SUPREME COURT OF INDIA

Girish Kumar Suneja

Vs.

C.B.I.

Crl.A.No.1137 of 2017

(Madan B.Lokur and Kurain Joseph and A.K.Sikri,JJ.,)

13.07.2017

JUDGMENT

Madan B. Lokur,J.,

SLP(Crl.)No.9503 of 2016

1. On 25th August, 2014, this Court delivered judgment in *Manohar Lal Sharma v. Principal Secretary*[1] Subsequently, further orders were passed in the case on ***24th September, 2014***.[2] These decisions are commonly referred to as having been rendered in the Coal Block Allocation cases.

2. Much earlier, on 25th July, 2014 the following order was passed by this Court in the Coal Block Allocation cases (the relevant extract is reproduced):

> "4. In pursuance of our order dated 18.7.2014, the Registrar General, Delhi High Court has intimated to the Secretary General of this Court that the Hon'ble the Chief Justice of Delhi High Court has been pleased to nominate Mr. Bharat Prashar, an officer of Delhi Higher Judicial Service for being posted as Special Judge to deal and exclusively try the offences pertaining to coal block allocation matters under the Indian Penal Code, 1860, Prevention of Corruption Act,1988, Prevention of Money-Laundering Act, 2002 and other allied offences.
>
> 5. We, accordingly, direct the competent authorities to issue requisite notifications appointing Mr. Bharat Prashar, an officer of Delhi Higher Judicial Service as Special Judge for the above purpose. The notifications shall be issued within two weeks from the date of communication of copy of this order.
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> 6. We also order that Mr. R.S. Cheema, senior advocate shall be appointed as Special Public Prosecutor by the Government of India to conduct the prosecution of the offences pertaining to coal block allocation matters on behalf of CBI and

Enforcement Directorate. On such appointment, Mr. R.S. Cheema may choose two other advocates, who, in his opinion, will be of assistance in the matter. While doing so, Mr. R.S. Cheema may keep in view the magnitude and complexities of the case.

7. The Special Public Prosecutor shall have access to the entire evidence/material including case diaries collected in the course of investigation.

8. We direct the CBI to render all necessary assistance to the Special Public Prosecutor.

9. All cases pending before different courts in Delhi pertaining to coal block allocation matters shall stand transferred to the court of Special Judge as afore-noted.

10. We also make it clear that any prayer for stay or impeding the progress in the investigation/trial can be made only before this Court and no other Court shall entertain the same."

3. Leave granted.

4. The issue in the present appeals concerns the interpretation and effect of paragraph 10 of the above order which provides that any request for stay or impeding the progress in the investigation or the trial of the coal block allocation cases can be made only to this Court and no other Court shall entertain any such request.

5. As a result of orders passed by this Court from time to time, the Central Bureau of Investigation (for short 'the CBI') filed a charge sheet against the appellant Girish Kumar Suneja and others. On 29th April, 2016 the learned Special Judge appointed to hear the criminal cases arising out of the illegal allocation of coal blocks, directed framing of charges in the case titled CBI v. Jindal Steel and Power Ltd. & Others in R.C. No. 219/2013/E/0006 against Suneja and others for offences punishable under Sections 120-B/409/420 of the Indian Penal Code and Section 13(1)(c) and Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short "the PC Act").

6. Being aggrieved by the order passed by the learned Special Judge, Criminal Misc. Case No. 3847 of 2016 was filed in the Delhi High Court by Girish Kumar Suneja. In the High Court, a preliminary issue arose regarding the maintainability of the petition in view of paragraph 10 of the order passed by this Court on 25th July, 2014.

7. A learned Single Judge of the High Court heard elaborate submissions of learned counsel and by a well reasoned order, after relying upon several decisions of this Court and of the Delhi High Court, concluded that in view of the order passed by this Court on 25th July, 2014 the petition deserves to be dismissed as not maintainable. Against that decision of the High Court, the present appeal has been preferred by Suneja.

8. Appeals raising a similar issue have been preferred by other accused persons arising out of the same order and also by others in other proceedings before the learned Special Judge. The learned Special Public Prosecutor Mr. R.S. Cheema placed before us a tabular statement of all appeals raising the same substantive issue as has been raised by Suneja. With consent, we took up all these appeals and heard learned counsel for the appellants as also the learned Special Public Prosecutor and learned counsel for the CBI.

9. Learned counsel for the appellants raised several contentions, all of them directed towards the conclusion that paragraph 10 of the order passed by this Court had prevented them from exercising certain legal and constitutional rights. The general submission was that the order passed by this Court deserves to be recalled or revisited since the appellants have been denied access to justice in that:

> "(i) The right to file a revision petition under Section 397 of the Code of Criminal Procedure, 1973 or the Cr.P.C. as well approaching the High Court under Section 482 of the Cr.P.C. has been taken away;
>
> (ii) The order passed by this Court has taken away the right of the Appellants to file a petition under Articles 226 and 227 of the Constitution and thereby judicial review, which is a part of the basic structure of the Constitution, has been violated which even Parliament cannot violate;
>
> (iii) Article 14 of the Constitution has been violated by treating the coal block allocation cases as a separate class having a separate procedure, thereby denying to them equal protection of the law;
>
> (iv) The right to life and liberty guaranteed by Article 21 of the Constitution has been restricted;
>
> (v)Article 32 and Article 142 of the Constitution oblige this Court to protect the fundamental rights of citizens and not curtail them;
>
> (vi) The High Court has an inherent right to grant a stay of proceedings, but this Court has precluded the High Court from granting a stay of proceedings and has thereby deprived the High Court of exercising an inherent right;
>
> (vii) The prohibition in granting a stay under Section 19(3)(c) of the PC Act is not absolute and in an appropriate case, a stay of proceedings could be granted in favour of an accused person particularly when there is a failure of justice. Any restrictive reading would entail a fetter on the discretion of the High Court which itself might lead to a failure of justice."

10. Before dealing with the submissions, we make it clear that if the order passed by this Court needs correction, we have no hesitation in doing so. Therefore, this issue need not detain us at all.

Right to file a revision petition

11. The submission made on behalf of the appellants was that they have a right to file a revision petition against orders passed by the learned Special Judge but the order passed by this Court effectively prevents the High Court from entertaining any such petition.

12. The Constitution Bench of this Court considered the scope of the revision jurisdiction of the High Court under Section 439 of the Criminal Procedure Code, 1898 (the old Code) in *Pranab Kumar Mitra v. State of West Bengal*[3] The consideration was in the context of an application for substitution filed by the son of a convict who had challenged his conviction and sentence, but had expired during the pendency of the revision petition. The Constitution Bench held that the revision jurisdiction of the High Court is a discretionary jurisdiction to be exercised in aid of justice. What is significant is that a litigant does not have a right to have a revisable order set aside. Whether the High Court chooses to exercise its revision jurisdiction in a particular case or not depends upon the facts of that case - hence, the reference to the revision jurisdiction as a discretionary jurisdiction. The revision jurisdiction of the High Court only conserves the power of the High Court to ensure that justice is done in accordance with the recognized rules of criminal jurisprudence and that criminal courts subordinate to the High Court do not exceed their jurisdiction or abuse the powers vested in them by the Criminal Procedure Code (the old Code). In view of these conclusions of the Constitution Bench, there is no doubt that the appellants do not have any right to the revision of a revisable order. It was held as follows:

> "In our opinion, in the absence of statutory provisions, in terms applying to an application in revision, as there are those in Section 431 in respect of criminal appeals, the High Court has the power to pass such orders as to it may seem fit and proper, in exercise of its revisional jurisdiction vested in it by Section 439 of the Code. Indeed, it is a discretionary power which has to be exercised in aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon the facts and circumstances of that case. The revisional powers of the High Court vested in it by Section 439 of the Code, read with Section 435, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence, and that subordinate Criminal Courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code."

