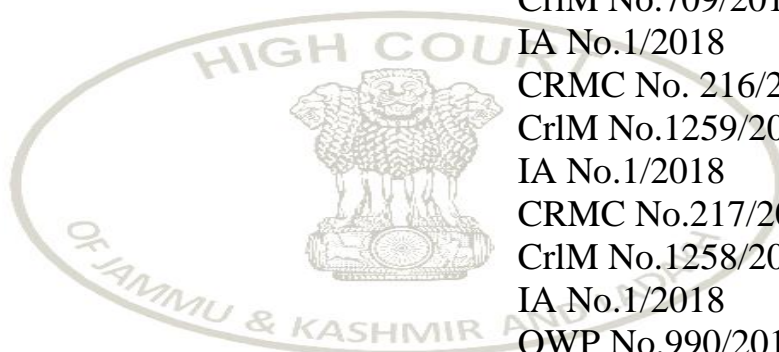


**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CRMC No. 29/2016
IA Nos. 01/2016, 01/2018
CrlM No. 1255/2021
c/w
CRMC No.64/2018
IA No.2/2018
CrlM No.1256/2021
IA No.1/2018
CRMC No.106/2017
CrlM No.852/2022
CrlM No.1257/2021
CrlM No.989/2019
CRMC No.63/2018
IA No.2/2018
CrlM No. 1260/2021
IA No.1/2018
IA No.3/2018
CRMC No.209/2018
CrlM No.709/2019
IA No.1/2018
CRMC No. 216/2018
CrlM No.1259/2021
IA No.1/2018
CRMC No.217/2018
CrlM No.1258/2021
IA No.1/2018
OWP No.990/2018
IA No.1/2018
CRM(M) No.281/2020
CrlM No.1087/2020
CrlM No.1086/2020(Disposed)
CrlM No.1343/2022
(SRINAGAR WING CASES)

OWP No.1266/2015
IA No.1/2015
c/w
OWP No. 1126/2013
IA No.1580/2013
OWP No.1136/2013
IA No.1592/2013
OWP No.131/2014
IA No.152/2014
OWP No.133/2014
IA No.154/2014
OWP No.531/2014
IA No.691/2014
OWP No.1633/2014
IA No.2100/2014
OWP No.1944/2014
IA No.2529/2014



OWP No.603/2015
IA No.1/2015
OWP No.1264/2015
IA No.1/2015
OWP No.1859/2015
IA No.1/2015
OWP No.1902/2015
IA No.1/2015
OWP No.51/2016
IA No.1/2016
OWP No.106/2016
IA No.1/2016
OWP No.288/2016
IA No.1/2016
OWP No.338/2016
IA No.1/2016
OWP No.418/2016
IA No.1/2016
OWP No.449/2016
IA No.1/2016
OWP No.456/2016
IA No.1/2016
OWP No.662/2016
IA No.1/2016
OWP No.663/2016
IA No.1/2016
OWP No.675/2016
IA No.1/2016
CRR No.83/2010
IA No.59/2010
IA No.60/2014
CRR No.84/2010
IA No.60/2010
IA No.59/2014
CRR No.57/2012
IA No.51/2012
CRMC No.260/2013
IA No.313/2013
CRMC No.88/2014
IA No.105/2014
CRMC No.505/2015
IA No.1/2015
IA No.1/2016
IA No.1/2018
CRMC No.553/2015
CRMC No.634/2015
IA No.2/2015
IA No.1/2015



CRMC No.460/2016
IA No.1/2016
CRMC No.184/2017
IA No.1/2017
CRMC No.215/2017
IA No.1/2017
CRMC No.216/2017
IA No.1/2017
CRMC No.225/2017
IA No.1/2017
CRMC No.226/2017
IA No.1/2017
CRMC No.378/2017
IA No.1/2017
CRMC No.18/2018
IA No.1/2018
(JAMMU WING CASES)

Reserved on : 30.12.2022
Pronounced on :02.02.2023

Kumar Avinav

....Petitioner(s)/Appellant(s)

Through :- Mr. Pranav Kohli, Sr. Advocate with
Mr. Farhan Mirza, Advocate
Mr. Faisal Qadiri, Sr. Advocate with
Mr. Salih Pirzada, Advocate &
Ms. Taiyba, Advocate
Mr. M. Asif Mir, Advocate vice
Mr. Sudarshan Sharma, Advocate
Mr. Ashwani Khajuria, Advocate
Ms. Mehreen Altaf, Advocate
Mr. Danish Majid Dar, Advocate with
Mr. Bhat Shafi, Advocate &
Ms. Ahra, Advocate

Vs.

Union of India th. Commissioner/Secretary to
Government Ministry of Home Affairs, New
Delhi and others

....Respondent(s)

Through :- Mr. D.C. Raina, Advocate General (th. Virtual
Mode) with
Mr. Sajad Ashraf, GA & Mr. Faheem Nisar
Shah, GA
Mr. T.M. Shamsi, DSGI with
Ms. Rehana, Advocate

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. A common question of law as to whether the Central Bureau of Investigation is vested with jurisdiction to investigate offences committed within the territorial jurisdiction of erstwhile State of Jammu and Kashmir prior to its bifurcation into two Union Territories, has arisen in all these petitions. Besides laying challenge on the ground of jurisdiction of the CBI to investigate the offences, certain other grounds of challenge to the prosecution launched by Central Bureau of Investigation against the petitioners, which are peculiar to individual cases have also been raised by the petitioners. The petitions have been clubbed together on account of the fact that a common question of law has arisen as regards the jurisdiction of Central Bureau of Investigation to investigate offences committed in the erstwhile State of Jammu and Kashmir, as such for the present, by virtue of this judgment/order, it is proposed to deal with the said question of law only.

