

M/S. HCL INFOSYSTEM LTD.

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v.

CENTRAL BUREAU OF INVESTIGATION

(Criminal Appeal No. 751 of 2016)

AUGUST 09, 2016

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**[V. GOPALA GOWDA AND ADARSH KUMAR GOEL, JJ.]**

*Prevention of Corruption Act, 1988 – ss. 3(1), 4, 13(1)(d) r/w 13(2) – Jurisdiction of Special Judge appointed u/s. 3(1) to deal with all cases relating to NRHM (National Rural Health Mission) scam under the PC Act – If can continue proceedings against the appellant, not a public servant, named as co-accused with the sole public servant who died before framing of charges, in absence of any independent charge under the PC Act and for offences, though related to the scam but, not under the PC Act – Held: As rightly observed by High Court, charges were yet to be framed and from the material placed on record, framing of charges under the PC Act was not ruled out – Hence, appellant’s contention that the sole public servant having died before framing of charges, the appellant could not be tried by the Special Judge, pre-mature at this stage – Further, the Special Court was constituted not only to deal with the cases of PC Act but also other cases relating to the NRHM Scam – No prejudice caused to trial before the Special Judge duly appointed to deal with non-PC cases when the object of doing so was to try connected cases before same Court – Non-PC Act cases could also be allowed to be tried by the Special Judge u/s.26, Cr.P.C – Code of Criminal Procedure, 1973 – ss.26/378/407/482 – Penal Code, 1860 – ss.120(B)/409/420 – Criminal Trial.*

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**Dismissing the appeals, the Court**

**HELD: 1. The only contention raised by the appellant is that the public servant having died before framing of the charge, the appellant could not be tried by the Special Judge. However, there are two difficulties in accepting this submission, viz. (i) As observed by the High Court, the charge was yet to be framed and the framing of charge under the PC Act from the material placed on record could not be ruled out, thus this argument at**

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A this stage is premature, and (ii) The special Judge was authorized not only to deal with the cases under the PC Act but also for other offences. This course was permissible in view of law laid down by this Court in *M/s. Essar Teleholdings Limited*. [Paras 11, 14][769-F-G; 771-E-G]

B *M/s. Essar Teleholdings Limited v. Registrar General, Delhi High Court and Others* 2013 (8) SCC 1: 2013 (7) SCR 1 – relied on.

2. In the present case, the Special Court in question was constituted not only to deal with the cases of PC Act but also other cases relating to the NRHM scam. Code of Criminal Procedure is applicable to trial before Special Judge and there is no prejudice to trial taking place before Special Judge duly appointed to deal with non PC cases when the object of doing so was to try connected cases before same court. Undoubtedly, while Special Judge alone could deal with cases under the PC Act, non-PC Act could also be allowed to be tried by the Special Judge under Section 26 of the Code of Criminal Procedure. There is no legal bar to do so, as held by this Court in *M/s. Essar Teleholdings Limited*. [Para 15][771-G-H; 772-A-B]

E *State through Central Bureau of Investigation, New Delhi v. Jitender Kumar Singh* (2014) 11 SCC 724: 2014 (2) SCR 621 – distinguished.

#### Case Law Reference

2013 (7) SCR 1           relied on           Paras 14, 15  
2014 (2) SCR 621       distinguished       Paras 14, 16

F CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 751 of 2016.

From the Judgment and Order dated 01.05.2015 of the High Court of Judicature at Allahabad in Application U/S/ 482 No. 6623 of 2015.

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Crl. A. No. 752 of 2016.

C. U. Singh, Sr. Adv., P. V. Dinesh, Sanjiv K. Jha, T. P. Sindhu, Rajendra Beniwal, Binesh K., Aarushi Singh, Sibho Sankar Mishra, U. K. Mishra, Niranjan Sahu, Advs. for the Appellant.

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Rana Mukherjee, Sr. Adv., M. Rambabu, Mukesh Kumar Maroria, A  
Advs. for the Respondent.

