

**HIGH COURT OF ANDHRA PRADESH**  
THURSDAY ,THE THIRTEENTH DAY OF APRIL  
TWO THOUSAND AND TWENTY THREE

**PRESENT**

**THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU**

**THE HONOURABLE SRI JUSTICE V SRINIVAS**

**WRIT PETITION NO: 26990 OF 2021**

**Between:**

1. A SATISH KUMAR S/o Late Shri A.V. Narasimham,  
aged 53 years, Occ- Superintendent of Central Tax, GST,  
O/o The Commissioner, Central Tax and GST,  
Medchal Commissionerate, Lakadi Ka Pool,  
Hyderabad-500 004.

**...PETITIONER(S)**

**AND:**

1. The Registrar (Administration) Hon'ble High Court for State of A.P.  
Amaravati, A.P.
2. The State of Andhra Pradesh, rep. by The Principal Secretary to  
Government, Home (SC A) Department,  
Government of Andhra Pradesh, Amaravati, A.P.
3. The Administrative Officer, Court of II Additional Special Judge for CBI  
Cases, Visakhapatnam.
4. The State Central Bureau of Investigation rep. by The Special Public  
Prosecutor,  
CBI, Hon'ble High Court of A.P. Amaravati.
5. The Secretary Ministry of Personnel, P G and Pensions, Department of  
Personnel and Training, North Block, New Delhi - 110 001.

**...RESPONDENTS**

**Counsel for the Petitioner(s): K R K V PRASAD**

**Counsel for the Respondents: V HIMABINDU**

**The Court made the following: ORDER**

**\* HIGH COURT OF ANDHRA PRADESH: AMARAVATI**

**HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU**

**AND**

**HON'BLE MR.JUSTICE V.SRINIVAS**

**+ W.P. Nos.26990 of 2021 and 5441 of 2022**

% 13.04.2023

**W.P.No.26990 of 2021**

# A.Satish Kumar,  
S/o Late Sri A.V.Narasimham,  
Age 53 Yrs., Occ: superintendent of Central Tax, GST,  
Lajdika pool,  
Hyderabad – 500 004.

... Petitioners

Vs.

\$ The Registrar (Administration,  
Hon'ble High Court for State of  
A.P., Amaravati. A.P. and 4 others.

... Respondents

! Counsel for the petitioner: Sri K.R.K.V.Prasad

! Counsel for the Respondents : Deputy Solicitor General and  
Learned standing counsel for CBI

< Gist:

> Head Note:

? Cases referred:

<sup>1</sup>(2021) 2 SCC 525

<sup>1</sup> (2004) 5 SCC 518

<sup>1</sup> (1999) 8 SCC 728

<sup>1</sup> (2004) 8 SCC 169

<sup>1</sup>(2001) 9 SCC 432

<sup>1</sup> (2020) 10 SCC 92

<sup>1</sup>(2012) 8 SCC 106

<sup>1</sup> 1992 Supp (1) SCC 335

**HIGH COURT OF ANDHRA PRADESH: AMARAVATI****HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU****AND****HON'BLE MR.JUSTICE V.SRINIVAS****W.P. Nos.26990 of 2021 and 5441 of 2022****COMMON ORDER:** *(per D.V.S.S.Somayajulu, J)*

With the consent of the learned counsel, this writ petition is taken up for hearing along with W.P.No.5441 of 2022. The facts and questions of law are similar in both the matters, but this writ petition is taken up for hearing.

This Court has heard Sri K.R.K.V.Prasad, learned counsel for the petitioner, learned Deputy Solicitor General and the Standing counsel for the Central Bureau of Investigation.

This writ petition is filed for the following relief:

'to issue a Writ Order or direction more particularly one in the nature of Writ of Mandamus by declaring the action of conducting trial in C.C.No.35 of 2020 pending on the file of the Court of II Additional Special Judge for CBI Cases, Visakhapatnam as illegal and quash the same ....'

This was amended by this Court by allowing I.A.No.2 of 2022 and the words “C.C.No.13 of 2022 before the Special Judge for CBI cases at Kurnool” is substituted.

