REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRIMINAL REVISION PETITON NOS. 322 & 272 OF 2008

Reserved on : 1st September, 2010.

% Date of Decision: 29th October, 2010.

S.S. AHLUWALIA ....Petitioner

Through Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Anurag Ahluwalia, Advocate.

INDERJIT SINGH ....Petitioner

Through Mr. Sidhartha Luthra, Sr. Advocate withMr. Anurag Ahluwalia, Advocate.

VERSUS

CBI .....Respondent

Through Mr. Vikas Pahwa, Standing Counsel. Mr. Harish Gulati and Mr. Anindya Malhotra, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in the Digest ? YES

SANJIV KHANNA, J.:

These two revision petitions by S.S. Ahluwalia and his brother Inderjit Singh are directed against the order on the point of charge dated 23rd February, 2008 passed by the Special Judge, Central Bureau of Investigation (CBI, for short). It has been held in the impugned order that a case is made out for framing of

charges against the two petitioners under Section 120-B of the Indian Penal Code, 1860 (hereinafter referred to as IPC) read with Sections 419, 420, 467, 468 and 471 IPC read with Sections 5(1)(e) and 5(2) of Prevention of Corruption Act, 1947 (hereinafter referred to as PC Act for short). Substantive charges against S.S. Ahluwalia have also been framed under Sections 419, 420, 467, 468, 471 IPC as well as under Sections 5(1)(e) read with Section 5(2) of the PC Act.

2. The allegation is that during the check period 1st July, 1969 to 28th March, 1987, S.S. Ahluwalia, an officer of Indian Administrative Services, while working in Kohima/Nagaland and Delhi, had acquired assets worth Rs.67,96,601/- disproportionate to his known sources of income. It is also alleged against S.S. Ahluwalia that he had entered into a criminal conspiracy with Inderjit Singh, V. Bhaskaran (approver) and Nyamo Lotha (who has expired), at Kohima and Delhi and in furtherance of criminal conspiracy had committed several acts. Some of these acts have been discussed separately, while dealing with the petition of Inderjit Singh.

3. On behalf of S.S. Ahluwalia, it was submitted that the State of Nagaland by their letter dated 6th November, 1990 had withdrawn their general/open consent under Section 6 of the Delhi Special Police Establishment Act, 1946 (DSPE Act for short) and, therefore, charges should not have been framed in respect of the alleged acts/offences relating to the State of Nagaland. Reference was made to the decision dated 1st February, 1991 in C.W.No. 1844/1998, filed by the petitioner S.S. Ahluwalia, which is reported in 1991 Crl.L.J. 2583. It was submitted that this decision operates as *res judicata*. Relying on the decision of the Supreme Court in ***H.N. Rishbud and Another Vs. State of Delhi***

AIR 1955 SC 196, learned counsel for the petitioner S.S. Ahluwalia, had submitted that 'investigation' includes formation of opinion by the police/prosecution as to whether on the material collected, there is a case to place the accused before a Magistrate for trial by filing charge sheet under Section 173 of the Code of Criminal Procedure, 1973 (Code for short). Reference was made to Section 2(h) of the Code, which defines investigation, and observations in paragraph 5 of the judgment of the Supreme Court in ***H.N. Rishbud*** (supra), which read:-

> "…..Thus, under the Code investigation consists generally of the following steps : (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173…"

Accordingly, on the basis of the charge sheet which was filed on 10th April, 1992, it is urged that charges cannot be framed for acts/omissions relating to the State of Nagaland after the letter dated 6th November, 1990.

4. S.S. Ahluwalia was inducted into IAS in 1969 and was allocated the State of Nagaland. During the check period 1st July, 1969 to 28th March, 1987, he had worked in the State of Nagaland and at Delhi. On 4th December, 1986, Chief Minister of the State of Nagaland wrote a letter to the Union Home Minister

regarding questionable conduct of S.S. Ahluwalia relating to extortion of businessmen, involvement in shoddy gunny bags transaction, his conduct as a Director of State Lotteries, etc. It was alleged that the petitioner S.S. Ahluwalia had acquired assets, which were disproportionate to his known sources of income including immovable properties in Delhi and outside Nagaland. The Government of Nagaland had stated that they do not have proper machinery to conduct investigation into all ramifications of the case and a comprehensive inquiry by reputed agency like CBI was necessary.

