**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRR-1306-2020 (O&M)
Reserved on : 17.02.2025
Pronounced on : 15.05.2025

Rajeev Arora .....Petitioner

Versus

Central Bureau of Investigation .....Respondent

CRR-1321-2020 (O&M)
Reserved on : 17.02.2025
Pronounced on : 15.05.2025

D.R. Dhingra .....Petitioner

Versus

Central Bureau of Investigation .....Respondent

CRR-1322-2020 (O&M)
Reserved on : 17.02.2025
Pronounced on : 15.05.2025

Dhare Singh .....Petitioner

Versus

Central Bureau of Investigation .....Respondent

CRR-363-2021 (O&M)
Reserved on : 18.03.2025
Pronounced on : 15.05.2025

Kulwant Singh Lamba .....Petitioner

Versus

Central Bureau of Investigation .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Vinod Ghai, Senior Advocate with
Mr. Himanshu Arora, Advocate
Mr. Arnav Ghai, Advocate and
for the petitioner in CRR-1306-2020.

Mr. Vinod Ghai, Senior Advocate with
Mr. P.S. Ahluwalia, Advocate,
Mr. Shivansh Malik, Advocate
for the petitioner in CRR-1321-2020.

Mr. Randeep S. Rai, Senior Advocate with
Mr. Anurag Arora, Advocate
for the petitioner in CRR-1322-2020.

Mr. Arun Sharma, Advocate
for the petitioner in CRR-363-2021.

Mr. Ravi Kamal Gupta, Special Public Prosecutor,
for the respondent-CBI.

****

MANJARI NEHRU KAUL, J.

1. This order shall dispose of above referred Criminal Revision Petitions as they all arise out of the same impugned order and similar questions of facts and law are involved in them.

2. The petitioners are challenging order dated 01.12.2020 passed by learned Special Judge, CBI Court at Panchkula, Haryana in PC Case No.3/2018 'titled as CBI Vs. Bhupinder Singh Hooda and others', in case FIR No.RCCHG2015A0019 dated 15.09.2015 registered under Sections 120-B, 420, 465, 467, 468, 471 of the IPC and Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act'), at Police Station CBI, ACB, Chandigarh, whereby the petitioners have been summoned to face trial as additional accused under Section 120-B read with Section 13(2) read with Section 13(1)(d) of the PC Act.

3. **Gist of the Case of the Prosecution as Per the Police Report**

(a) The Government of Haryana issued a notification under

Section 4 of the Land Acquisition Act, 1894 (LAA) on 27.08.2004 for the acquisition of approximately 912 acres of land situated in the revenue estates of villages Manesar, Naurangpur, and Lakhnaula in District Gurugram, intended for the development of an Industrial Model Township. Following the issuance of this notification, private builders and property dealers allegedly exploited the situation by instilling fear among the innocent farmers that their land would be acquired by the government at nominal compensation. Under this pressure, the farmers sold around 350 acres of land to the said builders at substantially undervalued prices, approximately Rs.20 to 25 lakhs per acre.

(b) It is further alleged that those farmers, who initially resisted the sale, later sold the remaining 50 acres of land at much higher rates—around Rs.1.5 crores per acre—after the issuance of notification under Section 9 of the LAA.

(c) Subsequently, when nearly all of the land identified for acquisition had been purchased by the "land mafia" under the looming threat of compulsory acquisition at inadequate rates, the competent authority—namely, the Director of the Department of Industries—passed an order dated 24.08.2007, releasing the land from the acquisition process. It is alleged that this release order was issued in contravention of government policy and was passed in favour of private builders, their entities, and agents rather than the original landowners.

(d) According to the allegations, about 400 acres of land were acquired by the accused conspirators for a total sum of Rs.100 crores, despite the prevailing market rate at the relevant time being

approximately Rs.4 crores per acre—resulting in a notional market value of approximately Rs.1,600 crores. **It is, thus, alleged that a wrongful loss of approximately Rs.1,500 crores was caused to the landowners of villages Manesar, Naurangpur and Lakhnaula, while corresponding unlawful gains were made by politicians, government functionaries, and their agents**.

4. **Litigation Before the High Court and Hon'ble the Supreme Court**

(a) The land acquisition in question has been the subject of extensive litigation before both this Court, and the Hon'ble Supreme Court. Although the present petition must be adjudicated on its own merits, it would be appropriate to briefly outline the history of litigation concerning the acquisition proceedings in question.

(b) The State Government formally withdrew the land acquisition process vide order dated 24.08.2007. Thereafter, an Inter-Departmental Committee also recommended complete withdrawal of the acquisition. Accepting this recommendation, the Department of Industries and Commerce resolved to terminate the acquisition proceedings on 29.01.2010.

(c) Aggrieved by these developments, certain landowners approached this Court by filing Civil Writ Petition No.23769 of 2011 and other connected matters. They contended that the entire process of acquisition, beginning with the initiation of acquisition and culminating in its abrupt withdrawal just two days before the scheduled date for declaration of award, was executed with malice. It was alleged that the

process was deliberately manipulated to coerce landowners into selling their fertile, high-value land at throwaway prices to private developers. The petitioners sought, *inter alia*, the cancellation of the sale deeds executed in favour of the builders.

(d) These writ petitions were dismissed by a Division Bench of this Court, vide judgment dated 15.12.2014. The aggrieved landowners carried the matter to the Hon'ble Supreme Court by filing ***Civil Appeal No.8788 of 2015 titled 'Rameshwar and others Vs. State of Haryana and others'***, along with several connected appeals.

(e) The Hon'ble Supreme Court, vide its judgment dated 12.03.2018, allowed the civil appeals. In paragraph 3 of the said judgment, the Hon'ble Court elaborated the entire factual background in detail (not reproduced here for brevity). The Apex Court held that the decisions of the State Government dated 24.08.2007 and 29.01.2010, as well as the acceptance of licence applications from those who had purchased land post-notification, did not represent a *bona fide* exercise of power. On the contrary, such actions constituted a “fraud on power”. It was further observed that the transactions between landowners and private builders were not voluntary but the result of coercive and fraudulent circumstances.

(f) The relevant concluding observations of the Hon'ble Supreme Court are reproduced hereinunder:-

> *“31. If we consider the established or crystallized facets of the matter as stated above, in the light of the principles emerging from the decisions rendered by this Court, in our considered view the decisions dated 24.08.2007 and 29.01.2010 were taken to confer advantages and benefits upon the builders/private entities rather than to carry out*

or effectuate public purpose. The record indicates that various entities including certain "middlemen" cornered unnatural gains and walked away with huge profits taking the entire process of acquisition for a ride. Substantial sums have exchanged hands in the form of settlement money. All the steps and stages show that the builders/private entities were well aware that the acquisition would not go through but the landholders were confronted with the smoke screen of acquisition and were cornered and persuaded in entering into transactions with the builders/private entities. The transactions so entered into between the landholders and the concerned builders/private entities could not be said to be voluntary and free from any influence. The unnatural and unreasonable bargain was forced upon the landholders by creating façade of impending acquisition. Public Interest was not the underlying concern or objective behind those decisions dated 24.08.2007 and 29.01.2010 but the motive was to confer undue advantage on the builders/private entities. It is clear that considerations other than those which were required to be bestowed, guided the exercise of power in arriving at decisions dated 24.08.2007 and 29.01.2010. The inescapable conclusion, therefore, is that there was an unholy nexus between the governmental machinery and the builders/private entities in devising a modality to deprive the innocent and gullible landholders of their holdings and jeopardize public interest which the acquisition was intended to achieve. Mr. Dhruv Mehta, learned Senior Advocate is right in his submission that the entire mechanism was deliberately employed so that gullible landholders could be deprived of their holdings by a set of builders/private entities and after having seen that the desired result was achieved, the acquisition was dropped and later completely withdrawn. The decisions on the part of the State arrived at on 24.08.2007 and 29.01.2010 were clearly a result of fraud on power and cannot be said to be bona fide exercise of power. In our view, the initiation of class action and filing of Writ Petition in the present matter was perfectly justified and we reject all the submissions made by the learned Counsel appearing for various builders/private entities.

32. We thus hold that:-

a] The transactions entered into between the landholders and the concerned builders/private entities in the present case were not voluntary and were brought about by fraudulent influence. Certain 'middlemen' and builders enriched themselves at the expense of the landholders and public interest which was to be achieved by acquisition.

b] The decisions dated 24.08.2007 and 29.01.2010 as well as entertaining of applications for grant of licence from those who had bought the lands after the acquisition was initiated, were not bona fide exercise of power by the State machinery. The exercise of power under the Act was guided by considerations extraneous to the provisions of the Act and as a matter of fact, was designed to enrich the builders/private entities. These decisions were nothing but fraud on power."

5. **Transfer of Investigation to Central Bureau of Investigation (CBI)**

(a) In the present matter, one FIR No.510 dated 12.08.2015, was registered at Police Station Manesar, Gurugram, under Sections 420, 465, 467, 468, 471, 120-B of the IPC, along with Section 13 of the PC Act. The FIR named unidentified public servants of the Government of Haryana and certain private individuals as accused.

(b) Subsequently, on 14.08.2015, the Government of Haryana considering the gravity and complexity of the case, issued a formal request for the investigation to be handed over to the Central Bureau of Investigation (hereinafter referred to as 'CBI'). Acting upon this request, the CBI officially took over the probe on 15.09.2015 and registered a case bearing No.RCCHG2015A0019, concerning the alleged irregularities in the acquisition of land situated in villages Manesar, Naurangpur, and Lakhnaula in District Gurugram.

6. **Proceedings Before the Special Court in the Present Case**

(a) Upon completion of investigation the CBI presented a police report before the learned Special Court, Panchkula (hereinafter referred to as 'Special Court') on 01.02.2018 against the following individuals/entities :

Sr. No.	Name	Designation
1.	Bhupinder Singh Hooda	Chief Minister, Haryana
2.	Murari Lal Tayal	Principal Secretary to Chief Minister, Haryana
3.	Chhatar Singh	Principal Secretary to Chief Minister, Haryana
4.	Sudeep Singh Dhillon	Director, Town & Country Planning, Govt. of Haryana
5.	Jaswant Singh	Retired Public Servant
6.	Atul Bansal	Director, ABW Infrastructure Ltd. & other companies
7.	M/s Aditya Buildwell Pvt. Ltd. (now known as ABW Infrastructure Ltd.)	
8.	M/s Jassum Estates Pvt. Ltd. (through Director/authorised representative u/s 305 Cr.P.C.)	
9.	M/s Jassum Tower Pvt. Ltd.(through Director/authorised representative u/s 305 Cr.P.C.)	
10.	M/s Jassum Infrastructure Pvt. Ltd.(through Director/authorised representative u/s 305 Cr.P.C.)	
11.	M/s Beeta Promoters Pvt. Ltd. (through Director/authorised representative u/s 305 Cr.P.C.)	
12.	M/s Divya Jyoti Enterprises Pvt. Ltd. (through Director/authorised representative u/s 305 Cr.P.C.)	
13.	M/s NCR Properties Pvt. Ltd. (through Director/authorised representative u/s 305 Cr.P.C.)	
14.	M/s Indo-Asian Construction Company Pvt. Ltd. (through Director/authorised representative u/s 305 Cr.P.C.)	
15.	M/s Dugman Engineers Pvt. Ltd. (through Director/authorised representative u/s 305 Cr.P.C.)	
16.	M/s Galaxy Colonizers Pvt. Ltd. (through Director/authorised representative u/s 305 Cr.P.C.)	
17.	M/s Mount Valley Estates Pvt. Ltd.(through Director/authorised representative u/s 305 Cr.P.C.)	
18.	M/s Miraz Overseas Pvt. Ltd. (through Director/authorised representative u/s 305 Cr.P.C.)	
19.	M/s Yorks Hotels Pvt. Ltd. (through Director/authorised representative u/s 305 Cr.P.C.)	
20.	M/s Sheel Buildcon Pvt. Ltd. (through Director/authorised representative u/s 305 Cr.P.C.)	
21.	M/s Progressive Buildtech Pvt. Ltd. (through Director/authorised representative u/s 305 Cr.P.C.)	