Learned counsel for the petitioner argued that the registration of the crime, the investigation, taking of cognizance etc., in this case by the Central Bureau of Investigation (CBI) is totally contrary to law. He points out that even thereafter, the transfer of the case from the CBI Court, Hyderabad to the CBI Court, Visakhapatnam and later to Kurnool etc., is contrary to law.

The petitioner’s case is that while he was working as Superintendent, Central Excise in Nandyal, (Kurnool District, Andhra Pradesh) an FIR was registered against him on 09.05.2017 under section 7 of the Prevention of Corruption Act, 1988 (for short ‘the PC Act’). The Judge for CBI cases, Hyderabad took cognizance of the case and CBI also filed a charge sheet before the said Court at Hyderabad. The same was numbered as C.C.No.2 of 2018. The Court issued summons and the petitioner appeared before the Court. Thereafter, in September, 2019, the petitioner was informed that the case was transferred to the Special Judge’s Court for Trial of CBI cases, Visakhapatnam and proceedings were

issued for the same. Case was later numbered as C.C.No.35 of 2020 before the Special Court for CBI cases at Visakhapatnam. Currently, it is numbered as C.C.No.13 of 2022 and is pending before the Special Court for CBI cases at Kurnool. Learned counsel for the petitioner argues that the State of Andhra Pradesh was bifurcated into two States by virtue of the A.P.State Reorganisation Act (for short 'the Act'). He submits that the Act was passed in 2014 and the appointed day is 02.06.2014 on which day the two States were created. It is the contention of the learned counsel that for the CBI to register or investigate the case, permission from the Government of Andhra Pradesh is necessary as per the provisions of the Delhi Special Police Establishment Act (for short 'the DSPE Act'). He points out that on 09.05.2017, the FIR was registered in Telangana when the alleged offence took place at Kurnool in Andhra Pradesh. He points out that on that particular day, there was no express permission as required under the DSPE Act to investigate the case. He also submits that the entire investigation and the filing of the charge sheet are wrong, since the Court at Hyderabad did not have the jurisdiction to entertain the case. Therefore, according to him, the entire proceedings are vitiated. He also submits that for a case to be

tried under the PC Act, a specific notification is to be issued and only the Special Court can try the same. He points out that till December, 2017, the Government of Andhra Pradesh did not permit the prosecution of Central Government servants under the provisions of PC Act and therefore, neither the CBI Court nor the High Court had jurisdiction to transfer the case to the CBI Court, Visakhapatnam or thereafter. Relying upon the case law submitted, learned counsel argues that the entire case is vitiated due to inherent lack of jurisdiction which goes to the root of the matter. Therefore, he submits that this is a fit case to grant the relief.

In reply to this, learned Deputy Solicitor General for the Union of India, the standing counsel for the High Court of Andhra Pradesh and the special Public Prosecutor have argued the matter in line with the counters that have been filed. In particular, the Special Public Prosecutor also filed four cases along with a memo and relied upon the same to argue that the proceedings are not vitiated and that the writ cannot be granted as prayed for. It is their contention that as it is an offence involving a public servant,

this Court should not take a lenient view and should in fact allow the prosecution to go ahead.

**COURT:** (1) The first and the foremost issue that falls for this Courts consideration is the power of CBI to register the FIR.

Admittedly, the CBI is created and functions under the DSPE Act, 1946. The statement and objects of the very Act states that it is enacted to make a provision for constitution of a Special Police Force in Delhi for the investigation of certain offences in the Union Territories.

Section 5 of the DSPE Act is also as follows:

**“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) 3 [in 4 [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

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. 5 [(3) Where any such order under sub-section (1) is made relation to any area, then, without prejudice prejudice to the 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 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.”

Section 6 of the DSPE Act is also important and the same is as follows:

**“6. Consent of State Government to exercise of powers and jurisdiction.—**Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in 2 [a State, not being a Union territory or railway area], without the consent of the Government of that State.

A reading of Section 5 of the DSPE Act, makes it clear that the Central Government can extend the area of operation of the Act in a State. However, section 6 of the DSPE Act, which starts with an



non-obstante clause clearly states that notwithstanding anything contained in section 5 of the DSPE Act, a member of the Delhi Police Establishment cannot exercise his powers without the consent of the Government of the State. This is clear from a plain language reading of the DSPE Act itself.

