

Pramod Kumar Vs. Union of India

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Court : Chennai

Decided On : Apr-29-2013

Judge : T.RAJA

Appellant : Pramod Kumar

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

29. 04.2013 CORAM: THE HON'BLE MRS.JUSTICE R.BANUMATHI AND THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU W.A.No.12 of 2013 Pramod Kumar Appellant Vs. 1.Union of India, rep.by its Secretary, Ministry of Home Affairs, Grih Mantralaya, New Delhi, 2.Union of India, rep.by its Secretary, Department of Personnel and Training, New Delhi, 3.Central Bureau of Investigation, rep.by its Director, CGO Complex, Lodhi Road, New Delhi, 4.State of Tamil Nadu, rep.by its Secretary, Department of Home, Fort St.George, Chenna

009. 5.Additional Superintendent of Police, Economic Offences Wing, III Floor, Rajaji Salai, Besant Nagar, Chenna

090. ... Respondents Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 5.12.2012 made in W.P.No.21801 of 2012 on the file of this Court. For Appellant : Mr.Vijay Narayanan, Senior Counsel for Mr.S.R.Raghunathan assisted by Mr.S.R.Rajagopal For Respondents :

Mr.M.Devendran, Central Govt. Standing Counsel for RR.1 and 2
Mr.N.Chandrasekaran Spl. Public Prosecutor for Respondent Nos.3 and 5
Mr.A.L.Somayaji, Advocate General assisted by Mr.Inbadurai, Special
Government Pleader for Respondent No.4 JUDGMENT R.BANUMATHI,J Whether
Appellant/Inspector General of Police is the employee of the Central Government
in the level of Joint Secretary covered by Section 6A of Delhi Special Police
Establishment Act, 1946 mandating prior approval of the Central Government;
whether investigation is vitiated for non-compliance of Section 6A and whether the
5th Respondent is to be interdicted from investigating the offences alleged to have
been committed by the appellant in connection with the case registered in FIR in
RC.No.13(E)/2011-CBI/EOW/Chennai are the questions arising for consideration
in this writ appeal.

2. Background facts:- The appellant is an All India Service Officer of IPS Cadre
and was allocated to Tamil Nadu Cadre. In course of time, he got various
promotions and at the relevant time he was holding the post of Inspector General
of Police in West Zone, which covers Coimbatore and Tirupur where the criminal
case was registered against one Paazee Forex Company known as Paazee Forex
Trading India Private Limited stating that they collected deposits from public and
not returned the said amount to the depositors.

3. On 24.09.2009, Central Crime Branch (for short CCB), Tirupur suomoto
registered Crime No.26 of 2009 under Sections 3 and 4 of Prize Chits and Money
Circulation Schemes (Banning) Act, 1978 and under Section 420 I.P.C. against the
Directors of the Paazee Forex Trading India Private Limited, (i) K.Mohanraj, son of
Kathiravan; (ii) K.Kathiravan and (iii) Kamalavalli Arumugam with the allegation
that all the three accused cheated general public to the tune of hundreds of crores
by collecting deposits in the name of doing forex trade without Reserve Bank of
India's licence. In CrI.O.P.No.20857 of 2009 (08.10.2009), the High Court has
granted anticipatory bail to all three accused with a direction to the Superintendent
of Police, Tirupur to take effective measures for ensuring repayments to the
depositors by the accused. By the order of the Director General of Police, Tamil
Nadu, dated 23.2.2010, Crime No.26 of 2009 on the file of CCB, Tirupur was
transferred to Economic Offences Wing II, Coimbatore and re-numbered as

4. On 08.12.2009, Kamalavalli Arumugam (3rd accused in Crime No.26 of 2009) went missing and woman missing case under Crime No.3068 of 2009 was registered by Tirupur North Police Station on 09.12.2009. The said Kamalavalli Arumugam surfaced on 11.12.2009 and on 14.02.2010, she gave representation to the then Deputy Superintendent of Police, Tirupur alleging that she was kidnapped on 08.12.2009 and an amount of Rs.3 crore was extorted from her Company by three Police Officers viz., Rajendran, Dy. Superintendent of Police, Tirupur; V.Mohanraj, Inspector, CCB, Tirupur; E.Shanmugaiah, formerly Inspector, CCB, Tirupur and a private individual viz., Annachi @ John Prabakar. Accordingly on 15.02.2010, the Sections of Woman Missing case was altered to Sections 323, 365, 384 and 354 I.P.C. By the order of the Director General of Police, Tamil Nadu and the case in Crime No.3068 of 2010 on the file Tirupur North Police Station was transferred to CB-CID, Vellore. After considerable investigation, on 15.09.2010, CB-CID, Vellore altered the case to Sections 384, 506(i) and 507 I.P.C., Section 4 of Tamil Nadu Prohibition of Harassment of Women (Amendment) Act, 2002 and Section 7 and 13(2) read with Section 13(1)(d) of P.C. Act against the above said three Police Officers and the private individual Annachi @ John Prabakar. The appellant was directed to attend an enquiry in connection with the case in Tiruppur North Police Station Crime Branch - Crime No.3068 of 2009 on 06.4.2011 and the appellant was interrogated.

5. The depositors, who formed an Association, filed petitions under Section 482 of Crl.P.C. in Crl.O.P.Nos.2691 and 5356 of 2011 seeking for transfer of the investigation from State Police to CBI expressing apprehension that State Police is protecting Directors of the Company and delaying the payments of money payable to depositors. Pointing out that so far no persons have been arrested inspite of cancellation of anticipatory bail and that the matter would have international ramifications, the Court ordered transfer of investigation from State Police to C.B.I for investigation with the observation as under: "6. While doing so, we would also transfer the investigation of the case pending in Crime No.3068 of 2009 on the file of Deputy Superintendent of Police, CBCID, Vellore to the CBI/3rd Respondent. This Court would do since such is a case, which though in origin was

of a woman missing has turned out to be one where Police Officials are said to have wrongly obtained upto Rs.3,00,00,000/- under assurance to the Directors of the Paazee Company that they need not repay to any of the remaining depositors. Besides considering the probability that if the prosecution version be true, the moneys involved could be that of the depositors, we also would think that interrogation of the accused Police Officials could throw light on what has been gathered by them on the wrong doings of M/s.Paazee Forex Trading India Pvt Ltd, and its Directors/Officials." Accordingly, the cases in Crime No.3 of 2010 (originally Cr.No.26 of 2009) and Cr.No.3068 of 2009 pending on the file of Deputy Superintendent of Police, CB-CID were ordered to be transferred to CBI. Those transferred cases are re-registered as R.C.12/E/2011 and RC.13/E/2011 by CBI, EOW, Chennai on 15.6.2011.

6. During investigation, it was found that Appellant while working as Inspector General of Police, West Zone, Coimbatore during 2008-2009 under whose jurisdiction CCB, Tirupur also comes, abused his official position and extorted money to the extent of Rs.2.85 crores from the Directors of M/s.Paazee Group of Companies viz., accused in Crime No.26 of 2009. Accordingly Appellant was arraigned as 6th accused through a Memo filed before the Special Judge for CBI cases, Coimbatore on 28.02.2012. On 12.3.2012, searches were conducted in the residence of Appellant in Chennai and incriminating documents are said to have been seized. Appellant was summoned to appear before the Investigating Officer on 13.3.2012. Since the Appellant did not appear, another summon was sent to the appellant and on 14.3.2012, appellant Pramod Kumar (A-6) appeared before the Investigating Officer and he was interrogated.

7. Bail application filed by Appellant in CrI.O.P.No.7071 of 2012 was dismissed by the High Court on 20.04.2012. Appellant was arrested on 02.05.2012 in Crime No.3068 of 2009 for the offences punishable under Sections 384, 506(i) and 507 I.P.C. and Section 4 of Tamil Nadu Prohibition of Harassment of Women (Amendment) Act, 2002 and Section 7 and 13(2) read with Section 13(1)(d) of P.C. Act, 1988. Subsequently, Appellant was released on bail in CrI.O.P.No.12056 of 2012 dated 28.06.2012. It is stated that the investigation is in final stage against the accused person including the Appellant. It is stated that after thorough

investigation, CBI collected ample oral and documentary evidence to prove the complicity of the appellant, who is alleged to have abused his official position as Inspector General of Police of Coimbatore zone in dealing with the accused in Crime No.26 of 2009, which was investigated by CCB, Tiruppur. The appellant is alleged to have entered into criminal conspiracy with other accused including his subordinate police officers and private individuals and is alleged to have extorted huge money from the accused Directors of Paazee Forex Trading India Private Limited.

8. W.P.No.21801 of 2012 Appellant filed this Writ Petition to forbear the Respondents 3 and 5 from proceeding further with regard to investigation in R.C.No.13(E)/2011-CBI/EOW/Chennai on the file of 5th Respondent. In the Writ Petition, Appellant mainly raised the issue that since he is a member of IPS Cadre, even though serving in Tamil Nadu, he is in the category of Officer of the level of Joint Secretary and hence as per Section 6A of Delhi Special Police Establishment Act, 1946 (DSPE Act), it is mandatory to get prior permission to initiate any investigation against the Appellant. In clear abuse of such position, without obtaining prior permission and sanction and suppressing the fact that the appellant is an Officer entitled to immunity as contemplated under Section 6A of DSPE Act, the CBI has proceeded further with the investigation. Case of appellant is that even though certain powers of imposition of minor punishments are delegated to the State Government for the day to day operational/functional requirements, the official word is vested only with the Central Government. According to appellant, "working in connection with affairs of a State", is not synonymous with "being an employee of that State". Section 6A of DSPE Act uses the phrase "the employees of Central Government of the level of Joint Secretary and above" and clearly the same would cover all employees of the Central Government of a Joint Secretary level and above irrespective of the Government in connection with whose affairs they may be working at a given time. The contention of appellant is that notwithstanding the transfer of investigation to CBI by the Order of the Court, without obtaining permission from the Central Government, investigation launched against the appellant is in violation of the statutory mandate of Section 6A of DSPE Act and therefore is invalid and non-est and therefore, prayed that the entire investigation made by the CBI against the Appellant should be set aside insofar as

the appellant is concerned.

