

A DHYAN INVESTMENTS AND TRADING CO. LTD.  
v.  
CENTRAL BUREAU OF INVESTIGATION AND ORS.

JULY 31, 2001

B [K.T. THOMAS AND S.N. VARIOVA, JJ.]

*Criminal Procedure Code—Section 407—Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992—Sections 5, 5A, 6, 7, 9, 10 and 11-A—Power of High Court to transfer cases of Special Court—Held, Special Court is not subordinate to High Court—Hence, High Court has no such power—Constitution of India—Articles, 226, 227 and 235.*

**D** Respondent-agency filed a Criminal case before the Special Court set up under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (Special Courts Act) alleging criminal conspiracy by appellant-company to cause unlawful loss to a finance company by sale and purchase of the same securities within a period of two days at differing rates. The Special Court had only two Judges. The case was listed before Justice T. Chief Justice of High Court transferred the case administratively from Justice T to Justice K. The appellant filed a Criminal application before the High Court praying for an order of transferring the case from Justice K to Justice T. Single Judge of the High Court directed that the Criminal Application be placed before a Division Bench. The Division Bench directed the appellant to file an application before Justice K of the Special Court for transfer of the case. Accordingly the appellant filed an application before Justice K, and it was dismissed. On the same day, the appellant filed an application before the High Court seeking some clarifications. The application was dismissed. Hence the appeals against the said two orders of the High Court.

**G** The appellant contended that the Special Court is a Criminal Court as envisaged by the Cr. P.C. and that provisions of the Code applied to it; that Section 9 of the Special Courts Act deems that the Special Court is a Sessions Court; that the Special Court is subordinate to the High Court since it is under the superintendence of the High Court in its constitutional jurisdiction under Articles 226 and 227 and so the High Court has power to transfer cases of the Special Court under Section 407 of the Cr. P.C.; and that if it is held that the Special Court is not subordinate to the High Court, then the Special Courts

Act would become unconstitutional since there is no provision for transfer of cases from one Special Court to another. A

The respondent-agency contended that the Special Court is manned by sitting Judges of the High Court; that the sitting Judges of the High Court take up matters pertaining to the Special Court and of the High Court; that a conjoint reading of the various provisions of the Special Court Act would show that the Special Court is not a Court subordinate to the High Court; that the High Court, though had judicial superintendence, had no administrative control over the Special Court; that as per the provisions of the Special Court Act, an appeal against the order/judgment of the Special Court would lie to the Supreme Court and not to the High Court; and that the mere deeming provision in Section 9 of the Special Courts Act does not make it a Court subordinate to the High Court. B

#### Disposing of the appeals, the Court

HELD : 1.1. The High Court may have judicial superintendence over the Special Court under Article 226 of the constitution of India, however the High Court does not have administrative control over the Special Court under Article 235 of the Constitution of India. Also the Special Court is manned by a sitting Judge of the High Court. On occasions the same Judge also takes up matters of the High Court. As per Section 5 of the Special Courts Act, if the Judge manning the Special Court is absent or on leave, the duties could be performed by another Judge of the High Court nominated by the Chief Justice of the High Court in consultation with the Chief Justice of India. It would therefore not be in the fitness of things that for purposes of Section 407 Cr.P.C., a sitting Judge of the High Court, performing simultaneous duties be deemed subordinate to the High Court merely because he is trying cases of the Special Court. C

Thus the Special Court is not subordinate to the High Court and the High Court would have no power under Section 407 of the Criminal Procedure Code to transfer a case from one Judge of the Special Court to another. Further there may be two Judges, but there is only one Special Court. In law, there is no power except administrative, to transfer case from one Judge of the Supreme Court to another Judge of the Supreme Court or from one Judge of a High Court to another Judge of the same High Court. The position in respect of the Special Court is the same. [95-B, C, D; 96-A, E, F] D

*In Re. : the Special Courts Bill, [1978] 2 SCR 476; L. Chandra Kumar v. H*

A *Union of India, [1997] 3 SCC 261; T. Sudhakar Prasad v. Government of Andhra Pradesh and Ors., [2001] 1 SCC 516; State of A.P. and Ors. v. K. Mohanlal and Anr., [1998] 5 SCC 468 and Mohamed Abdul Raoof and Ors. v. State of Hyderabad, AIR 38 (1951) Hyderabad 50, referred to.*

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 757-58 of 2001.

