are accordingly dismissed. CRL.M.C. 3847/2016 Page 7 of 18 3. It would be open to both the petitioners to agitate and put forward its defences before the Trial Court and the same shall be duly considered in accordance with law. At this stage, however, an oral request has been made by 4. Shri Amarendra Sharan and Mr. Salman Khurshid, learned senior counsel, appearing for the respective petitioners herein for modification of our earlier orders dated 10.02.2011 and 11.04.2011. In those orders we had made it clear that since this Court was monitoring the investigation of the 2-G Spectrum cases, any order that would be made by the Special Judge could be challenged only in this Court in an appropriate proceedings. The purpose was to ensure smooth trial of the cases. Shri Anand Grover, learned Special Public Prosecutor 4. appointed by us would submit that the evidence in the matters is complete and

now the arguments are being heard in the matters.

5. In view of these developments, we intend to modify our earlier orders dated 10.02.2011 and 11.04.2011 by clarifying that the petitioners herein and also similarly placed persons would be entitled to approach the High Court against the final judgment(s) that may be passed against them on trial.

6. We make it clear that the High Court shall not entertain any petition(s) filed against any interim order(s) passed by the learned Special Judge. Ordered accordingly. 9. The primary contention of learned counsel for the petitioner is that the judgment of the Supreme Court dated 25th July, 2014 directing that any prayer for stay or impeding the progress of investigation/ trial can be made only before that Court and no other Court shall entertain the same, requires interpretation. It is well settled that the judgment of a Court cannot be treated as a Euclids formula and interpreted as a provision of the Statute. In the decision reported as (2002) 3 SCC496Haryana Financial Corpn. Vs. CRL.M.C. 3847/2016 Page 8 of 18 Jagdamba Oil Mills a three Judge Bench of the Honble Supreme Court held: the decision on which reliance 19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC737: (1951) 2 All ER1(HL)]. (at p.

761) Lord MacDermot observed: (All ER p. 14C-D) The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge. 10. The Constitution Bench of the Supreme Court in A.R. Antulay (supra) which is heavily relied by learned senior

counsel for the petitioner was dealing with a case where the Supreme Court directed withdrawal of the case against the accused from a Special Judge and transferred the same to the High Court which was held to be violative of Article 14 and 21 of the Constitution of India and it was held that the accused therein was singled out for a differential treatment to his prejudice and his right of appeal to the High Court was denied. CRL.M.C. 3847/2016 Page 9 of 18 11. Right to appeal is a statutory right which is preserved as noted by the decision of the Supreme Court in its order dated 3rd November, 2015 in similarly placed 2-G Spectrum cases clarifying that against the final judgment parties will be entitled to approach the High Court. In the present case the petitioner is not availing the statutory remedy of appeal but has filed a petition invoking revisional/ inherent powers of the High Court and the power of superintendence under Article 227 of the Constitution of India.

12. The Supreme Court in the decision reported as (2013) 15 SCC460Kamlesh Kuamr & Ors. Vs. State of Jharkhand & Ors. while dealing with the right of a party to avail the remedy of revision held: Right of revision Is the petitioners' right of revision taken away if the case 40. is transferred from the Magistrate to the Special Judge?.

41. This question proceeds on the assumption that there is a right of revision. A Constitution Bench of this Court in Pranab Kumar Mitra v. State of W.B. [Pranab Kumar Mitra v. State of W.B., AIR 1959 SC144:

1959. Cri LJ256:

1959. Supp (1) SCR63 set the right issue at rest several decades ago. It was held that the power to revise an order is a discretionary power which is to be exercised in aid of justice and the exercise of that power will depend on the facts and circumstances of a given case. It was held: (AIR p. 147, para

6) 6. The revisional powers of the High Court vested in it by Section 439 of the Code read with Section 435, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence, and that subordinate criminal

courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code. 42. In Akalu Ahir v. Ramdeo Ram [(1973) 2 SCC583:

1973. SCC (Cri) 903]. this Court once again adverted to the power of CRL.M.C. 3847/2016 Page 10 of 18 revision invested in a superior court and described it as an extraordinary discretionary power to set right grave injustice. Clearly, therefore, it cannot be said that a litigant has a right to have an adverse order revised by a superior court. On the contrary, if there is any right to revise, it is invested in the superior court.

43. While the revisional power of a superior court actually enables it to correct a grave error, the existence of that power does not confer any corresponding right on a litigant. This is the reason why, in a given case, a superior court may decline to exercise its power of revision, if the facts and circumstances of the case do not warrant the exercise of its discretion. This is also the reason why it is felicitously stated that a revision is not a right but only a procedural facility available to a party. If the matter is looked at in this light, the transfer of a case from a Magistrate to a Special Judge does not take away this procedural facility available to the petitioners. It only changes the forum and as already held above, the petitioners have no right to choose the forum in which to file an appeal or move a petition for revising an interlocutory order.