9. Counter - Respondents 3 and 5 resisted the Writ Petition contending that even though appellant is an IPS Cadre Officer, he is serving in Tamil Nadu Police Department and that the power of transfer and administrative control are vested with the State Government and therefore, Section 6A of DSPE Act is not applicable. As per Rules 2,3, 5 and 6 of Indian Police Service (Cadre) Rules, 1954, IPS Officers are Cadre Officers, they are recruited by Central Government and then allotted to State to serve in their respective State Cadres and the appellant, having been allotted to the State of Tamil Nadu, can never be called as an employee of the Central Government, because he is employee in the affairs of State of Tamil Nadu. As far as the appellant, he is posted in the affairs of the State of Tamil Nadu and he cannot be an employee of a Central Government and therefore Section 6A of DSPE Act is not applicable. Further case of respondents is, exercising inherent powers under Section 482 CrI.P.C, while deciding CrI.O.P.Nos.2691 and 5356 of 2011, the investigation was entrusted to CBI and only on the strength of orders of the Court dated 19.4.2011, CBI took up investigation in the said cases, which are not under its purview in normal course. According to respondents 3 and 5, once the cases are transferred to CBI by the High Court, 3rd respondent CBI does not require any permission under Section 6A of DSPE Act. Moreover, the appellant, being a State Government employee, Section 6A of DSPE Act is not applicable.

10. Findings of Writ Court - Learned single Judge dismissed the Writ Petition holding that the High Court in exercise of powers under Section 482 CrI.P.C., passed an order transferring investigation from State Police to CBI and when the transfer of investigation was ordered by the High Court, CBI can investigate the case even without getting prior permission from the Central Government. Observing that Respondents 3 and 5 are conducting the investigation only as per the order of the Court which cannot be challenged by the Appellant, the learned Judge dismissed the Writ Petition. Being aggrieved by the dismissal of his Writ Petition, appellant has preferred this intra Court appeal.

11. Contentions:- Mr.Vijay Narayan, learned Senior Counsel for appellant contended that Appellant is an officer of Indian Police Service (IPS) belonging to All India Service, appointed by the President of India on the recommendations made by the Union Public Service Commission and that Indian Police Service Recruitment Rules clearly show that the appointing authority is Central Government. According to appellant, as per All India Services (Discipline and Appeal) Rules, 1969, only the Central Government can impose penalty of dismissal or removal or compulsory retirement under Rule 7(2) and the power to appoint and power to terminate rests with the Central Government which would show that appellant is a Central Government employee. According to appellant, "All India Services" is subject matter of Laws of Union and Parliament and Parliament has exclusive power to make laws with respect to appointment, conduct and discipline. Learned Senior Counsel further submitted that as an Officer of Indian Police Service, while serving in the State of Tamil Nadu, appellant is drawing salary in the pay scale equal to the Joint Secretary of Government of India falling in the category of Officers of the level of Joint Secretary and is covered by Section 6A of DSPE Act. It was submitted that as per Section 6A of DSPE Act, prior permission of Central Government should be taken before conducting enquiry or any investigation against the employees of Central Government of the level of Joint Secretary and above and Section 6A is a mandatory provision and CBI cannot start investigation violating the mandatory provision.

12. Learned Senior Counsel further submitted that merely because Court has passed the order, the mandatory requirement of obtaining permission of Central Government under Section 6A cannot be dispensed with. Placing reliance upon (2010) 3 SCC 57.(State of West Bengal v. Committee for Protection of Democratic Rights), learned Senior Counsel submitted that powers to transfer investigation to another agency could be exercised by Constitutional Court under Article 226 of Constitution of India and such power cannot be stretched to be exercised under inherent power under Section 482 CrI.P.C. Learned Senior Counsel submitted that in any event, merely because of transfer by the order of the Court, the mandatory provisions of Section 6A of DSPE Act is not wiped out. It was submitted that the learned single Judge was not right in dismissing the Writ Petition saying that once

the High Court transferred the case to the file of CBI, appellant cannot contend that CBI has no jurisdiction to investigate and the said findings will be running counter to the well settled principles and prays for allowing of the Writ Appeal.

13. Taking us through various events and the detailed counter, Mr.Chandrasekaran, learned Special Public Prosecutor for CBI submitted that appellant is an Officer of Indian Police Service of All India Service allotted to Tamil Nadu Cadre and as per the definition provided under Rule 2(c) of All India Services (Discipline and Appeal) Rules, 1969, Appellant is only an employee of State of Tamil Nadu. Drawing our attention to the Rules of All India Services (Discipline and Appeal) Rules, 1969 and other Rules, learned Special Public Prosecutor for CBI submitted that when the appellant is an employee of State of Tamil Nadu, appellant can never be called as an employee of Central Government. Learned Special Public Prosecutor for CBI submitted that provisions of Section 6A of DSPE Act are applicable only to the employees of Central Government of the level of Joint Secretary and above and the appellant, being employed in the affairs of the State of Tamil Nadu is not an employee of Central Government. Learned Special Public Prosecutor further contended that on the orders of the Court in Crl.O.P.Nos.2691 and 5356 of 2011 dated 19.4.2011, High Court entrusted the investigation in Crime No.26 of 2009 on the file of EOW-II, Coimbatore and Crime No.3068 of 2009 on the file CB-CID, Vellore and pursuant to the orders of the Court CBI took up investigation in the said cases which are not under its purview in normal course and once cases are entrusted to CBI, CBI does not require any permission under Section 6A of DSPE Act. Learned Special Public Prosecutor for CBI submitted that order of the Court transferring the investigation to CBI remains unchallenged.

14. We have carefully considered the rival contentions and the order of learned single Judge and also perused the materials on record. The following points arise for consideration in this appeal:- (1) Whether appellant is the employee of Central Government in the level of Joint Secretary requiring prior permission under Section 6A of DSPE Act, 1946? (2) Whether appellant is right in contending that investigation against the appellant is vitiated in view of violation of mandatory provisions of Section 6A of DSPE Act, 1946? (3) Whether exercise of power of

transfer of investigation from State Investigating Agency to Central Bureau of Investigation could be exercised only by Constitutional Court under Article 226 of Constitution of India and not under Section 482 of CrI.P.C.? (4) Whether appellant is right in contending that mandatory provisions of Section 6A of DSPE Act, 1946 cannot be overlooked by the High Court while exercising jurisdiction under Section 482 CrI.P.C.? 15. Point Nos.1 and 2:- On 24.09.2009, a case in Crime No.26 of 2009 was registered by CCB, Tirupur under Sections 3 and 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and under Section 420 IPC against K.Mohanraj, K.Kathiravan, and Kamalavalli, Directors of M/s.Paazee Forex Trading India Private Limited for cheating the depositors by collecting huge amounts from them on the promise of high returns and defaulted in making repayments. By the Order of Director General of Police, the said case was transferred to EOW-II, Coimbatore and re-registered as Crime No.3 of 2010.

16. Kamalavalli, one of the Directors of Paazee Group of Companies went missing on 8.12.2009 and on 8.12.2009, a woman missing case in Crime No.3068 of 2009 was registered by Tirupur North Police Station. Kamalavalli surfaced on 11.12.2009 and on 14.02.2010 she lodged a complaint to Deputy Superintendent of Police, Tirupur that she was kidnapped by some unknown persons and ransom money of Rs.3 Crores was extorted by the police officers from Paazee Group of Companies. On 18.3.2010, Director General of Police, Tamil Nadu transferred Crime No.3068 of 2009 of Tirupur North Police Station to CB CID, Vellore. After considerable investigation, on 15.09.2010, CB CID, Vellore altered the Sections of the case in Crime No.3068 of 2009 to Sections 384 and 506 Part I of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women (Amendment) Act, 2002 and Section 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 against the police officers (1) Rajendran, Deputy Superintendent of Police, (2) V.Mohanraj, Inspector of Police, CCB, Tirupur, (3) E.Shanmugaiah, formerly Inspector, CCB, Tirupur and a private individual namely Annachi @ John Prabakar and others.

17. By common order dated 19.4.2011 in CrI.O.P.Nos.2691 and 5356 of 2011, the Crime No.3068 of 2009 on the file of Deputy Superintendent of Police, CBCID, Vellore and Crime No.26 of 2009 (3 of 2010 on the file of EOW-II, Coimbatore,

Tamil Nadu) were transferred to CBI for investigation while observing that the extortion amount of Rs.3 crores reportedly paid to the police officers is necessarily the money belonging to depositors. Crime No.26 of 2009 (Cr.No.3 of 2010 on the file of Deputy Superintendent of Police, Economic Offences Wing-II, Coimbatore of Tamil Nadu) was re-registered as case not RC.12/E/2011 of CBI, EOW, Chennai. The Crime No.3068/2009 on the file of Dy.Superintendent of Police, CB-CID, Vellore was re-registered as case not RC.13/E/2011/CBI/ EOW/Chennai.

18. The appellant functioned as Inspector General of Police, West Zone, Coimbatore between 2008 and 2010. Tirupur comes under the jurisdiction of the appellant i.e., West Zone, in which main case in Crime No.26 of 2009 was investigated by CCB, Tirupur, which was under the administrative control of the appellant during the relevant period. According to CBI, the investigation conducted so far revealed the involvement of the appellant while he was functioning as Inspector General of Police, West Zone, Coimbatore, having jurisdiction over Tirupur police, where main case of cheating the depositors was under active investigation. It is stated that the investigation pointed out that the appellant abused his official position as Inspector General of Police during the relevant period and is alleged to have demanded illegal gratification of Rs.10 Crores through his subordinate police officers viz., V.Mohanraj (A-2) and E.Shanmugaiah (A-3), the then Inspectors of Police, CCB, Tirupur from the Directors of M/s.Paazee group of companies on the promise that the Company need not make repayment to the depositors and that the Company can also delay such repayments to the depositors. The appellant is alleged to have abused his official position as Inspector General of Police, West Zone and accepted Rs.2.85 Crores as bribe on various dates between December, 2009 and February, 2010 from the Directors of M/s.Paazee Group of Companies through various persons including the subordinate police officers. Searches were conducted at the residential premises of the appellant and it is stated that the documents, which have the potential of incriminating the appellant, have been seized and the investigation is almost nearing completion.

19. As pointed out earlier, by the Order of the High Court dated 19.4.2011 in Crl.O.P.Nos.2691 and 5356 of 2011, cases were transferred to CBI. It is pertinent

to note that even before the cases were transferred to CBI and the case in Crime No.3068 of 2009 was investigated by CBCID, by the Memorandum of the Office of the Director General of Police, Chennai in C.No.042643/Crime II(2)/2010 dated 23.03.2011, the appellant was directed to attend the enquiry in connection with the investigation in Tirupur North Police Station Crime No.3068 of 2009. Issuance of the said memorandum would show that it is not as if the investigation against the appellant "commenced only after the case was transferred to CBI". Even before the case was transferred to CBI, the needle of suspicion pointed towards the appellant and that the appellant was called upon to appear for enquiry.