22.	M/s Ecotech Buildcon Pvt. Ltd. (through Director/authorised representative u/s 305 Cr.P.C.)	
23.	Anil Kumar Batra	Private Person. Director of M/s Conway Developers Pvt. Ltd. (now known as Frontier Home Developers Pvt. Ltd.) & other associated companies
24.	Naveen Rao	Private Person (Businessman).
25.	Ramesh Chandra	Private Person. Director of M/s Girnar Infrastructure Pvt. Ltd.
26.	M/s Girnar Infrastructure Pvt. Ltd. (through Director/authorised representative u/s 305 Cr.P.C.)	
27.	Gaurav Choudhry	Private Person. Director of M/s Flair Realtors Pvt. Ltd. & other associate companies.
28.	M/s Metropolis Infrastructure Pvt. Ltd.(through Director/authorised representative u/s 305 Cr.P.C.)	
29.	M/s Flair Realtors Pvt. Ltd.(through Director/authorised representative u/s 305 Cr.P.C.)	
30.	M/s Earl Infotech Pvt. Ltd. (through Director/authorised representative u/s 305 Cr.P.C.)	
31.	M/s Guru Nanak Infrastructure Pvt. Ltd. (through Director/authorised representative u/s 305 Cr.P.C.)	
32.	M/s Angelique International Ltd. (through Director/authorised representative u/s 305 Cr.P.C.)	
33.	M/s Conway Developers Pvt. Ltd. (now known as Frontier Home Developers Pvt. Ltd.) (through Director/authorised representative u/s 305 Cr.P.C.)	
34.	Virender Kumar Jain	Private Person

(b) Vide order dated 16.03.2018, the learned Special Court took cognizance of the offences and summoned all the above named accused in the police report, to face trial. Subsequently, three of the accused—namely, Murari Lal Tayal, Sudeep Singh Dhillon, and Jaswant Singh—filed applications under Section 239/240 of the Cr.P.C. seeking discharge. Similar prayers for discharge were also made by the other accused.

(c) Notably accused Murari Lal Tayal, in his application for

discharge, additionally sought the summoning of further individuals as additional accused under Section 193 of the Cr.P.C.

(d) Vide impugned order dated 01.12.2020, the learned Special Court dismissed the discharge application of all the accused and proceeded to frame charges against them. Furthermore, the Court summoned the following additional accused persons under Section 193 of the Cr.P.C. including the present petitioners, to face trial for various offences under the Indian Penal Code and the PC Act:

Sr. No.	Name	Designation
1.	Rajeev Arora	Managing Director, HSIIDC
2.	Surjeet Singh	Chief Town Planner, HSIIDC
3.	Dhare Singh	Chief Town Planner, Department of Town & Country Planning (DTCP)
4.	Kulwant Singh Lamba	Deputy Superintendent, DTCP
5.	D.R. Dhingra	Dy. Director, Department of Industries and Commerce

(e) Aggrieved by the order summoning them to face trial, the petitioners preferred the present revision petitions challenging the impugned order.

7. Arguments Raised on Behalf of Petitioner Rajeev Arora in CRR-1306-2020

Learned senior counsel appearing for the petitioner advanced the following submissions:-

(a) **The Learned Special Court Erred in Taking Cognizance Second Time**:

(i) Learned senior counsel submitted that the learned Special

Court committed a fundamental jurisdictional error by taking cognizance of the offence for a second time, despite the fact that it had already exercised such power earlier. Learned senior counsel drew the attention of this Court to the impugned order dated 01.12.2020 and submitted that the CBI, after conducting a thorough investigation, had submitted a detailed inquiry report wherein the present petitioner was categorically cited as a witness, not an accused. Based on this report, the learned Special Court had already taken cognizance of the offence vide its order dated 16.03.2018. However, at the subsequent stage of framing of charges, the learned Special Court disregarded this comprehensive report and proceeded to summon the petitioner and others as additional accused vide its order 01.12.2020.

(ii) It is a well settled principle of law that cognizance can only be taken once, and any subsequent act of taking cognizance in the absence of fresh material or evidence is impermissible. Learned senior counsel contended that in the present case, the learned Special Court grossly exceeded its jurisdiction by re-exercising the power of cognizance without any justifiable reason and proceeded to summon the petitioner at an advanced stage of proceedings. The action of the learned Special Court is contrary to settled law and amounts to a serious miscarriage of justice.

(iii) In this regard, learned senior counsel placed reliance on the pronouncement of the Hon'ble Supreme Court in ***Dharmpal and others Vs. Haryana : 2014 (3) SCC 306***, wherein a Constitution Bench categorically held that cognizance of an offence can only be taken once,

and if a Magistrate has already taken cognizance and committed the case to the Court of Sessions, the Sessions Court cannot take fresh cognizance. Learned senior counsel further emphasized that cognizance is taken of an offence and not of an offender, thereby ruling out the possibility of a Court revisiting its decision on cognizance at a later stage.

(iv) Learned senior counsel further submitted that in the instant case, the CBI itself had cited the petitioner as a prosecution witness, and the learned Special Court, acting merely on the existing material without recording any additional evidence erroneously summoned him as an accused. This action as per the learned senior counsel is legally untenable, as it undermines the settled position that a person cannot be summoned as an additional accused unless there is fresh, tangible evidence on record to justify such a move.

(v) Furthermore, the reply filed by the CBI in the instant case unequivocally states that the petitioner had no involvement in the commission of the alleged offence. The investigating agency, after a thorough inquiry, had found no material against the petitioner to implicate him as an accused. However, the learned Special Court arbitrarily disregarded the findings of the CBI and reviewed the inquiry report at the stage of framing of charges by summoning the petitioner in a manner that is not only irregular but also amounts to an abuse of process of law.

(b) **The Learned Special Court Acted in Excess of Jurisdiction by Directing the CBI to Proceed Without Sanction**

Under Section 19 of The PC Act:

(i) Learned senior counsel submitted that the learned Special Court grossly exceeded its jurisdiction by issuing a mandatory direction to the CBI to proceed against the petitioner without first obtaining sanction under Section 19 of the PC Act. It is well settled that when an accused is a public servant, prior sanction is a mandatory precondition for prosecution, and in the absence of such sanction, the learned Special Court could not even have applied its mind to take cognizance, let alone issue summons under Section 193 of the Cr.P.C.

(ii) The learned Special Court, despite being aware that the petitioner was a public servant at the time of the alleged offence, arbitrarily disregarded the statutory mandate of sanction and erroneously took cognizance without obtaining prior approval from the competent authority. This act of the learned Special Court is patently illegal and vitiates the entire proceedings against the petitioner.

(iii) In support of his submissions learned senior counsel placed reliance on the ***State of Punjab Vs. Partap Singh Verka : 2024 SCC OnLine SC 1659 J9***, where the Hon'ble Supreme Court categorically held that even an application under Section 319 of the Cr.P.C. cannot be entertained unless the mandatory requirements of Section 19 of the PC Act are fulfilled. The Court further clarified that the correct legal procedure requires the prosecution to first obtain sanction before seeking to add an accused under Section 319 of the Cr.P.C.

(iv) Moreover, learned senior counsel highlighted that the

learned Special Court, apart from failing to insist on prior sanction, went a step further and issued a direction to the sanctioning authority to grant sanction to prosecute. Such an order as per the learned senior counsel is manifestly illegal, as it interferes with the exclusive domain of the sanctioning authority, which is required to independently apply its mind without any extraneous influence.

(v) While placing reliance on ***Mansukh Lal Vithal Dass Chauhan Vs. State of Gujarat : (1997) 7 SCC 622***, learned senior counsel submitted that the Hon'ble Supreme Court had emphasized that sanction is not a mere formality but a safeguard that protects public servants from frivolous and vexatious prosecutions. The Hon'ble Supreme Court categorically held that if the sanctioning authority fails to exercise independent judgment or acts under external compulsion, the sanction would be rendered invalid.

(vi) In the present case, the allegations against the petitioner relate to acts performed by him in the discharge of his official duties. Therefore, sanction was indispensable before initiating prosecution against him. However, the learned Special Court violated this statutory protection by taking cognizance first and directing the CBI to seek sanction at a later stage. Such an approach is contrary to law and renders the entire proceedings against the petitioner unsustainable.

(c) **Non-Compliance with the Mandate of Sanction Under Section 197 of the Cr.P.C.**:

(i) Learned senior counsel submitted that the learned Special Court erred in failing to appreciate that the allegations against the

petitioner pertain to acts performed in the course of his official duties, thereby necessitating prior sanction under Section 197 of the Cr.P.C. before prosecuting him.

(ii) The learned Special Court, in the impugned order dated 01.12.2020 observed that a *prima facie* case was made out against the petitioner under Sections 420 and 120-B of the IPC, along with Sections 13(2) and 13(1)(d) of the PC Act. However, it erroneously concluded that since cheating is not part of the official duties of a public servant, sanction under Section 197 of the Cr.P.C. was not required.

(iii) Learned senior counsel refuted this finding, by asserting that the allegations levelled against the petitioner directly relate to his administrative functions, including the deferment of the declaration of the award and the release of funds, which were in fact his official duties. Therefore, sanction under Section 197 of the Cr.P.C. was a mandatory precondition before proceeding against him. In support, learned senior counsel placed reliance upon ***Ramesh Chander Diwan Vs. Central Bureau of Investigation : 2024:PHHC:007833*** wherein this Court while placing reliance upon ***A. Srinivasulu Vs. State Rep. by the Inspector of Police (Criminal Appeal No.2417 of 2010, decided on 15.06.2023)*** had observed that since no public servant is appointed to commit an offence, the statutory safeguard of Section 197 of the Cr.P.C. would be applicable to both serving and retired public servants.

(iv) The learned Special Court, however, failed to appreciate this crucial distinction and proceeded to summon the petitioner without

first obtaining the necessary sanction, thereby violating his statutory protection under Section 197 of the Cr.P.C.

(v) Learned senior counsel submitted that the learned Special Court overlooked crucial correspondence between HSIIDC and various Government Departments regarding the release of funds. The petitioner had, in fact, repeatedly sought timely decisions from the State Government, and the deferment of funds was due to delay on the part of the State Government, not the petitioner.

(d) **Procedural Irregularities and Abuse of Process of Law**:

(i) Learned senior counsel contended that the learned Special Court committed serious procedural lapses, including summoning the petitioner at a highly belated stage, without any new evidence on record.

(ii) The contradictory approach of the learned Special Court—rejecting the findings of the CBI while simultaneously relying on the same material to summon the petitioner—demonstrates non-application of judicial mind.

(iii) In the light of the above, learned senior counsel submitted that the impugned order suffers from grave irregularities, is contrary to law, and warrants interference by this Court to prevent further miscarriage of justice.

(iv) The learned Special Court's assertion that HSIIDC, in collusion with the Department of Industries, deliberately deferred the award is wholly unfounded and not supported by any additional evidence.

(v) The petitioner was cited as a prosecution witness by the CBI, and even in their reply the CBI has not opposed the prayer of the petitioner, therefore, the Ld. Special Public Prosecutor for the CBI cannot take a contrary stand and oppose the prayer of the petitioner.

8. Arguments Raised on Behalf of Petitioner D.R. Dhingra in CRR-1321-2020

Learned senior counsel appearing for the petitioner advanced the following submissions:-

(a) **Applicability of 2018 Amendment to the PC Act:**

(i) Emphasizing the stringent provisions introduced by the 2018 amendment to the PC Act, the learned senior counsel contended that in the present case, the learned Special Court took cognizance on 01.12.2020. Since the cognizance regarding the summoning of additional accused was taken after the enforcement of the 2018 amendment of the PC Act, the petitioner is entitled to the protection afforded under Section 19 of the PC Act.

(ii) In support of this contention, learned senior counsel placed reliance on ***Sarah Mathew Vs. State (Govt. of NCT of Delhi) : 2014(1) SCC 721***, wherein the Apex Court comprehensively elucidated the meaning and implications of the term 'cognizance' for all intents and purposes. Learned senior counsel specifically drew the attention of this Court to paragraphs 23 and 24 of the said judgment (reproduced hereinafter), wherein the Constitution Bench, after referring to ***Jamuna Singh & others Vs. Bharati Shah : AIR 1964 Supreme Court 1541***, explained in detail the concept of 'cognizance'. It was observed that

taking cognizance does not necessitate any formal action of any kind. Rather, as soon as the Magistrate applies his mind to the suspected commission of an offence, cognizance is deemed to have been taken. Furthermore, it was categorically held that cognizance is taken of an offence and not of an offender.

