(2010) 11 MAD CK 0326

Madras High Court

Case No: Criminal O.P. (MD) No. 2520 of 2009 and M.P (MD) No. 1 of 2009

S. Kasimayan — APPELLANT

Vs

The Inspector of Police, CBI ACB — RESPONDENT

Date of Decision: Nov. 18, 2010

Acts Referred:

- Constitution of India, 1950 - Article 14, 226
- Criminal Procedure Code, 1973 (CrPC) - Section 152(2), 156(1), 482
- Income Tax Act, 1961 - Section 17, 29, 3, 33, 4(1)
- Penal Code, 1860 (IPC) - Section 120(B), 169, 19, 2(9), 420
- Prevention of Corruption Act, 1947 - Section 5, 6
- Prevention of Corruption Act, 1988 - Section 13(2), 19

Hon'ble Judges: G. Rajasuria, J

Bench: Single Bench

Advocate: B. Kumar for M/s. Mohammed Asif, for the Appellant; S. Rozario Sundarraj, Special Public Prosecutor for CBI Cases, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

G. Raja Suria, J.
Animadverting upon the method and manner in which the F.I.R in R.C. No. 15 of 2009 has been registered by C.B.I, this petition is focussed to get it quashed.

2. Heard both sides.

3. Compendiously and concisely, the relevant facts absolutely necessary and germane for the disposal of this petition would run thus:

(i) Indubitably and indisputably, the Petitioner/A.1 was working as Recovery Officer in Madurai Debts Recovery Tribunal functioning under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as R.D.B.F. Act,)

and as against him, the C.B.I. registered the F.I.R. in R.C. No. 15 of 2009 and the relevant portion is extracted hereunder for ready reference:

INFORMATION

A reliable information has been received at the office of the Superintendent of Police, CBI,ACB, Chennai alleging that the accused persons A-1 to A-4 and others entered into criminal conspiracy at Madurai during the period from March to June 2008 to cheat the Debt Recovery Tribunal, Government of India and Dhanalakshmi Bank, by under valuing the properties to be auctioned. Consequently, A-1 by abusing his official position, auctioned the properties at the lower rate than the market rate to A-3 to A-4 and thereby caused wrongful loss to property owner as well as to the Dhanalakshmi Bank and corresponding wrongful gain to themselves.

The information revealed that the Debt Recovery Tribunal No. III, Mumbai in O.A. No. 2054/2000 vide Order dated 24.08.2004, had ordered to recover an amount of Rs. 19,03,118/-with simple interest @ 15% from Shri. M.R. Gopinathan, S/o Shri. M.N. Ramalingam, E-17, Sarvodaya Estte, Chembur, Mumbai, by auctioning the following three properties belonging to him, pledged with Dhanalakshmi Bank, Mumbai, as he failed to repay the loan availed from the said Bank.

(i) Land and building at Plot No. 22 in Survey No. 4245/20 and 4247/4 at Krishnapuram Colony, II nd Street, Maudrai with an upset price of Rs. 6.31 Lakhs.

(ii) Land at Plot No. 7 in Survey No. 22/2 Bibikulam village, LIC Colony, Madurai with an upset price of Rs. 1.50 Lakhs.

(iii) Land and Building at Plot T in Survey No. 2738/2A and 7A(New Nos. 4245/20 and 4247/4) with an upset price of Rs. 8.67 Lakhs.

As the above properties were located at Madurai, the proceedings were transferred to DRT Madurai, for further action.

The information revealed that, in pursuance of the said conspiracy, Shri S. Kasimayan, working as a public servant in the capacity of Recovery Officer, Debt Recovery Tribunal, Madurai has given Tender-cum-Auction Notice in a Tamil and English Newspaper for the said three properties viz., (i)Land and Building at Plot No. 22 in Survey No. 4245/20 and 4247/4 at Krishnapuram Colony, I Ind Street, Madurai with an upset price of Rs. 6.31 Lakhs, (ii)Land at Plot No. 7 in Survey No. 22/2 Bibikulam village, LIC Colony, Madurai with an upset price of Rs. 1.50 Lakhs and (iii)Land and building at Plot T in Survey No. 2738/2A and 7A(New Nos. 4245/20 and 4247/4) with an upset price of Rs. 6.87 Lakhs, to be auctioned on 24.04.2008. The information revealed that Shri. S. Kasimayan (A-1), by abusing his official position, fraudulently fixed the upset prices of the above mentioned properties in the year 2008 based on the valuation report of the year 2006.

In pursuance of the said criminal conspiracy, Shri Rajesh Kannan (A-3) only bidder for the properties at Sl.(i) and (iii) above, quoted Rs. 1,000/-more than the upset price fixed by A-1 i.e., 6.32 Lakhs and 8.68 Lakhs, respectively. For the property mentioned at Sl.(ii) above, out of the five bidders, Smt. R. Anitha(A-4) W/o R. Selvaraj (A-2) had quoted Rs. 1.55 Lakhs, against the upset price of Rs. 1.50 Lakhs, as the highest bidder.

In pursuance of the conspiracy the above properties (i) to(iii) were auctioned on 24.04.2008 by the A-1 by fraudulently quoting the market value for the year 2006 at Rs. 6.32 Lakhs, Rs. 1.5 Lakhs and 8.68 Lakhs respectively, whereas the assessment value for the above said properties for year 2008 were (i) Rs.13,35,150/-(ii) Rs.8,40,500/-and (iii) Rs. 19,55,700/-.

In pursuance of the said Criminal conspiracy, the properties at Sl. No. (i) and (iii) were auctioned to Shri. Rajesh Kannan (A-3) and the property at Sl. No. (ii) above was auctioned to Smt. R. Anitha (A-4) who is the wife of Shri. R. Selvarj (A-2) who is working as a UDC at the DRT Madurai and was closely associated with the proceedings of the office of DRT, Madurai. The information revealed that as per Debts Recovery Tribunals part II(Recovery of Debts due to Bank and Finance Institutions) Act, 1993 and IT Act 1961 u/s 17, Shri R. Selvarj (A-2) and Smt. Anitha(A-4) were prohibited against bidding and purchase of immovable properties auctioned by DRT, Madurai.

Information revealed that Shri. S. Kasimayan(A-1)and Shri. R. Selvaraj(A-2) and others unkown officials of DRT/Dhanalakshmi Bank, had managed to fix the value of the properties in the year 2008, at the prices valued in the year 2006 and auctioned the properties fraudulently and dishonestly to Shri. Rajesh Kannan (A-3) and R. Anitha (A-4) at a price much lesser than the market value as on 24.04.2008. Information further revealed that Shri. M.R. Gopinathan the property owner obtained a stay order from DRAT, Mumbai on 16.05.2008 as the properties were auctioned based on the valuation report of the year 2006.

