Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL/CIVIL APPELLATE/ORIGINAL JURISIDCTION

CRIMINAL APPEAL NO. 67 OF 2011

Securities and Exchange Board of India ... Appellant(s)

versus

Classic Credit Ltd. ... Respondent(s)

With

Criminal Appeal Nos. 68 to 73 of 2011

Civil Appeal Nos. 102-103 of 2011

Criminal Appeal No.1096 of 2013

Writ Petition (Crl.) No. 67 of 2016

Criminal Appeal No. 1450 of 2017
(Arising out of SLP(Crl.) No.3593 of 2011)

Civil Appeal No.10729 of 2017
Arising out of SLP(C) No. 21394 of 2011

J U D G M E N T

Jagdish Singh Khehar, CJI.

1. Leave granted, in all the special leave petitions.

2. Complaints were filed against the private parties herein, for offences punishable under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'the SEBI Act'). At the time when the complaints were filed under Section 26(2) of 'the SEBI Act', the concerned accused were to be tried by a Metropolitan Magistrate (or, a

Judicial Magistrate of the first class). In this bunch of cases, the contention before this Court, at the behest of the private parties is, that for offences allegedly committed before 29.10.2002 (whether or not, taken up for trial before 29.10.2002) the trial was to be conducted by the concerned Metropolitan Magistrate (or, a Judicial Magistrate of the first class), and none other. It is relevant to record, that in these cases complaints filed against the private parties herein, pertain to allegations of commission or omission, prior to 29.10.2002. In some of these matters, proceedings were initiated prior to 29.10.2002, while in others, it was initiated after 29.10.2002. The above contention pertaining to the 'forum', for trial by a Metropolitan Magistrate (or, a Judicial Magistrate of the first class), was premised on a purely legal assertion, founded on the format of Sections 24 and 26 of 'the SEBI Act', as they existed prior to the Securities and Exchange Board of India (Amendment) Act, 2002 (hereinafter referred to as 'the 2002 Amendment Act'). It was the submission of the private parties, that the amended provisions under 'the 2002 Amendment Act' had no express or implied retrospective effect, and therefore, the amendment carried out through 'the 2002 Amendment Act', would not have any impact, particularly on the 'forum' for trial (-the Court of Metropolitan Magistrate, or Judicial Magistrate of the first class). It was submitted, that trial in all these matters, with reference to offences committed prior to 29.10.2002, whether or not put to trial, could only be conducted by the Metropolitan Magistrate (or, Judicial Magistrate of the first class).

3. In order to appreciate the gamut of the submissions advanced, it is imperative to extract hereunder, Sections 24 and 26 of 'the SEBI Act', in the format in which the provisions existed, prior to 'the 2002 Amendment Act'. The same are accordingly reproduced below:

> "24. Offences. -(1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.
> (2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees or with both.
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> 26. Cognizance of offences by courts.-(1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by the Board.
> (2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try an offence punishable under this Act."

It is also necessary to notice the change brought in, on the subject of 'forum' for trial, by 'the 2002 Amendment Act'. Even though, the change of 'forum' was expressed in the amended Section 26(2), yet some of the submissions advanced during the course of hearing, emerged out of a collective reading of the amended Sections 24 and 26 (-by 'the 2002 Amendment Act'). Accordingly, the format which Sections 24 and 26 of 'the SEBI Act' assumed, after 'the 2002 Amendment Act' also needs to be noticed. The above amended provisions, are accordingly reproduced below:

"24.Offences. -(1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

(2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years or with fine, which may extend to twenty-five crore rupees or with both.

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26. Cognizance of offences by courts.-(1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by the Board.

(2) No court inferior to that of a Court of Session shall try any offence punishable under this Act."

4. After 'the 2002 Amendment Act', all pending matters (-before Metropolitan Magistrates, or Judicial Magistrates of the first class) were committed to the concerned, Court of Session. This was done, under the assumption, that 'the 2002 Amendment Act' had the effect of retrospectively altering the 'forum' for trial. And as such, matters which were being tried by Metropolitan Magistrates (or, Judicial Magistrates of the first class), and were pending before such Courts, were transferred to the concerned Court of Session. The above change of 'forum' for trial, was assailed by some of the private parties, before the court to which the matters were committed. Their challenge failed. The matters were then carried, to the jurisdictional High Court, i.e., the High Court of Judicature at Bombay (hereinafter referred to as, 'the Bombay High

Court'). Alternatively, some of the private parties, directly approached the jurisdictional High Court, to assail the changed 'forum' of trial.

5. Before the Bombay High Court, the SEBI supported the determination rendered by the Court of Session, and also, placed reliance on a decision rendered by the High Court of Delhi at New Delhi (hereinafter referred to as 'the Delhi High Court') in Panther Fincap and Management Services Ltd. v. Securities and Exchange Board of India (decided on 5.9.2006), wherein it had been concluded, that the amendment to Section 26 of 'the SEBI Act' through 'the 2002 Amendment Act', related to a change in 'forum' of trial, and therefore, the amendment was only procedural. And consequently, an amendment of procedure being impliedly retrospective, the Delhi High Court held, that the committal of pending cases to the Court of Session, was justified in law.

6. A Division Bench of the Bombay High Court, through the impugned judgment dated 16.01.2008, collectively disposed of all matters pending before it, by setting aside the judgment rendered by the Court of Session, by taking a view different from the one recorded by the Delhi High Court. The SEBI therefore approached this Court to assail the judgment rendered by the Bombay High Court. Some of the cases in this group of cases (being collectively disposed of through the instant judgment), arise out of the judgment of the Bombay High Court dated 16.01.2008. All the remaining cases, arise out of a similar sequence of events, which culminated before the Delhi High Court, wherein the lead judgment was

rendered in Mahender Singh v. High Court of Delhi (Writ Petition (C) No.141 of 2007, decided on 11.01.2008). It is apparent, that the above judgment of the Delhi High Court dated 11.01.2008, was rendered just a few days before the impugned judgment was rendered by the Bombay High Court, on 16.01.2008.

7. Consequent upon an interpretation of the amendment to Section 26 by 'the 2002 Amendment Act', the Division Bench of the Delhi High Court, through the above judgment dated 11.01.2008 (as already noticed above), held that after the amendment of Section 26 by 'the 2002 Amendment Act', offences under 'the SEBI Act', were to be tried by a Court of Session. It is also necessary for us to mention, that the Bombay High Court did not refer to the above judgment dated 11.01.2008, since it may not have come to its notice, as the Bombay High Court had reserved orders in the matter on 22.02.2007 – well before the Division Bench of the Delhi High Court, had pronounced its judgment (- on 11.01.2008). The judgment dated 11.01.2008 rendered by the Delhi High Court (recording a view, contrary to that expressed by the Bombay High Court) has been assailed by private parties, affected by the change of 'forum' of trial, from the Court of Metropolitan Magistrate (or, a Judicial Magistrate of the first class), to the Court of Session.

8. Whilst these matters were pending before this Court, 'the SEBI Act' was again amended, by the Securities and Exchange Board of India (Amendment) Act, 2014 (hereinafter referred to, as 'the 2014 Amendment Act'). It is relevant for the present controversy to notice, that by 'the

2014 Amendment Act', Section 26(2) was omitted from 'the SEBI Act', and Sections 26A to 26E were inserted therein, with effect from 18.07.2013. During the course of hearing, one of the contentions advanced by learned counsel representing SEBI was, that the effect and impact of 'the 2002 Amendment Act' with reference to the change of 'forum' for trial under Section 26(2), from the Metropolitan Magistrate (or, the Judicial Magistrate of the first class), to the Court of Session, had again been altered. It was submitted, that all pending matters were now to be tried by a Special Court, in terms of 'the 2014 Amendment Act', and therefore, all the cases in hand, had been rendered infructuous, because now the 'forum' for trial had again been changed. The instant position, canvassed on behalf of 'the SEBI', was seriously contested by learned counsel representing the private parties. Having examined the contention, we are of the considered view, that it is imperative for us (during the course of the present adjudication), to render a determination on the effect and impact of 'the 2014 Amendment Act', as well. It is therefore, that learned counsel for the rival parties were heard, and they advanced detailed submissions on this aspect of the matter, as well.

9. Since we will also be dealing with the jurisdictional effect of 'the 2014 Amendment Act', to matters where the offence(s) was/were committed before 29.10.2002 (whether or not, put up for trial before 29.10.2002). It is necessary for us, to extract herein Sections 26A to 26E

inserted into 'the SEBI Act' through 'the 2014 Amendment Act'. The above provisions are accordingly reproduced below:

> "26A. Establishment of Special Courts.-(1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.
> (2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.
> (3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.
> 26B. Offences triable by Special Courts.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2014 or on or after the date of such commencement, shall be taken cognizance of and tried by the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.
> 26C. Appeal and revision.- The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.
> 26D. Application of Code to proceedings before Special Court.-
> (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 (2 of 1974).
> (2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.
> 26E. Transitional provisions.- Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court

is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974):
Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code of Criminal Procedure, 1973 (2 of 1974) to transfer any case or class of cases taken cognizance by a Court of Session under this section.''.

10. Ms. Pinky Anand, learned Additional Solicitor General of India, whilst appearing on behalf of the SEBI, laid the foundation of her submissions by asserting, that it was a settled proposition of law, that alteration of substantive law is always presumed and treated as having only prospective implications, unless the legislative enactment itself, expressly or impliedly mandates it to be retrospective. And in contradistinction to the above, it was submitted, that an amendment to a procedural enactment is always presumed and treated to have retrospective effect, except when intended otherwise, expressly or impliedly, through the legislation itself. Accordingly, it was asserted, that change of 'forum' for trial, having merely procedural connotations, the same was bound to be treated as retrospective, especially because there was no express or implied intent in the legislative enactments ('the 2002 Amendment Act'; and 'the 2014 Amendment Act') that the amendments were intended to have prospective effect.

11. Additionally, it was submitted, that in the facts and circumstances of this case, there would be absolutely no prejudice caused to the private parties, by change of 'forum' for trial, firstly, by transfer of proceedings from the Metropolitan Magistrates (or, the Judicial Magistrates of the

first class), to the Court of Session, and thereafter, by the transfer of proceedings from the Court of Session, to that of the Special Court. The absence of any alleged prejudice to the accused, in the pleadings filed on behalf of the private parties before this Court, and the absence of any such submissions, during the course of hearing (to demonstrate prejudice), according to learned counsel, leave no room for any doubt, that the litigation initiated by the private parties, based on the above mentioned jurisdictional issue, was only a ploy to delay the prosecution initiated against them, by SEBI.

12. It was also the contention of the learned Additional Solicitor General representing SEBI, that 'the SEBI Act' was an enactment, which provided for a wholesome special procedure to deal with criminal implications, on account of the violation of the provisions of 'the SEBI Act'. It was submitted, that the provisions of 'the SEBI Act', were separate and distinct, from the general provisions contained in the Code of Criminal Procedure. Since, according to learned counsel, a special enactment is always presumed to have an overriding effect over a general enactment, the postulation of a special 'forum' under 'the SEBI Act', would have an overriding effect, over the general provisions contained in the Code of Criminal Procedure. It was also submitted, that 'the SEBI Act' provided a complete code for prosecution of offences under 'the SEBI Act', and as such, reference to the provisions of the Code of Criminal Procedure, on the subject(s) expressly provided for, included the 'forum' for trial, would not be proper.

13. In order to substantiate her contention, that alteration in procedure, had an implied retrospective effect, and further, that there was no vested right with a litigant, on a matter of procedure, learned Additional Solicitor General, placed reliance on a number of judgments. We shall first endeavour to refer to the same hereunder:

(i) In the first instance, reliance was placed on Union of India v. Sukumar Pyne, AIR 1966 SC 1206, a judgment rendered by a Constitution Bench, wherein this Court observed as under:

> "9. Mr Chatterjee, the learned counsel for the respondent, urges that a substantive vested right to be tried by an ordinary Court existed before the amendment, and he relied on Maxwell 11th Edn., p. 217, where it is stated that "the general principle, however, seems to be that alterations in procedure are retrospective, unless there be some good reason against it." He says that there is a good reason if the principles of Art. 20 are borne in mind. In our opinion, there is force in the contention of the learned Solicitor-General. As observed by this Court in 1953 SCR 1188: (AIR 1953 SC 394) a person accused of the commission of an offence has no vested right to be tried by a particular Court or a particular procedure except insofar as there is any constitutional objection by way of discrimination or the violation of any other fundamental right is involved. It is well recognized that "no person has a vested right in any course of procedure" (vide Maxwell 11th Edn., p. 216), and we see no reason why this ordinary rule should not prevail in the present case. There is no principle underlying Art. 20 of the Constitution which makes a right to any course of procedure a vested right. Mr Chatterjee complains that there is no indication in the Amending Act that the new procedure would be retrospective and he further says that this affects his right of appeal under the Criminal Procedure Code. But if this is a matter of procedure, then it is not necessary that there should be a special provision to indicate that the new procedural law is retrospective. No right of appeal under the Criminal Procedure Code is affected because no proceedings had ever been started under the Criminal Procedure Code."

(ii) Reliance was then placed on Ramesh Kumar Soni v. State of Madhya Pradesh, (2013) 14 SCC 696, wherefrom, our attention was drawn to the following observations:

> "2. The factual matrix in which the controversy arises may be summarised as under: Crime No. 129 of 2007 for commission of offences punishable under Sections 408, 420, 467, 468 and 471 IPC was registered against the appellant on 18-5-2007, at Bheraghat Police Station. On the date of the registration of the case the offences in question were triable by a Magistrate of First Class in terms of the First Schedule of Code of Criminal Procedure, 1973. That position underwent a change on account of the Code of Criminal Procedure (Madhya Pradesh Amendment) Act of 2007 introduced by Madhya Pradesh Act 2 of 2008 which amended the First Schedule of the 1973 Code and among others made offences under Sections 467, 468 and 471 IPC triable by the Court of Session instead of a Magistrate of First Class. The amendment received the assent of the President on 14-2-2008 and was published in Madhya Pradesh Gazette (Extraordinary) on 22-2-2008.
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> 9. Having said so, we may now examine the issue from a slightly different angle. The question whether any law relating to forum of trial is procedural or substantive in nature has been the subject-matter of several pronouncements of this Court in the past. We may refer to some of these decisions, no matter briefly.
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> 10. In New India Insurance Co. Ltd. v. Shanti Misra (1975) 2 SCC 840, this Court was dealing with the claim of payment of compensation under the Motor Vehicles Act. The victim of the accident had passed away because of the vehicular accident before the constitution of the Claims Tribunal under the Motor Vehicles Act, 1939, as amended. The legal heirs of the deceased filed a claim petition for payment of compensation before the Tribunal after the Tribunal was established. The question that arose was whether the claim petition was maintainable having regard to the fact that the cause of action had arisen prior to the change of the forum for trial of a claim for payment of compensation. This Court held that the change of law operates retrospectively even if the cause of action or right of action had accrued prior to the change of forum. The claimant shall, therefore, have to approach the forum as per the amended law. The claimant, observed this Court, had a "vested right of action" but not a "vested right of forum". It also held that unless by express words the new forum is available only to causes of action arising after the creation of the forum, the general rule is

to make it retrospective. The following passages are in this regard apposite: (SCC pp. 844-45, paras 5-6)

> "*5.* On the plain language of Sections 110-A and 110-F there should be no difficulty in taking the view that the change in law was merely a change of forum i.e. a change of adjectival or procedural law and not of substantive law. It is a well-established proposition that such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the change of forum. He will have a vested right of action but not a vested right of forum. If by express words the new forum is made available only to causes of action arising after the creation of the forum, then the retrospective operation of the law is taken away. Otherwise the general rule is to make it retrospective. The expressions 'arising out of an accident' occurring in sub-section (1) and 'over the area in which the accident occurred', mentioned in sub-section (2) clearly show that the change of forum was meant to be operative retrospectively irrespective of the fact as to when the accident occurred. To that extent there was no difficulty in giving the answer in a simple way. But the provision of limitation of 60 days contained in sub-section (3) created an obstacle in the straight application of the well-established principle of law. If the accident had occurred within 60 days prior to the constitution of the tribunal then the bar of limitation provided in sub-section (3) was not an impediment. An application to the tribunal could be said to be the only remedy. If such an application, due to one reason or the other, could not be made within 60 days then the tribunal had the power to condone the delay under the proviso. But if the accident occurred more than 60 days before the constitution of the tribunal then the bar of limitation provided in sub-section (3) of Section 110-A on its face was attracted. This difficulty of limitation led most of the High Courts to fall back upon the proviso and say that such a case will be a fit one where the tribunal would be able to condone the delay under the proviso to sub-section (3), and led others to say that the tribunal will have no jurisdiction to entertain such an application and the remedy of going to the civil court in such a situation was not barred under Section 110-F of the Act. While taking the latter view the High Court failed to notice that primarily the law engrafted in Sections 110-A and 110-F was a law relating to the change of forum.
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> 6. In our opinion in view of the clear and unambiguous language of Sections 110-A and 110-F it is not reasonable and proper to allow the law of change of forum give way to the bar of limitation provided in sub-section (3) of Section 110-A. It must be vice versa. The change of the procedural law of forum must

be given effect to. The underlying principle of the change of law brought about by the amendment in the year 1956 was to enable the claimants to have a cheap remedy of approaching the claims tribunal on payment of a nominal court fee whereas a large amount of ad valorem court fee was required to be paid in civil court."

11. In Hitendra Vishnu Thakur v. State of Maharashtra (1994) 4 SCC 602, one of the questions which this Court was examining was whether clause (bb) of Section 20(4) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 introduced by an Amendment Act governing Section 167(2) CrPC in relation to TADA matters was in the realm of procedural law and if so, whether the same would be applicable to pending cases. ..... The Court summed up the legal position with regard to the procedural law being retrospective in its operation and the right of a litigant to claim that he be tried by a particular Court, in the following words: (SCC p. 633, para 26)

"(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

12. We may also refer to the decision of this Court in Sudhir G. Angur v. M. Sanjeev (2006) 1 SCC 141 where a three-Judge Bench of this Court approved the decision of the Bombay High Court in Shiv Bhagwan Moti Ram Saraoji v. Onkarmal Ishar Dass (1952) 54 Bom. LR 330 and observed: (SCC p. 148, para 11)

"11. ... It has been held that a court is bound to take notice of the change in the law and is bound to administer the law as it was when the suit came up for hearing. It has been held that if a court has jurisdiction to try the suit, when it comes on for disposal, it then cannot refuse to assume jurisdiction by reason

of the fact that it had no jurisdiction to entertain it at the date when it was instituted. We are in complete agreement with these observations."

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19. ..... In Nani Gopal Mitra v. State of Bihar AIR 1970 SC 1636, this Court declared that amendments relating to procedure operated retrospectively subject to the exception that whatever be the procedure which was correctly adopted and proceedings concluded under the old law the same cannot be reopened for the purpose of applying the new procedure. ..... This Court held that the conviction pronounced by the Special Judge could not be termed illegal just because there was an amendment to the procedural law on 18-12-1964. The following passage is, in this regard, apposite: (AIR p. 1639, paras 5-6)

"5. ... It is therefore clear that as a general rule the amended law relating to procedure operates retrospectively. But there is another equally important principle viz. that a statute should not be so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the amending Act came into force (see A Debtor, In re, ex p Debtor (1936) 1 Ch 237 (CA) and Attorney General v. Vernazza 1960 AC 965). The same principle is embodied in Section 6 of the General Clauses Act which is to the following effect:

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6. The effect of the application of this principle is that pending cases, although instituted under the old Act but still pending, are governed by the new procedure under the amended law, but whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure. ..... It is not hence possible to accept the argument of the appellant that the conviction pronounced by the Special Judge, Santhal Parganas, has become illegal or in any way defective in law because of the amendment to procedural law made on 18-12-1964. In our opinion, the High Court was right in invoking the presumption under Section 5(3) of the Act even though it was repealed on 18-12-1964 by the amending Act. We accordingly reject the argument of the appellant on this aspect of the case."