(iii) Relevant extract of ***Sarah Mathew's case (supra)*** is reproduced hereinunder:-

> *"23. In Jamuna Singh & Ors. v. Bhadai Shah [AIR 1964 SC 1541], relying on R.R. Chari and Gopal Das Sindhi & Ors. v. State of Assam & Anr.[AIR 1961 SC 986], this Court held that it is well settled that when on a petition or complaint being filed before him, a Magistrate applies his mind for proceeding under the various provisions of Chapter XVI of the Cr.P.C., he must be held to have taken cognizance of the offences mentioned in the complaint.*
>
> *24. After referring to the provisions of the Cr.P.C. quoted by us hereinabove, in S.K. Sinha, Chief Enforcement Officer, this Court explained what is meant by the term 'taking cognizance'. The relevant observations of this Court could be quoted:*
>
> *"19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.*
>
> *20. "Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial.*
>
> *Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance." In several judgments, this view has been*

reiterated. It is not necessary to refer to all of them."

(b) **Sanction Under Section 19 of the PC Act as a Pre-Requisite**:

(i) Learned senior counsel further submitted that the requirement of prior sanction under Section 19 of the PC Act is *sine qua non* and cannot be postponed until after the Court has already applied its mind to the matter. The necessity of obtaining sanction must precede judicial scrutiny, and failure to adhere to this procedural safeguard would vitiate the proceedings.

(c) **Test for Determining the Requirement of Sanction:**

(i) The learned senior counsel invited the attention of this Court to the following law laid down by the Hon'ble Supreme Court in ***D.Devaraja Vs. Owais Sabeer Hussain : 2020 SCC OnLine SC 517:***

> *"31. In Pukhraj v. State of Rajasthan this Court held : (SCC p. 703, para 2)*
>
> *"2. ... While the law is well settled the difficulty really arises in applying the law to the facts of any particular case. The intention behind the section is to prevent public servants from being unnecessarily harassed. The section is not restricted only to cases of anything purported to be done in good faith, for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. Nor is it confined to cases where the act, which constitutes the offence, is the official duty of the official concerned. Such an interpretation would involve a contradiction in terms, because an offence can never be an official duty. The offence should have been committed when an act is done in the execution of duty or when an act purports to be done in execution of duty. The test appears to be not that the offence is capable of being committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a*

> *mistaken belief as to the existence of such duty. Nor need the act constituting the offence be so inseparably connected with the official duty as to form part and parcel of the same transaction. What is necessary is that the offence must be in respect of an act done or purported to be done in the discharge of an official duty. It does not apply to acts done purely in a private capacity by a public servant. Expressions such as the " capacity in which act is performed", "cloak of office" and "professed exercise of the office" may not always be appropriate to describe or delimit the scope of section. An act merely because it was done negligently does not cease to be one done or purporting to be done in execution of duty."*

(ii) Learned senior counsel asserted that the Hon'ble Supreme Court has enunciated the test for determining whether sanction under Section 19 of the PC Act is required. It was contended that the Apex Court observed that the crucial consideration is whether the alleged act is entirely unconnected with the official duty of the public servant or whether there exists a reasonable nexus between the act and the discharge of official functions. However, if the alleged act is reasonably connected with the discharge of official duties, the necessity of obtaining prior sanction remains, even if the officer has exceeded the scope of his authority or acted beyond the four corners of law. The Hon'ble Supreme Court illustrated this by citing an example of a police officer, emphasizing that if the alleged act of a police man or any other public servant, is unrelated to official duty, no question of sanction arises.

(iii) It was vehemently urged that in the light of the aforementioned judicial precedents and statutory provisions, the absence of prior sanction in the present case renders the proceedings

unsustainable in law.

(iv) Emphasizing the rigor introduced by the 2018 Amendment to the PC Act, learned senior counsel submitted that in the present case, cognizance was taken by the learned Special Court on 01.12.2020. Since the cognizance regarding the summoning of additional accused was taken pursuant to the 2018 Amendment, the present petitioners are protected under the provisions of Section 19 of the PC Act.

9. Arguments Raised on Behalf of Petitioner Dhare Singh in CRR-1322-2020

Learned senior counsel appearing for the petitioner made the following submissions:-

(a) **Role of the petitioner**:

(i) The petitioner, is a retired public servant, who superannuated in February, 2010. He was promoted to the position of Chief Town Planner in 2005 and remain posted in the Urban Development Department, DCP, until his retirement.

(ii) It was submitted that Urban Development Department is not involved in the acquisition of land but deals with applications for the grant of licences concerning purchases of land.

(iii) During investigation carried out by CBI, it emerged that the petitioner had recommended the rejection of licence application. Consequently, he was cited as a prosecution witness by the CBI, and his statement under Section 161 of the Cr.P.C. was recorded.

(b) **Discrepancies in the reply filed by the CBI**:

(i) Learned senior counsel drew the attention of this Court to

the reply of the CBI dated 07.01.2021, para viii, where the CBI conceded as follows:

> *"viii. It is submitted that a report submitted under Section 173 of Cr.P.C. comprising of material (Statement of witnesses under Section 161 of Cr.P.C., documents collected/ seized, CFSL report etc.) as also the conclusion of analysis of investigating agency. The report under Section 173 of Cr. P.C. is accordingly put before the Learned Competent Court for summoning of the accused persons and their trial according to law. The Learned Trial Court may, in its own wisdom/ jurisdiction, differ with the conclusion arrived at by the Investigating Agency and may choose to summon/further accused for facing trial. In the instant case, the Learned Trial Court has not agreed with the conclusion of CBI regarding the culpability of some persons and has chosen, in exercise of its wisdom and jurisdiction, to summon more persons as accused which order of the Learned Trial Court is liable to be defended by the Public Prosecutor. It is, however, with utmost humility submitted that the Learned Trial Court has fallen into grave error in making the following observations in the order dated 01.12.2020 that:*
>
> > *"76. The common man of this country reposes unflinching faith in the investigations conducted by the CBI and the premier investigating agency has always remained above board in almost all sensitive matters and the matters involving high and mighty. Therefore, the faith and confidence of common man cannot be allowed to be shaken and sporadic instances of the biased and tainted investigations of a few investigators cannot dent the image of this agency. It apparently appears that IO of this case has done investigation in an apparent pick and choose manner, for the reasons best known to him. The IO has sought to introduce narrative which on the face of its gets contradicted vide documents/ material on record. Despite there being unambiguous statements of witnesses and documents on record so as to afford him to take a logical line of action in his investigation, the IO has chosen to turn a blind eye to the role of some important public servants whose acts and omissions can be prima-facie termed to be more culpable than the persons arrayed as accused in this case, if the standard of analysis adopted by the IO is applied to the whole matter. Objectively and detachment, which are hallmark of functioning of premier*

> *agencies like CBI, are found to have been thrown to winds by the Investigator and it apparently seems that he has treaded a path guided by pre-conceived ideas and line of action. Such isolated instances are enough to bring the sobriquet of caged parrot to the agency. At the cost of repetition, as per settled law, the court is not supposed to act as a mere post office or a mouth piece of the prosecuting agency and act as a mute spectator.*
>
> *77. The conduct of investigators, especially in sensitive matters needs to be put under scanner and be scrutinized with reference to their movements and calls records of the relevant time."*
>
> *It is submitted, with excruciating pain and all humility/respect, the Learned Trial Court has clearly transgressed its jurisdiction while making the abovesaid observations. The present petition filed by the petitioner (herein) deserves to be dismissed but the abovesaid observations deserve to be expunged by this Hon'ble Court in the interest of justice, equity and fair play."*

(ii) In fact, the CBI also further asserted that the learned Special Court transgressed its jurisdiction while making certain observations and also prayed for those observations to be expunged in the interest of justice, equity, and fair play. Therefore, in the aforesaid circumstances the Ld. Special Public Prosecutor for the CBI has no locus to oppose the prayer made by the petitioner in the present petition and the same deserves to be allowed.

(iii) The learned Special Court, while deciding the application for discharge of the co-accused, assumed the role of a prosecuting agency by rejecting the final report submitted by the CBI. The Court made contradictory observations—on the one hand, it criticized the final report submitted by the CBI, finding that the witnesses cited, including the petitioner, had connived with the main accused and that a

prima facie case was made out against them under Section 420 read with Section 120-B of the IPC; on the other hand, it relied upon the same report, re-evaluated the position of the prosecution, and drew its own conclusions, contrary to the settled law in the said regard.

(iv) Furthermore, learned senior counsel referred to the prayer made by the CBI to expunge the remarks made against it in the impugned order dated 01.12.2020. However, learned senior counsel asserted that these remarks cannot be viewed in isolation as the entire case against the petitioner and the four other persons summoned as additional accused rests upon the impugned order, including these observations. Expunging those remarks would effectively conclude the case against the petitioner and his co-accused.

(c) **Mandate of Sanction Under Section 19 of the PC Act and Section 197 of the Cr.P.C.:**

(i) The petitioner was initially cited as a prosecution witness, PW-27, by the CBI but was later summoned as an additional accused vide the impugned order dated 01.12.2020.

(ii) Prior to the amendment of the PC Act on 26.07.2018, no sanction was required for prosecution of a retired public servant. However, after the amendment, Section 19(1)(b) of the PC Act removed the distinction between serving and retired public servants regarding sanction, thereby mandating prior sanction before prosecution.

(iii) The learned senior counsel submitted that the CBI relied upon the statement made by the petitioner under Section 161 of the Cr.P.C. while contesting the discharge application of co-accused

Sudeep Singh Dhillon. However, the learned Special Court in its independent assessment, strangely concluded that a prima facie case under Section 420 and 120-B was made out against the petitioner.

(iv) Referring to the impugned order, learned senior counsel further submitted that the learned Special Court erred in holding that since four out of the five additional accused, including the petitioner, had already superannuated, sanction under Section 19 of the PC Act was not required. The learned Special Court further observed that the offence of cheating, by its very nature, does not arise in the discharge of official duties, and hence, the absence of sanction under Section 197 of the Cr.P.C. was no bar to summoning the accused.

(v) Challenging this view, learned senior counsel contended that the allegations against the petitioner pertain to processing applications for ineligible candidates seeking licences, which falls within his official duties. Thus, the learned Special Court wrongly concluded that the alleged offence of cheating did not constitute an official act.

(vi) In support of this submission, learned senior counsel placed reliance upon ***State of Punjab Vs. Partap Singh Verka : 2024 SCC OnLine SC 1659 J9,*** and ***Dilawar Singh Vs. Parminder Singh : 2005(12) SCC 709***. Learned senior counsel contended that even for an application under Section 319 of the Cr.P.C., the correct procedure mandates obtaining prior sanction under Section 19 of the PC Act before formally seeking the addition of an accused. Therefore, the learned Special Court ought to have insisted on such sanction before

summoning the petitioner.

