REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL/CRIMINAL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6448-6452 OF 2011

Yogendra Kumar Jaiswal Etc. ... Appellants

Versus

State of Bihar & Ors. ... Respondents

WITH

CIVIL APPEAL NO. 6460 OF 2011

CRIMINAL APPEAL NOS. 360-378 OF 2012

CRIMINAL APPEAL NOS. 385-386 OF 2012

CRIMINAL APPEAL NO. 387 OF 2012

CRIMINAL APPEAL NO. 388 OF 2012

CRIMINAL APPEAL NOS. 379-384 OF 2012

CRIMINAL APPEAL NO. 389 OF 2012

CRIMINAL APPEAL NO. 390 OF 2012

CRIMINAL APPEAL NO. 1678 OF 2015 (@ SLP(CRL) NO. 4558/2012)

CRIMINAL APPEAL NO. 1371 OF 2012

CRIMINAL APPEAL NO. 1372 OF 2012

CRIMINAL APPEAL NO.1679 OF 2015 (@ SLP(CRL) NO. 3084/2013)

CRIMINAL APPEAL NO.1680 OF 2015 (@ SLP(CRL) NO. 3085/2013)

J U D G M E N T

Dipak Misra, J.

Corruption, a 'noun' when assumes all the characteristics of a 'verb', becomes self-infective and also develops resistance to antibiotics. In such a situation the disguised protagonist never puts a Hamletian question - "to be or not to be" – but marches ahead with perverted proclivity – sans concern, sans care for collective interest, and irrefragably without conscience. In a way, corruption becomes a national economic terror. This social calamity warrants a different control and hence, the legislature comes up with special legislation with stringent provisions. The law having been enacted, there is a challenge to the constitutionality of the provisions. That is the subject matter of these appeals, for the judgments rendered by the High Courts of Orissa and Patna are under assail herein. _

2. Leave granted in Special Leave Petition (Criminal) No. 4558 of 2012, Special Leave Petition (Criminal) No. 3084 of

2013 and Special Leave Petition (Criminal) No. 3085 of 2013.

3. In this batch of appeals, by special leave, we are called upon to deal with the legal substantiality of the judgments rendered by the High Court of Judicature of Orissa at Cuttack and the High Court of Judicature at Patna upholding the constitutional validity of the Orissa Special Courts Act, 2006 (for brevity, "the Orissa Act") which has been assented to by the President of India on 19.9.2007 and published in Extraordinary Orissa Gazette on 15.10.2007; and the Bihar Special Courts Act, 2009 (for short, "the Bihar Act"), respectively. We are also required to consider the validity of an aspect of Bihar Special Court Rules, 2010 (for short, "the 2010 Rules"). May it be stated though the High Court has noted the same and made certain observations yet has not proceeded to deal with the validity of the Rule in question.

4. As the factual matrix in all the cases has a common backdrop, we shall refer to the facts in brief. In all the cases, the appellants are/were public servants and facing criminal cases for various offences including the offences

under the Prevention of Corruption Act, 1988 (for short, 'the 1988 Act'), particularly Section 13(1)(e) of the 1988 Act on the allegation that they were having property disproportionate to their known sources of income. The grievance of appellants in these appeals relate to the impact and effect of the legislations brought during the pendency of the proceedings. That apart, the constitutional validity of the number of provisions of the two enactments has been assailed on many a ground which are not restricted to the pending trials alone.

5. At the outset, we may state that the provisions in both the Acts are almost similar and, therefore, we shall dwell upon the constitutionality of the Orissa Act first and in course of our delineation, we shall refer to the Bihar Act wherever it is necessary. Hence, we proceed to deal with the Orissa Act. The State legislature keeping in view the accumulation of extensive properties disproportionate to the known sources of income by persons who had held or are holding high political and public offices, thought it appropriate to provide special courts for speedy trial for certain class of offences and for confiscation of properties

involved; and accordingly, enacted the Orissa Act which was passed by the Orissa Legislative Assembly that got the assent of the President of India. The State Government in exercise of its power conferred under Section 27 of the Orissa Act framed a set of Rules, namely, the Orissa Special Courts Rules, 2007 (for short "2007 Rules").

6. Before we dwell upon the submissions that were raised before the High Court and how the High Court has dealt with them, we think it appropriate to understand the scheme of the Orissa Act. Section 2(a) of the Orissa Act defines "authorised officer" which means any serving officer belonging to Orissa Superior Judicial Service (Senior Branch) and who is or has been an Additional Sessions Judge, nominated by the State Government with the concurrence of the High Court for the purpose of Section 13. Section 2(c) defines "declaration" in relation to an offence and it means a declaration made under Section 5 in respect of such offences. The term "offence" has been defined under Section 2(d) which means an offence of criminal misconduct within the meaning of clause (e) of sub-section (1) of section 13 of the 1988 Act. As per

dictionary clause, Section 2(e) specifies "Special Court" which means a Special Court would be one as provided under Section 3 of the Orissa Act. Section 2(f) provides that words and expressions used herein and not defined but defined in the Code shall have the same meanings respectively assigned to them in the Code.

7. Section 3 of the Orissa Act deals with establishment of Special Courts. Section 4 enables the Special Court to take cognizance and try such cases as are instituted before it or transferred to it under Section 10. Section 7 deals with the jurisdiction of Special Courts as to trial of offences. It lays down that Special Court shall have jurisdiction to try any person alleged to have committed the offence in respect of which a declaration has been made under Section 5, either as the principal, or as a conspirator or abettor and for all the other offences, and the accused persons can jointly be tried therewith at one trial in accordance with the Code of Criminal Procedure, 1973 ("the Code" for short). Section 8 deals with the procedure and powers of the Special Courts. Sub-section (2) of Section 8 lays the postulate that save as expressly provided in the Act, the provisions of the Code

and of the 1988 Act shall, in so far as they are not inconsistent with the provisions of the Orissa Act, apply to the proceedings before a Special Court and for the purpose of the said provisions, the person conducting a prosecution before a special court shall be deemed to be a Public Prosecutor. Section 9 provides for an appeal to the High Court of Orissa from any judgment and sentence. Section 10 confers the power on the High Court of Orissa to transfer cases from one Special Court to another. Section 11(1) expressing the legislative command lays down that the special courts shall not adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interest of justice and for reasons to be recorded in writing and sub-Section (2) of said Section provides that the Special Court shall endeavour to dispose of the trial of the case within a period of one year from the date of its institution or transfer, as the case may be. Section 12 enables the Special Judge presiding over a Special Court on the evidence recorded by his predecessor or predecessors or partly recorded by his predecessor or predecessors and partly recorded by himself. Section 13

provides for filing of application for confiscation before the Authorised Officer. It empowers the State Government to authorise the Public Prosecutor to make an application and also stipulates what the application shall accompany.

8. Section 14 provides for issuance of show cause notice by the Authorised Officer to the person concerned to explain his source of income and other assets and why such money or property or both should not be declared to have been acquired by means of the offence and be confiscated to the State Government. Sub-section (2) provides that where a notice under sub-section (1) to any person specifies any money or property or both has been held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person. Sub-section (3) lays down that the evidence, information or particulars brought on record before the authorised officer shall not be used against the accused in the trial before the special court. Section 15 deals with the confiscation of property in certain cases. It provides a detailed procedure and obliges the authorised officer to follow the principles of natural justice. It prescribes a time limit for disposal of the

proceeding and gives immense stress on identification of property or money or both which have been acquired by means of the offence and further it makes the confiscation subject to the order passed in appeal under Section 17 of the Orissa Act. It may be noted here that the proviso to Section 15(3) stipulates that the market price of the property confiscated, if deposited with the Authorised Officer, the property shall not be confiscated. Section 16 lays down that after the issue of notice under Section 14, any money or property or both referred to in the said notice are transferred by any mode whatsoever, such transfer shall for the purposes of the proceedings under the Orissa Act, be void and if such money or property or both are subsequently confiscated to the State Government under Section 15, then the transfer of such money or property or both shall be deemed to be null and void. Section 17(1) enables the aggrieved person by the order passed by an authorised officer to prefer an appeal within thirty days from the date on which the order appealed against was passed. Sub-section (2) provides that upon appeal being preferred under the said provision, the High Court may,

after giving such parties, as it thinks proper, an opportunity of being heard, pass such order as it thinks fit; sub-section (3) requires the High Court to dispose of the appeal within three months from the date it is preferred and stay order, if any, passed in appeal shall not remain in force beyond the period prescribed for disposal of appeal. Sub-section (1) of Section 18 of the Orissa Act empowers the State Government to take possession. It stipulates that where any money or property has been confiscated to the State Government under the Act, the concerned authorised officer shall order the person affected as well as any other person who may be in possession of the money or property or both, to surrender or deliver possession thereof to the concerned authorised officer or to any person duly authorised by in this behalf, within thirty days of the service of the order. The proviso to the said sub-section stipulates that the authorised officer, on an application being made in that behalf and being satisfied that the person affected is residing in the property in question, may instead of dispossessing him immediately from the same, permit such person to occupy it for a limited period to be

specified on payment of market rent to the State Government and thereafter, such person shall deliver the vacant possession of the property. Sub-section (2) provides that if any person refuses or fails to comply with an order made under sub-section (1), the authorised officer may take possession of the property and may, for that purpose, use such force as may be necessary. Sub-section (3) confers powers on the authorised officer to requisition service of any police officer to assist and mandates the concerned police officer to comply with such requisition.

9. Chapter IV of the Orissa Act deals with the miscellaneous provisions. Section 20 stipulates that no notice issued or served, no declaration made and no order passed under the Act shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein, if such property or person is identifiable from the description so mentioned. Section 21 provides that the provisions of the Orissa Act shall be in addition, and not in derogation of, any other law for the time being in force. It also lays down that nothing contained in the Act shall exempt any public servant from a

proceeding, apart from this Act, be instituted against him. Section 22 says save as provided in Sections 9 and 17 and notwithstanding anything contained in any of the law, no suit or any other legal proceeding shall be maintainable in any Court in respect of money or property or both ordered to be confiscated under Section 15. Section 23 grants protection to the person in respect of any action done in good faith or intended to be done in pursuance of the Orissa Act. Section 24 empowers the State Government to make rules as it may deem necessary for carrying out the purposes of the Orissa Act. Section 26, an overriding provision, provides that notwithstanding anything in the 1988 Act and the Criminal Law Amendment Ordinance, 1944 or any other law for the time being in force, the provisions of the said Act shall prevail in case of any inconsistency.

10. Having enumerated the scheme of the Orissa Act, we think it appropriate to refer to certain definitions under the 2007 Rules framed under the Orissa Act. Rule 2(e) and (f) define “person holding high public office” and “person

holding high political office", respectively. The said definitions read as under:-

> "2(e) "person holding high public office" includes a public servant falling within the meaning of clause (c) of Section 2 of the Prevention of Corruption Act, 1988 or under Section 21 of the Indian Penal Code, 1860 and belonging to Group-A service of the Central or State Government or officers of equivalent rank in any organization specified in the explanation below clause (b) of Section 2 of the said Act who was serving under or in connection with the affairs of the State Government;
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> (f) "Person holding high political office" includes-
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> (i) members of the Council of Ministers and the Chief Minster;
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> (ii) any person falling under the definition of public servant under clause (c) of Section 2 of the Prevention of Corruption Act, 1988 or under Section 21 of the Indian Penal Code, 1860 who has been appointed to discharge the executive functions of the State in any organization specified in the explanation below clause (b) of Section 2 of the said Act and receiving pay or honorarium or allowances for the services so rendered."

11. We have only referred to the abovesaid definitions since the learned counsel for the State has made an effort to get support from the same and the learned counsel for the appellants have submitted that rules are not to be

taken recourse to for sustaining the constitutional validity of the Act.

12. Be it stated after judgment was delivered by the High Court on 16.9.2010, the State Government, Department of Home brought out a notification on 27.11.2010 amending certain rules. The relevant rule which has been amended is as follows:-

> "2. In the Orissa Special Courts Rules, 2007 (hereinafter referred to as the said Rules), in Rule 2, in sub-rule(1), in clause (e), after the words and the figures "Indian Penal Code, 1860" and before the words "belonging to Group 'A' Service", the words "including Officers of All India Services working under Government of Orissa" shall be inserted."

13. The constitutional validity of the Act as well as the Rules (prior to the amendment of the Rule) was assailed before the High Court in many a writ petition. The High Court noted the rivalised contentions and basically posed six questions. The sixth question related to a writ petitioner who was an IAS officer and it was asserted that he belonged to a category other than the officer of Group A service and hence, the declaration bringing him under the Act was illegal. Thus, the said issue stands on a different

footing and we shall in due course deal with the said challenge but the five questions posed by the High Court are enumerated herein:-

> "(1) Whether the similar provisions in the present impugned Act is required to be re-examined in these writ petitions with reference to either the definition clause or declaration under section 5(1) and other provisions of Chapter III of the impugned Act in view of the decision rendered by this Court in Kishore Chandra Patel's case (supra) wherein the provisions of section 5 and other similar provisions of the impugned Act and Chapter III (Confiscation) have already been held to be constitutional, legal and valid as the same do not offend Articles 14 and 21 of the Constitution.
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> (2) Whether the impugned Act is repugnant or inconsistent with the provisions of the Prevention of Corruption Act and other Central Acts to the impugned Special Courts Act, 2006?
>
> (3) Whether the provisions of the Orissa Special Courts Act, 2006 are repugnant to the provisions of the Prevention of Money Laundering Act as amended by Amendment Act, 2009?
>
> (4) Whether the impugned notification issued under section 5(1) of the Act is liable to be quashed?
>
> (5) Whether introducing the bill as Money Bill is legal and valid?"

14. After posing the said questions, the High Court dealt with question nos. 1 and 4 together and referred to the

decision in ***Kishore Chandra Patel v. State of Orissa***[1], and observed that in the aforesaid judgment, the constitutional validity of Part III regarding confiscation of monies and properties of the accused persons, who were facing the criminal trial in the Special Court constituted under the Orissa Special Courts Act, 1990 by the State Government for speedy disposal, was held to be legal and valid and did not violate any of the fundamental rights and were not inconsistent with the statutory rights conferred either under the Code or the Criminal Law Amendment Act or Civil Procedure Code. The High Court also took note of the fact that the earlier Division Bench had issued certain directions and an ordinance was brought in to cure the flaws and the Court had ultimately found that the amended Act was constitutional. Keeping the same in view, the Division Bench by the impugned order opined that section 5 of the Act is constitutional. The High Court also took note of an affidavit filed on 23.7.2010 and on that basis ruled that the apprehension that certain cases would be selectively picked and chosen from amongst the offenders

[1] 1993 (76) CLT 720

charged under Section 13(1)(e) of the 1988 Act for the purposes of invoking the provision of Chapter III was untenable in law. After making reference to the authority in ***Delhi Administration v. V.C. Shukla***[2], the Court opined that the attack based on discrimination was unfounded and accordingly answered the question nos. 1 and 4 against the writ petitioners. While dealing with the question no. 3 which pertained to the repugnancy of the Orissa Act to the provisions of the Prevention of Money Laundering Act, 2002 as amended by Amendment Act 2009, it has been opined that there was no repugnancy between the two statutes, for the procedure under both the statutes relating to confiscation of monies and properties of the accused are different and further the Prevention of Money Laundering Act, 2002 does not efface the prosecution against the persons facing prosecutions under the 1988 Act. That apart, the Division Bench also opined that Part A and Part B of the Schedule to the Prevention of Money Laundering Act, 2002 provide that in case of specified offence under the Indian Penal Code (IPC),

[2] (1980) Supp. SCC 249

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and the Explosive Substances Act, 1908, the 1988 Act, an accused can be prosecuted under the said statutes, apart from being prosecuted under the Prevention of Money Laundering Act, 2002. The Court placed reliance on ***S. Satyapal Reddy v. Govt. of A.P. & Ors***[3], ***M.P. Shikshak Congress & Ors. v. R.P.F. Commissioner, Jabalpur & Ors***[4]., ***P. Venugopal v. Union of India***[5], ***M. Karunanidhi v. Union of India***[6] and ***Hoechst Pharmaceuticals v. State of Bihar***[7] and came to hold that there was no repugnancy. As far as question no. 5 is concerned, the High Court referred to the scheme of Articles 198 and 199, referred to the authorities in ***State of Punjab v. Satyapal***[8] and ***Burrakur Coal Co. Ltd v. Union of India***[9] and negatived the assail. As is manifest, the Court has fundamentally placed heavy reliance on earlier legislation which was given the stamp of approval by the High Court in ***Kishore Chandra Patel*** (supra).

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[3] (1994) 4 SCC 391
[4] (1999) 1 SCC 396
[5] (2008) 5 SCC 1
[6] AIR (1979) SC 898
[7] AIR (1983) SC 1019
[8] AIR (1969) SC 903
[9] AIR (1961) SC 954

15. Having stated how the Division Bench of the High Court of Orissa has dealt with the constitutional validity of the Orissa Act, we think it apt and definitely for the sake of convenience, to refer to the Bihar Act, challenges before the High Court and the judgment rendered by the High Court of Judicature at Patna. The Bihar Act was notified in the Gazette on 8.2.2010. Section 2 of the dictionary clause defines the Act, that is, the 1988 Act, Authorised Officer, Declaration and Offences. Section 3 deals with establishment of Special Courts. Section 4 provides for taking cognizance of cases by Special Courts. Section 7 provides the jurisdiction of the Special Courts for trial of offence. Section 8 stipulates the procedure and powers of the Special Courts. Section 9 provides for an appeal against the judgment and sentence to the High Court. Section 10 deals with transfer of cases. Sections 11 and 12 deal with the role of the presiding Judge. Chapter III of the Bihar Act deals with confiscation of property. Sections 13 to 16 are similar to the Orissa Act. Section 18 empowers the authorized officer to take possession. The proviso appended there is similar to the Orissa Act. Section 19 deals with

refund of confiscated money or property. Chapter IV of the Bihar Act enumerates the miscellaneous provisions and Section 26, like the Orissa Act states as regards the overriding effect. The competent authority has framed a set of rules, namely, Bihar Special Courts Rules 2010, for short, "2010 Rules". Rule 2(f) of the 2010 Rules defines "public servant" to mean a public servant as defined within the meaning of clause (c) of Section 2 of the 1988 Act or under Section 21 of the Indian Penal Code, 1860 and including Group – A service of the Central or State Government or officers of equivalent rank in any organization specified in the explanation below clause (b) of Section 2 of the said Act who was serving under or in connection with the affairs of the State Government. Rule 6 deals with cognizance and trial by the Special Court. Rule 9 states that the State Government, in consultation with the High Court shall nominate an officer belonging to the cadre of the Bihar Superior Judicial Service, Senior Branch, who is or has been a Sessions Judge or Additional Sessions Judge to act as the authorized officer for the purposes of the Act and requires him to follow the

summary procedure. Rule 13 deals with the application of CrPC and it stipulates that the provisions of the Code shall apply to the proceedings before the authorised officer insofar as they are not inconsistent with the provisions of the Act. Rule 14 provides for particulars of an application made before the Authorised Officer and Form of Notice. The said Rule provides the particulars to be mentioned while filing an application under Section 13 of the Act which requires a range of information to be furnished.

16. Presently, we shall refer to the judgment rendered by the Division Bench of the High Court of Patna. It has referred to the preamble and highlighted certain aspects of the preamble and scanned the anatomy of the Bihar Act. It was contended before the High Court that the declaration made under Section 5 which brings the case of the accused under the purview of the Bihar Act to be tried by the Special Judge, exposes him to the risk of confiscation of property which the accused does not face under the 1988 Act; that when there are sufficient provisions in the CrPC pertaining to disposal of property at conclusion of the trial under Section 452, there was no justification or warrant to

introduce a provision for confiscation; that no guidelines have been provided by the legislature for working of Section 5(1) and 5(2) of the 2009 Act and it is completely unguided giving total discretion to the State Government to pick and choose any particular case; that Section 5(1) suffers from unreasonable classification because certain offences covered under the 1988 Act would be tried by the Special Judge under the 1988 Act and offence defined under the Bihar Act would be tried according to the procedure which is more rigorous; that the necessity of speedy trial by itself is too vague to withstand the test of reasonable classification; that there is no *intelligible differentia* which can sustain the classification and hence, it is hostile, discriminatory and contrary to the basic tenet of Article 14 of the Constitution; that there has been excessive and unguided delegation of power to the executive and, therefore, the manner of classification to be undertaken is contrary to the constitutional scheme.

17. Resisting the aforesaid submissions, it was urged on behalf of the State that the 2009 Act was brought into existence regard being had to the rampant corruption and

disproportionate assets amassed by the public servants through illegal means; that it is the obligation of the State to prosecute such persons and confiscate their ill-gotten assets; that Section 5(1) does not suffer from vice of discrimination and it withstands the test of discernible differentia and there has been no abdication of legislative function or conferment of unguided delegation of power; that making a provision for speedy trial is a facet of Article 21 of the Constitution and in the obtaining scenario to eradicate the maladies and the menace, the legislature had enacted the legislation to deal with it frontally; that the power vested under Section 5 has enough guidance and it cannot be said that it falls foul of Article 14 of the Constitution; that from the very definition of the term "offence" it is clear that it is in a different category or compartment altogether; that the non-assail of the declaration before any court would not include the High Court or the Supreme Court of India which exercises power of judicial review; that the challenge to Section 6(2) of the Act takes in its sweep the pending cases whereby making the provision effective; that it neither offends Article 20(1)

nor Article 20(3) of the Constitution, for the plea that accused persons would be exposed to harsher punishment relating to confiscation which is a greater penalty that was prescribed for the offence under the 1988 Act, is unsustainable inasmuch as the Act does not alter the punishment for the offence as provided under the 1988 Act and, in any case, the confiscation proceeding is an independent proceeding to be conducted by the authorized officer and it cannot be treated as a part of the criminal proceeding; that the procedure prescribed for adjudication of the issues relating to confiscation of properties does not suffer from any arbitrariness inasmuch as the confiscation including taking over possession of the confiscated property is independent and the plea that the findings recorded by the authorized officer in every likelihood to cause prejudice and bias during the trial, is absolutely unsustainable inasmuch as the statute itself provides the exclusion of consideration of the said material and the findings during the trial.

18. Adverting to the rivalised submissions, the High Court opined that the nature of property sought to be confiscated

under the Act is different and, therefore, the assail has no substance; that the provision in Section 13 of the Act and related provisions in Chapter–III cannot be faulted on account of ordinary principles of criminal jurisprudence that penalty or punishment must follow determination of guilt of the accused for confiscation, a *pro tem* one, is of a different nature; that the Act guarantees fairness to the accused by making the order of confiscation subject to an appeal before the High Court as well as subject to the final determination of guilt of the accused in the trial; that the general criticism that the procedure for confiscation invites the wrath of Article 14 of the Constitution does not deserve acceptance; and that the proceeding for confiscation is to be adjudicated by the Authorized Officer who has to be a Sessions Judge or Additional Sessions Judge and hence, there is fair and adequate protection provided for considering the case of the delinquent before passing an order of confiscation. Adverting to the likelihood of bias, the High Court opined that a trained judicial mind of a person holding post of Sessions Judge/Additional Sessions Judge is not expected to suffer from prejudice and the legislature

has cautiously entrusted the confiscation proceeding to an "Authorized Officer" whereas the trial has been entrusted to the "Special Court", and that is why the words i.e. "Authorized Officer" and "Special Court" have been separately defined and the distinction is evident and it is quite clear that confiscation proceeding and criminal trial against accused of an offence are not conducted by the same judicial officer; and, therefore, the likelihood of bias is not allowed to have any room.