(iii) Reliance was then placed on Kamlesh Kumar v. State of Jharkhand, (2013) 15 SCC 460. In this judgment, the main opinion was rendered by H.L. Gokhale, J., and a concurring order was passed by

Madan B. Lokur, J. Reliance was placed on the following observations from the judgment rendered by H.L. Gokhale, J.:

> "19. The First Schedule to CrPC deals with the classification of offences. Part I thereof deals with the offences under the Penal Code, 1860, Part II deals with classification of offences against other laws, which would include offences under laws such as FERA. The petitioners were being prosecuted under Section 56 of FERA, wherein the maximum punishment that could be awarded was up to seven years. The second entry of this Part II laid down that such offences were triable by a Magistrate of the First Class, provided those offences were cognizable offences. As noted earlier, Section 62 of FERA made the offence under Section 56 non-cognizable. Besides, Section 61(1) of FERA stated that "it shall be lawful" for the Magistrate to pass the necessary sentence under Section 56. It does not state that the Magistrate alone is empowered to pass the necessary sentence, in which case the proceeding cannot be transferred from his Court. This provision is not like the one in A.R. Antulay v. R.S. Nayak (1988) 2 SCC 602 where under Section 7(1) of the Criminal Law Amendment Act, 1952 the offence was "triable by Special Judge only". In the instant case it was merely lawful for the Magistrate to try the offences under Section 61, but the Court of the Magistrate was not a court of exclusive jurisdiction as in Antulay *case*. The offence was a non-cognizable one, and therefore it was not mandatory that it ought to have been tried only by the Magistrate of the First Class. Thus the petitioner could not claim that the Magistrate had the special jurisdiction to try the offence, and that the State could not transfer the case to the Sessions Judge. In view of what is stated above, it cannot be said that the Magistrate's Court had an exclusive jurisdiction to try the cases relating to violations of the provisions of FERA, and those cases could not be transferred to the Special Judge. In the present case the accused were common, many of the witnesses would be common, and so also their evidence. The administrative power of the High Court in such a situation to effect transfer has been upheld in Ranbir Yadav v. State of Bihar (1995) 4 SCC 392, and there is no reason for this Court to take a different view in the facts of the present case.
> 20. The petitioner had relied upon the judgment of a Division Bench of the Delhi High Court in A.S. Impex Ltd. v. Delhi High Court (2003) 107 DLT 734, on the question of transfer of a proceeding. Mr Malhotra pointed out that although the judgment in Ranbir Yadav was brought to the notice of the Division Bench in that matter, the Division Bench had erroneously held that the reliance thereon to be a "misplaced" one, as can be seen from the sentence at the end of para 12 of that judgment. This judgment

has been distinguished and found to be not laying down a good law by another Division Bench of the Delhi High Court in Mahender Singh v. High Court of Delhi (2009) 151 Comp Cas 485 (Del). In that matter, the Court was concerned with transfer of prosecutions under the Securities and Exchange Board of India Act, 1992 from the Magistrate's Court to the Court of Session, and the High Court has held it to be valid and permissible. The Division Bench in Mahender Singh has in terms held that reliance on the judgment in A.R. Antulay to oppose such transfer was of no help, and rightly so. There is no difficulty in stating that A.S. Impex Ltd. does not lay down the correct proposition of law.

21. The High Court does have the power to transfer the cases and appeals under Section 407 CrPC which is essentially a judicial power. Section 407(1)(c) CrPC lays down that, where it will tend to the general convenience of the parties or witnesses, or where it was expedient for the ends of justice, the High Court could transfer such a case for trial to a Court of Session. That does not mean that the High Court cannot transfer cases by exercising its administrative power of superintendence which is available to it under Article 227 of the Constitution of India. While repelling the objection to the exercise of this power, this Court observed in para 13 of Ranbir Yadav as follows: (SCC p. 400)

> "13. We are unable to share the above view of Mr Jethmalani. So long as power can be and is exercised purely for administrative exigency without impinging upon and prejudicially affecting the rights or interests of the parties to any judicial proceeding we do not find any reason to hold that administrative powers must yield place to judicial powers simply because in a given circumstance they coexist."

22. For the reasons stated above, there is no substance in the objections raised by the petitioners. The High Court has looked into Section 407 CrPC, referred to Articles 227 and 235 of the Constitution of India, and thereafter in its impugned judgment has observed as follows:

> "Having perused Section 407 CrPC and Articles 227 and 235, I have no hesitation to hold that this Court either on the administrative side or in the judicial side has absolute jurisdiction to transfer any criminal cases pending before one competent court to be heard and decided by another court within the jurisdiction of this Court. This Court in its administrative power can issue direction that cases of particular nature shall be heard by particular court having jurisdiction."

In view of what is stated earlier, we have no reason to take a view different from the one taken by the High Court. Both the special leave petitions (criminal) are, therefore, dismissed."

From the observations recorded by Madan B. Lokur, J. reliance was placed on the following:

> "30. It was contended that assuming that at law the case could validly have been transferred to the Special Judge, the petitioners are seriously prejudiced inasmuch as their right of appeal from the decision of a Magistrate to a Sessions Judge is taken away. Due to this prejudicial action, which was taken by the High Court without hearing the petitioners, the notification conferring power on the Special Judge to try the case should be struck down.
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> 33. Similarly, in Maria Cristina De Souza Sodder v. Amria Zurana Pereira Pinto (1979) 1 SCC 92 it was held somewhat more elaborately: (SCC p. 97, para 5)
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> > "5. … It is no doubt well settled that the right of appeal is a substantive right and it gets vested in a litigant no sooner the lis is commenced in the Court of the first instance, and such right or any remedy in respect thereof will not be affected by any repeal of the enactment conferring such right unless the repealing enactment either expressly or by necessary implication takes away such right or remedy in respect thereof. … This position, has also been settled by the decisions of the Privy Council and this Court (vide Colonial Sugar Refining Co. Ltd. v. Irving 1905 AC 369 and Garikapati Veeraya v. N. Subbiah Choudhry AIR 1957 SC 540) but the forum where such appeal can be lodged is indubitably a procedural matter and, therefore, the appeal, the right to which has arisen under a repealed Act, will have to be lodged in a forum provided for by the repealing Act."
>
> 34. In T. Barai v. Henry Ah Hoe (1983) 1 SCC 177, it was observed in para 17 of the Report that a person accused of the commission of an offence has no right to trial by a particular procedure. This view was followed in Rai Bahadur Seth Shreeram Durgaprasad v. Director of Enforcement (1987) 3 SCC 27.
>
> 35. Therefore, it cannot be seriously urged that the petitioners were prejudiced by a change of the appellate forum.
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> xxx xxx xxx
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> 43. While the revisional power of a superior court actually enables it to correct a grave error, the existence of that power does not confer any corresponding right on a litigant. This is the reason why, in a given case, a superior court may decline to exercise its power of revision, if the facts and circumstances of the case do not warrant the exercise of its discretion. This is also the reason why it is felicitously stated that a revision is not a right but only a "procedural facility" available to a party. If the matter is looked at in this light, the transfer of a case from a Magistrate to a Special

Judge does not take away this procedural facility available to the petitioners. It only changes the forum and as already held above, the petitioners have no right to choose the forum in which to file an appeal or move a petition for revising an interlocutory order.

xxx xxx xxx

45. In A.S. Impex case (2003) 107 DLT 734, the High Court administratively decided to transfer cases filed under Section 138 of the Negotiable Instruments Act, 1881 on or before 31-12-2001 and pending before the Magistrates to the Additional Sessions Judges. A notification for transfer of cases was accordingly issued and this was struck down by the Delhi High Court by, inter alia, relying on the law laid down in Antulay. As already noted above, the law laid down in Antulay has limited application and is not relevant to cases such as the one we are dealing with. This was clearly explained in Ranbir Yadav but the Delhi High Court ignored the observations of this Court without much ado by holding: (A.S. Impex case, DLT p. 744, para 12)

"*12.* … In that case the Court transferred the case from the Court of one Magistrate to the Court of another Magistrate for the reason that there was shortage of accommodation in the first court. That is not the case in hand. It was not a case where the jurisdiction was transferred from the Court of Magistrate to the Court of Session."

The Delhi High Court also proceeded on an erroneous basis that the exercise of plenary administrative power available to the High Court to transfer cases meant the bypassing or circumventing of statutory provisions empowering the Magistrates to try cases under Section 138 of the Negotiable Instruments Act, 1881 and conferring that jurisdiction on Additional Sessions Judges. The High Court did not correctly appreciate the power available to a High Court under Article 227 of the Constitution."

(iv) On the instant aspect of the matter, last of all, reliance was placed on Rajendra Kumar v. Kalyan, (2000) 8 SCC 99. The Court's attention was invited to the following conclusions:

"20. We do feel it expedient to record that the analysis as effected by the High Court stands acceptable and as such we refrain ourselves from dilating on this aspect of the matter any further. It is pertinent to add in this context that some differentiation exists between a procedural statute and statute dealing with substantive rights and in the normal course of events, matters of procedure are presumed to be retrospective unless there is an express ban onto its retrospectivity. In this context, the observations of this Court in the case of Jose Da Costa v. Bascora Sadasiva Sinai Narcornim

(1976) 2 SCC 917 is of some relevance. This Court in para 31 of the Report observed: (SCC p. 925)

> "31. Before ascertaining the effect of the enactments aforesaid passed by the Central Legislature on pending suits or appeals, it would be appropriate to bear in mind two well-established principles. The first is that while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment (see Delhi Cloth and General Mills Co. Ltd. v. CIT, AIR 1927 PC 242).
>
> The second is that a right of appeal being a substantive right the institution of a suit carries with it the implication that all successive appeals available under the law then in force would be preserved to the parties to the suit throughout the rest of the career of the suit. There are two exceptions to the application of this rule, viz. (1) when by competent enactment such right of appeal is taken away expressly or impliedly with retrospective effect and (2) when the court to which appeal lay at the commencement of the suit stands abolished (see Garikapati Veeraya v. N. Subbiah Choudhry AIR 1957 SC 540 and Colonial Sugar Refining Co. Ltd. v. Irving 1905 AC 369)."

21. Still later this Court in Gurbachan Singh v. Satpal Singh (1990) 1 SCC 445 expressed in the similar vein as regards the element of retrospectivity. The English courts also laid that the rule that an Act of Parliament is not to be given retrospective effect applies only to statutes which affect the vested rights; it does not apply to statutes which alter the form of procedure or the admissibility of evidence, or the effect which the courts give to evidence; if the new Act affects matters of procedure only, then, prima facie, it applies to all actions pending as well as future (see in this context the decisions of the House of Lords in the case of Blyth v. Blyth (1966) 1 All ER 524; A.G. v. Vernazza (1960) 3 All ER 97). In Halsbury's Laws of England (4th Edn., Vol. 44, para 925, p. 574) upon reference to Wright v. Hale (1860) 6 H&N 227 and Gardner v. Lucas (1878) 3 AC 582 (HL) along with some later cases including Blyth v. Blyth it has been stated:

> "The presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament."

22. The law thus seems to be well settled that no person has, in fact, a vested right in procedural aspect — one has only a right of prosecution or defence in the manner as prescribed by the law for

> the time being and in the event of any change of procedure by an Act of Parliament one cannot possibly have any right to proceed with the pending proceeding excepting as altered by the new legislation and as such we need not dilate on the issue any further."

Based on the conclusions recorded by this Court in the above cited judgments, it was contended, that with reference to procedure, there could be no dispute, that cognizance to be taken by a court competent at the time a matter is taken up, can be changed retrospectively, even if the cause of action had accrued prior to the change (of 'forum' for trial). And further, that an accused has no vested right, to be tried by a particular procedure, or by a particular court (forum), except insofar as there is a mandate (express or implied) in the amending statute, or a constitutional bar or objection, or the violation of any fundamental right. Therefore, when the amendments herein vested exclusive jurisdiction in a particular court (-the Court of Session, consequent upon 'the 2002 Amendment Act', and the Special Court, consequent upon 'the 2014 Amendment Act'), adjudication could thereupon have only been rendered by the court with which special jurisdiction was vested (by the respective amendments). In such a situation, notwithstanding anything contained in the Code of Criminal Procedure, the special enactment would also have an overriding effect. It was therefore contended, that in the absence of any prejudice shown to the private parties before this Court, it was not open to them, to assail the express determination rendered for change of 'forum', in the first instance, by 'the 2002 Amendment Act', and thereafter, by 'the 2014 Amendment Act'.

14. It was also the contention of the learned Additional Solicitor General representing SEBI, that the legislature enacting the original legislation, surely had the power and the authority to amend the same, which would include the power to alter the 'forum' of trial, originally postulated. Herein again, it was contended, that the aforementioned proposition, is subject to a general limitation, namely, that the change of 'forum' for trial should not prejudicially affect the rights of the party(ies) facing prosecution. Insofar as the instant aspect of the matter is concerned, learned Additional Solicitor General placed reliance on the declared legal position, by citing the following judgments:

(i) Reliance was first of all placed on Kamlesh Kumar v. State of Jharkhand, (2013) 15 SCC 460. Our attention was invited to the following observations recorded therein:

> "27.3. The third reason related to the power of transfer available to this Court under Article 142 of the Constitution. In this context, reference was made to a Constitution Bench decision of this Court in Prem Chand Garg v. Excise Commr. AIR 1963 SC 996 wherein it was observed that: (AIR p. 1002, para 12)
>
> > "12. ... The powers of this Court are no doubt very wide and they are intended to be and will always be exercised in the interest of justice. But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. An order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws."
>
> Since the order of this Court transferring the case from the Special Judge to the High Court was contrary to the statutory law and (as held in a later part in Antulay) contrary to Article 14 and Article 19 of the Constitution, the order of transfer was liable to be set aside. In this context, this Court also noted that the power to create or enlarge jurisdiction is legislative in character and no court,

whether superior or inferior or both combined, could enlarge the jurisdiction of a court. On this basis, inter alia, this Court concluded that the transfer of Antulay case from the Special Judge to the High Court was erroneous in law.

28. Antulay subsequently came up for consideration in Ranbir Yadav v. State of Bihar (1995) 4 SCC 392. In para 14 of the Report, it was noted that the express language of Section 7(1) of the CLA Act, took away the right of transfer of cases contained in the Code to any other court which was not a Special Court and that this was notwithstanding anything contained in Section 406 and Section 407 of the Code. This is what was said in this regard: (SCC p. 400)

> "14. Coming now to A.R. Antulay case we find that the principles of law laid down in the majority judgment, to which Mr Jethmalani drew our attention have no manner of application herein. There questions arose as to whether (i) the High Court could transfer a case triable according to the Criminal Law Amendment Act, 1952 ('the 1952 Act', for short) by a Special Court constituted thereunder to another court, which was not a Special Court and (ii) the earlier order of the Supreme Court transferring the case pending before the Special Court to the High Court was valid and proper. In answering both the questions in the negative the learned Judges, expressing the majority view, observed that (i) Section 7(1) of the 1952 Act created a condition which was sine qua non for the trial of offences under Section 6(1) of the said Act. The condition was that notwithstanding anything contained in the Code of Criminal Procedure or any other law the said offence shall be triable by Special Judges only. By express terms therefore it took away the right of transfer of cases contained in the Code to any other court which was not a Special Court and this was notwithstanding anything contained in Sections 406 and 407 of the Code and (ii) the earlier order of the Supreme Court transferring the case to the High Court was not authorised by law, namely, Section 7(1) of the 1952 Act and the Supreme Court, by its direction, could not confer jurisdiction on the High Court of Bombay to try any case for which it did not possess such jurisdiction under the scheme of the 1952 Act."

(ii) Reliance was then placed on Nani Gopal Mitra v. State of Bihar, AIR 1970 SC 1636, and the observations recorded in paragraph 6, were brought to our notice:

> "6. The effect of the application of this principle is that pending cases although instituted under the old Act but still pending are

governed by the new procedure under the amended law, but whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure. In the present case, the trial of the appellant was taken up by the Special Judge, Santhal Parganas when Section 5(3) of the Act was still operative. The conviction of the appellant was pronounced on March 31, 1962 by the Special Judge, Santhal Parganas long before the amending Act was promulgated. It is not hence possible to accept the argument of the appellant that the conviction pronounced by the Special Judge, Santhal Parganas has become illegal or in any way defective in law because of the amendment to procedural law made on December 18, 1964. In our opinion, the High Court was right in invoking the presumption under S. 5(3) of the Act even though it was repealed on December 18, 1964 by the amending Act. We accordingly reject the argument of the appellant on this aspect of the case."

(iii) Reliance was also placed on Securities and Exchange Board of India v. Ajay Agarwal, (2010) 3 SCC 765, wherefrom learned counsel pointedly drew our attention to the legal position expressed in paragraphs 40 and 41, which are reproduced below:

"40. Provisions of Section 11-B being procedural in nature can be applied retrospectively. The Appellate Tribunal made a manifest error by not appreciating that Section 11-B is procedural in nature. It is a time-honoured principle if the law affects matters of procedure, then prima facie it applies to all actions, pending as well as future. [See K. Kapen Chako v. Provident Investment Co. (P) Ltd. (1977) 1 SCC 593, wherein A.N. Ray, C.J. laid down those principles].

41. Maxwell in his Interpretation of Statutes also indicated that no one has a vested right in any course of procedure. A person's right of either prosecution or defence is conditioned by the manner prescribed for the time being by the law and if by the Act of Parliament, the mode of proceeding is altered, then no one has any other right than to proceed under the alternate mode. (Maxwell on Interpretation of Statutes, 11th Edn., p. 216.) These principles, enunciated by Maxwell, have been quoted with approval by the Supreme Court in its Constitution Bench judgment in Union of India v. Sukumar Pyne, AIR 1966 SC 1206."

(iv) Last of all, reliance was placed on A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602, wherefrom, our attention was pointedly drawn to the following:

> "24. Section 7(1) of the 1952 Act creates a condition which is sine qua non for the trial of offences under Section 6(1) of the said Act. The condition is that notwithstanding anything contained in the Code of Criminal Procedure or any other law, the said offences shall be triable by Special Judges only. Indeed conferment of the exclusive jurisdiction of the Special Judge is recognised by the judgment delivered by this Court in A.R. Antulay v. Ramdas Sriniwas Nayak (1984) 2 SCR 914 where this Court had adverted to Section 7(1) of the 1952 Act and at p. 931 (SCC p. 514) observed that Section 7 of the 1952 Act conferred exclusive jurisdiction on the Special Judge appointed under Section 6 to try cases set out in Sections 6(1)(a) and 6(1)(b) of the said Act. The court emphasised that the Special Judge had exclusive jurisdiction to try offences enumerated in Section 6(1)(a) and (b). In spite of this while giving directions in the other matter, that is, R.S. Nayak v. A.R. Antulay (1984) 2 SCR 495, this Court directed transfer to the High Court of Bombay the cases pending before the Special Judge. It is true that Section 7(1) and Section 6 of the 1952 Act were referred to while dealing with the other matters but while dealing with the matter of directions and giving the impugned directions, it does not appear that the court kept in mind the exclusiveness of the jurisdiction of the Special Court to try the offences enumerated in Section 6."

