IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.464 OF 2021

Reliance Industries Limited)
Having its address at 3rd Floor,)
Maker Chambers IV, 222,)
Nariman Point, Mumbai 400 021) ….Petitioner

V/s.

1. Chief Commissioner of Income Tax)
Tax-2, Room Nos.334/371-A,)
Ayakar Bhavan, Maharshree Karve)
Road, Mumbai 400 020)

2. Union of India)
Through the Secretary, Department of)
Revenue Ministry of Finance,)
Government of India, North Block,)
New Delhi 110001) …Respondents

Mr. Vikram Nankani, Senior Advocate a/w Mr. P. C. Tripathi, Mr. Amit Mathur, Mr. Dhruv Nyayadhish and Mr. Mehul Talera i/b Mr. Raj Darak for Petitioner
Mr. Anil C Singh, Additonal Solicitor General a/w Mr. Suresh Kumar, Mr. Aditya Thakkar, Ms Smita Thakur, Mr. Pranav Thackur, Ms Mohinee Chougule and Mr. Arjun Gupta for Respondents

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CORAM : K.R. SHRIRAM &
AMIT B BORKAR, JJ.
RESERVED ON: 30th NOVEMBER , 2021
PRONOUNCED ON: 23rd DECEMBER 2021

JUDGMENT (PER K. R. SHRIRAM J.) :

1 Rule. Rule made returnable forthwith and heard and disposed at the admission stage itself with the consent of the parties.

Heard, Shri Nankani, Shri Anil Singh and considered the pleadings and written submissions.

2 Petitioner originally filed the petition challenging the communication dated 25th January 2021 withdrawing the earlier communication dated 21st October 2020 issued by the office of Chief Commissioner of Income Tax, Mumbai. By this communication dated 21st October 2020, petitioner was informed that they are eligible for resolution of tax disputes under the provisions of the Direct Tax Vivad Se Vishwas Act 2020 (DTVSV Act). According to petitioner, relying on this communication petitioner had filed several applications for resolution of tax disputes. It is petitioner's case that the stand of respondents is contrary to the plain language of Section 9(c) of the DTVSV Act.

3 Petitioner is desirous of availing the benefit of DTVSV Act with respect to certain pending income tax litigations before various appellate levels. By an application dated 15th April 2020, petitioner sought clarification from the revenue with respect to its eligibility under the DTVSV Act. A doubt regarding petitioner's eligibility occurred in the mind of petitioner because of the following two proceedings:-

> (A) FIR No.17/2014 dated 11th February 2014 under Section "Section 13(1)(c) and (d) of Prevention of Corruption Act (PCA) and 420/120 B of the Indian Penal Code (IPC) registered by Anti Corruption Bureau of the National Capital Territory of Delhi dated 14th February 2014 where no charge sheet has been filed. The Accused persons include petitioner. (hereinafter referred to as the first proceeding)

(B) Special CBI Case No.91 of 2011 pending before Special Judge for Greater Mumbai wherein the Ld. Special Judge has taken cognizance for "offences punishable under Section 120B r/w 420 of IPC and u/s 13(2) r/w 13(1)(d) of PC Act against the accused in the matter. The Accused named in the chargesheet include petitioner. (hereinafter referred to as the second proceeding)

4 Respondent no.1, by letter dated 21st October 2020, replied to petitioner's application dated 15th April 2020 that petitioner was eligible / entitled to avail the benefit of DTVSV Act in accordance with law. Following the said communication, petitioner filed 27 applications for resolution of disputes under the DTVSV Act as mentioned in paragraph 4(M) of the Petition. In the petition that was lodged on 29th January 2021 it is also stated that petitioner was proposing to file further applications before the last date of filing of the application, i.e., 31st January 2021 and petitioner was ready and willing to pay the amounts as per the orders passed under the DTVSV Act.

Thereafter, petitioner received a letter dated 25th January 2021 from respondent no.1, whereby respondent no.1 conveyed to petitioner that in view of the provisions of Section 9(c) of the DTVSV Act, since the prosecution was instituted against petitioner under the Prevention of Corruption Act 1988 (PC Act), the letter dated 21st October 2020 issued to petitioner was contrary to the said provisions and withdrew the letter dated 21st October 2020.

5 Aggrieved by the said withdrawal, petitioner filed this petition impugning the letter dated 25th January 2021. Subsequently petitioner has, upon leave being granted amended the petition when petitioner's 27 applications / declarations filed under the DTVSV Act were rejected. Petitioner has also impugned the rejection of petitioner's applications under the DTVSV Act and has also sought declaration to hold and declare that petitioner is not rendered ineligible under the DTVSV Act on the ground stated in the letter dated 25th January 2021, i.e., prosecution was instituted against petitioner under PC Act.

6 Admittedly, the first and second proceedings are the hurdles for petitioner. These two proceedings are still pending. In any event, they were pending on the date the declaration was filed by petitioner under the DTVSV Act. Section 9(c) of the DTVSV Act reads as under:

> *"9. The provisions of this Act shall not apply :-*
>
> *(a)……*
>
> *(b)……*
>
> *(c) to any person in respect of whom prosecution for any offence punishable under the provisions of the Unlawful Activities (Prevention) Act 1967, the Narcotic Drugs and Psychotropic Substances Act 1985, the Prevention of Corruption Act, 1988, the Prevention of Money Laundering Act 2002, the Prohibition of Benami Property Transactions Act 1988 has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any of those Acts.*
>
> *(d)……..*
>
> *(e)……"* *(emphasis supplied)*

SUBMISSIONS OF SHRI NANKANI:-

7 RE: Whether *"in respect of petitioner"* any prosecution has been *"instituted"* on or before the filing of *"the declaration":*

(a) The word "instituted" in regard to prosecution in either of the above two proceedings is not defined under the DTVSV Act.