19. The High Court of Patna while dealing with the vice of Section 17(3) proceeded to interpret sub-section (3) of Section 17 and opined that legislature has not given a definite and fixed period of six months as the time for disposal of appeal regard being had to the phraseology used in the provision, for it has been stipulated that an appeal preferred under sub-section (1) shall be disposed of preferably within a period of six months from the date it is preferred, and stay order, if any, passed in an appeal shall not remain in force beyond the prescribed period of disposal of appeal. The High Court has observed that the use of word "preferably" is a definite pointer that the

legislature has only indicated its preference that the appeal should be disposed of within a period of six months but it also permits disposal of the appeal beyond the period of six months and, therefore, it will not be proper to construe that the prescribed period for disposal of an appeal is only six months. As a logical corollary, it ruled that six months is not the prescribed period of disposal of appeal, but it is only desirable that the appeal should be disposed of within six months, and, accordingly, the stay order passed by the High Court will not lose its force automatically on expiry of any particular period. Placing such an interpretation, the High Court of Patna expressed the view that the said interpretation is to be preferred in order to save the provision from the vice of unreasonableness by causing undue hardship to the delinquent-appellant.

20. Dwelling on the issue of refund as contained under Section 19 is concerned, the High Court found merit in the contention advanced on behalf of the writ petitioners and observed that there can be no justification to cause any hardship or loss to the delinquent or the accused once the confiscation proceeding fails because it is the constitutional

obligation of the State that it shall not act in an unreasonable manner. Being of this view, it clarified that Section 19 requires clarification by way of interpretation that ordinarily when the confiscation is modified or annulled by the High Court in an appeal or where the person affected is acquitted by the Special Court, the money or property or both shall be returned to the person affected, and for not returning the property, the State shall have to seek permission of the High Court or the Special Court as the case may be to return only the price of the property and such permission shall be granted only when the State is able to show good reasons as to why it is not possible to return the property. So far as the rate of interest of 5% *per annum* is concerned, it is clearly insufficient and hence, in case the confiscated property is not returned by showing good reasons that it is not possible to do so, the interest payable must be at the usual bank rate prevailing during the relevant period for a loan to purchase or acquire similar property and then alone the constitutionality of the said provision can be saved.

21. Dealing with the grievance relating to forceful eviction from dwelling house ordinarily occupied by the delinquent/accused prior to final determination of guilt in course of trial for the offence, as contemplated under Section 18 of the Act, the Division Bench observed that the said provision makes no distinction between the properties found fit for confiscation, for all the properties subjected to confiscation proceeding whether they are dwelling house or other kinds of property have been treated alike. Addressing to the submission that an exception should have been made in respect of a dwelling house or unit where the delinquent/accused ordinarily resides himself with or without his family, because the dwelling house meets one of the basic needs of a person and it would be arbitrary to deprive a delinquent of such basic requirement when the trial is still pending and taking note of the argument on behalf of the State that the entire confiscated property has to be treated similarly and not making of an exception for a dwelling house or unit from the provisions of Section 18 does not violate any constitutional provision, the High Court opined that no distinction made between the

two sets of properties is justified. That apart, the Court held that once the relevant purpose is to confiscate all the ill-gotten money or property, even if such property includes a dwelling house or unit also under the scheme of the Act, and if there would be any exclusion, it would, to a large extent, frustrate the object of the Act instead of subserving the purposes of the Act. It further opined that if after undergoing the reasonable procedure of confiscation proceeding, including appeal, a dwelling house or unit of the delinquent is found to be ill-gotten property which cannot be accounted for on the basis of lawful income of the delinquent, there can be hardly any justification to allow the delinquent to continue in enjoyment of such ill-gotten property only because the trial is still pending. The legislature having taken precautions to expedite the trial and if it is made to linger inspite of such provisions, the accused would always be at liberty to take remedial action and get the trial expedited. Being of this view, the Writ Court found that the said provision does not violate any of the facets of Articles 14 and 21 of the Constitution of India.

22. It was also urged before the High Court that the confiscation proceedings as provided under the Act is impermissible because it leaves no option to the affected person but to disclose his defence prior to holding of the trial and such compulsion upon him to disclose true state of affairs in the confiscation proceeding frustrates the right guaranteed by the Article 20(3) of the Constitution. The High Court did not find any substance in the said submission and opined that grant of opportunity in confiscation proceeding to the delinquent official cannot be construed as compelling him to be a witness against himself. It also opined that considering the nature of the two proceedings, both could be maintained together or one after another, for the order of confiscation has been made subject to a final judgment in the trial by the Special Court.

23. Dealing with an Interlocutory Application bearing No. 10468 of 2010 filed in CWJC No. 10735/2010 after dealing with the constitutional validity of the Act, the High Court expressed its unwillingness to decide the vires of the 2010 Rules which was sought to be challenged as the said I.A.

was not pressed. However, the High Court observed as follows:-

> "Although we have given the liberty aforesaid but sometimes it is useful to observe certain facts in order to avoid unnecessary litigation. In respect of Bihar Special Court's Rules, 2010 a grievance was raised that Rule 12(f) envisages a procedure which is contrary to procedure prescribed for trial of warrant cases before a Magistrate which has been prescribed by Section 18(1) of the Act. It goes without saying that in case of conflict between Act of Legislature and Rules framed under the Act, the provisions of the Act will prevail. The State of Bihar is expected to take note of the aforesaid submission in its own interest and amend the relevant Rule if there is any need felt for the same."

24. Thus, the High Court interpreted certain provisions to sustain the constitutional validity of the Act and as far as the Rule is concerned observed as above, and thereafter dismissed the writ petitions.

25. We have heard Mr. A. Saran, Mr. Vinoo Bhagat, Mr. P.S. Narasimha, Mr. R.K. Dash, Mr. Rakhruddin, Mr. S.B. Upadhyaya, Mr. Neeraj Shekhar, Mr. Gaurav Agrawal, Mr. Anirudh Sanganeria, and Mr. M.P. Jha, learned counsel for the appellants and Mr. Ranjit Kumar, Mr. S.K. Padhi, learned senior counsel, Mr. Gopal Singh, Mr. Shibashish

Misra and Mr. Nishant Ramakantrao Katneshwarkar, learned counsel for the respondents.

26. At the outset, we think it appropriate to mention that the learned counsel for the parties had addressed at length with regard to the issues raised before the High Court and also canvassed certain issues of law before us and we had permitted them to argue the matter from all angles. Before we enumerate the issues that have been urged before the High Court and the additional points that have been canvassed before us, it is necessary to understand the background of the legislation. We have already indicated at the beginning the purpose of enacting the legislation by the States of Odisha and Bihar and have scanned the scheme of both the Acts and also adumbrated upon the reasoning ascribed by the High Courts while upholding the constitutional validity of the enactments. Be it noted, the objects and reasons of the Orissa Act as well as that of the Bihar Act are almost similar. Therefore, we only reproduce the objects and reasons of the Orissa Act. It reads as follows:-

"An Act to provide for the constitution of special courts for the speedy trial of certain class of offences and for confiscation of the properties involved.

WHEREAS corruption is perceived to be amongst the persons holding high political and public offices in the State of Orissa;

AND, WHEREAS, investigations conducted by the agencies of the Government disclose prima facie evidence, confirming existence of such corruptions;

AND WHEREAS, the Government have reasons to believe that large number of persons, who had held or are holding high political and public offices have accumulated vast property, disproportionate to their known sources of income by resorting to corrupt means;

AND, WHEREAS, it is constitutional, legal and moral obligation of the State to prosecute persons involved in such corrupt practices;

AND, WHEREAS, the existing courts of Special Judges cannot reasonably be expected to bring the trials, arising out of those prosecutions, to a speedy termination and it is imperative for the efficient functioning of a parliamentary democracy and the institutions created by or under the Constitution of India that the aforesaid offenders should be tried with utmost dispatch;

AND WHEREAS, it is necessary for the said purpose to establish Special Courts to be presided over by the persons who are or have been Sessions Judge and it is also expedient to make some procedural changes whereby avoidable delay in the final determination of the guilt or innocence, of the persons to be tried, is

eliminated without interfering with the right to a fair trial."

27. The objects and reasons and various provisions of the Act which we have referred to in course of our narration would show that there is immense emphasis on corruption by the people holding high political and public offices. The stress is on accumulation of wealth disproportionate to the known sources of their income by resorting to corrupt practices. Corruption at high levels has been taken note of by this Court in many a judgment. This Court has also on the basis of reports of certain Commissions/Committees, from time to time, has painfully addressed to the burning issue of corruption. In ***Manoj Narula v. Union of India***[10], the Constitution Bench harping on the concept of systemic corruption, has been constrained to state that systemic corruption and sponsored criminalisation can corrode the fundamental core of elective democracy and, consequently, the constitutional governance. A democratic republic polity hopes and aspires to be governed by a government which is run by the elected representatives who do not have any involvement in serious criminal offences or offences relating

[10] (2014) 9 SCC 1

to corruption, casteism, societal problems, affecting the sovereignty of the nation and many other offences.

28. In ***Niranjan Hemchandra Sashittal v. State of Maharashtra***[11], the Court was compelled to say that corruption is not to be judged by degree, for corruption mothers disorder, destroys .societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. The Court further observed that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered; and the only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality. The emphasis was on intolerance of any kind of corruption bereft of its degree.

29. While dealing with the constitutional validity of Section 6-A of the Delhi Special Police Establishment Act, 1946, the Constitution Bench in ***Subramanian Swamy v.***

[11] (2013) 4 SCC 642

CBI[12], clearly stated that corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the 1988 Act and it is difficult to justify the classification which has been made in Section 6-A because the goal of law in the 1988 Act is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences.

30. We have highlighted the facet of corruption and the object and reasons of the Orissa Act which basically aims to curb corruption at high places and in the course of hearing, it has been urged by the learned counsel for both the States that corruption at higher levels is required to be totally repressed, for it destroys the fiscal health of the society and it hampers progress. The learned counsel for the appellants have submitted that there cannot be any cavil over the issue that corruption should be hindered from all angles, but when the State legislature brings a new law into existence despite an earlier law, that is, the 1988

[12] (2014) 8 SCC 682

Act, the special legislation has to withstand close scrutiny and satisfy the test that is warranted under the constitutional parameters. To elaborate, highlighting on the existing scene of corruption the State legislature or any legislature cannot be allowed to introduce a law which is not constitutionally permissible.

31. The learned counsel appearing for the appellants have raised many a submission and their arguments can be summaried as follows :-

(A) The Orissa Act has been introduced in the assembly as a money bill whereas it does not remotely have any characteristics of a money bill and hence, it violates the mandate of Article 199 of the Constitution.

(B) The State legislature does not have the authority to make provisions for establishment of Special Courts for the offences provided under the Central Act regard being had to the language employed in Article 247 of the Constitution and hence, it suffers from the vice of the said constitutional provision.

(C) The assent obtained from the President of India, the same being imperative, is only in respect of few provisions and not for all the provisions of the Orissa Act and, therefore, it suffers from substantial illegality which has made the Act unconstitutional.

(D) The provisions contained in the Orissa Act cover many a range and sphere that come within the ambit and sweep of the Prevention of Money Laundering Act, 2002 and has encroached into legislation in the occupied field. That apart, there is inherent inconsistency between the 1988 Act and the Orissa Act and that allows enough room for repugnancy, as is understood within the conceptual sweep of Article 254(2) of the Constitution, to set in.

(E) The State legislation makes a distinction between the other offences under Section 13 and 13(1)(e) without any *intelligible differentia* between the two categories of offences and in the absence of any justifiable classification test, the provision is *ultra vires* the Article 14 of the Constitution.

(F) The corruption on which the fulcrum of argument of the State rests for bringing such a legislation is impermissible inasmuch as corruption is an all India phenomenon and in other States, similarly situated persons are tried under the 1988 Act, but in Odisha they are tried under the special provisions for no manifest reason.

(G) The Orissa Act does not define "high political offices" and "high public offices" but an attempt has been made to define the same in the Rules, but the Rules cannot stand as pillars to support the constitutional validity of the legislation. That apart, these terms are extremely vague and leave enough room to the executive to adopt any kind of discrimination which is impermissible.

(H) Section 5 of the Orissa Act deals with declaration and said provision confers wide and untrammelled discretion and unbridled power on the executive to choose a particular person or allow the executive to adopt pick and choose method thereby clearly inviting the frown of Article 14.

(I) The provisions in the Orissa Act provide for confiscation at the pre-trial stage and eventually at pre-conviction stage which is extremely harsh and, in fact, it takes away the properties of a citizen without any compensation thereby it violates Article 300A of the Constitution.

(J) The concept of confiscation in such a case is confiscatory in nature and, therefore, it is extremely arbitrary and unreasonable. That apart, the confiscation of the properties including the dwelling house disrobes a person from living with dignity having basic requirement of life and hence, it offends Article 21 of the Constitution. The proviso which carves out an exception to enable a delinquent officer to retain the dwelling house on payment of the market price is in a way deceptive inasmuch as all the properties and bank accounts are seized it is well-nigh impossible to offer the market price and the legislature has not kept in view that the law does not envisage an impossible act to be done. In essence, the criticism is that the proviso does not save the

provisions from being offensive of Article 21 of the Constitution.

(K) In the proceedings for confiscation, the accused is bound to disclose all his defence at the pre-trial stage and that ultimately plays foul of Article 20(3) of the Constitution and also Article 21 which encompasses a fair trial and does not tolerate any violation of the same.

(L) The accused persons against whom cases have been registered under the 1988 Act are compelled to be tried under the present Orissa Act as a consequence of which they have to face a pre-trial confiscation which was not there in the 1988 Act and that clearly violates the basic tenet of Article 20(1) of the Constitution, for the provisions of the Act cannot be allowed to operate retrospectively when it imposes a different kind of punishment.

(M) The mandate by the legislature in Section 17 that an order of stay passed by the appellate court, that is, the High Court, shall remain in force for a period of three months and would stand automatically vacated, is an encroachment on the power of court proceedings and

there can be no shadow of doubt that such a provision creates a dent in the concept of power of judicial review, which is constitutionally not allowable.

(N) The provision contained in Section 19 of the Orissa Act which pertains to payment of amount with five per cent interest *per annum* when the State Government is not in a position to return the property and the value of the property has to be on the date of confiscation, is absolutely arbitrary and unreasonable which clearly invites the discomfort of Article 14 and also clearly violates Article 300A of the Constitution.

(O) The reason ascribed to classify the persons holding high public office or high political office on the foundation that there is a necessity for speedy trial is absolutely no justification because there has to be speedy trial in every case.

32. Resisting the aforesaid submissions and defending the judgment of the High Court, learned counsel for the State of Odisha has submitted as follows:-

(I) The Bill was introduced in the legislature as a money bill, regard being had to the confiscation of

disproportionate assets by way of interim measure and various other aspects and, in any case, the introduction of such a bill as a money bill would not invalidate the legislation and the High Court is justified in placing reliance upon Article 212 of the Constitution. Emphasis is laid on legislative independence on this score.

(II) The interpretation placed by the appellant on Article 247 is absolutely incorrect because the said Article does not enjoin that the Parliament alone in all circumstances can provide for additional courts for carrying out the provisions of the Central Act. That apart, in the instant case, the Special Courts are established after obtaining the assent from the President and, therefore, the provision for establishing the Special Courts by the State Government in consultation with the High Court does not become unconstitutional.

(III) The submission that the assent has not been obtained in respect of all the provisions of the Orissa Act and, therefore, the Orissa Act is invalid and cannot withstand scrutiny, is absolutely unsustainable, for the entire enactment with notes were sent for the assent of

the President and the same has been given due assent by the President as required under the Constitution.

(IV) The submission that the provisions of the Orissa Act are repugnant to other enactment as the provisions encroach upon the offences under the Acts, namely, the Prevention of Money Laundering Act, 2002, as amended in 2009, is totally untenable as the sphere of operation is altogether different.

(V) The submission that there is no rationale to differently try the offence punishable under Section 13(1)(e) separating it from other offences under Section 13 in the backdrop of Article 14, is absolutely unacceptable inasmuch as there is a gulf of difference between the two categories of offences as the offence under Section 13(1)(e) relates to amassing of wealth disproportionate to the income of the person.

(VI) The stand that the Act does not define "high political office" and "high public office" and hence, confers unfettered discretion on the executive is sans substance, for the said words are well understood and really do not allow any room for exercise of any arbitrary

power. Quite apart from that, the State Government has framed the rules which supplement the Act. In this backdrop, the question of any discrimination taking place, as argued, is inconceivable.

(VII) The principle of speedier disposal of corruption cases at high levels, especially instituted under Section 13(1)(e) of the 1988 Act, is definitely a ground to sustain the provisions of the Orissa Act.

(VIII) The plea that provisions, namely, Sections 5 and 6, and the provisions pertaining to confiscation being irrational and discriminatory, are violative of Article 14, is wholly unacceptable inasmuch as the classification in respect of offences, that is, Section 13(1)(a) to (1)(e), stand on a different footing and the *intelligible differentia* is clearly demonstrable. The attack on the provisions on the plank of unbridled conferment of power on the executive to pick and choose pertaining to the declaration is on an erroneous understanding of the provision, for the provision has to be read in an apposite manner to convey the meaning that the State Government has extremely limited discretion only to see

whether the offence falls under Section 13(1)(e) or not and the moment a person covered under the Act is booked for the offence under Section 13(1)(e), the State Government has no further discretion than to make a declaration to transfer the case to the Special Court.

(IX) The challenge to the confiscatory proceeding which is *'pro tem'* in nature, is devoid of any merit, for it is constitutionally permissible inasmuch as acquisition of property by the delinquent is associated with ill-gotten money and has no connection with the property which is acquired by the person from acceptable component of his earnings. The submission that retention of a dwelling house on payment of market price is extremely harsh and, in fact, it effectively affects the right to life as is understood within the broader umbrella of Article 21 of the Constitution is based on erroneous premises.

(X) The argument that the accused persons being tried in respect of other offences under the 1988 Act do not face the situation of interim confiscation, whereas the accused persons facing trial under the Orissa Act face the confiscation proceedings which is arbitrary has no

legs to stand upon if the classification as regards offences and the forum is valid, for that, as a natural corollary, would structurally protect the interim confiscation.

(XI) The assailment as regards the retrospective applicability is concerned, may, on a first blush, look quite attractive but on a keener scrutiny it has to pale into insignificance. The plea that it plays foul of Article 20(1) of the Constitution is absolutely unsound.

(XII) The provisions relating to confiscation are absolutely guided and, in fact, a judicial officer of the rank of Sessions Judge or Additional Sessions Judge is nominated as the authorised officer and there is an appeal provided from his order which would show that the confiscation is not done at the whim and caprice of the executive but after affording adequate opportunity to the delinquent officer. Therefore, it is not hit by Article 14 of the Constitution.

(XIII) The criticism that the provision for order of stay passed by the appellate court, that is, the High Court, shall remain in force for a period of three months may be

treated as a directory provision so as to require the court to dispose of the appeal within three months; and the order of stay, if any, passed in an appeal shall not remain in force beyond the prescribed period of disposal of appeal.

(XIV) The challenge to Section 19 of the Orissa Act which pertains to release of the confiscated property after the release order and further provision that if it is not possible to return, to pay the value with five per cent interest *per annum* has to be appropriately understood, for this can only happen in a very rarest occasion and the words used in the provision are to be appropriately understood because of some reason beyond control like due to natural disaster or some other calamity; and not because of any appropriation of the property by the State Government. In essence, the submission is, the said provision can be read down to sustain its constitutional validity.

33. First, we shall take up the issue pertaining to the introduction of the Bill as a money bill in the State legislature. Mr. Vinoo Bhagat, learned counsel appearing

for some of the appellants, has laid emphasis on the said aspect. Article 199 of the Constitution, defines Money Bills. For our present purpose, sub-article (3) of Article 199 being relevant is reproduced below:-

> "(3). If any question arises whether a Bill introduced in the Legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final."

We have extracted the same as we will be referring to the authorities as regards interpretation of the said sub-article.

34. Placing reliance on Article 199, learned counsel would submit that the present Act which was introduced as a money bill has remotely any connection with the concept of money bill. It is urged by him that the State has made a Sisyphean endeavour to establish some connection. The High Court to repel the challenge had placed reliance upon Article 212 which stipulates that the validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

35. Learned counsel for the appellants has drawn inspiration from a passage from ***Special Reference No. 1 of 1964***[13], wherein it has been held that Article 212(1) lays down that the validity of any proceedings in the legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure and Article 212(2) confers immunity on the officers and members of the legislature in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order, in the legislature from being subject to the jurisdiction of any court in respect of the exercise by him of those powers. The Court opined that Article 212(1) seems to make it possible for a citizen to call in question in the appropriate Court of law the validity of any proceedings inside the Legislative Chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a Court of law, though such scrutiny is prohibited if the complaint against the

[13] AIR 1965 SC 745

procedure is not more than that the procedure was irregular. Thus, the said authority has made a distinction between illegality of procedure and irregularity of procedure.

36. Our attention has also been drawn to certain paragraphs from the Constitution Bench decision in ***Raja Ram Pal v. Hon'ble Speaker, Lok Sabha and Others***[14]. In the said case, in paragraphs 360 and 366, it has been held thus:-

> "360. The question of extent of judicial review of parliamentary matters has to be resolved with reference to the provision contained in Article 122(1) that corresponds to Article 212 referred to in *M.S.M. Sharma v. Dr. Shree Krishna Sinha*, AIR 1960 SC 1186 [*Pandit Sharma (II)]*. On a plain reading, Article 122(1) prohibits "the validity of any proceedings in Parliament" from being "called in question" in a court merely on the ground of "irregularity of procedure". In other words, the procedural irregularities cannot be used by the court to undo or vitiate what happens within the four walls of the legislature. But then, "procedural irregularity" stands in stark contrast to "substantive illegality' which cannot be found included in the former. We are of the considered view that this specific provision with regard to check on the role of the judicial organ vis-à-vis proceedings in Parliament uses language which is neither vague nor ambiguous and, therefore, must be treated as the constitutional mandate on the subject, rendering unnecessary search for an

[14] (2007) 3 SCC 184

answer elsewhere or invocation of principles of harmonious construction.