13. The decision of the Constitution Bench has been subsequently followed in a large number of cases, including somewhat more recently in *Kamlesh Kumar v. State of Jharkhand*[4]

14. However, learned counsel for the appellants go a step further and submitted that even though the appellants have no right to have a revisable order set aside since the power of revision is an "***extraordinary discretionary power***[5] **"** they are entitled to approach the High

Court through a revision petition and then it is for the High Court to decide whether to entertain that revision petition or not. According to the appellants, the order passed by this Court prevents the High Court from even considering whether its extraordinary discretionary power should be exercised or not. In support of the submission that such an order cannot be passed by this Court, various passages from *A.R. Antulay v. R.S. Nayak*[6] were read out to us. In other words, it is not only the right to file a revision petition that is agitated before us but the right to be heard in a revision petition which might then be disposed of one way or the other by the High Court. The objection really is to the finding of non-maintainability of a revision petition.

15. To appreciate the submission, it is necessary to interpret Section 397 of the Cr.P.C. which reads as follows:

> "**397. Calling for records to exercise of powers of revision - (1)** The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.
>
> Explanation.−All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.
>
> (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
>
> (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

16. While the text of sub-section (1) of Section 397 of the Cr.P.C. appears to confer very wide powers on the court in the exercise of its revision jurisdiction, this power is equally severely curtailed by sub-section (2) thereof. There is a complete prohibition in a court exercising its revision jurisdiction in respect of interlocutory orders. Therefore, what is the nature of orders in respect of which a court can exercise its revision jurisdiction?

17. There are three categories of orders that a court can pass - final, intermediate and interlocutory. There is no doubt that in respect of a final order, a court can exercise its revision jurisdiction - that is in respect of a final order of acquittal or conviction. There is equally no doubt that in respect of an interlocutory order, the court cannot exercise its

revision jurisdiction. As far as an intermediate order is concerned, the court can exercise its revision jurisdiction since it is not an interlocutory order.

18. The concept of an intermediate order first found mention in *Amar Nath v. State of Haryana*[7] in which case the interpretation and impact of Section 397(2) of the Cr.P.C. came up for consideration. This decision is important for two reasons. Firstly it gives the historical reason for the enactment of Section 397(2) of the Cr.P.C. and secondly considering that historical background, it gives a justification for a restrictive meaning to Section 482 of the Cr.P.C.

19. As far as the historical background is concerned, it was pointed out that the Cr.P.C. of 1898 and the 1955 amendment gave wide powers to the High Court to interfere with orders passed in criminal cases by the subordinate courts. These wide powers were restricted by the High Court and this Court, as matter of prudence and not as a matter of law, to an order that "suffered from any error of law or any legal infirmity causing injustice or prejudice to the accused or was manifestly foolish or perverse." This led to the courts being flooded with cases challenging all kinds of orders and thereby delaying prosecution of a case to the detriment of an accused person.

20. The Statement of Objects and Reasons of the Cr.P.C. state that the Government kept in mind the following for the purposes of enacting the Cr.P.C.:

> "(z) an accused person should get a fair trial in accordance with the accepted principles of natural justice;
>
> (zz) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and
>
> (zzz) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community."
>
> As regards Section 397(2) of the Cr.P.C. paragraph 5(d) of the Statement of Objects and Reasons mentioned that:
>
> "(5) Some of the more important changes proposed to be made with a view to speeding up the disposal of criminal cases are -
>
> (d) the powers of revision against interlocutory orders are being taken away, as it has been found to be one of the main contributing factors in the delay or disposal of criminal cases; "

In reply to the debate on the subject, it was stated by Shri Ram Niwas Mirdha the concerned Minister that:

> "It was stated before the Select Committee that a large number of appeals against interlocutory orders are filed with the result that the appeals got delayed considerably. Some of the more notorious cases concern big business persons. So, this new provision was also welcomed by most of the witnesses as well as the Select Committee. . . . This was a well-thought out measure so we do not want to delete it."

As noted in Amar Nath the purpose of introducing Section 397(2) of the Cr.P.C. was to curb delays in the decision of criminal cases and thereby to benefit the accused by giving him or her a fair and expeditious trial. Unfortunately, this legislative intendment is sought to be turned topsy turvy by the appellants.

21. The concept of an intermediate order was further elucidated in *Madhu Limaye v. State of Maharashtra*[8] by contradistinguishing a final order and an interlocutory order. This decision lays down the principle that an intermediate order is one which is interlocutory in nature but when reversed, it has the effect of terminating the proceedings and thereby resulting in a final order. Two such intermediate orders immediately come to mind - an order taking cognizance of an offence and summoning an accused and an order for framing charges. Prima facie these orders are interlocutory in nature, but when an order taking cognizance and summoning an accused is reversed, it has the effect of terminating the proceedings against that person resulting in a final order in his or her favour. Similarly, an order for framing of charges if reversed has the effect of discharging the accused person and resulting in a final order in his or her favour. Therefore, an intermediate order is one which if passed in a certain way, the proceedings would terminate but if passed in another way, the proceedings would continue.

22. The view expressed in Amar Nath and Madhu Limaye was followed in *K.K. Patel v. State of Gujarat*[9] wherein a revision petition was filed challenging the taking of cognizance and issuance of a process. It was said:

> "It is now well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage (vide Amar Nath v. State of Haryana, Madhu Limaye v. State of Maharashtra, *V.C. Shukla v. State through CBI*[10] and *Rajendra Kumar Sitaram Pande v. Uttam*[11]). The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable."

(Emphasis supplied by us).

23. We may note that in different cases, different expressions are used for the same category of orders - sometimes it is called an intermediate order, sometimes a quasi-final order and

sometimes it is called an order that is a matter of moment. Our preference is for the expression 'intermediate order' since that brings out the nature of the order more explicitly.

24. The second reason why Amar Nath is important is that it invokes the principle, in the context of criminal law, that what cannot be done directly cannot be done indirectly. Therefore, when Section 397(2) of the Cr.P.C. prohibits interference in respect of interlocutory orders, Section 482 of the Cr.P.C. cannot be availed of to achieve the same objective. In other words, since Section 397(2) of the Cr.P.C. prohibits interference with interlocutory orders, it would not be permissible to resort to Section 482 of the Cr.P.C. to set aside an interlocutory order. This is what this Court held:

> "While we fully agree with the view taken by the learned Judge that where a revision to the High Court against the order of the Subordinate Judge is expressly barred under sub-section (2) of Section 397 of the 1973 Code the inherent powers contained in Section 482 would not be available to defeat the bar contained in Section 397(2). Section 482 of the 1973 Code contains the inherent powers of the Court and does not confer any new powers but preserves the powers which the High Court already possessed. A harmonious construction of Sections 397 and 482 would lead to the irresistible conclusion that where a particular order is expressly barred under Section 397(2) and cannot be the subject of revision by the High Court, then to such a case the provisions of Section 482 would not apply. It is well settled that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject-matter. Where there is an express provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers."
>
> (Emphasis supplied by us).