(b) The Hon'ble Supreme Court in ***Jamuna Singh vs. Bhadai Shah***[1], in relation to institution of a case for prosecution, had deliberated on and explained as to when a case is said to be "instituted". The Hon'ble Supreme Court observed that the Code does not contain any definition of the words "institution of a case". It is clear that a case can be said to be instituted in a Court only when the Court takes cognizance of the offence alleged therein. An examination of the provisions makes it clear that when a Magistrate takes cognizance of an offence upon receiving a complaint of facts which constitute such offence, a case is instituted in the Magistrate's Court and such a case is one instituted on a complaint. Again, when a Magistrate takes cognizance of any offence upon a report in writing of such facts made by any police officer it is a case instituted in the Magistrate's Court on a police report.

(c) *Jamuna Singh (supra)* was followed by the Hon'ble Supreme Court in ***Ramesh Kumar Soni v. State of Madhya Pradesh***[2] where the court held the Code of Criminal Procedure does not, however, provide any definition of "institution of a case". It is, however, trite that a case must be deemed to be

1 AIR 1964 SC 1541
2 (2013) 14 SCC 696

instituted only when the court competent to take cognizance of the offence alleged therein does so. The cognizance can, in turn, be taken by the Magistrate on a complaint of facts filed before him which constitute such an offence. It may also be taken if a police report is filed before the Magistrate in writing of such facts as would constitute an offence. The Magistrate may also take cognizance of an offence only the basis of his knowledge or suspicion upon receipt of the information form any person other than a police officer. In the case of the Sessions Court, such cognizance is taken on commitment to it by a Magistrate duly empowered in that behalf. All this implies that the case is instituted in the Magistrate's Court when the Magistrate takes cognizance of an offence, in which event the case is one instituted on a complaint or police report. The decision of this Court in *Jamuna Singh (supra)* clearly explains the legal position in this regard.

(d) The judgment in *Jamuna Singh (supra)* was in the context of "institution" of prosecution for offences punishable under 393 and 323 of IPC case, for which Code of Criminal Procedure (CrPC) being applicable in view of Section 4 of CrPC, the provisions of CrPC were analysed for the correct meaning and scope of the word *"institution".* Even though the DTVSV Act does not per se make any offence punishable so as to apply Section 4(2) of CrPC, however, all the five Acts specified under Section 9(c) of DTVSV Act are also Special Acts, wherein, in view of section 4(2) of CrPC, investigation and trial shall be, subject to provisions of those Special Acts as per provisions of CrPC. Therefore, same meaning of the word *"institution"*

will have to be given even for the purpose of Section 9(c) of the DTVSV Act.

(e) The term "institution" in the context of any prosecution for specified offences is not defined in the DTVSV Act as well as CrPC. It is a term of art, which has to be understood in the context it is used. There is no room for dictionary or common parlance meaning. In the context of institution of a case for prosecuting for offences, the court has explained the scope and contextual meaning of the term "institution".

(f) The judgment relied by respondents in ***State, CBI Vs. Sashi Balasubramanian & Anr***[3] does not consider the earlier decision in *Jamuna Singh (supra)*, which has also been followed later in *Ramesh Kumar Soni (supra)*. Notwithstanding the above, even otherwise the case of *Sashi Balasubramanian (supra)* is clearly distinguishable and was in peculiar facts of that case inasmuch as:

> (i) Petitioner therein was a public servant charged under the PC Act and seeking immunity under Kar Vivad Samadhan Scheme, 1998 (KVSS), who had neither filed any declaration, nor paying any disputed Tax Arrears, under the said Scheme.
>
> (ii) The declarants therein (non-public servants), who filed declaration dated 31st December1998 and paid Tax Arrears under the said KVSS, were in fact granted immunity under

3 (2006) 13 SCC 252

the Scheme, despite being co-accused in the said FIR qua them alleging offences under Sections 120-B, 420 and 471 of the Penal Code, Section 13(2) read with Section 13(1) (*d*) of the Prevention of Corruption Act, 1988 and Section 136 of the Customs Act, 1962.

(iii) The question framed was not for interpreting the word "institution" of prosecution qua the case of the non-public servant declarants, who were accused in the FIR.

(iv) Having held that the KVSS was not meant for public servants, the Hon'ble Supreme Court itself refrained from delving deep in the issues.

(g) In the first proceeding, FIR is registered but Charge Sheet has not been filed in Court, and no cognizance has been taken by the Court. Thus, by applying the contextual meaning given to the term "institution" by the Hon'ble Supreme Court in *Jamuna Singh (supra)*, in respect of petitioner no prosecution has been "instituted" on or before the filing of "the declaration".

(h) However, in the Case pending before the Special Judge for CBI cases, Charge Sheet has been filed in Court, and cognizance of offences has been taken by the Court. Thus, by applying the contextual meaning given to the term "institution" the Hon'ble Supreme Court in *Jamuna Singh (supra)*, in respect of petitioner, prosecution has been "instituted" on or before the filing of "the declaration".

8 RE: Whether such prosecution is instituted qua petitioner for any *"offence punishable under the provisions of"* any of the following five specified Acts:

(a) The first proceedings, i.e., FIR No. 17 of 2014 dated 11.02.2021 registered by Anti Corruption Bureau, Delhi, against petitioner and others is for investigating alleged offences punishable under Section 120B r/w 420 of IPC and Section 13(2) r/w 13(1)(c) & (d) of PC Act, 1988.

The second proceedings, i.e., Special CBI Case No. 91 of 2011 pending before the Special Judge, Mumbai, against petitioner and others, is for prosecution for alleged offences punishable under Section 120B r/w 420 of IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988.

Although the Bill proposed inclusion of IPC offences in offences specified in Section 9(c), the DTVSV Act specifically excluded IPC in the said Section. Therefore, Section 120B r/w 420 of IPC would have no bearing on the issue. Section 13 of PC Act, 1988 applies exclusively qua a Public Servant. It is not the case of respondent that petitioner Company is a Public Servant. The Hon'ble Supreme Court in ***State through CBI v. Jitendra Kumar Singh***[4] held that:-

> "***26.3.*** *Section 13 deals with the criminal misconduct by a public servant, which is exclusively an offence against the public servant relating to criminal misconduct. ……"*

(b) As per the plain reading of Section 13 of PC Act, 1988 as also the

4 (2014) 11 SCC724

aforesaid judgment of Hon'ble Supreme Court in *Jitendra Singh (supra)*, petitioner being a "non public servant", even if petitioner fails in the 1st proposition, and even if it is presumed for the sake of arguments that the allegations in both the cases would result in the trial and conviction of petitioner, neither the prosecution can be said to have been instituted for trying petitioner (a non public servant) for "offence punishable under the provisions of" Section 13 of PC Act, nor can he be convicted thereunder.