2. It has been contended by learned counsels appearing for the petitioners that the Central Bureau of Investigation lacks jurisdiction to investigate the FIRs which have been impugned in these petitions because no consent in terms of Section 6 of the Delhi Special Police Establishment Act (hereinafter referred to as DSPE Act) has been accorded by the erstwhile State of Jammu and Kashmir to the investigation of the instant cases. According to the petitioners, the Central Bureau of Investigation, before undertaking investigation of the impugned FIRs, was bound to obtain consent of the State Government in individual cases in terms of Section 6 of the DSPE Act and because the same has not been done, as such, the CBI lacks inherent jurisdiction to investigate

the impugned FIRs and to file challan against the petitioners. It is also contended that notifications/orders in terms of Sections 3, 5 and 6 of DSPE Act are required to be issued in the same order in which these provisions have been incorporated in the Act, meaning thereby that in the first instance there has to be a notification under Section 3 which should be followed by an order under Section 5 and finally there has to be consent of the State Government in terms of Section 6 of the DSPE Act. It is contended that in the instant case, even if it is assumed that notifications/orders/consent have been issued by the relevant authorities, the same has not been done in the aforesaid order, which goes on to show that the provisions of DSPE Act have been observed in breach. It is also contended that under the provisions of Jammu and Kashmir Prevention of Corruption Act the offences are required to be investigated by the officers of Vigilance Organization, as such, the members of the CBI are not authorized to investigate offences under the aforesaid Act.

3. I have heard learned counsel appearing for the parties and also the learned Advocate General, who has put forward the stand of the Government of Union Territory of Jammu and Kashmir on the issue.

4. Before dealing with the contentions raised by learned counsel for the petitioners, it would be apt to trace out the legislative history of Delhi Special Police Establishment Act, 1946. A Division Bench of the Patna High Court in the case of **J.N. Sahay V/s State of Bihar, 1982 Cri LJ 410** has traced out the legislative history of the aforesaid Act. While doing so the Division Bench has observed as under:

“7. As an aftermath of outbreak of the World War II, various unscrupulous and anti-social persons, both official and non-officials, indulged in activities enriching themselves dishonestly at the cost of public and Government. The Government of India accordingly set up a central organisation for investigating offences relating to such transactions and the Delhi Special Police Establishment was set up in 1941 by an executive order under the administration of a Deputy Inspector General of Police with headquarters at Lahore, for purposes of investigating cases of corruption connected with matters relating firstly only to the War Department. It appears that some doubt was raised about the jurisdiction and powers of investigation of offences by this Establishment and consequently an Ordinance being Ordinance No. 22 of 1943 was promulgated constituting a Special Police Force for the investigation of certain offences committed in connection with the Departments Central Government with powers to investigate such offences wherever committed in British India. This Ordinance was issued under the powers conferred under Sections 102(1) and 126-A (b) of the Government of India Act, 1953, but inasmuch as the proclamation of Emergency was revoked with effect from 1st April, 1946, the Ordinance lapsed by the end of September, 1946, i.e., after the period of six months from the date of the said revocation in view of the restrictions contained in Sub-section (4) of Section 102. Since, however, the efficacy and advantages of this Organisation were realised, it was considered expedient and necessary to continue this Police Establishment and, therefore, the Ordinance was replaced by the Delhi Special Police Establishment Ordinance No. 22 of 1946 which was subsequently replaced by Act XXV of 1946 which came into force on 19th November, 1946. After the Act came into force the superintendence of the Special Police Establishment was transferred to the then Home Department of the Government of India and its jurisdiction was extended to cover all the Departments of the Government of India.”

8. *Originally the investigation by the Special Police Establishment was intended to apply only to "certain offences committed in connection with matters concerning departments of the Central Government". Section 3 of the Act authorised the Central Government "by notification in the official Gazette to specify the offence or classes of offences committed in connection with matters concerning Departments of Central Government... to be investigated by the Delhi Special Police Establishment". Section 5 of this Act authorises the Central Government to extend to any area (including Railway areas) in British India, outside the Chief Commissioner's province of Delhi, as well "the powers and jurisdiction of members of the Delhi Special Police Establishment for investigation of any offence or classes of offences specified in a notification under Section 3" by order. On making of such order the authority of the members of this Police Establishment were to be extended to any such area where they could discharge the functions of a Police Officer and were to be deemed to be members of the Police Force of that area vested with all the powers, functions and privileges, subject, however, to the liabilities of a Police Officer belonging to that Police Force.*

9. *The original Act of 1946 was subsequently amended in the years 1950, 1952 and also thereafter. Some of the amendments were formal in nature necessitated on account of the adaptation of laws and orders of 1953 and 1956 making mutatis mutandis changes and alterations. The important changes were, however, introduced by the Amending Act No. 26 of 1952 by which the restrictions in the long title and preamble and Section 3 of the Act, which purported to apply the provisions of the Act only to the State of Delhi for the investigation of certain offences committed in connection with the matters concerning Departments of the Central Government only, were omitted thereby enlarging the powers of the Central*

Government to specify offences or class of offences to be investigated by the Delhi Special Police Establishment with respect to the departments beyond the Departments of the Government of India; and under the Act as it stands after the above amendments, its jurisdiction now extends to all the States and Union territories. But the authority to exercise powers and jurisdiction in any area in a State (not being a Railway area) is subject to the consent of the State Government concerned. This restriction is contained in Section 6 of the Act and it prescribes that "nothing contained in Section 5 shall be deemed to enable any member of the D.S.P.E. to exercise powers and jurisdiction in any area in a State without the consent of the Government of that State."

10. *XXXXXXXXXXXXXXXXXX.*

11. *The provision for consent was necessitated on account of the provisions contained in the Government of India Act, 1935 as well as the Constitution of India. List II of the VIIth Schedule of the Government of India Act as well as of the Constitution, both put the 'police' under the State List (then provincial legislative list) and entry No. 39 of List I (Federal legislative list) corresponding to entry No. 80 of the present List I (Union list), contemplated that "extension of the powers and jurisdiction of the members of a police force belonging to any part of British India to any area in another Governor's province or Chief Commissioner's province" could not be done "elsewhere without the consent of the Governor of the province or the Chief Commissioner as the case may be". Similar is the provision with mutatis mutandis changes in entry No. 80 of the Union list of the present Constitution in view of Article 245 of the Constitution of India. It is, therefore, manifest and was rightly conceded to by the learned Attorney General, appearing for the opposite party, that giving of consent by the State of Bihar was a*

condition precedent for application of the provisions of the 1946 Act within the State territory.”

