

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2009

C O R A M

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Crl.O.P.Nos.12726, 12753, 12754, 12755, 12756, 12758, 12759, 12760,
12761, 12762, 12763, 12764, 12765, 12790, 12791, 12796, 12848,
12725, 12757, 12766, 12767, 12769, 12770, 12787, 12788, 12789,
12792, 12793, 12794, 12795, 13344, 13371 and 13407 of 2009

and

M.Ps.Nos.1 and 2 of 2009

M.Gopalakrishnan

Petitioner in Crl.O.P.Nos.

12726,12753,12754,12755,12758,
12759,12760,12761,12762,12763,
12764,12765,12790,12791,12796/09,
12848,13371/2009

A.V. Shanmugasundaram

Petitioner in Crl.O.P.12725/09,12757,
12766,12767,12769,12770,12787,12788,
12789,12792,12793,12794,12795,13344
and 13407/09

Vs

State by
Inspector of Police,
CBI/ACB/Chennai

1st Respondent in Crl.O.P.No.12726/09,
12753,12754,12755,12757,12758,12759,
12791,12796,12848,12725/09,12769
12787,12788,12789,12792, 13344/2009

State by Inspector of Police
CBI/BSFC/Bangalore

1st Respondent in Crl.O.P.12760/09,
12761/09,12762/09,12763/09,12765,
12766,12788,12789,12791,12793,
12848,13407/2009

State by Inspector of Police
CBI/BSFC,Delhi

1st Respondent in Crl.O.P.Nos.12758/09
12992,12795/2009

State by Inspector of Police
CBI/EOW/Chennai

1st Respondent in Crl.O.P.Nos.12764/09,
12767,12770,12787,12790,12794,13344,
13371/2009

2 A.V.Shanmuga Sundaram

3 K. Sundaramurthy

4 Dana Singh

5 Anandan Pillai
6 M/s. Akilan Constructions
H.32/45, Astalakshmi
Gardens, Besent Nagar,
Chennai-90

Respondents 2 to 6 in
Crl.O.P.No.12726/09

2 A.V.Shanmuga Sundaram
3 J.M.Pandey
4 Mathew Sebastian
5 M.U.S. Rao
6 Ashok Kumar Rahoji
7 S.P.Narasimohan
8 S.Ramachandran

Respondents 2 to 8 in Crl.O.P.12753/09

2 A.V.Shanmugasundaram
3 J.M.Pandey
4 Mathew Sebastian
5 A.W.Shihabudeen

Respondents 2 to 5 in Crl.O.P.12754/09

2 A.V.Shanmugasundaram
3 Satish Kumar

Respondents 2 to 3 in Crl.O.P.12755/09

2 M/s.Kiran Innovatious
No.4 & 5, Sydanhams Road,
Arunachalam Lane,
Periamet, Chennai-3

3 Rajiv Batna
4 Kiran Batna
5 P.L. K.R. Srinivasan
6 M.Aziz

7 A.V.Shanmugasundaram Respondents 2 to 7 in Crl.O.P.12756/09

2 M.Gopala Krishnan
3 B.Muthiah
4 G.V.Srinivasan
5 A.Ravishankar Prasad
6 A.Manohar Prasad
7 P.R.Kotteeswara Rao
8 Gemeni Arts Pvt Ltd, Chennai.

Respondents 2 to 8 in
Crl.O.P.12757/09

2 V.R.Chidambaram
3 A.V.Shanmuga Sundaram
4 B.Natarajan
5 V.Srinivasan
6 Nazirudeen Abdul Wahid
7 Thaharudeen Abdul Wahid

- 8 Shihabudeen Abdul Wahid
- 9 Faizal Abdul Wahid
- 10 S.Ramesh
- 11 M/s. Eastwest Travel & Trade
Links Pvt.Ltd., No.2-4-B,
Silver Apartments, Shankar
Ghanekar Road, Mumbai

Respondents 2 to 11 in
Cr1.O.P.12758/09

- 2 M/s.Enkay Foods Pvt Ltd., A1
(Formerly Global Agro Exports)
33,Melpadi Muthu Street
Nungambakkam, Chennai-34
Represented by K.Srinivasan
and S.Srinivasa Raghavan

- 3 K.Srinivasan
- 4 S.Srinivasan Raghavan
- 5 K.Subramaniam
- 6 N.Ramakrishnan
- 7 N.Kumarasamy
- 8 B.Subramanian
- 9 S.Arunachalam
- 10 V.Srinivasan
- 11 A.V.Shanmugasundaram
- 12 N.Seetharaman
- 13 K.Sai Jagannathan
- 14 S.P.Vairavan
- 15 M.Varatharajaloo
- 16 S.Sridharan
- 17 M/s.M.V.R.Exports Pvt.Ltd
Royala Towers, No.781,
Anna Salai Chennai-2
Represented by S.P.Vairavan

- 18 M/s. Maxell Exports Pvt. Ltd.,
Royala Towers No.781,Anna
Salai, Chennai-2, Represented
by S.P.Vairavan

- 19 M/s.Sathyam Foods Pvt.Ltd.,
30 HIG Flat Nandanam,
Chennai-35, Represented by its
Director H.Arulmanalan

Respondents 2 to 19 in
Cr1.O.P.No.12759/09

- 2 N.Kumarasamy
- 3 Balakrishnan
- 4 R.Srinivasa Raghava
- 5 A.R.Arunachalam
- 6 P.Vasangharajan
- 7 S.Jayaraman
- 8 M.Varadharajulu

9 V.Krishnakumar
10 G.Sambasivan
11 C.S.Usha Devi
12 K.SaiJagannathan
13 M/s. Anderson Industries
International Ltd., 89,
4th Street, Abhiramapuram
Chennai-18, Rep.by Its Director,
K.Sai Jaganathan

14 M/s. Sathyam Chemicals
28, West CIT Nagar,
Nandanam, Chennai-35
Rep.by Director,
K.Sai Jaganathan

Respondents 2 to 14 in
Crl.O.P.No.12760/09

2 A.V.Shanmugasundaram
3 B.Muthiah
4 M.Azeez
5 A.Ravishankar Prasad,
6 A.Manohar Prasad,
7 M/s.Gemini Picture Circuit
Pvt.Ltd (Rep.by A.Ravishankar
Prasad and A.Manohar Prasad,
No.2, Vembuli Amman Koil St.
Virugambakkam, Chennai
8 M/s. Asian Photo Films (P) Ltd.
Represented by its Directors
P.Kiran & R.Raghunathan
V.K.Iyer Avenue Luz,
Mylapore, Chennai

Respondents 2 to 8
in WP.No.12761/09

2. A.V. Shanmugasundaram
3. B. Natarajan,
4 V. Srinivasan
5. K.R. Muralidharan
6. K.T. Venkateswaran
7. Sujaritha Sundararajan
8. T.S. Venkateswaran
9. H.M. Prathiba
10. A. Ravishankar Prasad
11. A. Manohar Prasad

12. M/s. Ravishankar Films Pvt. Ltd.,
(Now M/s. Ravishankar Industries Pvt. Ltd.,)
Represented by A. Ravishankar Prasad and
A. Manohar Prasad No.2, Sarangapani Street,
T. Nagar, Chennai -17.

13. S. Ravindran
14. V.S. Madhavan
15. K. Shivagurunathan
16. G. Karunaidhi
17. K. Sundaramurthy
18. N. Balakrishnan
19. C. Sathyanarayana
20. P. Sathya Reddy
21. R. Srinivasan
22. P. Kiran
23. A. Narasimhan
24. G. Sethuraman
25. V. Suresh Kumar
26. R. Raghunandan
27. A. Sriramulu
28. N. Gopalakrishnan
29. S. Ramesh
30. V.R.Chidambaram,
31. K.S.Elango .. Respondents 2 to 31 in Crl. Op.12762/09

2. A.v. Shanmugasundaram
3. Shri.P.L.K.R. Srinivasan
4. D. Natarajan .. Respondents 2 to 4 in Crl. Op. 12763/09

2. M/s. Kiran Oversease Ltd., A1
No.4&5, Sydanhams Road,
Arunachalam Lane, Periamet,
Chennai - 3.
3. M/s. Kiran Oversease Ltd., A2
No.A2/21, Model Town, New Delhi.
4. Ranjiv Batra, A3
5. Kiran Batra, A4
6. P.L.K.R. Srinivasan, A5
7. U.V. Ruppai, A6
8. Aziz, A7

9. G.V. Srinivasan, A8
10. Muthiah, A9
11. A.V. Shanmuga Sundaram, A10
12. S.Arunachalam, A11 ..Respondents 2 to 12 in Crl.OP.12764/09

