Before Balwant Rai, J

HARNEK SINGH,—*Petitioner*

versus

THE STATE OF PUNJAB,—*Respondent*

Crl. M. 5860/M/1991

The 25th September, 1998

Prevention of Corruption Act, 1988—Ss. 13(2) and 17 proviso (c)—Code of Criminal Procedure, 1973—Ss. 156 and 482—General Clauses Act, 1897,—Ss. 6 and 24—Punjab Government notifications dated 9th July, 1968 issued under S. 5-A of the Prevention of Corruption Act, 1947—Inspectors of Police, Vigilance Bureau, Punjab, whether can be considered persons authorised by general or special order to investigate an offence without obtaining orders of the Magistrate under the Act—S.17(c) authorising only Deputy Superintendent of Police or of equal rank to investigate cases—The notifications of 1968 do not survive under the new Act and consequently investigations stand vitiated.

Held that the legislature had the intention to bodily lift the provisions of Section 6 of the General Clauses Act, 1897 and incorporate the same in the Amending Act of 1988 and (no other provision) of the General Clauses Act. If the legislature had intended to apply any other provision or whole of the General Clauses Act, 1897, it would have so said clearly instead of saying that Section 6 only would apply or would have said nothing in that regard and in that eventuality, whole of the Act of 1897 would have its application. It is trite law that even when a saving clause reserving the rights and liabilities under the repealed law is absent in a new enactment, the same will neither be material nor decisive on the question of different intention because in such cases Section 6 of the General Clauses Act will be attracted and rights and liabilities acquired, accrued under the repealed law will remain saved unless there is something to infer that legislature intended to destory the rights and liabilities already accrued. It, therefore appears clear that the legislature intended to apply section 6 only and not the whole of the Act.

(Para 37)

Further held, that the State Government had neither any intention to keep alive or to give lease of life to the notifications, dated 9th July 1968 and 12th August, 1968 nor had any intention to empower Inspectors of Police to investigate the cases registered under the provisions of the Prevention of Corruption Act, 1988.

(Para 40)

Further held that a plain reading of sub section (2) of Section 156 Cr. P.C. would show that investigation by an officer not empowered under that Section i.e. with reference to sub sections (1) and (3) thereof cannot be questioned. Sub Section (1) of Section 156 is a provision empowering an officer in charge of the Police Station to investigate a cognizable case without an order of the Magistrate and it limits his power to the investigation of such cases within such local jurisdiction. It is the violation of this provision that is cured under sub section (2). Obviously sub- section (2) of Section 156 Cr. P.C. cannot cure the violation of any other statutory specific provisions prohibiting investigation by an officer of a lower rank that a Deputy Superintendent of Police unless specifically authorised. By apart from the implication of the language, Section 156 (2), it is not permissible to read the emphatic negative language of Section 17 of the Act of 1988 as merely being in the nature of an amendment or a proviso to sub section (1) of Section 156 Cr. P.C.

(Para 41)

Further held that the notifications dated 9th July, 1968 and 12th August, 1968 issued under Section 5-A of the Prevention of Corruption Act, 1947 empowering the Inspectors of Police in Vigilance Bureau to investigate and take the proceedings in cases registered under the provisions of Corruption Act, 1988 would not ensure and if the proceedings are taken up and carried out by the Inspector of Police not empowered under any general or special order under new Act shall stand vitiated. The proceedings shall also stand vitiated if these are initiated and continued without order of Judicial Magistrate of First Class in that behalf. It cannot be disputed that after commencement of the Act of 1988, the Inspectors of Police, Vigilance Bureau, Punjab have not been empowered by general or special order of the State Government authorising or empowering them to investigate the cases in relation to the offence under the Prevention of Corruption Act, 1988 and that as provided under Section 17(c) only the Deputy Superintendent of Police or a Police Officer of equivalent rank is empowered to investigate any offence punishable under this Act without

the order of a Magistrate of the 1st Class or make any arrest therefor without a warrant.

(Paras 43 and 44)

Dinesh Goyal, Advocate *for the Petitioner.*

I.P.S. Sidhu, AAG Punjab, *for the Respondents.*

JUDGMENT

B. Rai, J.

(1) These eight Criminal Misc. Petitions No. 5860-M of 1991, 397-M, 2441-M of 1992,17558-M of 1993, 5772-M, 8262-M of 1994, 14806-M of 1995 and 318-M of 1997, have been filed under Section 482 Cr. P.C. for quashing of F.I.R. No. 46 dated 15th March 1991, Police Station Jagraon, FIR No. 45 dated 28th February, 1991, Police Station Kotwali, Ludhiana, F.I.R. No. 187 dated 21st October, 1991 Police Station Kotwali Bathinda, F.I.R. No. 62, dated 9th June, 1993, Police Station City Ferozepur, F.I.R. No. 83 dated 15th May, 1991 Police Station Nur Mehal District Jalandhar, F.I.R. No. 47 dated 8th April, 1991, Police Station Sarabha Nagar, Ludhiana, F.I.R. No. 22 dated 1st April, 1992, police Station Longowal and F.I.R. No. 109 dated 28th July, 1991, Police Station Division No. 4, Jalandhar, respectively registered under sections 13(2) of the Prevention of Corruption Act, 1988 and all subsequent proceedings arising therefrom. In all these petitions, a same question of law and fact is involved, therefore, these shall be disposed of by a common order. Facts are being taken from Crl. M. No. 5860-M of 1991 (*Harnek Sinigh* v. *State of Punjab*).

(2) The abovesaid F.I.R. was registered on the Statement of Baldev Singh son of Maghar Singh, resident of Bahewal, Police Station Nihalsinghwala District Faridkot which was recorded by Garib Singh Inspector, Vigilance Bureau, Ludhiana on 15 March, 1991 and investigated by him.

(3) The petitioner seeks the quashment of F.I.R. Annexure P1 on the ground that Inspector Garib Singh, was not authorised by the State Government by general or special order as mentioned under proviso (c) to Section 17 of the Act of 1988. Since Inspector Garib Singh, Vigilance Bureau, Ludhiana was neither authorised under the Act by the State Government nor he had obtained any order from the concerned Judicial Magistrate of the Ist Class, therefore, the arrest of the petitioner by him was illegal. All proceedings and the investigation being without jurisdiction are illegal as the same are hit by proviso (c)

to Section 17 of the Prevention of Corruption Act, 1988. It is also the case of the petitioner that his right as well as liberty have been affected by an act of unauthorised person and has caused a great prejudice to him. That apart, he will have to face the suspension from service which will certainly effect his career as well as his family. The contention is that the circumstances of the case in which the petitioner is placed have compelled him to invoke the provisions of Section 482 of the Code of Criminal Procedure. Once it is found that the Inspector, Vigilance Bureau was not authorised under the law to lay trap and take up the investigation including the steps taken in the investigation and other proceedings as also the FIR deserve to be quashed.