25. This view was reaffirmed in Madhu Limaye when the following principles were approved in relation to Section 482 of the Cr.P.C. in the context of Section 397(2) thereof. The principles are:

> "(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
>
> (2)That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
>
> (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code. Therefore, it is quite clear that the prohibition in Section 397 of the Cr.P.C. will govern Section 482 thereof. We endorse this view."

26. In this context, reliance on Antulay is completely misplaced. In that case, this Court was concerned with Section 9 of the Criminal Law Amendment Act of 1952 which reads as follows:

> "9. Appeal and revision -The High Court may exercise, so far as they may be applicable, all the powers conferred by Chapters XXXI and XXXII of the Code of Criminal Procedure, 1898 (5 of 1898) on a High Court as if the Court of the Special Judge were a Court of Session trying cases without a jury within the local limits of the jurisdiction of the High Court. It is quite obvious that the Section is with reference to the Cr.P.C. of 1898 and not the Cr.P.C. of 1973. The law as it stood with reference to the Cr.P.C. of 1898 is radically different from the law with reference to the Cr.P.C. of 1973. Moreover and quite obviously, since this Court had directed in Antulay that the trial would have to be conducted not by the Special Judge but by the High Court, no revision would lie to the High Court from its own order. Therefore, we are of opinion that the appellants cannot draw any support for their submissions from Antulay.

27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 of the Cr.P.C.

28. However, this does not mean that the appellants have no remedy available to them - paragraph 10 of the order does not prohibit the appellants from approaching this Court under Article 136 of the Constitution. Therefore all that has happened is that the forum for ventilating the grievance of the appellants has shifted from the High Court to this Court. It was submitted by one of the learned counsel that this is not good enough for the appellants since this Court is not obliged to give reasons while dismissing such a petition unlike the High Court which would necessarily have to give reasons if it rejected a revision petition. In our opinion, the mere fact that this Court could dismiss the petition filed by the appellants under Article 136 of the Constitution without giving reasons does not necessarily lead to the conclusion that reasons will not be given or that some equitable order will not be passed. The submission of learned counsel has no basis and is only a presumption of what this Court might do. We cannot accept a submission that has its foundation on a hypothesis.

29. This leads us to another facet of the submission made by learned counsel that even the avenue of proceeding under Section 482 of the Cr.P.C. is barred as far as the appellants are concerned. As held in Amar Nath and with which conclusion we agree, if an interlocutory order is not revisable due to the prohibition contained in Section 397(2) of the Cr.P.C. that

cannot be circumvented by resort to Section 482 of the Cr.P.C. There can hardly be any serious dispute on this proposition.

30. What then is the utility of Section 482 of the Cr.P.C.? This was considered and explained in Madhu Limaye which noticed the prohibition in Section 397(2) of the Cr.P.C. and at the same time the expansive text of Section 482 of the Cr.P.C. and posed the question: In such a situation, what is the harmonious way out? This Court then proceeded to answer the question in the following manner:

> "In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly."

31. The expanse of Section 482 of the Cr.P.C. was also discussed in great detail in *State of Haryana v. Bhajan Lal*[12] in the context of quashing a first information report or a complaint. After giving several illustrations, this Court cautioned that the power available under Section 482 of the Cr.P.C. should be exercised in the "rarest of rare" cases. It was said:

> "We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

32. In *Satya Narayan Sharma v. State of Rajasthan*[13] this Court considered the provisions of the PC Act and held that there could be no stay of a trial under the PC Act. It was clarified that that does not mean that the provisions of Section 482 of the Cr.P.C. cannot be taken recourse to, but even if a litigant approaches the High Court under Section 482 of the Cr.P.C. and that petition is entertained, the trial under the PC Act cannot be stayed. The litigant may convince the court to expedite the hearing of the petition filed, but merely because the court is not in a position to grant an early hearing would not be a ground to stay the trial even

temporarily. With respect, we do not agree with the proposition that for the purposes of a stay of proceedings recourse could be had to Section 482 of the Cr.P.C. Our discussion above makes this quite clear.

33. Proceeding on this basis, what is the nature of cases that we are presently dealing with? While in some appeals the order summoning the appellant or the order for framing charges is in question (we have already dealt with these issues), in other appeals the grievance is in respect of: admission and denial of documents under Section 294 of the Cr.P.C. [SLP (Crl) No. 6912 of 2016 - Ashok Daga v. CBI and SLP (Crl) No. 7477 of 2016 - Mukesh Gupta v. CBI]; alteration of charge under Section 216 of the Cr.P.C. [SLP (Crl) No. 8391 of 2016 - Mukesh Gupta v. CBI]; joint or single trial under Sections 219 and 220 of the Cr.P.C. [SLP (Crl) No. 8703 of 2016 - Manoj K. Jayaswal v. CBI]; summoning additional accused persons [SLP (Crl) No. 1441 of 2017 - Devendra Darda v. CBI]. A challenge to orders of this non-substantive nature that can be agitated in a regular appeal is nothing but an abuse of the process of the court.

34. How ridiculous a challenge can become was illustrated in *Centre for Public Interest Litigation v. Union of India*[14] wherein this Court cautioned against challenging the appointment of the Special Public Prosecutor or his assistant advocates! Quite obviously, these are tactics employed by the accused to delay the trial while the endeavour of Parliament is to expedite all trials to prevent harassment to the accused. This has led to odd situations in which some accused are desirous of continuing their harassment by delaying the trial and then complaining about it. In any event, such orders cannot fall in the "rarest of rare" category and can always be made a ground for appeal, if necessary, after the final order is made since in respect of such orders even a petition under Section 482 of the Cr.P.C. would not be maintainable.

Article 226 and Article 227 of the Constitution

35. It was submitted on behalf of the appellants that paragraph 10 of the order passed by this Court prohibits the appellants from approaching the High Court under Articles 226 and 227 of the Constitution. In this context, it was submitted that it is now well settled that judicial review by the High Court and by this Court is a part of the basic structure of the Constitution and this has been recognized in *L. Chandra Kumar v. Union of India*[15]

36. It was submitted by relying upon *Shalini Shyam Shetty v. Rajendra Shankar Patil*[16] that the jurisdiction of the High Court under Articles 226 and 227 of the Constitution is very vast and the principles for the exercise of jurisdiction have been culled out in that decision by this Court on an analysis of several earlier decisions. The principles have been stated in paragraph 49 of the Report and are not repeated here.

37. There is no doubt that the power of superintendence available to the High Court under Article 227 is extremely vast but at the same time as held in Shalini Shyam Shetty the High Court cannot exercise that power of superintendence on the drop of a hat. In addition, in

exercise of its power of superintendence the High Court cannot correct mere errors of law or fact only because another view is possible. What is more important is the following principle that has been culled out:

> "This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 of the Constitution is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above."

