R E P O R T A B L E

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.394 OF 2017

STATE OF JHARKHAND THROUGH SP, CBI ...APPELLANT

VERSUS

LALU PRASAD @ LALU PRASAD YADAV ...RESPONDENT

WITH

CRIMINAL APPEAL NO.393 OF 2017

STATE OF JHARKHAND THROUGH S.P., CBI ...APPELLANT

VERSUS

SAJAL CHAKRABORTY ...RESPONDENT

WITH

CRIMINAL APPEAL NO.395 OF 2017

STATE OF JHARKHAND THROUGH SP, CBI ...APPELLANT

VERSUS

DR. JAGANNATH MISHRA ...RESPONDENT

J U D G M E N T

ARUN MISHRA, J.

1. The appeals arise out of three separate judgments and orders of learned Single Judge of High Court of Jharkhand at Ranchi discharging three accused persons namely; Lalu Prasad Yadav, Sajal Chakraborty and Dr. Jagannath Mishra on the ground of their conviction in one of the criminal cases arising out of fodder scam of erstwhile State of Bihar. Applying the provision under Article 20(2) of the Constitution of India and Section 300 of Code of Criminal Procedure, 1973 (for short 'the Cr.PC'), the High Court has quashed RC No.64A/96 against Lalu Prasad Yadav, four cases against Dr. Jagannath Mishra being RC Nos.64A/96, 47A/96, 68A/96 and 38A/96 and two cases against Sajal Chakraborty being RC Nos.20A/96 and 68A/96 on the ground that they have been convicted in one of the cases for offences involving the same ingredients with respect to Chaibasa treasury.

2. In the wake of large scale defalcation of public funds, fraudulent transactions and fabrication of accounts in Animal Husbandry Department of State of Bihar popularly known as fodder scam, Central Bureau of Investigation (for short, 'the CBI') investigation had been

ordered by this Court in *State of Bihar & Anr. v. Ranchi Zila Samta Party & Anr.* (1996) 3 SCC 682 to investigate corruption in public administration, misconduct by the bureaucracy, fabrication of official records, misappropriation of public funds by an independent agency. This Court directed CBI to do investigation and inform the Chief Justice of Patna High Court. On the re-orgnisation of the State of Bihar by virtue of Bihar Re-organisation Act, 2000, States of Bihar and Jharkhand were formed. Question arose with respect to the place of trial of cases i.e. whether in State of Bihar or State of Jharkhand. A Full Bench of High Court of Patna took the view that none of the 36 cases which were of Jharkhand to be transferred to Jharkhand. CBI preferred appeals before this Court as well as Dr. R.K. Rana. Total 64 cases had been registered relating to Bihar Fodder Scam. 52 cases involved withdrawal of huge sums of money from Government treasuries falling within Jharkhand State and in 36 out of 52 cases charge-sheet had been filed by CBI before the appointed day. This Court opined that the only court which has the jurisdiction to try offences under Prevention of Corruption Act is the Court of Special Judge appointed for areas within which such offences were committed. This Court in *CBI, AHD, Patna v. Braj Bhushan Prasad & Ors.* (2001) 9 SCC 432 has laid down thus :

> **"33.** For that purpose it is useful to look at Section 3(1) of the PC Act. It empowers the Government to appoint a Special Judge to try two categories of offences. The first is, "any offence punishable under this Act" and the second is, "any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified" in the first category. So when a court has jurisdiction to try the offence punishable under the PC Act on the basis of the place where such offence was committed, the allied offences such as conspiracy, attempt or abetment to commit that offence are only to be linked with the main offence. When the main offence is committed and is required to be tried, it is rather inconceivable that jurisdiction of the court will be determined on the basis of where the conspiracy or attempt or abetment of such main offence was committed. It is only when the main offence was not committed, but only the conspiracy to commit that offence or the attempt or the abetment of it alone was committed, then the question would arise whether the Court of the Special Judge within whose area such conspiracy etc. was committed could try the case. For our purpose it is unnecessary to consider that aspect because the charges proceed on the assumption that the main offence was committed." (Emphasis Supplied)

3. This Court in *Braj Bhushan Prasad* (supra) has laid down that so far as offences under section 13(1)(c) and 13(1)(d) are concerned, the place where the offences were committed could easily be identified as the place where the treasury concerned was situate and laid down thus :

> **"37.** Thus, when it is certain where exactly the offence under Section 13 of the PC Act was committed it is an unnecessary exercise to ponder over the other areas wherein certain allied activities, such as conspiracy or preparation, or even the prefatory or incidental acts were done, including the consequences that ensued." (Emphasis Supplied)

> **"42.** Thus, if the PC Act has stipulated any place for trial of the offence under that Act the provisions of the Code would stand displaced to that extent in regard to the place of trial. We have, therefore, no doubt that when the offence is under Section 13(1)(c) or Section 13(1)(d) of the PC Act the sole determinative factor regarding the court having jurisdiction is the place where the offence was committed." (Emphasis Supplied)

4. With respect to adoption of evidence in various cases as evidence with respect to conspiracy was to be common, this Court has observed in *Braj Bhushan Prasad* (supra) thus :

> **"50.** To avoid the confusion and repetition of the exercise, we make it clear that the evidence already recorded in any of the 36 cases will be treated as evidence recorded by the proper court having jurisdiction. In other words, the Special Judge need not call the witnesses already examined over again for repetition of what has already come on record."

This Court has clearly observed that the place of trial has to be on the basis of commission of offence where the defalcation has been made and not on the basis of place of conspiracy. Submission to the contrary had been negatived.

5. Subsequently, prayer was made for amalgamation of six cases which were pending before Special Courts in the State of Jharkhand. Matter was considered by this Court with respect to joint trial of cases including RC Nos.20A/96 and 64A/96 which were pending before the

Special Judge at Patna. This Court considered the matter in *Lalu Prasad alias Lalu Prasad Yadav v. State through CBI (A.H.D.), Ranchi, Jharkhand* (2003) 11 SCC 786. It was urged on behalf of Lalu Prasad Yadav, Dr. Jagannath Mishra and others that it was a case of only a single conspiracy and therefore there should be amalgamation of trials as per the provisions contained in section 223 Cr.PC. This Court opined that charges were not framed at that stage. It is for trial court to decide the prayer for joint trial. There were large number of accused persons. It was also observed that main offence was under the PC Act and conspiracy was an allied offence. This Court laid down thus :

> "11. ….Thus it has already been held, by a three-Judge Bench of this Court, that the main offences were under the Prevention of Corruption Act. It has been held that the offence of conspiracy is an allied offence to the main offence under the Prevention of Corruption Act. The cases are before the Special Judges because the main offences are under the Prevention of Corruption Act. The main offence under the Prevention of Corruption Act in each case is in respect of the alleged transaction in that case. As conspiracy is only an allied offence, it cannot be said that the alleged overt acts are in the course of the same transaction. We are bound by this decision. In any case we see no reason to take a different view. As it has already been held that the charge of conspiracy is only an allied charge and that the main charges (under the Prevention of Corruption Act) are in respect of separate and distinct acts i.e. monies siphoned out of different treasuries at different times, we fail to see as to how these cases could be amalgamated."

> **"14.** Before we part it must be mentioned that it had been complained that the appellants would be forced to hear the same evidence 5/6 times. If the appellants or any of them feel aggrieved by this and if they so desire, they may apply to the Special Judges that evidence recorded in one case and documents marked as an exhibit in one case be used as evidence in other cases also. This would obviate their having to hear the same evidence in 5/6 different cases. We are sure that if such an application is made, the same will be considered by the Special Judge on its merit, after hearing all the other accused". (Emphasis Supplied)

This Court had noted the grievance that accused persons would be forced to hear the same evidence 5-6 times, but ordered that they may apply to the Special Judges that evidence recorded in one case and the document marked as an exhibit in one case be used as evidence in other cases also.

6. Lalu Prasad Yadav was prosecuted and convicted in RC No.20(A)/96 with respect to aforesaid period 1.4.1994 to 31.1.1995 relating to Chaibasa treasury. The charges had been framed for commission of offence of criminal conspiracy punishable under section 120B read with sections 409, 420, 467, 468, 471, 477, 477A of the Indian Penal Code, 1860 (for short, 'the IPC') and section 13(1)(c) read with section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the PC Act') where defalcation/general conspiracy was alleged between 1988 and 1996 and included various treasuries of erstwhile State of

Bihar. However, in RC No.20(A)/96 with respect to Chaibasa treasury, the specific charge was with respect to the period 1.4.1994 to 31.1.1995 for facilitating dishonest and fraudulent withdrawal of Government funds to the tune of Rs.37,70,39,743/-. The case RC No.64(A)/96 which is quashed relates to Deoghar whereas the amount misappropriated is Rs.85 lakhs as against actual allotment of funds for district of Rs.4,73,400/- with the help of 250 vouchers and 17 fake allotment letters. Misappropriation is alleged for the period 1991 to 1994. There are 38 accused persons and one of them is Lalu Prasad Yadav.

