REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 662 OF 2010
[Arising out of SLP (Crl.) No. 6563 of 2007]

Lalu Prasad Yadav & Anr. ….Appellants

Vs.

State of Bihar & Anr. ….Respondents

WITH

CRIMINAL APPEAL NO. 670 OF 2010
[Arising out of SLP (Crl.) No. 6821 of 2007]

Central Bureau of Investigation ….Appellant

Vs.

State of Bihar & Ors. ….Respondents

JUDGMENT

R.M. LODHA,J.

Leave granted.

2. Section 378 of Code of Criminal Procedure, 1973 (for short, `1973 Code') enacts the provision for appeal from an order of

acquittal. The said provision as it existed prior to 2005 amendment reads:

> "S.378. - **Appeal in case of acquittal.** - (1) Save as otherwise provided in sub-section (2) and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court or an order of acquittal passed by the Court of Session in revision.
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> (2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub-section (3), to the High Court from the order of acquittal.
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> (3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.
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> (4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.
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> (5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.
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> (6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2)."

3. The main question presented, in light of the aforesaid provision is, namely, as to whether the State Government (of Bihar) has competence to file an appeal from the judgment dated 18th December, 2006 passed by Special Judge, CBI (AHD), Patna, acquitting the accused persons when the case has been investigated by the Delhi Special Police Establishment (CBI).

4. Shri Lalu Prasad Yadav and Smt. Rabri Devi are husband and wife. Both of them have held the office of Chief Minister of the State of Bihar. These appeals concern the period from March 10, 1990 to March 28, 1995 and April 4, 1995 to July 25, 1997 when Shri Lalu Prasad Yadav was the Chief Minister, Bihar. Allegedly for acquisition of assets – both moveable and immoveable – by corrupt or illegal means disproportionate to his known sources of income during the aforesaid period, a first information report (FIR) was lodged by CBI against Shri Lalu Prasad Yadav and also his wife. As a matter of fact, lodgement of FIR was sequel to direction by the Patna High Court to CBI to enquire and scrutinize all cases of excess drawls and expenditure in the Animal Husbandry Department, Government of Bihar during the period 1977-78 to 1995-96. CBI investigated into the matter and on August 19, 1998, a chargesheet was filed against Shri Lalu Prasad Yadav and Smt. Rabri Devi in the

Court of Special Judge, CBI (AHD), Patna. The charges were framed against Shri Lalu Prasad Yadav under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (`PC Act') that during the said period, he acquired assets which were disproportionate to his known sources of income and on 31st March, 1997 he had been in possession of pecuniary resources of property in his name and in the name of his wife and children to the extent of Rs. 46,26,827/- which he could not satisfactorily account for. Smt. Rabri Devi was charged under Section 109 of Indian Penal Code (IPC) read with Section 13(1)(e) and 13(2) of the PC Act for abetting her husband in the commission of the said offence. The Court of Special Judge, CBI (AHD), Patna, upon conclusion of trial, vide its judgment dated December 18, 2006 acquitted the accused holding that prosecution failed to prove the charges levelled against them.

5. It is pertinent to notice here that as per CBI, the central government after considering the conclusions and findings of the trial court took a conscious and considered decision that no ground whatsoever was made for filing an appeal against the judgment of the trial court.

6. On February 17, 2007 the state government, however, filed leave to appeal against the order of acquittal dated December

18, 2006 before the High Court of Judicature at Patna. The accused were arrayed as respondent nos. 1 and 2 respectively and the CBI was impleaded as respondent no. 3. The Single Judge of the High Court issued notice to the respondents to show cause as to why leave to appeal be not granted. In response thereto, on behalf of respondent nos. 1 and 2, a preliminary objection was raised with regard to maintainability of appeal by the state government. The preliminary objection about the maintainability of appeal raised by respondent nos. 1 and 2 was supported by respondent no. 3 (CBI). The learned Single Judge heard the arguments on the question of maintainability of appeal and vide his order dated September 20, 2007 overruled the preliminary objection and held that appeal preferred by the state government was maintainable. It is from this order that two appeals by special leave have been preferred. One of the two appeals is by the accused and the other by CBI.

7. We heard Mr. Ram Jethmalani, learned senior counsel (for accused) and Mr. A. Mariarputham, learned senior counsel (for CBI) – appellants – and Mr. L. Nageshwar Rao, learned senior counsel for the state government.