(4) In response to notice or motion, respondents have filed the reply in the form of affidavit of Inspector Garib Singh, Vigilance Bureau, Ludhiana. He has taken up the plea that he being Inspector of Police in the Vigilance Department was authorised to investigate this case as provided by Ist proviso to sub section (1) of Section 5-A of the Prevention of Corruption Act, 1947. The Punjab Government under Section 30(2) of the Prevention of Corruption Act, 1988 and under section 6 of the General Clauses Act, 1897 issued the notifications Annexures R1 and R2 authorising all the Inspectors of Police, Vigilance Department, to investigate the case under the Act in whole or the Punjab State. It is clear that these notifications are still in force and empower every Inspector of the Police of the Vigilance Department to investigate every case under the Prevention of Corruption Act in whole of the Punjab State. It is further pleaded that the case was rightly registered on the statement of Baldev Singh as accused Harnek Singh while holding the office as a public servant demanded Rs. 5000 from Baldev Singh as illegal gratification by abusing his position as a public servant. In view of the notifications Annexure R1 and R2, he was legally authorised to investigate the case and to make arrest without prior permission of the Judicial Magistrate 1st Class. On these averments, prayer for dismissal of the petition has been made.

(5) I have heard the learned counsel for the parties and have perused the record.

(6) The controversy as emerges is as to whether the Inspector, Vigilance Bureau, after the coming into force of the Prevention of Corruption Act, 1988, was a person authorised by the State Government by general or special order to investigate an offence without the order of the Magistrate under the Prevention of Corruption Act, 1988, while taking action against the petitioner.

(7) Bribe is an illegal reward given to someone; briber is one who gives bribery is an act of taking or giving bribe. Corruption is moral degradation. Scams, Hawala, scandals, school/college admissions, transfer of government servants, donations, plot/house/petrol pump allotments etc and recruitments give foul smell of corruption. It is like cancer eating into the bone marrow of the society. It is condemned at all levels and at all platforms.

(8) In *State of Haryana and others* v. *Ch. Bhajan Lal and others* (1), their lordships of the Supreme Court in paras 4 to 10 of the judgment held as under :—

> '4. In our democratic policy under the Constitution based on the concept of 'Rule of law' which we have adopted and given to ourselves and which serves as an aorta in the anatomy of our democratic system, THE LAW IS SUPREME.
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> 5. Every one whether individually or collectively is unquestionably under the supermacy of law. Whoever he may be, however high he is, he is under the law. No matter how powerful he is and how rich he may be.
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> 6. The heated and lengthy arguments advanced in general by all the learned counsel on the magnitude and the multidimensional causes of corruption and also about the positive and constructive remedial measures and steps to be taken for its eradictaion has necessitated us to give a brief exordium about its perniciousness, though strictly speaking, we would be otherwise not constrained to express any opinion on this.
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> 7. At the outset we may say that we are not inclined to make an exhaustive survey and analysis about the anatomy, dimensions and causes of corruption. It cannot be gain said that the ubiquity of corruption is always associated with a motivation of private gain at public expenses.
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> 8. Though the historical background and targets of corruption are reviewed time after time; the definitional and conceptual problems are explored and the voluminous causes and consequences of corruption are constantly debated throughout the globe, yet the evils of corruption and their autonarcotic effect pose a great threat to the welfare of the society and continue to grow in menacing proportion. Therefore, the canker

(1) 1991 (1) Recent C.R. 383 (S.C.)

of the venality, if not fought against on all fronts and at all levels, checked and eradicated, well destabilize and debilitate the very foundations of democracy; wear away the rule of law through moral decay and make the entire administration ineffective and dysfunctional.

9. Mere rhetorical preaching of apostolic sermons listing out the vils of corruption and raising slogans with catch-words are of no use in the absence of practical and effective steps to eradicate them; because evil tolerated is evil propagated'.

10. At the same time one should also be alive to cases where false and frivolous accusations of corruption are maliciously made against an adversary exposing him to social ridicule and obloquy with an ulterior motive of wreaking vengeance due to past animosity or personal pique or merely out of spite regardless of the fact whether the proceedings will ultimately culminate into conviction or not.

(9) In order to put curbs or to eradicate corruption, the Legislature thought it just and proper to enact 'law'. When the Indian Penal Code was enacted in the year 1860, it also defined and prescribed punishment for the offence of bribery and corruption amongst public servants. But during the World Ward II, it was realised that the existing law in the Indian Penal Code was not adequate to meet the exigencies of the time and imperative need was felt to introduce a special legislation with a view to eradicate the evil of bribery and corruption and thereby the Prevention of Corruption Act, 1947 was enacted which was later on amended twice, once by the Criminal Amendment Act, 1952 and then in 1964 by the Santhanam Committee which was finally repealed by the Prevention of Corruption Act 1988 which filled the inadequcies of the 1947 Act. The objects and reasons for enactment of the Prevention of Corruption Act are that a bill was intended to make the existing anti-corruption laws more effective by widening their coverage and by strengthening the provisions. Accepting the recommendations of the Santhanam Committee, the Prevention of Corruption Act, 1947 was amended in 1964. 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, that enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. The bill sought to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants. The bill, *inter alia*, envisages

widening the scope of the definition of the expression 'public servant', incorporation of offences under sections 161 to 165A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial Court has been effaced. It is, however, subject to saving provision in the repealing Act. The effect of repeal and saving provisions in various repealing enactments have been considered by the Supreme Court and High Courts.

(10) The Prevention of Food Adulteration Act, 1954 (Act No. 37 of 1954) came into force on 1st June, 1955. In the year 1972, the words "except the State of Jammu and Kashmir" were omitted by prevention of Food Adulteration (Amendment) Act (41 of 1971), s. 2 (with effect from 26th January, 1972). Section 25 of the Act of 1954 deals with Repeal and Saving. Under Sub Section (1) of Section 25, if there was in force in any State to which this Act extends any law corresponding to this Act immediately before the commencement of this Act, that corresponding law stood repealed on the commencement of this Act. Section 25(2) reads as under :

> "25(2). Notwithstanding the repeal by this Act of any corresponding law, rules, regulations and bye-laws relating to the prevention of adulteration of food, made under such corresponding law and in force immediately before the commencement of this Act shall, except where and so far as they are inconsistent with or repugnant to the provisions of this Act, continue in force until altered, amended or repealed by rules made under this Act.