In the cases cited by the respondents, in ***Fertico Marketing and Investment Pvt. Ltd. v. Central Bureau of Investigation***<sup>1</sup>, at para 11 of this judgment, it was held that although Section 5 of the DSPE Act enables the Central Government to extend the power and jurisdiction of the members of the DSPE to a State, the same is not permissible unless the State grants its consent for such an extension. These provisions are held to be in continuation of the federal structure of the Constitution of India.

If the sequence of events is examined, it is clear that the FIR was registered on 09.05.2017 for an offence that occurred in Nandyal at Kurnool District in Andhra Pradesh. The trap was laid in Kurnool only. Thereafter, investigation started and charge sheet was also filed in the Special Court for CBI cases at Hyderabad on 28.12.2017.

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<sup>1</sup>(2021) 2 SCC 525

As per the Andhra Pradesh Re-organization Act 2014, the appointed date is 02.06.2014. With effect from that date, the State of Andhra Pradesh was formed and thus two States came into existence-The State of Telangana and the State of Andhra Pradesh. Kurnool, admittedly, is in the State of Andhra Pradesh.

The State of Andhra Pradesh issued G.O.Ms.No.158 on 28.11.2014 extending the general consent given earlier in 1994 for the territorial jurisdiction of Andhra Pradesh. This was followed by G.O.Ms.No.67 dated 01.06.2016 mentioning certain offences in the annexures to the said G.O. This was followed by G.O.Ms.No.184 dated 05.12.2017, wherein, the consent is given against the officials of Central Government, Central Government undertakings and private persons. This is further followed by G.O.Ms.No.109 dated 03.08.2018. These Government Orders pertain to the State of Andhra Pradesh only.

Therefore, it is crystal clear that as on date of the registration of the FIR, there was no power vested in the Officers of the CBI in Telangana to register the crime with regard to an offence that took place in Kurnool in the State of Andhra Pradesh because by that date, two distinct States are carved out and the State of Telangana

and the State of Andhra Pradesh came into existence. The consent that was the necessary is not available for the Officers in Telangana to lay a trap, register an FIR for an offence at Kurnool in the State of Andhra Pradesh.

(2) Sections 3 and 4 of the Prevention of Corruption Act are as the follows:

3. Power to appoint special Judges.—(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:— (a) any offence punishable under this Act; and (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a). (2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974).

4. Cases triable by special Judges.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only. (2) Every offence specified in sub-section (1) of section 3 shall be tried by

the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government. (3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial. (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973.'

Therefore, it is clear that it is not every Court that can entertain, hear and dispose of a case registered under the PC Act. Only if a Court is specifically designated by the State or Central Government, it will have the power to entertain the case. The counter affidavits filed by the respondents only speak of G.O.Ms.No.88 dated 07.08.2012 by which the CBI Court at Hyderabad was given the power to exercise jurisdiction over the Districts in Telangana and also Rayalaseema Districts of A.P., namely Chittoor, Anantapur, Kadapa and Kurnool. Therefore, from 2012, in the combined State of Andhra Pradesh, the CBI Court at Hyderabad had the jurisdiction to entertain the case, but after the State Re-Organization Act was passed in 2014 and the

States were bifurcated, in the opinion of this Court, the Special CBI Court at Hyderabad did not have the jurisdiction to deal with the case under the PC Act. With effect from June, 2014, the G.O.Ms.No.88 could not apply since the four (4) Rayalaseema districts are in the State of Andhra Pradesh. The offence was committed in Andhra Pradesh and no special court was notified for these offences.

The contention urged by the respondents is that because the Andhra Pradesh High Court continued to be a combined High Court till December, 2018, the CBI Court at Hyderabad had the jurisdiction to entertain the matter. It is only on 26.12.2018, the High Court of Judicature at Hyderabad was bifurcated into High Court of Telangana and High Court of Andhra Pradesh and therefore, the four Rayalaseema Districts of Andhra Pradesh i.e., Kurnool, Anantapur, Kadapa and Chittoor were transferred to the jurisdiction of Special Court of CBI, Visakhapatnam. This was also done by proceedings dated 03.09.2019. Counter filed by the Superintendent of Police/CBI, Visakhapatnam details these. However, in the opinion of this Court, it is clear from the counter affidavit that the transfer of the cases was done under the orders

of the High Court for the State of Telangana dated 03.09.2019 and accordingly the case was transferred to Visakhapatnam. Thereafter, further proceeding were issued in G.O.Ms.No.147 dated 14.11.2019 to transfer the case to Kurnool.