38. The Cr.P.C. is undoubtedly a complete code in itself. As has already been discussed by us, the discretionary jurisdiction under Section 397(2) of the Cr.P.C. is to be exercised only in respect of final orders and intermediate orders. The power under Section 482 of the Cr.P.C. is to be exercised only in respect of interlocutory orders to give effect to an order passed under the Cr.P.C. or to prevent abuse of the process of any Court or otherwise to serve the ends of justice. As indicated above, this power has to be exercised only in the rarest of rare cases and not otherwise. If that is the position, and we are of the view that it is so, resort to Articles 226 and 227 of the Constitution would be permissible perhaps only in the most extraordinary case. To invoke the constitutional jurisdiction of the High Court when the Cr.P.C. restricts it in the interest of a fair and expeditious trial for the benefit of the accused person, we find it difficult to accept the proposition that since Articles 226 and 227 of the Constitution are available to an accused person, these provisions should be resorted to in cases that are not the rarest of rare but for trifling issues.

39. In any event, if such a one in a million case does arise, the appellants can certainly approach this Court for relief under Article 136 of the Constitution.

40. While there can be no doubt that the jurisdiction of a High Court under Articles 226 and 227 cannot be curtailed, yet extraordinary situations could arise where it would be advisable for a High Court to decline to interfere. In *Kartar Singh v. State of Punjab*[17] this Court considered the "nagging question" whether an accused could approach the High Court for the grant of bail under Article 226 of the Constitution in a case arising out of an offence under the Terrorist and Disruptive Activities (Prevention) Act of 1985 and 1987 or the TADA Act. In that context, this Court took the view that given the special nature of the statute, if a High Court entertains a bail application invoking its extraordinary jurisdiction under Article 226 and passes orders, the very scheme and object of the TADA Act and the intendment of the Parliament would be completely defeated and frustrated. It was held that a High Court would interfere, if at all, only in extreme and rare cases and additionally, judicial discipline and comity of courts require that High Courts should refrain from exercising their jurisdiction in entertaining bail applications, more particularly since this Court could grant relief in an appropriate case under Article 136 of the Constitution. It was held:

> "Though the High Courts have very wide powers under Article 226, the very vastness of the powers imposes on it the responsibility to use them with circumspection and in accordance with the judicial consideration and well established principles. The legislative history and the object of TADA Act indicate that the special Act has been enacted to meet challenges arising out of terrorism and disruption. Special provisions are enacted in the Act with regard to the grant of bail and appeals arising from any judgment, sentence or order (not being an interlocutory order) of a Designated Court etc. The overriding effect of the provisions of the Act (i.e. Section 25 of TADA Act) and the Rules made thereunder and the non-obstante clause in Section 20(7) reading, "Notwithstanding anything contained in the Code...." clearly postulate that in granting of bail, the special provisions alone should be made applicable. If any party is aggrieved by the order, the only remedy under the Act is to approach the Supreme Court by way of an appeal. If the High Courts entertain bail applications invoking their extraordinary jurisdiction under Article 226 and pass orders, then the very scheme and object of the Act and the intendment of the Parliament would be completely defeated and frustrated. But at the same time it cannot be said that the High Courts have no jurisdiction. Therefore, we totally agree with the view taken by this Court in *Abdul HamidHaji Mohammed*[18] that if the High Court is inclined to entertain any application under Article 226, that power should be exercised most sparingly and only in rare and appropriate cases in extreme circumstances. What those rare cases are and what would be the circumstances that would justify the entertaining of applications under Article 226 cannot be put in strait-jacket. However, we would like to emphasise and re-emphasise that the judicial discipline and comity of courts require that the High Courts should refrain from exercising their jurisdiction in entertaining bail applications in respect of an accused indicted under the special Act since this Court has jurisdiction to interfere and correct the orders of the High Courts under Article 136 of the Constitution."

This was reaffirmed subsequently in the decision in the following words:

> "Though it cannot be said that the High Court has no jurisdiction to entertain an application for bail under Article 226 of the Constitution and pass orders either way, relating to the cases under the Act 1987, that power should be exercised sparingly, that too only in rare and appropriate cases in extreme circumstances. But the judicial discipline and comity of courts require that the High Courts should refrain from exercising the extraordinary jurisdiction in such matters."

41. There is therefore nothing extraordinary if this Court were to pass an order that in a certain identified category of cases, the High Court ought not to interfere and leave it to this Court to take a decision in the matter in larger public interest, which this Court has already seen and explained.

Violation of Article 14 of the Constitution

42. According to learned counsel for the appellants, paragraph 10 of the order violates the provisions of Article 14 of the Constitution inasmuch as the appellants are denied equal protection of the law by being singled out to have their case dealt with by a special procedure not provided for by law. In that paragraph in Antulay. Reliance was also placed on *State of West Bengal v. Anwar Ali Sarkar*[19]

43. In our opinion, it is not as if one single case has been taken up for allegedly discriminatory treatment out of an entire gamut of cases. All the cases relating to the allocation of coal blocks have been compartmentalized and are required to be treated and dealt with in the same manner. The coal block allocation cases form one identifiable category of cases that are distinct from other cases since they have had a massive impact on public interest and there have been large scale illegalities associated with the allocation of coal blocks. It is therefore necessary to treat these cases differentially since they form a unique identifiable category. The treatment of these cases is certainly not arbitrary - on the contrary, the classification is in public interest and for the public good with a view to bring persons who have allegedly committed corrupt activities, within the rule of law. It is hence not possible to accept the submission that by treating the entire batch of coal block allocation cases in a particular manner different from the usual cases that flood the Courts, there is a violation of Article 14 of the Constitution.

44. In *Kedar Nath Bajoria v. State of West Bengal*[20] this Court explained Anwar Ali Sarkar and held that it proceeded on the basis that no identifiable principle was laid down for the trial of a case by the Special Court except that it was for the "speedier trial of certain offences". However, where there is a definite objective that furnishes a tangible and rational basis of classification, then there would be no violation of Article 14 of the Constitution. A distinction was drawn between discrimination with reason and discrimination without reason. No general rule can be laid down and it would depend on the relevant facts in each situation and a practical assessment of the law. In this context, it was said:

> "Whether an enactment providing for special procedure for the 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. A practical assessment of the operation of the law in the particular circumstances is necessary. There are to be found cases on each side of the line: Anwar Ali Sarkar case is an authority on one side; the *Saurashtra case*[21] is on the other. Apart from dicta here and there in the course of the judgments delivered in these cases and the decisions based on them, there is no real conflict of principle involved in them. The majority decision in Anwar Ali Sarkar case proceeded on the view that no standard was laid down and no principle or policy was disclosed in the legislation challenged in that case, to guide the exercise of discretion by the Government in selecting a "case" for reference to the Special Court for trial under the special procedure provided in the Act. All that was relied on as indicative of a guiding principle for selection was the object, as disclosed in the preamble of the West Bengal Act, of providing for the "speedier trial of certain offences", but the

majority of the learned Judges brushed that aside as too indefinite and vague to constitute a reasonable basis for classification."

