Reserved

Court No. 9

Case :- APPLICATION U/S 482 No. - 7681 of 2012
Petitioner :- Paritosh Kumar
Respondent :- Union Of India Through C.B.I.Abc Lucknow And Others
Petitioner Counsel :- Rajul Bhargava
Respondent Counsel :- Anurag Khanna

With
Case :- APPLICATION U/S 482 No. - 8251 of 2012
Petitioner :- Bipin Bihari Agarwal And Another
Respondent :- Union Of India And Another
Petitioner Counsel :- V.K. Jaiswal
Respondent Counsel :- Anurag Khanna

And
Case :- APPLICATION U/S 482 No. - 7682 of 2012
Petitioner :- Paritosh Kumar
Respondent :- Union Of India Through C.B.I.Abc Lucknow And Others
Petitioner Counsel :- Rajul Bhargava
Respondent Counsel :- Anurag Khanna

And
Case :- APPLICATION U/S 482 No. - 5246 of 2012
Petitioner :- Krishna Shankar Mishra
Respondent :- Union Of India And Another
Petitioner Counsel :- Rajul Bhargava
Respondent Counsel :- Anurag Khanna.

And
Case :- APPLICATION U/S 482 No. - 7685 of 2012
Petitioner :- Paritosh Kumar
Respondent :- Union Of India Through C.B.I.Abc Lucknow And Others
Petitioner Counsel :- Rajul Bhargava
Respondent Counsel :- Anurag Khanna

And
Case :- APPLICATION U/S 482 No. - 6753 of 2012
Petitioner :- Asharfi Lal
Respondent :- Union Of India And Others
Petitioner Counsel :- Rajul Bhargava
Respondent Counsel :- Anurag Khanna

And

Case :- APPLICATION U/S 482 No. - 7683 of 2012
Petitioner :- Paritosh Kumar
Respondent :- Union Of India Through C.B.I.Abc Lucknow And Others
Petitioner Counsel :- Rajul Bhargava
Respondent Counsel :- Anurag Khanna

And

Case :- APPLICATION U/S 482 No. - 7684 of 2012
Petitioner :- Paritosh Kumar
Respondent :- Union Of India Through C.B.I.Abc Lucknow And Others
Petitioner Counsel :- Rajul Bhargava
Respondent Counsel :- Anurag Khanna

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Hon'ble Satya Poot Mehrotra, J.
Hon'ble Devendra Pratap Singh, J.
Hon'ble Bala Krishna Narayana, J.

1. Heard Sri Rajul Bhargava, learned counsel for the applicant, Sri Anurag Khanna, learned Counsel for Central Bureau of Investigation (respondent No. 1), learned A. G. A., appearing on behalf of the State and Sri Yashwant Verma, erstwhile Chief Standing Counsel for the State of U. P. and now learned Senior Counsel, assisted by Sri Raghav Nayar,

2. The instant application under Section 482 Cr. P. C. was filed by the applicant, Paritosh Kumar before this Court for quashing the entire proceedings of Criminal Case No. 13 of 2011; State Versus Rajesh Kumar Gupta and others arising out of chargesheet dated 31.10.2011 laid in RC 0062009A0005 of 2009, under Sections-420, 467, 468, 471 and 120-B IPC and Section-13 (1) r/w (i) (d) of the Prevention of Corruption Act, 1988, P. S.-C. B. I., A. C. B., Lucknow pending in the court of Special Judge (Anti Corruption)-Ist, Lucknow. In the six other connected applications prayer made is either for quashing of the

proceedings or for clubbing the criminal proceedings under the provisions of Section 220 Cr. P. C. The application in hand along with the connected matters was assigned to Hon'ble R. D. Khare, J. vide order dated 1.3.2012 passed by Hon'ble Chief Justice. It is noteworthy that Hon'ble R. D. Khare, J. had earlier vide order dated 29.9.2011 passed in Criminal Misc. Application No. 32256 of 2011; Shiv Pratap Singh and others Versus Superintendent of Police, C. B. I. / Acb, Lucknow and another held that the jurisdiction of the Principal Bench of Allahabad High Court would not be ousted on account of the police report being filed before the Special Judge, C. B. I. Court constituted at Lucknow in respect of the offences arising out of those districts which were beyond the limits of territorial jurisdiction of Lucknow Bench of this Court and it would be open to the litigants to institute their cases either at the Principal Bench at Allahabad or the Lucknow Bench. When the present case along with other connected matters came up for hearing before Hon'ble R. D. Khare, J., it was brought to the notice of His Lordship that another single Judge of this Court (Hon'ble Jayashree Tiwari, J.) in Criminal Misc. Application under Section 482 Cr. P. C. No. 32993 of 2011; Mohd. Yasir Versus State of U. P. and another had vide order dated 6.2.2012 taken a view different from that expounded by Hon'ble R. D. Khare, J. in Criminal Misc. application No. 32256 of 2011; Shiv Pratap Singh and others Versus Superintendent of Police, C. B. I. / Acb, Lucknow and another. Hon'ble R. D. Khare, J. thereafter released the present case and the connected matters by his order dated 14.3.2012. Hon'ble Chief Justice vide order dated 16.3.2012 nominated Hon'ble Arvind Kumar Tripathi, J. to hear this case and the connected matters for returning his opinion on the issue in view of he conflicting decisions of two single Judges of this Court.

3. The present reference to this Full Bench arises pursuant to an order dated 9.7.2012 passed by Hon'ble Arvind Kumar Tripathi, J. in

this case doubting the correctness of the judgements rendered by two Division Benches of this Court in ***Sanjay Somani Versus State of U. P.*** reported in ***2002-JIC-1-913*** and ***Dr. Balram Dutt Sharma and etc. Versus State of U. P.*** reported in ***1999 Cr. L. J. 3396*** respectively in the light of the judgement of the Hon'ble Supreme court in ***Nasiruddin Versus State Transport Appellate Tribunal*** reported in ***(1975) 2 SCC 671 and U. P. Rashtriya Chini Mill Adhikari Parishad, Lucknow Versus State of U. P. and others*** reported in ***(1995) 4 SCC 738***.

4. Hon'ble Arvind Kumar Tripathi, J. framed the following questions in the reference order to be considered by a larger Bench:

> 1. The Amalgamation Order, 1948 is a special law hence whether territorial jurisdiction of the two Benches of the Allahabad High Court has to be decided in view of the provision of clause 14 of the Amalgamation Order, as interpreted, in case of Nasiruddin, by the Apex Court or in view of the notification of State Government with regard to the place of sitting of Special Judge, CBI ?
> 2. Whether decisions of the two Division Bench of this Court in case of Sanjay Somani and Dr. Balram Dutt Sharma deciding the territorial jurisdiction, by the location of the court, which has passed the impugned order or where the proceeding is pending, are against the object and provision of clause 14 of the Amalgamation Order and against the judgement of the Supreme Court in cases of Nasiruddin and para 14 of U. P. Rashtriya Chini Mill's case ?

5. Sri Anurag Khanna, learned counsel for the C. B. I. raised a preliminary objection regarding the maintainability of the reference and submitted that the reference order itself is bad. Advancing his submissions in this regard further, he submitted that the reason for nominating this case and the connected matters to Hon'ble Arvind Kumar Tripathi, J. appears to be that earlier Hon'ble R. D. Khare, J. had in Criminal Misc. Application (U/s 482 Cr. P. C.) No. 32256 of 2011

held that mere filing of the chargesheet before the Special Judge, C. B. I. Court will not oust the jurisdiction of the Principal Bench of High Court at Allahabad where it is alleged that the offence was committed within the territorial limits of a district falling within the jurisdiction of the Principal Bench while another single judge in Criminal Misc. application (U/s 482 Cr. P. C.) No. 32993 of 2011; Mohd. Yasir Versus State of U. P. took a diagonally opposite view holding that the Principal Bench stood stripped of its jurisdiction in a matter where challenge was to an order passed by the C. B. I. Court at Lucknow which is subordinate to the Lucknow Bench. When the present application came up for hearing before Hon'ble R. D. Khare, J., His Lordship, upon noticing two conflicting judgments on the issue, by His order dated 14.3.2013 directed this application as well as the connected matters to be placed before Hon'ble Chief Justice for nomination to another Bench so that the said question may be effectively decided. The matter was accordingly nominated to Hon'ble Arvind Kumar Tripathi, J.

6. Sri Khanna further submitted that in view of the observation made by Hon'ble Arvind Kumar Tripathi, J. in para 33 of the reference order that the opinion of Hon'ble R. D. Khare, J. appears to be sound, it can safely be inferred that Hon'ble Arvind Kumar Tripathi, J. while deciding the reference had held the view taken by Hon'ble R. D. Khare, J. to be correct and hence there was no necessity for Hon'ble Arvind Kumar Tripathi, J. to have referred the questions for consideration by a larger Bench as virtually nothing remains to be decided by His Lordship after the Full Bench answeres the reference. He further submitted that Rule 6 of Chapter V of the Allahabad High Court Rules confers power on the Hon'ble Chief Justice to constitute a Bench of two or more Judges for deciding any question of law. It further provides that decision of such Bench on the questions so formulated shall be returned to the Bench hearing the case and that Bench shall follow the decision of the larger

Bench on such question and since Hon'ble Arvind Kumar Tripathi, J. has already affirmed the opinion of Hon'ble R. D. Khare, J., and if, after the Full Bench decides the reference taking a different view and returns the matter back to Hon'ble Arvind Kumar Tripathi, J., His Lordship will have to review his order dated 9.7.2012, which is not permissible under the criminal jurisprudence of our country.

