A.F.R.

Court No. - 42

Case :- APPLICATION U/S 482 No. - 6623 of 2015
Applicant :- M/S Hcl Infosystem Ltd.
Opposite Party :- C.B.I.
Counsel for Applicant :- Manish Tiwary,Ashwini Kumar Awasthi
Counsel for Opposite Party :- Anurag Khanna

Hon'ble Amreshwar Pratap Sahi,J.

This application under Section 482 Cr.P.C. raises a crucial question about the jurisdiction of Sri Atul Kumar Gupta presiding over the Court of Special Judge, Anti Corruption, C.B.I. to proceed to try Special Case No.15 of 2013 and to quash the order dated 28.2.2015 passed by him. It may be placed on record that the impugned order dated 28.2.2015 in turn refers to the order passed by the learned Judge on 11.8.2014 in other cases relating to the same scam on the same issue of jurisdiction whereby it has been held that the court presided over by the aforesaid officer continues to have jurisdiction to try all NRHM cases in the entire State of U.P. The Special Judge has also referred to the judgment of this Court dated 23.9.2013 in Case No.33050 of 2013 to try cases of this class in relation to the jurisdiction enjoyed by him and accordingly has distinguished the judgment relied upon by the learned counsel in the decision of the Apex Court, ***State Vs. Jitender Kumar Singh, 2014 (11) SCC Page 724,*** which has been heavily and extensively relied upon by Sri Gopal Chaturvedi while arguing this application.

Thus, the issue is of the jurisdiction of the learned Special Judge who is proceeding with the case where the argument of Sri Gopal Chaturvedi is primarily two fold. Firstly that the Court does

not have territorial jurisdiction over the subject matter in view of the notification of the State Government dated 29.5.2014. The contention is that the said notification clearly specifies the area and the jurisdiction to try special cases that only relates to cases of the Prevention of Corruption Act that fall within the territorial jurisdiction of the areas referred to in column-4 of the said notification. The submission is that the present case does not fall within the territorial jurisdiction so prescribed in the notification as it relates to Lucknow and which is not the territorial area of the learned Judge.

The second ground on which his jurisdiction is being challenged is that the government servant who was involved in the present case, Late Sri G.K. Batra, died on 16.8.2012. In the circumstances, the government servant who was accused had died even prior to the court having taken cognizance. Cognizance was taken on 5.12.2014. Sri Gopal Chaturvedi contends that since the government servant had died, there was nothing so as to enable the court concerned to try a case of the Prevention of Corruption Act as the petitioner-company is not a government servant. He also contends that the cognizance which has been taken spells out conspiracy under Section 120-B IPC but only in relation to the offences of Sections 409 and 420 IPC and not in relation to the offences under Section 13(1)(d) and 13(2) of the Prevention of Corruption Act. He, therefore, submits that any trial under the Prevention of Corruption Act as against the petitioner-company is neither contemplated nor can it be undertaken by the learned Special Judge who otherwise also does not have jurisdiction in the matter. Sri Gopal Chaturvedi contends that on account of the death of the government servant the judgment in the case of ***State Vs. Jitender Kumar Singh (supra)*** squarely applies on the facts of the present case where also a similar

situation existed and the Apex Court was pleased to hold that since no Prevention of Corruption offences had been committed by any of the non-public servants, there was no occasion for the Special Judge to try any such case relating to the offences under the Prevention of Corruption Act. The sum and substance of the argument, therefore, is that offences under the IPC should be tried by the regular courts and not by the learned Special Judge who does not have any jurisdiction left to try the offences under the Prevention of Corruption Act against the applicant.

Sri Chaturvedi then contends that no element of conspiracy remotely exists so as to charge the petitioner-company with any offence relating to the Prevention of Corruption Act or any offence having been committed by late Sri G.K. Batra who also could not be tried, nor can the offences committed by him be tried by the learned Special Judge in the circumstances indicated above after his death. He, therefore, submits that the learned Special Judge ceases to have any jurisdiction in the matter and the entire proceedings being without jurisdiction the impugned order and the proceedings deserve to be quashed.

Sri Chaturvedi, however, clarifies that the existence of jurisdiction is one part but the occasion to exercise such jurisdiction being not available in the facts of the present case, the proceedings are clearly vitiated. He, therefore, submits that the impugned order, passed by the learned Special Judge, C.B.I., be quashed and appropriate directions be issued for the offences to be tried by the regular court and not by the learned Special Judge.

Sri Anurag Khanna, learned counsel for the C.B.I., on the

other hand has opposed this application by filing a counter affidavit contending that the petitioner has neither been able to demonstrate any miscarriage or failure of justice and to the contrary the circumstances that led to the notification of a single court at Ghaziabad for trying the NRHM cases is sufficient in itself to construe that the trial was clearly intended to be conducted by a single court which is supported by the legal provisions under the Prevention of Corruption Act, 1988 and the Constitutional Authority of the High Court to recommend designating a particular court to hear these cases. There being no short fall in the intention so expressed, the impugned order passed by the learned Magistrate holding that exclusive power vests in the same court does not suffer from any infirmity. Sri Khanna has substantiated his arguments by relying on the order passed by the learned Judge on 11.8.2014 which has been referred to in the impugned order as well. He has produced a copy of the order dated 11.8.2014 in a similar matter in the case of ***C.B.I. Vs. Dr. S.P. Ram and others, Special Case No.4 of 2012*** that is reasoned on identical lines. There also the application had been filed on the same grounds of territorial jurisdiction before the same learned Special Judge and Sri Khanna submits that the learned Judge having considered all aspects passed the said order which is extracted hereinunder :-

The Court of Atul Kumar Gupta, Special Judge,
Anti-Corruption, CBI, Ghaziabad.

CBI versus Dr SP Ram and others

Special Case No. 04/2012
RC No. 220-2012-E-003
Offences: 120-B r/w 420, 468
471 IPC r/w 13(2) r/w 13(1)(D)
of POC Act and substances offences
U/S 420, 468, 471 IPC
PS:- CBI/EOW-IV, New Delhi

ORDER ON APPLICATION 987 KH

*I have heard the arguments of Counsel for the accused Atul Kumar Srivastava as well as Special Prosecutor for CBI on application 987 KH and have perused the record. The application 987KH (the application 987 KH shall be referred hereinafter as "impugned application" for the sake of brevity) has been moved by the accused Atul Kumar Srivastava (the word "accused Atul Kumar Srivastava" shall be referred hereinafter as "applicant" for the sake of brevity) wherein, the applicant in precise mentioned that the Presiding Officer of this Court has been appointed as Special Judge, Anti-Corruption, CBI, Ghaziabad vide UP Government Notification No. U.O.-34/Ch-P-9-14-167G/09-Nyay-02 dated 29/05/2014 (Notification No. U.O.-34/Ch-P-9-14-167G/09-Nyay-02 dated 29/05/2014 shall be referred hereinafter as "**Notification-A**" for the sake of brevity) and this Notification empowers the Presiding Officer of this Court to try cases pertaining to districts namely, Gautam Budh Nagar, Aligarh, Rampur and Mainpuri only as investigated by the CBI as the appointment has been made by name of the Presiding Officer in para number 3 and 4 of the impugned application, the verbatim language of section 3 and section 4 of The Prevention of Corruption Act, 1988 has been reproduced. It has further been mentioned in the impugned application that the Presiding Officer of this Court has been appointed to be Special Judge for the cases/group of cases as such the Presiding Officer of this Court has got no power to conduct the trial of any other cases except the cases pertaining to districts namely, Gautam Budh Nagar, Aligarh, Rampur and*

*Mainpuri only and hence, the Presiding Officer of this Court has no power to conduct the trial of the captioned case. It has further been mentioned in the impugned application that earlier Presiding Officer of this Court was having the jurisdiction to conduct the trial of cases pertaining to Gautam Budh Nagar, Meerut, Aligarh, Rampur, Mainpuri and Firozabad vide UP Government Notification No. U.O. - 24/Ch-P-9-2011-167G/09-TC-Nyay-02 dated 10/03/2011 (Notification No. U.O. - 24/Ch-P-9-2011-167G/09-TC-Nyay-02 dated 10/03/2011 shall be referred hereinafter as "**Notification-B**" for the sake of brevity) and in addition to the above stated Notification, earlier Presiding Officer of this Court was secondly and separately appointed as Special Judge, Anti-Corruption, CBI, Ghaziabad to conduct trial of the group of cases pertaining to NRHM vide Notification No. U.O. - 49/Ch-P-9-12-167G/09- TC- Nyay- 02 dated 28/08/2012 (Notification No. U.O. - 49/Ch-P-9-12-167G/09-TC-Nyay-02 dated 28/08/2012 shall be referred hereinafter as "**Notification-C**" for the sake of brevity) and in pursuance of Notification-C, Special Judge, Anti-Corruption, West UP transferred a case titled "State versus GK Batra and others" to this Court vide his order dated 02/11/2012. It has further been mentioned in the impugned application that unless a separate appointment is not made either by the Central Government or by the State Government, in favour of the Presiding Officer of this Court as it was issued in the name of earlier Presiding Officer of this Court; the Presiding Officer of this Court has no jurisdiction to conduct trial of cases not pertaining to the districts namely, Gautambudh Nagar, Aligarh, Rampur and*

Mainpuri. It has further been mentioned in the impugned application that on the basis of the facts, circumstances and reasons disclosed/stated hereinabove it is expedient in the interest of justice that the papers/records of the captioned case be sent to the competent Court, having jurisdiction to try the same. On the basis of the above averments, prayer for transfer of captioned case to the competent Court, having jurisdiction to try the same has been made. The Counsel for the applicant has argued on the points mentioned in the impugned application and in support of his arguments, has also relied upon following rulings:-

1. RS Nayak versus A.R. Antulay and others reported in (1992) 1 SCC 279;
2. A.R. Antulay versus RS Nayak and others reported in (1988) 2 SCC 602.
The Special Public Prosecutor for CBI has opposed the impugned application by arguing that the Notification dated 28/08/2012 pertaining to trial of NRHM cases from whole of UP is in the name of this Court and the same still survives.