5. The State of Nagaland has given general consent for conduct of investigation under DSPE Act vide their letter dated 8th November, 1967. On 24th March, 1987, an FIR was registered by the CBI against the petitioner S. S. Ahluwalia on information received from a reliable source that he was indulging in corrupt activities and mal-practices and had amassed assets disproportionate to his known sources of income. S.S. Ahluwalia does not question and challenge the registration of this FIR in view of the general consent dated 8th November, 1967. It is submitted that this general consent in relation to the petitioner S. S. Ahluwalia was withdrawn on 23rd November, 1989. It is accepted that by another order dated 9th May, 1990, the general consent in relation to S.S. Ahluwalia was restored. Subsequently, the Government of Nagaland issued another order dated 6th November, 1990 stating that the order dated 23rd November, 1989 withdrawing the consent was valid and by the order dated 6th November, 1990, the order dated 9th May, 1990 was cancelled. It is, thus, the contention of S.S. Ahluwalia that the consent for investigation by CBI was specifically withdrawn in his

case and, therefore, the charge sheet for offences relating to the State of Nagaland has to fail.

6. S.S. Ahluwalia had raised similar contentions before the Court in C.W.No. 1844/1998, which was decided on 1st February, 1991. Paragraphs 6, 9 to 11 and 30 of the decision dated 1st February, 1991 read as follow;-

> "6. Shri Satpal, learned counsel for respondents 1 to 3, on the other hand, submitted that ……So, the FIR correlate with the offence u/S. 5(1)(e). He also submitted that the FIR is under investigation which is now almost complete and the CBI is ready to file a charge-sheet. It was urged that it is not a fit case for exercise of extraordinary power of this court for preventing the CBI to investigate the offence and for quashing the FIR. He submitted that there are good grounds for charging the petitioner of the said offence.
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> 9. It would appear from the provisions contained in S. 5 that the Central Government may by order extend the powers and jurisdiction to members of DSPE to any area for the investigation of any offences or classes of offences specified in a notification u/S. 3. While exercising that power the members of the DSPE would be deemed to be members of the police force of that area and be vested with the powers, functions and privileges and would be subject to the liabilities of a police officer belonging to the police force of that area, i.e. the members of the DSPE will discharge the functions of the police officer of that area. Further the members of the D.S.P.E. of or above the rank of Sub Inspector shall be deemed to be in charge of the police station discharging the functions of such an officer within the limits of his police station. So, for all purposes, the members of DSPE would be police officers of that particular area, exercising all powers, functions and privileges and subject to all liabilities of a police officer of that area. S. 6 is an

overriding provision. It begins with a non obstante clause. It overrides the provisions of S. 5. According to this provision, the powers would not be exercisable by any member of the DSPE unless the Government of the State gives its consent. By virtue of S. 5, any member of DSPE would not be able to exercise power and jurisdiction in any area in a State, without the consent of the Government of that State. This consent of a State is a pre-condition for exercise of powers and jurisdiction in that area of the State by any member of the Delhi Special Police Establishment. Thus, it would appear that consent of the State of Nagaland is necessary for investigating the offence u/S.5(1)(e) in respect of the aforesaid FIR relating to the offences in the State of Nagaland.

10. …. Thus. there was a pre-existing consent at the time of registration of the case by the CBI on 24-3-87. It is true that in respect of the petitioner, the consent was withdrawn on 23-11-89 and it was again restored vide order dated 9-5-90 and further by order dated 6-1190, order dated 9-5-90 was cancelled and in respect of the order of withdrawal, it was stated that that stands valid and further it was reiterated vide order dated 8-1-9l. It is really strange. how the State Government functioned in relation to the giving of consent for investigation of offence u/S.5(1)(e) in respect of the petitioner. In any case, the general consent still holds good and it is only in relation to the petitioner that it is withdrawn. After the withdrawal of the consent, it is correct that the CBI has no jurisdiction to investigate the offence against the petitioner under the aforesaid FIR. As it is clear from the provision contained in S.6 that the members of the DSPE will have no jurisdiction to exercise any power in any area of the State of Nagaland without the consent of the Government of Nagaland.

11. We may also mention here that in the FIR, "Nagaland, Delhi and other places" have been mentioned as places of occurrence. The offence has no relation only with the State of Nagaland but it

has relation with Delhi and other places as well. And as such, the CBI is competent to investigate into the offence as mentioned in the FIR against the petitioner with respect to Delhi and other places but no investigation after the withdrawal of the order dated 9-5-90 can be conducted by the CBI in any area of the State of Nagaland with respect to the petitioner.