2. N. Kumarasamy,
3. K. Kuberanathan
4. V.Srinivasan

5. M/s. M.V.R. Industries Ltd.,
5th Floor, Rayala towers
Anna Salai, Chennai 600 002
(through MD S.P. Vairavan)

6. M/s. Maxwell Exim Pvt Ltd.,
5th Floor, Rayala towers
Anna Salai, Chennai 600 002
(through G. Balakrishnan Director)

7. M. Varadarajulu
8. S.P. Vairavan
9. K. Sai Jaganathan
10. G.S. Kumar
11. G. Balakrishnan
12. K. Sugumaran
13. Madhusoodhanan
14. V.R. Usha
15. P. Vijayaragavan
16. B. Chandramouly
17. M.A. Joseph Xavier Basil
18. R. Ramesh
19. T.S. Jayakumar
20. Kala Kumarasamy

.. Respondents 2 to 20 in
Crl.OP.12765/09

2. S.Arunachalam
3. N.Chandrasekar Rao
4. B.Subramanian,
5. A.V.Shanmuga Sundaram
6. N.Kumarasamy
7. V.Srinivasan
8. K.Subramanian
9. N.Ramakrishnan
10.N.Seetharaman
11.M.Varadarajulu @ M.V.Raja
12.S.P.Vairavan
13.K.SaiJeganathan
14.M/S.Sathyam Foods Pvt.Ltd
No.30, HIG Flats,
Nandanam, Chennai- 35.
15.H.Arulmanalan
16.R.Palaniappan

Respondents
2 to 16 in
Crl. O.P NO.12790/09

2. A.V.Shanmugasundaram
3. B.Muthiah
4. G.V.Srinivasan
5. A.Ravishankar Prasad
6. A. Manohar Prasad
7. P.R.Kotesswara Rao
8. Gemini Arts Pvt.Ltd,
No.60, Annasalai Chennai.

Respondent
2 to 8 in
Crl.O.P.No.12791/09

2. V.Raj Rumar
3. K.Sai Jeganathan
4. N.Ramakrishnan

Respondent
2 to 4 in
Crl.O.P.No.12796/09

2. A.V.Shanmugasundaram
3. V.Srinivasan
4. K.R.Muralidharan
5. A.Ravishankar Prasad
6. A. Manohar Prasad
7. M/S.Prasad Properties & Investment
& (P)Ltd., (Represented by
A.Ravishankar Prasad (A4) and
A.Monohar Prasad (A5)
No.2,Sarangapani Street,
T.Nagar, Chennai.17.
8. S.Ramesh
9. M/S.Asian Photo Films (P) Ltd.,
Represented by P.Kiran &
R.Ragunathan, its Directors
V.K.Iyer Avenue, Luz,
Mylapore, Chennai.

10. S. Ravindran
11. R.Shivagurunathan
12. B.Natarajan
13. N.Balakrishnan
14. B.Subramanian
15. L.Natarajan

Respondent 2 to 15 in
Crl.O.P.No.12848/09

2. Gopalakrishnan
3. K.Sundaramurthy
4. Danasingh
5. Anandan pillai
- 6.M/S. Aklaam Construction
H.32/45, Astalakshmi Gardens
Besant Nagar, Chennai.90,

Respondent
2 to 6 in
Crl.O.P.No.12725/09

2. M.Gopalakrishnan
3. B.Muthiah
4. G.V.Srinivasan
5. A.Ravishankar Prasad
6. A. Manohar Prasad
7. P.R.Kotesswara Rao
8. Gemini Arts Pvt.Ltd,
No.60, Annasalai Chennai.

Respondent
2 to 8 in
Crl.O.P.No.12757/09

2. Gopalakrishnan.M
3. B.Natarajan
4. V.Srinivasan
5. K.R.Muralidharan
6. K.T.Venkateswaran
7. Sujaritha Sundarajan
8. T.S.Venkateswaran
9. H.M. Prathiba
- 10.A.Ravishankar Prasad
- 11.A. Mahohar Prasad
- 12.M/S.Ravishankar films Pvt.Ltd.,
(New M/S.Ravishankar Industries Pvt.Ltd.,
Represented by
A.Ravishankar Prasad and
A.Manohar Prasad
No.2,Sarangapani Street,
T.Nagar, Chennai.17.
- 13.S.Ravindran
- 14.V.S.Madhavan
- 15.K.Shivagurunathan
- 16.G.Karunaidhi
- 17.K.Sundaramurthy
- 18.N.Balakrishnan
- 19.C.Sathyannarayana
- 20.P.Sathya Reddy
- 21.R.Srinivasan
- 22.P.Kiran
- 23.A.Narasimhan
- 24.G.Sethuraman
- 25.V.Suresh Kumar
- 26.R.Raghunandan
- 27.S.Ramesh
- 28.N.Gopalakrishnan
- 29.S.Ramesh
- 30.V.R.Chidambaram
- 31.K.S.Elango

Respondent
2 to 31 in
Crl.O.P.No.12766/09

2. M.Gopalakrishnan
3. J.M.Pandy
4. Mathew Sebastian
5. A.W.Shihabudeen

.. Respondents 2 to 5 in
Crl OP 12767/09

2. M/S.Enkay Foods Pvt. Ltd.,
(Formerly Global Agro Exports)
33, Melpadi Muthu Street,
Nungambakkam, Chennai-34
Represented by K.Srinivasan
and S.Srinivasa Raghavan

3. K.Srinivasan
4. S.Srinivasa Raghavan
5. K.Subramanian
6. N.Ramakrishnan
7. N.Kumarasamy
8. B.Subramanian
9. M.Gopalakrishnan
10.S.Arunachalam
11.V.Srinivasan
12.N.Seetharaman
13.K.Sai Jagannathan
14.S.P.Vairavan
15.M.Varatharajulu
16.S.Sridharan

17.M/s.MVR Exports Pvt Ltd.,
Rayala Towers No.781,
Anna Salai, Chennai-2,
Represented by S.P.Vairavan

18.M/S.Maxell Exim Pvt. Ltd.,
Rayala Towers -do-

19.M/s.Sathyam Foods Pvt., Ltd.,
30, HIG Flats, Nandanam,
Chennai-35.

Rep. by its - H.Arulmanalan .. Respondents 2 to 19
in CrI OP 12769/09

2.M/s.Kiran Overseas Ltd.,
No.4 & 5, Sydanhams Road,
Arunachalam Lane, Periamet,
Chennai-3

3.M/s.Kiran Overseas Ltd.,
No.A2/21, Model Town,
New Delhi

4. Ranjiv Batra,
5. Kiran Batra,
6. P.L.K.R.Srinivasan
7. U.V.Ruppai
8. Aziz
9. G.V.Srinivasan
10.Muthiah
11.S.Arunachalam
12.M.Gopalakrishnan

.. Respondents 2 to 12 in
CrI Op No.12770/09

2. M.Gopalakrishnan
3. S.Arunachalam
4. N.Chandrasekar Rao,
5. B.Subramanian
6. N.Kumarasamy
7. V.Srinivasan
8. K.Subramanian,
9. N.Ramakrishnan,
- 10.N.Seetharaman
- 11.M.Varadarajulu @ M.V.Raja
- 12.S.P.Vairavan
- 13.K.Sai Jeganathan
- 14.M/s. Sathayam Foods Pvt. Ltd.,
No.30, HIG Flats,
Nandanam, Chennai-35
- 15.H.Arulmanalan
- 16.R.Palaniappan

... Respondents 2 to 16 in
Crl OP 12787/09

2. M.Gopalakrishnan
3. SatishKumar

... Respondents 2 & 3 in
Crl OP 12788/09

2. M.Gopalakrishnan
3. PL.K.R.Srinivasan
4. D.Natarajan

... Respondents 2 to 4 in
Crl OP No.12789/09

2. M.GOPALAKRISHNAN

3. V.R.CHIDAMBARAM
4. B.NATARAJAN
5. V.SRINIVASAN
6. NAZIRUDEEN ABDUL WAHID
7. THAHAKUTTY ABDUL WAHID
8. SHIHABUDEEN ABDUL WAHID
9. FAIZAL ABDUL WAHID
10. S.RAMESH

- 11.M/S.EAST WEST TRAVEL AND TRADE LINKS PVT LTD
NO.2-4 SILVER APARTMENTS SHANKAR GHANEKAR ROAD MUMBAI

... Respondents 2 to 11 in Crl.O.P.No.12792/09

- 2 M.GOPALAKRISHNAN
- 3 B.MUTHIAH
- 4 M.AZEEZ
- 5 A.RAVISHANKAR PRASAD
- 6 A.MANO HAR PRASAD

7 M/S.GEMINI PICTURERS CIRCUIT PVT LTD
REP BY A.RAVISHANKAR PRASAD (A4) and A.MANO HAR PRASAD (A5) ,
NO.2 VEMBULIAMMANKOIL STREET VIRUGAMBAKKAM CHENNAI

