SUPREME COURT OF INDIA

Essar Teleholdings Ltd.

Vs.

Registrar General, Delhi High Court

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya JJ.)

01.07.2013

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. Feeling aggrieved by the order dated 21st December, 2011 passed by the Special Judge, Central Bureau of Investigation, New Delhi taking cognizance against the petitioners, they have preferred these writ petitions challenging the said order dated 21st December, 2011, Administrative Order dated 15th March, 2011 passed by the Delhi High Court and Notification dated 28th March, 2011 passed by the Government of National Capital Territory of Delhi (for short 'NCT of Delhi') designating Mr. Om Prakash Saini as Special Judge to undertake the trial of cases in relation to all matters pertaining to 2G Spectrum case (commonly known as 2G Scam case) exclusively. One of the writ petitions has been filed by an individual and two other writ petitions have been preferred by two Companies who are all accused in 2G Scam case.

2. The factual matrix of the case is given in brief as under: Acting on various complaints pursuant to grant of UAS licences in 2008, the Central Vigilance Commission after conducting a preliminary inquiry entrusted investigation of the case to the CBI. After preliminary investigation, on 21.10.2009, the CBI lodged FIR RC No. DAI-2009-A-0045 against "unknown officers of the Department of Telecommunications and unknown private persons/companies and others" for causing wrongful loss to the Government by criminal misconduct and criminal conspiracy in distribution of UAS licences in January, 2008. Subsequently, a Public Interest Litigation was filed before the Delhi High Court, in Writ Petition (C) No.3522 of 2010, inter alia, alleging that the FIR filed by the CBI on 21.10.2009 was not being investigated and thereby praying that the CBI be

directed to investigate the same. The said writ petition was dismissed by the Delhi High Court on 25.5.2010.

3. Against the order of dismissal, the petitioner of the said case, Centre for Public Interest Litigation (for short, 'CPIL'), filed SLP(C) No.24873 of 2010, wherein this Court by order dated 16th December, 2010 granted leave (C.A.No.10660 of 2010) and decided to monitor the investigation, [reported in (2011) 1 SCC 560].

4. In the said case by order dated 10.2.2011, this Court indicated that a separate Special Court should be established to try the case(s) relating to 2G Spectrum. The said part of the above order is quoted hereunder:

> "We also indicated to the learned Attorney General that a separate Special Court should be established to try the case(s) relating to 2G Spectrum. The learned Attorney General responded to this by stating that he may be given two weeks' time to consult the concerned authorities and make a statement on this issue."

5. Pursuant to aforesaid observation, the Delhi High Court issued impugned Administrative order dated 15.3.2011 nominating one Mr. Om Prakash Saini as Special Judge to try cases of 2G Scam exclusively.

6. Another order was passed by this Court on 16.3.2011 inter alia directing;

> "At the commencement of hearing, learned Attorney General placed before the Court letter dated 14.03.2011 sent to him by the Registrar General of the High Court of Delhi conveying the decision taken by the High Court to nominate Shri O.P. Saini, an officer of Delhi Higher Judicial Service, who is presently posted as Special Judge (PC Act) (CBI)-2, New Delhi, Patiala House Courts as the Special Judge to undertake the trial of cases in relation to all matters pertaining to what has been described as 2G Scam exclusively.
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> Learned Attorney General gave out that he would ensure that two separate notifications are issued by the Central Government in terms of Section 3(1) of the Prevention of Corruption Act, 1988 and Section 43(1) of the Prevention of Money Laundering Act, 2002 for establishment of the Special Court to exclusively try the offences pertaining to what has been termed as 2G Scam and other related offences. Learned Attorney General submitted that appropriate notifications will be issued on or before 29.3.2011."

7. Pursuant to the abovesaid order the Government of N.C.T. of Delhi exercising its power under Section 3(1) of the Prevention of Corruption Act, 1988 (for short "the PC Act") by notification dated 28.3.2011 designated Mr. Om Prakash Saini as Special Judge to undertake the trial of cases in relation to all matters pertaining to 2G Scam case exclusively.