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30**.** In the light of what we have considered above and also in the light of principles laid down by their Lordships of the Supreme Court. we find no justification whatsoever for interference in investigation of the offence as alleged in the FIR in question."

7. It is clear from the aforesaid paragraphs, especially from the paragraph 30 that the said writ petition filed by S.S. Ahluwalia was dismissed and it was observed that the Court should not interfere with the investigation being conducted by the CBI. The Division Bench had recorded the contention of the counsel for the CBI that investigation was complete and charge sheet was ready to be filed. Thus CBI was not prohibited and barred from filing the charge sheet. Therefore, the first contention of the petitioner S.S. Ahluwalia that investigation includes formation of opinion i.e., whether charge sheet should be filed and charge sheet could not have been filed after withdrawal of consent by the State of Nagaland has to be rejected. Principle of Res judicata rather than supporting the plea of the petitioner S.S. Ahluwalia to this extent goes against him. The term 'investigation' for the purpose of DSPE Act need not to be given a very wide meaning. Investigation as defined in Section 2 (h) of the Code, has to be interpreted subject to the

context. In ***Kazi Lhendup Dorji Vs. Central Bureau of Investigation and Others*** *1994 Supp (2) SCC 116* it has been held:-

> "**16.** ….it may be mentioned that Section 21 of the General Clauses Act does not confer a power to issue an order having retrospective operation. [See *Strawboard Manufacturing Co. Ltd.* v. *Gutta Mill Workers' Union*(SCR at pp. 447-48).] Therefore, even if we proceed on the basis that Section 21 of the General Clauses Act is applicable to an order passed under Section 6 of the Act, an order revoking an order giving consent under Section 6 of the Act can have only prospective operation and would not affect matters in which action has been initiated prior to the issuance of the order of revocation. The impugned notification dated 7-1-1987, has to be construed in this light. If thus construed it would mean that investigation which was commenced by CBI prior to withdrawal of consent under the impugned notification dated 7-1-1987, had to be completed and it was not affected by the said withdrawal of consent. In other words, the CBI was competent to complete the investigation in the cases registered by it against Respondent 4 and other persons and submit the report under Section 173 CrPC in the competent court…."

8. Learned counsel for the petitioner S.S. Ahluwalia, however, has heavily relied upon the observations of the Division Bench in the judgment dated 1st February, 1991, in paragraphs 9 and 10 and has contended that consent by the State of Nagaland was necessary for the offences committed in the State of Nagaland and CBI has no jurisdiction to investigate the said offences. CBI had illegally conducted 'investigation' even after the letter dated 6th November, 1990 and therefore should be compelled and asked to rectify the said defect and illegality should not be ignored.

9. In paragraph 11 of the judgment dated 1st February, 1991, the Division Bench had observed that the offences have relation not only with the State of Nagaland but with Delhi and other places as well. In paragraph 11 it has been observed that no investigation after withdrawal of the order dated 9th May, 1990 could be conducted by the CBI in any area of the State of Nagaland. Thus, even for the State of Nagaland, CBI was competent to conduct investigation prior to the withdrawal order dated 9th May, 1990. Learned counsel for the petitioner was asked to pin point what investigation was conducted by the CBI after 9th May, 1990. In this connection reference was made to the statement of Mr. M.K. Mitral, Branch Manager, Kohima Branch, State of Nagaland. Merely recording of statement of Mr. M.K. Mitral after the order dated 9th May, 1990, does not mean that investigation by the CBI relates to the offences committed in the State of Nagaland and not to the offences committed in Delhi and other places. Further the last sentence in paragraph 11 of the judgment dated 1st February, 1991, has to be read with the preceding sentences. The preceding sentences refer to occurrences/ offences outside the Sate of Nagaland. Thus, Division Bench had observed regarding further investigation into offences relating to the State of Nagaland and not about inquiries or investigation in the State of Nagaland for offences committed outside the State of Nagaland.