7. Sri Khanna also submitted that the reference is not maintainable also in view of the legal principle propounded by the Hon'ble Supreme Court in the case of ***Central Board of Dawoodi Bohra Community Versus State of Maharashtra reported in 2005 (2) SCC 673*** that the law laid down by the Supreme Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength and a bench of lesser quorum cannot disagree or dissent from the view of law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration and it will be open for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength.

8. Advancing his submissions further, Sri Khanna submitted that Hon'ble Arvind Kumar Tripathi while observing in para 28 of the reference order that the conclusions of the two Division Benches in the case of Sanjay Somani and Dr. Balram Dutt Sharma (supra) are not only against the provisions and objects of Clause 14 of the Amalgamation Order but also appear to be in conflict with construction of the aforesaid clause by the Hon'ble Supreme Court in case of Nasiruddin (supra) has clearly gone on to disagree or dissent from the Division Bench which was beyond His Lordship's jurisdiction.

9. Sri Khanna also submitted that the questions framed by Hon'ble

Single Judge do not call for any adjudication by the Full Bench in view of the fact that there are two Division Benches which have already decided the same issues earlier and the correctness of law laid down by those Division Benches, i. e. Dr. Balram Dutt Sharma and Sanjay Somani (supra) has not been doubted by any Bench of co-ordinate strength and the same still holds to be good law. The ratio of the larger Bench of the High Court is clearly binding on the single judge as held by the Constitutional Bench of this Court in the case of ***Rana Pratap Singh Versus State of U. P. and others*** reported in ***1996 (Suppl.) AWC page 92.***

10. Per contra, Sri Yashwant Varma who had earlier appeared before this Full Bench in his capacity as the Chief Standing Counsel of the State of U. P. and later as designated Senior Advocate, upon being called to address the Full Bench, made his submissions in support of the reference order and very candidly submitted that the view taken by two Division Benches of this Court in Dr. Balram Dutt Sharma and Sanjay Somani (supra) requires reconsideration not only in view of the questions framed by Hon'ble Single Judge in the reference order but also for the reason that an earlier Division Bench judgement of this Court namely ***Baldeo Ram and another Versus Deputy Commissioner, Gonda and another*** reported in ***AIR 1959 (Alld.) 460 (DB)*** taking a contrary view had escaped the attention of the two Division Benches which had decided the cases of Sanjay Somani and Dr. Balram Dutt Sharma (supra) and hence Sanjay Somani and Dr. Balram Dutt Sharma (supra) cannot be said to be binding precedents laying down correct law on the issue. Hence, the preliminary objection raised by Sri Khanna is without any substance and is liable to be rejected summarily. In support of his aforesaid submissions, Sri Yashwant Varma has placed reliance on the judement of the Apex Court rendered in ***State of Bihar Versus Kalika Kuer alias Kalika***

Singh and others reported in (2003) 5 SCC 448.

11. Sri Rajul Bhargava, learned counsel for the applicant also adopted the submissions made by Sri Yashwant Varama, Senior Advocate on the question of maintainability of the reference.

12. Before proceeding to examine the matter on merits, we consider it apt to first deal with the preliminary objection raised by Sri Anurag Khanna.

13. The main thrust of Sri Khanna's submissions against the maintainability of the reference appears to be founded upon the settled legal position propounded by the Hon'ble Supreme Court in Central Board of Dawoodi Bohra Community as well as Constitutional Bench judgement of this Court in the case of Rana Pratap Singh (supra) that the Bench of lesser quorum cannot disagree or dissent from the view of law taken by a bench of larger quorum. It would be relevant to quote paras 5 and 10 of the judgement rendered in ***Central Board of Dawoodi Bohra Community Versus State of Maharashtra*** reported in ***2005 (2) SCC 673.***

> "5. In Bharat Petroleum Corporation Ltd's case (supra) the Constitution Bench has ruled that a decision of a Constitution Bench of this Court binds a Bench of two learned Judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, they could have ordered that the matter be heard by a Bench of three learned Judges. Following this view of the law what has been declared by this Court in Pradip Chandra Parija & Ors.'s case (supra) clinches the issue. The facts in the case were that a Bench of two learned Judges expressed dissent with another judgment of three learned Judges and directed the matter to be placed before a larger Bench of five Judges. The Constitution Bench considered the rule of 'judicial discipline and propriety' as also the theory of precedents and held that it is only a Bench of the same quorum which can question the correctness

> of the decision by another Bench of the co-ordinate strength in which case the matter may be placed for consideration by a Bench of larger quorum. In other words, a Bench of lesser quorum cannot express disagreement with, or question the correctness of, the view taken by a Bench of larger quorum. A view of the law taken by a Bench of three judges is binding on a Bench of two judges and in case the Bench of two judges feels not inclined to follow the earlier three-Judge Bench decision then it is not proper for it to express such disagreement; it can only request the Chief Justice for the matter being placed for hearing before a three-Judge Bench which may agree or disagree with the view of the law taken earlier by the three-Judge Bench. As already noted this view has been followed and reiterated by at least three subsequent Constitution Benches referred to hereinabove.
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> 10. Reference was also made to the doctrine of stare decisis. His Lordship observed by referring to Sher Singh Vs. State of Punjab, (1983) 2 SCC 344, that although the Court sits in Divisions of two and three Judges for the sake of convenience but it would be inappropriate if a Division Bench of two Judges starts overruling the decisions of Division Benches of three. To do so would be detrimental not only to the rule of discipline and the doctrine of binding precedents but it will also lead to inconsistency in decisions on points of law; consistency and certainty in the development of law and its contemporary status both would be immediate casualty."

14. Another decision on which Sri Khanna has placed reliance in support of his submission is ***Rana Pratap Singh (supra)*** Para 20 of the Full Bench decision, which is relevant for the purpose reads as under:

> "20. Seen in the light of what has been discussed it must inevitably follow that the ratio of the two full

> Bench decisions, namely, C. P. Sahu, 1984 AWC 145 and Kailash Nath's cases, 1985 AWC 493 (supra), was clearly binding upon the learned single Judge and it was thus incumbent upon him to follow it. No occasion for its reconsideration arose. Having arrived at this conclusion, we have no option but to send the matter back to the learned single Judge for decision on merits in accordance with law."

15. If we examine the preliminary objection raised by Sri Khanna in the light of the law laid down in the cases of ***Central Board of Dawoodi Bohra Community*** and ***Rana Pratap Singh (supra),*** the same at the first glance appears to be well founded and attractive. It is true that in the order of reference there is no mention of the earlier Division Bench of this Court in Dr. Baldeoram (supra) which had apparently taken a view entirely different from that propounded by the later division Benches in the case of Sanjay Somani and Dr. Balram Dutt Sharma (supra). The correctness of the law laid down by these two Division Benches has not been questioned by any bench of coordinate strength of this Court, yet since now it has been brought to our notice that an earlier Division Bench of this Court in Baldeo Ram (supra) which had taken a view contrary to that expounded by the two subsequent Division Benches in Dr. Balram Dutt Sharma and Sanjay Somani (supra) had escaped the notice of the aforesaid subsequent Division Benches, the same cannot be said to be binding precedents on the issue decided by those Division Benches.

16. The Division Bench of this Court in the case of Baldeo Ram (supra) had while considering the question whether the Lucknow Bench of Allahabad High Court will have the jurisdiction to entertain a petition filed by subsequent allottees against an order passed by the Excise Commissioner, U. P. at Allahabad in the appeal preferred by the original allottees of liquor shops at Gonda against cancellation of their

shops by the District Magistrate, Gonda held that the words 'cases arising' in Clause 14 of the Amalgamation Order 1948 would refer to mean from where the case springs up or originates.

17. Similarly, a learned single judge of this Court in the case of Prem Singh (supra) while considering an appeal which stemmed from an order of conviction made by Special Judge, Anti Corruption, Lucknow arising out of a case in which offence was committed at Varanasi and the issue which arose was whether the appeal at Allahabad would be maintainable, the learned Single Judge after considering the provisions of Amalgamation Order, 1948 held that Clause 14 laid emphasis on the area where the occurrence had taken place as decisive for deciding the jurisdiction. Relying upon two judgements of this Court including Baldeo Ram (supra) the learned Single Judge was pleased to hold the appeal to be maintainable at Allahabad.