7. In the case against Dr. Jagannath Mishra he has been convicted in RC No.20(A)/96 with respect to Chaibasa treasury in respect of misappropriation of Rs.37.70 crores for the period 1994-95 whereas the prosecution has been quashed with respect to RC No.38(A)/96 relating to misappropriation of Rs.3.76 crores from Dumka treasury as against actual allotment of Rs.1.5 lakhs with the help of 96 fake vouchers in the financial year 1995-96. In case RC No.47(A)/96 misappropriation alleged is that of Rs.139.35 crores against actual allotment of Rs.1,97,90,000 by fake vouchers numbering 4845,502 fake allotment orders and 2367 fake supply orders in financial years 1991 to 1995. RC No.68(A)/96 relates to Chaibasa treasury regarding misappropriation of Rs.37.62 crores against

actual allotment of Rs.7.10 lakhs with the help of 495 fake vouchers, 67 fake allotment letters and 3870 fake supply orders during the financial year 1992-93.

8. Sajal Chakraborty had been convicted by Trial Court in RC No.51(A)/96 relating to Chaibasa treasury regarding Rs.39.92 crores misappropriation against actual allotment of Rs.4,09,750/- with the help of 580 vouchers, 4789 fake supply orders for the financial year 1993-94 on 14.7.2008 but acquitted by the High Court in appeal. The prosecution has been quashed *vis a vis* Sajal Chakraborty in RC No.20(A)/96 relating to Chaibasa Treasury and RC No.68(A)/96 relating to Chaibasa Treasury for misappropriation of Rs.37.62 crores during the financial year 1992-93.

9. It was submitted on behalf of CBI that though the same learned Judge of the High Court has quashed the proceedings in the aforesaid cases with respect to Lalu Prasad Yadav, Dr. Jagannath Mishra and Sajal Chakraborty owing to their conviction in one of the cases, however, with respect to accused Dr. R.K. Rana, the same Judge in criminal W.P. No.226/2011 has declined to quash the criminal prosecution in pending six other cases owing to his conviction in RC No.22A/96. Prayer for quashing of criminal prosecution in RC Nos.20A/96, 33A/96, 38A/96,

47A/96, 64A/96 and 68A/96 had been declined but the same very cases have been quashed by taking a contrary view in the impugned judgment and order.

10. It was submitted by Shri Ranjit Kumar, learned Solicitor General appearing for CBI that as the offences relate to different treasuries for different financial years, for different amounts running into several crores with the help of different fake allotment letters, supply orders, different falsification of books of accounts, different suppliers, Article 20(2) of Constitution of India is not attracted as the offences cannot be said to be the same. Similarly the provisions of section 300 Cr.PC are not attracted. They are different offences and transactions. Reliance has been placed upon section 212(2) of the Cr.PC so as to contend that the period of charge for offence of misappropriation shall not exceed one year. There has to be different trials for different periods. Reference has also been made to sections 219, 220 and 221 of Cr.PC. There is difference between the same kind and the same offence. In different treasuries, distinct offences have been committed though of same kind by different sets of accused persons. There have to be separate charges for distinct offences and, therefore separate trials are required to be held. Principle of issue estoppel would not arise as parties are different, duties were different for

different times. Judgment of conviction has also been placed on record by CBI.

11. Prayer has also been made to condone the delay in filing the appeals in this Court for which reliance has been placed upon the affidavits/explanation which has been offered. Thus, it was urged that sufficient ground has been made out so as to condone the delay.

12. It was submitted by Shri Ram Jethmalani, learned senior counsel appearing on behalf of respondent Lalu Prasad Yadav that the delay has not been satisfactorily explained. There is no sufficient cause so as to condone the delay. CBI has acted in flagrant violation of the provisions contained in CBI Manual. Thus, no case is made out so as to condone the delay.

13. It was contended by Shri Surendra Singh, learned senior counsel on behalf of Lalu Prasad Yadav that the charge for conspiracy against Lalu Prasad Yadav with respect to cases at Chaibasa, Patna, Ranchi, Bhagalpur and other places of Bihar, Calcutta and Delhi, was not specific to the period of defalcation. The charges were general for the period from 1988 to 1996. Thus, it was submitted that evidence has been adduced with respect to the general conspiracy between 1988 and 1996

which included the Treasuries in question in the cases where prosecution has been quashed. It was not the case put up under section 313 Cr.PC that there was separate conspiracy for the period 1.4.1994 to 30.1.1995. In RC No.64(A)/96 similar charges for conspiracy for the years 1988 to 1996 at Deoghar, Dumka, Ranchi, Patna and other places had been framed. In pursuance thereof an amount of Rs.89,27,164.15/- has been withdrawn from Deogarh Treasury. As the conspiracy for Chaibasa and Deogarh is the same the evidence has already been adduced in the case relating to Chaibasa treasury. Thus for one and the same conspiracy respondent Lalu Prasad Yadav cannot be tried over again in view of Article 20(2) and section 300 Cr.PC. It was further contended that the respondent is being prosecuted in two separate cases arising out of the Chaibasa Treasury namely R.C. No.68 (A)/1996 and R.C. No.20 (A)/1996. The first is when the money was siphoned out of the Treasury in 1992-93 and the second is for the period from 1.4.1994 to 30.1.1995 when the money was withdrawn from the Treasury. In other words, it is the prosecution case itself that between 1992-1995 money was being regularly siphoned out of the Chaibasa Treasury. The charge for conspiracy also states that the conspiracy was from 1990-1997. This is further proof of the fact that the conspiracy referred to by the

prosecution for the Treasuries of Chaibasa and Deogarh is one and the same conspiracy and not different or distinct conspiracies. Counsel has also attracted our attention to the charges pertaining to the Treasuries of Dumka (R.C. 38 (A)/1996) and Doranda (R.S. 47A)/1996. The charges framed for withdrawal of money from these two treasuries is from 1988-1996 and 1990-1996 respectively and the period of conspiracy has been shown from 1990-1997 and 1991-1996 respectively.

14. It was also urged by Shri Surendra Singh, learned senior counsel that as per prosecution itself, there was a single conspiracy that started in the year 1988 and continued till 1996. The result of investigation in RC 20(A)/96 and RC 64(A)/96 conclusively proves that there was a single conspiracy with respect to defalcation at various Treasuries. Once accused has been punished for the conspiracy for the period 1988 to 1996 he cannot be punished again for the same offence. Without much ado and more evidence, the trial of the accused for offence under section 120B IPC is barred by Article 20(2) and section 300 Cr.PC. It was also urged that there was a core group of 20 common accused in all the prosecutions *i.e.* nine politicians and eleven senior administrative officers who allegedly hatched the main conspiracy to siphon off the funds from treasuries earmarked for Animal Husbandry Department of erstwhile

State of Bihar. The *modus operandi* employed by the conspirators was identical for all the treasuries and funds were siphoned off as and when an opportunity occurred. Since there is no evidence that separate conspiracies were hatched to defalcate the funds from different treasuries at different points of time second prosecution is not permissible. Reference has been made to *Laloo Prasad @ Laloo Prasad Yadav v. State of Jharkhand* (2002) 9 SCC 372 so as to contend that there was single general conspiracy, the offences of withdrawal of money from different treasuries including the treasuries of Chaibasa and Deogarh were merely offshoots of the main conspiracy as observed by this Court while granting bail to Lalu Prasad Yadav. Learned senior counsel has also relied upon decision in *Mohd. Hussain Umar Kochra etc. v. K.S. Dalipsinghji & Anr*. AIR 1970 SC 45, *Srichand K. Khetwani v. The State of Maharashtra* AIR 1967 SC 450; and *S. Swamirathnam v. State of Madras* AIR 1957 SC 340 so as to point out that the case of single general conspiracy is opposed to a number of separate conspiracies. Since there was a single conspiracy in the instant case, accused cannot be tried and punished for defalcations made in different periods separately. So far as treasury payment is concerned there is no evidence

against Lalu Prasad Yadav. Besides, it is a case where there is no evidence against the accused.

15. It was submitted by Shri Adit S. Pujari, learned counsel appearing on behalf of Sajal Chakraborty, that the main case set up against the respondent is that he did not take any steps to find out the cause of heavy withdrawal of Rs.50.56 lakhs on a single day by co-accused Dr. B.N. Sharma. He was Deputy Commissioner, Chaibasa from September, 1992 to July, 1995. He did not exercise control to prevent misappropriation of Government funds from Chaibasa treasury. The formal charge is identical in RC Nos.51(A), 20(A) and 68(A). It was further alleged by the prosecution that the accused had developed a nexus with co-accused persons and had obtained from co-accused as a reward for services rendered – a laptop and two printers for himself. The accused Sajal Chakraborty was convicted by the trial court for certain offences under sections 409, 420, 465, 467, 468, 471, 477A IPC. His conviction has been ultimately set aside by the High Court of Jharkhand vide judgment and order dated 3.8.2012 in Criminal Appeal No.979 of 2009 in which it has been held that there was no mechanism with the Deputy Commissioner to check illegal withdrawal from treasury. Copy of allotment letter of funds to different departments was not sent to the

petitioner. There was no other evidence direct or circumstantial to establish that the accused did certain acts for facilitating other accused to draw money illegally. There is no evidence of nexus or association *vis a vis* the other accused. No one had seen installation of laptop and computer in the residence of the accused and so the allegation of receiving the same was also discarded. Learned counsel has placed reliance upon *T.T. Anthony v. State of Kerala* (2001) 6 SCC 181, *Amitbhai Anilchandra Shah v. C.B.I.* (2013) 6 SCC 348. He has also referred to section 212 Cr.PC. FIR relating to Chaibasa is for same transactions though for different financial years but for the bar under section 212(2) Cr.PC, it would have constituted one offence, as such section 300(1) would apply. In similar circumstances in *Emperor v. Jhabbar Mull Lakkar* 1922 ILR 924, *Sidh Nath Awasthi v. Emperor* 1920 ILR 17, prosecution in subsequent cases had been quashed. Section 220(1) Cr.PC would apply to the present case. In fact series of acts formed the same transaction. Thus there cannot be subsequent trial. Ingredients of offence in all the 3 cases are the same as such there cannot be different trials. It was also submitted that the principle of issue estoppel is attracted. Same issues cannot be agitated afresh in the cases which are settled by prior litigation. The issue of estoppel stands merged in the principles of

Autrefois acquit and *Autrefois convict* enshrined in Article 20(2) and section 300 Cr.PC.

16. The main question for consideration is whether in view of Article 20(2) of Constitution of India and section 300 Cr.PC, it is a case of prosecution and punishment for the "same offence" more than once. No doubt about it that the general conspiracy had been hatched as alleged for the period 1988 to 1996 but defalcations are from different treasuries for different financial years by exceeding the amount of each year which was allocated for Animal Husbandry Department for each of the district for the purpose of animal husbandry. The amount involved is different, fake vouchers, fake allotment letters, fake supply orders had been prepared with the help of different sets of accused persons. Though there is one general conspiracy, offences are distinct for different periods. Question arises whether there is one general conspiracy pursuant to which various defalcations of different amounts have been made running into several years from different treasuries, by different sets of accused persons. Whether there could have been only one trial or more than one. Whether legal requirement is for one trial or more than one in such cases. Article 20(2) of the Constitution is extracted hereunder :

> "20. (2) No person shall be prosecuted and punished for the same offence more than once."

17. Article 20(2) says that no person shall be prosecuted and punished for the same offence more than once. This is called the doctrine of double jeopardy. The objective of the Article is to avoid harassment, which may be caused by successive criminal proceedings, where the person has committed only one crime. There is a law maxim related to this, *nemo debet bis vexari*. This means that no man shall be put twice in peril for the same offence. There are two aspects of doctrine of jeopardy viz. *Autrefois convict* and *Autrefois acquit*. *Autrefois convict* means that the person has been previously convicted in respect of the same offence. *Autrefois acquit* means that the person has been acquitted on a same charge on which he is being prosecuted. Constitution bars double punishment for the same offence. The conviction for such offence does not bar for subsequent trial and conviction for another offence and it does not matter even if some ingredients of these two offences are common.

Section 300 Cr.P.C. is extracted hereunder :

> "**Section 300. Person once convicted or acquitted not to be tried for same offence.--**

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub- section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub- section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last- mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first- mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897, (10 of 1897) or of section 188 of this Code."

18. Section 300 refers to sections 220 and 221 Cr.PC. No doubt it appears that a person who has been convicted or acquitted of the "same offence" cannot be tried again considering the aforesaid provisions. Section 220(1) provides that if one series of acts is so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence. Section 220(1) is extracted hereunder :

> "**220. Trial for more than one offence**.--(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence."

19. Section 221(1) is applicable where it is doubtful what offence has been committed. When a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved would constitute, the accused may be charged with having committed all or any of such offences and such charges can be tried together.

20. Chapter XVII deals with the form of charges. Section 212 deals with contents of charge, *e.g.*, particulars of time, place and person. Section 212 is extracted hereunder :

> "**212. Particulars as to time, place and person.--**(1) The charge shall contain such particulars as to the time and place

> of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.
>
> (2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, It shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219;
>
> Provided that the time included between the first and last of such dates shall not exceed one year." (Emphasis Supplied)

21. When the accused is charged with criminal breach of trust or dishonest appropriation of money or other immovable property, it shall be sufficient to specify the gross sum or describe the moveable property in respect of which offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items of exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219 provided that the time included between the first and last of such dates shall not exceed one year. A charge shall contain such particulars as to time and place of the alleged offence and time period shall not exceed one year. Time period and place of the offence is material in such cases.

22. Section 219 Cr.PC provides that three offences of same kind within a year may be charged together. When a person is accused of more offences than one of the same kind committed within a period of one year, he may be charged with, and tried at one trial for, any number of them not exceeding three for same kind of offence under section 219(1). Section 219 is reproduced hereunder :

> "**S.219. Three offences of same kind within year may be charged together.--**
> (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.
> (2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law:
>
> Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence."

23. It is apparent from section 212 read with section 219 that there have to be separate trials for different years covering the period of more than one year. Same kind of offence is a different thing than the "same offence" for the purpose of sections 219, 220 or 300. The scheme of law

is clear that separate charges for distinct offences must be framed separately and they cannot be clubbed together for more than one year.

24. This Court in *Natwar Lal Sakar Lal Mody v. The State of Bombay* 26 (1984) DLT 64 considered the question of joint trial of persons and offences for conspiracy as per provisions contained in section 239(d) of the old Cr.PC. This Court has laid down that separate trial is the rule and joint trial is an exception. Joint trial would be an irregular exercise of discretion if a court allows innumerable offences spread over a long period of time and committed by a large number of persons to be under the protecting wings of an all-embracing conspiracy, and if each or some of the offences can be separately tried, it would be appropriate and lawful. Joint trial prolongs the trial and causes waste of judicial time and complicates the matter which might otherwise be simple, and it would confuse the accused and cause prejudice to them. Court should not be overzealous to provide a cover of conspiracy for a number of offences unless it is satisfied that the persons who committed separate offences were parties to the conspiracy and committed the separate acts pursuant to conspiracy. This Court has laid down thus :

> "11. This discussion leads us to the following legal position. Separate trial is the rule and joint trial is an exception. While Section 239 of the Code of Criminal Procedure allows a joint

trial of person and offences within defined limits, it is within the discretion of the Court to permit such a joint trial or not, having regard to the circumstances of each case. It would certainly be an irregular exercise of discretion if a Court allows an innumerable number of offences spread over a long period of time and committed by a large number of persons under the protecting wing of all-embracing conspiracy, if each or some of the offences can legitimately and properly form the subject-matter of a separate trial; such a joint trial would undoubtedly prolong the trial and would be a cause of unnecessary waste of judicial time. It would complicate matters which might otherwise be simple; it would confuse accused and cause prejudice to them, for more often than not accused who have taken part in one of the minor offences might have not only to undergo the long strain of protracted trial, but there might also be the likelihood of the impact of the evidence adduced in respect of other accused on the evidence adduced against him working to his detriment. Nor can it be said that such an omnibus charge or charges would always be in favour of the prosecution for the confusion introduced in the charges and consequently in the evidence may ultimately benefit some of the accused, as a clear case against one or other of the accused may be complicated or confused by the attempt to put it in a proper place in a larger setting. A Court should not be overzealous to provide a cover of conspiracy for a number of offences unless it is clearly satisfied on the material placed before it that there is evidence to prove prima facie that the persons who committed separate offences were parties to the conspiracy and they committed the separate acts attributed to them pursuant to the object of the said conspiracy." (Emphasis Supplied)

25. This Court in *Ranchhod Lal v. State of Madhya Pradesh* AIR 1965 SC 1248 has also considered the question of joint trial in the case of criminal breach of trust. It has been observed that normal rule is that there should be a charge for each distinct offence. Court is authorized to

lump up the various items with respect to which criminal breach of trust was committed and to mention the total amount misappropriated within a year in the charge. When so done, the charge is deemed to be the charge of one offence. This Court has laid down that a separate trial with respect to each distinct offence of criminal breach of trust with respect to an individual item is the correct mode of proceeding with the trial of an offence of criminal breach of trust. This Court has laid down thus :

> "(14.) Section 222, Cr. P.C. reads :
>
> "(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.
>
> (2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of S. 234:
>
> Provided that the time included between the first and last of such dates shall not exceed one year."
>
> Sub-section (2) is an exception to meet a certain contingency and is not the normal rule with respect of framing of a charge in cases of criminal breach of trust. The normal rule is that there should be a charge for each distinct offence as provided in S. 233 of the Code. S. 222 mentions what the contents of the charge should be. It is only when it may not be possible to specify exactly particular items with respect to which criminal breach of trust took place or the exact date on which the individual items were misappropriated or in some similar contingency, that the Court is authorised to lump up the

various items with respect to which criminal breach of trust was committed and to mention the total amount misappropriated with a year in the charge. When so done, the charge is deemed to be the charge of one offence. If several distinct items with respect to which criminal breach of trust has been committed are not so lumped together, no illegality is committed in the trial of those offences. In fact a separate trial with respect to each distinct offence of criminal breach of trust with respect to an individual item is the correct mode of proceeding with the trial of an offence of criminal breach of trust.

(15.) Learned counsel for the appellant also relied on S. 234, Code of Criminal Procedure and urged that three offences of criminal breach of trust could have been tried at one trial as sec. 234 provides that when a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for any number of them not exceeding three. This again is an enabling provision and is an exception to sec. 233, Code of Criminal Procedure If each of the several offences is tried separately, there is nothing illegal about it. It may also be mentioned that the total number of items charged in the four cases exceeded three.

(16.) Lastly, reference was made, on behalf of the appellant to sec. 235, Code of Criminal Procedure and it was urged that all these offences were committed in the course of the same transaction, and therefore, they should have been tried at one trial. Assuming, without deciding, that these offences could be said to have been committed in the course of the same transaction, the separate trial of the appellant for certain specific offences is not illegal. This section too is an enabling section."

26. In *R. v. Griffith* 1965 (2) AER 448 it has been laid down that a conspiracy should be tried separately to substantive counts. The Court of Appeal in England has laid down thus :

> "9. The practice of adding what may be called a rolled up conspiracy charge to a number of counts of substantive offences has become common. We express the very strong hope that this practice will now cease and that the courts will never again have to struggle with this type of case, where it becomes almost impossible to explain to a jury that evidence inadmissible against the accused on the substantive count may be admissible against him on the conspiracy count once he is shown to be a conspirator. We do no believe that most juries can ever really understand the subtleties of the situation. In our judgment, except in simple cases, a conspiracy count (if one is needed at all) should be tried separately to substantive counts."

27. In *State of A P v. Cheemalapti Ganeswara Rao & Anr.* (1964) 3 SCR 297 this Court dealt with misjoinder of parties under section 239 of the old Cr.P.C. This Court with respect to 'same transaction' has observed thus :

> "10. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any Court which the Legislature has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same."
>
> Further, it was held that:
>
> "Where, however, several offences are alleged to have been committed by several accused persons it may be more reasonable to follow the normal rule of separate trials. But

> here, again, if those offences are alleged not be wholly unconnected but as forming part of the same transaction the only consideration that will justify separate trials would be the embarrassment or difficulty caused to the accused persons in defending themselves." (Emphasis supplied)

When several offences are alleged to have been committed by several accused persons this Court has laid down that normal rule is of separate trials.

28. In *Sardar Sardul Singh Caveeshar v. State of Maharashtra* (1964) 2 SCR 378, this Court considered the question of conspiracy in a case where the accused had first defrauded one Jupiter company and thereafter another company called Empire. Argument was raised that once having been convicted of conspiracy qua the Jupiter case, he could not be convicted qua company called Empire. This Court relying upon judgment in *State of Bombay v. S.L. Apte* (1961) 3 SCR 107 has laid down thus :

> "In the present case, applying the test laid down by this Court, the two conspiracies are not the same offence: the Jupiter conspiracy came to an end when its funds were misappropriated. The Empire conspiracy was hatched subsequently, though its object had an intimate connection with the Jupiter in that the fraud of the Empire was conceived and executed to cover up the fraud of the Jupiter. The two conspiracies are distinct offences. It cannot even be said that some of the ingredients of both the conspiracies are the same. The facts constituting the Jupiter conspiracy are not the

> ingredients of the offence of the Empire conspiracy, but only afford a motive for the latter offence. Motive is not an ingredient of an offence. The proof of motive helps a Court in coming to a correct conclusion when there is no direct evidence. Where there is direct offence for implicating an accused in an offence, the absence of proof of motive is not material. The ingredients of both the offences are totally different and they do not form the same offence within the meaning of Art.20(2) of the Constitution and, therefore, that Article has no relevance to the present case."

29. In *Gopal Prasad Sinha v. State of Bihar* (1970) 2 SCC 905 offence was committed between two different periods when the accused was working as Cashier. On the basis of acquittal in the first offence, plea of issue estoppel was raised for the second period during trial. This Court had rejected the submission thus :

> "7. In our opinion, the High Court came to the correct conclusion. The basic principle underlying the rule of issue-estoppel is that the same issue of fact and law must have been determined in the previous litigation. The question then arises: Was it the same issue of fact which was determined in the earlier case? A person may be acting as a cashier at one period and may not be acting as a cashier at another period, especially as in this case it was found that the appellant had never been appointed as a cashier. He was a temporary senior accounts clerk who was alleged to be doing the work of a cashier. If there is any likelihood of facts or conditions changing during the two periods which are under consideration then it is difficult to say that the prosecution would be bound by the finding in a previous trial on a similar issue of fact. It seems to us that the later finding must necessarily be in contradiction of the previous determination. <u>There can be no such contradiction if the periods are different</u> and the facts

relating to the carrying on of the duties of a cashier are different."(Emphasis supplied)

30. It is pertinent to mention here that this Court in this very case has negatived the contention of joint trials and amalgamation of trials in the aforesaid decisions. When parties are different, issue of estoppel would not arise. The substantive offence is that of defalcation. Conspiracy was an allied offence to the substantive offence.

31. Section 218 deals with separate charges for distinct offences. Section 219 quoted above, provides that three offences of the same kind can be clubbed in one trial committed within one year. Section 220 speaks of trial for more than one offence if it is the same transaction. In the instant case it cannot be said that defalcation is same transaction as the transactions are in different treasuries for different years, different amounts, different allotment letters, supply orders and suppliers. Thus the provision of section 221 is not attracted in the instant case. There are different sets of accused persons in different cases with respect to defalcation.

32. There may be a conspiracy in general one and a separate one. There may be larger conspiracy and smaller conspiracy which may develop in successive stages involving different accused persons. In the

instant case defalcations have been made in various years by combination of different accused persons. Thus, there can be separate trials on the basis of law laid down by this Court in *Ram Lal Narang v. State (Delhi Administration)* (1979) 2 SCC 322 wherein this Court has laid down thus :

> "11. ….The offences alleged in the first case were Section 120-B read with Section 420 and Section 406, Indian Penal Code, while the offences alleged in the second case were Section 120-B read with Section 411, Indian Penal Code and Section 25 of the Antiquities and Art Treasures Act, 1972……. We are clear, in the present case, that the conspiracies which are the subject-matter of the two cases cannot be said to be identical though the conspiracy which is the subject-matter of the first case may, perhaps, be said to have turned out to be part of the conspiracy which is the subject-matter of the second case. As we mentioned earlier, when investigation commenced in FIR. R.C. 4 of 1976, apart from the circumstance that the property involved was the same, the link between the conspiracy to cheat and to misappropriate and the conspiracy to dispose of the stolen property was not known."

33. In the instant case, offences are not the same offence. There can be different trials for the same offence if tried under two different enactments altogether and comprised of two different offences under different Acts/statutes without violation of the provisions of Article 20(2) or Section 300 Cr.PC. This Court has decided the issue in various cases:-

(a) In *Kharkan & Ors. v. The State of U.P.* (1964) 4 SCR 673 this Court has laid down thus :

> "Even if the two incidents could be viewed as connected so as to form parts of one transaction it is obvious that the offences were distinct and required different charges. The assault on Tikam in fulfilment of the common object of the unlawful assembly was over when the unlawful assembly proceeded to the house of Tikam to loot it. The new common object to beat Puran was formed at a time when the common object in respect of Tikam had been fully worked out and even if the two incidents could be taken to be connected by unity of time and place (which they were not), the offences were distinct and required separate charges. The learned Sessions Judge was right in breaking up the single charge framed by the magistrate and ordering separate trials. In this view the prior acquittal cannot create a bar in respect of the conviction herein reached." (Emphasis Supplied)

(b) In *Maqbool Hussain v. The State of Bombay* (1953) SCR 730 this Court has laid down thus :

> "Appellant had smuggled gold into India and was booked u/s 167(8) of the Sea Customs Act, 1878 and subsequently when no one came to claim the gold, he was charged 11/8 8 0f FERA. He challenged this as violation of Art. 20(2). The Court analysed the scope of Art. 20(2) and held that the "prosecution" must be before a court of law or judicial tribunal. The plea of double jeopardy was discarded as it was held that the Customs authorities were not a judicial tribunal or court. For double jeopardy, the test is whether the former offence and the offence now charged have the same ingredients in the sense that the facts constituting the one are sufficient

to justify a conviction of the other and not that the facts relied on by the prosecution are the same in the two trials."

(c) In *State of Bombay v. S.L. Apte* (1961) 3 SCR 107 a Constitution Bench of this Court has laid down as to the issue regarding conviction under section 409 IPC and section 105 of Insurance Act. The submission of double jeopardy was repelled with respect to offences under section 11 of IPC and section 105 of Insurance Act. It was held that the offences under both the Acts are distinct due to their ingredients. So as to constitute double jeopardy two offences should be identical.

(d) In *T.S. Baliah v. T.S. Rengachari* (1969) 3 SCR 65, appellant was sought to be prosecuted under section 177 IPC and section 52 of Income Tax Act, 1922 for furnishing wrong information in his tax returns. On consideration of section 26 of General Clauses Act, this Court held that the provision did not provide a bar on trial and conviction for the same offence under more than one enactment in case ingredients of offences are distinct. It only barred double punishment and not double conviction.

(e) In *V.K. Agarwal v. Vasantraj B. Bhatia* (1988) 3 SCC 467 the question arose whether acquittal of an accused charged with having committed the offence punishable under section 111 read with section 135 of Customs Act, 1969 created a legal bar to the accused, subsequently being prosecuted under section 85 of the Gold (Control) Act, 1968. It was held that the ingredients of offence under each of the enactments were quite different. The Court applied the test developed in *Maqbool Hussain* (supra) and held the two offences to be different in scope and contents of their ingredients. The Court also relied upon *S.L. Apte*'s decision (supra) and observed that what is necessary is to analyse the ingredients of the two offences and not the allegations made in two complaints. No doubt about it that there can be separate offences but ingredients would remain same under penal provision but that would also not make out a case of violating the provisions of Article 20(2) of the Constitution and Section 300 Cr.P.C.

(f) In case ingredients of the offences to be tried separately arise out of the same offence, there can be separate trials under two enactments, if the ingredients constituting two offences are different under different Acts, there is no bar for separate trials. In *State of Bihar v. Murad Ali Khan & Ors.* (1988) 4 SCC 655 it was held :

> "The expression "any act or omission which constitutes any offence under this Act" in Section 56 of the Wild Life (Protection) Act, 1972 merely imports the idea that the same act or omission might constitute an offence under another law and could be tried under such other law or laws also. Further held that, if there are two distinct and separate offences with different ingredients under two different enactments. a double punishment is not barred. The same set of facts can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time constitute an offence under any other law."

(g) In *State of Rajasthan v. Hat Singh & Ors.* (2003) 2 SCC 152 this Court was dealing with vires of Rajasthan Sati (Prevention) Act, 1987. It was urged that sections 5 and 6 of new Sati Act were overlapping. It was held that with regard to Article 20(2) that subsequent trial or a prosecution and punishment are not barred if the ingredients of two offences are distinct. There can be separate offences from same set of facts and hence no double jeopardy.

(h) In *Monica Bedi v. State of Andhra Pradesh* (2011) 1 SCC 284 this Court considered the meaning of the expression "same offence" employed in Article 20(2) and observed that second prosecution and conviction must be for the same offence. If the offences are distinct, there is no question of the rule as to double jeopardy being applicable. This Court has observed thus :

> "26. What is the meaning of the expression used in Article 20(2) "for the same offence"?

> What is prohibited under Article 20(2) is, that the second prosecution and conviction must be for the same offence. If the offences are distinct, there is no question of the rule as to double jeopardy being applicable. ….
>
> x x x x x
>
> 29. It is thus clear that the same facts may give rise to different prosecutions and punishment and in such an event the protection afforded by Article 20(2) is not available. It is settled law that a person can be prosecuted and punished more than once even on substantially same facts provided the ingredients of both the offences are totally different and they did not form the same offence."

(i) In *Sangeetaben Mahendrabhai Patel v. State of M.P.* (2012) 7 SCC 621, with respect to double jeopardy, this Court has laid down thus :

> "33. In view of the above, the law is well settled that in order to attract the provisions of Article 20(2) of the Constitution i.e. doctrine of autrefois acquit or Section 300 Code of Criminal Procedure. or Section 71 Indian Penal Code or Section 26 of General Clauses Act, ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not identity of the allegations but the identity of the ingredients of the offence. Motive for committing offence cannot be termed as ingredients of offences to determine the issue. The plea of autrefois acquit is not proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge."

.(j) In *State of Rajasthan v. Bhagwan Das Agrawal* (2013) 16 SCC 574 there were 3 FIRs. registered with respect to illegal

supply of explosives. Charge was under the Explosives Act. This Court held that the nature and manner of the offences committed by the accused persons were not identical but were different, and as such FIRs. were not relating to the same offence as different acts happened in different places. As such the provisions contained in section 186 Cr.PC would not apply.

(k) In *State of NCT of Delhi v. Sanjay etc.* (2014) 9 SCC 772 this Court considered the maxim "*nemo debet bis vexari pro una et eadem causa"* i.e. no man shall be put in jeopardy twice for one and the same offence. In case ingredients are different there can be separate trial for the same offence also. This Court has laid down thus :

> "52. It is well known principle that the rule against double jeopardy is based on a maxim *nemo debet bis vexari pro una et eadem causa*, which means no man shall be put in jeopardy twice for one and the same offence. Article 20 of the Constitution provides that no person shall be prosecuted or punished for the offence more than once. However, it is also settled that a subsequent trial or a prosecution and punishment has no bar if the ingredients of the two offences are distinct."

34. In the light of aforesaid discussion, it is appropriate to consider the submissions raised by Shri Surendra Singh, learned senior counsel appearing on behalf of Lalu Prasad Yadav. It was submitted by learned senior counsel that since the conspiracy was between 1988 and 1996 which included the period of 1994-1995, the conviction has been made on the charge of conspiracy from 1988 to 1996 which included all the treasuries of the erstwhile State of Bihar. There was no charge of

separate conspiracy. Charges being similar in the cases which have been quashed. No case is made out for trial under section 120-B. Same and identical circumstances are being relied upon by the prosecution. There are no new or additional circumstances in the cases which have been quashed. The conspiracies referred to are one and the same and not different conspiracies. Thus, in view of the trial which had concluded, there cannot be further trial on the charge of conspiracy.

35. We are unable to accept the submissions raised by learned senior counsel. Though there was one general charge of conspiracy, which was allied in nature, the charge was qualified with the substantive charge of defalcation of a particular sum from a particular treasury in particular time period. The charge has to be taken in substance for the purpose of defalcation from a particular treasury in a particular financial year exceeding the allocation made for the purpose of animal husbandry on the basis of fake vouchers, fake supply orders etc. The sanctions made in Budget were separate for each and every year. This Court has already dealt with this matter when the prayers for amalgamation and joint trial had been made and in view of the position of law and various provisions discussed above, we are of the opinion that separate trials which are being made are in accordance with provisions of law otherwise it would

have prejudiced the accused persons considering the different defalcations from different treasuries at different times with different documents. Whatever could be combined has already been done. Each defalcation would constitute an independent offence. Thus, by no stretch, it can be held to be in violation of Article 20(2) of the Constitution or Section 300 Cr.P.C. Separate trials in such cases is the very intendment of law. There is no room to raise such a grievance. Though evidence of general conspiracy has been adduced in cases which have been concluded, it may be common to all the cases but at the same time offences are different at different places, by different accused persons. As and when a separate offence is committed, it becomes punishable and the substantive charge which has to be taken is that of the offence under the P.C. Act etc. There was conspiracy hatched which was continuing one and has resulted into various offences. It was joined from time to time by different accused persons, so whenever an offence is committed in continuation of the conspiracy, it would be punishable separately for different periods as envisaged in section 212(2), obviously, there have to be separate trials. Thus it cannot be said to be a case of double jeopardy at all. It cannot be said that for the same offence the accused persons are being tried again.

36. Learned senior counsel has relied upon the decision of this Court in *S. Swamirathnam* (*supra*) in which the charge disclosed one single conspiracy, although spread over several years. There was only one object of the conspiracy, and that was cheating members of the public. The fact that in the course of years others joined the conspiracy or that several incidents of cheating took place in pursuance of the conspiracy, does not change the conspiracy and does not split up a single conspiracy into several conspiracies. The accused persons raised the submission as to misjoinder of the charges. This Court has dealt with the matter thus :

> "2. Both the courts below, relying on the oral and documentary evidence in the case, held it as a fact that there had been a conspiracy during the years 1945-48 to cheat members of the public between some of the accused and the approvers Ramaswami Mudaliar and Vellayam Pillai examined as P. Ws. 91 and 61 respectively. The method adopted for cheating was to persuade such members of the public, as could be persuaded, to part with their money to purchase counterfeit Rs. 5 currency notes at half their face value and after having obtained their money to decamp with it. When a member of the public handed over his money, at a certain stage, one of the conspirators pretending to be a Police Officer would arrest the man who had the box containing their money and take him away with the box. The victim was thus deprived of his money without even having a single counterfeit currency note in his possession in exchange of the genuine money paid by him. We have scrutinized with care the judgments of the Sessions Judge and the learned Judge of the High Court and find that they were amply justified, having regard to the state of the evidence on the record, in coming to the conclusion that the case of the prosecution concerning the existence of the conspiracy as charged to cheat

> the members of the public, had been proved. We are unable to find any special circumstance, arising from the evidence on the record, which would justify our interference with the finding of fact arrived at by the courts below. Indeed, the evidence is overwhelming and convincing to prove the case of the prosecution that there had been a conspiracy in the relevant years to cheat the members of the public between some of the accused and the aforesaid approvers.
>
> 7. On behalf of the appellant Abu Bucker it was contended that there has been misjoinder of charges on the ground that several conspiracies, distinct from each other, had been lumped together and tried at one trial. The Advocate for Swamirathnam, however, did not put forward this submission. We have examined the charge carefully and find no ground for accepting the contention raised. The charge as framed, discloses one single conspiracy, although spread over several years. There was only one object of the conspiracy and that was to client members of the public. The fact that in the course of years others joined the conspiracy or that several incidents of cheating took place in pursuance of the conspiracy did not change the conspiracy & did not spilt up a single conspiracy into several conspiracies. It was suggested that although the modus operandi may hove been the same, the several instances of cheating were not part of the same transaction. Reliance was placed on the case of Sharpurji Sorabji v. Emperor : AIR 1936 Bom 154 and on the case of Choragudi Venkatadari In re ILR 33 Mad 592. These cases are not in point. In the Bombay case no charge of conspiracy had been framed and the decision in the Madras case was given before Section 120-B, was introduced into the Indian Penal Code. In the present case, the instances of cheating were in pursuance of the conspiracy and were therefore parts of the same transaction."