In pursuance of the said criminal conspiracy, Shri S. Kasimayan (A-1) by abusing his official position, knowing fully well that a stay was granted by the Hon''ble DRAT, Mumbai on 16.05.08 against the auction of the above said three properties, fraudulently confirmed on 27.06.08, the sale of said properties to Shri. Rajesh Kannan (A-3) and Smt. R. Anitha (A-4) much below the market value and thereby had caused pecuniary advantage to A-3 and A-4, with a vested interest.

Thus by cheating the DRT and auctioning and purchasing the three properties worth Rs. 41,31,350/-at a cost of Rs. 16,55,000/-, A-1 to A-4 had caused a wrongful loss of Rs. 24,76,350/-to the property owner/Dhanalakshmi Bank and corresponding wrongful gain to themselves.

The above information prima facie discloses the commission of offences punishable u/s 120B, r/w 169 and 420 IPC and Section 13(2) r/w 13(1)(d) of P.C. Act, 1988, by A-1

Shri. S. Kasimayan, recovery officer, DRT, Madurai; A-2, Shri. R. Selvaraj, UDC, DRT, Madurai; A-3 Shri. Rajesh Kannan, Perumal Koil Street, Usilampatti Taluk, Madurai; A-4, Smt. R. Anitha, W/o. R. Selvaraj No. 24/146, Central Excise Staff Quarters, Meenambalpuram, Madurai and others.

(ii) C.B.I commenced the investigation. Whereupon, this Criminal Original Petition has been filed impugning and challenging the act of the C.B.I in registering the F.I.R without getting previous permission from the competent authority concerned, on various grounds inter alia thus:

(a) The act of selling the property in auction sale after fixing the upset price and confirming the same, is a judicial act irrespective of the fact whether the Recovery Officer is nomenclatured or designated, labelled or dubbed as a judge or not.

(b) The suo motu action taken by the C.B.I was unwarranted and that no one lodged a complaint also expressing grievance over the sale conducted by the Petitioner/A.1, the Recovery Officer.

4. Whereas on the side of the Respondent/complainant, it was contended inter alia thus:

The Recovery Officer by no stretch of imagination could be termed as a judge and his acts cannot be termed as judicial acts and he could be treated only as an Executive Official under the control of the Central Government and C.B.I being the Central Government Agency having competence to register an F.I.R and investigate into the cognizable offences, its act cannot be found fault with.

5. During arguments, it transpired that the main thrust of the contention to get quashed the F.I.R is based on the ground that the Petitioner/A.1''s act is a judicial act enjoying statutory protection.

6. Wherefore, the point for consideration is as to whether the F.I.R has to be quashed on the ground that the Petitioner/A.1''s act selling the property in auction sale and confirming the same, is a judicial act enjoying statutory protection, from being investigated by C.B.I suo motu after registering the F.I.R?

7. At the outset itself, I hark back to the following decisions of the Honourable Apex Court:

(i) State of Haryana and others Vs. Ch. Bhajan Lal and others, . An excerpt from it, would run thus:

The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers u/s 482 Code of Criminal Procedure can be exercised by the High Court either to prevent abuse of process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds

of cases wherein such power should be exercised:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

(ii) Jeffrey J. Diermeier and Anr. v. State of West Bengal and Anr. (2010) 6 SCC 243.

(iii) Preeti Gupta and Anr. v. State of Jharkhand and Anr. (2010) 7 SCC 667.

(iv) Shakson Belthissor v. State of Kerala (2010) 1 SCC 1412.

8. A mere reading of the decisions referred to supra of the Honourable Apex Court, would exemplify and demonstrate that the quashment of the F.I.R would arise only in the rarest of rare cases and that the power u/s 482 Cr.P.C which is based on the maxim "Quando aliquid mandatur, mandatur etomne per quod pervenitur ad illud."

(When anything is commanded, everything by which it can be accomplished is also commanded.) could be exercised, cautiously and sparingly and with circumspection.

9. At this juncture, it has to be considered as to whether the probe by C.B.I, is touching upon any judicial act or any non-judicial act.

10. Once it is found that the probe emanated centering on a judicial act, then the answer is at once clear that the previous permission from the higher authority in the same hierarchy at least, was required before entering upon such probe.

11. The learned Special Public Prosecutor would submit that in this case, the preliminary enquiries were made and thereafter alone, the suo motu F.I.R was registered and it is strictly in compliance with the directives governing the C.B.I probes and investigations.

12. The gist and kernel of the arguments as put forth by Mr. S. Rozario Sundarraj, learned Special Public Prosecutor for the Respondent would run thus:

(a) The Recovery Officer under the Act, is not a judge and none of his functions could be termed as judicial acts or judicial functions. He is only bound to execute the certificate issued by the D.R.T or the Appellate Tribunal in the hierarchy and nothing more.

(b) In this case, A.1 was deputed from the defence service and virtually he is an employee of the Central Government of India and he is not enjoying any immunity as that of a judge or judicial officer. The Judges (Protection) Act, 1985 and the Judicial Officers Protection Act, 1850, are not applicable to him. None of the decisions cited on the side of the Petitioner/A.1 could be pressed into service in favour of A.1 because he is not a judicial officer or a judge.

(c) A perusal of the F.I.R along with the typed sets would indicate and exemplify the manner in which A.1 had committed various misdeeds and also had conspired with others for the purpose of illegally selling the said property involved in the proceedings for a low price.

(d) The recovery of amount by conducting auction sale was relating to enforcement of a certificate sent from Mumbai Tribunal to Madurai. Even though the auction was conducted in the year 2008, the value during the year 2006 relating to the properties concerned was taken into account and in fact, when the debtor filed an application for considering the fresh and upto date valuation, A.1 passed order observing that the debtor could bring better offers at the time of auction sale, without refixing and enhancing the upset price.

(e) After the auction sale but before confirmation of sale, stay was obtained by the debtor from the appellate authority at Mumbai, but ignoring the same, A.1 confirmed the sale. The investigating agency also traced out various incriminating documents during the house search as against A.1. The property which was sold was taken in the name of the wife of a staff of the Debts Recovery Tribunal and various other illegalities also, were committed by A.1.

13. By way of attempting to torpedo and pulverise the arguments set out on the side of the C.B.I, Mr. B. Kumar, the learned Senior Counsel for the Petitioner would put forth and advance his arguments which could tersely and briefly be set out thus:

(a) Even though the Recovery Officer is not termed as a judge, the functions which he is carrying out while bringing the property for sale and confirming the same are necessarily judicial functions.

(b) The discretion is also vested with the Recovery Officer to fix the upset price as per law.

(c) The Recovery Officer under the Debts Recovery Tribunal is actually doing a very crucial task by selling the property in the process of recovering the amounts due.

(d) So far this case is concerned, the F.I.R is centered on the act of the Recovery Officer-A.1 in fixing the upset price and bringing it for sale and selling it and thereafter confirming it and in such a case, C.B.I did not obtain previous permission from the higher authority in the hierarchy concerned, but straight away registered the F.I.R and probed into A.1''s judicial act.

(e) The higher-up in the hierarchy of Debts Recovery Tribunal is the competent authority to decide as to whether the act performed by the Recovery Officer is right or wrong.