8. Mr. Ram Jethmalani submitted that the competence of the state government to file an appeal from the judgment and order of

acquittal is to be determined by Section 378 of the 1973 Code as it existed prior to 2005; the law in force on the date of the chargesheet. He would submit that the key words in Section 378(1) are : “Save as otherwise provided in sub-section (2)” and by these words whatever is covered by sub-section (2) is left outside the purview of sub-section (1). According to him, the word “also” in sub-section (2) refers to the mode of exercising substantive right of appeal; the word “also” in the changed context means `likewise’ and that means that the central government can also instruct the public prosecutor to present an appeal; it does not have to file vakalatnama signed by the President of India or for the State by the Governor of the State. Learned senior counsel argued that the High Court by giving undue weight to the word “also” in sub-section (2) has made the opening key words in sub-section (1) of Section 378 wholly redundant and useless thereby defeating the intention of the Legislature. He would, thus, submit that the court has to adopt one of the two courses, namely, (i) assign to the word another of its meanings which the word does carry and harmonise it with the effect of the dominant words or (ii) reject the word as a useless surplusage.

9. Mr. Ram Jethmalani, learned senior counsel, referred to the judgment of this Court in Eknath Shankarrao Mukkawar v. State

of Maharashtra[1], and submitted that the construction of Section 377 put by this Court where similar words occur, must apply to the construction of Section 378 as well. He argued that the reliance placed by the High Court upon the decision of this Court in the case of Khemraj vs. State of Madhya Pradesh[2] was misconceived as the said case has no application on construction of Section 378 as the controlling words "save as otherwise provided" did not exist in Section 417 of Code of Criminal Procedure (for short, `1898 Code') and the observations made in that case are neither *ratio decidendi* nor *obiter dicta*.

10. Lastly, Mr. Ram Jethmalani contended that if there is a conflict of exercise of executive powers by the state government and the central government, by virtue of the proviso to Article 162 of the Constitution of India, the decision of the latter will prevail.

11. Mr. A. Mariarputham, learned senior counsel for CBI, adopted the arguments of Mr. Ram Jethmalani. He further submitted that by addition of words "save as otherwise provided in sub-section (2)", in Section 378, the Legislature brought changes in erstwhile Section 417 of 1898 Code and made its intention clear to take class of cases covered by sub-section (2) out of purview of sub-section (1).

[1] (1977) 3 SCC 25
[2] (1976) 1 SCC 385

12. On the other hand, Mr. L. Nageshwar Rao, learned senior counsel for the state government, vehemently supported the view of the High Court to sustain the maintainability of appeal filed by the state government. He submitted that right of appeal is a creature of statute and the question whether there is right of appeal or not will have to be considered on an interpretation of the provision of the statute and not on the ground of propriety or any other consideration. According to him, when the language of statute is plain and unambiguous then literal rule of interpretation has to be applied and the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act or to have consideration of equity, public interest or to seek the intention of the Legislature. He would submit that the use of the expressions “in any case” in sub-section (1) and “also” in sub-section (2) clearly indicates that Legislature intended that the general rule would be that the state government may file an appeal in any and every case [including cases covered by sub-section (2)] and the central government may additionally file an appeal in a case covered by sub-section (2). Mr. L. Nageshwar Rao contended that the interpretation to the expression “save as otherwise provided in sub-section (2)”, sought to be placed by the

appellants, is not in accordance with the logic or the plain language of the provision and such interpretation would result in rendering the expression “in any case” in sub-section (1) and the word “also” in sub-section (2) redundant and otiose. He emphasized that no word or expression used in any statute can be said to be redundant or superfluous; that in matters of interpretation one should not concentrate too much on one word and pay too little attention to other words and no provision in the statute and no word in the section can be construed in isolation and every provision and every word must be looked at generally and in the context in which it is used.

13. Relying upon the case of Eknath Shankarrao Mukkawar[1], Mr. L. Nageshwar Rao submitted that this Court has held that in the absence of use of the word “also” in sub-section (2) of Section 377, as contained in sub-section (2) of Section 378, the state government was incompetent to file an appeal in a case falling under Section 377(2) and now in order to remedy the lacuna pointed out by this Court, Parliament amended Section 377(2) by Act No. 45 of 1978 to include the word “also” therein and bring the same in pari materia with the provisions of Section 378(2). He referred to the Statement of Objects and Reasons for the said amendment and argued that after the said amendment, the state government is also competent to file an appeal in a case falling under Section 377(2). Learned senior

counsel urged that inasmuch as the provisions of Section 377 and Section 378 are now in pari materia and the same interpretation needs to be accorded to Section 378 as well.