(11) It clearly goes to show that all rules, regulations and bye-laws relating to the prevention of adulteration of food, made under the corresponding law and in force immediately before the commencement of this Act were kept intact despite the fact that the law corresponding to this Act, that corresponding law stood repealed except where and so far as they are inconsistent with or repugnant to the provisions of this Act, continue in force until altered, amended or repealed by rules made under this Act.

(12) In Re: Sambayya, AIR 1958 Andhra Pradesh 348, the facts were that the petitioner had used criminal force and obstructed the Executive Officer of Giddalur Panchayat Board while the said officer was inspecting the petitioner's shop at Giddalur on 29th September, 1995. The Executive Officer is said to have entered the petitioner's shop and demanded from the petitioner, who was an oil merchant, a sample of the oil for the purpose of ascertaining whether the petitioner

had committed the offence under the Prevention of Food Adulteration Act. The petitioner refused to do so on the ground that the Executive Officer had no authority to seize the oil and he is further stated to have pushed the Executive Officer aside.

(13) It was argued by the learned counsel for the petitioner that Executive Officer of the Panchayat Board had no power to enter the petitioner's shop and seize the oil in question for the purpose of determining, whether it was adulterated.....Finding sufficient force in this contention, it was observed by their Lordships of the Supreme Court that under Section 7 of the Madras Prevention of Adulteration Act (Act III of 1918), the Local Executive Officer was empowered to enter any place where the articles of food were being manufactured or exposed for sale and inspect the same and seize any utensil or vessel used for the manufacturing, preparing or for storing such article. But that Act was superseded by a Central enactment, the Prevention of Food Adulteration Act (Act XXVII of 1954) which came into force on 1st June, 1955. It was noticed that under this Act, the State Government was authorised to appointment certain persons designated as Food Inspectors to carry out the purpose of the Act. Under Section 10, Food Inspectors are empowered to take samples of any article of food from any person selling such article or from any person in the course of conveying, delivering or preparing to deliver such articles to a purchaser or consignee, and from a consignee after delivery of any such article to him, and to send such sample for analysis to the public analyst for the local area within which such sample was taken.

(14) Food Inspectors are also empowered to enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take samples of such articles of food for analysis. Taking note of the provisions of Section 25 of the Act, it was held that Section 7 of the Madras Act III of 1918 stood repealed the moment the Central Act XXXVII of 1954 came into force. Consequently, the Local Executive Officers who were exercising the powers by virtue of Section 7 of the address Act ceased to have such powers. Under the Central Act, Food Inspectors alone can exercise those powers and that the saving clause contained in sub-section (2) of S. 25 of the Central Act has no application to this case.

(15) The Essential Commodities Act, 1955 received the assent of the President on 1st April, 1955 and soon thereafter became an Act of Parliament. On coming into force of the Act of 1955, the Essential Commodities Ordinance, 1955 (1 of 1955) and any other law in force in any State immediately before the commencement of this Act in so far

as such law controlled or authorised the control of the reduction, supply and distribution of, and trade and commerce in, any essential commodity were repealed. Section 16(2) and 16(3) read as under :

> 16. (2) Notwithstanding such repeal, any order made or deemed to be made by any authority whatsoever, under any law repealed hereby and in force immediately before the commencement of this Act shall, in so far as such order may be made under this Act, be deemed to be made under this Act and continue in force, and accordingly any appointment made, licence or permit granted or direction issued under any such order and in force immediately before such commencement shall continue in force until and unless it is superseded by any appointment made, licence or permit granted or direction under this Act.
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> 16. (3) The Provision of sub-section (2) shall be without prejudice to the provision contained in section 6 of the General Clauses Act, 1897 (10 of 1897), which shall also apply to the repeal of the Ordinance or other law referred to in sub-section (1) as if such Ordinance or other law had been an enactment.

(16) The provisions of Section 15 of the Essential Commodities Act, 1955 came to be considered in *Emperor* v. *Ranchhodial Hirabha,* (2) It was observed that the whole object of this section is to put orders deemed to be made on the same footing as orders made under Section 3 of the Act, to given those orders the same force and the same efficacy and to make the contravention of those orders as much penal as the contravention of orders made under Section 3. By reason of Section 16(2), the words "deemed to be made" must be read in every section of the Act wherever the words "order made" appear. Section 7 is only one of such sections and therefore an offence is committed if there is a contravention of any order deemed to be made under Section 3 of that Act.

(17) The West Bengal Soft Coke Distribution Order, 1955 and Section 16 of the Essential Commodities Act, 1955 came to be considered by the Calcutta High Court in *Sudhanshu Bhusan Pal* v. *State of West Bengal,* (3). It was held that this section repeal "any other law in force in any State immediately before the commencement of this Act". The repeal, therefore, is only in respect of law which was current immediately before the Essential Commodities Act commenced. But this

(2) A.I.R. 1948 Bombay 370
(3) A.I.R. 1963 Calcutta 61

West Bengal Soft Coke Distribution Order, 1955 commenced not before the Essential Commodities Act, 1955, but after the Essential Commodities Act came into force on the 1st April, 1955. The West Bengal Soft Coke Distribution Order, 1955, came into force in October, 1955 and indeed by reason of and under the provisions of Essential Commodities Act, 1955. In the preamble to the West Bengal Soft Coke Distribution Order, 1955, it is clearly said that Soft Coke Order is made in exercise of the powers conferred by Section 3(1) of the Essential Commodities Act, 1955, read with Clauses (c), (d), (e), (f), (i) and (j) of sub-section (2) of that section and the order No. 18, CI.(4)/55/1, dated the 10th June, 1955, of the Government of India in the Ministry of Production. That order of the 10th June, 1955 of the Government of India in the Ministry of Production expressly delegates powers of the Central Government under Section 3 of the Essential Commodities Act to the State Governments of the then Part A States and which includes the State of West Bengal. It was held by their Lordships that the West Bengal Soft Coke Distribution Order, 1955, Order No. 2215-S.D., dated the 7th October, 1955 and published in the Calcutta Gazette, dated the 20th October, 1955, is not repealed by Section 16(1) (b) of the Essential Commodities Act, 1955.