8. Administrative side of the Delhi High Court, thereafter, issued an allocation list on 1.4.2011 whereby Mr. Om Prakash Saini (P.C. Act) (CBI-4) PHC was designated as Special Judge in a new court to deal with matters pertaining to the 2G Scam cases exclusively.

9. CBI initially filed a charge sheet on 2nd April, 2011 against nine accused persons and thereafter on 25th April, 2011 filed a supplementary chargesheet against some more accused persons. No allegations were made against the petitioners in any of the chargesheets. Therefore, they were not shown as accused.

10. In the 2G Scam case this Court vide order dated 11.4.2011 while appointing the learned Special Public Prosecutor ordered as follows:

> "We also make it clear that any objection about the appointment of Special Public Prosecutor or his assistant advocates or any prayer for staying or impeding the progress of the Trial can be made only before this Court and no other Court shall entertain the same. The trial must proceed on a day-a-day basis."

11. Subsequently, the CBI filed second supplementary chargesheet on 12.12.2011 against the petitioner(s) and other accused persons for the alleged commission of offences under Section 420/120-B IPC. No offences under the PC Act have been alleged against the petitioner(s) and other accused persons arraigned in the second supplementary chargesheet. Based on the same, the learned Special Judge by impugned order dated 21.12.2011 was pleased to take cognizance of the second supplementary chargesheet dated 12.12.2011 and the petitioner(s) and others were summoned.

12. According to the petitioner(s), the CBI in its chargesheet dated 12.12.2011 admits that the chargesheet is being filed " regarding a separate offence" under Section 420/120-B IPC. In paragraphs 73 and 74 of the said chargesheet whilst admitting that the offences alleged in the chargesheet are triable by a Magistrate, the CBI relying on the notification dated 28.3.2011 requested the Special Judge to take cognizance of the matter. Paragraphs 73 and 74 of the chargesheet read as

under: “73. This final report under Section 173(8) Cr. P.C. is being filed regarding a separate offence which came to notice during investigation of the FIR No. RC DAI 2009 A 0045 (2G Spectrum Case),which is pending before Hon’ble Special Judge (2G Spectrum Cases), Patiala House Courts, New Delhi and a final report dated 02.04.2011 and supplementary final report dated 25.04.2011 were earlier filed in the same FIR.

> 74. In terms of the Notification No.6/05/2011-Judl./363-367 dated 28.03.2011 issued by Govt. of NCT of Delhi this Hon’ble Court has been designated to undertake the trial of cases in relation to all matters pertaining to 2G Scam exclusively in pursuance of the orders of the Supreme Court, although offences alleged to have been committed by accused persons sent up for trial are triable by the Magistrate of first class. It is, therefore, prayed that cognizance of the aforesaid offences may be taken or the final report may be endorsed to any other appropriate court as deemed fit and thereafter process may be issued to the accused persons for their appearance and to face the trial as per Law.”

13. The learned Special Judge, thereafter, took cognizance vide impugned order dated 21.12.2011. The relevant portion of the said impugned order reads as under:

> “2. Ld. Spl. PP further submits that the accused have been charged with the commission of offence, which are triable, by the Court of Metropolitan Magistrate. It is further submitted that this second supplementary charge sheet also arises from the aforesaid RC bearing No.DAI2009A0045/CBI/ACB/ND, titled as CBI v. A.Raja & others, arose and is pending trial. He further submits that since this case also arises from the same FIR, it is to be tried by this Court alone. He has further invited my attention to an order dated 15.03.2011, passed by the Hon’ble High Court, whereby the undersigned was nominated as Special Judge by the Hon’ble High Court to exclusively try cases of 2G Scam.
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> 3. Accordingly, the trial of this second supplementary charge sheet shall be held in this Court. A copy of the order dated 15.03.2011 be placed on the file.”