(f) Furthermore, the orders passed and the acts performed by the Recovery Officer are subject to being challenged in appeal. In fact, the judgment debtor preferred M.A. No. 318 of 2008 in Appeal No. 77 of 2008. There was a delay of 1269 days in filing the appeal. The Appellate Authority rejected the application for getting the delay condoned. Consequently, the appeal itself was dismissed. In such a case, the C.B.I was not justified in suomotu registering the F.I.R and probing into the matter.

(g) Section 29 of the R.D.B.F. Act, would usher in the Second and Third Schedules appended to the Income Tax Act, 1961, which would clearly point out that the Recovery Officer is enjoying the protection under the Judicial Officers Protection Act, 1850 and that itself is indicative of the fact that the acts performed by the Recovery Officer is protected by the Judicial Officers Protection Act, 1850 on the ground that his acts are judicial acts. In fact, the departmental probe by A.1''s higher official gave him clean chit. Accordingly, he prays for quashment of the F.I.R.

14. Whereas the learned Special Public Prosecutor would submit that the C.B.I completed the investigation and approached the Sanctioning Authority for getting sanction in terms of Section 19 of Prevention of Corruption Act.

15. The learned Senior Counsel for the Petitioner would submit that the submission made by the learned Special Public Prosecutor attacking the sale conducted by A.1 are not tenable for the reason that A.1 properly fixed the upset price after considering the available materials, but the debtor did not make use of the

opportunity given by A.1, the Recovery Officer for furnishing his valuations before fixing the upset price; only after the fixation of upset price, the debtor filed a petition suggesting higher price and for that, A.1 ordered that it was open for the debtor to bring prospective bidders to bid at the auction for higher price than the upset price fixed. According to him, the contention on the side of the Special Public Prosecutor that ignoring the stay order of the Appellate Tribunal, Mumbai, the sale was confirmed, was not correct as A.1 called upon the debtor to produce necessary stay order, but that was not produced. On the one hand, the C.B.I would contend that the sale effected by A.1 was fraught with fraudulent conduct on the part of A.1 and other accused; per contra, A.1 would contend that the sale was perfectly in order. At present, this Court is not at all concerned with the issues as to whether the upset price fixed was correct or not; whether the sale confirmed was correct or not and also as to whether such sale was actuated and fraught with fraudulent motives or purposes etc. or not.

16. In this factual matrix, this Court is concerned with the fact as to whether the acts of having brought the property for sale and confirmed it by the Recovery Officer under the Debts Recovery Tribunal could be termed as judicial acts.

17. The learned Special Public Prosecutor in support of his contentions cited the following precedents:

(i) Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corporation in Civil Appeal No. 4796 of 2009 dated 29.07.2009 (arising out of SLP.(C) No. 24715 of 2008)

(ii) Allahabad Bank v. Canara Bank AIR 2000 SC 1535.

(iii) Ravishankar Srivastava v. State of Rajasthan and Ors. 3 (2005) CCR 15.

18. In Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corporation in Civil Appeal No. 4796 of 2009 dated 29.07.2009 (arising out of SLP.(C) No. 24715 of 2008), no doubt, the Honourable Apex Court unambiguously and unequivocally, plainly and pellucidly has held that the Tribunal is not a civil Court and any final order passed by it cannot be termed as a decree. Absolutely, there is no quarrel over such a proposition. But, here, the point involved is as to whether the Recovery Officer''s acts are protected as judicial acts or not. The Recovery Officer as per law is having the duty to fix the upset price for bidding in the auction sale. In this case, the upset prices, it appears, were fixed by the Officer concerned taking into account the valuation as it existed during the year 2006, thus:

Whereas the learned Special Public Prosecutor would submit that the actual valuation during the year 2008 should have been taken into consideration and the upset price should have been fixed as under:

19. No doubt, in the year 2008, the property was sold, but, A.1 relied upon the valuation as it existed in year 2006 and furthermore, even before bringing the

property for sale, the judgment debtor himself furnished the higher valuation, for which, the Recovery Officer passed the order to the effect that he could bring bidders at the time of auction for bidding at a higher value than the upset price fixed by A.1 already. These are all judicial acts only in my considered opinion. To the risk of repetition and pleonasm, I would point out that as of now, I do not in any way decide the validity or otherwise of the said auction sale. In the civil Court, while bringing the property for sale, the executing judge is expected to fix the upset price after giving opportunity to both sides to furnish their respective valuations and thereafter, the Judge would fix the upset price and specify it in the proclamation of sale. In fact, the same procedures are being adopted by the Recovery Officer in fixing the upset price and in selling the property in auction and confirming the same. As such, in my considered opinion, the act of the Recovery Officer is no less than that of a judicial function and it is a judicial act. In fact, the judicial discretionary power is available with the executing judge as well as with the Recovery Officer in fixing the upset price.

20. Incontrovertibly and indubitably, indisputably and unassailably, the act of the Recovery Officer is not that of a mere clerical staff of the Debts Recovery Tribunal and at one point of time, the learned Special Public Prosecutor for the Respondent attempted to project the act of the Recovery Officer as that of a Court Amin only, which I with great respect to him, would observe that such an argument is ex facie untenable. Amin''s function, it is well known, is clerical in nature, and his function cannot be equated with that of the function of a Recovery Officer under the R.D.B.F. Act.

21. The learned Special Public Prosecutor would place reliance on Section 7 of the R.D.B.F. Act,, which would run thus:

7. Staff of Tribunal.-

(1) The Central Government shall provide the Tribunal [with one or more Recovery Officers] and such other officers and employees as that Government may think fit.

(2) [The Recovery Officers] and other officers and employees of a Tribunal shall discharge their functions under the general superintendence of the Presiding Officer.

(3) The salaries and allowances and other conditions of service of the [Recovery Officers] and other officers and employees of a Tribunal shall be such as may be prescribed.

(Emphasis Supplied)

22. Placing reliance on the same, the learned Special Public Prosecutor would submit that the Recovery Officer is termed only as staff in the Act and according to him, a staff cannot be equated to the level of a judge and the definition of a ''judge'' as in Black''s Dictionary is as under:

judge.-A public official appointed or elected to hear and decide legal matters in court.

would not in any way include the Recovery Officer, for which, the learned Senior Counsel for the Petitioner would invite the attention of this Court to Section 19 of the Indian Penal Code which would run thus:

19. "Judge".-The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person,

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations

(a) A Collector exercising jurisdiction in a suit under Act 10 of 1859, is a Judge.

(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(c) A member of a panchayat which has power, under Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.

(d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trail to another Court, is not a Judge.

(Emphasis Supplied.)

23. He would also rely upon Section 77 I.P.C which is extracted hereunder for ready reference:

77. Act of Judge when acting judicially.-Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

24. Placing reliance on the above provisions, the learned Senior Counsel for the Petitioner would develop his argument to the effect that there is no pre-condition for an official to get protection for his judicial acts that he should have been designated as a judge, but the acts which he performed should have been judicial acts.