(18) In *Harpal Singh and others* v. *State of Punjab* (4), controversy arose whether under clause 15 of the Punjab Light Diesel Oil and Kerosene Dealers Licensing Order, 1978 issued under Section 3 of the Essential Commodities Act, 1955, an Assistant Sub Inspector of Police was competent to enter upon or search the business premises of the dealer or only a police officer not below the rank of Sub Inspector in competent to do so. Dealing with the said controversy, the learned Single Judge of this Court after considering clause 15 of the said Order held as under :—

> "A bare glance through the above clause leaves no doubt that special provision have been incorporated in this clause by empowering the Director, the District Magistrate, the Assistant Director, Food and Supplies, the Inspector or any other Officer not below the rank of Sub Inspector of Police to enter upon or search any premises of dealer or any premises on which such Officer has reason to believe that light diesel oil or kerosene or both have been, of being or are likely to be kept, store, distributed or disposed of in contravention with the provisions of this Order, Admittedly, the Essential Commodities Act as well as the above referred Order issued by the State

(4) 1991 (3) Recent C.R. 307

Government under Section 3 of the said Act are special laws whereas the Code of Criminal Procedure is general law. The law is well settled on the point that the provisions of the Special Act or Law will prevail upon the provisions of the general law. Moreover, if it appears that the special protection has been given to the offenders indulging in the sale of light diesel or kerosene oil in contravention with the provisions of this order by empowering the Officers holding responsible post only to detect the storage of such article in view of the nature of the offence. The factum that under sub-clause (3) of clause 15 of this Order that Procedure under the Code of Criminal Procedure, relating to search and seizure had been made applicable to searches under the Order is of no consequence since only that procedure embodied in the Code will be applicable in this matter regarding which no specific provision has been made under this clause. Thus the reading of clause 15 of the Order as a whole leaves no doubt that the inconsistent provisions of the Code of Criminal Procedure regarding the power to search etc. will not be applicable to the searches under clause 15 of the order. Consequently, there is no escape but to conclude that only police officer not below the rank of Sub-Inspector is competent to conduct such searches or seize the kerosene oil or diesel as the case may be. In the case in hand, there is no dispute that Assistant Sub-Inspector Narender had organised a raiding party and effected recovery of kerosene oil during the search. In view of the mandate contained in clause 15 of the Order, the entire investigation or search conducted by the Assistant Sub-Inspector stands vitiated as he was not competent to do so."

(19) Same view was also taken by another learned Single Judge of this Court in *Vijay Kumar* v. *State of Punjab,* (5); The facts were that on 29th June, 1990 at 10.40 a.m. Shri Inderjit Singh, Assistant District Food and Supplies Controller, Faridkot and his officials raided the show-room and the godown of M/s Moga Gas Service, Moga, Shri M.S. Gujral, Officer of the Indian Oil Corporation was also present and weighment of cylinders was got done in the presence of Shri Vijay Kumar and on weighment cylinders were found under weight. It was found that M/s Moga Gas Service had violated the provisions of Clause 6(6) (2) of the Liquified Petroleum Gas Regulation of Supplies and Distribution Order, 1981. Consequently, on the complaint made by the District Food and Supplies Controller, Faridkot to Senior Superintendent

(5) 1991 (3) Recent C.R. 525

of Police, Faridkot. *Vide* his memo No. 90/8576, dated 4th July, 1990, a case was registered against the said fire. In the above said case, provisions of Section 72 Clause (a) of the standard Weights and Measures Act, 1976 came to be considered by a learned Singled Judge of this Court who found that the complaint could be filed by Director Metrology in writing to the Judicial Magistrate Ist Class having jurisdiction in the area at Moga and District Food and Supplies Controller, could move the Director Metrology and not the police in this regard. Special jurisdiction conferred on the Director aforesaid excludes general pervading and self-assumed jurisdiction of the police under general criminal law. Consequently, the FIR and the investigation were quashed.

(20) In *Ashok Kumar* v. *State of Haryana,* (6), the fact were that Inspector, Food and Supplies Department, on 5th January, 1989 found on perusal of the sale register of kerosene oil maintained by the petitioner on the basis of the statements of eight PWs that bogus entries have been made with regard to sale of 8 litres of kerosene oil to each one of them. The case was registered under Section 7 of the Essential Commodities Act. 1955. While dealing with the prayer of the petitioner for quashing the order framing the charge by the Special Judge, Rohtak, Clause 11(1) as amended by notification dated 25th January, 1986 of Haryana Kerosene Dealers Licensing Order, 1976, came to be considered. It was observed that the said licensing Order had been amended by notification dated 25th January, 1986 according to which the power of entry, search and seazure which was previously vested amongst others inthe Inspector, Food and Supplies, Department, had been vested in the Senior Officers of the department i.e. not below the rank of Assistant Food and Supplies Officer. The checking of the sale register of kerosene oil having been done by the Inspector and not by the Assistant Food and Supplies Officer, it was held that the entry, search and seizure by the Inspector were thus without any authority of law Consequently, the proceedings were quashed.

(21) The Narocotic Drugs and Psychotropic Substances Act, 1985 (for short NDPS Act) came into force in the whole of India on 14th November, 1985,—*vide* S.O. No. 821(E), dated 14th November, 1985, on the coming into force, the Act of 1985, the opium Act, 1857 (13 of 1857), the opium Act, 1878 (1 of 1878) and the Dangerous Drugs Act, 1930 (2 of 1930) were repealed. Sub section (2) of Section 82 of the NDPS Act provided that notwithstanding such repeal, anything done or action taken or purported to have been done or taken under any of

(6) 1991 (2) Recent C.R. 140

the enactments repealed by sub-section (1) shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act. Section 74 was incorporated in the Act as transitional provisions. It reads as under :—

> "74. Transitional provisions,—Every officer or other employee of the Government exercising or performing, immediately before the commencement of this act, any powers of duties with respect to any matters provided for in this Act, shall, on such commencement, be deemed to have been appointed under the relevant provisions of this Act to the same post and with the same designation as he was holding immediately before such commencement.