10. Invalid investigation does not nullify cognizance or trial based thereupon before the court. A defect or illegality in investigation, how so ever serious, has no direct bearing on competence or procedure relating to cognizance by Court or trial before Court. In the present case we are not concerned with breach or violation of a mandatory statutory pre condition

before a Court can take cognizance of an offence or regulating the competence or procedure of a court regarding trial, as in case of sanction under Section 195, 196 etc. of the Code. This is a well established principle as observed in ***H.N. Rishbud*** (supra). In this case, it has been held as under;-

> "9. The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises.
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> A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190, Cr. P. C. as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190, Cr. P. C. is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings". The language of this section is in marked contrast with that of the other sections of the group under the same heading, i.e., Sections 193 and 195 to 199.
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> These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, Clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a

nullity. Such an invalid report may still fall either under Clause (a) or (b) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537, Cr. P. C. which is in the following terms is attracted :

> "Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in act occasioned a failure of justice."

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in - 'Prabhu v. Emperor', AIR 1944 PC 73 (C) and - 'Lumbhardar Zutshi v. The King', AIR 1950 PC 26 (D).”

My attention has been drawn to the observations made in ***H.N. Rishbud*** (supra) and paragraphs 22 to 28 in ***R.R. Kishore versus C.B.I.*** *142 (2007) DLT 702*. In the said paragraphs it has been held that where any illegality in investigation is brought to the notice of the trial court at an early stage, prosecution should be directed to take necessary steps to get the defects rectified and in a given case the court may direct re-investigation. But

illegality in investigation by itself does not vitiate the trial unless it can be shown that the said illegality has brought about miscarriage of justice. Accordingly, in paragraph 10 of ***H.N.Rishbud's*** case it has been observed as under:-

> "10. It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the circumstances of an individual case may call for. Such a course is not altogether outside the contemplation of the scheme of the Code as appears from Section 202 under which a Magistrate taking cognizance on a complaint can order investigation by the police. Nor can it be said that the adoption of such a course is outside the scope of the inherent powers of the Special Judge, who for purposes of procedure at the trial is virtually in the position of a Magistrate trying a warrant case. When the attention of the Court is called to such an illegality at a very early stage it would not be fair to the accused not to obviate the prejudice that may have been caused thereby, by appropriate orders, at that stage but to leave him to the ultimate remedy of waiting till the conclusion of the trial and of discharging the somewhat difficult burden under Section 537 of the Code of Criminal Procedure of making out that such an error has in fact occasioned a failure of justice. It is relevant in this context to observe that even if the trial had proceeded to conclusion and the accused had to make out that there was in fact a failure of justice as the result of such an error, explanation to Section 537 of the Code of Criminal Procedure indicates that the fact of the objection having been raised at an early stage of the proceeding is a pertinent factor. To ignore the breach in such a situation when brought to the notice of the Court would be virtually to make a dead letter of the peremptory provision which has been enacted on grounds of public policy for the benefit of such an

> accused. It is true that the peremptory provision itself allows an officer of a lower rank to make the investigation if permitted by the Magistrate. But this is not any indication by the Legislature that an investigation by an officer of a lower rank without such permission cannot be said to cause prejudice. When a Magistrate is approached for granting such permission he is expected to satisfy himself that there are good and sufficient reasons for authorising an officer of a lower rank to conduct the investigation. The granting of such permission is not to be treated by a Magistrate as a mere matter of routine but it is an exercise of his judicial discretion having regard to the policy underlying it. In our opinion, therefore, when such a breach is brought to the notice of the Court at an early stage of the trial the Court have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Section 5-A of the Act. It is in the light of the above considerations that the validity or otherwise of the objection as to the violation of Section 5(4) of the Act has to be decided and the course to be adopted in these proceedings, determined."

11. The contention of the petitioner S.S. Ahluwalia relying upon paragraph 10 in ***H.N. Rishbud's*** case is that the CBI must obtain consent of the State of Nagaland or otherwise investigation will be illegal. It is submitted that this plea was/is raised at the earliest stage and, therefore, the question of prejudice is immaterial. Argument though attractive but has to be rejected in view of the subsequent decision of the Supreme Court in ***Kazi Lhendup Dorji*** (supra). Supreme Court in the said decision has held that consent once given under the DSPE Act can only be withdrawn prospectively and will operate in investigation of new cases and will not affect pending

investigation on the date of issue of notification withdrawing consent. Cases pending investigation on the date of withdrawal of consent can continue to be investigated by the CBI and the CBI can file charge sheet under Section 173 of the Code.