*It is an admitted fact that undersigned has been appointed as Special Judge in the Court of Special Judge, Anti-Corruption, CBI at Ghaziabad by virtue of UP Government Notification No. U.O.-34/Ch-P-9-14-167G/09-Nyay-02 dated 29/05/2014 which is "**Notification-A**" and this Notification has been confirmed by Notification No. 8304/Main-B/Admin. (A-3) Allahabad dated 05/06/2014 by **Hon'ble High Court of Allahabad**. The Notification-A has been*

*passed superseding earlier Notification No.U.O.- 24/Ch-P-9-2011-167G/09-TC-Nyay-02 dated 10/03/2011 passed by UP Government which is "**Notification-B**". The Notification-B had allocated districts namely, Gautambudh Nagar, Meerut, Aligarh, Rampur, Mainpuri and Firozabad to this Court and thereafter, since one new Court i.e. Special Court, Anti-Corruption, CBI, Court No. -3 has been created at Ghaziabad, so, two districts namely, Meerut and Firozabad have been taken away from this Court and have been allocated to Special Court, Anti-Corruption, CBI, Court No – 3 and in the like manner, districts namely, Agra, Muzaffarnagar and Baghpat have been taken away from Special Court, Anti Corruption, CBI, Court No – 2 and allocated to Special Court, Anti Corruption, CBI, Court No.-3 by virtue of Notification-A.* ***It is worth mention here that in Notification-B, the nomenclature of the Court of undersigned was "Special Court, Anti-Corruption, CBI, Ghaziabad" and in Notification-A, the nomenclature of the Court of undersigned is the same i.e. "Special Court, Anti-Corruption, CBI, Ghaziabad"****; whereas, the nomenclatures of Special Courts other than the Court of undersigned in Notification-B were (1)* ***Special Court CBI, Court No. 1, Ghaziabad and (2) Special Court CBI, Court No. 2, Ghaziabad.*** *In Notification-A, the nomenclature of the Court of undersigned is the same as it was in Notification-B whereas the nomenclature of other Courts other than the Court of undersigned has been changed which were (1)* ***Special Court, Anti-Corruption, CBI Court No. 1 Ghaziabad,*** *(2)* ***Special Court, Anti-Corruption, CBI Court No. 2 Ghaziabad*** *and (3)* ***Special Court, Anti-***

Corruption, CBI Court No. 3 Ghaziabad.

*Notification No. Asha-49/VI-Pu-9-12-167G/09- T.C – Nyay- 02 dated 28/08/2012 which is "**Notification-C**" was passed by U.P. Government which was confirmed by Notification No. 13230/Main-B/Admin. (A-3) Allahabad dated 01/09/2012 of **Hon'ble High Court of Allahabad**. The Notification-C conferred exclusive jurisdiction upon this Court to try all the cases pertaining to NRHM Scam from whole UP. Thus, it is apparent that this Court has been conferred exclusive jurisdiction for group of cases i.e. all cases pertaining to NRHM scam from whole UP by virtue of Notification-C. It is apparent from the perusal of Notification-A and Notification-C that Notification-A has conferred jurisdiction upon this Court pertaining to cases of 4 districts mentioned therein whereas, Notification-C has conferred exclusive jurisdiction upon this Court to try group of cases i.e. all cases pertaining to NRHM scam from whole UP and thus, Notification-A has only superseded Notification-B qua the cases pertaining to districts mentioned therein and it is apparent that Notification-A has not superseded Notification-C which is pertaining to group of cases i.e. all cases pertaining to NRHM scam from whole UP. Further, as per literal interpretation of Notification-C, it is apparent that Notification-C is not only in the name of the then Special Judge of this Court namely, Shri Shyam Lal-II but is also in the name of Court i.e. the Court of Special Judge, Anti-Corruption, CBI, Ghaziabad. Since, the then Special Judge of this Court namely, Shri Shyam Lal-II has retired on superannuation in the month of November 2013, so, by virtue of the*

appointment of undersigned in this Court as Special Judge, undersigned is the successor of the then Special Judge of this Court namely, Shri Shyam Lal-II. Section 15 of The General Clauses Act, 1897 provides that an appointment may be made either by name or virtue of office. The nomenclature of this Court in Notification-C as "Special Judge, Anti-Corruption, CBI, Ghaziabad" falls within the ambit of word "office" as provided in section 15 of The General Clauses Act, 1897. The perusal of Notification-C shows that it has not only been issued in the name of the then special judge but has also been issued by office i.e. "Special Judge, Anti-Corruption, CBI, Ghaziabad." Thus, in view of above, it is crystal clear that Notification-C is subsisting and is in force continuously.

***Hon'ble Orissa High Court** in case titled "**Adikando Satpathy verus State**"; reported in **AIR 1967 Orissa 31**; has been pleased to hold as under:-*

> ***"Section 15 of The General Clauses Act, 1897 clearly laid down that where under any Central Act or regulation a power is given to any person to fill any office or execute any function unless it is otherwise expressly provided, any such appointment if it is made after the commencement of this Act, may be made in his name or by virtue of his office. In view of this provision, the appointment of either a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge by virtue of their office is not invalid."***

***Hon'ble High Court of Andhra Pradesh** in case titled "**S. Janardhna Rao versus K. Paul Reddy"** reported in **1983 Criminal Law Journal 248 (A.P.)**; has been*

pleased to hold as under :-

> *"It is abundantly clear that once an appointment is made by virtue of an office any person competent to discharge the functions of the food inspector shall be deemed to have been appointed under section 9 of The Prevention of Food Adulteration Act, 1954 and no separate Notification need be made at every time as and when an officer is either appointed or transferred. It would be only an unnecessary duplication of issue of Notification since the appointment is being made."*

Hon'ble Supreme Court of India *in case titled "**Abdul Hussain Tayabali versus State of Gujrat**", reported in **AIR 1968 SC 432**; has been pleased to hold as under :-*

"Section 15 of The General Clauses Act, 1897 is a clear statutory authorization to appoint persons by virtue of office as Estate Officers. They could be appointed, not doubt, by name also as provided under section 15, but if they are appointed by virtue of office, it cannot be questioned."

Hon'ble High Court of Andhra Pradesh *in case titled "**K. Gopala Krishanayya versus State of Andhra Pradesh**" reported in **AIR 1959 AP 292**; has been pleased to hold as under :-*

> ***"In fact, section 15 of the General Clauses Act, 1897 makes it clear that where by any Act or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, any such appointment may be made either by name or by virtue of office. The Act does not prescribe that there should be identity of the two authorities. Surely, it is open to the successor authority to implement or***

> ***continue the works started by another statutory body. Sections 17 and 18 of the Indian General Clauses Act, 1897 warrant it and these provisions are reproduced in clauses (f) and (e) respectively of section 9 of the Madras Gen Clauses Act, 1897****."*

In a case reported in AIR 1963 Tripura 31; it has been held as under:-

> *"**Thus, a person holding another official post can be conferred the power of a Magistrate by virtue of his office, with the result that the successor in the said office also becomes invested with the said power**."*

It is, thus, apparent that Notification-C is also in the name of this Court and thus, by virtue of Sections 15, 17 and 18 of The General Clauses Act, 1897, this Court has got the exclusive jurisdiction to try all the cases pertaining to NRHM scam from whole UP by virtue of Notification-C.

Thus, in view of the law laid down in above noted cases (supra), by virtue of the provisions of Sections 15, 17 and 18 of The General Clauses Act, 1897 and in view of above stated detailed discussion, it is crystal clear that this Court has got the exclusive jurisdiction to try all the cases pertaining to NRHM scam from whole UP by virtue of Notification-C. The rulings relied upon by the Counsel for the applicant are not applicable in the facts of the present case as the facts stated therein are not similar to the facts and situation of the present case. It is worth mention here that applicant did not move any application like present one questioning the jurisdiction of other CBI Courts at Ghaziabad other than present Court when this Court was lying vacant

since 1st of December, 2013 to 8th of June, 2014 and cases of NRHM scam were used to be taken up by the other CBI Courts at Ghaziabad other than present Court when this Court was lying vacant during above stated period and thus, the act of applicant moving present impugned application questioning the jurisdiction of this Court when this Court has started functioning apparently show that impugned application has only been moved to delay expeditious disposal of this case. Hence, impugned application has got no any merit and thus, is liable to be dismissed.

ORDER

The impugned application 987 KH moved by applicant/ accused Atul Kumar Srivastava is hereby dismissed.