(vii) Further reliance was placed by the learned senior counsel on ***A. Srinivasulu Vs. State Rep. by the Inspector of Police (Criminal Appeal No.2417 of 2010, decided on 15.06.2023)***:

> *"29. There is no dispute about the fact that A-1 to A-4, being officers of a company coming within the description contained in the Twelfth item of Section 21 of the IPC, were 'public servants' within the definition of the said expression under Section 21of the IPC. A-1 to A-4 were also public servants within the meaning of the expression under Section 2(c)(iii) of the PC Act. Therefore, there is a requirement of previous sanction both under Section 197(1) of the Code and under Section 19(1) of the PC Act, for prosecuting A-1 to A-4 for the offences punishable under the IPC and the PC Act.*
>
> *XXX XXX XXX XXX*
>
> *47. For the purpose of finding out whether A-1 acted or purported to act in the discharge of his official duty, it is enough for us to see whether he could take cover, rightly or wrongly, under any existing policy.*
>
> *Paragraph 4.2.1 of the existing policy extracted above shows that A-1 at least had an arguable case, in defence of the decision he took to go in for Restricted Tender. Once this is clear, his act, even if alleged to be lacking in bona fides or in pursuance of a conspiracy, would be an act in the discharge of his official duty, making the case come within the parameters of Section 197(1) of the Code. Therefore, the prosecution ought to have obtained previous sanction. The Special Court as well as the High Court did not apply their mind to this aspect.*
>
> *48. Shri Padmesh Mishra, learned counsel for the respondent placed strong reliance upon the observation contained in paragraph 50 of the decision of this Court in Parkash Singh Badal vs. State of Punjab10. It reads as follows:-*
>
> *"50. The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence."*

> *49. On the basis of the above observation, it was contended by the learned counsel for the respondent that any act done by a public servant, which constitutes an offence of cheating, cannot be taken to have been committed while acting or purporting to act in the discharge of official duty.*
>
> *50. But the above contention in our opinion is far-fetched. The observations contained in paragraph 50 of the decision in Parkash Singh Badal (supra) are too general in nature and cannot be regarded as the ratio flowing out of the said case. If by their very nature, the offences under sections 420, 468, 471 and 120B cannot be regarded as having been committed by a public servant while acting or purporting to (2007) 1 SCC 1 act in the discharge of official duty, the same logic would apply with much more vigour in the case of offences under the PC Act. Section 197 of the Code does not carve out any group of offences that will fall outside its purview. Therefore, the observations contained in para 50 of the decision in Parkash Singh Badal cannot be taken as carving out an exception judicially, to a statutory prescription. In fact, Parkash Singh Badal cites with approval the other decisions (authored by the very same learned Judge) where this Court made a distinction between an act, though in excess of the duty, was reasonably connected with the discharge of official duty and an act which was merely a cloak for doing the objectionable act. Interestingly, the proposition laid down in Rakesh Kumar Mishra (supra) was distinguished in paragraph 49 of the decision in Parkash Singh Badal, before the Court made the observations in paragraph 50 extracted above."*

(d) **Jurisdictional Overreach by the Learned Special Court in the Impugned Order Dated 01.10.2020**:

(i) Learned Special Court, while deciding the discharge application of accused persons Murari Lal Tayal, Sudeep Singh Dhillon, and Jaswant Singh, arbitrarily invoked its power under Section 193 of the Cr.P.C. and summoned five additional accused, including the petitioner.

(ii) The impugned order is patently illegal, as the learned Special

Court had already taken cognizance on 16.03.2018 and was at the stage of considering the framing of charges. Therefore, the power under Section 193 of the Cr.P.C. was no longer available to it.

(iii) By summoning additional accused persons vide impugned order dated 01.12.2020, the learned Special Court failed to comply with the procedures as laid down by law. The Court, while reconsidering the final report submitted by the CBI and analyzing the role of the additional accused, effectively took cognizance of the same offence for a second time.

(iv) Learned senior counsel further submitted that the learned Special Court was deciding application for discharge under Sections 239 and 240 of the Cr.P.C. However, in complete disregard of the protection under Section 19 of the PC Act, the learned Special Court erred in summoning additional accused, including the petitioner, without first obtaining the requisite sanction from the competent authority.

(v) Learned senior counsel contended that once the Special Court had taken the cognizance of the offence vide order dated 16.03.2018, the subsequent act of taking cognizance in the absence of fresh material or evidence amounted to second cognizance. The Court should have waited until the appropriate stage where an application under Section 319 of the Cr.P.C. could have been moved.

(vi) It was further submitted that the learned Special Court erroneously relied upon the final report by the CBI, wherein the petitioner along with the other subsequently summoned accused, was

cited as a witness. The learned Special Court, on the basis of that report, including the petitioner's own statement, summoned him under Section 193 of the Cr.P.C. Learned senior counsel asserted that this is not a mere procedural irregularity but a fundamental violation of the petitioner's right against self-incrimination under Article 20(3) of the Constitution of India. In support, learned senior counsel placed reliance upon ***Dharmpal and others Vs. Haryana : 2014 (3) SCC 306*** wherein the Hon'ble Supreme Court held that cognizance can be taken only once.

10. Arguments Raised on Behalf of Petitioner Kulwant Singh Lamba in CRR-363-2021

(a) Learned counsel for the petitioner submitted that the CBI, upon conducting a detailed and comprehensive investigation in the matter, did not find any material indicating culpability on the part of the petitioner. Consequently, the petitioner was cited as a prosecution witness (PW-28) in the chargesheet filed before the learned Special Court. However, vide impugned order dated 01.12.2020, the learned Special Court erroneously summoned the present petitioner along with co-accused Rajeev Arora, Dhare Singh and D. R. Dhingra, to face trial as additional accused.

(b) Learned counsel further contended that the impugned order passed by the learned Special Court is based solely on the averments and submissions made by accused Sudeep Singh Dhillon (accused No.4) in his application under Section 239/240 of the Cr.P.C. It was submitted that the learned Special Court failed to identify or rely upon

any fresh material or evidence—let alone any incriminating material—on the record that would warrant summoning of the petitioner as an accused. The entire basis for summoning the petitioner, it was urged, rested on the same set of documents and evidence which had already been considered by the CBI during the course of investigation and which had led to the petitioner being made a prosecution witness, and not an accused.

(c) It was further argued that no offence under the IPC or the Prevention of Corruption Act, is made out against the petitioner. The petitioner, it was submitted, had no role whatsoever in the process of acquisition of land or in proposing the grant of licences which form the substratum of the present proceedings. Rather, the petitioner was merely posted as a Deputy Superintendent in the Department of Town and Country Planning, Haryana (DTCP), and had no decision-making authority in either the acquisition or licencing processes.

(d) Learned counsel submitted that the only allegation levelled against the petitioner pertains to an alleged omission to submit a file after 09.08.2007. However, it was clarified that the petitioner, acting diligently and in compliance with the directions dated 07.08.2007, had indeed submitted the concerned file. The said file, however, was returned to him, and the record clearly reflects this fact. It was further submitted that the petitioner was subsequently promoted as Superintendent, vide order dated 26.08.2008, and his successor, one Rajbir Singh, took over his previous role, and was responsible for any subsequent file movement, including the submission of the file after the

alleged dropping of acquisition proceedings.

(e) Learned counsel emphasised that even during his tenure as Deputy Superintendent, the petitioner had acted strictly in accordance with procedure and due administrative diligence, and had, as and when the files were received in the office of the Chief Town Planner (CTP), promptly processed and submitted them to his superiors for further action. Hence, the petitioner had, at no stage, acted with *malafides* or in dereliction of duty.

(f) It was next contended that the learned Special Court had already taken cognizance in the matter on 16.03.2018. Therefore, the invocation of Section 193 of the Cr.P.C. by the learned Special Court at the stage of deciding the discharge applications filed by co-accused Murari Lal Tayal, Sudeep Singh Dhillon and Jaswant Singh, to summon additional accused, was wholly without jurisdiction. It was argued that once cognizance had been taken, the Court could not have assumed fresh jurisdiction to summon additional accused without satisfying the preconditions laid down under Section 193/319 of the Cr.P.C. The action of the learned Special Court, it was submitted, is *ex-facie*, illegal and reflects a serious jurisdictional error.

(g) Learned counsel further submitted that the summoning of the petitioner at a stage when the matter had already advanced to arguments on charge, demonstrates a predetermined mind-set on the part of the learned Special Court. It was asserted that, in the absence of any fresh or incriminating evidence against the petitioner, the decision to summon him as an accused is arbitrary and unjustified.

(h) It was also contended that the limited allegation regarding the role of the petitioner in processing and forwarding applications for licences, including those of allegedly ineligible applicants, is devoid of any criminal intent or conspiracy. It was pointed out by the learned counsel that, in fact, the petitioner had made a noting dated 07.08.2007, recommending rejection of the licence application submitted by M/s Aditya Buildwell Pvt. Ltd. (hereinafter referred to as 'M/s ABW'), which clearly evidences his *bonafide* conduct and adherence to the legal procedure.

(i) Finally, learned counsel drew the attention of this Court to paragraph 73 of the impugned order, wherein the learned Special Court itself appears to have acknowledged that the principal responsibility for the alleged lapses in the land acquisition proceedings lay with two departments, namely the HSIIDC and the Department of Industries. This, it was urged by the learned counsel, further exonerates the petitioner, who was part of the DTCP and had no control or involvement in the functioning of those departments.

(j) In addition to the above submissions, it was also contended by the learned counsel for the petitioners that the CBI has no locus to oppose the present petitions, as no incriminating material was found against the petitioners during the course of investigation. On the contrary, the petitioners were cited as prosecution witnesses. It was, thus, submitted that, at this stage, the CBI cannot be permitted to oppose the relief sought by the petitioners, particularly when their affidavit is silent on any substantive opposition to the petitions.

11. **<u>Arguments Raised on Behalf of the Respondent-CBI Qua Petitioners Rajeev Arora, Dhare Singh and D.R. Dhingra</u>**

Learned counsel for the respondent-CBI made the following submissions:-

(a) **Summoning of Prosecution Witnesses to Face Trial:**

(i) Learned Special Public Prosecutor for CBI emphatically submitted that there is no embargo on summoning of prosecution witnesses to face trial in case their *prima facie* complicity is made out from the material on record. In such circumstances, the learned Special Court cannot be faulted with for summoning the petitioners to face trial in view of the *prima facie* material against them.

(ii) To substantiate this position, learned Special Public Prosecutor for the CBI placed reliance upon ***R.N. Aggarwal Vs. R.C. Bansal and others : 2014(4) RCR (Criminal) 644,*** wherein the Hon'ble Supreme Court has held as under:-

> *"22. As noticed above, after completion of investigation, CBI filed charge- sheet in the Court of Special Judge to deal with the cases in the Prevention of Corruption Act, as also under the Indian Penal Code. The procedure and the powers of the Special Judge have been prescribed in Section 5 of the said Act. For better appreciation, Section 5 of the Act is reproduced hereinbelow:-*
>
> > *"5. Procedure and powers of special Judge.—*
> >
> > *(1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by the Magistrates.*
> >
> > *(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been*

directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under section 307 of that Code.

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

(5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944).”

23. A bare reading of the provision would show that the special judge may take cognizance of the offence without the accused being committed to him for trial and the court of special judge shall be deemed to be a court of session. The special judge in trying the accused persons shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 for the trial of warrant cases by the Magistrate. Indisputably, a person holding the post of either a Sessions Judge, Additional Sessions Judge or

Assistant Sessions Judge is appointed as Special Judge and shall follow the procedure prescribed in the Code for trial of warrant cases.

24. The constitution Bench in the case of A.R. Antuley (supra), was of the view that the special judge appointed under the Prevention of Corruption Act, enjoys all powers conferred on the Court of original jurisdiction functioning under the High Court except those specifically conferred under the Act. The Bench observed :-

> *"27……..While setting up a Court of a Special Judge keeping in view the fact that the high dignitaries in public life are likely to be tried by such a court, the qualification prescribed was that the person to be appointed as Special Judge has to be either a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge. These three dignitaries are above the level of a Magistrate. After prescribing the qualification, the Legislature proceeded to confer power upon a Special Judge to take cognizance of offences for the trial of which a special court with exclusive jurisdiction was being set up. If a Special Judge has to take cognizance of offences, ipso facto the procedure for trial of such offences has to be prescribed. Now the Code prescribes different procedures for trial of cases by different courts. Procedure for trial of a case before a Court of Session is set out in Chapter XVIII; trial of warrant cases by Magistrates is set out in Chapter XIX and the provisions therein included catered to both the types of cases coming before the Magistrate, namely, upon police report or otherwise than on a police report. Chapter XX prescribes the procedure for trial of summons cases by Magistrates and Chapter XXI prescribes the procedure for summary trial. Now that a new criminal court was being set up, the Legislature took the first step of providing its comparative position in the hierarchy of courts under Section 6 CrPC by bringing it on level more [pic]or less comparable to the Court of Session, but in order to avoid any confusion arising out of comparison by level, it was made explicit in Section 8(1) itself that it is not a Court of Session because it can take cognizance of offences without commitment as contemplated by Section 193 CrPC. Undoubtedly in Section 8(3) it was clearly laid down that subject to the provisions of sub-sections (1) and (2) of Section 8, the Court of Special Judge shall be deemed to be a Court of Session trying cases without a jury or without the aid of assessors.""*

(b) **Contentions Regarding Sanction**

(i) The protection under Section 19 of the PC Act is available only to public servants while they are in service and not after retirement. In the present case, except for petitioner Rajeev Arora, all other petitioners had retired well before the commission of the alleged offence.