The Judgment of the Court was delivered by

**ADARSH KUMAR GOEL, J.** 1. Leave granted. These B  
appeals have been preferred against the orders of the High Court of  
Judicature at Allahabad dated 1<sup>st</sup> May, 2015 and 22<sup>nd</sup> January, 2016 in  
APP No. 6623 of 2015 and Application u/s 482/378/407 No. 3823 of  
2014 respectively.

2. The question for consideration relates to the jurisdiction of the C  
Special Judge appointed under the Prevention of Corruption Act, 1988  
(the "PC Act") to try a person other than a public servant if the public  
servant dies before the commencement of the trial. Further question is  
whether the Special Judge can try a non PC Act case when his  
appointment is to try all cases of the category which covers the present  
case.

3. The Central Bureau of Investigation (the "CBI") conducted D  
investigation in what is known as "National Rural Health Mission Scam"  
("NHRM Scam"). According to the said investigation, NRHM funds to  
the tune of Rs. 9,000 crores, which were allocated to the State of Uttar  
Pradesh for the period 2005-2006 by the Ministry of Health & Family  
Welfare, Government of India, were diverted and allegedly E  
misappropriated on a large scale. The CBI enquiry was ordered by the  
Lucknow Bench of the High Court on 15<sup>th</sup> November, 2011. It also  
came to light that two Chief Medical Officers were shot dead as a result  
of the said scam. One Deputy Chief Medical Officer was arrested by  
the local police, but he was found dead in jail on 22<sup>nd</sup> June, 2011. One  
Sunil Verma, who was named as one of the accused, allegedly committed F  
suicide on 23<sup>rd</sup> January, 2012. One Mahender Kumar Sharma, who was  
a clerk in the office of Chief Medical Officer, Lakhimpur Kheri was  
found murdered on 15<sup>th</sup> February, 2012. The CBI conducted searches  
of more than 150 places across the State and arrested a number of  
accused persons suspected to be involved in the embezzlement of NHRM  
funds. G

4. A single court was designated as the trial court to facilitate the H  
progress of the trial *vide* order of the Chief Justice of the High Court  
dated 16<sup>th</sup> May, 2012. *Vide* order of the State Government dated 28<sup>th</sup>  
August, 2012 the said notification designated the Special Judge, CBI,

A Ghaziabad for dealing with “NRHM scam matters” for whole of the Uttar Pradesh State and was in addition to notification dated 10<sup>th</sup> March, 2011 issued earlier for appointment of Special Judge for trial of offences under Section 3(1) of the PC Act.

5. The two notifications are as follows :

B (I) “ NOTIFICATION  
Miscellaneous

No.U.O.-24/6-P-9-2011-167G/09TC-Nyaya-2  
Lucknow : dated March 10, 2011

C In exercise of the powers under sub-section (1) of section 3 and sub-section (2) of section 4 of the Prevention of Corruption Act, 1988 (Act No. 49 of 1988) read with section 21 of the General Clauses Act, 1897 (Act no.X of 1897) and in supersession of all other notifications issued in this behalf, the Governor is pleased to appoint from the date of his taking over charge the Additional District Judge mentioned in Column 2 of the Scheduled below, as Special Judge for the areas mentioned in Column 4 for trial for such offences specified in sub-section (1) of section 3 of the aforesaid Act no.49 of 1988 in which hereinafter charge sheet are filed in his court by Special Police Establishment of the Government of India and to direct that such other cases arising within the said areas, in which charge sheets have already been filed before any other Special Judge appointed under the said Act and also such other cases arising within the said area relating to the said Special Police Establishment which are pending before such Special Judge, shall also be tried and disposed off by him and his court shall be designated as specified in column-3 of said Schedule with headquarters at Ghaziabad.

