

[2012] 13 S.C.R. 949

AKHILESH YADAV ETC. ETC.

v.

VISHWANATH CHATURVEDI & ORS.

(Review Petition (Civil) No. 272 of 2007 etc.)

IN

(Writ Petition (Civil) No. 633 of 2005)

DECEMBER 13, 2012.

[ALTAMAS KABIR, CJI., AND H.L. DATTU, J.]

Code of Civil Procedure, 1908 - Order 47 - Review petition - Maintainability, scope and ambit of - Writ petition (PIL) before Supreme Court for direction to prosecute four members of a political family (respondent nos. 2 to 5) under the Prevention of Corruption Act for acquiring assets more than the known source of their income - Court directing the CBI to submit its report with UOI and liberty was given to UOI to take further steps - Order challenged in review - Held: The order under review was neither irregular nor without jurisdiction - Supreme Court has jurisdiction to direct CBI inquiry in the matter - Review of a judgment is permissible on account of error on the face of the record - Such error has to be decided in the facts of the case - An erroneous decision by itself does not warrant a review - The judgment under review does not suffer from any error apparent on the face of the record except for the directions given in the case of respondent no. 4 - Investigation launched against respondent no. 4 liable to be dropped since she was not holding any public office or Government post, and was essentially a private person - The Court's direction to CBI to submit its Inquiry Report to UOI is erroneous since CBI is an independent body and not under obligation to report to UOI - Such a course is not contemplated in the scheme of Delhi Special Police Establishment Act - Direction given to CBI to take independent action, as it considers fit - Delhi Special Police Establishment Act, 1946

A - *Supreme Court Rules, 1966 - Order 40 - Constitution of India, 1950 - Articles 32 and 137 - Prevention of Corruption Act, 1988.*

B The Writ petition (PIL) was filed against respondent Nos. 2 to 5 before this Court seeking direction to prosecute respondent Nos. 2 to 5 under Prevention of Corruption Act, 1988 for acquiring assets more than the known source of their income, by misusing their power and authority. This Court by order dated 1.3.2007 directed C
C Central Bureau of Investigating (CBI) to inquire into the allegations relating to acquisition of wealth by respondent Nos. 2 to 5, and to find out as to whether there was any truth in the allegations. Respondent Nos. 2 to 5 filed petitions for review of the order.

D The main questions for consideration were whether the High Court or Supreme Court had jurisdiction to direct a CBI Inquiry and whether the investigation and/or inquiry could also be extended to the assets of respondent No. 4, though she neither held any post under the Government nor was she involved in the activities of her E
E husband or father-in-law (two other respondents).

Disposing of the Review Petition, the Court

F HELD: 1.1 Review of a judgment on account of some mistake or error apparent on the face of the record is permissible, but an error apparent on the face of the record has to be decided on the facts of each case, as an erroneous decision by itself does not warrant a review of each decision. [Para 1] [955-C-D]

G 1.2 The scope and ambit of a review proceeding is limited and the order dated 1st March, 2007, in respect of which review has been sought, was neither irregular nor without jurisdiction and was passed after considering the H
H submissions made on behalf of the respective parties.

The review proceedings cannot be converted into an appeal. [Para 30] [969-B-C] A

2.1 A direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State, without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, Supreme Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly. However, the power which is vested in the superior courts should be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing fundamental rights. [Paras 26 and 27] [967-F-H; 968-A-C] B
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Supreme Court Bar Association Vs. Union of India and Anr. (1998) 4 SCC 409: 1998 (2) SCR 795 - relied on. F

2.2 This Court had jurisdiction to direct the CBI to make an inquiry into the accumulation of wealth by the political leader and his family members in excess of their known source of income, based on the allegations made in the writ petition. By its judgment dated 1st March, 2007, this Court merely directed an investigation into the allegations made in the writ petition and to submit a report to the Union Government. [Para 28] [968-D-E] G

State of West Bengal and Ors. Vs. The Committee for H

A *Protection of Democratic Rights, West Bengal and Ors. 2006*
 (12) SCC 534 - followed.