(ii) For the protection under Section 197 Cr.P.C. to apply, the alleged act or omission must be integrally connected with the official duties of the public servant. In support, reliance was placed upon ***Prakash Singh Badal Vs. State of Punjab : 2007(1) RCR (Criminal) 1***, which underscores that there must be a reasonable nexus between the act in question and the official duty. In addition, learned counsel for CBI has also placed reliance upon ***N. Bhargava Pillai (dead) by LRs and another Vs. State of Kerala : AIR 2004 Supreme Court 2317; P.K. Pradhan Vs. State of Sikkim (CBI) : AIR 2001 Supreme Court 2547*** and ***Station House Officer, CBI/ACB/Bangalore Vs. B.A. Srinivasam and another : 2020(2) SCC 153***.

(iii) An accused facing prosecution under the PC Act cannot claim immunity on the ground of absence of sanction if they ceased to be a public servant at the time the Court took cognizance of the offence.

(iv) The immunity under Section 197 of the Cr.P.C. would not be available to public servants accused of committing offences under Sections 420, 406 etc. of the IPC. In support, reliance was placed on the judgment rendered by the Constitution Bench of the Hon'ble Supreme Court in ***K. Satwant Singh Vs. State of Punjab : 1960 AIR 266.***

(c) **Allegation of Cognizance Being Taken Twice**:

(i) While it is settled law that cognizance of an offence can only be taken once, the Sessions Court assumes original jurisdiction upon commitment of the case.

(ii) Learned counsel relied upon ***Dharmpal's case (supra)*** and ***Raffiusshan Vs. State of U.P. and others : Criminal Appeal No.1347 of 2021***, where the Hon'ble Supreme Court held as follows, that once a case is committed to the Court of Sessions, it assumes original jurisdiction and is empowered under Section 193 Cr.P.C. to summon additional accused based on the records transmitted to it:

> *"8. However, the High Court made following observations regarding the present matter:*
>
> > *"In the present matter as the cognizance has already been taken by the learned Sessions Judge and charges were framed against the accused after considering the police papers annexed with the charge-sheet and the trial had started, it would not be proper for the trial court to take further cognizance of the case and to summon the three accused by the impugned order.*
> >
> > *The summoning of the three accused by the impugned order is not in consonance with the legal provisions of law. The cognizance taken by the trial Sessions Court under Section 193 Cr.P.C. for the second time is not perfectly valid and permissible by law. The impugned order is not legally proper and the impugned order transpires that the trial sessions court has abused the process of law. The impugned order is liable to be quashed.""*

Further reliance was placed by CBI on ***Kishun Singh Vs. State of Bihar : 1993(1) RCR (Criminal) 647***.

(iii) Attention was also drawn to Section 5 of the PC Act, which empowers a Special Judge to take cognizance of offences without requiring the committal. The procedure to be followed is that

prescribed for the trial of warrant cases by Magistrates under the Cr.P.C. A plain reading of this provision indicates that a Special Court has extensive powers, including the power to take cognizance of offences without prior committal.

(iv) The Magistrate is not bound to accept the final report by the police under Section 173 of the Cr.P.C. If dissatisfied, the Magistrate has the powers to disagree with the report and issue summons to the accused, as deemed appropriate in the given facts and circumstances. In support, reliance was placed on ***A.R. Antulay Vs. R.S. Naik and another : 1988 AIR 1531***.

(v) The claim that cognizance was taken twice is demonstrably false. The records clearly indicate that cognizance was taken on 16.03.2018, whereas in 2020, only certain witnesses were summoned as additional accused.

(vi) It is a settled legal principle that cognizance is taken of an offence, not of specific offenders. The learned Special Court in exercising its powers under Section 5 of the PC Act, rightly summoned the petitioners as additional accused. Learned Special Public Prosecutor for the CBI vehemently submitted that summoning additional accused cannot be construed as taking cognizance of an offence afresh, but rather as a procedural step aimed at identifying the real offenders.

(vii) In ***Raghubans Dubey Vs. State of Bihar : 1967 AIR SC 1167***, the Hon'ble Supreme Court held that when a Magistrate takes cognizance of an offence based on a police report, they take cognizance of the offence itself, not merely of the individuals named in the report.

Consequently, the Magistrate is well within his jurisdiction to summon additional accused if there is sufficient evidence against them based on the material before the Court.

(d) **Directions Issued by the Learned Special Court to the CBI**:

(i) Learned Special Public Prosecutor, while referring to the impugned order, submitted that the petitioners have misinterpreted the term 'direction' to suit their dilatory tactics. The so called direction in question was not a mandate to the sanctioning authority but an instruction to the CBI to seek valid sanction in compliance with Section 19 of the PC Act. A perusal of the order makes it clear that the Special Court's observations were made in furtherance of procedural compliance rather than imposing any binding directive.

(ii) Reliance was placed upon ***Amit Katyal Vs. CBI (CRR No.563 of 2021, decided on 04.12.2024)***, where under similar circumstances, the learned Special Court summoned the petitioner (a director) in his individual capacity to face trial as an additional accused under Section 120B read with Sections 420, 468, and 471 of the IPC and 13(2) read with 13(1)(b) of the PC Act.

(iii) Furthermore, in response to a specific query put to the CBI regarding the averments made in its reply (para viii), it was submitted that the CBI stands by its earlier reply and does not wish to file a fresh reply on the issue.

12. Arguments Raised on Behalf of the Respondent-CBI Qua Petitioner-Kulwant Singh Lamba

(a) Learned Special Public Prosecutor for the CBI submitted that the present petitioner was originally cited as a prosecution witness in the chargesheet filed by the CBI. However, he did not dispute that the petitioner neither played any role in the decision-making process regarding the grant of licences nor was involved in withholding the relevant files. It was further not denied that the petitioner failed to present the concerned files before the competent authority at the relevant time.

(b) Nevertheless, learned Special Public Prosecutor for the CBI contended that the mere designation of a person as a prosecution witness in the chargesheet does not preclude the Trial Court from summoning such person as an accused, should the material on record disclose their involvement in the commission of the offence. In this regard, reliance was placed on the judgment of the Hon'ble Supreme Court in ***R.N. Aggarwal (supra)***, wherein it was observed in paras 22 and 23, that once the Court takes cognizance of an offence, it is incumbent upon it to examine whether any person, irrespective of how they are described in the chargesheet, appears to be *prima facie* involved in the crime. He submitted that the Hon'ble Supreme Court emphasized that the overarching duty of the Trial Court is to ensure that all actual perpetrators of the offence are brought to justice. The mere fact that an individual has been listed as a witness does not insulate him from being summoned as an accused, if the evidentiary material warrants such action. Learned Special Public Prosecutor further reiterated that the cognizance taken by a Court is in respect of the

offence and not the offender. It was still further argued that, in terms of Section 193 of the Cr.P.C., once the case is committed to the Court of Session, it is empowered to take cognizance of the offence afresh, even in the absence of a formal committal of the accused to stand trial before it. In this context, reliance was placed on the decision of the Hon'ble Supreme Court in ***Dharampal and others Vs. State of Haryana and another : AIR 2013 Supreme Court 3018***, particularly paras 26 to 28, where it was held that the Sessions Court is not bound by the scope of cognizance taken by the Magistrate under Section 190 of the Cr.P.C. The Sessions Court may, upon commitment, exercise its jurisdiction independently and summon persons as accused, if the material on record discloses sufficient grounds for proceeding against them.

FINDINGS OF THE COURT

13. I have heard learned counsel for the parties and perused the relevant material on record.

Consideration of Preliminary Objection Regarding Locus of Special Public Prosecutor, CBI

14. At the very threshold, it is necessary to address the preliminary objection raised by the learned senior counsel for the petitioners challenging the *locus standi* of the Special Public Prosecutor representing the CBI to oppose the present petitions.

15. Even assuming, for the sake of argument, that the contention of the petitioners is accepted, and the Special Public Prosecutor is not competent to oppose the petition in his representative capacity, that, by itself, does not entitle the petitioners to a grant of

relief as a matter of course. This Court is under a solemn obligation to adjudicate upon the matter on its own merits and in accordance with law, irrespective of whether the respondent-CBI has formally opposed the prayer made in the petitions.

16. Furthermore, it must be emphasized that the Special Public Prosecutor, although appointed to represent the CBI, is fundamentally an officer of the Court. In that capacity, his duty is not limited to advocating the case of the prosecuting agency but extends to rendering assistance to the Court in ensuring the fair administration of justice. Therefore, the submissions made by him cannot be disregarded merely on the ground of a perceived lack of locus. His role, being rooted in a larger obligation to the Court, warrants consideration, and the Court shall accordingly take into account the submissions advanced by him while determining the issues raised herein.

Issue of Alleged Second Cognizance

17. The principal contention urged by the learned counsel for the petitioners is that the learned Special Court has erroneously taken cognizance of the case for a second time while summoning the petitioners to face trial, even though cognizance had already been taken earlier vide order dated 16.03.2018. However, there is no merit in the aforesaid submission since it cannot be considered a situation where the Special Court has indeed taken cognizance again.

(a) It is pertinent to note that the term “cognizance” has not been expressly defined in the Cr.P.C. However, as per Black's Law Dictionary, it denotes the judicial recognition or judicial consideration

of a matter—the exercise of jurisdiction or authority to proceed. The Hon'ble Supreme Court in ***R.R. Chari Vs. The State of U.P. : AIR 1951 SUPREME COURT 207***, has held that taking cognizance does not involve any formal action but merely the application of judicial mind to the suspected commission of an offence with a view to initiating proceedings. It is a stage preceding any further procedural steps such as issuance of process or framing of charges.

(b) A foundational principle of criminal law is that cognizance is always taken of the offence and not of the offender. At the pre-trial stage, the task of the Court is to apply its mind to the materials placed before it—typically the police report under Section 173(2) of the Cr.P.C. and the accompanying material—and assess whether any offence has been disclosed, thereby justifying the judicial notice taken by a Court.

(c) Upon receipt of the police report, the Magistrate has three broad courses of action : (1) accept the report and take cognizance of the matter; (2) direct further investigation under Section 156(3) of the Cr.P.C.; (3) disagree with the report and proceed to discharge the accused or take other permissible action.

(d) It would be apposite to point out that the Magistrate is not bound by the conclusions arrived at by the Investigating Officer and has to independently apply its judicial mind to the material collected during investigation and thereafter, proceed further.

18. The scheme of the Cr.P.C. under Section 193 stipulates that a Court of Session cannot take cognizance of an offence as a Court

of original jurisdiction unless the case has been committed to it by a Magistrate. This general procedure entails that the Magistrate first receives the police report, takes cognizance, and then commits the matter to the Sessions Court, which thereafter proceeds to exercise jurisdiction under Section 193 of the Cr.P.C. The Sessions Court, even in the aforesaid circumstances, is empowered to summon additional accused in exercise of powers under Section 193 of the Cr.P.C., as has been held by a Constitution Bench of the Hon'ble Supreme Court in ***Dharampal's case (supra),*** and the same would not amount to taking cognizance twice. It would be relevant to reproduce the relevant extract of the ***Dharampal's case (supra)***:-

> *"28. In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh's case (supra) that the Session Courts has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Session Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.*
>
> *29. We are also unable to accept Mr. Dave's submission that the Session Court would have no alternative, but to wait till the stage under Section 319 Cr.P.C. was reached, before proceeding against the persons against whom a prima facie case was made out from the materials contained in the case papers sent by the learned Magistrate while committing the case to the Court of Session.*
>
> *30. The Reference to the effect as to whether the decision in Ranjit Singh's case (supra) was correct or not in Kishun Singh's case (supra), is answered by holding that the decision in Kishun Singh's case was the correct decision and the learned Session Judge, acting as a Court of original jurisdiction, could issue summons under Section 193 on the basis of the records transmitted to him as a result of the committal order passed by the learned*

Magistrate."