11/08/2014 *(Atul Kumar Gupta)*
Special Judge, Anti-Corruption, CBI
Ghaziabad"

He, therefore, submits that the impugned order in the present application has to be read along with the aforesaid order that spells out cogent and lawful reasons for retaining jurisdiction in the case. He also submits that place of trial causes no prejudice and the proceedings would not be invalid for such a reason as it does not occasion any failure of justice as per the principles contained in the provisions of Section 462 Cr.P.C. He further submits that this Court even otherwise under the provisions of Section 32 Cr.P.C. has the authority to confer powers and hence the impugned order is not vitiated. The contention is that the notification is in consonance with the directions issued by this Court and its clear intention to allow the continuance of the NRHM cases trial only in one particular court. He has also relied

on the same judgment of the Apex Court in the case of ***State Vs. Jitender Kumar Singh (supra)*** to contend that even a non-government servant can be tried by the Special Court inasmuch as in the present case the conspiracy is clearly intertwined with the offences under the Prevention of Corruption Act that are writ large from a bare perusal of the facts and evidence narrated in the FIR, the charge sheet and the cognizance order. He contends that the argument of Sri Chaturvedi about the element of conspiracy and the offences of conspiracy being confined to the offences of IPC and does not extend to the offences under the Prevention of Corruption Act is unfounded and against the material on record.

Before delving into the rival arguments, it may be put on record that this case pertains to a huge scam known as "National Rural Health Mission Scam" in the State of U.P. where the funds allocated for utilization were diverted and allegedly misappropriated on a large scale throughout the State. Three petitions were filed before the Lucknow Bench of this Court where orders were passed on 15.11.2011 directing the Central Bureau of Investigation to hold a preliminary inquiry and then proceed to take appropriate action on the basis of material found for lodging criminal prosecution. On conducting preliminary inquiries, it was found that between the period 2005-2006 till 2011 the utilization of the funds were under a dark cloud and the scam had come to light after two Chief Medical Officers in Lucknow were shot dead by unidentified assailants in separate incidents. Another Deputy Chief Medical Officer who came to be arrested by the local police was found dead in the Lucknow Jail and one Mr. Sunil Verma an Assistant Engineer in a Government undertaking of the U.P. Jal Nigam, who was one of the main named accused in a regular case registered by the C.B.I., committed suicide. Not only that one Mr.

Mahendra Kumar Sharma, a Clerk working in the office of Chief Medical Officer, District Lakhimpur Kheri was found murdered. These sensational developments that circled round the NRHM scam was deliberated upon by the Investigating Agency and the Director of the C.B.I. dispatched a letter on 5.3.2012 to the Registrar General of this Court requesting for designating a single court as the trial court preferably at Ghaziabad for attending to all cases arising out of the NRHM scam for reasons that are recorded in the said letter and is part of the administrative file of the High Court extracted hereinunder :-

> *"CENTRAL BUREAU OF INVESTIGATION*
> *5-B, CGO Complex, Lodhi Road,*
> *New Delhi -110003*
>
> *Subject : Notification for separate Court in Ghaziabad exclusively for all NRHM cases- regarding*
>
> *The Hon'ble High Court of Judicature at Allahabad, Lucknow Bench vide order dated 15.11.2011, passed in Writ Petition No.3611 of 2011 (PIL) & writ petition No.3301 of 2011(PIL) in the matter of Sachchdanand (Sachchey) versus State of U.P. and others connected matters, directed CBI to conduct preliminary enquiry into the matter of execution and implementation of National Rural Health Mission (NRHM) Scheme and utilization of funds at various levels during such implementation in the entire state of Uttar pradesh, from the period 2005-2006 till date and register Regular Cases in respect of persons against whom prima facie cognizable offence is made out and proceed in accordance with law.*

2. Pursuant to the aforesaid orders of the Hon'ble High Court, five Preliminary Enquiries were registered by C.B.I. During the course of enquiry into the said Preliminary Enquiries, CBI has so far registered 12 Regular Cases and investigation taken up. CBI has also conducted searches at more than 150 places across the State and arrested a number of accused persons found involved in the embezzlement of NRHM funds.

3. The NRHM funds to the tune of Rs.9,000 crores approx. were allocated to the State of Uttar Pradesh for the period 2005-2006 till date by the Ministry of Health & Family Welfare, Govt. of India. The scam came to light after two CMOs in Lucknow were shot dead by unidentified assailants in separate incidents. Another deputy CMO Dr. Y.S. Sachan, arrested by local police in the scam, was found dead in the Lucknow jail on 22.06.2011. Shri Sunil Verma, AE in C & DS, Uttar Pradesh Jal Nigam, who was one of the main FIR named accused in a regular case registered by CBI, allegedly committed suicide on 23.01.2012. Recently, a Clerk working in the office of Chief Medical Officer, Lakhimpur Kheri namely Shri Mahendra Kumar Sharma was allegedly found murdered on 15.02.2012.

4. In view of number of murders / suicide of the key accused or witnesses, as mentioned above, there is a genuine apprehension of danger to the lives of suspects and witnesses. It is not out of place to mention here that Lucknow and adjoining area has remained the focal point of the alleged crime related to NRHM. There is reasonable apprehension among witnesses of possible threat from criminal elements if

investigation and trial proceedings involving them are allowed to take place in Lucknow.

5. It is desirable to designate a single Court at Ghaziabad to deal exclusively all the cases related to National Rural Health Mission (NRHM) scam, for the purpose of investigation and trial for the following reasons :-

(i) Most of the witnesses and suspects prefer their examination to be conducted in Delhi or Ghaziabad and not at Lucknow.

(ii) Most of the cases have been registered by Central units of CBI in Delhi. To have a jurisdictional Court at Ghaziabad, would help the investigation teams to expedite the process of investigation and attend day to day Court matters at Ghaziabad;

(iii) It would facilitate witnesses and accused to attend the investigation and trial proceedings without any fear and pressure;

(iv) It would be easier to coordinate and monitor all the cases in an effective manner.

6. In view of the above, it is requested that for all the cases registered in connection with NRHM scam, a single court may kindly be designated as trial court. Since the Court of Dr. A.K. Singh, Special Judge, CBI at Ghaziabad is already dealing with most of the NRHM related cases, he may be designated as Special Judge for all NRHM cases in larger public interest and in the interest of justice.

AMAR PRATAP SINGH
DIRECTOR

The Registrar General, Allahabad High Court, Allahabad, Uttar Pradesh

No.DP/3/1/2012/EOU-IV Dated : 03.2012"

The aforesaid exercise had become necessary as designated C.B.I. courts did exist including one relating to Anti Corruption were already notified at Ghaziabad vide notification dated 10.3.2011, which is extracted hereinunder :-

UTTAR PRADESH SHASHAN
GRIH (POLICE) SECTION-9

In pursuance of the provisions of clause (3) of Article 348 of the Constitution, the Governor is pleased to order the publication of the following English translation of notification no.U.O.-24/6-P-9-2011-167G/09 T.C.-Nyaya-2, dated March 10, 2011

NOTIFICATION
Miscellaneous
No.U.O.-24/6-P-9-2011-167G/09TC-Nyaya-2
Lucknow : dated March 10, 2011

In exercise of the powers under sub-section(1) of section 3 and sub-section (2) of section 4 of the Prevention of Corruption Act, 1988 (Act No.49 of 1988) read with section 21 of the General Clauses Act, 1897 (Act no.X of 1897) and in supersession of all other notifications issued in this behalf, the Governor is pleased to appoint from the date of his taking over charge the Additional District Judge mentioned in Column 2 of the Scheduled below, as Special Judge for the areas mentioned in Column 4 for trial of such

offences specified in sub-section (1) of section 3 of the aforesaid Act no.49 of 1988 in which hereinafter charge sheet are filed in his court by Special Police Establishment of the Government of India and to direct that such other cases arising within the said areas, in which charge sheets have already been filed before any other Special Judge appointed under the said Act and also such other cases arising within the said area relating to the said Special Police Establishment which are pending before such Special Judge, shall also be tried and disposed off by him and his court shall be designated as specified in column-3 of said Schedule with headquarters at Ghaziabad.

SCHEDULE

Sl. No.	*Name of the Judge*	*Name of the Court*	*Area of Jurisdiction (District)*
1	*2*	*3*	*4*
1	*Sri Shyam Lal-II, Additional District and Sessions Judge, Ghaziabad*	*Special Court, Anti Corruption, CBI, Ghaziabad*	*G.B. Nagar, Meerut,Aligarh, Rampur, Mainpuri, Firozabad.*
2	*Dr. Ashok Kumar Singh-IV, Special Judge Anti Corruption C.B.I., Ghaziabad*	*Special Court C.B.I., Court No.1, Ghaziabad.*	*Ghaziabad, Moradabad, Bulandshahar, Bijnor, Hathras*
3	*Sri M.S. Wadhwa, Additional District and Sessions Judge, Muzaffarnagar*	*Special Court C.B.I., Court No.2, Ghaziabad*	*Saharanpur, Agra, Muzaffarnagar, J.P. Nagar, Etah, Baghpat, Mathura.*

By Order
Deepak Kumar
Secretary

Upon receipt of the said letter from the Director of the C.B.I. the file was moved for the purpose of a fresh notification and the proposal was placed before Hon'ble the Chief Justice vide office note dated 14.5.2012 of the Joint Registrar (Services) which was approved by Hon'ble the then Chief Justice vide order dated 16.5.2012 clearly reciting that Sri Shyam Lal-II will look after all the cases of NRHM scam.

