CASE NO.:
Appeal (crl.) 982-983 of 2003

PETITIONER:
Dilawar Singh

RESPONDENT:
Parvinder Singh @ Iqbal Singh & Anr.

DATE OF JUDGMENT: 08/11/2005

BENCH:
H.K. Sema & G.P. Mathur

JUDGMENT:
J U D G M E N T

G. P. MATHUR, J.

1. These appeals, by special leave, have been preferred against the judgment and order dated 3.7.2002 of the High Court of Punjab and Haryana by which Criminal Revision Petition No.553 of 2002 filed by the respondent Parvinder Singh @ Iqbal Singh was allowed and the appellant was summoned for facing prosecution under Section 13(2) of Prevention of Corruption Act, 1988. The appellant filed an application under Section 482 Cr.P.C. for recall of the order dated 3.7.2002 on the ground that he was not served with the notice of the revision and the same was allowed ex-parte against him, but the application was dismissed by the order dated 4.3.2003 with the observation that there was no provision for review under the Code of Criminal Procedure. The appellant has laid challenge to the aforesaid order as well.

2. It is necessary to mention the basic facts giving rise to the present appeals. On the complaint made by the wife, a case was registered against Parvinder Singh @ Iqbal Singh under Section 406/498-A IPC. On 27.1.2000 Parvinder Singh @ Iqbal Singh gave a complaint to the SSP Barnala alleging that on 23.1.2000, Jasbir Singh, ASI and a Home Guard came to his house on a scooter and forcibly took him to the Police Station Barnala. He was beaten and tortured and was subjected to third degree methods. Some of his relatives, namely, Jarnail Singh, Sukhdev Singh, Sadhu Singh Grewal and Sukhdev Singh Virk came to the police station and requested the police personnel not to beat or torture him. It was further alleged in the complaint that Jasbir Singh, ASI, told them that they should talk to Dilawar Singh, S.H.O., who was sitting there on a chair. Dilawar Singh then demanded an amount of Rs.20,000/- for releasing Parvinder Singh. His relations then brought the amount, out of which Rs.15,000/- was offered to Dilawar Singh but he said that the money may be handed over to ASI Jasbir Singh. The amount of Rs.15,000/- was then given to ASI Jasbir Singh, who kept the same in the pocket of his coat. Parvinder Singh was medically examined on 28.1.2000 and a case was registered under Section 13(2) Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act"). After investigation, charge-sheet was submitted only against ASI Jasbir Singh. A closure report was submitted against Dilawar Singh S.H.O. as in the opinion of the investigating officer he had not committed any offence. It may be mentioned here that for prosecution of ASI Jasbir Singh, necessary sanction had been obtained from the competent authority under Section 19 of the Act. After the statement of the complainant Parvinder Singh had been recorded, he moved an application under Section 319 Cr.P.C. for summoning Dilawar Singh, S.H.O. as a co-accused in the case. After hearing the counsel for the parties, the learned Special Judge dismissed the application by the order dated 7.1.2002. Parvinder Singh filed a revision petition against the

aforesaid order which has been allowed by the High Court by the impugned order dated 3.7.2002 and a direction has been issued to summon Dilawar Singh and try him in accordance with law.

3. Learned counsel for the appellant had submitted that no sanction had been granted under Section 19 of Prevention of Corruption Act, 1988, for prosecution of the appellant under Section 13(2) of the said Act and in absence of sanction, the appellant could not be summoned to face the trial. Learned counsel for the respondent Parvinder Singh has submitted that the language used in the opening part of the sub-section (1) of Section 19 is that "No Court shall take cognizance of an offence punishable under Sections 7, 10, 11 13 ....." and in the present case cognizance of the offence had already been taken by the Special Judge as against ASI Jasbir Singh and in these circumstances, no fresh sanction was required as against the appellant Dilawar Singh. Learned counsel has further submitted that a Court takes cognizance of an offence and not that of an offender and once cognizance has been validly taken as against ASI Jasbir Singh, for whose prosecution sanction had been granted, there is no impediment in proceeding against the appellant Dilawar Singh as well. In support of the submission that cognizance is taken of an offence and not that of an offender, reliance is placed on certain observations made in Raghubans Dubey v. State of Bihar AIR 1967 SC 1167, wherein it was held that once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. Learned counsel has also submitted that the complainant respondent had moved an application for summoning the appellant under Section 319 Cr.P.C., which gives wide power to the Court to summon an accused and to proceed against him if it appears from the evidence that any person not being an accused has committed any offence for which such person could be tried together with the accused.