25. A plain reading of Section 19 I.P.C would indicate and evince that irrespective of the fact as to whether a person is designated as a judge or not, he would be enjoying the status of a judge depending upon the acts he performs. In the illustration to Section 19 I.P.C., even a Collector exercising jurisdiction in a suit under

Act 10 of 1859, is treated as a judge. Similarly, in other illustrations (b) and (c) also, the same point is found highlighted and illustrated. As such, I cannot accept the contention of the learned Special Public Prosecutor that simply because the Recovery Officer was not designated as a judge, his official acts in the discharge of his duty cannot be taken as judicial acts.

26. Section 77 I.P.C is having wider application which I need not consider at this stage.

27. Nevertheless the Recovery Officer is contemplated u/s 7 of the R.D.B.F. Act, bearing the Section heading viz., ''Staff of Tribunal'', yet he should not be treated as a clerical staff.

28. It would not be out of place or context, to portray that the confirmation of sale is virtually a judicial act which is definitive and subject to appeal. Axiomatically, the Recovery Officer possesses all power to confirm the sale which implies the power not to confirm the sale and I am at a loss to understand as to how such an act cannot be termed as a judicial act. Adversarial proceedings are contemplated before the Recovery Officer and he has to adhere to the maxim "Audi alteram partem" (Hear the other side. No one should be condemned unheard.) and I stress upon the maxim "Jura naturae sunt immutabilia" (The laws of nature are unchangeable.) and the Recovery Officer as per law is enjoined to do such judicial act in adversarial proceedings. In an adversarial proceedings after hearing both, if any decision or adjudication is made, it in a sense tantamounts to judgment. Section 2(9) of the Code of Civil Procedure, defines a judgment as under:

2(9). "Judgment" means the statement given by the Judge on the grounds of a decree or order."

29. It is therefore just and necessary to extract Section 29 of the R.D.B.F. Act, as well as R.82 to Part VI of the Second Schedule to the Income Tax Act, 1961, hereunder:

29. Application of certain provisions of income tax Act.-The provisions of the Second and Third Schedules to the income tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the income tax:

Provided that any reference under the said provisions and the rules to the "Assessee" shall be construed as a reference to the Defendant under this Act.

Officers deemed to be acting judicially.

82. Every [Chief Commissioner or Commissioner], Tax Recovery Officer or other officer acting under this Schedule shall, in the discharge of his functions under this Schedule, be deemed to be acting judicially within the meaning of the Judicial Officers Protection Act, 1850 (18 of 1850).

(Emphasis Supplied.)

30. A mere reading of the provisions cited supra would unambiguously and unequivocally, pellucidly and palpably highlight and spotlight the fact that the Recovery Officer while bringing the property for sale, is doing certain acts, which are zealously protected by the statute namely the Judicial Officers Protection Act, 1850.

31. It is therefore clear that Section 29 of the Act read with the Second Schedule to Income Tax Act, does demonstrate and display that the acts performed by the Recovery Officer should be taken as judicial functions and they are protected by the Judges (Protection) Act, 1985. If an act of bringing the property for sale by the Recovery Officer cannot be termed as a judicial act, then there would have been no necessity for the legislators as per Section 29 of the Act, to usher in the Second Schedule of the Income Tax Act and also in mandating under the said Second Schedule that the Recovery Officer under the Income Tax Act should be protected by the Judicial Officers'' Protection Act, 1850.

32. The R.D.B.F. Act, itself was interpreted by the Honourable Apex Court in various decisions which would exemplify and indicate that not only pending suits should be transferred to the Debts Recovery Tribunal on the commencement of the Act, but also the execution proceedings pending in the civil Court. There was a doubt at one point of time as to whether the pending execution proceedings also should be transferred, for which the Honourable Apex Court''s dictum made all to understand that the execution proceedings also should be transferred from the civil Court to the Debts Recovery Tribunal.

33. Mr. B. Kumar, the learned Senior Counsel for the Petitioner would stress upon the fact that the very fact that even the execution proceedings having been transferred from the civil Court to Debts Recovery Tribunal for the Recovery Officer to execute the same by way of bringing the property for sale, would amply make the point clear that the Recovery Officers have been vested with the power to perform judicial acts in selling the properties and confirming the sale and their acts are protected as per the Judicial Officers'' Protection Act, 1850. Over and above that, the learned Senior Counsel for the Petitioner would cite one other Act, so to say, the Judges (Protection) Act, 1985.

34. No doubt, the Judges (Protection) Act, 1985, has not been referred to in the Second Schedule of the Income Tax Act. As a corollary, it should be taken that the said Act of 1985 also is protecting the Recovery Officer of Income Tax Department as well as the Debts Recovery Tribunal. The acts of Recovery Officer is termed as judicial act by the legislators themselves in view of Section 29 of the Act read with the Second Schedule to the Income Tax Act. The protection as contained in the Judges (Protection) Act, 1985, supplements the already existing protection under the Judicial Officers'' Protection Act, 1850 and it is quite obvious and axiomatic and no more elaboration and dilation in this regard is required.

35. The Recovery Officer under the Income Tax Act and the Recovery Officer under the R.D.B.F. Act,, should be construed as equally performing important functions and they are entitled to equal protection as per law and more specifically, as per Article 14 of the Constitution of India. I am at a loss to understand as to how it could be contended that the Judicial Officers'' Protection Act, 1850, could protect only the Recovery Officer under the Income Tax Act, 1961 and not the Recovery Officer under the R.D.B.F. Act, and that too, when Section 29 of the said Act contemplates that mutatis mutadis the Second and Third Schedules appended to the Income Tax Act, 1961, shall be applicable while recovering the dues under the R.D.B.F. Act,, by the Recovery Officer.

36. I recollect and call up the following maxims:

(i) Verba generalia generaliter sunt intelligenda. (General words are to be understood generally.)

(ii) Verba ita sunt intelligenda, ut res magis valeat quam pereat. (Words are to be so understood that the matter may have effect rather than fail.)

37. Accordingly, if interpreted and viewed in the wake of the concept of equal protection of the laws as envisaged under Article 14 of the Constitution of India, the Recovery Officer under the Income Tax Act, 1961 and the Recovery Officer under the R.D.B.F. Act,, should be accorded with equal protection and the Recovery Officer under the R.D.B.F. Act,, cannot be left high and dry while he is performing his functions which are tantamounting to judicial acts.

38. The learned Special Public Prosecutor for the Respondent would place reliance on the decision in Ravishankar Srivastava v. State of Rajasthan and Ors. 3 (2005) CCR 15. An excerpt from it, would run thus:

80. The Supreme Court, in the case of Raj Kishor Roy Vs. Kamleshwar Pandey and Another, , wherein the matter was pending for quashing of complaint on the ground that sanction u/s 197, Cr.P.C not obtained, has observed that question of sanction can be raised at any time after the cognizance of offence is taken, may be even at the time of conclusion of trial.