It is not out of place to mention here that such powers are exercisable by the High Court in terms of Article 233 of the Constitution of India and it goes without saying that the aforesaid legal issues have already been set at rest by the Apex Court in the 2G scam case ***Essar Teleholdings Limited Vs. Registrar General, Delhi High Court and others, 2013 (8) SCC Page 1*** paras 30 to 30.3 and 31.

The proposed draft was thereafter sent to the State Government for issuing a notification and it was accordingly issued by the State Government on 28.8.2012 which is extracted hereinunder :-

उत्तर प्रदेश सरकार

गृह (पुलिस) अनुभाग–9

संख्या–अशा.–49 / छः–पु0–9–12–167जी / 09टी0सी0–न्याय–2

लखनऊः दिनांकः 28 अगस्त, 2012

अधिसूचना

प्रकीर्ण

साधारण खण्ड अधिनियम, 1897 (अधिनियम संख्या 10, सन् 1897) की धारा 21 के साथ

पठित भ्रष्टाचार निवारण अधिनियम, 1988 (अधिनियम संख्या–49, सन् 1988) की धारा–3 की उप धारा (1) और धारा–4 की उपधारा (2) के अधीन शक्ति का प्रयोग करके और **इस निमित्त जारी की गयी अधिसूचना संख्या–यू0ओ0–24/छ :–पु0–9–2011–167जी/09टीसी0– न्याय–2, दिनांक 10 मार्च, 2011 के अतिरिक्त राज्यपाल श्री श्याम लाल–द्वितीय, विशेष न्यायाधीश, एन्टीकरप्शन सी0बी0आई0, गाजियाबाद को पूर्वोक्त अधिसूचना मे उल्लिखित मामलों के अतिरिक्त सम्पूर्ण उत्तर प्रदेश के राष्ट्रीय ग्रामीण स्वास्थ्य मिशन (एन0आर0एच0एम0) घोटाला में अन्तर्ग्रस्त समस्त मामलों का अनन्य रूप से निस्तारण करने के लिए तात्कालिक प्रभाव से नियुक्त करते है।**

आज्ञा से,

कमल सक्सेना
सचिव, गृह।

संख्या–अशा0–49(1)/छः–पु0–9–2012 तद्दिनांकः

प्रतिलिपि संयुक्त निदेशक, मुद्रण एवं लेखन सामग्री, उत्तर प्रदेश, राजकीय मुद्रणालय, ऐशबाग, लखनऊ को अंग्रेजी की प्रतिलिपि सहित इस अभ्युक्ति के साथ प्रेषित कि वे उक्त अधिसूचना को उत्तर प्रदेश असाधारण गजट के विधायी परिशिष्ट भाग–4 खण्ड (ख) के संस्करण में दिनांकः अगस्त, 2012 की तिथि में प्रकाशित करने का कष्ट करें तथा मुद्रित अधिसूचना की 100 प्रतियां न्याय अनुभाग–2 को भेजने का कष्ट करें।

आज्ञा से,

(ए0पी0 तिवारी)
अनु सचिव।

The then learned Special Judge, Anti Corruption C.B.I., Ghaziabad vide order dated 26.10.2012 returned the charge sheet in relation to the same scam but in a different case, namely, ***C.B.I. Vs. Vijay Tripathi and others*** on the ground that the charge sheet had not been filed under the Prevention of Corruption Act. The said order was challenged by the C.B.I. in Criminal Misc. Application 482 No.33050 of 2013 and the said

application was allowed quashing the said order and holding that the notification dated 28.8.2012/1.9.2012 did not suggest that the designated Judge Sri Shyam Lal-II could try only cases in which one of the offences is under the Prevention of Corruption Act. The notification, therefore, so issued was treated to be comprehensive for the purpose of trying all cases relating to the NRHM scam. The judgment dated 23.9.2013 is extracted hereinunder :-

> *"Heard learned counsel for the applicant and learned AGA for the State.*
>
> *The applicant-C.B.I. in the present case, has invoked the inherent jurisdiction of this Court with a prayer to quash the impugned order dated 26.10.2012 passed by Special Judge, Anti-Corruption, CBI, Ghaziabad by which he has returned the charge sheet laid before him by the C.B.I. upon completion of investigation in R.C. No. 2172011A0010 CBI/ACU-VI, New Delhi (CBI Vs. Vijay Tripathi & others) on the ground that he had no jurisdiction to entertain the charge sheet and take the cognizance of the matter as the said charge sheet was not under Prevention of Corruption Act.*
>
> *There is no dispute amongst the learned counsel for the parties present that the present matter pertains to NRHM scam. There is also further no quarrel about the fact that the State Government has appointed Sri Shyam Lal-II, Anti Corruption, C.B.I., Ghaziabad to try all the offences relating to the NRHM scams by notification dated 01.09.2012, copy where of has been filed as Annexure no. 5 to the affidavit accompanying this application. There is nothing in the said notification, which may suggest that Sri Shyam Lal-II shall try only those cases in which one of the offences is under the Prevention of Corruption Act. Thus it is apparent that the impugned order has been passed by the learned Special Judge upon an erroneous assumption that he has jurisdiction to try only those cases which arise under the Prevention of Corruption Act relating to the NRHM scam.*
>
> *Accordingly, this application is allowed and the impugned order is set aside. The Special Judge, Anti*

Corruption, C.B.I., Ghzaiabad is directed to proceed with the matter in accordance with law."

During this period one additional court at Ghaziabad namely a Special Court for all Anti Corruption cases was created together with such special courts of Anti Corruption at Lucknow as well. With the creation of three additional special courts of Anti Corruption, an office report by the Registry of the High court appears to have been submitted for redetermination of the territorial jurisdiction of all the twelve special courts including the three newly created ones as above which was considered by the Administrative Committee of the High Court and the jurisdictions were accordingly allocated. Hon'ble the Chief Justice after the said resolution of the Administrative Committee issued orders of posting, as it was a matter of mid-session posting due to retirement of Sri Shyam Lal-II and other Special Courts becoming available, on 13.2.2014 approving the proposal of the Registrar General extracted hereinunder :-

"In view of above facts, may, if approved, the file be laid before Ld. Registrar General for his kind perusal & onward submission before Hon'ble the Chief Justice for His Lordship's kind perusal & orders in respect of ***recommendation*** *as follows, so that the State Government may be moved accordingly :-*

1. 02 officers may be recommended out of ***08 officers of Lucknow Judgeship****, as their names are mentioned above in* ***table-1,*** *for being appointed as Special Judges in the newly created 02 Special Courts of C.B.I. at Lucknow i.e. in the Special Court of Anti Corruption C.B.I. Court* ***Nos.5 & 6 respectively.***

2. 02 officer may be recommended out of ***04 officers of Ghaziabad Judgeship****, as their names are mentioned above in* ***table-2****, for being appointed one officer as Special Judge in the Special Court of*

Anti Corruption, C.B.I. at Ghaziabad which has ***fallen vacant due to retirement of Sri Shyam Lal-II****, the then Presiding Officer* ***and one officer*** *for being appointed as Special Judge,* ***in the newly created Special Court of Anti Corruption, C.B.I., Court no.03 at Ghaziabad.***

Or

3. Any other orders, which His Lordship may deem fit & proper, be passed.

Approval order of Hon'ble the Chief Justice as endorsed on the said proposal is as follows :-

"*Approved in the following terms :-*

1. <u>For CBI Court Ghaziabad :</u>

- ***Atul Kumar Gupta (in place of Shyam Lal in the vacant court)***
- *Nalin Kant Tyagi (in the newly vacant court)*

2. <u>For CBI Court Lucknow</u>

- *Smt. Neerja Singh*
- *Shri Vinod Kumar Srivastava IV"*

The aforesaid order of posting categorically prescribes that Sri Atul Kumar Gupta is being posted in place of Sri Shyam Lal-II in that vacant court whereas the other officers have been allocated other courts. The posting order, therefore, admits of no ambiguity. The same was sent to the State Government for an appropriate notification for specifying the areas in relation thereto. It is these notifications dated 29.5.2014 which are subject matter of debate and are being relied on for the purpose of this controversy. The two notifications that were issued include one separate notification for the special courts at Lucknow being eight in number and four courts at Ghaziabad. The notification in

relation to Lucknow and Ghaziabad are extracted hereinunder :-

FOR LUCKNOW

UTTAR PRADESH SHASAN

GRIH (POLICE) SECTION-9

In pursuance of the provisions of clause (3) of Article 348 of the Constitution, the Governor is pleased to order the publication of the following English translation of notification no.U.O.-33/VI-P-9-14-167G/ 09-Nyaya-2, dated May 29, 2014.