14. Mr. L. Nageshwar Rao, learned senior counsel, strenuously urged that the interpretation sought to be placed by the appellants would lead to absurdity inasmuch as (i) even in a case where the state government requests and permits investigation under Section 6 of the Delhi Special Police Establishment Act, 1946 (`1946 Act', for short) and prosecution is conducted by the public prosecutor appointed by the state government, the state government would not be entitled to file an appeal in case of acquittal, but would have to approach the central government for the purpose (which has no role or connection with the investigation or the case); and (ii) in view of the express amendment to Section 377 of 1973 Code so as to enable the state government to file an appeal even where investigation was conducted by the CBI or central agency, the state government would be competent to file an appeal in case of award of inadequate sentence; but in a similar case that results in acquittal then the state government would not be able to file an appeal under Section 378.

15. In the Code of Criminal Procedure, 1861, Section 407 prohibited an appeal from acquittal. For the first time, the Code of Criminal Procedure, 1872 provided for an appeal by the government from an order of acquittal (Section 272). The said provision was re-enacted in Section 417 of the Code of Criminal Procedure, 1882. The provision concerning an appeal in case of acquittal was retained in Section 417 of 1898 Code. The provision relating to an appeal from order of acquittal in 1898 Code (as amended by Amendment Act 26 of 1955) reads as under:-

> "S. 417.- **Appeal in case of acquittal.-** (1) Subject to the provisions of sub-section (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.
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> (2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946, the Central Government may also direct the Public Prosecutor to present an appeal to the High Court from the order of acquittal.
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> (3) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court.
>
> (4) No application under sub-section (3) for the grant of special leave to appeal from an order of acquittal

> shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal.
>
> (5) If, in any case, the application under sub-section (3) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1)."

16. In 1973 Code, appeal from an order of acquittal has been retained with some modifications. Section 378, sub-section (1) opens with the words, "save as otherwise provided in sub-section (2)". The main thrust of the arguments by the learned senior counsel centered around the opening words, "save as otherwise provided in sub-section (2)", the phrase "in any case" in sub-section (1) and the word "also" in sub-section (2).

17. Way back in 1766, Parker, C.B., in Robert Mitchell v. Soren Torup[3] recognized the rule that in expounding Acts of parliament, where words are express, plain and clear, the words ought to be understood according to their genuine and natural signification and import, unless by such exposition a contradiction or inconsistency would arise in the Act by reason of some subsequent clause, from whence it might be inferred the intent of the Parliament was otherwise; and this holds with respect to penal, as well as other Acts.

[3] (1766) Parker 227

18. Parke, B. in Becke v. Smith[4], stated the following rule:

> "It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further."

19 In The Attorney-General v. Lockwood[5], the rule regarding construction of statutes was expounded in the following words:

> ".....The rule of law, I take it, upon the construction of all statutes, and therefore applicable to the construction of this, is, whether they be penal or remedial, to construe them according to the plain, literal, and grammatical meaning of the words in which they are expressed, unless that construction leads to a plain and clear contradiction of the apparent purpose of the act, or to some palpable and evident absurdity....".

20. In The Sussex Peerage[6], the House of Lords, through Lord Chief Justice Tindal, stated the rule for the construction of Acts of Parliament that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are of themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary

[4] (1836) 2 Meeson and Welsby 191
[5] (1842) 9 Meeson and Welsby 378
[6] (1844) XI Clark & Finnelly 85

sense. The words themselves do, in such case, best declare the intention of the Legislature.

21. A Constitution Bench of this Court in Union of India & Anr. v. Hansoli Devi and Others[7], approved the rule exposited by Lord Chief Justice Tindal in The Sussex Peerage's case[6] and stated the legal position thus:

> "It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In *Kirkness* v. *John Hudson & Co. Ltd., (1955) 2 All ER 345,* Lord Reid pointed out as to what is the meaning of "ambiguous" and held that:
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> > "A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning."
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> It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, C.J. in the case of *Aswini Kumar Ghose* v. *Arabinda Bose, AIR 1952 SC 369,* had held that it is not a sound principle of construction to brush aside words in a statute as

[7] (2002) 7 SCC 273

being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In *Quebec Railway, Light Heat & Power Co. Ltd.* v. *Vandry, AIR 1920 PC 181,* it had been observed that the legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective….."