From the Judgment and Order dated 16.4.2001 of the Bombay High Court in Crl. A. No. 809 of 2001.

C P. Chidambaram, P.M. Amim, P.P. Malhotra, Virag Tuljapurkar, Sandeep Jumarkar, Ravi Gandhi, P. Venugopal, P.S. Sudheer, Ms. Surekha Raman, Raja Thakare, A. Mariarputham, P. Parmeswaran and S.V. Deshpande for the appearing parties.

The Judgment of the Court was delivered by

D **S.N. VARIAVA, J.** Leave granted.

Heard parties.

These Appeals are against Orders dated 16th April, 2001 and 19th April, 2001 passed by the Bombay High Court.

E Briefly stated the facts leading to these Appeals are as follows:

F Due to large scale diversions of public funds, belonging to banks and financial institutions, to the individual accounts of certain brokers, the Government first promulgated an Ordinance. Subsequently the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 was passed. (This Act will hereinafter be referred to as the Special Courts Act.) Under this Special Courts Act one Special Court came to be established. In the beginning there was only one Judge. All civil and criminal matters, even if they arose from the same transaction were before the same Judge. The same Judge had, in fact, tried both civil and criminal matters even though they arose out of the same transaction or same set of facts. It is only because the work load was found to be very heavy that the Special Courts Act was amended in 1997, to enable appointment of more Judges. It is only thereafter that there have been two Judges.

H In May 1995 Canbank Financial Services Limited (Canfina) filed a

Civil Petition No. 74 of 1995 before the Special Court, claiming criminal A conspiracy to cause unlawful loss to them by sale and purchase of the same securities within a period of two days at differing rates. Canfina claimed damages arising out of the tort of conspiracy in a sum of Rs. 38,01,13,561.

In March 1998 CBI filed Criminal Case No. 2 of 1998 before the Special Court alleging criminal conspiracy amongst the Respondents to cause B unlawful loss to Canfina by sale and purchase of the same securities within a period of two days at differing rates.

One of the two Judges of the Special Court i.e. Justice Kapadia disposed of, after a lengthy trial, Petition No. 74 of 1995 by a judgment dated 17th January, 2001. It would appear that Special Case No. 2 of 1998 was earlier before the other Judge presiding over the Special Court, Justice Trivedi. Sometime in September 2000, Special Case No. 2 of 1998 was administratively transferred by the Chief Justice of the Bombay High Court from Justice Trivedi to Justice Kapadia. C

The Appellants then filed Criminal Application No. 809 of 2001 before the Bombay High Court praying for an order transferring the case from Justice Kapadia to any other Special Court. As there were only two presiding Judges in the Special Court, in effect the Appellants wanted the case to be transferred to Justice Trivedi. D

On 5th March, 2001 parties made a mention in the Chamber of Justice Kapadia that they had filed Criminal Application No. 809 of 2001. We are told that the learned Judge was orally requested to withdraw from the case. The Learned Judge rejected the oral request. The Judge, however, adjourned the Special Case No. 2 of 1998 to 8th March, 2001. Thereafter on 8th March, 2001, the Judge adjourned Special Case No. 2 of 1998 to 19th April, 2001, indicating that unless a stay was obtained, Special Case No. 2 of 1998 would be proceeded with. E

On 3rd of April, 2001, a learned Single Judge of the Bombay High Court directed that the Criminal Application No. 809 of 2001 be placed before a Division Bench of the Court as an important question arose. The Chief Justice, therefore, assigned it to a Division Bench. Criminal Application No. 809 of 2001 was heard by a Division Bench on 16th April, 2001. By the Order dated 16th April, 2001, (i.e. one of the impugned orders), the Division Bench directed that a written application for transfer be moved before the Special Court, i.e. before the Hon'ble Judge, Mr. Kapadia himself. With F G H

**A** these directions the Criminal Application No. 809 of 2001 was disposed of.

Appellants then filed, in the Special Court, Miscellaneous Application No. 168 of 2001 praying that Justice Kapadia may recuse himself from the matter. By an order dated 19th April, 2001, that application has been rejected.

**B** On the same date, i.e. 19th April, 2001 parties moved for some clarification before the Division Bench and the Division Bench by its order dated 19th April, 2001 has refused to issue any clarification.