18. From the perusal of the judgements of Sanjay Somani and Dr. Balram Dutt Sharma it is apparent that none of the aforementioned judgements were considered by the said division benches and the same cannot be said to be binding precedents in view of the law laid down by the Apex Court in ***State of Bihar (supra).*** Para 6 of the judgement which is relevant for our purpose is reproduced below:

> "6. In a decision of this Court reported in 2000 (4) S.C.C. 262 Govt. of Andhra Pradesh and Anr. Vs B. Satyanarayana Rao (Dead) by Lrs., it has been held as follows:
> "Rule of Per Incuriam can be applied where a Court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue. We therefore find that the rule of per incuriam cannot be invoked in the present case. Moreover a case cannot be referred to a larger Bench on mere asking of a party. A decision by two judges, unless it is demonstrated that the said decision by any subsequent change in

law or decision ceases to laying down a correct law"

19. The second count on which reference order has been assailed by Sri Khanna is also without any substance in view of the fact that the observation made by Hon'ble Arvind Kumar Tripathi, J. in the reference order that the conclusion of Hon'ble R. D. Khare, J. appeared to His Lordship to be correct is merely tentative and not conclusive. We do not find any force in the preliminary objection raised by Sri Khanna regarding the reference being bad in law and the same is rejected.

20. The questions referred arise out of the following facts. The State Government in exercise of power conferred by Section 178 of Code of Criminal Procedure (V of 1989) issued a notification on 5.10.1951 directing that all Special Police Establishment cases committed to the court of session in any district in U.P. shall be tried in Lucknow sessions division. Exercising power under Section 193(2) of the same Code, it was further directed that the Sessions Judge, Lucknow, as Additional Sessions Judge of other sessions division in U.P. shall try such cases. Subsequently, another notification was issued whereunder more courts of Special Judges were created for trial of cases wherein charge-sheets had been submitted by the Special Police Establishment (CBI) under the Delhi Special Police Establishment Act, 1946. In the exercise of powers conferred by Sections 3 and 4 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the ' PC Act') the State Government in consultation with the High Court was pleased to constitute the courts of Special Judge at Lucknow and Ghaziabad for trial of all the cases under the Act in which the investigation was undertaken and completed by the Central Bureau of Investigation. These Special Judges posted at Lucknow / Ghaziabad deal with the cases arising out of various districts in the State of U. P. some of which are subject to the jurisdiction of the Lucknow Bench while some are

subject to the jurisdiction of Principal Bench at Allahabad in terms of the provisions of United Provinces High Court (Amalgamation) Order, 1948 (hereinafter referred to as 'the Amalgamation Order'). Accordingly, the offence committed in a district which may otherwise be within the jurisdiction of the Principal Bench may be committed for trial to the Special Judge either at Lucknow or at Ghaziabad depending upon the allocation of the districts between the aforesaid two courts as per the notifications issued by the State Government under Sections 3 and 4 of the P. C. Act. (Act. No. 49 of 1988)

21. It is also necessary in our opinion, to set out the historical background against which, the question must be considered which has been given in detail in in U. P. Rashtriya Chini Mill Adhikari Parishad and others Versus State of U. P. and others, 1994 (12) Lucknow Civil Decision 1026, and it will be useful to reproduce paragraphs 8 to 17 of the Report:

> “8. Our Temple of Justice was consecrated in 1866 under a Royal Charter issued by the Queen Victoria, the British Sovereign, with the nomenclature High Court of Judicature for the North Western Provinces at Agra under Letters Patent of the 17th March, 1866. The day was 18th June, 1866, marking the birth of our court. On that historic day six Judges-the entire complement of the court, quietly walked in, took their seats and began the day’s work as if totally oblivious of the great transition from the Suddar Diwanny Adawalat and Sardar Nazamat Adawalat to a High Court. The Indian High Courts Act, 1861, enacted by the British Parliament, gave to the Crown the authority to establish High Courts at Calcutta, Madras,

Bombay and at one other place. In the year 1868, High Court was shifted from Agra to Allahabad and later came to be known as High Court of Judicature at Allahabad.

9. In 1834, the Upper Provinces were separated from the Bengal Presidency to be governed by the newly constituted Agra Presidency with its Headquarters at Allahabad Fort, but in 1836 the Presidency was superseded by a Lt. Governorship of the North-Western Provinces with Headquarters at Agra. In 1858 the Headquarters of the Government were again shifted to Allahabad.

10. Avadh, after its annexation in 1856, had been placed under a Chief Commissioner but in 1877 it also came under the jurisdiction of the Lt. Governor and the whole territory was named as 'North-Western Provinces and Avadh'. This area was named as 'United Provinces of Agra and Avadh in 1902. In 1921, after the implementation of India Constitutional Reforms, the area came under the jurisdiction of a Governor. A Legislative Council was formed at Lucknow in 1921 after the elections of 1920 and the seat of the Government was shifted from Allahabad to Lucknow in the same year. The shifting of the Secretariat from Allahabad to Lucknow was complete by 1935 making Lucknow the capital of the State. The province was named 'United Provinces' in 1937 and subsequently from 26th January, 1950, its name has been changed to 'UTTAR PRADESH' (See, A

guide to the Records in the U. P. State Archives, page 6 and 7).

11. In 1834, Allahabad was made the seat of Government of the North-Western Province.

12. In February, 1858, Lord Canning announced the formation of the whole of the North-Western Provinces retransferring the seat of Government from Agra to Allahabad, however, the retransfer of the High Court followed in the year 1868. (See, the Journal of the Allahabad Historical Society, Allahabad, July, 1962, Annual number, Vol. I, page 56.)

13. Beginning with the formation of Legislative Council at Lucknow in the year 1921, subsequently most of the important Government Offices, including the secretariat and the legislative wings, were transferred to Lucknow.

(See, Gazetteer of India, U. P.)

14. On 7th February, 1858, Oudh comprising 12 Districts namely: Lucknow, Faizabad, Sultanpur, Rae Bareilly, Pratapgarh, Barabanki, Gonda, Bahraich, Sitapur, Kheri, Hardoi, Unnao, was annexed to the British Empire, Annexation of 1856, brought the British system of administration of justice with some flexibility and the highest Court of appeal, the Judicial Commissioner's Court was established at Lucknow under the Government of India Order dated February 4, 1856.

15. By the Oudh Civil Courts Act, 1879, the Judicial Commissioner was constituted the head of the

judiciary. In the year 1901, United Provinces of Agra and Oudh was created. The judicial administration in the two regions of the provinces, however, continued to remain separate. Subsequently the Oudh Civil Courts Act, 1879 was replaced by the Oudh Courts Act, 1925 and the Court of Judicial Commissioner was replaced by the Oudh Chief Court with jurisdiction extending over the same area.

(See, Chapter I, Clause 1 (2) of Oudh Courts Act, 1925)

16. The two judicial administrations wielded jurisdiction over the two separate regions of the United Provinces for many years. Though the capital of the United Provinces continued at Lucknow since the year 1921 yet the Chief Court in Oudh used to exercise its jurisdiction only in respect of Oudh area.

17. Ultimately both Chambers of the Legislature of the United Provinces presented addresses to the Governor to amalgamate the High Court of Judicature at Allahabad and the Chief Court in Oudh and the said addresses were submitted to the Governor General, who in exercise of the powers conferred by Section 229 of the Government of India Act, 1935, and all other powers enabling him in that behalf promulgated the Amalgamation Order, 1948 whereby the High Court in Allahabad and the Chief Court in Oudh have been amalgamated and since then they

> constitute one High Court by the name of the High Court of Judicature at Allahabad."

22. Having broadly examined the historical aspect of the matter we now proceed to consider the questions referred to us. The territory over which High Court can exercise its jurisdiction is governed exclusively by the Constitution of India or its Charter. In terms of the Article 225 of the Constitution of India the territorial jurisdiction of High Court would be regulated in accordance with either the provisions of the Constitution or the provisions of any law of the appropriate legislature as was in force before the commencement of the Constitution of India. The conjoint reading of Article 225 of the Constitution of India which finds place in Chapter V of the Constitution of India with Article 240, clearly shows that each State of Union of India would have a High Court. Amalgamation Order, 1948 was the law of appropriate legislature in force at the time of commencement of the Constitution. Hence the extent of the territorial jurisdiction of the Principal Bench and the Lucknow Bench has to be ascertained with reference to the language of the Amalgamation Order.

23. The expression in respect of cases arising in such areas in Oudh appearing in Clause 14 of the Amalgamation Order, 1948 was first considered and examined by a Division Bench of this Court in Baldeo Ram (supra). The Division Bench held that the words "cases arising in such areas of Oudh" would refer to mean from where the case springs up or originates. Para 9 of the judgement which is relevant for our purpose is being reproduced below:

> "9. Whether the Luckuow Bench could exercise jurisdiction and make an order in respect of the present petition or not was, in our opinion, dependent upon the meaning of the words "exercise in respect of cases arising in such areas

> in Oudh". The word 'case' is not co-extensive in meaning with the words "suit", "appeal' or 'proceeding'. The word 'case' may have a wider connotation than either a 'suit,' an 'appeal' or a "proceeding,' or it may have a narrower connotation than these three, for the connotation of the word 'case' would depend, in any particular cause on the particular circumstances of that cause and no general rule of definition can, in our opinion, be laid down by which one could test whether a particular matter was a 'case' or not. But on the scope and meaning of the word "case" does not depend the answer to the problem facing us, for the word of real significance was the word 'arising', and on the true interpretation of this word depended, in our view, the key to the answer. The word 'arise', among other meanings, has the meaning "to spring up; to spring forth from its source; to take its rise, originate". The word 'arising" has no special or technical meaning attached to it in forensic language". Therefore, it has to be interpreted in accordance with its common dictionary meaning and we have quoted the dictionary meaning as given in the Shorter Oxford English Dictionary, Vol. 1. If we accept that meaning, as we have to, then the phrase 'cases arising' must relate to the origin of a case, that is, these words must refer to the place or area of origin of the dispute."