(c) It is trite law that Cognizance is of offences, and not of the offender / accused. The offences alleged under IPC are distinct and separate, and are admittedly excluded under Section 9(c) of the DTVSV Act. Therefore, the contention of respondents, with support of various decisions reported in ***P. Nallamal v. State,***[5] ***U. Santosh Kumar v. State***[6], ***State v. D.J. Prabhakar Anand***[7] *and* ***Rajendra Kumar Jain v. State***[8] that even a non public servant can be tried by a Special Judge for PC Act cases with aid of provisions of IPC such as Section 107, 109 or 120B, for abetting or conspiracy for an offence by public Servant under Section 13 of PC Act, is wholly irrelevant. Which Court can try an offence is wholly irrelevant for the issue in hand. Neither any of the said judgments relied upon by respondents depart from *Jitendra Kumar Singh (supra),* nor do they hold that prosecution can be instituted for trying a non public servant for an *"offence punishable under the provisions of"* Section 13 of PC Act. Hence, it is clear that no prosecution is instituted

5 (1999) 6 SCC 559
6 2001 SCC Online AP 1570
7 2005(3) A.P.L.J. 293(HC)
8 (2016) 3 Gauhati Law Reports 309

against petitioner for an "offence punishable under the provisions of" PC Act.

(d) Respondents further relied upon a judgment of this Hon'ble Court in ***Amit Hemendra Jhaveri v. Union of India***[9] to contend that the intention DTVSV Act is to exclude persons against whom prosecution is instituted for socio-economic offences, and that the DTVSV Act is not meant for legitimising proceeds of crime by payment of tax thereon. The observation in the said judgment were while considering challenge to the validity of the provisions of KVSS on the grounds of discrimination and manifest arbitrariness. Unlike the DTVSV Act, KVSS had excluded benefits thereunder against a person against whom prosecution was instituted even under IPC. By the said submission an attempt is made by respondents to again read the provisions of IPC into Section 9(c) of the DTVSV Act, though specifically excluded. Neither such attempt to supply *"casus omissus"* can sustain in the eyes of law, nor would the same be in accordance with the legislative intent in excluding IPC offences from Section 9(c), once it is established that no prosecution is instituted against petitioner for any offence punishable under the provisions of any of the specified Acts. IPC has been consciously omitted in Section 9(c) of the DTVSV Act. The legislative intent in not including IPC cannot be nullified by invoking provisions of abetment and conspiracy from IPC. This was purely within the domain of the Parliament. The offences punishable under the provisions of the DTVSV Act specified in Section 9(c)

9 (2015) 64 Taxmann.com 28 (Bom)

shall be applicable qua the declarant to cover him under the provision. There cannot be any departure from this basic requirement.

9 SUBMISSIONS OF SHRI ANIL SINGH, ASG

(a) The present writ petition is misconceived and baseless. The DTVSV Act shall not apply to petitioner.

(b) As held by the Apex Court in *Sashi Balsubramanian (supra)* court need not even take cognizance where institution of FIR has resulted in initiation of investigation to say prosecution has been instituted.

Jamuna Singh (supra) relied upon by petitioner was not at all applicable because that was considering the proceedings under the IPC read with CrPC, whereas in *Sashi Balsubramanian (supra)* Apex Court was considering the provisions of Section 95 clause (iii) of KVSS. The provisions of the scheme as well as the wording in clause (iii) of Section 95 of KVSS were almost identical to the words used in Sub Section (c) of Section 9 of DTVSV Act, only exception being that Chapter IX or Chapter XVII of the Indian Penal Code 1860 and the Foreign Exchange Regulation Act 1973, which were included in KVSS has been retained in the DTVSV Act, with a tweak, i.e, IPC has been included in Sub Section (d) of Section 9 restricting it to prosecution which has been initiated by the Income Tax Authority for offence punishable under the IPC or for enforcement of civil liability and Sub Section (b) of Section 9 has taken care of FERA to cover any person in respect of whom an order of detention has been made under the provisions of Foreign Exchange and Prevention of Smuggling Activities 1974.

(c) Prosecution has been instituted would not mean the charge sheet has been filed or cognizance has been taken but it should be given its ordinary meaning because if that is what has to be read in Sub Section (c) of Section 9 of the DTVSV Act, the Act would have stated so. The words used are "prosecution has been instituted" and it should be given its ordinary meaning. The provisions of the DTVSV Act was not to apply to those persons against whom prosecution has been instituted under the PC Act and/or those who have income/property acquired by illicit means. The benefit of the DTVSV Act was only for those whose income/ property are acquired through legal permissible process but not disclosed. The DTVSV Act provides for immunity from penalty and prosecution to those who make a valid declaration thereunder. The parliament in its wisdom did not want to extend the benefit of the DTVSV Act to those persons whose hands were tainted, who had acquired income / property by illicit means and those who are accused of / charged with having conspired to commit acts of corruptions which are punishable under the PC Act. Parliament wanted to keep out such money offered to tax on which there is a shadow of illegality. The differential classification made has a nexus to the objective of the Act which was extended by way of benefit to all assessees who have disputes with the Revenue pending before the authority under the DTVSV Act or in the High Court or the Supreme Court. This benefit, however, under the DTVSV Act was not available to a person against whom proceedings have been instituted under the IPC, PC Act, Narcotic Drugs and Psychotropic

Substances Act, 1985 etc. The class of persons who have been left out of the benefit are those against whom proceedings/prosecution have been initiated for various social-economic crimes as listed out therein. The objective of the DTVSV Act is to provide a mutual benefit,i.e., not only to collect revenue which is locked in litigation which will augment the State's resources but also benefit the tax payer who on settling the disputes pays tax only at 30% of the declared income along with immunity from penalty and prosecution.