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14. Learned counsel for the petitioner(s) assailed the impugned Administrative Order passed by the Delhi High Court dated 15th March, 2011 and the Notification dated 28th March, 2011 issued by the Government of NCT Delhi on the following grounds:

(a) The impugned notification travels beyond the provisions of the Cr.PC. The Cr.PC mandates that offences under the IPC ought to be tried as per its provisions.

(b) It has been held by this Hon'ble Court in the case of CBI v. Keshub Mahindra reported in (2011) 6 SCC 216 that, "No decision by any court, this Court not excluded, can be read in a manner as to nullify the express provisions of an Act or the Code." Thus, the Administrative order and Notification are contrary to the well- settled provisions of law and ought to be set aside in so far as they confer jurisdiction on a Special Judge to take cognizance and hold trial of matters not pertaining to PC Act offences.

(c). If the offence of Section 420 IPC, which ought to be tried by a Magistrate, is to be tried by a Court of Sessions, a variety of valuable rights of the petitioner would be jeopardised. This would be contrary to the decision of the Constitutional Bench of the Hon'ble Supreme Court in the case ofA.R. Antulay v. R.S. Nayak reported in (1988) 2 SCC 602, wherein it was acknowledged that the right to appeal is a valuable right and the loss of such a right is violative of Article 14 of the Constitution of India.

15. Mr. Harin P. Rawal, learned Additional Solicitor of India appearing on behalf of the CBI made the following submissions:

a). The orders of the Hon'ble Supreme Court directing the setting up of the Special Court for 2G Scam cases were pursuant to its powers under Articles 136 and 142 of the Constitution, which made it clear that all the cases arising out of this Scam would be tried by the Special Court so constituted.

b). The Administrative Order of the High Court of Delhi setting up the Special Court is pursuant to its powers under Section 194 Cr.P.C., which empowers the High Court to direct, by special or general order, an additional Sessions Judge to try certain cases. Section 194 of Cr.P.C. is reproduced as below:-

"Section 194. Additional and Assistant Sessions Judges to try cases made over to them- An Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try."

c) Both Section 4(3) of the PC Act and Section 43(2) of the Prevention of Money-Laundering Act 2002 empower the Special Court to try any other offences that may be taken cognizance of under the Cr.P.C.. In this view of events, the cognizance taken by the Special Court of the charge-sheet filed against the accused was valid.

d) The Second Supplementary charge-sheet which makes out offences against the present accused arises out of FIR No. RC DAI 2009 A 0045 registered by the CBI on 21.10.2009, out of which the earlier charge- sheets have been filed, and cognizance taken by the Special Court. An anomalous situation would be created if various accused charged with offences arising out of the same FIR were to be tried by different courts on the flimsy ground that some of them are only charged of offences arising out of the IPC and not the special statutes under which other charges are laid.

e) Higher courts can try an offence in view of Section 26 of Cr.P.C. and no prejudice should be caused if the case is tried by a Special Judge. By virtue of Administrative Order passed by the Delhi High court and Notification issued by the Government of NCT, Delhi, the learned Special Judge is not divested of his jurisdiction which he otherwise possesses under Section 26 of the Cr.P.C. to try offence under IPC. The Section reads as follows:

"26. Courts by which offences are triable.- Subject to the other provisions of this Code,-

(a) Any offence under the Indian Penal Code (45 of 1860) may be tried by -

i) The High Court, or

ii) The Court of Session, or

iii) Any other court by which such offence is shown in the First Schedule to be triable;

(b) Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no court is so mentioned, may be tried by –

i) The High Court, or

ii) Any other court by which such offence is shown in the First Schedule to be triable."

16. Mr. Prashant Bhushan, learned counsel for the CPIL, submitted that a Special Judge has the power to try offences under the IPC and no challenge can be made against this power. It was further submitted that in view of the order passed by this Court in 2G Scam case, it is not open to the petitioners to approach any other Court to commence the trial.