24. The aforesaid expression appearing in Clause 14 of the Amalgamation Order was next authoritatively decided by the Full Bench of this Court in the case of ***Uma Shankar Versus State reported in AIR 1971 Alld. 96 (FB).*** The Full Bench in ***Uma Shankar (supra)*** while interpreting the expression "cases arising in such areas in Oudh" held that the question as to where a case arises, that is in Oudh or outside it would have to be determined on the basis of the stage of the case when the jurisdiction of the High Court is sought to be invoked for deciding as to where the case arises, not the place where the controversy originally originated would be material, but the

place where the proceedings would culminate for invoking the jurisdiction of the High Court would be relevant. The Full Bench thus propounded the principle of the location of the last court which had passed the order sought to be assailed before the High Court as the basis for determining the question of jurisdiction of the Lucknow Bench or the principal Bench at Allahabad.

25. However, the said ratio was reconsidered by another Full Bench of this Court in the case of ***Nirmal Das Khaturia and others Versus The State Transport Appellate Tribunal, U. P., Lucknow and others reported in AIR 1972 Allahabad 200 (V 59 C 55)*** in the light of the four questions referred for the opinion of the Full Bench which are as follows:

> "1. Can a case falling within the jurisdiction of the Lucknow Bench of this Court be presented at Allahabad?
>
> 2. Can the Judges sitting at Allahabad summarily dismiss a case, presented at Allahabad, pertaining to the jurisdiction of the Lucknow Bench?
>
> 3. Can a case pertaining to the jurisdiction of the Lucknow Bench, presented and entertained at Allahabad, be decided finally by the judges sitting at Allahabad, without there being an order as contemplated by the second proviso to Article 14 of the U. P. High Courts (Amalgamation) Order, 1948?
>
> 4. What is the meaning of the expression "in respect of cases arising in such areas in Oudh" used in the first proviso to Article 14 of the High Courts (Amalgamation) Order, 1948? Has this expression reference to the place where the case originated or to the place of sitting of the last court or authority whose decree or order is being challenged in the proceeding before the High Court?"

26. The four questions referred to the Full Bench in Nirmal Dass Khaturia (supra) were answered in para 96 of the judgement which is quoted hereinbelow:

> 96. We answer the questions referred as follows:--
>
> Question No. 1:-- A case falling within the jurisdiction of the judges at Lucknow should be presented at Lucknow and not at Allahabad.
>
> Question No. 2:-- However, if such a case is presented at Allahabad the judges at Allahabad cannot summarily dismiss it only for that reason. The case should be returned for filing before the judges at Lucknow, and where the case has been mistakenly or inadvertently entertained at Allahabad a direction should be made to the High Court office to transmit the papers of the case to Lucknow.
>
> Question No. 3:-- A case pertaining to, the jurisdiction of the judges at Lucknow and presented before the judges at Allahabad cannot be decided by the judges at Allahabad in the absence of an order contemplated by the second proviso to Article 14 of the U. P. High Courts (Amalgamation) Order, 1948.
>
> Question No. 4:--- The expression "in respect of cases arising in such areas in Oudh" used in the first proviso to Article 14 of the High Courts (Amalgamation), Order, 1948 refers to legal proceedings, including civil cases, criminal cases, petitions under Articles 226, 227 and 228 of the Constitution and petitions under Articles 132, 133 and 134 of the Constitution instituted before the judges sitting at Lucknow and having their origin, in the sense explained in the majority judgment, in such areas in Oudh as the Chief Justice may direct. The expression "arising in such areas in Oudh" refers to the place where the case originated in the sense explained in the majority judgment and not to the place of sitting of the last

> court or authority whose decree or order is being challenged in the proceeding before the High Court.
>
> Question No. 5:-- Writ Petition No. 5833 of 1971 cannot be entertained, heard and decided by the judges sitting at Lucknow."

27. The Full Bench of Nirmal Dass (supra) overruled the view taken by the Full Bench of this Court in Uma Shankar (supra) and held that the meaning of the expression in respect of "cases arising in such areas of Oudh" in the first proviso to Clause 14 of the Amalgamation Order with regard to the application under Article 226 of the Constitution of India, will be a case arising within the areas in Oudh only if the right of the petitioner in such an application arose first at a place within an area in Oudh and if the subsequent orders either at the revisional or appellate stage were passed by an authority within an area in Oudh but the right of the involving the writ jurisdiction arose first in an area outside Oudh, then in such cases Lucknow Bench would not have any jurisdiction. As far as the place or origin of a criminal case is concerned, the Full Bench ruled in para 59 that a criminal case arises where the offence has been committed. In para 53 of the of the same judgement, Full Bench relying upon ***Bhimappa Versus Laxman*** reported in ***AIR 1970 SC 1153*** held that "under the criminal law, a case ordinarily means a proceeding for the prosecution of a person accusd of having committed an offence."

28. The Full Bench decision of this Court in the case of Nirmal Das Khaturia and others (supra) was assailed before the Apex Court in Civil Appeal Nos. 1940-41 of 1972; Nasiruddin Versus State of Transport Appellate Tribunal and Criminal Appeal No. 254 of 1974; Rama Versus State of Uttar Pradesh.

29. Civil Appeal No. 1940 of 1972 arose out of the Writ Petition No. 3294 of 1970. Writ Petition No. 3294 of 1970 was filed before the

Lucnow Bench of the High Court by respondents Nos. 3 to 9 for quashing the order dated 12 May, 1970 passed by the State Transport Appellate Tribunal at Lucknow. The respondents also claimed the direction that the judgment of the High Court sitting at Lucknow dated 15 September, 1966 in Writ Petition No. 750 of 1964 is a nullity.

30. In Civil Appeal No. 1941 of 1972 the appellants filed writ petition No. 470 of 1971 in the High Court at Lucknow for a writ of certiorari for quashing order dated 11 December, 1970 passed by the Deputy Director of Consolidation, Shahjahanpur, with headquarters at Lucknow. The appellants filed objections under section 9 of the Consolidation of Holdings Act, 1954. Their objections were allowed by the Consolidation officer. On appeal the order was upheld by the Settlement Officer, Consolidation, Shahjahanpur. The respondent No. 1 went up in revision and the Deputy Director, Consolidation, on 11 December, 1970, set aside the order. It is this order which forms subject-matter of writ petition No. 4170 of 1971. On 26 July, 1971 the writ petition was listed for orders before a Division Bench consisting of the Chief Justice of the High Court and another learned Judge sitting at Lucknow. The Registry of the High Court at Lucknow reported that the petition related to the District of Shahjahanpur and question was raised as to the competency of the writ petition being presented before the Bench sitting at Lucknow. The matter eventually came before the Full Bench.

31. Criminal Appeal No. 254 of 1974 arose out of the Criminal Revision No. 270 of 1973 filed in the Principal Bench of the High Court at Allahabad. The revision related to the sentence under section 25 of the Arms Act passed by the Temporary Civil & Sessions Judge, Rae Bareli. Question arose as to whether the revision should have been filed before the Lucknow Bench. Eventually the matter came before the Full Bench.

32. The Four Judge Bench of the Apex Court in Nasiruddin's case after noting the four questions which were referred to the Full Bench in Nirmal Dass Khaturia (supra), the answers returned by the majority view on the said questions, in paras 35, 36, 37, 38, 39 and 40 of its judgement held as hereunder:

> “35. The meaning of the expression "in respect of cases arising in such areas in Oudh" in the first proviso to paragraph 14 of the order was answered by the High Court that with regard to applications under Article 226 the same will be "a case arising within the areas in Oudh, only if the right of the petitioner in such an application arose first at a place within an area in Oudh. The implication according to the High Court is that if the right of the petitioner arose first at any place outside any area in Oudh and if the subsequent orders either in the revisional or appellate stage were passed by an authority within an area in Oudh then in such cases the Lucknow Bench would not have any jurisdiction. The factor which weighed heavily with the High Court is that in most cases where an appeal or revision would lie to the State Government, the impugned order would be made at Lucknow and on that view practically all writ petitions would arise at Lucknow.
>
> 36. The conclusion as well as the reasoning of the High Court is incorrect. It is unsound because the expression "cause of action" in an application under Article 226 would be as the expression is understood and if the cause of action arose because of the appellate order or the revisional order which came to be passed at Lucknow then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It may be that the original order was in favour of the person applying for a writ. In such case an adverse appellate order might be the cause of action. The expression "cause of action is well-known. If the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction. If the

cause of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench would have exclusive jurisdiction in such a matter. If the cause of action arises in part within the specified areas in Oudh it would be open to the litigant who is the dominus litis to have his forum conveniens. The litigant has the right to go to a Court where part of his cause of action arises. In such cases, it is incorrect to say that the litigant chooses any particular Court. The choice is by reason of the jurisdiction of the Court being attracted by part of cause of action arising within the jurisdiction of the Court. Similarly, if the cause of action can be said to have arisen part within specified areas in Oudh and part outside the specified Oudh areas, the litigant will have the choice to institute proceedings either at Allahabad or Lucknow. The Court will find out in each case whether the jurisdiction of the Court rightly attracted by the alleged cause of action.

37. To sum up. Our conclusions are as follows. First there is no permanent seat of the High Court at Allahabad. The seats at Allahabad and at Lucknow may be changed in accordance with the provisions of the order. Second, the Chief Justice of the High Court has no power to increase or decrease the areas in Oudh from time to time. The areas in Oudh have been determined once by the Chief Justice and, therefore, there is no scope for changing the areas. Third. the Chief Justice has power under the second proviso to paragraph 14 of the order to direct in his discretion that any case or class of cases arising in Oudh areas shall be heard at Allahabad. Any case or class of cases are those which are instituted at Lucknow. The interpretation given by the High Court that the word "heard" confers powers on the Chief Justice to order that any case or class of cases arising in Oudh areas shall be instituted or filed at Allahabad, instead of Lucknow is wrong. The word "heard" means that cases which have already been instituted or filed at Lucknow may in the discretion of the Chief Justice under the second proviso to paragraph 14 of the order he directed to be heard at Allahabad. Fourth,

> the expression "cause of action" with regard to a civil matter means that it should be left to the litigant to institute cases at Lucknow Bench or at Allahabad Bench according to the cause of action arising wholly or in part within either of the areas. If the cause of action arises wholly within Oudh areas then the Lucknow Bench will have jurisdiction. Similarly, if the cause of action arises wholly outside the specified areas in Oudh then Allahabad will have jurisdiction. If the cause of action in part arises in the specified Oudh areas and part of the cause of action arises outside the specified areas, it will be open to the litigant to frame the case appropriately to attract the jurisdiction either at Lucknow or at Allahabad. Fifth, a criminal case arises where the offence has been committed or otherwise as provided in the Criminal Procedure Code. That will attract the jurisdiction of the Court at Allahabad or Lucknow. In some cases depending on the facts and the provision regarding jurisdiction, it may arise in either place.
>
> 38. Applications under Article 226 will similarly lie either at Lucknow or at Allahabad as the applicant will allege that the whole of cause of action or part of the cause of action arose at Lucknow within the specified areas of Oudh or part of the cause of action arose at a place outside the specified Oudh areas.
>
> 39. The answers given by the High Court to the first three questions are correct save as modified by our conclusions aforesaid.
>
> 40. The answer given by the High Court to the fourth question is set aside. The meaning of cases arising in Oudh areas will be found out by appropriate courts in the light of this judgment."

33. Thus, the Apex Court in the case of Nasiruddin (supra) affirmed the answers given by the High Court in Nirmal Dass Khaturia (supra) to the first three questions referred to the Full Bench of this Court with certain modifications. However, the answer given by the High Court to

the fourth question opining that the expression in respect of “cases arising in such areas of Oudh” used in first proviso to Clause 14 of the Amalgamation Order, 1948 means the place where the right of the petitioner in a writ application first arose and not to the place of last sitting of the court or the authority whose decree or order is challenged in the proceedings before the High Court was set aside and it was held that the meaning of the expression in respect of “cases arising in such areas in Oudh” in the first proviso to Clause 14 of the Amalgamation Order, 1948 is to be found by the appropriate Courts in the light of the judgement in Nasiruddin's case. The constitution Bench further held that a criminal case arises where offence has been committed or otherwise provided in the Criminal Procedure Code that will attract the jurisdiction of the Allahabad High Court at Lucknow Bench. In some cases depending on the facts, it may arise in either place. Thus, the import of the words “the place where the case arises” as explained by the Full Bench that a criminal case arises, where the offence is committed” was affirmed by the Apex Court in Nasiruddin's case.

34. The Apex Court while interpreting Clause 14 of the Amalgamation Order, 1948 in U. P. Rashtriya Chini Mill Adhikari Parishad (supra) has in para 14 which reads as hereunder reiterated the law laid down by a Four Judge Bench of the Apex Court in Nasiruddin's case:

> “14. …..... The territorial jurisdiction of a Court and the “cause of action” are interlinked. To decide the question of territorial jurisdiction it is necessary to find out the place where the “cause of action” arose. We, with respect, reiterate that the law laid down by a Four Judge Bench of this Court in Nasiruddin's case (AIR 1976 SC 331) holds good even today despite the incorporation of an Explanation to Section 141 to the Code of Civil Procedure.”

35. It will be further interesting to note that an expression similar to that in the Amalgamation Order existing in the High Court of Rajasthan

(Establishment of Permanent Bench of Jaipur), 1976 came up for consideration before the Supreme Court in Rajasthan High Court Advocates' Association Versus Union of India and others reported in (2001) 2 SCC 294 in which the Supreme Court approved and reiterated the law laid down in Nasiruddin and U. P. Rashtriya Chini Mill Adhikari Parishad (supra). In para 18 of the aforesaid judgement it has been observed hereunder:

> “18. It was submitted at the end by the learned counsel for the appellant that the Division Bench of the High Court in its impugned order has observed that the permanent bench at Jaipur shall have exclusive jurisdiction to hear the cases arising out of the 11 specified districts and the High Court at Jodhpur shall not have jurisdiction to hear those cases which fall within the territorial jurisdiction of Jaipur Bench. He submitted that the use of word exclusive pre-fixed to jurisdiction is uncalled for. We find no substance in this contention as well. The purpose of the Presidential Order is to carve out and define territorial jurisdiction between the principal seat at Jodhpur and the permanent bench seat at Jaipur. The cases are to be heard accordingly unless the Chief Justice may exercise in his discretion the power vested in him by the proviso to para 2 of the Presidential order. Clauses (1) and (2) of Article 226 of the Constitution provide how territorial jurisdiction shall be exercised by any High Court. Although the said clauses do not deal with principal seat or permanent bench of any High Court but in our opinion, there is no reason why the principle underlying thereunder cannot be applied to the functioning of the bifurcated territorial jurisdiction between the principal seat and permanent bench seat of any High Court. In case of a dispute arising whether an individual case or cases should be filed and heard at Jodhpur or Jaipur, the same has to be found out by applying the test __ from

> which district the case arises, that is, in which district the cause of action can be said to have arisen and then exercising the jurisdiction under Article 226 of the Constitution."

36. However, the Division Bench of this Court in Dr. Balram Dutt Sharma (supra) while considering the issue whether the bail application emanating from a criminal case registered in pursuance of the chargesheet laid by the C. B. I. at Lucknow is maintainable before the Principal Bench or not and another Division Bench in the case of Sanjay Somani while considering the issue whether challenge to orders passed by Special Judge, C. B. I. Court at Lucknow can be entertained by the Principal seat at Allahabad or Lucknow Bench of Allahabad High Court held that it is the location of the Court which is determinative of the fact whether the challenge to the order passed by it can be entertained by the Principal Bench of Allahabad or Lucknow Bench of Allahabad High Court. Para 10 of Dr. Balram Dutt Sharma (supra) which ingrains the reasons for the conclusion of the Division Bench reads as hereunder:

> "10. It appears that the High Court could grant bail to a person who is accused of an offence and is in custody. Thus, the cause of action for bail might be differentiated from a cause of action for writ petition and cause of action for a bail may not arise on the lodging of an FIR unless a particular person is arrested or detained in custody. The materials on record indicated that although FIRs are there in different districts touching the present applicants, the basic or the parent FIR is the one lodged by the CBI upon which only the investigation was taken up and there is nothing on record to show that investigation was made separately in the different FIRs in the districts. They were detained admittedly in relation to the CBI FIR as is clear from the averments made in each individual bail applications. Thus, the cause of action for every applicant would be or is when

> he was detained in connection with the investigation/charge-sheet in the CBI FIR that was lodged at Lucknow. Seen in this light, the cause of action is only within the jurisdiction of the Lucknow Bench of the Allahabad High Court. We are of the view that in this case the Judges at the principal seat of the Allahabad High Court may not exercise jurisdiction in view of the provisions of the Amalgamation Order and the explanation thereof by the Supreme Court in Nasiruddin's case."

37. The reasons which primarily weighed with the Division Bench in Sanjay Somani (supra) for its conclusion, are to be found in paragraphs 10, 11 and 12 of the judgement which are being reproduced hereinbelow:

> "9. The dictionary meaning of the word 'case' shows that it is a word of comprehensive import. In the context in which the word 'case arising' has been used in Clause 14 it would mean a subject on which the judicial power is capable of acting and which has been submitted to it by a party in the forums required by law. Therefore, if any order is passed in any proceedings by a criminal Court situate within the area of Oudh and the same is challenged before the High Court it is the Lucknow Bench of the High Court alone which will have jurisdiction in the matter, and not the principal seat of High Court at Allahabad.
>
> 10. ..... In Nirmal Dass Khaturia and others Versus S. T. Tribunal, U. P. and others, AIR 1972 Allahabad 200, it was held by a Full Bench of this Court that with regard to the petitioners under Article 226 of the Constitution the same will be a "case arising within the areas in Oudh" only if the right of the petitioner in such an application arose first at a place within an area in Oudh. In Nasiruddin (supra) this conclusion of the Full Bench was specifically overruled (paragraph 36 of the Reports) and it was held that the expression 'cause of action" in application under Article 226 would be as the expression is understood and if the cause of action arose because of an appellate

order or the revisional order, which came to be passed at Lucknow, then Lucknow Bench would have jurisdiction though the original order was passed at a place outside the areas in Oudh.