22. As noticed above, Section 378, sub-section (1), opens with the words - "save as otherwise provided in sub-section (2)". These words are not without significance. The immediate question is as to what meaning should be ascribed to these words. In Concise Oxford English Dictionary (Tenth Edition, Revised), the word "save" is defined thus:

"save.- formal or poetic/literary except; other than…."

23. In Webster Comprehensive Dictionary (International Edition), the word "save" is defined as follows:-

"save.- Except; but - 1. Except; but 2. Archaic Unless".

24. A Dictionary of Modern Legal Usage by Bryan A. Garner (1987) states that "save" is an ARCHAISM when used for "except". It should be eschewed, although, as the examples following illustrate, it is still common in legal prose. e.g., `The law-of-the-circuit rule forbids one panel to overrule another save [read except] when a later statute or Supreme Court decision has changed the applicable law'.

25. In Williams v. Milotin[8], the High Court of Australia, while construing the words "save as otherwise provided in this Act" stated:-

> "….In fact the words "save as otherwise provided in this Act" are a reflexion of the words "except" – or "save" – "as hereinafter excepted".

26. Section 378 is divided into six sub-sections. Sub-section (1) provides that the state government may direct the public prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than High Court or an order of acquittal passed by the court of session in revision. It opens with the words "save as otherwise provided in sub-section (2)" followed by the words "and subject to the provisions of sub-sections (3) and (5)". Sub-section (2) refers to two class of cases, namely, (i) those cases where the offence has been

[8] 97 C.L.R.465

investigated by the Delhi Special Police Establishment constituted under 1946 Act and (ii) those cases where the offence has been investigated by any other agency empowered to make investigation into an offence under any Central Act other than 1973 Code and provides that the central government may also direct the public prosecutor to present an appeal to the High Court from an order of acquittal. Such an appeal by the central government in the aforesaid two types of cases is subject to the provisions contained in sub-section (3). Sub-section (3) provides that an appeal under sub-sections (1) and (2) shall not be entertained without leave of the High Court. Where the order of acquittal has been passed in a case instituted upon complaint, sub-section (4) provides that the complainant may apply for special leave to appeal from the order of acquittal and if such leave is granted, an appeal be presented by him to the High Court. The limitation is prescribed in sub-section (5). Insofar as the cases covered by sub-section (4) are concerned, where the complainant is a public servant, limitation prescribed is six months from the date of an order of acquittal and in all other cases, including the cases covered by sub-sections (1) and (2), a period of sixty days from the date of the order of acquittal. Sub-section (6) makes a provision that if an application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused,

no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2). We have surveyed Section 378 in its entirety to have complete conspectus of the provision.

27. The opening words – "save as otherwise provided in sub-section (2)" – are in the nature of exception intended to exclude the class of cases mentioned in sub-section (2) out of operation of the body of sub-section (1). These words have no other meaning in the context but to qualify the operation of sub-section (1) and take out of its purview two types of cases referred in sub-section (2), namely, (i) the cases in which offence has been investigated by the Delhi Special Police Establishment constituted under 1946 Act and (ii) the cases in which the offence has been investigated by any other agency empowered to make investigation into an offence under any Central Act other than 1973 Code. By construing Section 378 in a manner that permits appeal from an order of acquittal by the state government in every case, except two class of cases mentioned in sub-section (2), full effect would be given to the exception (clause) articulated in the opening words. As noticed above, the words – "save as otherwise provided in sub-section (2)" – were added in 1973 Code; Section 417 of 1898 Code did not have these words. It is familiar rule of construction that all changes in wording and phrasing may be presumed to have been deliberate and with the purpose to

limit, qualify or enlarge the pre-existing law as the changes of the words employ. Any construction that makes exception (clause) with which section opens unnecessary and redundant should be avoided. If we give to Section 378, sub-sections (1) and (2), the interpretation which the state government claims; we would have to say that no matter that complaint was not lodged by the state government or its officers; that investigation was not done by its police establishment; that prosecution was neither commenced nor continued by the state government; that public prosecutor was not appointed by the state government; that the state government had nothing to do with the criminal case; that all steps from launching of prosecution until its logical end were taken by the Delhi Police Special Establishment and yet the state government may file an appeal from an order of acquittal under Section 378(1). That would be rendering the exception (clause) reflected in the opening words – "save as otherwise provided in sub-section (2)" – redundant, meaningless and unnecessary. If the Legislature had intended to give the right of appeal under Section 378(1) to the state government in all cases of acquittal including the class of cases referred to in sub-section (2), it would not have been necessary to incorporate the exception (clause) in the opening words. This objective could have been achieved without use of these words as erstwhile Section 417 of 1898 Code

enabled the state government to appeal from all cases of acquittal while in two types of cases mentioned in sub-section (2) thereof, appeal from the order of acquittal could be filed under the direction of central government as well.

28. In The Bengal Immunity Company Limited v. The State of Bihar and others[9] Venkatarama Ayyar, J. observed :

> "…..It is a well-settled rule of construction that when a statute is repealed and re-enacted and words in the repealed statute are reproduced in the new statute, they should be interpreted in the sense which had been judicially put on them under the repealed Act, because the Legislature is presumed to be acquainted with the construction which the Courts have put upon the words, and when they repeat the same words, they must be taken to have accepted the interpretation put on them by the Court as correctly reflecting the legislative mind….."

29. However, if the latter statute does not use the same language as in the earlier one, the alteration must be taken to have been made deliberately. In his classic work, Principles of Statutory Interpretation by G.P. Singh, 12th Edition, 2010 at page 310, the following statement of law has been made:

> "Just as use of same language in a later statute as was used in an earlier one in *pari materia* is suggestive of

[9] (1955) 2 SCR 603

> the intention of the Legislature that the language so used in the later statute is used in the same sense as in the earlier one, change of language in a later statute in *pari materia* is suggestive that change of interpretation is intended."

The learned author also refers to the observations of Lord MacMillan in D.R. Fraser & Co. Ltd. v. The Minister of National Revenue[10]: "When an amending Act alters the language of the principal Statute, the alteration must be taken to have been made deliberately".

30. It is important to bear in mind that this Court in Khemraj[2], has put the following construction to Section 417 of 1898 Code:

> **"10.** Section 417 Criminal Procedure Code, prior to the Amendment Act XXVI of 1955 provided for presentation of appeals by the Public Prosecutor on the direction of the State Government. The 1955 Amendment introduced several changes and provided for appeals at the instance of the complainant as also on the direction of the Central Government in cases investigated by the Delhi Special Police Establishment. Further changes were introduced in the matter of appeals against acquittal under Section 378 of the Code of Criminal Procedure, 1973, with which we are not concerned in this appeal in view of the repeal provisions under Section 484(1), CrPC.
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> **11.** The Delhi Special Police Establishment (briefly "the Establishment"), a central police force, is constituted under the Delhi Special Police Establishment Act, 1946 (Act XXV of 1946) (briefly the Delhi Act). Under Section 2 of the Act, the Central Government may constitute a special police force, called the Delhi Special Police Establishment, for investigation of certain offences or class of offences as notified under Section 3 of the Delhi Act. Under Section 4 of the Act the superintendence of the Delhi Special Police Establishment vests in the Central Government and administration of the Special Police Establishment vests in an officer appointed by the Central Government who exercises powers

[10] AIR 1949 PC 120

exercisable by an Inspector General of Police as the Central Government may specify. Under Section 5 the powers and the jurisdiction of the Establishment can be extended by the Central Government to other areas in a State although not a Union territory. Once there is an extension of the powers and jurisdiction of the members of the Establishment, the members thereof while discharging such functions are deemed to be members of the police force of the area and are vested with the powers, functions and privileges and are subject to the liabilities of a police officer belonging to that force. The police officer also subject to the orders of the Central Government exercises the powers of the officer-in-charge of a police station in the extended area. Under Section 6 consent of the State Government is necessary to enable the officer of the Establishment to exercise powers and jurisdiction in any area in the State not being a Union territory or railway area.

12. Investigation under the Delhi Act is, therefore, a central investigation and the officers concerned are under the superintendence of the officer appointed by the Central Government. The superintendence of the Establishment is also under the Central Government. The Central Government, therefore, is concerned with the investigation of the cases by the Establishment and its ultimate result. It is in that background that in 1955, Section 417 was amended by adding sub-section (2) to the section to provide for appeal against acquittal in cases investigated by the Establishment also on the direction of the Central Government. In view of the provisions of the Delhi Act it was necessary to introduce sub-section (2) in Section 417 so that this Central agency which is solely and intimately connected with the investigation of the specified offences may also approach the Central Government for direction to appeal in appropriate cases.

