AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 403 of 2016

- Kaushal Kishore Yadu S/o Shri N.L. Yadu Aged About 52 Years R/o Panjabi Colony Dayalband, P.S. Civil Line, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh. **--- Applicant**

Versus

1. State of Chhattisgarh through In Charge Of Police Station E.O.W./ A.C.B. Raipur, District Raipur, Chhattisgarh.

2. Additional Director General, Anti Corruption Bereau, Telibandha Raipur, District Raipur, Chhattisgarh.

3. Girish Sharma S/o Shri R.P. Sharma Aged About 51 Years R/o H I G 02/441, Sector- I, Pandit Dindayal Upadhyay Nagar, Raipur, District Raipur, Chhattisgarh.

4. Arvind Singh Dhruv S/o Ganesh Singh Dhruv Aged About 44 Years R/o A.K. Road, Mohdapara Raipur, District Raipur, Chhattisgarh.

5. Jeet Ram Yadav S/o Rambharosa Yadav Aged About 56 Years R/o Shakti Nagar, In Front of Arogya Hospital, Raipur, District Raipur, Chhattisgarh.

For the applicant	:	Mr. Surendra Singh, Sr. Advocate with Mr. Peeyush Bhatia, Adv.
For the State/R-1 & 2	:	Mr. J.KT. Gilda, Advocate General, Mr. Ashish Shukla, Govt. Adv. & Mr. Sangharsh Pandey, Dy.Govt. Adv.
For respondents 3 & 5	:	Mr. Anil Khare & Mr. Akhilesh Mishra, Advocate
For Respondent no.4	:	Mr. Roop Naik, Advocate

CRR No. 484 of 2016

- Sudhir Kumar Bhole S/o Late Shri Prakash Bhole Aged About 40 Years R/o Senior M.I.G. - 316, Vijeta Complex, New Rajendra Nagar P.S. New Rajendra Nagar, Raipur, Tah. & Distt. Raipur Chhattisgarh. **---- Applicant**

Versus

1. State of Chhattisgarh through In Charge of Police Station E.O.W./ A.C.B., Raipur, Distt. Raipur Chhattisgarh.

2. Additional Director General Anti-Corruption Bureau Telibandha Raipur, Distt. Raipur Chhattisgarh.

3. Girish Sharma S/o Shri R.P. Sharma Aged About 51 Years R/o H.I.G. 02/441, Sector-I, Pandit Dindayal Upadhyay Nagar, Raipur, Distt. Raipur Chhattisgarh.

4. Arvind Singh Dhruv S/o Ganesh Singh Dhruv Aged About 44 Years R/o A.K. Road Mohdapara Raipur, Distt. Raipur Chhattisgarh.

5. Jeet Ram Yadav S/o Rambharosa Yadav Aged About 56 Years R/o Shakti Nagar, in front of Arogya Hospital, Raipur, Distt. Raipur Chhattisgarh. **--- Respondents**

For the applicant	:	Mr. Avininder Singh. Advocate with Mr. Peeyush Bhatia, Advocate
For the State/R-1 & 2	:	Mr. J.KT. Gilda, Advocate General, Mr. Ashish Shukla, Govt. Adv. & Mr. Sangharsh Pandey, Dy.Govt. Adv.
For respondents 3 & 5	:	Mr. Anil Khare & Mr. Akhilesh Mishra, Advocates
For Respondent no.4	:	Mr. Roop Naik, Advocate

Hon'ble Shri Justice Goutam Bhaduri

CAV ORDER

(Reserved on 12.09.2017)

(Delivered on 15.09.2017)

1. These two revisions were initially decided by this Court by order dated 03.03.2017 wherein this Court directed for impleadment of respondents 3 to 5 as accused in trial and directed thereafter to proceed further in trial. The said order of this Court was challenged before Hon'ble the Supreme Court by filing Criminal Appeal No. 939-940 of 2017. The Hon'ble Supreme Court by order dated 23rd August 2017 set aside the orders passed by this Court and remanded the case. The Supreme Court observed that the order of High Court was arrived without weighing the interest of justice in having the respondent (appellant therein) as accused instead of their utility as witness and the order was held to be erroneous as it considered there being material against them. It was thereafter observed that while adjudicating afresh the High Court shall not take into account the statements made by the respondents 3 to 5 (who were

proposed to be accused) made either u/s 161 or 164 of Cr.P.C., and further will also consider that in view of the fact that since the evidence has already commenced whether the interference should have been made to make the respondent as accused. On such premises the revision has come again here before the High Court for reconsideration afresh

2. In order to give a bird's eye view, brief facts would be necessary. The record goes to show that the Anti Corruption Bureau (for short ACB) and Economic Offences Wing (for short EOW) had registered an FIR on 12.2.2015 after conducting a raid in the head office of Chhattisgarh State Civil Supplies Corporation, Raipur, known as Nagrik Aapurti Nigam (for short, NAN) and also at some of the residential premises of the employees and officers of NAN. In such raid, cash amounts were recovered from few of the officers and persons. It is alleged that the said persons along-with other officers of NAN were carrying out organized activities whereby different rice millers were forced to pay the amounts for acceptance of rice for the custom milling by the State otherwise the goods were refused to be accepted by citing various reasons by the officers of the State. After the investigation, 16 persons were charge- sheeted and two officers remained for want of permission of sanction for prosecution. However, it was submitted by the State that subsequent sanction has been granted for prosecution. During the course of trial, accused Kaushal Kishore Yadu who is applicant in Criminal Revision No.403 of 2016 filed application under Sections 193 & 319 of Cr.P.C., and accused

Sudhir Kumar Bhole who is an applicant in Cr.Revision No. 484 of 2016 moved an application u/s 319 of Cr.P.C., wherein prayer was made to implead the other persons in the array of accused whose names were initially found in the FIR. The said application was dismissed by the trial Court by order dated 13.04.2016. Against such order the revision was preferred before the High Court. The High Court allowed the revision and directed that Girish Sharma who is respondent No.3, Arvind Singh who is respondent no.4 and Jeet Ram Yadav who is respondent no.5 to be made as an accused and the trial was ordered to be commenced against them. Against such order, the respondent went to Supreme Court and the Supreme Court by its order dated 23rd August, 2017 has set aside such order of the High Court and remanded the revision for fresh adjudication.