NOTIFICATION

Miscellaneous

No.U.O.-33/VI-P-9-14-167G/09-Nyaya-2

Lucknow : Dated: May 29, 2014

In exercise of the powers under sub section (1) of section 3 and sub-section (2) of section 4 of Prevention of Corruption Act, 1988 (Act no.49 of 1988) read with section 21 of the General Clauses Act, 1897 (Act No.X of 1897) and in supersession of all other notifications issued in this behalf the Governor is pleased to appoint from the date of his taking over charge the Additional District Judge mentioned in Column-2 of the Scheduled below, as Special Judges for the areas mentioned in column 4 for trial of such offences as specified in sub-section (1) of section 3 of the aforesaid Act of 1988 in which, hereinafter charge sheets are filed in his court by Special Police Establishment of the Government of India and to direct that such other cases arising within the said areas, in which charge sheet have already been filed before any other Special Judge appointed under the said Act of

1988 and also such other cases arising within the said area relating to the said Special Police Establishment which are pending before such Special Judge, shall also be tried and disposed of by him and his court shall be designated as specified in column-3 of said Schedule with headquarters at Lucknow.

SCHEDULE

Sl. no.	*Name of Judge*	*Name of the Court*	*Area of Jurisdiction (district)*
1	*2*	*3*	*4*
1	*Sri Rajendra Singh-I, Additional District & Sessions Judge, Lucknow*	*Special Court, Anti Corruption, C.B.I. (West) Lucknow*	*Lucknow, Shravasti, Pilibhit, Ambedkar Nagar and Maharajganj*
2	*Sri Ashok Kumar Singh-III, Additional District & Sessions Judge, Lucknow*	*Special Court Anti Corruption, C.B.I. (Central) Lucknow*	*Kanpur Nagar, Kanpur Dehat, Kushinagar, Kaushambi and Kansi Ram Nagar*
3	*Sri Hari Nath Pandey, Additional District & Sessions Judge, Lucknow*	*Special Court Anti Corruption, C.B.I. Court No.-1, Lucknow*	*Allahabad, Kannauj, Fatehpur, Chitrakoot, Hamirpur and C.S.M. Nagar*
4	*Sri Vinok Kumar-IV, Additional District & Sessions Judge, Lucknow*	*Special Court Anti Corruption, C.B.I. Court No.-2, Lucknow*	*Azamgarh, Etawah, Basti, Mau, Bhadhohi, Balrampur and Bahraich*
5	*Sri Dinesh Kumar Singh-II, Additional District & Sessions Judge, Lucknow*	*Special Court Anti Corruption, C.B.I. Court No.-3, Lucknow*	*Varanasi, Badaun, Raebareli, Faizabad, Jalaun at Orai, Siddharthnagar and Pratapgarh.*
6	*Sri Brijesh Kumar Pandey, Additional District & Sessions Judge, Lucknow*	*Special Court, Anti Corruption, C.B.I. Court No.-4, Lucknow*	*Gorakhpur, Farrukhabad, Mirzapur, Unnao, Sonbhadra, Sitapur, Gazipur, Deoria and*

			Barabanki.
7	*Smt. Neerja Singh, Additional District & Sessions Judge, Lucknow*	*Special Court Anti Corruption, C.B.I. Court No.-5, Lucknow (Newly created Court)*	*Jhansi, Auraia, Chandauli, Lakhimpur Kheri, Bareilly, Hardoi and Mahoba.*
8	*Sri Vinod Kumar Srivastava-IV, Additional District & Sessions Judge, Lucknow*	*Special Court Anti Corruption, C.B.I. Court No.-6, Lucknow (Newly created court)*	*Jaunpur Sant Kabir Nagar, Shahjahanpur, Gonda, Lalitpur, Ballia, Sultanpur and Banda*

By Order

(S.K. Raghuvanshi)

Secretary

FOR GHAZIABAD

UTTAR PRADESH SHASAN

GRIH (POLICE) SECTION-9

In pursuance of the provisions of clause (3) of Article 348 of the Constitution, the Governor is pleased to order the publication of the following English translation of notification no.U.O.-34/VI-P-9-14-167G/ 09-Nyaya-2, dated May 29, 2014

NOTIFICATION

Miscellaneous

No.U.O.-34/VI-P-9-14-167G/09-Nyaya-2

Lucknow: Dated : May 29, 2014

In exercise of the powers under sub section (1) of section 3 and sub-section (2) of section 4 of Prevention of Corruption Act, 1988 (Act no.49 of 1988) read with section 21 of the General Clauses Act, 1897 (Act no.X of 1897) and in supersession of all other notifications issued in this behalf, the Governor is

pleased to appoint from the date of his taking over charge the Additional District Judge mentioned in Column-2 of the Scheduled below, as Special Judge for the areas mentioned in column 4 for trial of such offences as specified in sub-section (1) of section 3 of the aforesaid Act of 1988 in which, hereinafter charge sheets are filed in his court by Special Police Establishment of the Government of India and to direct that such other cases arising within the said areas, in which charge sheets have already been filed before any other Special Judge appointed under the said Act and also such other cases arising within the said areas relating to the said Special Police Establishment which are pending before such Special Judge, shall also be tried and disposed of by him and his court shall be designated as specified in column-3 of said schedule with headquarters at Ghaziabad.

SCHEDULE

Sl no.	*Name of Judge*	*Name of the Court*	*Area of Jurisdiction (district)*
1	*2*	*3*	*4*
1	***Sri Atul Kumar Gupta, Additional District & Sessions Judge, Ghaziabad***	***Special Court, Anti Corruption, C.B.I., Ghaziabad***	***G.B. Nagar, Aligarh, Rampur and Mainpuri***
2	*Sri Kuldeep Kumar, Additional District & Sessions Judge, Ghaziabad*	*Special Court, Anti Corruption, C.B.I. Court No-1 Ghaziabad*	*Ghaziabad, Moradabad, Bijnor and Hathras*
3	*Sri Madhu Sudan Wadhwa, Additional District & Sessions Judge, Ghaziabad*	*Special Court Anti Corruption, C.B.I. Court No.2, Ghaziabad*	*Saharanpur, J.P. Nagar, Etah, Bulandshahar and Mathura*
4	*Sri Nalin Kant Tyagi, Additional District & Sessions*	*Special Court Anti Corruption, C.B.I. Court No.-*	*Agra, Muzaffarnagar, Baghpat, Meerut*

	Judge, Ghaziabad	*3 Ghaziabad (newly created Court).*	*and Firozabad*

By Order
(S.K. Raghuvanshi)
Secretary

It may be put on record that Sri Atul Kumar Gupta, learned Special Judge, Anti Corruption C.B.I., Ghaziabad is the successor-in-office of Sri Shyam Lal-II who was looking after all cases of NRHM as notified earlier and also in terms of the specific posting order passed by Hon'ble the Chief Justice on 13.2.2014. It may also be pointed out that the notification dated 28.8.2012 **in relation to NRHM scam** has not been specifically rescinded even though the notifications dated 29.5.2014 extracted hereinabove state that they are in supersession of all other notifications issued in this behalf. The order of Hon'ble the Chief Justice dated 13.2.2014 is still intact that clearly specifies the posting of Sri Atul Kumar Gupta in place of Sri Shyam Lal-II.

Objections thereafter emanated in several such cases about the jurisdiction of Sri Atul Kumar Gupta, Special Judge, Anti Corruption C.B.I., Ghaziabad to try and proceed with the trial of the NRHM scam cases on the ground that by virtue of the notifications dated 29.5.2014 the territorial jurisdiction defined therein did not permit Sri Atul Kumar Gupta to proceed with the cases as it suffered from want of territorial jurisdiction. The matter was also contested by the C.B.I. and brought to the notice of the High Court where this exercise of clarifying the said notification was undertaken. In between some lawyers of the Awadh Bar Association at the Lucknow Bench also raised a demand on the administrative side that all cases that arose within the territorial jurisdiction of the Lucknow Bench, the same should

be allowed to be tried by the special courts at Lucknow itself. The said representation is on record of the administrative file of the High Court concerning the notifications and posting orders. The said request may have been also from a professional point of view as, if these cases are conducted by the special courts at Lucknow, then the lawyers of the Lucknow Bench would be benefited as they would have the option to deal with briefs relating to the NRHM scam at Lucknow itself.

The matter appears to have been placed before Hon'ble the Chief Justice and a notification clarifying the said position was prepared by the High Court under approval orders of the Chief Justice and has been forwarded to the State Government in relation thereto. It is reported by the High Court office that the same is pending before the State Government for further ministerial action in the matter. It is in this background that the issue of territorial jurisdiction of the learned Special Judge has been raised contending that in the absence of a specific notification for a specified class of cases, namely, the NRHM cases to be tried by the designated Judge Sri Atul Kumar Gupta, he suffers from lack of patent authority in proceeding to try the present case and which is the argument advanced in relation to other cases as well.

The first argument, therefore, of Sri Chaturvedi has to be addressed to in the background aforesaid. The relevant provisions that are to be noticed are Section 3(1) and Section 4(2) of the Prevention of Corruption Act, 1988 and are extracted hereinunder for convenience :-

> ***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).*
>
> ***4. Cases triable by special Judges-*** *(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.*

A perusal of the aforesaid two provisions makes it clear that in order to try a case under the Prevention of Corruption Act, 1988 it is only the designated special court which can try such cases. The question is as to whether the notifications referred to hereinabove in anyway continue to authorise Sri Atul Kumar Gupta to preside over and deal with such cases including the present case.