It was then said:

> "It will be seen that the main reasoning of the majority Judges in Anwar Ali Sarkar case as disclosed in the passages extracted above is hardly applicable to the statute here in question which is based on a classification which, in the context of the abnormal post-war economic and social conditions is readily intelligible and obviously calculated to subserve the legislative purpose. The case, in our opinion, falls on the same side of the line as the Saurashtra ruling where Anwar Ali Sarkar's case was distinguished by three of the learned Judges who were parties to the majority decision in the earlier case. Fazl Ali, J. observed: "There is however one very important difference between the West Bengal Act and the present Ordinance which, in my opinion, does afford such justification (for upholding the Ordinance), and I shall try to refer to it as briefly as possible. I think that a distinction should be drawn between discrimination without reason and discrimination with reason.... The main objection to the West Bengal Act was that it permitted discrimination without reason or without any rational basis.... The mere mention of "speedier trial" as the object of the Act did not "cure the defect", as the expression "afforded no help in determining what cases required speedier trial ... The clear recital (in the Saurashtra Ordinance) of a definite objective furnishes a tangible and rational basis of classification to the State Government for the purpose of applying the provisions of the Ordinance and for choosing only such offences or cases as affect public safety, maintenance of public order and the preservation of peace and tranquillity"

45. Insofar as the present appeals are concerned, the cases fall in a class apart, arising as they do out of the illegal and unlawful allocation of coal blocks. It is only in respect of these cases that this Court monitored the investigations and it is only in respect of these cases that the order was passed by this Court on 25th July, 2014. The cases are concerned with large scale corruption that polluted the allocation of coal blocks and they form a clear and distinct class that need to be treated in a manner different from the cases that our justice delivery system usually deals with. The classification being identifiable and clear, we do not see any violation of Article 14 of the Constitution.

46. Learned counsel for the appellants then submitted that in effect, this Court has legislated and that it was not permissible to do so. In our opinion, it is not that this Court has legislated, otherwise every order passed by this Court giving special treatment to a case (such as an out of turn hearing) would amount to legislation. Learned counsel have mixed up legislation in the classical sense and giving special treatment to an identifiable class of cases. The order passed by this Court does not amount to legislating in the classical mould but according special treatment to a class of cases for good and clear reason and in larger public interest as well as in the interest of the accused.

Violation of Article 21 of the Constitution

47. It was submitted that the right to life and liberty guaranteed by Article 21 of the Constitution has also been restricted by paragraph 10 of the order passed by this Court. The submission made in this regard was that there are certain procedural safeguards provided by statutes and these have been denied to the appellants or in any event restricted or constricted by a judicial order and therefore the procedure established by law has been compromised. It is further submitted that the procedure which the appellants are subjected to is not just, fair and reasonable.

48. This contention of learned counsel for the appellants also deserves rejection. No procedural safeguard has been denied to the appellants and it is a complete misnomer to say that any statutory right has been restricted or constricted by a judicial order. The remedies available to the appellants continue to be available to them except that the forum has been shifted from the High Court to this Court in larger public interest.

49. It must not be forgotten that the cases arising out of the coal block allocations are not ordinary cases but fall under a special or distinct category which requires special attention given the magnitude of the illegalities allegedly committed including some with criminal intent. It is in this view of the matter that this Court had no option but to hand over the investigations to the CBI and to monitor the investigations so that they reach their logical conclusion, without any interference from any quarter. The magnitude of the illegalities is such that it appears that even the integrity of the Director of the CBI was prima facie compromised, and this Court had to intervene and direct investigations into the conduct of the Director of the CBI. That being so, it can hardly be said with any degree of seriousness that the procedure adopted by this Court, in the facts and circumstances of the case, violate any right to the life and liberty of any of the appellants or any other persons allegedly involved in the criminality associated with the allocation of coal blocks.

Article 32 and Article 142 of the Constitution

50. It was submitted that paragraph 10 of the order contravenes the fundamental right of the appellants to access justice and an accused person cannot be deprived of this fundamental right even by a judicial order. Reliance was placed on *Naresh Shridhar Mirajkar & Ors v. State of Maharashtra* [22] It was further submitted that in the garb of doing complete justice, this Court could not deprive the appellants of their right to access justice.

51. It is no doubt true that the words 'complete justice' appearing in Article 142 of the Constitution enable this Court to exercise extremely wide powers but there is also no doubt that the power is ancillary and can be made use of only when it is not in conflict with the substantive provisions of any law. This has been the view expressed by several larger Benches of this Court including in Mirajkar and Antulay and was also settled in *Supreme Court Bar Association v. Union of India*[23] It is not necessary for us to further elucidate this position or to elaborate on it.

52. While it is true that the fundamental rights of a citizen cannot be taken away even by an order of the court except where a restriction is placed by the statute such as remanding an accused to judicial custody, no right of the appellants has been curtailed by this Court by the order under consideration. As repeatedly emphasized, it is only the forum in which the right to seek relief has been varied, and not denied. We do not see how this is impermissible or contrary to any law or any fundamental right of the appellants.

53. This Court is undoubtedly obliged to protect the fundamental rights of the people in the country in accordance with the Constitution, but it is equally true that while doing so public interest cannot be flung out of the window. It is now time for all of us including the courts to balance the right of an accused person vis-a-vis the rights and interests of individual victims of a crime and society. Very often, public interest is lost sight of while dealing with an accused person and the rights of an accused person are given far greater importance than societal interests and more often than not greater importance than the rights of individual victims. This is a delicate balance to be struck and we do not see any curtailment of any fundamental right of the appellants or any violation of any substantive law if there is a change in the forum in the exercise of the rights of the appellants given the nature of the allegations against them and the wide impact on society. It is not as if the appellants have been denuded of their rights. It is only that their rights have been placed in the proper perspective and they have been enabled to exercise their rights before another forum.

54. In *State of Punjab v. Rafiq Masih*[24] this Court considered the powers under Article 142 of the Constitution. It was held that this Article enables this Court to pass such an enforceable decree or order as is necessary for doing complete justice in any case or matter. While discussing the meaning of the expression "complete justice", this Court took the view that there were several decisions that have been rendered which made it clear that though the powers are wide, nevertheless, the power is ancillary and could be used when not necessary in conflict with substantive provisions of law. Article 142 of the Constitution is supplementary in nature and cannot supplant substantive provisions of the statute. It is the power that gives preference to equity over the law enabling the moulding of a relief as distinguished from a declaration of law as contemplated under Article 141 of the Constitution. While directions issued under Article 142 of the Constitution do not constitute a binding precedent, a declaration of law under Article 141 of the Constitution does constitute a binding precedent.

Stay of proceedings

55. The penultimate submission of learned counsel for the appellants was that the High Court has an inherent power to stay proceedings in a criminal case. Reliance was placed on *Income Tax Officer v. M.K. Mohammed Kunhi*[25] wherein it was categorically held by this Court that the Income Tax Appellate Tribunal must be held to have the power to grant a stay as incidental or ancillary to its appellate jurisdiction. Reference was also made to *Satish Mehra*

v. State (NCT of Delhi)[26] There is no doubt that a High Court has an inherent power to grant a stay of proceedings and it is not necessary to labour any further on this issue.

56. However, it was then submitted that in passing the order of 25th July, 2014 this Court has prevented the grant of any interim stay by any court and has even otherwise gone beyond its remit as stated in *Vineet Narain v. Union of India*[27] wherein it was specifically held that the task of monitoring investigations by a court is over the moment a charge sheet is filed in respect of a particular investigation. It was submitted that paragraph 10 of the order permits the continuation of the monitoring process at the stage of trial as well and therefore goes beyond the stage of investigation. In other words, it was submitted that the terms of the order passed by this Court result in monitoring and supervising the trials by this Court, which is impermissible.

