A M/S. FERTICO MARKETING AND INVESTMENT PVT. LTD AND ORS. ETC.

v.

CENTRAL BUREAU OF INVESTIGATION AND ANOTHER ETC.

B (Criminal Appeal Nos. 760-764 of 2020 Etc.)

NOVEMBER 17, 2020

[A. M. KHANWILKAR AND B. R. GAVAI, JJ.]

C *Delhi Special Police Establishment Act, 1946:*

s.6 – Consent under – Scope of – FIR by CBI alleging offences u/ss. 120B and 420 IPC and s. 13(2) r/w. s. 13(1)(d) of Prevention of Corruption Act, 1988 (PC Act) – Against Director of coal-purchasing company and unknown public servants – During D *investigation two public servants of the State Government were found to be part of the conspiracy – Charge-sheet filed against the Director of the coal-purchasing company and against the public servants after obtaining sanction u/s. 19 of PC Act – Petitions u/s. 482 Cr. P.C. seeking quashing of the criminal proceedings – Single Judge of High Court dismissed the petitions holding that post-facto consent* E *after completion of investigation would be a valid consent u/s. 6 – Appeal to Supreme Court – Held: As regards private individuals no consent is required u/s. 6 and hence there was no embargo in registering FIR against them – As regards public servants, the post-facto consent u/s. 6 given by the State Government was valid – The* F *public servants have also not been able to show any prejudice caused to them or any miscarriage of justice, in absence of prior consent u/s. 6 – Matter remitted to High Court to decide other issues raised before the High Court – Code of Criminal Procedure, 1973 – s.482.*

G **Disposing of the appeals, the Court**

HELD: 1. Though Section 5 of Delhi Special Police Establishment Act, 1946 (DSPE Act) enables the Central Government to extend the powers and jurisdiction of Members of the Delhi Special Police Establishment (DSPE) beyond the Union Territories to a State, the same is not permissible unless,

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a State grants its consent for such an extension within the area of State concerned under Section 6 of the DSPE Act. Obviously the provisions are in tune with the federal character of the Constitution, which has been held to be one of the basic structures of the Constitution. The State of Uttar Pradesh has accorded a general consent for extension of powers and jurisdiction of the Members of DSPE, in the whole of State of Uttar Pradesh for investigation of offences under the Prevention of Corruption Act, 1988 and attempts, abetments and conspiracies in relation to all or any of the offence or offences committed in the course of the transaction and arising out of the same facts. The same is however with a rider, that no such investigation shall be taken up in cases relating to the public servants, under the control of the State Government, except with prior permission of the State Government. [Paras 11, 13][966-E-F; 967-E-F]

2. Insofar as the private individuals are concerned, there is no embargo with regard to registration of FIR against them inasmuch as, no specific consent would be required under Section 6 of the DSPE Act. Vide notification dated 15th June 1989, the State of Uttar Pradesh has accorded a general consent thereby, enabling the Members of DSPE to exercise powers and jurisdiction in the entire State of Uttar Pradesh with regard to investigation of offences under the Prevention of Corruption Act, 1988 and also to all or any of the offence or offences committed in the course of the same transaction or arising out of the same facts. As such, for registration of FIR against the private individuals for the offences punishable under the Prevention of Corruption Act and other offences under the IPC, committed in the course of the same transaction or arising out of the same facts, the Members of DSPE have all the powers and jurisdiction. As such, there are no merits in the appeals filed by the private individuals. [Para 13][967-F-H; 968-A-B]

3.1 Insofar as the two public servants in the present case are concerned, who have undoubtedly been working under the State Government, initially, were not named in the FIR. However, their names surfaced during the course of investigation and thus sanction was granted for their prosecution under Section 19 of the Prevention of Corruption Act vide order dated 31st May 2012,

prior to filing of the charge-sheet. It is also not in dispute that Post-Facto consent was given by the State Government vide notification dated 7th September 2018, under Section 6 of the DSPE Act to the authorities to investigate the public servants. [Para 14][968-B-C]