Based on the legal position declared by this Court, it was asserted, that the 'forum' for trial, expressed prior to the concerned amendment herein, did not create a vested right in the accused. And that, even in matters where proceedings had already commenced before the amendment, the amendment would have to be given effect to. Furthermore, the concerned accused were liable to be proceeded against, before the changed 'forum' (introduced by the amendment). It was pointed out, that while interpreting the provisions of 'the SEBI Act' itself, this Court had held Section 11B to be a procedural provision, having retrospective

effect, and that, the amended provision would be applicable to pending cases, even in matters which had arisen prior to the amendment. It was submitted that, where a legislative enactment provides for a special/specific 'forum' for adjudication, then only such special/specific 'forum' can try matters arising under the enactment. It was submitted, that in such matters, the jurisdiction of all other courts stood excluded.

15. In order to support the contentions advanced on behalf of the SEBI, as have been recorded in the preceding two paragraphs, it was also the contention of the learned Additional Solicitor General, that procedure and 'forum' for trial postulated by a special law – 'the SEBI Act', would always have an overriding effect over the general law – the Code of Criminal Procedure. In this behalf, it was contended, that Section 26 of 'the SEBI Act' (consequent upon 'the 2002 Amendment Act') expressly provided, that "no court inferior to that of a court of session shall try any offence punishable under this Act". It was therefore asserted, that there was no room for any doubt, that the aforesaid amendment was made retrospectively, with effect from 29.10.2002. It was submitted, that there was no ambiguity in the aforesaid provisions and it was not possible even on a close examination of the text of the above amendment, to construe otherwise. And that, after 29.10.2002 (i.e., the operative date of 'the 2002 Amendment Act') criminal adjudication arising under the provisions of 'the SEBI Act' could not be entertained by any court, inferior to the Court of Session. It was submitted, that the Court of Metropolitan Magistrate/Judicial

Magistrate, therefore came to be divested of the authority to adjudicate upon matters arising under 'the SEBI Act', after the above amendment. On the same analogy, it was contended, that consequent upon 'the 2014 Amendment Act', whereby, Section 26(2) of 'the SEBI Act' was omitted, and Section 26B of 'the SEBI Act' was inserted (into 'the SEBI Act'), jurisdiction was vested with Special Courts, to deal with all offences under 'the SEBI Act', "…committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2014, or on or after the date of such commencement, shall be taken cognizance of and tried by the Special Court …". Based on the above amendment, which came into force with effect from 18.07.2013, it was asserted, that all courts other than Special Courts created under 'the SEBI Act', were divested of the power to adjudicate matters arising thereunder, including pending matters, which had arisen prior to the amendment. It was submitted, that the intent of the legislature was clear and emphatic, namely, offences committed before or after the coming into operation of 'the 2014 Amendment Act' would be triable only by a Special Court, and by no other court. It was therefore asserted, that with effect from 18.07.2013, all pending matters would have to be transferred for adjudication to the Special Courts. Based on the aforesaid assertions, it was the contention of the learned Additional Solicitor General, that the Bombay High Court had erred in recording its finding, that cases instituted before a Metropolitan Magistrate (or, a Judicial Magistrate of the first class) would continue to be adjudicated by the said courts, and that, 'the 2002

Amendment Act' would have no effect on such matters. In the above view of the matter, it was the submission of the learned Additional Solicitor General, that the determination rendered by the Bombay High Court, with reference to 'forum' had been rendered infructuous, consequent upon 'the 2014 Amendment Act' which *inter alia* omitted Section 26(2) from 'the SEBI Act', and retrospectively inserted Section 26B into 'the SEBI Act'. Before that, according to learned senior counsel, Section 26(2) of 'the SEBI Act' amended by 'the 2002 Amendment Act' held the field (with effect from 29.10.2002), and that, adjudication after 29.10.2002 could only be made (for offences arising under 'the SEBI Act'), by a Court of Session.

16. Mr. C.A. Sundaram, Senior Advocate, represented most of the private parties (some appellants, and some respondents). He acknowledged the proposition canvassed on behalf of the SEBI, on the basis of the judgments cited during the course of hearing. It was however his contention, that the proposition canvassed on behalf of the SEBI was the general view, on the subject of change in procedural law, which included change of 'forum'. It was his pointed assertion, that there was a basic difference between change in substantive law, change in procedural law, and change in procedure constituting a change in 'forum'. He emphasized, that there was an important and subtle difference in the latter two. It was submitted, that change in 'forum' need not always be procedural. Learned counsel acknowledged, that change in substantive law was generally prospective (more so, in a case

of criminal jurisprudence). In this behalf, he placed reliance on Articles 20 and 21 of the Constitution of India. It was also acknowledged, that even though change in procedural law was generally retrospective, it would not be so, where the legislature expressly or by necessary implication, required it to be prospective.

17. Learned Senior Advocate also pointed out, that all matters pertaining to change in 'forum' should not be clubbed and treated similarly, under the parameters expressed above. It was submitted, that cases pertaining to change of 'forum', ought to be placed in two different categories. Firstly, where the proceedings had already been instituted and were pending, at the time of amendment. And secondly, where proceedings were yet to be instituted, on the date when the amendment became operational. It was submitted, that where proceedings had already been initiated and trial was in progress, change of 'forum' by way of legislation, by implication would be prospective. In terms of the instant classification, it was submitted, that the present controversy falls in the first category. Change of 'forum', according to learned counsel, would not be retrospective, for the first category, only where expressly mandated otherwise. Besides the legality of the issues, learned counsel posed a simple question; how can an amendment in legislation, shift a pending case, midstream, to another court?

18. Learned senior counsel however conceded, that where the legislative amendment, while providing for a change of 'forum' for trial, also provides for transfer of pending case (postulated, under the

unamended enactment), the amendment of 'forum' for trial would be retrospective. It was submitted, that in the absence of express or implied intent, all matters falling in the first category would continue to remain with the original 'forum' (provided for, under the unamended provision). And therefore, such an amendment of 'forum', even though admittedly procedural in nature, would be prospective (and not, retrospective). It was submitted, that such express or implied intendment (pertaining to the first category), would become apparent from an amended statute, where the original court is not deprived of exercising jurisdiction, or alternatively, when the original court's existing jurisdiction is abolished. In all such cases, according to learned counsel, unless the continuation of pending matters by the 'forum' already seized of the matter is done away with, expressly or by necessary implication, all pending proceedings would continue to be dealt with by the 'forum' where the matter was originally instituted. While expounding the aforesaid position, learned senior counsel, representing the private parties acknowledged, that the proposition canvassed on behalf of the SEBI, with reference to 'forum' would be applicable, to the second category, namely, to cases wherein proceedings were yet to be instituted. It was acknowledged by learned counsel, that in matters where the proceedings were yet to be instituted, the legally justified assumption would be, that they would have to be instituted in the newly created 'forum', despite the fact, that the cause had occurred when the 'forum' postulated was the one envisaged under the unamended enactment.

19. Insofar as the present controversy is concerned, it was sought to be asserted by learned senior counsel, that the amendment of 'forum' for trial, through 'the 2002 Amendment Act' could not be described as purely procedural, as the same was demonstrably substantive. Firstly, because the change in 'forum' was merely consequential to substantive changes in the Act (namely, change in Sections 11C and 24 of 'the SEBI Act'). In this behalf it was submitted, that the change of 'forum', was not a stand alone action. It was pointed out, that the change of 'forum' was dependent and accessory to, the amendment to the quantum of punishment contemplated for failing or refusing to cooperate with the investigating authorities, for violating the provisions of the SEBI Act. It was asserted, that the enhanced quantum of punishment, was the reason for the change in 'forum' (from a lower, to a superior court). Secondly, it was submitted, that as change in 'forum' was only consequential, and as such, by virtue of Sections 208 and 209 of the Code of Criminal Procedure, the new 'forum' – the Special Court, could not deal with pending matters (as is the situation, in all the cases herein) since the pre-requisites therefor are not completed by the amendment, inasmuch as, Sections 11C and 24 of the SEBI Act, would not apply to occurrences/causes, prior to the date of amendment. It was submitted, that to understand the amendments introduced through 'the 2002 Amendment Act', especially Sections 11C, 24 and 26, the other provisions amended simultaneously, had to be read together. It was also submitted, that the insertion of Section 26B through 'the 2014

Amendment Act', would only apply to offences committed after the amendment, or to those offences, though committed prior to the amendment; but cognizance whereof had not been taken, at the time of the amendment. It was further submitted, that a plain reading of Section 26B would reveal, that the intent expressed therein, was conjunctive, inasmuch as the language adopted in Section 26B, could not be read as disjunctive.

20. In order to substantiate the contentions canvassed by learned senior counsel representing the private parties, as have been delineated in the foregoing paragraphs, emphatic reliance was placed on Ramesh Kumar Soni v. State of Madhya Pradesh, (2013) 14 SCC 696. It was pointed out from the above judgment, that the factual foundation of the controversy was depicted in paragraphs 2 to 8, which are reproduced below:

> "2. The factual matrix in which the controversy arises may be summarised as under: Crime No. 129 of 2007 for commission of offences punishable under Sections 408, 420, 467, 468 and 471 IPC was registered against the appellant on 18-5-2007, at Bheraghat Police Station. On the date of the registration of the case the offences in question were triable by a Magistrate of First Class in terms of the First Schedule of Code of Criminal Procedure, 1973. That position underwent a change on account of the Code of Criminal Procedure (Madhya Pradesh Amendment) Act of 2007 introduced by Madhya Pradesh Act 2 of 2008 which amended the First Schedule of the 1973 Code and among others made offences under Sections 467, 468 and 471 IPC triable by the Court of Session instead of a Magistrate of First Class. The amendment received the assent of the President on 14-2-2008 and was published in Madhya Pradesh Gazette (Extraordinary) on 22-2-2008.
> 3. Consequent upon the amendment aforementioned, the Judicial Magistrate, First Class appears to have committed to the Sessions Court all cases involving commission of offences under the above

provisions. In one such case the Sessions Judge, Jabalpur, made a reference to the High Court on the following two distinct questions of law:

3.1. (i) Whether the recent amendment dated 22-2-2008 in Schedule I of the Criminal Procedure Code is to be applied retrospectively?

3.2. (ii) Consequently, whether the cases pending before the Magistrate, First Class, in which evidence partly or wholly has been recorded, and now have been committed to this Court are to be tried de novo by the Court of Session or should be remanded back to the Magistrate, First Class for further trial?

4. A Full Bench of the High Court of Madhya Pradesh in Amendment of First Schedule of Criminal Procedure Code by Criminal Procedure Code (M.P. Amendment) Act, 2007, In re (2008) 3 MPLJ 311, answered the reference and held that all cases pending before the Court of the Judicial Magistrate, First Class as on 22-2-2008 remained unaffected by the Amendment and were triable by the Judicial Magistrate, First Class as the Amendment Act did not contain a clear indication that such cases also have to be made over to the Court of Session. The Court further held that all such cases as were pending before the Judicial Magistrate, First Class and had been committed to the Sessions Court shall be sent back to the Judicial Magistrate, First Class in accordance with law. The reference was answered accordingly.

5. Relying upon the decision of the Full Bench the appellant filed an application before the trial court seeking a similar direction for remission of the case for trial by a Judicial Magistrate. The appellant argued on the authority of the above decision that although the police had not filed a charge-sheet against the appellant and the investigation in the case was pending as on the date the amendment came into force, the appellant had acquired the right of trial by a forum specified in Schedule I of the 1973 Code. Any amendment to the said provision shifting the forum of trial to the Court of Session was not attracted to the appellant's case thereby rendering the committal of the case to the Sessions Court and the proposed trial of the appellant before the Sessions Court illegal. The trial court, as mentioned earlier, repelled that contention and held that since no charge-sheet had been filed before the Magistrate as on the date the amendment came into force, the case was exclusively triable by the Sessions Court. The High Court has affirmed that view and dismissed the revision petition filed by the appellant, hence the present appeal.

6. The Code of Criminal Procedure (Madhya Pradesh Amendment) Act, 2007 is in the following words:

> "An Act further to amend the Code of Criminal Procedure, 1973 in its application to the State of Madhya Pradesh.

Be it enacted by the Madhya Pradesh Legislature in the Fifty-eighth Year of the Republic of India as follows:

1. Short title.—(1) This Act may be called the Code of Criminal Procedure (Madhya Pradesh Amendment) Act, 2007.

2. Amendment of Central Act No. 2 of 1974 in its application to the State of Madhya Pradesh.—The Code of Criminal Procedure, 1973 (2 of 1974) (hereinafter referred to as 'the Principal Act'), shall in its application to the State of Madhya Pradesh, be amended in the manner hereinafter provided.

3. Amendment of Section 167.— * * *

4. Amendment of the First Schedule.—In the First Schedule to the Principal Act, under the heading 'I-Offences under the Indian Penal Code' in Column 6 against Sections 317, 318, 326, 363, 363-A, 365, 377, 392, 393, 394, 409, 435, 466, 467, 468, 471, 472, 473, 474, 475, 476, 477 and 477-A, for the words 'Magistrate of the First Class' wherever they occur, the words 'Court of Session' shall be substituted."

7. The First Schedule to the Criminal Procedure Code, 1973 classifies offences under IPC for purposes of determining whether or not a particular offence is cognizable or non-cognizable and bailable or non-bailable. Column 6 of the First Schedule indicates the court by which the offence in question is triable:

7.1. The Madhya Pradesh Amendment extracted above has shifted the forum of trial from the Court of a Magistrate of the First Class to the Court of Session. The question is whether the said amendment is prospective and will be applicable only to the offences committed after the date the amendment was notified or would govern cases that were pending on the date of the amendment or may have been filed after the same had become operative?

7.2. The Full Bench has taken the view that since there is no specific provision contained in the Amendment Act making the amendment applicable to pending cases, the same would not apply to cases that were already filed before the Magistrate. This implies that if a case had not been filed up to the date the Amendment Act came into force, it would be governed by the amended Code and hence be triable only by the Sessions Court.

7.3. The Code of Criminal Procedure does not, however, provide any definition of "institution of a case". It is, however, trite that a case must be deemed to be instituted only when the court competent to take cognizance of the offence alleged therein does so. The cognizance can, in turn, be taken by a Magistrate on a complaint of facts filed before him which constitute such an offence. It may also be taken if a police report is filed before the Magistrate in writing of such facts as would constitute an offence. The Magistrate may also take cognizance of an offence on the basis

of his knowledge or suspicion upon receipt of the information from any person other than a police officer. In the case of the Sessions Court, such cognizance is taken on commitment to it by a Magistrate duly empowered in that behalf. All this implies that the case is instituted in the Magistrate's court when the Magistrate takes cognizance of an offence, in which event the case is one instituted on a complaint or a police report. The decision of this Court in Jamuna Singh v. Bhadai Shah AIR 1964 SC 1541, clearly explains the legal position in this regard.

7.4. To the same effect is the decision of this Court in Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy (1976) 3 SCC 252 (SCC p. 257, para 14), where this Court held that a case can be said to be instituted in a court only when the court takes cognizance of the offence alleged therein and that cognizance can be taken in the manner set out in clauses (a) to (c) of Section 190(1) CrPC. We may also refer to the decision of this Court in Kamlapati Trivedi v. State of W.B. (1980) 2 SCC 91, where this Court interpreted the provisions of Section 190 CrPC and reiterated the legal position set out in the earlier decisions.

8. Applying the test judicially recognised in the above pronouncements to the case at hand, we have no hesitation in holding that no case was pending before the Magistrate against the appellant as on the date the Amendment Act came into force. That being so, the Magistrate on receipt of a charge-sheet which was tantamount to institution of a case against the appellant was duty-bound to commit the case to the Sessions as three of the offences with which he was charged were triable only by the Court of Session. The case having been instituted after the Amendment Act had taken effect, there was no need to look for any provision in the Amendment Act for determining whether the amendment was applicable even to the pending matters as on the date of the amendment no case had been instituted against the appellant nor was it pending before any court to necessitate a search for any such provision in the Amendment Act. The Sessions Judge as also the High Court were, in that view, perfectly justified in holding that the order of committal passed by the Magistrate was a legally valid order and the appellant could be tried only by the Court of Session to which the case stood committed."

21. Learned senior counsel emphasized, that it was not necessary for him to refer to different decisions of this Court on the issue, since all the relevant judgments had already been dealt with in the Ramesh Kumar Soni case (supra). It was submitted, that it would suffice if this Court,

with reference to the present case, adverts to the legal position expressed in the above judgment (rendered on an analysis of earlier judgments). Learned senior counsel, pointedly drew our attention to the following observations recorded in the above judgment:

> "10. In New India Insurance Co. Ltd. v. Shanti Misra (1975) 2 SCC 840, this Court was dealing with the claim of payment of compensation under the Motor Vehicles Act. The victim of the accident had passed away because of the vehicular accident before the constitution of the Claims Tribunal under the Motor Vehicles Act, 1939, as amended. The legal heirs of the deceased filed a claim petition for payment of compensation before the Tribunal after the Tribunal was established. The question that arose was whether the claim petition was maintainable having regard to the fact that the cause of action had arisen prior to the change of the forum for trial of a claim for payment of compensation. This Court held that the change of law operates retrospectively even if the cause of action or right of action had accrued prior to the change of forum. The claimant shall, therefore, have to approach the forum as per the amended law. The claimant, observed this Court, had a "vested right of action" but not a "vested right of forum". It also held that unless by express words the new forum is available only to causes of action arising after the creation of the forum, the general rule is to make it retrospective. The following passages are in this regard apposite: (SCC pp. 844-45, paras 5-6)
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> > "5. On the plain language of Sections 110-A and 110-F there should be no difficulty in taking the view that the change in law was merely a change of forum i.e. a change of adjectival or procedural law and not of substantive law. It is a well-established proposition that such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the change of forum. He will have a vested right of action but not a vested right of forum. If by express words the new forum is made available only to causes of action arising after the creation of the forum, then the retrospective operation of the law is taken away. Otherwise the general rule is to make it retrospective. The expressions 'arising out of an accident' occurring in sub-section (1) and 'over the area in which the accident occurred', mentioned in sub-section (2) clearly show that the change of forum was meant to be operative retrospectively irrespective of the fact as to when the accident occurred. To that extent there was no difficulty in giving the answer in a simple way. But the provision of limitation of 60 days contained in sub-section (3)

created an obstacle in the straight application of the well-established principle of law. If the accident had occurred within 60 days prior to the constitution of the tribunal then the bar of limitation provided in sub-section (3) was not an impediment. An application to the tribunal could be said to be the only remedy. If such an application, due to one reason or the other, could not be made within 60 days then the tribunal had the power to condone the delay under the proviso. But if the accident occurred more than 60 days before the constitution of the tribunal then the bar of limitation provided in sub-section (3) of Section 110-A on its face was attracted. This difficulty of limitation led most of the High Courts to fall back upon the proviso and say that such a case will be a fit one where the tribunal would be able to condone the delay under the proviso to sub-section (3), and led others to say that the tribunal will have no jurisdiction to entertain such an application and the remedy of going to the civil court in such a situation was not barred under Section 110-F of the Act. While taking the latter view the High Court failed to notice that primarily the law engrafted in Sections 110-A and 110-F was a law relating to the change of forum.

6. In our opinion in view of the clear and unambiguous language of Sections 110-A and 110-F it is not reasonable and proper to allow the law of change of forum give way to the bar of limitation provided in sub-section (3) of Section 110-A. It must be vice versa. The change of the procedural law of forum must be given effect to. The underlying principle of the change of law brought about by the amendment in the year 1956 was to enable the claimants to have a cheap remedy of approaching the claims tribunal on payment of a nominal court fee whereas a large amount of ad valorem court fee was required to be paid in civil court."