5. Having traced out the legislative history of the DSPE Act in the manner as indicated in the afore quoted judgment of the Division Bench of Patna High Court, it has to be ascertained as to whether the relevant provisions contained in the said Act in relation to the erstwhile State of Jammu and Kashmir have been followed so as to vest jurisdiction with the CBI to investigate the offences which are the subject matter of the impugned FIRs. For this purpose, it is necessary to have a look at the provisions contained in Section 2, 3, 5 and 6 of the Act, which are reproduced as under:

“2. Constitution and powers of special police establishment.—(1) *Notwithstanding anything in the Police Act, 1861 (5 of 1861), the Central Government may constitute a special police force to be called the Delhi Special Police Establishment for the investigation [in any [Union territory]] of offences notified under section 3.*

(2) Subject to any orders which the Central Government may make in this behalf, members of the said police establishment shall have throughout [any [Union territory]], in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers of [that Union territory] have in connection with the investigation of offences committed therein.

(3) Any member of the said police establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise in [any [Union territory]] any of the powers of the officer in charge of a police station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders as

aforesaid, be deemed to be an officer in charge of a police station discharging functions of such an officer within the limits of his station.

3. Offences to be investigated by special police establishment.—*The Central Government may, by notification in the Official Gazette, specify the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment.*

5. Extension of powers and jurisdiction of special police establishment to other areas.—*(1) The Central Government may by order extend to any area (including Railway areas) in a State, not being a Union territory the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under section 3. (2) When by an order under sub-section (1) the powers and jurisdiction of members of the said police establishment are extended to any such area, a member thereof may, subject to any orders which the Central Government may make in this behalf, discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force. (3) Where any such order under sub-section (1) is made relation to any area, then, without prejudice prejudice to the provisions of sub-section (2), any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station.*

6. Consent of State Government to exercise of powers and jurisdiction.—*Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union territory or railway area, without the consent of the Government of that State.”*

6. There is no dispute to the fact that Central Bureau of Investigation has been constituted by the Central Government in exercise of its powers under Section 2 of the Act. Section 3 of the Act empowers the Central Government to issue a notification in the official gazette specifying the offences or classes of offences which are to be investigated by the Delhi Special Police Establishment, i.e., CBI. Once such a notification is issued, the members of CBI are vested with the powers of a Police Officer in that particular area and they are deemed to be members of Police Force of that area. In terms of Section 5 of the Act, the Central Government is vested with power to issue an order so as to extend to any area, including railway area in a State not being a Union Territory, the powers and jurisdiction of the members of the Delhi Police Establishment for investigation of any offences or classes of offences specified in the notification under Section 3 of the Act. This means that in the case of Union Territory the issuance of notification under Section 3 by the Central Government is enough to vest jurisdiction with the CBI to undertake investigation in respect of offences mentioned in the said notification, but if investigation of such offences is to be undertaken in a State, then there has to be an order of the Central Government in terms of Section 5 of the Act. Section 6 of the Act provides that there has to be a consent from the concerned State

Government to exercise of jurisdiction by the CBI to that particular State and without such a consent the order under Section 5 issued by the Central Government would not vest jurisdiction with the CBI to investigate specified offences in the said State.

7. The Supreme Court in the case of “*M. Balakrishna Reddy V/s Director, Central Bureau of Investigation, New Delhi*” (2008) 4 SCC 409, after noticing the provisions contained in section 3, 5 and 6 of DSPE Act explained the conditions which are required to be fulfilled before the CBI exercises its power and jurisdiction to investigate a case in any State. Para 19 of the said judgment is relevant to the context and the same is reproduced as under:

“19. Plain reading of the above provisions goes to show that for exercise of jurisdiction by the CBI in a State (other than Union Territory or Railway Area), consent of the State Government is necessary. In other words, before the provisions of the Delhi Act are invoked to exercise power and jurisdiction by Special Police Establishment in any State, the following conditions must be fulfilled;

(i) A notification must be issued by the Central Government specifying the offences to be investigated by Delhi Special Police Establishment (Section 3);

(ii) An order must be passed by the Central Government extending the powers and jurisdiction of Delhi Special Police Establishment to

any State in respect of the offences specified under Section 3 (Section 5); and

(iii) Consent of the State Government must be obtained for the exercise of powers by Delhi Special Police Establishment in the State (Section 6)”

8. From the above it is clear that for the CBI, which is an agency constituted under Section 2 of the DSPE Act, to exercise its jurisdiction to undertake investigation in a particular State, there has to be a notification under Section 3 specifying the offences regarding which the CBI is authorised to undertake investigation, then there has to be an order under section 5 of the Act extending the powers of CBI to undertake investigation in specified offences to a particular State and there has also to be a consent of the concerned State Government for exercise of powers by the CBI in the said State.

9. In order to determine as to whether the aforesaid conditions have been fulfilled in relation to extension of jurisdiction of the CBI to erstwhile State of J&K, it is necessary to make a reference to the notifications / orders / communications on the subject issued from time to time. The particulars of the notifications/orders/communications on the subject which have been placed on record by the CBI and the Government of Jammu and Kashmir during the course of hearing of this case are given as under:-

S.No.	Particulars	Subject
01.	Letter No. S-253/57-PD dated 7 th May, 1958	Vide this letter the Government of Jammu and Kashmir has consented to the Delhi

	addressed by Secretary to Government of Jammu and Kashmir, Political Department to Deputy Secretary to Govt. of India, Ministry of Home Affairs, New Delhi.	Special Police Establishment exercising powers and jurisdiction in the State of Jammu and Kashmir for investigation of offences specified in the notification issued by Government of India on 09.04.1958 and 06.11.1956 under Section 3 of the Delhi Special Police Establishment Act and it further specifies the particulars of the offences in respect of which the consent has been accorded which includes offences under State Ranbir Penal Code as also Jammu and Kashmir State Prevention of Corruption Act, 2006.
02.	Order dated 10.02.1961 issued by Govt. of India, Ministry of Home Affairs in terms of Sub-Section (1) of Section 5 of DSPE Act.	This is an order issued by the Central Government under Section 5(1) of the DSPE Act whereby the Central Government has extended the powers and jurisdiction of CBI to the State of Jammu and Kashmir in respect of certain offences punishable under RPC and Jammu and Kashmir Prevention of Corruption Act.
03.	Communication dated 22.07.1963 issued by Deputy Secretary to Government of India, Ministry of Home Affairs to Chief Secretary, Government of Jammu and Kashmir, Srinagar.	Vide this Communication the Government of India has forwarded to the Government of Jammu and Kashmir a draft notification under Section 3 and draft order under Section 5(1) of the DSPE Act and as per the communication the State Government has been asked to accord consent in respect of offences under Indian Penal Code, offences punishable under

		Prevention of Corruption Act, 1947, offences under Sections 7 and 8 of the Essential Commodities Act, 1955 and offences punishable under Section 24(i)(iii) of the Industries (Development & Regulations Act), 1955. It is also provided in the communication that draft order under Section 5(1) also includes certain offences under Customs Act regarding which a request for consent to the State Government has already been made in terms of communication dated 25.04.1963.
04.	Communication No. S-253/57-PD dated 18.12.1963 addressed by Secretary to Government, General Department, Government of Jammu and Kashmir to Deputy Secretary to Government of India, Ministry of Home Affairs.	Vide this communication the State Government has given its consent to the issue of two draft notifications enclosed with the letter dated 22.07.1963.
05.	Order dated 01.04.1964 issued by Government of India, Ministry of Home Affairs in terms of Sub-section 1 of Section 5 of DSPE Act.	This order has been issued under Sub-section (1) of Section 5 of the DSPE Act by the Central Government extending the powers and jurisdiction of CBI to the State of Jammu and Kashmir for investigation of certain offences mentioned in the schedule to the said order.
06.	Notification dated	This notification has been issued by the

	01.04.1964 issued in terms of Section 3 of DSPE Act issued by Government of India, Ministry of Home Affairs.	Central Government under Section 3 of the DSPE Act and it has been issued in supersession of the earlier notification under Section 3 issued on 09.04.1958 and it specifies the offences and classes of offences in addition to those already mentioned in earlier notification dated 18.02.1963.
07.	Notification dated 07.09.1989 issued by Government of India under Section 3 of the DSPE Act.	This is a notification issued by Central Government under Section 3 of the DSPE Act specifying the offences regarding which the CBI has been vested with powers to investigate offences.

10. Besides the above communications/notifications/orders the respondent CBI has produced photocopy of the record relating to various notifications/communications issued from time to time by the Central Government and by the erstwhile State Government on the subject.

11. From the foregoing record, it appears that the Central Government has issued notification under Section 3 specifying the offences to be investigated by the CBI, firstly on 6th November 1956 and then on 9th April, 1958. After the issuance of these two notifications it appears that the Government of Jammu and Kashmir has accorded consent to the investigation of certain offences by CBI in terms of its communication dated 7th May, 1958. These offences include some of the offences under RPC as also the offences under Jammu and Kashmir State Prevention of Corruption Act. It appears that on 10th February, 1961 an order under Section 5(1) of the DSPE Act has been issued by the

Central Government whereby jurisdiction of CBI to investigate offences in the State of Jammu and Kashmir in respect of certain offences under RPC and J&K State Prevention of Corruption Act, 2006 has been extended. It also appears that the Central Government felt a need for inclusion of certain more offences in the notification under Section 3 as also in order under Section 5 of DSPE Act and accordingly the State Government was approached vide communication dated 22nd July, 1963 and consent of the State Government was sought regarding inclusion of these additional offences, so that fresh notifications/orders in terms of Section 3 and 5 can be issued. The consent, it seems, has been accorded by the Government of Jammu and Kashmir in terms of its letter dated 18th December, 1963 where-after a fresh notification under Section 3 was issued on 1st of April, 1964 and a fresh order in terms of Section 5 was also issued on the same date. In these notifications and orders offences already specified in the earlier notifications and orders, in addition to newly added offences, find a mention.

12. Before dealing with the contentions raised by learned counsel for the petitioners it would be pertinent to mention here that the question whether the CBI has jurisdiction to investigate offences in the erstwhile State of Jammu and Kashmir and whether consent has been accorded by the Government of Jammu and Kashmir under Section 6 of the Act, has been a matter of discussion before this Court in a number of cases. It would also be apt to refer those cases wherein a consistent view has been taken that the Government of Jammu and Kashmir has accorded general consent to exercise of jurisdiction by CBI to investigate certain offences in the State of Jammu and Kashmir. The

first in point of time in this regard is the judgment titled “***Lt. Col. H.N. Tripathi vs. State***”, 1988 CriLJ 582. In the said case a Full Bench of this Court while answering the question as to whether the CBI has jurisdiction to investigate offences in the erstwhile State of Jammu and Kashmir, has observed as under:-

“6. Section 3 of the 1946 Act, provides that the Central Government may by notification in the official gazette specify the offences or class of offences which are to be investigated by the Delhi Special Police Establishment (SPE, for short). Under Section 5 of the 1946 Act the Central Government has been empowered to extend to an area, the jurisdiction of the members of the SPE for the investigation of any offence or the class of offences specified in the notification under Section 3, Sub-section (2) of Section 5 lays down that when by an order the powers and jurisdiction of the members of the SPE are extended to any area, a member thereof may, subject to any order which the Central Government may make in that behalf, discharge the functions of a police officer in that area and shall, while discharging such functions, be deemed to be a member of the police force of that area and be vested with the powers, functions and privileges and be subject to the liabilities of a police officer belonging to that police force. A notification under the 1946 Act, for extension of the jurisdiction of Delhi SPE to any other State can, however, be issued only with the consent of the State Government as provided by Section 6 of the 1946 Act. The members of the Delhi SPE would, thus, acquire the jurisdiction in the other States only if the notification is issued by the Central Government with the consent of the State Government and shall extend to such offences as are specified in the notification.”

7. *The Central Government vide notifications No. 25/3/60-AVD (i) and (ii) dated 1-4-1964, authorised the SPE to investigate offences punishable under the State P.C. Act as well as under Sections 161 and 165, RFC besides other specified offences detailed in the notification, in Jammu & Kashmir. The notifications had been issued consequent upon the consent of the State Government for their issuance conveyed vide letter No. S-253/57-PD dated 18-12-1963 addressed by the Secretary to the Government of J & K, General Department to the Deputy Secretary to Government of India, Ministry of Home Affairs, New Delhi. These notifications are a complete answer to the first argument of Mr. Koul, as CBI vide these notifications read with the relevant provisions of the 1946 Act has jurisdiction to investigate the offences specified therein and the offences in the present case have been so specified. Brother Bhat J. has not made any reference, whatsoever, to these notifications at all in his judgment let alone considered them and thus, reached a conclusion to the contrary. Brother Sethi J. has, however, on the strength of these notifications replied the argument of Mr. Koul and I am in complete agreement with his Lordship.”*

13. Thereafter, the question relating to jurisdiction of CBI again came up for discussion in the case of **“Bihari Lal Bhagat vs. CBI, Cr. Rev. 91/1998”**, decided on 10th August, 1999. A Single Bench of this Court has, while placing reliance upon the ration laid down in H.N. Tripathi’s case (Supra) observed as under:-

“4. However, according to Mr. Sethi the letter of the State Government relied in the case of Tripathi (supra), being prior in date of the notification, it could not be construed as consent under section 6 of the Act. Even this argument must fail because section 6 does not

contemplate a separate notification evidencing consent. This section reads as under:-

"Consent of State Government to exercise of powers and jurisdiction. Nothing contained in section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union territory or railway area, without the consent of the Government of that State.

5. *This section nowhere prescribes the form in which the consent is to be conveyed. So neither any separate notification nor any order is necessary. It is sufficient compliance of the Act if notification under section 5 is issued after obtaining the consent of the State Government. This view finds support from the decision of Patna High Court in 'Association for Protection of public Rights and Interest through its Secretary Vs. State of Bihar and others', 1990 Cri. L. J. 1928 in which it has been held that:-"An argument that there could be no consent "case-wise" or "personwise" or that there could be no implied consent when the statute requires express consent was not accepted by the Court in J.N. Sahay's case (1982 Cri. L.J. 410). This Court has said (para 15):-"I do not find any force in this connection advanced by learned counsel for the petitioner in this regard. All that is contemplated either by entry 39 of the 1935 Act or for that matter. Entry 80 of the Constitution of India referred to earlier, is that a Police Force belonging to any part other than the part where it is called upon to investigate any case, cannot do so unless its powers to investigate were extended by obtaining the consent of the concerned State over whose territory the members of the Police Force belonging to an outside agency were to put their feet. It is not possible to read in Section 6 to support the reasoning and argument of learned counsel for the petitioner that the consent of the State Government cannot be given in relation to an 'area' in this manner and that it must be with respect to the whole of the State or any*

part of the same as such. It goes without saying that offence by an accused are committed in relation to a geographical area or places and, therefore, once a consent is given for investigating particular offences committed by any particular person, obviously and as a matter of necessary corollary, it would amount to giving consent for the investigation over the entire area and confer jurisdiction for making investigation with reference to the entire area over which the offences committed by any particular person are spread over."

14. Again in the case titled "***Sushil Kumar Khajuria and others v. The State***", 2000 CRI.L.J. 682, a Division Bench of this Court faced with the same question has observed that the Government of Jammu and Kashmir has granted consent to exercise of powers by the members of CBI in the State of J&K and, therefore, it would be futile to imagine that CBI has no jurisdiction to register cases and investigate them. A similar view was taken by this Court in the cases titled "***Raj Kumar Gupta and others Versus Union of India and others***", 2021(3) JKJ[HC] 22 and "***Ram Gopal Meena vs. CBI***", CRM(M) No. 406/2021, decided on 02.12.2022.

15. From the above it is clear that consistent view of this Court has been that the erstwhile State of Jammu and Kashmir has granted general consent to the jurisdiction of the CBI to investigate certain classes of offences in the State of Jammu and Kashmir and that the CBI has the jurisdiction to conduct investigation of these classes of cases in the State of Jammu and Kashmir.

16. That takes us to the contentions raised by the ld. counsels during the course of hearing. Much emphasis has been laid by the learned counsel for the petitioners on the issue that the notifications, orders and communications in

terms of Section 3, 5 and 6 of the Act are required to be issued in the order in which these provisions have been placed in the statute book, meaning thereby that in the first instance there has to be a notification under Section 3, where after there has to be an order under Section 5 and lastly, there has to be a consent of the State Government.

17. I am afraid the contention of the learned counsel for the petitioners in this regard has no substance. The notification under Section 3 deals with an entirely different subject, inasmuch as, it specifies the offences, regarding which the Central Bureau of Investigation can undertake investigation. Even in the absence of extension of powers of Central Bureau of Investigation to any particular State, such a notification has to be issued so as to authorize the said agency to undertake investigation in the offences committed in the Union Territories and Railway areas, for which there is no requirement of order under Section 5 or a consent in terms of Section 6. So far as order under Section 5 of the Act is concerned the law nowhere provides that in the first instance there has to be an order under Section 5 and only then the consent under Section 6 has to be sought from the concerned State Government. The provisions of Section 6 of the Act start with the expression "Nothing contained in Section 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State". This clearly suggests that even if there is an order under Section 5 issued by the Central Government extending the powers of CBI to a particular State, still then the said order will not enable the CBI to exercise its powers in that State unless there is a consent of the concerned State Government accorded in terms

of Section 6 of the Act. The consent can be either prior to issuance of order under Section 5 or it can be obtained after the issuance of said order. The only requirement is that there has to be consent of the State Government for an order under Section 5 of the Act to take effect so as to enable the CBI to undertake investigation in that particular State.