3.2 In the present case, there are no pleadings by the public servants with regard to the prejudice caused to them on account of non-obtaining of prior consent under Section 6 of the DSPE Act qua them specifically in addition to the general consent in force, nor with regard to miscarriage of justice. There is no reason to interfere with the finding of the High Court with regard to not obtaining prior consent of the State Government under Section 6 of the DSPE Act. [Paras 19, 21][972-B-C; E-F]

H. N. Rishbud and Inder Singh v. The State of Delhi **[1955] 1 SCR 1150;** *State of Karnataka v. Kuppuswamy Gownder and Others* **(1987) 2 SCC 74 : [1987] 2 SCR 295;** *Union of India v. Prakash P. Hinduja and Another* **(2003) 6 SCC 195 : [2003] 1 Suppl. SCR 307;** *Kanwal Tanuj v. State of Bihar and Others* **(2020) SCC OnLine SC 395 – relied on.**

Ms. Mayawati v. Union of India and Others **(2012) 8 SCC 106 : [2012] 7 SCR 33 – referred to.**

4. The Single Judge while referring two questions to the Division Bench, had observed that the question Nos. 2, 3 and 4 can be decided only after the question No. 1 was answered. After the matter was returned to the Single Judge by the Division Bench, the Single Judge was bound to answer question Nos. 2, 3 and 4. The Single Judge, in the impugned order, has not at all dealt with question Nos. 2, 3 and 4. Therefore, the matter is remitted to the Single Judge for deciding the question Nos. 2, 3 and 4 on its own merits. The merits of the matter have not been considered and all questions available to both the parties are kept open. [Paras 22, 23][972-F-H; 973-A]

CASE LAW REFERENCE

[2012] 7 SCR 33	referred to	Para 8
[1955] 1 SCR 1150	relied on	Para 15

[1987] 2 SCR 295	relied on	Para 16	A
[2003] 1 Suppl. SCR 307	relied on	Para 17	

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 760-764 of 2020.

From the Judgment and Order dated 14.08.2019 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Criminal Misc. Case No. 4253, 4251, 4252, 4250 and 4446 of 2012. B

With

Criminal Appeal Nos. 765-767, 768-769, 770-774, 775-777, 778-785 Of 2020. C

S. V. Raju, ASG, Ajit Kumar Sinha, Sr. Adv., Ashwarya Sinha, Srijan Sinha, Niraj Sharma, Ambhoj Kumar Sinha, Amit Anand Tiwari, Ms. Shakun Sharma, Ms. Mary Mitzy, Ms. Devyani Gupta, A. K. De, Anuj Chauhan, Ms. Ananya De, Pramit Saxena, Manan Popli, Kush Chaturvedi, Divyansh Rathi, Arvind Kumar Sharma, Ashwani Kumar Dubey, Manish Kumar, Amit Sharma, Dipesh Sinha, Ms. Pallavi Barua, Advs. for the appearing parties. D

The Judgment of the Court was delivered by

B. R. GAVAI, J. E

1. Leave granted.

2. All these appeals challenge the common judgment and order passed by the learned Single Judge of the Allahabad High Court dated 14th August 2019. The facts in brief giving rise to the present appeals are as under:- F

On 18th October 2007, Coal India Limited had introduced a new policy, whereunder the Fuel Supply Agreement (hereinafter referred to as 'FSA') was required to be entered into by coal companies and purchasers of coal. In pursuance of the said policy, on 30th April 2008, an FSA was entered into between the appellants in appeals arising out of SLP(Crl.) Nos. 8342-46 of 2019 and the Coal India Limited. On 25th March 2011, a joint surprise raid was conducted by the CBI in factory premises of Fertico Marketing and Investment Private Limited and it was found that the coal purchased under the FSA was sold in the black market. It was further found by CBI that this was done in G H

A connivance with the unknown government officials which led to loss of Rs.36.28 crore to the Central Government. Accordingly, on 13th April 2011, an FIR came to be registered by CBI for the offences punishable under Sections 120B and 420 of the IPC and Section 13 (2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act') against Mr. Anil Kumar Agarwal, Director B of said M/s Fertico Marketing and Investment Pvt. Ltd. and unknown officials of the District Industries Centre (hereinafter referred to as 'DIC'), District Chandauli, so also unknown officials of Northern Coalfields Limited, Singrauli, Madhya Pradesh.