(d) Submissions of Shri Nankani that the prosecution instituted should be for an offence punishable under the PC Act and as petitioner cannot be punished under Section 13 of the PC Act, Sub Section (c) of Section 9 of the DTVSV Act is not applicable to petitioner is a nonstarter. It is because first of all the two proceedings referred to in the petition are those exclusively triable only by the court of Special Judge having jurisdiction in the matter. The Apex Court in *P. Nallammal (supra)* has held that even if in the two proceedings the prosecution against public servants abate for whatever reasons, still it is only the court of Special Judge having jurisdiction in the matter who can try the matter. *P. Nallammal (supra)* shows how an offence under Section 13(1)(e) of the PC Act can be abetted by non-public servants and the only mode of prosecuting such offender is through the trial envisaged in the PC Act.

These submissions find support in a judgment of the High Court of Andhra Pradesh at Hyderabad in *U. Santosh Kumar (supra)* and another

judgment of the same court in *D. J. Prabhakar Anand (supra)* and *Rajendra Kumar Jain (supra).* These judgments show that under Section 120B of the IPC, whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment of two years or upwards under Section 13 of the PC Act it is not less than 4 years but may extend to 10 years and shall also be liable to fine, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

Even under Section 120B of the IPC, petitioner would be an abettor of the offence under the PC Act and, therefore, cannot at this stage come up with the argument that petitioner cannot be punished under the provisions of the PC Act.

The tax authority who is considering the declaration under the DTVSV Act cannot be expected to go into the details of each offence and admittedly there are two proceedings against petitioner for offence punishable under the PC Act read with IPC and petitioner is certainly one of those to whom the provisions of the DTVSV Act would not apply.

(e) The charge sheet in the second proceeding, copy whereof has been filed by petitioner, makes serious allegations against petitioner where petitioner is accused of causing wrongful loss of Rs.147.41 crores to National Insurance Co. Ltd. and corresponding wrongful gain to petitioner. Conspiracy under Section 120B of IPC cannot be segregated from Section

13(1)(d) and the offence under the PC Act could not have happened but for conspiracy by petitioner. Trial is one, evidence will be common and the Special Court will decide the matter. The role of Income Tax Department is limited to scrutinizing the application/declaration to see the applicant's eligibility and if any person falls under the provisions of Section 9, the application will be rejected. As there is prosecution instituted against petitioner for offence punishable under the PC Act, Income Tax Department has rightly rejected. Petitioner is accused of criminal wrongful loss of Rs.147.41 crores to National Insurance Co. Ltd. and corresponding wrongful gain to itself and if the court grants petitioner the relief prayed for in the petition, it would amount to extending the beneficial provisions of DTVSV Act to a person against whom prosecution have been instituted for social-economic crime and that will be against the objective of DTVSV Act.

DISCUSSION AND CONCLUSIONS:-

10 The petition seeks the following final reliefs:-

> *"a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other writ order or direction under Article 226 of the Constitution of India calling for the records of the case leading to the issue of the impugned letter (Exhibit H) dated 25th January, 2021 and after going through the same and examining the question of legality thereof quash, cancel and set aside the impugned letter (Exhibit H) dated 25th January, 2021;*
>
> *b) that this Hon'ble Court may be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus, or any other appropriate Writ, Order or Direction under Article 226 of the Constitution of India, ordering and directing the Respondents to withdraw the impugned letter (Exhibit H) dated 25th January, 2021;*
>
> *bb) that this Hon'ble Court may be pleased to hold and declare that petitioner is not rendered ineligible under the Vivad Se Vishwas Act, 2020 on the ground stated in the impugned letter dated 25th January, 2021 or any other. ground;*

> *cc) that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction under Article 226 of the Constitution of India to quash and set aside the summary ex-parte rejection of the various applications filed by petitioner under the Vivad Se Vishwas Act, 2020 (shown as rejected in Exhibit-I), and to direct the Respondents to grant consequential reliefs under The DTVSV Act to secure the ends of justice;"*

11 It is the case of petitioner that it is entitled to these reliefs on the basis that petitioner is not covered by Section 9(c) of the DTVSV Act because out of the two criminal cases pending against petitioner, in the first proceeding the prosecution has not been instituted as yet since only FIR has been registered and the matter has not proceeded further. In the second proceeding where chargesheet is filed and cognisance is taken, even if convicted, petitioner would be convicted for offences under the Indian Penal Code, 1860 and not for offences punishable under the Prevention of Corruption Act, 1988.

12 The present Writ Petition, in our view, is misconceived and baseless. Petitioners are not eligible for the benefits available under the DTVSV Act. The DTVSV Act cannot apply to petitioner in view of provisions of Section 9(c) of the Act.

13 Before addressing the two contentions raised by petitioner, it may be noted that the purpose and object of DTVSV Act is that the DTVSV Act has been formulated for resolution of disputed tax and for matters connected therewith or incidental thereto. The DTVSV Act allows the eligible assessees to settle pending disputes on payment of the specified amount based on the percentage of the disputed tax. The objective of the DTVSV Act is to *inter*

alia reduce pending income tax litigation, generate timely revenue for the Government and benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process.

14 The DTVSV Act is a beneficial legislation enacted with a definite purpose for the benefit of both the Assessee and the Department whereby the Legislature has provided a mechanism under which pending income tax litigation is sought to be reduced as also ensuring that the revenue is generated in a timely manner for the Government. The DTVSV Act, in a sense, provides a deviation from the strict application of tax laws towards achieving this purpose.

15 The benefits granted by the DTVSV Act are, however, by legislative policy not available to certain persons like those identified in Section 9(c) of the DTVSV Act. A perusal of Section 9(c) quoted earlier, shows that Legislature, in its wisdom, has with a definite purpose, specifically carved out and provided the persons to whom the DTVSV Act shall not apply and cases in which the benefits of the DTVSV Act would not be available to certain persons. The purpose and intent behind the said provision is clear and unambiguous that the DTVSV Act would only apply to monies acquired by legal means and not to monies generated from socio-economic offences. The purpose and intent of Section 9(c) of the DTVSV Act is to ensure that the DTVSV Act which is a piece of beneficial legislation, is not utilised for regularising or seeking benefits qua tainted monies or monies which fall

under the shadow of a socio-economic offence.