11. In Hitendra Vishnu Thakur v. State of Maharashtra (1994) 4 SCC 602, one of the questions which this Court was examining was whether clause (bb) of Section 20(4) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 introduced by an Amendment Act governing Section 167(2) CrPC in relation to TADA matters was in the realm of procedural law and if so, whether the same would be applicable to pending cases. Answering the question in the affirmative this Court speaking through A.S. Anand, J. (as His Lordship then was), held that Amendment Act 43 of 1993 was retrospective in operation and that clauses (b) and (bb) of sub-section (4) of Section 20 of TADA apply to the cases which were pending investigation on the date when the amendment came into force. The Court summed up the legal position with regard to the procedural law being retrospective in its operation and the right of a litigant to claim that he be tried by a particular Court, in the following words: (SCC p. 633, para 26)

"(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

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13. In Shiv Bhagwan Moti Ram Saraoji case (1952) 54 Bom LR 330, the Bombay High Court has held procedural laws to be in force unless the legislatures expressly provide to the contrary. The Court observed: (Bom LR p. 352)

"… Now, I think it may be stated as a general principle that no party has a vested right to a particular proceeding or to a particular forum, and it is also well settled that all procedural laws are retrospective unless the legislature expressly states to the contrary. Therefore, procedural laws in force must be applied at the date when a suit or proceeding comes on for trial or disposal."

14. The amendment to the Criminal Procedure Code in the instant case has the effect of shifting the forum of trial of the accused from the Court of the Magistrate, First Class to the Court of Session. Apart from the fact that as on the date the amendment came into force no case had been instituted against the appellant nor had the Magistrate taken cognizance against the appellant, any amendment shifting the forum of the trial had to be on principle retrospective in nature in the absence of any indication in the Amendment Act to the contrary. The appellant could not claim a vested right of forum for his trial for no such right is recognised. The High Court was, in that view of the matter, justified in (*sic* not) interfering with the order passed by the trial court.

15. The questions formulated by the Full Bench of the High Court were answered in the negative holding that all cases pending in the

Court of the Judicial Magistrate, First Class as on 22-2-2008 when the amendment to the First Schedule to CrPC became operative, will remain unaffected by the said amendment and such matters as were, in the meanwhile committed to the Court of Session, will be sent back to the Judicial Magistrate, First Class for trial in accordance with law. In coming to that conclusion the Full Bench placed reliance upon three decisions of this Court in Manujendra Dutt v. Purnedu Prosad Roy Chowdhury AIR 1967 SC 1419, CIT v. R. Sharadamma (1996) 8 SCC 388 and R. Kapilnath v. Krishna (2003) 1 SCC 444. The ratio of the above decisions, in our opinion, was not directly applicable to the fact situation before the Full Bench. The Full Bench of the High Court was concerned with cases where evidence had been wholly or partly recorded before the Judicial Magistrate, First Class when the same were committed to the Court of Session pursuant to the amendment to the Code of Criminal Procedure. The decisions upon which the High Court placed reliance did not, however, deal with those kind of fact situations.

16. In Manujendra Dutt case the proceedings in the Court in which the suit was instituted had concluded. At any rate, no vested right could be claimed for a particular forum for litigation. The decisions of this Court referred to by us earlier settle the legal position which bears no repetition. It is also noteworthy that the decision in Manujendra Dutt case was subsequently overruled by a seven-Judge Bench of this Court in V. Dhanapal Chettiar v. Yesodai Ammal (1979) 4 SCC 214 though on a different legal point.

17. So also the decision of this Court in R. Sharadamma case (1996) 8 SCC 388 relied upon by the Full Bench was distinguishable on facts. The question there related to a liability incurred under a repealed enactment. The proceedings in the forum in which the case was instituted had concluded and the matter had been referred to the inspecting Assistant Commissioner before the dispute regarding jurisdiction arose.

18. The decision of this Court in R. Kapilnath case (2003) 1 SCC 444, relied upon by the Full Bench was also distinguishable since that was a case where the eviction proceedings before the Court of Munsif under the Karnataka Rent Control Act, 1961 had concluded when the Karnataka Rent Control (Amendment) Act, 1994 came into force. By that amendment, the Court of Munsif was deprived of jurisdiction in such cases. This Court held that the change of forum did not affect pending proceedings. This Court further held that the challenge to the competence of the forum was raised for the first time, that too as an additional ground before this Court and that, for other factors, the Court was inclined to uphold the jurisdiction of the Court of Munsif to entertain and adjudicate upon the eviction matter. The fact situation was thus different in this case.

19. Even otherwise the Full Bench failed to notice the law declared by this Court in a series of pronouncements on the subject to which we

may briefly refer at this stage. In Nani Gopal Mitra v. State of Bihar AIR 1970 SC 1636, this Court declared that amendments relating to procedure operated retrospectively subject to the exception that whatever be the procedure which was correctly adopted and proceedings concluded under the old law the same cannot be reopened for the purpose of applying the new procedure. In that case the trial of the appellant had been taken up by Special Judge, Santhal Paraganas when Section 5(3) of the Prevention of Corruption Act, 1947 was still operative. The appellant was convicted by the Special Judge before the Amendment Act repealing Section 5(3) was promulgated. This Court held that the conviction pronounced by the Special Judge could not be termed illegal just because there was an amendment to the procedural law on 18-12-1964. The following passage is, in this regard, apposite: (AIR p. 1639, paras 5-6)

> "5. … It is therefore clear that as a general rule the amended law relating to procedure operates retrospectively. But there is another equally important principle viz. that a statute should not be so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the amending Act came into force (see A Debtor, In re, ex p Debtor (1936) 1 Ch 237 (CA) and Attorney General v. Vernazza 1960 AC 965). The same principle is embodied in Section 6 of the General Clauses Act which is to the following effect:
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> 6. The effect of the application of this principle is that pending cases, although instituted under the old Act but still pending, are governed by the new procedure under the amended law, but whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure. In the present case, the trial of the appellant was taken up by the Special Judge, Santhal Parganas when Section 5(3) of the Act was still operative. The conviction of the appellant was pronounced on 31-3-1962 by the Special Judge, Santhal Parganas, long before the amending Act was promulgated. It is not hence possible to accept the argument of the appellant that the conviction pronounced by the Special Judge, Santhal Parganas, has become illegal or in any way defective in law because of the amendment to procedural law made on 18-12-1964. In our opinion, the High Court was right in invoking the presumption under Section 5(3) of the Act even though it was repealed on 18-12-1964 by the amending Act. We accordingly reject the argument of the appellant on this aspect of the case."

20. Reference may also be made upon the decision of this Court in Anant Gopal Sheorey v. State of Bombay AIR 1958 SC 915, where the legal position was stated in the following words: (AIR p. 917, para 4)

> "4. The question that arises for decision is whether to a pending prosecution the provisions of the amended Code have become applicable. There is no controversy on the general principles applicable to the case. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the court in which the case is pending and if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to the altered mode. See Maxwell on Interpretation of Statutes on p. 225; Colonial Sugar Refining Co. Ltd. v. Irving, 1905 AC 369, AC p. 372. In other words a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective."
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> 21. The upshot of the above discussion is that the view taken by the Full Bench holding the amended provision to be inapplicable to pending cases is not correct on principle. The decision rendered by the Full Bench would, therefore, stand overruled but only prospectively. We say so because the trial of the cases that were sent back from the Sessions Court to the Court of the Magistrate, First Class under the orders of the Full Bench may also have been concluded or may be at an advanced stage. Any change of forum at this stage in such cases would cause unnecessary and avoidable hardship to the accused in those cases if they were to be committed to the Sessions for trial in the light of the amendment and the view expressed by us."

22. It was also the contention of learned counsel for the private parties, that 'the 2002 Amendment Act' does not indicate the desire of the legislature in divesting proceedings which were earlier pending before a Metropolitan Magistrate (or, a Judicial Magistrate, as the case may be). In order to substantiate the instant contention, learned counsel, in the first instance, placed reliance on the statement of objects and reasons of the Securities and Exchange Board of India (Amendment) Act, 2002. The same is extracted hereunder:

> "The Securities and Exchange Board of India (SEBI) Act, 1992 was enacted to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development

of, and to regulate, the securities market and for matters connected therewith or incidental thereto.

2. Recently many shortcomings in the legal provisions of the Securities and Exchange Board of India Act, 1992 have been noticed, particularly with respect to inspection, investigation and enforcement. Currently, the SEBI can call for information, undertake inspections, conduct enquiries and audits of stock exchanges, mutual funds, intermediaries, issue directions, initiate prosecution, order suspension or cancellation of registration. Penalties can also be imposed in case of violation of the provisions of the Act or the rules or the regulations. However, the SEBI has no jurisdiction to prohibit issue of securities or preventing siphoning of funds or asset stripping by any company. While the SEBI can call for information from intermediaries, it cannot call for information from any bank and other authority or board or corporation established or constituted by or under any Central, State or Provincial Act. The SEBI cannot retain books of account, documents, etc., in its custody. Under the existing provisions contained in the Securities and Exchange Board of India Act, 1992, the SEBI cannot issue commissions for the examination of witnesses or documents. Further, the SEBI has pointed out that existing penalties are too low and do not serve as effective deterrents. At present, under section 209A of the Companies Act, 1956, the SEBI can conduct inspection of listed companies only for violations of the provisions contained in sections referred to in section 55A of that Act but it cannot conduct inspection of any listed public company for violation of the SEBI Act or rules or regulations made thereunder.

3. In addition, growing importance of the securities markets in the economy has placed new demands upon the SEBI in terms of organisation structure and institutional capacity. A need was therefore felt to remove these shortcomings by strengthening the mechanisms available to the SEBI for investigation and enforcement so that it is better equipped to investigate and enforce against market malpractices.

4. In view of the above, the Securities and Exchange Board of India (Amendment) Ordinance, 2002 (Ord. 6 of 2002) was promulgated on the 29th October, 2002 to amend the Securities and Exchange Board of India Act, 1992.

5. It is now proposed to replace the Ordinance by a Bill, with, inter alia, the following features—

(a) increasing the number of members of the SEBI from six (including Chairman) to nine (including Chairman);

(b) conferring power upon the Board for,-

(i) calling for information and record from any bank or other authority or Board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any

transaction in securities which are under investigation or inquiry by the Board;
(ii) passing an order for reasons to be recorded in writing, in the interest of investors or securities market, either pending investigation or inquiry or on completion of such investigation or inquiry for taking any of the following measures, namely, to--
(A) suspend the trading of any security in a recognised stock exchange;
(B) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
(C) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;
(D) impound and retain the proceeds or securities in respect of any transaction which is under investigation;
(E) attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder;
(F) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation;
(iii) regulating or prohibiting for the protection of investors, issue of prospectus, offer document or advertisement soliciting money for issue of securities;
(iv) directing any person to investigate the affairs of intermediary or person associated with the securities market and to search and seize books, registers, other documents and records considered necessary for the purposes of the investigation, with the prior approval of a Magistrate of the first class;
(v) passing an order requiring any person who has violated or is likely to violate, any provision of the SEBI Act or any rules or regulations made thereunder to cease and desist for committing and causing such violation;
(c) prohibiting manipulative and deceptive devices, insider trading, fraudulent and manipulative trade practices, market manipulation and substantial acquisition of securities and control;
(d) crediting sums realised by way of penalties to the Consolidated Fund of India;
(e) amending the composition of the Securities Appellate Tribunal from one person to three persons;
(f) changing the qualifications for appointment as Presiding Officer and members of the Securities Appellate Tribunal;

(g) composition of certain offences by the Securities Appellate Tribunal;
(h) conferring power upon the Central Government to grant immunity;
(i) appeal to the Supreme Court from the orders of the Securities Appellate Tribunal;
(j) enhancing the penalties specified in the SEBI Act.
6. The Bill seeks to achieve the above objects."

Reading extensively from the objects and reasons extracted above, it was submitted, that the aforestated amendment was primarily aimed at remedying the shortcomings in 'the SEBI Act', particularly, with reference to inspection, investigation and enforcement. It was also pointed out, that the said amendment was aimed at enhancing the penalties postulated for violation of the provisions of 'the SEBI Act', inasmuch as, the existing penalties did not serve as an effective deterrent. It was submitted, that 'the 2002 Amendment Act' was an in-depth restructuring of the SEBI (by increasing the number of its members), and by conferring further powers on the Securities & Exchange Board of India. It was submitted, that the change of 'forum' emerging out of the provisions of 'the 2002 Amendment Act', was not even referred to in the statement of objects and reasons. And as such, it was not proper for this Court to draw any inference, merely on the premise, that a procedural amendment had been contemplated by changing the existing 'forum (to that of the Court of Session). It was submitted, that an overall analysis of 'the 2002 Amendment Act' would demonstrate, that the erstwhile penalties under the original SEBI Act (under Section 24), were of a trivial nature. Inasmuch as, the

contravention of the provisions of 'the SEBI Act' or any rules and regulations made thereunder, was punishable with imprisonment "... for a term which may extend to one year, or with fine, or with both". Referring to sub-section (2) of Section 24 it was submitted, that for failing to comply with the directions or orders of adjudicating officers, under 'the SEBI Act', the punishment provided for, was of "...not less than one month, but which may extend to three years or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees or with both.". In consonance with the above level of punishment, it was not only appropriate, but also justified, that the proceedings should be conducted by the Court of a Metropolitan Magistrate (or, a Judicial Magistrate, as the case may be). It was submitted, that all the matters arising for adjudication before this Court, in the present set of cases, can only be punished with imprisonment and fine, as has been noticed herein above. In addition to the factual position narrated hereinabove, it was highlighted, that the punishment contemplated under Section 24 of 'the SEBI Act', was altered by 'the 2002 Amendment Act' whereby, consequent upon the contravention of the provisions of 'the SEBI Act' or any rules or regulations made thereunder, the offender was "...punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both." Additionally referring the amendment of Section 24(2) by 'the 2002 Amendment Act', it was submitted, that for failing to comply with any of the directions or orders

of an adjudicating officer, the punishment contemplated was "... imprisonment for a term which shall not be less than one month but which may extend to ten years or with fine, which may extend to twenty-five crore rupees or with both." It was submitted, that the private parties herein, cannot be required to suffer the punishment contemplated under Section 24, consequent upon its amendment by 'the 2002 Amendment Act'. It was submitted, that on account of the enhanced punishment under Section 26(2) of 'the 2002 Amendment Act' postulated, that no court inferior to that of a Court of Session, would try any offence triable under 'the SEBI Act'. It was submitted, that any change of 'forum', whilst the penal consequences remained unchanged, was absurd. According to learned counsel representing the private parties, the change of 'forum' (through 'the 2002 Amendment Act') was aimed at bringing the 'forum' of adjudication, at par with the 'forum' contemplated for similar penal consequences, under the Code of Criminal Procedure. It was submitted, that it could never have been the intention of the legislature through 'the 2002 Amendment Act', to alter the 'forum' for offences with trivial punishments (as is the case, with the private parties herein).

23. In order to substantiate the contention advanced in the foregoing paragraph, learned counsel has placed reliance on Commissioner of Income Tax, Orissa v. Dhadi Sahu, 1994 Supp (1) SCC 257, and drew our attention to the following observations recorded therein:

"5. Pending reference of the case before the Inspecting Assistant Commissioner, Section 274(2) of the Act was amended with effect from April 1, 1971 by the Taxation Laws (Amendment) Act, 1970 (hereinafter referred to as 'the Amending Act') so as to read as follows:

"Notwithstanding anything contained in clause (iii) of sub-section (1) of Section 271 if in a case falling under clause (c) of that sub-section, the amount of income (as determined by the Income Tax Officer on assessment) in respect of which the particulars have been concealed or inaccurate particulars have been furnished exceeds a sum of twenty-five thousand rupees the Income Tax Officer shall refer the case to the Inspecting Assistant Commissioner, who shall, for the purpose, have all the powers conferred under this chapter for the imposition of penalty."

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18. It may be stated at the outset that the general principle is that a law which brings about a change in the forum does not affect pending actions unless intention to the contrary is clearly shown. One of the modes by which such an intention is shown is by making a provision for change-over of proceedings, from the court or the tribunal where they are pending to the court or the tribunal which under the new law gets jurisdiction to try them.

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20. It will be noticed that the amending Act did not make any provision that the references validly pending before the Inspecting Assistant Commissioner shall be returned without passing any final order if the amount of income in respect of which the particulars have been concealed did not exceed Rs 25,000. This supports the inference that in pending references the Inspecting Assistant Commissioner continued to have jurisdiction to impose penalty. The previous operation of Section 274(2) as it stood before April 1, 1971, and anything done thereunder continued to have effect under Section 6(b) of the General Clauses Act, 1897, enabling the Inspecting Assistant Commissioner to pass orders imposing penalty in pending references. In our opinion, therefore, what is material to be seen is as to when the references were initiated. If the reference was made before April 1, 1971, it would be governed by Section 274(2) as it stood before that date and Inspecting Assistant Commissioner would have jurisdiction to pass the order of penalty.

21. It is also true that no litigant has any vested right in the matter of procedural law but where the question is of change of forum it ceases to be a question of procedure only. The forum of appeal or proceedings is a vested right as opposed to pure procedure to be followed before a particular forum. The right becomes vested when the proceedings are initiated in the tribunal or the court of first instance and unless the legislature has by express words or by necessary implication clearly so indicated, that vested right will continue in spite of the change of jurisdiction of the different tribunals or forums."

Reliance was also placed on R. Kapilnath v. Krishna, (2003) 1 SCC 444, wherein the Court's pointed attention was drawn to the following observations:

> "4. The above submission of the learned counsel has been stated only to be rejected. It is pertinent to note that the proceedings in the Court of Munsiff had already stood concluded by the time the amendment came into force. It is not disputed that Amendment Act 32 of 1994 has not been given a retrospective operation and there is nothing in the Act to infer retrospectivity by necessary implication. The Act has been specifically brought into force w.e.f. the 18th day of May, 1994. The learned counsel for the appellant cited a number of decisions laying down the law as to how an amendment in legislation brought into force during the pendency of legal proceedings has to be given effect to. Without stating the decisions so cited, suffice it to observe that all those decisions deal with substantive rights having been created or abolished during the pendency of legal proceedings and depending on the legislative intent and the language employed by the legislature in the relevant enactment, this Court has determined the impact of the legislation on pending proceedings and the power of the court to take note of change in law and suitably mould the relief consistently with the legislative changes. So far as the present case is concerned, the only submission made by the learned counsel for the appellant is that the effect of the amendment is to deprive the Court of Munsiff of its jurisdiction to hear and decide the proceedings for eviction over such premises as the suit premises are. In other words, it is a change in forum brought during the pendency of the proceedings. The correct approach to be adopted in such cases is that a new law bringing about a change in forum does not affect pending actions, unless a provision is made in it for changeover of proceedings or there is some other clear indication that pending actions are affected. (See Principles of Statutory Interpretation, Justice G.P. Singh, 8th Edn., 2001, p. 442.) We have already indicated that the Act does not bring about a change in forum so far as the pending actions are concerned. Moreover, by the time the amendment came into force, the proceedings before the Munsiff had already stood concluded and the case was pending at the stage of revision before the Additional District Judge. Further, we find that an objection laying challenge to the forum's competence was not raised before the learned Additional District Judge nor was the objection taken before the High Court in the civil revision preferred by the appellant. It was not taken as a ground in the special leave petition. It has been taken only by way of a separate petition filed subsequently and seeking leave to urge additional grounds. Such an objection cannot be allowed to be urged

so belatedly. However, we have already held the argument based on the 1994 Amendment as of no merit."

Based on the aforestated submissions, it was contended, that 'the 2002 Amendment Act' did not expressly or impliedly choose to alter the forum of pending matters, wherein cognizance had already been taken. Referring to Section 26B, introduced into 'the SEBI Act' by 'the 2002 Amendment Act', learned counsel emphasized on "... shall be taken cognizance of and tried ...". Relying on the aforestated words used in Section 26B, it was asserted, that the intent of the legislature was that the change of 'forum' would apply only to matters, wherein cognizance had not been taken. It was submitted, that there was no question of taking fresh cognizance, where cognizance had already been taken. It was accordingly sought to be inferred, that the clear intent indicated by the legislature was, that the change of 'forum' would be applicable, only in matters wherein cognizance had not been taken.