18. In the above context it would be apt to refer to judgment of a Division Bench of Karnataka High Court in the case of ***"A.Narasimhaiah and others v. State of Karnataka and others"***, 2001 CRI. L.J. 4293, wherein the Court while dealing with the issue as to whether there should be a fresh order under Section 5 of the Act once a fresh notification under Section 3 is issued, observed as under:-

"We do not think that, that on the emergence of a fresh notification under Section 3 of the Act the antecedent order under Section 5 will become extinct and will not survive. We cannot infer any such result either on the basis of language employed or scheme underlying the two provisions viz., Sections 3 and 5. The purpose of Section 3 notification is to specify offences and the purpose of order envisaged by Section 5 is to extend the powers and jurisdiction of SPE to specify areas. When once the jurisdiction of SPE is extended to another State it remains in force until and unless it is rescinded. The powers and jurisdiction of members of SPE can be exercised subject to the provisions of Section 6 with reference to the offences specified in a notification issued under Section 3, whenever it is or has been issued. It is not necessary that fresh order under Section 5 should be promulgated by the Central Government as and when the notification under Section 3 is amended or altered. The language employed in Section 5 viz. 'for the investigation of any offences or classes of offences specified in a notification under Section 3' does not admit of the interpretation that the

order under Section 5 should necessarily follow the notification under Section 3. Such an interpretation would go against the principle of 'Purposive construction of statutes'. There is no reason to think that the Parliament intended that with the change of notification under Section 3 adding or deleting the offences, the Central Government should every time issue a formal order under Section 5. It may, if it so chooses, having due regard to the offences added or deleted. But when it is not necessary to do so and when its extension to the areas of operation is intended to be kept intact despite the change in Section 3 notification, the insistence on a fresh order under Section 5 would be meaningless and does not in any way effectuate the purpose underlying the statute. We, therefore, reject this contention advanced by the learned counsel for the respondent. When once it is accepted that the order under Section 5 issued on 18.2.1963 is valid and applicable to the State of Karnataka (corresponding to the old State of Mysore), consent by the State Government under Section 6 should be up-held subject to our findings on the other objections thereto."

19. Again a Division Bench of the Patna High Court has, in J.N. Sahay's case (Supra) dealt with the issue as to what should be the stage of according consent by the State Government under Section 6 of the Act. It was a case where consent under Section 6 of the Act was accorded by the State Government even prior to promulgation of the statute. The observations of the Court in para 22 of the judgment are relevant to the context and the same are reproduced as under:-

"In my view, this amounts to a complete consent of the State Government in the eye of law within the meaning of Section 6 of the Act inasmuch as there was sufficient indication in the communication of the Home Department that the Central Government wanted the

consent of the State Government not only for the sake of any moral support for this laudable legislation but specifically wanted the consent in terms of entry No. 39, of List I of the 7th Schedule, and once such a consent was specifically given with full knowledge of the implications in pursuance of the said entry No. 39, in my view, it would be futile and too late in the day to contend that this could not amount to a valid consent in terms of Section 6. I also do not find any substance in the contention raised by Shri Balbhadra Prasad Singh that the consent could be accorded only after the Act had been promulgated. As I do not see any point of objection, particularly in the domain of law, as to why a consent could not be solicited by the Central Government even at the stage when the legislation was on the anvil so that on coming into force of the Act the Central Government or the State Governments may entrust the investigation of the important cases to this Police Establishment. The Government had already the experience of the working of the Police Establishment and was aware that there were many cases which had inter-State territorial complexion and therefore, it might have been thought well in advance to have the consent of the provincial Governments for extending the territorial jurisdiction of the Special Police Establishment.”

20. From the perusal of the afore quoted observations of the Patna High Court it is clear that the statute does not intend according of consent under Section 6 of the Act at any particular stage or in any particular order. The Court has observed that even when the legislation had not come into operation the consent of the State Government to its operation in the State of Bihar, once it is promulgated, is sufficient enough to infer that consent under Section 6 of the Act had been accorded by the Government. So, it is not necessary that the consent of the State Government under Section 6 of the Act should be the last

of the acts to be performed for extending the jurisdiction of the CBI to a particular State, as has been contended by the learned counsel for the petitioners. The consent of the State Government can be accorded at any stage, even when the extension of jurisdiction of CBI to the State is still under contemplation.

21. It has been argued by learned counsel for the petitioners that in the instant cases no consent has been accorded by the erstwhile State of Jammu and Kashmir for extension of jurisdiction of CBI to the State and that even if any such consent has been accorded, the same has been done on case to case basis and there is no general consent accorded by the State Government. This position has been supported by the Government of Union Territory of Jammu and Kashmir by filing an affidavit to this effect. In the latest affidavit dated 4th November, 2022 sworn by the Deputy Secretary to the Government GAD, it has been contended that letter dated 7th May, 1998 is not a general consent under section 6 of the DSPE Act. As per the affidavit the said consent was given by the State Government on case to case basis only and no general consent has been issued by the State Government. It has been submitted that the consent has always been given on case to case basis and that letter dated 7th May, 1958 cannot be construed as general consent in terms of section 6 of the Act. A similar stand was taken by the erstwhile State Government while filing their affidavit in answer to the writ petition being OWP No. 1126/2016 as also in reply given to an RTI query made by one Shri Mukesh Khurana.

22. The question that arises for consideration is whether the consent given by State Government in terms of communication dated 7th May, 1958 can be

construed as a general consent or it is a case of consent on case to case basis. To determine this issue it would be apt to reproduce the contents of the said communication, which reads as under:-

“SECRET IMMEDIATE

GOVERNMENT OF JAMMU & KASHMIR
CHIEF SECRETARIAT - POLITICAL DEPARTMENT

.....
Shri K.N.V. Nambisen,
Deputy Secretary to Govt. of India,
Ministry of Home Affairs,
New Delhi.

No.S-253/57-PD

Dated Jammu, the 7th May 1958.

Sir,

I am directed to say that the Government of Jammu and Kashmir consents to the Delhi Special Police Establishment exercising powers and jurisdiction in the State of Jammu and Kashmir for the investigation of the following offences specified in the Notification of the Government of India in the Ministry of Home Affairs, Nos. (a) 7/9/56-AVD dated the 9th April, 1958 regarding (1) and (2) below and (b) 7/5/55-AVD dated 6-11-56 as amended from time to time issued under section 3 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), namely.