3. Mr. Surendra Singh, learned Senior Counsel assisted by Mr. Peeyush Bhatia appearing for counsel for the applicant in Cr.R.No. 403/2016 would submit that the evidence in this case would prove that respondents 3 to 5 along-with other accused Shiv Shankar Bhatt are neck deep involved in the offence and further the documents would show that the recovery of money by the arm twisting method started way back in the year 2011. He further referred to the submission made before the Supreme Court that as per the prosecution itself they contended that the prosecution has sufficient material against the proposed accused and they could be separately prosecuted in a separate trial. It is further submitted that even if the cognizance is taken as of now and in case subsequently cognizance is taken after they are

made approvers, it will not jeopardize the the case of prosecution as the evidentiary value of approver and accomplice would be one and the same. He further submits that since there would be apprehension to prosecute the witness consequently the witness will depose according to the wish and will of the prosecution, as a result, the applicant accused will not get any fair opportunity of trial. However, it is further contended that on the other hand, if the cognizance is taken post pardon, the fear of making a statement in a particular way would not exist, therefore, making them accused would be necessary.

4. He would further submit that the contents of charge sheet would show that there is overwhelming evidence against respondents 3 to 5, therefore, *prima facie* case is made out against them and in such situation subsequently as and when the application is made under section 319 of Cr.P.C., and they would be made accused and at such later stage, it will result into *denovo* trial. It is stated that as many as 212 witnesses are to be examined and after part examination, the order of *denovo* trial would be waste of time and would be prejudicial to the other accused. It is stated that therefore, even if the cognizance is taken at this moment or sometime after, the position of respondents 3 to 5 would remain same. It is further submitted that so far as the evidence is concerned, mainly it is attributed against Shiv Shankar Bhatt through whom the respondents are also roped in and in the facts of the present case even as of now 4 witnesses who were examined have only stated about some transportation and there will be no requirement of re-

summoning them. Therefore, the application which is moved to implead the respondents as accused would not prejudice either the prosecution or the respondents/proposed accused.

5. He would further submit that Mr. Girish Sharma, who was PA to Managing Director, Civil Supplies Corporation (NAN) was later designated as Deputy Manager whereas Arvind Singh Dhruv was designated as Steno to Shiv Shankar Bhatt and Jeet Ram Yadav who was Senior Assistant as Steno in the office of Shiv Shankar Bhat and on a raid being conducted, Rs.1,61,05,000/- was recovered from the office of Shiv Shankar Bhatt whereas Rs. 20 lakhs was recovered from the office room of Girish Sharma and in addition, Rs.1,78,800/- was recovered from the house of Girish Sharma. It is further submitted that Rs.1,78,800/- which was recovered from the house of Girish Sharma has not been shown in the charge sheet. He further submits that Girish Sharma owns a shopping mall which would be evident from the document and from Arvind Singh Dhruv, Benami property along-with diary was recovered. Like wise, from Jeet Ram Yadav, Rs.36,06,000/- and different pass books were recovered. So cash and property worth lakhs of rupees were recovered from each of the proposed accused and no explanation has been given as to how the money was available with them. Therefore, by virtue of section 20 of the Prevention of Corruption Act 1988, the presumption of guilt arises. It is further submitted that the explanation which was given that they were holding money on behalf of Senior Officers cannot be accepted.

6. He referred to a case law reported in ***AIR 2006 S.C. 825***

(State of Maharashtra Vs. Rashid Babubhai Mulani) and would submit that only bare explanation of a person cannot be accepted and the Pen-drive which was recovered from Girish Sharma wherein the details were fed would show that from March to June, the money was received and the account thereof was maintained. Therefore, he was very much involved in the conspiracy and the document would show that the seizure made from Shiv Shankar Bhat will prove that the payment was made to Girish Sharma and the account starts before the year 2011 that is much prior to joining of M.D., Mr. Tuteja and Chairman Dr. Shukla. He further submits that from Arvind Dhruv, the documents were seized which proves the payment made to various persons. He also referred to the telephonic conversation made between the accused and Managing Director and would submit that according to the prosecution, there is enough material available to hold that respondents 3 and 5 are guilty. Therefore, as and when these facts came on record, the applicants moved an application to implead them as a party.

7. He further referred to ***AIR 2012 S.C. 1485 (Rattiram Vs. State of M.P.)*** and would submit that in the facts and circumstances of the case, the fair trial which is the right of the victims should be accorded to him as the facts of the instant case will suggest that the prosecution has been pressurizing respondents to give statements in a particular way. He further submits that under the circumstances, the application to implead the respondents as accused should have been allowed.

8. Mr. Avninder Singh, learned counsel appearing for the applicant Sudhir Kumar Bhole in Criminal Revision No.484 of 2016 would submit that after remand of the revision by the Supreme Court, if the statements u/s 161 & 164 of Cr.P.C., made by the proposed accused are eliminated, even in such a case there are ample evidence in the trial so as to inculpate the respondents as accused. He would submit that initially the FIR was made on 12.02.2015 wherein 27 persons were named which includes the name of Arvind Dhruv at Serial no.2, Jeet Ram Yadav at Serial No.3 and Girish Sharma at Serial No.8 whereas applicant herein Sudhir Kumar Bhole was at Serial No.15. While going through the FIR it is contended that on telephone interception certain information was received on 12.02.2015 that illegal money was being transacted and received so as to accept the custom milled rice and low standard rice and other articles like salt etc., and the FIR includes the names of Arvind Dhruv, Jeet Ram Yadav and Girish Sharma and it is stated that the FIR itself shows that Girish Sharma was acting as Personal Assistant to Managing Director of NAN to handle the money, so involvement of Girish Sharma cannot be ruled out.