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366. The touchstone upon which parliamentary actions within the four walls of the legislature were examined was both the constitutional as well as substantive law. The proceedings which may be tainted on account of substantive illegality or unconstitutionality, as opposed to those suffering from mere irregularity thus cannot be held protected from judicial scrutiny by Article 122(1) inasmuch as the broad principle laid down in *Bradlaugh*, (1884) 12 QBD 271 : 53 LJQB 290 : 50 LT 620, acknowledging exclusive cognizance of the legislature in England has no application to the system of governance provided by our Constitution wherein no organ is sovereign and each organ is amenable to constitutional checks and controls, in which scheme of things, this Court is entrusted with the duty to be watchdog of and guarantor of the Constitution."

37. In this regard, we may profitably refer to the authority in ***Mohd. Saeed Siddiqui v. State of Uttar Pradesh and another***[15], wherein a three-Judge Bench while dealing with such a challenge, held that Article 212 precludes the courts from interfering with the presentation of a Bill for assent to the Governor on the ground of non-compliance with the procedure for passing Bills, or from otherwise questioning the Bills passed by the House, for proceedings inside the

[15] (2014) 11 SCC 415

legislature cannot be called into question on the ground that they have not been carried on in accordance with the Rules of Business. Thereafter, the Court referring to Article 199(3) ruled that the decision of the Speaker of the Legislative Assembly that the Bill in question was a Money Bill is final and the said decision cannot be disputed nor can the procedure of the State Legislature be questioned by virtue of Article 212. The Court took note of the decision in ***Raja Ram Pal*** (supra) wherein it has been held that the proceedings which may be tainted on account of substantive or gross irregularity or unconstitutionality are not protected from judicial scrutiny. Eventually, the Court repelled the challenge.

38. In our considered opinion, the authorities cited by the learned counsel for the appellants do not render much assistance, for the introduction of a bill, as has been held in ***Mohd. Saeed Siddiqui*** (supra), comes within the concept of "irregularity" and it does come with the realm of substantiality. What has been held in the ***Special Reference No. 1 of 1964*** (supra) has to be appositely understood. The factual matrix therein was totally different

than the case at hand as we find that the present controversy is wholly covered by the pronouncement in ***Mohd. Saeed Siddiqui*** (supra) and hence, we unhesitatingly hold that there is no merit in the submission so assiduously urged by the learned counsel for the appellants.

39. The next issue pertains to understanding of ambit and sweep of Article 247 of the Constitution. The said Article reads as follows:-

> **"Article 247. Power of Parliament to provide for the establishment of certain additional courts**.—Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List."

40. Relying on the said constitutional provision, learned counsel has proponed that the Article empowers the Parliament to provide for establishment of certain additional courts and that too for the better administration of laws made by Parliament. He has contended that no part of the Constitution confers power on State legislature to create additional courts for administering central laws and,

therefore, the Orissa Act is *ultra vires* Article 247 of the Constitution. He has referred to Article 366(10) of the Constitution to buttress the proposition that courts can be established in respect of central laws only by the Parliament and not by the State legislature, for the said Article denudes the State legislature the competence to make laws and create additional courts for administering laws made by the Parliament.

41. The aforesaid submission has to be carefully scrutinised. The Article is not to be understood the way it is put forth. Recently, in ***Madras Bar Association v. Union of India and another***[16], a contention was advanced by the Union of India, respondent therein, that Article 247 empowers Parliament to establish additional courts for better administration in respect of laws passed under List I of the Seventh Schedule of the Constitution. After reproducing Article 247, the Constitution Bench noted the following submissions which throw some light:-

> "Referring to the above provision, it was the assertion of the learned counsel for the respondents, that power was expressly vested

[16] (2014) 10 SCC 1

> with Parliament to establish additional courts for better administration of laws. It was submitted that this was exactly what Parliament had chosen to do while enacting the NTT Act. Referring to the objects and reasons, indicating the basis of the enactment of the NTT Act, it was the categorical assertion at the hands of the learned counsel, that the impugned enactment was promulgated with the clear understanding that NTT would provide better adjudication of legal issues arising out of direct/indirect tax laws."

42. Be it noted, in the said case, the constitutional validity of the National Tax Tribunal Act, 2005 was called in question on many a ground. One of the grounds that was urged by the petitioner therein was that the appellate power of the High Court in respect of substantial question of law could not have been taken away by the Parliament. Defending the legislation, the respondents apart from other grounds, had also laid emphasis on Article 247 and we have reproduced the paragraph from the judgment. It has to be borne in mind that this Court was dealing with the abolition of the appellate jurisdiction enshrined under Article 260A of the Income Tax Act, 1961 by the National Tax Tribunal Act, 2005 which had not taken away the power of judicial review. The submission on behalf of the Union of India was that its power to establish the courts is

created under a statute. Keeping that in view, we have to focus on the 1988 Act. In the 1988 Act, under Section 3 special Judges stand appointed by the concerned States to deal with the offences and the State Governments in consultation with the High Court appoint requisite special Judges. Section 3 of the 1988 Act provides that 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 any offence punishable under this Act; and any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a) of sub-section (1) of the said Section.

43. The present Orissa Act which specifically deals with offences under Section 13(1)(e) and provides for Special Courts for the trial of the said offences has got the assent of the President. It is to be understood that under the 1988 Act the State had the authority to appoint special Judges in respect of all the offences. Presently, one part of the offence has been carved out and after obtaining assent Special

Courts have been established. In view of the fact situation, it does not violate Article 247. That apart, the language employed in Article 247 does not take away the jurisdiction of the State legislature for constitution of courts. Entry 11-A of List III of the Seventh Schedule, which provides for "administration of Justice; constitution and organisation of all courts, except the Supreme Court and the High Courts", has been transferred from Entry 3 of List I by the 42nd Constitution (Amendment) Act, 1976 in order to make it a concurrent power. It was opined in ***O. N. Mohindroo v. The Bar Council Of Delhi & Ors***[17] that it was within the exclusive power of the State. After the amendment both Parliament and the State legislature are empowered under the Constitution to give the High Court general power including territorial jurisdiction and also take away jurisdiction and powers from the High Court which have been conferred by the statutory law by enacting appropriate legislation which is referable to administration of justice. But, it cannot take away the power specifically conferred on the High Courts under the Constitution. This principle has

[17] AIR 1968 SC 888

been stated in the following terms in ***Jamshed N. Guzdar v. State of Maharashtra***[18]:-

> "In the light of the various decisions referred to above, the position is clear that the expression "administration of justice" has wide amplitude covering conferment of general jurisdiction on all courts including High Court except the Supreme Court under Entry 11-A of List III. It may be also noticed that some of the decisions rendered dealing with Entry 3 of List II prior to 3-1-1977 touching "administration of justice" support the view that conferment of general jurisdiction is covered under the topic "administration of justice". After 3-1-1977 a part of Entry 3 namely "administration of justice" is shifted to List III under Entry 11-A. This only shows that the topic "administration of justice" can now be legislated both by the Union as well as the State Legislatures. As long as there is no Union legislation touching the same topic, and there is no inconsistency between the Central legislation and State legislation on this topic, it cannot be said that the State Legislature had no competence to pass the 1987 Act and the 1986 Act."

44. Interpreting Entry 11-A this Court in ***the Special Courts Bill, 1978***[19] has held that Parliament has concurrent power to set up Special Courts for the trial of offences of special class. In this regard, we may reproduce the relevant passage from the said authority:-

[18] (2005) 2 SCC 591
[19] (1979) 1 SCC 380

> "44. The challenge to the legislative competence of Parliament to provide for the creation of Special Courts is devoid of substance. Entry 11-A of the Concurrent List relates to "Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Court". By virtue of Article 246 (2), Parliament has clearly the power to make laws with respect to the constitution and organisation, that is to say, the creation and setting up of Special Courts. Clause 2 of the Bill is therefore within the competence of the Parliament to enact."

45. Be it noted that a contention was raised that Parliament could not have created Special Courts but the Court repelled the said submission and accepted the contention that such a power exists with Parliament in view of Articles 138(1) and 246(1) and Entries 77, 78 and 99 of List I of the Seventh Schedule and Entry 11-A of List III and the courts can be created by the State legislature as well as by the Parliament. As has been indicated earlier, Section 3 of the 1988 Act empowers the State Government to constitute special courts and when a category of offence has been segregated and for the said purpose the Orissa Act has been enacted and assent has been taken, the power to constitute special courts cannot be found to be fallacious.

46. Under the scheme of the Constitution, the courts as established by the State are to administer the laws made by the Parliament as well as by the State legislature and have the obligation to carry the administration of justice but the same is subject to Entry 77 and Entry 78 of List I. Entry 77 and Entry 78 of List I read as follows:-

> "Entry 77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.
>
> Entry 78. Constitution and organisation (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts."

47. Entry 46 of List III in this context needs to be reproduced:-

> "Entry 46. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List."
>
> Entry 65 of List II is worth referring to :-
>
> "Entry 65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List."

48. The aforesaid entries make it clear that as regards jurisdiction and powers of the Supreme Court, the Parliament has exclusive legislative competency and as far as the jurisdiction other than Supreme Court and the High Courts is concerned, the power can be exercised by the Union and the State legislature. The purpose of Article 247, which commences with a *non-obstante* clause, is to confer power on the Parliament to create additional courts for the better administration of a particular Union law, but it cannot be said that the State cannot make laws for adjudication and administration of justice in respect of a parliamentary legislation more so, when initially power was conferred under Section 3 of the 1988 Act and assent has been accorded for establishment of Special Courts for adjudication of the offence. Let it be made clear that we have so answered regard being had to the offence being carved out and a different category of Special Courts are constituted to try the said offence. It does not take away the power already conferred under Section 3 of the 1988 Act.

49. The next aspect we shall dwell upon pertains to repugnancy and the nature of "assent" obtained by the State Government from the President under Article 254(2) of the Constitution. The submission of the learned counsel for the appellants is that though the State legislature reserved it for presidential assent, yet assent has not been taken in respect of the entire Orissa Act and also in respect of other laws, namely, the Prevention of Money-Laundering Act, 2002, etc. as a consequence of which it will ultimately lead to a situation of anomaly and, therefore, there is repugnancy in respect of existing legislations in similar fields enacted by the Parliament and the Orissa Act.

50. Article 254 deals with inconsistency between laws made by the Parliament and laws made by the Legislature of States. Article 254(2) deals with laws made by the State legislature in respect of the matters enumerated in the Concurrent List. The issue of repugnancy arises when the subjects come within List III of the Seventh Schedule. In ***Hoechst Pharmaceuticals Ltd. & Another v. State of Bihar and Others***[20], the Court referred to the authority

[20] AIR 1983 SC 1019 = 1983 (4) SCC 45

in ***Deep Chand v. The State of Uttar Pradesh & Ors.***[21] wherein Subba Rao, J., analysing the ratio of earlier authorities, had taken note of three tests evolved by Nicholas in his "Australian Constitution" as regards inconsistency or repugnancy. The three tests are (i) there may be inconsistency in the actual terms of the competing statutes; (ii) though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive Code; and (iii) even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject-matter. The Court had placed reliance upon ***Ch. Tika Ramji & Ors. v. The State of Uttar Pradesh & Ors.***[22].

51. Thereafter, the Court proceeded to state that:-

> "The question of repugnancy under Article 254(1) between a law made by Parliament and a law made by the State Legislature arises only in case both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List, and there is direct conflict

[21] (1959) Supp. 2 SCR 8
[22] (1956) SCR 393

between the two laws. It is only when both these requirements are fulfilled that the State law will, to the extent of repugnancy become void. Article 254(1) has no application to cases of repugnancy due to overlapping found between List II on the one hand and List I and List III on the other. If such overlapping exists in any particular case, the State law will be ultra vires because of the non-obstante clause in Article 246(1) read with the opening words "subject to" in Article 246(3). In such a case, the State law will fail not because of repugnance to the Union law but due to want of legislative competence. It is no doubt true that the expression "a law made by Parliament which Parliament is competent to enact" in Article 254(1) is susceptible of a construction that repugnance between a State law and a law made by Parliament may take place outside the concurrent sphere because Parliament is competent to enact law with respect to subjects included in List III as well as 'List I' But if Article 254(1) is read as a whole, it will be seen that it is expressly made subject to clause (2) which makes reference to repugnancy in the field of Concurrent List-in other words, if clause (2) is to be the guide in the determination of scope of clause (1), the repugnancy between Union and State law must be taken to refer only to the Concurrent field. Article 254(1) speaks of a State law being repugnant to (a) a law made by Parliament or (b) an existing law."

52. Thus, it is settled in law that the State law may become repugnant when there is a direct conflict between the two provisions. In this regard, reference to the

authority in ***Engineering Kamgar Union v. Electro Steels Castings Ltd. and Another***[23] would be instructive. It has been held therein that recourse to the said principles, however, would be resorted to only when there exists direct conflict between two provisions and not otherwise. Once it is held that the law made by the Parliament and the State Legislature occupy the same field, the subsequent legislation made by the State which had received the assent of the President of India indisputably would prevail over the parliamentary Act when there exists direct conflict between two enactments. It has been further observed that both the laws would ordinarily be allowed to have their play in their own respective fields; however, in the event there exists any conflict, the parliamentary Act or the State Act shall prevail over the other depending upon the fact as to whether the assent of the President has been obtained therefor or not.

53. There can be a situation where two enactments come into the field where obedience to each of them may be possible without disobeying the other. Repugnancy may,

[23] (2004) 6 SCC 36

however, come in if one statute commands anything to be done and the other enactment may say the contrary and that even both the laws cannot co-exist together. In such cases, as has been ruled in ***M.P. AIT Permit Owners Association and Another v. State of M.P.***[24], the law made by Parliament shall prevail over the State law. Same principle has been reiterated in ***Govt. of A.P. and Another v. J.B. Educational Society and Another***[25].

54. Thus viewed, repugnancy arises when there is a clear and direct inconsistency between the central law and the State law and such inconsistency is irreconcilable. It is because in such a situation there is a direct collision with the Central Act or brings about a situation where obeying one would lead to disobeying the other. In ***Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd***.[26] it has been spelt out that clause (2) of Article 254, however, provides that where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List, contains any provision repugnant to an

[24] (2004) 1 SCC 320
[25] (2005) 3 SCC 212
[26] (2007) 9 SCC 109

existing law with respect to that matter, then, the law so made by the legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. The question of repugnancy can arise only with reference to a legislation made by Parliament falling under the Concurrent List or an existing law with reference to one of the matters enumerated in the Concurrent List. If a law made by the State Legislature covered by an entry in the State List incidentally touches any of the entries in the Concurrent List, Article 254 is not attracted. But where a law covered by an entry in the State List (or an amendment to a law covered by an entry in the State List) made by the State Legislature contains a provision, which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to any provision of an existing law with respect to that matter in the Concurrent List then such repugnant provision of the State law will be void. Such a provision of law made by the State Legislature touching upon a matter covered by the Concurrent List,

will not be void if it can coexist and operate without repugnancy with the provisions of the existing law.

55. It needs no special emphasis to state that the issue of repugnancy would also arise where the law made by the Parliament and the law made by the State legislature occupy the same field. It has been so held in ***Sitaram & Bros. v. State of Rajasthan***[27]**.**

56. In this context, reference to ***M.P. Shikshak Congress*** (supra) would be fruitful. While repelling the plea of repugnancy, it has been held that under Article 254(1) of the Constitution, if any provision of a law made by the legislature of a State is repugnant to any provision of a law made by the Parliament, which Parliament is competent to enact, then subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the legislature of such State shall prevail and the law made by the legislature of the State shall, to the extent of the repugnancy, be void. The ordinary rule, therefore, is that when both the State Legislature as well as Parliament are competent to enact a law on a given subject, it is the

[27] 1995 (1) SCC 257

law made by Parliament which will prevail. The exception which is carved out is under sub-clause (2) of Article 254. Under this sub-clause (2), where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament, then the law so made by the legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State.

57. Another aspect with regard to repugnancy and the validity of the State legislation may be stated. If there is a parliamentary legislation and the law enacted by the State legislation can co-exist and operate where one Act or the other is not available, then there is no difficulty in making the State law on the fact situation available. It has been so held in ***EID Parry (I) Ltd. v. G. Omkar Murthy and Others*** [28] and ***Saurashtra Oil Mills Assn. v. State of Gujarat***[29]. When a situation crops up before the court pertaining to applicability of a parliamentary legislation and

[28] (2001) 4 SCC 68
[29] (2002) 3 SCC 202

any enactment or law enacted by the State legislature for consideration, the effort of the court should be to see that the provisions of both the Acts are made applicable, as has ruled in ***Imagic Creative (P) Ltd. v. CCT***[30].

58. Having stated the proposition where and in which circumstances the principle of repugnancy would be attracted and the legislation can be saved or not saved, it is necessary to focus on clause (2) of Article 254. In ***Hindustan Times v. State of U.P.***[31], after referring to the earlier judgments, it has been held that clause 254(2) carves out an exception and, that is, if the Presidential assent to a State law which has been reserved for his consideration is obtained under Article 200, it will prevail notwithstanding the repugnancy to an earlier law of the Union. The relevant passage of the said authority is extracted below:-

> "As noticed hereinbefore, the State of Uttar Pradesh intended to make a legislation covering the same field but even if the same was to be made, it would have been subject to the parliamentary legislation unless assent of the President of India was obtained in that behalf. The State executive was, thus, denuded of any

[30] (2008) 2 SCC 614
[31] (2003) 1 SCC 591

> power in respect of a matter with respect whereto Parliament has power to make laws, as its competence was limited only to the matters with respect to which the legislature of the State has the requisite legislative competence. Even assuming that the matter relating to the welfare of the working journalists is a field which falls within Entry 24 of the Concurrent List, unless and until a legislation is made and assent of the President is obtained, the provisions of the 1955 Act and the Working Journalists (Fixation of Rates and Wages) Act, 1958 would have prevailed over the State enactment."

59. The issue in the instant case is that the State Government had not complied with the requisite procedure for obtaining the assent of the President. The criticism advanced by the learned counsel for the appellants is that in the letter written by the State Government to the competent authority for obtaining assent only certain provisions of the Orissa Act were mentioned but there is no reference to other provisions and certain other legislations, which also cover the same field. To bolster the said submission, reliance has been placed on the Constitution Bench decision in ***Kaiser-I-Hind (P) Ltd. v. National Textile Corpn. (Maharashtra North) Ltd.***[32]. In the said case, the majority dealt with the jurisdiction of the court is

[32] (2002) 8 SCC 182

to see the record and nature of the assent sought by the State. The Court scanned the anatomy of Article 254(2) and after analyzing the same, opined that it can be stated that for the State law to prevail, the requirements that are to be satisfied are; (a) law made by the legislature of a State should be with respect to one of the matters enumerated in the Concurrent List; (b) it contains any provision repugnant to the provision of an earlier law made by Parliament or an existing law with respect to that matter; (c) the law so made by the legislature of the State has been reserved for the consideration of the President; and (d) it has received "his assent".

60. After so stating, the Court proceeded to lay down as follows:-

> "14. In view of the aforesaid requirements, before obtaining the assent of the President, the State Government has to point out that the law made by the State Legislature is in respect of one of the matters enumerated in the Concurrent List by mentioning entry/entries of the Concurrent List and that it contains provision or provisions repugnant to the law made by Parliament or existing law. Further, the words "reserved for consideration" would definitely indicate that there should be active application of mind by the President to the repugnancy pointed out between

the proposed State law and the earlier law made by Parliament and the necessity of having such a law, in the facts and circumstances of the matter, which is repugnant to a law enacted by Parliament prevailing in a State. The word "consideration" would manifest that after careful thinking over and due application of mind regarding the necessity of having State law which is repugnant to the law made by Parliament, the President may grant assent. This aspect is further reaffirmed by use of the word "assent" in clause (2), which implies knowledge of the President to the repugnancy between the State law and the earlier law made by Parliament on the same subject-matter and the reasons for grant of such assent. The word "assent" would mean in the context as an expressed agreement of mind to what is proposed by the State.

x x x x x

20. ...As discussed above before grant of the assent, consideration of the reasons for having such law is necessary and the consideration would mean consideration of the proposal made by the State for the law enacted despite it being repugnant to the earlier law made by Parliament on the same subject. If the proposal made by the State is limited qua the repugnancy of the State law and law or laws specified in the said proposal, then it cannot be said that the assent was granted qua the repugnancy between the State law and other laws for which no assent was sought for. Take for illustration — that a particular provision, namely, Section 3 of the State law is repugnant to enactment *A* made by Parliament; other provision, namely, Section 4 is repugnant to some provisions of enactment *B* made by Parliament and Sections 5 and 6 are repugnant to some provisions of enactment *C* and the State submits

> proposal seeking "assent" mentioning repugnancy between the State law and provisions of enactments *A* and *B* without mentioning anything with regard to enactment *C*. In this set of circumstances, if the assent of the President is obtained, the State law with regard to enactments *A* and *B* would prevail but with regard to *C*, there is no proposal and hence there is no "consideration" or "assent". Proposal by the State pointing out repugnancy between the State law and of the law enacted by Parliament is a *sine qua non* for "consideration" and "assent". If there is no proposal, no question of "consideration" or "assent" arises. For finding out whether "assent" given by the President is restricted or unrestricted, the letter written or the proposal made by the State Government for obtaining "assent" is required to be looked into."

61. Proceeding further, the Court placed reliance on ***P.N. Krishna Lal v. Govt. of Kerala***[33] and ***Hoechst Pharmaceuticals Ltd.*** (supra) and ruled that it cannot be said that the High Court committed any error in looking at the file of the correspondence Ext. F collectively for finding out — for what purpose "assent" of the President to the extension of Acts extending the duration of the Bombay Rent Act was sought for and given. After so stating, the Court observed:-

> "29. We further make it clear that granting of assent under Article 254(2) is not exercise of legislative power of the President such as

[33] 1995 Supp. (2) SCC 187

contemplated under Article 123 but is part of the legislative procedure. Whether procedure prescribed by the Constitution before enacting the law is followed or not can always be looked into by the Court.

30. Finally, we would observe that the challenge of this nature could be avoided if at the commencement of the Act, it is stated that the Act has received the assent with regard to the repugnancy between the State law and specified Central law or laws."

62. In this regard, we may extract a passage from ***P.N. Krishna Lal*** (supra) wherein the Court, after referring to the decision in ***Gram Panchayat, Jamalpur v. Malwinder Singh***[34] ruled that:-

"...it is clear that this Court did not intend to hold that it is necessary that in every case the assent of the President in specific terms had to be sought and given for special reasons in respect of each enactment or provision or provisions. On the other hand, the observation clearly indicates that if the assent is sought and given in general terms it would be effective for all purposes. In other words, this Court observed that the assent sought for and given by the President in general terms could be effective for all purposes unless specific assent is sought and given in which event it would be operative only to that limited extent."