19. It is, therefore, abundantly clear that once the Court has taken cognizance of an offence, it must assess, on *prima facie* basis, which individuals appear to be involved in the commission of that offence. If it emerges that a person, who has not been named in the chargesheet, is *prima facie* found to have committed the offence, the Court is competent to summon such an individual under Section 193 of the Cr.P.C. at this stage.

Distinction in Procedure Under the Prevention of Corruption Act

20. In cases governed by special statutes such as the PC Act, the general procedural scheme is subject to a crucial qualification. A plain reading of Section 5 of the PC Act makes it clear that the Special Court is vested with significant procedural and substantive powers. It is empowered to take cognizance of offences without a prior commitment and is required to follow the procedure applicable to the trial of warrant cases by Magistrates. For all practical purposes under the Cr.P.C., the Special Court is treated as a Court of Session, and the Prosecutor appearing before it is regarded as a Public Prosecutor. In addition to having the power to impose any sentence permissible under law, the Special Court is also empowered to exercise the powers of a Session Judge, under the Criminal Law Amendment Ordinance, 1944.

21. Therefore, unlike in cases under the IPC where the Sessions Court assumes jurisdiction only after committal, a Special Court under the PC Act exercises original jurisdiction *ab initio* and is competent to take cognizance of offences. Consequently, the Special

Court after taking cognizance has the power to summon not only the accused named in the police report, but also any other person whose complicity is disclosed in the material placed before the Court, even prior to the commencement of the trial. This power is exercisable contemporaneously while taking cognizance and does not depend upon the formal framing of charges or the emergence of evidence during trial, even under Section 319 of the Cr.P.C.

Application to the Present Case

22. In the present case, upon submission of the final report by the CBI, the Special Court took cognizance of the offences on 16.03.2018 and summoned certain accused persons named in the chargesheet, as detailed in the earlier part of this order. Before the stage of framing charges, during the course of pre-trial scrutiny of the material presented by the investigating agency, the Court found that the additional persons, including the present petitioners, also *prima facie* appeared to be involved in the commission of the offences. Consequently, vide the impugned order dated 01.12.2020, the petitioners were summoned as additional accused. On the same day, i.e. 01.12.2020, charges were framed against the accused originally summoned.

23. It is, therefore, evident that both the summoning of the petitioner and the framing of charges against the originally named accused took place on the same day. The case had not progressed beyond the pre-trial phase. Hence, the argument that the Special Court had taken cognizance for a second time, is entirely misconceived. There

was no fresh or repeated cognizance; rather, the summoning of additional accused was a natural extension of powers of the Court to act upon the material already before it while still seized of the matter in its original jurisdiction.

24. The Hon'ble Supreme Court while dealing with an identical issue, as in the present case, in ***R.N. Aggarwal's case (supra)***, upheld the power of the Special Judge to summon additional accused, even after taking cognizance and summoning those named as witnesses in the police report, by invoking jurisdiction under Section 193 of the Cr.P.C.

25. In ***R.N. Aggarwal's case (supra)***, the CBI had filed a chargesheet naming six accused. Cognizance was taken and summons were issued. Thereafter, an application was filed by one of the accused under Sections 190 and 193 of the Cr.P.C., seeking summoning of three witnesses, cited by the CBI, as additional accused. The Special Court, after hearing arguments and considering the material, allowed the application and summoned the said individuals as accused. This order was upheld by the Hon'ble Supreme Court in the following terms:-

> *"6. The Special Judge, CBI vide order dated 23rd July, 2008, after perusing the material submitted by the CBI, took cognizance of the offences punishable under Section 120-B, 420, 468 and 471 of the Indian Penal Code (in short, 'IPC') as well as Section 13(1)(d) of the Prevention of Corruption Act, and ordered summoning of six persons who had been named by the CBI in its charge-sheet as accused persons alleged to have committed the offences in conspiracy with each other.* ***After all the accused persons entered appearance, the Special Judge furnished them copies of all the documents as per the requirement of Section 207 of the Code of Criminal Procedure and, thereafter, the matter was adjourned to 9th March, 2009. However, before the next date of hearing, accused R.N.***

Aggarwal moved an application under Section 190 read with Section 193 Cr.P.C. before the Special Judge for summoning three more persons, namely, Madan Sharma (PW-21), Ms. Sujata Chauhan (PW-23) and R.C. Bansal (PW-30) as accused, who had been cited by the CBI as its witnesses. The learned Special Judge kept that application for consideration on 9th March, 2009. However, on that day the matter was adjourned to 5th May, 2009 for arguments on charge without mentioning anything about the application which had been moved by the accused R.N. Aggarwal. Special Judge heard arguments on that application on 5th June, 2009 and then by order dated 10th July, 2009 allowed that application and summoned the prosecution witnesses Madan Sharma, Sujata Chauhan and R.C. Bansal *and also directed the Director of CBI to get a case registered against the Investigating Officer of the case under Section 217, IPC for letting off these three persons.*

19. The Constitution Bench has overruled the ratio decided in Ranjit Singh's case (supra) and Raj Kishore Prasad's case and held that the ratio laid down in Kishun Singh's case (supra) has been correctly decided. The Constitution Bench held as under:-

"34. The view expressed in Kishun Singh case, in our view, is more acceptable since, as has been held by this Court in the cases referred to hereinbefore, the Magistrate has ample powers to disagree with the final report that may be filed by the police authorities under Section 173(2) of the Code and to proceed against the accused persons dehors the police report, which power the Sessions Court does not have till the Section 319 stage is reached. The upshot of the said situation would be that even though the Magistrate had powers to disagree with the police report filed under Section 173(2) of the Code, he was helpless in taking recourse to such a course of action while the Sessions Judge was also unable to proceed against any person, other than the accused sent up for trial, till such time evidence had been adduced and the witnesses had been cross-examined on behalf of the accused.[pic]

35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) CrPC. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against

the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.

xxxxxxxxxx

39. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes [pic]cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Sessions Judge.

40. In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh case that the Sessions Court has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Sessions Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein."

20. In another Constitution Bench judgment in ***Hardeep Singh vs. State of Punjab, (2014) 3 SCC 92****, this Court while discussing the powers of the Court concurred with the view taken in Dharam Pal's case and observed as under:-*

"53. It is thus aptly clear that until and unless the case reaches the stage of inquiry or trial by the court, the power under Section 319 CrPC cannot be exercised. In fact, this proposition does not seem to have been disturbed

by the Constitution Bench in Dharam Pal (CB). The dispute therein was resolved visualising a situation wherein the court was concerned with procedural delay and was of the opinion that the Sessions Court should not necessarily wait till the stage of Section 319 CrPC is reached to direct a person, not facing trial, to appear and face trial as an accused. We are in full agreement with the interpretation given by the Constitution Bench that Section 193 CrPC confers power of original jurisdiction upon the Sessions Court to add an accused once the case has been committed to it.

54. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor could the legislature have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 CrPC."

21. The Constitution Bench further answered the question as under:-

"117.1. In Dharam Pal case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of the investigation. Such cognizance can be taken under Section 193 Cr.PC and the Sessions Judge need not wait till "evidence" under Section 319 CrPC becomes available for summoning an additional accused.

117.2. Section 319 Cr.PC, significantly, uses two expressions that have to be taken note of i.e. (1) inquiry (2) trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 CrPC, and under Section 398 Cr.PC are species of the inquiry contemplated

by Section 319 CrPC. Materials coming before the court in course of such inquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.PC, and also to add an accused whose name has been shown in Column 2 of the charge-sheet.

117.3. In view of the above position the word "evidence" in Section 319 CrPC has to be broadly understood and not literally i.e. as evidence brought during a trial.

117.4. Considering the fact that under Section 319 CrPC a person against whom material is disclosed is only summoned to face the trial and in such an [pic]event under Section 319(4) CrPC the proceeding against such person is to commence from the stage of taking of cognizance, the court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination."

22. As noticed above, after completion of investigation, CBI filed charge- sheet in the Court of Special Judge to deal with the cases in the Prevention of Corruption Act, as also under the Indian Penal Code. The procedure and the powers of the Special Judge have been prescribed in Section 5 of the said Act. For better appreciation, Section 5 of the Act is reproduced hereinbelow:-

"5. Procedure and powers of special Judge.— (1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by the Magistrates. (2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under section 307 of that Code.

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session

> *and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.*
>
> *(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate. (5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.*
>
> *(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944).”*
>
> *23. A bare reading of the provision would show that the special judge may take cognizance of the offence without the accused being committed to him for trial and the court of special judge shall be deemed to be a court of session. The special judge in trying the accused persons shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 for the trial of warrant cases by the Magistrate. Indisputably, a person holding the post of either a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge is appointed as Special Judge and shall follow the procedure prescribed in the Code for trial of warrant cases.”*

26. In view of the settled legal position, the exercise of power under Section 193 of the Cr.P.C. by the learned Special Court to summon the petitioners as additional accused—after having already taken cognizance of the offence and summoned the original accused—cannot be faulted. This action falls squarely within the jurisdiction of the learned Special Court and is consistent with the legal principles laid down by the Hon'ble Supreme Court in the case of ***R.N. Aggarwal (supra)***.

27. Still further, it was also argued on behalf of the petitioners

that they had been cited as prosecution witnesses and no new material had emerged subsequent to the filing of the chargesheet that would warrant their summoning as accused. It was contended that there was no sufficient ground for their implication, and that the order summoning them was arbitrary.

28. This contention cannot be accepted. It is settled law that while exercising its powers under Section 193 of the Cr.P.C., the Court is only required to ascertain from the material on record whether a *prima facie* case is made out. The Court is not expected to evaluate the probative value or conclusiveness of the material. If, upon consideration of the record, the Court discerns the involvement of any person in the commission of the offence who has not been arrayed as an accused, it is well within its powers to summon such person to stand trial.

Findings of the Learned Special Court and Analysis of the Material on Record

29. In the present case, the petitioners held key positions in the HSIIDC and the Department of Industries at the relevant point in time. A detailed perusal of the impugned order reveals that the learned Special Court took into consideration various materials forming part of the chargesheet, which *prima facie,* indicated their complicity. The relevant considerations include :

Prima Facie Involvement of Petitioner Rajeev Arora (CRR-1306-2020)

30. The file noting of petitioner Rajeev Arora, MD, HSIIDC,

recorded that the decision to defer the award was taken based on a letter dated 05.10.2005 from the DTCP. However, no such letter was found on record. The explanation provided was that it was a clerical mistake and in fact the intended reference was to a letter dated 30.10.2006 (D-12 annexed with the challan). However, this explanation would not further the cause of the petitioner as the said letter dated 30.10.2006 pertains to unrelated land in Sectors 59 and 60, Sonepat-Kundli Urban Multifunctional Urban Complex.

31. The justification for deferment was further stated to be the communication dated 20.06.2007 from DTCP, bearing memo No.16131. However, even the contents of this letter do not contain any direction or proposal to defer the award.

32. The statement of PW-48, P.K. Chaudhary, IAS was relied upon by the learned Special Court, wherein he confirmed that the deferment was communicated *post facto* and without the sanction of the Department of Industries. He specifically stated that the deferment decision by HSIIDC was not taken with the approval of the State Government. The relevant excerpt of the statement of PW-48 P.K. Chaudhary is as follows:-

> *"...Q. The announcement of award of the above land was fixed on 26.06.2007 by the LAC, Gurgaon, then why was it deferred?*
>
> *Ans. From the perusal of the record shown to me today (Item no. 6, Page no. 11 & 12), the factum of deferment of the award was put up in the note sent to me by the Managing Director, HSIIDC on 29.06.2007. This note specifies that based on a communication dated 20.06.2007 from Director, Town and country Planning, the action of the advising LAC, Gurgaon to defer the announcement of award was taken by the HSIIDC. It is clear that this action*

> *of the HSIIDC was not taken with the approval of the state government in the Industries Department and the information was sent only after the deferment..."*

33. Prior to the scheduled announcement of the award on 26.06.2007, the DRO-cum-LAC had, on 31.05.2007, addressed a letter to the MD, HSIIDC, petitioner Rajeev Arora, requesting the release of Rs.282.26 crores for the purpose of issuing the award. However, despite this communication, neither petitioner Rajeev Arora nor the Director of Industries, D.R. Dhingra, took any steps to ensure that the requisite funds were made available.