9. It is further stated that since as per the FIR the money was circulated through Girish Sharma, who was P.A., to Managing Director of Civil Supplies Corporation (NAN) and in respect of Arvind Dhruv it is stated that he was the Steno to Shiv Shankar Bhatt, Manager at the main office of NAN, Raipur, their involvement has been established as accused. It is stated that even the statements of these witnesses u/s 161 & 164 of Cr.P.C. are excluded, their names were in the FIR.

Further it is contended that the charge sheet was filed along-with seizure documents. The seizure document would show that one laptop was seized from the office of Girish Sharma. Further certain bags and pen drive were seized from Arvind Dhruv and further Rs.31,800/- was seized from the office and around Rs.36 lakhs were seized from Jeet Ram Ydav and in addition, a brief case from the office of Shiv Shankar Bhatt was also seized. So the involvement of respondents in the case is very much there. It is further stated that the list of the witnesses with charge-sheet would show that Girish Sharma would prove certain conversations made between Dr. Alok Shukla, Arvind Dhruv, Anand Dubey, Anil Tuteja, Yash Tuteja. Therefore, certainly Girish Sharma has inculpated Arvind Dhruv who is one of the proposed accused. Like wise Arvind Singh Dhruv would prove that 20 lakhs were given to Girish Sharma which was meant for the share of Dr. Alok Shukla and Anil Tuteja and the said amount was given to Girish Sharma at the instance of Shiv Shankar Bhatt, therefore, the statement of Arvind Dhruv inculpates Girish Sharma. It is further submitted that according to the prosecution Arvind Singh would prove the conversations made between him and Girish Sharma along-with others i.e., Shiv Shankar Bhat, Amritanshu Shukla, Ashok Soni, Anil Singh and Ashu. It is also contended that as per charge-sheet, Arvind Dhruv would also prove the transactions made in diary. Similarly, as per the charge-sheet, Jeet Ram Yadav would prove certain mobile conversations made in between 4.02.2015 and 15.01.2015. He will also prove that how the irregularities were committed in procurement and supply of

rice in utter violation of rules. Therefore, all the proposed accused have stated some part of commission of crime against others sans the statement made u/s 161 & 164 of Cr.P.C. and the offence is prima facie shown to have been committed by each of the respondents 3 to 5.

10. It is further submitted that as per the charge-sheet, Girish Sharma would prove that out of Rs.20 lakhs seized from him, Rs.10 lakhs each was meant for the share of Dr. Alok Shukla and Anil Tuteja and he will also prove that a pen drive which was seized from him would show the details contained in the seizure slip. It is also contended that this witness will further prove that the amount was also used for payment of personal/private bills or Air Tickets etc., of Dr. Alok Shukla and Anil Tuteja. It is stated that according to the prosecution, Girish Sharma will also prove that different amounts were received by Anil Tuteja from different transporters and others. Further this witness will also prove the mobile conversations made among Alok Shukla, Arvind Dhruv, Anand Dubey and Anil Tuteja and Yash Tuteja on different dates between 11.12.2014 to 12.02.2015. It is further submitted that as per the charge-sheet, Girish Sharma would prove that by receipt of cash amount, the bills of Ashok Shukla and Anil Tuteja are paid. It is stated that therefore the other witnesses would be deposing against each of the respondent and their involvement in crime. It is stated that as the case is u/s 120-B of IPC also, therefore, the respondents cannot be separated for that.

11. It is further contended that certain documents which were seized and the loose papers which are filed by the

prosecution would show that Rs. 21,78,800/- was deposited in the bank and the bifurcation of amount would show that 20 lakhs was seized from the office of Girish Sharma and Rs.1,78,800/- was seized from his house. Therefore, the accumulated amount would show that Girish Sharma was very much involved in the crime. It is further contended that as per the seizure memo, the computer print outs were seized from Girish Sharma and a slip dated 12.2.2015 was seized from Arvind Dhruv and when the seizure documents are seen, again the amount which was received by Girish Sharma would show that different amounts were paid to different persons and Girish Sharma himself has also retained certain amounts which would show that Girish Sharma was privy to conspiracy.

12. He further referred to the names of Jeet Ram Yadav and Arvind Singh Dhruv who are shown as Senior Assistant and Steno Typist respectively (at particular Serial Nos. 5 and 10 in different pages) and submits that the money which was marked against them was distributed out side the NAN and Girish Sharma and other proposed accused were very much involved in the conspiracy. He further referred to certain documents which were seized from Shiv Shankar Bhatt, Manager in the Main Office of Civil Supplies Corporation (NAN), Raipur and would show that name of Girish Sharma apparently appears to be the recipient of money.

13. It is stated that the document received from Arvind Dhruv would show that it reflects the name of Girish Sharma and further the documents show that names of Jeet Ram Yadav and Arvind Singh Dhruv repeatedly appear. So each

document *inter-se* inculpate each other.

14. The counsel further referred to the statement of one Thanu Ram Anant recorded u/s 161 Cr.P.C., and would submit that as per the statement, the entire allegations on Girish Sharma cannot be diluted when he was very much involved in the conspiracy of offence. He further submits that the FIR starts with the fact that the information was received that Arvind Singh was going to Girish Sharma's office with huge money which was intercepted and thereafter alone FIR was registered. It is stated that it would be evident from telephonic conversation which was made on 16.01.2015 which gave rise to investigation.