B 3. The judgment under review does not suffer from
 any error apparent on the face of the record, except for
 the directions given in the case of respondent No. 4.
 C When the order under review was passed, respondent
 No. 4 in the writ petition had neither held any Public Office
 nor Government post and was essentially a private
 person notwithstanding her proximity to the two political
 D leaders. The investigation launched against her on the
 issue of amassing wealth beyond her known source of
 income, is liable to be dropped. The Review Petition, so
 far as respondent No. 4 is concerned, is, accordingly,
 allowed and the investigation conducted by the CBI
 against her should, therefore, be dropped. [Paras 29 and
 31] [968-F-H; 969-A, C-D]

E 4. While disposing of the writ petition and directing
 the CBI to inquire into the alleged acquisition of wealth
 by respondent Nos. 2 to 5, the CBI was directed to submit
 a report to the Union of India and on receipt of such
 F report, the Union of India was given the liberty to take
 further steps depending upon the outcome of the
 preliminary inquiry into the assets of the said
 respondents. Since, the CBI is an independent body and
 is under no obligation to report to the Union of India in
 G regard to investigations undertaken by it, the direction to
 submit a report of the inquiry to the Union of India and
 the liberty given to the Union of India to take further steps
 on such report is not contemplated in the scheme of the
 Delhi Special Police Establishment Act, 1946. It is for the
 CBI to decide what steps it wishes to take on the basis
 of the inquiry conducted. Therefore, the order dated 1st
 H March, 2007 is modified and the directions given to the
 CBI to submit a report of its inquiry to the Union of India
 and the liberty given to the Union of India to take further
 steps on such report, is directed to be deleted from the

order. The CBI may take such independent action, as it considers fit, on the basis of the inquiry conducted by it pursuant to the directions given by this Court in the judgment under review, without seeking any direction from the Union of India or on the basis of any direction that may be given by it. [Paras 31 and 32] [969-D-G; 970-B]

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Common Cause, A Registered Society Vs. Union of India and Ors.(1999) 6 SCC 667: 1999 (3) SCR 1279; *A.R. Antulay Vs. R.S. Nayak*(1988) 2 SCC 602:1988 (1) Suppl. SCR 1; *Supreme Court Bar Association Vs. Union of India* (1998) 4 SCC 409: 1998 (2) SCR 795; *Mohd. Anis Vs. Union of India* (1994) Supp. 1 SCC 145: 1993 (1) Suppl. SCR 263; *Textile Labour Association Vs. Official Liquidator* (2004) 9 SCC 741: 2004 (3) SCR 1161; *M.S. Ahlawat Vs. State of Haryana* (2000) 1 SCC 278: 1999 (4) Suppl. SCR 160; *Advance Insurance Company Vs. Gurudasmal* (1970) 3 SCR 881; *Kazi Lhendup Dorzi Vs. CBI* (1994) Supp. 2 SCC 116; *Prem Chand Garg Vs. Excise Commissioner, U.P., Allahabad* (1962) Supp. 1 SCR 885; *State of West Bengal Vs. Sampat Lal* (1985) 1 SCC 317: 1985 (2) SCR 256 ; *Bihar State Construction Co. Vs. Thakur Munendra Nath Sinha* (1988) Supp. SCC 542; *King Emperor Vs. Khwaja Nazir Ahmed* AIR 1945 PC 18; *Bhajan Lal Vs. State of Haryana* (1992) Supp. 1 SCC 335: 1990 (3) Suppl. SCR 259; *Parsion Devi Vs. Sumitri Devi* (1997) 8 SCC 715: 1997 (4) Suppl. SCR 470; *Sir Hari Shankar Pal and Anr. Vs. Anath Nath Mitter and Ors.* (1949) FCR 36 - Cited.

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Case Law Reference:

1999 (3) SCR 1279	Cited	Para 8	G
1988 (1) Suppl. SCR 1	Cited	Para 9	
1998 (2) SCR 795	Cited	Para 9	
1993 (1) Suppl. SCR 263	Cited	Para 13	H

A	2004 (3) SCR 1161	Cited	Para 13
	1999 (4) Suppl. SCR 160	Cited	Para 13
	(1970) 3 SCR 881	Cited	Para 14
B	(1994) Supp. 2 SCC 116	Cited	Para 14
	(1962) Supp. 1 SCR 885	Cited	Para 15
	1985 (2) SCR 256	Cited	Para 17
	(1988) Supp. SCC 542	Cited	Para 17
C	AIR 1945 PC 18	Cited	Para 17
	1990 (3) Suppl. SCR 259	Cited	Para 17
	1997 (4) Suppl. SCR 470	Cited	Para 21
D	(1949) FCR 36	Cited	Para 21
	2006 (12) SCC 534	Followed	Para 25
	1998 (2) SCR 795	Relied on	Para 27

E CIVIL ORIGINAL JURISDICTION

Review Petition (Civil) No. 272 of 2007 in W.P. (C) No. 633 of 2005.