C 3. During the course of investigation, it was found that two officers namely Ram Ji Singh, the then General Manager, DIC, Chandauli and Yogendra Nath Pandey, Assistant Manager, DIC, Chandauli were also part of the conspiracy. Investigation revealed that these two officials had abused their official positions and fraudulently and dishonestly sent false status reports regarding working conditions of the accused D companies and thereby, dishonestly induced the Northern Coalfields Limited to supply coal on subsidized rates, for obtaining pecuniary advantage.

4. The competent authority granted sanction to prosecute the two public servants on 31st May 2012, under Section 19 of the PC Act. E Charge-sheet was filed on 31st May 2012, against the appellants under Section 120B read with Section 420, Sections 467, 468 and 471 of the IPC. Various petitioners approached the High Court by filing petitions under Section 482 Cr.P.C. praying for quashing the charge-sheet/ summoning order and consequential proceedings pending before the Special Judge, Anti-Corruption, CBI. The learned Single Judge of the F High Court vide his order dated 24th February 2015, framed the following four questions for determination:-

Q.No.1:- Whether the investigation conducted by the CBI in these bunch of cases are illegal and without jurisdiction for non-compliance of section 6 of DSPE Act? If so, its effect?

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Q.No.2- Whether the cases are overwhelmingly and predominantingly of civil nature as purely bases on breach of contract (FSA) and the criminal prosecutions are liable to be quashed?

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Q.No.3- Whether CBI did not follow doctrine of parity in filing the criminal prosecutions against the petitioners? If so, its effect?

Q.No.4- Whether in absence of Officers /official of NCL, charge of Criminal conspiracy under section 120-B IPC could be made out?

Having framed the aforesaid questions, the learned Single Judge has found in the judgment, that another Single Judge of the said High Court has taken a view, that when the State Government had granted sanction to prosecute an accused, it is implied that the permission for investigation was also granted. The learned Single Judge disagreed with the earlier view taken by another learned Single Judge and was of the view, that since in the present case, investigation conducted by the CBI was without the previous permission/consent of the Government of UP as such, was in breach of the mandatory provisions of Section 6 of the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as "DSPE Act"). He was therefore of the view, that the investigation suffered with incurable defect of lacking inherent jurisdiction. However, the learned Single Judge found, that since he had disagreed with the earlier view of learned Single Judge and since there was no binding precedent on the issue, it was appropriate to refer question Nos.1 and 2 for decision by the Division Bench. The learned Single Judge vide his detailed order dated 24th February 2015, referred the following two questions to the Division Bench:-

1. *Whether investigation of such cases having involvement of Public servant under control of State Government of U.P. as well as private individuals for offences punishable under the Prevention of Corruption Act, 1988 (49 of 1988), and attempts, abetments and conspiracies in relation to all or any of the offence or offences mentioned above and any other offence or offences committed in the course of the transaction and arising out of the same facts under the G.O. of State Government Dated 15.6.1989 can be investigated by CBI assuming suo moto jurisdiction under section 6 of DSPE Act without the previous permission or consent of State Government?*

A *2. Whether total non compliance/absence of previous consent of State Government under section 6 of DSPE Act could be cured by grant of prosecution sanction under section 197 Cr.P.C. of under section 19 of P.C. Act by State Government or competent authority ?*

B 5. The Division Bench vide its judgment and order dated 6th July 2015, answered the reference in the following terms:-

"Our answer therefore to question no.1 is that since the question as framed proceeds on an erroneous premise of facts available in the case, the same is answered by holding that
C *the Government Order dated 15.6.l989 permits investigation and it was not a case of assuming suo motu jurisdiction by the CBI to investigate on the facts of the present case.*

The second question framed by the learned Single Judge is returned unanswered in view of the fact that the affidavit
D *of the State Government had not been invited by the learned Single Judge before proceeding to raise a doubt and frame the second question to be answered in this reference as observed above.*

With the aforesaid answers to the two questions framed,
E *let the papers be placed before the concerned court for proceeding in the matter in accordance with law."*

After the reference was answered, the matter again came up before the learned Single Judge, who by order dated 17th August 2015, directed the State Government to file an affidavit. In compliance with
F the directions issued by the High Court, the State Government filed affidavits dated 31st October 2015 and 20th December 2015. The learned Single Judge passed an order on 5th April 2018, to the following effect:-

"Sri P.K. Singh, learned AGA prays for and is granted ten days time to file an affidavit of the responsible secretary
G *of the Home Department regarding interpretation and scope of notification dated 15.06.1983 with regard to Section 6 of the Delhi Police Special Provisions Act.*

Put up this case on 18.04.2018."