24. Learned senior counsel, then placed reliance on Videocon International Limited v. Securities and Exchange Board of India, (2015) 4 SCC 33. It was submitted, that the instant judgment of this Court had taken into consideration a number of previous judgments rendered by it, for recording its final conclusions. As such, it was submitted, that reliance on the instant judgment, would obviate the necessity of reference to other judgments of this Court (on the question in hand). Learned counsel placed reliance on the observations and conclusions,

recorded in the Videocon International Limited case (supra), by placing reliance on the following paragraphs:

> "7. The High Court by the impugned order arrived at the conclusion, that such of the appeals as had been filed before the coming into force of the amended Section 15-Z, would not be affected by the amendment, and the High Court had the jurisdiction to hear and dispose of the same. The High Court also concluded, that such of the appeals as had been filed after the coming into force of the amended Section 15-Z, would not be maintainable.
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> 29. According to the learned counsel, a perusal of the above judgment in Dhadi Sahu case revealed, that change of forum could be substantive or procedural. It would be procedural when the remedy has yet to be availed of. But where the remedy had already been availed of (under an existing statutory provision), the right crystallised into a vested substantive right. In the latter situation, according to the learned counsel, unless the amending provision, by express words or by necessary implication mandates, the transfer of pending proceedings to the forum introduced by the amendment, the forum postulated by the unamended provision, has the jurisdiction to adjudicate upon pending matters (filed before the amendment).
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> 30. According to the learned counsel, his submission also flows from the mandate contained in Section 6 of the General Clauses Act, 1897. For this, the learned counsel placed reliance on Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal and Co (2001) 8 SCC 397. In the above-cited judgment, the respondent landlord had filed an eviction petition on 13-9-1985 against the appellant, under Section 14(1)(b) of the Delhi Rent Control Act. When the above petition was pending, Section 3(c) was brought in through an amendment with effect from 1-12-1988. By the above amendment, the jurisdiction of the Rent Controller, with respect to tenancies which fetched a monthly rent exceeding Rs 3500, was excluded. Consequent upon the aforesaid amendment, the appellant tenant contended, that the civil court alone, had the jurisdiction to entertain the claim raised by the landlord, and that, the eviction petition filed under the provisions of the Delhi Rent Control Act, was no longer maintainable.
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> 31. While adjudicating the aforesaid dispute, this Court held as under: (Ambalal case, SCC pp. 409-10 & 415, paras 24-27 & 34-36)
>
> > "24. We may quote here Section 6 of the General Clauses Act, 1897:
> >
> > '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 proceeding 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 penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.'

25. The opening words of Section 6 specify the field over which it is operative. It is operative over all the enactments under the General Clauses Act, Central Act or regulations made after the commencement of the General Clauses Act. It also clarifies in case of repeal of any provision under the aforesaid Act or regulation, unless a different intention appears from such repeal, it would have no affect over the matters covered in its clauses viz. (a) to (e). It clearly specifies that the repeal shall not revive anything not in force or in existence or affect the previous operation of any enactment so repealed or anything duly done or suffered or affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed statute, affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed statute and also does not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid. Thus the central theme which spells out is that any investigation or legal proceeding pending may be continued and enforced as if the repealing Act or regulation had not come into force.

26. As a general rule, in view of Section 6, the repeal of a statute, which is not retrospective in operation, does not prima facie affect the pending proceedings which may be continued as if the repealed enactment were still in force. In other words, such repeal does not affect the pending cases which would continue to be concluded as if the enactment has not been repealed. In fact when a lis commences, all rights and obligations of the parties get crystallised on that date. The mandate of Section 6 of the General Clauses Act is simply to leave the pending proceedings unaffected which commenced under the unrepealed provisions unless contrary intention is expressed. We find clause (c) of Section 6, refers the

words 'any right, privilege, obligation … acquired or accrued' under the repealed statute would not be affected by the repealing statute. We may hasten to clarify here, mere existence of a right not being 'acquired' or 'accrued', on the date of the repeal would not get protection of Section 6 of the General Clauses Act.

27. At the most, such a provision can be said to be granting a privilege to the landlord to seek intervention of the Controller for eviction of the tenant under the statute. Such a privilege is not a benefit vested in general but is a benefit granted and may be enforced by approaching the Controller in the manner prescribed under the statute. On filing the petition of eviction of the tenant the privilege accrued with the landlord is not effected by repeal of the Act in view of Section 6(*c*) and the pending proceeding is saved under Section 6(*e*) of the Act.

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34. Thus we find Section 6 of the General Clauses Act covers a wider field and saves a wide range or proceedings referred to in its various clauses. We find two sets of cases, one where Section 6 of the General Clauses Act is applicable and the other where it is not applicable.

35. In cases where Section 6 is not applicable, the courts have to scrutinise and find, whether a person under a repealed statute had any vested right. In case he had, then pending proceedings would be saved. However, in cases where Section 6 is applicable, it is not merely a vested right but all those covered under various clauses from (a) to (e) of Section 6. We have already clarified that right and privilege under it is limited to those which is 'acquired' and 'accrued'. In such cases pending proceedings are to be continued as if the statute has not been repealed.

36. In view of the aforesaid legal principle emerging, we come to the conclusion that since proceeding for the eviction of the tenant was pending when the repealing Act came into operation, Section 6 of the General Clauses Act would be applicable in the present case, as it is landlord's accrued right in terms of Section 6. Clause (*c*) of Section 6 refers to 'any right' which may not be limited as a vested right but is limited to be an accrued right. The words 'any right accrued' in Section 6(*c*) are wide enough to include landlord's right to evict a tenant in case proceeding was pending when repeal came in. Thus a pending proceeding before the Rent Controller for the eviction of a tenant on the date when the repealing Act came into force would not be affected by the repealing statute and will be continued and concluded in accordance with the law as existed under the repealed statute."

Based on the above determination, it was the contention of the learned counsel, that in addition to the existence of a vested right, Sections 6(*c*) and (*e*) make it abundantly clear, that a pending legal proceeding or remedy, before the amendment altered the forum, would continue to be available for the adjudication of the matter, unless the

amending provision by express words or by necessary implication expressed otherwise.

37. We have given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the rival parties. We shall now venture to determine the controversy which has been debated hereinabove. So as not to be required to repeatedly express one foundational fact, it would be pertinent to mention, that our determination, insofar as the present controversy is concerned is with reference to situations wherein the amending provision by express words or by necessary implication, does not mandate the amendment to be either prospective or retrospective. In the present case, the instant situation emerges from Section 32 of the Securities and Exchange Board of India (Amendment) Act, 2002, which is silent on the above subject.

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44. It was also the contention of the learned counsel for the appellant, that in the absence of a saving clause, the pending proceedings (and the jurisdiction of the High Court), cannot be deemed to have been saved. It is not possible for us to accept the instant contention. In the judgment rendered by this Court in Ambalal Sarabhai Enterprises Ltd. case, it was held, that the general principle was, that a law which brought about a change in the forum, would not affect pending actions, unless the intention to the contrary was clearly shown. Since the amending provision herein does not so envisage, it has to be concluded, that the pending appeals (before the amendment of Section 15-Z) would not be affected in any manner. Accordingly, for the same reasons as have been expressed in the above judgment (relevant extracts whereof have been reproduced above), we are of the view, that the instant contention advanced at the hands of the learned counsel for the appellant is wholly misconceived. Furthermore, the instant contention is wholly unacceptable in view of the mandate contained in Sections 6(*c*) and (*e*) of the General Clauses Act, 1897. While interpreting the aforesaid provisions this Court has held, that the amendment of a statute, which is not retrospective in operation, does not affect pending proceedings, except where the amending provision expressly or by necessary intendment provides otherwise. Pending proceedings are to continue as if the unamended provision is still in force. This Court has clearly concluded, that when a lis commences, all rights and obligations of the parties get crystallised on that date, and the mandate of Section 6 of the General Clauses Act, simply ensures, that pending proceedings under the unamended provision remain unaffected. Herein also, therefore, our conclusion is the same as has already been rendered by us, in the foregoing paragraphs.

45. Having concluded in the manner expressed in the foregoing paragraphs, it is not necessary for us to examine the main contention, advanced at the hands of the learned counsel for the appellant, namely, that the amendment to Section 15-Z of the SEBI Act,

contemplates a mere change of forum of the second appellate remedy. Despite the aforesaid, we consider it just and appropriate, in the facts and circumstances of the present case, to delve on the above subject as well. In dealing with the submission advanced at the hands of the learned counsel for the appellant, on the subject of forum, we will fictionally presume, that the amendment to Section 15-Z by the Securities and Exchange Board of India (Amendment) Act, 2002 had no effect on the second appellate remedy made available to the parties, and further that, the above amendment merely alters the forum of the second appeal, from the High Court (under the unamended provision), to the Supreme Court (consequent upon the amendment). On the above assumption, the learned counsel for the appellant had placed reliance on the decisions rendered by this Court in Maria Cristina De Souza Sodder, Hitendra Vishnu Thakur and Thirumalai Chemicals Ltd. cases to contend, that the law relating to forum being procedural in nature, an amendment which altered the forum, would apply retrospectively. Whilst the correctness of the aforesaid contention cannot be doubted, it is essential to clarify, that the same is not an absolute rule. In this behalf, reference may be made to the judgments relied upon by the learned counsel for the respondent, and more importantly to the judgment rendered in Dhadi Sahu case, wherein it has been explained, that an amendment of forum would not necessarily be an issue of procedure. It was concluded in the above judgment, that where the question is of change of forum, it ceased to be a question of procedure, and becomes substantive and vested, if proceedings stand initiated before the earlier prescribed forum (prior to the amendment having taken effect). This Court clearly declared in the above judgment, that if the appellate remedy had been availed of (before the forum expressed in the unamended provision) before the amendment, the same would constitute a vested right. However, if the same has not been availed of, and the forum of the appellate remedy is altered by an amendment, the change in the forum, would constitute a procedural amendment, as contended by the learned counsel for the appellant. Consequently even in the facts and circumstances of the present case, all such appeals as had been filed by the Board, prior to 29-10-2002, would have to be accepted as vested, and must be adjudicated accordingly."

25. Learned counsel for the private parties, emphasized the manner in which legislative intent, in such matters, is usually expressed. It was submitted, that it was usually provided for the amending provision itself. This, according to learned counsel, could be done by expressly providing, that the pending matters would stand transferred to the new 'forum'.

The same objective could be achieved, by denuding the existing 'forum' from jurisdiction. In order to demonstrate the aforesaid, learned counsel placed reliance on Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co., (2001) 8 SCC 397, wherein this Court held as under:

> "17. The aforesaid decision holds that tenants have no vested right under the Rent Act. In effect, the law is well settled. Prior to the enactment of the Rent Act the relationship between the landlord and the tenant was governed by the general law, maybe the Transfer of Property Act or any other law in relation to the property. The Rent Act merely provides a protection to a tenant as against the unbridled power of the landlord under the general law of the land. The Rent Act gives protection to the tenant from being ejected except on the grounds referred to under the Rent Act. In other words, it protects the tenant from ejectment, it protects a tenant from the drastic enhancement of the rent by the landlord which may otherwise the landlord could do under the general law. Thus the right of a tenant under the Rent Act at the best could be said to be a protective right, which cannot be construed to be a vested right. In effect, in view of this special enactment of the Rent Act, the right and remedies available to a landlord under the general law remains suspended. In other words the landlord's vested right under the general law continues so long it is not abridged by such protective legislation, but the moment when this protection is withdrawn the landlord's normal vested right reappears which could be enforced by him.
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> xxx xxx xxx
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> 34. Thus we find that Section 6 of the General Clauses Act covers a wider field and saves wide range of proceedings referred to in its various clauses. We find two sets of cases, one where Section 6 of the General Clauses Act is applicable and the other where it is not applicable.
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> 35. In cases where Section 6 is not applicable, the courts have to scrutinise and find, whether a person under a repealed statute had any vested right. In case he had, then pending proceedings would be saved. However, in cases where Section 6 is applicable, it is not merely a vested right but all those covered under various clauses from (a) to (e) of Section 6. We have already clarified right and privilege under it is limited to that which is "acquired" and "accrued". In such cases pending proceedings is to be continued as if the statute has not been repealed.
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> 36. In view of the aforesaid legal principle emerging, we come to the conclusion that since proceeding for the eviction of the tenant was pending when the repealing Act came into operation, Section 6 of the General Clauses Act would be applicable in the present case,

as it is the landlord's accrued right in terms of Section 6. Clause (c) of Section 6 refers to "any right" which may not be limited as a vested right but is limited to be an accrued right. The words "any right accrued" in Section 6(c) are wide enough to include landlord's right to evict a tenant in case proceeding was pending when repeal came in. Thus a pending proceeding before the Rent Controller for the eviction of a tenant on the date when the repealing Act came into force would not be affected by the repealing statute and will be continued and concluded in accordance with the law as existed under the repealed statute."

26. Reliance was also placed on Commissioner of Income Tax, Orissa v. Dhadi Sahu, 1994 Supp (1) SCC 257, and invited our attention to the following:

"5. Pending reference of the case before the Inspecting Assistant Commissioner, Section 274(2) of the Act was amended with effect from April 1, 1971 by the Taxation Laws (Amendment) Act, 1970 (hereinafter referred to as 'the Amending Act') so as to read as follows:

"Notwithstanding anything contained in clause (*iii*) of sub-section (1) of Section 271 if in a case falling under clause (*c*) of that sub-section, the amount of income (as determined by the Income Tax Officer on assessment) in respect of which the particulars have been concealed or inaccurate particulars have been furnished exceeds a sum of twenty-five thousand rupees the Income Tax Officer shall refer the case to the Inspecting Assistant Commissioner, who shall, for the purpose, have all the powers conferred under this chapter for the imposition of penalty."

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9. On the Revenue's application, the Appellate Tribunal stated the consolidated case to the Orissa High Court under Section 256(1) of the Act and referred the following question of law:

Whether, on the facts and circumstances of the case, and on a true interpretation of Section 274, as amended by the Taxation Laws (Amendment) Act, 1970, the Inspecting Assistant Commissioner to whom the case was referred prior to April 1, 1971, had jurisdiction to impose penalty?

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13. The learned Judges of the Orissa High Court agreed with the appellate order of the Income Tax Appellate Tribunal, Cuttack dated December 19, 1973 and took the view thus:

"If the Inspecting Assistant Commissioner had passed final orders prior to the amending Act of 1970, there would have been no question of loss of jurisdiction, but as the matter was still pending and by

change of procedure the references became incompetent, the Inspecting Assistant Commissioner had no jurisdiction to complete the proceedings, because he had no longer jurisdiction to deal with the matter of this type. We are of the view that the Tribunal came to the right conclusion on the facts of the case. Our answer to the question referred to us, therefore, is:

On the facts and in the circumstances of the case, and on a true interpretation of Section 274, as amended by the Taxation Laws (Amendment) Act of 1970, the Inspecting Assistant Commissioner to whom the case had been referred prior to 1971 had no jurisdiction to impose penalty."

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18. It may be stated at the outset that the general principle is that a law which brings about a change in the forum does not affect pending actions unless intention to the contrary is clearly shown. One of the modes by which such an intention is shown is by making a provision for change-over of proceedings, from the court or the tribunal where they are pending to the court or the tribunal which under the new law gets jurisdiction to try them."

Reference was also made to, Commissioner of Income Tax, Bangalore v. R. Shradamma, (1996) 8 SCC 388, and finally, learned counsel placed reliance on R. Kapilnath v. Krishna, (2003) 1 SCC 444, wherefrom the Court's attention was drawn to paragraph 4, which is extracted below:

"4. The above submission of the learned counsel has been stated only to be rejected. It is pertinent to note that the proceedings in the Court of Munsiff had already stood concluded by the time the amendment came into force. It is not disputed that Amendment Act 32 of 1994 has not been given a retrospective operation and there is nothing in the Act to infer retrospectivity by necessary implication. The Act has been specifically brought into force w.e.f. the 18th day of May, 1994. The learned counsel for the appellant cited a number of decisions laying down the law as to how an amendment in legislation brought into force during the pendency of legal proceedings has to be given effect to. Without stating the decisions so cited, suffice it to observe that all those decisions deal with substantive rights having been created or abolished during the pendency of legal proceedings and depending on the legislative intent and the language employed by the legislature in the relevant enactment, this Court has determined the impact of the legislation on pending proceedings and the power of the court to take note of change in law and suitably mould the relief consistently with the legislative changes. So far as the present case is concerned, the only submission made by the learned counsel for the

appellant is that the effect of the amendment is to deprive the Court of Munsiff of its jurisdiction to hear and decide the proceedings for eviction over such premises as the suit premises are. In other words, it is a change in forum brought during the pendency of the proceedings. The correct approach to be adopted in such cases is that a new law bringing about a change in forum does not affect pending actions, unless a provision is made in it for changeover of proceedings or there is some other clear indication that pending actions are affected. (See Principles of Statutory Interpretation, Justice G.P. Singh, 8th Edn., 2001, p. 442.) We have already indicated that the Act does not bring about a change in forum so far as the pending actions are concerned. Moreover, by the time the amendment came into force, the proceedings before the Munsiff had already stood concluded and the case was pending at the stage of revision before the Additional District Judge. Further, we find that an objection laying challenge to the forum's competence was not raised before the learned Additional District Judge nor was the objection taken before the High Court in the civil revision preferred by the appellant. It was not taken as a ground in the special leave petition. It has been taken only by way of a separate petition filed subsequently and seeking leave to urge additional grounds. Such an objection cannot be allowed to be urged so belatedly. However, we have already held the argument based on the 1994 Amendment as of no merit."

27. Learned counsel representing the private parties, in continuation of the above submission placed reliance on Kamlesh Kumar v. State of Jharkhand, (2013) 15 SCC 460. It was submitted, that the reliance on the above judgment, was to demonstrate the same position, through a proposition which was contextually different. It is necessary to record, that the instant judgment was also relied upon by learned counsel representing the SEBI. However, according to learned counsel for the private parties, it is essential also to take into consideration the observations recorded in the concurring order passed by Madan B. Lokur, J. First of all, it is necessary to appreciate the submissions canvassed. They were recorded (in the opinion relied upon) as under:

"25. The notification authorising the Special Judge to dispose of cases under the Foreign Exchange Management Act, 1999 and thereby effectively transferring the petitioners' case pending before the Magistrate to the Special Judge is said to be unlawful since the transfer is to a court that has no jurisdiction to try the offence.

26. Part II of the First Schedule to the Code of Criminal Procedure, 1973 (for short "the Code") provides that for an offence punishable with imprisonment for three years and upwards but not more than seven years, the case would be triable by a Magistrate of the First Class. Section 56 of the Foreign Exchange Regulation Act, 1973 (for short "FERA") now repealed by the Foreign Exchange Management Act, 1999 provides, inter alia, that for a violation of its provisions, the maximum punishment would be imprisonment which may extend to seven years and with fine. Therefore, effectively transferring the petitioners' case to a Special Judge (of the rank of a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge) functioning under the Criminal Law Amendment Act, 1952 (for short "the CLA Act") meant its trial by a court that lacked jurisdiction over the subject-matter. In support of this contention, great reliance was placed on some passages in A.R. Antulay v. R.S. Nayak.