57. There is obviously some misconception in this regard as far as the appellants are concerned. This Court is not in any manner monitoring the progress of the trial in the coal block allocation cases nor is it supervising the trial. Conducting the trial is entirely the business of the learned Special Judge. Paragraph 10 of the order only results in the removal of any impediment in the progress of the trial. To ensure that the trial is concluded at the earliest not only in the interest of the accused persons but also in public interest, any application intended to stay or impede the trial will be subject to orders of this Court. This out of the ordinary step has been taken given the serious nature of allegations made against those believed to be involved in the illegal allocation of coal blocks and in the interest of the accused as well as in larger public interest. As mentioned above, there is a need for maintaining a balance between the rights of an accused and the rights of an individual victim and society.

58. In Vineet Narain it was further observed by this Court that a proper investigation must be followed by an equally effective prosecution so as not to make the exercise completely futile. This is an important aspect of the rule of law, the emphasis being on a strong and competent prosecution machinery and not merely a fair and competent investigation followed by an equally fair trial. This is in the nature of an entire package and to obtain appropriate results (one way or the other) is to ensure there is no unnecessary impediment in a trial, in the form of a stay of proceedings or in any other manner. The emphasis given by learned counsel on the right of the appellants to apply for a stay of proceedings gives the impression that the appellants are primarily concerned with an interim order of stay and not in the conclusion of the trial. It should be clear that a stay of proceedings is not the most important part of a trial and should not be the main or the sole objective of an accused. We need to think beyond a stay of criminal proceedings which has played havoc with our criminal justice delivery.

59. The submission that paragraph 10 of the order passed by this Court fetters the discretion of the High Court in granting a stay of proceedings proceeds on the assumption that the High Court has an unfettered discretion to stay a trial. This is simply not so - the stay of a trial is a rather extraordinary step and cannot be given for the asking.

60. In this context, we may note that we are not concerned with any ordinary criminal trial, but a trial for an offence punishable under the provisions of the Prevention of Corruption Act, 1988. We may draw attention to the Statement and Objects and Reasons for introducing the Prevention of Corruption Bill in Parliament, with which we are concerned. It is stated, inter alia, that "In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included." Both these objectives have been incorporated in the provisions of the Prevention of Corruption Act, 1988 through Section 19 and Section 4 thereof. For the present we are concerned with Section 4 of the Prevention of Corruption Act, 1988 which provides in sub-Section (4) as follows:

> "Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis." It is clear that the intention of Parliament, which ought to be respected, is the expeditious conclusion of a trial on a day-to-day basis without any impediment and certainly not an impediment through a stay of proceedings granted for the asking as if it were an ordinary criminal trial.

61. This takes us to the last submission on behalf of learned counsel for the appellants, namely, with regard to the interpretation of Section 19(3)(c) of the Prevention of Corruption Act, 1988. Section 19 of the Act reads as follows:-

> "19. Previous sanction necessary for prosecution.− (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction save as otherwise provided in the Lokpal and Lokayukta Act, 2013 –
>
> (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
>
> (c) in the case of any other person, of the authority competent to remove him from his office.
>
> (2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),−

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4)In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.
Explanation.−For the purposes of this section, -

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

62. The submission of learned counsel for the appellants was that the prohibition against granting a stay of proceedings is not absolute insofar as Section 19(3)(c) of the PC Act is concerned. It was submitted that if there is a failure of justice, a stay of proceedings could certainly be granted by the High Court.

63. We are not in agreement with the over-broad interpretation given by

64. A reading of Section 19(3) of the PC Act indicates that it deals with three situations: (i) Sub-clause (a) deals a situation where a final judgment and sentence has been delivered by the Special Judge. We are not concerned with this situation. (ii) Sub-clause (b) deals with a stay of proceedings under the PC Act in the event of any error, omission or irregularity in the grant of sanction by the concerned authority to prosecute the accused person. It is made clear that no court shall grant a stay of proceedings on such a ground except if the court is satisfied that the error, omission or irregularity has resulted in a failure of justice - then and only then can the court grant a stay of proceedings under the PC Act. (iii) Sub-clause (c) provides for a

blanket prohibition against a stay of proceedings under the PC Act even if there is a failure of justice [subject of course to sub-clause (b)]. It mandates that no court shall stay proceedings "on any other ground" that is to say any ground other than a ground relatable to the error, omission or irregularity in the sanction resulting in a failure of justice.

65. A conjoint reading of sub-clause (b) and sub-clause (c) of Section 19(3) of the PC Act makes it is clear that a stay of proceedings could be granted only and only if there is an error, omission or irregularity in the sanction granted for a prosecution and that error, omission or irregularity has resulted in a failure of justice. There is no other situation that is contemplated for the grant of a stay of proceedings under the PC Act on any other ground whatsoever, even if there is a failure of justice. Clause (c) additionally mandates a prohibition on the exercise of revision jurisdiction in respect of any interlocutory order passed in any trial such as those that we have already referred to. In our opinion, the provisions of clauses (b) and (c) of Section 19(3) of the PC Act read together are quite clear and do not admit of any ambiguity or the need for any further interpretation.

66. Sub-section (4) of Section 19 of the PC Act is also important in this context inasmuch as the time lapse in challenging an error, omission or irregularity in the sanction resulting in a failure of justice is of considerable significance. Unless the challenge is made at the initial stages of a trial and within a reasonable period of time, the court would not be obliged to consider the absence of, or any error, omission or irregularity in the sanction for prosecution. Therefore, it is not as if the accused can, after an unreasonable delay, raise an issue about the sanction; but if that accused does so, the court may not decide that issue both at the appellate stage as well as for the purposes of stay of the proceedings.

67. In *Central Bureau of Investigation v. V.K. Sehgal*[28] it was held that for determining whether the absence of or any error, omission or irregularity in the grant of sanction has occasioned or resulted in a failure of justice, the court has a duty to consider whether the accused had raised any objection on that score at the trial stage. Even if it had been raised at the trial and early enough, it would not be sufficient to conclude that there was a failure of justice. Whether in fact and in law there was a failure of justice would differ from case to case but it was made clear that if such an objection was not raised in the trial, it certainly cannot be raised in appeal or in revision. It was explained that a trial involves judicial scrutiny of the entire material before the Special Judge. Therefore, if on a judicial scrutiny of the evidence on record the Special Judge comes to a conclusion that there was sufficient reason to convict the accused person, the absence or error or omission or irregularity would actually become a surplusage. The necessity of a sanction is only as a filter to safeguard public servants from frivolous or mala fide or vindictive prosecution. However, after judicial scrutiny is complete and a conviction is made out through the filtration process, the issue of a sanction really would become inconsequential. It was held in paragraphs 10 and 11 of the Report as under:

> "A court of appeal or revision is debarred from reversing a finding (or even an order of conviction and sentence) on account of any error or irregularity in the

sanction for the prosecution, unless failure of justice had been occasioned on account of such error or irregularity. For determining whether want of valid sanction had in fact occasioned failure of justice the aforesaid sub-section (2) enjoins on the court a duty to consider whether the accused had raised any objection on that score at the trial stage. Even if he had raised any such objection at the early stage it is hardly sufficient to conclude that there was failure of justice. It has to be determined on the facts of each case. But an accused who did not raise it at the trial stage cannot possibly sustain such a plea made for the first time in the appellate court In a case where the accused failed to raise the question of valid sanction the trial would normally proceed to its logical end by making a judicial scrutiny of the entire materials. If that case ends in conviction there is no question of failure of justice on the mere premise that no valid sanction was accorded for prosecuting the public servant because the very purpose of providing such a filtering check is to safeguard public servants from frivolous or mala fide or vindictive prosecution on the allegation that they have committed offence in the discharge of their official duties. But once the judicial filtering process is over on completion of the trial the purpose of providing for the initial sanction would bog down to a surplusage. This could be the reason for providing a bridle upon the appellate and revisional forums as envisaged in Section 465 of the Code of Criminal Procedure."

68. In enacting Section 19 of the PC Act in the manner which it did, Parliament has made it abundantly clear that it is extremely concerned about ensuring that trials under the PC Act are concluded expeditiously not only in the interest of the accused but also in public interest. This concern of Parliament must be respected.

69. To doubly ensure that there is no indirect stay of proceedings by calling for the records of the Special Judge while dealing with a revision petition filed by an accused person, Section 22 of the PC Act has been enacted with reference to Section 397(1) of the Cr.P.C. By virtue of Section 22(d) of the PC Act, a proviso has been added to Section 397(1) of the Cr.P.C. which makes it clear that the court exercising revision jurisdiction shall not ordinarily call for the record of the proceedings unless certain conditions are fulfilled. The proviso reads as follows:

"Provided that where the powers under this section are exercised by a court on an application made by a party to such proceedings, the court shall not ordinarily call for the record of the proceedings, −

(a) without giving the other party an opportunity of showing cause why the record should not be called for; or

(b) If it is satisfied that an examination of the record of the proceedings may be made from the certified copies."

70. By adding the proviso to Section 397(1) of the Cr.P.C. Parliament has made it clear that it would be appropriate not to call for the records of the case before the Special Judge even when the High Court exercises its revision jurisdiction. The reason for this quite clearly is that once the records are called for, the Special Judge cannot proceed with the trial. With a view to ensure that the accused who has invoked the revision jurisdiction of the High Court is not prejudiced and at the same time the trial is not indirectly stayed or otherwise impeded, Parliament has made it clear that the examination of the record of the Special Judge may also be made on the basis of certified copies of the record. Quite clearly, the intention of Parliament is that there should not be any impediment in the trial of a case under the PC Act.

71. What does the expression 'failure of justice' mean? In *Shamnsaheb M. Multani v. State of Karnataka*[29] it was held that the expression 'failure of Justice is too pliable or facile an expression which could be fitted in any situation. The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage. It was held in paragraphs 23 and 24 of the Report as follows:

> "We often hear about "failure of justice" and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression "failure of justice" would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in *Town Investments Ltd. v. Deptt. of the Environment*[30]). The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage. One of the cardinal principles of natural justice is that no man should be condemned without being heard, (audi alteram partem). But the law reports are replete with instances of courts hesitating to approve the contention that failure of justice had occasioned merely because a person was not heard on a particular aspect. However, if the aspect is of such a nature that non-explanation of it has contributed to penalising an individual, the court should say that since he was not given the opportunity to explain that aspect there was failure of justice on account of non-compliance with the principle of natural justice."

72. This decision was followed in *State of M.P. v. Bhooraji*[31] and also in *Rattiram v. State of M.P*[32]. In the latter decision, it was held that the expression 'failure of justice' must be given its due significance otherwise every procedural lapse or interdict could be interpreted to result in a failure of justice making the criminal justice delivery system completely illusory. Rattiram dealt with non-compliance with Section 193 of the Cr.P.C. and it was held that this did not result in a failure of justice. It was held in paragraphs 65 and 66 of the Report as follows:

> "We may state without any fear of contradiction that if the failure of justice is not bestowed its due signification in a case of the present nature, every procedural lapse or interdict would be given a privileged place on the pulpit. It would, with

unnecessary interpretative dynamism, have the effect potentiality to cause a dent in the criminal justice delivery system and eventually, justice would become illusory like a mirage. It is to be borne in mind that the legislature deliberately obliterated certain rights conferred on the accused at the committal stage under the new Code. The intendment of the legislature in the plainest sense is that every stage is not to be treated as vital and it is to be interpreted to subserve the substantive objects of the criminal trial. Judged from these spectrums and analysed on the aforesaid premises, we come to the irresistible conclusion that the objection relating to non-compliance with Section 193 of the Code, which eventually has resulted in directly entertaining and taking cognizance by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, does not vitiate the trial and on the said ground alone, the conviction cannot be set aside or there cannot be a direction of retrial and, therefore, the decision rendered in Bhooraji lays down the correct law inasmuch as there is no failure of justice or no prejudice is caused to the accused."

73. *In* ***Bhooraji*** [33] this Court concluded that in the event of a failure of justice, a de novo trial could be ordered but that should be the last resort and only when such a course becomes desperately indispensable. If the "core" of the case is not affected but there are some procedural illegalities that would not be a good ground for ordering a de novo trial. "This is because the appellate court has plenary powers for revaluating and reappraising the evidence and even to take additional evidence by the appellate court itself or to direct such additional evidence to be collected by the trial court."

74. Interestingly, in an Advisory Opinion given by the ***International Court of Justice***[34] one of the questions referred was as follows:

> "Has the Tribunal (United Nations Administrative Tribunal) committed a fundamental error in procedure which has occasioned the failure of justice as contended in the application to the Committee for Review of Administrative Tribunal Judgements?"

75. In the Advisory Opinion, the International Court considered Article 11 of the Statute of the United Nations Administrative Tribunal (as it then stood). The words 'which has occasioned a failure of justice' appearing in that Article were introduced at the 499th meeting of the Fifth Committee on the proposal of the Indian delegation which stated:

> "Another ground for review provided in the proposed new Article 11 was the commission of a fundamental error in procedure. The use of the word 'fundamental' was intended to preclude review on account of trivial errors in procedure or errors that were not of a substantial nature. In order to make the intention clearer, the Indian delegation would suggest that the phrase 'which has

occasioned a failure of justice' should be inserted after the words 'fundamental error in procedure' in the text of the article."

76. While considering the interpretation of the expression 'a fundamental error in procedure which has occasioned a failure of justice' the International Court of Justice expressed the view that to constitute a failure of justice an error in procedure is fundamental when it is of the kind where the fundamental right of a staff member to present his case, either orally or in writing is denied. The International Court then proceeded to identify certain elements of the right to hearing well recognized as for instance the right to an independent and impartial tribunal established by law; the right to have the case heard and determined within a reasonable time; the right to a reasonable opportunity to present the case to the tribunal and to comment upon the opponent case; the right to equality in the proceedings vis-a-vis the opponent; and the right to a reasoned decision. It was stated in paragraph 92 of the Advisory Opinion as follows:-

> "It may not be easy to state exhaustively what is involved in the concept of "a fundamental error in procedure which has occasioned a failure of justice". But the essence of it, in the cases before the Administrative Tribunal, may be found in the fundamental right of a staff member to present his case, either orally or in writing, and to have it considered by the Tribunal before it determines his rights. An error in procedure is fundamental and constitutes "a failure of justice" when it is of such a kind as to violate the official's right to a fair hearing as above defined and in that sense to deprive him of justice. To put the matter in that way does not provide a complete answer to the problem of determining precisely what errors in procedure are covered by the words of Article 11. But certain elements of the right to a fair hearing are well recognized and provide criteria helpful in identifying fundamental errors in procedure which have occasioned a failure of justice: for instance, the right to an independent and impartial tribunal established by law; the right to have the case heard and determined within a reasonable time; the right to a reasonable opportunity to present the case to the tribunal and to comment upon the opponent's case; the right to equality in the proceedings vis-a-vis the opponent; and the right to a reasoned decision."