6. In compliance with the order dated 5th April 2018, the State
H Government filed various affidavits through the Secretary, Home and

Principal Secretary, Home. The stand taken by the State Government in the said affidavits was that the Notification dated 15th June 1989, accorded consent to the powers and jurisdiction of the Members of Delhi Special Police Establishment (hereinafter referred to as 'the DSPE') in whole of the State of Uttar Pradesh for investigation of offences under the Prevention of Corruption Act, with the rider that no such investigation shall be taken up in cases relating to the public servants, under the control of the State Government except with the prior permission of the State Government. It was the stand of the State Government, that restriction of prior permission of the State Government was limited only in relation to public servants under the control of the State Government and not to any private individual. It was further the stand of the Government, that the notification permits the competent authority under DSPE Act for investigation of offences as mentioned in the notification in the State of Uttar Pradesh. However, if any public servant, under the control of the State Government was named in the First Information Report, prior permission of the State Government would be required for investigation. Further stand of the State Government was that, public servant under the control of the State Government, if not named in the First Information Report, but if, in the further investigation, is found to be involved in the said crime, the prior permission of the State Government would not be required for investigation. The State Government further stated in the affidavit, that insofar as two public servants are concerned i.e. Sri Ram Ji Singh, the then General Manager, DIC, Chandauli and Sri Yogendra Nath Pandey, Assistant Manager, DIC, Chandauli, the sanction under Section 6 of the DSPE Act was granted vide notification dated 7th September 2018, in respect of the FIR registered by CBI on 13th April 2011, under Sections 120B and 420 IPC and Section 13 (2) read with Section 13(1)(d) of the PC Act.

7. The learned Single Judge vide the impugned order found, that the State Government had granted Post-Facto consent vide notification dated 7th September 2018, against the two public servants of the State Government whose names had figured during the course of investigation. The learned Single Judge found, that the Post-Facto consent was sufficient for investigation by the CBI for the offences against the two public servants, whose names though did not find place in the FIR but were found in charge-sheet. The learned Single Judge held, that if the names of the said public servants did not figure in the FIR and their names came to light during the course of investigation and charge-sheet was

A filed against the said public servants of the State Government, the consent given after completion of investigation would be a valid consent under Section 6 of the DSPE Act. The learned Single Judge further found, that the question of consent can be raised only by the public servants who have been named in the FIR and not by the private individuals, who had come before the Court. The learned Single Judge therefore, dismissed B all the petitions. Being aggrieved thereby, the present appeals.

8. Shri Mukul Rohatgi, learned Senior Counsel appearing on behalf of the appellants submitted, that in the absence of the consent of the State Government under Section 6 of the DSPE Act, the DSPE (CBI) had no powers to conduct investigation in view of the provisions contained C in Section 6 of the DSPE Act. He submitted, that the consent of the State Government is mandatory as is seen from Section 6 of the DSPE Act. The learned Senior Counsel would submit, that failure in obtaining the consent prior to registration of the FIR would go to the root of the matter and vitiate the entire investigation. He submitted, that the D appellants-private individuals have been charged with the offences punishable under Sections 120B and 420 of IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. He submitted, that an offence under the provisions of the Prevention of Corruption Act can be registered only against public servant. He submitted, that since the prosecution had invoked Section 120B of the IPC, the mandatory E requirement is that there has to be a meeting of minds. He submitted, that an offence under Section 120B of the IPC read with Section 13(1)(d) of the Prevention of Corruption Act cannot stand unless there is a meeting of minds between public servant and the private individuals and as such, an FIR could not be registered. He submitted, that investigation in a F matter which concerns the conspiracy between the private individual and the public servant, the same would not be permitted unless there is a valid consent under Section 6 of the DSPE Act. The learned Senior Counsel strongly relied on the judgment of this Court in the case of ***Ms. Mayawati v. Union of India and Others***[1].