(22) It is amply clear that every officer or other employee of the government exercising or performing any powers or duties with respect to any matters provided for in the act of 1985, immediately before the commencement of this Act, on commencement of this Act have to be deemed to have been appointed under the relevant provisions of this act to the same post and with the same designation as he was holding immediately before such commencement. Sub Section (2) of Section 82, begins with non obstente clause and provides that anything done or any action taken or purported to have been taken or taken under any of the enactments i.e. under the opium Act, 1857 (13 of 1857) the opium Act 1878 (1 of 1878) and the Dangerous Drugs Act, 1930 (2 of 1930) (repealed enactments) in so far as it is not inconsistent with the provisions of this Act or considered to have been done or taken under the corresponding provisions on this Act. It is therefore, clear that anything done or any action taken or purported to have been done or taken under the provisions of the repealed enactments so far as it is not inconsistent with the provisions of this Act were specifically saved by incorporating a specific provisions in this act. Section 24 of the General Clauses Act, 1897 reads as under:—

> 24. Continuation of orders, etc. issued under enactments repealed and re-enacted.—Where any Central Act or Regulation, is, after the commencement of this act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any appointment notification, order, scheme, rule, from or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so

re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye-law, made or issued under the provisions so re-enacted and when any Central act or Regulation, which, by a notification under Section 5 or 5A of the Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this Section."

(23) A Division Bench of this Court in *Murli Dhar* v. *State of Haryana,* (7) While dealing with the provisions in Section 74 and 82 of the NDPS Act and Section 24 of the General Clauses Act, 1897 observed as under :—

"Reading of both these sections along with section 74 of the act makes it clear that actions taken under the repealed Act would be deemed to have been taken under the Repealing Act. Thus, the Officers who were authorised to conduct investigation or effect recoveries under the opium Act would be deemed to have been appointed under the provisions of the Act and would exercise such powers and follow the procedure as prescribed under the Act till the State Governments appoint officers to act under Sections 41 and 42 of the Act."

(24) Section 484 of the Code of Criminal Procedure, 1973 deals with Repeal and Savings. The relevant portion of it reads as under :—

484. Repeal and savings.—(1) The Code of Criminal Procedure, 1898 (5 of 1898), is hereby repealed.

(2) Notwithstanding such repeal :—

(a) xx xx xx xx

(b) all notifications published, proclamations issued, powers conferred, forms prescribed, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the Old Code and which are in force immediately before the commencement of this

(7) 1990 (3) Recent C.R. 656

Code, shall be deemed, respectively, to have been published, issued, conferred, prescribed defined, passed or made under the corresponding provisions of this Code;

(c) xx xx xx

(d) xx xx xx

(3) xx xx

(25) It is thus clear that under specific provisions contained in Section 484 (b), all notifications published, proclamations issued, powers conferred, froms prescribed, local jurisdictions defined, sentences passed and orders,rules and appointments, made under the Code have been expressely saved. It is thus illustratively clear that all the repealing enactments, referred to above, contained a specific provision in respect of repeal and saving. It also appears clear that if the intention of the Legislature is to save the notification, bye-laws, powers given to any person, acts done by the officers or employees mentioned in the repeal and saving clauses that must be so said in so many clear words and expressely save the same by incorporating a specific provisions in the repealing enactment.

(26) In *Natabad Parida and others* v. *State of Orissa* (8), the facts were that occurence took place on 8th March, 1974 at a place situated in the District of Cuttack, Orrisa. First information Repot was lodged on 9th March, 1974, and a police investigation started in connection with the offences alleged to have been committed under Sections 147, 148, 307, 302 simpliciter as also with the aid of section 149 of the Indian Penal Code. The four accused were arrested by the Police in the course of investigation on 10th March, 1974 and four others who were released on bail by the Sessions Judge were arrested on 14th March, 1974. They were produced before the Magistrate who remanded them to jail custody from time to time. The bail was refused to them by the Sessions Judge rejecting the argument based upon provisio (a) to sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) relying on the saving clause (a) of sub-section (2) of Section 484. Their prayer was also rejected by the Orissa High Court. The concerned accused approached the Hon'ble Supreme Court by filling a Special Leave Petition. Their lordships of the Supreme Court observed that new Code came into force withe ffect from 1st of April, 1974. Section 484(1) repealed the Code of Criminal Procedure, 1898 (Old Code) but there were certain saving clauses engrafted in sub-section (2). Their

(8) A.I.R. 1975 S.C. 1465

lordships noticed the provisions contained in sub-section (2) of the Code of Criminal Procedure, 1973 and observed that the Magistrate to whom the accused was forwarded could remand him to police custody or jail custody for a term not exceeding 15 days in the whole under Section 167(2). Even the Magistrate who had jurisdiction to try the case could not remand the accused to any custody beyond the period of 15 days under section 167(2) Cr.P.C. It was further observed that there was no other section which in clear or express language conferred this power of remand on the Magistrate beyond the period of 15 days during the pendency of investigation and before taking of the cognizance on the submission of charge-sheet. Section 344 (Old Code) however, enabled the Magistrate to postpone the commencement of any enquiry or trial for any reasonable cause. Then question for consideration arose, whether during the pedency of the investigation which started before coming into force of the New Code, the accused could press into service proviso (a) to sub-section (2) of Section 167 of the Code and claimed to be released on bail as a matter of right when they were prepared to furnish bail. Their lordships observed that answer to this question depended on the interpretation of Sections 167 and 484 of the New Code. Unlike the wording of Section 428, the language of Section 167(1) which will govern sub-section (2) also, is whenever any person is "arrested" suggesting thereby that the section would be attracted when the arrest is made after coming into force of the Act. While the expression used in Section 426 is "where an accused person has, on conviction, been sentenced....." Considering the case law on the point, their Lordships of the Supreme Court held as under :—

> "Immediately before the 1st day of Apri, 1974 the investigation of this case was pending Saving Clause (a) therefore enjoins that the said investigation shall be continued or made in accordance with the provisions of the Old Code. The police officer, therefore, making the investigation has to continue and complete it in accordance with Chapter XIV of the Old Code. Section 167 of that Code could not enable the Magistrate to remand the appellants to jail custody during the pendency of the investigation. The Police could seek the help of the Court for exercise of its power of remand under Section 344, bringing it to the notice of the Court that sufficient evidence had been obtained to raise a suspicion that the appellants may have commited an offence and there will be hinderance to the obtaining of further evidence unless order of remand was made. As we have said above, invoking the power of the Court under S. 344 of the Old Code by the Investigating Officer

would be a part of the process of investigation which is to be continued and made in accordance with the old code. That being so, we hold that the appellants in this case can not claim to be released under proviso (a) of Section 167(2) of the New Code."