63. In ***Rajiv Sarin and Another v. State of Uttarakhand and Others***[35], another Constitution Bench

[34] (1985) 3 SCC 661
[35] (2011) 8SCC 708

adverted to the earlier pronouncements on the concept of "assent of the President" including the authority in ***Kaiser-I-Hind (P) Ltd.*** (supra) and observed that in the said case this Court made it clear that it was not considering whether the assent of the President was rightly or wrongly given; and whether the assent was given without considering the extent and the nature of the repugnancy and should be taken as no assent at all. In ***Rajiv Sarin*** (supra), the Court reproduced paragraph 27 from ***Kaiser-I-Hind (P) Ltd.*** (supra), which is to the following effect:-

> "In this case, we have made it clear that we are not considering the question that the assent of the President was rightly or wrongly given. We are also not considering the question that—whether 'assent' given without considering the extent and the nature of the repugnancy should be taken as no assent at all. Further, in the aforesaid case, before the Madras High Court also the relevant proposal made by the State was produced. The Court had specifically arrived at a conclusion that Ext. P-12 shows that Section 10 of the Act has been referred to as the provision which can be said to be repugnant to the provisions of the Code of Civil Procedure and the Transfer of Property Act, which are existing laws on the concurrent subject. After observing that, the Court has raised the presumption. We do not think that it was necessary to do so. In any case as discussed above, the essential ingredients of Article 254(2)

> are: (*1*) mentioning of the entry/entries with respect to one of the matters enumerated in the Concurrent List; (*2*) stating repugnancy to the provisions of an earlier law made by Parliament and the State law and reasons for having such law; (*3*) thereafter it is required to be reserved for consideration of the President; and (*4*) receipt of the assent of the President."

64. Thereafter, the Constitution Bench referred to paragraph 65 of the authority in ***Kaiser-I-Hind (P) Ltd.*** (supra) wherein it has been stated that "pointed attention" of the President is required to be drawn to the repugnancy and the reasons for having such a law, despite the enactment by Parliament, has to be understood. After reproducing paragraph 65 in entirety, the larger Bench in ***Rajiv Sarin*** (supra) observed:-

> "64. If it is to be contended that *Kaiser* (supra) lays down the proposition that there can be no general Presidential assent, then such an interpretation would be clearly contrary to the observation of the Bench in para 27 itself where it states that it is not examining the issue whether such an assent can be taken as an assent.
>
> 65. Such an interpretation would also open the judgment to a charge of being, with respect, per incuriam as even though while noting the *Jamalpur case* (supra), it overlooks the extracts in *Jamalpur case* (supra) dealing with the aspect of general assent: (SCC p. 669, para 12)

> "*12*. … The assent of the President under Article 254(2) of the Constitution is not a matter of idle formality. The President has, at least, to be apprised of the reason why his assent is sought if, there is any special reason for doing so. If the assent is sought and given in general terms so as to be effective for all purposes, different considerations may legitimately arise. But if, as in the instant case, the assent of the President is sought to the law for a specific purpose, the efficacy of the assent would be limited to that purpose and cannot be extended beyond it."

65. Having delved into the principle of obtaining assent, the controversy at hand is required to be dealt with on the touchstone of the said principles. The competent authority of the State had written to the appropriate authority for obtaining assent. We think it apt to reproduce the said letter:-

> "N. Sanyal, IAS
> Commissioner-cum-Secretary
> To Governor, Orissa,
>
> No. 7876/SC(Con)
> Dated the 28 October 2006
>
> To,
> The Secretary to Government of India,

Ministry of Home Affairs,
New Delhi-1

Sub: Proposal to obtain assent of the President of India under Article 254(2) of the Constitution of India to the Orissa Special Courts Bill, 2006

Sir,

I am directed to say that in order to tackle the menace of corruption in public life and since the existing courts lack necessary machineries for speedy termination of the trial of the offences under Clause (e) of sub section (1)of Section 13 of the Prevention of Corruption Act, 1988, it is considered necessary to establish Special Courts by enacting a Special legislation. Accordingly, the "Orissa Special Courts Bill, 2006" was passed by the State Legislature on 11.8.2006.

2. The Bill seeks to enable the State Government to establish Special Courts to be presided over by the persons who are or have been Session Judge in the State for trial of offences committed under Clause (e) of sub-Section (1) of Section 13 of the Prevention of Corruption Act, 1988. To eradicate corruption from high public and political offices properties alleged to have been acquired out of such alleged corruption need to be confiscated. So for confiscation of property of the alleged offender, provision has been made for appointment of authorized officer who is or has been an Additional Session Judge.

3. The sub matter of Legislation is relatable to Entry 11-A read with Entries 1 and 2 of List III (Concurrent List) of the Seventh Schedule to the

Constitution. Accordingly, the State Legislature has enacted the said law. But the provisions contained in Clauses 6, 7, 22 and 26 of the Bill are repugnant to the existing provisions of certain laws, namely, the prevention of Corruption Act, 1988, the Code of Criminal Procedure,1973 and the Criminal Law Amendment Ordinance, 1944, therefore, the Bill as passed by the State Legislature is required to be reserved for the consideration and assent of the President of India under Article 254(2) of the Constitution.

4. It is further stated that the aforesaid Bill is similar to the Orissa Special Courts Act, 1990 earlier assented to by the President of India under Article 254(2) of the Constitution,, But it was subsequently repealed by the Orissa Special Courts (Repent and Special Provision) Act, 1995.

5. The Governor of Orissa has been pleased to reserve the Bill for consideration and assent of the President of India under Article 254(2) of the Constitution.

6. Three authenticated copies of the Governor of Orissa alongwith another six copies of such Bill as introduced and passed by the Orissa Legislative Assembly are forwarded herewith, which may kindly be placed before the President of India for favour of his kind consideration and assent.

7. The authenticated copies of the Bill may kindly be returned after the assent of the President is obtained at any earlier date. Six copies of the letter of the State Government are enclosed for your reference.

8. A Certificate in the prescribed proforma is also enclosed.

Encl: As above yours faithfully,

Commissioner-cum-Secretary to
the Governor, Orissa"
[emphasis supplied]

66. On a perusal of the aforesaid letter, it is demonstrable that the State Government had sought assent of the President in respect of certain provisions of the 1988 Act, the Code of Criminal Procedure, 1973 and the Criminal Law Amendment Ordinance, 1944. On a scrutiny of the judgment of the High Court, it is manifest that on behalf of the State certain communications were placed on record from which the High Court was satisfied that the assent had been properly obtained. In the course of hearing, we have also found that the entire Bill was sent for the assent with the aforesaid forwarding letter and there has been correspondence thereafter. On a perusal of the communication and the finding recorded by the High Court and keeping in view the purpose of communication and taking note of the fact that the entire Bill was sent to the President for obtaining assent, it can safely be concluded

that the President was apprised of the reason when the assent was sought. The assent has been given in general terms so as to be effective for all purposes. It cannot be said that the general assent by the President was not obtained. Thus, we are of the considered opinion that the provisions of the Orissa Act are definitely not repugnant to the 1988 Act, the Code of Criminal Procedure, 1973 and the Criminal Law Amendment Ordinance, 1944.

67. It is submitted that there is repugnancy between Orissa Act and the Prevention of Money-Laundering Act, 2002. It is urged by the learned counsel for the appellants that whatever has been mentioned in the letter or other provisions may not be repugnant but definitely the Act is repugnant to other enactment like the Prevention of Money-Laundering Act, 2002, as amended in 2009. It has been stated by the Constitution Bench in ***M. Karunanidhi*** *(supra)* that in order to decide the question of repugnancy it must be shown (i) that the two enactments contain inconsistent and irreconcilable provision so that they cannot stand together or operate in the same field; (ii) that there can be no repeal by implication unless the

inconsistency appears on the face of the two statutes; (iii) that where the two statues occupy a particular field, but there is room or possibility of both the statutes operating in the same filed without coming into collusion with each other, no repugnancy results; (iv) that where there is no inconsistency but the statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statute continue to operate in the same field.

68. In ***J.B. Educational Society*** (supra) the Court, after referring to ***M. Karunanidhi*** (supra), laid down the following principle:-

> "Parliament has exclusive power to legislate with respect to any of the matters enumerated in List I, notwithstanding anything contained in clauses (2) and (3) of Article 246. The non obstante clause under Article 246(1) indicates the predominance or supremacy of the law made by the Union Legislature in the event of an overlap of the law made by Parliament with respect to a matter enumerated in List I and a law made by the State Legislature with respect to a matter enumerated in List II of the Seventh Schedule.

69. On the principles enumerated in the aforesaid pronouncements, the submissions put forth by the learned counsel are to be appreciated. The Prevention of Money-Laundering Act was enacted in 2002 and an amendment was brought in 2009. We may refer to the objects and reasons of the Prevention of Money-Laundering Act, 2002 which read as follows:-

> "An Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto..."

70. Section 2(p) defines "money laundering" and Section 3 which has connection with Section 2(p) defines "offence of money laundering". Sections 3 and 4 read as follows:-

> **"Section 3. Offence of money-laundering**.— Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.
>
> **Section 4. Punishment for money-laundering**.— Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not

be less than three years but which may extend to seven years and shall also be liable to fine:

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted."

71. Section 5, which provides for attachment of property involved in the money laundering, stipulates that where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe, on the basis of material in his possession, that (a) any person is in possession of any proceeds of crime; and (b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under Chapter III, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed, provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a

report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country; provided further that, notwithstanding anything contained in first proviso, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing) on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under Chapter III, the non-attachment of the property is likely to frustrate any proceeding under this Act. Sub-section (2) provides that the Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the

order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed. Sub-section (3) provides that every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 8, whichever is earlier and sub-section (4) says that nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment. Sub-section (5) stipulates that the Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

72. Section 8 deals with adjudication and provides that (1) on receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or

under subsection (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, he may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized 2 or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government. There are certain provisions appended to the said Section. Sub-section 2 stipulates that the Adjudicating Authority shall, after considering the reply, if any, to the notice issued under subsection (1) and hearing the aggrieved person and the Director or any other officer authorised by him in this behalf, and taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties

referred to in the notice issued under sub-section (1) are involved in money-laundering. Thereafter, the provisions of the said Act deal with the adjudication by the Adjudicating Authority as regards the property involved in the Prevention of Money-Laundering Act, confirmation of attachment of property or retention or freezing of the property, taking over of the possession by the competent authority, the order to be passed by the Special Court after conclusion of the trial of the offence, the resultant effect where the Special Court finds the offence of money laundering has not taken place, the circumstances in which the property would vest in the Central Government free from all encumbrances, the management of confiscated properties during the interregnum period, the role of the Administrator, the power of Central Government to dispose of the property, the role attributed to various authorities to conduct search and seizure at various places, the action to be taken in a situation while it is not practical to seize a frozen property, the procedure for seizure and power of arrest, etc.

73. Section 20 of the said Act deals with retention of property. The said provision stipulates about the authority who can seize and freeze money to a maximum period and eventually pass a final order. Section 25 deals with establishment of an Appellate Tribunal and Section 26 provides for appeal to the said Tribunal. Section 42 provides for appeal to the High Court from the order passed by the Tribunal. Section 43 provides for designation of Special Courts. The said provision being relevant is reproduced below:-

> "**Section 43. Special Courts**.—(1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification. Explanation.—In this sub-section, "High Court" means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation. (2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

74. Section 44 provides for offences triable by Special Courts. Section 47 provides for appeal to the High Court against the judgment passed by the Special Courts. Chapter IX of the Prevention of Money-Laundering Act, 2002 deals with reciprocal arrangement for assistance in certain matters and procedure for attachment and confiscation of property. Section 55 occurring in this Chapter is a dictionary clause which defines the terms "contracting State", "identifying" and "tracing". Section 56 mentions about the agreement with the foreign countries. Sections 57 to 61 deal with range of topics where concepts of reciprocal arrangement and letter of request are involved. Chapter X which is miscellaneous chapter provides for punishment of vexatious search. Section 70 deals with offences by companies and Section 71 occurring in this Chapter captioned as "Miscellaneous" is with regard to the overriding effect and it clearly lays down that "The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

75. Be it stated that the Prevention of Money-Laundering Act, 2002 contains Schedules which originally contained three Parts, namely, Part A, Part B and Part C. Part A which contains various paragraphs enumerates offences under the Indian Penal Code, The Narcotic Drugs and Psychotropic Substances Act, 1985, etc. Part B (Containing Para 1 to Para 25) was omitted by Act 2 of 2013, section 30(ii) (w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013) and earlier Part B was amended by Act 21 of 2009, section 13(ii) (w.e.f. 1-6-2009). Part C deals with an offence which is the offence of cross border implications and is specified in Part A or the offences against property under Chapter XVII of the Indian Penal Code.

76. At this juncture, it is appropriate to note that in 2009, the Prevention of Money-Laundering Act, 2002 was amended whereby the offences under Section 13 of the 1988 Act was incorporated in Part B of the Schedule. It may be mentioned that same has been deleted in 2013 inasmuch as the entire Part B has been deleted. The High Court in the impugned judgment has referred to Entries 93 and 44 of the Union List whereby the Prevention of Money-

Laundering Act, 2002 has been brought into force. The High Court has also taken note of the fact that the Orissa Act was enacted in 2007 regard being had to the 1988 Act. The High Court has observed that the Prevention of Money-Laundering (Amendment) Act, 2009 upon which reliance is placed by the petitioners counsel therein cannot prevail upon either the 1988 Act or the Orissa Act.

77. We have analysed the scheme under the Prevention of Money-Laundering Act, 2002. It is clearly demonstrable that the offences under the said Act are different from an offence under the 1988 Act. The offence under the Orissa Act which has been carved out is the offence under Section 13(1)(e) of the 1988 Act and the Orissa Act provides for establishment of Special Courts and also provides for provisions pertaining to confiscation at an interim stage. The entire Prevention of Money-Laundering Act, 2002, if keenly scrutinized, clearly reveals that it deals with different situations altogether; a different offence which has insegregable nexus with money laundering. True it is, in 2009 an amendment was brought incorporating the 1988 Act in Part B of the Schedule, and the said Part B has been

totally deleted in 2013. In view of the same, the submission of the learned counsel for the State is that after deletion of Part B the issue has become academic. Be that as it may, Part B of the Prevention of Money-Laundering Act, 2002 enumerated offences under the Indian Penal Code, The Narcotic Drugs and Psychotropic Substances Act, 1985; The Explosive Substances Act, 1908; The Unlawful Activities (Prevention) Act, 1967; The Arms Act, 1959; The Wildlife (Protection) Act, 1972; etc. There was a purpose behind the same. There could be offences under the Prevention of Money-Laundering Act, 2002 arising from the offences under the other Acts. Unless an offence under the Money Laundering Act, 2002 is committed and taken cognizance of by the authorities, the offences under the other Acts can continue as that is the law in the field. Once there is money laundering, the accused may be tried by the Special Courts as provided under the said Act. Part A enumerates offences under the Central legislation and certain offences under the Indian Penal Code. The first condition precedent is that the offence committed must pertain to money laundering. If a person is tried under

Section 13(1)(e) satisfies the ingredients of money laundering, the matter would be different and hence, both the Acts can harmoniously co-exist.

78. In view of the aforesaid analysis and keeping in view the law pertaining to repugnancy we have hereinbefore referred to, we are unable to accept the submission of the learned counsel for the appellants that there is repugnancy between the two Acts and the Orissa Act is invalid as no assent was obtained in respect of the Prevention of Money-Laundering Act, 2002. We may hasten to clarify that we have not addressed the issue on the impact of the deletion of Part B of the Schedule in 2013 as the legislature may have deleted it in its own wisdom.

79. Next, we shall advert to the assail made in respect of certain provisions of the Orissa Act. Attack on two provisions, namely, Section 5 and 6, is basically on Article 14 and Article 20(1) of the Constitution. We shall first address to the challenge made under Article 14 and thereafter deal with the assail under Article 20(1) while we will be addressing the constitutional validity of other provisions, for it has been contended before us by the

learned counsel for the appellants that the provisions pertaining to confiscation and other matters are punishments at the pre-trial stage and hence, the person suffers from double jeopardy. That apart, it is urged, confiscation was not there at time of institution of the prosecution and, therefore, the amended law cannot be retrospectively applied. It has been further argued that the submission of the State that there is only a procedural change as no one has a right to the forum is absolutely unsustainable and the appellants have been aggrieved by the substantive part and not by the facet relating to adjective law.

80. The principal ground of attack of the said provisions is that the legislature has not defined persons who have held "high public or political office". According to them, in the absence of any definition, it is extremely arbitrary and confers unbridled powers on the State Government and that apart, it is quite vague as a consequence of which, it invites the frown of Article 14 of the Constitution. Learned counsel for the State, *per contra*, has drawn our attention to the objects and reasons of the Act and has propounded

that the concept of high public or political office is well understood and the provision does not deserve to be struck down solely on the ground that there is no definition of the said words in the dictionary clause.

81. Be it stated, the definition in the rules have been pressed into service. We need not look at the rules, for we have to find out whether in the provision in the context of the legislation and the purpose it intends to serve, there is enough guidance not to allow any kind of arbitrariness. To appreciate the said contention, we are obligated to refer to Section 2(d) of the Orissa Act which defines the term 'offence' which reads as follows:-

> "**Section 2(d).** "Offence" means an offence of criminal misconduct within the meaning of clause (e) of sub-section (1) of section 13 of the Prevention of Corruption Act, 1988."

82. Section 5 and Section 6 of the Orissa Act read as follows:-

> "**Section 5. Declaration of cases to be dealt with under this Act** – (1) If the State Government is of the opinion that there is *prima facie* evidence of the commission of an offence alleged to have been committed by a person, who held high public or political office in the State of Orissa, the State Government shall make a

declaration to the effect in every case in which it is of the aforesaid opinion.

(2) Such declaration shall not be called in question in any Court."

Section 6. Effect of declaration – (1) On such declaration being made, notwithstanding anything in the Code or any other law for the time being in force, any prosecution in respect of the offence shall be instituted only in a Special Court.

(2) Where any declaration made under section 5 relates to an offence in respect of which a prosecution has already been instituted and the proceedings in relation thereto are pending in a Court other than Special Court, such proceedings shall, notwithstanding anything contained in any other law for the time being in force, stand transferred to Special Court for trial of the offence in accordance with this Act."

83. The stand of the learned counsel for the appellants is that Section 5 of the Orissa Act confers uncanalised and unfettered discretion on the State Government to make a declaration as a consequence of which the delinquent officer will have to face the prosecution in the Special Court. No guidance has been provided and in the absence of any guidance, the exercise of power would be arbitrary and the State Government is at liberty to pick and choose

any person as it desires. The impugned judgment would show that the State Government had filed an affidavit on 23.7.2010 and the High Court has quoted certain paragraphs from the said affidavit. The relevant part of the affidavit shows that in the event there is *prima facie* evidence of the commission of an offence alleged to have been committed by a person who held high public or political office in the State of Orissa as defined under the Act and the Rules, the State Government shall mandatorily make a declaration to that effect and the State Government does not have any discretion on the subject. It has also been asserted that the role of the State Government is limited to be satisfied that the ingredients of Section 5(1) of the Special Courts Act are existent and if the ingredients of Section 5(1) of the Special Courts Act are in existence, the State Government is bound to make a declaration to that effect. Placing reliance on the said affidavit, the High Court has repelled the submission urged on behalf of the petitioners therein. We must say without any reservation that the approach of the High Court is erroneous. Constitutionality of a provision has to be tested within the

constitutional parameters. An affidavit filed by an officer of the State Government cannot change the interpretation if it is textually and contextually not permissible. In ***Supreme Court Advocates-on-Record Association and Another v. Union of India***[36], while dealing with the term "fit" expressed under Section 5(1) of the National Judicial Appointments Commission Act, 2014, the Court noted the submissions of the learned Attorney General that the said word would only mean mental and physical fitness, and nothing else. Commenting on the said submission, Khehar, J. stated as follows:-

> "...The present wisdom, cannot bind future generations. And, it was exactly for this reason, that the respondents could resile from the statement made by the then Attorney General, before the Bench hearing the Third Judges case, that the Union of India was not seeking a review or reconsideration of the judgment in the Second Judges case (that, it had accepted to treat as binding, the decision in the Second Judges case). And yet, during the course of hearing of the present case, the Union of India did seek a reconsideration of the Second Judges case."

[36] 2015 (11) SCALE 1

84. In this regard, a passage from ***Sanjeev Coke Manufacturing Company v. M/s Bharat Coking Coal Limited and Another***[37] would be apt to quote:-

> "... The deponents of the affidavits filed into court may speak for the parties on whose behalf they swear to the statements. They do not speak for the Parliament. No one may speak for the Parliament and Parliament is never before the court. After Parliament has said what it intends to say, only the court may say what the Parliament meant to say. None else. Once a statute leaves Parliament House, the Court is the only authentic voice which may echo (interpret) the Parliament. This the court will do with reference to the language of the statute and other permissible aids. The executive Government may place before the court their understanding of what Parliament has said or intended to say or what they think was Parliament's object and all the facts and circumstances which in their view led to the legislation. When they do so, they do not speak for Parliament. No Act of Parliament may be struck down because of the understanding or misunderstanding of parliamentary intention by the executive Government or because their (the Government's) spokesmen do not bring out relevant circumstances but indulge in empty and self-defeating affidavits. They do not and they cannot bind Parliament. Validity of legislation is not to be judged merely by affidavits filed on behalf of the State, but by all the relevant circumstances which the court may ultimately find and more especially by what may be gathered from what the legislature has itself said..."

[37] (1983) 1 SCC 147

85. We have referred the said statement of law only to highlight that the affidavit sworn by the Joint Secretary could not have been relied upon by the High Court for the purpose of construction of Section 5 of the Orissa Act. Thus viewed, we have to understand, appreciate and interpret the provisions contained in Section 5 and Section 6 whether there is any scope for arbitrary use of power.

86. The language employed in Section 5 has to be appositely scrutinized. Section 5(1) of the Orissa Act provides that if the State Government is of the opinion that there is *prima facie* evidence of the commission of an offence alleged to have been committed by a person, who held high public or political office in the State of Orissa, the State Government shall make a declaration to the effect in every case in which it is of the aforesaid opinion. The Division Bench of the High Court on earlier occasion in ***Kishore Chandra Patel*** (supra) had struck down the part that stated "and that the said offence ought to be dealt with under the Act" and treated the rest of it as valid. The legislature, as is perceptible, has rightly deleted the said words. Interpretation of the stipulations in Section 5 are to

be appreciated in the context of the scheme of the Orissa Act. Section 2(d) defines the term "offence" which means an "offence" of criminal misconduct within the meaning of clause (e) of sub-section (1) of Section 13 of the 1988 Act. Section 5(1) confers power on the State to form an opinion that there is *prima facie* evidence of commission of an offence alleged to have been committed by a person who has held high public or political office in the State of Orissa and then proceed to make the declaration to that effect. The key words, as we find, are "*prima facie* evidence of the commission of the offence alleged". In ***Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.***[38] it has been ruled that interpretation must depend on the text and the context and they must form the basis of interpretation. The two-Judge Bench speaking through Chinnappa Reddy, J. has expressed that:-

> "...A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statutemaker, provided by such context, its scheme, the sections, clauses, phrases and words

[38] AIR 1987 SC 1023

may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place..."

87. In ***Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama***[39] the Court has held that:-

> "The paramount object in statutory interpretation is to discover what the legislature intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary text nor a divine revelation. "Words are certainly not crystals, transparent and unchanged" as Mr Justice Holmes has wisely and properly warned. (*Towne* v. *Eisner,* 245 US 418, 425 (1918). Learned Hand, J., was equally emphatic when he said: "Statutes should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them." (*Lenigh Valley Coal Co.* v. *Yensavage*, 218 FR 547, 553)."