27.2. Secondly, Section 7(1) of the CLA Act provides for trial of the case by the Special Judge notwithstanding anything contained in the Code. Therefore, the statutory power available to this Court to transfer cases under Section 406 of the Code was statutorily taken away. Additionally, Section 406 of the Code only enabled this Court to transfer cases and appeals from one High Court to another High Court or from one criminal court subordinate to one High Court to another criminal court of equal or superior jurisdiction subordinate to another High Court. Section 406 of the Code did not empower this Court to transfer a case from the Special Judge under the CLA Act to the High Court and even if it did, that power was taken away by the CLA Act. Section 406 of the Code reads as follows:

"406. Power of Supreme Court to transfer cases and appeals.—(1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case or appeal be transferred from one High Court to another High Court or from a criminal court subordinate to one High Court to another criminal court of equal or superior jurisdiction subordinate to another High Court.

(2) The Supreme Court may act under this section only on the application of the Attorney General of India or of a partly interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney General of India or the Advocate General of the State, be supported by affidavit or affirmation.

(3) Where any application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion

that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case."

27.3. The third reason related to the power of transfer available to this Court under Article 142 of the Constitution. In this context, reference was made to a Constitution Bench decision of this Court in Prem Chand Garg v. Excise Commr. wherein it was observed that: (AIR p. 1002, para 12)

"12. … The powers of this Court are no doubt very wide and they are intended to be and will always be exercised in the interest of justice. But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. An order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws."

Since the order of this Court transferring the case from the Special Judge to the High Court was contrary to the statutory law and (as held in a later part in Antulay) contrary to Article 14 and Article 19 of the Constitution, the order of transfer was liable to be set aside. In this context, this Court also noted that the power to create or enlarge jurisdiction is legislative in character and no court, whether superior or inferior or both combined, could enlarge the jurisdiction of a court. On this basis, inter alia, this Court concluded that the transfer of Antulay case from the Special Judge to the High Court was erroneous in law.

30. It was contended that assuming that at law the case could validly have been transferred to the Special Judge, the petitioners are seriously prejudiced inasmuch as their right of appeal from the decision of a Magistrate to a Sessions Judge is taken away. Due to this prejudicial action, which was taken by the High Court without hearing the petitioners, the notification conferring power on the Special Judge to try the case should be struck down."

Based on the judgments relied upon by learned counsel representing the private parties, as have been narrated in the foregoing paragraphs, since the proceedings in the matters in hand were pending, before the Court of Metropolitan Magistrate (or, the Judicial Magistrate, as the case may be), when 'the 2002 Amendment Act' was introduced with effect from 29.10.2002, the pending proceedings could not be transferred, to the

'forum' created by 'the 2002 Amendment Act'. In order to demonstrate prejudice, learned counsel contended, that the right of the private parties to avail of the remedy of revision stood obviated. Additionally it was reiterated, that the objects and reasons of the amended provisions, or the amended provisions themselves, do not indicate any express or implied determination, that the change of 'forum' would be retrospective, and would apply to pending matters, as well. And as such, Section 26E introduced through 'the 2014 Amendment Act', would determine the 'forum' for fresh matters, i.e., matters where cognizance had not been taken till the date of amendment. In order to protect the proposition being canvassed in the correct perspective and context, reliance was placed on Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat, (1969) 2 SCC 74, wherefrom, our pointed attention was drawn to the following observations:

> "5. It would appear that their Lordships of the Privy Council regarded the revisional jurisdiction to be a part and parcel of the appellate jurisdiction of the High Court. This is what was said in Nagendra Nath Dey v. Suresh Chandra Dey 59 IA 283, 287.
> "There is no definition of appeal in the Code of Civil Procedure, but their Lordships have no doubt that any application by a party to an Appellate Court, asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptation of the term……"
> Similarly in Raja of Remnad v. Kamid Rowthen and Others53 IA 74, a civil revision petition was considered to be an appropriate form of appeal from the judgment in a suit of small causes nature. A full Bench of the Madras High Court in P.P.P. Chidambara Nadar v. C.P.A. Rama Nadar and Others AIR 1937 Mad 385, had to decide whether with reference to Article 182(2) of the Limitation Act 1908, the term "appeal" was used in a restrictive sense so as to exclude revision petitions and the expression "appellate court" was to be confined to a court exercising appellate, as opposed to, revisional powers. After an exhaustive examination of the case law including the decisions of the

Privy Council mentioned above the full Bench expressed the view that Article 182(2) applied to civil revisions as well and not only to appeals in the narrow sense of that terms as used in the Civil Procedure Code. In Secretary of State for India in Council v. British India Steam Navigation Company 13 CLJ 90, an order passed by the High Court in exercise of its revisional jurisdiction under Section 115, Code of Civil Procedure, was held to be an order made or passed in appeal within the meaning of Section 39 of the Latters Patent. Mookerji, J., who delivered the judgment of the division Bench referred to the observations of Lord Westbury in Attorney-General v. Sillem (1864) 10 RLC 704, and of Subramania Ayyar, J., in Chappan v. Moidin (1958) ILR Mad 68, 80, on the true nature of the right of appeal. Such a right was one of entering a superior Court and invoking its aid and interposition redress the error of the court below. Two things which were required to constitute appellate jurisdiction were the existence of the relation of superior and inferior Court and the power on the part of the former to review decisions of the latter. In the well known work of Story on Constitution (of United States), Vol. 2, Article 1761, it is stated that the essential criterion of appellate jurisdiction is that it revises and corrects the proceedings in a cause already instituted and does not create that cause. The appellate jurisdiction may be exercised in a variety of forms and, indeed, in any form in which the Legislature may choose to prescribe. According to Article 1762 the most usual modes of exercising appellate jurisdiction, at least those which are most known in the United States, are by a writ of error, or by an appeal, or by some process of removal of a suit from an inferior tribunal. An appeal is a process of civil law origin and removes a cause, entirely subjecting the fact as well as the law, to a review and a retrial. A writ of error is a process of common law origin, and it removes nothing for re-examination but the law. The former mode is usually adopted in cases of equity and admiralty jurisdiction; the latter, in suits at common law tried by a jury.

6. Now when the aid of the High Court is invoked on the revisional side it is done because it is a superior court and it can interfere for the purpose of rectifying the error of the court below. Section 115 of the Code of Civil Procedure circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior court. It is only one of the modes of exercising power conferred by the statute; basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider and larger sense. We do not, therefore, consider that the principle of merger of orders of inferior courts in those of superior Courts would be affected or would become inapplicable by making a distinction between a petition for revision and an appeal."

28. While repudiating the submissions advanced by Mr. C.A. Sundaram, Ms. Pinky Anand, learned Additional Solicitor General of India, submitted that as long as the rights of the private parties, to prefer an appeal stands sustained, none of them can plead prejudice. In this behalf, reference was made to Section 374(2) of the Code of Criminal Procedure to contend, that the accused would not be deprived of any provision for preferring an appeal, after the 'forum' was altered from that of the Metropolitan Magistrate (or, Judicial Magistrate of the first class), to the Court of Session. It was submitted, that Section 374 of the Code of Criminal Procedure clearly postulates, that an appeal from the conviction against trial by the Court of Session or Additional Sessions Judge, shall lie before the High Court. In this behalf, it was sought to be pointed out that even after 'the 2002 Amendment Act', upon trial of a case by the Court of Session (or, Additional Sessions Judge), an appeal would lie, before the High Court. It was sought to be highlighted, that the above position was further clarified in 'the 2014 Amendment Act' through Section 26C.

29. It was submitted, that the determination of 'forum', based on the quantum/gravity of the sentence contemplated for an offence, under 'the SEBI Act', as canvassed by learned counsel for the private parties, is wholly misconceived. It was submitted, that there was no such mandate, that for offences where the prescribed punishment was up to three years, a magisterial trial alone could be held. It was pointed out, that the punishment contemplated under Section 308 of the Indian

Penal Code was up to three years, but the cases under the said provision was triable by a Court of Session. It was submitted, that the use of the word "or" in Section 374 of the Code of Criminal Procedure denotes, that the expressions contained in the provision preceding and subsequent thereto, were meant to be disjunctive. It was pointed out, that in such a case, by express provision, the High Court has been postulated as the forum of appeal (under Section 374(2) of the Code of Criminal Procedure). It was also the contention of the learned Additional Solicitor General, that the appellate remedy is to the High Court, from any order passed by a Court of Session (or, a Court of Additional Sessions Judge), and from any order passed by any other court, where the punishment is for a period in excess of seven years. In order to demonstrate the disjunctive character of the above provision, reliance was placed on Devender Kumar Singla v. Baldev Krishan Singla, (2005) 9 SCC 15, wherein the Court observed as under:

> "7. In order to appreciate the rival submissions, it would be necessary to consider on the background of the factual position as to whether offence punishable under Section 420 IPC is made out. Section 420 deals with certain specified classes of cheating. It deals with the cases whereby the deceived person is dishonestly induced to deliver any property to any person or to make, alter or destroy, the whole or any part of a valuable security or anything which is signed or sealed and which is capable of being converted into a valuable security. Section 415 defines "cheating". The said provision requires: (i) deception of any person, (ii) whereby fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property, or (iii) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. Deception of any person is common to the second and third requirements of the provision. The said requirements are alternative

to each other and this is made significantly clear by use of disjunctive conjunction "or". The definition of the offence of cheating embraces some cases in which no transfer of property is occasioned by the deception and some in which such a transfer occurs. Deception is the quintessence of the offence. The essential ingredients to attract Section 420 are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security; and (iii) the mens rea of the accused at the time of making the inducement. The making of a false representation is one of the ingredients for the offence of cheating under Section 420. (See Bashirbhai Mohamedbhai v. State of Bombay AIR 1960 SC 979.)"

Based on the observations extracted above, it was submitted, that inference sought to be drawn by learned counsel representing private parties, that in determining 'forum' it is essential to take into consideration the length of the punishment, contemplated under the provision violated, was nothing but a figment of imagination of learned counsel for the private parties. It was also contended on behalf of SEBI, that the availability of a revisional jurisdiction to assail an order has never been accepted as a vested right. In this behalf, reliance was placed on a judgment rendered by a Constitution Bench in Pranab Kumar Mitra v. State of West Bengal, AIR 1959 SC 144, wherein it was held as under:

"6. In our opinion, in the absence of statutory provisions, in terms applying to an application in revision, as there are those in S. 431 in respect of criminal appeals, the High Court has the power to pass such orders as to it may seem fit and proper, in exercise of its revisional jurisdiction vested in it by S. 439 of the Code. Indeed, it is a discretionary power which has to be exercised in aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon the facts and circumstances of that case. The revisional powers of the High Court vested in it by S. 439 of the Code, read with S. 435, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence, and that subordinate Criminal Courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code.

On the other hand, as already indicated, a right of appeal is a statutory right which has got to be recognized by the courts, and the right to appeal, where one exists, cannot be denied in exercise of the discretionary power even of the High Court. The Legislature has, therefore, specifically provided, by S. 431 of the Code, the rules governing the right of substitution in case of death of an appellant, but there is no corresponding provision in Chapter XXXII, dealing with the question of abatement and the right of substitution in a criminal revision. We may assume that the Legislature was aware of the decision of the Bombay High Court, referred to above, when it enacted S. 431 for the first time in the Code of 1882. If the Legislature intended that an application in revision pending in a High Court, should be dealt with on the same footing as a pending appeal, it would have enacted accordingly. But in the absence of any such enactment, we may infer that the power of revision vested in the High Court under Chapter XXXII of the Code, was left untouched — to be exercised according to the exigencies of each case. The High Court is not bound to entertain an application in revision, or having entertained one, to order substitution in every case. It is not bound the other way, namely, to treat a pending application in revision as having abated by reason of the fact that there was a composite sentence of imprisonment and fine, as some of the Single Judge decisions placed before us, would seem to indicate. The High Court has been left complete discretion to deal with a pending matter on the death of the petitioner in accordance with the requirements of justice. The petitioner in the High Court may have been an accused person who has been convicted and sentenced, or he may have been a complainant who may have been directed under S. 250 of the Code to pay compensation to an accused person upon his discharge or acquittal. Whether it was an accused person or it was a complainant who has moved the High Court in its revisional jurisdiction, if the High Court has issued a Rule, that Rule has to be heard and determined in accordance with law, whether or not the petitioner in the High Court is alive or dead, or whether he is represented in Court by a legal practitioner. In hearing and determining cases under S. 439 of the Code, the High Court discharges its statutory function of supervising the administration of justice on the criminal side. Hence, the considerations applying to abatement of an appeal, may not apply to the case of revisional applications. In our opinion, therefore, the Bombay majority decision, in the absence of any statutory provisions in respect of criminal revisional cases, lays down the correct approach."

For the same proposition, reliance was also placed on Kamlesh Kumar v. State of Jharkhand, (2013) 15 SCC 460, and the Court's attention was drawn to the following observations:

> "41. This question proceeds on the assumption that there is a right of revision. A Constitution Bench of this Court in Pranab Kumar Mitra v. State of W.B. set the "right" issue at rest several decades ago. It was held that the power to revise an order is a discretionary power which is to be exercised in aid of justice and the exercise of that power will depend on the facts and circumstances of a given case. It was held: (AIR p. 147, para 6)
>
> "6. … The revisional powers of the High Court vested in it by Section 439 of the Code read with Section 435, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence, and that subordinate criminal courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code."
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> 43. While the revisional power of a superior court actually enables it to correct a grave error, the existence of that power does not confer any corresponding right on a litigant. This is the reason why, in a given case, a superior court may decline to exercise its power of revision, if the facts and circumstances of the case do not warrant the exercise of its discretion. This is also the reason why it is felicitously stated that a revision is not a right but only a "procedural facility" available to a party. If the matter is looked at in this light, the transfer of a case from a Magistrate to a Special Judge does not take away this procedural facility available to the petitioners. It only changes the forum and as already held above, the petitioners have no right to choose the forum in which to file an appeal or move a petition for revising an interlocutory order."

It was accordingly the contention of learned counsel for SEBI, for the accused cannot make out any grievance to the effect that the change of 'forum', in the facts and circumstances of the present case, has adversely affected their vested right.

30. It was also highlighted by the Additional Solicitor General, that prior to 'the 2002 Amendment Act', the postulated punishment under Section 24(1) of 'the SEBI Act', extended to one year of sentence and fine,

or both; and under Section 24(2) thereof, the prescribed punishment was a minimum of one month, which could extend to three years or with fine, which would not be less than rupees two thousand, but not more than rupees ten thousand, or with both. It was pointed out, that even at that juncture, the 'forum' of trial under Sections 24(1) and 24(2) of 'the SEBI Act' was the same, namely, "No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try an offence punishable under this Act". It was submitted, that after 'the 2002 Amendment Act', "…no court inferior to the Court of Session shall try any offence punishable under this Act …" In the above view of the matter, it was submitted, that the entire contention advanced at the hands of learned counsel representing the private parties, was misconceived.

31. In addition to the submissions noticed in the foregoing paragraphs, learned Additional Solicitor General contended, that the legislative intent in 'the 2002 Amendment Act', as well as, 'the 2014 Amendment Act' was clear. It was submitted, that by 'the 2002 Amendment Act' the statutory legislation took away the right of courts inferior to the Court of Session from trying offences punishable under 'the SEBI Act'. Emphasis was placed by learned counsel on the pointed indication in the provision, to "…offences punishable under this Act." It was therefore asserted, that the above amendment especially denuded the jurisdiction of courts inferior to the Court of Session, to try offences punishable under the Special Act. The above contention was sought to be reiterated by

assailing, that trial before any court inferior to the Court of Session, after 'the 2002 Amendment Act', would be ex facie without jurisdiction. For supporting the aforesaid contention, learned counsel also emphasized on the use of the words "no court inferior to" and the word "shall" in Section 26(2) of 'the 2002 Amendment Act', to highlight that jurisdiction of all other inferior courts was taken away. In order to support the aforesaid contention, learned counsel placed reliance on Union of India v. A.K. Pandey, (2009) 10 SCC 552, wherein reference was pointedly made to the following observations:

> "15. The principle seems to be fairly well settled that prohibitive or negative words are ordinarily indicative of mandatory nature of the provision; although not conclusive. The Court has to examine carefully the purpose of such provision and the consequences that may follow from non-observance thereof. If the context does not show nor demands otherwise, the text of a statutory provision couched in a negative form ordinarily has to be read in the form of command. When the word "shall" is followed by prohibitive or negative words, the legislative intention of making the provision absolute, peremptory and imperative becomes loud and clear and ordinarily has to be inferred as such. There being nothing in the context otherwise, in our judgment, there has to be clear ninety-six hours' interval between the accused being charged for which he is to be tried and his arraignment and interval time in Rule 34 must be read as absolute. There is a purpose behind this provision: that purpose is that before the accused is called upon for trial, he must be given adequate time to give a cool thought to the charge or charges for which he is to be tried, decide about his defence and ask the authorities, if necessary, to take reasonable steps in procuring the attendance of his witnesses. He may even decide not to defend the charge(s) but before he decides his line of action, he must be given clear ninety-six hours."

And, on the subject in hand, reference was made to Mannalal Khetan v. Kedar Nath Khetan, (1977) 2 SCC 424, wherefrom the Court's attention was drawn to the following observations:

> 17. In Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur this Court referred to various tests for finding out when a provision is mandatory or directory. The purpose for which the provision has been made, its nature, the intention of the legislature in making the provision, the general inconvenience or injustice which may result to the person from reading the provision one way or the other, the relation of the particular provision to other provisions dealing with the same subject and the language of the provision are all to be considered. Prohibition and negative words can rarely be directory. It has been aptly stated that there is one way to obey the command and that is completely to refrain from doing the forbidden act. Therefore, negative, prohibitory and exclusive words are indicative of the legislative intent when the statute is mandatory. (See Maxwell on Interpretation of Statutes, 11th Edn., p. 362 seq.; Crawford: Statutory Construction, Interpretation of Laws, p. 523 and Seth Bikhrai Jaipuria v. Union of India.)"

32. We have given our thoughtful consideration to the submissions advanced by Ms. Pinky Anand, learned Additional Solicitor General of India, in support of the conclusions drawn by the Delhi High Court in Mahender Singh v. High Court of Delhi (Writ Petition (C) No.141 of 2007, decided on 11.01.2008) and to oppose the view expressed by the Bombay High Court in M/s. Classic Credit Ltd. v. State of Maharashtra (Criminal Application No.1557 of 2007, decided on 16.01.2008). We have also considered the converse stance, raised by Mr. C.A. Sundaram, learned Senior Advocate representing most of the private parties.

33. In a manner of understanding, it may well be possible to conclude, that the adjudicatory 'forum' was not altered at all by 'the 2002 Amendment Act'. In this behalf, reference may be made to Section 26(2) of 'the SEBI Act', as it existed prior to the 2002 amendment. The above provisions mandated, that no Court inferior to that of a Metropolitan Magistrate (or, a Judicial Magistrate of the first class) shall try an offence

punishable under this Act. The contemplated 'forum' of adjudication could be the Court of a Metropolitan Magistrate (or, a Judicial Magistrate of the first class), or any other higher court. And not necessarily the Court of a Metropolitan Magistrate (or, a Judicial Magistrate of the first class). The higher court which could have tried matters even before 'the 2002 Amendment Act', could well be the Court of Session. And as such, in case of a determination, the trial of offences under 'the SEBI Act' could have been conducted by a Court of Session even prior to 'the 2002 Amendment Act', there would be nothing wrong about it. The provision, as it existed prior to 'the 2002 Amendment Act', clearly contemplated that even a Court of Session could try offences postulated by the provisions of 'the SEBI Act'. As such, when 'the 2002 Amendment Act' provided that adjudication of offences under 'the SEBI Act' would be by a court not inferior to that of a Court of Session, the position postulated prior to the aforesaid amendment cannot be stated to have been breached. It may well be said to be curtailed from the original position. But, it could not be said to be in conflict with the original position. In a similar manner of understanding, even after 'the 2014 Amendment Act', which provided that offences arising under 'the SEBI Act' would be tried by a Special Court (- Section 26B), the position cannot be taken to be at variance from the one, as it existed prior to the 2002 amendment, as also, the position as it existed after 'the 2002 Amendment Act'. The reason for the above inference is, that a Special Court (notified by the Central Government) was to be a court which, immediately before such

notification, was the Court of Session or an Additional Sessions Judge (-Section 26A(3)). Truly therefore, a Special Court was a court superior to a Metropolitan Magistrate (or, a Judicial Magistrate of the first class), as contemplated prior to 'the 2002 Amendment Act'. It was also the same as the court contemplated under 'the 2002 Amendment Act', namely, the Court of Session. Therefore, the projection of the jurisdictional claim, as has been raised by the accused herein, is a mere furore, without any serious justification.