15. It is further submitted that the FIR speaks of conspiracy u/s 120-B of IPC and the same is shown by the contents of the pen-drive seized during the enquiry but not brought and produced. So under the facts and circumstances of the case, he referred to ***AIR 1968 SC 594 (Lt. Commander Pascal Fernandes Vs. State of Maharashtra)*** and submits that the power of the Court is not circumscribed to obtain evidence of any person and in order to find whether the testimony of the approver is likely to advance the interest of justice, there should have been material before the Court and in this case, the statement would show that the entire material is against respondents 3 to 5. He also referred to a case law reported in ***2014 (12) Scale page 89 (R.N. Agrawal Vs. R.C. Bansal)*** and submits that when the complicity in commission of crime can be *prima facie* gathered from the material available on record, the Court must exercise the power u/s 193 of Cr.P.C.

16. Per contra, Shri J.K.T. Gilda learned Advocate General appears on behalf of the State/respondents 1 & 2 and defending the order of the Court would would submit that this Court has to exercise the jurisdiction u/s 397 of Cr.P.C., and has to appreciate what was the material available on the date when the trial Court has passed the order. It is contended that on 24.07.2015, the application u/s 319 and 193 of Cr.P.C., was filed and the prayer was only confined to make the respondent accused by virtue of section 319 of Cr.P.C. He further submits that the State has taken a categorical stand that it is the prerogative of the State to implead any accused or prosecute him and however the power is vested with the Court whether to add any person as accused or not. He refers to a decision rendered in ***AIR 2017 SC 540 [Common Cause (A Registered Society) Vs. Union of India]*** and would submit that the loose documents on which the applicants rely cannot be accepted as evidence.

17. It is further contended that only challenge in this revision is part of the order passed u/s 319 of Cr.P.C. Therefore, having made submission before the Supreme Court that the case do not fall u /s 319 of Cr.P.C., they are estopped to challenge the order before this Court. It is further submitted that as per the case law reported in ***2010 (2) Maharashtra Law Journal (Ashok Ghanshyam Kamble Vs. CBI)*** the application for joining a particular person cannot be made by other accused. It is prerogative of the prosecution to file such application. He further submits that the rejection of application u/s 319 was before framing of the charge since

the validity of the order has to be adjudged on the date of application, the charges having been framed and 4 witnesses having already been examined, the stage for such prayer has already been passed. Further referring to a case law reported in ***(2000) 3 SCC 262 – Michael Machado Vs. C.B.I.,*** it is submitted that the power u/s 319 of Cr.P.C., can only be invoked after the evidence is collected during trial and in this case the evidence is being recorded after filing of the application, therefore, the same is not tenable. He further refers to ***(2014) 3 SCC page 92 – Hardeep Singh Vs. State of Punjab*** and would submit that the ratio in this case has been laid down by the Supreme Court that the court can only exercise power u/s 319 of Cr.P.C., only after the trial proceeds and commences with recording of evidence. Going thorough the judgment he would submit that the prima facie case has to be established from the evidence led before the Court and it should be strong enough to ultimately hold conviction.

18. It is further contended by the State that section 319 of Cr.P.C., does not give right to the accused person who are facing trial to move an application seeking impleadment of another accused i.e., the present accused/ respondents 3 to 5. Referring to ***AIR 1968 Bombay 400***, ***Lakshman Das Chaganlal Bhatia Vs. The State*** it is contended that the provisions of Section 319 of Cr.P.C., are enabling one for joinder of an accused which do not give right to other accused to insist to be joined as accused. It is further submitted that the accused do not get a right to challenge the order of the Court wherein an application u/s 319 of

Cr.P.C., was dismissed by way of revision unless it adversely affects the right of the person making the request. He referred to ***(2007) 14 SCC 783 Paul Varghese Vs. State of Kerala*** and would submit that in absence of any sanction, the provisions of Section 319 of Cr.P.C., cannot be invoked.

19. Mr. Anil Khare, Counsel for the respondents No. 3 & 5 would submit that the finding of the Supreme Court in this case whereby the remand was made is clear as it has been held that section 306 of Cr.P.C. would not be applicable. Reading the para 8 of the order of the Supreme Court dated 23rd August, 2017, it is submitted that the entire order of the High Court has been set aside. Therefore, all the facts are to be considered afresh. It is stated that though the FIR was named against 27 persons but actually the charge sheet has been filed against 16 persons after the enquiry and the investigation. It is stated that two were left out for want of sanction but subsequently sanction has been accorded, therefore, the part of the sanction in prosecuting or summoning the respondents as accused would be a necessary requirement.

20. He referred to section 19 of the Prevention of Corruption Act (for short 'PC Act') and would submit that in any case if the sanction is not obtained, the public servant cannot be prosecuted under the provisions of the PC Act. So without there being any sanction, no summoning can be made either u/s 193 Cr.P.C or section 319 of the Cr.P.C. He went through the definition of government company and the public duty as explained in the PC Act and submits that the admitted facts

are that the respondents were working as government employees therefore, the sanction would be necessary. He referred to the case law reported in ***(2013) 10 SCC 705 Anil Kumar Vs. M.K. Aiyappa*** and submitted that in order to prosecute or to take cognizance under the PC Act, sanction would be necessary. He further referred to a decision rendered in ***(2016) 9 SCC 598 – L. Narayana Swamy Vs. State of Karnataka*** and would submit that summoning would mean taking cognizance and the same cannot be made if the sanction has not been obtained u/s 19 of the PC Act.

21. The counsel for respondents No. 3 & 5 further referred to the order dated 15.11.2016 and submits that the applicants have adopted 'pick and choose' method as though the number of persons were made accused/respondents to summon them, but the applicants withdrew the prayer against few of them which would mean to show that the applicants themselves are not bona-fide and have acted in wreaking vengeance. He further went through the charge sheet and would submit that in the facts of this case, the respondents who are only working as PA and steno to the Managing Director/ Chairman, their evidence would be necessary in the interest of justice to prove the guilt against the persons who have committed offence of a higher degree. Consequently the decision of the prosecution to cite them as witnesses cannot be faulted.

22. Mr. Anil Khare further referred to the decision rendered in ***Dilwar Singh Vs. Parvinder Singh @ Iqbal Singh(2005) 12 SCC 709*** and would submit that the

Prevention of Corruption Act being a special statute unless and until sanction is obtained, cognizance cannot be taken. It is further stated that as per the order of the Supreme Court, this Court has to weigh the addition of the respondents as accused or as a witnesses as what is the better utility for the prosecution. He submitted that under the facts and circumstances, if the respondents are made accused then in such eventuality, the entire prosecution will fail which would be evident from the conduct of the applicants as the applicants though initially had chosen to add the other persons as accused who were not added as accused but subsequently deleted such prayer to add them as a result, policy has been adopted which speaks a lot.

23. The counsel further referred to a decision rendered in ***Chandran alias Manichan alias Maniyan Vs. State of Kerala (2011) 5 SCC 161*** and would submit that the prosecution will be the sole judge to decide who is the best suitable person to prove their case and stated that in case of ***(2014) 3 SCC 92 (Hardeep Singh Vs. State of Punjab)*** and ***AIR 2013 S.C. 3018 (Dharam Pal Vs. State of Haryana)*** which has been decided by the Full Bench the issue was placed before the Court about the applicability of section 19 of the Prevention of Corruption Act. He submitted that at the most without prejudice the allegations may be under section 13(1)(d) of the Prevention of Corruption Act, 1988 against the respondents, therefore, even if the money which was alleged to be found, the presumption of section 20 of PC Act would not be applicable. Consequently the order whereby the cognizance was refused by the court below is

well merited and it do not call for any interference.

24. Mr. Roop Naik, learned counsel appearing for respondent No.4 has adopted the arguments advanced by learned counsel for respondents 3 & 5.

25. I have heard learned counsel for the parties at length. The initial order herein passed by this Court on 03.03.2017 was subject of challenge before the Supreme Court. The Supreme Court has set aside the order passed by this Court and remanded the case by order dated 23rd August, 2017 in Criminal Appeal No.939-940 of 2017. In view of such facts, it was of utmost important to go through the order of the remand so as to know on what issue Their Lordship expected this Court to decide the revision afresh. At para 6 of the order, the Supreme Court has held that the submission of respondents (proposed accused) that the prosecution was entitled to cite 3 original accused as witnesses in the given facts situation having regard to larger interest of justice to strengthen the prosecution case against more serious accused cannot be held to be without substance. It was held that the same could be done even without recourse to section 306 of Cr.P.C. Consequently, the order records that at this juncture, it is clear that application of section 306 of Cr.P.C., may not be relevant. It was further held that it is open for the Court to finally decide whether the cognizance ought to be taken or not can still be adjudicated but the same is to be considered after compliance of the relevant considerations and the decision of the prosecutor to cite the respondents as witnesses do not bind the Court and the same can be interfered in the interest of justice.

26. Further at para-7 of the order of Supreme Court while setting aside the order of this Court, the Supreme Court has held that the decision of the High Court was not arrived at by weighing the interest of justice by having appellants (respondents herein) as accused instead of their utility as a witnesses. Therefore, this Court has to examine whether the correctness of decision of the prosecution to add the respondent as witnesses can be faulted with, at this stage. Further the question was also made open whether rejecting the proposal of prosecution to cite the respondents as witnesses will jeopardize the prosecution case against more serious accused or not. Necessarily therefore this aspect has to be examined in the given set of facts. Therefore, the Court has to evaluate about the weighment of interest of the respondent as a utility to the witnesses or an accused would be more beneficial or not or if the respondents are not all added as accused whether it will jeopardize prosecution case.

27. In order to find out the answer to the question, the records were perused. The records would show that an application (I.A.No.2/2016) was moved in Criminal Revision No.403/2016 for deleting the names of respondents 6 to 19 and by order dated 15.11.2016 the names of respondents 6 to 19 were removed from the array of the respondents. Likewise, in Criminal Revision No.484/ 2016, an application for deletion of the names of respondents 6 to 32 was moved which was allowed by the Court. Meaning thereby the applicants who initially sought for addition of other respondents to be summoned as accused their names were deleted leaving

behind only 3 of the respondents. The conduct, therefore, would certainly show that pick and chose policy was adopted by the applicants/ accused. This necessarily took this Court to examine the charge sheet as to why the request for addition of 3 accused persons has been sought.

28. Reading of the charge sheet would reflect that at the relevant time, the Civil Supplies Corporation i.e., Nagrik Apoorthi Nigam (NAN) has its head office at Raipur wherein the Managing Director as well as Chairman used to sit. In the District headquarters of all over the State, the District Managers are posted and NAN has godowns for procurement of rice and the office structure and paraphernalia includes the Quality Inspectors, Godown Keepers, Technical Assistant etc. At the relevant time, the Managing Director of the State Warehousing Corporation was Anil Tuteja and its Chairman was Dr. Alok Shukla both are I.A.S. officers and other accused namely Shiv Shankar Bhatt (Manager of PDS), M.N. Prasad Rao (as Incharge of procurement and transportation), Sandeep Agrawal (Quality Incharge) were working under the instructions of the Managing Director and so on the other higher officers. In order to procure rice, the custom mill rice quality was being checked for which in the headquarter, the quality cell also operates which is under the control of Managing Director and all the officers were required to go into the field and after examination of samples and having found quality to be acceptable, the same was accepted to be kept in the godown.