88. In ***R.L. Arora v. State of Uttar Pradesh and Others***[40] the Constitution Bench dealt with the validity of

[39] 1990 AIR 981
[40] AIR 1964 SC 1230

amendments to Land Acquisition Act, 1894 as amended by Act 31 of 1962. The challenge therein was to the amendments of certain provisions in the Land Acquisition Act, 1894. While dealing with the concept of construction of a provision, the Court opined that a literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning, of the words used in a provision of the statute. The Court further ruled that it is permissible to control the wide language used in a statute if that is possible by the setting in which the words are used and the intention of the law-making body which may be apparent from the circumstances in which the particular provision came to be made, and therefore, a literal and mechanical interpretation is not the only interpretation which courts are bound to give to the words of a statute; and it may be possible to control the wide 'language in which a provision is made by taking into account what is implicit in it in view

of the setting in which the provision appears and the circumstances in which it might have been enacted.

89. In ***TATA Engineering & Locomotive Co. Ltd. v. State of Bihar and Another***[41] emphasis was laid as regards the purposes which lie behind the words and to be too literal in the meaning of words is to see the skin and miss the soul.

90. In this regard, a passage from the Statutory Interpretation by Justice G.P. Singh, 9th Edn. 2004, at p. 86, would throw immense insight:-

> "No word", says PROFESSOR H.A. SMITH "has an absolute meaning, for no words can be defined in *vacuo*, or without reference to some context". According to SUTHERLAND there is a "basic fallacy" in saying "that words have meaning in and of themselves", and "reference to the abstract meaning of words", states CRAIES, "if there be any such thing, is of little value in interpreting statures". In the words of JUSTICE HOLMES : "A word is not a crystal transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used." Shorn of the context, the words by themselves are "slippery customers". Therefore, in determining the meaning of any word or phrase in a statute the first question to be asked is "what is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that

[41] (2000) 5 SCC 346

> meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature that it is proper to look for some other possible meaning of the word or phrase". The context as already seen in the construction of statures means the statute as a whole, the previous state of the law, other statutes in *pari materia*, the general scope of the statute and the mischief that it was intended to remedy."

91. In ***Union of India v. Sankalchand Himatlal Sheth***[42], Bhagwati, J. opined as follows:-

> "I mean it in its widest sense 'as including not only other enacting provisions of the same statute but its preamble, the existing state of the law, other statutes in pari materia and the mischief which — the statute was intended to remedy' ".

92. The concept of context has also been emphasised in ***Maharaj Singh v. State of U.P.***[43].

93. Apart from the aforesaid interpretation, we are also of the view that regard being had to the text, context and the legislative intendment, the principle of reading down can be applied to save it from the constitutional invalidity. May it be mentioned that there are certain authorities which have held that such provisions are valid when the power is vested with high authority and there is guidance in the

[42] (1977) 4 SCC 193
[43] (1977) 1 SCC 155

language employed in the provision. But we prefer to take this route as we find the legislature never intended to leave any offender. In ***Shreya Singhal v. Union of India***[44], the Court upheld the constitutional validity of Section 79 of the Information Technology Act, 2000 subject to Section 79(3)(b) by stating as follows:-

> "Section 79 is valid subject to Section 79(3)(*b*) being read down to mean that an intermediary upon receiving actual knowledge from a court order or on being notified by the appropriate government or its agency that unlawful acts relatable to Article 19(2) are going to be committed then fails to expeditiously remove or disable access to such material. Similarly, the Information Technology "Intermediary Guidelines" Rules, 2011 are valid subject to Rule 3 sub-rule (4) being read down in the same manner as indicated in the judgment."

94. A passage from ***DTC v. Mazdoor Congress***[45] is also fruitful to extract:-

> "...The doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible--one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the

[44] (2015) 5 SCC 1
[45] AIR 1999 SC 101 = 1991 Supp (1) SCC 600

legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made…"

95. In ***Suresh Kumar Koushal v. Naz Foundation***[46], the Court held that:-

> "Another significant 8canon of determination of constitutionality is that the courts would be reluctant to declare a law invalid or ultra vires on account of unconstitutionality. The courts would accept an interpretation, which would be in favour of constitutionality rather than the one which would render the law unconstitutional. Declaring the law unconstitutional is one of the last resorts taken by the courts. The courts would preferably put into service the principle of "reading down" or "reading into" the provision to make it effective, workable and ensure the attainment of the object of the Act".

96. In ***Calcutta Gujarati Education Society v. Calcutta Municipal Corporation***[47], it has been held that:-

> "The rule of "reading down" a provision of law is now well recognised. It is a rule of harmonious construction in a different name. It is resorted to smoothen the crudities or ironing out the creases found in a statute to make it workable. In the

[46] (2014) 1 SCC 1
[47] (2003) 10 SCC 533

> garb of "reading down", however, it is not open to read words and expressions not found in it and thus venture into a kind of judicial legislation. The rule of reading down is to be used for the limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statute. It is to be used keeping in view the scheme of the statute and to fulfill its purposes".

97. We have referred to the aforesaid authorities only to highlight that the interpretation placed by us can come within both the conceptions, namely, textual and contextual interpretation as well as also reading down the provision to save it from unconstitutionality. Be it stated, by such reading down no distortion is caused.

98. Applying the aforesaid principle, we are inclined to think that the State Government is only to be *prima facie* satisfied that there is an offence under Section 13(1)(e) and the accused has held high public or political office in the State. Textually understanding, the legislation has not clothed the State Government with the authority to scrutinize the material for any other purpose. The State Government has no discretion except to see whether the offence comes under Section 13(1)(e) or not. Such an interpretation flows when it is understood that in the entire

texture provision turns around the words “offence alleged” and “prima facie”. It can safely be held that the State Government before making a declaration is only required to see whether the person as understood in the context of the provision is involved in an offence under Section 13(1)(e) of the Orissa Act and once that is seen, the concerned authority has no other option but to make a declaration. That is the command of the legislature and once the declaration is made, the prosecution has to be instituted in a Special Court and that is the mandate of Section 6(1) of the Orissa Act. Therefore, while holding that the reference to the affidavit filed by the State Government was absolutely unwarranted, for that cannot make a provision constitutional if it is otherwise unconstitutional, we would uphold the constitutional validity, but on the base of above interpretation. The argument and challenge would fail, once on interpretation it is held that there is no element of discretion and only *prima facie* satisfaction is required as laid down hereinabove.

99. Having said that, we shall dwell upon the argument which is raised with regard to classification part,

that is, that the persons holding "high public or political office" are being put in a different class to face a trial in a different court under a different procedure facing different consequences, is arbitrary and further the provision suffers from serious vagueness. The other aspect which has been seriously pyramided by the learned counsel for the appellants pertains to transfer of cases to the Special Court once declaration is made.

100. Learned counsel for the State has also referred to the rules to show that to avoid any kind of confusion a definition has been introduced in the rules. It is obligatory to make it immediately clear that the argument of the State that by virtue of bringing in a set of rules defining the term "high public or political office" takes away the provision from the realm of challenge of Article 14 of the Constitution is not correct. In this regard Mr. Vinoo Bhagat, learned counsel for the appellants, has drawn our attention to the authority in ***Hotel Balaji and Others v. State of A.P. and Others***[48]. In the said case, a question arose as to how far it is permissible to refer to the rules made in an Act while

[48] 1993 Supp (4) SCC 536

judging the legislative competency of a legislature to enact a particular provision. In that context, the majority speaking through Ranganathan, J. observed that a subordinate legislation cannot travel beyond the purview of the Act. The learned Judge noted that where the Act says that rules on being made shall be deemed "as if enacted in this Act", the position may be different. Thereafter, the learned Judge said that where the Act does not say so, the rules do not become a part of the Act. A passage from Halsbury's Laws of England (3rd Edn.) Vol. 36 at page 401 was referred to. It was contended on behalf of the State of Gujarat that the opinion expressed by Hedge J. in ***J.K. Steel Ltd. v. Union of India***[49], a dissenting opinion was pressed into service. The larger Bench dealing with the said submission expressed the view:-

> "... Shri Mehta points out further that Section 86 which confers the rule-making power upon the Government does not say that the rules when made shall be treated as if enacted in the Act. Being a rule made by the Government, he says, Rule 42-E can be deleted, amended or modified at any time. In such a situation, the legislative competence of a legislature to enact a particular provision in the Act cannot be made to depend upon the rule or rules, as the case may be,

[49] AIR 1970 SC 1173

> obtaining at a given point of time, he submits. We are inclined to agree with the learned counsel. His submission appears to represent the correct principle in matters where the legislative competence of a legislature to enact a particular provision arises. If so, the very foundation of the appellants' argument collapses."

101. From the aforesaid, it is crystal clear that unless the Act provides that the rules if deemed as enacted in the Act, a provision of the rule cannot be read as a part of the Act.

102. In the instant case, Section 24 lays down that the State Government may, by notification, make such rules, if any, as it may deem necessary for carrying out the purposes of this Act. The said provision is not akin to what has been referred to in the case in ***Hotel Balaji*** (supra). True it is, the said decision was rendered in the case of legislative competence but it has been cited to highlight that unless the condition as mentioned therein is satisfied, rules cannot be treated as a part of the Act. Thus analysed, the submission of the learned counsel for the State that the Rules have clarified the position and that

dispels the apprehension of exercise of arbitrary power, does not deserve acceptance.

103. Having not accepted the aforesaid submission, we shall proceed to deal with the real thrust of the submission on this score. It is urged by Mr. Padhi, learned senior counsel for the State of Odisha, that the principles stated in the decision in ***V.C. Shukla*** (supra) will apply on all fours.

104. In ***the Special Courts Bill, 1978*** (supra), may it be noted, the President of India had made a reference to this Court under Article 143(1) of the Constitution for consideration of the question whether the Special Courts Bill, 1978 (or any of its other provisions) if enacted would be constitutionally invalid. The Court referred to the text of the preamble. The preamble of the Bill was meant to provide for trial of a certain class of offences. Clause 4 of the Act which is relevant for the present purpose, provided that if the Central Government is of the opinion that there is prima facie evidence of the commission of an offence alleged to have been committed during the period mentioned in the Preamble by a person who held high

public or political office in India and that in accordance with the guidelines contained in the Preamble, the said offence ought to be dealt with under the Act, the Central Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion.

105. It was contended that Section 4(1) furnished no guidance for making the declaration for deciding who one and for what reasons should be sent up for trial to the Special Courts. The Court referred to the various statutes with regard to classification and the concept of guidance and vagueness and opined that:-

> "... By clause 5 of the Bill, only those offences can be tried by the Special Courts in respect of which the Central Government has made a declaration under clause 4(1). That declaration can be made by the Central Government only if it is of the opinion that there is prima facie evidence of the commission of an offence, during the period mentioned in the preamble, by a person who held a high public or political office in India and that, in accordance with the guide-lines contained in the Preamble to the Bill, the said offence ought to be dealt with under the Act. The classification which Section 4(1) thus makes is both of offences and offenders, the former in relation to the period mentioned in the preamble that is to say, from February 27, 1975 until the expiry of the proclamation of emergency dated June 25, 1975 and in relation to the objective mentioned in the sixth para of the

preamble that it is imperative for the functioning of parliamentary democracy and the institutions created by or under the Constitution of India that the commission of such offences should be judicially determined with the utmost dispatch; and the latter in relation to their status, that is to say, in relation to the high public or political office held by them in India. It is only if both of these factors co-exist that the prosecution in respect of the offences committed by the particular offenders can be instituted in the Special Court."

106. Thereafter, the Court referred to certain periods as mentioned in the preamble and in that context, opined that:-

> "... But persons possessing widely differing characteristic, in the context of their situation in relation to the period of their activities, cannot by any reasonable criterion be herded in the same class. The antedating of the emergency, as it were, from June 25 to February 27, 1975 is wholly unscientific and proceeds from irrational considerations arising out of a supposed discovery in the matter of screening of offenders. The inclusion of offences and offenders in relation to the period from February 27 to June 25, 1975 in the same class as those whose alleged unlawful activities covered the period of emergency is too artificial to be sustained."

107. The Court recorded its conclusion in paragraph 120 as follows:-

> "The Objects and Reasons are informative material guiding the court about the purpose of a

> legislation and the nexus of the differentia, if any, to the end in view. Nothing about Emergency period is adverted to there as a distinguishing mark. If at all, the clear clue is that all abuse of public authority by exalted public men, whatever the time of commission, shall be punished without the tedious delay which ordinarily defeats justice in the case of top echelons whose crimes affect the credentials of democratic regimes."

108. In this context, reference may be made to ***V.C. Shukla*** (supra) upon which heavy reliance has been placed by the State Government. The appellants therein while challenging the conviction raised a number of preliminary objections including constitutional validity of the Special Courts Act [No. 22 of 1979] on several grounds, including contravention of Articles 14 and 21 of the Constitution. A three-Judge Bench referred to the order passed in the reference made by the President of India under Article 143(1) of the Constitution wherein majority of the provisions in the Bill were treated to be valid. Thereafter, the Bill ultimately got the assent of the President with certain changes. After the Act came into force, it assumed a new complexion. The Court in the latter judgment referred to clauses in the preamble and scanned the anatomy of the Act. It was contended that regard being

had to the principles laid down by this Court in ***the Special Courts Bill, 1978*** (supra) the provisions fail to pass the test of valid classification under Article 14, for the classification which distinguishes persons who are placed in a group from others who are left out of the group is not based on *intelligible differentia*; that there was no nexus between the differentiation which was the basis of the classification and the object of the Act; and that such differentiation did not have any rational relation to the object sought to be achieved by the Act. The Court reading the opinion in ***the Special Courts Bill, 1978*** (supra) did not agree with the submissions of the learned counsel for the appellants that this Court had held that unless emergency offenders could be punished under the Special Courts Act and that no Act seeking to punish the offences of a special type not related to the emergency would be hit by Article 14. The Court addressed to the validity of Sections 5, 6, 7 and 11 of the Special Courts Act, 1979. One of the arguments advanced was that neither the words 'high public or political office' had been defined nor the offence being delineated so as to make the prosecution of

such offenders a practical reality. Dealing with the said contention, the Court held:-

> "24. As regards the definition of "high public or political office" the expression is of well-known significance and bears a clear connotation which admits of no vagueness or ambiguity. Even during the debate in Parliament, it was not suggested that the expression suffered from any vagueness. Apart from that even in the *Reference case* Krishna Iyer, J. referred to holders of such offices thus : (SCC pp. 440, 441, paras 107, 111)
> "... heavy-weight criminaloids who often mislead the people by public moral weight-lifting and multi point manifestoes. . . *such super-offenders in top positions*.... No erudite pedantry can stand in the way of pragmatic grouping of *high-placed office holders separately*, for purposes of high-speed criminal action invested with early conclusiveness and inquired into by high-level courts.
>
> 25. It is manifest from the observations of Krishna Iyer, J., that persons holding high public or political offices mean persons holding top positions wielding large powers."

109. Thereafter, the three-Judge Bench referred to the description of persons holding high public or political office in American Jurisprudence (2d, Vol. 63, pp. 626, 627 and 637) Ferris in his Thesis on "Extraordinary Legal Remedies", Wade and Phillips in "Constitutional Law" and after referring to various meanings attributed to the words ruled:-

"28. A perusal of the observations made in the various textbooks referred to above clearly shows that "political office" is an office which forms part of a political department of the Government or the political executive. This, therefore, clearly includes Cabinet Ministers, Ministers, Deputy Ministers and Parliamentary Secretaries who are running the Department formulating policies and are responsible to the Parliament. The word High is indication of a top position and enabling the holder thereof to take major policy decisions. Thus, the term "high public or political office" used in the Act contemplates only a special class of officers or politicians who may be categorised as follows:

"(*1*) officials wielding extraordinary powers entitling them to take major policy decisions and holding positions of trust and answerable and accountable for their wrongs;

(*2*) persons responsible for giving to the State a clean, stable and honest administration;

(*3*) persons occupying a very elevated status in whose hands lies the destiny of the nation."

29. The rationale behind the classification of persons possessing the aforesaid characteristics is that they wield wide powers which, if exercised improperly by reason of corruption, nepotism or breach of trust, may mar or adversely mould the future of the country and tarnish its image. It cannot be said, therefore, with any conviction that persons who possess special attributes could be equated with ordinary criminals who have neither the power nor the resources to commit offences of the type described above. We are, therefore, satisfied that the term "persons holding high public or political offices" is self-explanatory and

admits of no difficulty and that mere absence of definition of the expression would not vitiate the classification made by the Act. Such persons are in a position to take major decisions regarding social, economic, financial aspect of the life of the community and other far-reaching decisions on the home front as also regarding external affairs and if their actions are tainted by breach of trust, corruption or other extraneous considerations, they would damage the interests of the country. It is, therefore, not only proper but essential to bring such offenders to book at the earliest possible opportunity."

110. After so stating, the Court referred to clause 4 of the preamble and opined thus:-

"31. The words "powers being a trust" clearly indicate that any act which amounts to a breach of the trust or of the powers conferred on the person concerned would be an offence triable under the Act. Clause (4) is wide enough to include any offence committed by holders of high public or political offices which amounts to breach of trust or for which they are accountable in law and does not leave any room for doubt. Mr Bhatia, however, submitted that even if the person concerned commits a petty offence like violation of municipal bye-laws or traffic rules he would have to be prosecuted under the Act which will be seriously prejudicial to him. In our opinion, this argument is purely illusory and based on a misconception of the provisions of the Act. Section 5 which confers powers on the Central Government to make a declaration clearly refers to the guidelines laid down in the preamble and no Central Government would ever think of prosecuting holders of high public or political offices for petty offences and the doubt expressed

by the counsel for the appellant is, therefore, totally unfounded."

In view of the aforesaid enunciation of law, we are unable to accept the submission of the learned counsel for the appellants that the words "high public or political office" not being defined, creates a dent in the provision. The said words, we are absolutely certain, convey a category of public servants which is well understood and there is no room for arbitrariness.

111. The next aspect of challenge pertains to the classification made by the legislature in respect of the accused persons facing trial under Section 13(a) to (d) and the accused persons under Section 13(1)(e). It is urged by the learned counsel for the appellants that there is no *intelligible differentia* for making such a classification qua the offence and moreover by adopting a rigorous procedure.

112. First, we shall advert to the class of offence and the persons. It is submitted by Mr. Vinoo Bhagat, learned counsel appearing for some of the appellants, that when a person holding public office is accused of an offence under Section 13(1)(a) to (d), he will be tried by the Special Courts

under the 1988 Act, but when Section 13(1)(e) is combined along with other offences, namely, Section 7 to 11 of the 1988 Act, he will be facing the trial under the Orissa Act or two trials. Mr. P.S. Narasimha, learned senior counsel, would contend that the bifurcation of offences defeats the concept of classification, for it pertains to a "stand alone offence", though no discernable principle is perceptible. Learned senior counsel would contend that there is no difference between Section 13(1)(a) to (d) and Section 13(1)(e) of the 1988 Act, but the legislature has made a special classification which the law does not countenance. It is also canvassed that a person not holding high public or political office would be tried by the Special Judge under the 1988 Act, whereas the differentiated category will be tried by the Orissa Act as a consequence of which an unacceptable discrimination takes place. It is contended that the only basis of classification for choosing a different forum with a different procedure is that the accused persons held 'high public or high political office' though there can be cases where holders of low public office can amass assets by illegal means but they would not be liable

to face confiscation proceedings as provided under the Orissa Act. It has been argued that the classification is not to be done on the basis of post which a public servant holds.

113. We have already referred to the term "offence". The Orissa Act defines the offence to make it come within the compartment of Clause (e) of sub-section 1 of Section 13 of the 1988 Act. The submission on behalf of the learned counsel for the appellants is that the classification is arbitrary, unwarranted and unjustified as there is no rationale behind it. Learned counsel have referred to the offences under Sections 7, 8, 9 and 12 of the 1988 Act. The said offences relate to different situations, whereas Section 13 deals with criminal misconduct by a public servant. The said provision reads as follows:-

> "**Section 13. Criminal misconduct by a public servant.** – (1) A public servant is said to commit the offence of criminal misconduct,-
>
> (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

> **Explanation.** – For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.
>
> (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine."

114. The submission of Mr. Narasimha, learned senior counsel and others, as we have referred to earlier, is that it is a micro-mini classification and classification is on the base of a stand alone offence or to put it differently, it is a classification qua a singular class. It is to be noted that Section 13(1)(e) has its own significance in the context of the range of offences provided under the 1988 Act. Section 13(1)(e) covers a period which is called check period. It pertains to amassing of disproportionate assets. The condition precedent is that accused is *prima* facie found in possession of disproportionate properties or possessing resources not known to his sources of income. It is obligatory on the part of the accused in that case to explain his sources, which has been the basis for accumulating the

assets which are alleged to be disproportionate. The offences under Section 13(1) (a) to (d) in a broad way can be called incident specific or situation specific whereas the offence under Section 13(1)(e) is period specific and it is not incident specific. There can be different check periods. A person holding high public office or political office has opportunities to accumulate disproportionate assets other than his known sources of income. It has been submitted by the learned counsel for the appellants that disproportionate assets can be accumulated by the persons working in the lesser rank or not holding such high offices. This submission is noted only to be rejected, for the holders of high post or high public office do definitely enjoy a distinguished position in contrast to other categories of officers or post holders. They form a separate class. The legislature, regard being had to the position the public servant holds, has put them in a different class. There is a manifest reason that sustains the said classification. The contention of the learned counsel for the appellants is that the provision suffers because of under-inclusive classification but the same does not impress us as in the

instant case we are disposed to think that there is a perceptible differentia in such exclusion. The court cannot adopt an attitude to scrutinize a provision with mathematical exactitude. A pedantic approach in this regard cannot be visualized. Learned counsel for the State of Odisha would submit that the distinction is writ large and the legislature in its wisdom has carved out the offence of Section 13(1)(e) to be tried by Special Courts in a speedy manner. It is urged by him that the onus is on the accused to prove that the asset is not disproportionate and within the known sources of his income. He has drawn inspiration from ***P. Nallamal v. Inspector of Police***[50], wherein it has been held that the words "known sources of income" have to be understood as "any lawful source". That apart, the explanation to Section 13(1)(e) further enjoins that receipt of such income should have been intimated by the public servant in accordance with the provisions of any law applicable to such public servant at the relevant time. Such a public servant cannot escape from Section 13(1)(e) of the 1988 Act by showing other

[50] (1999) 6 SCC 559

legally forbidden sources, albeit such sources are outside the purview of clauses (a) to (d) of the sub-section.