WITH

F R.P. (C) Nos. 339, 347 and 348 of 2007.

G Mohan Parasaan, ASG, Uday U. Lalit, Rakesh Dwivedi, KTS Tulsi, Gaurav Bhatia, Irshad Ahmad, Faizal Sherwani (for Bhatia & Co.), A.D.N. Rao, Atul Sharma, Nitesh Jain, Ejaz Maqbool, Adarsh Upadhyay (for Bhatia & Co.), Nikhil Sharma for Bhatia & Co.), T.A. Khan, Arvind Kumar Sharma, S.N. Terdal Raj Kamal, Santosh Kumar Tripathy, Maheen Pradhan and Neha Gupta for the appearing parties, Ashutosh Srivastava (applicant-in-person).

H The Judgment of the Court was delivered

ALTAMAS KABIR, CJI. 1. Certain questions of fact and law were raised on behalf of the parties when the review petitions were heard. Review petitions are ordinarily restricted to the confines of the principles enunciated in Order 47 of the Code of Civil Procedure, but in this case, we gave counsel for the parties ample opportunity to satisfy us that the judgment and order under review suffered from any error apparent on the face of the record and that permitting the order to stand would occasion a failure of justice or that the judgment suffered from some material irregularity which required correction in review. The scope of a review petition is very limited and the submissions advanced were made mainly on questions of fact. As has been repeatedly indicated by this Court, review of a judgment on account of some mistake or error apparent on the face of the record is permissible, but an error apparent on the face of the record has to be decided on the facts of each case as an erroneous decision by itself does not warrant a review of each decision. In order to appreciate the decision rendered on the several review petitions which were taken up together for consideration, it is necessary to give a background in which the judgment and order under review came to be rendered.

2. One Vishwanath Chaturvedi, claiming to be an Advocate by profession and unconnected with any political party or parties, filed Writ Petition (Civil) No.633 of 2005, inter alia, for the following relief :-

"(a) issue an appropriate writ in the nature of mandamus directing Respondent No.1 to take appropriate action to prosecute Respondent Nos.2 to 5 under the Prevention of Corruption Act, 1988, for acquiring amassed assets more than the known source of their income by misusing their power and authority;"

3. In the Writ Petition, the Writ Petitioner provided instances of the wealth allegedly acquired by the said Respondents beyond their known source of income. After a contested hearing, this Court was of the view that the inquiry should not

A be shut out at the threshold because political elements were
involved. The prayer in the Writ Petition was, therefore,
moulded and the same was disposed of on 1st March, 2007,
with a direction upon the Central Bureau of Investigation,
hereinafter referred to as the "CBI", to inquire into the
B allegations relating to acquisition of wealth by the Respondent
Nos.2 to 5. The CBI was also directed to find out as to whether
there was any truth in the allegations made by the Petitioner
regarding acquisition of assets by the said Respondents
disproportionate to their known source of income and to submit
C a report to the Union of India which could take further steps in
the matter.

4. Soon, thereafter, the Respondent Nos.2 to 5 filed
Review Petitions for review of the aforesaid judgment dated 1st
D March, 2007 in Writ Petition (Civil) No.633 of 2005 and the
same was directed to be posted before the Court on 16th
March, 2007. Subsequently, the Review Petitions were placed
for hearing before the Court on 20th March, 2007 and ultimately
on 10th February, 2009, the Court directed notice to issue
thereupon. On 1st April, 2009, when the Review Petitions were
E taken up for hearing, a submission was made on behalf of the
Review Petitioners that one of the questions, which could have
a vital bearing on the matters, related to the question as to
whether the Court could issue directions to the CBI,
notwithstanding the provisions of Section 6 of the Delhi Special
F Police Establishment Act, 1946, which was under consideration
of the Constitution Bench in Civil Appeal Nos.6249-6250 of
2001 filed by the State of West Bengal. The hearing of the
Review Petitions was, therefore, adjourned till a decision was
pronounced by the Constitution Bench in the above Appeals.
G The Constitution Bench ultimately held that the High Court was
within its jurisdiction in directing the CBI to investigate into a
cognizable offence alleged to have been committed within the
territory of a State without the consent of that State and the
same would neither impinge upon the federal structure of the
H Constitution nor violate the doctrine of separation of powers

and would be valid in law. However, a note of caution was also given and it was further observed that the extra-ordinary power conferred by Articles 32 and 226 of the Constitution of India has to be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing fundamental rights.