16 In this connection, it will be relevant to refer to the judgment of a Division Bench of this court in *Amit Hemendra Jhaveri (supra)* wherein the Court whilst examining the vires of a similar provision under the KVSS was pleased to observe, *inter alia,* as under:-

> *"17. The State has filed an affidavit indicating that the policy/intent of KVSS 1998 to exclude offenders specified under s. 95(iii) DTVSV Act from the benefit of the KVSS 1998. The benefit of KVSS 1998 was not to be extended to all those who have, inter alia, income/property which had been acquired by illicit means. The benefit of KVSS 1998 was to all those whose income/property are acquired through legally permissible process but not disclosed. The KVSS 1998 provides for immunity from penalty and prosecution to those who make a valid declaration thereunder. However the Parliament in its wisdom does not want to extend the benefit of KVSS 1998 to those persons who had acquired income/property by illicit means and if the same was a subject of prosecution as listed out in s. 95(iii) DTVSV Act. It would therefore be noticed that there is a policy underlying the exclusion under s. 95(iii) of the KVSS 1998. Therefore, the differential classification made by Parliament has a nexus to the objective DTVSV Act which was extended by way of benefit to all assessees who have disputes with, the Revenue pending before the authority under The DTVSV Act or in the High Court. However, the aforesaid benefit under the KVSS 1998 was not available to a person against whom proceedings have been instituted under the Penal Code, 1860, Prevention of Corruption Act, 1988, TADA, FERA and Narcotic Drugs and Psychotropic Substances-Act, 1985. It would therefore be noticed that the class of people who have been left out of the benefit of KVSS 1998 by virtue of s. 95(iii) thereof are those against whom proceedings/prosecutions have been initiated for various social economic crimes as listed out therein. The objective DTVSV Act is to provide a mutual benefit i.e. not only to collect revenue which is locked in litigation which will augment the State's resources but also benefit the taxpayer who on settling the dispute pays tax only at 30 per cent of the declared income along with immunity from penalty and prosecution. Once a classification as pointed out by the Revenue is found to be based on reasons, the mere fact that petitioner or the Court is of the view that the classification could be better, would not entitle the Court to interfere with the classification as done by the legislature. The role of the Court is limited only to ensure that the classification is not arbitrary i.e. absence of intelligible differentia having a nexus to the object DTVSV Act. The Courts are not in any way concerned whether the classification that is made in The DTVSV Act is the best possible in the available circumstances. This is purely within the domain of Parliament.*
>
> *18. It is first contended by petitioner that ousting a person from the*

benefit of KVSS 1998 in respect of whom a complaint has been filed in a criminal Court, alleging offences under Chapters IX and XVII of the Penal Code, 1860 is arbitrary. This it is submitted is in view of the fact that the complaint in the Criminal Court is filed on mere suspicion and if ultimately the person so excluded is discharged even then the benefit of KVSS 1998 would not be available. The legislation does not factor in the likelihood of honourable discharge. Thus it is arbitrary according to petitioner. The Parliament in its wisdom has provided a window period during which an offer of settlement under KVSS 1998 is kept open subject to certain conditions being satisfied on the date of filing of the declaration. This providing of cut-off days as held by the Supreme Court in NITDIP Textile Processors (supra) would always result in same disadvantage to some individuals but in economic legislations there has to be some free play on the joints. The Parliament in its wisdom did not desire to make the offer of settlement available to those under a shadow of culpability in respect of socioeconomic offences. This wisdom of Parliament of excluding pending prosecution' from the benefit of KVSS 1998 is not for us to question so long it does have a nexus to the object of the KVSS 1998. This nexus to the object exists. Furthermore, the Apex Court in the case of Sashi Balasubramaniam (supra) has held that benefit of the KVSS 1998 scheme is not to be extended to those against whom a complaint is pending, therefore, this condition cannot be held to be arbitrary.

19. It is next contended by petitioner that the various categories listed out in s. 95(iii) of KVSS 1998 excluding them from the benefit of KVSS 1998 are persons who are being prosecuted under Penal Code, 1860, TADA, FERA, Prevention of Corruption Act, 1995, Narcotic Drugs and Psychotropic Substance Act, 1985. This according to petitioner has no nexus to the objective of collection of more revenue. This is not correct for the reason as pointed out above, the object of the KVSS 1998 is to collect the revenue which is otherwise stuck up in disputes in respect of persons who are not being prosecuted for offences which are likely to be illegal/illicit income at the cost of the society. This benefit of KVSS 1998 would also grant immunity to such persons from penalty and prosecution which in the view of Parliament is not justified/warranted. Further, one must not loose sight of the fact that the benefit under the KVSS 1998 is a deviation from the strict application of tax laws. Thus the Challenge on the above ground is also not sustainable.

20. The next contention urged by petitioner was that a person against whom prosecution has been launched for a minor crime as provided under Chapter XVII of the Penal Code, 1860 is excluded by virtue of s. 95(iii) of the KVSS 1998 from its benefit while a person against whom prosecution is lodged for serious crimes like murder etc., is not deprived benefit of KVSS 1998. This itself, is evidence of the arbitrary nature of the exclusion having no nexus to the objective DTVSV Act which is undisputedly to collect revenue. As pointed out above, the policy DTVSV Act as set out in the affidavit-in-reply filed by the State was to exclude those classes of persons who were involved in socio-economic crimes having obtained income/property by illegal means. The State is prosecuting those persons under the criminal law of land for having acquired/obtained income/property by committing

> *breaches of the various Acts referred to therein. The classification is restricted only to those persons who are involved in crimes which in Parliament's experience/wisdom could have lead to generation of income/wealth/property. It is these classes of persons who have been excluded. This classification certainly has a nexus to the objective DTVSV Act namely recovering revenue which has been clogged and the income which is being offered to tax under the KVSS 1998 is not shadowed by a likelihood of the same having arisen from socio-economic' crimes for which prosecution has been launched as provided in s. 95(iii) DTVSV Act. Serious crimes like murder etc per se according to the wisdom of Parliament, may have no nexus to the generation of income. In any case at the very highest, the grievance of petitioner appears to be that the classification is not proper and there is room for more classification by including into, those categories listed in s. 95(iii) DTVSV Act, those who have been left out. Grievance made is one of under inclusion."*
>
> (emphasis supplied)

Clause 95(iii) of KVSS is similar and/or akin to Section 9(c) of the DTVSV Act and hence the above observations in *Amit Hemendra Jhaveri (supra)* would apply in the instant case as well.