G 9. Mr. Ajit Kumar Sinha, learned Senior Counsel appearing on behalf of the accused who are the public servants in appeals arising out of SLP(Crl.) Nos. 8420-21 of 2019 submitted, that insofar as the appellants-public servants are concerned, in the absence of a valid consent, the CBI could not have exercised powers and jurisdiction to

H [1] (2012) 8 SCC 106

investigate the matter. It is submitted, that the Post-Facto sanction granted on 7th September 2018, would not cure the defect of obtaining the prior consent. Both the learned Senior Counsel therefore submitted, that the proceedings are liable to be quashed and set aside.

10. Shri S.V. Raju, learned Additional Solicitor General would submit, that the prior consent under Section 6 of the DSPE Act is not mandatory but directory. He submitted, that in any case unless the appellants point out that on account of the procedural irregularity of not obtaining the prior consent, prejudice is caused to the appellants or it has resulted in miscarriage of justice, the investigation would not be vitiated. He submitted, that insofar as the appellants-private individuals are concerned, the grievance of the said appellants is totally unwarranted inasmuch as the Notification dated 15th June, 1989 vide which a general consent has been granted to investigate the matters arising out of PC Act, unless it concerns a public servant under the control of the State Government. Insofar as the public servants are concerned, the learned ASG submitted, that in any case, the consent has been granted after completion of the investigation on 7th September 2018 and as such the defect, if any, stands cured. He submitted, that in any case, there are no pleadings by the appellants-public servants with regard to prejudice caused to them or with regard to miscarriage of justice. He therefore submitted, that no interference is warranted with the judgment of the High Court.

11. It will be relevant to refer to Sections 5 and 6 of the DSPE Act as under:-

> ***5. Extension of powers and jurisdiction of special police establishment to other areas.—*** *(1) The Central Government may by order extend to any area (including Railway areas) in a State, not being a Union territory, the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under section 3.*
>
> *(2) When by an order under sub-section (1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to*

A *be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force.*

(3) Where any such order under sub-section (1) is made relation to any area, then, without prejudice prejudice to the
B *provisions of sub-section (2), any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police station in that area and when so exercising such*
C *powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.*

6. Consent of State Government to exercise of powers and jurisdiction.— *Nothing contained in section 5 shall be deemed*
D *to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union territory or railway area], without the consent of the Government of that State.*

It could thus be seen, that though Section 5 enables the Central Government to extend the powers and jurisdiction of Members of the
E DSPE beyond the Union Territories to a State, the same is not permissible unless, a State grants its consent for such an extension within the area of State concerned under Section 6 of the DSPE Act. Obviously, the provisions are in tune with the federal character of the Constitution, which has been held to be one of the basic structures of the Constitution.

F 12. It would be relevant to refer to the notification issued by the Government of Uttar Pradesh dated 15th June 1989, which reads as under:-

"Government of Uttar Pradesh
Home(Police) Section-1
G *No.3442/VIII-1-84/88*
Lucknow, dated : June 15, 1989

Notification

In pursuance of the Provisions of Section 6 of the Delhi Special Police Establishment Act, 1946 (25 of 1946) the
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Governor of the State of Uttar Pradesh is pleased to accord consent to the extension of powers and jurisdiction of the members of the Delhi Special Police establishment in whole of the State of Uttar Pradesh, for investigation of offences punishable under the Prevention of Corruption Act, 1988 (49 of 1988), and attempts, abetments and conspiracies in relation to all or any of the offence or offences mentioned above and any other offence or offences committed in the course of the transaction and arising out of the same facts, subject however to the condition that no such investigation shall be taken up in cases relating to the public servants, under the control of the State Government except with the prior permission of the State Government.

BY ORDER IN THE NAME OF THE GOVERNOR.