4. In our opinion, the contention raised by the learned counsel for the appellant is well founded. Sub-section (1) of Section 19 of the Act, which is relevant for the controversy in dispute, reads as under :
"19. Previous sanction necessary for prosecution.\026(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, -

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office."

This section creates a complete bar on the power of the Court to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the competent authority enumerated in clauses (a) to (c) of this sub-section. If the sub-section is read as a whole, it will clearly show that the sanction for prosecution has to be granted with respect to a specific accused and only after sanction has been granted that the Court gets the competence to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by such public servant. It is not possible to read the section in the manner

suggested by learned counsel for the respondent that if sanction for prosecution has been granted qua one accused, any other public servant for whose prosecution no sanction has been granted, can also be summoned to face prosecution.

5. In State through CBI v. Raj Kumar Jain (1998) 6 SCC 551, the Court was examining the scope of Section 6(1) Prevention of Corruption Act, 1947, which is almost similar to sub-section (1) of Section 19 of the Act. After quoting the provisions of Section 6(1) Prevention of Corruption Act, 1947, it was held as under in para 5 of the report :
"5. From a plain reading of the above section it is evidently clear that a Court cannot take cognizance of the offences mentioned therein without sanction of the appropriate authority. In enacting the above section, the legislature thought of providing a reasonable protection to public servants in the discharge of their official functions so that they may perform their duties and obligations undeterred by vexatious and unnecessary prosecutions."

6. In Jaswant Singh v. State of Punjab AIR 1958 SC 124, sanction had been granted for prosecution of the accused for an offence under Section 5(1)(d) of the Prevention of Corruption Act, 1947, but no sanction had been granted for his prosecution under Section 5(1)(a) of the said Act. It was held that no cognizance could be taken for prosecution of the accused under Section 5(1)(a) of the Prevention of Corruption Act, 1947, as no sanction had been granted with regard to the said offence, but the accused could be tried under Section 5(1)(d) of the said Act as there was a valid sanction for prosecution under the aforesaid provision.

7. In Crl. Appeal No.215 of 2004 (State of Goa v. Babu Thomas) decided by this Bench on 29.9.2005, it was held that in absence of a valid sanction on the date when the Special Judge took cognizance of the offence, the taking of the cognizance was without jurisdiction and wholly invalid. This being the settled position of law, the impugned order of the High Court directing summoning of the appellant and proceeding against him along with Jasbir Singh ASI is clearly erroneous in law.

8. The contention raised by learned counsel for the respondent that a Court takes cognizance of an offence and not of an offender holds good when a Magistrate takes cognizance of an offence under Section 190 Cr.P.C. The observations made by this Court in Raghubans Dubey v. State of Bihar (supra) were also made in that context. The Prevention of Corruption Act is a special statute and as the preamble shows this Act has been enacted to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. Here, the principle expressed in the maxim Generalia specialibus non derogant would apply which means that if a special provision has been made on a certain matter, that matter is excluded from the general provisions. (See Venkateshwar Rao v. Govt. of Andhra Pradesh AIR 1966 SC 828, State of Bihar v. Yogendra Singh AIR 1982 SC 882 and Maharashtra State Board of Secondary Education v. Paritosh Bhupesh Kumar Sheth AIR 1984 SC 1543). Therefore, the provisions of Section 19 of the Act will have an overriding effect over the general provisions contained in Section 190 or 319 Cr.P.C. A Special Judge while trying an offence under the Prevention of Corruption Act, 1988, cannot summon another person and proceed against him in the purported exercise of power under Section 319 Cr.P.C. if no sanction has been granted by the appropriate authority for prosecution of such a person as the existence of a sanction is sine qua non for taking cognizance of the offence qua that person.

9. For the reasons mentioned above, we are of the opinion that the impugned order of the High Court directing summoning of the appellant Dilawar Singh is wholly illegal and cannot be sustained. The appeals are accordingly allowed. The impugned order dated 3.7.2002 of the High Court is set aside and the order dated 7.1.2002 of the Special Judge,

Barnala, is restored.