®

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2nd DAY OF JANUARY 2017

BEFORE

THE HON'BLE MRS.JUSTICE RATHNAKALA

CRIMINAL REVISION PETITION NO.473/2012
C/W
CRIMINAL REVISION PETITION NO.480/2012

IN CRL.RP. NO.473/2012

BETWEEN:

1. Smt.Shylaja
   W/o V.Somanna
   R/o No.967, II Main Road
   Vijayanagar
   Bangalore-560 040.

2. Sri.V.Somanna,
   S/o Late Veeranna
   Major in age
   Minister for Housing,
   Government of Karnataka
   R/o No.967, II Main Road
   Vijaynagar
   Bangalore-560 040. ...PETITIONERS

(By Sri C.V.Nagesh, Sr.Adv. for
Sri.Murthy Dayanand Naik, Adv. for
Petitioner No.1.;
Sri.H.S.Chandramouli, Adv. for
Petitioner No.2)

IN CRL.R.P. NO.480/2012

D.Lingaiah
S/o Late Devegowda

Aged about 67 years
Residing at No.75
Mariyappanahapalya
Bangalore University
Bangalore-560 056. ..PETITIONER

(By Sri.Hareesh Bhandary, Adv.)

AND:

1. The Superintendent of Police
   Lokayukta, Bangalore Urban
   M.S.Building
   Bangalore.

2. Ravi Krishna Reddy
   S/o Krishna Reddy V.
   R/o No.400, 23rd Main
   BTM Layout, 2nd Stage
   Bangalore-560 076. ...RESPONDENTS
   (COMMON)

(By Sri.B.S.Prasad, Spl.PP for R-1/Lokayukta;
Sri.P.N.Hegde, Adv. For R-2)

CRL.R.P.NO.473/2012 is filed under Section 397(1) read with Section 401 of Cr.P.C. praying to set aside the order dated 13.4.2012 passed by the Special Judge, Prevention of Corruption Act, Bangalore Urban in P.C.R.No.25/2011 taking cognizance of the offence and issuing summons to the accused No.2 and 3/petitioners herein and further be pleased to dismiss the complaint filed by the respondent No.2 against the petitioners in Spl.C.C.No.46/2012 (PCR No.25/2011) on the file of the XXIII Addl.C.C. and Spl.Judge for Prevention of Corruption Act.

CRL.R.P.NO.480/2012 is filed under Section 397(1) of Cr.P.C. praying to set aside the order dated 13.4.2012 passed by the XXIII Addl.City Civil and Special Judge for Prevention of Corruption Act, Bangalore Urban in Spl.C.C.No.46/2012

(PCR No.25/2011) and further be pleased to dismiss the complaint against the petitioner/accused No.4.

These Criminal Revision Petitions having been reserved on 01.12.2016 and coming on for pronouncement of orders this day, the Court made the following:

O R D E R

The Revision Petitioners being arrayed as accused persons in a private complaint filed by respondent No.2 are challenging the order of the Special Judge in taking cognizance of the offence and issuing summons to them.

2. Briefly stated, the second respondent filed a complaint against four accused persons. The First accused is the Former Deputy Chief Minister/Chief Minister of Government of Karnataka. The second accused is the wife of third accused, who is MLC and Former Minster of Government of Karnataka and the fourth accused is the landlord of the immovable properties, the de-notification of which was challenged in the complaint. The learned Special Judge referred the matter for investigation to the first

respondent/Lokayukta Police. After investigation, the Investigating Officer submitted 'B' Final Report since there was no evidence/documentary proof in support of complaint allegation. The learned Special Judge rejected the final report and took cognizance in respect of the offences under Sections 406, 409, 420, 463, 464, 468, 471 read with Section 120B of the Indian Penal Code, Sections 13(1)(c) and (d) read with Section 13(2) of the Prevention of Corruption Act ('the Act' for short) and Sections 3, 4 and 5 read with Section 9 of the Karnataka Land (Restriction and Transfer) Act, 1991 ('the K.L.R.T.Act' for short).