81. It is further held that it is mandatory where the act has been done by the public servant in the course of his service or in the discharge of his duty-protection u/s 197 not available, if the act complained of is not in connection with the discharge of official duty.

82. Applying the ratio decided by Hon''ble Supreme Court as in the instant case the Petitioner while in Jaipur away from his office has accepted the bribe and even otherwise without discussing on the merit of the case as trial is already commenced, the Petitioner in view of this judgment can raise the question before the trial. It is for the Petitioner to raise these questions before the Trial Court whether the sanction is necessary or not.

83. At this stage while considering the writ petition whether the FIR lodged against the Petitioner on the face value itself is false or not is only a question to determine by this Court. Even in the lack of obtaining sanction the FIR has been lodged, cannot said to be false at face value and on this ground the FIR cannot be quashed and set aside as per the principle laid down by the Hon''ble Supreme Court.

(Emphasis Supplied)

39. The perusal of the aforesaid decision would highlight that in the case cited supra, a member of the Revenue Board was proceeded against for the act of he having obtained bribe before exercising his power. In that connection, the learned Judge observed as such in the aforesaid extracted paragraphs 80, 81, 82 and 83. As such, that case is factually distinguishable. Here, the main thrust of the F.I.R is on the act of A.1 in fixing the upset price and selling the properties and confirming the same. As such, the said decision of Rajasthan High Court is not applicable to the facts of the present case.

40. The learned Special Public Prosecutor also would rely on the decision in Allahabad Bank v. Canara Bank AIR 2000 SC 1535 to highlight the point that R.D.B.F. Act is a special enactment and the Debts Recovery Tribunal has got exclusive jurisdiction and the functions cannot be equated with that of a civil Court. There could be no quarrel over such a proposition. But, here, as has been highlighted by me supra, the point involved is entirely different, so to say, this Court is probing into the fact as to whether the act of the Recovery Officer in bringing the property for sale and confirming the same, is a judicial act coming under the protective umbrage of the Judges (Protection) Act, 1985 and the Judicial Officers'' Protection Act, 1850 and also the directives of the Honourable Apex Court protecting the judicial functions or not.

41. The learned Senior Counsel for the Petitioner would cite the following decisions:

(1) M. Sumathi v. State (2009) 2 MLJ 413.

(2) Government of India represented by Assistant Commissioner, Central Excise Department (Legal), Madurai v. Sri Jayajothi and Co. Ltd in Crl.R.C. No. 1120 of 2003 dated 16.07.2009.

(3) Rajya v. The State of Bihar 1996 (40) MLJ 741.

(4) Allahabad Bank v. Canara Bank AIR 2000 SC 1535.

(5) Anowar Hussain Vs. Ajoy Kumar Mukherjee and Others, .

(6) Rachapudi Subba Rao Vs. Advocate General, Andhra Pradesh, .

(7) R. Balakrishna Pillai Vs. State of Kerala, .

(8) N.K. Ogle Vs. Sanwaldas @ Sanwalmal Ahuja, .

(9) Abdul Wahab Ansari v. State of Bihar and Anr. 2001 SCC 18.

(10) N. Kannadasan v. Ajoy Khose (2009) 7 SCC 1.

(11) Vineet Narain and Ors. v. Union of India and Anr. 1998 SCC 307. The aforesaid decisions are touching upon the factum of quashment based on a different factual analysis of the matter, with which at present this Court is not concerned.

42. The learned Senior Counsel for the Petitioner would also place reliance on the following decisions:

(1) R.P. Kapur Vs. The State of Punjab, .

(2) Shri Radhey Shyam Vs. Shyam Behari Singh, .

(3) Gajadhar Prasad and Others Vs. Babu Bhakta Ratan and Others, .

(4) Prabhu Dayal Deorah Vs. The District Magistrate, Kamrup and Others, .

(5) I.N. Saksena v. State of Madhya Pradesh AIR 1976 SC 2250.

(6) State of Karnataka Vs. L. Muniswamy and Others, .

(7) State of West Bengal and Others Vs. Swapan Kumar Guha and Others, .

(8) Chandrapal Singh and Others Vs. Maharaj Singh and Another, .

(9) Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, .

(10) Municipal Corporation of Delhi Vs. Purshotam Dass Jhunjunwala and Others, .

(11) Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, .

(12) State of U.P. Vs. R.K. Srivastava and Another, .

(13) Maganlal Vs. Jaiswal Industries, Neemach and Others, .

(14) State of Haryana and others Vs. Ch. Bhajan Lal and others, .

(15) Surjit and others Vs. Harbans Singh and others etc. etc., .

(16) Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta, .

(17) In Re. Ajay Kumar Pandey v. dated 20.09.1996. SC.

(18) Dr. D.C. Saxena v. dated 19.07.1997. SC.

(19) M/s. Pepsi Foods Ltd. v. Special Judicial Magistrate 1998 SC 128.

(20) U. Nilan Vs. Kannayyan (Dead) Through Lrs., .

(21) Hridaya Ranjan Pd. Verma v. State of Bihar AIR 2000 SC 2341.

(22) G. Sagar Suri and Another Vs. State of U.P. and Others, .

(23) Roy V.D. Vs. State of Kerala, .

(24) R.M. Rajendran and Anr. v. Recovery Officer Indian Bank, Debts Recovery Tribunal, Anna Salai, Chennaiand Anr. (2000) 2 M.L.J.171.

(25) Divya Manufacturing Company (P) Ltd. Vs. Union Bank of India and Others, .

(26) Union of India and Another Vs. Delhi High Court Bar Association and Others, .

(27) Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi, .

(28) B.S. Joshi and Others Vs. State of Haryana and Another, .

(29) Ajay Mitra Vs. State of M.P. and Others, .

(30) R. Sai Bharathi v. J. Jayalalitha AIR 2004 SC 692.

(31) N.S. Gnaneswaran v. State (2004) M.L.J. 435.

(32) Keshrimal Jivji Shaj and Anr. v. Bank of Maharashtra and Ors. 4 (2004) BC 6 (DB).

(33) P. Mohanreddy and Others Vs. Debts Recovery Appellate Tribunal and Others, .

(34) Anil Maharajan v. Bhor Industries Ltd. and Anr. (2005) 10 SCC 228.

(35) Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, .

(36) Indian Oil Corporation Vs. NEPC India Ltd. and Others, .

(37) All Cargo Movers (I) Pvt. Ltd. and Others Vs. Dhanesh Badarmal Jain and Another, .

(38) Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, .

(39) Vir Prakash Sharma v. Anil Kumar Agarwal (2007) 7 SCC 373 .

(40) Madan Mohan Abbot Vs. State of Punjab, .

(41) Nikhil Merchant Vs. Central Bureau of Investigation and Another, .

(42) Lakshmi Shankar Mills (P) Ltd. v. The Authorised Officer/Chief Manager, Indian Bank 2008 (2) CTC 529.

(43) K. Veeraswami Vs. Union of India (UOI) and Others, .