115. Having so stated, we proceed to dwell upon the concept of classification as envisaged under Article 14 of the Constitution. In this regard, we may usefully refer to the authority in ***Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and others***[51] wherein this Court while dwelling upon the concept of permissible classification opined thus:-

> "It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

[51] AIR 1958 SC 538

116. Recently, in ***Satyawati Sharma (Dead) by LRs v. Union of India and Another***[52], the Court, after reproducing the principles stated in ***Shri Ram Krishna Dalmai*** (supra), has referred to the various principles that have been enunciated in that case by Chief Justice S.R. Das. We may profitably reproduce the same:-

> "(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;
>
> (b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;
>
> (c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;
>
> (d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;
>
> (e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which

[52] (2008) 5 SCC 287

can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

117. Having noted the aforesaid authorities, it is instructive to refer to the authority in ***Rehman Shagoo v. State of Jammu and Kashmir***[53], which dealt with a single offence legislation and treated it to be valid by observing thus:-

"The offence created by Section 3 of the Ordinance is not found as such in the Penal Code but is a new offence of an aggravated kind which may in the circumstances prevailing in the State mentioned above be treated as different from the ordinary offences and may well be dealt with by a drastic procedure without encountering the charge of violation of the equal protection clause. We are, therefore, of opinion that on the principles laid down by this Court in the large number of cases summarised in the *Dalmia case* the Ordinance cannot be said to be

[53] AIR 1960 SC 1

discriminatory and, therefore, violative of Article 14 of the Constitution."

118. In ***C.I. Emden v. State of Uttar Pradesh***[54], the Constitution Bench, while considering the presumption raised under Section 4(1) of the Prevention of Corruption Act, 1947 has ruled that:-

> "Legislature presumably realised that experience in courts showed how difficult it is to bring home to the accused persons the charge of bribery; evidence which is and can be generally adduced in such cases in support of the charge is apt to be treated as tainted, and so it is not very easy to establish the charge of bribery beyond a reasonable doubt. Legislature felt that the evil of corruption amongst public servants posed a serious problem and had to be effectively rooted out in the interest of clean and efficient administration. That is why the legislature decided to enact Section 4(1) with a view to require the raising of the statutory presumption as soon as the condition precedent prescribed by it in that behalf is satisfied. The object which the legislature thus wanted to achieve is the eradication of corruption from amongst public servants, and between the said object and the intelligible differentia on which the classification is based there is a rational and direct relation. We have, therefore, no hesitation in holding that the challenge to the vires of Section 4(1) on the ground that it violates Article 14 of the Constitution must fail."

[54] AIR 1960 SC 548

119. While dealing with this facet, it would not be inappropriate to advert to certain passages from the concurring opinion of V.R. Krishna Iyer, J. in ***the Special Courts Bill, 1978*** (supra) which reads as under:-

> "105. Right at the beginning, an exordial enunciation of my socio-legal perspective which has a constitutional bearing may be set out. I lend judicious assent to the broader policy of social justice behind this Bill. As I read it, this measure is the embryonic expression of a necessitous legislative project, which, if full-fledged, will work a relentless break-through towards catching, through the compulsive criminal process, the higher inhabitants of Indian public and political decks, who have, in practice, remained "untouchable" and "unapproachable" to the rule of law. "Operation Clean-Up" is a "consummation devoutly to be wished", although naive optimism cannot obfuscate the obnoxious experience that laws made *in terrorem* against those who belong to the top power bloc prove in action to be paper tigers. The pathology of our public law, with its class slant, is that an unmincing ombudsman or sentinel on the *qui vive*, with power to act against those in power, now or before, and offering legal access to the informed citizen to complain with immunity does not exist, despite all the bruited umbrage of political performers against peculations and perversions by higher echelons. Law *is* what law *does*, not what law *says* and the moral gap between word and deed menaces peopled faith in life and law. And then, the tragedy — democracy becomes a casualty.
>
> 111. No erudite pedantry can stand in the way of pragmatic grouping of high-placed office-holders

separately, for purposes of high-speed criminal action invested with early conclusiveness and inquired into by high-level courts. This differentia of the Bill rings irresistibly sound. And failure to press forward such clean-up undertaking may be a blow to the rule of law and the Rule of life and may deepen the crisis of democracy among the millions — the men who make our nation — who today are largely disenchanted. So it is time, if peaceful transformation is the constitutional scheme, to begin by pre-emptive steps of quick and conclusive exposure and conviction of criminals in towers of power — a special class of economic offenders with abettors from the Bureaucracy and Big Business, as recent Commission Reports trendily portray and portent. Such is the simple, sociological substance of the classificatory discrimen which satisfies the egalitarian conscience of Article 14."

[emphasis supplied]

120. From the abovestated ratiocination, it is quite evincible that there is a difference, a demonstrable one, between the offence under Section 13(1)(e) and the rest of the offences enumerated in Section 13. Section 13(1)(e) targets the persons who have disproportionate assets to their known sources of income. This conceptually is a period offence, for it is not incident specific as such. It does not require proof of corruption in specific acts, but has reference to assets accumulated and known sources of income in a particular period. The test applicable and

proof required is different. That apart, in the context of the present Orissa Act it is associated with high public office or with political office which are occupied by people who control the essential dynamics of power which can be a useful weapon to amass wealth adopting illegal means. In such a situation, the argument that they being put in a different class and tried in a separate special court solely because the alleged offence, if nothing else, is a self-defeating one. The submission that there is a sub-classification does not remotely touch the boundaries of Article 14; and certainly does not encroach thereon to invite its wrath of the equality clause.

121. The controversy can be looked from another angle. The special courts have been established on the basis of the law enacted by the State Legislature after obtaining the presidential assent. The legislature has spelt out a policy for the purpose of establishing the Special Courts. It relates to an offence of special kind. In this regard, reference to a Constitution Bench decision in ***Kedar Nath Bajoria v. The State of West Bengal***[55] may

[55] (1954) SCR 30

be usefully referred to. Speaking for the majority, Patanjali Sastri C.J. distinguished the decision in ***State of West Bengal v. Anwar Ali Sarkar***[56]. The Court referred to the Act which was brought into existence to provide for the more speedy trial and more effective punishment of certain offences. The Court while dealing with the equal protection of law guaranteed by Article 14 of the Constitution observed that there is a system which is brought into by introducing Special Courts dealing with special types of offences under a shortened and simplified procedure. The legislation is based on perfect intelligible principles of differentia having a clear and reasonable relation with the object sought to be achieved. The Court further observed that whether an enactment providing for a special procedure for trial of certain offences is or is not discriminatory and violative of Article 14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. It has been further ruled that practical assessment of operation of the law in the particular circumstances is necessary. We may

[56] (1952) SCR 284

state that the Court took note of the fact that in ***Kathi Raning Rawat v. The State of Saurashtra***[57] the decision in ***Anwar Ali Sarkar*** (supra) was distinguished and it was held that the provisions are not obnoxious to Article 14 as it has provided a special procedure regard being had to the gravity of the particular crime, the advantage to be derived by the State by recoupment of its loss, and other like considerations may have to be weighed before allotting a case to the special court which is required to impose a compensatory sentence of fine on every offence tried and convicted by it.

122. In ***J. Jaya Lalitha v. Union of India***[58] the validity of Section 3 of the 1988 Act insofar as it empowers the State Government "to appoint as many special judges as may be necessary for such or group of cases" as may be specified in the notification and the consequential exercise of power in appointing special judges to try exclusively on day to day basis the criminal cases filed against the writ petitioner therein, was called in question. Dealing with the said facet, the two-Judge Bench opined that the said

[57] ((1952) SCR 435
[58] (1999) 5 SCC 138

provision is not arbitrary inasmuch as the provisions sufficiently indicated the intention of the legislature and also the object of the Act that the cases of corruption are required to be tried speedily and completed as early as possible. Be it stated, the Court referred to the authorities in ***the Special Courts Bill, 1978*** (supra), ***Kathi Raning Rawat*** (supra) and ***Jyoti Pershad v. Administrator for the Union Territory of Delhi***[59] to arrive at the said conclusion.

123. Thus, the submission which has been put forth forcefully by the learned counsel for the appellants pales into insignificance, and the irresistible conclusion is that the legislative policy behind establishment of Special Courts for trial of accused involved in the offence under Section 13(1)(e) of the 1988 Act in respect of certain categories of accused is absolutely impeccable and it is saved from the vice of Article 14 of the Constitution.

124. The next submission advanced by the learned counsel for the appellants pertains to the issue that the corruption is an all India phenomenon and persons in

[59] AIR 1961 SC 1602

other States are prosecuted under the 1988 Act, whereas in the State of Odisha, they are tried in a more rigorous manner. It is submitted that the same brings in inequality which causes discomfort to Article 14 of the Constitution. We have already held that as the assent of the President under Article 254(2) of the Constitution has been obtained and the assent is valid in law, the State law will operate. Article 14 comes into play where equals are treated as unequals. The persons holding high public or political office in the State of Odisha are governed by the Orissa Act. The State legislature has passed the Orissa Act having regard to the obtaining situation in the State as the objects and reasons of the said Act do reflect. The legislature in its wisdom has enacted the law. The persons who are functioning in certain other States may be required to face trial under the 1988 Act, but on that score there can be no violation of Article 14 of the Constitution. The scale suggested, cannot be the scale to judge. A legislation passed by one State legislature cannot be equated with the legislation passed by another State legislature. Nor can its validity be tested on that foundation. The Constitution

bench judgment in ***The State of Madhya Pradesh v. G.C. Mandawar***[60] long back had succinctly clarified the position in this regard laying down thus:-

> "The power of the Court to declare a law void under Article 13 has to be exercised with reference to the specific legislation which is impugned. It is conceivable that when the same legislature enacts two different laws but in substance they form one legislation, it might be open to the Court to disregard the form and treat them as one law and strike it down, if in their conjunction they result in discrimination. But such a course is not open where, as here, the two laws sought to be read in conjunction are by different Governments and by different legislatures. Article 14 does not authorise the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory. Nor does it contemplate a law of the Centre or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of the two enactments. The sources of authority for the two statutes being different, Article 14 can have no application".

125. Similar view was reiterated in ***Prabhakaran Nair v. State of Tamil Nadu & Others***[61]. Therefore, the question of bringing in the concept of equality qua persons

[60] AIR 1954 SC 493
[61] AIR 1987 SC 2117

who function in the other States is an unacceptable proponement and it is impossible to accept the same.

126. Now, we shall advert to the challenge relating to the grievance which is fundamentally twin in nature. First, the appellants who were facing the trial before the Special Judge under the 1988 Act, their cases being transferred, are being compelled to be tried under the Orissa Act as a consequence of which they are constrained to face rigourism of confiscation as an interim punishment which was not in existence and second, the provisions pertaining to confiscation cause double jeopardy. It is urged that the provisions violate Article 14, 20(2) and 21 of the Constitution. Having regard to the submissions made, we think it necessary to produce the relevant provisions of the Act. The said provisions are Sections 13, 14, 15 and 16 of the Orissa Act. They occur in Chapter III of the Orissa Act that deals with confiscation of property. We have outlined the said provisions earlier. To appreciate the controversy in proper perspective, we reproduce the said provisions:-

> "**Section 13. Application for confiscation.** – (1) Where the State Government, on the basis of *prima facie* evidence, have reasons to believe that

any person, who held high public or political office has committed the offence, the State Government may, whether or not the Special Court has taken cognizance of the offence, authorise the Public Prosecutor for making an application to the authorised officer for confiscation under this Act of the money and other property, which the State Government believe the said person to have procured by means of the offence.

2. An application under sub-section (1) –

(a) shall be accompanied by one or more affidavits, stating the grounds on which the belief, that the said person has committed the offence, is founded and the amount of money and estimated value of other property believed to have been procured by means of the offence; and

(b) shall also contain any information available as to the location for the time being of any such money and other property, and shall, if necessary, give other particulars considered relevant to the context.

Section 14. Notice for confiscation. – (1) Upon receipt of an application made under Section 13 of this Act, the authorised officer shall serve a notice upon the person in respect of whom the application is made (hereafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the source of his income, earnings or assets, out of which or by means of which he has acquired such money or property,

the evidence on which he relies and other relevant information and particulars, and to show cause as to why all or any of such money or property or both, should not be declared to have been acquired by means of the offence and be confiscated to the State Government.

(2) Where a notice under sub-section (1) to any person specifies any money or property or both as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

(3) Notwithstanding anything contained in sub-section (1), the evidence, information and particulars brought on record before the authorised officer, by the person affected, shall not be used against him in the trial before the Special Court.

Section 15. Confiscation of property in certain cases –

(1) The authorised officer may, after considering the explanation, if any, to the show cause notice issued under section 14 and the materials available before it, and after giving to the person affected (and in case where the person affected holds any money or property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any other money or properties in question have been acquired illegally.

(2) Where the authorised officer specifies that some of the money or property or both referred to in the show cause notice are acquired by means of the offence, but is not able to identify specifically such money or property, then it shall be lawful for the authorised officer to specify the money or property or both which, to the best of his

judgment, have been acquired by means of the offence and record a finding, accordingly, under sub-section (1).

(3) Where the authorised officer records a finding under this section to the effect that any money or property or both have been acquired by means of the offence, he shall declare that such money or property or both shall, subject to the provisions of this Act, stand confiscated to the State Government free from all encumbrances.

Provided that if the market price of the property confiscated is deposited with the authorised officer, the property shall not be confiscated.

(4) Where any share in a Company stands confiscated to the State Government under this Act, then, the Company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the Articles of Association of the Company, forthwith register the State Government as the transferee of such share.

(5) Every proceeding for confiscation of money or property or both under this Chapter shall be disposed of within a period of six months from the date of service of the notice under sub-section (1) of section 14.

(6) The order of confiscation passed under this section shall, subject to the order passed in appeal, if any, under section 17, be final and shall not be called in question in any Court of law.

Section 16. Transfer to be null and void. – Where, after the issue of a notice under section 14 any money or property or both referred to in the said notice are transferred by any mode whatsoever, such transfer shall, for the purposes of the proceedings under this Act, be void and if such money or property or both are subsequently

confiscated to the State Government under section 15, then, the transfer of such money or property or both shall be deemed to be null and void."

127. The said provisions, as has been stated earlier, have been attacked from two angles. The first one, these provisions violate Articles 14, 20(2), 20(3) and 21 of the Constitution. The second limb of submission is with regard to the accused persons who had been facing trial under the 1988 Act prior to coming into force of the Orissa Act as a result of the transfer of case, are compelled to face harsher penalty than what was provided at the time of commission of the alleged offence. Structuring the first submission, it is contended that reasonableness of pre-trial confiscation of a person's property before he has been found guilty makes the provision unjust, unfair and arbitrary. That apart, it being a punishment, the accused cannot be allowed to face double jeopardy. Additionally, it is contended that Section 13 confers the power on the State Government to authorise the Public Prosecutor for making the application to the authorised officer for confiscation of money and other property under the Orissa Act, if the State Government believes that the said person to have been procured by

means of the offence. The criticism advanced as regards the said provision is that unbridled and unrestricted power is conferred on the State Government to form an opinion. We have expressed our opinion with regard to formation of opinion as regards the *prima facie* case in the context of Section 5 of the Act. The said principles are applicable to Section 13. What is required to be scrutinized by the State Government that the offence exists under Section 13(1)(e) of the Orissa Act and thereafter it has to authorise the Public Prosecutor to make an application. The submission of the learned counsel for the appellants that the Public Prosecutor has no role. We are not adverting to the role of the Public Prosecutor that has been conferred on him under the Code of Criminal Procedure nor is it necessary to dwell upon, how this Court has time and again dwelt upon the role of the Public Prosecutor. It is because the application that is required to be filed in sub-section (1) of Section 13 itself postulates the guidelines. The application has to be accompanied by an affidavit stating the grounds on which the belief as regards the commission of the offence and the amount of money and many other aspects.

An application has to be filed by the Public Prosecutor. The Public Prosecutor before he files an application under sub-section (1) of Section 13, is required to be first satisfied with regard to the aspects enumerated in sub-section (2). Sub-section (2) obliges the Public Prosecutor that requirements are satisfied for filing the application. In view of the said position, it cannot be said that there is lack of guidance. It is not that the authority has the discretion to get an application filed through the Public Prosecutor or not. It is not that a mere discretion is left to the Public Prosecutor. The authority has only been authorised to scrutinize the offence and authorise the Public Prosecutor and thereafter the Public Prosecutor has been conferred the responsibility which is manifestly detailed, and definitely guided, to file the application. Thus scrutinized, the said provision does not offend Article 14 of the Constitution.

128. Having said about the guidance, we would like to make it clear that the word “may” used in Section 13 has to be understood in its context. It does not really relate to authorization of filing. To clarify that the authority does not have the discretionary power to authorise for filing against

some and refrain from authorizing in respect of the other, it has to be construed that the said word relates to the purpose, that is, the application to be filed for the purpose of confiscation. This is in consonance with the legislative policy, the scheme of the Act and also the objects and reasons of the Act. The legislative policy, as declared, clearly indicates that there should not be any kind of discretion with the Government in these kinds of matters. The fulcrum of the policy, as is discernible, is that delinquent officers having disproportionate assets coming within the purview of Section 13(1)(e) have to face the confiscation proceedings subject to judicial scrutiny as the rest of the provisions do unveil. Learned counsel for the appellants would contend that the legislature has delegated such power on the authority which can act in an indiscriminate manner. The said submission in the context of this Act, is sans substance as we have already opined that there is no discretion to pick and choose but to see the minimum requirement, that is, the offence and the status. Nothing beyond that.

129. Sections 14 and 15 have been criticized on the ground that they introduce concept of pre-trial confiscation. As indicated earlier, the submission is pyramided on the principle that the provisions are violative of Articles 14, 20(2) and 21 of the Constitution of India. Apart from this, the other assail is that they have been made retrospectively applicable because the cases of accused persons pending before the Special Courts under the 1988 Act are transferred and they are compelled to face the confiscation proceedings and further consequence thereof, which is not permissible in the constitutional scheme.

130. First we shall deal with the first attack. Section 14 requires the person in respect of whom the application is made to indicate his source of income, earnings or assets out of which he has acquired such money or property. He is entitled to adduce evidence on which he wants to place reliance and is also entitled to furnish other relevant information. Section 15 confers jurisdiction on the Authorised Officer to consider the explanation and the material available before it and proceed to record a finding

whether all or any other money or properties in question have been acquired illegally. He is statutorily required to offord reasonable opportunity of being heard to the affected person. He is obliged under the law to declare that such money or property or both shall stand confiscated free from all encumbrances. Sub-section 5 of Section 15 stipulates that the proceeding for confiscation shall be disposed of within a period of six months from the date of notice issued under sub-section (1) of Section 14. The order of confiscation as envisaged under Section 15(6) is subject to appeal. Mr. R.K. Dash, learned senior counsel appearing for some of the appellants would contend that it is a draconian law taking the society back to the dark days. The provisions are criticized that once a confiscation takes place free from all encumbrances, the right, title and interest to the property or the money gets extinguished. It is urged that same cannot be done without a proper trial. Learned counsel for the State would lay emphasis on the ill-gotten wealth. He has referred to an extract of the 160th Law Commission Report. We have been commended to certain judgments of this Court that spoke of corruption at

high places. The issue that has really emanated for consideration is whether there can be an interim confiscation when the trial is pending. It is argued with vehemence by the learned counsel for the appellants that it is "forfeiture" of property and it cannot be imposed without a trial. In this context, reference has been made to Section 53 of the Indian Penal Code which provides forfeiture of property as a punishment. It is also canvassed that the nomenclature would not make any difference when the impact tantamounts to a punishment. Emphasis is laid on the words "vest free from all encumbrances" to highlight that in its normal connotation, it would only mean that it shall stand transferred to the State.

131. Regard being had to the aforesaid submissions, it is absolutely essential to understand the concept of confiscation. In ***Maqbool Hussain v. State of Bombay***[62] the Constitution Bench was dealing with the issue whether the confiscation by the customs authorities is a punishment. Dealing with the said issue, the larger Bench ruled:-

[62] AIR 1953 SC 325

> "17. We are of the opinion that the Sea Customs authorities are not a judicial tribunal and the adjudging of confiscation, increased rate of duty or penalty under the provisions of the Sea Customs Act do not constitute a judgment or order of a court or judicial tribunal necessary for the purpose of supporting a plea of double jeopardy.
>
> 18. It therefore follows that when the Customs authorities confiscated the gold in question neither the proceedings taken before the Sea Customs authorities constituted a prosecution of the appellant nor did the order of confiscation constitute a punishment inflicted by a court or judicial tribunal on the appellant. The appellant could not be said by reason of these proceedings before the Sea Customs authorities to have been "prosecuted and punished" for the same offence with which he was charged before the Chief Presidency Magistrate, Bombay, in the complaint which was filed against him under Section 23 of the Foreign Exchange Regulation Act."