Hence these SLPs against the Orders of the Bombay High Court dated 16th April, 2001 and 19th April, 2001.

**C** In these Appeals we have not permitted parties to argue on merits. We have confined parties to the question whether the High Court would have power to transfer the case from one Judge of the Special Court to another.

**D** Mr. Chidambaram submits that the High Court has such a power under Section 407 of the Criminal Procedure Code. Section 407 Cr.P.C. reads as follows :

“407. Power of High Court to transfer cases and appeals. - Whenever it is made to appear to the High Court-

**E** (a) that a fair and impartial inquiry or trial cannot be had in any criminal court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

**F** (c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order-

**G** (i) that any offence be inquired into or tried by any court not qualified under Secs. 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a criminal court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

**H** (iii) that any particular case be committed for trial to a Court of

Session; or

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(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the Lower Court, or on the application of a party interested, or on its own initiative:

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Provided that no application shall lie to the High Court for transferring a case from one criminal court to another criminal court in the same sessions division, unless an application for such transfer has been made to the Session Judge and rejected by him.

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(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

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(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

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(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

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(6) Where the application is for the transfer of a case or appeal from any Subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the Subordinate Court shall be stayed, on such terms as the High Court may think fit, to impose: Provided that such stay shall not affect the Subordinate Court's power of remand under Section 309.

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(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

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A (8) When the High Court orders under sub-section (1) that a case be transferred from any court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

B (9) Nothing in this section shall be deemed to affect any order of Government under Section 197."

It is thus to be seen that the High Court could only exercise power under Section 407 provided the Special Court was subordinate to it.

C Mr. Chidambaram submitted that the Special Court was a Criminal Court as envisaged by the Criminal Procedure Code and that provisions of the Criminal Procedure Code applied to it. In support of his contention Mr. Chidambaram referred to Section 4 of the Criminal Procedure Code. Under this Section all offences under the Indian Penal Code could be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code. He also referred to Section 6 of the Criminal Procedure Code, which provides that besides the High Courts and Courts constituted under any law, there would be in every State :- a) Courts of Session; (b) Judicial Magistrates of the first class and in any metropolitan area, Metropolitan Magistrates; (c) Judicial Magistrates of the second class and (d) Executive Magistrates.

E Mr. Chidambaram sought to further support his arguments from the provisions of the Special Courts Act. In this behalf he referred to Sections 5, 6, 7 and 9 of the Special Courts Act. These Sections reads as follows :

F "5. Establishment of Special Court - (1) The Central Government shall, by notification in the Official Gazette, establish a court to be called the Special Court.

G (2) The Special Court shall consist of one or more sitting Judges of the High Court nominated by the Chief Justice of the High Court within the local limits of whose jurisdiction the Special Court is situated, with the concurrence of the Chief Justice of India.

H (3) When the office of a Judge of the Special Court is vacant by reason of absence or leave, the duties of the officer shall be performed by such Judge of the High Court within the local limits of whose jurisdiction the Special Court is situated as the Chief Justice of that High Court may, with the concurrence of the Chief Justice of India,

nominate for the purpose and the judge so appointed shall have all A  
the jurisdiction and powers of a Judge of the Special Court including  
the powers to pass final orders.

6. Cognizance of cases by Special Court - The Special Court shall B  
take cognizance of or try such cases as are instituted before it or  
transferred to it as hereinafter provided.

7. Jurisdiction of Special Court - Notwithstanding anything contained C  
in any other law, any prosecution in respect of any offence referred  
to in sub-section (2) of Section 3 shall be instituted only in the Special  
Court and any prosecution in respect of such offence pending in any  
court shall stand transferred to the Special Court.

9. Procedure and powers of Special Court - (1) The Special Court  
shall, in the trial of such cases, follow the procedure prescribed by  
the Court for the trial of warrant cases before a magistrate.

(2) Save as expressly provided in this Act, the provisions of the Code D  
shall, insofar as they are not inconsistent with the provisions of this  
Act, apply to the proceedings before the Special Court and for the  
purposes of the said provisions of the Code. The Special Court shall  
be deemed to be a Court of Session and shall have all the powers of  
a Court of Session, and the person conducting a prosecution before  
the Special Court shall be deemed to be a Public Prosecutor.