12. In view of the said decision asking the CBI to obtain consent of the State of Nagaland, will be an empty formality or something which is not required to be done. In fact, in view of the decision in the case of ***Kazi Lhendup Dorji***(supra), the investigation by itself is not illegal as when the FIR was registered on 24th March, 1987, there was a valid consent by the State of Nagaland and the subsequent withdrawal on 6th November, 1990 does not affect the general consent or even the consent dated 9th May, 1990.

13. Learned counsel for the petitioner S.S. Ahluwalia had argued that the decision dated 1st February, 1991 in C.W.No.1844/1988 operates as *res judicata* and, therefore, consent is required. It was submitted that even if this decision is contrary to the ratio of the decision of the Supreme Court in ***Kazi Lhendup Dorji*** (supra) it has attained finality and is binding. The decision dated 1st February, 1991 relates to 'investigation' by the CBI and does not relate to question of 'cognizance' by the court or the subject matter whether or not and what evidence collected by the CBI can be looked into by the court. We are concerned with cognizance by the court and whether consent should be obtained from the State of Nagaland at this stage as the prosecution seeks to rely upon evidence which has been collected during 'invalid' or 'illegal' investigation. For this purpose, we can assume that the investigation is 'invalid' or 'illegal' and then decide whether or not evidence can be relied upon before the Court. The question raised in C.W.No.

1844/1988 related to investigation by the CBI and the decision dated 1st February, 1991, would operate as *res judicata to this extent*. The question and issue now raised is different, whether evidence/material collected in an 'invalid' or 'illegal' investigation is admissible before the trial court. Thus the decision dated 1st February, 1991 does not operate as *res judicata* to the subject matter now in issue. In this connection, it will be appropriate to refer to the following ratio as elucidated in ***Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy***, *(1970) 1 SCC 613*, :

> **"4.** The rule of res judicata applies if "the matter directly and substantially in issue" in a suit or proceeding was directly and substantially in issue in the previous suit between the same parties and had been heard and finally decided by a competent Court.....
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> **5.** But the doctrine of res judicata belongs to the domain of procedure: it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a Court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute between the parties has been determined thereby. A decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties: the "matter in issue" may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent Court is finally determined between the parties and cannot be re-opened between them in another proceeding. The previous decision on a matter in issue alone is res judicata: the reasons for the decision are not res judicata. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the

relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is res judicata. A previous decision on a matter in issue is a composite decision: the decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law.

6. The authorities on the question whether a decision on a question of law operates as res judicata disclose widely differing views. In some cases it was decided that a decision on a question of law can never be res judicata in a subsequent proceeding between the same parties: *Parthasardhi Ayyangar* v. *Chinnakrishna Ayyangar,* ILR 5 Mad 304; *Chamanlal* v. *Bapubhai* ILR 22 Bom 669; and *Kanta Devi* v. *Kalawati* AIR (1946) Lah 419. On the other hand Aikman, J., in *Chandi Prasad* v. *Maharaja Mahendra Singh*, ILR 23 All 5 held that a decision on a question of law is always res judicata. But as observed by Rankin, C.J., in *Tarini Charon Bhattacharjee* v. *Kedar Nath Haldar* ILR 56 Cal 723:

> "Questions of law are of all kinds and cannot be dealt with as though they were all the same. Questions of procedure, questions affecting jurisdiction, questions of limitation,

may all be questions of law. In such questions the rights of parties are not the only matter for consideration."...

7. Where the law is altered since the earlier decision, the earlier decision will not operate as res judicata between the same parties: *Tarini Charan Bhattacharjee case*. It is obvious that the matter in issue in a subsequent proceeding is not the same as in the previous proceeding, because the law interpreted is different.

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11. It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent Court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question of law i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression "the matter in issue" in Section 11 of the Code of Civil Procedure means the right litigated between the parties i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land.

14. The contention raised on behalf of Inderjit Singh is that he is being prosecuted as he is the brother of S.S. Ahluwalia and

there is no evidence to implicate him in the alleged conspiracy. Reference is specifically made to the opinion of the Government Examiner of Questioned Documents, Shimla that it is not possible to express any definite opinion on the two letters purportedly written by Inderjit Singh to the Manager, New Bank of India, NSCI Extension Counter, New Delhi for opening of bank accounts.