(27) Section 17 of the Corruption Act, 1988 reads as under :—

17. Persons authorised to investigate—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank—

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police ;

(b) in the metropolitan area of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-Section (1) of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or police officer of equivalent rank, shall investigate any offence punishable under this act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant :

Provide that if a police officer not below the rank of an inspector of police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be or make arrest therefore without a warrant :

Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

(28) This section talks of the persons authorised to conduct cases under the Act and is analogous to section 5-A of the Prevention of Corruption Act, 1947 except so far as offences under section 161, 165 or section 165 A of the Indian Penal Code, section 5-A of the Old Act is mandatory and not directory and the investigation conducted in violation thereof would bear the stamp of illegality.

(29) It is manifestly clear from the provisions of Section 17 of the Prevention of Corruption Act, 1988 that under clause (a) an inspector of Delhi Police in the case of the Delhi Special Police Establishment; under clause (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974); and elsewhere the Deputy Superintendent of Police or a police officer of equivalent rank is authorised to investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant. It is further provided that if a police officer not below the rank of an Inspector is authorised by the State Government in this behalf by general of special order, he may also investigate any such offence without the order of the Metropolitan Magistrate or Magistrate of the first class, as the case may, or make arrest therefore without a warrant. As provided under clause (c) of Section 17 of the Act of 1988 only a Deputy Superintendent of Police or a police Officer of an aquivalent rank could investigate the case registered under the Act.

(30) In *Ch. Bhajan Lal's* case (supra), the facts were that on the complaint presented by Dharam Pal, the Officer on Special Duty (OSD) in the Chief Minister's Secretariat made an endorsement on 12th November, 1987 in Hindi, the translation of which reads "C.M. has seen. For appropriate action: and marked the same to the Director General of police (DGP), who is turn made an endorsement on 12th November, 1987 itself reading please look into this; take necessary action and report" and marked it to the Superintendent of Police (S.P.) Hissar. The said complaint along with the above endorsements of OSD and DGP was put before the S.P. the second appellant on 21st November, 1987, on which date itself the S.P. made his endorsement reading "please register a case and investigate". The SHO registered a case on the basis of the allegations in the complaint under Sections 161 and 165 of the Indian Penal Code and Section 5(2) of the Act on 21st November, 1987 itself at 6.15 P.M. and took up the investigation. On the foot of the First information Report (FIR), the following endorsement was made :

> Police proceedings that the S.P. Hissar after registering the case of the above application has ordered to investigate the case. That FIR u/s 161 IPC and S. 5(2) P.C. Act has been registered at P.S. Sadar, Hissar. An inspector, along with constables Sumer Singh 700, Randhir Singh 445, After Singh 47 proceeded to the spot. Constables Sumer Singh 700 and

Randhir Singh 445 were handed over the rifle along with 50 cartridges each and copy of the FIR as a special reprot is being sent, through Head Constable Bhaktawar Singh, 602 at the residence of illaqa Magistrate and other offices.

Tara Chand,
Inspector,
Police Station Sadar"

(31) The SHO after forwarding a copy of the first information report to the Magistrate and other officers concerned, himsef took up the investigation and proceeded to the spot accompanied by three constables of whom two constables were handed over one rifle each and 50 cartridges, which led Ch. Bhajan Lal to file Writ petition No. 9172/ 1987 under Articles 226/227 of the Constitution of India seeking issuance of a writ of certiorari quashing the first information report and also of a writ of prohibition restraining the petitioners from further proceeding with the investigation. *Ex-parte* stay was granted which was thereafter made absolute by the High Court. The claim made in the above said writ petition was contested by the respondents in the writ petition. Ultimately, the High Court concluded that the allegations do not constitute a cognisable offence for commencing the investigation and granted the relief prayed for. The matter was taken to the apex Court. In para 136 of the judgment, their lordships of the Supreme Court held as under :-

"136. From the above discussion, we hold that (1) as the salutary legal requirement of disclosing the reasons for according the permission is not complied with ; (2) as the prosecution is not satisfactorily, explaining the circumstances which impelled the S.P. to pass the order directing the SHO to investigate the case ; (3) as the said direction manifestly seems to have been granted mechanically and in a very casual manner, regardless of the principles of law enunciated by this Court, probably due to blissful ignorance of the legal mandate ; and (4) as, above all, the SHO has got neither any order from the Magistrate to investigate the offences under Sections 161 and 165 IPC nor any order from the S.P. for investigation of the offence under section 5(1)(e) of the Prevention of Corruption Act in the manner known to law, we have no other option, save to quash that order of direction, reading "investigate" which direction suffers from legal infirmity and also the investigation, if any, so for carried out. Nevertheless, our order of quashing the direction of the S.P. and the investigation

thereupon will not in any way deter the first appellant, the State of Haryana to pursue the matter and direct an investigation afresh in prusuance of the FIR the quashing of which we have set aside, if the State so desires, through a competent police officer, clothed with the legal authority in strict compliance with Section 5A(1) of the Act."

(32) It is manifestly clear that in Ch. Bhajan Lal's case (supra), SHO had neither got any order from the Magistrate to investigate the offences under Sections 161 and 165 nor any order from the Superintendent of Police for investigation of the offence under Sections 5(2)(e) of the Prevention of Corruption Act and as such the investigation was quashed. The State of Haryana was left at liberty to pursue the matter and direct an investigation afresh in pursuance of the FIR, the quashing of which was set aside through a competent police officer clothed with the legal authority in strict compliance with the provisions of Section 5A(1) of the Act.

(33) In *Vishnu Kondaji Jadhav* v. *State of Maharashtra,* (9), their lordships of the Supreme Court observed as under and quashed the conviction and sentence :—

"In the present case, admittedly, on three difference occassions, the demand for money was made. The first was on 13th May, 1975, the second on 20th June, 1975 and the third on 5th July, 1975. Each demand constituted on offence by itself to investigate which permission for investigation was necessary under Section 5-A of the Act. Each investigation in the circumstances constituted an independent investigation into an independent offence. Hence, for investigating the offence for the demand of bribe made on the third occasion, i.e. on 5th July, 1975, it was necessary to take a separate and independent permission from the Magistrate which was admittedly not done. Since the provisions of Section 5-A relating to the obtaining of the permission from the Magistrate are mandatory before investigation is launched into the offence, the appellant is entitled to succeed."

(34) The present case was registered against the petitioner by inspector of police, trap was laid by him accused was arrested and investigation of the case was conducted by the Inspector of Police without an order of a Magistrate of the first class. He was also not authorised by the State Govt. In this behalf by general or special order.

(9) 1994 (3) Recent C.R. 47 (S.C.)