8 M/S.ASIAN PHOTO FILMS PVT LTD
REP BY P.KIRAN AND R.RAGUNATHAN ITS DIRECTORS
V.K.IYER AVENUE LUZ,
MYLAPORE CHENNAI

... Respondents 2 to 8 in CrI.O.P.No.12793/09

2.M/S KIRAN INNOVATIONS
NO.4 & 5 SYDANHAMS ROAD,
ARUNACHALAM LANE, PERIAMET, CHENNAI-3

3 RANJIV BATRA
4 KIRAN BATRA
5 M. GOPALAKRISHNAN
6 P.L.K.R.SRINIVASAN
7 M. AZIZ

... Respondents 2 to 7 in CrI.O.P.No.12794/09

2 M. GOPALAKRISHNAN
3 J.M.PANDEY
4 MATHEW SEBASTIN
5 M.U.S. RAO
6 ASHOK KUMAR RAHOJI
7 S.P.NARASIMHAN
8 S. RAMACHANDRAN

... Respondents 2 to 8 in CrI.O.P.No.12795/09

2 M.GOPALAKRISHNAN
3 R.SOMAYAJI
4 K.PANDIAN
5 RENGASWAMY
6 K.SUBRAMANIAN
7 K.SUNDARAMURTHY
8 S.R.SRIDHAR
9 K.VENKATESAN
10 M.VARADARAJULU
11 K.SAI JEGANATHAN
12 S.P.VAIRAVAN
13 N.KRISHNAMURTHY
14 K.SUBRAMANIAM
15 SMT.JANAKIAMMAL
16 K.SRINIVASAN
17 S.SRIDHARAN
18 SMT.S.HEMAMBUJAM
19 SRINIVASA RAGAVAN
20 D.GOPICHANDRAN
21 G.SELVAM
22 N.RAMAKRISHNAN

- 23 M/S.RAMRAJ TRADING CO PVT LTD
REGD.OFFICE NO.45 MARKET STREET T.R.PATTNAM KARIKAL
- 24 M/S.JAIMATHA FARM DEALERS PVT LTD
NO.7 IYYAMPERUMAL STREET ROYAPETTAH CHENNAI -14
- 25 M/S.WELL STORES (MADRAS) PVT LTD
REGD OFFICE NO.112 VELLALAR STREET PONDICHERRY -1
- 26 M/S.INDECO BUILDERS PVT LTD
NO.A7 BHATIA GARDENS MOUNT POONAMALLEE ROAD
CHENNAI -116
- 27 M/S.SANJEEVI PACKAGING PVT LTD
NO.151/10 MGR STREET VIRUGAMBAKAKM CHENNAI -92
- 28 M/S. ABHINAV EXIM PVT LTD
NO.46 IST CROSS STREET SABHARI NAGAR PORUR CHENNAI -116
- 29 M/S.SATHYAM CHEMICALS PVT LTD
NO.28 WEST STREET WEST CIT NAGAR NANDANAM
CHENNAI -35 ... Respondents 2 to 29 in Crl.O.P.No.13344/09

- 2.A.V.Shanmuga Sundaram
3.R.Somayaji
4.K.Pandean
5.Rengaswamy
6.K.Subramanian
7.K.Sundaramurthy
8.S.R.Sridhar
9.K.Venkatesan
10.M.Varadarajulu
11.K.Sai Jeganathan
12.S.P.Vairavan
13.N.Krishnamurthy
14.K.Subramaniam
15.Smt.Janakiammal
16.K.Srinivasan
17.S.Sridharan
18.Smt.S.Hemambujam
19.Srinivasa Regavan
20.D.Gopichandran
21.G.Selvam
22.N.Ramakrishnan
23.M/s.Ramraj Trading Co.Pvt.Ltd.,
Regd Office: No.45, Market Street,
T.R.Patnam, Karikal.

24.M/s.Jaimatha Farm Dealers Pvt.Ltd.,
No.7, Iyyamperumal Street,
Royapeetah, Chennai -14.
25.M/s. Well Stores (Madras) Pvt. Ltd.,
Regd Office:No.112,
Vellalar Street, Pondicherry-1.
26.M/s.Indeco Builders Pvt. Ltd.,
No.A-7, Bhatia Gardens,
Mount Poonamallee Road, Chennai-116.
27.M/s.Sanjeevi Packaging Pvt.Ltd.,
No.151/10, MGR Street, Virugambakkam, Chennai-92.
28.M/s.Abhinav Exim Pvt.Ltd.,
No.46, 1st Cross Street, Sabhari Nagar,
Porur, Chennai-116.
29.M/s.Sathyam Chemicals Pvt.Ltd.,
No.28, West Street, West CIT Nagar,
Nandanam, Chennai-35.

..Respondents 2 to 29 in
Crl.O.P No.13371/2009

2.V.Srinivasan
3.K.R.Muralidharan
4.A.Ravishankar Prasad
5.A.Manohar Prasad
6.M/s.Prasad Properties & Investments (P) Ltd.,
(Represented by A.Ravishankar Prasad (A4) and
A.Manohar Prasad (A5)
No.2, Sarangapani Street,
T.Nagar, Chennai-17
7.M.Gopalakrishnan
8.S.Ramesh
9.M/s.Asian Photo Films (P) Ltd.,
represented by P.Kiran & R.Ragunathan,
its Directors V.K.Iyer Avenue, Luz,
Mylapore, Chennai.
10.S.Ravindran
11.R.Shivagurunathan
12.B.Natarajan
13.N.Balakrishnan
14.B.Subramanian
15.L.Natarajan

..Respondents 2 to 15 in Crl.OP No.13407/2009

Prayer: These criminal original petitions have been filed under
Section 407 of Cr.P.C to withdraw and transfer the case in
C.C.Nos.33/1998, 13/2001, 14/2001, 56/2000, 3/2001, 57/2000,
58/2003, 1/2000, 81/2001, 71/2001, 29/1999, 15/2001, 64/2001,
17/2001, 80/2001, 55/2000, 82/2001, 36/1998 respectively from the
file of XI Additional Special Judge for CBI cases, Chennai to any
other competent court.

For Petitioners:

in Crl.OP Nos.12726,12753 to 12765,
12790,12791,12796 &12848/09

:Mr.A.L.Somayaji, SC
for Mr.Sabapathy

For Respondents: Mr.N.Chandrasekaran,

Spl.PP for CBI Cases (R1) in all the cases

Mr.K.M.Vijayan SC for

M/s.K.R.Ramesh

..For Respondents 5 to 7 in Crl.OP 12761/2009

R10 to 12 in Crl.OP 12762/2009,

R5,6 & 8 in Crl.OP 12791/2009,

R4 to 6 in Crl.OP 12848/2009

R5,6 & 8 in Crl.OP 12757/2009

R10 to 12 in Crl.OP 12766/2009

R5 to R7 in Crl.OP 12793/2009

R4 to 6 in Crl.OP No.13407/2009

Mr.A.Raghunathan SC for

Mr.Ramakrishnan for

M/s.Waran & Sairam

..For 4th Resopondent in Crl.OP 12726/09

Respondent 4 & 12 to 18 in Crl.OP 12759/09 &

R7 & 11 to 13 in Crl.OP No.12760/2009

R4 to R13 in Crl.OP 12765/2009

R7 & 10 to 15 in Crl.OP 12790/2009

R2 in Crl.OP 12796/2009

COMMON ORDER

All these petitions have been filed under Section 407 Cr.P.C for withdrawing the calendar cases pending on the file of the XI Additional Sessions Judge, City Civil Court (special judge for CBI cases), Chennai from the file of the said court and transfer the same to any other competent court for trial and disposal in accordance with law. All the criminal cases concerned in these petitions were originally pending before the VIII Additional Sessions Judge (special judge for CBI cases). They were subsequently transferred to the file of the XI Additional Sessions Judge (special judge for CBI cases) pursuant to an order of the government made in G.O.Ms.No.1504 Home (Courts-II) Department 24.10.2007 transferring all bank fraud cases to the said court. The petitioners in each case and the other accused persons, who have also been arrayed as respondents 2 to 6 in Crl.O.P.No.12726/2009, respondents 2 to 8 in Crl.O.P.No.12753/2009, respondents 2 to 5 in Crl.O.P.No.12754/2009, respondents 2 to 5 in Crl.O.P.No.12755, respondents 2 to 7 in Crl.O.P.No.12756, respondents 2 to 11 in Crl.O.P.No.12758, respondents 2 to 19 in Crl.O.P.No.12759, respondents 2 to 14 in Crl.O.P.No.12760,

respondents 2 to 9 in Crl.O.P.No.12761, respondents 2 to 31 in Crl.O.P.No.12762, respondents 2 to 4 in Crl.O.P.No.12763, respondents 2 to 12 in Crl.O.P.No.12764, respondents 2 to 20 in Crl.O.P.No.12765, respondents 2 to 16 in Crl.O.P.No.12790, respondents 2 to 8 in Crl.O.P.No.12791, respondents 2 to 4 in Crl.O.P.No.12796, respondents 2 to 15 in Crl.O.P.No.12848, respondents 2 to 6 in Crl.O.P.No.12725, respondents 2 to 8 in Crl.O.P.No.12757, respondents 2 to 31 in Crl.O.P.No.12766, respondents 2 to 5 in Crl.O.P.No.12767, respondents 2 to 19 in Crl.O.P.No.12769, respondents 2 to 12 in Crl.O.P.No.12770, respondents 2 to 16 in Crl.O.P.No.12787, respondents 2 to 3 in Crl.O.P.No.12788, respondents 2 to 16 in Crl.O.P.No.12789, respondents 2 to 11 in Crl.O.P.No.12792, respondents 2 to 8 in Crl.O.P.No.12793, respondents 2 to 7 in Crl.O.P.No.12794, respondents 2 to 8 in Crl.O.P.No.12795, respondents 2 to 29 in Crl.O.P.No.13344, respondents 2 to 29 in Crl.O.P.No.13371 and respondents 2 to 15 in Crl.O.P.No.13407 are being prosecuted for alleged offences punishable under Sections 120-B, 420 IPC and Section 13(2) of the Prevention of Corruption Act, 1988 and Section 3(1) (b) of the Prevention of Corruption Act, 1988.

2. The petitioners have come forward with the present petitions contending that the trial judge is biased against them, as the same was revealed by the fact that in a similar case i.e. C.C.No.66/2000 in which they were prosecuted for similar offences, each one of the petitioners were convicted with seven years rigorous imprisonment for each one of the offences with which they stood charged and were imposed a total fine of Rs.80,00,000/- (at the rate of Rs.10,00,000/- on each charge).

3. It is also their further contention that they suspect bias not because they were convicted, but because none of the defences raised by them in the written arguments submitted on their behalf by their advocates were considered by the learned trial judge. It is the further case of the petitioners that, in all 16 cases of similar nature arising out of the sanction of loan by the Chairman/Managing Director/Zonal Manager, the nature of accusation, the nature of evidence on the side of the prosecution and the nature of defence plea taken by the accused are similar in nature and that since the learned trial judge has already taken a particular view, the petitioners cannot expect an unbiased approach by the trial court in the cases now sought to be transferred. Besides citing some of the instances in connection with the case already disposed, namely C.C.No.66/2000, in support of their contention that they reasonably apprehend that there won't be any impartial and unbiased trial, the petitioners have also highlighted the inconvenience caused in the present cases by the method adopted by the trial court. According to the petitioners, such method adopted by the trial court will nevertheless amount to denial of a fair opportunity to the petitioners to effectively defend themselves in the prosecution launched against them.

4. It is the contention of the petitioners that, without framing a schedule for the examination of witnesses in advance, the trial court has allowed the prosecution to examine a number of witnesses at their choice on a particular day, out of numerous witnesses cited on the side of the prosecution, without even informing the accused persons or the counsel for the accused persons sufficiently in advance so that the defence side counsel would be able to bring the papers connected with the said witnesses alone without there being any necessity to carry loads of copies of documents served on the accused persons. The further contention of the petitioners is that despite the fact that such inconvenience caused to the accused and their counsel was brought to the notice of the trial judge, the petitioners were informed that there was no need to give prior notice/information regarding who are all the witnesses to be examined on a particular day.

5. The further contention of the petitioners is that, it is practically impossible for them to instruct their counsel for instantaneous cross-examination of witnesses in the absence of a scheme for the examination of witnesses, when they were not in a position to know who are all the witnesses to be examined on a particular day of hearing, as the defence counsel has to deal with a number of voluminous documents; that under such circumstances alone they were forced to seek time for cross-examination or an order deferring cross-examination of such witnesses for the time being and that on all such occasions, the learned trial judge used to record 'NIL' or 'No cross' under the caption cross-examination.

6. Several instances during the course of trial have been cited in the affidavits filed in support of the petitions to substantiate their contention that the petitioners are not given fair chances and reasonable opportunities to effectively defend themselves and that they have reason to suspect that the trial judge acts with bias in conducting the trial.

7. Respondents 2 to 6 in Crl.O.P.No.12726/2009, respondents 2 to 8 in Crl.O.P.No.12753/2009, respondents 2 to 5 in Crl.O.P.No.12754/2009, respondents 2 to 5 in Crl.O.P.No.12755, respondents 2 to 7 in Crl.O.P.No.12756, respondents 2 to 11 in Crl.O.P.No.12758, respondents 2 to 19 in Crl.O.P.No.12759, respondents 2 to 14 in Crl.O.P.No.12760, respondents 2 to 9 in Crl.O.P.No.12761, respondents 2 to 31 in Crl.O.P.No.12762, respondents 2 to 4 in Crl.O.P.No.12763, respondents 2 to 12 in Crl.O.P.No.12764, respondents 2 to 20 in Crl.O.P.No.12765, respondents 2 to 16 in Crl.O.P.No.12790, respondents 2 to 8 in Crl.O.P.No.12791, respondents 2 to 4 in Crl.O.P.No.12796, respondents 2 to 15 in Crl.O.P.No.12848, respondents 2 to 6 in Crl.O.P.No.12725, respondents 2 to 8 in Crl.O.P.No.12757, respondents 2 to 31 in Crl.O.P.No.12766, respondents 2 to 5 in Crl.O.P.No.12767, respondents 2 to 19 in Crl.O.P.No.12769, respondents 2 to 12 in Crl.O.P.No.12770, respondents 2 to 16 in Crl.O.P.No.12787, respondents 2 to 3 in Crl.O.P.No.12788,

respondents 2 to 16 in Crl.O.P.No.12789, respondents 2 to 11 in Crl.O.P.No.12792, respondents 2 to 8 in Crl.O.P.No.12793, respondents 2 to 7 in Crl.O.P.No.12794, respondents 2 to 8 in Crl.O.P.No.12795, respondents 2 to 29 in Crl.O.P.No.13344, respondents 2 to 29 in Crl.O.P.No.13371 and respondents 2 to 15 in Crl.O.P.No.13407 are the co-accused. All of them support the case of the petitioners seeking transfer of the case from the present trial court. The State represented by the Inspector of Police, CBI/BSFC, Bangalore/Chennai/Delhi, arrayed as the first respondent, has resisted these petitions by filing a common counter affidavit for all the above criminal OPs contending as follows:-

"All the cases were registered between the years 1996 and 1998. After submission of final reports, trial was pending in two special courts for CBI cases, namely Principal Sessions Judge for CBI cases (VIII Additional Sessions Judge) and Additional special judge for CBI cases (IX Additional Sessions Judge), Chennai. By virtue of government orders in G.O.Ms.No.811 Home (Courts.II) Department dated 06.06.2007 and G.O.Ms.No.1504 Home (Courts.II) Department, Government of Tamil Nadu published in G.O.No.1504 dated 24.10.2007, the court of XI Additional Sessions Judge, Chennai (special court) was designated as a special court for speedy trial of CBI cases relating to banks and financial institutions. The said court is the exclusive and competent court to try cases relating to banks and other financial institutions investigated by CBI. Hence the cases cannot be transferred from the said court to any other court, as no other court has been designated as special court for bank fraud cases. Specific direction has also been issued by the Hon'ble Supreme Court in Crl.A.Nos.1080 to 1089 of 2009 to avoid unnecessary adjournments, to conduct trial on a day-to-day basis and to conclude the trial as expeditiously as possible. The trial is being conducted in a fair manner and full opportunity is given to the accused to cross-examine the prosecution witnesses. Thus the petitions for transferring the cases are not maintainable, either on law or on fact. They have been filed in an attempt to protract the trial and hence all the petitions should be dismissed."

8. In the light of the above said pleadings, the following points are ear-marked as issues that have arisen for consideration in these petitions.

1. Whether these petitions for transfer of cases are not maintainable, as the court in which the cases are pending is a special court constituted for the trial of such cases?
3. Whether the apprehension of the petitioners that there may not be a fair and impartial trial is reasonable and whether the cases should be transferred as prayed for by the petitioners?

8. This court heard the submissions made by Mr.A.L.Somayaji, learned senior counsel representing Mr.Sabapathy, by Mr.A.Raghunathan, learned senior counsel, by Mr.C.Sivakumar, learned counsel for the petitioners in other criminal OPs, by Mr.N.Chandrasekaran, learned special Public prosecutor, representing the first respondent in all these criminal OPs, by Mr.K.M.Vijayan, learned senior counsel representing Mr.K.M.Ramesh Kumar, counsel on record for other respondents, by Mr.Ramakrishnan representing M/s.Waraon & Sairams, by Mr.R.Sankaranarayanan, by Mr.Mr.M.Kempuraj, by Mr.T.M.Buvaneswaran and by Mr.C.S.Pillai representing other respondents in other criminal OPs.

9. Attributing bias to the trial judge and expressing an apprehension that there won't be any fair and impartial trial if the criminal cases (C.C.Nos.33/1998, 13/2001, 14/2001, 56/2000, 3/2001, 57/2000, 58/2003, 1/2000, 81/2001, 71/2001, 29/1999, 15/2001, 64/2001, 17/2001, 80/2001, 55/2000, 82/2001, 36/1998) are allowed to be tried by the said judge, the petitioners (accused) have come forward with these petitions seeking orders withdrawing the above said criminal cases from the file of XI Additional Sessions Judge (Special Judge for CBI Cases), Chennai and transferring the same to the file of any other court competent to try the same.

10. These petitions are resisted by the first respondent/CBI on the question of maintainability and also on merit. According to the first respondent, since the court in which the criminal cases now sought to be transferred are pending is the only special court constituted for the trial of the particular category of cases, no other court should be held to be competent to try the cases. The learned special public prosecutor for CBI cases advanced an argument to the effect that a case pending on the file of a specially constituted court, cannot be transferred from the said court, if there is no other court designated as special court for the same category of cases and that hence the petitions seeking transfer of the cases should be rejected as not maintainable. Per contra, it is the arguments advanced not only on behalf of the petitioners but also on behalf of the other respondents, who support the petitioners, that the power of the High Court under Section 407 Cr.P.C is not taken away or in any way abridged because a particular court has been designated to be a special court for trial of particular type of cases. It is the further contention raised on behalf of the petitioners and the other respondents that the government orders constituting special court would be construed to be only an order for the distribution of the cases under the Prevention of Corruption Act, 1988 and that the same cannot override either the provisions of the Prevention of Corruption Act, 1988 or the provisions of the Criminal Procedure Code.

11. G.O.Ms.No.811 Home (Courts-II) Department dated 06.06.2007 is the government order by which a special court for trial of CBI cases relating to banks and financial institutions was sanctioned.

It does not refer to the provision of law under which the special court was to be constituted. On the other hand, G.O.Ms.No.1504 Home Courts-II dated 24.10.2007 is the government order under which the special judge was appointed. It refers to Section 3(1) of the Prevention of Corruption Act, 1988 as the provision under which the Government of Tamil Nadu derived power to appoint the special judge. The special judge has been appointed for trial of offences specified in Section 3(1) of the Prevention of Corruption Act, 1988 relating to bank and financial institutions which are investigated by the Delhi Special Police Establishment. The notification reads as follows:-

NOTIFICATION

In exercise of the powers conferred under sub-section (1) of section 3 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988), the Governor of Tamil Nadu hereby appoints the Judge specified in column (1) of the Table below as Special Judge to try the offences specified in sub-section (1) of the said section 3, relating to Banks and Financial Institutions, which are investigated by the Delhi Special Police Establishment, for the areas comprised in the Sessions Division specified in column (1) thereof.

Special Judge (1)	THE TABLE Sessions Division (2)
XI Additional City Civil and Sessions Judge (CBI Cases relating to Banks and Financial Institutions), Chennai	The entire State of Tamil Nadu

12. Therefore, we have to consider the provisions of the Prevention of Corruption Act, 1988 to arrive at a conclusion whether the power under Section 407 Cr.P.C is in any way curtailed. The relevant provisions, namely Section 3, 4 and 5 of the Prevention of Corruption Act, 1988, read as follows:-

Section 3

3. Power to appoint special Judges. - (1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:-

- (a) any offence punishable under this Act; and
- (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973.

Section 4:

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

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or, where there are more special judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis.

Section 5:

5. Procedure and powers of special Judge. – (1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by the Magistrates.

(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purpose of sub-sections (1) to (5) of section 308 of

the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under section 307 of that Code.

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for purposes of the said provisions, the court of special judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

(5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 (Ordinance 38 of 1944).

13. As per sub-section (3) of Section 5 of the Prevention of Corruption Act, 1988, the Code of Criminal Procedure shall apply to cases under the Prevention of Corruption Act, save as provided in sub-sections (1) and (2) of Section 5. Sub-section (1) gives power to the special judge (though a Sessions judge) to take cognizance of the offences without the accused being committed for trial. Sub-section (2) gives power to the special judge to render pardon to an accused (principal or abettor) on condition of making true and full disclosure of the whole circumstances within his knowledge, with a view to obtaining evidence of such persons. None of the provisions in the Prevention of Corruption Act containing 31 sections deals with the transfer of cases. As per Section 3 of the Prevention of Corruption Act, 1988, the government is empowered to appoint special judges. Section 5 deals with the powers of the special judge and the procedure applicable in the cases tried by the special judges. As the said special Act does not contain any provision dealing with the transfer of cases, we have to refer to the provisions dealing with the power of the government and the High Court regarding transfer of criminal cases.

14. Section 185 of the Code of Criminal Procedure gives power to the state government to direct that any case or class of cases committed for trial in any district to be tried in another sessions division. Section 185 reads as follows:

" 185. Power to order cases to be tried in different sessions divisions.—

Notwithstanding anything contained in the preceding provisions of this Chapter, the State Government may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division:

Provided that such direction is not repugnant to any direction previously issued by the High Court or the Supreme Court under the Constitution, or under this Code or any other law for the time being in force."

Though the state government has been given power to direct trial of a case or class of cases committed for trial in any sessions division in other sessions division, the proviso makes it clear that such a direction of the state government shall not be repugnant to any direction previously issued by the High court or the Supreme court under the constitution or under the Criminal Procedure Code or any other law for the time being in force. The proviso makes it clear that no order contra to a previous direction issued by the High court or the supreme court regarding the place of trial shall be made by the state government. However the converse restriction on the High court or the Supreme court has not been provided in the said provision. The mere fact that the state government exercised the power conferred on it under Section 185 of Cr.P.C shall not take away or abridge the power of the High court or that of the Supreme court either under the constitution or under the Criminal Procedure Code to pass an order regarding the place or court of trial which even may be repugnant or contrary to the direction issued by the state government under Section 185 Cr.P.C.

15. The other provisions regarding the power to transfer a case from one court to another court are found in sections 406 and 407 of the Criminal Procedure Code. Section 406 of Cr.P.C deals with the power of the supreme court to transfer a case from one High court to another High court or from a criminal court subordinate to one High court to another criminal court subordinate to another High court. Section 407 of Cr.P.C deals with the power of the High court to transfer cases and appeals from any criminal court subordinate to the High court to any other criminal court subordinate to it. The powers given to the Supreme court under Section 406 and the High court under Section 407 Cr.P.C are not in any way curtailed by the power given to the state government under Section 185 of Cr.P.C. The powers of the Supreme court and the

High court under sections 406 and 407 respectively of transfer of cases is not subservient to the power of the state government under section 185 Cr.P.C and the powers of the said courts are independent powers. However, there is a specific clause in section 407 sub-clause (9) which says "nothing in this section shall be deemed to affect any order of government under Section 197." Section 197 of Cr.P.C deals with the sanction for prosecution of judges, magistrates and public servants. The section dealing with sanction of prosecution of such person contains a sub-section, namely sub-section (4) which reads as follows:

"(4) The central government or the state government, as the case may be, may determine the person by whom, the manner in which and the offence or offences for which the prosecution of such judge, magistrate or public servant is to be conducted and may specify the court before which the trial is to be held."

Whether the exercise of the power conferred on the state government under sub-section (4) of section 197 of Cr.P.C shall take away the power of the High court under section 407 of Cr.P.C to transfer a case from one criminal court subordinate to it to another criminal court of equal or superior jurisdiction, has also got to be considered in these petitions.

16. Let us take up the contention of the learned special public prosecutor for CBI cases that once the government constitutes a special court and designates a judge to be a special judge for trial of a case or cases of a particular class, then the High court or the Supreme court shall have no power to transfer such cases from the said court to any other court – can be taken up for consideration.

17. It is the contention of the learned special public prosecutor for CBI cases that the state government which thought it fit to constitute a special court for the trial of corruption cases relating to banks and financial institutions investigated by Central Bureau of Investigation and thus designated the *XI Additional City Civil and Sessions Judge (CBI Cases relating to Banks and Financial Institutions), Chennai*, as the exclusive court for trial of such cases to exercise jurisdiction over the entire State of Tamil Nadu; that on the constitution of such court, the power conferred upon the High court under Section 407 Cr.P.C should be construed to have been taken away and that hence the present petitions for transferring the cases from the said court to any other court shall be rejected as not maintainable. It is the further contention of the learned special public prosecutor for CBI cases that since the present trial court is the only court designated as special court for the trial of corruption cases relating to banks and financial institutions investigated by the CBI, by necessary implication also the power of the High court under section 407 Cr.P.C should be held to be abridged and taken

away.

18. Per contra, the learned senior counsel for the petitioners and the learned senior counsel for the other respondents have contended that though the state government derived its power under Section 185 of Cr.P.C and also under section 197 sub-clause (4), the government orders passed sanctioning a special court and designating the XI Additional Judge of the City Civil Court as the special judge for trial of cases relating to banks and financial institutions investigated by CBI, the said government orders were passed in exercise of the powers conferred upon the government under section 3 of the Prevention of Corruption Act, 1988; that the XI Additional Sessions Judge is not the only judge appointed as special judge under the provisions of Prevention of Corruption Act and that there are two other special judges, namely VIII Additional Sessions Judge (special judge for CBI cases) and IX Additional Sessions Judge (special judge for CBI cases) appointed under section 3 of the Prevention of Corruption Act, 1988. It is their contention that the objection raised by the learned special public prosecutor for CBI cases is not tenable on the ground that the present trial court is the only designated judge for the trial of similar type of cases is not factually correct and that including the present trial judge, there are three special judges functioning in Chennai appointed under section 3 of the Prevention of Corruption Act, 1988.

19. It is their further contention that even otherwise, the mere fact that a single judge has been designated to be a special judge to exercise jurisdiction over the entire state shall not have the effect of either taking away or abridging the right of either the Supreme court or the High court under sections 406 and 407 of Cr.P.C respectively. While dealing with the powers of the High court under the corresponding provision, namely section 527 in the old Criminal Procedure Code, 1898, of the Criminal Procedure Code, a three judge bench of the Hon'ble Supreme Court rejected a contention similar to the one raised by the learned special public prosecutor for CBI cases in the case on hand. Therein, as per the Criminal Law Amendment Act, 1952, the case had been assigned by the state government to a special judge which was sought to be transferred. It was contended on behalf of the state that such a case could not be transferred at all because under the terms of the Criminal Law Amendment Act, 1952, a self-contained special law, such a case must be tried by the Special Judge designate alone. Their Lordships of the Hon'ble Supreme Court observed that such an argument was extremely plausible, but did not bear close scrutiny. The said judgment was pronounced in *Gurcharan Dass Chadha vs. State of Rajasthan* reported in (1966) 2 SCR 678: AIR 1966 SC 1418. The relevant observations are found in paragraphs 8 to 10 of the said judgment. They are extracted hereunder.

"8. The Advocate-General, Rajasthan in opposing the

<https://hcservices.ecourts.gov.in/hcservices> Petition relies principally on the provisions of Section

7(1) and (2) and contends that the two sub-sections create two restrictions which must be read together. The first is that offences specified in Section 6(1) can be tried by Special Judges only. The second is that every such offence shall be tried by the Special Judge for the area within which it is committed and if there are more Special Judges in that area, by the Special Judge chosen by Government. These two conditions, being statutory, it is submitted no order can be made under Section 527 because on transfer, even if a Special Judge is entrusted with the case, the second condition is bound to be broken.

9. No doubt sub-section (1) of Section 7 lays down that the trial of an offence specified in sub-section (1) of Section 6 must be by a Special Judge only but that condition can be fully met by transferring the case to another Special Judge. Indeed Section 527 itself contemplates that the transfer should be to a Court of equal or superior jurisdiction and we presume that there are Special Judges in every State of India. The selection of a Special Judge causes no difficulty. It is the second condition which is really pleaded in bar. The provision of sub-section (2) of Section 7 is that an offence shall be tried by the Special Judge for the area within which it is committed.

10. This condition, if literally understood would lead to the conclusion that a case once made over to a Special Judge in an area where there is no other Special Judge, cannot be transferred at all. This could hardly have been intended. If this were so, the power to transfer a case intra-state under Section 526 of the Code of Criminal Procedure, on a parity of reasoning, must also be lacking. But this court in Ramachandra Prasad v. State of Bihar upheld the transfer of a case by the High Court which took it to a Special Judge who had no jurisdiction in the area where the offence was committed. In holding that the transfer was valid this Court relied upon the third sub-section of Section 8 of the Act. That sub-section preserves the application of any provision of the Code of Criminal Procedure if it is not inconsistent with the Act, save as provided in the first two sub-sections of that section. The question, therefore, resolves itself to this: is there an inconsistency between Section 527 of the Code and the second sub-section of Section 7? The answer is that there is none. Apparently this Court in the earlier case found no inconsistency and the reasons appear to be these: The condition that an offence specified in Section 6(2) shall be tried by a Special Judge for the area within which it is committed merely specifies which of several Special

Judges appointed in the State by the State Government shall try it. The provision is analogous to others under which the jurisdiction of Magistrates and Sessions Judges is determined on a territorial basis. Enactments in the Code of Criminal Procedure intended to confer territorial jurisdiction upon courts and Presiding Officers have never been held to stand in the way of transfer of criminal cases outside those areas of territorial jurisdiction. The order of transfer when it is made under the powers given by the Code invests another officer with jurisdiction although ordinarily he would lack territorial jurisdiction to try the case. The order of this Court, therefore, which transfers a case from one Special Judge subordinate to one High Court to another Special Judge subordinate to another High Court creates jurisdiction in the latter in much the same way as the transfer by the High Court from one Sessions Judge in a Sessions Division to another Sessions Judge in another Session Division.

If the ratio decided therein is applied to the facts of the case on hand, the contention of the learned special public prosecutor for CBI cases can be discountenanced.

20. In *Ram Chandra Prasad v. State of Bihar* reported in AIR 1961 SC 1629, sections 7 and 8(3) of the Criminal Law Amendment Act, 1952 which were almost similar to sections 4 and 5(3) of the Prevention of Corruption Act, 1988 were considered by the Hon'ble Supreme Court. Section 7 of the Criminal Law Amendment Act, 1952 was as follows:-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, or in any other law the offences specified in sub-section (1) of section 6 shall be triable by Special Judges only.

(2) Every offence specified in sub-section (1) of section 6 shall be tried by the Special Judge for the area within which it was committed, 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 State Government.

(3) When trying any case, a Special Judge may also try any offence other than an offence specified in section 6 with which the accused may, under the Code of Criminal Procedure, 1898, be charged at the same trial."

Section 4 of the Prevention of Corruption Act, 1988 reads as follows:

" 4. Cases triable by special Judges. - (1)

Notwithstanding anything contained in the Code of Criminal

Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or, where there are more special judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis."

Section 8(3) of the Criminal Law Amendment Act, 1952 reads as follows:

"Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1898, shall, so far as they are not inconsistent with this Act, apply to the proceedings before a Special Judge; and for the purposes of the said provisions, the Court of the special judge shall be deemed to be a Court of Session trying cases without a jury or without the aid of assessors and the person conducting a prosecution before a Special Judge shall be deemed to be a public prosecutor."

Section 5(3) of the Prevention of Corruption Act, 1988 is as follows:-

"(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor."

21. Considering those provisions, the Hon'ble Supreme Court expressed the view that the court of the Special Judge was a criminal court subordinate to the High court. The following were the observations made by the Hon'ble Supreme Court:

"It follows that the provisions of section 526 of the Criminal Procedure Code (corresponding to section 407 of the Criminal Procedure Code, 1973) empowering the High court to transfer any case from a criminal court subordinate to it to any other competent court to try it. However, it was expressed therein that a case pending before a Special Judge could be transferred to another Special Judge, as the Act directed that such offences could be tried by Special Judges only. In the said judgment, it was held that since the case was tried by a Special Judge to whom the High court could have transferred from the Special Judge having jurisdiction over the area in which the offence was committed, the trial was not vitiated and that the conviction recorded therein could not be interfered with.

22. In *A.R. Anthulay vs. R.S. Naik and another* reported in (1988) 2 SCC 602, a constitutional bench of the Hon'ble Supreme Court consisting of seven judges considered the question whether a case pending before a Special Judge designated under the Criminal Law Amendment Act, 1952 could be withdrawn and transferred to the High court itself. Referring to the scope of sections 406 and 407 and section 7(1) of Criminal Law Amendment Act, 1952, by a majority of 4 to 3, it was held therein when the parliament enacted law to the effect that a particular type of cases should be tried by Special Judges alone appointed under the said law, then such cases could not be transferred to the High Court itself. It was also observed therein that the cases triable by a Special Judge could be transferred only to another Special Judge as the direction in the special law that such cases were to be tried by Special Judges only could be construed to be a procedure established by law. A careful reading of the said judgment of the constitutional bench of the Hon'ble Supreme Court will show that only the transfer of a case from a Special Judge to the High court itself was prohibited and not the transfer of a case from one Special Judge to another Special Judge. The majority view was to the effect that the provision made by the parliament for having the cases enumerated in section 3(1) of the Prevention of Corruption Act, 1988 to be tried by the Special Judges only, is a procedure established by law made by parliament and that hence the power of transfer available to the Supreme Court under Section 406 of Cr.P.C and to the High court under Section 407 of Cr.P.C should be held circumscribed by the condition that such cases are to be tried by the Special Judges only, meaning that a case pending before a Special Judge appointed under the provisions of the Prevention of Corruption Act, 1988 could be transferred to another Special Judge alone within its jurisdiction in the case of exercise of such power by the High Court under section 407 of Cr.P.C and from one special court subordinate to a High court to another special court subordinate to another High court in case of exercise of such power by the Hon'ble Supreme Court under section 406 of Cr.P.C. From the majority view

of the larger constitutional bench of the Hon'ble Supreme Court in the above said case, it is quite clear that the power of the High court under section 407 of Cr.P.C is not altogether taken away in cases triable by Special Judges appointed under the Prevention of Corruption Act, 1998, but provides a restriction that such transfers could be made only to another Special Judge appointed under the said Act.

23. The said view gets strengthened by at least two subsequent judgments of the Hon'ble Supreme Court. They are *Abdul Nazar Madani v. State of Tamil Nadu* reported in 2000(6) SCC 204 and *K.Anbazhagan vs. The Superintendent of Police and Ors. Etc.* reported in 2003(4) CTC 609. In case of *Abdul Nazar Madani v. State of Tamil Nadu*, a case pending before the a special court for the trial of bomb blast cases was sought to be transferred. The Hon'ble Supreme Court in the said case was of the view that a case pending before the said special court could be transferred within the State under section 407 of Cr.P.C and anywhere in the country under Section 406 of Cr.P.C. The following were the observations made therein:- "The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that the public confidence in the fairness of a trial would be seriously undermined, any party and seek the transfer of a case within the State under Section 407 of Cr.P.C and anywhere in the country under section 406 of Cr.P.C. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive." However, in the said case, the Hon'ble Supreme Court declined the prayer for transfer of the case.

24. The second case, namely *K.Anbazhagan vs. The Superintendent of Police and Ors. Etc.* reported in 2003(4) CTC 609 deals with the case of a petition for transfer of a case under the Prevention of Corruption Act, 1988 from the court of a special judge appointed under the Act. The former Chief Minister of Tamil Nadu was facing trial of charges under the Prevention of Corruption Act, 1988 before the Special Judge No.1 (IX Additional Sessions Judge), Chennai. A petition was filed before the Hon'ble Supreme Court under Section 406 Cr.P.C seeking transfer of the case to a court of equal and competent jurisdiction in any other State, as the accused was the then the Chief Minister of Tamil Nadu. The Hon'ble Supreme Court exercising its power under section 406 Cr.P.C directed transfer of the cases from the court of a special Judge No.1 (XI Additional Sessions Judge), Chennai in the State of Tamil Nadu to a special court to be constituted by the State of Karnataka in consultation with the Chief Justice of High Court of Karnataka under the Prevention of Corruption Act, 1988 having its seat at

Bangalore The said judgment will make it clear that the power of the Supreme Court under section 406 Cr.P.C to transfer cases from one State to another State includes the power to transfer cases from one Special Court under the Prevention of Corruption Act, 1988 in a State to another Special Court constituted under the said Act in another State and that the said power includes direction for constitution of a new Special court for the purpose of trial of transferred cases. The said judgment makes it abundantly clear that the power of the Supreme court is not in any way abridged by the fact that there is no other special court constituted by the State or the Central government having equal or superior jurisdiction to try the case sought to be transferred and that in appropriate cases, if necessity arises, the Supreme Court shall have the power to direct constitution of a special court to try the cases transferred from one State to another State. By analogy, the power of the High court under Section 407 Cr.P.C can be interpreted to include a power to not only transfer a case from one special court constituted under the Prevention of Corruption Act, 1988 to another special court constituted under the Act within the State, but also the power to direct constitution of a special court by issuing necessary notification under the Prevention of Corruption Act, 1988 to try the case sought to be transferred.

25. In this case, the government has notified XI Additional Judge of the City Civil Court as the Special Judge for trial of cases relating to banks and financial institutions investigated by CBI. But the notification was issued only in exercise of the powers conferred upon the state government under section 3(1) of the Prevention of Corruption Act, 1988. When considering the fact of such a notification, one may be able to appreciate that the constitution of one of the special courts for dealing with particular type of cases is nothing but defining the jurisdiction and allocation of cases. It cannot be construed to mean that there are no other courts competent to try such offences. Whether other courts are competent to try such offences have to be decided in the light of the provisions of the Prevention of Corruption Act. Section 4(1) of the Prevention of Corruption Act, 1988 says that the offences specified in sub-section 1(3) shall be tried by Special Judges only. It is not the case of the first respondent (prosecution) that the court from which the cases are sought to be transferred in these petitions, namely the XI Additional Judge, City Civil Court (Special Judge for CBI cases) is the only judge appointed as special judge under Section 3(1) of the Prevention of Corruption Act, 1988 in Tamil Nadu. Admittedly, in Chennai itself there are two other special judges appointed under section 3(1) of the Prevention of Corruption Act, 1988. They are VIII Additional Sessions Judge (special judge for CBI cases) and IX Additional Sessions Judge (special judge for CBI cases). Apart from that in each district Special Judges under section 3(1) of the Prevention of Corruption Act, 1988 have been appointed. In this case, the other Special Judges, in addition to their designation as Special Judges under section 3(1) of the Prevention of Corruption Act, 1988

have also been designated to be the judges for the trial of cases investigated by the Central Bureau of Investigation. Under such circumstances, there shall be no legal impediment for transferring these cases from the present trial court to the court of another special judge functioning within Tamil Nadu, that too in Chennai itself.

26. The above said conclusion will take us to the next question, namely, "whether the petitioners have made out a case on merit for the transfer of these cases?"

27. The petitioners have come forward with these petitions seeking transfer of the cases pending before the XI Additional Sessions Judge (Special Judge for CBI cases) on the ground that they reasonably apprehend denial of impartial and fair trial as they believe the trial judge to be biased against them. The petitioners have cited the fact that they were convicted in a similar case, namely C.C.No.66/2001 and sentenced them to undergo seven years rigorous imprisonment for each one of the charges framed against them in the said case besides imposing a fine of Rs.80,00,000/- (at the rate of Rs.10,00,000/- per charge) on each one of the convicted persons in the said case as a ground for their belief that the trial judge is biased against them. The fact that in a previous case, the accused were convicted by the trial court alone shall not be the ground on which they can seek a transfer of the case from the said court stating that they have reasonable apprehension that the judge, who had already taken a view in the former case, would be prejudiced against them or would be not in a position to consider the case in an unbiased manner. If such a contention is accepted, then a person having a number of cases shall have to be either tried simultaneously or in different courts. But, there must be clear averments to the effect that there are reasonable grounds for entertaining an apprehension that there won't be fair and impartial trial.

28. In these cases, the petitioners have come forward with a plea that they reasonably apprehend bias and failure of impartial trial not simply because the earlier case ended in their conviction, but because the trial court, according to them, deliberately omitted to refer to the various contentions raised by them in the written arguments submitted in the prior case. That is one of the grounds alleged for seeking transfer of the present cases. Another ground alleged is pertaining to the procedure adopted by the trial court in the trial of the present cases which are sought to be transferred. Admittedly, large number of witnesses have been cited as prosecution witnesses and the copies of the documents supplied to the accused persons run to several volumes. It is also not in dispute that witnesses are examined in the trial court not in accordance with the serial number assigned to them in the list of witnesses annexed to the charge-sheet. Clear averment has been made (which has also been admitted by the learned special public prosecutor for CBI cases to be correct) that

the witnesses produced by the prosecution on the date of hearing are being examined without adhering to any scheme and without dispensing with the witnesses whose names are found in the list of witnesses annexed to the charge-sheet. It is submitted on behalf of the petitioners that the said procedure provides a lot of hardships to the accused as well as the counsel for the accused as they have to carry loads of documents supplied to the accused persons to the court on each and every day. It is also argued on behalf of the petitioners that the requests made by the counsel for the accused before the trial court were of no use as the trial judge informed them that they need not be furnished with the information in advance as to who are all the witnesses to be examined on a particular day. This court is of the considered view that the said procedure adopted by the trial court would definitely cause not only inconvenience to the accused and the counsel for the accused but also a certain amount prejudice to the accused persons in effectively defending the case against them.

29. The further ground alleged by the petitioners is that despite the fact that no scheme for the examination of witnesses was framed and witnesses were produced not in accordance with the list but in accordance with the convenience of the prosecution, the petitioners were cooperating with the trial court but the same was not reciprocated by the trial court by providing reasonable opportunity for effectively cross-examining the witnesses. According to the petitioners, since the documents supplied to them are contained in several volumes and since the witnesses are examined at the choice of the prosecution without adhering to a scheme and without informing the counsel for the accused in advance so that they could get prepared for the cross-examination of the particular witnesses, the petitioners and other accused persons are not in a position to give on the spot instructions to their counsel for effectively cross-examining the witnesses and the request made by the counsel for the accused persons seeking time for cross-examining the witnesses examined on a particular day or for deferring their cross-examination for the time being was turned down abruptly by the trial court.

30. The next limb of allegation made by the petitioners herein and supported by the other accused persons is that whenever such requests were made by the defence counsel seeking time for cross-examination or deferring the cross-examination of any particular witness, without even making a record of it, the learned trial judge used to record 'NIL' or 'NO CROSS' under the caption cross-examination and that the same has created a reasonable apprehension in the minds of the accused, especially the petitioners herein, that they cannot expect unbiased and impartial trial. The said allegations made by the petitioners have been supported by the other accused persons who have been arrayed as respondents 2 to 6 in CrI.O.P.No.12726/2009, respondents 2 to 8 in CrI.O.P.No.12753/2009, respondents 2 to 5 in CrI.O.P.No.12754/2009, respondents 2 to 5 in CrI.O.P.No.12755, respondents 2 to 7 in

Crl.O.P.No.12756, respondents 2 to 11 in Crl.O.P.No.12758, respondents 2 to 19 in Crl.O.P.No.12759, respondents 2 to 14 in Crl.O.P.No.12760, respondents 2 to 9 in Crl.O.P.No.12761, respondents 2 to 31 in Crl.O.P.No.12762, respondents 2 to 4 in Crl.O.P.No.12763, respondents 2 to 12 in Crl.O.P.No.12764, respondents 2 to 20 in Crl.O.P.No.12765, respondents 2 to 16 in Crl.O.P.No.12790, respondents 2 to 8 in Crl.O.P.No.12791, respondents 2 to 4 in Crl.O.P.No.12796, respondents 2 to 15 in Crl.O.P.No.12848, respondents 2 to 6 in Crl.O.P.No.12725, respondents 2 to 8 in Crl.O.P.No.12757, respondents 2 to 31 in Crl.O.P.No.12766, respondents 2 to 5 in Crl.O.P.No.12767, respondents 2 to 19 in Crl.O.P.No.12769, respondents 2 to 12 in Crl.O.P.No.12770, respondents 2 to 16 in Crl.O.P.No.12787, respondents 2 to 3 in Crl.O.P.No.12788, respondents 2 to 16 in Crl.O.P.No.12789, respondents 2 to 11 in Crl.O.P.No.12792, respondents 2 to 8 in Crl.O.P.No.12793, respondents 2 to 7 in Crl.O.P.No.12794, respondents 2 to 8 in Crl.O.P.No.12795, respondents 2 to 29 in Crl.O.P.No.13344, respondents 2 to 29 in Crl.O.P.No.13371 and respondents 2 to 15 in Crl.O.P.No.13407.

31. There is no effective denial of the correctness of the above said allegations made by the accused persons. On the other hand, in the counter affidavit, it has been stated that there are directions by this court as well as the Hon'ble Supreme Court that the trial should be held on a day to day basis and every effort should be made for expeditious disposal of the cases; that despite there being such directions, the petitioners and other accused persons are bent upon protracting the cases as long as possible and that the present petitions are also examples of such attempt to protract the case. The very fact that, without denying the specific averments made by the petitioners regarding the denial of reasonable opportunity to effectively defend themselves by having effective cross-examination of the witnesses examined on the side of the prosecution and the allegations that the trial judge is recording incorrect particulars as if the accused did not have any question to put in to be cross-examined first respondent has chosen to refer to the direction of this court and the Hon'ble Supreme Court for speedy disposal and contend that the accused persons are trying to protract the case, will make the contention of the petitioners probable. This court, should also take notice of the fact that even though, the petitioners have filed petitions for stay of trial pending disposal of these transfer OPs, they have not pressed for an order and they continued to cooperate for the day to day progress of the case during the pendency of these transfer petitions. As such the contention of the first respondent that the petitioners are bent upon protracting the case, cannot be countenanced.

32. On the other hand, the allegations made in the affidavits filed in support of the petitions are enough to make out a case that the petitioners have reason to apprehend that the trial judge is biased against the petitioners. This court is also satisfied

that the apprehension of the petitioners that there won't be a fair and impartial trial and that they are not being given sufficient opportunity to effectively defend themselves in the criminal cases is quite reasonable. In this regard, the observations made by the Hon'ble Supreme Court in *Manak Lal v. Dr. Prem Chand Sanghvi* reported in AIR 1957 SC 425 is worth mentioning.

"Confidence in the administration of justice is an essential element of good government, and reasonable apprehension of failure of justice in the mind of the litigant public should, therefore, be taken into serious consideration. Courts should not fail to remember that it is their duty no less to preserve an outward appearance of impartiality than to maintain the internal freedom from biasness. Transfer in certain cases is made not because the party approaching the Court will not have a fair and impartial trial but because the party has reasonable apprehension that it will not have such a trial."

33. In *Gurcharan Dass Chadha vs. State of Rajasthan* reported in (1966) 2 SCR 678: AIR 1966 SC 1418, it has been observed that the petitioners seeking transfer is not required to demonstrate that justice will inevitably fail and that he is entitled to a transfer if he is able to put the circumstances before the court from which it may be inferred that he entertains an apprehension, which is reasonable in the circumstances alleged.

36. It is unnecessary to cite all the judgments which deal with the proof required of the person seeking transfer of the case and suffice to observe that it is a well settled law that a person seeking transfer is not expected to establish that he will not get fair and impartial justice and what is expected of him is to prove that he apprehends that there won't be a fair trial and that such an apprehension is not an illusion or baseless, but a reasonable one. It is not enough to do justice and it must be seen to be done. If the above mentioned legal principles in connection with the transfer of criminal cases are applied to the facts of the case on hand, this court, without any hesitation, shall come to the conclusion that the petitioners have proved that they have reasonable apprehension that they will be denied reasonable opportunity to defend themselves in the criminal cases against them and that there won't be any fair trial, if the case is allowed to be tried in the present trial court.

37. For all the reasons stated above, this court comes to the conclusion that the petitioners have made out a clear case for transfer of the cases. As the cases sought to be transferred are pending before a Special Judge appointed under section 3(1) of the Prevention of Corruption Act, 1988 for dealing with the cases investigated by the Central Bureau of Investigation, this court is of the view that these cases can be transferred to one of the two

provisions. The other two judges are VIII Additional Sessions Judge (Principal special judge for CBI cases) and IX Additional Sessions Judge (Additional special judge for CBI cases). This court deems it fit to have the transfer of the cases to the file of the VIII Additional Sessions Judge (Principal special judge for CBI cases), Chennai. The VIII Additional Sessions Judge (Principal special judge for CBI cases) on such transfer shall proceed with the trial of the cases on a day to day basis and dispose of the case, as expeditiously as possible in accordance with the previous directions issued by this court and the Hon'ble Supreme Court.

38. In the result, these petitions are allowed and the C.C.Nos.33/1998, 13/2001, 14/2001, 56/2000, 3/2001, 57/2000, 58/2003, 1/2000, 81/2001, 71/2001, 29/1999, 15/2001, 64/2001, 17/2001, 80/2001, 55/2000, 82/2001, 36/1998 now pending on the file of XI Additional Sessions Judge (Additional Special Judge for CBI cases), Chennai are transferred to VIII Additional Sessions Judge (Principal special judge for CBI cases), Chennai. The VIII Additional Sessions Judge (Principal special judge for CBI cases), Chennai, shall proceed with the trial of the cases on a day to day basis and dispose of the case, as expeditiously as possible in accordance with the previous directions issued by this court and the Hon'ble Supreme Court. Consequently, all connected MPs are also closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

asr

To

1.The XI Additional Sessions Judge,
(Additional Special Judge for CBI Cases)
Chennai.

2.The VIII Additional Sessions Judge,
(Principal Special Judge for CBI Cases)
Chennai.

3.The Special Public Prosecutor,
CBI Cases, Chennai.

+1cc to Mr.Sabapathi, Advocate Sr 43251

RL (CO)

Km,Sra,Tp,Eu,Vc.Rh/7.10.2009

CrI.O.P.Nos.12726... of 2009 etc.