A reading of Section 4 of the P.C. Act states that notwithstanding anything in the Cr.P.C or in any other law, an offence under the Act, shall only be tried by the Special Judge in the area within which it was committed or a Special Judge appointed for the case. (emphasis supplies)

The case law cited by the respondents-State includes the judgment in ***Fertico Marketing's*** case (1 supra), wherein the Hon'ble Supreme Court was dealing with a reference made to the Division Bench by the single Judge of the High Court. Question No.2 was dealing with the absence of previous consent by the State Government. This issue was however not decided and the matter was remanded back to single Judge to decide the questions 2, 3 and 4.

The other judgments cited viz., **Sakshi and others v. Union of India and others**<sup>2</sup>, **Satvinder Kaur v. State (Govt., of N.C.T. of Delhi) and others**<sup>3</sup> and the case of **State of Rajasthan v. Shambhoogiri**<sup>4</sup> deal with the general jurisdiction of the criminal Courts to try the offences.

The respondents on the other hand cited the case of **CBI, AHD, Patna v. Braj Bhushan Prasad and others**<sup>5</sup> and other cases. In paras 31 and 32 of the said case, the following was held by the Hon'ble Supreme Court:

31. Section 4 of the PC Act relates to the jurisdiction of the court for trial of offences under that Act. The first sub-section of Section 4 declares that notwithstanding anything contained in the Code or in any other law, the offences punishable under the PC Act can be tried "only" by the Special Judge, appointed under Section 3(1) of the PC Act. Now sub-section (2) of Section 4 is the important provision and it is extracted below:

"4. (2) Every offence specified in sub-section (1) of Section 3 shall be tried by the Special Judge for the area within which it was committed, or, as the case may be, by the

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<sup>2</sup> (2004) 5 SCC 518

<sup>3</sup> (1999) 8 SCC 728

<sup>4</sup> (2004) 8 SCC 169

<sup>5</sup> (2001) 9 SCC 432

Special Judge appointed for the case, or where there are more Special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.”

32. Thus, the only court which has jurisdiction to try the offences under the PC Act is the Court of Special Judge appointed for the areas within which such offences were committed. When such an offence is being tried sub-section (3) enables the same Special Judge to try any other offence which could as well be charged against that accused in the same trial. So the pivot of the matter is to determine the area within which the offence was committed.

Similarly, in paras 41 and 42 the following was held:

41. Absence of a non obstante clause linked with Section 4(2) of the PC Act does not lead to a conclusion that the sub-section is subject to the provisions of the Code. A reading of Section 4(2) of the Code (not the PC Act) gives the definite indication that the legal position is the other way round. Section 4 of the Code is regarding trial of offences under the Penal Code, 1860 and other laws. Sub-section (1) of it relates only to offences under the Penal Code, 1860. Sub-section (2) relates to “all offences under any other law”. It is useful to read the said sub-section at this stage:

“4. (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any



enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.”

42. Thus, if the PC Act has stipulated any place for trial of the offence under that Act the provisions of the Code would stand displaced to that extent in regard to the place of trial. We have, therefore, no doubt that when the offence is under Section 13(1)(c) or Section 13(1)(d) of the PC Act the sole determinative factor regarding the court having jurisdiction is the place where the offence was committed.

In addition, the learned counsel has also cited judgment in the case of ***Kaushik Chatterjee v. State of Haryana and others***<sup>6</sup>, the following was held in paras 28 and 29:

28. Section 26 of the Code divides offences into two categories, namely, (i) offences under IPC and (ii) offences under any other special law. Insofar as offences under IPC are concerned, clause (a) of Section 26 states that they may be tried by (i) the High Court or (ii) the Court of Session or (iii) any other court, by which such offence is shown in the first Schedule to be triable. In respect of offences under any other law, clause (b) of Section 26 states that they shall be tried by the court specifically mentioned in such special law. In case the special law is silent about the court by which it can be tried, then such

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<sup>6</sup> (2020) 10 SCC 92

an offence may be tried either by the High Court or by any other court by which such offence is shown in the First Schedule to be triable.