15. One of the allegations against S.S. Ahluwalia is that he had opened saving account No.4078 in the Bank of Baroda, Kohima on 3rd August, 1985 in connivance with Nyamo Lotha (since expired). He had during the period 3rd August, 1985 to 26th March, 1986 deposited Rs.39,66,936/- in the said account. Out of this amount, Rs.30,00,000/- were withdrawn through six cheques of Rs.5,00,000/- each in the name of his family members and relatives including Inderjit Singh. He opened six bank accounts in New Bank of India, Chawri Bazar Branch, Delhi in the name of his relatives including Inderjit Singh. The six cheques of Rs.5,00,000/- each totaling to Rs.30,00,000/- were deposited in the said bank accounts and were invested for purchase of immovable properties, which form part of disproportionate assets.

16. Further S.S. Ahluwalia from the period 17th September, 1986 to 25th September, 1986 paid cash amount of Rs.15,43,000/- to the co-accused V. Bhaskaran (now approver), the then Manager, Bank of Baroda, Kohima and got issued 19 demand drafts for a total amount of Rs.15,40,000/- in the name of bogus, fictitious and non-existing persons. Rs.3,000/- was paid as commission to the bank. S.S. Ahluwalia got opened 7 SB Accounts Nos.1563 to 1569 in the names of bogus, fictitious and non-existing persons in New Bank of India, NSCI, Extension

counter, New Delhi. These accounts were introduced by Inderjit Singh on 29th September, 1986 and address of the 7 bank account holders was given as "C/o Inderjit Singh, D-II/49, Pandara Road, New Delhi". This property was allotted by the government to S.S. Ahluwalia as official residence. The 19 demand drafts for Rs.15,40,000/- were deposited in the aforesaid 7 bank accounts and the proceeds were withdrawn and invested by S. S. Ahluwalia for purchase of immovable properties in the names of his family members and relatives.

17. Another allegation made in the charge sheet is that S.S.Ahluwalia had during the period 2nd July, 1985 to 10th July, 1986 had got issued 22 fixed deposit receipts of Rs.17,00,000/- in connivance with the co-accused V. Bhaskaran(approver), the then Manager, Bank of Baroda, Kohima in the names of bogus and non-existing persons by forging specimen signatures cards. He got them prematurely encashed by making forged discharge endorsement and deposited the same in the various saving bank accounts of the same branch. Subsequently, S. S. Ahluwalia got issued 29 demand drafts of Rs.17,71,580/- in the name of bogus and non-existing persons payable at Delhi in connivance with V. Bhaskaran (approver). S. S. Ahluwalia further opened a joint SB Account No.1603 in New Bank of India, NSCI, Extension counter, New Delhi in joint names of 26 non-existing and fictitious persons. This account was opened on the introduction of Inderjit Singh. The aforesaid 29 demand drafts were deposited in the said account and were subsequently withdrawn and invested by S.S. Ahluwalia for purchase of immovable properties in the names of his family members and relatives.

18. Learned counsel appearing for Inderjit Singh had submitted that the account opening forms for the 7 bank accounts and account No.1603 in the name of 26 persons have not been signed by Inderjit Singh and merely because his name is mentioned as an introducer, does not show involvement of Inderjit Singh. The account opening form placed on record with the petition in respect of one of the 7 bank accounts, shows that against column-occupation "C/o Inderjit Singh" was written by hand and against the column for introduction "letter enclosed was written. The prosecution has relied upon a typed letter, which it is claimed was given to the Manager, New Bank of India, Extension Counter NSCI. The said letter purportedly signed by Inderjit Singh states that Inderjit Singh was pleased to introduce 7 new accounts in the names of persons mentioned therein. It further states that the bearer Rajinder Singh would deliver the bank drafts amounting to Rs.15,40,000/-. The bank was required to do needful and cooperate. The second letter is a hand written purportedly letter signed by Inderjit Singh and states that Inderjit Singh was pleased to inform and enclose drafts in various names with a request to open a single joint saving account in the names of all persons appearing on the drafts. It further states that authority to operate the account would remain with one Ram Singh Yadav. The Manager was requested to complete formalities and comply with the instructions to operate the account under the signatures of Ram Singh Yadav, whose signatures also purportedly appears on the said letter. It is alleged that Ram Singh Yadav is a fictitious person.