Therefore, there is a clear purpose and intent to the provisions of Section 9(c) of the DTVSV Act which is to ensure that revenue which has been clogged and the income which is being offered to tax is not shadowed by a likelihood of the same having arisen from socio-economic crimes for which prosecution has been instituted. The DTVSV Act does not and cannot be read as providing a window to "regularise" tainted money.

17 It has to be, at this point, noted that the pendency of criminal proceedings against petitioner is an admitted position. The petition itself provides which are the pending criminal proceedings against petitioner. There are two criminal proceedings pending against petitioner wherein petitioner is charged for having conspired (Section 120B of IPC) to commit offences of Cheating (Section 420 of IPC) as also offences under Section

13(1)(d) and Section 13(2) of the PC Act. The charge against petitioner would have to be read as composite whole as framed and cannot be segregated, as read by Shri Nankani.

18 It is, however, the case of petitioner that despite the pendency of these two criminal proceedings, it would not fall within the ambit of Section 9(c) of the DTVSV Act since in the first proceeding prosecution has not yet been instituted and in the second proceeding, it is not punishable for offences under the PC Act. In our view, both these contentions are misconceived and baseless.

19 At the outset, with respect to the plea of prosecution not having been instituted, this issue stands squarely covered by *Sashi Balasubramaniam (supra)* wherein the Hon'ble Apex Court, whilst considering the provisions of the KVSS and the provisions of Clause 95(iii) thereof, after raising a specific issue as to when is a prosecution said to be instituted, answered the same, *inter alia,* as under:-

> *"28. The first information report in regard to the offences committed, as indicated hereinbefore, was lodged on 2-3-1995. The investigation started immediately thereafter. The investigation was being carried on by the Central Bureau of Investigation (Economic Offences Wing). Only at a much later stage, namely, more than three years thereafter i.e. on 31-12-1998, declarations were filed. Charge-sheet in the criminal case was filed on 12-4-1999.*
>
> *29. It is in the aforementioned context that interpretation of the word "prosecution" assumes significance. The term "prosecution" would include institution or commencement of a criminal proceeding. It may include also an inquiry or investigation. The terms "prosecution" and "cognizance" are not interchangeable. They carry different meanings. Different statutes provide for grant of sanction at different stages.*
> *30. "In initio" means in the beginning. The dictionary meaning of "initiation" is cause to begin. Whereas some statutes provide for grant of sanction before a prosecution is initiated, some others postulate grant of sanction before a cognizance is taken by court. However,*

> *meaning of the word may vary from case to case. In its wider sense, the prosecution means a proceeding by way of indictment or information, and is not necessarily confined to prosecution for an offence.*
> *31. The term "prosecution has been instituted" would not mean when charge-sheet has been filed and cognizance has been taken. It must be given its ordinary meaning."*
>
> (emphasis supplied)

20 The aforesaid dictum of the Hon'ble Apex Court has also been clarified in the case of *Amit Jhaveri (supra)* wherein this Court observed, *inter alia,* that "*Furthermore, the Apex Court in the case of Sashi Balasubramaniam (supra) has held that benefit of the KVSS 1998 scheme is not to be extended to those against whom a complaint is pending, therefore, this condition cannot be held to be arbitrary."*

In light of the above, both the proceedings are cases where prosecution was instituted since in both cases an FIR had been duly lodged, thus casting a shadow on the monies sought to be offered to tax.

21 The submission of Shri Nankani that the judgment of the Hon'ble Apex Court in the case of *Sashi Balasubramaniam (supra)* does not consider or address the judgment in *Jamuna Singh (supra)* is not accurate. *Jamuna Singh (supra)* was a case where the Hon'ble Court was considering the provisions of the Criminal Procedure Code in respect of an offence under the Indian Penal Code, 1860. The Hon'ble Court was not considering the provision of the KVSS or a law in relation to taxation laws. On the other hand, the judgment in *Sashi Balasubramaniam (supra)* is in the specific context and with reference to the precursor law to the DTVSV Act and interprets an almost identical and/or similar provision.

22 In any event, the submission of petitioner that prosecution can be said to be instituted only upon cognizance being taken is of no use to petitioner as even then cognizance was taken in the second proceeding where chargesheet has been filed. Hence, the said issue would not arise.

23 With respect to the second contention of petitioner, viz., that petitioner is not punishable for offences under the PC Act, the same also is faulty. We say this because:-

(a) Petitioner is charged for having conspired to commit offences under Section 120B of IPC, the conspiracy to commit offences is in respect of Cheating under Section 420 of IPC as also offences under Section 13(1)(d) and Section 13(2) of the PC Act. This would be evident on a reading of the chargesheet. The Chargesheet, inter alia, provides, as under :-

> *"14. That, the accused officials of NICL namely Sh. S. N. Raza (A-4), Sh. L. S. Sawant (A-5), Sh. S. D. Karande (A-6), Sh. D. L. Valecha (A-7), Sh. Sh. G. Subramanian (A-8) and Smt. Rachana M. Patwardhan (A-10); with dishonest intention processed and settled the claims in bunches amounting to Rs. 26.81 crores approximately under Handset Policy and claims in bunches amounting to Rs. 120.60 crores approximately under Default Liability Policy lodged by Reliance Industries Ltd. (A-9), thereby causing a wrongful loss of Rs. 147.71 crore to National Insurance Co. Limited and Corresponding wrongful gain to Reliance Industries Ltd. (A9). It is further revealed that claims amounting to Rs. 98.28 crore under both the policies are outstanding.*
>
> *15. The above acts constitute commission of offences punishable U/s. 120 B IPC r/w. 420 of IPC and under section 13(2) r/W 13(1)(4) of PC Act, 1988 against St. AK: Banerjee, E (A-1), Sh. Man Mohan Dutt, (A-2), Sh. Kuthur Subramania Sankar; (A-3), Shi. Saroof Nazir Raza; (A-4), Sh. Lalali Sitaram Sawant, (A-5), Sh. Shivaji D. Karande, (A-6), Sh. Dindayal L. Valecha, (A-7), Sh. G. Subramanian, (A-8), M/s. Reliance Industries Ltd. (A-9), Smt. Rachana M. Patwardhan, (A-10) and Sh. H. S. Wadhwa (A-11)."*
>
> (emphasis supplied)

The charge would have to be read as composite whole as framed and cannot be segregated.