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5. Thereafter, the Review Petitions were again taken up for hearing on 8th February, 2011.

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6. Five broad propositions were canvassed on behalf of the Review Petitioner, Shri Akhilesh Yadav, namely,

(i) Can this Court direct a CBI inquiry without the consent of the State concerned?

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(ii) Does a Court have jurisdiction to refer the matter to the CBI for investigation without forming a opinion as to whether a prima facie case of the commission of an offence had been made out?

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(iii) Can the Supreme Court order a CBI investigation without expressly invoking its jurisdiction under Article 142 of the Constitution of India?

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(iv) Could the Supreme Court have entertained the Writ Petition filed by the Respondent No.1 in the Review Petition under the garb of a public interest litigation? and

(v) Does the judgment and order dated 1st March, 2007, passed in Writ Petition (Civil) No.633 of 2005 warrant a review thereof?

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7. Mr. Rakesh Dwivedi, learned Senior Advocate, appearing for the Review Petitioners, Shri Akhilesh Yadav and

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A Smt. Dimple Yadav did not press the first proposition, since, as indicated hereinbefore, the said question had been settled by the Constitution Bench.

B 8. On the second proposition, Mr. Dwivedi urged that in the decision rendered by this Court in *Common Cause, A Registered Society Vs. Union of India & Ors.* [(1999) 6 SCC 667], a Bench of three Judges of this Court had specifically held that the CBI should not be involved in an investigation unless a prima facie case is found and established against the accused. Mr. Dwivedi pointed out that this Court had inter alia
C observed that the right to life engrained in Article 21 of the Constitution means something more than mere survival or animal existence. A man had, therefore, to be left alone to enjoy life without fetters and should not be allowed to be hounded
D either by the police or CBI only to find out as to whether he had committed any offence or was living as a law abiding citizen. This Court also observed that even under Article 142 of the Constitution, this Court could not issue such a direction ignoring the substantive provisions of law and the constitutional rights available to a person.
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F 9. On the third proposition relating to cases where this Court had directed the CBI to investigate, Mr. Dwivedi submitted that there were cases involving gross atrocities and State apathy and there were also cases which stand on a different footing and are concerned with corruption. Learned counsel submitted that in the present case no prima facie case of corruption had been established against the review petitioners and/or any of the proforma respondents and, accordingly, the direction given to the CBI to conduct
G investigations against them was ex facie illegal. Referring to various judgments in which directions had been given by this Court to the CBI to conduct investigation, there were special reasons for doing so in each case and not without a prima facie case having been made out against them in such cases. Mr.
H Dwivedi urged that the CBI has no jurisdiction to inquire or

investigate into a matter where there is no material to show prima facie that an offence has been committed. Mr. Dwivedi submitted that in the case of *A.R. Antulay Vs. R.S. Nayak* [(1988) 2 SCC 602], this Court had held that no jurisdiction can be conferred beyond the scope of the Act by Courts of law even with consent. He also urged that in the case of *Supreme Court Bar Association Vs. Union of India* [(1998) 4 SCC 409], this Court had observed that even the powers under Article 142 of the Constitution vested in this Court could not be exercised in a manner which was contrary to the Statute. It is only on account of special reasons where it was felt that an investigation by the local police would prove to be ineffective, that directions had been given to the CBI to take up the investigation. Mr. Dwivedi submitted that there were no such special reasons in the instant case which warranted the directions being given to the CBI to conduct investigation into the allegations of corruption and police excesses as well as human rights violations.

10. As far as Smt. Dimple Yadav is concerned, Mr. Dwivedi submitted that except for the fact that she is the wife of Akhilesh Yadav, who had been a Member of Parliament since 2000, there is no other ground to treat her as a public servant for the purposes of inquiry by the CBI. Mr. Dwivedi submitted that Smt. Dimple Yadav carried on her own business in agricultural produce and had her own income which had been wrongly clubbed by the Writ Petitioner with the assets of Shri Akhilesh Yadav to bring her within the ambit of the investigation by the CBI under the provisions of the Prevention of Corruption Act. It was further submitted that there is also no allegation that Smt. Dimple Yadav had, in any way, aided or abetted any public servant to commit any act which could have attracted the provisions of the Prevention of Corruption Act and including Smt. Dimple Yadav in the inquiry against those who could be said to be public servants, amounts to harassment of a private individual having a separate source of income in respect of which no offence under the aforesaid Act could be made out. Mr. Dwivedi contended that the inquiry directed to be conducted

A by the CBI in relation to the assets held by Shri Adkhilesh Yadav and Smt. Dimple Yadav was contrary to the procedure established by law and could not have been ordered even upon invocation of powers under Article 142 of the Constitution and was, therefore, liable to be set aside in review.

B 11. As far as the fourth proposition is concerned, as to whether the Supreme Court could have entertained the writ petition filed by the Respondent No.1 in the review petition in the garb of Public Interest Litigation, Mr. Dwivedi submitted that the writ petitioner had not made any specific allegation against the review petitioners which merited a direction by the Court to the CBI to conduct an investigation into the allegations relating to acquisition of wealth by the Respondent Nos.2 to 5 in the writ petition, beyond their known sources of income. Furthermore, the Writ Petitioner had links with the Indian National Congress, although, he had denied any connections with the Congress Party. Mr. Dwivedi urged that the Respondent No.1 herein had no locus standi to maintain the writ petition as a Public Interest Litigation, since it was more of a personal enmity rather than a public cause which had resulted in the filing of the writ petition. Mr. Dwivedi submitted that the entire exercise had been undertaken to malign the Respondent Nos.2 to 5 and was without any factual basis and the writ petition had been filed only to harass the Respondent No.2 to 5 therein and to tarnish their reputation amongst the people of Uttar Pradesh and also other parts of the country. Mr. Dwivedi submitted that the writ petition had been filed with the mala fide intention of discrediting the Review Petitioner and his family members in the eyes of the local public and to adversely affect their political fortunes in the State.

G 12. In addition to Mr. Dwivedi's submissions, Mr. Mukul Rohatgi, learned Senior Advocate, who also appeared for Smt. Dimple Yadav, submitted that merely because she belongs to a family of politicians, she had been included within the ambit of the scope of the investigation which was unwarranted, since

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it did not have any nexus with the objects sought to be achieved by such an inquiry.

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13. Mr. Rohatgi also submitted that since despite his denial it was amply clear that the Writ Petitioner, Mr. Vishwanath Chaturvedi, was a representative of the Congress Party, the Writ Petition ought to have been dismissed in limine. Mr. Rohatgi submitted that the explanation given in the judgment under review for invoking the Court's powers under Article 142 of the Constitution relying on the decision of this Court in *Mohd. Anis Vs. Union of India* [(1994) Supp. 1 SCC 145], needed a second look in view of the decision in the *Supreme Court Bar Association* case (supra). Mr. Rohatgi submitted that in *Mohd. Anis's* case (supra), it had been held that in order to do complete justice, the Supreme Court's power under Article 142 of the Constitution was not circumscribed by any statutory provision, and the Supreme Court could direct an investigation by the CBI into an offence committed within a State without a notification or order having been issued in that behalf, in public interest, to do complete justice in the circumstances of a particular case. However, in exercise of its powers under Article 142 of the Constitution, the Supreme Court should not direct a fishing inquiry without reference to the facts and circumstances of the offence of disproportionate assets under the Prevention of Corruption Act, 1988. Mr. Rohatgi urged that subsequently in the *Supreme Court Bar Association* case (supra), this Court held that the powers conferred on this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various Statutes, though not limited by those Statutes. These powers exist independent of the Statutes with a view to do complete justice between the parties. However, the powers conferred on the Court under Article 142 of the Constitution, being curative in nature, cannot be construed as powers which authorize the Court to ignore the substantive rights of a litigant while dealing with the cause pending before it. It was further observed that "Article 142, even with the width

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A of its amplitude, cannot be used to build a new edifice where
 none existed earlier, by ignoring express statutory provisions
 dealing with a subject and thereby to achieve something
 indirectly which cannot be achieved directly. The very nature of
 B the power must lead the Court to set limits for itself within which
 to exercise those powers and ordinarily it cannot disregard a
 statutory provision governing a subject, except perhaps to
 balance the equities between the conflicting claims of the
 litigating parties by 'ironing out the creases' in a cause or matter
 before it." It was submitted that the decision in the *Supreme*
 C *Court Bar Association* case (supra) cannot be reconciled with
 the reasoning of the decision in *Mohd. Anis's* case (supra). Mr.
 Rohatgi submitted that all the decisions rendered subsequent
 to the decision rendered in the *Supreme Court Bar*
Association case (supra), following the earlier decision in
 D *Mohd. Anis's* case (supra), were per incuriam. In support of
 his submission, Mr. Rohtagi referred to the decision of this
 Court in *Textile Labour Association Vs. Official Liquidator*
 [(2004) 9 SCC 741] wherein while examining the plenary power
 of this Court under Article 142 of the Constitution, it referred to
 the decision in the *Supreme Court Bar Association* case
 E (supra). Mr. Rohatgi concluded on the note that under Article
 142 of the Constitution, the Supreme Court could always correct
 any error made by it and to that effect it could recall its own
 order, as was held in *M.S. Ahlawat Vs. State of Haryana*
 [(2000) 1 SCC 278].

F 14. Mr. Ashok Desai, learned Senior Advocate, who
 appeared for Shri Mulayam Singh Yadav, the Review Petitioner
 in Review Petition (C) No.339 of 2007, based his submissions
 mainly on the powers of the Supreme Court to direct the CBI
 G to conduct an investigation in respect of an offence committed
 within a State, without the consent of the State Government as
 envisaged in Section 6 of the Delhi Special Police
 Establishment Act, 1946, hereinafter referred to as 'the 1946
 Act'. Mr. Desai attempted to distinguish the decisions rendered
 H by this Court in the case of *Advance Insurance Company Vs.*

Gurudasmal [(1970) 3 SCR 881 = (1970) 1 SCC 633] and in the case of *Kazi Lhendup Dorzi Vs. CBI* [(1994) Supp. 2 SCC 116]. Mr. Desai submitted that while in the first case, the Government of Maharashtra had given its consent to the investigation by the CBI, in the latter case the question involved was not of grant of permission to investigate into the case, but withdrawal of such consent which had already been granted. A B

15. Mr. Desai reiterated the contentions, both of Mr. Dwivedi and Mr. Rohatgi, that powers under Article 142 of the Constitution could not be invoked in contravention of the provisions of a Statute and a fortiori the provisions of the Constitution. Mr. Desai also urged that in the *Supreme Court Bar Association* case (supra) not only had the decision in *Mohd. Anis's* case (supra) been referred to, but this Court had expressly disapproved the observation made therein by Mr. V.C. Misra that the law laid down in *Prem Chand Garg Vs. Excise Commissioner, U.P., Allahabad* [(1962) Supp. 1 SCR 885], in which it had been observed that despite the width of the powers conferred on the Supreme Court by Article 142(1), even this Court could not under the said provision make an order which was plainly inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any constitutional provision, was no longer good law. C D E

16. Mr. Desai submitted that since the decision in the *Supreme Court Bar Association* case (supra) had not been considered by this Court while rendering the judgment under review and the relief had been moulded without any discussion on such issue, the judgment was liable to be reviewed. F

17. Dr. Rajiv Dhawan, Senior Advocate, who appeared for the Respondent No.5, Shri Prateek Yadav, reiterated the submissions made by Mr. Dwivedi, Mr. Rohatgi and Mr. Desai in relation to the decision rendered by this Court in the *Supreme Court Bar Association* case (supra). Dr. Dhawan submitted that the CBI, as a statutory body for the purpose of conducting criminal investigation in extra-ordinary G H

A circumstances with the consent of the State Government, could exercise powers within the limits and constraints of the Delhi Special Police Establishment Act, 1946, which fact had not been considered in the decisions rendered in *State of West Bengal Vs. Sampat Lal* [(1985) 1 SCC 317], *Bihar State Construction Co. Vs. Thakur Munendra Nath Sinha* [(1988) Supp. SCC 542] and also in *Mohd. Anis's* case (supra). Dr. Dhawan submitted that within the constitutional framework, the CBI could not encroach upon the powers of the police of several States. Referring to Entry 80 in List I of the Seventh Schedule to the Constitution and Article 239AA, Dr. Dhawan submitted that the Central Government was not entitled to extend the powers and jurisdiction of the members of the police force belonging to any area outside the State so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the State Government of that State in which such area is situated. Dr. Dhawan submitted that it was, therefore, clear that the direction given by this Court to the CBI, which is a creation of the Delhi Special Police Establishment Act, 1946, to investigate into a State subject, was contrary to the constitutional safeguards engrafted in Entry 80 of List I of the Seventh Schedule to the Constitution. Reference was also made by Dr. Dhawan to the principles evolved by the Privy Council in *King Emperor Vs. Khwaja Nazir Ahmed* [AIR 1945 PC 18] and *Bhajan Lal Vs. State of Haryana* [(1992) Supp. 1 SCC 335], wherein it was observed that judicial review is subject to the principles of judicial restraint and must not become unmanageable in other aspects relating to the power of the Union or State Governments. Reference was also made to Section 5 of the 1946 Act which listed the classes of offences which may be inquired into by the CBI.

18. Dr. Dhawan also contended that while entertaining a public interest litigation, it was always necessary for the Court to be extra cautious since at the very initial stage no opportunity is given to the Respondent to state his case before notice is

issued and at times it could result in premature reference to the CBI on a view short of a prima facie case, particularly where the public interest litigation was politically motivated to adversely affect the political consequences of the persons involved. Dr. Dhawan lastly submitted that the direction given to the CBI after completion of the inquiry to submit its report to the Union of India was clearly contrary to law and could not be sustained under any circumstances.

19. In addition to the above petitions, we had also considered I.A. Nos.16 and 17 of 2009 which had been filed by one Shri Ashutosh Srivastava, who appeared in-person in support of his application for being impleaded. Having heard learned counsel for the Respondents and the Applicant in-person, we had reserved orders on the same.

20. In the facts and circumstances of the case, we are not inclined to implead Shri Srivastava in these proceedings and his application for being impleaded stands rejected.

21. Appearing for the Writ Petitioner, Vishwanath Chaturvedi, Mr. K.T.S. Tulsi, learned Senior Advocate, submitted that every order in which a mistake may be noticed does not automatically call for a review and that the power of review could be invoked only in circumstances as contained in Order 47 Rule 1 of the Code of Civil Procedure (CPC). Referring to the decision dated 16th June, 2008 of this Court in *State of West Bengal Vs. Kamal Sengupta and Anr.* in Civil Appeal No.1694 of 2006, Mr. Tulsi submitted that the term "mistake or error apparent" which finds place in Order 47 Rule 1 CPC, by its very connotation signifies an error which is evident per se from the record of the case and does not require any detailed examination, scrutiny and elucidation either of the facts or legal position. In fact, in *Parsion Devi Vs. Sumitri Devi* [(1997) 8 SCC 715] it was observed that if an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the

A face of the record for the purpose of Order 47 Rule 1 CPC. In other words, an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken on a point of fact or law, as the Court could not sit in appeal over its own judgment. Similar views were expressed by a Five-Judge Bench of the Federal Court in *Sir Hari Shankar Pal and Anr. Vs. Anath Nath Mitter & Ors.* [(1949) FCR 36], wherein it was, inter alia, observed that a decision being erroneous in law is certainly no ground for ordering review.

C 22. Various other decisions were also referred to which will only serve to duplicate the decisions of this Court on the said issue.

D 23. As has been indicated in paragraph 5 of this judgment, five broad propositions were canvassed on behalf of the review petitioner, Shri Akhilesh Yadav, which were mainly confined to the jurisdiction of the High Court and the Supreme Court to direct a CBI inquiry in respect of an offence alleged to have been committed within a State, without the consent of the State concerned. Along with the above, the locus standi of the writ petitioner to maintain the writ petition was also raised on behalf of Shri Yadav. While the submissions on behalf of all the review petitioners were centered around the said two propositions, a specific issue was raised by Mr. Mukul Rohatgi as to whether the investigation and/or inquiry could also be extended to the assets of Smt. Dimple Yadav, wife of Shri Akhilesh Yadav, since she had neither held any post under the Government nor was she involved in the activities of her husband or father-in-law, Shri Mulayam Singh Yadav. The acquisition of wealth by her was attributed to her agricultural income and not to any source of income through her husband and her father-in-law.