The provisions of Sections 22 and 28 of the Prevention of Corruption Act, 1988 have to be taken note of while applying such principles as have also been indicated by the learned Special Judge in the impugned order. The said sections are extracted hereinunder for ready reference :-

> *"**22. The Code of Criminal Procedure, 1973 to apply subject to certain notifications.-** The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall in their application to any proceedings in relation to an offence punishable under this Act*

have effect as if,-

(a) in sub-section (1) of Section 243, for the words "The accused shall then be called upon", the words "The accused shall then be required to give in writing at once or within such time as the Court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon" had been substituted ;

(b) in sub-section (2) of Section 309, after the third proviso, the following proviso had been inserted, namely :-

"Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under Section 397 has been made by a party to the proceeding";

(c) after sub-section (2) of Section 317, the following sub-section had been inserted, namely :-

"(3) Notwithstanding anything contained in sub-section (1) or sub section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination";

(d) in sub-section (1) of Section 397, before the Explanation, the following proviso had been inserted, namely :-

"Provided that where the powers under this section are exercised by a Court on an application made by a party to such proceedings, the Court shall not ordinarily call for the record of the proceedings :-

(a) without giving the other party an opportunity of showing cause why the record should not be called for; or

(b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies."

28. Act to be in addition to any other law.- *The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him."*

In order to understand the powers to be exercised authorizing a particular court to function for a particular jurisdiction, a parallel deserves to be considered for comparing similar powers under the provisions of Criminal Procedure Code and other enactments. Section 32 Cr.P.C. being relevant to delve into this comparative study is extracted hereinunder :-

> ***32. Mode of conferring powers :-*** *(1) In conferring powers under this Code, the High Court or the State Government, as the case may be, may, by order, empower persons specially by name or in virtue of their offices or classes of officials generally by their official titles.*
>
> *(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.*

Here a reference to Section 35 Cr.P.C. and Section 15 of the General Clauses Act, 1897 would be necessary. Section 35 Cr.P.C. is extracted hereinunder :-

> *"**35. Powers of Judges and Magistrates exercisable by their successors-in-office** – (1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor-in-office.*
>
> *(2) When there is any doubt as to who is the successor-in-office of any Additional or Assistant Sessions Judge, the Sessions Judge shall determine by order in writing the Judge who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Additional or Assistant Sessions Judge.*
>
> *(3) When there is any doubt as to who is the successor-in-office of any Magistrate, the Chief Judicial Magistrate, or the District Magistrate, as the case may be, shall determine by order in writing the Magistrate who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor-in-office of such Magistrate."*

The same categorically recites that under our ordinary criminal justice system the successor-in-office is authorized in law to continue with the case that was pending in the court of his predecessor.

Section 15 of the General Clauses Act, 1897 is extracted hereinunder :-

> ***15. Power to appoint to include power to appoint*** *ex officio- Where, by any [Central Act] or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.*

A perusal thereof would also support the aforesaid proposition, but here the issue is of notification either by name or by designation or in respect of a class of cases as referred to under Section 3(1) and Section 4(2) of the 1988 Act. The first step of the notification is the proposal to notify a court and for that the State Government has to necessarily abide by the proposal made by the High Court. This unquestionable binding authority of the High Court which emanates from Article 233 read with Article 234 of the Constitution of India has been dealt with and the issue is no longer res-integra in the matter of an establishment of a special court and as already pointed out hereinabove in the case of ***Essar Teleholdings Limited (supra)***. To re-emphasize this, it would be appropriate to extract paragraph 30 to 31 of the aforesaid decision reproduced hereinbelow :-

"30. On the question of validity of the Notification dated 28.3.2011 issued by the NCT of Delhi and Administrative Order dated 15.3.2011 passed by the Delhi High Court, we hold as follows :-

30.1. Under sub-section (1) of Section 3 of the PC Act 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 any offence punishable under the PC Act. In the present case, as admittedly, co-accused have been charged under the provisions of the PC Act, and such offence punishable under the PC Act, the NCT of Delhi is well within its jurisdiction to issue notification (s) appointing Special Judge(s) to try the 2G Scam case(s).

30.2. Articles 233 and 234 of the Constitution are attracted in cases where appointments of persons to be Special Judges or their postings to a particular Special Court are involved. ***The control of the High Court is comprehensive, exclusive and effective and it is to subserve a basic feature of the Constitution i.e. independence of judiciary.*** *(See High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal (1998) 3 SCC 72 and High Court of Orissa v. Sisir Kanta Satapathy (1999) 7 SCC 725. The power to appoint or promote or post a District Judge of a State is vested with the Governor of the State under Article 233 of the Constitution which can be exercised only in consultation with the High Court.* ***Therefore, it is well within the jurisdiction of the High Court to nominate officer(s) of the rank of the District Judge for appointment and posting as Special Judge(s) under sub-section(1) of Section 3 of the PC Act.***

30.3. In the present case, the petitioners have not challenged the nomination made by the High Court of Delhi to the NCT of Delhi. They have challenged the letter dated 15.3.2011 written by the Registrar General, High Court of Delhi, New Delhi to the District Judge-I-cum-Sessions Judge, Tis Hazari Courts, Delhi and the District Judge-IV-cum-Additional Sessions Judge, I/C, New Delhi District, Patiala House Courts, New Delhi whereby the High Court intimated the officers about nomination of Mr. O.P. Saini, an officer of Delhi Higher Judicial Service for his appointment as Special Judge for 2G Scam cases.

31. In the present case there is nothing on the

> *record to suggest that the petitioners will not get fair trial and may face miscarriage of justice. In absence of any such threat and miscarriage of justice, no interference is called for against the impugned order taking cognizance of the offence against the petitioners."*

The background, therefore, has to be understood in which the notifications under consideration emanated for trying all cases under the NRHM scam that also include the offences under the Prevention of Corruption Act, 1988. As noted above this problem had to be tackled in order to prevent any miscarriage of justice and also to take all possible precautionary steps that such an action may not occasion any failure of justice. For this the request of the C.B.I. to get all cases tried at Ghaziabad came to be considered by the High Court and after due deliberation orders were issued for notifying a single court to try all such matters.

On the facts of the present case there is no doubt that the jurisdiction, the place of trial and the Judge nominated for trying all NRHM cases under the notification dated 28.8.2012/1.9.2012 was Sri Shyam Lal-II who retired on 30.11.2013. The bifurcation of jurisdiction on availability of three more additional courts was undertaken by the Administrative Committee, but the jurisdiction of Sri Shyam Lal-II to try all NRHM cases was not rescinded by the Administrative Committee. It was the territorial jurisdiction of cases, other than NRHM cases, that had to be reallocated and were redefined under the fresh notification dated 29.5.2014. To the contrary, the clear intention of the High Court was to continue the trial of NRHM cases that were being tried by Sri Shyam Lal-II by his successor-in-office Sri Atul Kumar Gupta who was posted and nominated under the orders dated 13.2.2014 extracted hereinabove. Thus, the High Court had posted Sri Atul Kumar Gupta in place of Sri Shyam Lal-II in that vacant court by the

order dated 13.2.2014. This direction of the High Court, therefore, even after the resolution of the Administrative Committee dated 30.11.2013 bifurcating the jurisdictions did not take away the authority of Sri Atul Kumar Gupta who is the successor-in-office of Sri Shyam Lal-II to try all NRHM cases. Had it been so, the said specific notification in favour of Sri Shyam Lal would have been rescinded.

The notification dated 29.5.2014 continues to recognize the posting of Sri Atul Kumar Gupta as successor to Sri Shyam Lal and which obviously is an outcome of the posting order of Hon'ble the Chief Justice dated 13.2.2014 extracted hereinabove. Consequently, the notification dated 29.5.2014 has to be read clearly in terms of the decision of the High Court which is binding on the State Government as well as on the court exercising jurisdiction. The State Government cannot be presumed to have denuded Sri Atul Kumar Gupta by its ministerial act of issuing a notification which was only in pursuance of the directions dated 13.2.2014 as duly approved by the competent authority.

The absence of any specific mention of NRHM cases as against the name of Sri Atul Kumar Gupta in the notification dated 29.5.2014 may be a ministerial omission but that does not amount to a patent lack of jurisdiction in the authority of Sri Atul Kumar Gupta to try the NRHM cases. The issuance of the notification dated 29.5.2014 even though is a statutory performance of duty by the State Government but its issuance is on the directions of the High Court and its binding effect as explained hereinabove. The order dated 13.2.2014 appointing Sri Atul Kumar Gupta as successor of Sri Shyam Lal in that very court being clearly established, the said ministerial act of issuance of notification has to be read accordingly. It is not only the sole act

of issuance of a notification which confers jurisdiction or authority to decide a class of cases but it is the binding effect of the directions issued by the High Court that completes the transaction. What is a ministerial act has been explained by the Apex Court in the following terms in the case of ***State of Maharashtra & others Vs. Saeed Sohail Sheikh and others, 2012(13) SCC Page 192*** :-

> *"26. The expressions "ministerial", "ministerial office", "ministerial act", and "ministerial duty" have been defined by* ***Black's Law Dictionary*** *as under :*
>
> *"Ministerial, adj.- [16c] Of or relating to* ***an act that involves obedience to instructions or laws instead of discretion, judgment, or skill*** *the court clerk's ministerial duties include recording judgments on the docket.*
>
> *Ministerial office.- An office that does not include authority to exercise judgment, only to carry out orders given by a superior office, or to perform duties or acts required by rules, statutes, or regulations.*
>
> ***Ministerial act.- An act performed without the independent exercise of discretion or judgment****. If the act is mandatory, it is also termed a ministerial duty.*
>
> *Ministerial duty.- A duty that requires neither the exercise of official discretion nor judgment."*
>
> *27.* ***Prof. De Smith*** *in his book on Judicial Review (Thomson Sweet & Maxwell, 6th Edn., 2007) refers to the meaning given by the courts to the terms "judicial", "quasi-judicial", "administrative", "legislative" and "****ministerial****" for administrative law purposes and found them to be inconsistent.* ***According to the author "ministerial" as a technical legal term has no single fixed meaning. It may describe any duty the discharge whereof requires no element of discretion or independent judgment. It may often be used more narrowly to describe the issue of a formal instruction, in consequence of a prior determination*** *which may or may not be of a judicial character. Execution of any such instructions by an inferior officer sometimes called ministerial officer may also be treated as a ministerial function. It is sometimes loosely used to*

> *describe an act that is neither judicial nor legislative. In that sense the term is used interchangeably with "executive" or "administrative". The tests which, according to Prof. De Smith delineate "judicial functions", could be varied some of which may lead to the conclusion that certain functions discharged by the courts are not judicial such as award of costs, award of sentence to prisoners, removal of trustees and arbitrators, grant of divorce to petitioners who are themselves guilty of adultery, etc. We need not delve deep into all these aspects in the present case. We say so because pronouncements of this Court have over the past decades made a distinction between quasi-judicial function on the one hand and administrative or ministerial duties on the other which distinctions give a clear enough indication and insight into what constitutes ministerial function in contradistinction to what would amount to judicial or quasi-judicial function."*

A perusal of the aforesaid ratio would leave no room for doubt that the issuance of the notification being of the nature as explained in the aforesaid decision, the notification dated 29.5.2014 will be presumed to be not contrary to the orders of Hon'ble the Chief Justice dated 13.2.2014. The notification is only a result of prior determination by the High Court to continue Sri Gupta enabling him to exercise powers over the same subject matter as that by his predecessor Sri Shyam Lal under the notification dated 28.8.2012/1.9.2012.

The powers of the Chief Justice to do so are unquestionable keeping in view the provisions of Rule 4(A) of Chapter III of the Allahabad High Court Rules which includes the powers of the Chief Justice in matters of Mid-term posting and transfers and all residuary matters not allotted to any Committee or Administrative Judges. This being the legal position and there being no indication of any prejudice or failure of justice, the notification dated 29.5.2014 read with the notification dated

28.8.2012/1.9.2012 and the order of the Chief Justice mentioned hereinabove dated 13.2.2014 clearly continues the authority of Sri Atul Kumar Gupta to exercise powers exclusively over NRHM cases at Ghaziabad. From the administrative file of the High Court relating to the issuance of such notifications it also appears that steps have been initiated and the Government has already been communicated with the approval of Hon'ble the Chief Justice, that the said omission in the notifications dated 29.5.2014 specifically about NRHM cases be rectified. There is, therefore, a substantial compliance of procedure in relation to the conferment of the posting and jurisdiction of Sri Atul Kumar Gupta as successor in office of Sri Shyam Lal-II who was already notified to exclusively try NRHM cases. In the light of above, a ministerial omission either by the registry of the High Court or by the State Government will not dissolve the conferment of authority on the successor in office.

To explain further, the authority to adjudicate and declare law on a subject matter is jurisdiction. Enforcing and implementing it is the exercise of jurisdiction. Sri Chaturvedi is right in his submission that existence of jurisdiction and its exercise are two different things. The existence of jurisdiction is dependant on conferment by an act of the authority empowered to confer jurisdiction. It cannot be assumed and it has to come into play only by authority of law. The exercise of power within jurisdiction or any error in relation thereto is only a consequence that follows if jurisdiction exists. This is the difference between lack of jurisdiction and error of jurisdiction. To understand this, the observations made by Lord Reid and Lord Pearce in **Anisminic Ltd. vs. Foreign Compensation Commission (1969) 2 AC 147** in the following words as quoted in Para 12 of **M.L. Sethi vs. R.P. Kapur 1972 (2) SCC Page 427** would be

illustrative :-

> *"12. x x x x The word "jurisdiction" is a verbal coat of many colours. Jurisdiction originally seems to have had the meaning which Lord Reid ascribed to it in Anisminic Ltd. v. Foreign Compensation Commission, 1969 (2) AC 147, namely, the entitlement "to enter upon the enquiry, in question". If there was an entitlement to enter upon an enquiry, into the question, then any subsequent error could only be regarded as an error within the jurisdiction. The best known formulation of this theory is that made by Lord Darman in R. V. Boltan, 1841 (1) QB 66. He said that the question of jurisdiction is determinable at the commencement, not at the conclusion of the enquiry. In Anisminic Ltd. case (supra), Lord Reid said:*
>
> > *"But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive."*
>
> *In the same case, Lord Pearce said:*
>
> > *"Lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an,enquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or, in the intervening stage while*

> *engaged on a proper enquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which the Parliament did direct. Any of these things would cause its purported decision to be a nullity."*

The dicta of the majority of the House of Lords in the above case would show the extent to which `lack' and 'excess' of jurisdiction have been assimilated or, in other words, the extent to which we have moved away from the traditional concept of "jurisdiction". The effect of the dicta in that case is to reduce the difference 'between jurisdictional error and error of law within jurisdiction almost to vanishing point. The practical effect of the decision is that any error of law can be reckoned as jurisdictional. This comes perilously close to saying that there is jurisdiction if the decision is right in law but none if it is wrong. Almost any misconstruction of a statute can be represented as "basing their decision on a matter with which they have no right to deal", "imposing an unwarranted condition" or "addressing themselves to a wrong question". The majority opinion in the case leaves a Court or Tribunal with virtually no margin of legal error. Whether there is excess of jurisdiction or merely error within jurisdiction can be determined only by construing the empowering statute, which will give little guidance. It is really a question of how much latitude the Court is prepared to allow. In the end it can only be a value judgment (see H.N.R. Wade, "Constitutional and Administrative Aspects of the Anismanic case", Law Quarterly Review, Vol. 85, 1969, p. 198). Why is it that a wrong decision on a question of limitation or res judicata 'was treated as a jurisdictional error and liable to be interfered with in revision ? It is a bit difficult to understand how an erroneous decision on a question of limitation or res judicata would oust the jurisdiction of the Court in the primitive sense of the term and render the decision or a decree embodying the decision a nullity liable to collateral attack. The reason can only be that the error of law was considered as vital by the Court. And there is no yardstick to determine the magnitude of the

error other than the opinion of the Court.

In the instant case lack of territorial jurisdiction is being complained of which has to be tested on the principle extracted above in the observation of Lord Pearce "absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an enquiry." The facts of this case and the chain of transactions that led to Sri Atul Kumar Gupta being designated as a Special Judge to succeed to try the subject matter earlier conferred on Sri Shyam Lal has already been detailed above. The preeminently dominant condition precedent of the exercise of constitutional authority by the High Court to confer jurisdiction in the manner above fulfils the formality of authorising Sri Gupta to exclusively try the NRHM cases, and any ministerial omission will not invalidate the exercise of conferment of authority in manner indicated hereinabove. Thus the proceedings before Sri Gupta do not suffer from lack of jurisdiction much less a patent lack of jurisdiction.

Another position that deserves to be clarified is that once a Special Court is created to try a particular class of cases under a special enactment then the issue of '*dominus litus*' stands obliterated and the jurisdiction and place of trial by a particular court presided over by a Judge is governed under orders exercised under these special provisions and would not be effected by any general principles. The conscious act of the High Court to confer jurisdiction as explained hereinabove to a particular Judge in a particular court at Ghaziabad obliterates any arguments seeking to disempower Sri Atul Kumar Gupta from exercising jurisdiction over the NRHM cases exclusively for all the aforesaid reasons and coupled with the reasons given by the learned Magistrate in his order. The argument on the issue of territorial jurisdiction raised by the learned counsel for the

applicant-petitioner deserves outright rejection.

In my considered opinion as well, the aforesaid approach of getting the scam tried in one particular court does not suffer from any administrative or judicial infirmity and rather the same would advance the cause of justice with the entire scam being looked into by one particular court instead of a variety of courts spread over differently as it would result in a likelihood of conflict of appreciation of evidence and obviously might result in a conflict of opinion. The nature of the offences being tried simultaneously by one court relate to the diversion, misappropriation and misutilization of the funds of the National Rural Health Mission that according to the charge sheet and the FIRs as well as the evidence collected indicate a concerted effort through a deep-routed conspiracy to siphon off the funds of the NRHM scam. In such a situation it would not be inappropriate to invoke the principle "extraordinary situations require extra ordinary remedies" for retaining the jurisdiction with the learned Special Judge in the facts of the present case.

The second argument of Sri Gopal Chaturvedi is that the death of the sole government servant who was the co-accused, the offences under the Prevention of Corruption Act under Section 13 cannot be tried and even otherwise the said notification did not relate to the petitioner in any form. Hence, by no stretch of imagination the said offences under the Prevention of Corruption Act cannot be read as part of a larger conspiracy to enable the learned Special Judge to try the petitioner for such offences who is a non-government servant. On a careful study of the FIR, the charge sheet and the cognizance order, the words used are "Section 120-B IPC read with Sections 409 and 420 IPC and Section 13(1)(2) and 13(2)(d) of the Prevention of Corruption

Act." The narration of facts in the FIR, the evidence collected and mentioned in the charge sheet prima facie indicate a clear nexus of all the accused conspiring to misappropriate the funds right from the inception of its allocation and further utilization. The facts which have been narrated in detail in the charge sheet are sufficient to prima facie construe, that the conspiracy along with a government servant indicates a pre-meeting of minds for misappropriating the funds. The facts disclosed in the charge sheet, therefore, cannot be ignored at this stage when charges are yet to be framed. Sri Chaturvedi submits that the position would have been different had the offences under Sections 7, 8 and 9 of the Prevention of Corruption Act been attributed. I am unable to agree with this proposition keeping in view the ratio of the decision in the case of ***P. Nallammal and another Vs. State, 1999 (6) SCC Page 559.*** There also the kith and kin of a former Chief Minister of Tamil Nadu were seeking similar immunity but the same was denied holding that the offences under Section 13 of the Prevention of Corruption Act cannot be said to be unabettable. In the instant case there is no charge of abetment but the charge is of conspiracy. This issue in relation to a non-public servant vis-a-vis Section 3 of the Prevention of Corruption Act has been elaborately dealt with in paragraphs 8 to 10 of the aforesaid decision where conspiracy has also been taken into account. The paragraphs aforesaid are extracted hereinunder :-

> *8. Before dealing with the contention advanced by the appellants we may point out that Section 4 of the PC Act confers exclusive jurisdiction to Special Judges appointed under the PC Act to try the offences specified in Section 3(1) of the PC Act. To understand the exclusively of such jurisdiction it is advantageous to extract Section 4(1) of the PC Act as under :-*
>
> *"4.(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."

9. The placement of the monosyllable "only" in the sub-section is such that the very object of the sub-section can be discerned as to emphasise the exclusivity of the jurisdiction of the Special Judges to try all offences enveloped in Section 3(1). That can be further noticed while reading that sub-section. It is as follows :-

"3. (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)."

10. Thus, clause (b) of the sub-section encompasses the offences committed in conspiracy with others or by abetment of "any of the offences" punishable under the PC Act. If such conspiracy or abetment of "any of the offences" punishable under the PC Act can be tried "only" by the Special Judge, it s inconceivable that the abettor or the conspirator can be delinked from the delinquent public servant for the purpose of trial of the offence. If a non-public servant is also a member of the criminal conspiracy for a public servant to commit any offence under the PC Act, or if such non-public servant has abetted any of the offences which the public servant commits, such non-public servant is also liable to be tried along with the public servant before the Court of a Special Judge having jurisdiction in the matter."

There is one thing which deserves mention at this very stage is that the possibility of amendment in the charges and addition thereto keeping in view the nature of the allegations cannot be ruled out in future. This, therefore, would be a premature stage to presume that no other offence can be tried by

the Special Court. The offences in relation to a non-government servant which connect him with the conspiracy of misappropriation of public funds with the aid of a government servant, would not vanish merely because the government servant has died. This would clearly depend upon the evidence and the facts of the case that would ultimately determine the framing of the charge and its consequential trial. Not only this, the Court has ample powers to add charges even during the course of the trial.

From a perusal of the FIR, charge sheet and cognizance order, it may not be said at this stage that no offence under the Prevention of Corruption Act has been committed by the applicant. The cognizance is taken of the offence and not of the person. The charges are framed in relation to the offence committed which are tried. The question is of the link of a non-government servant to such an offence which may be relatable to the Prevention of Corruption Act, 1988. In the instant case the material on record does indicate prima facie such connection whereas in the case of ***State Vs. Jitender Kumar Singh (supra)*** which has been relied upon by the learned counsel for the applicant, the Apex Court came to a conclusion that there was no offence under the Prevention of Corruption Act for being tried as against the non-government servants involved therein that arose out of the Bombay case as discussed in the said judgment. In the circumstances, it would be absolutely premature to presume on the facts of the present case of there being no evidence or linkage as suggested by the learned counsel for the petitioner when prima facie a charge sheet and the cognizance order do disclose such links.

The judgment in the case of ***Vivek Gupta Vs. CBI and***

another, 2003 (8) SCC Page 628 also sheds light in relation to non-government servants for holding the trial simultaneously by the same court, even though the facts in the present case are nearer to the case of ***State Vs. Jitender Kumar Singh (supra)***. Inspite of this the judgment in the case of ***State Vs. Jitender Kumar Singh (supra)*** itself holds that the offences under the IPC coupled with the Prevention of Corruption Act can be tried by the Special Judge. Thus, the Special Judge is not denuded of any authority or jurisdiction in the exercise of such powers and no miscarriage of justice has resulted nor any prejudice appears to have been caused to the applicant. In the absence of any such occasion of failure of justice, the mere death of a co-accused public servant for the reasons aforesaid does not take away the power and authority of the learned Special Judge to try the applicant for the offence of conspiracy along with the offences under the Prevention of Corruption Act.

What is *'Conspiracy'* has been spelt out while considering the definition under Section 120-A of IPC by a learned Single Judge of the Delhi High Court in the case of ***Natwar Rateria Vs. CBI, decided on 20.2.2015, Crl. M.C. No.4648 of 2014.***, paragraphs 12 to 16 of the said judgment are extracted hereinunder :-

> *"12. Before examining the respective contentions of both the parties, it is necessary to consider the provisions of Section 120A of IPC, which reads as under :-*
>
> *"120A. Definition of criminal conspiracy.- When two or more persons agree to do, or cause to be done, -*
>
> *(1) an illegal act, or*
>
> *(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy :*
>
> *Provided that no agreement except an*

agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial where the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

13. The law with regard to criminal conspiracy has been laid down and has been defined under Section 120A IPC, as per which when two or more persons agree to do or cause to be done (i) an illegal act or (ii) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act beside the agreement is done by one or more parties to such an agreement in pursuance thereof and ***it is immaterial whether the illegal act is the ultimate object of such agreement or is merely incidental to that object****.*

14. The elements of a criminal conspiracy have been stated to be (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement or by any effective means, (d) in the jurisdiction where the statute required an overt act. ***Thus, the essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no over act need be done in furtherance of the conspiracy and that the object of the combination need not be accomplished****, in order to constitute that object of the conspiracy need not always be "an offence" but it may be any "illegal act". The encouragement and support which co-conspirators give to one another rendering enterprise possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. Offence of criminal conspiracy consists not merely in the intention of two or more but in the agreement of*

two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only it is not indictable. When two agreed to carry into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means. The said proposition was laid down by the Hon'ble Supreme Court in the case titled 'K. Hasim vs. State of Tamil Nadu', AIR 2005 SC 128.

15. It is also an established proposition of law that conspiracies are generally hatched in secrecy and hardly any direct evidence is available to prove the same and it is in this background that Section 10 of the Indian Evidence Act was enacted providing a special law of evidence for providing the conspiracy which reads as under :-

"10. Things said or done by conspirator in reference to common design- Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

16. Section 10 has been deliberately enacted in order to make acts and statements of a co-conspirators admissible against the whole body of conspirators because of the nature of the crime and the words "common intention" signify a common intention existing at the time when the thing was said, done or written by one of them but it had nothing to do with carrying the conspiracy into effect. Yet another proposition of law is that a conspiracy in itself may be a combination of may sub-conspiracies and the liability still remains of the person who may be a party to only one sub-conspiracy and he is still liable under the criminal law even if he may be ignorant of remaining sub-conspiracies."

Applying the aforesaid principles on the facts of the present case, it is clear that there are clear allegations and also evidence prima facie collected to indicate conspiracy that connect the acts and omissions of Late Sri G.K. Batra, the government servant, with the applicant-company and its officials and agents who got themselves introduced in the manner indicated in the charge sheet along with the active aid of Late Sri G.K. Batra. Consequently, all arguments that have been advanced by Sri Chaturvedi on the strength of the judgment in the case of ***State Vs. Jitender Kumar Singh (supra)*** do not come to his aid as the facts of the present case are not identical except for the similarity of the death of the government servant. Consequently, the second argument also does not hold water.

In view of the conclusions drawn hereinabove, the order impugned dated 28.2.2015 is upheld and the proceedings before Sri Atul Kumar Gupta are treated to be well within his jurisdiction in all NRHM cases. In order to remove any doubt in this regard it is further directed that Sri Atul Kumar Gupta would continue to have jurisdiction over such cases till his successor joins on the said post. It may also be put on record that according to the annual list of transfer and posting Sri Atul Kumar Gupta is under orders of transfer, but on account of no fresh notification for the court occupied by him, his transfer order is under abeyance till his successor joins.

The Registrar General of the High Court is directed to take appropriate steps keeping in view the observations made in this judgment for appropriate notifications to issue in the changed circumstances as Sri Atul Kumar Gupta is under orders of transfer. Once the proposal is forwarded by the High Court for issuing of any fresh notification for the successor in office, the State

Government is expected to act fast in the matter and not delay the issuance of any formal notification so that the functioning of the Court in relation to NRHM cases being exclusively tried at Ghaziabad is not affected.

Subject to the aforesaid directions, the present application is dismissed.

Order Date :- 1.5.2015
Anand Sri./-