(b) At this stage let us consider the provisions of Section 120B of the IPC and Section 13 of the PC Act which provide, inter alia, as under:-

IPC

"120B. Punishment of criminal conspiracy.—
1. Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 2[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
2. Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]

PC Act

13. Criminal misconduct by a public servant.—(1) A public servant is said to commit the offence of criminal misconduct,—
(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or (b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or
(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or
(d) if he,— (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or
(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or

> *property disproportionate to his known sources of income.*
> *Explanation.—For the purposes of this section, 'known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.*
> *(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than [four years] but which may extend to [ten years] and shall also be liable to fine."*

It would be evident that petitioner is charged with having conspired, *inter alia,* to commit acts of corruption which are punishable under the PC Act and hence, *ex facie,* there is a shadow of illegality on the money sought to be offered to tax. Thus, petitioner is not eligible under the DTVSV Act.

(c) The nature of enquiry by the Tax Authority would be limited. The Tax Authority is required to consider whether on the face of it, i.e., after seeing the FIR or the chargesheet or further material, if any, the person is charged with offences punishable under the specified Acts. The Tax Authority cannot and would not go beyond the documents and cannot be expected to make a details enquiry into the charges or the veracity thereof. If this interpretation is accepted, it would convert the Tax Authority into a form of criminal court who could, whilst granting benefit under a tax law, seek to opine on the crimes alleged itself and usurp the jurisdiction or conflict with the jurisdiction of the court that is actually hearing the criminal proceedings. Hence, the nature of enquiry contemplated would be on a demurrer and not beyond that. The Tax Authority can and must only be required to verify whether there is a socio-economic offence alleged as contemplated by Section 9(c) of the DTVSV Act, whether the applicant is an accused and

whether the prosecution in this regard is instituted. This would be the only limited inquiry that a Tax Authority would have to make and nothing else. In the instant case, all the aforesaid enquiries are answered in the affirmative and hence, the application of petitioner was rightly rejected.

(d) Even if we assume for a moment that the Tax Authority is required to delve into or consider even the issue of applicability of the PC Act, even then it is trite law that there can be abettors and/or conspirators to the offence under Section 13 of the PC Act who may be private persons as held in the following judgments relied upon by Shri Singh, Learned ASG:-

(i) *P. Nallamal (supra)*

> *"4. The appellants have restricted their contentions in these appeals to the question whether they are liable to be prosecuted along with the public servants for the offence under Section 109 of the Penal Code read with Section 13(1)(e) of the PC Act. Shri K.K. Venugopal, learned Senior Counsel arguing for the appellants submitted his point broadly that the offence under Section 13(1)(e) of the PC Act is unabettable, since the nub of the offence is the failure of the public servant to account for the excess wealth which none else can possibly do.*
>
> *…*
>
> *16. Section 13 of the PC Act is enacted as a substitute for Sections 161 to 165-A of the Penal Code which were part of Chapter IX of that Code under the title "All offences by or relating to public servants". Those sections were deleted from the Penal Code contemporaneous with the enactment of Section 31 of the PC Act (vide Section 31 of the PC Act). It is appropriate to point out here that in the original old PC Act there was no provision analogous to Section 13(1)(e), but on the recommendation of Santhanam Committee the said Act was amended in 1964 by incorporating Section 5(1)(e) in the old PC Act. Parliament later proceeded to "consolidate and amend the law relating to prevention of corruption" and in the bill introduced for that purpose the following was declared as per the Statement of Objects and Reasons thereof: "*
>
> > *2. The Prevention of Corruption Act, 1947, was amended in 1964 based on the recommendations of the Santhanam Committee. There are provisions in Chapter IX of the Indian Penal Code to deal with public servants and those who abet them by way of criminal misconduct. There are*

> *also provisions in the Criminal Law Amendment Ordinance, 1944, to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. The Bill seeks to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants."*

17. Thus, one of the objects of the new Act was to incorporate all the provisions to make them more effective. Section 165-A of the Penal Code read like this:

> *"165-A. Punishment for abetment of offences defined in Section 161 or Section 165.-Whoever abets any offence punishable under Section 161 or Section 165, whether or not that offence is committed in consequence of the abetment, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."*

18. Therefore, the legislative intent is manifest that abettors of all the different offences under Section 13(1)(e) of the PC Act should also be dealt with along with the public servant in the same trial held by the Special Judge.

…

24. Shri Shanti Bhushan cited certain illustrations which, according to us, would amplify the cases of abetments fitting with each of the three clauses in Section 107 of the Penal Code vis-a-vis Section 13(1)(e) of the PC Act….

Next illustration is this:

Four persons including the public servant decide to raise a bulk amount through bribery and the remaining persons prompt the public servant to keep such money in their names. If this is a proved position then all the said persons are guilty of abetment through conspiracy.

…

25. Such illustrations are apt examples of how the offence under Section 13(1)(e) of the PC Act can be abetted by non-public servants. The only mode of prosecuting such offender is through the trial envisaged in the PC Act."

(emphasis supplied)

(ii) *Santosh Kumar (supra)*

> *"2. The first petitioner is the father, petitioners 2 to 4 are his sons and petitioners 5 to 7 are his daughters. The first petitioner is a public servant working as the Assistant Social Welfare Officer in the State of Andhra Pradesh. petitioners 2 to 7 are admittedly not public servants.*

...