(3) The Special Court may pass upon any person convicted by it any E  
sentence authorised by law for the punishment of the offence of  
which such person is convicted.

(4) While dealing with any other matter brought before it, the Special F  
Court may adopt such procedure as it may deem fit consistent with  
the principles of natural justice."

Mr. Chidambaram submitted that Section 6 of the Special Courts Act G  
provides that the Special Court shall take cognizance of or try such cases as  
are instituted before it or transferred to it hereinafter. He points out that the  
Section provides that all prosecutions in respect of offences referred to in  
Sub-section (2) of Section 3 of the Act are to be instituted in the Special  
Court and that if a prosecution was pending in any other court, it stood  
transferred to the Special Court. Mr. Chidambaram submitted that Section 9  
clinches the matter in his favour. He submitted that Section 9 specifically H

- A provides that the provisions of the Criminal Procedure Code apply to the proceedings before the Special Court and that for the purposes of the proceedings the Special Court was a court of Sessions. He submitted that the Special Court, having been deemed to be a court of Sessions and being a criminal Court as envisaged under Section 6 of the Criminal Procedure Code,
- B was subordinate to the High Court. He submitted that the Code of Criminal Procedure applied to all proceedings before the Special Court, unless they were inconsistent with the provisions of the Special Court. He submitted that in the Special Courts Act there was no provision inconsistent with Section 407 of the Criminal Procedure Code. He submitted that Section 407 of the Criminal Procedure Code applied and could be used by the High Court.
- C Mr. Chidambaram submitted that if this Court were to hold that the Special Court was not a Court subordinate to the High Court then it would mean that there was no provision of transfer of cases from one Special Court to another. He submitted that in that event the Special Courts Act would become unconstitutional. Mr. Chidambaram submitted that attempt of the Court should be to interpret in a manner which did not make the Special Courts Act unconstitutional.
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- E In support of his submission Mr. Chidambaram relied upon the case of “*In Re the Special Courts Bill, 1978*” reported in 1979 (2) S.C.R. 476. In this case the constitutional validity of a Special Courts Bill was being considered.
- F Mr. Chidambaram drew the attention of this Court to the provisions of the Bill as reproduced in the Judgment and the provisions of the Special Courts Act of 1979 which followed. (For the sake of convenience this Act will hereinafter be referred to as the 1979 Act.) Mr. Chidambaram pointed out that most of the provisions of the 1979 Act were almost identical to the provisions of the Special Courts Act. Mr. Chidambaram points out that the Constitution Bench of this Court, consisting of Seven Judges, had while considering the Bill observed that unless there was a provision for transferring a case from one court to another the Bill would be constitutionally invalid. He submitted that because of this opinion expressed by the Constitution Bench, the Attorney General made a statement that the Government had agreed to incorporate a provision empowering the Supreme Court to transfer a case from one Special Court to another. Mr. Chidambaram submitted that pursuant to this Section 10 was incorporated. Section 10 reads as follows :
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“10. (1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may

direct that any particular case be transferred from one Special Court A to another Special Court.

(2) The Supreme Court may act under this section only on the application of the Attorney-General of India or of a party interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India or the B Advocate-General of a State, be supported by affidavit or affirmation.

(3) Where any application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case." C

Mr. Chidambaram submitted that even though most of the other provisions of the Special Courts Act are identical and have been copied from the 1979 Act, a provision similar to Section 10 has not been incorporated in the Special Courts Act. He submitted that if this Court holds that Section 407 Cr.P.C. does not apply, there would be no other provision for transfer and the Special Courts Act would become unconstitutional. D

Mr. Chidambaram submitted that another reason for holding that the Special Court was subordinate to the High Court was that the Special Court was under the superintendence of the High Court in its constitutional jurisdiction under Articles 226 and 227. In this behalf he relied upon the following observations of Chief Justice Chandrachud (as he then was) in the case of "*In Re the Special Courts Bill, 1978*" :- E

"One may also not be unmindful of the benign presence of article 226 of the Constitution which may in appropriate cases be invoked to ensure justice." F

Mr. Chidambaram submitted that this shows that the Constitution Bench was of the opinion that the Special Court would be under the superintendence of the High Court in the jurisdiction under Article 226. He submitted that this also shows that the Constitution Bench was of the opinion that the Special Courts were subordinate to the High Court. G

Mr. Chidambaram also relied upon the case of *L Chandra Kumar v. Union of India and Ors.*, reported in [1997] 3 SCC 261. In this case the H

A question was whether the Administrative Tribunals, created under the Administrative Tribunals Act, 1985, were subject to writ jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India. The Constitution Bench of this Court noted, in para 12, that a person would not be qualified for appointment as a Chairman unless, he is or had been, a Judge of a High Court. The Constitution Bench then held that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. It was held that the situation where the High Courts had been divested of all other judicial functions apart from that of constitutional interpretation was to be avoided.