34. We will now deal with the legality of the propositions canvassed, at the hands of learned counsel for the rival parties. In our considered view, the legal position expounded by this Court in a large number of judgments including New India Insurance Co. Ltd. v. Shanti Misra, (1975) 2 SCC 840; Securities and Exchange Board of India v. Ajay Agarwal, (2010) 3 SCC 765; and Ramesh Kumar Soni v. State of Madhya Pradesh, (2013) 4 SCC 696, is clear and unambiguous, namely, that procedural amendments are presumed to be retrospective in nature, unless the amending statute expressly or impliedly provides otherwise. And also, that generally change of 'forum' of trial is procedural, and normally following the above proposition, it is presumed to be retrospective in nature, unless the amending statute provides otherwise. This determination emerges from the decision of this Court in Hitendra Vishnu Thakur v. State of Maharashtra (1994) 4 SCC 602; Ranbir Yadav v. State of Bihar (1995) 4 SCC 392, and Kamlesh Kumar v. State of

Jharkhand, (2013) 15 SCC 460, as well as, a number of further judgments noted above.

35. We have also no doubt, that alteration of 'forum' has been considered to be procedural, and that, we have no hesitation in accepting the contention advanced on behalf of the SEBI, that change of 'forum' being procedural, the amendment of the 'forum' would operate retrospectively, irrespective of whether the offence allegedly committed by the accused, was committed prior to the amendment.

36. Whilst accepting the contentions advanced on behalf of learned counsel for SEBI pertaining to 'forum' (with reference to which inferences have been drawn in the foregoing paragraph), it is not possible for us to outrightly reject the contentions advanced by Mr. C.A. Sundaram, learned Senior Advocate, while projecting the claim of the accused. We are not oblivious of the conclusions recorded by this Court in Commissioner of Income Tax, Orissa v. Dhadi Sahu, 1994 Supp (1) SCC 257, wherein it was held that a law which brings about a change in the 'forum' does not affect pending actions, unless an intention to the contrary is clearly shown. One of the modes in which such intentions can be shown is, by making a provision for change for a proceeding from the court or the tribunal where it was pending, to the court or tribunal under which the new law gets jurisdiction. In the said judgment, this Court also observed, that it was true that no litigant had any vested right in the matter of procedural law, but where the question is of the change of 'forum', it ceases to be a question of procedure only, with reference to

pending matter. The 'forum' of appeal or proceedings, it was held, was a vested right as opposed to pure procedure to be followed before a particular 'forum'. It was therefore concluded, that a right becomes vested when the proceedings are initiated, in spite of change of jurisdiction/forum by way of amendment thereafter. So also, in Manujendra Dutt v. Purnedu Prosad Roy Chowsdhury, AIR 1967 SC 1419, wherein a question arose, as to whether, by the deletion of Section 29 of the Thikka Tenancy Act, 1949, the jurisdiction of the Controller over a pending suit was taken away. It was held by this Court, that the deletion of Section 29 did not deprive the Controller of his jurisdiction to try the pending suit, on the date when the Amending Act came into force. It was pointed out, that though the amending Act did not contain a saving clause, the saving contained in Section 8 of the Bengal General Clauses Act, 1899, which corresponded with Section 6 of the Central Act, fully applied to the issue. And as such, the transfer of a suit having been lawfully filed under Section 29 of the Act could not be affected by its deletion or by its amendment. Similarly, in Mohd. Idris v. Sat Narain, AIR 1966 SC 1499, the question which arose was, whether a Munsif who was trying a suit under the U.P. Agriculturist Relief Act ceased to have jurisdiction, after the passing of the U.P. Zamindari Abolition and Amendment Act, 1953, which conferred jurisdiction on an Assistant Collector. This Court held that the jurisdiction of the Assistant Collector was itself created by the Abolition Act, and as there was no provision in that Act, that the pending case were to stand transferred to the Assistant

Collector for disposal, the Munsif continued to have jurisdiction to try the suit. It was also observed in the above judgment, that the provisions for change over of proceedings from one court to another, are only found in a statute, which takes away the jurisdiction of one court, and confers it on another, in pending actions. Since the amending Act did not show the pending proceedings before the court would abate, it was felt, that the court before which proceedings were filed, continued to have the jurisdiction to adjudicate the same. The above position has been considered affirmatively by this Court also in Nani Gopal Mittal v. State of Bihar, AIR 1970 SC 1636; Ambalal Sarabhai Enterprises v. Amrit Lal and Co., (2001) 8 SCC 397; R. Kapilnath v. Krishna, (2003) 1 SCC 444; Ramesh Kumar Soni v. State of Madhya Pradesh, (2013) 14 SCC 696; and Videocon International Limited v. Securities and Exchange Board of India, (2015) 4 SCC 33. From a perusal of the conclusions drawn in the above judgments, we are inclined to accept the contention, that change of 'forum' could be substantive or procedural. It may well be procedural when the remedy was yet to be availed of, but where the remedy had already been availed of (under an existing statutory provision), the right may be treated as having crystalised into a vested substantive right.

37. In the latter situation referred to (and debated) in the preceding paragraph, where the remedy had been availed of prior to the amendment, even according to learned counsel for the private parties, unless the amending provision by express words, or by necessary implication, mandates the transfer of proceedings to the 'forum'

introduced by the amendment, the 'forum' postulated by the unamended provision, would continue to have the jurisdiction to adjudicate upon pending matters (matters filed before amendment). In view of the above, we are of the considered view, that no vested right can be claimed with reference to 'forum', where the concerned court, had not taken cognizance and commenced trial proceedings, in consonance with the unamended provision.

38. Insofar as the matters where proceedings had already commenced before the amendment, change of 'forum' for trial came into effect, it is apparent from the judgments referred to in the preceding paragraph, that the general principle is that a law which brings about a change in the 'forum', does not affect pending actions, unless intention to the contrary is clearly shown. What needs to be determined with reference to 'the 2002 Amendment Act', as well as, with reference to 'the 2014 Amendment Act' is, whether an intention to the contrary was expressed therein, so as to alter the 'forum', where proceedings were pending. And to bring such proceedings to the 'forum' contemplated by the amendment.

39. Having given our thoughtful consideration to the proposition referred to in the preceding paragraph, we are of the view, that Section 26, as amended through 'the 2002 Amendment Act', leaves no room for any doubt, that the erstwhile 'forum' would cease to be the adjudicatory authority and the newly created 'forum' – the Court of Session, would deal with all pending matters as well. The phrase, "No court inferior to

that of a court of session shall try any offence punishable under this Act", leaves no room for any doubt, that the erstwhile 'forum' – the Court of Metropolitan Magistrate (or, Judicial Magistrate of the first class), was denuded of its jurisdiction. The court having jurisdiction earlier, being a court inferior to a Court of Session ceased to have the jurisdiction to adjudicate matters punishable under 'the SEBI Act', after the amendment under 'the 2002 Amendment Act' came into force, on 29.10.2002. There can be no doubt whatsoever, that 'the 2002 Amendment Act', expressly diverted jurisdiction from the Metropolitan Magistrates (and, Judicial Magistrates of the first class) to try offences under 'the SEBI Act', after 'the 2002 Amendment Act' became operational.

40. The position was similarly explicit in Section 26B inserted by 'the 2014 Amendment Act', by use of the words "… all offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2014 or on or after the date of such commencement, shall be … tried by the Special Court established for the area in which the offence is committed…". There can be no doubt whatsoever, that 'the 2014 Amendment Act' grouped all offences together as one, by providing that all offences committed prior to or after 'the 2014 Amendment Act', would be tried by a Special Court. The attempt of the learned Senior Advocate, to segregate the cases arising under 'the SEBI Act' into two categories, is clearly and expressly ruled out, by the language adopted in the provision itself. We are of the view, that Section 26B was

categorically explicit, because of the clear intent expressed therein, that all offences committed under 'the SEBI Act', prior to the introduction of 'the 2014 Amendment Act', would be tried by the Special Court. We are therefore of the view, that there is absolutely no ambiguity, that after 'the 2014 Amendment Act', proceedings in respect of offences committed prior thereto, could only be tried by a Special Court.

41. We have intentionally overlooked and not extracted the words "... shall be taken cognizance of and tried by the Special Court ...", relied upon by learned counsel for the accused, to emphasise that the amendment of 'forum' contemplated under Section 26B would be applicable only to matters where cognizance had not been taken. It is not possible, either from the language of the provision, or even from the surrounding circumstances, to arrive at the advocated position. We are of the view, that the legislative intent was clearly contrary to the one suggested. Ordinarily, cognizance is taken by a magisterial court, whereupon, the matter is committed to the concerned higher court, for trial. Herein, the Special Courts (a Court of Session or an Additional Sessions Judge, in terms of Section 26D(1) of 'the 2014 Amendment Act') provides for a position different from the provisions contained in the Code of Criminal Procedure. Now, by 'the 2014 Amendment Act', the function of taking cognizance has been vested with Special Court, conferred with the responsibility to conduct trials. In our considered view, therefore, all pending matters where cognizance had been taken and proceedings had commenced, before the Court of Session, would not

be affected. 'The 2014 Amendment Act' which provided for a change of 'forum', also authorized a Special Court to take cognizance. It is not reasonable to read anything further into the words highlighted by learned senior counsel. 'The 2014 Amendment Act' expressly provided, that for all offences committed even prior to 'the 2014 Amendment Act, proceedings would be conducted only before the Special Court. The provision itself therefore expressly mandated, that the change of 'forum' would operate retrospectively, and as such, pending proceedings would necessarily have to be transferred to the changed 'forum' – the Special Court. This is our considered view. For the reasons recorded above, we hereby hold, that even for such matters where trial had commenced under the unamended provision, after the amendments, which we have held to be operational retrospectively, the trial would move to the changed 'forum' (to the Court of Session, after 'the 2002 Amendment Act' and, to the Special Court, after 'the 2014 Amendment Act').

42. We shall now endeavour to attempt to record the submission advanced by Mr. D.P. Singh, Advocate, who also represented the accused. The first contention advanced by learned counsel was simple and straightforward. It was submitted, that transfer of jurisdiction, consequent upon 'the 2002 Amendment Act', from the Court of a Metropolitan Magistrate (or, a Judicial Magistrate of the first class), to a Court of Session, would seriously prejudice the accused represented by him. It was his contention, that after the amendment of Sections 24 and 26 by 'the 2002 Amendment Act', the punishment for offences

committed under 'the SEBI Act' were enhanced to the extent, that the same could no longer be tried as summons-cases. It was pointed out, that the trial of cases after 'the 2002 Amendment Act', could only be as warrant-cases. In this behalf, it was sought to be asserted, that under Section 2(x) of the Code of Criminal Procedure, a warrant-case is a case "…relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years". In conjunction with the definition of warrant-cases, learned counsel placed reliance on the definition of summons cases by inviting the attention of the Court to Section 2(w), wherein a summons case is defined as a case "…relating to an offence, and not being a warrant-case". During the course of the instant submission, learned counsel *inter alia* invited our attention to Section 4 of the Code of Criminal Procedure, which deals with trial of offences under the Indian Penal Code and other laws, so as to conclude, that for offences punishable with imprisonment for more than seven years, the trial is liable to be conducted by a Court of Session. In this behalf, the pointed attention of this Court was also drawn to Schedule I, Part II appended to the Code of Criminal Procedure, which comprises of classification of offences from other laws (other than the Indian Penal Code). It was pointed out, that 'the SEBI Act' satisfies the category of "other laws", and therefore, for an offence punishable with imprisonment for more than seven years, the trial can only be by a Court of Session. It was submitted, that where the contemplated punishment was for three years and upwards (though less than seven years), the trial had to be

conducted by a Magistrate of the first class. Again making a reference to the Part II of the First Schedule (appended to the Code of Criminal Procedure), it was submitted, that if the punishment contemplated was of imprisonment for less than three years, or with fine alone, the trial could be conducted by any Magistrate. It was submitted, that the provisions of Sections 24 and 26 of 'the SEBI Act', prior to 'the 2002 Amendment Act', were drawn in consonance with Part II of the First Schedule, appended to the Code of Criminal Procedure, and as such, trial had necessarily to be conducted by a Metropolitan Magistrate (or, a Judicial Magistrate of the first class).

43. In order to demonstrate prejudice, learned counsel in the first instance, invited the Court's attention to Section 260 of the Code of Criminal Procedure, and in conjunction thereto, to Section 262 thereof. The aforestated provisions are being extracted hereunder:

> "260. Power to try summarily. –(1) Notwithstanding anything contained in this Code
> (a) any Chief Judicial Magistrate;
> (b) any Metropolitan Magistrate;
> (c) any Magistrate of the first class specially empowered in this behalf by the High Court,
> may, if he thinks fit, try in a summary way all or any of the following offences:
> (i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;
> (ii) theft, under section 379, section 380 or section 381 of the Indian Penal Code, 1860 (45 of 1860), where the value of the property stolen does not exceed two thousand rupees;
> (iii) receiving or retaining stolen property, under section 411 of the Indian Penal Code, 1860 (45 of 1860), where the value of the property does not exceed two thousand rupees;
> (iv) assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code, 1860 (45 of 1860) where the value of such property does not exceed two thousand rupees;

(v) offences under sections 454 and 456 of the Indian Penal Code, 1860 (45 of 1860);
(vi) insult with intent to provoke a breach of the peace, under section 504 and criminal intimidation punishable with imprisonment for a term which may extend to two years, or with fine, or with both, under section 506 of the Indian Penal Code, 1860 (45 of 1860);
(vii) abetment of any of the foregoing offences;
(viii) an attempt to commit any of the foregoing offences, when such attempt is an offence;
(ix) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871).
(2) When, in the course of a summary trial it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the Magistrate shall recall any witnesses who may have been examined and proceed to re-hear, the case in the manner provided by this Code.

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262. Procedure for summary trials. –(1) In trials under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned.
(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter."

Relying upon sub-section (1) of Section 260, it was contended, that it was open to the Metropolitan Magistrate (or, Judicial Magistrate of the first class), to try the accused under the 'the SEBI Act', by holding a summary trial. In case, the Metropolitan Magistrate (or, Judicial Magistrate of the first class), exercises his discretion to try an accused by holding a summary trial, the Metropolitan Magistrate (or, Judicial Magistrate, as the case may be), could not impose a sentence in excess of three months. It was contended, that the above right which was vested in the accused, stands taken away by 'the 2002 Amendment Act' on account of change of 'forum'. So also, by 'the 2014 Amendment Act'. It was pointed out, that in the above view of the matter the change of

'forum' – contemplated through 'the 2002 Amendment Act', could not be considered as having mere procedural implications, but must also be deemed to have substantive implications. It was submitted, that the adoption of the process of summary trial, is only vested with Chief Judicial Magistrates, Metropolitan Magistrates, or Magistrates of the first class. Consequent upon the change of 'forum', to that of the Court of Session, it was asserted, the possibility of adjudication of the accused by holding a summary trial has been taken away. And therefore, the possibility of being let off with a light sentence of three months, has also been taken away. It was submitted, that the instant right vested in the accused under the unamended provisions of Sections 24 and 26 of 'the SEBI Act' could not have been taken away retrospectively. It was pointed out, that after 'the 2002 Amendment Act', the accused cannot insist, in case he is found guilty, that the sentence imposed upon them should be limited to three months.

44. It was the emphatic contention of learned counsel for the accused, that irrespective of the submissions advanced on behalf of the accused, as have been canvassed by other learned counsel, if it could be shown that the change of 'forum' of trial, was discriminatory or prejudicial or created a disability or disadvantage or fastened an obligation, not arising in the 'forum' of trial prior to the amendment, the change of 'forum' would have to be prospective. In this behalf, reliance was placed on Union of India v. Sukumar Pyne, AIR 1966 SC 1206; Nani Gopal Mitra v. State of Bihar, AIR 1970 SC 1636; New India Insurance Co. Ltd. v.

Shanti Misra (1975) 2 SCC 840; Hitendra Vishnu Thakur v. State of Maharashtra (1994) 4 SCC 602; Ranbir Yadav v. State of Bihar (1995) 4 SCC 392, and Kamlesh Kumar v. State of Jharkhand, (2013) 15 SCC 460. We are of the view, that the legal proposition canvassed, has been correctly advanced. The question however is, whether it can be applied to the instant case, based on the submissions recorded in the foregoing paragraph.

45. Learned Additional Solicitor General, vehemently contested the above submissions. It was pointed out, that prior to amendment in 'the SEBI Act' with effect from 29.10.2002, the punishment prescribed was as under:

(a) Section 24(1) of 'the SEBI Act' imprisonment was for a term which may extend to one year, or with fine or both,

(b) Section 24(2) of the SEBI Act imprisonment was for a term which may extend to three years or with fine which shall not be less than two thousand rupees but which may extend to ten thousand or with both.

It was highlighted, that Section 2(x) of the Code of Criminal Procedure defines a 'warrant case', as a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. Section 2(w) of the Code of Criminal Procedure defines a 'summons case', as a case relating to an offence, and not being a warrant case. It was submitted, that all offences would either be tried under Chapter XIX of the Code of Criminal Procedure as 'warrant cases' or under Chapter XX as 'summons cases' in view of the quantum of

maximum imprisonment prescribed (of three years and one year respectively). The 'forum' of trial for both the aforesaid was the same. It was sought to be emphasized, that Section 260 of the Code of Criminal Procedure is not in Chapter XIX or XX but under Chapter XXI. The application of Section 260 according to the learned Additional Solicitor General, is discretionary, and no right is vested in the acused to be tried summarily. And therefore, no right is vested in an accused to claim a summary trial. Furthermore, Section 262(2), according to learned Additional Solicitor General, provides that 'no sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under the chapter. Therefore, the discretion of a Magistrate cannot prevail over the unambiguous and clear special Statute, i.e., 'the SEBI Act', wherein, the punishment prescribed is one year or three years (in the case of the pre-amendment, of Section 24(1) and 24(2) of 'the SEBI Act'.

46. Moreover it was submitted, that in 'the SEBI Act', there is no provision of summary trial of the cases. The legislative intent, is therefore very clear. Wherever the legislature had envisaged summary trial of cases, the legislature has made specific provision for the same, in the enactment itself. Under the Negotiable Instrument Act, the legislature had provided under Section 143 of the Negotiable Instruments Act, 1881. Similar provisions were also provided for under Section 16A of the Food Adulteration Act, 1954. It was accordingly asserted, that under special enactments, whenever the legislature desired the offences

to be tried summarily, it provided so expressly. But, no such provision has expressly been enacted under 'the SEBI Act'. There was no expression in either the pre-amendment or the post-amendment legislation, of any legislative intent of the trial proceeds, before different forums for violations of the different provisions of Section 24(1) and 24(2) of 'the SEBI Act'. As 'the SEBI Act' had provided different punishment under Sections 24(1) and 24(2), for trial before the same 'forum', the plea raised by learned counsel for the accused, cannot be accepted.