(35) Faced with this, it was argued by the learned counsel appearing on behalf of the State that as required by sub-section (1) of Section 5-A of the Prevention of Corruption Act, 1947 all the Inspectors of police in the Vigilance Department, were authorised by the State Government to investigate the cases under this Act in the whole of the Punjab State by issuing notifications Annexures R1 and R2. It was further argued that in view of the provisions of sub section (2) of Section 30 of the Prevention of Corruption Act. 1988 and under Section 6 of the General Clauses Act, 1897, the said notifications are still in force and every Inspector of Police in the Vigilance Bureau of the State is empowered to investigate the cases under the Prevention of Corruption Act, 1988 in whole of the Punjab State. The contention raised is misconceived.

(36) To properly appreciate the contentions raised, provisions of the Prevention of Corruption Act, 1988 and Section 6 of the General clauses act, 1897, may be adverted to. Section 38(2) reads as under :—

30. Repeal and saving :—(1) xx xx xx

"30. (2) Notwithstanding such repeal, but without prejudice to the application of Section 6 of the General Clauses Act, 1897 (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provisions of this Act."

(37) It is manifestly clear that the legislature had the intention to bodily lift the provisions of Section 6 of the General Clauses Act, 1897 and incorporate the same in the Amending Act of 1988 and (no other provision) of the General Clauses Act. If the legislature had intended to apply any other provision or whole of the General Clauses Act, 1897, it would have so said clearly instead of saying that Section 6 only would apply or would have said nothing in that regard and in that eventuality, whole of the Act of 1897 would have its application. It is trite law that even when a saving clause reserving the rights and liabilities under the repealed law is absent in a new enactment, the same will neither be material not decisive on the question of different intention because in such cases Section 6 of the General Clauses Act will be attracted and rights and liabilities acquired, accrued under the repealed law will remain saved unless there is something to infer that legislature intended to destroy the rights and liabilities already accrued. It, therefore, appears clear that the legislature intended to apply Section 6 only and

not be whole of the Act. Section 6 of the General Clauses Act, 1897 reads as under :—

"6. Effect of repeal.—Where this Act, or any (Central Act) or Regulation made after the commencement of this act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceedings or remedy in respect of any such right, privilege obligation, liability, penalty forfeiture or punishment as aforesaid; and any such investigation. Legal proceeding or remedy may be instituted, continued or enforced, and any such penality, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

(38) *In G.P. Nayyar* v. *State (Delhi Administration)* (10), the facts were that a public servant was charged under Section 161 read with section 5(2) and Section : 5(1) (d) of the Prevention of Corruption Act, 1947, the Special Judge found that the assets of the accused during 1955 to 1961 were disproportionate to the known sources of his income. But as S. 5(3) had been repealed by Act No. 40 of 1964 on 18th December, 1964 the accused was acquitted on the ground that presumption under S. 5(3) was not available. Appeal was preferred by the State to the High Court. During the pendency of the appeal Act No. 16 of 1967 introducing S. 5(1) (e) came into force. The High Court remanded the case to be tried from the stage at which it was pending on 18th December, 1964. Their Lordships of the Supreme Court

(10) A.I.R. 1979 S.C. 602

observed and held as under :—

Section 6 provides that the repeal shall not affect the previous operation of any enactment so repealed unless a different intention appears. The operation of all the provisions of the Prevention of Corruption Act would continue in so far as the offences that were committed when section 5(3) was in force. The offences that were committed after the date of the repeal will not come under the provisions of S. 6(b) of the General Clauses Act. Section 6(c) also preserves all legal proceedings and consequences of such proceedings as if the repealing Act had not been passed. In this view it is clear that whether Act 16 of 1967 had been brought into force on 20th June, 1967 or not the rule of evidence as incorporated in S. 5(3) would be available regarding offences that were committed during the period before the repeal of S. 5(3).

Notification Annexure R.I. reads as under :—

(Extract from Punjab Government Gazette, dated the 17th April, 1970).

HOME DEPARTMENT

Notification

The 9th July, 1968

No. 6490-3H/7967.—In pursuance of the first proviso to sub- section (1) of section 5A of the prevention of Corruption Act, 1947 (2 of 1947), the Governor of Punjab is pleased to authorise "Inspector of Police" for the time being serving inthe Special Inquiry Agency of Vigilance Department of the punjab Government or who may be posted in future to serve the said agency to investigate offences under the said Act in the whole of the Punjab State so long as they remain posted in the said agency.

(Sd.) . . .,
Home Secretary to Government,
Punjab.

Notification Annexure RII reads as under :—

(Extract from Punjab Government Gazette, dated the 17th April, 1970.

HOME DEPARTMENT

Notification

The 12th August, 1968

No. 7823-3H-68/7966.—In supersession of Punjab Government, Home Department, notification No. 6490-3H-68, dated 9th July, 1968 and in exercise of the powers conferred by the first proviso to sub section (1) of Section 5-A of the Prevention of Corruption Act, 1947 (2) of 1947, the Governor of Punjab is pleased to authorise for the purpose of the said proviso, Inspector of Police for the time being serving in the Special Enquiry Agency of Vigilance Department of the Punjab Government or who may be posted in future to serve in the said agency.

(Sd.) . . .,
Home Secretary to Government,
Punjab.

(39) These notifications were issued under sub section (1) of Section 5-A of the Prevention of Corruption Act, 1947 and Inspector of Police serving in the Special Inquiry agency in the Vigilance Department of the Punjab Government or who were to be posted in future to serve in the said agency were authorised to arrest and investigate the case for the commission of the offence under the Act of 1947. The notifications enure in respect of any investigation legal proceedings or remedy that may be instituted, continued or any such penalty, forfeiture of punishment that may be imposed under the Act of 1947, as if the repealing Act or Regulation had not been passed. These notifications, referred to above, were not expressly saved by saving provision contained in Section 30(2) of the act of 1988. These notifications, therefore, would not enure or survive to govern any investigation done or legal proceeding instituted in respect of cases registered under the repealing Act 1988 after it came into force with effect from 9th September, 1988.