77. An allegation of 'failure of justice' is a very strong allegation and use of an equally strong expression and cannot be equated with a miscarriage of justice or a violation of law or an irregularity in procedure - it is much more. If the expression is to be understood as in common parlance, the result would be that seldom would a trial reach a conclusion since an irregularity could take place at any stage, inadmissible evidence could be erroneously admitted, an adjournment wrongly declined etc. To conclude, therefore, Section 19(3)(c) of the PC Act must be given a very restricted interpretation and we cannot accept the over-broad interpretation canvassed by learned counsel for the appellants.

78. In *Centre for Public Interest Litigation v. Union of India*[35] this Court passed the following order on 11th April, 2011 in what is now, commonly known as the 2G Spectrum Scam cases:

> "We also make it clear that any objection about the appointment of Special Public Prosecutor or his assistant advocates or any prayer for staying or impeding the progress of the trial can be made only before this Court and no other court shall entertain the same. The trial must proceed on a day-to-day basis.
>
> All these directions are given by this Court in exercise of its power under Article 136 read with Article 142 of the Constitution and in the interest of holding a fair prosecution of the case."

79. The aforesaid order came up for consideration before this Court in *Shahid Balwa v. Union of India*[36].

80. While dealing with the submissions made in relation to the aforesaid order (submissions that are similar to those made before us) this Court held that considering the width and ambit of the investigation which could even spread overseas and also considering the larger public interest, the aforesaid order was passed reserving the right of the accused to move this Court if there is a grievance against the order passed by the Special Judge during the trial and that this would ensure that progress in the trial is not hampered. Such an order was permissible under the provisions of Article 136 read with Article 142 of the Constitution. It was also made clear that the parties cannot invoke the jurisdiction under Article 226 or 227 of the Constitution or under Section 482 of the Cr.P.C. so as to ensure compliance with the orders passed by this Court otherwise the very purpose and object of the order would be defeated. This Court held in paragraphs 22 and 23 of the Report as follows:

> "We may, at the very outset, point out that CBI as well as the Enforcement Directorate are yet to complete the investigation of the cases relating to 2G Scam and the case which is being tried by the Special Judge is only one amongst them, wherein the charge-sheet has been filed and the trial is in progress. This Court, taking into consideration the width and ambit of the investigation which even spreads overseas and the larger public interest involved, passed the orders impugned, reserving the right of all, including the accused persons, to move this Court if their prayer would amount to staying or impeding the progress of the trial. In case they have any grievance against the orders passed by the Special Judge during trial, they are free to approach this Court so that the progress of the trial would not be hampered by indulging in cumbersome and time-consuming proceedings in the other forums, thereby stultifying the peremptory direction given by this Court for day-to-day trial. Article 136 read with Article 142 of the Constitution of India enables this Court to pass such orders, which are necessary for doing complete justice in any cause or matter pending before it and, any order so made, shall be enforceable throughout the territory of India. The parties, in such a case, cannot invoke the jurisdiction under Article 226 or 227 of the Constitution of India or under Section 482 CrPC so as to

interfere with those orders passed by this Court, in exercise of its constitutional powers conferred under Article 136 read with Article 142 of the Constitution of India. Or, else, the parties will move courts inferior to this Court under Article 226 or Article 227 of the Constitution of India or Section 482 CrPC, so as to defeat the very purpose and object of the various orders passed by this Court in exercise of its powers conferred under Article 136 read with Article 142 of the Constitution of India."

81. It was further held that the order passed only facilitates the progress of the trial by ordering that it must proceed on a day to day basis. It was noted that the backlog of cases is often an incentive to the litigants to take unfair advantage of the delays and therefore, it was necessary to pass the order dated 11th April, 2011. It was stated as follows in paragraph 31 of the Report:

"We also, therefore, find no basis in the contention of the petitioners that the orders dated 11-4-2011 and 9-11-2012 have the effect of monitoring the trial proceedings. No court, other than the court seized of the trial, has the power to monitor the proceedings pending before it. The order dated 11-4-2011 only facilitates the progress of the trial by ordering that the trial must proceed on a day-to-day basis. Large backlog of cases in the courts is often an incentive to the litigants to misuse the courts' system by indulging in unnecessary and fraudulent litigation, thereby delaying the entire trial process. Criminal justice system's procedure guarantees and elaborateness sometimes give, create openings for abusive, dilatory tactics and confer unfair advantage on better heeled litigants to cause delay to their advantage. Longer the trial, witnesses will be unavailable, memories will fade and evidence will be stale. Taking into consideration all those aspects, this Court felt that it is in the larger public interest that the trial of 2G Scam be not hampered. Further, when larger public interest is involved, it is the bounden duty of all, including the accused persons, who are presumed to be innocent, until proven guilty, to cooperate with the progress of the trial. Early disposal of the trial is also to their advantage, so that their innocence could be proved, rather than remain enmeshed in criminal trial for years and unable to get on with their lives and business."

Conclusion

82. In view of the above and the issue having already been agitated before this Court and negatived (also in some other case) we do not think it appropriate to revisit the order of 25th July, 2014 passed by this Court nor do we think it appropriate to modify that order.

Judgment Referred.

[1] *(2014) 9 SCC 516*
[2] *(2014) 9 SCC 614*
[3] *(1959) Supp. 1 SCR 0063*
[4] *(2013) 15 SCC 460*
[5] *(1973) 2 SCC 583*
[6] *(1988) 2 SCC 602*
[7] *(1977) 4 SCC 137*
[8] *(1977) 4 SCC 551*
[9] *(2000) 6 SCC 195*
[10] *(1980) Supp SCC 92*
[11] *(1999) 3 SCC 134*
[12] *1992 Supp (1) SCC 335*
[13] *(2001) 8 SCC 607*
[14] *(2012) 3 SCC 117*
15 (1997) 3 SCC 261

[16] *(2010) 8 SCC 329*
[17] *(1994) 3 SCC 569*
[18] *(1994) 2 SCC 664*
[19] *(1952) SCR 284*
20 1954 SCR 30
[21] *(1952) SCR 435*

[22] *(1966) 3 SCR 744*
[23] *(1998) 4 SCC 409*
24 (2014) 8 SCC 883
[25] *AIR 1969 SC 430*
[26] *(2012) 13 SCC 614*
27 (1998) 1 SCC 226
[28] *(1999) 8 SCC 501*
[29] *(2001) 2 SCC 577*
[30] *(1978) AC 359*

[31] *(2001) 7 SCC 679*
[32] *(2012) 4 SCC 516*
[33] *(2001) 7 SCC 679*
[34] *Application for Review of Judgment No.158 of the United Nations Administrative Tribunal, Advisory Opinion, ICJ Reports 1973, p.166*
[35] *(2012) 3 SCC 117*
[36] *(2014) 2 SCC 687*