29. The charge sheet reflects that the information was received that in the process of procurement of such rice,

transportation, storage and distribution, organized corruption was being committed, thereby, certain phone conversations were intercepted. On interception of Phone on 12.02.2015 it was found that Shiv Shankar Bhatt had instructed Arvind Dhruv (R-4) to give the amount of Rs.20 lakhs to Girish Sharma R-3 who was P.A., to the M.D. Anil Tuteja. Therefore immediately crime was registered against Shiv Shankar Bhatt and 26 others. On a raid being made, an amount of Rs.20 lakhs was seized from the office room of Girish Sharma (R-3) and the enquiry revealed that the same was sent by Shiv Shankar Bhatt through Typist Arvind Dhruv (R-4), out of which, Rs.10 lakhs was to be paid to Alok Shukla, Chairman and Rs.10 lakhs was to be paid to Yash Tuteja, son of Anil Tuteja, Managing Director. Subsequently from the office of Shiv Shankar Bhatt, Rs.1,62,97,500/- and 130 pages of collection details were seized. Thereafter, on a raid being conducted at the office and house through out the State from other officers of NAN, different amounts were seized. In all, amounts of Rs.3,43,96,965/- was seized and the persons from whom the recoveries were made were the Field District Managers, Quality Inspectors, Godown Incharges, Technical Assistants etc.

30. It was further stated in the charge sheet that the officers created deliberate barriers at the head office and at the offices of the District in the State for procurement of rice and other food products and in order to avoid such barriers indirect pressure was created on the rice millers about the quality, availability of space, forged movement of the goods, transportation etc., and since the rice millers have used to do

business as such they could not complain so as to continue their business in future. Consequently all over the State, the illegal money were recovered and routed to the main head office as a collection office, thereafter the money were distributed to all the officers including the MD and Chairman of NAN.

31. In respect of charge no.1, the charge sheet purports that the amount of Rs.1,62,97,500/- was recovered from the office of Shiv Shankar Bhatt, Rs.20 lakhs was recovered from the office of Girish Sharma, P.A., to M.D., and Rs.36,06,000/- was recovered from the house of Steno Typist Jeet Ram Yadav who is R-5. In addition, Rs.20,000/- was recovered from the office of Company Secretary Sandeep Agrawal and Rs.34,99,500/- was recovered from his house. Further the recovery of Rs.1,22,715/- was made from the locker of Manager Devendra Singh Kushwaha and Rs.5,60,000/- from his house. Similarly recovery of Rs.4,12,000/- was made from the house of Quality Control Assistant Manager Ram Phool Pathak and Rs.7,75,000/ from his house and Rs.7,25,000/- was recovered from the house of Assistant Accounts officer. The allegation as was leveled would show that the said amounts were received by Alok Shukla and Anil Tuteja in an organized manner.

32. Likewise charge no.2 shows that in such organized collection of money, the then M.D., and Chairman Alok Shukla were directly involved alongwith senior officers of the NAN. It further reflects that from the field offices in the State , the entire money was recovered and Girish Sharma who is proposed accused being PA., to Anil Tuteja used to follow the

instructions of the higher officials and used to take care of personal expenses of the higher officials by paying their bills. It further shows that out of Rs.20 lakhs which was seized from Girish Sharma, Rs.10 lakhs belonged to Anil Tuteja and the investigation reveals that such amount which was received from Girish Sharma was held by him on behalf of Anil Tuteja which was sent by Shiv Shankar Bhatt through Steno Typist Arvind Dhru (R-4).

33. The Charges further purports that Dr.Alok Shukla, I.A.S., alongwith Anil Tuteja through his P.A., Girish Sharma used to receive money and out of Rs.20 lakhs, Rs.10 lakhs belonged to Alok Shukla which was being handed over to one Dr. Anand Dubey at the instructions of Dr. Alok Shukla. The charge sheet shows that though the amount was received from Girish Sharma but actually it belongs to Alok Shukla which was demanded by him. The rejoinder filed in this petition contains the transcript of conversation between Dr. Girish Sharma and Dr.Alok Shukla which is of 16.01.2015 the same Prima facie raises presumption. The transcription which has been placed by the applicant shows conversation between Girish Sharma and Anil Tuteja as also Dr. Alok Shukla at different points of time wherein certain delivery of 'goods' was deliberated at Delhi since it was expressed that carrying such 'goods' to Delhi was difficult, therefore, it raises presumption. Admittedly Girish Sharma, Arvind Dhruv and Jeet Ram Yadav were posted/placed at Raipur in the capacity of P.A., and Steno Typist whereas the document shows that collection of money centres were spread all over the State through different officers of NAN. Consequently,

the status and authority of the respondents would also be relevant and the question arises as to whether they had authority to disobey the instructions of superior officers, mainly the I.A.S. officers, certainly the answer would be 'no'.

34. Likewise, charge no.3 touches upon the illegal orders issued by the Anil Tuteja, Managing Director for inter district movement of the goods i.e., rice. But in order to support the rice millers, unnecessary movement was ordered by the Managing Director whereby the ricemillers and transporters were benefitted again. Certainly, this authority also cannot be said to be vested with P.A., and Steno Typist of an office, the respondents. The Charge No.4 speaks about acceptance of bad quality of rice and it shows that out of 252 samples, 111 samples were found to be of substandard quality thereby the Quality Control Officers were involved. Charge No.5 is relating to supply of substandard salt and it purports that sub-standard less iodine salt and less weight salt packets were though found but segregation of orders were not carried out and substandard salt packets were distributed in all over the State. Charge no.6 also purports unnecessary movement of rice and thereby transportation was carried out to provide benefit to certain persons.

35. Charge no.7 shows that Dr.Alok Shukla and Anil Tuteja without consideration received the goods which was evident from the documents of Pendrive seized from Girish Sharma, out of which, Rs.95,500/- was paid to Alok Shukla for IAS Officers Association Membership and Bank Drafts were prepared in part to avoid the requirement of PAN Card. It also reflects that pen-drive which was seized from “Girish

Sharma would show that the amount was kept with Girish Sharma and personal purchases were made by Anil Tuteja and on 03.08.2014 and 04.8.2014 certain amounts in lakhs were received by Anil Tutaja from Girish Sharma and certain amounts were paid to different persons at the instructions of Anil Tuteja by Girish Sharma and eventually it was found that though the name of Girish Sharma, Arvind Dhruv and Jeet Ram Yadav have been shown to be accused and from their possession, amount was also seized but during investigation, it was found that whatever work they had done, it was done at the instructions of and pressure of higher officials. According to the prosecution, neither the respondents were concerned with procurement of rice nor their personal interest was found in that. Since no direct evidence was available against them, therefore, they were admitted as witnesses.