47. Furthermore, it was pointed out, that the trial under Chapter XIX is for warrant cases (starting from Section 238 to 250). Chapter XX is for Summons Case (starting from Sections 251 to 259). Both these chapters are very exhaustive in nature, and prescribe complete procedure in itself, and provided sufficient protections. Provisions for summary trial, on the other hand, are in Chapter XXI. Further, summary trial is at the discretion of the magistrate and cannot be sought as a matter of right. The language of Section 260(1) is "… may, if he thinks fit, try in a summary way …". The language of section is crystal clear. Section 260(2) even provides, that the magistrate can try the case in the regular manner even after deciding to proceed summarily, at any time, if he finds during the course of summary trial, that the nature of the case is such, that it is undesirable to try it summarily. It was accordingly asserted, that the accused under 'the SEBI Act', do not have any right to a summary trial, leave alone a valuable right.

48. Whilst dealing with the first contention advanced by Mr. D.P. Singh, Advocate, it is imperative to deal with some of the salient features, which need be kept in mind. Section 26(b) of the Code of Criminal Procedure, deals with offences under legislative enactments other than the Indian Penal Code. This is how Section 26(b) contrasts with Section 26(a) of the Code. Section 26 of the Code of Criminal Procedure is reproduced below:

> "26. Courts by which offences are triable. Subject to the other provisions of this Code,-
> (a) any offence under the Indian Penal Code (45 of 1860), may be tried by-
> (i) the High Court, or
> (ii) the Court of Session, or
> (iii) any other Court by which such offence is shown in the First Schedule to be triable;
> Provided that any offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code (45 of 1860) shall be tried as far as practicable by a Court presided over by a woman.
> (b) <u>any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court</u> and when no Court is so mentioned, may be tried by-
> (i) the High Court, or
> (ii) any other Court by which such offence is shown in the First Schedule to be triable."

Under 'the SEBI Act', the court postulated for adjudication of offences committed under 'the SEBI Act', prior to 'the 2002 Amendment Act', was a court not inferior to that of a Court of the Metropolitan Magistrate (or, a Judicial Magistrate of the first class). It is therefore apparent, that the 'forum' for trial, which would adjudicate offences under 'the SEBI Act', emerged from the substantive enactment itself (-'the SEBI Act'). As such, reference for purposes of offences under 'the SEBI Act' to the provisions

of the Code of Criminal Procedure, for the matter of jurisdiction, is wholly misconceived.

49. It is also essential, to make a reference to Part II of the Second Schedule to the Code of Criminal Procedure. The same is extracted hereunder:

"II – CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

Offence	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
1	2	3	4
If punishable with death, imprisonment for life, or imprisonment for more than 7 years,	Cognizable	Non-bailable	Court of Session
If punishable with imprisonment for 3 years, and upwards but not more than 7 years,	Cognizable	Non-bailable	Magistrate of the first class
If punishable with imprisonment for less than 3 years or with fine only.	Non-cognizable	Bailable	Any Magistrate

It is imperative for us to record, that the classification of offences other than the offences under the Indian Penal Code, and the courts by which such offences would be triable, expressed in Part II of the First Schedule, must essentially be read with Section 26 of the Code of Criminal Procedure. Part II of the First Schedule, would therefore be applicable only in cases where, the other laws (-other than the Indian Penal Code) do not postulate the adjudicatory court. In such cases, offences

(-provided for under other laws) if punishable with death, imprisonment for life or imprisonment for more than seven years, would be tried by a Court of Session, and where, the offence in question was punishable with imprisonment for three years and upwards, but not more than seven years, the adjudicatory court would be the Court of Magistrate of the first class. And if, the punishment of the offence is imprisonment for less than three years or with fine only, the matter would be triable by any Magistrate. The above contingencies contemplated in Part II of the First Schedule (appended to the Code of Criminal Procedure), are clearly inapplicable to 'the SEBI Act' on account of the fact, that the adjudicatory court (prior to 'the 2002 Amendment Act'), was a court not inferior to that of the Metropolitan Magistrate (or, a Judicial Magistrate of the first class), after 'the 2002 Amendment Act', it was a court not inferior to a Court of Session, and finally, after 'the 2014 Amendment Act', adjudication was vested with Special Courts. Therefore, at no stage was there any ambiguity of 'forum' for trial which would deal with offences postulated under 'the SEBI Act'.

50. We may now deal with the proposition canvassed pointedly. The mandate contained in Section 260 of the Code of Criminal Procedure, enabling "(a) any Chief Judicial Magistrate; (b) any Metropolitan Magistrate; (c) any Magistrate of the first class", to try in a summary way offences mentioned at (i) to (ix) of sub-section (1), has a precondition. This precondition is, that the court concerned must be "... specifically empowered in this behalf by the High Court...". Therefore, the authority

to decide a matter through a summary process under the Code of Criminal Procedure has to be express (by the High Court), and the same does not automatically flow out of Section 260, aforementioned. The use of the words "…all or any of the following offences …" with reference to the offences mentioned at (i) to (ix) of sub-section (1) of Section 260 further makes it apparent, that the summary process could be applied only to the clearly defined exigencies/offences. It is therefore, that Section 26(b) assumes significance, because it endeavours to deal with offences provided for in special enactments. Reliance on Section 260, with reference to offences provided for in special enactments, in our view, is clearly misconceived. Since the 'forum for trial under the SEBI Act' is derived from Section 26(b) of the Code of Criminal Procedure, the same would need an express order of empowerment for holding summary proceedings, before the court concerned adopts the summary procedure. And that is exactly why, summary proceedings are expressly provided for, by different legislative enactments, i.e., where the competent court for trial is determined under Section 26(b) of the Code of Criminal Procedure. It may illustratively be noticed, that when legislative intent was to provide for summary proceedings, the legislation itself expressly provided for the same, as under the Negotiable Instruments Act, 1881, and the Food Adulteration Act, 1954, wherein summary procedure has been legislatively provided for. It is therefore apparent, that the issue whether proceeding can be conducted by adopting the summary procedure cannot be inferred, when the court for trial is determined

under Section 26(b) aforementioned. Both the above enactments (the Negotiable Instruments Act, 1881; and the Food Adulteration Act, 1954), are regulated by Section 26(b) aforementioned, just as 'the SEBI Act'. The number of legislative enactments providing for summary proceedings can be multiplied. What is of importance is, that the legislative intent in matters falling in Section 26(b) of the Code of Criminal Procedure, for holding summary proceedings has been express. In the absence of any similar provision under 'the SEBI Act', it is natural to assume, that summary proceedings were not contemplated by the legislation, and has to be considered as precluded. In the absence of an express provision for holding summary proceedings in the trial of offences under 'the SEBI Act', it is not possible for us to accept the contention canvassed by learned counsel, by merely relying on Section 260 of the Code of Criminal Procedure.

51. It also needs to be kept in mind, that Section 26(2) of 'the SEBI Act' (prior to 'the 2002 Amendment Act') expressly provided, "No court inferior to that of a Metropolitan Magistrate (or, a Judicial Magistrate of the first class) shall try an offence punishable under this Act". It is therefore apparent, that it was not imperative, that the 'forum' for trial of offences under the unamended Section 24 of 'the SEBI Act' would be conducted only by a Metropolitan Magistrate (or, a Judicial Magistrate of the first class). Trials for offences under 'the SEBI Act', even prior to 'the 2002 Amendment Act', could well have been conducted by a Court of Session, or an Additional Sessions Judge. If trial had actually been

vested in such a superior court (-as the same was possible), Section 260 of the Code of Criminal Procedure, would not have been applicable, as Section 260 comes into play only for trials by courts of Chief Judicial Magistrates, Metropolitan Magistrates and Judicial Magistrates of the first class. For the instant reason also, the provision of Section 260 of the Code of Criminal Procedure, cannot be so interpreted, as is suggested by learned counsel representing the accused. Since the applicability of Section 260 of the Code of Criminal Procedure to proceedings under 'the SEBI Act' has not been accepted, the prejudice claimed on behalf of the accused under Section 262 of the Code of Criminal Procedure (-which is dependent on Section 260 of the Code) can also not be accepted.

52. The second contention advanced by Mr. D.P. Singh, learned counsel was, that the right of revision available to the accused, prior to the amendment to 'the SEBI Act', has been taken away. It was pointed out, that this aspect also had substantive (and, not merely procedural) implications for the accused. It was pointed out, that the right of revision being a valuable right of the accused, the deprivation of the above valuable right, emerging from the change of 'forum' from the Court of the Metropolitan Magistrate (or, Judicial Magistrate of the first class) by 'the 2002 Amendment Act', and by 'the 2014 Amendment Act', should not be considered as a trivial procedural issue. It was submitted, that the taking away of the right of revision from an accused, has to be considered as a substantial procedural deprivation. It was submitted, that cases where an amending enactment, takes away favourable rights,

by replacing the same with an alternative which is less advantageous, would violate the fundamental rights of the accused. On the instant aspect of the matter, learned counsel placed reliance on the State of West Bengal v. Anwar All Sarkar Habib Mohamed, AIR 1952 SC 75, and drew the Court's attention to the following:

> "27. It was suggested that the reply to this query is that the Act itself being general and applicable to all persons and to all offences, cannot be said to discriminate in favour of or against any particular case or classes of persons or cases, and if any charge of discrimination can be leveled at all, it can be leveled only against the act of the executive authority if the Act is misused. This kind of argument however does not appear to me to solve the difficulty. The result of accepting it would be that even where discrimination is quite evident one cannot challenge the Act simply because it is couched in general terms; and one cannot also challenge the act of the executive authority whose duty it is to administer the Act, because that authority will say :- I am not to blame as I am acting under the Act. It is clear that if the argument were to be accepted, article 14 could be easily defeated. I think the fallacy of the argument lies in overlooking the fact that the "insidious discrimination complained of is incorporated in the Act itself", it being so drafted that whenever any discrimination is made such discrimination would be ultimately traceable to it. The Act itself lays down a procedure which is less advantageous to the accused than the ordinary procedure, and this fact must in all cases be the root-cause of the discrimination which may result by the application of the Act.
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> 40. These two appeals are directed against the judgment of a Special Bench of the Calcutta High Court dated the 28th of August, 1951, and they arise out of two petitions presented, respectively, by the respondent in the two appeals under Art. 226 of the Constitution praying for writs of certiorari to quash two criminal proceedings, one of which has ended in the trial Court, resulting in conviction of the accused, while the other is still pending hearing. The questions requiring consideration in both the appeals are the same and the whole controversy centers round the point as to whether the provision of section 5 (1) of the West Bengal Special Courts Act, 1950, as well as certain notifications issued under it are ultra vires the Constitution by reason of their being in conflict with Art. 14 of the Constitution. The material facts, which are not controverted, may be shortly stated as follows. On 17-8-1949, an Ordinance, known as the West Bengal Special Courts Ordinance, was promulgated by the Governor of West

Bengal under section 88 of the Government of India Act, 1935. On 15-3-1950, this Ordinance was superseded and replaced by the West Bengal Special Courts Act which contained provisions almost identical with those of the Ordinance. Section 3 of the Act empowers the State Government to constitute, by notification, Special Courts of criminal jurisdiction for such areas and to sit at such places as may be notified in the notification. Section 4 provides for appointment of a Special Judge to preside over a Special Court and it mentions the qualifications which a Special Judge should possess.

Section 5(1) then lays down that a Special Court shall try such offences or classes of offences or cases or classes of cases as the State Government may, by general or special orders, in writing direct. Sections 6 to 15 set out in details the procedure which the Special Court has to follow in the trial of cases referred to it. Briefly stated, the trial is to be without any jury or assessors, and the Court has to follow the procedure that is laid down for trial of warrant cases by the Magistrate under the Criminal Procedure Code. The procedure for committal in the sessions cases is omitted altogether; the court's powers of granting adjournment are restricted and special provisions are made to deal with refractory accused and also for cases which are transferred from one Special Court to another. The Court is expressly empowered to convict a person of an offence with which he was not charged if it transpires from the evidence adduced at the time of trial that such offence was committed by him, and it is immaterial that the offence is not a minor offence. The right of revision to the High Court has been taken away entirely, though appeals have been allowed in all cases both at the instance of the accused as well as of the State and they lie both on questions of fact and law.

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68. The argument that changes in procedural law are not material and cannot be said to deny equality before the law or the equal protection of the laws so long as the substantive law remains unchanged or that only the fundamental rights referred to in Arts. 20 to 22 should be safeguarded is, on the face of it, unsound. The right to equality postulated by Art. 14 is as much a fundamental right as any other fundamental right dealt with in part III of the Constitution. Procedural law may and does confer very valuable rights on a person, and their protection must be as much the object of a court's solicitude as those conferred under substantive law."

Reliance for the same proposition, was also placed on A.R. Antulay v. R.S. Naik (1988) 2 SCC 602, wherein this Court while examining the valuable rights of the appellant inter alia concluded, that the right of revision to the High Court under Section 9 of the Criminal Law

Amendment Act, was a valuable right of the accused, which had been taken away.

53. It was therefore submitted, that the right of revision which was vested in the accused under Section 397, read with Section 401 of the Code of Criminal Procedure, was available to the accused under the unamended provisions of 'the SEBI Act', when adjudication for offences under 'the SEBI Act' was vested with a Metropolitan Magistrate (or, a Judicial Magistrate of the first class). It was submitted, that since the adjudicatory procedure for holding trials for offences under 'the SEBI Act' was vested with a Court of Session (under 'the 2002 Amendment Act'), and thereafter, with the Special Court (consequent upon 'the 2014 Amendment Act'), the accused who have not been tried (prior to the above amendments), stood deprived of the right of revision, under Section 397 read with Section 401 of the Code of Criminal Procedure. It was therefore contended, that the amendment of 'forum' of trial, in the facts and circumstances of the present case, could not be treated as a mere procedural amendment, but was liable to be considered as having substantive adverse implication for the accused. In order to support his above assertion, learned counsel placed reliance on Krishnan v. Krishnaveni, (1997) 4 SCC 241, and invited our attention to the following:

> "7. It is seen that exercise of the revisional power by the High Court under Section 397 read with Section 401 is to call for the records of any inferior criminal court and to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court and to pass

> appropriate orders. The Court of Sessions and the Magistrates are inferior criminal courts to the High Court and Courts of Judicial Magistrate are inferior criminal courts to the Sessions Judge. Ordinarily, in the matter of exercise of power of revision by any High Court, Section 397 and Section 401 are required to be read together. Section 397 gives powers to the High Court to call for the records as also suo motu power under Section 401 to exercise the revisional power on the grounds mentioned therein, i.e., to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court, and to dispose of the revision in the manner indicated under Section 401 of the Code. The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that its subordinate courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior criminal courts or to prevent miscarriage of justice."

It was therefore the assertion of learned counsel, that the action of transfer of pending matters from the Court of Metropolitan Magistrate (or, Judicial Magistrate of the first class), to the Court of Session (consequent upon 'the 2002 Amendment Act') and thereafter, to the Special Court (consequent upon 'the 2014 Amendment Act'), was liable to be treated as prospective, failing which the accused will be deprived of the important right of revision vested in him.

54. We have given our thoughtful consideration to the second contention of Mr. D.P. Singh, Advocate, noticed in the foregoing paragraphs. In view of the legal position, namely, that power of revision to a superior court does not confer or create a corresponding right in the litigant, it is not possible for us to accept the aforesaid contention of learned counsel. When the remedy of revision is considered as not a right of an accused, at all, the absence of the remedy of revision cannot

be considered as deprivation of a right. In this behalf, reference may be made to Pranab Kumar Mitra v. State of West Bengal, AIR 1959 SC 144, wherein it was held:

> ".....The revisional powers of the High Court vested in it by Section 439 of the Code, read with Section 435, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence, and that subordinate Criminal Courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code. .....".

The aforesaid determination also emerges from the following observations recorded in paragraph 6 of the above judgment, which is extracted hereunder:

> "6. In our opinion, in the absence of statutory provisions, in terms applying to an application in revision, as there are those in Section 431 in respect of criminal appeals, the High Court has the power to pass such orders as to it may seem fit and proper, in exercise of its revisional jurisdiction vested in it by Section 439 of the Code. Indeed, it is a discretionary power which has to be exercised in aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon the facts and circumstances of that case. The revisional powers of the High Court vested in it by Section 439 of the Code, read with Section 435, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence, and that subordinate Criminal Courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code. On the other hand, as already indicated, a right of appeal is a statutory right which has got to be recognized by the courts, and the right to appeal, where one exists, cannot be denied in exercise of the discretionary power even of the High Court. The legislature has, therefore, specifically provided, by Section 431 of the Code, the rules governing the right of substitution in case of death of an appellant, but there is no corresponding provision in Chapter XXXII, dealing with the question of abatement and the right of substitution in a criminal revision. We may assume that the legislature was aware of the decision of the Bombay High Court, referred to above, when it enacted Section 431 for the first time in the Code of 1882. If the legislature intended that an application in revision pending in a High Court, should be dealt with on the same footing as a pending appeal,

it would have enacted accordingly. But in the absence of any such enactment, we may infer that the power of revision vested in the High Court under Chapter XXXII of the Code, was left untouched — to be exercised according to the exigencies of each case. The High Court is not bound to entertain an application in revision, or having entertained one, to order substitution in every case. It is not bound the other way, namely, to treat a pending application in revision as having abated by reason of the fact that there was a composite sentence of imprisonment and fine, as some of the Single Judge decisions placed before us, would seem to indicate. The High Court has been left complete discretion to deal with a pending matter on the death of the petitioner in accordance with the requirements of justice. The petitioner in the High Court may have been an accused person who has been convicted and sentenced, or he may have been a complainant who may have been directed under Section 250 of the Code to pay compensation to an accused person upon his discharge or acquittal. Whether it was an accused person or it was a complainant who has moved the High Court in its revisional jurisdiction, if the High Court has issued a rule, that rule has to be heard and determined in accordance with law, whether or not the petitioner in the High Court is alive or dead, or whether he is represented in court by a legal practitioner. In hearing and determining cases under Section 439 of the Code, the High Court discharges its statutory function of supervising the administration of justice on the criminal side. Hence, the considerations applying to abatement of an appeal, may not apply to the case of revisional applications. In our opinion, therefore, the Bombay majority decision, in the absence of any statutory provisions in respect of criminal revisional cases, lays down the correct approach."

Reference on the above issue, may also be made to Kamlesh Kumar v. State of Jharkhand, (2013) 15 SCC 460, wherein this Court held as under:

"41. This question proceeds on the assumption that there is a right of revision. A Constitution Bench of this Court in Pranab Kumar Mitra v. State of W.B. set the "right" issue at rest several decades ago. It was held that the power to revise an order is a discretionary power which is to be exercised in aid of justice and the exercise of that power will depend on the facts and circumstances of a given case. It was held: (AIR p. 147, para 6)

"6. … The revisional powers of the High Court vested in it by Section 439 of the Code read with Section 435, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognised rules of criminal

jurisprudence, and that subordinate criminal courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code."

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43. While the revisional power of a superior court actually enables it to correct a grave error, the existence of that power does not confer any corresponding right on a litigant. This is the reason why, in a given case, a superior court may decline to exercise its power of revision, if the facts and circumstances of the case do not warrant the exercise of its discretion. This is also the reason why it is felicitously stated that a revision is not a right but only a "procedural facility" available to a party. If the matter is looked at in this light, the transfer of a case from a Magistrate to a Special Judge does not take away this procedural facility available to the petitioners. It only changes the forum and as already held above, the petitioners have no right to choose the forum in which to file an appeal or move a petition for revising an interlocutory order."

55. For the reasons recorded hereinabove, we find no merit even in the second contention advanced by Mr. D.P. