CASE NO.:
Appeal (crl.) 36 of 2002

PETITIONER:
Central Bureau of Investigation

RESPONDENT:
Shri Ravi Shankar Srivastava, IAS and Anr.

DATE OF JUDGMENT: 10/08/2006

BENCH:
ARIJIT PASAYAT & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Central Bureau of Investigation (in short 'CBI') questions legality of the judgment rendered by a learned Single Judge of the Rajasthan High Court, Jaipur Bench. Respondent No.1, a member of Indian Administrative Service filed a petition under Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Code') for quashing the FIR registered by the appellant alleging commission of offences punishable under Sections 120B, 167, 168, 177A of the Indian Penal Code, 1860 (in short 'IPC') and Sections 13(2) and 13(1) of the Prevention of Corruption Act, 1988 (in short 'PC Act'). The only ground on which the respondent no.1 prayed for quashing the FIR is that the CBI had no jurisdiction to register the FIR under the Delhi Special Police Establishment Act, 1946 (in short the 'Act'). FIR was registered by Shri Rajiv Sharma, Superintendent of Police, Jaipur at the Police Station, CBI on the information received through some sources as in regard to certain advertisements involving criminal conspiracy resulting in the commission of offences noted above.

Respondent no.1 filed the petition before the High Court questioning legality of the proceedings.

With reference to Sections 3, 5 and 6 of the Act, the respondent no.1 took the stand that the CBI had no jurisdiction to register the case. In substance the stands were: (a) consent necessary by the concerned State for operation of the Act had been withdrawn as is evident from the letter dated 26.6.1999 of the Special Officer (Home), Secretary, Department in response to the letter dated 21.11.1989 written by the Government of India, Department of Personnel and Training, New Delhi. (b) consent of the State Government which was given in 1956 was extended in 1989 after the PC Act was promulgated but subsequently the State Government had not considered it appropriate to accord consent to extend some provisions of the Act to the whole of the State of Rajasthan, (c) though the consent had been given by the State of Rajasthan in 1956 and extended in 1989, same did not relate to any particular officer to act in terms of the Act and, therefore, the FIR as lodged had no validity in the eye of law. The High Court accepted the stands. It held that the consent was earlier given in 1956 and extended in 1989 after the Act

was enacted. The same became inoperative after the State Government refused to accord consent for extending the same provisions of the Act to the whole of Rajasthan. It was also held that for the authorized officers to function under the Act it was necessary that the officers were required to be individually notified and a general notification would not suffice.

In support of the appeal, learned counsel for the appellant submitted that the High Court has committed patent errors in law. First, prayer of the respondent no.1 could not have been adjudicated in a petition instituted under Section 482 of the Code. Secondly, the High Court has lost sight of the fact that the notification issued under Section 5 of the Act had not been rescinded or revoked at any point of time. Further an inter departmental communication has been treated as a notification to hold that the State Government had not extended the notification. The authority of the person who wrote that letter has not been established. In any event, the same cannot be treated to be one covered under Article 166 of the Constitution of India, 1950 (in short 'the Constitution'). Thirdly, there was no specific order required in respect of each officer as has been held in various decision of this Court.

In response, learned counsel for the respondent no.1 submitted that when the proceeding itself was void ab initio the High Court was justified in quashing the FIR. Further, there is no material on record to show that the consent which was given in 1956 and extended in 1989 was intended to be continued.

The rival contentions need careful consideration. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse

that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

In R. P. Kapur v. State of Punjab (AIR 1960 SC 866) this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings.

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal (1992 Supp (1) 335). A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a

cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or Act concerned, providing efficacious redress for the grievance of the aggrieved party.
(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: Janata Dal v. H. S. Chowdhary (1992 (4) SCC 305), and Raghubir Saran (Dr.) v. State of Bihar (AIR 1964 SC 1). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the

complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (See: Dhanalakshmi v. R. Prasanna Kumar (1990 Supp SCC 686), State of Bihar v. P. P. Sharma (AIR 1996 SC 309), Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995 (6) SCC 194), State of Kerala v. O. C. Kuttan (AIR 1999 SC 1044), State of U.P. v. O. P. Sharma (1996 (7) SCC 705), Rashmi Kumar v. Mahesh Kumar Bhada (1997 (2) SCC 397), Satvinder Kaur v. State (Govt. of NCT of Delhi) (AIR 1996 SC 2983), Rajesh Bajaj v. State NCT of Delhi (1999 (3) SCC 259) and in State of Karnataka v. M. Devendrappa and Another (2002 (3) SCC 89).

Coming to the question as to whether specific order in respect of each of the officer, the position is no longer res integra. In Central Burea of Investigation v. State of Rajasthan and Ors. (1996 (9) SCC 735) it was held as follows:

"21. On a careful consideration of the facts and circumstances of the case and submissions made by the learned Counsel for the parties, it appears to us that under Section 3 of DSPE Act, the Central Government may, by notification, specify the offences which are to be investigated by the members of DSPE. It is not disputed that notification under Section 3 of DSPE Act has been issued by the Central Government specifying the offences under FERA to be investigated by the members of DSPE. It is also not in dispute that a notification dated October 26, 1977 by the Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms, has been issued in exercise of the powers conferred by Sub-section (1) of Section 5 read with Section 6 of DSPE Act. By the said notification the Central Government, with consent of the various State Governments as mentioned in the said notification including the State Government of Rajasthan, has extended the powers and jurisdiction of the members of DSPE, inter alia, to the State of Rajasthan for the investigation of the offences specified in the Schedule to the said notification. In the schedule under Clause (a), offences punishable under the FERA and under Clause (b) attempts, abatements and conspiracies in relation to or in connection with any offence mentioned in Clause (a) and any other offence committed in the course of

the same transaction arising out of the same facts have been mentioned.

22. It is, however, to be noted that under Section 2 of DSPE Act, the Central Government has been empowered to constitute a special police force to be called the DSPE for the investigation in any Union Territory of offences notified under Section 3. Under Section 5(1) of DSPE Act the Central Government may by order extend to any area including Railway areas in a State, not being Union Territory, the powers and jurisdiction of the members of the DSPE for the investigation of any of the offences or classes of offences specified in a notification under Section 3, Under Section 5(2), when by an order under Sub-section (1), the powers and jurisdiction of the members of the said police establishment are extended to any such area, a member thereof may, subject to any order 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 be a member of a 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.

23. It is quite evident that members of DSPE are members of special police force constituted under Section 2 of DSPE Act by the Central Government. The question that arises for decision in this case is whether or not a member of DSPE, which is also a member of special police force constituted by the Central Government, even if authorised under Section 3 and Section 5 of DSPE Act to investigate in respect of offences under FERA in a particular state other than the Union Territory, with the consent of such State Government, can investigate the offences for violation of FERA, more so, when the offence is alleged to have been committed outside indian Territory. It will be apposite at this stage to refer to the provisions of Sections 3, 4 and 5 of FERA:

"Section 3: Classes of Officers of Enforcement -

There shall be the following classes of officers of Enforcement, namely:

(a) Directors of Enforcement:

(b) Additional Directors of Enforcement;

(c) Deputy Directors of Enforcement;

(d) Assistant Directors of Enforcement;

(e) Such other class of officers of Enforcement as may be appointed for the purposes of this Act.

Section 4 - Appointment and powers of officers of enforcement:

(1) The Central Government may appoint such persons as it thinks fit to be officers of enforcement.

(2) Without prejudice to the provisions of Sub-section (1), the Central Government may authorise a Director of Enforcement or an Additional Director of Enforcement

or a Deputy Director of Enforcement or an Assistant Director of Enforcement to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement.
(3) Subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharged the duties conferred or imposed on him under this Act.
Section 5 - Entrustment of functions of Director or other officer of Enforcement: The Central Government may, by order and subject to such conditions and limitations as it thinks fit to impose, authorise any officer of customs or any Central Excise Officer or any police officer or any other officer of the Central Government or a State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of Enforcement under this Act as may be specified in the order.
27. In our view, such notifications under Sections 3 and 5 of DSPE Act are necessary for the purpose of exercising powers by a member of DSPE in respect of offence or offences and in respect of areas outside the Union Territory. It may however be noted here that by a general notification, members of DSPE may be authorised to exercise power of investigation in respect of offence or offences and in areas as specified in the notification under Sections 3 and 5. As already indicated, although officers of Enforcement Directorate are clothed with the powers and duties to enforce implementation of the provisions of FERA, the Central Government has been authorised to impose on other officers including a police officer, power and authority to discharge such of the duties and functions as may be specified by it. It is nobody's case that any notification has been issued under FERA authorising the member of DSPE to discharge the duties and functions of an officer of Enforcement Directorate. In our view, in the absence of such notification under FERA, a member of DSPE, despite the aforesaid notifications under Sections 3 and 5 of DSPE Act, cannot be held to be an officer under FERA and therefore is not competent to investigate into the offences under FERA."

Nearly four decades back the position was succinctly stated by this Court in Major E.G. Barsay v. State of Bombay (AIR 1961 SC 1762) at para 29 as follows:

"It was contended before the High Court and it was repeated before us that the consent should have been given to every individual member of the Special Police Establishment and that a general consent would not be good consent. We do not see any force in this

argument. Under s. 6 of the Delhi Special Police Establishment Act, no member of the said Establishment can exercise powers and jurisdiction in any area in a State without the consent of the Government of that State. That section does not lay down that every member of the said Establishment should be specifically authorized to exercise jurisdiction in that area, though the State Government can do so. When a State Government can authorize a single officer to exercise the said jurisdiction, we do not see any legal objection why it could not authorize the entire force operating in that area belonging to that Establishment to make such investigation. The authorization filed in this case sufficiently complies with the provisions of s. 6 of the Delhi Special Police Establishment Act, 1946, and there are no merits in this contention."

Coming to the pivotal stand of respondent no.1, as has been rightly submitted by leaned counsel for the appellant, there is no notification revoking the earlier notification. The letter on which great emphasis has been laid by the respondent no.1 and highlighted by the High Court, the authority to write the letter has not been indicated. It has also not been established that the person was authorized to take a decision. In any event, the same does not meet requirements of Article 166 of the Constitution. The letter is not even conceptually a notification. High Court was, therefore, not justified in holding that there was a notification rescinding earlier notification.

The High Court was not justified in quashing the proceedings instituted on the basis of the FIR lodged. The impugned judgment of the High Court is set aside. The appeal is allowed.