C Mr. Chidamaram also relied upon the case of *T. Sudhakar Prasad v. Government of Andhra Pradesh and Ors.* reported in [2001] 1 SCC 516. In this case the Administrative Tribunal had passed an order punishing for contempt. The question was whether under Articles 226 and 227 the High Court had jurisdiction over Administrative Tribunals' functions under Section 17 of the Administrative Tribunals Act. It may only be mentioned that Section 17 of the Administrative Tribunals Act empowered the Administrative Tribunals to punish for contempt of itself and vested in it the same jurisdiction and powers as a High Court had. The question before this Court was whether an order passed under Section 17 of the Administrative Tribunals Act was subject to judicial scrutiny by the High Court under Articles 226 and 227 of the Constitution of India. This Court, *inter alia*, held as follows :

“The Administrative Tribunals as established under Article 323-A and the Administrative Tribunals Act, 1985 are an alternative institutional mechanism or authority, designed to be not less effective than the High Court, consistently with the amended constitutional scheme but at the same time not to negate judicial review jurisdiction of constitutional courts. Transfer of jurisdiction in specified matters from the High Court to the Administrative Tribunal equates the Tribunal with the High Court insofar as the exercise of judicial authority over the specified matters is concerned. *That, however, does not assign the Administrative Tribunals a status equivalent to that of the High Court nor does that mean that for the purpose of judicial review or judicial superintendence they cannot be subordinate to the High Court.*” (*underlining provided*)

H Mr. Chidamaram strongly relied on the underlined observations and submitted that this judgment clearly lays down that the Tribunal was

subordinate to the High Court. Mr. Chidambaram submitted that the same A would be the position of the Special Court.

Mr. Chidambaram also relied upon the case of *A.P. and Ors. v. K. Mohanlal and Ors.* reported in [1998] 5 SCC 468. In this case a Special Court had been established under Section 7 of the Andhra Pradesh Land-Grabbing (Prohibition) Act, 1982. In this case also it was held that the power of judicial review under Articles 226 and 227 and 32 of the Constitution were B an important check and were not taken away.

Mr. Chidambaram submitted that the above authorities clearly establish C that the High Court has superintendence over the Special Court under Articles 226 and 227. He submitted that the Special Court is thus subordinate to the High Court and that Section 407 would apply.

Mr. Chidambaram submitted that even if Section 407 of the Criminal D Procedure Code did not apply, the High Court could always exercise its powers under Articles 226 and 227 of the Constitution. He submitted that the Appellant would then invoke that jurisdiction and apply for transfer of the case from one Judge to another.

In support of his last submission Mr. Chidambaram relied upon the authority in the case of *Mohamed Abdul Raoof and Ors. v. State of Hyderabad*, reported in A.I.R. (38) 1951 Hyderabad 50, wherein it is held that Article 227 E of the Constitution was applicable to the Court of the Special Tribunal constituted under the Special Tribunals Regulation and the powers of superintendence conferred on the High Court were sufficiently wide to transfer cases from one Special Court to another.

On the other hand Mr. Malhotra pointed out that the Special Court is F manned by sitting Judges of the High Court. He pointed out that there is only one Special Court. He submitted that the sitting Judges of the High Court, who man the Special Court, not only take up matters pertaining to the Special Court but also on occasions take up matters of the High Court.

Mr. Malhotra also pointed out Section 5-A of the Special Courts Act, G which reads as follows :

“5A. Where the Special Court consists of two or more Judges, the Chief Justice of the High Court within the local limits of whose jurisdiction the Special Court is situated may, from time to time, by H

A general or special order, make provisions as to the distribution of cases amongst the Judges and specify the matters which may be dealt with by each of such Judge."