H 24. Same were the submissions made by Dr. Rajiv Dhawan, appearing for Shri Prateek Yadav, and, in addition, it was submitted that the said Respondent did not get a reasonable opportunity of stating his case before the judgment

was delivered in Writ Petition (C) No.633 of 2005 on 1st March, 2007. A

25. As far as the first contention is concerned, the same has been set at rest by the Constitution Bench in State of West Bengal & Ors. Vs. The Committee for Protection of Democratic Rights, West Bengal & Ors., being Civil Appeal Nos.6249-6250 of 2001. In the very first paragraph of its judgment the Constitution Bench set out the issue, which had been referred to it for its opinion in the following terms : B

"The issue which has been referred for the opinion of the Constitution Bench is whether the High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, can direct the Central Bureau of Investigation (for short "the CBI"), established under the Delhi Special Police Establishment Act, 1946 (for short "the Special Police Act"), to investigate a cognizable offence, which is alleged to have taken place within the territorial jurisdiction of a State, without the consent of the State Government." C D

26. After considering the various decisions on this point, as also Article 246 of the Constitution, the Constitution Bench ultimately answered the reference in the manner following : E

"In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly." F G H

A 27. A note of caution was also given by the Constitution
Bench, which, in fact, finds place in all the decisions relating to
this issue, namely, that the power which is vested in the superior
courts should be exercised sparingly, cautiously and in
exceptional situations where it becomes necessary to provide
C credibility and instill confidence in investigations or where the
incident may have national and international ramifications or
where such an order may be necessary for doing complete
justice and enforcing fundamental rights. The said note of
caution is an echo of the observations made by this Court in
Supreme Court Bar Association Vs. Union of India & Anr.
D [(1998) 4 SCC 409], that such an inquiry by the CBI could be
justified in certain circumstances to prevent any obstruction to
the stream of justice.

D 28. That this Court had jurisdiction to direct the CBI to make
an inquiry into the accumulation of wealth by Shri Mulayam
Singh Yadav and his family members in excess of their known
source of income, based on the allegations made in the writ
petition, cannot be questioned. By its judgment dated 1st
E March, 2007, this Court merely directed an investigation into
the allegations made in the writ petition and to submit a report
to the Union Government. The submissions made on behalf
of the review petitioners in this regard, must, therefore, be
rejected, except in regard to the direction given to the CBI to
submit a report of its inquiry to the Union Government.

F 29. In addition, the submissions made qua Smt. Dimple
Yadav merits consideration, since when the order under review
was passed, she had neither held any public office nor
Government post and was essentially a private person
G notwithstanding her proximity to Shri Akhilesh Yadav and Shri
Mulayam Singh Yadav. On reconsideration of her case, we are
of the view that the investigation launched against her on the
issue of amassing wealth beyond her known source of income,
is liable to be dropped. The review petition, so far as Smt.
Dimple Yadav is concerned, is, accordingly, allowed and the
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investigation conducted by the CBI against her should, therefore, be dropped.

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30. As far as the other review petitioners are concerned, we have to keep in mind the fact that the scope and ambit of a review proceeding is limited and the order dated 1st March, 2007, in respect of which review has been sought, was neither irregular nor without jurisdiction and was passed after considering the submissions made on behalf of the respective parties. The review proceedings cannot be converted into an appeal.

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31. The judgment under review does not, in our view, suffer from any error apparent on the face of the record, except for the directions given in the case of Smt. Dimple Yadav. There is another error which we ourselves are inclined to correct. While disposing of the writ petition and directing the CBI to inquire into the alleged acquisition of wealth by the Respondent Nos.2 to 5, the CBI was directed to submit a report to the Union of India and on receipt of such report, the Union of India was given the liberty to take further steps depending upon the outcome of the preliminary inquiry into the assets of the said respondents. Since, the CBI is an independent body and is under no obligation to report to the Union of India in regard to investigations undertaken by it, the direction to submit a report of the inquiry to the Union of India and the liberty given to the Union of India to take further steps on such report is not contemplated in the scheme of the Delhi Special Police Establishment Act, 1946. It is for the CBI to decide what steps it wishes to take on the basis of the inquiry conducted. We, therefore, modify the order dated 1st March, 2007, and direct that the directions given to the CBI to submit a report of its inquiry to the Union of India and the liberty given to the Union of India to take further steps on such report, be deleted from the order.

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32. The review petitions are disposed of with the following directions :

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- A i) The CBI shall drop the inquiry into the assets of the Respondent No.4, Smt. Dimple Yadav, wife of Shri Akhilesh Yadav;
- B ii) The CBI may take such independent action, as it considers fit, on the basis of the inquiry conducted by it pursuant to the directions given by this Court in the judgment under review, without seeking any direction from the Union of India or on the basis of any direction that may be given by it.
- C K.K.T. Review Petitions disposed of.