It is apparent from the aforesaid decision that this Court did not consider various provisions and question of double jeopardy did not arise for consideration. It was held in the facts that there was no prejudice to

the accused persons. There was no misjoinder of the charges. On facts the case has no application and cannot be said to be an authority on Article 20 of the Constitution and section 300 Cr.PC.

37. In *Srichand K. Khetwani's case* (supra), accused were tried for an offence punishable under section 120-B read with section 409 and section 5(2) read with section 5(1)(d) of the P.C. Act. They were all convicted by the trial court. The conviction of the appellants was upheld. The prosecution case was that in pursuance of the conspiracy, a number of licences in the name of several companies which had no existence were prepared, some of them were actually issued and that two of those licences issued were in the name of M.L. Trading Co., Bombay and were delivered to appellant by Prabhakar Karmik. The Court held that the appellant received the licences issued in the name of the fictitious firm, therefore the appellant was a member of the conspiracy with which he was charged. Charge was framed for commission of offence punishable under section 120-B IPC read with section 5(2) of PC Act. The charge framed described the conspiracy to be agreeing of the various persons, including the persons not put on trial, to do or cause to be done, illegal acts. The charge of conspiracy was not that the conspiracy was entered into with each bogus individual firm for the benefit of that firm alone in

connection with the issue of licences to that particular firm. The charge was that out of the profits made from acts done in furtherance of the conspiracy, all the persons in the conspiracy were to benefit. This Court observed that the conspiracy was a general conspiracy to keep on issuing licence in the names of fictitious firms and to share the benefits arising out of those licences when no real independent person was the licensee. This Court held that it was not a case of conspiracy with respect to licences issued to one fictitious company. This Court has laid down thus:

> "The finding that the various firms to whom licences were issued were fictitious is not questioned. The conspiracy was a general conspiracy to keep on issuing licences in the names of fictitious firms and to share the benefits arising out of those licences when no real independent person was the licensee. The various members of the conspiracy other than the two public servants must have joined with the full knowledge of the modus operandi of the conspiracy and with the intention and object of sharing the profits arising out of the acts of the conspirators. We do not therefore see that the mere fact that licences were issued in the names of eight different companies make out the case against the appellant and the other conspirators to be a case of eight different conspiracies each with respect to the licences issued to one particular fictitious company."

It is apparent that the case is quite distinguishable. In the instant case different accused persons exist with the help of whom amount has been withdrawn in different years. It is not a case that only a few persons had benefited each and every year, when the facts are juxtaposed. Thus,

it would be a case of different offences. The decision has no application and this Court was not concerned with the provisions of Article 20 or section 300 Cr.PC and other provisions relating to separate trial contained in the Cr.P.C.

38. Another decision relied upon by learned senior counsel is *Mohd. Hussain Umar Kochra etc. v. K.S. Dalipsinghji & Anr*. AIR 1970 SC 45. The facts indicate that 40 accused persons were at Bombay and other places from 1.11.1956 to 2.2.1959 and were parties to a continuing criminal conspiracy, to acquire possession of, carry, remove deposit harbor, keep concealed and deal in gold and knowingly to be concerned in fraudulent evasion of duty chargeable on gold and of the prohibition and restriction applicable thereto and committed an offence under section 120B IPC read with section 167 (81) of Sea Customs Act, 1878. On other counts the accused persons were charged individually with offences punishable under section 167. The scheme was that necessary finances would be arranged, remittances to foreign countries would be made through Murad, gold would be sent by air from foreign countries to Bombay, Delhi, Calcutta and other airports and the smuggled gold would be sold in India. There were several transactions of smuggling. In 1957, other accused persons joined the conspiracy. From February, 1958,

seven or eight consignments of gold concealed in the rear left bathroom of the aircrafts were sent from Lori to Bombay. On 1.2.1959 the Rani of Jhansi consignment of gold was searched by customs officers at the Santacruz airport Bombay and the gold was seized. It was urged before this Court by the accused persons that evidence disclosed number of conspiracies and charge of general conspiracy was not proved. It was not a case of common conspiracy. This Court has laid down thus :

> "15. As to the second question the contention was that the evidence disclosed a number of separate conspiracies and that the charge of general conspiracy was not proved. Criminal conspiracy as defined in Section 120A of the I.P.C. is an agreement by two or more persons to do or cause to be done an illegal act or an act which is not illegal by illegal means. The agreement and the breach attracted to it the provisions of Section 167(81) of is the gist of the offence. In order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be a general plan to accomplish the common design by such means as may from time to time be found expedient. New techniques may be invented and new means may be devised for advancement of the common plan. A general conspiracy must be distinguished from a number of separate conspiracies having a similar general purpose. Where different groups of persons co-operate towards their separate ends without any privity

with each other each combination constitutes a separate conspiracy. The common intention of the conspirators then is to work for the furtherance of the common design of his group only. The cases illustrate the distinction between a single general conspiracy and a number of unrelated conspiracies. In S.K. Khetwani v. State of Maharashtra ,S. Swaminatham v. State Madras the Court found a single general conspiracy while in R. v. Griffiths [1965] 2 All E.R. 448 the Court found a number of unrelated and separate conspiracies.

16. In the present case, there was a single general conspiracy to smuggle gold into India from foreign countries. The scheme was operated by a gang of international crooks. The net was spread over Bombay, Geneva, Beirut and Bahrein. Yusuf Merchant and Pedro Fernandes supplied the brain power, Murad Asharanoff remitted the funds, Lakshmandas Kochra and Rabiyabai supplied the finances, Pedro Fernadez and the Shuhaibar brothers sent the gold from Geneva and the Middle East, carriers brought the gold hidden in jackets, mechanics concealed and removed gold from aircrafts and others helped in contacting the carriers and disposing of the gold. Yusuf, Pedro and Murad and Lakshmandas were permanent members of the conspiracy. They were joined later by Kochra, the Shuhaibar brothers and Lori and other associates. The original scheme was to bring the gold from Geneva. The nefarious design was extended to smuggling of gold from the Middle East. There can be no doubt that the continuous smuggling of gold sent by Pedro from Geneva during February 1956 to February 1958 formed part of a single conspiracy. The settlement of account between Yusuf and Pedro at Beirut did not end the original conspiracy. There can also be no doubt that the smuggling of gold from Beirut by the Shuhaibar brothers and from Bahrein by their agent Lori were different phases of the same conspiracy. The main argument was that the despatch of gold from Geneva was the result of one conspiracy and that the despatch of gold from the Middle East was the result of another separate and unrelated conspiracy. The courts below held, and in our opinion rightly, that there was a single general conspiracy embracing all the activities. Pedro had a share in the profits of

> the smuggling from Geneva. He got also a share of Yusuf's profits from the smuggling of the Middle East gold. Apparently Shuhaibar brothers and Lori had no share in the profits from the smuggling of the Geneva gold but they attached themselves to the general conspiracy originally devised by Yusuf and Pedro with knowledge of its scheme and purpose and took advantage of its existing organization for obtaining finances from Kochra and Rabiyabai and for remittances of funds by Yusuf. Each conspirator profited from the general scheme and each one of them played his own part in the general conspiracy. The second contention is rejected."

This Court has distinguished general conspiracy from number of separate conspiracies having a similar general purpose. Where different groups of persons co-operate towards their separate ends without any privity with each other, each combination constitutes a separate conspiracy. It was held that in the case there was single general conspiracy to smuggle gold into India from foreign countries. The contention raised was that separate conspiracies were raised by the accused in the facts of the said case. The facts are quite different in the instant case. The question which has come up for consideration did not arise in the aforesaid decision and this Court has held that there was no prejudice caused to the accused persons by not making separate trials.

39. The *modus operandi* being the same would not make it a single offence when the offences are separate. Commission of offence pursuant

to a conspiracy has to be punished. If conspiracy is furthered into several distinct offences there have to be separate trials. There may be a situation where in furtherance of general conspiracy, offences take place in various parts of India and several persons are killed at different times. Each trial has to be separately held and the accused to be punished separately for the offence committed in furtherance of conspiracy. In case there is only one trial for such conspiracy for separate offences, it would enable the accused person to go scotfree and commit number of offences which is not the intendment of law. The concept is of 'same offence' under Article 20(2) and section 300 Cr.PC. In case distinct offences are being committed there has to be independent trial for each of such offence based on such conspiracy and in the case of misappropriation as statutorily mandated, there should not be joinder of charges in one trial for more than one year except as provided in section 219. One general conspiracy from 1988 to 1996 has led to various offences as such there have to be different trials for each of such offence based upon conspiracy in which different persons have participated at different times at different places for completion of the offence. Whatever could be combined has already been done. Thus we find no merit in the submissions made by learned senior counsel appearing on behalf of accused persons.

40. It was also submitted by learned counsel appearing on behalf of Sajal Chakraborty that the principle of issue estoppel is attracted to criminal trial and has relied upon decision in *Manipur Administration, Manipur v. Thokchom Bira Singh* AIR 1965 SC 87 in which it has been observed that the rule of issue *estoppel* in a criminal trial is that where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute *estoppel* against the prosecution. Said principle has been merged with the principle of *Autrefois acquit* as enshrined in section 300 Cr.PC. Learned counsel has also relied upon *Assistant Collector of Customs, Bombay & Anr. v. L.R.Melwani* AIR 1970 SC 962 in which this Court has observed that the issue estoppel rule is but a facet of the doctrine of *Autrefois acquit.* He has also referred to the decision of Supreme Court of the Federation of Malaya in *Sambasivan v. Public Prosecutor*, reported in (1950) AC 458, where two charges were framed for carrying a firearm and being in possession of ammunition the appellant being acquitted on the second charge but being subject to a second trial for the first charge, the Privy Council held that :

> "The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be

added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication." (Emphasis Supplied)

41. In *Manipur Administration* (supra) this Court has affirmed the decision in *Pritam Singh v. The State of Punjab* AIR 1956 SC 415 which in turn relied upon decision in *Sambasivan* (supra). Thus it was contended that CBI is barred from adducing evidence in respect of the allegations for which the respondent Sajal Chakraborty has been subsequently acquitted by the High Court and the conviction recorded by the trial court has been set aside. Finding had been recorded by the High Court that there was no mechanism with the respondent to check illegal withdrawal from treasury. Receiving of laptop and illegal gratification has not been proved as a reward and the accused did not take any step to find out causes of heavy withdrawal of Rs.50.56 lakhs in a single day by co-accused Dr. B.N. Sharma. Learned counsel has further submitted that earlier there was no such practice to send the yearly allocation information to the Deputy Commissioner. Thus the CBI cannot try the accused on the basis of same allegations *de novo*. There is no role of the accused in preparation of different fake bills. The prosecution of the respondent is for the same offence in RC 20A/96 and RC 68A/96 for which he has already been acquitted in RC No.51A/96. Learned counsel

had also submitted that for each separate bill, separate FIR should have been registered in case CBI stand is accepted. It was a series of acts forming part of the same transaction. It is unclear as to which of the several offences related to each bill during the tenure as District Collector was committed. Thus, there ought to be one trial only. Section 212 of Cr.PC does not cover those facts where the offence of criminal breach of trust has been clubbed with the offence of criminal conspiracy under section 120-B IPC.

42. Learned counsel has referred to decision in *Emperor v. Jhabbar Mull Lakkar* reported in (1922) ILR 49 Cal 924 wherein the Court has laid down thus :

> "6. It is conceded by the earned Counsel for the prosecution that the evidence which would be given in respect of the present charges, would be identical with the evidence given against the accused at the last Sessions, and the earned Counsel further informed me that the matter of the alleged false entries was investigated at the trial before my learned brother Mr. Justice Walmsley and the Jury. In other words, it was a part of the prosecution case, at the trial at the last Sessions, that the: accused had made the alleged false entries in the book for the purpose of a carrying out the alleged misappropriation, and with the intention of concealing his alleged breach of trust.
>
> 7. Since the case was argued last Friday I have considered the matter, and I have come to the conclusion that, on the facts of this case, the accused ought not to be put on his trial in respect of these charges. If he were so tried, in my judgment, it would in effect amount to trying him again for the same

offences as those upon winch he has already been tried and acquitted by the Jury, although the charges now before the Court are framed in a different manner.

8. Apart from this, I am not at present satisfied that, if it had been thought advisable to lay before the Court at the trial at the last Sessions, the facts as constituting offence under Section 477A as well as offences under Section 408, a form of procedure could not have been adopted for the purpose of carrying out such object.

9. Under these circumstances, in my judgment, it would not b; right to put the accused man on his trial for the second time in respect of the same evidence and in respect of the same matters upon which he has already been unanimously acquitted by the Jury." (Emphasis Supplied)

The said decision has no application to facts of the cases.

43. The counsel has referred to *State of Bombay v. Umarsaheb Buransaheb Inamdar* AIR 1962 SC 1153 dealing with the bar in section 222 of Cr.PC, 1898 corresponding to section 212 of Cr.P.C., 1973 and section 235 of old Code corresponding to section 220 of Cr.P.C. in which this Court has observed :

"6. The charge could have been split up into two charges, one with respect to the offence of criminal breach of trust committed with respect to be amount embezzled between March 6, 1949 and March 5, 1950 and the other with respect to the amount embezzled between March 6, 1950 and June 30, 1950. The two offences of criminal breach of trust could have been tried together in the present case, as the offences were said to have been committed in pursuance of the criminal conspiracy entered into by the accused. All the offences committed in pursuance of the conspiracy are

> committed in the course of the same transaction and therefore can be tried together at one trial, in view of sub-s. (1) of s. 235 of the Code which provides that if in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence. It is therefore clear that no prejudice was caused to the accused by the defect in the charge." (Emphasis Supplied)

The question of amalgamation and joint trial had already been concluded by this Court. The question of *Autrefois acquit* (double jeopardy) was not involved in the aforesaid decision.

44. *Gopal Prasad Sinha v. State of Bihar* (1971) 2 SCR 619 has also been relied upon for issue of estoppel. The Court has laid down:

> "The basic principle underlying the rule of issue-estoppel is that the same of fact and law must have been determined in the previous litigation. The question then arises : Was it the same issue of fact which was determined in the earlier case ? A person may be acting as a cashier at one period and may not be acting as a cashier at another period, especially as in this case it was found that the appellant had never been appointed as a cashier. He was a temporary senior accounts clerk who was alleged to be doing the work of a cashier. If there is any likelihood of facts or conditions changing during the two periods which are under consideration then it is difficult to say that the prosecution would be bound by the finding in a previous trial on a similar issue of fact. It seems to us that the later finding must necessarily be in contradiction of the previous determination. There can be no such contradiction if the periods are different and the facts relating to the carrying on of the duties of a cashier are different." (Emphasis Supplied)

Submission of issue of estoppel is based on presupposition that there is no likelihood of facts or conditions changing in different years. What would be the facts and conditions cannot be said before trial. Duty was to be performed at different times. Thus, the decision is of no utility. The decision does not support the cause espoused.

45. In the case of *Mills v. Cooper* (1967) 2 QB 459, the facts were that the defendant was accused of illegally camping on the highway under section 127 of the Highways Act, l959. One of the primary ingredients of such crime was being a 'gipsy'. There were two complaints registered against him, albeit on different dates. In the first case, he was accused of being a gipsy as on 22nd December, 1965 and he was acquitted. In the second case, he was accused of being a gipsy and illegally camping on 13th March, 1966. He took the plea of issue estoppel. Lord Parker, CJ & Lord Diplock, J. saw it differently whilst disallowing the plea of issue estoppel. They held that the second case came later in time and evidence with regard to his status as on the later date cannot be estopped. Being a gipsy was not a permanent disposition. Lord Diplock held that issue estoppel, in criminal proceedings takes the form of the 'rule against double jeopardy'. In that sense, issue estoppel is distinct when applied to

civil and criminal proceedings. In similar light, rejecting the application of issue estoppel to the facts of that case, Lord Parker, CJ held:

"I am by no means convinced, for reasons into which I find it unnecessary to go, that the doctrine as applied in civil cases has any application in criminal cases at all. I will, however, assume for the purposes of this case that it has. Even so, I am satisfied that it has no application in the present case, since the issue determined on the earlier occasion was that the defendant was not a gipsy on December 22, 1965, whereas the issue to be determined on the second occasion was whether he was a gipsy on March 13, 1966."

46. On the issue of estoppel, learned Solicitor General has relied upon *Masur Khan v. State of U.P.* (1974) 1 SCR 793 thus :

> "The Appellant pleaded on the ground of issue estoppel. The issue was regarding his citizenship. Earlier, he had been prosecuted by the SDM, Fatehpur u/s 14 of the Foreigners Act. He was then acquitted as not being a foreigner. Now he had been detained under Paragraph 5 of the Foreigners (Internment) Order, 1962. The Court dismissed the petition and therewith the argument of issue estoppel: "Here again it is to be remembered that the principle applies to two criminal proceedings and the proceeding with which we are now concerned is not a criminal proceeding. We therefore hold that there is no substance in this contention.
> The petition is dismissed.
> Whilst doing so, the Court retraced the jurisprudence on issue-estoppel starting with the verdict of Lord MacDermott in Sambasivam v. Public, Prosecutor, Federation of Malaya,

1950 AC. 458 as well as Pritam Singh v. State of Punjab (AIR 1956 SC 415) and Manipur Admn. v. T. Bira Singh (Supra)."

47. With respect to issue of estoppel in *R. v. Humphrys* (1976) 2 AER 497, Humphrys had previously been acquitted on a charge of driving a motorcycle whilst being disqualified to do so. During his trial he testified that he hadn't at all driven a motorcycle during that year and he was acquitted. Later, it was found that he had lied leading to a charge of perjury. Their Lordships were then faced with two broad issues: first, whether issue estoppel operated in criminal proceedings; second, even if issue estoppel was not recognised by the criminal law, was the bringing of a charge of perjury prevented by the generality of the double jeopardy doctrine? On the first issue, the one that was being addressed there, the House was unequivocal in its view that issue estoppel had no place in criminal proceedings.

48. In *Ravinder Singh v. Sukhbir Singh* (2013) 9 SCC 245, the appellant had come up in appeal against the High Court order dismissing his application for quashing of criminal proceedings initiated by R-1 under SC, ST (Prevention of Atrocities) Act, 1989. The dispute was over some agricultural land in Delhi over which multiple FIRs. and writs were filed. Counsel for the appellant pleaded on the grounds of issue estoppel

stating that the issue had already been settled by the High Court. While allowing the appeal, this Court then drew a distinction between 'issue-estoppel' and 'double jeopardy' holding the former not to be a bar on a second proceeding but merely acting as estoppel *qua* prior findings.

49. Thus, it is apparent that it is premature to raise the plea of issue of estoppel before evidence is recorded for different sets of accusations of different offences for different periods. Then it is difficult to say that prosecution would be bound by the finding in a previous trial on a similar issue of fact and there may not be any contradiction if the periods are different and with respect to culpability for different periods and without fear of contradiction, separate findings can be recorded. In what manner the duty has been carried on for different periods would be the question of fact in each case and there is no question of double jeopardy in such a case.

50. We are constrained to observe that the same learned Judge had taken a different view in Dr. R.K. Rana's case on the basis of same facts, and same question of law in the same cases. Judicial discipline requires that such a blatant contradiction in such an important matter should have been avoided. The order passed in the case of Dr. R.K. Rana was on sound basis and though the court had noted that there was some

overlapping of facts but the offences were different, it, however, has taken a different view in the impugned order for the reasons which are not understandable. The court ought to have been careful while dealing with such matters and consistency is the hallmark of the court due to which people have faith in the system and it is not open to the court to take a different view in the same matter with reference to different accused persons in the same facts and same case. Such inconsistent decision-making ought to have been avoided at all costs so as to ensure credibility of the system. The impugned orders are palpably illegal, faulty and contrary to the basic principles of law and Judge has ignored large number of binding decisions of this Court while giving impermissible benefit to the accused persons and delayed the case for several years. Interference had been made at the advanced stage of the case which was wholly unwarranted and uncalled for. Let now amends be made by expediting the trial without any further hindrance from any quarter.

51. Coming to the question of delay, we find that there is a delay of 113, 157 and 222 days in filing the respective appeals by the CBI. Applications have been filed for condonation of delay on account of the departmental, administrative procedures involved in for filing the special leave petition. It is submitted that unlike the private litigant the matters

relating to the Government are required to be considered at various levels and then only a decision is taken to file special leave petition. The process of referring the particular file from one department to another is a time consuming process and decisions have to be taken collectively.

52. It was submitted by Shri Ram Jethmalani, learned senior counsel appearing on behalf of the respondents that delay of 157 days has not been satisfactorily explained. The averments made in the applications seeking condonation of delay are based upon earlier authorities which no longer can be said to be good law. He has relied upon the decisions in *Postmaster General & Ors. v. Living Media India Ltd. & Anr.* (2012) 3 SCC 503 and *State of U.P. thr. Exe. Engineer v. Amar Nath Yadav* (2014) 2 SCC 422. His submission is that Law of Limitation binds everybody equally including the Government and defense by the Government of impersonal machinery and inherited bureaucratic methodology cannot be accepted in view of the modern technology being used and available; more so in the light of the aforesaid decisions. Delay in moving files from one department to another is not sufficient explanation for condoning abnormal delay. Condonation of delay is an exception and should not be used as an anticipated benefit for the Government department. The case was investigated by CBI from beginning to end and the CBI Manual

provides mechanism for filing appeal expeditiously. The CBI was bound by its Manual and in violation of the provisions contained in Manual without sufficient explanation, the delay cannot be condoned.

53. Reliance was also placed on *Ajit Singh Thakur & Anr. v. State of Gujarat* 1981 (1) SCC 495, which has been approved in *Pundlik Jalam Patil (D) by Lrs. v. Exe. Engg. Jalgaon Medium Project & Anr.* (2008) 17 SCC 448 that as per the conduct of the appellants they are not entitled for condonation of delay, more so, in view of the decision in *Binod Bihari Singh v. Union of India* (1993) 1 SCC 572 as t*here was suppression as to when the judgment was applied or received. CBI Manual has a statutory force as held in *Vineet Narain & Ors. v. Union of India & Anr.* (1998) 1 SCC 226 and the guidelines as to time frame should have been strictly adhered to as observed by this Court.

54. On the other hand, learned Solicitor General has submitted that delay deserves to be condoned. He has relied upon the decision of this Court in *Japani Sahoo v. Chandra Sekhar Mohanty* (2007) 7 SCC 394 in which it has been observed that in serious offences, prosecution is done by the State and the court of law should not throw away prosecution solely on the ground of delay. Mere delay in approaching a court of law would not by itself afford a ground for dismissing the case. He has also

referred to *Sajjan Kumar v. Union of India* (2010) 9 SCC 368 to contend that a prosecution should not be quashed merely on the ground of the delay. The aforesaid decisions cited of *Japani Sahoo* and *Sajjan Kumar* (supra) are with respect to the delay in institution of the case not with respect to sufficient cause in filing of appeals. However, reliance on the *State of Tamil Nadu v. M. Suresh Rajan* (2014) 11 SCC 709 is apt in which the time consumed in taking opinion on change of Government was held to be sufficient cause so as to condone the delay. Reliance has also been placed on *Indian Oil Corporation Ltd. & Ors. v. Subrata Borah Chowlek, etc.* (2010) 14 SCC 419 in which there was a delay in filing the appeals in which this Court has observed that Section 5 owes no distinction between State and citizen. The Court has to ensure that owing to some delay on part of the machinery, miscarriage of justice should not take place. It is also contended that the power under Section 5 of the Limitation Act should be exercised to advance substantial justice by placing reliance *on State of Nagaland v. Lipok AO & Ors.* (2005) 3 SCC 752.

55. In view of the averments made in the applications we are satisfied that delay has been sufficiently explained and considering the facts and circumstances of the case, gravamen of matter and also the divergent

views taken by the same Judge of the High Court in the same case vis a vis different accused persons on same question, we consider it our duty not to throw away petition on the ground of delay. The explanation offered by the CBI of movement of file so as to condone the delay so as to subserve the ends of justice, deserves to be accepted. No doubt about it that the CBI ought to have acted with more circumspection and ought to have followed the CBI Manual. It is regrettable that we are receiving majority of the special leave petitions filed in this Court barred by limitation not only on behalf of the Government but also by the other private litigants. Not only that the special leave petitions are preferred with the delay but in refiling also enormous time is consumed and this Court in order to advance substantial justice is not throwing away cases only on limitation.

56. Sufficiency of cause has to be judged in a pragmatic manner so as to advance cause of justice. No doubt about it that litigants are supposed to act with circumspection within limitation and that there should not be delay and laches and State machinery should not be differentiated *vis a vis* with the private individual in the matter of filing the appeals, petitions etc., however, in the facts and circumstances of the case and

considering the averments in the applications, we deem it appropriate to condone the delay in filing the appeals in this court.

57. In this case, we are surprised at the conduct of the CBI in such important matters how such delay could take place. The CBI ought to have been careful in filing the Special Leave Petitions within limitation considering the factual matrix of the case. The criticism made by the senior counsel for respondent is not wholly unjustified. CBI ought to be guided by its Manual. It is expected of it to be more vigilant. It has failed to live up to its reputation. In the instant case, lethargy on its part is intolerable. If CBI fails to act timely, peoples' faith will be shaken in its effectiveness. Let the Director of CBI look into the matter and saddle the responsibility on a concerned person. In important cases Director, CBI should devise methodology which should not be cumbersome as reflected in these cases, otherwise in future, Director, CBI cannot escape the responsibility for delay in such cases to be termed as deliberate one, which is intolerable. Being the head of the institution it was the responsibility of the Director, CBI to ensure that appeals were filed within limitation. There should not have been delay in filing special leave petitions at all.

58. Resultantly, we set aside the impugned judgments and orders passed by the High Court, allow the appeals and direct the trial court concerned to expedite the trial and to conclude the same as far as possible within a period of nine months from today.

.....J.
(ARUN MISHRA)

.....J.
(AMITAVA ROY)

NEW DELHI;
MAY 08, 2017.