20. Contending that the appellant is an employee of the Central Government to whom Section 6A of the DSPE Act is applicable and that permission from the Central Government ought to have been obtained for commencing/carrying out the investigation against the appellant, the learned Senior Counsel for appellant made the following submissions:- (i) An Officer of Indian Police Service (I.P.S) belonging to All India Service appointed by the President of India on the recommendations made by the Union Public Service Commission and removable from service only by the Central Government as he is the employee of the Central Government. An I.P.S. Officer serving in the State drawing the salary in a Pay Scale equal to the Joint Secretary to the Government of India falls in the category of Officers of the level of Joint Secretary and above as envisaged in Section 6A of DSPE Act. (ii) As per Entry No.70 of List I, "All India Service" is the subject matter of laws of Union and Parliament has exclusive power to make laws with respect to this matter. All India Services Act 1951 gives power to the Central Government to make rules for the regulation of the recruitment and conditions of service of persons appointed to All India Service. (iii) In exercise of this power, Central Government has made Indian Police Service Recruitment Rules and as per the said Rules, the appointing authority is the Central Government. So also, All India Services (Discipline and Appeal) Rules would make it clear that only the Central Government can impose penalty of dismissal or removal or compulsory retirement under Rule 7(2). (iv) Merely because the appellant happened to be serving in a particular State will not take away his status as employee of the Central Government. The phrase used in Section 6A of DSPE Act "the employees of the Central Government of the level of Joint Secretary and above" would clearly show that it would cover all employees of

the Central Government of Joint Secretary level and above, irrespective of the Government in connection with those affairs they may be working at a given time.

(v) Since the appellant is an employee of the Central Government in the level of Joint Secretary and above as envisaged in Section 6A of DSPE Act, unless there is a prior approval from the Central Government, no complaint alleging offences under Prevention of Corruption Act could be enquired or investigated upon.

21. To contend that the appellant is an employee of the Central Government, the learned Senior Counsel placed reliance upon the unreported decision of RAKESH MITTAL VS. CBI (S.L.P.(CrI.) No.8074 of 2008) and submitted that whether the I.P.S. Officer is an employee of the Central Government or State Government is directly in issue before the Supreme Court and the appellant is similarly placed as that of the Officer in Rakesh Mittal's case.

22. Refuting the contentions, Mr.N.Chandrasekaran, learned Special Public Prosecutor appearing for CBI submitted that as per Rule 2, 3, 5 and 6 of Indian Police Service (Cadre) Rules, I.P.S. Officers are Cadre Officers, they are recruited by Central Government and then allotted to State to serve in their respective State Cadres and the appellant was allotted to State of Tamil Nadu. He is only an employee of the State Government of Tamil Nadu and he can never be called as an employee of the Central Government. The learned Special Public Prosecutor for CBI further submitted that the provisions of Section 6A of DSPE Act are applicable only to the employees of the Central Government of the level of Joint Secretary and such officers appointed by the Central Government in Corporations, Government Companies, Societies or Local Bodies owned or controlled by Central Government. Taking us through various Rules, the learned Special Public Prosecutor submitted that while the appellant is functioning and discharging his duties in the State of Tamil Nadu and drawing his salary from the consolidated fund of State of Tamil Nadu, the appellant cannot claim to be the Central Government employee and Section 6A of DSPE Act should not be stretched to dilute the intention of the legislature and cannot be interpreted to cover All India Service Officers discharging their duties under the direct control and supervision of the State Government.

23. Main objection of the appellant is that he is the Central Government employee in the level of Joint Secretary and in view of clear provisions of Section 6A of DSPE Act, no enquiry or investigation into any offence could have been conducted without previous approval of the Central Government. Firstly, let us consider the provisions of Section 6A of DSPE Act and then examine whether appellant is an employee of Central Government in the level of Joint Secretary and above and whether the provisions of Section 6A of DSPE Act is applicable to the appellant, necessitating prior approval of the Central Government for conducting investigation against the appellant.

24. Section 6A of Delhi Special Police Establishment Act, 1946:- Section 6A was introduced into the DSPE Act with effect from 11.9.2003 by virtue of Section 26(c) of the Central Vigilance Commission Act, 2003. The pre-cursor to Section 6A was the Single Directive which was a consolidated set of instructions issued to the CBI by the various Ministries/Departments. It was first issued in 1969 and thereafter amended on many occasions. The Single Directive contained certain instructions to the CBI regarding modalities of initiating an enquiry or registering a case against certain categories of civil servants.

25. The Single Directive was quashed by the Supreme Court in the case of Vineet Narain vs. Union of India, (1988) 1 SCC 22.on the ground that the Single Directive was a mere executive order which cropped a classification when the law did not permit such a classification with regard to prior approval for investigation in respect of Officers of a particular rank and above. Subsequent to Vineet Narain's case, (1988) 1 SCC 226.Section 6A has been inserted in the DSPE Act with effect from 11.09.2003.

26. Section 6A of DSPE Act reads as under:- 6A. Approval of Central Government to conduct inquiry or investigation. (1) The Delhi Special Police Establishment shall not conduct any enquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act,1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to (a) the employees of the Central Government of the Level of Joint Secretary and above; and (b) such officers as are appointed by the Central

Government in corporations established by or under any Central Act, Government Companies, Societies and local Authorities owned or controlled by that Government. (2) Notwithstanding anything contained in sub-section (1), no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the Explanation to Section 7 of the Prevention of Corruption Act, 1988 (49 of 1988.) 27. By reading of Section 6, it is clear, in cases covered by Section 6A(1), prior approval of the Central Government is a pre-condition which has to be satisfied before any inquiry or investigation alleged to have been committed under the Prevention of Corruption Act by the employee of the Central Government of the level of Joint Secretary and above.

28. The validity of Section 6A of DSPE Act has been challenged in SUBRAMANIAN SWAMY VS. DIRECTOR, CBI, (2005 Cri LJ 1413), and the matter has now been referred to a larger Bench of the Supreme Court on the following questions:

6. In short, the moot question is whether arbitrariness and unreasonableness or manifest arbitrariness and unreasonableness, being facets of Article 14 of the Constitution are available or not as grounds to invalidate a legislation. Both counsel have placed reliance on observations made in decisions rendered by a Bench of three learned Judges.

7. Further contention of learned Solicitor General is that the conclusion drawn in Vineet Narain case is erroneous that the Constitution Bench decision in K.Veeraswami vs. Union of India is not an authority for the proposition that in the case of high officials, requirement of prior permission/sanction from a higher officer or Head of the Department is permissible, the submission is that conclusion reached in para 34 of Vineet Narain decision runs contrary to observations and findings contained in para 28 of Veeraswami case.

8. Having regard to the aforesaid, we are of the view that the matters deserve to be heard by a larger Bench, subject to the orders of Hon'ble the Chief Justice of India." Though the validity of Section 6A of the DSPE Act is under challenge and

the issue is pending before a Larger Bench of the Supreme Court, Section 6A is in operation.

29. Whether appellant is the employee of the Central Government or the State Government:- 'Public Order' and 'Police' figure as entries 1 and 2 respectively in the State List in the Seventh Schedule of the Constitution. Each State has, therefore, exclusive power to legislate in regard to its police system and also has full administrative control over the police in the State. The Central Government can exercise similar power in regard to 'Public Order' and 'Police' in the Union Territories only. The primacy of the State Government over the police is reiterated in (2006) 8 SCC 1 [Prakash Singh and others Vs. Union of India and others].

30. As per Rules 2, 3, 5 and 6 of Indian Police Service (Cadre) Rules, 1954, IPS Officers are cadre officers, they are recruited by Central Government and then allotted to State to serve in their respective State Cadres. Page No.1 of the typed set of papers in Volume not I is the appointment order of the appellant dated 21.11.1989. In Paragraph 2 of the appointment order dated 21.11.1989 issued to the appellant, it is stated that the conditions of service in the Indian Police Service are laid down in the Rules, framed from time to time under the All India Services Act, 1951 and the appellant will be governed by All India Service Rules and other rules framed from time to time under All India Services Act, 1951. In the appointment order, the appellant was informed that under the rules of the service, the appellant will be allocated to one of the State/Joint State Indian Police Service Cadres and mostly be required to serve either under the State Government concerned or the Central Government. The relevant portion of the appointment order of the appellant dated 21.11.1989 reads as under: "(ii) ALLOCATION Under the Rules of the Service you will be allocated to one of the State/Joint State Indian Police Service Cadres and will mostly be required to serve either under the State Government concerned or the Central Government. The name of the cadre to which you shall be allotted will be communicated to your later. The Government of India, however, retain the right to require you to serve anywhere in India or abroad whether under the Central Government any State Government or a Public enterprise or a local body substantially owned or controlled by the Central or a State Government...

31. Let us now refer to various Rules which govern service conditions of the appellant.

32. As per Rule 2(a) of Indian Police Service (Cadre) Rules, 1954 'Cadre Officer' means "a member of the Indian Police Service". Rule 3 of Indian Police Service (Cadre) Rules, 1954 deals with Constitution of Police Service Cadre, which reads as under:- "3. Constitution of Cadres.- 3(1) There shall be constituted for each State or group of States an Indian Police Service Cadre. 3(2) The Cadre so constituted for a State or a group of States are hereinafter referred to as a 'State Cadre' and a 'Joint Cadre' respectively." 33. As per Rule 7 of Indian Police Service (Cadre) Rules, 1954, all appointments to cadre posts shall be made:- (a) in the case of a State Cadre, by the State Government; and (b) in the case of Joint Cadre, by the State Government concerned.

34. Rule 6 of Indian Police Service (Cadre) Rules, 1954 deals with "Deputation of Cadre Officers", which reads as under:- "6. Deputation of cadre officers. - 6(1) A cadre officer may, with the concurrence of the State Government or the State Governments concerned and the Central Government, be deputed for service under the Central Government or another State Government or under a company, association or body of individuals, whether incorporated or not which is wholly or substantially owned or controlled by the Central Government or by another State Government. Provided that in case of any disagreement, the matter shall be decided by the Central Government and the State Government or State Governments concerned shall give effect to the decision of the Central Government." A cadre officer may also be deputed for service viz., company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by a State Government, Municipal Corporation or a Local Body by the State Government on whose cadre he is borne.

35. As per Indian Police Service (Cadre) Rules, seniority of the Officer of Indian Police Service borne on State Cadre is as per the Cadre in the State. The members of Indian Police Service while borne and serving in their State cadres are transferred and promoted by the respective State Government. The promotion, posting and pay and allowances are under the control of the State Cadre to which

the officer is borne to. In addition to that, as per All India Service (Discipline and Appeal) Rules, 1969, State Government is authorised to initiate disciplinary proceedings and impose penalties (save penalty of removal, dismissal or compulsory retirement, which can only be done by the appointing authority.) Thus an IPS Officer borne on the State cadre, is an Officer of that State Government.