11. Sri Giri has placed strong reliance on the following observations made in the Nasiruddin (supra) in paragraph 37 of the reports where conclusions were summarised:

"....Fifth, a criminal case arises where the offence has been committed or otherwise as provided in the Criminal Procedure Code. That will attract the jurisdiction of the Court at Allahabad or Lucknow. In some cases depending on the facts and the provision regarding jurisdiction, it may arise in either place."

12. In our opinion, the aforesaid observations have been made in a general manner with regard to normal situation and they cannot be construed literally or in a strict manner. The Supreme Court was not contemplating a situation where a special Court has been created to try such type of offences which had been investigated by the CBI and that single Court has been conferred jurisdiction to try such cases of several districts as in the case here. The observation, "a criminal case arises where the offence has been committed" does not mean that a criminal case would necessarily be arising in the local area where the offence has been committed. When the Court used the words, "or otherwise as provided in the Criminal Procedure Code", it obviously meant the place where the criminal Court will have jurisdiction to hold enquiry or trial having regard to Chapter XIII of the Code of Criminal procedure. The Court of Special Judge (Anti Corruption), Lucknow has been conferred jurisdiction to try the offence in question which was committed in Kanpur on account of the jurisdiction conferred upon it by exercise of power under the relevant provisions of the Code of Criminal Procedure. Since the case was investigated by the C. B. I, the Special Judge (Anti Corruption), Lucknow has exclusive jurisdiction to try the offence. The petitioners are not being prosecuted in any case before a criminal Court at Kanpur.

> Even though the offence was committed at Kanpur the jurisdiction of the Court of Sessions at Kanpur has been ousted on account of the jurisdiction conferred upon it by the exercise of power under the relevant provisions of the Code of Criminal Procedure. Since the case was investigated by the CBI, the Special Judge (Anti-Corruption), Lucknow, has exclusive jurisdiction to try the offence. The petitioners are not being prosecuted in any case before a criminal Court at Kanpur. Even though the offence was committed at Kanpur the jurisdiction of the Court of Sessions at Kanpur has been ousted on account of conferment of jurisdiction on the Court of Special Judge (Anti-Corruption), Lucknow, by issuing notification under the relevant provisions of Code of Criminal Procedure. The relief sought by the petitioners in the present petition under Section 482 Cr. P. C. is the quashing of the order passed by the Special Judge, (Anti Corruption), Lucknow. Therefore, the abovequoted observation relied upon Sri Giri cannot be interpreted to mean that even in such a fact situation the principal seat at Allahabad will have jurisdiction to entertain the petition."

38. We now proceed to test the correctness of the conclusions of the two Division Benches and the reasons given in support thereof in the background of the relevant provisions of Cr. P. C. and P. C. Act and Clause 14 of the Amalgamation Order, 1948 as interpreted by the Apex Court in the case of Nasiruddin (supra) which in-disputedly is the most authoritative pronouncement on the issue involved till date. It will be useful to reproduce the relevant provisions of the Amalgamation Order, 1948, Cr. P. C. and of the P. C. Act

The United Provinces High Courts

(Amalgamation) Order, 1948.

> 2 (a) "the Act" means the Government of India Act, 1935 as for the time being in force in the Dominion of India;

“appointed day” means the twenty-sixth day of July, 1948;
And
“existing High Courts” means the High Courts referred to in Section 219 of the Act as the High Courts in Allahabad and the Chief Court in Oudh.
(b) the Interpretation Act, 1889, applies for the interpolation of this order as it applies for the interpretation of an Act of Parliament.”
3. As from the appointed day, the High Court in Allahabad and the Chief Court in Oudh shall be amalgamated and shall constitute one High Court by the name of the High Court of Judicature at Allahabad (hereinafter referred to as ‘the new High Court’).
7. (1) The new High Court shall have, in respect of the whole of the United Provinces all such original, appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of any part of that Province by either of the existing High Courts.
(2) The new High Court shall also have in respect of any area outside the United Provinces all such original, appellate and other jurisdiction as under the law in force immediately before the appointed day is exercisable in respect of that area by the High Court in Allahabad.”

“14. The new High Court, and the judges and division courts thereof, shall sit at Allahabad or at such other places in the United Provinces as the Chief Justice may, with the approval of the Governor of the United Provinces, appoint:

Provided that unless the Governor of the United Provinces with the concurrence of the Chief Justice otherwise directs, such judges of the new High Court not less than two in number , as the Chief Justice , may, from time to time nominate, shall sit at Lucknow in order to exercise in respect of cases arising in such areas in Oudh, as the Chief Justice may direct, the jurisdiction and power for the time being vested in the new High Court:
Provided further that the Chief Justice may in his discretion order that any case or class of cases arising in the said areas shall be heard at

Allahabad.”

Code of Criminal Procedure

2.Definitions.-

2. In this Code, unless the context otherwise requires, -

(j)"local jurisdiction", in relation to a Court or Magistrate, means the local area within which the Court or Magistrate may exercise all or any of its or his powers under this Code;

7.Territorial divisions.-

(1) Every State shall be a sessions division or shall consist of sessions divisions; and every sessions division shall, for the purposes of this Code, be a district or consist of districts:

Provided that every metropolitan area shall, for the said purposes, be a separate sessions division and district.

(2) The State Government may, after consultation with the High Court, alter the limits or the number of such divisions and districts.

(3) The State Government may, after consultation with the High Court, divide any district into sub-divisions and may alter the limits or the number of such sub-divisions.

(4) The sessions divisions, districts and sub-divisions existing in a State at the commencement of this Code, shall be deemed to have been formed under this section.

9.Court of Session.-

(1)The State Government shall establish a Court of Session for every sessions division.

(2) Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.

(3) The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session.

(4) The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.

(5) Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent application which is, or may be, made or pending before such Court of Session by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by a Chief Judicial Magistrate, in the sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application.

(6) The Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.

Explanation.- For the purposes of this Code, "appointment" does not include the first appointment, posting or promotion of a person by the Government to any Service, or post in connection with the affairs of the Union or of a State, where under any law, such appointment, posting or promotion is required to be made by Government.

11.Courts of Judicial Magistrates.-

(1) In every district (not being a metropolitan area), there shall be established as many Courts of Judicial Magistrates of the first class and of the second class, and at such places, as the State Government may, after consultation with the High Court, by notification, specify.

(2) The presiding officers of such Courts shall be appointed by the High Court.

(3) The High Court may, whenever it appears to it to be expedient or necessary, confer the powers of a Judicial Magistrate of the first class or of the second class on any member of the Judicial Service of the State, functioning as a Judge in a Civil Court.

14.Local jurisdiction of Judicial Magistrates.-

(1) Subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under section 11 or under section 13 may exercise all or any of the powers with which they may respectively be invested under this Code.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

[(3) Where the local jurisdiction of a magistrate, appointed under Section 11 or Section 13 or Section 18, extends to an area beyond the district, or the metropolitan area, as the case may be, in which he ordinarily holds Court, any reference in this Code to the Court of Sessions, Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall, in relation to such Magistrate, throughout the area within his local jurisdiction, be construed,

unless the context otherwise requires, as a reference to the Court of Sessions, Chief Judicial Magistrate, or Chief Metropolitan Magistrate, as the case may be, exercising jurisdiction in relation to the said district or metropolitan area.]

177.Ordinary place of inquiry and trial.-

Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

178. Place of inquiry or trial.-

(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas.

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

179.Offence triable where act is done or consequence ensues.-

When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

180. Place of trial where act is an offence by reason of relation to other offence.-

When an act is an offence by reason of its relation to

any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first-mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either act was done.

181. Place of trial in case of certain offences.-

(1) Any offence of being a thug, or murder committed by a thug , of dacoity, of dacoity with murder, of belonging to a gang of dacoits, or of escaping from custody, may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the accused person is found.

(2) Any offence of kidnapping or abduction of a person may be inquired into or tried by a Court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained.

(3) Any offence of theft, extortion or robbery may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property which is the subject of the offence was possessed by any person committing it or by any person who received or retained such property knowing or having reason to believe it to be stolen property.

(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

(5) Any offence which includes the possession of stolen property may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the stolen property was possessed by any person who received or retained it knowing or having reason to believe it to be stolen property.

182. Offences committed by letters, etc.-

(1) Any offence which includes cheating may, if the deception is practiced by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

(2) Any offence punishable under section 494 or section 495 of the Indian Penal Code(45 of 1860) may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage.

183. Offence committed on journey or voyage.-

When an offence is committed whilst the person by or against whom, or the thing in respect of which, the offence is committed is in the course of performing a journey or voyage, the offence may be inquired into or tried by a Court through or into whose local jurisdiction that person or thing passed in the course of that journey or voyage.

184. Place of trial for offences triable together.- Where-

(a) the offences committed by any person are such that he may be charged with, and tried at one trial for, each such offence by virtue of the provisions of section 219, section 220 or section 221, or

(b) the offence or offences committed by several persons are such that they may be charged with and tried together by virtue of the provisions of section

223, the offences may be inquired into or tried by any Court competent to inquire into or try any of the offences.

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

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

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

377. Appeal by the State Government against sentence.-

(1) Save as otherwise provided in sub-section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.

(2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946, (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.

(3) When an appeal has been filed against the

sentence on the ground of its inadequacy, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

397.Calling for records to exercise powers of revision.-

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.- All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

Sections 3, 4 and 27 of the Prevention of Corruption Act are reproduced below:

3. Power to appoint special Judges: (1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as may special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:--
(a) any offence punishable under this Act; and
(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a)
(2) A person shall not qualifed for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additioinal Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1972 (2 of 1974).
4. Cases triable by special Judges-----(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of Section 3 shall be tried by special Judges only.
(2) Every offence specified in sub-section (1) of Section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge apponted for the case, or where there re more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.
(3) When trying any case, a special Judge may also try any offence, other than an offence specified in Section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.
(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis."

27. Appeal and revision

Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all

> the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 on a High Court as if the court of special Judge were a court of Session trying cases within the local limits of the High Court."

39. The Division Bench of this Court in the case of Dr. Balram Dutt Sharma was dealing with the question whether the bail application on behalf of a accused against whom chargesheet was submitted before the Special Court, C. B. I. at Lucknow was maintainable before the Principal Bench or Lucknow Bench in view of the fact that the alleged offence of misappropriation, forgery and cheating was committed by him in the district of Meerut. The Division Bench after referring to the judgement of Nasiruddin (supra) and the First proviso to Clause 14 of the Amalgamation Order, 1948 and the provisions of Sections-437 and 438 Cr. P. C. held that the cause of action for bail might be differentiated from as cause of action for writ petition and cause of action for bail may only arise after the accused is detained and arrested in connection with the F. I. R. and chargesheet and since in the case of Dr. Balram Dutt Sharma, the parent F. I. R. was lodged at Lucknow, although the F. I. R. against Dr. Balram Dutt Sharma was registered at Meerut but he was arrested pursuant to the basic / parent F. I. R. filed at Lucknow and chargesheet was also laid before the Special Court, C. B. I. at Lucknow, the Division Bench was of the view that the cause of action for filing the bail application arose within the jurisdiction of Lucknow Bench of Allahabad High Court alone and the Judges at the Principal seat had no jurisdiction to entertain the bail application.

40. The question which now arises is whether the fifth conclusion of Nasiruddin (supra) which lays down the principles for determining the jurisdiction of criminal cases has been correctly interpreted in Dr. Balram Dutt Sharma. The Apex Court has categorically held in

Nasiruddin's case that a criminal case arises where the offence has been committed or as otherwise provided in Cr. P. C. The Division Bench in Dr. Balram Dutt Sharma (supra) erred in observing that the cause of action for moving the bail application arose at the place where the basic F. I. R. was lodged in connection with which the accused was arrested and detained and the place where the Special Court before which chargesheet was filed, is situate. In the case of Dr. Balram Dutt Sharma (supra) there was no ambiguity with regard to the place where offence was committed and thus not only the district Meerut was the place of the origin of the case but also part of the cause of action had arisen within the district Meerut, which is subject to territorial jurisdiction of Principal Bench and hence it was incorrectly concluded in Dr. Balram Dutt Sharma's case that the Lucknow Bench alone had jurisdiction to entertain the bail application on a wholly erroneous premise.

41. Thus, in the light of the aforesaid observations, we have no hesitation in holding that the issue regarding the jurisdiction of the Principal Bench at Allahabad and the Lucknow Bench of Allahabad High Court to entertain a bail application in a case where the offence was committed at Meerut which was within the territorial jurisdiction of Principal Bench at Allahabad and the F. I. R. was also filed at Meerut but parent F. I. R. was lodged at Lucknow and charge-sheet was also submitted at Lucknow, was incorrectly decided by the Division Bench without applying the principles enunciated by the Apex Court in the case of Nasiruddin (supra) correctly.

42. The grounds noted by the Division Bench of this Court in Sanjay Somani (supra) for its conclusions interalia are that the view taken by this Court in Nirmal Dass Khaturia (supra) that with regard to the petitioners under Article 226 of the Constitution of India, that a case can be said to arise within the areas in Oudh only if the right of the

petitioner in such an application arose first at a place within the area in Oudh, was specifically overruled in Nasiruddin's case; and that the fifth conclusion drawn in Nasiruddin's case in para 37 of the reports was made in a general manner with regard to normal situation and the Supreme Court was not contemplating a situation where the Special Court had been created to try a particular class of offences which had been investigated by the C. B. I and that single court had been conferred jurisdiction to try such cases of several districts and that the observation “a criminal case arises where the offence has been committed” does not mean that a criminal case may necessarily be arising in the local area where the offence has been committed. The Division Bench in Sanjay Somani (supra) further justified its conclusion by explaining that the words “case arising” in Clause 14 of the Amalgamation Order, 1948 means a subject on which the judicial power is capable of acting and which has been submitted to it by a party in the forms required bylaw and therefore, if any order is passed in any case by a criminal Court situate within the area of Oudh, the same can be challenged only before Lucknow Bench of the High Court which will alone have jurisdiction in the matter and not the Principal Seat of the High Court at Allahabad.

43. In our opinion, the reasons given by the Division Bench in Sanjay Somani in support of its conclusion and for distinguishing the law laid down by the Apex Court in Nasiruddin's case do not appear to be sound.

44. The Division Bench of this Court in Sanjay Somani has not correctly construed the principles laid down by the Apex Court in Nasiruddin's case and more particularly its fifth conclusion by referring to the same as one made “in a general manner”. In the light of the facts noticed hereinabove, it cannot be said that the fifth conclusion was either a stray observation or one made in a cursory manner by the

Four Judge Bench. The Division Bench failed to notice that the Apex Court in Nasiruddin's case apart from hearing the two civil appeals arising out of the orders passed in writ petitions was also hearing a criminal appeal which arose out of a judgement passed by the revisional court and it was not a case where the Apex Court was not conscious of a case where the trial was held at Raebareli within the jurisdiction of the Lucknow Bench and the subsequent proceedings. The fifth conclusion was recorded by the Apex Court fully conscious of the legal position and the same was binding and conclusive.

45. The Division Bench has further totally mis-constructed the fourth conclusion of the Apex Court in Nasiruddin's case in holding that the interpretation of the expression “cases arising in such areas in Oudh” as propounded by the Full Bench of this Court in Nirmal Dass Khathura (supra) that a case would be said to be first arising within the areas of Oudh, with regard to the writ petitions, only if the right of the petitioner in such an application arose first in a place within the areas in Oudh, was overruled in Nasiruddin's case and further in observing that when the Court used the words “or otherwise as provided in the Criminal Procedure Code” in Nasiruddin's case, it obviously meant the place, where the Criminal Court will have jurisdiction to hold enquiry or trial having regard to Chapter XIII of the Code of Criminal Procedure.

46. The Apex Court had in fact while setting aside the fourth conclusion of Nirmal Dass Khathuria (supra) had not held that where the case originates in a place outside the territorial jurisdiction of Oudh but appeal or revisional order is passed by the authority at Lucknow, the Lucknow Bench alone will have jurisdiction to entertain a petition challenging such an order. It merely decided that in such a contingency, Lucknow Bench will have jurisdiction though the original order was passed in a place outside the areas of Oudh meaning thereby that in such circumstances where the cause of action arises

partly in the specified areas of Oudh or part of the cause of action arises outside the specified areas, it will be open to the litigant who is dominus litis to frame the case appropriately to attract the jurisdiction either at Lucknow Bench or principal seat at Allahabad..

47. In our view, there is nothing in Chapter XIII of the Criminal Procedure Code, which may lend support to the theory advanced by the Division Bench that it is the location of the Court which is determinative of the fact whether challenge to the orders passed by it can be entertained by the principal seat at Allahabad or Lucknow Bench of the Allahabad High Court. The inherent fallacy in the reasoning of the Division Bench is apparent from the following:

48. A careful reading of Clause 2 of the Amalgamation order, 1948 along with its proviso unequivocally indicates that the extent of the jurisdiction of Lucknow Bench and the Principal seat at Allahabad can be governed and decided only on the strength of the provisions contained in the Constitution of India and the Amalgamation Order, 1948 which stands saved by virtue of Article 225 of the Constitution of India and no notification or order made under the P. C. Act or the Cr. P. C. can eclipse, abridge or modify the distribution of the territories of the two seats of the High Court. In the present case there is no dispute that the offence was committed outside the Oudh area in Allahabad. There is also no dispute about the fact that a writ petition challenging the first information report registered against the applicant was maintainable at Allahabad and merely because the offence complained happens to be one under the Prevention of Corruption Act which was investigated by the C. B. I. and chargesheet was submitted before the Special Judge, C. B. I., Lucknow which has been conferred the jurisdiction to try the offences under the Prevention of Corruption Act committed in certain districts of U. P. mentioned in the relevant notification including Allahabad, it cannot be said that either no part of cause of action arose

within Allahabad or Allahabad ceased to be the place from where the case arose and the Principal Bench at Allahabad had no jurisdiction to entertain an application under Section 482 Cr. P. C. challenging the order passed by the C. B. I. Court at Lucknow.

49. Regard may further be had to the fact that when the Code of Criminal Procedure refers to the local jurisdiction, it sets out the territories over which the Court of Sessions and Magistrate would exercise jurisdiction. In so far as the High Court is concerned, it defines to mean the High Court of the State. Neither the Cr. P. C. nor the Prevention of Corruption Act touch or modify the territorial jurisdiction of the High Court. No notification issued by the State Government directing that any case or class of cases committed for trial in any district be tried in any Sessions Division by a Special Court, can have the effect of increasing or decreasing the territorial jurisdiction of the Lucknow Bench which stands finally determined under Clause 14 of the Amalgamation Order, 1948. This embargo on the power of the State Government in this regard is also borne out from the proviso to Section 185 Cr. P. C. which clearly provides that the power under Section 185 Cr. P. C. can be exercised by the State Government subject to the condition that any notification or direction issued under the aforesaid section is not repugnant to any direction previously issued by the High Court either under the Constitution or the Code of Criminal Procedure or any other law for the time being in force.

50. From the above, it is apparent that although the State Government may for certain reasons direct that a class of cases otherwise triable in a particular Sessions division, may be transferred to any other Sessions Division such exercise of power would not be liable to be read in any manner contrary to any direction of the High Court or any other law for the time being in force. There is no dispute that the Amalgamation Order, 1948 was a law for the time being in force at the

time of the commencement of the Constitution. The Division Bench in Sanjay Somani holding that the context in which the words “case arising” has been used in Clause 14 of the Amalgamation Order, would mean a subject on which the judicial power is capable of acting and which has been submitted to it by a party in the forums required by law and that “definition of 'case' is wider than that of a 'suit' or 'criminal prosecution' or a 'proceedings in rem,' although in law it usually applies to one of them.” and therefore, if any order is passed in any proceedings by a criminal court situate within the area of Oudh and the same is challenged before the High Court, it is the Lucknow Bench of High Court alone, which will have jurisdiction in the matter and not the Principal Seat of High Court at Allahabad, has totally misread the fourth conclusion of Nasiruddin's case which clearly states that the place of origin of a criminal case, will be the place where the offence has been committed and if the interpretation of the expression “case arising” mentioned in Clause 14 of the Amalgamation Order, 1948 as propounded in Sanjay Somani (supra) is accepted to be correct, the same would amount to enlarging the territorial jurisdiction of the Lucknow Bench. The Apex Court in Nasiruddin's case has recorded that if the cause of action arises wholly or in part at a place within the specified Oudh areas, the Lucknow Bench will have jurisdiction and if the casue of action arises wholly within the specified Oudh areas, it is indisputable that the Lucknow Bench will have exclusive jurisdiction in such a matter and if the cause of action arises in part within the specified areas in Oudh, it would be open to the litigant who is dominus litis to have his forum conveniens.

51. Reference may also be made to Section 27 of the Prevention of Corruption Act which provides that subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all powers of appeal and revision conferred by the Code of Criminal

Procedure, 1973 on a High Court as if the Court of Special Judge was a Court of Sessions trying cases within the local limits of the High Court.

52. As envisaged under the Prevention of Corruption Act, a Special Judge may be appointed for trial of offences and the said Judge may exercise powers over such areas or group of cases as may be specified by the State Government. Under Section 4 (2) of the Prevention of Corruption Act, 1988, every offence punishable thereunder is liable to be tried by a Special Judge appointed for the area within which it was committed.

53. Thus, what follows from the above is that the Special Judge may hold a trial in respect of an offence committed under the Prevention of Corruption Act sitting at any place either within or outside the territorial jurisdiction of a High Court or its Bench. If the intention of the Legislature was that the Special Judge appointed under Section 4 (2) of the Prevention of Corruption Act shall be treated subordinate only to Principal Bench at Allahabad High Court or Lucknow Bench of Allahabad High Court, as the case may be, depending upon the location of such Special Court, such stipulation would have definitely been found in Section 27 of the Prevention of Corruption Act which provides that the High Court may exercise all powers of appeal and revision conferred by the Code of Criminal Procedure on the High Court. The absence of any such provision under Section 27 of the Prevention of Corruption Act and the use of words “as if” and “were a” in Section 27 of the Prevention of Corruption Act gives rise only to one inference that the court of Special Judge constituted under the Prevention of Corruption Act would be like a Court of Sessions situate within the local limits of the High Court.

54. Thus, it would be a misnomer to hold that the Lucknow Bench of this Court alone will have jurisdiction to entertain a petition under

Section 482 Cr. P. C. or Criminal Revision or appeal filed against the judgement and order of conviction or acquittal passed by the Special Court, C. B. I. constituted at Lucknow irrespective of the place of origin of the case, i. e. where the offence was committed. Any such interpretation of first proviso to Clause 14 of the Amalgamation Order, 1948 as well as the provisions of the Code of Criminal Procedure would be contrary to the law laid down by the Apex court in the case of Nasiruddin (supra).

55. Thus, what emerges from the foregoing discussion, is that the conclusions drawn by the two Division Benches in Dr. Balram Dutt Sharma and Sanjay Somani (supra) while interpreting the words “cases arising in such areas in Oudh”, are against the judgement of the Apex Court in Nasiruddin's case. It would be worthwhile to take note of the fact that the Apex Court had clearly ruled that the question whether the Lucknow Bench or the Principal seat at Allahabad would have jurisdiction, would depend upon the “cause of action” of the matter before the Court and in so far as the criminal matters are concerned, the Bench specifically held that it would depend on the place where the offence was committed or as otherwise provided in the Cr. P. C. In so far as the Cr. P. C. is concerned, the territorial jurisdiction of the Courts is provided for in Chapter XIII. Section 177 of the Cr. P. C. provides that the offence is ordinarily to be tried within the local jurisdiction of the Court where it is committed. Sections-179 to 185 provide for various contingencies to decide where the trial of the offence may be held. The aforesaid provisions far from extinguishing or restricting the basic principle enshrined in Section 177 expand it to cover Courts where a part of the offence may have been committed or where a part of cause of action relating to the crime may accrue. From the above, it is clear that the jurisdiction of two seats of the High Court would depend upon the cause of action relating to the crime committed. If a part of the

cause of action of the crime namely its commission arises in a district within one of the two seats, then the said seat would certainly retain jurisdiction to consider an appeal or revision or a petition under Section 482 Cr. P. C. in respect of the same. In case the crime is triable before a Special Judge, whose Court may be located within the jurisdiction of one of the seats of the High Court, as is factual position in the present case, that would not be sufficient ground to denude the other seat of its jurisdiction. In a case such as the case in hand where admittedly the offence was committed in Allahabad and the F. I. R. was also lodged at Allahabad, which is within the territorial limits of the Principal Bench of Allahabad High Court, it goes without saying that part of the cause of action had accrued within the territorial limits of Allahabad district, notwithstanding the fact that the impugned order was passed by the Special C. B. I. Court located at Lucknow, which has been conferred with the exclusive jurisdiction to try the offences under the Prevention of Corruption Act, it would be incorrect to hold that the Principal Bench has no jurisdiction to entertain a petition under Section 482 Cr. P. C., a criminal appeal or a criminal revision against the order passed by such Special Court at Lucknow and such an interpretation would be in direct conflict with the judgement of the Apex Court in Nasiruddin's case. The contrary view expressed by the Division Bench in para 12 of the judgement of this Court in Sanjay Smonai (supra), is thus palpably incorrect.

56. Our answers to the two questions referred to us are as follows:

(1) The territorial jurisdiction of the two Benches of the Allahabad High Court has to be decided in view of the first proviso to Clause 14 of the Amalgamation Order, 1948 as interpreted in the case of Nasiruddin (supra) by the Apex Court and the notifications issued by the State Government under the provisions of Code of Criminal Procedure and the Prevention of Corruption Act, 1988 appointing Special Judges to

hold trial in respect of certain class of offences under the Prevention of Corruption Act or any other Special Act while sitting at any place either within or outside the territorial jurisdiction of High Court or its Bench, such exercise of power by the State Government cannot in any manner be read contrary to any direction of the High Court or any other law for the time being in force including the Amalgamation Order, 1948 by which the respective territorial jurisdiction of the Principal Bench and the Lucknow Bench of this Court have been determined.

(2) The principle of law enunciated by the two Division Benches of this Court in the case of Dr. Balram Dutt Sharma and Sanjay Somani that for deciding the territorial jurisdiction, it is the location of the Court which has passed the impugned order or where the proceedings are pending, which shall be the determinative factor is totally against the provisions and object of the Clause 14 of the Amalgamation Order, 1948 and the judgement of the Apex Court in Nasiruddin (supra) and para 14 of U. P. Rashtriya Chini Mill Adhikari Parishad, Lucknow (supra).

56. Thus, in view of the above, we have no hesitation in holding that the Division Benches of this Court in the cases of Dr. Balram Dutt Sharma and Sanjay Somani (supra) do not lay down the correct law on the issue.

57. Reference is answered accordingly.

58. The matters are now remitted to the learned Single Judge for decision on merits.

Dated: 10th October, 2013.

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