Sd/-
(S.K. TRIPATHI)
HOME SECRETARY TO THE GOVT
OF UTTAR PRADESH"

13. It could thus be seen, that the State of Uttar Pradesh has accorded a general consent for extension of powers and jurisdiction of the Members of DSPE, in the whole of State of Uttar Pradesh for investigation of offences under the Prevention of Corruption Act, 1988 and attempts, abetments and conspiracies in relation to all or any of the offence or offences committed in the course of the transaction and arising out of the same facts. The same is however with a rider, that no such investigation shall be taken up in cases relating to the public servants, under the control of the State Government, except with prior permission of the State Government. As such, insofar as the private individuals are concerned, there is no embargo with regard to registration of FIR against them inasmuch as, no specific consent would be required under Section 6 of the DSPE Act. Vide notification dated 15th June 1989, the State of Uttar Pradesh has accorded a general consent thereby, enabling the Members of DSPE to exercise powers and jurisdiction in the entire State of Uttar Pradesh with regard to investigation of offences under the Prevention of Corruption Act, 1988 and also to all or any of the offence or offences committed in the course of the same transaction or arising out of the same facts. As such, for registration of FIR against the private

A individuals for the offences punishable under the Prevention of Corruption Act and other offences under the IPC, committed in the course of the same transaction or arising out of the same facts, the Members of DSPE have all the powers and jurisdiction. As such, we find absolutely no merits in the appeals filed by the private individuals.

B 14. Insofar as the two public servants who have been undoubtedly working under the State Government are concerned, initially, they were not named in the FIR. However, their names surfaced during the course of investigation and thus sanction was granted for their prosecution under Section 19 of the Prevention of Corruption Act vide order dated 31st C May 2012, prior to filing of the charge-sheet. It is also not in dispute that Post-Facto consent was given by the State Government vide notification dated 7th September 2018, under Section 6 of the DSPE Act to the authorities to investigate the public servants.

15. As early as in 1955, the question arose for consideration before this Court, as to whether an investigation carried out by a police officer D below the rank of Deputy Superintendent of Police, under Section 5(4) of the Prevention of Corruption Act, 1947, without the order of the Magistrate of First Class, was mandatory or directory? While holding that the provision is mandatory, this Court considered a question as to whether and to what extent, the trial which follows such investigation, is E vitiated. The Court, in ***H.N. Rishbud and Inder Singh v. The State of Delhi***[2], observed as under:-

> *"If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial* F *which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in Prabhu v. Emperor AIR 1944 PC 73* G *and Lumbhardar Zutshi v. The King AIR 1950 PC 26. These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection*

H [2] [1955] 1 SCR 1150

of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination., the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby."

It could thus be seen, that this Court has held, that the cognizance and the trial cannot be set aside unless the illegality in the investigation can be shown to have brought about miscarriage of justice. It has been held, that the illegality may have a bearing on the question of prejudice or miscarriage of justice but the invalidity of the investigation has no relation to the competence of the court.

16. It will also be apposite to note the following observations of this Court in ***State of Karnataka v. Kuppuswamy Gownder and Others***[3]**,** while considering the provisions of Section 465 of the Cr.P.C.:-

14. *The High Court, however, observed that provisions of Section 465 CrPC cannot be made use of to regularise this trial. No reasons have been stated for this conclusion. Section 465 CrPC reads as under:*

"Finding or sentence when reversible by reason of error, omission or irregularity.—(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered by a court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any

[3] (1987) 2 SCC 74

A *error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."*

It is provided that a finding or sentence passed by a court of B *competent jurisdiction could not be set aside merely on the ground of irregularity if no prejudice is caused to the accused. It is not disputed that this question was neither raised by the accused at the trial nor any prejudice was pleaded either at the trial or at the appellate stage and therefore in absence of* C *any prejudice such a technical objection will not affect the order or sentence passed by competent court. Apart from Section 465, Section 462 provides for remedy in cases of trial in wrong places. Section 462 reads as under:*

"462. Proceedings in wrong place.—No finding, sentence D *or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong Sessions Division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice."*

E *This provision even saves a decision if the trial has taken place in a wrong Sessions Division or sub-division or a district or other local area and such an error could only be of some consequence if it results in failure of justice, otherwise no finding or sentence could be set aside only on the basis of* F *such an error.*

17. This Court, in the case of ***Union of India v. Prakash P. Hinduja and Another***[4], while relying on the judgment of this Court in ***H.N. Rishbud***[5] ***(supra)***, has observed thus:-