132. Learned counsel for the State has drawn our attention to another Constitution Bench decision in the ***State of West Bengal v. S.K. Ghosh***[63]. The factual matrix in the said case was that the respondent therein was appointed as the Chief Refugee Administrator of Burma Refugee Organisation and he was believed to have embezzled large sums of money belonging to Government which were at his disposal. The prosecution was initiated

[63] AIR 1963 SC 255 = 1963 (2) SCR 111

under Sections 120-B and 409 of the Indian Penal Code before coming into force the Second Special Tribunal constituted under the Criminal Law Amendment Ordinance, No. 29 of 1943. During the pendency of the case, the Criminal Law Amendment Ordinance 30 of 1944 was passed. The Court took note of the fact that the object of the Ordinance was to prevent disposal or concealment of money or other property procured by means of certain scheduled offences punishable under the IPC and one of the offences to which the Ordinance applied was 409 IPC apart from other offences. The respondent was convicted by the Special Tribunal on August 31, 1949 by which Criminal Law (1943) Amendment amending Ordinance No. 12 of 1945 had come into force. Relying on the said Ordinance, the Special Tribunal apart from imposing a substantial sentence of rigorous imprisonment for five years, directed a fine of Rs. 45 lakhs to be paid on the charge of conspiracy. The respondent preferred an appeal before the High Court assailing his conviction and the High Court upheld the conviction and sentence of fine. However, the High Court opined that the Special Tribunal could have

imposed the fine under the ordinary law but not under Section 10 of the 1943 Ordinance as amended in 1945 prescribing minimum limit of fine. The respondent had approached this Court in appeal which was dismissed on the ground that it was clear that Rs. 30 lakhs have been misappropriated by the respondent as a result of the conspiracy. On January 9, 1957, an application was made to the District Judge under Section 13 of the 1944 Ordinance for confiscation of the property. The property stood attached under Section 3 of the 1944 Ordinance. The learned District Judge held on a construction of Section 12 and Section 13(3) of the 1944 Ordinance that the amount of Rs. 30 lakhs together with the cost of attachment had first to be forfeited to the Union of India from the properties attached and thereafter the fine of Rs. 45 lakhs was to be recovered from the residue of the said attached property. However, as it was not possible to forfeit the properties to the value of Rs. 30 lakhs without valuation, the District Judge directed the receiver to report as to the cost of attachment including the cost of management of the property attached. He also directed the

parties to submit their estimates as to the value of the property attached. The said order was assailed by the respondent in appeal and one of the Judges of the High Court opined that the fine amount was recoverable and no proceeding under Section 13 could be taken for forfeiture of Rs. 30 lakhs, the embezzled amount inasmuch as no action could be taken under the Ordinance. The other learned Judge opined that the District Judge had jurisdiction to forfeit properties worth Rs. 30 lakhs under Section 13 but he was of the opinion that Section 53 of the IPC referred to forfeiture as punishment is distinct from fine and as the punishment of forfeiture as contemplated by the 1944 Ordinance had yet to take place, Article 20(1) of the Constitution would apply. The reason for coming to such a conclusion was that 1944 Ordinance had come into force on August 23, 1944, while the real and effective period during which the offence was committed ended with July, 1944 and thereafter forfeiture was not prescribed as a punishment before the 1944 Ordinance. This Court referred to Section 13 of the 1944 Ordinance which deals with the disposal of attached property upon termination of

criminal proceeding. The court referred to Section 5 that provides for investigation of objection to attachment and the authority of the District Judge under sub-section 3 of Section 5 to pass an order making the attachment absolute or varying it by releasing a portion of the property from attachment or withdrawing the order. In the said case, the District Judge had made the order absolute and the properties had continued under attachment. The Court referred to Section 3 to opine that there are two kinds of properties which are to be attached. The first property which has been procured by the commission of the offence, whether it be in the form of money or in the form of movable or immovable property, and second properties are other than the above. The respondent in the said case had been charged with embezzlement of money and that was why an application for attachment under Section 3 was made that he had used the money procured by commission of offence in purchasing certain properties. The Court referred to Section 13 and ruled that the District Judge has jurisdiction to deal with the property attached under Section 38 for the purpose of forfeiture provided Section 12

has been complied with. Thereafter, the larger Bench adverted to Section 12(1) and in that context held that:-

> "…. The sub-section lays down that before the judgment is pronounced by the court trying the offender and it is represented to the court that an order of attachment of property had been passed under Section 3 in connection with such offence, the court shall, if it is convicting the accused, record a finding as to the amount of money or value of other property procured by the accused by means of the offence. Clearly all that Section 12(1) requires is that the court trying the offender should be asked to record a finding as to the amount of money or value of other property procured by the accused before it by means of the offence for which he is being tried. There is no procedure provided for making the representation to the court to record a finding as to the amount of money or value of other property procured by the offence. In our view, all that Section 12(1) requires is that at the request of the prosecution the court should give a finding as to the amount of money or value of other property procured by the accused. Representation may be by application or even oral and so long as the court gives a finding as to the amount of money or value of other property procured by the offence that would in our opinion be sufficient compliance with Section 12(1). It is not necessary that the court when it gives a finding as to the amount of money or value of other property procured by means of the offence should say in so many words in passing the order that it is making that finding on a representation under Section 12(1). It is true that under Section 10 of the 1943 Ordinance as amended in 1945 the court when imposing a fine has to give a finding as to the amount of money or value of other property found to have been procured by

> the offender by means of the offence in order that it may comply with the provisions of Section 10 as to the minimum fine to be imposed. We see no reason however why a finding given for the purpose of Section 10 determining the amount of money or the value of other property found to have been procured by the offender by means of the offence should not also be taken as a finding under Section 12(1) of the 1944 Ordinance. The result of the two findings in our opinion is exactly the same, the only difference being that under Section 10 of the 1943 Ordinance, as amended in 1945, the court may do this suo moto while under Section 12(1) of the 1944 Ordinance it has to be done on the representation made by the prosecution."

133. Thereafter the Court noted the reasoning of the other learned Judge and opined that it was not necessary in the said appeal to decide whether the case would come within the ambit of Articles 20(1). This opinion was expressed principally on the ground that the forfeiture provided under Section 13(3) is not a penalty at all within the meaning of Article 20(1). In that context, the Court analyzed the provisions of the 1944 Ordinance and came to hold that:-

> "....The forfeiture by the District Judge under Section 13(3) cannot in our opinion be equated to forfeiture of property which is provided in Section 53 of the Indian Penal Code. <u>The forfeiture provided in Section 53 is undoubtedly a penalty</u>

or punishment within the meaning of Article 20(1); but that order of forfeiture has to be passed by the court trying the offence, where there is a provision for forfeiture in the section concerned in the Indian Penal Code. There is nothing however in the 1944 Ordinance to show that it provides for any kind of punishment for any offence. Further it is clear that the Court of District Judge which is a Principal Court of Civil Jurisdiction can have no jurisdiction to try an offence under the Indian Penal Code. The order of forfeiture therefore by the District Judge under Section 13(3) cannot be equated to the infliction of a penalty within the meaning of Article 20(1). Article 20(1) deals with conviction of persons for offences and for subjection of them to penalties. It provides firstly that "no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence". Secondly, it provides that no person shall be "subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence". Clearly, therefore Article 20 is dealing with punishment for offences and provides two safeguards, namely, (*i*) that no one shall be punished for an act which was not an offence under the law in force when it was committed, and (*ii*) that no one shall be subjected to a greater penalty for an offence than what was provided under the law in force when the offence was committed. The provision for forfeiture under Section 13(3) has nothing to do with the infliction of any penalty on any person for an offence. If the forfeiture provided in Section 13(3) were really a penalty on a convicted person for commission of an offence we should have found it provided in the 1943 Ordinance and that penalty of forfeiture would have been inflicted by the criminal court trying the offender."

[emphasis is added]

134. In this context reference to authority in ***Divisional Forest Officer and another v. G.V. Sudhakar Rao and others***[64] would be apt. In the said case, the confiscation under the Andhra Pradesh Forest Act arose for consideration. The question that was posed by the Court was whether where a Forest Officer makes a report of seizure of any timber of forest produce and produces the seized property along with a report under Section 44(2) that he has reason to believe that a forest offence has been committed in respect of such timber or the forest produce seized, could there be simultaneous proceedings for confiscation to the Government of such timber or forest produce and the implements, etc., if the Authorized Officer under Section 44(2A) of the Act is satisfied that a forest offence has been committed, along with a criminal case instituted on a complaint by the Forest Officer before a Magistrate of the commission of a forest offence under Section 20 of the Act. Answering the said issue, the Court

[64] (1985) 4 SCC 573

scrutinized the amended provisions that were brought into force by Act of 1976 and came to hold that:-

> "The conferral of power of confiscation of seized timber or forest produce and the implements, etc., on the Authorized Officer under sub-section (2A) of Section 44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under sub-section (2A) of Section 44 of the Act, where a Forest Officer makes report of seizure of any timber or forest produce and produces the seized timber before the Authorized Officer along with a report under Section 44(2), the Authorized Officer can direct confiscation to Government of such timber or forest produce and the implements, etc., if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence under Section 20 or 29 of the Act."

135. In ***Director of Enforcement v. M.C.T.M. Corporation Pvt. Ltd and Others***[65] a two-Judge Bench was addressing the issue with regard to mens rea or criminal intent for establish contravention of Section 10 punishable under section 23 of Foreign Exchange Regulation Act, 1947. The other issue that arose for consideration was whether Section 10(1) of FERA, 1947

[65] (1996) 2 SCC 471

was an independent provision making its contravention by itself punishable under Section 23(1)(a) of FERA, 1947 or whether its contravention could arise only if there is a breach of some directions issued by the Reserve Bank of India under Section 10(2) of FERA, 1947. In the said case, the High Court had opined that Section 23 was a penal provision and the proceedings under Section 23(1)(a) were quasi criminal in nature and therefore existence of *mens rea* was a necessary ingredient for the commission of an offence under Section 10 of the Act. Dealing with the said facet the Court expressed:-

> "The proceedings under Section 23(1)(a) of FERA, 1947 are 'adjudicatory' in nature and character are not "criminal proceedings". The officers of the Enforcement Directorate and other administrative authorities are expressly empowered by the Act to 'adjudicate' only. Indeed they have to act 'judicially' and follow the rules of natural justice to the extent applicable but, they are not 'Judges' of the 'Criminal Courts' trying an 'accused' for commission of an offence, as understood in the general context. They perform quasi-judicial functions and do not act as 'courts' by only as 'administrators' and 'adjudicators'. In the proceedings before them, they do not try 'an accused' for commission of "any crime" (not merely an offence) but determine the liability of the contravener for the breach of his 'obligations' imposed under the Act. They impose 'penalty' for the breach of the "civil obligations" laid down

> under the Act and not impose any 'sentence' for the commission of an offence. The expression 'penalty' is a word of wide significance. Sometimes, it means recovery of an amount as a penal measure even in civil proceedings. An exaction which is not compensatory in character is also termed as a 'penalty'. When penalty is imposed by an adjudicating officer, it is done so in "adjudicatory proceedings" and not by way of fine as a result of 'prosecution' of an 'accused' for commission of an 'offence' in a criminal court. Therefore, merely because 'penalty' clause exists in Section 23(1)(a), the nature of the proceedings under that section is not changed from 'adjudicatory' to 'criminal' prosecution. An order made by an adjudicating authority under the Act is not that of conviction but of determination of the breach of the civil obligation by the offender".

136. In this regard, reference to a recent two-Judge Bench decision in ***Biswanath Bhattacharya v. Union of India & others***[66] would be apt. In the said case the Court was dealing with forfeiture under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976. A contention was advanced by the appellant therein that forfeiture is a penalty and, therefore, it could not be taken recourse to without a conviction. The stand of the Union of India was that the forfeiture contemplated under the said Act was not a penalty within the meaning of that expression occurring in Article 20, but only a deprivation of

[66] (2014) 4 SCC 392

property to a legislatively identified class of persons – in the event of their inability to explain to the satisfaction of the State that they had legitimate sources of funds for the acquisition of such property. The two-Judge Bench, while explaining the stand of the Union of India, took note of the fact that the Act is made applicable to five classes of persons specified under Section 2 of the said Act. It also observed that the conviction or the preventive detention contemplated under the Act is not the basis or cause of confiscation, but the factual basis for a rebuttable presumption to enable the State to initiate proceedings to examine whether the properties held by such persons are illegally acquired properties. In the ultimate eventuate, the Court ruled that the forfeiture provided in the said enactment was not violative of Article 20 of the Constitution. It also proceeded to state:-

> "If a subject acquires property by means which are not legally approved, the sovereign would be perfectly justified to deprive such persons of the enjoyment of such ill-gotten wealth. There is a public interest in ensuring that persons who cannot establish that they have legitimate sources to acquire the assets held by them do not enjoy such wealth. Such a deprivation, in our opinion, would certainly be consistent with the

requirement of Articles 300-A and 14 of the Constitution which prevent the State from arbitrarily depriving a subject of his property."

137. In the case at hand, the entire proceeding is meant to arrive at the conclusion whether on the basis of the application preferred by the Public Prosecutor and the material brought on record, the whole or any other money or some of the property in question have been acquired illegally and further any money or property or both have been acquired by the means of the offence. After arriving at the said conclusion, the order of confiscation is passed. The order of confiscation is subject to appeal under Section 17 of the Orissa Act. That apart, it is provided under Section 19 where an order of confiscation made under Section 15 is modified or annulled by the High Court in appeal or the where the person affected is acquitted by the special court, the money or property or both shall be returned to the person affected. Thus, it is basically a confiscation which is interim in nature. Therefore, it is not a punishment as envisaged in law and hence, it is difficult to accept the submission that it is a pre-trial punishment and, accordingly, we repel the said submission.

138. The next facet of the said submission pertains to retrospective applicability. The submission has been put forth on the ground that by transfer of cases to the Special Courts under the Orissa Act in respect of the accused persons who are arrayed as accused under the 1988 Act, have been compelled to face harsher punishment which is constitutionally not permissible. It is contended that there was no interim confiscation under the 1988 Act but under the Orissa Act they have to face confiscation. We have already opined that confiscation is not a punishment and, therefore, Article 20(1) is not attracted. Thus, the real grievance pertains to going through the process of confiscation and suffering the same after the ultimate adjudication of the said proceeding which is subject to appeal. In this context we are required to see the earlier provision. The 1988 Act provides for applicability of Criminal Law Amendment Ordinance, 1944. Section 2 refers to "interpretation" and in sub-section (1) it is stipulated that "Schedule offence" in the Ordinance means an offence specified in the Schedule to the Ordinance; Section 3 deals with the application for attachment of

property; Section 4 provides for ad interim attachment; Section 5 deals with investigation of objections to attachment; Section 6 provides for attachment of property of *mala fide* transferees; Section 7 stipulates how execution of orders of attachment shall take place; Section 8 provides for security in lieu of attachment and Section 9 deals with administration of attached property. Section 10 deals with duration of attachment and Section 11 provides for appeals. Section 13 deals with disposal of attached property upon termination of criminal proceedings. Section 13(3) reads as follows:-

> "(3) Where the final judgment or order of the Criminal Courts is one of conviction, the District Judge shall order that from the property of the convicted person attached under this Ordinance or out of the security given in lieu of such attachment, there shall be forfeited to Government such amount or value as is found in the final judgment or order of the Criminal Courts in pursuance of Section 12 to have been procured by the convicted person by means of the offence, together with the costs of attachment as determined by the District Judge and where the final judgment or order of the Criminal Courts in pursuance of Section 12 to have been procured by the convicted person by means of the offence, together with the costs of attachment as determined by the District Judge and where the final judgment or order of the Criminal Courts has imposed or upheld a sentence of fine on the

said person (whether alone or in conjunction with any other punishment), the District Judge may order, without prejudice to any other mode of recovery, that the said fine shall be recovered from the residue of the said attached property or of the security given in lieu of attachment."

139. Learned counsel for the appellants would submit that under the 1988 Act the accused were liable to face attachment during trial and forfeiture after conviction but by virtue of the Orissa Act they are compelled to face confiscation as a consequence of which they are deprived of the possession and the property goes to the State Government. Learned counsel for the State would submit that the forfeiture is provided after the conviction as the property has to be forfeited and embezzled amount requires to be realized but it does not debar the legislature to provide confiscation of property as an interim measure by providing an adequate adjudicatory process. It is also submitted that the offence under Section 13(1)(e) has its gravity and, therefore, the stringent interim measure is the requisite. Alternatively, it is argued that when forfeiture was prescribed, and attachment of property was provided

as an interim measure, different arrangement, may be a stringent one, can always be provided by the legislature.

140. We have already held that confiscation is not a punishment and hence, Article 20(1) is not violated. Learned counsel for the State would lay stress on the decision in ***State of Andhra Pradesh and Others v. CH. Gandhi***[67]. In that case, the issue that arose for consideration when the disciplinary proceeding was initiated, one type of punishment was imposable and when the punishment was imposed due to amendment of rule, a different punishment, which was a greater one, was imposed. The High Court opined that the punishment imposed under the amended rule amounted to imposition of two major penalties which was not there in the old rule. Dealing with the issue the Court referred to the rule that dealt with major penalties and the rule making power. Reference was made to the decision in ***Pyare Lal Sharma v. Managing Director and others.***[68] wherein it has been stated that no one can be penalised on the ground of a conduct which was not penal on the date it was committed.

[67] (2013) 5 SCC 111
[68] (1989) 3 SCC 448

Thereafter, the two-Judge Bench referred to the authority ***K. Satwant Singh v. State of Punjab***[69] wherein it has been held thus:-

> "... In the present case a sentence of imprisonment was, in fact, imposed and the total of fines imposed, whether described as 'ordinary' or 'compulsory', was not less than the amount of money procured by the appellant by means of his offence. Under Section 420 of the Penal Code an unlimited amount of fine could be imposed. Article 20(1) of the Constitution is in two parts. The first part prohibits a conviction of any person for any offence except for violation of law in force at the time of the commission of the act charged as an offence. The latter part of the article prohibited the imposing of a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. The offence with which the appellant had been charged was cheating punishable under Section 420 of the Penal Code which was certainly a law in force at the time of the commission of the offence. The sentence of imprisonment which was imposed upon the appellant was certainly not greater than that permitted by Section 420. The sentence of fine also was not greater than that which might have been inflicted under the law which had been in force at the time of the commission of the offence, as a fine unlimited in extent could be imposed under the section."

[69] AIR 1960 SC 266

141. Thereafter, the Court referred to ***Maya Rani Punj v. CIT***[70], ***K. Satwant Singh*** (supra) and ***Tiwari Kanhaiyalal v. CIT***[71] and eventually held:-

> "... The order of compulsory retirement is a lesser punishment than dismissal or removal as the pension of a compulsorily retired employee, if eligible to get pension under the Pension Rules, is not affected. Rule 9(*vii*) was only dealing with reduction or reversion but issuance of any other direction was not a part of it. It has come by way of amendment. The same being a lesser punishment than the maximum, in our considered opinion, is imposable and the disciplinary authority has not committed any error by imposing the said punishment, regard being had to the nature of charges. It can be looked from another angle. The rule-making authority has split Rule 9(*vii*) into two parts—one is harsher than the other, but, both are less severe than the other punishments, namely, compulsory retirement, removal from service or dismissal. The reason behind it, as we perceive, is not to let off one with simple reduction but to give a direction about the condition of pay on restoration and also not to impose a harsher punishment which may not be proportionate. In our view, the same really does not affect any vested or accrued right. It also does not violate any constitutional protection."

142. We are absolutely conscious that the said judgment was delivered in a different context. What is prohibited under Article 20(1) is imposition of greater

[70] (1969) 1 SCC 445
[71] (1975) 4 SCC 101

punishment that might have been imposed and prohibition of a conviction of any person for violation of law at the time of commission of the act. We repeat at the cost of repetition that confiscation being not a punishment does not come in either of the categories. Thus viewed, the property of an accused facing trial under the 1988 Act could be attached and there can be administration by third party of the said property and eventual forfeiture after conviction. The term "attachment" has been understood by this Court in ***Kerala State Financial Enterprises Ltd. v. Official Liquidator, High Court of Kerala***[72] in the following manner:-

> "The word "attachment" would only mean "taking into the custody of the law the person or property of one already before the court, or of one whom it is sought to bring before it". It is used for two purposes: (*i*) to compel the appearance of a defendant; and (*ii*) to seize and hold his property for the payment of the debt. It may also mean prohibition of transfer, conversion, disposition or movement of property by an order issued by the court."

143. The legislature has thought it proper to change the nature and character of the interim measure. The property obtained by ill-gotten gains, if *prima facie* found to be such by the authorised officer, is to be confiscated. An

[72] (2006) 10 SCC 709

accused has no vested right as regards the interim measure. He is not protected by any constitutional right to advance the plea that he cannot be made liable to face confiscation proceedings of the property which has been accumulated by illegal means. That being the litmus test, the filament of reasoning has to rest in favour of confiscation and not against it. Therefore, we are of the considered view that the provision does not violate any constitutional assurance.

144. The next aspect we shall address to whether the procedure for confiscation as envisaged under Section 13 to Section 15 suffers from any lack of guidance. We have already opined that the State Government is only required to scrutinize the "offence" and authorises the Public Prosecutor for the purpose of filing an application for confiscation. The Public Prosecutor, as mandated under Section 13(2) is required to file an application indicating the reasons on the basis of which the State Government believes that the delinquent officer has procured the property by means of the offence. Thus, reasons have to be stated in the application and it has to be clearly averred

that the property has been acquired by means of the offence as defined under the Orissa Act. The authorised officer is a judicial officer and is required to afford reasonable opportunity of hearing to the accused or any other person operating the property on his behalf. Discretion is also conferred on the authorised officer to record a finding whether all or any other money or property in question have been acquired illegally. The said authority can drop the proceedings or direct confiscation of all or some properties. Affording of a reasonable opportunity of hearing is not confined only to file affidavits. We are inclined to think that when the delinquent is entitled to furnish an explanation and also put forth his stand, he certainly can bring on record such material to sustain his explanation. Confiscation proceeding as provided under sub-section (3) of Section 15 is subject to appeal. In view of the scheme of the Orissa Act, there can be no shadow of doubt that there is ample guidance in the procedure for confiscation. It is not a proceeding where on the basis of launching of prosecution, the properties are confiscated. Therefore, the proceedings relating to confiscation cannot

be regarded as violative of article 14 because conferment of unchecked power or lack of guidance.

145. Learned counsel for the appellants have laid emphasis on the phraseology used in Section 15(3) of the Orissa Act. The said provision stipulates that where the authorised officer records a finding under the Section that any money or property or both have been acquired, by means of the offence, he shall make a declaration subject to the provisions of the Act, then they stand confiscated to the State Government "free from all encumbrances". It is submitted that once the property stands confiscated to the State Government free from all encumbrances, the right, title and interest of the person concerned is extinguished. The said submission, in our consideration, is on a very broad canvass. As the scheme of the Orissa Act would show, the confiscation is interim in nature. It does not assume the character of finality. Same is the position in Bihar Act. The accused is entitled to get return of the property or money in case he succeeds in appeal before the High Court against the order passed by the authorised officer or in the ultimate eventuality when the order of

acquittal is recorded. The words "free from all encumbrances", in the context, are to be given restricted meaning. It is to repel third party claims and negate attempts to undo and invalidate the temporary or interim confiscation till the final decision. It cannot be equated with the provisions in other statutes where by operation of law the property vests with the State Government free from all encumbrances where the rights of the person concerned get obliterated.

146. While dealing with the word "encumbrance", this Court in ***State of Himachal Pradesh v. Tarsem Singh and others***[73] has opined that:-

> "... means a burden or charge upon property or claim or lien upon an estate or on the land. "Encumber" means burden of legal liability on property, and, therefore, when there is encumbrance on a land, it constitutes a burden on the title which diminishes the value of the land...

147. In ***Sulochana Chandrakant Galande v. Pune Municipal Transport and others***[74] dealing with the word "encumbrance", the Court has expressed thus:-

[73] AIR 2001 SC 3431
[74] (2010) 8 SCC 467

> "Encumbrance" actually means the burden caused by an act or omission of man and not that created by nature. It means a burden or charge upon property or a claim or lien on the land. It means a legal liability on property. Thus, it constitutes a burden on the title which diminishes the value of the land. It may be a mortgage or a deed of trust or a lien of an easement. An encumbrance, thus, must be a charge on the property. It must run with the property. (Vide *Collector of Bombay* v. *Nusserwanji Rattanji Mistri*[75], *H.P. SEB* v. *Shiv K. Sharma*[76] and *AI Champdany Industries Ltd.* v. *Official Liquidator*[77])."

In view of the aforesaid enunciation of law, the words "free from all encumbrances" in the provision under assail has to be conferred constricted meaning, for it is interim confiscation and definitely it is not equivalent to vesting. Hence, the contention on the said score founders.

148. The next plank of submission relates to creation of a dent in the basic concept of fair trial, which is an integral part of Article 21 of the Constitution. In ***Dayal Singh v. State of Uttaranchal***[78] the Court, while dealing with the concept of fair trial, expressed the view that where our criminal justice system provides safeguards of fair trial and

[75] AIR 1955 SC 298
[76] (2005) 2 SCC 164
[77] (2009) 4 SCC 486
[78] (2012) 8 SCC 263

innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution; and then alone can law and order be maintained.