3. Sri.C.V.Nagesh, learned Senior Counsel appearing on behalf of the petitioners submits that the final report was filed on 21.3.2012. On the same day, complainant filed a memo and he was heard on 21.3.2012 and the matter was posted to 29.3.2012. On 29.3.2012 the matter was reserved for orders on 13.4.2012. However, the complainant got the case

advanced to 5.4.2012 and was heard. On 13.4.2012, the learned Special Judge rejected the final report and took cognizance against the petitioners and others and issued summons returnable by 30.4.2012. The learned Judge has not followed the mandatory procedure envisaged under Sections 200 and 202 of the Code, in directly issuing summons. Since the complainant had filed a protest application, same had to be treated as private complaint and the mandatory procedure contemplated at Chapter-V of the Code ought to have been followed. The discussion in the body of the impugned order does not reflect that the learned Judge has taken cognizance. As such, very reference of the complaint for investigation was bad in law since the complainant had not obtained prior sanction under Section 19 of the Act and Section 197 of the Code. Petitioner No.2 is a "public servant" falling under the definition of Section 2(c) of the Act and Section 21 of IPC. Thus the entire proceedings is vitiated. Even otherwise, the complaint allegations do

not make out any offence against the petitioners. They are in no way connected to the crime in question. The complaint allegations are absurd and inherently improbable. The impugned order is passed in a mechanical way without application of mind. Hence, the continuation of proceedings would be an abuse of process of the Court and the petitioners will have to unnecessarily undergo the ordeal of facing the trial before the Special Court.

Learned Senior Counsel continues to submit that as per law enunciated in ***Vasanti Dubey –vs- State of Madhya Pradesh ([2012] 2 SCC 731),*** it is only after holding an enquiry, the learned Trial Court would have formed an opinion as to whether the complainant has made out a case for the purpose of proceeding in the matter. The impugned order is passed without proper application of judicial mind, thus, against the principles laid down by the Apex Court in ***Sunil Bharti Mittal –vs-***

Central Bureau of Investigation reported in ***(2015) 4 SCC 609*** and ***M/s.GHCL Employees Stock Option Trust –vs- M/s.India Infoline Limited ((2013) 4 SCC 505).***

The documents collected by the Investigating Officer during the course of his investigation is not looked into by the trial court. In the gazette notification itself, the fourth accused Lingaiah's name is notified and award is also passed in favour of Lingaiah. As per the status reports of the BDA, several structures have come up over the land in Sy.Nos.77 and 78 of Nagadevanahalli. Some of the structures are also regularized by the authority concerned and a Trust is also running educational institutions in the structure standing on the land. B.D.A. has not been able to take possession of the land. The investigation material also indicates that, large extent of land in Sy.Nos.77 and 78 of Nagadevanahalli is already de-notified and the land in question cannot be

availed by B.D.A. Since the possession of the land continued with the applicant, the Government in its wisdom and in exercise of power clothed upon it under Section 48 of the Land Acquisition Act ordered denotification of the land. Said order of denotification so far is not challenged before any forum. There was no illegality on the part of the land owner in continuing his efforts for an order of denotification, since his name was borne in the revenue records and the preliminary notification, till issuance of notification under Section 16(2) of Bangalore Development Authority Act. The De-notification Committee is not a Statutory Committee, it is only a recommending body. The Trial Court itself has observed that there was absolutely no legal impediment for the authority to exercise its powers under Section 48 of the Land Acquisition Act. On identical allegations, the cognizance taken by the Special Judge was quashed by this Court in exercise of power under Section 482 of the Code of Criminal Procedure ('the Code' for short) in

Criminal Petition No.7274/2012 and connected cases D.D. 18.12.2015 (Sri.Hamed Ali –vs- Kabbalegowda and another). To make out an offence under Section 13(2) of the Act for violation of the provisions of Section 13(1)(d) of the Act, there must be material indicating demand or request for a valuable thing or a pecuniary advantage by the Public Servant, as held by the Apex Court, in ***A.Subair –vs- State of Kerala*** reported in ***[2009] 6 SCC 587***. The vital fact is, in the complaint, there was no allegation of demand and acceptance of illegal gratification. Even the ingredients of Sections 406 and 420 of IPC are lacking in the case on hand (placing reliance on ***Common Causes –vs- Union of India*** **([1999] 6 SCC 667)**.

Learned Senior Counsel further submits that in view of the following judgments of the Apex Court, issuance of summons cannot be termed as an

Interlocutory Order within the meaning of Section 19(3)(c) of the Act or Section 397(2) of the Code:

i) *Bhaskar Industries Ltd. –vs Bhiwani Denim and Apparels Ltd. And Others (2001 SCC (Crl.) 1254);*

ii) *Urmila Devi –vs- Yudhvir Singh ([2013] 15 SCC 624); and*

iii) *Prabhu Chawla –vs- State of Rajasthan and Another (AIR 2016 SC 4245).*

The petitioners are not challenging in these revision petitions the Order directing framing of the charges. Hence, the order of the learned Special Judge dated 13.4.2012 in P.C.R.No.25/2011 in taking cognizance of the offence and issuing summons to the accused persons since challenged, these revision petitions are maintainable and the impugned order deserves to be set aside.

4. Sri.B.S.Prasad, learned Special Public Prosecutor for Lokayuktha though does not support the order of the

Special Judge, has a technical objection to the maintainability of the petition in view of the bar enumerated in Section 19(3)(c) of the P.C. Act restricting revision jurisdiction against any interlocutory order passed in the proceeding under the Act.

5. Sri.P.N.Hegde, learned Counsel appearing for R-2/complainant in reply submits, first accused is the Former Chief Minister of Government of Karnataka between 30.5.2008 and 31.7.2011. The third accused was earlier an MLA elected on Indian National Congress ticket. He resigned from the membership w.e.f. 4.4.2009 and joined Bharatiya Janata Party and was inducted into the Council of Ministers headed by first accused on 18.6.2009. In the by-election he suffered defeat, thus, had to resign from the Council of Ministers on 31.8.2009. He was elected to upper house of the Legislature on 24.6.2010 and was inducted to the Cabinet headed by first accused. Second accused is the wife of third

accused. She is the President of VSS Educational Group of Institutions and the Trustee of the VSS Educational Trust. The fourth accused was the absolute owner of the properties bearing Sy.No.77 measuring 1 acre 30 guntas and another property bearing Sy.No.78 measuring 2 acres 10 guntas. A preliminary notification was passed on 2.2.1989 by the Bangalore Development Authority for the formation of Jnanabharathi Layout. The above said properties belonging to the father of fourth accused were notified. Objections were filed by the fourth accused and his brother to the preliminary notification for the proposed acquisitions. There was a family partition in respect of the above properties and those properties fell to the share of fourth accused. A memorandum of partition was entered into on 28.10.1993. A final notification came to be issued on 19.1.1994. Some properties belonging to the father of fourth accused along with the above mentioned properties were notified. Again there was a protest memo by the fourth accused and his

brothers seeking to drop the proceedings. In furtherance of the final notification, the possession of the land is taken over on 26.8.1997 and is handed over to the Engineering Section of BDA on 15.9.1997, award is passed and the compensation is deposited in the RD account of the BDA. A notification under Section 16(2) of the L.A.Act is also issued on 25.6.1998. The fourth accused was well aware of the above facts. Sections 3 and 4 of the Karnataka Land (Restriction on Transfer) Act, 1991 creates a bar for the land owners from disposing of notified lands. Still he has executed the sale deed on 4.9.2004 and handed over possession. On the same day, vacant site Nos.47, 48 and 49 carved out of Sy.Nos.77 and 78 are sold out to second accused by a separate registered sale deed for consideration and possession is handed over. After the alienation, fourth accused had no right to make any representation to the Principal Secretary, Urban Development Department. Until the first accused assumed office, the land was not