*"**21.** .....The Court after referring to Prabhu v. Emperor AIR* G *1944 SC 73 and Lumbhardar Zutshi v. The King AIR 1950 PC 26 held that if cognizance is in fact taken on a police report initiated by the breach of a mandatory provision relating*

[4] (2003) 6 SCC 195

H [5] [1955] 1 SCR 1150

to investigation, there can be no doubt that the result of the trial, which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice and that an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial. This being the legal position, even assuming for the sake of argument that the CBI committed an error or irregularity in submitting the charge sheet without the approval of CVC, the cognizance taken by the learned Special Judge on the basis of such a charge sheet could not be set aside nor could further proceedings in pursuance thereof be quashed. The High Court has clearly erred in setting aside the order of the learned Special Judge taking cognizance of the offence and in quashing further proceedings of the case."

It could thus be seen, that this Court held that even for the sake of argument that CBI had committed an error or irregularity in submitting the charge-sheet without the approval of CVC, the cognizance taken by the learned Special Judge on the basis of such a charge-sheet, would not be set aside nor could further proceedings in pursuance thereof be quashed.

18. Recently, a bench of this Court consisting one of us (Khanwilkar J.) had an occasion to consider the aforesaid provisions of DSPE Act, in ***Kanwal Tanuj v. State of Bihar and Others***[6]. In the said case, the question arose, as to whether when an offence was committed in the Union Territory and one of the accused was residing/employed in some other State outside the said Union Territory, the Members of DSPE had power to investigate the same, unless there was a specific consent given by the concerned State under Section 6 of the DSPE Act. The contention on behalf of the appellant before the High Court was that since the appellant was employed in connection with the affairs of the Government of Bihar, an investigation was not permissible, unless there was a specific consent of State of Bihar under Section 6 of the DSPE Act. This Court rejected the said contention holding that if the offence is committed in Delhi, merely because the investigation of the said offence incidentally transcends to the Territory of State of Bihar, it cannot be held that the investigation against an officer employed in the territory of

[6] 2020 SCC OnLine SC 395

A Bihar cannot be permitted, unless there was specific consent under Section 6 of the DSPE Act. While considering the argument on behalf of the State, that such a consent was necessary for CBI to proceed with the investigation, this Court held that the respondent-State having granted general consent in terms of Section 6 of the DSPE Act vide notification dated 19.02.1996, it was not open to the State to argue to the contrary.

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19. In the present case, there are no pleadings by the public servants with regard to the prejudice caused to them on account of non-obtaining of prior consent under Section 6 of the DSPE Act qua them specifically in addition to the general consent in force, nor with regard to miscarriage of justice.

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20. Insofar as the reliance on the judgment of this Court in ***Mayawati*[7] *(supra)***, the only question that fell for consideration before this Court was, as to whether any of the orders passed by this Court amounted to issuance of any direction to CBI to conduct a roving inquiry against the conduct of the petitioner commencing from 1995 to 2003 or as to whether the directions were restricted to irregularities in the Taj Corridor matter. The court in the facts found, that there was no such finding or satisfaction recorded by this Court in the matter of the disproportionate assets of the petitioner on the basis of the status report dated 11th September 2003 and as a matter of fact, the petitioner was not even a party before this Court.

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21. In the result, we find no reason to interfere with the finding of the High Court with regard to not obtaining prior consent of the State Government under Section 6 of the DSPE Act.

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22. However, it could be noticed that the learned Single Judge while referring two questions to the Division Bench, had observed that the question Nos. 2, 3 and 4 can be decided only after the question No. 1 was answered. After the matter was returned to the learned Single Judge by the Division Bench, the learned Single Judge was bound to answer question Nos. 2, 3 and 4. The learned Single Judge, in the impugned order, has not at all dealt with question Nos. 2, 3 and 4.

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23. We, therefore, remit the matter to the learned Single Judge for deciding the question Nos. 2, 3 and 4 on its own merits. We clarify,

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that we have not considered the merits of the matter and all questions available to both the parties are kept open. A

24. The criminal appeals are disposed of in the aforesaid terms. Accordingly, all pending applications, if any, shall stand disposed of.

Kalpana K. Tripathy Appeals disposed of.