36. Learned Special Public Prosecutor appearing for CBI had also produced Establishment List of Indian Police Service of Tamil Nadu Cadre which is the compilation of civil list of Officers of the Indian Police Service borne on Tamil Nadu Cadre and of Superintendents of Police (non-cadre) as on 01.01.2013. Name of appellant is mentioned in Serial No.42 of Establishment List of Indian Police Service of Tamil Nadu Cadre.

37. Article 312 of Constitution of India provides for creation of All India Service. Union Public Service Commission recruits All India Service Officers and the selected All India Service Officers are allotted to the State as per All India Service (Cadre) Rules. All India Service is common service to both Union and the State. Central Government i.e. President of India is the appointing and removing authority of All India Service Officers. All India Service Officers enjoy special status. That is they are employees of Central Government, while serving at the Centre and employees of the State Government, while serving in the State. Article 312 of the Constitution of India provides that Parliament may by law regulate the recruitment and conditions of service of persons appointed to the All India Service common to the Union and the States and the Parliament enacted All India Services Act, 1951.

38. As pointed out earlier, appointment of appellant is governed by All India Service Rules framed from time to time under All India Services Act. Section 3 of All India Services Act, 1951 gives power to the Central Government to frame rules for regulation of recruitment and the conditions of service after consultation with the Government of the States concerned and lay down that all rules so framed shall be laid before Parliament and shall be subject to such modifications as Parliament may make. In exercise of the said power, the Central Government after consultation with State Governments framed various rules, viz., (1) All India

Services (Discipline and Appeal) Rules, 1969 (2) All India Service (Confidential Roll) Rules, 1970 (3) Indian Police Service (Cadre) Rules, 1954 (4) The All India Service (Conduct) Rules 1968 (5) All India Service (Leave) Rules 1955 (6) All India Service (Medical Attendance) Rules 1954 (7) All India Service (Provident Fund) Rules 1955 (8) All India Service (Condition of Service-Residual Matters) Rules, 1960 (9) All India Service (Performance Appraisal Report) Rules 2007 (10) All India Service (Group Insurance) Rules 1981 and likewise.

39. In the All India Service (Conduct) Rules, 1968, Rule 2(a) defines "Government" as under:- (i) in the case of a member of the Service serving in connection with the affairs of the Union, the Central Government; or (ii) in the case of a member of the Service serving under a Foreign Government or outside India (whether on duty or on leave), the Central Government; or (iii) in the case of a member of the Service serving in connection with the affairs of a State, the Government of that State. Explanation- . A member of the Service whose services are placed at the disposal of a company, corporation or other organisation or a local authority by the Central Government or the Government or the Government of a State shall for the purpose of these rules, be deemed to be a member of the Service serving in connection with the affairs of the Union or in connection with the affairs of that State, as the case may be, notwithstanding that his salary is drawn from the sources other than the Consolidated Fund of India or the Consolidated Fund of that State." 40. Rule 2(1)(g) of All India Services (Provident Fund) Rules, 1955 and Rule 2(g) of All India Service (Leave) Rules, 1955 also reiterate the same definition of "Government" as that of All India Services (Conduct) Rules, 1955.

41. As per Rule 2(c) of All India Services (Discipline and Appeal) Rules, 1969, "Government" means - "in the case of a member of the Service serving in connection with the affairs of a State, or who is deputed for service in any company, association or body of individuals whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by an Act of the Legislature of a State, the Government of that State; (ii) in any other case, the Central Government" 42. Rule 2(d) of All India Services (Medical Attendance) Rules, 1954 defines "Government" as under:- "2(d) "Government" means in the case of a member of the Service serving in connection

with the affairs of the Union, the Central Government, and in the case of a member of the Service serving in connection with the affairs of a State, the Government of that State: Provided that a member of the Service serving in connection with the affairs of a State falls ill in some other State the Government of that other State shall be deemed to be the Government for the purpose of clause (a)" 43. As per Rule 2(c) of All India Services (Confidential Rolls) Rules, 1970, "Government" means - "(i) in the case of a member of the Service serving in connection with the affairs of the Union or of a Union Territory, or serving under a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government, or serving under a local body set up by an Act of Parliament, or serving under an international organization, an autonomous body not controlled by the Central Government or a State Government, or a private body the Central Government. (ii) in the case of a member of the Service serving in connection with the affairs of a State, or serving under a company, association or body of individuals whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or serving under a local body set up by an Act of the Legislature of a State, the Government of that State." 44. All India Services (Performance Appraisal Report) Rules, 2007 deals with performance appraisal report. As per Rule 2(n), "State Government" is defined as under:- "2(n) "State Government" means the Government of the State on whose cadre the member of the Service is borne and in relation to a member of the Service borne on a Joint Cadre, the Joint Cadre Authority." 45. By perusal of Rule 8 of All India Services (Performance Appraisal Report) Rules, 2007, it is seen that performance appraisal report is communicated to the Central Government from the State Government. Rule 8 reads as under:- "8. Communication of the performance appraisal report to the Central Government and the State Government. - A certified true copy of the performance appraisal report shall be sent to the Central Government or the State Government or both to the Central Government and the State Government, according as the member of the Service is serving in connection with the affairs of the State, on whose cadre he is borne, or the Union, or a State to which he has been deputed under sub-rule (1) of rule 6 of the respective All India Services Cadre Rules: Provided that if the performance appraisal report is written in a language other than Hindi or English, it

shall be accompanied by an authentic certified translation in Hindi or English." 46. As per Rule 2(a) of the All India Services (Conduct) Rules, 1968, Government means - (i) in the case of a member of the Service serving in connection with the affairs of the Union, the Central Government; or (ii) in the case of a member of the Service serving under a Foreign Government or outside India (whether on duty or on leave), the Central Government; or (iii) in the case of a member of the Service serving in connection with the affairs of a State, the Government of that State.

47. Reading of various Rules as referred above would clearly show that Appellant is a member of All India Service serving in connection with the affairs of the State of Tamil Nadu and the State Government shall be the appropriate Government in respect of such employee for all practicable purposes.

48. All India Service Officers are only recruited by Union Public Service Commission, a constitutional body for being borne on several States of the Union. No All India Service Officer is recruited to serve the Central Government, except on deputation to Central Government. Central Government makes rules with regard to All India Service Officers only to have uniformity in service conditions for such Officers. The members of Indian Police Service (I.P.S), an All India Service "while borne on serving in their State Cadres" are transferred and promoted by their respective State Government. As per the Scheme of All India Service Officers, the promotion/posting, pay and allowances are under the control of the State Cadre to which the Officer is borne to. The members of All India Service are promoted by the Parent Cadre States as per seniority list of the Cadre Officers. The All India Service Officer is subject to disciplinary control of the State Government "for any act of misconduct as per Rule 7 of All India Services (Discipline and Appeal) Rules. As per Rule 7 of All India Services (Discipline and Appeal) Rules, 1969, the State Government is authorised to institute disciplinary proceedings and impose penalties (save major penalty of removal, dismissal or compulsory retirement). The Central Government cannot initiate disciplinary action suo motu against All India Service Officer serving in connection with the affairs of the State, if the member of All India Service for his commissions and omissions while he was serving in connection with the affairs of the State.

49. As per Rule 31 of All India Services (Discipline and Appeal) Rules, 1969 where a doubt has arisen as to the interpretation of any of the provisions of the Rules, the matter shall be referred to the Central Government for its decision. 1st Respondent Union of India has filed its counter clarifying the issue raised by the appellant. After referring to Rule 2(c) of All India Services (Discipline and Appeal) Rules, 1969, in its Counter, the Union of India has stated as under:- "7. in view of above Rule position, it is implied that Members of All India Services enjoy a special status; they are employees of the Central Government while serving at the Centre and employees of the State Government while serving in the State. A member of All India Service while serving in connection with the affairs of the State Government is an employee of the State Government. The Petitioner is serving in connection with the affairs of the State Government, Section 6A of the DSPE Act, 1946 is not applicable to him." Reiterating the same, State Government also filed its counter referring to the letter of the Union of India in Letter No.16013/66/2012-IPS.II dated 7.2.2013 clarifying the position that member of All India Service Officers while serving in connection with the affairs of the State Government is an employee of the State Government and hence protection under Section 6A of DSPE Act, 1946 is not applicable to him.

50. Disciplinary control over All India Service Officers is mainly by the State Government concerned. While minor punishments can be awarded to All India Service Officer by the State Government, major punishments like dismissal or removal from service can be awarded only by the Central Government, since the Central Government i.e., President of India is the appointing and removing authority. Merely because the imposition of penalties such as dismissal/ removal or compulsory retirement need the approval of President of India, the appellant cannot be held as an employee of the Central Government while serving in connection with the affairs of State of Tamil Nadu.

51. Contention of the appellant that he is an employee of the Central Government while borne on State Cadre and when serving under State Government is untenable. While the appellant is serving in connection with the affairs of the State and functioning and discharging his duties in the State of Tamil Nadu, he cannot claim to be the employee of the Central Government. In fact, the appellant was

suspended by the Government of Tamil Nadu vide G.O.Ms.No.341 dated 10.5.2012 issued by the Principal Secretary to Government of Tamil Nadu in terms of sub-rule (2) of Rule 3 of All India Services (Discipline and Appeal) Rules, 1969. While borne on a State Cadre and while serving under the State Government, appellant is only an employee of the State Government and the appellant cannot invoke Section 6A of the DSPE Act. Since the appellant borne on a State Cadre is not an employee of the Central Government and obtaining of prior approval of the Central Government as contemplated under Section 6A does not arise. CBI is not bound to take prior approval from the Central Government as the appellant is only an employee of the State Government of Tamil Nadu.

52. Contending that Indian Police Service Officers are the employees of Central Government, reliance was placed upon the decision of Rakesh Mittal's case (SLP (Crl) No.8074 of 2008). In the said case, Rakesh Mittal belongs to the I.P.S. Cadre of Uttarakhand State. On a complaint by the State Government, CBI registered the F.I.R. against Rakesh Mittal, an IPS officer, then posted as Additional Director General of Police in the State of Uttarakhand, under Sections 120B, 420, 467 and 477 IPC read with Section 13(1)(d) of Prevention of Corruption Act. CBI proceeded to file chargesheet against Rakesh Mittal after obtaining sanction from the State Government. However, CBI had not got permission from the Central Government under Section 6A of DSPE Act. The trial Court held that Rakesh Mittal, an IPS officer was a Central Government employee and Section 6A of DSPE Act was applicable in his case and the trial Court directed CBI to re-investigate the matter.

53. As against the said order of the trial Court, CBI filed Revision (Criminal Revision No.197 of 2007) before the High Court of Uttaranchal. Observing that IPS officer is not an employee of the Central Government and that Section 6A of DSPE Act was not applicable to Rakesh Mittal, the Uttaranchal High Court held as under:- "A plain reading of Section 6A clearly suggests that there is a specific bar about conducting any inquiry or investigation with respect to any offence under the Prevention of Corruption Act, 1988 (1988 Act for short) except with the previous approval of the Central Government with respect to the employees of the Central Government of the level of Joint Secretary and above. In other words, Section 6A very clearly stipulates that if any inquiry or investigation under 1988 Act is intended

to be started against an employee of the Central Government of the level of Joint Secretary and above, the previous approval of the Central Government is mandatory. The respondent at the relevant time was posted as Additional Director General of Police in the State of Uttarakhand. He belongs to the IPS cadre of Uttarakhand State. Even though his appointment was made by the President of India at the relevant time after his selection by the Union Public Service Commission, the issue which arises for consideration is whether at the relevant time he was an employee of the Central Government or he was the employee of the State Government. As far as this Court is concerned, the issue poses no problem because by the mere fact of his having been posted as Additional Director General of Police, Uttarakhand at the relevant time and he having been allocated to the State cadre of Uttarakhand, he could not be deemed, considered or treated as an employee of the Central Government. The respondent was an employee of the Government of Uttarakhand. He was working in the capacity of Additional Director General of Police, Uttarakhand at the relevant time. Therefore, the respondent at the relevant time was working in the State of Uttarakhand in connection with the affairs of the State of Uttarakhand and not in connection with the affairs of the Central Government. The learned Court below was clearly in error in holding that Section 6A of Delhi Special Police Establishment Act, 1946 was applicable or attracted in this case and, therefore, demanding that previous approval of the Central Government should have been brought on record for continuation of the case." 54. Against the order of Uttaranchal High Court, Rakesh Mittal preferred Special Leave Petition before the Hon'ble Supreme Court in S.L.P. (Crl) No.8074 of 2008 in which the Hon'ble Supreme Court has granted stay of further proceedings in connection with the CBI Case No.3 of 2006 pending on the file of Special Judge (Anti Corruption), Dehradun, Uttarakhand. Much reliance is placed upon interim stay granted by the Hon'ble Supreme Court Rakesh Mittal's case to contend that an I.P.S. Officer of State Cadre is an employee of the Central Government. It is pertinent to note that the Hon'ble Supreme Court had granted only "stay of further proceedings in connection with CBI Case No.3 of 2006" and not finally determined the matter. Case against Rakesh Mittal is distinguishable on facts. That apart, case against Rakesh Mittal, the then Additional Director General of Police, Uttarakhand was registered by CBI based on the complaint of the

Government of Uttarakhand; whereas the present case is being investigated by the CBI as per the orders of the Court.

55. Learned Senior Counsel for appellant has also placed reliance upon R.R.Kishore Vs. C.B.I, (142 (2007) DLT

702) to contend that prior approval of Central Government is to be sought for investigation in respect of a case registered against an Officer of rank of Joint Secretary. In R.R.Kishore case, the petitioner thereon was the Chief District Medical Officer (CDMO), Government of National Capital Territory (NCT) of Delhi and was of the rank of Joint Secretary. Defacto complainant - Handa, a Radiologist was running a diagnostic centre and there was an allegation that he was conducting pre-natal test to determine the foetus which would ultimately result in female foeticide. The petitioner therein had demanded certain money from the said Handa to put his case right and FIR was registered at 2.00 P.M on 16.12.2004. A trap was laid on the evening of 16.12.2004 and the petitioner thereon was caught receiving the bribe amount. Discharge Petition filed by the petitioner/accused came to be dismissed, which was challenged before the Delhi High Court. After narrating the background with regard to Section 6A of DSPE Act, the learned single Judge of Delhi High Court found that since the petitioner/accused thereon was of the rank of Joint Secretary, prior approval of Central Government ought to have been obtained and in view of violation of mandatory requirement of Section 6A of DSPE Act, the learned Judge held that the investigation carried out in contravention of mandatory statutory requirement of Section 6A is illegal and ordered re-investigation in the context of provisions of Section 6A of the said Act.

56. The present case is clearly distinguishable on facts from R.R.Kishore case. Firstly, the appellant is not an employee of the Central Government and never worked in the rank of Joint Secretary and above in Central Government. Secondly, the investigation in R.R.Kishore case was pursuant to a complaint lodged by defacto complainant and the trap laid. In the present case, the investigation by CBI was pursuant to the order of the Court transferring the investigation to CBI.

57. Empanelment of the appellant for holding the posts of Inspector General at the Centre, whether amounts to his status at the level of Joint Secretary at the Centre:- The contention of the appellant is that he is in the Joint Secretary level with effect from 13.7.2010 as he was empanelled by the Appointments Committee of the Cabinet (ACC) for holding the post of Inspector General/ equivalent level post at the Centre vide Proceedings not I-21023/14/2010-IPS-IV Government of India, Ministry of Home Affairs, New Delhi dated 13.07.2010.

58. Learned Senior Counsel appearing for the appellant strongly relied on two proceedings to contend that the appellant is only a Central Government employee and therefore his status is at par with the Joint Secretary level. The first proceedings relied on by the learned Senior Counsel is that of Ministry of Home Affairs, Government of India in not I-21023/14/2010-IPS-IV dated 13.7.2010. In the said proceedings, it is stated that the Appointments Committee of the Cabinet (ACC) has approved empanelment of the 108 Indian Police Service Officers belonging to various batches from 1979 to 1989 for holding the posts of Inspector General/equivalent level post at the Centre. The appellant is shown at Sl.No.88 in the said proceedings. A perusal of the said proceedings would only show that the appellant has been empanelled for holding the posts of Inspector General/equivalent level post "at the Centre" and such empanelment was approved by the Appointments Committee of the Cabinet. Thus, the fact remains that the appellant was only empanelled for holding the post at the Centre and not appointed to the said post. It is mere an empanelment approved by the Appointments Committee of the Cabinet. It is neither claimed by the appellant nor his case that in pursuant to such empanelment, he was posted as Inspector General or appointed in a post with equivalent level at the Centre. It is only a list of qualifying or eligible officers belonging to Indian Police Service for being considered to the post of Inspector General or any equivalent level post at the Centre. Certainly, such empanelment itself would not confer any right on the persons, whose names are found in the list, to claim an appointment to the posts of Inspector General/ equivalent level post at the Centre as a matter of right.

59. Likewise, the other proceedings relied on by the learned Senior Counsel is an Office memorandum issued by the Ministry of Home Affairs, Government of India,

in No. 1-21017/06/2010 -IPS.III dated 19.1.2011. In the said Office Memorandum, again a panel of IPS Officers was forwarded to the National Highways Authority of India for considering their suitability for appointment to the post of Executive Director (JS level) in that organisation on deputation basis.

60. In the said panel, the appellant's name figures in Sl.No.3. This again is only an empanelment for considering for appointment to the post of Executive Director (Joint Secretary level) in the National Highways Authority of India. Such empanelment, as already stated supra, will not confer any right of appointment nor it could be taken to mean that mere finding a place in the empanelment would automatically be construed as attaining such status of the post for which such empanelment was prepared. Therefore, under both the proceedings, the appellant cannot rely and contend that he has attained the level of Joint Secretary as contemplated under Section 6A of the said Act.

61. The Hon'ble Supreme Court has considered the scope of empanelment in very many decisions. In a decision reported in AIR 201.SC 93.(Rakhi Ray and Others Vs. High Court of Delhi and Others) , the Hon'ble Apex Court at paragraph 26 of its judgment has held as follows:- "A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for purpose of appointment and by itself does not amount to selection or create a vested right to be appointed." 62. Likewise in another decision reported in 2010 (6) SCALE 12 (State of Orissa and Another Vs. Rajkishore Nanda and Others), the Hon'ble Apex Court held at paragraph 13 as follows:- "13. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate." 63. In yet another decision reported in State of Bihar Vs. Secretariat Asstt. Successful Examinees Union (1994 (1) SCC 126), the Hon'ble Apex Court has observed that a person who is selected and empanelled does not, on account of empanelment alone, acquire any indefeasible right of appointment. Empanelment is at the best, a condition of eligibility for purposes of appointment and that by itself does not

amount to selection or creation of a vested right for appointment unless relevant service rule says to the contrary.

64. Considering all these decisions and the law laid down by the Apex Court on this issue, it is crystal clear that mere empanelment does not confer any right on the person, who is empanelled for appointment to the said post. It is only when such a person is appointed to the said post, he gets the status of such post and not by merely including his name in the eligibility list for being considered to the said post. Right to be considered to a post is not a right conferred on such post. Mere right of consideration itself would not mean that the status of such post or position is vested on such person. The appellant working as Inspector General of Police in West Zone, Coimbatore from 10.9.2008 to 19.02.2010. Thereafter he served as Assistant Commissioner of Police, Chennai and then as Inspector General of Police (Armed Forces), Chennai. He was suspended on 02.5.2012. In the stay petition in M.P.No.1 of 2013, it was stated that during the time of search and seizure, appellant was working as Inspector General of Police (Armed Forces), Chennai. Admittedly, appellant never worked as Inspector General of Police at the Centre at the Joint Secretary level. When that being the position, the appellant, admittedly, having not been appointed to the said post at the Centre, in pursuant to the empanelment made either in the proceedings dated 13.7.2010 or in the proceedings dated 19.1.2011, cannot claim that he has already attained the status of Joint Secretary level at the Centre. Therefore, we are of the firm view that the appellant has not attained the Joint Secretary level status at the Centre at any point of time and mere empanelment of his name either to the post of Inspector General / equivalent level post or to the post of Executive Director (JS level) will not automatically confer him the status of JS level unless and until he gets appointed to the said post in pursuant to the empanelment.

65. Whether prior approval under Section 6A of DSPE Act is mandatory or directory:- Let us analyse the issue in different angle and assume that the appellant is the employee of the Central Government. If that be so, according to the appellant, Section 6A of the DSPE Act would come to his rescue as admittedly, no previous approval of the Central Government was obtained for conducting the investigation by the CBI against the appellant. In order to

appreciate such contention, we should necessarily look into the said provision of law and find out as to whether seeking of such approval is mandatory or directory. We have already extracted Section 6A of the said Act supra.

66. No doubt, the language employed in the said provision though prima facie gives an impression that seeking of such previous approval is mandatory when an investigation is sought to be proceeded against the employees of the Central Government of the level of Joint Secretary and above, in effect, in our considered view, it is not so. We would not have ventured to consider the nature of the said provision to find out as to whether it is mandatory or directory but for sub -clause (2) of Section 6-A wherein it is stated that no such approval is necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration . Thus, even in respect of an investigation against an employee of the Central Government of the level of Joint Secretary and above , if the case falls under sub-clause (2) of Section 6A, no such approval is necessary. Therefore, the approval contemplated under Section 6A projected as though to be necessary only under sub-clause (1) and not so under sub-clause (2). An over all reading of entire Section 6A would only show the legislative intent that the approval contemplated therein can at the best be only directory and not mandatory. As against the same person, there cannot be two yard sticks , one under sub-clause (1) and another under sub-clause (2), if the intent of the legislation is mandatory under all circumstances for seeking approval of the Central Government.

67. More over, non-compliance of such requirement is also not visited with any consequences or penalty under the said provision. Therefore, we are of the view that the said requirement of obtaining prior approval can at the best be only directory and not mandatory.

68. We draw support for the above view from the latest decision of the Hon'ble Apex Court reported in State Rep. By Inspector of Police, Chennai Vs. N.S.Gnaneswaran (2013 (3) SCC 594). The said case was also from our High Court. The FIR filed after CBI investigation was sought to be quashed under Section 482 Cr.P.C. on the ground that the mandatory requirement under Section

154(2) of Cr.P.C. was not followed. Under the said procedure the copy of such information recorded shall be supplied forth with free of cost to the informant. This Court accepted the said contention and consequently quashed the FIR. When matter was taken on appeal before the Apex Court, the issue considered was as to whether giving the copy of the FIR to informant is mandatory and if not what is the prejudice caused to the respondent/ accused. After elaborately discussing various case laws on this issue, the Apex Court found that the provisions of Section 154(2) are merely directory and not mandatory. It is observed at paragraphs 15 to 22 as follows:- 15. While determining whether a provision is mandatory or directory, in addition to the language used therein, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve. It may also be necessary to find out the intent of the legislature for enacting it and the serious and general inconveniences or injustice to persons relating thereto from its application. The law which creates public duties is directory but if it confers private rights it is mandatory.

16. A Constitution Bench of this Court, in *State of U.P. and Ors. v. Babu Ram Upadhyaya* AIR 196.SC 751, considered the issue and held as under:- "29. ... For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered." (Emphasis added) (See also: *Dattatraya Moreshwar v. State of Bombay and Ors.* : AIR 195.SC 181. *Raza Buland Sugar Co. Ltd., Rampur v. Municipal Board, Rampur*: AIR 196.SC 895. and *State of Mysore v. V.K. Kangan* : AIR 197.SC 2190.

17. In *Sharif-Ud-Din v. Abdul Gani Lone* AIR 198.SC 303, this Court, while considering the provisions of Sub-section (3) of Section 89 of the J&K Representation of People Act, 1957, held that the difference between a mandatory

and directory rule is that the former requires strict observance while in the case of latter, substantial compliance of the rule may be enough and where the statute provides that failure to make observance of a particular rule would lead to a specific consequence, the provision has to be construed as mandatory.

18. In *Rubber House v. Excellsior Needle Industries Pvt. Ltd.* : AIR 198.SC 1160.this Court considered the provisions of the Haryana (Control of Rent and Eviction) Rules, 1976, which provided for mentioning the amount of arrears of rent in the application was held to be directory though the word "shall" has been used in the statutory provision for the reason that non-compliance of the rule, i.e. non-mentioning of the quantum of arrears of rent did involve no invalidating consequence and also did not visit any penalty.

19. In *B.S. Khurana and Ors. v. Municipal Corporation of Delhi and Ors.* (2000) 7 SCC 679.this Court considered the provisions of the Delhi Municipal Corporation Act, 1957, particularly those dealing with transfer of immovable property owned by the Municipal Corporation, and held to be mandatory for the reason that the effect of non-observance of the statutory prescription would vitiate the transfer.

20. In *State of Haryana and Anr. v. Raghubir Dayal*: (1995) 1 SCC 133.this Court observed as under:- If by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory. 21.. In *Ramchandra Keshav Adke v. Govind Joti Chavare and Ors.* : AIR 197.SC 915.this Court held that where "the imperative language, the beneficent purpose and importance of the provisions for efficacious implementation of the general scheme of the Act, all unerringly lead to the conclusion that they were intended to be mandatory, neglect of any of those statutory requisites would be fatal." 22. The law on this issue can be summarised that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance of the provision could render entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of Legislature and not upon the language for which the intent is clothed. But the circumstance that Legislature has used the language of compulsive force is always of great relevance. If we apply this test to

the provisions of Section 154 Cr.P.C., we reach the inescapable conclusion that the provisions of Section 154 (2) are merely directory and not mandatory as it prescribes only a duty to give the copy of the FIR." (Emphasis supplied) 69. Thus, by applying the above said principle of law laid down by the Apex Court, we could also safely come to the conclusion that non-observance of Section 6A will not vitiate the proceedings as we have already pointed out that the legislative intent is very clear from inserting sub-clause (2) in the case of arrest of a person on the spot on the charge of accepting or attempting to accept any gratification. It is also seen that there is no provision to indicate what would be the consequences if Section 6A is not complied with. Above all, as pointed out by the Apex Court, the object of the legislation as seen from the DSPE Act is to investigate the case of bribery and corruption by Central Government employees. Such object cannot be defeated merely by a non-observance of a procedure contemplated under Section 6A.

70. It is also to be noted that the word "approval" is contemplated under Section 6-A and not the word "permission" . Certainly permission and approval acts on different circumstances. Approval of an action done is different from permitting such an action to take place. Therefore, we are of the view that approval contemplated under Section 6A can at the best be only directory and not mandatory. Consequently non-compliance of the same would not vitiate the proceedings, even assuming that the appellant is a central Government employee at Joint Secretary level.

71. Points No.3 and 4:- Re-contention : Transfer of investigation to CBI under the order of the Court cannot be done, except under Article 226 of Constitution of India:- Before answering this issue we would like to make it clear that the appellant is not entitled to raise this issue in this writ appeal or before the learned single Judge when admittedly the order passed by this Court in transferring the investigation to CBI was not at all challenged either by the appellant or by any other accused. Thus the said order has become final, conclusive and is binding on all the parties concerned. The correctness or otherwise of the said order cannot be questioned by the appellant in these proceedings. It is relevant to note that the order of transferring the investigation to CBI was passed by this Court in

Crl.O.P.Nos. 2691 and 5356 of 2011 on 19.4.2011. However, even before such an order was made, the appellant was subjected to the enquiry by the State Police in connection with the Cr.No. 3068 of 2009 by calling upon him to attend an enquiry through the proceedings of the Director General of Police (Law and Order) dated 23.3.2011. Thus, the investigation / enquiry has already commenced against the appellant also by the State Police and only such investigation was subsequently transferred to CBI through the Court order made on 19.4.2011. Therefore, it is not open to the appellant to contend that he is not a party concerned in those proceedings and the order passed by the learned Judge in transferring the case to CBI will not bind him. However, the learned counsel for the appellant advanced arguments on this issue elaborately and therefore, we are constrained to express our opinion on this issue.

72. Learned Senior Counsel for appellant contended that the learned single Judge dismissed the Writ Petition mainly on the ground that by the order of the Court case was transferred to CBI and therefore, appellant cannot complain of transfer of investigation. Learned Senior Counsel contended that in the Constitution Bench decision of the Supreme Court in (2010) 3 SCC 57.[State of West Bengal v. Committee for Protection of Democratic Rights], it was categorically held that transfer of investigation from the State police to CBI overlooking the provisions of Section 6A of DSPE Act cannot be done except under Article 226 of Constitution of India. According to appellant, the very transfer of case itself under Section 482 of Crl.P.C. was not in accordance with the decision of the Constitution Bench. Learned Senior Counsel further submitted that when the case was transferred from the State police to CBI by the order of the Court dated 19.4.2011, the appellant was not at all an accused in either of two cases in Crime No.26 of 2009 of CCB, Tirupur (Crime No.3 of 2010 of EOW-II, Coimbatore) and Crime No.3068 of 2009 of Tirupur North Police Station registered by the State police and even as per the counter of CBI, appellant was arrayed as accused on 28.2.2012 through a Memo filed before the Special Judge for CBI Cases. Contention of appellant is that once CBI collected materials against the appellant, CBI had statutory obligation to take prior approval of the Government of India to conduct any enquiry or investigation and by the order of the Court to transfer cases to CBI exercising power under Section 482 Crl.P.C., compliance of mandatory provision cannot be

dispensed with.

73. There is no force in the contention that at the time when the cases were transferred by the High Court from the State police to CBI on 19.4.2011, the appellant was not an accused in either of two cases - Crime No.26 of 2009 of CCB, Tirupur (Crime No.3 of 2010 of EOW-II, Coimbatore) and Crime No.3068 of 2009 of Tirupur North Police Station. As pointed out earlier, on 09.12.2009, a woman missing case was registered in Crime No.3068 of 2009 of Tirupur North Police Station. Subsequently, when Kamalavalli surfaced on 11.12.2009, on her representation to the Deputy Superintendent of Police, Tirupur Town, on 15.12.2009, sections of woman missing case was altered to Sections 323, 365, 384 and 354 I.P.C. against the Police officers viz., (i) Rajendiran, Dy. Superintendent of Police, Tirupur, (ii) V.Mohanraj, Inspector, CCB, Tirupur, (iii) E.Shanmugaiah, formerly Inspector, CCB, Tirupur and a private individual viz., Annachi @ John Prabakar. When the CB-CID was investigating the case, by the Proceedings of the Additional Director General of Police (Law and Order) in C.No.042643/Crime II(2)/2010 dated 23.3.2011, appellant was directed to attend an enquiry in connection with the case in Tirupur North Police Station in Crime No.3068 of 2009 at CB-CID Head Quarters Office, Guindy, Chennai. The fact that appellant was directed to appear for enquiry shows that needle of suspicion pointed towards the appellant. After collecting materials, appellant was arrayed as accused through a Memo filed before the Special Judge for CBI cases on 28.2.2012. Therefore, it cannot be said that appellant was no way involved in connection with the case in Tirupur North Police Station, when the case was transferred to CBI by the order of the Court dated 19.4.2011.

74. Learned Senior Counsel for appellant submitted that when the case was transferred to CBI, mandatory provision of compliance of Section 6A of DSPE Act cannot be dispensed with. Contention of appellant is that power under Section 482 of CrI.P.C. is the statutory power of the High Court to prevent abuse of process of Court and during inspection while CBI got clue about the appellant, CBI should have obtained permission from the Central Government under Section 6A of DSPE Act to proceed against the appellant. Further contention of appellant is that power to order transfer of investigation to CBI cannot be ordered except under

Article 226 of Constitution of India and the inherent power under Section 482 CrI.P.C. cannot be equated to the power of Constitutional Court under Article 226.