13. This, however, does not bar the jurisdiction of the State Government also to direct presentation of appeals when it is moved by the Establishment. The Establishment can move either the Central Government or the State Government. It will be purely a matter of procedure whether it moves the State Government directly or through the Central Government or in a given case moves the Central Government alone. It will again be a matter of procedure when the Central Government decides to appeal it requests the State Government to do the needful through the Public Prosecutor appointed under the Code.

> **14.** The word `also' in sub-section (2) of Section 417 is very significant. This word seems not to bar the jurisdiction of the State Government to direct the Public Prosecutor to present an appeal even in cases investigated by the Establishment. Sub-section (1) of Section 417 is in general terms and would take in its purview all types of cases since the expression used in that sub-section is "in any case". We do not see any limitation on the power of the State Government to direct institution of appeal with regard to any particular type of cases. Sub-section (1) of Section 417 being in general terms is as such of wider amplitude. Sub-section (2) advisedly uses the word `also' when power is given to the Central Government in addition to direct the Public Prosecutor to appeal."

31. The Parliament in 1973 Code re-enacted the provision for appeal from order of acquittal with certain modifications. It changed the language by addition of words – "save as otherwise provided in sub-section (2)". The alteration in language by addition of these words gives rise to an inference that the Legislature made conscious changes in Section 378 (1973 Code). We are afraid, the addition of words in Section 378(1) by way of exception (clause) cannot be set at naught by giving same interpretation which has been given to Section 417 (1898 Code). As a matter of fact, in Khemraj[2], this Court did notice that changes have been introduced in the matter of appeals against acquittal under Section 378 of the 1973 Code, but the Court did not deal with these

changes as it was not concerned with that provision. In our opinion, the decision of this Court in Khemraj[2] cannot be applied as the language used in Section 417 (1898 Code) and Section 378 (1973 Code) is not in pari materia.

32. Much emphasis, however, has been placed on the word "also" in sub-section (2) of Section 378 by learned senior counsel for the state government. It has been urged that by use of the word "also", competence of the state government in directing the public prosecutor to file an appeal from an order of acquittal in the two types of cases covered by sub-section (2) is not taken away and rather the word "also" suggests that central government may also direct the public prosecutor to file an appeal from an order of acquittal in the class of cases mentioned in sub-section (2). Does the word "also" carry the meaning as contended by the learned senior counsel for the state government? One of the rules of construction of statutes is that language of the statute should be read as it is and any construction that results in rejection of words has to be avoided; the effort should be made to give meaning to each and every word used by the Legislature. However, such rule of construction of statutes is not without exceptions. In Stone v. Yeovil Corp.[11], Brett J. observed :

[11] (1875-76) L.R. 1 CPD 691

> "The word "such" in the second branch of that clause would seem at first sight to apply to lands purchased or taken; but, if so read, it is insensible. It is a canon of construction that, if it be possible, effect must be given to every word of an Act of Parliament or other document; but that, if there be a word or a phrase therein to which no sensible meaning can be given, it must be eliminated. It seems to me, therefore, that the word "such" must be eliminated from this part of the clause."

Archibald, J. concurred with Brett J. thus :

> "But I agree with my Brother Brett that it is a true canon of construction, that, where a word is found in a statute or in any other instrument or document which cannot possibly have a sensible meaning, we not only may, but must, eliminate it in order that the intention may be carried out."

33. In Salmon v. Duncombe and Others[12], Privy Council speaking through Lord Hobhouse stated :

> "It is, however, a very serious matter to hold that when the main object of a statute is clear, it shall be reduced to a nullity by the draftsman's unskilfulness or ignorance of law. It may be necessary for a Court of Justice to come to such a conclusion, but their Lordships hold that nothing can justify it except necessity or the absolute intractability of the language used. And they have set themselves to consider, first, whether any substantial doubt can be suggested as to the main object of the legislature; and, secondly, whether the last nine words of sect. 1 are so cogent and so limit the rest of the statute as to nullify its effect either entirely or in a very important particular."