(40) Under Section 17(c) of the act of 1988 only the Deputy Superintendent of Police or Police Officer of an equivalent rank could investigate the cases but the cases in hand were admittedly investigated by the Inspector of Police who is neither Deputy Superintendent of Police nor a Police Officer equivalent to the rank of Deputy Superintendent of Police. After the repealment of the Prevention of Corrpution Act, 1947, the Prevention of Corruption Act, 1988, came into force, the matter regarding the issue of notification empowering or authorising the inspectors of police to investigate the cases under the Prevention of Corruption Act, 1988 was taken up with the Government,

Annexure P2 shows that the Vigilance Department,—*vide* letter No. 18297/VB/Co-3, dated 26th August, 1992, requested the Government of Punjab to grant powers of investigation to Police Inspectors under the Prevention of Corruption Act, 1988. In response to that communication the Director General of Police Vigilance Bureau,—*vide* memo No. 19/13/91 14th (1) 15021, dated 17th December, 1992 was informed that after considering the matter, it had been decided not to give powers regarding investigation below the rank of Deputy Superintendents of Police. Again the Director General of Police, Vigilance Punjab,—*vide* urgent letter No. 23157/VB/3, dated 21st October, 1993 requested the Government of Punjab in the Department of Vigilance for strengthening of Vigilance Bureau and for making it multi-disciplinary in character and for launching of special compaign for the eradication of corruption. The Additional Secretary, Vigilance,—*vide* memo No. 10/9/93/-9V(4), dated 3rd November, 1993 informed the Director General of Police, Vigilance Punjab that on 18th October, 1993 a High Level meeting under the Chairmanship of Chief Secretary to Government Punjab was held in which issue of notification of inspectors under the Prevention of Corruption Act was considered. It was explained that under the Prevention of Corruption Act, the Power of investigation lies with the Deputy Superintendent of police, as such inspectors should benotified. After the discussion it was felt that the Vigilance Bureau should be officer oriented. The Officers taken on deputation in the Vigilance Bureau should be competent and of proven integrity. It was decided that to maintain high standard of investigation it would be better that Deputy Superintendents of Police should investigate cases under the Prevention of Corruption Act. As such it was agreed that as per requirements by keeping the number of posts of Inspectors posted in the Vigilance Bureau in abeyance, same number of posts in the rank of Deputy Superintendents of Police can be got created to handle cases under the Prevention of Corruption Act. Copy of the Proceedings of the High Level Meeting was sent to the Director General of Police, Vigilance Punjab. At this on 30th November, 1993, the Director General of Police, Vigilance Bureau, Punjab,—*vide* his letter dated 26764/VB/CC3, dated 30th November, 1993 again took up the matter with the Secretary to Government of Punjab, Vigilance Department regarding issuance of notification of Inspectors for investigation of cases under the Prevention of Corruption Act for creation of more posts of Deputy Superintendents of Police as it was known to the Government that Inspectors of Police had not been empowered to investigate cases under the Prevention of Corruption Act, 1988 and that power of investigation was with the Deputy Superintendent of Police, the material available on record shows that

Inspectors of Police in the Vigilance Bureau, Punjab were not empowered by any notification to investigate the cases under the Prevention of Corruption Act, 1988 though posts of Superintendents of Police, Deputy Superintendents of Police and Steno Typists were created. It is, therefore, clearly made out that the State Government had neither any intention to keep alive or to give lease of liee to the notifications Annexure R1 and R2 nor had any intention to empower Inspectors of Police to investigate the cases registered under the provisions of the Prevention of Corruption Act, 1988.

(41) Faced with this, it was argued by the learned counsel for the State that sub-section (1) of Section 156 Cr.P.C. provides that any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII and that sub section (2) further provides that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. The contention raised is misconceived and misplaced. A plain reading of sub-section (2) of section 156 Cr.P.C. would show that investigation by an officer not empowered under that Section i.e. with reference to sub sections (1) and (3) thereof cannot be questioned. Sub-section (1) of Section 156 is a provision empowering an officer in charge of the Police Station to investigate a cognizable case without an order of the Magistrate and it limits his power to the investigation of such cases within such local jurisdiction. It is the violation of this provision that is cured under sub section (2). Obviously sub section (2) of Section 156 Cr.P.C. cannot cure the violation of any other statutory specific provisions prohibiting investigation by an officer of a lower rank than a Deputy Superintendent of Police unless specifically authorised. But apart from the implication of the language, section 156 (2), it is not permissible to read the emphatic negative language of section 17 of the Act of 1988 as merely being in the nature of an amendment or a proviso to sub section (1) of Section 156 Cr.P.C.

(42) Under Section 17(c) of the Act of 1988 only the Deputy Superintendent of Police or Police Officer of an equivalent rank could investigate the cases but the cases in hand were admittedly registered under the act of 1988 and investigated by the Inspector of police who is neither Deputy Superintendent of Police nor a police officer equivalent to the rank of Deputy Superintendent of Police.

(43) For the reasons recorded, it is held that the notifications Annexures R1 and R2 issued under Section 5-A of the Act of 1947 empowering the Inspectors of Police in Vigilance Bureau to investigate and take the proceedings in cases registered under the Provisions of Corruption Act, 1988 would not ensure and if the proceedings are taken up and carried out by the Inspector of police not empowered under any general or special order under the new Act shall stand vitiated. The proceedings shall also stand vitiated if these are initiated and continued without order of Judicial Magistrate of First Class in that behalf.

(44) It may be noted with advantage from the material available on record that while Prevention of Corruption Act, 1947 was in force, notifications Annexures R-1 and R-2 reproduced above were issued under Section 5-A of the Old Act empowering Inspectors of Police in the Vigilance Bureau to investigate Offence under the said Act in the whole of the Punjab State so long as they remained posted in the said agency. It cannot be disputed that after commencement of the Act of 1988, the Inspectors of Police, Vigilance Bureau Punjab have not been empowered by general or special order of the State Government authorising or empowering them to investigate the cases in relation to the offence under the Prevention of Corruption Act, 1988 and that as provided under Section 17(c) only the Deputy Superintendent of Police or a Police Officer of equivalent rank is empowered to investigate any offence punishable under this Act without the order of a Magistrate of the 1st Class or make any arrest therefore without a warrant. Prevention of Corruption Act, 1988 came into force with effect from 9th September, 1988 repealing the Act of 1947. It is pertinent to note that the cases at hand were registered after the Act of 1988 came into force, therefore the provisions of Section 6 of the General Clauses Act, 1897 would also not come into play in such cases. provisions of Section 6 of the General Clauses act 1897 would come into play only in the cases registered or any act done in that behalf before the commencement of the Act of 1988 i.e. the 9th September, 1988.

(45) For the reasons recorded above, these petitions are allowed and the F.I.Rs referred to in para No. 1 of this petition, with all subsequent proceedings thereto are quashed.

R.N.R.