(44) Goodwill Paint and Chemical Industry Vs. Union of India and another, .

(45) Uttar Pradesh Judicial Officers'' Association v. Union of India and Ors. 1994 SCC 1321.

(46) U.P. Judicial Officers'' Asso. Vs. Union of India (UOI) and Others, .

(47) Sanjos Jewellers v. Syndicate Bank (2007) 6 MLJ 755

43. Among the voluminous precedents, only a few are relevant for deciding this Criminal Original Petition and I incline to refer to those crucial ones infra.

44. The most crucial decision is U.P. Judicial Officers'' Asso. Vs. Union of India (UOI) and Others, . An excerpt from it, would run thus:

... The Counsel also urged that some additional guidelines be issued to the effect that before lodging an FIR against any judicial officer, the permission of the Chief Justice of the High Court should be obtained irrespective of the nature of the offence and irrespective of the fact that the alleged offence are in discharge of his official duty or purported discharge of his official duty. We do not think it necessary to issue any such direction, as at present in the case in hand. The interim orders and directions issued in this case as well as the guidelines indicated by this Court in the case of Delhi Judicial Service Association (supra) are sufficient to protect the independence of the judicial officers.

Having heard the learned Counsel for the parties, we dispose of this matter by directing the prosecution to proceed with the criminal case as expeditiously as possible, and we further direct that the disciplinary authority should initiate/take appropriate disciplinary action against the errant police officer. This writ petition is disposed of accordingly with the aforesaid observations. The disciplinary authority would do well in reporting to this Court what action has been taken in this matter.

45. A mere perusal of it would clearly exemplify and indicate that the Honourable Apex Court zealously wanted to protect the judicial functions being probed into by the investigating agency holus bolus. If an investigating agency is allowed to probe into the judicial functions, then the persons enjoined to perform such act would have a fear that they are being watched by the investigating agency and at any time, they may bounce upon them. At this context, the following maxim could fruitfully be referred to:

De fide et officio judicis non recipitur quaestio, sed de scientia sive sit error juris sive facti. (The honesty and integrity of a judge cannot be questioned, but his decision may be impugned for error either of law or of fact.) As such, the Honourable Apex Court in the aforesaid judgment and also in the earlier judgments, highlighted and stressed that for enabling the officials to perform judicial functions and acts, without any fear or favour, protection should be given to such persons from they being investigated straight away. With that in mind alone, the Honourable Apex Court in the aforesaid judgments, laid down the law that the judicial functions and acts should be protected.

46. The learned Special Public Prosecutor once again would advance his argument that the judicial functions performed by the judicial officers and the personnel in the cadre of judicial officers are protected by the Honourable Apex Court''s judgment

and not acts of the persons like the Recovery Officers who are only the staff of the Tribunals and even Presiding Officers of the Tribunals are not judges and in such a case, the Recovery Officers working under those Presiding Officers by no stretch of imagination could be termed as judges or persons performing the judicial acts or judicial functions.

47. My discussion supra touching upon the judicial function and act would highlight that the Recovery Officers also are performing judicial acts as in this case and before their judicial acts are being probed into, previous permission from their higher-up in that hierarchy is required.

48. For the purpose of comprehensively deciding the issue, I would like to refer to the other decisions of the Honourable Apex Court also as under:

(i) In K. Veeraswami Vs. Union of India (UOI) and Others, , the Honourable Apex Court laid down the law to the effect that the High Court Judges and the Supreme Court Judges being constitutional functionaries should be protected.

(ii) In Goodwill Paint and Chemical Industry Vs. Union of India and another, also, the Honourable Apex Court laid down the law as under:

(A) If a Judicial Officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.

(B) If facts and circumstances necessitate the immediate arrest of a Judicial Officer of the subordinate judiciary, a technical or formal arrest may be effected.

(C) The fact of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court.

(D) The Judicial Officer so arrested shall not be taken to a police station, without the prior order or directions of the District and Sessions Judge of the concerned district, if available.

(E) Immediate facilities shall be provided to the Judicial Officer for communication with his family members, legal advisers and Judicial Officers, including the District and Sessions Judge.

(F) No statement of a Judicial Officer who is under arrest be recorded not any panchnama be drawn up nor any medical tests be conducted except in the presence of the Legal Adviser of the Judicial Officer concerned or another Judicial Officer of equal or higher rank, if available.

(G) There should be no handcuffing of a Judicial Officer. If however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be overpowered and handcuffed. In such case, immediate report shall be made to the District and Sessions Judge concerned and also to the Chief Justice of the High

Court. But the burden would be on the police to establish the necessity for effecting physical arrest and handcuffing the Judicial Officer and if it be established that the physical arrest and handcuffing of the Judicial Officer was unjustified, the police officers causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally liable for compensation and/or damages as may be summarily determined by the High Court.

49. Subsequently, the Honourable Apex Court, so to say, the Constitutional Bench of the Honourable Apex Court in U.P. Judicial Officers'' Asso. Vs. Union of India (UOI) and Others, , as set out earlier, pointed out that even the registration of F.I.R and probing into the judicial acts should be protected.

50. The learned Senior Counsel for the Petitioner would place reliance on the decision in Rachapudi Subba Rao Vs. Advocate General, Andhra Pradesh, . Certain excerpts from it, would run thus:

8. The contention is clearly unsustainable. Section 1 of the Judicial Officers Protection Act, 1850 provides: "No Judge, Magistrate, justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction:

Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person, acting judicially shall be liable to be sued in any civil court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

9. As pointed out by this Court in Anwar Hussain v. Ajay Kumar Mukherjee 1 the section affords protection to two broad categories of acts done or ordered to be done by a judicial officer in his judicial capacity. In the first category fall those acts which are within the limits of his jurisdiction. The second category encompasses those acts which may not be within the jurisdiction of the judicial officer, but are, nevertheless, done or ordered to be done by him, believing in good faith that he had jurisdiction to do them or order them to be done.

10. In the case of acts of the first category committed in the discharge of his judicial duties, the protection afforded by the statute is absolute, and no enquiry will be entertained as to whether the act done or ordered to be done was erroneous, or even illegal, or was done or ordered without believing in good faith.

11. In the case of acts of the second category, the protection of the statute will be available if at the time of doing, ordering the act, the judicial officer acting judicially, in good faith believed himself to have jurisdiction to do or order the same. The expression "jurisdiction" in this section has not been used in the limited sense of the

term, as connoting the "power" to do or order to do the particular act complained of, but is used in a wide sense as meaning "generally the authority of the judicial officer to act in the matters". Therefore, if the judicial officer had the general authority to enter upon the enquiry into the cause, action, petition or other proceeding in the course of which the impugned act was done or ordered by him in his judicial capacity, the act, even if erroneous, will still be within his "jurisdiction", and the mere fact that it was erroneous will not put it beyond his "jurisdiction". Error in the exercise of jurisdiction is not to be confused with lack of jurisdiction in entertaining the cause or proceeding. It follows that if the judicial officer is found to have been acting in the discharge of his judicial duties, then, in order to exclude him from the protection of this statute, the complainant has to establish that (1) the judicial officer complained against was acting without any jurisdiction whatsoever, and (2) he was acting without good faith in believing himself to have jurisdiction.