- (1) Offences punishable under sections 161, 162, 163, 164, 165, 168, 182, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 246, 247, 248, 249, 250, 251, 252, 253, 254, 258, 259, 260, 261, 262, 263, 263-A, 379, 380, 381, 382, 384, 385, 386, 387, 388, 389, 403, 406, 407, 408, 409, 411, 412, 413, 414, 417, 418, 419, 420, 465, 466, 467, 468, 471, 477-A, 489-A, 489-B, 489-C, 489-D of the Jammu and Kashmir State Ranbir Penal Code 1989 (XII of 1989);
- (2) Offences punishable under the Jammu and Kashmir State Prevention of Corruption Act, 2006 (XIII of 2006);
- (3) Offences punishable under the Imports & Exports (Control) Act, 1947 (18 of 1947)
- (4) Offences punishable under the Foreign Exchange Regulation Act, 1947 (7 of 1947).
- (5) Offences punishable under section 63, 68, 116, 538, 539, 540, 541, 542, 628, 629 and 630 of the Companies Act, 1956 (1 of 1956) only to the extent to which these provisions relate to the incorporation, regulation and

winding up of banking insurance and financial corporations;

- (6) *Offences punishable under sections 104 and 105 of the Insurance Act, 1938 (4 of 1938);*
- (7) *Offences punishable under items 26, 72, 74, 75, 76, 76-A, 76-B, 77, 78, 79, 80 and 81 of the Schedule to section 167 of the Sea Customs Act, 1878 (8 of 1878);*
- (8) *Offences punishable under sections 5 and 7 of the Land Customs Act, 1924 (19 of 1924);*
- (9) *Offences punishable under the Indian Wireless Telegraphy Act, 1933 (Act 17 of 1933);*
- (10) *Offences punishable under the Telegraph Wires (Unlawful Possession) Act, 1950 (Act 74 of 1950);*
- (11) *Offences punishable under Railway Stores (Unlawful Possession) Act, 1955 (Act 51 of 1955);*
- (12) *Offences punishable under the Indian Post Office Act, 1898;*
- (13) *Offences punishable under the Indian Official Secrets Act, 1923.*

Yours faithfully,

Sd/ Dwarka Nath

Secretary to Government.”

23. A bare perusal of the aforesaid contents would reveal that the Government of Jammu and Kashmir has accorded a general consent to CBI exercising its jurisdiction in the State of Jammu and Kashmir for investigation of offences mentioned in the aforesaid letter. Had it been a case of consent on case to case basis then the particulars of the case, the particulars of the FIR or the facts of the case regarding which the consent was accorded would have been mentioned in the said communication which is not the case. Merely because the Government of Jammu and Kashmir wants to read this communication in a particular manner does not mean that it conveys the said meaning. A communication or a document has to be read as a whole and contents thereof have to be given a plain construction. When a plain construction is given to the contents of the letter dated 7th May, 1958 one

comes to the irresistible conclusion that it is a general consent and not a consent on case to case basis. It contains particulars of as many as thirteen categories of offences in respect of which Government of Jammu and Kashmir has accorded its consent in terms of Section 6 of the Act. It is not the case of the State Government that the person who has signed the said communication was not authorized to do so or that the said consent has been withdrawn at any stage by the competent authority. The stand of the Government of the Union Territory is that it is not a general consent. The said stand of the Government on the bare reading of the communication appears to be without any substance.

24. The above position further gets substantiated by the subsequent events. When the Government of India contemplated to include certain more offences in the notification under Section 3 and order under Section 5, a fresh communication was addressed by the Government of India to State Government on 22nd July, 1963 and annexed to the said communication were the draft notification (Under Section 3) and the draft order (Under Section 5). The Government of Jammu and Kashmir vide its communication dated 18th December, 1963 conveyed its consent to the issuance of these draft notifications/orders, thereby according its consent to the jurisdiction of CBI to investigate additional classes of offences as well. Both these consent letters, i.e., letters dated 7th May, 1958 and 18th December, 1963 have not been withdrawn and at least nothing is stated in the affidavit of the Government of Union Territory of Jammu and Kashmir in this regard, meaning thereby that both these communications conveying consent of the State Government were in force at the relevant time.

25. Mere filing of affidavits in Court proceedings by officers of the State Government contending that there was no general consent given by the State Government would not nullify the effect of the communications already addressed by the competent authorities of the State Government to the Government of India according consent to the jurisdiction of CBI to investigate certain offences in the State of Jammu and Kashmir. The giving of consent by the State Government is exercise of the executive power of the Government. Ordinarily, such an order expressing the consent has to be by an authorized person under Article 166(2) of the Constitution. The letters of consent which are subject matter of the instant case clearly show that the same have been issued in the name of Government of Jammu and Kashmir. The State Government as defined in Section 3(60)(C) of General Clauses Act means the Governor. Therefore, these communications have been issued in exercise of powers under Article 166(2) of the Constitution. In order to withdraw these communications a similar method is required to be adopted by issuing communications authenticated by an authorized person under Article 166(2) of the Constitution. Filing of affidavits in Court proceedings or conveying answers to RTI queries without actually communicating to the Government of India that the consent has been modified or rescinded, does not mean that these letters of consent ceased to have effect. Thus, letters of consent dated 7th May, 1958 and 18th December, 1963 continued to remain in force on the relevant dates.

26. It has been contended that once fresh notification under Section 3 or order under Section 5 is issued, there has to be a fresh consent by the State

Government in terms of Section 6, which in the instant case, according to learned counsel for the petitioners, is missing. The argument raised is without any merit for the reason that it would be contrary to all the principles to take the view that the State Government has to go on issuing new letters of consent merely because the Central Government chooses to issue a new notification under Section 3. In fact the State Government may refuse to issue a new letter of consent on the ground that it wants that the consent be restricted to the offences already notified only. By superseding notifications or orders, the Central Government may desire to include additional offences, to which the State Government may not wish to accord the consent. The letter of consent issued by the State Government remains valid until it is withdrawn in the manner provided under Article 166(2) of the Constitution and the same remains valid in respect of the offences to which the consent pertains. I am supported in my aforesaid view by the judgment of the Delhi High Court in the case of *“Management of the Advanced Insurance Co. Ltd. v. Shri Gurudasmal, Supdt. Of Police and others” AIR 1969, Delhi 330.*

27. It has been contended by learned counsel for the petitioners as also by the learned Advocate General that the consent was being accorded to exercise of jurisdiction by CBI in the State of Jammu and Kashmir on case to case basis. In fact the record also suggests that in a number of instances consent under Section 6 has been accorded by the State Government on case to case basis. On this ground it is urged that in absence of any consent in the cases which are the subject matter of the instant judgment/order, the CBI lacked jurisdiction to investigate the impugned FIRs.