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

"3. Power to appoint special Judges-(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:--

(a) any offence punishable under this Act; and

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974).

4. Cases triable by special Judges –

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis."

18. Section 22 of PC Act provides that provisions of the Cr.P.C., shall in their application to any proceeding in relation to an offence punishable under the Act to apply subject to certain modifications. It is, therefore, apparent that provisions of the Cr.P.C. are to be applied to trials for offence under the PC Act, subject to certain modifications.

19. Section 220 of the Cr.P.C. relates to trial for more than one offence, if, in one series of acts so connected together as to form the same transaction more offence than one are committed and provides as follows:

"220 - Trial for more than one offence –

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of properly as provided in sub- section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, or such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860)."

20. Persons accused of different offences committed in the course of the same transaction may be charged jointly as per Section 223 of the Cr.P.C., which reads as under:

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

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) *********

(d) persons accused of different offences committed in the course of the same transaction;

(e) to (g) *********

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the1[Magistrate or Court of Sessions] may, if such persons by an application in writing, so desire, and [if he or it is satisfied] that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together."

21. The second supplementary charge-sheet dated 12th December, 2011 was filed in the FIR No. RC DAI 2009 A 0045 dated 21st October, 2009 wherein following allegations have been made against the petitioners and some others:

> "Allegations
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> 1. On 21.10.2009, the CBI registered an FIR vide RC DAI 2009 A 0045 against unknown officials of Department of Telecommunications, Government of India, unknown private persons/companies and others for the offences punishable under Section 120-B IPC read with Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, on allegations of criminal conspiracy and criminal misconduct, in respect of allotment of Letters of Intent, United Access Service (UAS) Licenses and spectrum by the Department of Telecommunication. Investigation of the case was taken up and charge-sheets dated 02.04.2011 and first supplementary charge-sheet dated 25.04.2011 were filed before Hon'ble Special Judge (2G Spectrum Cases), Patiala House Courts, New Delhi, in which in trial proceedings are going on and are presently at the stage of prosecution evidence.
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> 3. The eligibility of all the companies which were allocated letters of Intent (LOI) on 10.01.2008 by the DOT was also investigated by BI during the investigation of this case. During such investigation, allegations came to notice that M/s Loop Telecom Ltd., which had applied for UAS licenses in 21 Telecom circles in September, 2007 was front company of M/s Essar Group. M/s Loop Mobile India Ltd. had been operating a UAS license since 2005 in the Mumbai Service Area. It was alleged that M/s Essar Group which already had a stake of 33% in M/s Vodafone Essar Ltd., a telecom operator in all the 22 telecom circles, was controlling substantial stake in the aforesaid 2 companies in violation of the UAS guidelines dated 14.12.2005and UAS license agreements signed by M/s Vodafone Essar Ltd. with DOT. It was further alleged that the accused persons belonging to M/s Loop Telecom Ltd. M/s Loop Mobile India Ltd and Essar Group of companies, fraudulently suppressed the facts of association of the two Loop Companies with M/s Essar Group of Companies while applying for new licenses DoT, in order the DoT considers these companies as entitles which are not substantially controlled by Essar Group. The said accused persons therefore, dishonestly or fraudulently got the 21 new UAS licenses and

continue to operate the Mumbai License of Loop in contravention of the applicable guidelines.

4. Investigation has been carried out on the allegations that M/s Loop Telecom Ltd., and associated persons including Essar Group persons/Companies, cheated the Department of Telecommunication, Government of India by concealing the actual stake holders of M/s Loop Telecom Ltd. behind a corporate veil, while applying for and getting 21 new UAS Licenses and got the 21 UAS Licenses and valuable spectrum for this Company."

Following facts also emerge from the background of the matter:

"70. That after the accused persons had cheated the DoT and fraudulently obtained the Letters of Intent/UAS Licenses/valuable spectrum in furtherance of a conspiracy among themselves, several complaints were received by the Department of Telecommunications during 2008-2010 alleging that M/s Loop Telecom Ltd. was an Essar group company under a corporate veil and was thereby violating the clause 8 of UASL Guidelines dated 14.12.2005. In one such matter Dot referred the matter to Ministry of Corporate Affairs seeking to examine the matter and open whether the given facts and circumstances made out a violation of the clause 8 of UASL Guidelines. Investigation has revealed that the Deputy Director (Inspection), Ministry of Corporate Affairs, who examined the matter in detail, concluded that the clause 8 of the UASL Guidelines had been violated. .....

71. The investigation has, therefore, revealed that M/s. Loop Telecom Ltd. made fraudulent UASL applications for 21 circles on 3.9.2007 by misrepresenting the fact that they met all the eligibility criteria including clause 8 of UASL guidelines. These fraudulent applications were accompanied by false certificates to the effect that the company met the conditions prescribed under clause 8 of UASL guidelines, thereby falsely claiming that the applicant company was not under any control influence of any existing licensee and that competition would not be compromised if 21 licenses applied for are issued to it.....

72. The aforesaid facts and circumstances constitute commission of offences, during 2007-08, punishable u/s 120-B IPC r/w 420 IPC, and substantive offence u/s 420 IPC, against accused persons, viz. Ravi N. Ruia, Anshuman Ruia, Vikash Saraf, I.P. Khaitan, Ms. Kiran Khaitan, M/s. Loop

Telecom Ltd. (erstwhile M/s. Shippingstop Dot Com India Pvt.Ltd.), M/s. Loop Mobile India Ltd. (BPL M/s. Mobile Communications Limited) and M/s. Teleholdings Ltd. Accused persons were not arrested during investigation."

From the aforesaid second charge-sheet it is clear that the offence alleged to have been committed by the petitioners in the course of 2G Scam Cases. For the said reason they have been made accused in the 2G Scam Case. Admittedly, the co-accused of 2G Scam case charged under the provisions of Prevention of Corruption Act can be tried only by the Special Judge. The petitioners are co-accused in the said 2G Scam case. In this background Section 220 of Cr.P.C. will apply and the petitioners though accused of different offences i.e. under Section 420/120-B IPC, which alleged to have been committed in the course of 2G Spectrum transactions, under Section 223 of Cr. P.C. they may be charged and can be tried together with the other co-accused of 2G Scam cases.

22. In A.R. Antulay v. Ramdas Sriniwas Nayak., (1984) 2 SCC 500, this Court came across a question whether a Court of a Special Judge for certain purposes is a Court of Magistrate or a Court of Session and held as follows:

"23. Once Section 5-A is out of the way in the matter of taking cognizance of offences committed by public servants by a Special Judge, the power of the Special Judge to take cognizance of such offences conferred by Section 8(1) with only one limitation, in any one of the known methods of taking cognizance of offences by courts of original jurisdiction remains undented. One such statutorily recognised well-known method of taking cognizance of offences by a court competent to take cognizance is upon receiving a complaint of facts which constitutes the offence. And Section 8(1) says that the Special Judge has the power to take cognizance of offences enumerated in Section 6(1)(a) and (b) and the only mode of taking cognizance excluded by the provision is upon commitment. It therefore, follows that the Special Judge can take cognizance of offences committed by public servants upon receiving a complaint of facts constituting such offences.