34. The learned Special Judge also noted that HSIIDC had previously recommended release of land for certain private developers, including M/s Carmalake Lands Pvt. Ltd. and M/s Eact Developers, and these recommendations were pending approval. Yet, suddenly, the HSIIDC decided to defer the award based on a letter that did not exist.

35. Repeated reminders from DRO-cum-LAC were ignored. Even though an amount of Rs.5 crore, and later Rs.50 crore was approved, the full amount was never released. Despite being repeatedly reminded, requested and warned that the acquisition would lapse if the award was not announced by 24.08.2007, no steps were taken to ensure timely payment.

36. Letters dated 20.08.2007 and 22.08.2007 from the DRO-cum-LAC, and further correspondence dated 23.08.2007 to D.R. Dhingra, Director Industries, requesting specific directions, went unanswered.

37. The learned Special Court in paragraph 71 of the impugned

order, after evaluating the material on record, arrived at a conclusion that the communication issued by the DTCP had no nexus with the deferment of the award that was scheduled to be announced on 26.06.2007. It was specifically observed that the decision to defer the award was independently taken by the officers of HSIIDC namely Surjit Singh, the then CTP, and petitioner Rajeev Arora, the then MD of HSIIDC. Paragraph 71 of the impugned order reads as follows:-

> *"71. Thus, from the material on records, it is clearly reflected that communication/letter of department of Town & Country Planning had nothing to do with the deferment of announcement of award fixed for 26.06.2007 and the HSIIDC authorities i.e. Surjit Singh, the then CTP, HSIIDC and Rajeev Arora, the then Managing Director, HSIIDC had taken a decision on their own to defer the award. However, as noticed hereinabove, the IO has drawn his own conclusions and inferences, for the reasons best known to him."*

Prima Facie Involvement of Petitioner D.R. Dhingra (CRR-1321-2020)

38. The learned Special Judge further found *prima facie* culpability of petitioner D.R. Dhingra, the then Dy. Director, Department of Industries, based on the testimony of PW-20 Ashwani Kumar, Additional Director (Technical), Department of Industries and Commerce. PW-20 Ashwani Kumar deposed that the LAC-cum-DRO, Gurgaon, through letters dated 03.08.2007, 14.08.2007, 20.08.2007, and 22.08.2007 (annexed along with the petition), addressed to the MD, HSIIDC (with a copy to the Director, Department of Industries), had communicated that the compensation had been determined at the rate of Rs.25 lakhs per acre for all land under acquisition. The LAC/DRO requested that a sum of Rs.285,70,67,500/- be deposited by 24.08.2007,

in order to enable the announcement of the award.

39. Consequently, the Revenue Officer, HSIIDC, vide letter No.759 dated 23.08.2007, informed the Director, Industries and Commerce, that the DRO-cum-LAC, Gurgaon had sought instructions on whether the award may be announced, noting that a date had already been fixed and part of the compensation amount had been deposited by HSIIDC. A request was made to issue specific directions to the LAC/DRO in this regard.

40. These communications were examined at file noting NP-18-A-20 wherein a decision was taken to inform HSIIDC to take necessary steps under the LAA and proceed with the announcement of the award. Meanwhile, a photocopy of a letter dated 03.08.2007 bearing No.19078, issued by the DTCP was personally collected by one Som Prakash on 21.08.2007 from the office of DTCP. The said letter, which was processed on a separate file, stated that the decision regarding acquisition of land at IMT, Manesar, was to be taken by the Department of Industries, since the acquisition was undertaken for the benefit of HSIIDC.

41. It was also conveyed in the letter that the decision on the pending licence applications could only be taken once the status of land acquisition was clarified and appropriate recommendations were received from the Department of Industries. PW-20 Ashwani Kumar further stated that on 21.08.2007, he placed the said letter before petitioner D.R. Dhingra, Dy. Director Industries for further instructions so that the award could be announced by 24.08.2007. However, no

order was passed by petitioner D.R. Dhingra; the file was returned without any remarks or signatures. The relevant extract of the statement of PW-20 Ashwani Kumar is as under:-

> *"The DRO-cum-LAC, Gurgaon vide letters dated 03.08.2007, 14.08.2007, 20.08.2007 and 22.08.2007 (Pages 73-77 and 100- 104) addressed to MD, HSIIDC with copy to the Director Industries intimated that the compensation amount has been fixed @25 lacs per acre of all the lands under acquisition and requested to make payment of Rs. 2857067500/ before 24.08.2007, so that the Award may be announced. The Revenue Officer, HSIIDC, Panchkula vide letter no. 759 dated 23.08.2007 (Page no 105) has intimated the Director of Industries and Commerce, that the DRO-cum-LAC, Gurgaon has requested for the directions on the issue of announcing the award since he has already fixed the dated and the Corporation has deposited the part money. It was also requested that clear instructions/direction on the issue of award may be given to the DRO-cum-LAC, Gurgaon. The aforesaid letters were dealt at NP-18-A-20 and it was decided to intimate the HSIIDC to take necessary action as per Land Acquisition Act and proceed for announcement of Award. In the meantime, photocopy of letter no. 19078 dated 03.08.2007 of DTCP was personally collected by Sh. Som Parkash on 21.08.2007 from the office of DTCP, Haryana and the same was dealt on a separate file. Vide this letter the DTCP intimated that the decision to acquire land at IMT, Manesar is to be taken by the Industries Department as this land was acquired by the Department of Industries for HSIIDC. They further mentioned that decision on the license applications can only be taken once the status of land acquisition and further recommendations of Industries Department is known to them.* ***On 21.08.2007, I put up the aforesaid letter to the Director Industries for further direction in the matter so that award can be announced on 24.08.2007, however, no order was passed by the then Director Sh. D.R. Dhingra and file was sent back without any remarks and signature.****"*

Missing File In the Department of Industries

42. The learned Special Court also took note of the fact that the relevant files in the Department of Industries dealing with the communication dated 03.08.2007 were found to be missing. Paragraph

16.89 of the challan, which discusses this aspect, reads as follows:-

> *"Investigation has revealed that letter dated 03.08.2007 collected from the Town and country Planning Department was dealt in a separate file in the Industries Department on 21.08.2007 and it was recommended that none of the license applications as per list provided by DTCP affect the present acquisition proceeding. It was further recommended to advise about the announcement of award, so that LAC, Gurgaon can announce the award by 24.08.2007 as per publication date of the delcaration in the Extraordinary Gazette. With the above recommendation, Sh. Ashwani Kumar, Technical expert Mechanical Engineering (TEME) had submitted the filed to Sh. D.R. Dhingra, Director Industries. During the investigation, neither the Department of Industries nor the Financial Commissioner, Industries Department could provide this file. As the file could not be traced, SH. DR Dhingra refused to state what he had written/recommended in the file. As per the Dispatch Register of the Department of Industries, this file was sent to Sh. Chhatar Singh, the then Addl. PS to CM and Financial Commission, Industries. However, investigation revealed that this file was submitted to seek final instructions of the Govt. To announce the award of land on 24.08.2007."*

43. In view of the above, the learned Special Court expressed its reservation regarding the conclusions drawn by the investigating officer. It was noted that while the investigating officer asserted that the Department of Industries had recommended issuance of instructions for the announcement of the award, the fact that the relevant file was untraceable, cast doubt on how such a conclusion could be definitively arrived at by the investigating agency.

Prima Facie Role of Petitioner Kulwant Singh Lamba (CRR-363-2021)

44. The involvement of petitioner Kulwant Singh Lamba was discussed by the Special Court in paragraph 78 of the impugned order, which stands reproduced hereinunder:-

> *"78. At this stage, it may also be pertinent to point out that one of the important incriminating circumstances (as recorded in Para 16.135 of the challan) against the accused, especially accused Jaswant Singh (A-5) is that accused had to submit the file by 09.08.2007 to the Director, Town & Country Planning department, as the file relating to grant of licence qua application of applicant-accused Aditya Buildwell Pvt. Ltd. containing the order dated 19.07.2007 of A-1 B.S. Hooda for again ascertaining the land acquisition status from HSIIDC was marked to him by the CTP on 08.08.2007 and the same was required to be submitted to the Director, TCPD by 09.08.2007 and Kulwant Singh, the then dealing hand submitted the file to him (A-5) on 09.08.2007, however instead of submitting the file to CTP/DTCP, A-5 directed to take immediate action on individual file and after this order, the file remained silent till 01.01.2009. However, the documents on record clearly reflect that it was Kulwant Singh Lamba, the then Dy. Superintendent, TCPD, who had marked the file to the Record Keeper and after that the file remained silent till 09.01.2009 and the same very fact has also been noticed by the IO himself in Para No. 16.66 of the challan, to the following effect:-*
>
> > *"On 10.08.2007 Sh. Kulwant Singh Lamba mentioned that the action is being taken on the concerned file and the file was marked to the record keeper. After that this file remained silent till 09.01.2009."*"

45. The learned Special Court observed that accused Jaswant Singh was required to submit a file by 09.08.2007 to the Director, DTCP, which contained the application for licence of accused M/s ABW. This file also included the order dated 07.07.2007 passed by accused No.1 Bhupinder Singh Hooda, the then CM, for a fresh report on the status of acquisition from HSIIDC. The file had been marked to accused Jaswant Singh by the CTP on 08.08.2007.

46. Petitioner Kulwant Singh Lamba, who was then serving as Deputy Superintendent in the DTCP, submitted the file to accused Jaswant Singh on 09.08.2007. However, instead of forwarding the file

to the Director, DTCP, accused Jaswant Singh directed immediate action to be taken on the file, after which the file remained dormant until 01.01.2009. The records further indicate that it was petitioner Kulwant Singh Lamba who marked the file to the record keeper on 10.08.2007, rather than processing it for submission to the Director, DTCP. This fact is corroborated by para 16.66 of the challan, which records as under:-

> *"On 10.08.2007 Sh. Kulwant Singh Lamba mentioned that the action is being taken on the concerned file and the file was marked to the record keeper. After that this file remained silent till 09.01.2009."*

Prima Facie Involvement of Petitioner Dhare Singh (CRR-1322-2020)

47. The learned Special Court in the impugned order also observed that, as per the investigating officer's own version, the files of ineligible applicants who were eventually granted licences/CLUs following the abandonment of acquisition proceedings were processed by petitioners Kulwant Singh Lamba and Dhare Singh, the then Chief Town Planner, DTCP. It was found that the files processed by petitioner Kulwant Singh Lamba were approved by petitioner Dhare Singh, culminating in the issuance of licences/ CLUs to ineligible entities. The file relating to M/s ABW was resuscitated only in 2009 after abandonment of acquisition when the applicant again submitted an application for licence.

48. Accordingly, the Special Court found both petitioners Kulwant Singh Lamba and Dhare Singh to be *prima facie* on the same footing as co-accused Sudeep Singh Dhillon and Jaswant Singh. No

special circumstances were found to justify their exclusion from prosecution.

The Power of the Special Court to Differ From the Conclusions of the Investigating Officer

49. It was in the light of the above facts and material that the learned Special Court disagreed with the conclusions of the investigating officer. It is well settled that a Magistrate or Special Judge is not bound by the conclusions drawn by the investigating officer and may, upon a comprehensive assessment of the record, summon additional persons who, though not arrayed as accused, appear *prima facie* to be involved in the commission of the offence. There is also no legal bar to summoning a person who has been cited as a prosecution witness, if his involvement in the crime is discernible from the material on record.

50. An additional argument was advanced by learned counsel for the petitioners that the learned Special Court should have ordered further investigation if it was not satisfied with the conclusions of the investigating officer, and that the learned Special Court, by taking a view different from the investigating officer, has assumed the role of the investigator.