As such, there is no quarrel over such a proposition.

51. The core question arises as to whether in this case the act of A.1 in selling the properties and confirming the same could be taken as one protected by virtue of the decision in U.P. Judicial Officers'' Asso. Vs. Union of India (UOI) and Others, and Section 29 of the R.D.B.F. Act read with Second Schedule to the Income Tax Act, 1961.

52. In my considered opinion, the protection extended to Judicial Officers and Recovery Officers under the Income Tax Act, should be taken as the one extended to all acts performed by all Tribunals and the Recovery Officers attached to such Tribunals irrespective of the fact as to whether the personnel performing such officials are having the designation of a judge or not.

53. The learned Special Public Prosecutor for the Respondent would informatively submit that only the Joint Secretaries and the Officials above the level of such officials of the Central Government do enjoy certain immunities and if the C.B.I wants to register an F.I.R against such personnel, then previous permission should be obtained from the authority concerned and not in respect of any other officials. According to him, A.1 enjoys only the status of an Under Secretary as per the Central Government norms and in such a case, he cannot press into service such immunity.

54. I call up and recollect the view of the Honourable Apex Court in Vineet Narain and Ors. v. Union of India and Anr. 1998 SCC 307 and the relevant portions are extracted hereunder:

42. Once the jurisdiction is conferred on the CBI to investigate an offence by virtue of notification u/s 3 of the Act, the powers of investigation are governed by the statutory provisions and they cannot be estopped or curtailed by any executive instruction issued u/s 4(1) thereof. This result follows from the fact that conferment of jurisdiction is u/s 3 of the Act and exercise of powers of investigation is by virtue of the statutory provisions governing investigation of offences. It is settled that

statutory jurisdiction cannot be subject to executive control.

43. There is no similarity between a mere executive order requiring prior permission or sanction for investigation of the offence and the sanction needed under the statute for prosecution. The requirement of sanction for prosecution being provided in the very statute which enacts the offence, the sanction for prosecution is a prerequisite for the court to take cognizance of the offence. In the absence of any statutory requirement of prior permission or sanction for investigation, it cannot be imposed as a condition precedent for initiation of the investigation once jurisdiction is conferred on the CBI to investigate the offence by virtue of the notification u/s 3 of the Act. The word "superintendence" in Section 4(1) of the Act in the context must be construed in a manner consistent with the other provisions of the Act and the general statutory powers of investigation which govern investigation even by the CBI. The necessity of previous sanction for prosecution is provided in Section 6 of the Prevention of Corruption Act, 1947 (Section 19 of the 1988 Act) without which no court can take cognizance of an offence punishable u/s 5 of that Act. There is no such previous sanction for investigation provided for either in the Prevention of Corruption Act or the Delhi Special Police Establishment Act or in any other statutory provision. The above is the only manner in which Section 4(1) of the Act can be harmonised with Section 3 and the other statutory provisions.

44. The Single Directive has to be examined in this background. The law does not classify offenders differently for treatment thereunder, including investigation of offences and prosecution for offences, according to their status in life. Every person accused of committing the same offence is to be dealt with in the same manner in accordance with law, which is equal in its application to everyone. The Single Directive is applicable only to certain persons above the specified level who are described as "decision-making officers". The question is whether any distinction can be made for them for the purpose of investigation of an offence of which they are accused.

45. Obviously, where the accusation of corruption is based on direct evidence and it does not require any inference to be drawn dependent on the decision-making process, there is no rational basis to classify them differently. In other words, if the accusation be of bribery which is supported by direct evidence of acceptance of illegal gratification by them, including trap cases, it is obvious that no other factor is relevant and the level or status of the offender is irrelevant. It is for this reason that it was conceded that such cases, i.e., of bribery, including trap cases, are outside the scope of the Single Directive. After some debate at the Bar, no serious attempt was made by the learned Attorney General to support inclusion within the Single Directive of cases in which the offender is alleged to be in possession of disproportionate assets. It is clear that the accusation of possession of disproportionate assets by a person is also based on direct evidence and no factor pertaining to the expertise of decision-making is involved therein. We have,

therefore, no doubt that the Single Directive cannot include within its ambit cases of possession of disproportionate assets by the offender. The question now is only with regard to cases other than those of bribery, including trap cases, and of possession of disproportionate assets being covered by the Single Directive.

46. There may be other cases where the accusation cannot be supported by direct evidence and is a matter of inference of corrupt motive for the decision, with nothing to prove directly any illegal gain to the decision-maker. Those are cases in which the inference drawn is that the decision must have been made for a corrupt motive because the decision could not have been reached otherwise by an officer at that level in the hierarchy. This is, therefore, an area where the opinion of persons with requisite expertise in decision-making of that kind is relevant and, may be even decisive in reaching the conclusion whether the allegation requires any investigation to be made. In view of the fact that the CBI or the police force does not have the expertise within its fold for the formation of the requisite opinion in such cases, the need for the inclusion of such a mechanism comprising of experts in the field as a part of the infrastructure of the CBI is obvious, to decide whether the accusation made discloses grounds for a reasonable suspicion of the commission of an offence and it requires investigation. In the absence of any such mechanism within the infrastructure of the CBI, comprising of experts in the field who can evaluate the material for the decision to be made, introduction therein of a body of experts having expertise of the kind of business which requires the decision to be made, can be appreciated. But then, the final opinion is to be of the CBI with the aid of that advice and not that of anyone else. It would be more appropriate to have such a body within the infrastructure of the CBI itself.
47. The Single Directive cannot, therefore, be upheld as valid on the ground of it being permissible in exercise of the power of superintendence of the Central Government u/s 4(1) of the Act. The matter has now to be considered dehors the Single Directive.

55. Wherefore, from the excerpts supra, it is crystal clear that the Honourable Apex Court even went to the extent of striking down the notification protecting the higher officials from they being probed by C.B.I. However, the Honourable Apex Court clearly held as earlier pointed out that the judicial functions should be protected.

56. This Court raised a query to the learned Special Public Prosecutor for the Respondent as to whether the C.B.I complied with C.B.I Manual which contemplates certain pre-conditions before registering the F.I.R, for which the learned Special Public Prosecutor would at once submit that the preliminary enquiries were made by the C.B.I before registering the F.I.R and it is not as though holus bolus the F.I.R was registered as against A.1 and others. According to him, C.B.I always au fait with law and au curante with facts initiate proceedings and not haphazardly and that there is no dewy eyed approach or vindictive approach in this matter.

57. The plea of Res judicata as put forth on the Petitioner/A.1''s side is a misconceived one as simply because some probe was effected by some person and no further action was taken, cannot be pitted as against the present F.I.R and pray for quashment of the F.I.R. The criminal proceedings are different from departmental proceedings or non-criminal proceedings. I firmly hold that the principle of Res judicata based on the following maxims,

(i) Res judicata pro veritate accipitur. (A matter adjudged is taken for truth.)