44. Reliance was placed by the learned counsel for the petitioners on a Division Bench decision of the Delhi High Court in A.S. Impex Ltd. v. Delhi High Court [A.S. Impex Ltd. v. Delhi High Court, (2003) 107 DLT734 . This reliance is not only misplaced but, in my opinion, that decision should be overruled as not laying down the correct law.

45. In A.S. Impex case [A.S. Impex Ltd. v. Delhi High Court, (2003) 107 DLT734 , the High Court administratively decided to transfer cases filed under Section 138 of the Negotiable Instruments Act, 1881 on or before 31-12-2001 and pending before the Magistrates to the Additional Sessions Judges. A notification for transfer of cases was accordingly issued and this was struck down by the Delhi High Court by, inter alia, relying on the law laid down in Antulay [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC602:

1988. SCC (Cri) 372]. . As already noted above, the law laid down in Antulay [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC602:

1988. SCC (Cri) 372]. has limited CRL.M.C. 3847/2016 Page 11 of 18 clearly application and is not relevant to cases such as the one we are dealing with. This was in Ranbir Yadav [Ranbir Yadav v. State of Bihar, (1995) 4 SCC392:

1995. SCC (Cri) 728]. but the Delhi High Court ignored the observations of this Court without much ado by holding: (A.S. Impex case [A.S. Impex Ltd. v. Delhi High Court, (2003) 107 DLT734 , DLT p. 744, para

12) explained 12. In that case the Court transferred the case from the Court of one Magistrate to the Court of another Magistrate for the reason that there was shortage of accommodation in the first court. That is not the case in hand. It was not a case where the jurisdiction was transferred from the Court of Magistrate to the Court of Session. The Delhi High Court also proceeded on an erroneous basis that the exercise of plenary administrative power available to the High Court to transfer cases meant the bypassing or circumventing of the Magistrates to try cases under Section 138 of the Negotiable Instruments Act, 1881 and conferring that jurisdiction on Additional Sessions Judges. The High Court did not correctly appreciate the power available to a High Court under Article 227 of the Constitution. statutory provisions empowering 46. The error in A.S. Impex [A.S. Impex Ltd. v. Delhi High Court, (2003) 107 DLT734 was correctly understood by the Division Bench of the Delhi High Court in Mahender Singh v. High Court of Delhi [Mahender Singh v. High Court of Delhi, (2009) 151 Comp Cas 485 (Del)]. and in N.G. Sheth v. CBI [(2008) 151 DLT789 . The Division Bench in both cases took a view different from that in A.S. Impex [A.S. Impex Ltd. v. Delhi High Court, (2003) 107 DLT734. However, both decisions having been rendered by Division Benches, A.S. Impex [A.S. Impex Ltd. v. Delhi High Court, (2003) 107 DLT734 , could not be overruled. Therefore, I complete the formality and overrule A.S. Impex [A.S. Impex Ltd. v. Delhi High Court, (2003) 107 DLT734 since it does not lay down the correct law in this regard. CRL.M.C. 3847/2016 Page 12 of 18 13. It is thus well settled that unlike a right of appeal which is a Statutory remedy there is no right to revision or invoking the inherent powers or seeking superintendence of

the High Court which are procedural facilities available to a litigant. These are discretionary powers vested in the High Court to be exercised in aid of justice. Thus there being no right to a party to invoke revisional/ inherent/ superintendence powers, the argument that there would be violation of the right if the remedy is denied by the High Court cannot be sustained. Further the power of superintendence is being exercised by the Supreme Court by entertaining a petition challenging the order directing framing of charge and there is only a change in the forum and not the remedy.

14. A Division Bench of this Court in Mahender Singh Vs. High Court of Delhi & Anr. (2009) 151 Company case 485 (Delhi) negating the contention that the right to prefer a revision was a legal right held: Insofar as the deprivation of the petitioner's right to file revision is concerned, such an argument may be attractive in the first blush but it loses its sheen when the matter is considered in its right perspective. As pointed out above, the submission of the petitioners is that against the order of the Magistrate they will have right to file appeal before the Sessions Court and thereafter revision petition before the High Court. As already noticed above, once the case is tried by the Court of Sessions right to appeal, which is a statutory right, remains intact. After the exhaustion of remedy of appeal which is available to the petitioners in any case what has to be seen is as to whether is there any legal right in preferring the revision. We have to answer this question in the negative. Provisions of Section 397 of the Cr.P.C. do not confer any right upon a person to seek such revision. This provision, in fact, retains and conserves the right of the Court to revise an order CRL.M.C. 3847/2016 Page 13 of 18 passed by the Court of Sessions or the Magistrate, as the case may be. Nature of this provision came up for discussion before the Kerala High Court in C. Kunnhamad v. C. Abdul Kader, (1978) Crl.J.