36. It was further revealed in the charge sheet that to prove the organised corruption, the evidence of Arvind Dhruv, Girish Sharma, Jeet Ram Yadav would be necessary to connect the chain of events to prove the case of prosecution. The charge sheet further shows that though in the FIR name of Arvind Dhruv who is steno-typist in NAN head office, Jeet Ram Yadav, Steno Typist in NAN Office and Girish Sharma, P.A. To M.D., NAN head office were found alongwith other 16 persons, but during investigation against them sufficient evidence was not found and investigation also reveal that they were not involved in the crime directly, therefore, 18 persons were made accused and the charge sheet was filed. U/s 120-B 409, 420, of IPC read with Section 11, 13(1)(d),

13(2) of Prevention of Corruption Act, 1988 and it also records that after the sanction for prosecution is received of Dr. Alok Shukla and Anil Tuteja, the charge sheet would be filed.

37. The Supreme Court in case of ***Chandran alias Manichan alias Maniyan Vs. State of Kerala (2011) 5 SCC 161*** had reiterated the law laid down in case of ***Laxmipat Choraria v. State of Maharashtra, AIR 1968 SC 938*** and held that the competency of an accomplice is not destroyed because he could have been jointly tried with the accused but was not and was instead made to give evidence in the case. Following the same, it was held that the prosecution in a given case is not bound to prosecute if the evidence is necessary to break a conspiracy. The Supreme Court in *Chandran Vs. State of Kerala (Supra)* has spelled out as under:

The Court finally observed : *(Laxmipat Choraria case, p.944 Para 13)*

> "13..... It is not necessary to deal with this question any further because the consensus of opinion in India is that the competency of an accomplice is not destroyed because he could have been tried jointly with the accused but was not and was instead made to give evidence in the case."

38. Their Lordship in case of ***R. Dinesh Kumar @ Deena Vs. State represented by Inspector of Police (2015) 7 SCC 497*** at para 12 laid down the preposition that the joint trial of different accused in certain circumstances is permissible and may be tried together and even in case of conspiracy, if two or more accused agree to do an illegal act or agree to do an act which is not illegal in itself but illegal means or in the alternative if the two or more accused agree

to cause to be done an illegal act or an act which is not illegal through illegal means. He can be tried for the offences of conspiracy. In such case, the preposition to cite any accused as a witness in such case to unearth the conspiracy was considered and in case of *Laxmipath Choraria Vs. State of Maharashtra AIR 1968 S.C., 938* the Supreme Court was also taken a note of. However, Their Lordship have not over ruled the preposition of principles as laid down in AIR 1968 SC 938 and it was ultimately held that whether prosecution has liberty to examine any person as a witness in a criminal prosecution notwithstanding that there is some material available with the prosecution to indicate that such person is also involved in commission of crime for which the other accused are being tried, requires a deeper examination. Consequently it can be assumed that in a given case if the prosecution propose to examine any person as witness though against him some material are available, he can be cited as witness.

39. In the instant case, the order of the remand shows that initially order of making respondent as accused instead of witness was set aside as it was held that the High Court has not arrived by weighing interest of justice in having the appellant as accused instead of their utility as witnesses and the sale consideration being material against them was held to be not sufficient. In the instant case, therefore, when the position of respondent is weighed as against the other accused, the position which was held by the respondent as PA to MD and Steno-Typist in the main office of NAN cannot be ignored. The charge sheet document project that the

collection of money was being done in different branch offices which is spread over all over the entire State. The allegations of the prosecution is that the instructions were being parted through a Managing Director and Chairman of NAN which were implemented by the different officers in the entire State, the capacity of respondents qua their respective posts as that of PA & Steno are self explanatory. The instructions included in different nature of creating obstruction in acceptance of rice, storage, movement, transportation, quality control etc. Therefore, the position of the respondents directly reflects that they did not have any right to control any instructions in the hierarchy of government office. It is quite natural that the Steno and P.A., do not have such power within them to order for any moment of like nature of rice or to order for any acceptance of any goods or order for movement of goods i.e., rice and other articles including transportation except to follow the instructions of their higher officials.

40. The reading of charge sheet shows that 3 respondents were stationed at Raipur and the entire collection centers by illegal means were all over the State. The movement that accumulation of money at Raipur is projected by the prosecution and when certain initial part of money was recovered, entire incident opened. Therefore, prima facie, it appears that the prosecution would be relying on the respondent as a key witnesses to prove the chain of series of transactions. All the happenings took place in the inhouse of NAN. Therefore, considering the weighment of utility, prima facie it certainly shows that the utility of the respondents as

witnesses would be more fruitful in the given set of facts as on today. Undoubtedly certain recoveries were made from the respondents, but comparing it to the nature of crime as against other accused as has been stated by the Prosecution, certainly it appears to be in the interest of prosecution to inculpate all other accused as the evidence of the respondents would be of prime importance. In otherwords, the proposal of the prosecution to catch the big fishes involved in the activities by making a small fish to be a prey cannot be faulted with. It may also be presumed that rejecting proposal of prosecution to cite the respondents as witnesses may jeopardize the prosecution case against more serious accused as other accused against whom the charge sheet has been filed two of them are IAS Officers and rest of the other accused are in higher position hierarchy in the official capacity than that of the respondents.

41. The application filed on behalf of the applicant whereby they have chosen to delete the names of other proposed accused by order dated 15.11.2016 goes to show that the applicants have chosen a pick and choose policy. If it is seen from other angle also it suggests that if the 3 respondents are made accused then the entire evidence and the chain of evidence of disclosure of facts would be eliminated against the more serious accused and thereby it may result in entire failure of the prosecution. In such eventuality to examine the respondents as witnesses the prosecution holds sway in their favour instead of making them accused meaning thereby more prejudice would be caused to the prosecution and serious offenders would be scot free. Therefore, if the

respondents are made accused, the evidence against other more serious offenders would be completely wiped off.

42. No with respect to sanction part, the another argument which is advanced by the respondent that without there being valid sanction u/s 19 of the PC Act, no summoning could have been made and the prosecution itself is aware of the fact. In order to appreciate this, the charge sheet was again examined. The charge sheet opens with the description that Nagrik Apporthi Nigam (NAN) is a State institution wherein the Board of Directors is constituted and its head is Chairman and the Secretary is the Managing Director of NAN and all the powers relating to appointment of officers/employees who are working under the institution, their promotion, dismissal from service and other penalties are vested with the Managing Director or the Board of Directors of NAN.

43. Section 2(b) of the Prevention of Corruption Act, 1988 defines the “Public duty' which reads as under:

Section 2. Definitions.----In this Act, unless the context otherwise requires,-

(a) xxxxx

(b) “public duty” means a duty in the discharge of which the State, the public or the community at large has an interest;

Likewise “public servant” is defined u/s 2(c) of the Act. So far as relates to the officers/employees of a State Corporation like NAN, clauses (iii) and (viii) of 2(C) are also relevant here which read as under:

“public servant” means-

(i) xxx xxx
(ii) xxx xxx

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

(iv) to (vii) xxx xxx xxx

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) to (xii) xxx xxx xxx

Explanation 1. - Persons falling under any of the above sub-cluase are public servants, whether appointed by the Government or not.

44. Therefore, by virtue of section 2(b) 2(c)(iii) and (viii) of the PC Act, 1988, the respondents 3 to 5 who are steno typist and P.A., shall be are the public servants as the NAN is established by the State Act.

45. Section 19 of the PC Act 1988 which touches upon the sanction for prosectuion, the relevant part is produced as under:

19. **Previous sanction necessary for prosecution.**-(1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction[save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]--

(a) in the case of a person who is employued in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is

employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) In the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) No finding,sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1) unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby;

(b) No court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) No court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings."

46. In the instant case, a document dated 04.05.2017 has been placed by the applicant which is addressed to Board of Directors Chhattisgarh State Civil Supplies Corporation by the counsel of the Applicant seeking permission for grant of sanction to prosecute the respondents. Therefore, it is also case of the applicants that to prosecute the respondents the sanction u/s 19 of the PC Act is necessary.

47. Admittedly, in the instant case, sanction u/s 19 of the PC Act has not yet been granted. The Supreme Court in case of ***Dilwar Singh Vs. Parvinder Singh alias Iqbal Singh (2005) 12 SCC 709*** has held that section 19 of the PC Act creates a complete bar on the power of the Court to take cognizance of an offence punishable u/s 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the competent authority enumerated in clauses (a) to (c) of this sub-section. It is further held that if the sub-section is read as a whole, it will clearly show that the sanction for prosecution has to be granted with respect to a specific accused and only after sanction has been granted that the court gets the competence to take cognizance of an offence punishable u/ss 7, 10, 11, 13 and 15 alleged to have been committed by such public servant. The Court has further held that the Prevention of Corruption Act is a special statute and as the preamble shows, this Act has been enacted to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. It was held that the principles expressed in the maxim *generalia specialibus non derogant would* apply which means that if a special provision

has been made on a certain matter, that matter is excluded from the general provision.

48. Therefore the provisions of section 19 of the Act will have an overriding effect over the general provisions contained in section 190 or section 390 of the Code of Criminal Procedure. It was held that a Special Judge while trying an offence under the Prevention of Corruption Act, 1988, cannot summon another person and proceed against him in the purported exercise of power under Section 319 of Cr.P.C., as the existence of sanction is *sine qua non* for taking cognizance of the offence qua that person.

49. Further in case of *Anil Kumar Vs. M.K. Aiyappa (2013) 10 SCC 705 (supra)* and *L. Narayana Swamy Vs. State of Karnataka (2016) 9 SCC 598,* it was held that in cases of Prevention of Corruption Act 1988, sanction u/s 19(1) is a precondition for ordering investigation against the public servant and the word 'cognizance' has been given a wider connotation and it is not merely confined to the stage of taking cognizance of the offence wherein the complaint u/s 156(3) Cr.P.C., was also taken within its sweep and it was held that the sanction u/s 19 of the Prevention of Corruption Act would be must. In the instant case since the trial Court has not taken the cognizance by summoning the respondent/ accused at this stage it would be in the interest of prosecution to go in for trial with the respondents as witnesses, consequently the order of non-summoning by the trial Court cannot be faulted with.

50. Further in case of *Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92*, the Constitutional Bench while interpreting the

provisions of Section 319 has held that the Court can exercise the power to summon any person by virtue of Section 319 of Cr.P.C., only after the trial proceeds and commences with recording of evidence. In the facts of present case, invoking the provisions of section 319 Cr.P.C., has not occasioned. The similar situation was also considered by Hon'ble the Supreme Court while passing the order of remand. Consequently, since the recording of statements of witnesses have started, section 319 Cr.P.C., will not be applicable at this stage.

51. Therefore, considering the entire facts and circumstances of the case, this Court is of the view that the order dated 13.04.2016 passed by the trial Court rejecting to summon the respondents as accused cannot be faulted, at this stage, for the reasons stated in foregoing paragraphs. Accordingly, these revisions have no merit and are dismissed.

Sd/-

GOUTAM BHADURI
JUDGE

R a o