29. But clause (a) of Section 26 makes the provisions contained therein, subject to the other provisions of the Code. Therefore, a question arose before this Court in *State of U.P. v. Sabir Ali* [*State of U.P. v. Sabir Ali*, AIR 1964 SC 1673 : (1964) 2 Cri LJ 606] as to whether a conviction and punishment handed over by a Magistrate of First Class for an offence under the Uttar Pradesh Private Forest Act, 1948 were void, in the light of Section 15(2) of the Special Act. Section 15(2) of the Uttar Pradesh Private Forest Act made the offences under the Act triable only by a Magistrate of Second or Third Class. Though the entire trial in that case took place before a Magistrate of Second Class, he was conferred with the powers of a Magistrate of First Class, before he pronounced the judgment. This Court held that the proceedings were void under Section 530(p) of the Code of Criminal Procedure, 1898 (as it stood at that time). It is relevant to note that Section 461(l) of the 1973 Code is in *pari materia* with Section 530(p) of the 1898 Code.

The conclusion is found at para 35, wherein the Bench held that the question of jurisdiction with regard to the power of a Court to try the particular kind of offences goes to the root of the matter and that any transgression would vitiate the entire trial. In

the opinion of this Court the CBI Court at Hyderabad could not, therefore, entertain the case after 02.06.2014 as the required notification under the PC Act was not issued.

This Court also relies on a leading judgment of ***Mayawati v. Union of India***<sup>7</sup>. In that case, the CBI has registered an FIR to investigate the irregularities of Taj Corridor Project. This was quashed by the Hon'ble Supreme Court holding that the CBI did not have the jurisdiction to investigate this case. This ultimate order is passed because this Court holds that there is a bar under the concerned Act that the institution and continuation of the proceedings are contrary to law, in line with the landmark judgment of ***State of Haryana v. Bhajan Lal***<sup>8</sup>, this power is being exercised.

This Court, in conclusion, holds that the registration of the FIR and filing of the charge sheet are clearly vitiated by law. This goes to the very root of the matter and therefore, this Court has to hold that all the proceedings taken thereafter are bad in law.

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<sup>7</sup> (2012) 8 SCC 106

<sup>8</sup> 1992 Supp (1) SCC 335

The last ground urged is that the High Court of Telangana cannot transfer the cases. This Court is of the opinion that the respondents are better placed in this. This Court is conscious of the fact that the situation with regard to the transfer has arisen because of the formation of two States with a combined High Court. Residuary power is left with the High Court of Hyderabad to transfer proceedings to the newly constituted State of Andhra Pradesh as per Section 105(1) and (2) of the Andhra Pradesh Reorganization Act. G.O.Ms.No.10 dated 09.01.2020 was also issued transferring II Additional CBI Court itself from Visakhapatnam to Kurnool and for exercising the territorial jurisdiction over the four Districts of Kurnool, Kadapa, Chittoor and Anantapur.

In that view of the matter, after reviewing the sequence of events., this Court is of the opinion that the transfer of the case is not *per se* wrong and is in accordance with law. However, in so far as the lack of consent is concerned, it is clear that the petitioner has a good case on the date of registration of the FIR as the residuary State of Andhra Pradesh was formed, there was a necessity for the express extension of CBI's jurisdiction by the

State Government. In its absence, the prosecution has to fail. Similarly, the lack of a notification for a Special Court under the PC Act also goes to the root of the matter. The steps taken in the said Court are also held to be bad.

Accordingly, W.P.No.26990 of 2021 is allowed. No order as to costs.

As far as W.P.No.5441 of 2022 is concerned, the issue of fact and law in this case are also the same. The case pertains to another Rayalaseema District of Anantapur and the FIR was registered on 20.11.2017. The charge sheet was filed before the Special Judge for CBI cases at Hyderabad on 29.03.2018.

For the same reasons mentioned in W.P.No.26990 of 2021, this W.P.No.5441 of 2022 is also allowed. No order as to costs. As a sequel, the miscellaneous petitions if any shall stand dismissed.

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**D.V.S.S. SOMAYAJULU,J**

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**V.SRINIVAS,J**

Date: 13.04.2023

Note: L.R. Copy be marked

KLP