28. As has already been noted, the language of the two consent letters issued by the Government of Jammu and Kashmir, which admittedly have not been withdrawn, clearly suggests that a general consent was accorded by the State Government to the jurisdiction of CBI to investigate certain offences in the erstwhile State of Jammu and Kashmir. There are instances when the State Government has accorded consent to investigation of cases by CBI on case to case basis, but most of these cases pertain to matters involving transfer of investigation from local Police to CBI or the cases referred by Constitutional Courts to the CBI.

29. It has been contended by the learned Advocate General that the practice hitherto followed by the Government of Jammu and Kashmir has been to give consent to CBI to investigate any particular cases by issuing separate notifications under Section 6 of the Act. According to the learned counsel for the petitioners realizing the fact that such specific notification is necessary to empower the CBI to investigate each and every particular case a procedure of issuing specific notification in respect of specific cases is being followed by the Government of Jammu and Kashmir. Therefore, according to the learned counsel for the petitioners individual notification in respect of every case under Section 6 of the Act is necessary to cloth the CBI with power and jurisdiction to investigate the cases in the erstwhile State of Jammu and Kashmir.

30. In the above context it has to be noted that when a case is registered by local Police and the State Government intends to transfer the investigation of the case to CBI there has to be a specific consent by the State Government to empower the CBI to investigate the case registered by the Police. This is to

avoid parallel proceedings in respect of the very same offences. Once the CBI is entrusted with the investigation of such a case its members discharge the functions of the Police Officer Incharge of the Police Station, as such, in order to avoid any difficulty in investigation due to concurrent jurisdiction exercised by the local Police as well as the CBI a specific consent notification has to be issued by the State Government. In the face of the general consent accorded by the Government of Jammu and Kashmir to the jurisdiction of the CBI to investigate certain offences in the erstwhile State of Jammu and Kashmir no such specific consent is called for in the cases that are directly registered by the CBI as there is no question of any parallel investigation parallel investigation in such cases. Thus, no separate or specific consent with regard to each case to be investigated by the CBI is necessary and it is only in cases where the FIR has been registered by the local Police and the investigation is sought to be transferred by the CBI, a specific consent is required. This is what has been done by the State Government in most of the cases while issuing specific consent notification under Section 6 of the Act.

31. There may be a couple of instances where even in cases which have been directly registered by the CBI, the State of Jammu and Kashmir has accorded specific consent, but the same is superfluous in view of the fact that a general consent has been accorded by the Government as has been indicated herein before. A specific consent may also be required in a case in which subject matter of investigation is an offence which is not mentioned in the consent letter and the order issued under Section 5 of the Act.

32. It has further been contended by learned counsel for the petitioners that some of the offences like offences relating to conspiracies are not mentioned in the consent letter dated 7th May, 1958 and even the new offences created under the Jammu and Kashmir State Prevention of Corruption Act, 2006 are not included therein. It is to be noted that subsequent to the consent letter dated 7th May, 1958, another consent letter has been issued by the Government of Jammu and Kashmir on 8th December, 1963, which was necessitated due to addition of certain more offences in the notification under Section 3 and order under Section 5 of the DSPE Act. Vide the said consent letter, the consent has been accorded to the issuance of such notification/order and in these notification/order even the abetments, attempts and conspiracies relating to all categories of offences mentioned in those notification/order have been incorporated. So far as the offences punishable under the Jammu and Kashmir State Prevention of Corruption Act are concerned, all the offences are included in both the consent letters, therefore, all offences punishable under the said Act as amended from time to time would come within the purview of the consent letters. The argument of learned counsel for the petitioner in this regard is, therefore, without any merit.

33. Lastly, it has been argued by learned counsel for the petitioners that members of the CBI are not vested with jurisdiction to investigate offences under Jammu and Kashmir Prevention of Corruption Act, as a specialized agency, viz., Vigilance Organization has been created for investigation of offences under the said Act. The argument appears to be without any merit for the reason that once an order under Section 5 of the DSPE Act is issued

extending the powers of CBI for investigation of any offences or classes of offences to a State, a member of the CBI discharging functions of a Police Officer in that State, is deemed to be a member of the Police Force of that area and he is vested with powers, functions and privileges etc. of a Police Officer belonging to that Police Force. Thus, once a member of the CBI is vested with jurisdiction to investigate offences under the Jammu and Kashmir Prevention of Corruption Act in the State of Jammu and Kashmir, he would exercise the same powers and privileges as are available to an officer of Vigilance Organization.

34. In view of what has been discussed hereinbefore I do not find any reason to depart from the consistent view taken by this Court that the erstwhile State of J&K has accorded a general consent to the exercise of jurisdiction of CBI to investigate certain classes of offences in the erstwhile State of Jammu & Kashmir and that the contention that CBI lacks jurisdiction to investigate these classes of offences in the erstwhile State of J&K, is without any merit.

35. For the foregoing reasons the common question of law that has arisen in all these petitions is answered in the following manner:-

The erstwhile State of Jammu and Kashmir has accorded general consent under Section 6 of the DSPE Act for exercise of jurisdiction by the CBI to investigate the offences mentioned in the consent letter dated 07.05.1958 read with letter dated 18.12.1963 and that these communications have not been withdrawn by a competent authority of the erstwhile State of Jammu and Kashmir. Thus, the Central Bureau of

Investigation has jurisdiction to investigate the offences mentioned in the aforesaid two consent letters read with notification dated 01.04.1964 and order dated 01.04.1964.

36. The Registries of both the Wings of this High Court are directed to delink all these petitions and list the same separately before the roster Bench for consideration on other legal grounds raised in the petitions on individual basis. Since the stay of proceedings before the Trial court was granted primarily on the ground of jurisdiction of the CBI to investigate the impugned FIRs, as such, having regard to the answer rendered by this Court to the said question of law, the stay of proceedings before the Trial court shall stand vacated. The matters be listed before the Registrar Judicial, Jammu and Registrar Judicial, Srinagar on 20.02.2023 for fixing of dates in individual cases.

(Sanjay Dhar)
Judge

Srinagar:
02.02.2023
Pawan Angotra

Whether the order is speaking?
Whether the order is reportable?

Yes/No
Yes/No