34. The main object and legislative intent by the opening words – "save as otherwise provided in sub-section (2)" – in sub-

[12] (1886) 11 AC 627

section (1) of Section 378 being clear i.e., to fetter the general power given to the state government in filing appeal from the order of acquittal in two types of cases stated in sub-section (2), the use of word “also” in sub-section (2) does not make any sense. The word “also” in sub-section (2), if construed in the manner suggested by the state government, may result in reducing the opening words in sub-section (1) a nullity and will deny these words their full play. Since exception (clause) in the beginning of sub-section (1) has been expressly added in Section 378 and it is not possible to harmonise the word “also” occurring in sub-section (2) with that, it appears to us that no sensible meaning can be given to the word “also” and the said word has to be treated as immaterial. We are not oblivious of the fact that to declare “also” enacted in sub-section (2) immaterial or insensible is not very satisfactory, but it is much more unsatisfactory to deprive the words – “save as otherwise provided in sub-section (2)” – of their true and plain meaning. In order that the exception (clause) expressly stated in the opening words of sub-section (1) might be preserved, it is necessary that word “also” in sub-section (2) is treated as immaterial and we hold accordingly.

35. The phrase “in any case” in sub-section (1) of Section 378, without hesitation, means “in all cases”, but the opening words

in the said Section put fetters on the state government in directing appeal to be filed in two types of cases mentioned in sub-section (2).

36. Section 2(u) of 1973 Code defines “public prosecutor” which means any person appointed under Section 24 and includes any person acting under the directions of a public prosecutor. Section 24 reads as follows:

> “**S.24. - Public Prosecutors.-**(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.
>
> (2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district, or local area.
>
> (3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district:
>
> Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.
>
> (4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion, fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.
>
> (5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name

appears in the panel of names prepared by the District Magistrate under sub-section (4).

(6) Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government, may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).

Explanation.--For the purpose of this sub-section,--

(a) "regular Cadre of Prosecuting Officers" means a Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post;

(b) "Prosecuting Officer" means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, an Additional Public Prosecutor or an Assistant Public Prosecutor under this Code.]

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (I) or sub-section (2) or sub-section (3) or sub--section (6), only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.

> (9) For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate."

37. A perusal of Section 24 would show that the central government appoints its public prosecutors for conducting prosecution, appeal or other proceedings on its behalf and a state government appoints its public prosecutors in conducting prosecution, appeal or other proceedings on its behalf. One has no control over the other. The central government or the state government, as the case may be, may appoint a special public prosecutor for the purpose of any case or class of cases. Under Section 378(1) the state government may direct its public prosecutor to file an appeal from an order of acquittal while under Section 378(2) the central government may direct its public prosecutor to file an appeal from an order of acquittal. The public prosecutor, thus, has to be associated in an appeal from an order of acquittal. The 1946 Act provides for constitution of a special police establishment for investigation of certain offences or class of offences as notified under Section 3 of the 1946 Act. A close look to the provisions of 1946 Act

would show that investigation thereunder is a central investigation and the officers concerned are under the superintendence of the officer appointed by the central government. It is the central government that has the superintendence over Delhi Special Police Establishment. What is, therefore, important to notice is that it is the central government which is concerned with the investigation of the case by Delhi Special Police Establishment and its ultimate result. It is for this reason that sub-section (2) of Section 378 provides for appeal against acquittal in two types of cases mentioned therein on the direction of the central government by its public prosecutor. The opening words in sub-section (1), thus, qualify the general power given to the state government in filing appeal from an order of acquittal so that the central agency, which is solely and intimately connected with the investigation of cases referred in sub-section (2), may approach the central government for direction to appeal in appropriate cases.

38. The decision of this Court in Eknath Shankarrao Mukkawar[1], has been referred to and relied upon by Mr. Ram Jethmalani as well as Mr. L. Nageshwar Rao. We may appropriately consider the said decision now. In Eknath Shankarrao Mukkawar[1], the construction of Section 377 (appeal against inadequacy of sentence) fell for consideration. Section 377 (1) and (2) of 1973

Code with which this Court was concerned in Eknath Shankarrao Mukkawar[1], reads as follows:-

> "S.- 377.- **Appeal by the State Government against sentence**.- (1) Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any court other than a High Court, direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.
>
> (2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy."

This Court with reference to the aforesaid provision held:

> "10. It is true that Section 378(2) follows the pattern of Section 417(2) of the old Code and the right to appeal is conferred upon both the State Government and the Central Government in express terms in Section 378(2). It is clear that the legislature has maintained a water-tight dichotomy while dealing with the matter of appeal against inadequacy of sentence. We agree that in the absence of a similar word "also" in Section 377(2) it is not possible for the court to supply a casus omissus. The two sections, Section 377 and Section 378 CrPC being situated in such close proximity, it is not possible to hold that omission of the word "also" in Section 377(2) is due to oversight or per incuriam.
>
> 11. Section 377 CrPC introduces a new right of appeal which was not earlier available under the old Code. Under sub-section (1) of Section 377 CrPC the State Government has a right to appeal against inadequacy of sentence in all cases other than those referred to in

> sub-section (2) of that section. This is made clear under Section 377(1) by its opening clause "save as otherwise provided in sub-section (2)". Sub-section (2) of Section 377, on the other hand, confers a right of appeal on the Central Government against a sentence on the ground of its inadequacy in two types of cases:
>
> (*1*) Those cases where investigation is conducted by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946.
>
> (*2*) Those other cases which are investigated by any other agency empowered to make investigation under any Central Act not being the Code of Criminal Procedure.
>
> 12. There is no difficulty about the first type of cases which are investigated by the Delhi Special Police Establishment where, certainly, the Central Government is the competent authority to appeal against inadequacy of sentence."

39. The essence in a decision is its ratio and not every observation found therein, as stated by this Court in State of Orissa v. Sudhansu Sekhar Misra and others[13]. The ratio of decision in Eknath Shankarrao Mukkawar[1] is that the Legislature has maintained a watertight dichotomy in the matter of appeal against inadequacy of sentence; the competent authority to appeal against inadequacy of sentence in two types of cases referred to in sub-section (2) of Section 377 is the central government. However, Mr. L. Nageshwar Rao submitted that in Eknath Shankarrao Mukkawar[1], in the absence of use of word "also" in sub-section (2) of Section 377, it

[13] AIR 1968 SC 647

was held by this Court that the state government was incompetent to file an appeal in a case falling under Section 377(2). But now the lacuna pointed out by this Court has been remedied; Parliament amended by Act 45 of 1978 to include the word "also" therein and bring the same in pari materia with the provisions of Section 378(2) and the Statement of Objects and Reasons for the said amendment makes it clear that the state government is also competent to file an appeal in a case falling under Section 377(2). We are not persuaded by the submission of Mr. L. Nageshwar Rao for more than one reason. In the first place, the observations in Eknath Shankarrao Mukkawar[1], in relation to Section 378 do not operate as binding precedent as construction of Section 378 was neither under consideration nor in issue in that case. Secondly, and more importantly, although sub-section (2) of Section 377 came to be amended by Act 45 of 1978 to include the word "also" therein, but the Statement of Objects and Reasons relating to that amendment is of no relevance insofar as construction of Section 378 (1) and (2) is concerned. Insofar as Section 378 is concerned, the word "also" occurring in sub-section (2) cannot be accorded a meaning that would result in wiping out the effect of controlling words in sub-section (1) - "save as otherwise provided in sub-section (2)" – which are indicative of legislative intent to exclude two types of cases

mentioned in sub-section (2) out of operation of the body of sub-section (1).

40. In our opinion, the Legislature has maintained a mutually exclusive division in the matter of appeal from an order of acquittal inasmuch as the competent authority to appeal from an order of acquittal in two types of cases referred to in sub-section (2) is the central government and the authority of the state government in relation to such cases has been excluded. As a necessary corollary, it has to be held, and we hold, that the State Government (of Bihar) is not competent to direct its public prosecutor to present appeal from the judgment dated December 18, 2006 passed by the Special Judge, CBI (AHD), Patna.

41. In view of what we have discussed above, it is not necessary to consider the contention of Mr. Ram Jethmalani founded on the proviso to Article 162 of the Constitution that in case of conflict of exercise of executive powers by the state government and the central government, the decision of the latter shall prevail.

42. For the aforesaid conclusions, the reasons given by the High Court are not correct and the impugned order cannot be sustained.

43. The result is, both appeals are allowed, the order dated September 20, 2007 passed by the High Court is set aside and the

Govt. Appeal No. 1 of 2007 – State of Bihar v. Lalu Prasad and others – presented before the High Court of Judicature at Patna is rejected as not maintainable.

……CJI

…….J.
[R.M. LODHA]

……J.
[DR. B.S. CHAUHAN]

NEW DELHI,
APRIL 1, 2010.