149. In ***Rattiram v. State of M.P.***[79] it has been held:-

> "39. … Fundamentally, a fair and impartial trial has a sacrosanct purpose. It has a demonstrable object that the accused should not be prejudiced. A fair trial is required to be conducted in such a manner .which would totally ostracise injustice, prejudice, dishonesty and favouritism.
>
> x x x x x
>
> 62. … Decidedly, there has to be a fair trial and no miscarriage of justice and under no circumstances, prejudice should be caused to the accused but, a pregnant one, every procedural lapse or every interdict that has been acceded to and not objected at the appropriate stage would not get the trial dented or make it unfair. Treating it to be unfair would amount to an undesirable state of pink of perfection in procedure. An absolute apple-pie order in carrying out the adjective law, would only be sound and fury signifying nothing."

150. In the instant case, it is urged that when the concerned person/accused discloses his stand before the

[79] (2012) 4 SCC 516

authorised officer serious prejudice is likely to be caused to him during trial. The principal grievance is that he is compelled to disclose his defence before trial though he is entitled in law not to do so. This submission is founded on the protection given under Article 20(3) of the Constitution.

151. There can be no cavil over the proposition that an accused has the right to maintain silence and not to disclose his defence before trial. It is worth noting here that the Authorised Officer is a judicial officer and he is required to deal with material for the limited purpose of confiscation. That apart, there is a statutory protection that the material produced before the Authorised Officer shall not be used during trial. If we understand the said provision appositely, it is graphically clear that the materials produced before the authorised officer are not to be looked into during trial, and the trial is to proceed in accordance with the Code of Criminal Procedure and subject to the provisions of the 1988 act as long as there is no inconsistency. The trial Judge is a senior judicial officer and has a trained judicial mind. If something is not to be looked into, it shall by no means be looked into. The

constitutional protection under Article 20(3) is in no way affected. That apart, Article 20(3) of the Constitution speaks about the guarantee against "testimonial compulsion". In the case of ***M.P. Sharma v. Satish Chandra***[80] the court has observed thus:-

> "Broadly stated the guarantee in Article 20(3) is against "testimonial compulsion". It is suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witness-stand. We can see no reason to confine the content of the constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decisions. The phrase used in Article 20(3) is "to be a witness". A person can "be a witness" not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness (See Section 119 of the Evidence Act) or the like. "To be a witness" is nothing more than "to furnish evidence" and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes.
>
> * * *
>
> The phrase used in Article 20(3) is "to be a witness" and not to "appear as a witness". It follows that the protection afforded to an accused in so far as it is related, to the phrase "to be a witness" is not merely in respect of testimonial compulsion in the court room but may well extend to compelled testimony previously obtained from him. It is available

[80] AIR 1954 SC 300

> therefore to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution. Whether it is available to other persons in other situations does not call for decision in this case".

152. Tested on the aforesaid enunciation of law, it can be stated with certitude that the right conferred on an accused under Article 20(3) is not violated. We reiterate that whatever is produced before the authorised officer is not to be looked into by the trial court and neither the prosecution nor the defence can refer to the same. That is the statutory command. Therefore, the submission astutely canvassed by the learned counsel for the appellants is sans substance.

153. The next aspect which needs to be addressed is the validity of Section 17 of the Orissa Act which deals with appeal. The said provision reads as follows:-

> "**Section 17. Appeal**:- (1) Any person. aggrieved by any order of the authorised officer under this Chapter may appeal to the High Court within thirty days from the date on which the order appealed against was passed.
>
> (2) Upon any appeal preferred under this section the High Court may, after giving such parties, as it thinks proper, an opportunity of being heard, pass such order as it thinks fit.

> (3) An appeal preferred under sub-section (1) shall be disposed of within a period of three months from the date it is preferred, and stay order, if any, passed in an appeal shall not remain in force beyond the prescribed period of disposal of appeal."
>
> [underlining is ours]

154. Learned counsel for the appellants have seriously criticised Section 17(3) on the ground that the said provision interferes with the judicial proceeding by laying down that the said order shall not remain in force beyond the prescribed period of disposal of appeal. It appears that such a contention was not raised before the High Court, for the High Court has not dealt with the same. However, Mr. S.K. Padhi, learned senior counsel for the respondent-State, would submit that in the Orissa Special Courts Act, 1990 (Orissa Act 22 of 1992) contained a similar provision and the Division Bench in ***Kishore Chandra Patel*** (supra) construed the said provision by opining that the provision in Section 18(3) limiting the operation of stay order, if any, passed in appeal for a period of three months does not prohibit passing of a fresh stay order beyond that period, if a case for the same were to be

made out to the satisfaction of the Court. At this stage, we may note with profit that the High Court of Patna has dealt with Section 17(3) of the Bihar Act which provides that an appeal shall be disposed of preferably within a period of six months from the date it is preferred, and stay order, if any, passed in an appeal shall not remain in force beyond the prescribed period of disposal of appeal. It has been held therein that it would not be proper to construe that the prescribed period of disposal of appeal is only six months but it is only desirable that the appeal should be disposed of within six months and the stipulation that the order of stay is not to remain in force beyond the period of disposal of appeal would not mean that the order of stay will lose its force during the pendency of the appeal. The High Court has laid emphasis on the word "preferably" to interpret that the intention of the legislature is that the appeal should be disposed of within six months but it does not mean that the appeal has to be disposed of within six months. The High Court has further observed that it would not be proper to construe that the prescribed period of disposal of appeal is only six months and, therefore, the stay order passed by

the High Court will lose its force automatically on expiry of any particular period. It has placed the said interpretation to save the constitutionality of the provision. We have referred to the Bihar Act at this juncture as the provisions are similar to the Orissa Act except the word "preferably" used in Section 17(3) of the Bihar Act. There can be no doubt that no statutory provision can postulate that an order of stay shall not remain in force beyond the period meant for disposal of the appeal. The High Court of Patna has construed the provision by laying down stress on the word "preferably". We are disposed to think that the interpretation placed on the similar provision of the Orissa Act in ***Kishore Chandra Patel*** (supra) is correct and, therefore, we are disposed to hold that the order of stay if passed in an appeal would not debar or prohibit the High Court to pass a fresh stay order beyond that period, if a case is made out to the satisfaction of the court. We would like to add that the legislative intent is that an appeal has to be tried absolutely expeditiously regard being had to the scheme of the Orissa Act as well as the Bihar Act and the person grieved by the order passed by the authorities

should not enjoy an order of stay beyond that period. Proper construction that has to be placed would be that the High Court while exercising the power of appeal can extend the period of stay subject to its satisfaction unless there is justifiable reason for vacating the say. This provision, needless to say, has to be read in this manner to save it from the vice of unconstitutionality. However, we may clearly state that the High Court being a superior court having the power of judicial review shall see to it that the real purpose of the legislation is not defeated. It will be advisable and that the Chief Justice should demarcate a Bench for one day to hear these appeals. And accordingly, we so request. Needless to say, the learned Judge will endeavour to dispose of the appeal within the time frame.

155. Learned counsel for the appellants have seriously criticized the proviso appended to Section 18(1) of the Orissa Act. To appreciate the assail, Section 18(1) is reproduced in entirety:-

> "**Section 18(1)**. Where any money or property or both have been confiscated to the State Government under this Act, the concerned authorised officer shall order the person affected, as well as any other person, who may be in

possession of the money or property or both to surrender or deliver possession thereof to the concerned authorised officer or to any person duly authorised by him in this behalf, within thirty days of the service of the order:

Provided that the authorised officer, on an application made in that behalf and being satisfied that the person affected is residing in the property in question, may instead of dispossessing him immediately from the same, permit such person to occupy it for a limited period to be specified on payment of market rent to the State Government and thereafter, such person shall deliver the vacant possession of the property."

Criticizing the said provision, it is urged by them that by virtue of the provision pertaining to confiscation the delinquent officer/accused is compelled to face a situation where he will be disposed from his dwelling house, the so called protection given under the proviso is an illusory one. It is argued that when the money is confiscated, it is well-nigh impossible on his part to deposit the market rent to occupy even for a limited period. The argument, if we permit ourselves to say so, suffers from a fundamental fallacy. Under the scheme of the Orissa Act, the confiscation does not take place immediately on lodging of an FIR. A detailed procedure has been stipulated which is

contain adequate safeguards and thereafter the order is given effect to. The proviso appended to Section 18(1) of the Orissa Act is an exception to give protection to the concerned officer to remain in possession of the house where he resides for a certain period. The person concerned is given protection subject to certain terms. It is to be borne in mind that the confiscation is associated with the property accumulated from the ill-gotten gain. It is urged that though proviso gives protection, it actually mocks at Article 21 of the Constitutions. We do not think so. The property is confiscated by way of an interim measure by taking recourse to law which we have held to be constitutionally valid. The submission that the man will be in the streets is an argument in frustration but not founded on reason. Be that as it may, when by determination of the authorised officer for the purpose of confiscation, the plea that he will be ousted from the dwelling house which would play foul of Article 21 of the Constitution, really does not commend acceptance. A person cannot be allowed to indulge in corruption and conceive of protection to his dwelling house after a finding is recorded in the proceeding

for confiscation that it is constructed or purchased by way of corrupt means. The person concerned can satisfy the authorised officer or in appeal that the dwelling house where he is residing is acquired from his known sources of income. In such a situation, we are afraid that we cannot accept the submission advanced by the learned counsel for the appellants and, accordingly, the same stands rejected.

156. The next provision which is challenged is Section 19 of the Orissa Act that deals with refund of confiscated money or property in the event of the order of confiscation being modified or annulled by the High Court in appeal. The said provision is necessary to be reproduced:-

> "**19. Refund of confiscated money or property.-** Where an order of confiscation made under section 15 is modified or annulled by the High Court in appeal or where the person affected is acquitted by the Special Court, the money or property or both shall be returned to the person affected and in case it is not possible for any reason to return the property, such person shall be paid the price thereof including the money so confiscated with the interest at the rate of five per cent per annum thereon calculated from the date of confiscation."
>
> (underlining is ours)

157. The challenge of the appellants pertains to the part we have underlined. It is submitted that the said provision is confiscatory in nature and is violative of Article 300A of the Constitution. It is urged that the said provision enables the State Government to appropriate the property of a person who eventually succeeds in appeal or ultimately is acquitted. Learned counsel for the State would submit that when there is no possibility of being returned for a reason which is beyond the control of the State Government, then the said provision will come into play. The High Court of Patna while dealing with the similar provision contained in Section 19 of the Bihar Act in order to save its constitutionality has held that in case the confiscated property is not returned by showing good reasons that it is not possible to do so, the interest payable must be at the usual bank rate prevailing during the relevant period for a loan to purchase or acquire similar property. It has further observed that said direction is necessary in order to save the vires of Section 19 of the Bihar Act and otherwise the relevant provision would fall foul of provisions of the Constitution. The view expressed

by the High Court of Patna is not correct. The provision has to be construed in a seemly manner. The language used is "in case it is not possible for any reason to return the property". Mr. Ranjit Kumar, learned senior counsel appearing for the State of Bihar would submit that in case this Court read down the said provision, and, if it is not inclined to do so, it may apply doctrine of severability. Mr. A. Saran, learned senior counsel for the appellants, *per contra*, would contend that it is the obligation of the State Government to return the money as it is and there cannot be a stipulation to return the value with five per cent interest, for it is absolutely obnoxious.

158. The language employed in Section 19 of the Orissa Act has to be appreciated regard being had to the scheme of the said Act. The legislative intent is to curb corruption at high places and requires the accused persons to face trial in the Special Court constituted under the Orissa Act in a speedier manner and also to see that the beneficiaries of ill-gotten property or money do not enjoy the property or money during trial. That apart, the intention is also clear that the Government should not

appropriate the money or the property to itself in any manner. Confiscation, we have already opined, is done as an interim measure. The words "free from all encumbrances" have been given a restricted meaning by us as it follows from the language used in the Orissa Act. Section 19 clearly lays down return of the confiscated money or property or both. It conceives of three situations, namely, modification of the order of confiscation, or annulment of confiscation, or the eventual acquittal. In these conditions, the money or property or both are required to be returned. The words, which we have underlined in Section 19, seem to us, cannot be conferred a wide meaning. They cannot be allowed to convey that the State will not return the property. The key words are "in case it is not possible" and "for any reason". It will be an assumption to think that "for any reason" would mean any kind of subjective reason. In certain statutes or enactments the words "for any reason" can be attributed a wide meaning to subserve the legislative purpose. The term "possible", in our considered opinion, may not be given the stature or status of "impossible", which is absolute in its

connotation, but the word "possible", as we perceive, in itself contains certain concept of reason. The reason ascribed by the State has to withstand scrutiny in the strict sense. As indicated before, it may not be conceived in absolute terms like the word "impossible", for law does not countenance an impossible thing to be done. Therefore, the construction that is required to be placed on this provision is that the State must clearly demonstrate that it has a real and acceptable reason and hence, it is not possible not to return the money or property or both. Such an interpretation shall save the provision from the vice of unconstitutionality. We think so as there may be situations where it may not be possible on the part of the State to return the property. No illustration need be given because it would depend upon facts of each case. The argument by the appellants is that in such a situation the payment of value determined and the rate of interest provided in the provision is absolutely irrational and the State can appropriate the property. The aforesaid submission, though on a first blush, may look quite attractive, but on a deeper scrutiny, is bound to melt into insignificance. It is to be

remembered that the proceeding is initiated for confiscation in respect of the property acquired by the offence as described under the Act. It is done on the basis of certain material brought on record. Ultimately the proceedings may not be successful but if it is not possible to return the property the State cannot be asked to compensate more than what the legislature has thought to be appropriate. It cannot be equated with acquisition. The entire proceeding is initiated regard being had to the rampant corruption at high places in the present day society. Therefore, to think that submission that there has to be adequate compensation would be against the larger public interest. Thus understood, the challenge to the provision on the backdrop of Article 300A has to be treated as unacceptable and we do so. We may hasten to add that any order passed under this provision is always subject to judicial review by the superior courts.

159. We have at the beginning had mentioned that both the Orissa Act and the Bihar Act are almost similar and, wherever required we have adverted to the same while

dealing with the Orissa Act. Barring the same, we do not find there is any distinction between the two enactments and, therefore, analysis made by us as regards the Orissa Act will apply to the Bihar Act.

160. It is significant to note here that before the High Court of Patna the validity of a Rule was assailed but the application was not pressed and the High Court has made certain observations. We intend to put the controversy to rest. Rule 12 of the 2010 Rules provides for Special Courts to follow summary procedure. Rule 12(a) and (f) read as under:-

> "(a) On institution of a case or transfer of pending proceeding to the Special Courts, trial shall be held in summary manner.
>
> (f) The delinquent public servant shall be put on trial and shall be afforded opportunity to lead evidence in support of his defence. If the special court, on the evidence of delinquent public servant is, prima facie, satisfied that he has been able to discharge his onus, the prosecution shall be called upon to lead its evidence to prove the charges against the delinquent public servant."

161. When the Bihar Act provides to follow the warrant procedure prescribed by the Code for trial of cases before a Magistrate, the 2010 Rules could not have prescribed for summary procedure. The rules have to be in accord with the Act. The rules can supplement the provisions of the Act but decidedly they cannot supplant the same. Therefore, we declare that part of Rule 12 which lays down that the learned Special Judge shall follow summary procedure, is *ultra vires* the Bihar Act.

162. In view of the foregoing analysis, we proceed to summarise our conclusions:-

(i) The Orissa Act is not hit by Article 199 of the Constitution.

(ii) The establishment of Special Courts under the Orissa Act as well as the Bihar Act is not violative of Article 247 of the Constitution.

(iii) The provisions pertaining to declaration and effect of declaration as contained in Section 5 and 6 of the Orissa Act and the Bihar Act are constitutionally valid as they do not suffer from any unreasonableness or vagueness.

(iv) The Chapter III of the both the Acts providing for confiscation of property or money or both neither violates Article 14 nor Article 20(1) nor Article 21 of the Constitution.

(v) The procedure provided for confiscation and the proceedings before the Authorised Officer do not cause any discomfort either to Article 14 or to Article 20(3) of the Constitution.

(vi) The provision relating to appeal in both the Acts is treated as constitutional on the basis of reasoning that the power subsists with the High Court to extend the order of stay on being satisfied.

(vii) The proviso to Section 18(1) of the Orissa Act does not fall foul of Article 21 of the Constitution.

(viii) The provisions contained in Section 19 pertaining to refund of confiscated money or property does not suffer from any kind of unconstitutionality.

(ix) Sub-rules (a) and (f) Rule 12 of the 2010 Rules being violative of the language employed in

the Bihar Act are *ultra vires* or anything contained therein pertaining to the summary procedure is also declared as *ultra vires* the Bihar Act.

163. Consequently, the appeals arising out of the judgment and order passed by the High Court of Orissa are dismissed and the appeals which have called in question the legal validity of the judgments and order passed by the High Court of Patna are allowed to the extent indicated hereinbefore. Regard being had to the facts and circumstances of the case, we refrain from imposing any costs in the civil appeals.

.....J.
[ANIL R. DAVE]

.....J.
[DIPAK MISRA]

NEW DELHI
DECEMBER 10, 2015.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 56 OF 2013

Ramendra @ Raman Dhuldhue ... Appellant

Versus

State of Madhya Pradesh ... Respondent

J U D G M E N T

Dipak Misra, J.

The appellant was appointed on the post of Assistant Grade III in the Regional Transport Office, Indore. A search was conducted on the residential premises of the appellant on the allegation that the property was acquired from the ill-gotten money by criminal misconduct as per Section 13(1)(e) of the Prevention of Corruption Act, 1988.

2. After M.P. Vishesh Nyayalaya Adhiniyam, 2011 (for short, "the Act") came into force, the appellant was brought

within the ambit of that Act by declaration under Section 5 of the Act.

3. As the factual matrix would reveal, after the declaration, the prosecution filed an application under Section 13(1) for confiscation of the property under Section 15(3). The appellant protested and filed application for his discharge, but the said application met with non-success. The appellant approached the High Court under Section 482 of the Code of Criminal Procedure, 1973 for quashment of the order passed by the Special Judge. It was contended before the High Court that the Act could not be made retrospectively applicable inasmuch as it is a substantive law having penal consequence.

4. The High Court, as is manifest from the impugned order, after analyzing the provisions and also keeping in view the concept of confiscation, has not accepted the plea of retrospective applicability of the Act.

5. In our considered opinion, the view expressed by the High Court is infallible in view of the judgment pronounced by us today in Civil Appeal Nos. 6448-6452 of 2011 titled ***Yogendra Kumar Jaiswal Etc. v. State of Bihar & Ors***.

6. Resultantly, the appeal, being devoid of merit, stands dismissed.

.....J.
[ANIL R. DAVE]

.....J.
[DIPAK MISRA]

NEW DELHI
DECEMBER 10, 2015

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2431 of 2014

Balbhadra Parashar ... Appellant

Versus

State of Madhya Pradesh ... Respondent

J U D G M E N T

Dipak Misra, J.

In this appeal, by special leave, the appellant has called in question the legal propriety of the order dated 25.07.2014 passed by the Division Bench of the High Court Madhya Pradesh at Jabalpur, Gwalior Bench in M.Cr.C. No. 4277 of 2014 whereby the High Court has declined to interfere in the petition preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the CrPC") wherein the grant of sanction was called in question.

2. The facts, in a nutshell, are that the appellant was a Manager of the Primary Agriculture Credit Co-operative Society, Village Pipraua, District Gwalior. On the basis of allegations made, a case under Section 13(1)(e) of the Prevention of Corruption Act, 1988 (for short, 'the 1988 Act') was registered against him. After investigation it was found that he had secured assets and property of Rs. 1,05,44,604/- and, accordingly, sanction was sought to launch prosecution against him, and it was granted. As the factual matrix would reveal, the trial court proceeded and charges were framed against him. The order of framing the charge was assailed in a Writ Petition which stood dismissed.

3. In the petition under Section 482 CrPC it was contended before the High Court that the sanction to prosecute the accused had not been granted in accordance with law as there had been no application of mind. The High Court, after hearing the learned counsel for the parties, has held as under:-

> "We have perused the judgments of the Hon'ble Supreme Court and facts and evidence on record

of the case. In our opinion, the sanctioning authority has considered all the facts of the case. There is *prima facie* evidence against the petitioner in regard to acquiring property and assets in excess to his known source of income. In granting sanction to prosecute under the Prevention of Corruption Act, 1988 it is not necessary for the authority to pass a detailed reasoned judgment and order. The authority has to apply its mind. Even otherwise, there is sufficient evidence *prime facie* to prosecute the petitioner."

4. In this appeal on a perusal of the grounds, we find that there are numerous reference to M.P. Vishesh Nyayalaya Adiniya, 2011. The constitutionality of the said Act was not questioned before the High Court as it could not have been questioned under Section 482 Cr.P.C. However, we may note that almost similar Acts, namely, the Orissa Special Courts Act, 2006 and the Bihar Special Courts Act, 2009, have been treated to be valid by this Court in Civil Appeal Nos. 6448-6452 of 2011 titled ***Yogendra Kumar Jaiswal Etc. v. State of Bihar & Ors***.

5. It is contended that the grant of sanction is not an empty formality and there has to be application of mind in support of the said sanction. We have been commended to ***Mansukhlal Vithaldas Chauhan v. State of Gujarat***[81]

[81] (1997) 7 SCC 622

wherein a two-Judge Bench while dealing with grant of sanction has observed:-

> "18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also *Jaswant Singh* v. *State of Punjab*, AIR 1958 SC 124, and *State of Bihar* v. *P.P. Sharma,* 1992 Supp. (1) SCC 222.)
>
> 19. Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or

constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

6. In ***State of Karnataka v. Ameerjan***[82], while dealing with the grant of sanction, it has been held thus:-

> "9. We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.
>
> 10. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayukta. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police, Karnataka Lokayukta had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire

[82] (2007) 11 SCC 273

records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as (*sic* to) the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced."

7. Be it noted that in the said case, the decision in ***Prakash Singh Badal v. State of Punjab***[83] was distinguished and in that context, it has been opined:-

"*Parkash Singh Badal* (supra), therefore, is not an authority for the proposition that even when an order of sanction is held to be wholly invalid inter alia on the premise that the order is a nullity having been suffering from the vice of total non-application of mind. We, therefore, are of the opinion that the said decision cannot be said to have any application in the instant case."

8. In the case at hand, we are only concerned with validity of grant of sanction and nothing else. The only ground of attack is that there has been no application of mind. The High Court, as is demonstrable, has opined that while granting sanction a detailed reasoned judgment is not required to be passed. It has also come to hold that the authority had applied its mind. Nothing has been brought

[83] (2007) 1 SCC 1

on record to substantiate that the sanction was granted in an absolutely mechanical manner.

9. In view of the aforesaid premised reasons, we are of the considered view that the sanction granted in this case does not suffer from any infirmity so as to declare it as illegal. Therefore, we are not inclined to interfere with the order passed by the High Court.

10. Resultantly, the appeal, being devoid of merit, stands dismissed.

.....J.
[ANIL R. DAVE]

.....J.
[DIPAK MISRA]

NEW DELHI
DECEMBER 10, 2015