F SCHEDULE

Sl. No.	Name of the Judge	Name of the Court	Areas of Jurisdiction (District)
1	2	3	4
1	Shri Shyam Lal-II, Additional District and Sessions Judge, Ghaziabad	Special Court, Anti Corruption, CBI, Ghaziabad	G.B. Nagar, Meerut, Aligarh, Rampur, Mainpuri, Firozabad.

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2	Dr. Ashok Kumar Singh-IV, Special Judge Anti Corruption C.B.I., Ghaziabad	Special Court C.B.I., Court No.1, Ghaziabad	Ghaziabad, Moradabad, Bulandshahar, Bijnor, Hathras
3	Sri M.S. Wadhwa, Additional District and Sessions Judge, Muzaffarnagar	Special Court C.B.I., Court No.2, Ghaziabad	Saharanpur, Agra, Muzaffarnagar, J.P. Nagar, Etah, Baghpat, Mathura.

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By order  
Deepak Kumar  
Secretary

(II) GOVERNMENT OF UTTAR PRADESH  
HOME (POLICE) SECTION-9

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No. U.O.49/Six-P-12-167 G/09 T.C. Justice-2  
Lucknow, Dated: 28<sup>th</sup> August, 2012

Exercising the powers conferred under section 2 of General Clauses Act, 1897 (Act No.10 of 1897) read with sub-section (1) of section 73 and sub-section (2) of section 4 of Prevention of Corruption Act, 1988 (Act No.49 of 1988) and besides Notification No.U.O.24/Six-P-9-2011-167G/09 T.C. – Justice-2, dated 10<sup>th</sup> March, 2011 issued for this purpose, the Governor do hereby appoint Sri Shyam Lal-Second. **Special Judge, Anti Corruption, CBI, Ghaziabad, for disposing of National Rural Health Mission (NRHM) Scam matters of whole of Uttar Pradesh, besides the matters mentioned in previous Notification, with immediate effect.**

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By the order  
Kamal Saxena  
Secretary “(emphasis added)”

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A 6. The CBI filed several charge sheets, including a charge sheet  
 in respect of offences not covered by the PC Act in the case of Dr. Vijai  
 Tripathi (appellant in SLP (Crl.) No.1418 of 2016) and others. Since the  
 Special Judge declined to entertain the said charge sheet, on application  
 of the CBI, the High Court held that the Special Judge was to deal with  
 B “all cases relating to the scam”, even though the offences were not  
 under the PC Act.<sup>1</sup>

C 7. Vide notification dated 29<sup>th</sup> May, 2014 in place of Shri Shyam  
 Lal-II, Shri Atul Kumar Gupta was posted for CBI Court, Ghaziabad.  
 He was to look after all cases of NRHM as notified earlier, as the  
 notification dated 28<sup>th</sup> August, 2012 was not rescinded, even though.  
 The notification dated 29<sup>th</sup> May, 2014 was in supersession of all other  
 notifications. This aspect, as noted in the impugned judgment of the  
 High Court, was clarified on the administrative side of the High Court.  
 Cases of the appellants are being dealt with by the said court. Charge is  
 yet to be framed.

D 8. The appellant in SLP (Crl.) No.4338 of 2015 is named as co-  
 accused inter alia for offence of conspiracy along with a public servant  
 who was charged under the PC Act. It approached the High Court  
 with the plea of lack of jurisdiction of the Special Judge to deal with the  
 case against it after the death of the public servant. The High Court  
 E repelled the said contention and dismissed the petition. The High Court  
 relied upon the judgment of this Court in *M/s. Essar Teleholdings  
 Limited Vs. Registrar General, Delhi High Court and Others*<sup>2</sup>  
 wherein it was held that the Special Judge having been appointed to deal  
 with “all 2G scam” cases, could also deal with cases involving other  
 offences under the PC Act. This is clear from the following discussion  
 F in the judgment :

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G 11. Subsequently, the CBI filed second supplementary  
 charge sheet on 12.12.2011 against the Petitioner(s) and  
 other accused persons for the alleged commission of  
 offences under Section 420/ 120-B Indian Penal Code. No

<sup>1</sup> Order dated 23.09.2013 in Criminal Misc. Application U/s. 482 No. 33050 of  
 2013

H <sup>2</sup> 2013 (8) SCC 1

offences under the PC Act have been alleged against the Petitioner(s) and other accused persons arraigned in the second supplementary charge sheet. Based on the same, the learned Special Judge by impugned order dated 21.12.2011 was pleased to take cognizance of the second supplementary charge sheet dated 12.12.2011 and the Petitioner(s) and others were summoned.

12. According to the Petitioner(s), the CBI in its charge sheet dated 12.12.2011 admits that the charge sheet is being filed “ regarding a separate offence” under Section 420/120-B Indian Penal Code. In paragraphs 73 and 74 of the said charge sheet whilst admitting that the offences alleged in the charge sheet are triable by a Magistrate, the CBI relying on the notification dated 28.3.2011 requested the Special Judge to take cognizance of the matter. Paragraphs 73 and 74 of the charge sheet read as under:

73. This final report under Section 173(8) Code of Criminal Procedure is being filed regarding a separate offence which came to notice during investigation of the FIR No. RC DAI 2009 A 0045 (2G Spectrum Case), which is pending before Hon’ble Special Judge (2G Spectrum Cases), Patiala House Courts, New Delhi and a final report dated 02.04.2011 and supplementary final report dated 25.04.2011 were earlier filed in the same FIR.

74. In terms of the Notification No. 6/05/2011-Judl./363-367 dated 28.03.2011 issued by Govt. of NCT of Delhi this Hon’ble Court has been designated to undertake the trial of cases in relation to all matters pertaining to 2G Scam exclusively in pursuance of the orders of the Supreme Court, although offences alleged to have been committed by accused persons sent up for trial are triable by the Magistrate of first class. It is, therefore, prayed that cognizance of the aforesaid offences may be taken or the final report may be endorsed to any other appropriate court as deemed fit and thereafter process may be issued to the accused

A persons for their appearance and to face the trial as per Law.

13. The learned Special Judge, thereafter, took cognizance vide impugned order dated 21.12.2011. The relevant portion of the said impugned order reads as under:

B “2. Ld. Spl. PP further submits that the accused have been charged with the commission of offence, which are triable, by the Court of Metropolitan Magistrate. It is further submitted that this second supplementary charge sheet also arises from the aforesaid RC bearing  
C No. DAI2009A0045/CBI/ACB/ND, titled as CBI v. A. Raja and Ors., arose and is pending trial. He further submits that since this case also arises from the same  
D FIR, it is to be tried by this Court alone. He has further invited my attention to an order dated 15.03.2011, passed by the Hon’ble High Court, whereby the undersigned was nominated as Special Judge by the Hon’ble High Court to exclusively try cases of 2G Scam.

E 3. Accordingly, the trial of this second supplementary charge sheet shall be held in this Court. A copy of the order dated 15.03.2011 be placed on the file.”

F 14. Learned Counsel for the Petitioner(s) assailed the impugned Administrative Order passed by the Delhi High Court dated 15.3.2011 and the Notification dated 28.3.2011 issued by the Government of NCT Delhi on the following grounds:

G 14.1 The impugned notification travels beyond the provisions of the Code of Criminal Procedure. The Code of Criminal Procedure mandates that offences under the Indian Penal Code ought to be tried as per its provisions.

H 14.2 It has been held by this Hon’ble Court in the case of CBI v. Keshub Mahindra that: (SCC p. 219, para 11)

“No decision by any court, this Court not excluded, can be read in a manner as to nullify

**the express provisions of an Act or the Code...”**

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(emphasis in original)

Thus, the Administrative order and Notification are contrary to the well-settled provisions of law and ought to be set aside in so far as they confer jurisdiction on a Special Judge to take cognizance and hold trial of matters not pertaining to PC Act offences.

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14.3 If the offence of Section 420 Indian Penal Code, which ought to be tried by a Magistrate, is to be tried by a Court of Sessions, a variety of valuable rights of the Petitioner would be jeopardised. This would be contrary to the decision of the Constitutional Bench of the Hon'ble Supreme Court in the case of A.R. Antulay v. R.S. Nayak, wherein it was acknowledged that the right to appeal is a valuable right and the loss of such a right is violative of Article 14 of the Constitution of India.

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15.4 The Second Supplementary charge-sheet which makes out offences against the present accused arises out of FIR No. RC DAI 2009 A 0045 registered by the CBI on 21.10.2009, out of which the earlier charge-sheets have been filed, and cognizance taken by the Special Court. An anomalous situation would be created if various accused charged with offences arising out of the same FIR were to be tried by different courts on the flimsy ground that some of them are only charged of offences arising out of the Indian Penal Code and not the special statutes under which other charges are laid.

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15.5 Higher courts can try an offence in view of Section 26 of Code of Criminal Procedure and no prejudice should be caused if the case is tried by a Special Judge. By virtue of Administrative Order passed by the Delhi High court and Notification issued by the Government of NCT, Delhi, the learned Special Judge is not divested of his jurisdiction which he otherwise possesses under Section 26 of the Code of Criminal Procedure to try offence under Indian Penal Code. The Section reads as follows:

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- A            “26. Courts by which offences are triable.- Subject to the other provisions of this Code,-
- (a) Any offence under the Indian Penal Code (45 of 1860) may be tried by-
- B            (i) The High Court, or
- (ii) The Court of Session, or
- (iii) Any other court by which such offence is shown in the First Schedule to be triable;
- (b) Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court and when no court is so mentioned, may be tried by-
- C            (i) The High Court, or
- (ii) Any other court by which such offence is shown in the First Schedule to be triable.”
- D            16. Mr. Prashant Bhushan, learned Counsel for the CPIL, submitted that a Special Judge has the power to try offences under the Indian Penal Code and no challenge can be made against this power. It was further submitted that in view of the order passed by this Court in 2G Scam case, it is not open to the Petitioners to approach any other Court to commence the trial.
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- F            24. From the aforesaid second charge-sheet it is clear that the offence alleged to have been committed by the Petitioners in the course of 2G Scam Cases. For the said reason they have been made accused in the 2G Scam Case.
25. Admittedly, the co-accused of 2G Scam case charged under the provisions of Prevention of Corruption Act can be tried only by the Special Judge. The Petitioners are co-accused in the said 2G Scam case. In this background Section 220 of Code of Criminal Procedure will apply and the Petitioners though accused of different offences i.e. under Section 420/ 120-B Indian Penal Code, which alleged to have been committed in the course of 2G Spectrum
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transactions, under Section 223 of Code of Criminal Procedure they may be charged and can be tried together with the other co-accused of 2G Scam cases.

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30. On the question of validity of the Notification dated 28th March, 2011 issued by the NCT of Delhi and Administrative Order dated 15th March, 2011 passed by the Delhi High Court, we hold as follows:

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30.1. Under Sub-section (1) of Section 3 of the PC Act the State Government may, by notification in the Official Gazette, appoint as many Special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try any offence punishable under the PC Act. In the present case, as admittedly, co-accused have been charged under the provisions of the PC Act, and such offence punishable under the PC Act, the NCT of Delhi is well within its jurisdiction to issue Notification(s) appointing Special Judge(s) to try the 2G Scam case(s).

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30.2. Article 233 and 234 of the Constitution are attracted in cases where appointments of persons to be Special Judges or their postings to a particular Special Court are involved. The control of High Court is comprehensive, exclusive and effective and it is to subserve a basic feature of the Constitution i.e., independence of judiciary. [See High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal and High Court of Orissa v. Sisir Kanta Satapathy. The power to appoint or promote or post a District Judge of a State is vested with the Governor of the State under Article 233 of the Constitution which can be exercised only in consultation with the High Court. Therefore, it is well within the jurisdiction of the High Court to nominate officer(s) of the rank of the District Judge for appointment and posting as Special Judge(s) under Sub-section (1) of Section 3 of the PC Act.

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30.3. In the present case, the Petitioners have not challenged the nomination made by the High Court of Delhi to the NCT of Delhi. They have challenged the letter dated 15th March,

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A 2011 written by the Registrar General, High Court of Delhi,  
New Delhi to the District Judge-I-cum-Sessions Judge, Tis  
Hazari Courts, Delhi and the District Judge-IV-cum-Addl.  
Sessions Judge, I/C, New Delhi District, Patiala House  
B Courts, New Delhi whereby the High Court intimated the  
officers about nomination of Mr. O.P. Saini, an officer of  
Delhi Higher Judicial Service for his appointment as Special  
Judge for 2G Scam Cases.

C 31. In the present case there is nothing on the record to  
suggest that the Petitioners will not get fair trial and may  
& miscarriage of justice. In absence of any such threat  
D & miscarriage of justice, no interference is called for against  
the impugned order taking cognizance of the offence against  
the Petitioners.

D 9. In the impugned judgment, the High Court dealing with the  
powers of the Chief Justice of the High Court to permit non-PC Act  
cases also being dealt with by the Special Judge observed:

E “ The powers of the Chief Justice to do so are  
unquestionable keeping in view the provisions of Rule 4(A)  
of Chapter III of the Allahabad High Court Rules which  
includes the powers of the Chief Justice in matters of Mid-  
term posting and transfers and all residuary matters not  
allotted to any Committee or Administrative Judges. This  
being the legal position and there being no indication of any  
prejudice or failure of justice, the notification dated 29.5.2014  
F read with the notification dated 28.8.2012/ 1.9.2012 and  
the order of the Chief Justice mentioned hereinabove dated  
13.2.2014 clearly continues the authority of Sri Atul Kumar  
Gupta to exercise powers exclusively over NRHM cases  
at Ghaziabad. From the administrative file of the High Court  
relating to the issuance of such notifications it also appears  
G that steps have been initiated and the Government has  
already been communicated with the approval of Hon'ble  
the Chief Justice, that the said omission in the notifications  
dated 29.5.2014 specifically about NRHM cases be rectified.  
There is, therefore, a substantial compliance of procedure  
in relation to the conferment of the posting and jurisdiction  
H of Sri Atul Kumar Gupta as successor in office of Sri Shyam

Lal-II who was already notified to exclusively try NRHM cases. In the light of the above, a ministerial omission either by the registry of the High Court or by the State Government will not dissolve the conferment of authority on the successor in office.

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In my considered opinion as well, the aforesaid approach of getting the scam tried in one particular court does not suffer from any administrative or judicial infirmity and rather the same would advance the cause of justice with the entire scam being looked into by one particular court instead of a variety of courts spread over differently as it would result in a likelihood of conflict of appreciation of evidence and obviously might result in a conflict of opinion. The nature of the offences being tried simultaneously by one court relate to the diversion, misappropriation and misutilization of the funds of the National Rural Health Mission that according to the charge sheet and the FIRs as well as the evidence collected indicate a concerted effort through a deep-routed conspiracy to siphon off the funds of the NRHM scam. In such a situation it would not be inappropriate to invoke the principle "extraordinary situations require extra ordinary remedies" for retaining the jurisdiction with the learned Special Judge in the facts of the present case. "

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10. As already stated, the High Court held that the Special Judge could continue proceedings against the appellants even after the death of public servant and even if there was no charge under the PC Act. The High Court duly considered the effect of death of the sole public servant. The contention raised by the appellant in the first case was that the charges against it were under Section 120B read with Sections 409 and 420 IPC and Section 13(1)(d) read with Section 13(2) of the PC Act. There is no independent PC Act charge against it. Thus, only for non PC Act charges, proceedings could not continue before the Special Judge. On this aspect, it was observed that the charge could be amended and challenge was pre-mature apart from the fact the Special Judge

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A was competent to deal with non PC Act cases relating to NRHM scam. The relevant observations in this regard are :

B “ There is one thing which deserves mention at this very stage is that the possibility of amendment in the charges and addition thereto keeping in view the nature of the allegations cannot be ruled out in future. This, therefore, would be a premature stage to presume that no other offence can be tried by the Special Court. The offences in relation to a non-government servant which connect him with the conspiracy of misappropriation of public funds with the aid of a government servant, would not vanish merely because the government servant has died. This would clearly depend upon the evidence and the facts of the case that would ultimately determine the framing of the charge and its consequential trial. Not only this, the Court has ample powers to add charges even during the course of the trial.

D From a perusal of the FIR, charge sheet and cognizance order, it may not be said at this stage that no offence under the Prevention of Corruption Act has been committed by the applicant. The cognizance is taken of the offence and not of the person. The charges are framed in relation to the offence committed which are tried. The question is of the link of a non-government servant to such an offence which may be relatable to the Prevention of Corruption Act, 1988. In the instant case the material on record does indicate prima facie such connection whereas in the case of *State Vs. Jitender Kumar Singh (supra)* which has been relied upon by the learned counsel for the applicant, the Apex Court came to a conclusion that there was no offence under the Prevention of Corruption Act for being tried as against the non-government servants involved therein that arose out of the Bombay case as discussed in the said judgment. In the circumstances, it would be absolutely premature to presume on the facts of the present case of there being no evidence or linkage as suggested by the learned counsel for the petitioner when prima facie a charge sheet and the cognizance order do disclose such links.

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Applying the aforesaid principles on the facts of the present case, it is clear that there are clear allegations and also evidence prima facie collected to indicate conspiracy that connect the acts and omissions of Late Sri G.K. Batra, the government servant, with the applicant-company and its officials and agents who got themselves introduced in the manner indicated in the charge sheet along with the active aid of Late Sri G.K. Batra. Consequently, all arguments that have been advanced by Sri Chaturvedi on the strength of the judgment in the case of *State Vs. Jitender Kumar Singh (supra)* do not come to his aid as the facts of the present case are not identical except for the similarity of the death of the government servant. Consequently, the second argument also does not hold water.

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In view of the conclusions drawn hereinabove, the order impugned dated 28.2.2015 is upheld and the proceedings before Sri Atul Kumar Gupta are treated to be well within his jurisdiction in all NRHM cases. In order to remove any doubt in this regard it is further directed that Sri Atul Kumar Gupta would continue to have jurisdiction over such cases till his successor joins on the said post. It may also be put on record that according to the annual list of transfer and posting Sri Atul Kumar Gupta is under orders of transfer, but on account of no fresh notification for the court occupied by him, his transfer order is under abeyance till his successor joins. “

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11. The only contention raised by Shri C.U. Singh, learned senior counsel for the appellant is that public servant having died before framing of the charge, the appellant could not be tried by the Special Judge. He did not challenge any other finding in the impugned order except those relevant to this contention. Shri Singh submits that the case of the appellant-M/s. HCL Infosystem Limited is fully covered by the judgment of this Court in *State through Central Bureau of Investigation, New Delhi Vs. Jitender Kumar Singh*<sup>3</sup>. Particular reliance was placed on

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<sup>3</sup> (2014) 11 SCC 724

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A paragraph 46 of the judgment. It was submitted that the trial in a warrant  
case commenced on framing of the charge which has not yet happened  
and the public servant had died. The appellant could be tried only during  
the lifetime of the public servant. Having regard to the fact that the  
public servant has died before the framing of the charge, this Court  
B upheld the view of the High Court in forwarding the papers of the case  
to the Chief Judicial Magistrate.