51. This argument is devoid of legal substance.

52. It is well settled that a Magistrate or a Special Judge is not a post-office to mechanically accept the findings of the investigating officer. The Court is not bound by the conclusions drawn in the police report and must independently apply its judicial mind to the material on

record. If the Court finds that material exists suggesting involvement of individuals who were not arrayed as accused by the investigating officer, the Court is not only empowered but also obligated to proceed against such persons, in exercise of its powers under Section 190/193 of the Cr.P.C., to ensure that justice is served.

53. There is no legal requirement that the Magistrate or Special Court must invariably direct further investigation upon disagreeing with the police report. On the contrary, the law empowers the Court to directly summon persons found *prima facie* involved based on the material placed before it.

Application of Judicial Mind and Absence of Any Perversity in the Impugned Order

54. A plain reading of the impugned order reveals that the learned Special Court has applied its mind to the entirety of the material collected during the investigation. The findings recorded cannot, at this stage, be characterised as either perverse or legally untenable. It must be borne in mind that at the stage of summoning, the Court is not concerned with the question of ultimate conviction, but merely with the formation of a *prima facie* opinion regarding the involvement of the person concerned.

55. At the stage where the Trial Court is called upon to summon an additional accused and to frame charges, the scope of judicial scrutiny is inherently limited and circumscribed by well settled legal principles. It is impermissible for the Trial Court, at this preliminary juncture, to embark upon a detailed evaluation of the defence put forth by the accused, nor is it appropriate for the Court to

delve into or critically assess the probative value or merits of the case of the prosecution. Engaging in such an exercise would amount to conducting a mini-trial, which is legally impermissible and contrary to the settled position of law. The only consideration before the Court at this stage is whether there exists a *prima facie* case that warrants proceeding against the person sought to be summoned. The threshold is not whether the evidence on record would certainly or conclusively lead to a conviction, but whether the materials, taken at face value and without detailed scrutiny, disclose grounds for presuming that the accused has committed the alleged offence.

56. The Trial Court is neither expected nor required to meticulously weigh the evidence as if adjudicating upon guilt or innocence. Instead, if the material placed on record, taken cumulatively and in its entirety, gives rise to a strong suspicion regarding the involvement of a person in the commission of the offence, that in itself is sufficient to empower the Court to summon such person as an additional accused under Section 193 of the Cr.P.C.

57. Once such a *prima facie* view is formed, the trial must be allowed to proceed in accordance with law, thereby granting the prosecution the legitimate opportunity to prove its case through due process. In this context, the impugned order passed by the learned Special Court aligns squarely with the well settled legal standards governing the summoning of an additional accused and framing of charges. It neither suffers from any legal infirmity nor does it transgress the permissible limits of judicial discretion at this stage of the criminal

proceedings and furthermore is consistent with the mandate of law as enunciated through various judicial pronouncements of the Hon'ble Supreme Court.

Misconception Regarding Alleged Direction for Grant of Sanction

58. The contention advanced by learned senior counsel for petitioner Rajeev Arora, that the Special Court had issued a directive to the competent authority mandating the grant of sanction under the PC Act, is wholly misconceived and untenable. The relevant portion of the impugned order clearly clarifies the legal position, which reads as under:

> *"...However, so far as offence under the provision of PC Act, 1988 is concerned, the CBI is directed to place the entire incriminating material qua Rajeev Arora before the concerned competent sanctioning authority, so as to seek valid sanction in terms of section 19 of the PC Act, for proceeding further qua said offence as well."*

59. A plain and purposive reading of the aforesaid direction reveals that the learned Special Court did not issue any binding or peremptory command to the competent authority to accord sanction. Rather, the Court merely directed the investigating agency (CBI) to submit the relevant material gathered during investigation to the appropriate sanctioning authority for its consideration, in accordance with Section 19 of the PC Act.

60. Such a direction is procedural in nature and intended solely to facilitate compliance, with the statutory requirement of obtaining prior sanction before initiating prosecution against a public servant. There is no expression of opinion by the Court suggesting that sanction

ought to be granted, nor is there any intrusion into the discretion statutorily vested in the competent sanctioning authority. The order, in fact, upholds and respects, the principle of separation of powers by refraining from encroaching upon the administrative domain.

61. It is trite law that while a Court may require that the process for obtaining sanction be set in motion or expedited, it cannot direct the grant of sanction itself, which is no doubt, an administrative function, requiring an independent and objective application of mind by the competent authority. The impugned order strictly adheres to this legal boundary. Its sole purpose is to ensure that the competent authority is appropriately apprised of the investigative material, so as to enable it to discharge its statutory duty.

62. Any inference that the Court has directed the grant of sanction is plainly untenable and stems from a misreading of the order. The direction neither curtails the discretion of the competent authority nor fetters its decision-making process. The authority remains free to grant or withhold sanction upon an independent evaluation of the material placed before it. The mere act of forwarding such material, cannot, by any standard, be construed as a judicial mandate to accord prosecution sanction. Accordingly, the reliance placed by the petitioner on judicial precedents is misplaced and inapplicable to the facts of the present case.

63. Coming next to the question of sanction under Section 197 of the Cr.P.C., in the impugned order, the learned Special Judge has rightly observed that prior sanction under Section 197 of the Cr.P.C. is

not a prerequisite for prosecuting a public servant for offences punishable under Sections 420 and 120-B of the IPC. The reasoning offered is rooted in the intrinsic nature of the offence of cheating, which, by its very character, is incapable of being committed by a public servant in the discharge or purported discharge of official duty. In this context, although reliance was placed by the learned counsel for the petitioners upon the judgement of the Hon'ble Supreme Court in ***A. Srinivasulu's case (supra)*** and ***Ramesh Chander Diwan's case (supra)***, the legal issue under consideration is conclusively settled by the Constitution Bench of the Hon'ble Supreme Court in ***K. Satwant Singh's case (supra)***. The Apex Court therein considered a charge against a public servant, Henderson, who was accused of abetting the main accused in cheating by submitting false reports certifying fraudulent claims. It was emphatically held that although certifying claims was part of the official functions of Henderson, his act of falsely certifying claims to aid in cheating could not be construed as being done in the discharge of official duty. Consequently, the provisions of Section 197 of the Cr.P.C. were held to be inapplicable to such offences, notwithstanding the status of Henderson as a public servant. The Hon'ble Supreme Court in ***K. Satwant Singh's case (supra)*** has held as under:-

> *"16. Under, s. 197 no Court shall 'take cognizance of an offence committed by a public servant who is removable from his office by the Governor General-in Council or a Provincial Government, save upon a sanction by one or the other as the case may be, when such offence is committed by him while acting or purporting to act in the discharge of his official duty. Henderson was charged with intentionally aiding the appellant in the commission of an*

offence punishable under s. 420 of the Indian Penal Code by falsely stating as a fact, in his reports that the appellants claims were true and that statement bad been made knowing all the while that the claims in question were false and fraudulent and that he had accordingly committed an offence under s. 420/109, Indian Penal Code. ***It appears to us to be clear that some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty. For instance, acceptance of a bribe, an offence punishable under s. 161 of the Indian Penal Code, is one of them and offence of cheating or abetment thereof is another. We have no hesitation in saying that where a public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offences have no necessary connection between them and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences (vide Amrik Singh's case (1)). The Act of cheating or abetment thereof has no reasonable connection with the discharge of official duty. The act must bear such relation to the duty that the public servant could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty (vide Matajog Dobey v. H. C. Bhari, [1955] 2 S.C.R. 925)****. It was urged, however, that in the present case the act of Henderson in certifying the appellant's claims as true was an official act because it was his duty either to certify or not to certify a claim as true and that if he falsely certified the claim as true he was acting or purporting to act in the discharge of his official duty. It is, however, to be remembered that Henderson was not prosecuted for any offence concerning his act of certification. He was prosecuted for abetting the appellant to cheat. We are firmly of the opinion that Henderson's offence was not one committed by him while acting or purporting to act in the discharge of his official duty. Such being the position the provisions of s. 197 of the Code are inapplicable even if Henderson be regarded as a public servant who was removable from his office by the Governor General-in-Council or a Provincial Government.*

(Emphasis supplied)"

64. This principle enunciated by the Constitution Bench continues to hold the field and has not been overruled. It lays down

with clarity that offences such as cheating or abetment thereof cannot be shielded behind the protective cover of Section 197 of the Cr.P.C., as they fall outside the ambit of acts committed "while acting or purporting to act in the discharge of official duties". Therefore, the reliance placed by the learned counsel for the petitioners on ***A. Srinivasulu's case (supra)*** would not further their case in view of the binding law laid down by the Constitution Bench in ***K. Satwant Singh's case (supra)***. It is also pertinent to note that the judgement in ***K. Satwant Singh's case (supra)*** escaped the notice of this Court and was not brought to its attention while deciding ***Ramesh Chander Diwan's case (supra)***, and hence, the current position needs to be aligned with the binding precedent. Accordingly, the learned Special Court committed no error in taking cognizance of offences under Section 420 and 120-B IPC without sanction under Section 197 of the Cr.P.C.

65. Another contention raised on behalf of the petitioners (except petitioner Rajeev Arora) is that, in view of the amendment to Section 19 of the PC Act, which came into effect from 26.07.2018, sanction for prosecution is now required even in respect of retired public servants, and therefore, in the absence of such sanction, the cognizance taken by the learned Special Court vide the impugned order is vitiated.

66. This submission is equally without merit.

67. While it is correct that the amendment to Section 19(1) of the PC Act now extends the requirement of prior sanction for

prosecution even to retired public servants, the same would not apply to the facts of the present case. Cognizance in this matter was taken by the learned Special Court on 16.03.2018, which was prior to the enforcement of the said amendment on 26.07.2018. It is a settled position in law that cognizance is taken of the offence and not of the offender. Therefore, the subsequent summoning of the petitioners as additional accused after the amendment does not invalidate the earlier cognizance taken of the offence itself.

68. Once cognizance of the offence has been taken in accordance with law, the subsequent summoning of persons as accused under Section 193 of the Cr.P.C.—based on scrutiny of the material on record—does not necessitate the application of a later prospective amendment to Section 19 of the PC Act. Thus, the amendment requiring sanction for retired public servants does not retrospectively apply to the present case. Consequently, no sanction under Section 19 of the PC Act is required in the case of the petitioners (other than petitioner Rajeev Arora).

69. As regards the argument that the petitioners were summoned based on an application moved by co-accused Murari Lal Tayal, it is necessary to clarify that the said application was dismissed by the Court. The power under Section 193 of the Cr.P.C., which vests jurisdiction in the Sessions Court to summon additional accused, is not dependent on an application filed by any party. The Court may exercise this power *suo moto* on the basis of its own appreciation of the material on record.

70. Lastly, the learned senior counsel appearing for petitioner Dhare Singh contended that summoning of the petitioners who were cited as prosecution witnesses amounts to compelling them to incriminate themselves, thereby infringing their rights under Article 20(3) of the Constitution of India. This contention is also wholly misplaced. Article 20(3) of the Constitution of India states "*No person accused of any offence shall be compelled to be a witness against himself.*".

71. For this protection to apply, two essential conditions must be satisfied : (i) the person must be accused of an offence, and (ii) there must be compulsion to be a witness against oneself.

72. In the present case, when the petitioners rendered their statements before the investigating agency, they were not accused persons within the meaning of law. There is no element of coercion or compulsion in the making of their statements. At that stage, they were merely witnesses, and not persons formally accused of any offence. Furthermore, it is not on the basis of their own statements that the petitioners have been summoned to face trial. The Special Court has independently assessed the statements of other witnesses and the material collected during investigation to arrive at a *prima facie* finding regarding their involvement.

73. Accordingly, there is no infraction of the constitutional safeguard under Article 20(3), and the objection raised in this regard is devoid of merit.

74. In view of the foregoing analysis, this Court finds no

illegality or infirmity in the impugned order passed by learned Special Court in summoning the petitioners. The challenge to the impugned order is, therefore, liable to be rejected. Consequently, all the petitions stand dismissed.

75. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

76. Pending applications, if any, stand disposed of.

15.05.2025 (**MANJARI NEHRU KAUL**)
Vinay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No