Mr. Malhotra submitted that a conjoint reading of the various provisions of the Special Court Act makes it very clear the Special Court was not a Court subordinate to the High Court. He submitted that under Section 407 of the Criminal Procedure Code mere judicial superintendence was not sufficient. He submitted that what was required was both judicial and administrative subordination. He submitted that the Special Court could only be subordinate to the High Court if the High Court had both judicial as well as administrative control of the Special Court. He submitted that it was clear that the High Court had no administrative control over the Special Court.

Mr. Malhotra also relied upon Section 11-A and submitted that Section 11-A showed that the Special Court was in fact equivalent to the High Court. He further pointed out that Section 10 of the Special Courts Act provided that an Appeal, even from an interlocutory order of the Special Court, would lie only to the Supreme Court.

Mr. Malhotra further submitted that Section 9 of the Special Courts Act merely provided that Special Court would be deemed to be a Court of Session for the purposes of the proceedings before that Court. He submitted that for the purposes of criminal proceedings before it the Special Court may be deemed to be a Court of Session but that did not make it a Court subordinate to the High Court.

We have heard the parties. In our view the submissions of Mr. Chidambaram, that the Special Court is a Court subordinate to the High Court, cannot be accepted. The authorities in the case of "*Re The Special Courts Bill, 1978*", instead of supporting Mr. Chidambaram, is entirely against him. On a question from Court, it was fairly admitted by Mr. Chidambaram that in the entire judgment there was no reference to Section 407 of the Criminal Procedure Code. It is impossible to believe that seven eminent Judges of this Court were not aware or had lost sight of Section 407 of the Criminal Procedure Code. Many of those Special Courts were being established in Delhi. As pointed out by Mr. Chidambaram it was held that if there was no power to transfer then the Bill would be unconstitutional. Had those Courts were subordinate to the High Court Section 407 would have applied. Then the question of incorporating a provision of transfer would not have arisen. It is clear that the Court proceeded on the footing that Section 407 did

not apply because the Special Courts were not subordinate to the High Court. A That the Court proceeded on the footing that the Special Courts were not subordinate to the High Court is very clear from the observations made by Justice Shinghal, J. who delivered a separate minority judgment. In this judgment after considering the various constitutional provisions he *inter alia*, observed that the High Court had been vested with all the necessary jurisdiction and powers to stand out as the repository of all judicial authority within the State and that it was not contemplated by the Constitution that any civil or criminal court in the State should be outside its control. Justice Shinghal in his minority judgment then goes on to hold that Clauses 5 and 7 of the Bill (by which Special Courts are created and sitting Judges of the High Court are appointed) are unconstitutional. Thus the single Judge is holding that there could be no Court in the State over which the High Court had no control. Such a view could only be taken if the Court was proceeding on the footing that the Special Courts were not subordinate to or under the control of the High Court. Of course this view is not accepted by the majority, who hold that the provisions are constitutionally valid. But in this behalf also the following observations of Justice Chandrachud, made on behalf of majority, are very relevant : B C D

“It is true that the Special Courts created by the Bill will not have the Constitutional status which High Courts have because such courts are not High Courts as envisaged by the Constitution. Indeed, there can but be one High Court only for each State, though two or more States or two or more States and a union territory can have a common High Court. It is also true to say that the Special Courts are not District Courts within the meaning of article 235, with the result that the control over them will not be vested in any High Court. But we do not accept that by reason of these considerations, the creation of Special Courts is calculated to damage or destroy the constitutional safeguards of judicial independence. Our reasons for this view will become clearer after we deal with the questions arising under articles 14 and 21 but suffice it to say at this stage that the provision in clause 10(1) of the Bill for an appeal to the Supreme Court from every judgment and order of a Special Court and the provision for transfer of a case from one Special Court to another (which the Bill does not contain but without which, as we will show, the Bill will be invalid) are or will be enough to ensure the independence of Special Courts. Coupled with that will be the consideration, as we will in course of our judgment point out that only sitting judges of the High Courts H

**A** shall have to be appointed to the Special Courts. A sitting judge of the High Court, though appointed to the Special Court, will carry with him his constitutional status, rights, privileges and obligations. There is no reason to apprehend that the mere change of venue will affect his sense of independence or lay him open to the influence of the executive."