de-notified, however, on the first accused taking charge as the Chief Minister of the State, the fourth accused gave one more representation on 6.6.2009 to the Principal Secretary, Urban Development Department to drop 22 guntas of land in Sy.Nos.77 and 78, which he had sold to the second accused. The Principal Secretary, Urban Development Department in his note dated 20.6.2009 expressed his opinion that prayer sought for cannot be considered as per law since the property has already been vested with the BDA and the process of acquisition is complete. But the first accused ignored the opinion of the Senior Officer and overruled the decision of the Principal Secretary and ordered for de-notification of 22 guntas of the land in Sy.Nos.77 and 78 in the name of the fourth accused. When the second accused purchased the lands in question, buildings were not existing on the same. In the Assets and Liabilities Statement for the year 2009-10, the third accused submitted to the Registrar, Karnataka Lokayukta, since

he was the then sitting MLC had declared that, site Nos.47, 48 and 49 in Sy.No.78 measuring 21178 sq.ft. worth Rs.28,35,314/- is leased out and vacant plot No.50 measuring 2490 sq.ft. stands in the name of second accused in the same survey number. There was no mention of any building standing on the land. But the fourth accused in his application stated that there were buildings over the said properties and he is in possession of the same at the time of passing the de-notification order of the lands by the first accused.

Learned Counsel continues to submit that the second accused filed her self-assessment of property tax in respect of the properties situated in Sy.Nos.77 and 78 to the BBMP for the year 2007-2008. In her self-assessment of property tax for the year 2008-2009, for the first time, she declared the total built up area of the building as 26620 sq.ft. consisting of five floors in the lands purchased by her and declared that the said land

was constructed in the year 2004. That establishes the fact that, vacant land was leased to third parties. No building plan for construction of the building was obtained from the authorities and the land was already in possession of BDA for formation of layout. Thus, both the second and third accused have violated the regulations and illegally constructed the building by using political power. Second and fourth accused by using their political influence got the land de-notified through the first accused. The first accused in order to make unlawful gain to his supporters/second accused, conspired with the co-accused and floated all existing rules and regulations. The Investigating Officer after investigation has filed the final report on following counts:

a) The fourth accused sold the land in favour of the second accused without disclosing the acquisition of the said land for the formation of layout;

b) The second accused purchased the land without knowing the acquisition proceedings;

c) Physical possession of the land since was not taken over by BDA, the possession remained with accused No.4;

d) As per Section 27 of BDA Act, 1976, the scheme will lapse if the authority fails to execute the scheme substantially within a period of five years from the date of the publication in the official gazette.

e) Issuance of notification under Section 16(2) of Land Acquisition Act is not sufficient unless physical possession is taken. The remaining land in survey number is de-notified in favour of Housing Cooperative Society on two occasions.

f) The former Chief Ministers had ordered for de-notification/to take needful action and

the second accused after purchasing the land started institutions;

g) There is no evidence of third accused participating in the process of de-notification;

h) The SPP gave his opinion that it is a fit circumstance to file B report.

But the above reasons assigned by the I.O. are not tenable. The fourth accused despite selling the land continued to maintain that he is in possession of the property. Non-execution of the scheme under Section 27 of the BDA Act for a small piece of land does not fall within the definition of Section 27 of the BDA Act. It is not within the jurisdiction of the I.O. to opine the manner in which possession taken is right or wrong. Subsequent to the final notification, mahazar was drawn, possession was taken over, award was passed and notification under Section 16(2) was also issued. The land was handed over

to the Engineering Section of BDA for formation of sites, but on account of pendency of the litigations, the officials could not form the sites. De-notification of the adjacent land is not a ground for de-notifying the land in question. The circumstances under which those lands were de-notified is totally different from the one in the hand. Any order of the Government needs to be issued and published in the name of the Governor of the State authenticated by the Under Secretary to the concerned Department in terms of business transaction rules once former Chief Minister had de-notified the land. But, de-notification in question did not culminate into formal order. The effort of former Chief Minister in de-notifying the land is not a ground for the subsequent Chief Minister to float the rule. In the last representation of the accused made in the year 2009, for the first time, he disclosed the name of the purchaser as Shylaja, wife of Somanna. That leaves no room for the I.O. to hold that the third accused had no role in getting the property de-