19. ... The Apex Court in para 17 of its Judgement held that the legislative intent is manifest that the abettors of different offences under Section 13(1)(e) DTVSV Act should also be dealt with along with the public servant in the same trial held by the Special Judge having regard to the explanation appended to Section 13(1)(e) DTVSV Act. In para 24 of its Judgement, while adverting to the contentions of the learned counsel who seeks to exemplify by means of illustrations which can be clearly brought under the expression 'abetment' and finally held in para 25 that such illustrations are apt examples of how the offence under Section 13(1)(e) DTVSV Act can be abetted by non-public servants and the only mode of prosecuting such offender is through the trial envisaged in the Prevention of Corruption Act. Thus, it has been upheld ultimately that a non-public servant or a private person can be prosecuted for the offence of abetment of the offence punishable under Section 13(1)(e) DTVSV Act perpetrated by a public servant. For the first time, such an interpretation was given by the Apex Court in the annals of the law for preventing the corruption and bribery in the public life. The Judgement in P. Nallammal's case has been followed with approval in a latter Judgement by the Apex Court in STATE OF U.P. v. UDAI NARAYAN, 1999 (9) Supreme 11. The law declared by the Apex Court in the above two Judgements shall be binding on all Courts within the territory, of India as per Article 141 of the Constitution. Following the above binding precedents, I cannot but hold that petitioners 2. to 7 can be prosecuted as abettors for the of offence alleged to have been committed by the first petitioner under Section 13(1)(e) read with Section 13(2) DTVSV Act. Therefore, the contention of the learned senior counsel appearing for petitioners in that view of the matter merits no consideration."

(emphasis supplied)

(iii) *D. J. Prabhakar Anand (supra)*

" 5. The important and hotly contested question is whether A-2, wife of A-1 is liable as an abettor. The contention of the learned counsel for petitioner is that in P. Nallammal vs. State, (1) AIR 1999 SC 2556 it was held by the Hon'ble Supreme Court that the offence under section 13(1)(e) could be abetted even by a private person; in this case A-2 wife of A-1 has abetted the offence as she has allowed the illegally acquired property by her husband, to be kept on her name by consenting for the same.

15. ..... Thus, the Hon'ble Supreme Court observed that law does not require instigation to be in any particular form or that it should only be in words. The instigation may be by conduct. Whether there was instigation or not is a question to be decided on the facts of the case. As held by the Hon'ble Supreme Court intentional aiding and active complicity is the gist of the offence of abetment. Thus doing anything in order to facilitate commission DTVSV Act amount to aiding for doing that act. The offence under section 13 (e) DTVSV Act is of possession of disproportionate assets: As such allowing

possession of disproportionate assets on one's name would definitely amount to facilitating the possession and consequently amounts to abetment, as when possession of such assets is an offence, allowing to possess such assets on once name would automatically amount to abetment of possession.

18. In all these circumstances, it is not a case where the second accused, who is arrayed as an abettor can be discharged initially."

(emphasis supplied)

(iv) *Rajendra Kumar Jain (supra)*

"5. It is the contention of petitioner that the learned court below without applying its judicial mind, in a routine manner, framed charges against petitioner for trial under section 120B, IPC read with sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, vide impugned order dated 8.8.2011. The said court did not consider or dispose of the petition which was filed by petitioner under section 227 of the Code of Criminal Procedure, 1973, while passing the impugned order 8.8.2011.

6. It has been further contended that section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, is applicable to a government /public servant only. Since petitioner is a private person, as such, section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, are not at all attracted against him. Thus, the question of application of section 120B, IPC does not arise at all as the major/main offence accused of, is not attracted against petitioner.

…

17. I have considered the submissions of the rival parties. The first contention that the accused being a private person cannot be dealt with an offence under the Prevention of Corruption Act, 1988, cannot be accepted in view of the proposition of law that the Special Judge can also try the case of private person under the provision of IPC read with relevant provision of Prevention of Corruption Act, 1988."

(emphasis supplied)

On the other hand in *Jitender Kumar Singh (supra)* relied upon by Shri Nankani, the Hon'ble Supreme Court was considering the issue of whether a Special Judge could continue the proceedings even after the sole public servant had passed away. The Hon'ble Supreme Court, in fact, answered the issue in the affirmative. The finding in paragraph 26.3 relied upon by petitioner cannot be read in isolation and judgment would have to

be read as a whole. Paragraphs 29 and 30 specifically clarify that offences under PC Act can be done by a public servant or a private person or a combination of both. Paragraphs 29 and 30 read as under:

> *"29. It is thus clear that an offence under the PC Act can be committed by either a public servant or a private person or a combination of both and in view of the mandate of Section 4(1) of the PC Act, read with Section 3(1) thereof, such offences can be tried only by a Special Judge. For example:*
> *(i) A private person offering a bribe to a public servant commits an offence under Section 12 of Act. This offence can be tried only by the Special Judge, notwithstanding the fact that only a private person is the accused in the case and that there is no public servant named as an accused in that case.*
> *(ii) A private person can be the only accused person in an offence under Section 8 or Section 9 of the said Act. And it is not necessary that a public servant should also be specifically named as an accused in the same case. Notwithstanding the fact that a private person is the only accused in an offence under Section 8 or Section 9, it can be tried only by a Special Judge.*
>
> *30. Thus, the scheme of the PC Act makes it quite clear that even a private person who is involved in an offence mentioned in Section 3(1) of the PC Act, is required to be tried only by a Special Judge, and by no other Court. Moreover, it is not necessary that in every offence under the PC Act, a public servant must necessarily be an accused. In other words, the existence of a public servant for facing the trial before the Special Court is not a must and even in his absence, private persons can be tried for PC as well as non-PC offences, depending upon the facts of the case. We, therefore, make it clear that it is not the law that only along with the junction of a public servant in array of parties, the Special Judge can proceed against private persons who have committed offences punishable under the PC Act."*

Therefore, not only would this enquiry arise before the Tax Authority but even assuming such an enquiry were to arise, the same require consideration.

24 Any finding by the Tax Authority on this issue, would amount to deciding on merits the two proceedings under the PC Act referred earlier.

25 In light of the above, both the proceedings are cases where prosecution was instituted since in both cases an FIR had been duly lodged.

Both cases charge petitioner as having conspired to commit offences under the PC Act, thus casting a shadow on the monies sought to be offered to tax.

26 In light of the above, there is no merit in the petition and the same is dismissed.

(AMIT B BORKAR, J.) (K.R. SHRIRAM, J.)