28. Section 9 of the 1952 Act would equally be helpful in this behalf. Once Court of a Special Judge is a Court of original criminal jurisdiction, it became necessary to provide whether it is subordinate to the High Court, whether appeal and revision against its judgments and orders would lie to the High Court and whether the High Court would have general

superintendence over a Court of Special Judge as it has over all criminal courts as enumerated in Section 6 of the Code of Criminal Procedure. The Court of a Special Judge, once created by an independent statute, has been brought as a Court of original criminal jurisdiction under the High Court because Section 9 confers on the High Court all the powers conferred by Chapters XXXI and XXXIII of the Code of Criminal Procedure, 1898 on a High Court as if the Court of Special Judge were a Court of Session trying cases without a jury within the local limit of the jurisdiction of the High Court. Therefore, there is no gainsaying the fact that a new criminal court with a name, designation and qualification of the officer eligible to preside over it with powers specified and the particular procedure which it must follow has been set up under the 1952 Act. The court has to be treated as a Court of original criminal jurisdiction and shall have all the powers as any Court of original criminal jurisdiction has under the Code of Criminal Procedure, except those specifically excluded.

29. Once the position and power of the Court of a Special Judge in the hierarchy of criminal courts under the High Court is clearly and unambiguously established, it is unnecessary to roam into an enquiry examining large number of decisions laying down in the context of each case that the Court of a Special Judge is a Court of Session and the contrary view taken in some other decisions. Reference to those judgments would be merely adding to the length of this judgment without achieving any useful purpose."

23. In Gangula Ashok v. State of A.P., (2000) 2 SCC 504 this Court dealing with Section 193 of the Cr.PC observed:

"10. Section 193 of the Code has to be understood in the aforesaid backdrop. The section imposes an interdict on all Courts of Session against taking cognizance of any offence as a court of original jurisdiction. It can take cognizance only if "the case has been committed to it by a Magistrate", as provided in the Code. Two segments have been indicated in Section 193 as exceptions to the aforesaid interdict. One is, when the Code itself has provided differently in express language regarding taking of cognizance, and the second is when any other law has provided differently in express language regarding taking cognizance of offences under such law. The word "expressly" which is employed in Section 193 denoting those exceptions is indicative of the legislative mandate that a Court of Session can depart from the interdict contained in the section only if it is provided differently in clear

and unambiguous terms. In other words, unless it is positively and specifically provided differently no Court of Session can take cognizance of any offence directly, without the case being committed to it by a Magistrate.

11. Neither in the Code nor in the Act is there any provision whatsoever, not even by implication, that the specified Court of Session (Special Court) can take cognizance of the offence under the Act as a court of original jurisdiction without the case being committed to it by a Magistrate. If that be so, there is no reason to think that the charge-sheet or a complaint can straight away be filed before such Special Court for offences under the Act. It can be discerned from the hierarchical settings of criminal courts that the Court of Session is given a superior and special status. Hence we think that the legislature would have thoughtfully relieved the Court of Session from the work of performing all the preliminary formalities which Magistrates have to do until the case is committed to the Court of Session.

12. We have noticed from some of the decisions rendered by various High Courts that contentions were advanced based on Sections 4 and 5 of the Code as suggesting that a departure from Section 193 of the Code is permissible under special enactments. Section 4 of the Code contains two sub-sections of which the first sub-section is of no relevance since it deals only with offences under the Indian Penal Code. However, sub-section (2) deals with offences under other laws and hence the same can be looked into. Sub-section (2) of Section 4 is extracted below:

"4. (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

24. Similar question came for consideration before this Court in Vivek Gupta v. Central Bureau of Investigation, (2003) 8 SCC 628. In the said case the co-accused were charged by Special Judge under the provisions of the PC Act whereas the appellant before this Court had been charged only under Section 420 IPC and under Section 120-B of the IPC, as in the present case. Having noticed the provisions of the PC Act and Cr. PC as referred to above, this Court held:

"15. This is because the co-accused of the appellant who have been also charged of offences specified in Section 3 of the Act must be tried by the

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

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

25. Admittedly, 2G Scam case is triable by the Special Judge against the persons accused of offences punishable under the PC Act in view of sub- Section (1) of Section 4. The Special Judge alone can take the cognizance of the offence specified in sub-Section (1) of Section 3 and conspiracy in relation to them. While trying any case, the Special Judge may also try an offence other than the offence specified in sub-Section (1) of Section 3, in view of sub-Section (3) of Section 4. A magistrate cannot take cognizance of offence as specified in Section 3(1) of the PC Act. In this background, as the petitioners have been shown as co-accused in second- supplementary chargesheet filed in 2G Scam case, it is open to the Special Judge to take cognizance of the offence under Section 120-B and Section 420 IPC.

26. On the question of validity of the Notification dated 28th March, 2011 issued by the NCT of Delhi and Administrative Order dated 15th March, 2011 passed by the Delhi High Court, we hold as follows:

(i) Under sub-Section (1) of Section 3 of the PC Act the State Government may, by notification in the Official Gazette, appoint as many Special Judges

as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try any offence punishable under the PC Act. In the present case, as admittedly, co-accused have been charged under the provisions of the PC Act, and such offence punishable under the PC Act, the NCT of Delhi is well within its jurisdiction to issue Notification(s) appointing Special Judge(s) to try the 2G Scam case(s).

(ii) Article 233 and 234 of the Constitution are attracted in cases where appointments of persons to be Special Judges or their postings to a particular Special Court are involved. The control of High Court is comprehensive, exclusive and effective and it is to subserve a basic feature of the Constitution i.e., independence of judiciary. [See High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal (1998) 3 SCC 72 and Registrar (Admn.) High Court of Orissa v. Sisir Kanta Satapathy (1999) 7 SCC 725]. The power to appoint or promote or post a District Judge of a State is vested with the Governor of the State under Article 233 of the Constitution which can be exercised only in consultation with the High Court. Therefore, it is well within the jurisdiction of the High Court to nominate officer(s) of the rank of the District Judge for appointment and posting as Special Judge(s) under sub-Section (1) of Section 3 of the PC Act.

(iii) In the present case, the petitioners have not challenged the nomination made by the High Court of Delhi to the NCT of Delhi. They have challenged the letter dated 15th March, 2011 written by the Registrar General, High Court of Delhi, New Delhi to the District Judge-I-cum-Sessions Judge, Tis Hazari Courts, Delhi and the District Judge-IV-cum-Addl. Sessions Judge, I/C, New Delhi District, Patiala House Courts, New Delhi whereby the High Court intimated the officers about nomination of Mr. O.P. Saini, an officer of Delhi Higher Judicial Service for his appointment as Special Judge for 2G Scam Cases.

27. In the present case there is nothing on the record to suggest that the petitioners will not get fair trial and may face miscarriage of justice. In absence of any such threat & miscarriage of justice, no interference is called for against the impugned order taking cognizance of the offence against the petitioners.

On 11th April, 2001, when the 2G Scam Case was taken up by this Court, this Court, inter alia, observed as follows: “Acting on such basis, this Court has given directions for establishing a separate Special Court to try this case

and pursuant to such direction, a Special Court has been constituted after following the due procedure.

We also make it clear that any objection about appointment of Special Public Prosecutor or his assistant advocates or any prayer for staying or impeding the progress of the Trial can be made only before this Court and no other court shall entertain the same. The trial must proceed on a day-to-day basis.

All these directions are given by this Court in exercise of its power under Article 136 read with Article 142 of the Constitution and in the interest of holding a fair prosecution of the case."

28. From the aforesaid order it is clear that this Court passed the order under Article 136 read with Article 142 of the Constitution, in the interest of holding a fair prosecution of the case.

29. In Rupa Asbhok Hurra v. Ashok Hurra and another, (2002) 4 SCC 388, this Court held that a final judgment or order passed by this Court cannot be assailed in an application under Article 32 of the Constitution by an aggrieved person, whether he was a party to the case or not. For the said reason also, it is not open to the petitioner to indirectly assail the order passed by this Court in 2G Scam case.

30. We find no merit in these writ petitions, they are accordingly dismissed. The Special Court is expected to proceed with the trial on day- to-day basis to ensure early disposal of the trial. There shall be no order as to costs.