NOC19:

1977. KLT840 and it was opined that a revision is not a right and is only a procedural facility afforded to a party, while appeal is a statutory right conferred on a party. It was further held that a revision is not a continuation of the suit, appeal or trial. It is only a step in aid for invoking the powers of superintendence by the

Sessions Judge and the High Court for correcting irregularities, if any, in the judgments and orders of the subordinate Courts. In coming to this conclusion, the Kerala High Court in the said case, though it was a judgment of the Single Judge, followed its earlier judgment rendered by a Division Bench in Raman Pillay v. Dakshayni, 1975 KLT739 We consider that it is the correct interpretation of the nature of remedy provided under Section 397 of the Cr.P.C. Our reason for making these observations is based on the Constitution Bench judgment of the Apex Court in Pranab Kumar Mitra v. State of West Bengal, AIR 1959 SC144 where the same provision, namely, revisional power of the High Court contained in Section 439 of the Code of Criminal Procedure, 1882 came up for interpretation. This view is reiterated by the Supreme Court recently in Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers, (2003) 6 SCC659 After taking note of earlier precedents not only of the Supreme Court but English Courts, the Court (speaking through Hon'ble Mr. Justice Arijit Pasayat) dealt with the nature and scope of Section 115 of the Cr.P.C. (which deals with revisionary powers of the High Court in civil matters) and held as follows: 32. A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is yes then the revision is maintainable. But on the contrary, if the answer is no then the revision is not maintainable. Therefore, if the impugned order is interim in nature or does not finally decide the lis, the revision CRL.M.C. 3847/2016 Page 14 of 18 will not be maintainable. The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject-matter of revision under Section 115. There is marked distinction in the language of Section 97(3) of the Old Amendment Act and Section 32(2)(i) of the Amendment Act. While in the former, there was a clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly absent in Section 32(2)(i). The amendment relates to procedures. No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered, the parties are to proceed according to the altered mode, without exception, unless there is a different stipulation.

33. Section 6 of the General Clauses Act has no application because there is no substantive vested right available to a party seeking revision under Section 115 of the Code. In Kolhapur Canesugar Works Ltd. v. Union of India, (2000) 2 SCC536 it was observed that if a provision of statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, there is no scope for granting it afterwards. There is modification of this position by application of Section 6 of the General Clauses Act or by making special provisions. Operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in the statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings, then it can be reasonably inferred that the intention of the Legislature is that the pending proceedings shall continue but a fresh proceeding for the same purpose may be initiated under the new provision. CRL.M.C. 3847/2016 Page 15 of 18 The Constitution Bench in no certain terms observed that the revisional powers of the High Court vested in it by the said provision do not create any right in the litigant but only conserve the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisdiction and that subordinate Criminal Courts do not exceed their jurisdiction, or abuse their powers vested in them by the Court. On the other hand, it held, a right of appeal is a statutory right which has got to be recognized by the Courts. For this reason, the Court opined, that whereas the Legislature has specifically provided the rules governing the right of substitution in case of death of an appellant by Section 31 of the Code of 1882 (which was the provision for appeal), no such corresponding provision dealing with the question of abetment or and the right of substitution was made in a criminal revision. Insofar as observations of the Supreme Court about right of revision contained in A.R. Antulay (ibid) are concerned, such observations are made having regard to a particular provision contained in Section 9 of the Criminal Law (Amendment) Act, 1952 which gives statutory right of revision in contradiction to Section 397 of the Cr.P.C. which does not provide any such statutory right. 15. In L. Chandra Kumar (supra) the larger Bench of the Supreme Court held that the power of judicial review over legislative action vested in the

High Court under Article 226 and in the Supreme Court under Article 32 of the Constitution is an integral and an essential feature of the Constitution constituting part of its basic structure. The power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions was also held to be the part of basic structure of the Constitution because a situation where the High Courts are divested of all other judicial functions apart from that of Constitutional interpretation was required to be avoided. Thus if the same power of CRL.M.C. 3847/2016 Page 16 of 18 superintendence is exercised by the higher forum that is the Honble Supreme Court, it cannot be held that the Courts have declined to exercise the power of superintendence violating the basic structure of the Constitution.

16. It is trite law that directions of the Supreme Court under Article 142 of the Constitution are binding on all the Courts and the High Court is bound to come in aid thereto to see that the orders passed by the Honble Supreme Court are enforced within its territory. In the decision reported as (2014) 8 SCC883State of Punjab Vs. Rafiq Masih the Supreme Court noted: in Indian Bank v.ABS Marine Products 12. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigours of the law. The directions issued by the Court can normally be categorised into one, in the nature of moulding of relief and the other, as the declaration of law. Declaration of law as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the highest court of the land. This Court (P) Ltd. [(2006) 5 SCC72 , Ram Pravesh Singh v. State of Bihar [(2006) 8 SCC381:

2006. SCC (L&S) 1986]. and in State of U.P. v. Neeraj Awasthi [(2006) 1 SCC667:

2006. SCC (L&S) 190]. has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the

Supreme Court under Article 141 of the Constitution of India. The Court has compartmentalised and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under CRL.M.C. 3847/2016 Page 17 of 18 Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case. 17. Thus in view of the discussion aforesaid, following the mandate of the order dated 25th July, 2014 passed by the Honble Supreme Court the present petition is dismissed as not maintainable. (MUKTA GUPTA) JUDGE OCTOBER27 2016 ga CRL.M.C. 3847/2016 Page 18 of 18