12. His main reliance is on paragraphs 46 and 47 of the judgment  
which are as follows :

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C 46. We may now examine Criminal Appeal No.161 of 2011,  
where the FIR was registered on 2-7-1996 and the charge-  
sheet was filed before the Special Judge on 14-9-2001 for  
the offences under Sections 120-B, 420 IPC read with  
Sections 13(2) and 13(1) of the PC Act. Accused 9 and 10  
D died even before the charge-sheet was sent to the Special  
Judge. The charge against the sole public servant under  
the PC Act could also not be framed since he died on 18-2-  
2005. The Special Judge also could not frame any charge  
against non-public servants. As already indicated, under  
E sub-section (3) of Section 4, the Special Judge could try  
non-PC offences only when “trying any case” relating to  
PC offences. In the instant case, no PC offence has been  
committed by any of the non-public servants so as to fall  
under Section 3(1) of the PC Act. Consequently, there  
was no occasion for the Special Judge to try any case relating  
F to the offences under the PC Act against the appellant.  
The trying of any case under the PC Act against a public  
servant or a non-public servant, as already indicated, is a  
sine qua non for exercising powers under sub-section (3)  
of Section 4 of the PC Act. In the instant case, since no  
G PC offence has been committed by any of the non-public  
servants and no charges have been framed against the public  
servant, while he was alive, the Special Judge had no  
occasion to try any case against any of them under the PC  
Act, since no charge has been framed prior to the death of  
the public servant. The jurisdictional fact, as already  
H discussed above, does not exist so far as this appeal is

concerned, so as to exercise jurisdiction by the Special Judge to deal with non-PC offences.

A

47. Consequently, we find no error in the view taken by the Special Judge, CBI, Greater Mumbai in forwarding the case papers of Special Case No.88 of 2001 in the Court of the Chief Metropolitan Magistrate for trying the case in accordance with law. Consequently, the order passed by the High Court is set aside. The competent court to which Special Case No.88 of 2001 is forwarded, is directed to dispose of the same within a period of six months. Criminal Appeal No. 161 of 2011 is allowed accordingly.”

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C

13. Learned counsel for the CBI supports the impugned order by submitting that the cognizance had already been taken and the matter should be allowed to proceed before the Special Judge in view of the impugned order of the High Court.

14. While we do find that the observations of this Court in *Jitender Kumar Singh* (supra) in paragraphs 46 and 47 quoted above support the contention of Shri Singh that the Special Judge, under Section 4(3), could not try an offence other than that specified under Section 3. The public servant was no more and the trial had not commenced. In view of the relied upon judgment in absence of PC Act charge, the appellants may not be liable to be tried before the Special Judge. However, we find two difficulties in accepting the submission of Shri Singh as follows:

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(i) As observed by the High Court, the charge is yet to be framed and the framing of charge under the PC Act from the material placed on record was not ruled out. Thus, the argument at this stage is pre-mature; and

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(ii) The Special Judge was authorized not only to deal with the cases under the PC Act as was the position in the case before this Court in *Jitender Kumar Singh* (supra) but also for other offences. This course was permissible in view of law laid down by this Court in *M/s. Essar Teleholdings Limited* (supra).

G

15. In the present case, the Special Court in question has been constituted not only to deal with the cases of PC Act but also other cases relating to the NRHM scam. Procedure of Code of Criminal

H

- A Procedure is applicable to trial before Special Judge and there is no prejudice to trial that is taking place before Special Judge duly appointed to deal with non PC cases when the object of doing so was to try connected cases before same court. Undoubtedly, while Special Judge alone could deal with cases under the PC Act, non- PC Act could also be allowed to be tried by the Special Judge under Section 26 of the Code of Criminal Procedure. There is no legal bar to do so, as held by this Court in *M/s. Essar Teleholdings Limited* (supra).
- B
- C

16. In view of above distinguishing feature in the present case from the case of *Jitender Kumar Singh* (supra), we do not find any merit in these appeals and the same are dismissed.

Divya Pandey

Appeals dismissed.