**B** These observations show that the Special Courts were not a High Court. At the same time they are not District Courts within the meaning of Article 235. This shows that the control over Special Courts does not vest in the High Court. This judgment notes therefore, that Special Court not being a District Court, High Court would have no control over it. But the majority accepts that the creation of such a Court does not destroy the constitutional safeguards of judicial independence.

**C** That the Special Court is not subordinate to the High Court is also very clear from the case of T. Sudhakar Prasad (*supra*), referred to by Mr. **D** Chidambaram. In this case this Court has held as follows :

**E** “18. Subordination of Tribunals and courts functioning within the territorial jurisdiction of a High Court can be either judicial or administrative or both. The power of superintendence exercised by the High Court under Article 227 of the Constitution is *judicial superintendence and not administrative superintendence*, such as one which vests in the High Court under Article 235 of the Constitution over subordinate courts. Vide para 96 of *L. Chandra Kumar* case (*supra*) the Constitution Bench did not agree with the suggestion that the Tribunals be made subject to the supervisory jurisdiction of the High Courts within whose territorial jurisdiction they fall, as our constitutional scheme does not require that *all adjudicatory bodies which fall within the territorial jurisdiction of any High Court should be subject to its supervisory jurisdiction*. Obviously, the supervisory jurisdiction referred to by the Constitution Bench in para 96 of the judgment is the supervision of the administrative functioning of the Tribunals as is spelt out by discussion made in paras 96 and 97 of the judgment.

**G** **H** 19. *Jurisdiction should not be confused with status and subordination.* Parliament was motivated to create new adjudicatory fora to provide new, cheap and fast-track adjudicatory systems and permitting them to function by tearing off the conventional shackles

of the strict rule of pleadings, strict rule of evidence, tardy trials, three/four-tier appeals, endless revisions and reviews - creating hurdles in the fast flow of the stream of justice." (emphasis supplied) A

Thus from this judgment it is clear that only judicial superintendence is envisaged under Articles 226 and 227. There is no administrative control or superintendence. The High Court does not have administrative control over the Special Court under Article 235 of the Constitution of India. B

Also to be noted that the Special Court is manned by a sitting Judge of the High Court. On occasions the same Judge also takes up matters of the High Court. Also Section 5 provides that if the Judge manning the Special Court is absent or on leave the duties could be performed by another Judge of the High Court nominated by the Chief Justice of the High Court in consultation with the Chief Justice of India. It would therefore not be in the fitness of things that for purposes of Section 407 Criminal Procedure Code, a sitting Judge of the High Court, performing simultaneous duties be deemed subordinate to the High Court merely because he is trying cases of the Special Court. C D

In this view of the matter we hold that the Special Court is not subordinate to the High Court and that the High Court would have no power under Section 407 of the Criminal Procedure Code to transfer a case from one Judge of the Special Court to another. E

There is a further and greater difficulty in the Appellants' way. In the present case there is only one Special Court. There may be two Judges presiding over the Special Court but that there still is only one Special Court. F

As already stated above that Special Court is not subordinate to the High Court. What the Appellants are desirous of is transfer from one Judge of the Special Court to another Judge of the Special Court. On a question from Court, as to whether there is any provision in law which empowered any Court to transfer a case from one Judge of the Supreme Court to another Judge of the Supreme Court or from one Judge of the High Court to another Judge of the High Court, Mr. Chidambaram fairly conceded that there was no such power and that the only approach would be either to make an application before the concerned Judge to recuse himself or to administratively apply either to the Chief Justice of India (in the case of Supreme Court) or to the Chief Justice of the concerned High Court. He added that there have been cases where this Court whilst disposing of an SLP or an Appeal has, G H

**A** whilst remanding the matter, directed that the same be placed before some other Judge. He however fairly conceded that such directions were not pursuant to any power to transfer. In our view this is an identical situation. It is for that reason that Section 10, which had been incorporated in the 1979 Act was advisedly not incorporated in the Special Courts Act.

**B** In this Appeal we are not concerned with the question whether the High Court would have judicial superintendence under Article 226 and/or 227 and/or whether in exercise of such jurisdiction, even if there is one, whether a High Court would or could transfer a case from one Judge to another. We therefore express no opinion thereon.

**C** In this view of the matter, we hold that Section 407 Cr.P.C. does not apply. We see no reason to interfere with the impugned Orders.

The Appeals stand disposed of accordingly. There shall be no Order as to costs.

**D** B.S. Appeals disposed of.