75. The learned Senior Counsel placed reliance upon the decision of Supreme Court in (2010) 3 SCC 57.[STATE OF WEST BENGAL AND OTHERS V. COMMITTEE FOR PROTECTION OF DEMOCRATIC RIGHTS, WEST BENGAL AND OTHERS] to contend that power under Article 226 of Constitution of India cannot be equated to the power under Section 482 CrI.P.C. In the above said decision, the issue as to whether the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, can direct the Central Bureau of Investigation, established under Delhi Special Police Establishment Act, 1946 to investigate a cognizable offence, which is alleged to have taken place within the territorial jurisdiction of a State, without consent of the State Government came up for consideration before the Hon'ble Supreme Court.

76. Observing that power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of DSPE Act and in view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the Constitutional Courts with regard to the enforcement of fundamental rights, in (2010) 3 SCC 571.the Hon'ble Supreme Court held as under:- 68. Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows: (i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure. (ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing

for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State. (iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the constitutional courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review. (iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that the Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure. (v) Restriction on Parliament by the Constitution and restriction on the executive by Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Articles 32 and 226 of the Constitution. (vi) If in terms of Entry 2 of List II of the Seventh Schedule on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an exceptional situation, the Court would be precluded from exercising the same power which the Union could exercise in terms of the

provisions of the statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the Court fails to grant relief, it would be failing in its constitutional duty. (vii) When the Special Police Act itself provides that subject to the consent by the State, CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State police, the Court can also exercise its constitutional power of judicial review and direct CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the constitutional courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.

69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power

should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

77. The Hon'ble Supreme Court has clearly laid down that in exercise of its jurisdiction under Article 226 of Constitution of India, the High Court can issue a direction to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the sanction of that State. Whether order directing investigation by the CBI should be passed only by the Constitutional Court under Article 226 of Constitution of India and whether such direction cannot be issued exercising inherent power of the High Court under Section 482 CrI.P.C. is the point falling for consideration:- 78. Section 482 CrI.P.C. is the inherent power of the High Court to do real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. Inherent power under Section 482 CrI.P.C. envisages three circumstances, viz., (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. Courts, therefore, have inherent powers apart from any express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law.

79. The power possessed by the High Court under Section 482 CrI.P.C. are very wide and the very plenitude of the power requires great caution in its exercise, Court must be careful to see that its decision in exercise of the power is based on sound principles.

80. In *State of Punjab vs. Kasturi Lal and others*, (Crl.Appeal No.743 of 2004) dated 28.7.2004 cited by the learned Special Public Prosecutor for CBI, the Supreme Court has held as under:- "Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. This is the doctrine which finds expression in the Section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice. While exercising powers under the Section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complainant, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto." 81. Considering the scope

of Section 482 CrI.P.C. and observing that there is no statutory limitations for exercising power under Section 482 CrI.P.C., in (2012) 10 SCC 30.[Gian Singh v. State of Punjab and another], the Hon'ble Supreme Court held as under:- "53. As has been repeatedly stated that Section 482 confers no new powers on the High Court; it merely safeguards existing inherent powers possessed by the High Court necessary to prevent abuse of the process of any court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

54. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objections, (i) to prevent abuse of the process of any court, or (ii) to secure the ends of justice, is a sine qua non." 82. Observing that nomenclature of the petition is not decisive and that the High Court can exercise its power suo motu either under Article 226 of Constitution of India or under Section 482 CrI.P.C. or under both, in (2008) 3 SCC 54.[Divine Retreat Centre v. State of Kerala and others], the Hon'ble Supreme Court held as under:- "55. It was contended that nomenclature of the petition is not decisive. The High Court can exercise power suo motu either under Article 226 or under Section 482 Cr PC or under both. It was submitted that if for any reason the petition entertained by the High Court is held not maintainable under Section 482 of the Code, the same can always be treated as the one filed under Article 226 of the Constitution of India. Reliance was placed upon the observations made by this Court in Pepsi Foods Ltd. v. Special Judicial Magistrate (1998) 5 SCC 749..... This Court took the view that if the court finds that the appellant could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. The observations were made in the context of correcting grave errors that might be committed by the subordinate courts. The decision does not lay down any law that the High Courts in exercise of its power under Section 482 of the Code or Article 227 may be resorted to constitute any special investigating agency to investigate into allegations made for

the first time in an anonymous petition.

56. In our view, the whole of public law remedies available under Article 226 of the Constitution of India and the constituent power to issue writs in the nature of mandamus, certiorari, prohibition and quo warranto are neither echoed nor transplanted into Section 482. May be both the powers to issue writs and pass appropriate orders under Section 482 of the Code are conferred upon the High Court but they undoubtedly operate in different fields." 83. About 52,000 gullible depositors have been duped by M/s.Paazee Forex Trading India Private Limited and the amount cheated was to the tune of hundreds of crores and so many depositors have been cheated and the Investigating Agency had an obligation to secure the interest of the depositors and see that the amount was refunded to the depositors. When allegations were made against the State Police that proper investigation was not made and that the Police officers were alleged to have obtained money from the Directors of M/s.Pazee Forex Trading India Private Limited and that there was no proper investigation by the State Police, in order to render substantial justice, Court exercised its inherent power under Section 482 CrI.P.C. directing transfer of investigation to CBI. The direction was to protect the interests of depositors and to secure ends of justice.

84. Exercise of power by the High Court would depend on the facts and circumstances of each case. As held by the Hon'ble Supreme Court in Gian Singh case, in the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. The power possessed by the High Court under Section 482 CrI.P.C. is of wide amplitude, but required to be exercised with great caution and circumspection. Having regard to the magnitude of the offence and in order to protect the interest of the depositors, exercising inherent powers under Section 482 CrI.P.C., Court ordered transfer of investigation to CBI. Therefore, we are of the view that the nomenclature of the Petition was not material.

85. As pointed out earlier, exercise of power under Section 482 CrI.P.C. would depend upon the facts and circumstances of the case. When large number of

depositors have lost the money and allegations were levelled against the State police that they have received money from the Directors of M/s.Paazee Forex Trading India Private Limited to shield them, there was judicial obligation on the part of the Court to undo a wrong in the course of administration of justice to do real and substantial justice.

86. Re.contention Court cannot issue directions in contravention of the statutory provision:- Learned Senior Counsel for appellant contended that if CBI felt any incriminating materials emerged during investigation against the appellant, CBI ought to have obtained permission of the Central Government to proceed against the appellant. Contending that no person should suffer by reason of any mistake by the order of the Court and the order of the Court shall not prejudice any one, learned Senior Counsel for appellant placed reliance upon (1988) 2 SCC 60.[A.R.Antulay v. R.S.Nayak and another].

87. In the said case, the main question involved is, whether the directions given in R.S.NAYAK VS. A.R.ANTULAY, (1984) 2 SCC 18.were legally proper; whether the action and the trial proceedings pursuant to those directions are legal and valid and can those directions be recalled or set aside or annulled in the manner sought for by the appellant. In the above said decision, the Hon'ble Supreme Court held as under:- 41. In the aforesaid view of the matter and the principle reiterated, it is manifest that the appellant has not been ordered to be tried by a procedure mandated by law, but by a procedure which was violative of Article 21 of the Constitution. That is violative of Articles 14 and 19 of the Constitution also, as is evident from the observations of the Seven Judges Bench judgment in Anwar Ali Sarkar case where this Court found that even for a criminal who was alleged to have committed an offence, a special trial would be per se illegal because it will deprive the accused of his substantial and valuable privileges of defence which, others similarly charged, were able to claim. As Justice Vivian Bose observed in the said decision at page 366 of the report, it matters not whether it was done in good faith, whether it was done for the convenience of Government, whether the process could be scientifically classified and labelled, or whether it was an experiment for speedier trial made for the good of society at large. Justice Bose emphasised that it matters not how lofty and laudable the motives were. The

question which must be examined is, can fair minded, reasonable, unbiased and resolute men regard that with equanimity and call it reasonable, just and fair, regard it as equal treatment and protection in the defence of liberties which is expected of a sovereign democratic republic in the conditions which are obtained in India today. Judged by that view the singling out of the appellant in this case for a speedier trial by the High Court for an offence of which the High Court had no jurisdiction to try under the Act of 1952 was, in our opinion, unwarranted, unprecedented and the directions given by this Court for the said purpose, were not warranted. If that is the position, when that fact is brought to our notice we must remedy the situation. In rectifying the error, no procedural inhibitions should debar this Court because no person should suffer by reason of any mistake of the court. The court, as is manifest, gave its directions on 16-2-1984. Here no rule of res judicata would apply to prevent this Court from entertaining the grievance and giving appropriate directions. In this connection, reference may be made to the decision of the Gujarat High Court in *Soni Vrajlal Jethalal v. Soni Jadavji Govindji* (AIR 197.Guj

148) where D.A. Desai, J., speaking for the Gujarat High Court observed that no act of the court or irregularity can come in the way of justice being done and one of the highest and the first duty of all courts is to take care that the act of the court does no injury to the suitors.

55. Shri Jethmalani urged that the directions given on 16-2-1984, were not per incuriam. We are unable to accept this submission. It was manifest to the Bench that exclusive jurisdiction created under Section 7(1) of the 1952 Act read with Section 6 of the said Act, when brought to the notice of this Court, precluded the exercise of the power under Section 407 of the Code. There was no argument, no submission and no decision on this aspect at all. There was no prayer in the appeal which was pending before this Court for such directions. Furthermore, in giving such directions, this Court did not advert to or consider the effect of *Anwar Ali Sarkar* case (AIR 195.SC

75) which was a binding precedent. A mistake on the part of the court shall not cause prejudice to anyone. He further added that the primary duty of every court is

to adjudicate the cases arising between the parties. According to him, it is certainly open to a larger Bench to take a view different from that taken by the earlier Bench, if it was manifestly erroneous and he urged that the trial of a corrupt Chief Minister before a High Court, instead of a judge designated by the State Government was not injurious to public interest that it should be overruled or set aside. He invited us to consider two questions: (1) does the impugned order promote justice? and (2) is it technically valid? After considering these two questions, we are clearly of the opinion that the answer to both these questions is in the negative. No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity. Four valuable rights, it appears to us, of the appellant have been taken away by the impugned directions: (i) The right to be tried by a Special Judge in accordance with the procedure established by law and enacted by Parliament. (ii) The right of revision to the High Court under Section 9 of the Criminal Law Amendment Act. (iii) The right of first appeal to the High Court under the same section. (iv) The right to move the Supreme Court under Article 136 thereafter by way of a second appeal, if necessary.

58. We are clearly of the opinion that the right of the appellant under Article 14 regarding equality before the law and equal protection of law in this case has been violated. The appellant has also a right not to be singled out for special treatment by a Special Court created for him alone. This right is implicit in the right to equality. See Anwar Ali Sarkar case.

59. Here the appellant has a further right under Article 21 of the Constitution a right to trial by a Special Judge under Section 7(1) of the 1952 Act which is the procedure established by law made by the Parliament, and a further right to move the High Court by way of revision or first appeal under Section 9 of the said Act. He has also a right not to suffer any order passed behind his back by a court in violation of the basic principles of natural justice. Directions having been given in this case as we have seen without hearing the appellant though it appears from the circumstances that the order was passed in the presence of the counsel for the appellant, these were bad.

88. Learned Senior Counsel for Appellant placed reliance upon (1998) 4 SCC 40.[SUPREME COURT BAR ASSOCIATION V. UNION OF INDIA AND ANOTHER] to contend that under Article 142 of Constitution, Court cannot altogether ignore the substantive provisions of a statute and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute and it is not to be exercised in a case where there is no basis in law which can form an edifice for building up a superstructure.

89. In the above said case, aggrieved by the order of the Supreme Court in Vinav Chandra Mishra, Re., (1995) 2 SCC 58.suspending an advocate from practising for a period of three years by invoking powers under Articles 129 and 142 of the Constitution, on finding that an advocate committed criminal contempt of Court, the Supreme Court Bar Association filed petition under Article 32 of Constitution of India for a declaration that the Disciplinary Committees of the Bar Council set up under the Advocates Act, 1961 alone have exclusive jurisdiction to inquire into and suspend or debar an advocate from practising law for professional or other misconduct, arising out of punishment imposed for contempt of court or otherwise. On those facts, observing that power under Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant and that it cannot disregard a statutory provision governing a subject, the Hon'ble Supreme Court held as under:- 47. The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. There is no

doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent clogging or obstruction of the stream of justice. It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to supplant substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available only to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., to do complete justice between the parties. It cannot be otherwise. As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties."

49. In *Bonkya v. State of Maharashtra* ((1995) 6 SCC

447) a Bench of this Court observed:

23. The amplitude of powers available to this Court under Article 142 of the Constitution of India is normally speaking not conditioned by any statutory provision but it cannot be lost sight of that this Court exercises jurisdiction under Article 142 of the Constitution with a view to do justice between the parties but not in disregard of the relevant statutory provisions.

50. Dealing with the powers of this Court under Article 142, in *Prem Chand Garg v. Excise Commr., U.P.* (AIR 196.SC

996) it was said by the Constitution Bench: In this connection, it may be pertinent to point out that the wide powers which are given to this Court for doing complete

justice between the parties, can be used by this Court, for instance, in adding parties to the proceedings pending before it, or in admitting additional evidence, or in remanding the case, or in allowing a new point to be taken for the first time. It is plain that in exercising these and similar other powers, this Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary to do complete justice between the parties.

90. Contending that Court can issue direction to the statutory authorities to perform duties in only accordance with law and not other wise, the learned Senior Counsel placed reliance upon (1998) 4 SCC 40.[Supreme Court Bar Association v. Union of India and another]. Considering the plenary powers of the Supreme Court under Article 142 of the Constitution of India and observing that plenary powers of the Supreme Court under Article 142 cannot ignore any substantive statutory provision and that it cannot disregard a statutory provision governing a subject, in the said decision, the Hon'ble Supreme Court held as under:- "48. The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice "between the parties in any cause or matter pending before it". The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the enquiries between the conflicting claims of the litigating parties by "ironing out the creases" in a cause or matter before it. Indeed this Court is not a court of restricted jurisdiction of only dispute settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a "problem-solver in the nebulous areas" (see K.Veeraswami v. Union of India (1991) 3 SCC

655) but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject."

91. Learned Senior Counsel placed reliance upon AIR 196.SC 99.[PREM CHAND

GARG AND ANOTHER V. THE EXCISE COMMISSIONER, U.P. AND OTHERS] and (2010) 4 SCC 39.[MANISH GOEL V. ROHINI GOEL] to contend that no Court has competence to issue a direction contrary to law nor can the Court direct an authority to act in contravention of the statutory provisions. In the said decision, the Constitution Bench of the Hon'ble Supreme Court held as under:- 12. An order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws.

92. In (2010) 4 SCC 39.[MANISH GOEL V. ROHINI GOEL], the Hon'ble Supreme Court held as under:- 14. Generally, no court has competence to issue a direction contrary to law nor can the court direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injected by law. (Vide State of Punjab v. Renuka Singla (1994) 1 SCC 175.State of U.P. v. Harish Chandra (1996) 9 SCC 309.Union of India v. Kirloskar Pneumatic Co. Ltd. (1996) 4 SCC 453.University of Allahabad v. Dr. Anand Prakash Mishra (1997) 10 SCC 26.and Karnataka SRTC v. Ashrafulla Khan (2002) 2 SCC 560.) 93. Placing reliance upon the above decisions, the learned Senior Counsel submitted that transfer of investigation from the State police to CBI overlooking the provisions of Section 6A of DSPE Act cannot be done and the learned single Judge ought to have seen that very transfer of the case itself under Section 482 CrI.P.C. was not in accordance with the provisions of law. It was submitted that the order of the Court cannot be in deviation from the statutory provision causing prejudice to the appellant who was not an accused at the time when the investigation was transferred to CBI.

94. All these submissions of the learned Senior Counsel for the appellant would have relevance only when the appellant is an employee of the Central Government at the Joint Secretary Level, then only the question of applying Section 6A of the DSPE Act would arise for further consideration. We have already found that the appellant is not an employee of the Central Government at Joint Secretary level and on the other hand he is the employee of the State Government

and never functioned as the employee of the Central Government at any point of time much less the time during which the investigation/enquiry commenced. We have also held that mere empanelment of the appellant for holding the post of Inspector General at Centre does not confer any right of appointment to such post or confer such status on the appellant. Thus, the appellant who is an employee of the State Government, is not entitled to seek shelter under Section 6A of DSPE Act and there is no merit in contending that the direction for CBI enquiry was in contravention of the statutory provisions. In any event, as discussed earlier, the approval contemplated under Section 6A can at the best be only directory and not mandatory and non-compliance of the same would not vitiate the proceedings.

95. It is pertinent to note that the appellant has not challenged the order in Crl.O.P.Nos.2691 and 5356 of 2011 dated 19.4.2011. Without challenging the said order, the appellant cannot indirectly challenge the correctness of the order passed in Crl.O.P.Nos.2691 and 5356 of 2011 dated 19.4.2011 in this Writ Appeal. However, having regard to the elaborate submissions made, we were constrained to express our opinion upon the facts and circumstances in which the order of transfer of investigation to CBI came to be passed and the scope of inherent power of the High Court under Section 482 of CrI.P.C.

96. The learned single Judge dismissed the Writ Petition mainly on the ground that transfer of investigation was permitted by the High Court and the CBI can investigate even without prior permission from the Central Government including Officer at the Joint Secretary level. Of course, the learned single Judge did not go into the question whether the appellant is the employee of the Central Government or not. After referring to the decisions of Supreme Court in (2010) 3 SCC 57.[State of West Bengal Vs. Committee for Protection of Democratic Rights] and (2003) 6 SCC 19.[Union of India Vs. Prakash P.Hinduja], learned single Judge held that the defect in the investigation would not affect the cognizance of the case or trial and appellant is not entitled to maintain the writ petition and dismissed the writ petition. We have considered the submissions and recorded our findings that the appellant borne on a State Cadre is not a Central Government employee. In view of our findings and also the reasonings of the learned single Judge the writ appeal is liable to be dismissed.

97. We summarise our conclusions as under:- (i) The appellant, having been allotted to the State of Tamil Nadu, while serving in connection with the affairs of the State, the appellant is an employee of the State Government and the service conditions are governed under various rules as elaborated supra. Since the appellant is only an employee of the State Government, obtaining of prior approval of the Central Government under Section 6A of DSPE Act was not necessary and hence there is no violation of any statutory provision. (ii) Mere empanelment of the appellant for holding the post of Inspector General vide proceedings not I-21023/14/2010-IPS-IV of Government of India, Ministry of Home Affairs, dated 13.7.2010 does not confer any right of appointment on the appellant and the appellant, having not been appointed to the said post at the Centre, cannot claim that he is an Officer in the status of Joint Secretary level at the Centre. (iii) Even assuming that appellant is a Central Government employee at Joint Secretary level, the prior approval contemplated under Section 6A of DSPE Act can at the best be only directory and not mandatory and consequently, non-compliance of the same would not vitiate the proceedings. (iv) The inherent powers of the High Court under Section 482 are of wide amplitude. The power to order transfer of investigation to CBI is not restricted to only Constitutional Court under Article 226 of Constitution of India. As held in the decision of (2008) 3 SCC 54.[Divine Retreat Centre v. State of Kerala and others], the nomenclature of the petition is not decisive. The High Court can exercise powers either under Article 226 of Constitution of India or under Section 482 of Cr.P.C. or under both. (v) Direction in the Order made in Cr.O.P.Nos.2691 and 5356 of 2011 dated 19.4.2011 to transfer investigation to CBI cannot be said to be in deviation of any statutory provisions. More so, when the said order dated 19.4.2011 transferring investigation to CBI remains unchallenged.

98. In the result, the writ appeal is dismissed and the interim order granted on 4.1.2013 stands vacated. Consequently, connected M.P. is closed. No costs. (R.B.I.,J) (K.R.C.B.,J) 29.04.2013 Internet : Yes/No usk/bbr To 1.The Secretary, Ministry of Home Affairs, Union of India, Grih Mantralaya, New Delhi. 2.The Secretary, Department of Personnel and Training, Union of India, New Delhi. 3.The Director, Central Bureau of Investigation, CGO Complex, Lodhi Road, New Delhi. 4.The Secretary, Department of Home, State of Tamil Nadu, Fort St. George,

Chennai-9. 5.The Additional Superintendent of Police, Economic Offences Wing, III Floor, Rajaji Salai, Besant Nagar, Chennai-600 090. Note to Office: Issue copy of judgment on 03.05.2013 B/o bbr 29.4.2013 R.BANUMATHI,J and K.RAVICHANDRABAABU,J usk Judgment in W.A.No.12 o

29. 04.2013

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