notified. The way the I.O. framed questionnaire discloses that he made up his mind to file final report in the form of 'B' right from the beginning of the investigation. Involving or obtaining opinion from the Public Prosecutor is not provided either under the Code or under the Police Manual. The I.O. was not right in seeking opinion from the Public Prosecutor to arrive at the final conclusion. The material collected by the I.O. is sufficient to hold that the accused are guilty of the offences and rightly the Special Judge rejected the 'B' final report and has taken cognizance of the offences and the revision petitions are liable to be dismissed.

6. In the light of the above rival submissions and on perusal of the lower court records, the point that arises for my consideration is:

> *"Whether the order of the Special Judge in taking cognizance of the alleged offence and issuing summons to the petitioners is illegal?"*

7. The attack on these revision petitions at the first stroke is on the maintainability of the revision petitions in view of special bar contemplated under Section 19 sub-section (3) (c) of the Act, which reads thus:

> *"**19. Previous sanction necessary for prosecution.**- (1) . . . .*
>
> *(2) . . . . . .*
>
> *(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-*
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> *(a) . . . .*
>
> *(b) . . . .*
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> *(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings."*

8. A Special Judge is appointed by the Government in exercise of the power under Section 3 of the Act and jurisdiction of Special Judge is regulated by Section 4 of the Act. The position of a Special Judge is that of a Magistrate as settled by the Apex Court in ***A.R.ANTULAY –vs- RAMDAS SRINIWAS NAYAK AND ANOTHER (AIR 1984 SC 718).***

9. In ***Rajendra Kumar Sitaram Pande & Others –vs- Uttam & Another*** reported in ***AIR 1999 S.C. 1028,*** the Apex Court observed thus:

> *" ..... it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub-section (2) of section 397 would apply. On the other hand, it must be held to be intermediate or quasi final and, therefore, the revisional jurisdiction under section 397 could be exercised against the same. . . . ."*

10. Yet, in another judgment, in the case of ***Urmila Devi –vs- Yudhvir Singh [(2013) 15 SCC 624]***, on a survey of earlier judgments covering the controversy, the legal position was asserted to the effect that the revisional jurisdiction under Section 397 of the Code is available to the aggrieved party challenging the order of the Magistrate directing issuance of summons.

11. By virtue of Section 27 of the Act, the High Court exercises appellate and revisional jurisdiction over

the Special Court as if it is a Sessions Court trying the cases within the local limits of the High Court. That being so, in the light of the legal position cited supra, the bar contemplated by sub-section (3) of Section 19 of the Act pertaining to interlocutory order in an enquiry, trial, appeal or proceedings under the Act, definitely has no application, to challenge the process ordered by the Special Judge against the accused persons. Hence, there cannot be any room to entertain the doubt about the maintainability of the present petition.

12. Now reverting back to the case of the revision petitioners, they are assailing the order of the Special Judge basically, on the cognizance taken in the absence of previous sanction from the State Government; secondly on the ground that process is issued directly without holding enquiry as enumerated by Section 200 of the Code and thirdly, it is an order without application of mind.

13. As per the complaint allegation, at the time of lodging the complaint, the first accused is the former Chief Minister and the third accused/second petitioner of Crl.R.P.No.473/2012 is a former Minister for Housing between 18.6.2009 and 31.8.2009. He was re-elected on 24.6.2010. The de-notification is ordered by the first accused on 25.9.2009. Admittedly, the complaint is without the back up of previous sanction. Cognizance taken without previous sanction is barred (as per ***(2012)3 SCC 64 Subramanian Swamy Vs Manmohan Singh & others*** and ***N.K.Ganguly Vs C.B.I (2016) 2 SCC 143***). It is also the law that if on the date of taking cognizance accused continues to be a public servant but in a different capacity or is holding a different office than the one alleged to have been abused (as per ***Abhay Singh Chautala Vs C.B.I (2011)7 SCC 14)***, sanction is not a pre-requirement. Though the Special Judge has not dwelled upon requirement of previous sanction under Section 19 of the Act or otherwise, it may be conveniently

assumed that cognizance taken and process issued is not hit by Section 19(1) of the P.C. Act. Thus the first ground urged by the revision petitioners gets diffused.

14. Much reliance is placed on the judgment of ***Vasanti Dubey's case (supra)*** which highlighted the requirement of an independent enquiry before taking cognizance and issuing process under Section 200 of the Code. In ***India Carat (Pvt.) Ltd. –vs- State of Karnataka*** (**1989(2) SCC 132**), three Judges' Bench of the Apex Court had dealt in detail the power of the Magistrate under Sections 90(1)(b), 200, 202 and 204 of IPC, as under:

> *" 16. The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by*

the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. The High Court was, therefore, wrong in taking the view that the Second Additional Chief Metropolitan Magistrate was not entitled to direct the registration of a case against the second respondent and order the issue of summons to him."

15. While laying down the law regarding requirement of an independent enquiry prior to issue of process in ***Vasanti Dubey's case (supra)***, the facts and circumstances of the said case was not distinguished from ***India Carat (supra),*** there was no reference to the said case. Thus, the judgment of ***India Carat*** (supra), which is by Larger Bench of the Apex Court, holds over the judgment of ***Vasanti Dubey*** (supra). Same legal position is reiterated by the Apex Court in its later judgment i.e., ***State of Orissa –vs- Habibullah Khan*** [***(2003) 12 SCC 129***] and it was observed that the Magistrate can take into account the statements of the witnesses examined by the Police during investigation and take cognizance of the offence complained of and order the issue of process to the accused. In that view of the matter, the second ground on which these revisions are brought finds no support.

16. Thus we arrive at the third ground, i.e., non-application of mind of the Special Judge and the order not disclosing his satisfaction about existence of a *prima facie* case to issue summons to the accused.

The very scheme of the Act is to provide punishment for the offence of bribery and corruption among public servants. While Section 7 deals with public servants taking gratification other than legal remuneration in respect of official act, Section 13 envisages punishment for the offence of criminal misconduct of public servant. Sections 10 and 11 contemplate punishment for abetment of offence defined under Sections 8 and 9 of Act respectively and receiving valuables without consideration. By Sections 8 and 9 of the Act, others (whoever) taking gratification to influence public servant/for exercise of personal influence with public servant are brought to justice.

17. The intriguing question is, under what category, revision petitioners herein fall? To say that the second petitioner of Crl.R.P.No.473/2012 has not acted under the capacity of a public servant at the time of alleged offence and previous sanction is not warranted to take cognizance against him, then he falls under either of the category of Section 8 or 9 of the Act. The two petitioners of Cr.R.P.No.473/2012, as such are not the public servants. Then it follows that unless the ingredients of Section 8 or 9 of the Act is satisfied from the acts alleged against them, they cannot be prosecuted before the forum of Special Court.

18. The learned Special Judge in the body of his order has not made endeavour to record his satisfaction as to the existence of a *prima facie* case in respect of the offences for which he issued summons i.e., Sections 406, 409, 420, 463, 464, 468, 471 r/w Section 120-B of IPC, Section 13(1)(c) & d (i) r/w section 13(2) of Act, Sections

3, 4 and 5 r/w Section 91 of the Karnataka Land (Restriction on Transfer) Act 1991. The entire exercise of the Special Judge was only to reject the 'C' Final Report submitted by the Investigating Officer with an omnibus observation that the documents collected by the I.O. corroborates the allegation. Even if that were to be so, the learned Sessions Judge was obliged to reason out how the acts alleged against the petitioners herein fall within the four corners of the offences under the Act, K.L.R.T.Act and Indian Penal Code in respect of which summons was ordered.

19. In ***Pepsi Food Limited Vs. Judicial Magistrate reported in 1998(5) SCC 749*** the Hon'ble Supreme Court highlighted the importance of the stage, the Magistrate issues summons to the accused persons in respect of the alleged offences. Para-28 relevant for the moment reads as follows:

> *"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be*

set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused".

20. In ***M/s GHCL Employees Stock Option Trust's*** *case (supra),* the omission on the part of the Magistrate for not recording his satisfaction in his order issuing summons about the *prima facie* case against the

accused and the role played by them in their official capacity was strongly taken note of.

21. In ***Sunil Bharathi Mittal's*** *case (supra)* at para.48 it was held thus:

> "48. Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so & decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a *prima facie* case or not."

22. In the case of ***Mehmood Ul Rehman vs. Khazir Mohammad Tunda and Others*** reported in

(2015) 12 SCC 420, it was observed at para Nos.21 and 22 thus:

> *"**21.** Under Section 190(1)(b) CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(c) CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(a) CrPC, he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) CrPC. The complaint is simply to be rejected.*
>
> ***22.** The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the Court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when*

considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 Cr.P.C. when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke

its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment"

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23. The jurisdiction of a Special Judge under the Act is controlled by Section 4 of the Act. The Special Judge gets jurisdiction to try the offences notified by the Government for a particular area under sub-section (1) of Section 3 of the Act. In addition to that, Sub-Section (3) of Section 4 enables him to try other offences apart from the offences under the Act. Relevant Sub-Section reads thus:

"4(3) When trying any case, a special Judge may also try any offence, other than an offence specified in Section 3, with which the accused may, under the Code of Criminal Procedure, 1973(2 of 1974), be charged at the same trial."

24. Thus, it is clear that unless *any* out of many other acts alleged against an accused falls within the description of the offence contemplated under the Act, a Special Judge does not get jurisdiction to try the offences under IPC or any other allied statute. Unfortunately, learned Special Judge did not address this aspect of the matter. There is no indication of application of his mind as to what offence the alleged acts amount to. He gets jurisdiction to try offences under I.P.C. if only ingredients of any of the offences under Sections 7 to 11 and 13 of the Act is attracted as against the revision petitioners. He has not expressed his satisfaction that for violation of provisions of K.L.R.T Act, Special Court is the right forum for prosecution. That cloths the impugned order with illegality.

25. In ***Urmila Devi***'s case (supra), it was declared by the Apex Court that such an order of a Magistrate deciding to issue process or summons to an accused in

exercise of his power under Sections 200 to 204 of the Code can always be the subject matter of challenge under inherent jurisdiction of the High Court under Section 482 of the Code.

26. Still, it is for the Special Judge, being the primary Authority to discharge his function in accordance with the requirement of law, but not for this Court to take over the matter from the province of the Trial Court. The revisional power of this Court is to see that justice is done in accordance with the recognized rules of Criminal Jurisprudence and the subordinate courts do not exceed their jurisdiction or abuse the powers vested in them under the Code. In that view of the matter, it suffices for the present to set aside the order impugned with a direction to the court below to firstly ascertain from the complaint and evidentiary material collected by the Investigating Officer as to the

jurisdiction of the Special Court to entertain the complaint, and then to take the matter to its logical end. It is also for the Special Judge to record his satisfaction from the record before him as to what offences are made out to issue summons to the accused.

The Revision Petitions are allowed. The order dated 13.4.2012 in Special C.C.No.46/2012 (PCR No.25/2011) passed by the Special Judge thereby taking cognizance and issuing summons to the revision petitioners in respect of the offences under Sections 406, 409, 420, 463, 464, 468, 471 read with Section 120-B of the Indian Penal Code, Sections 13(1)(c) and (d) read with Section 13(2) of the Act and Sections 3, 4 and 5 read with Section 9 of the K.L.R.T.Act, is set aside. The learned Special Judge is directed to re-consider the matter in the light of the observations supra.

Sd/-
JUDGE

KNM/DVR/-