19. The contention of the petitioner Inderjit Singh is that the government examiner has not been able to certify and give a definite opinion that these letters were written or signed by

Inderjit Singh. CBI, however, has point out that Inderjit Singh did not cooperate in the investigation and hence his signatures could not be obtained and sent to the hand writing expert. They have relied upon statements of Mr.D.R. Anand, who was the Manager, New Bank of India, Chawri Bazar and Mr. P.K. Sharma, Manager, New Bank of India, NSCI Extension Counter, New Delhi. Mr. D.R. Anand in his statement has stated that he opened a bank account in the name of Inderjit Singh on 29th October, 1984 with initial deposit of Rs.5,00,000/-. Subsequently the account was closed on 4th March, 1985 and the money was delivered in the manner mentioned in the statement. He had stated that Inderjit Singh had opened a bank account when he was in Kirti Nagar branch. He further stated that he had introduced other relatives of Inderjit Singh for opening accounts on telephonic messages from Inderjit Singh. He has stated that he had seen the vouchers for preparation of pay orders in favour of Pragati Construction Company, which were filled up but were made on the order/request of persons concerned including Inderjit Singh. These pay orders were used for making payment of Pragati Construction Company for purchase of flats.

20. It may be noted that Flat No.232, Devika Tower was purchased on 17th October, 1985 was purchased in the name of minor son of S.S. Ahluwalia, Manpreet Singh under guardianship of Guljeet Walia wife of S.S. Ahluwalia. This flat was transferred in the name of Inderjit Singh without any consideration on 12th September, 1986. The Flat No.236 was purchased in the name of the daughter of S.S. Ahluwalia, Harpreet Kaur but two-third share of the flat was transferred to Inderjit Singh without any consideration.

21. Mr. P.K. Sharma who was the Manager, New Bank of India, NSCI Extension Counter, New Delhi has stated that he had opened 7 bank accounts on 29th September, 1986 and these accounts were closed on 13th November, 1986. He had stated that S.S. Ahluwalia was the person in background and had visited the branch one or two days before opening of the accounts and had spoken to him in the National Sports Club. He had stated that S.S. Ahluwalia had brought demand drafts from the Bank of Baroda, Kohima and had desired that these bank drafts should be encashed by opening saving accounts. He had further stated that S.S. Ahluwalia told him that he would send Anil Wahi, Chartered Accountant and his brother Inderjit Singh with bank drafts for early encashment. Mr. P.K. Sharma due to close proximity and because of influence Mr.D.R. Anand could not deny help in the matter. On 29th September, 1986, Mr. Anil Wahi and Inderjit Singh contacted him and gave Rs.100/- for opening 7 bank accounts. He had stated that 19 demand drafts were shown to him and blank account opening cards were collected by Mr. Anil Wahi as he was not accompanied by the said persons. Subsequently, cards bearing specimen signatures were given after 2-3 days by Mr. D.R. Anand. He had also brought a letter written by Inderjit Singh introducing 7 persons. 19 demand drafts were deposited and encashed in these bank accounts. He has stated that he was not in a position to identify any of the said bank holders and he had acted solely on the basis of the instructions given by Mr. D.R. Anand and the request made by S.S. Ahluwalia. Mr. Anil Wahi's statement was also recorded and it is alleged that he has proved purchase of immovable benami properties and how the payments for purchase of the said

properties were made and how the deposits were made in the bank accounts.

22. V. Bhaskaran, co-accused (approver) has stated that he had opened account No.3626 in the name of Inderjit Singh on 30th November, 1984 while he was working as a Manager, Bank of Baroda, Kohima. On 19th May, 1988, V. Bhaskaran had stated that he had seen 20 cheque leaves issued for account No.3626 of Inderjit Singh and 10 blank cheques signed on the front as well as on the reverse and 10 cheques were signed in front.

22. In view of the above, it is clear that there are sufficient grounds to frame charges against Inderjit Singh and this is not a fit case wherein the charges against him should be dropped.

The Revision petitions are accordingly dismissed.

It is noticed that the petitioners herein have been stalling trial by repeatedly moving applications before the trial court and by filing revision petitions. The charge sheet was filed in the year 1992 but the trial has not progressed. Keeping in view the aforesaid facts it is directed that the trial court shall expeditiously record evidence and even if the matter is required to be adjourned shortest possible dates will be given and the trial will be concluded as soon as possible.

Observations made above are for the disposal of the present revision petitions and will not be construed as observations on merits binding on the trial court.

(SANJIV KHANNA)
JUDGE

OCTOBER 29, 2010.
NA