(ii) Nemo debet bis vaxari pro una et eadem causa. (No one ought to be twice troubled for one and the same cause.)

(iii) Nemo debet bis puniri pro uno delicto. (No one ought to be punished twice for the same offense.)

(iv) Autrefois acquit. (A plea in bar of arraignment that the Defendant has been acquitted of the offense.)

(v) Autrefois convict. (A plea in bar of arraignment that the Defendant has been convicted of the offense.), cannot be pressed into service by the Petitioner/A.1. However, it is for the Sanctioning Authority to consider the factum of the said previous non-criminal proceedings alleged to have taken and dropped, while viewing as to whether sanction could be granted or not.

58. The learned Special Public Prosecutor placing reliance on Section 33 of the R.D.B.F. Act, would develop his argument that if at all good faith is involved in an act, the question of non-prosecution would arise. In fact, the learned Senior Counsel for the Petitioner would also rely upon the very same section of law and argue that in view of the said provision, bad faith or good faith as pointed out, could be probed into only after obtaining previous permission from the competent authority. Precisely, as the impugned act comes within the ostensible power of the official, no probe straight away could be undertaken by C.B.I without such previous permission, as otherwise, such protection u/s 33 of the Act would be rendered illusory and nugatory.

59. The pertinent question now arises is as to whether previous permission from the higher-up in the hierarchy of the Debts Recovery Tribunal before registering the F.I.R as against the Recovery Officer for he having committed the alleged illegalities in bringing the property for sale and confirming the same, was obtained or not, for which the obvious answer is that no such permission was obtained. The very subject matter of probe by C.B.I itself is relating to the fixation of upset price and in selling the property and in confirming the sale, which are part and parcel of the Recovery Officer''s official duties and in such a case, C.B.I should have obtained previous permission from the higher-up in the hierarchy of the Debts Recovery Tribunal to probe into such conduct and that only would have been in commensurate with the dicta as found enunciated in the decisions of the Honourable Apex Court as well as

in Indian Penal Code; the Judges (Protection) Act, 1985; the Judicial Officers'' Protection Act, 1850 and Section 29 of the R.D.B.F. Act, read with Second Schedule appended to the Income Tax Act.

60. The learned Senior Counsel for the Petitioner would submit that once it is found that the F.I.R was registered without getting previous permission from the higher-up in the hierarchy, then the F.I.R itself has to be quashed, leaving the C.B.I to get previous permission from the higher-up in the hierarchy and afresh deal with the matter and investigate into it if they so decide and desire. According to him, without such permission if F.I.R is registered in matters of this nature, it should be taken as void ab initio and accordingly, irrespective of the consequences, the F.I.R should be quashed.

61. Now, the core question arises as to whether the F.I.R itself should be quashed.

62. It is quite clear that now as stated by the learned Special Public Prosecutor, the matter is already before the Sanctioning authority u/s 19 of P.C. Act, for granting sanction. The Sanctioning authority unambiguously is the highest authority having control over A.1 and in such a case, it would be a futile exercise to quash the F.I.R and direct the C.B.I to once again probe into it after getting permission. Since the case has reached the stage of obtaining the permission from the Sanctioning Authority which is the highest authority having the control over A.1, I instead of quashing the F.I.R, issue direction that the Sanctioning Authority shall consider the finding of this Court and also the relevant acts and take a decision as to whether in the facts and circumstances of this case, sanction could be granted or not.

63. I recollect and call up the following maxim:

Omnis ratihabitio retrotrahitur et mandato priori aequiparatur. (Every subsequent ratification has a retrospective effect and is equivalent to a prior command.) I am fully aware of the fact that the expose facto permission should be an exceptional one and not a routine one to be adhered to as a rule of practice. If it is done as a routine, the very safeguard itself would be rendered nugatory and that would become illusory. This is a singularly singular case for the reason that so far there is no clear cut direct decision or precedent available pertaining to the registration of F.I.R as against the Recovery Officer of the Debts Recovery Tribunal relating to illegality in the conduct of sale and confirmation of sale. As suggested by the learned Senior Counsel for the Petitioner, if F.I.R is quashed leaving the C.B.I to obtain necessary permission from the higher-up for afresh conducting the investigation, then that would look odd and unconvincing as per jurisprudence and common sense and the C.B.I will have to undergo the rigmarole of once again doing the same investigation. The Sanctioning Authority is the highest authority so far A.1 is concerned and it is for the Sanctioning Authority now to consider as per the mandate of this Court as to whether the previous permission would have been granted by the Sanctioning Authority for registering the F.I.R, had it been brought to

its knowledge by the C.B.I before registering the F.I.R.

64. No doubt, in the decision of the Honourable Apex Court in U.P. Judicial Officers'' Asso. Vs. Union of India (UOI) and Others, , it is found exemplified that previous permission from the Chief Justice of High Court concerned should be obtained before registering the F.I.R; but, so far the Recovery Officers of the Debts Recovery Tribunal are concerned, it cannot be inferred that to register an F.I.R as against the Recovery Officers, the Chief Justice of the High Court concerned should be approached as that would be onerous, however, by analogy, it should be taken that the higher-up in the hierarchy of the Tribunal should be approached for getting previous permission before registering the F.I.R and these features are not precisely with clarity already found exemplified in any precedents.

65. At this juncture, I would like to distinguish a case of quashment of F.I.R on the ground of non-availability of prima facie case attracting the ingredients of a particular offence with that of a case of this nature on hand. Without any second thought, the F.I.R has to be quashed if the materials disclose that no offence has been made out ex facie from the averments and the circumstances, but this is not a case of that nature as it is quite obvious from my discussion supra. The distinction sought to be made by me is not one that of tweedledum and tweedledee or six of the one and half a dozen of the other or between rock and hard place, but it is one that of chalk and cheese. As such, in these circumstances, even though this Court is giving a finding that the C.B.I could have obtained previous permission from the higher-up in the hierarchy before registering the F.I.R, as against A.1, yet I do not incline to quash it, but I would like to direct the Sanctioning Authority to consider before according sanction u/s 19 of the P.C. Act, the aforesaid factors set out in this judgment.

66. The learned Special Public Prosecutor made an extempore submission that the Sanctioning Authority u/s 19 of the P.C. Act, is not a party to this petition. That makes no difference as I am of the considered view that this Court now only directs the Sanctioning Authority to consider these facts before according sanction. The Sanctioning Authority has not been found fault with in this matter and no adverse remarks have been passed by this Court as against such authority. Wherefore, the non-impleadment of the Sanctioning Authority would not in any way incapacitate this Court in passing the direction as set out supra in this order. It is for the C.B.I. to bring to the knowledge of the Sanctioning Authority the order of this Court along with other papers and do the needful.

67. Accordingly, this Criminal Original Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed.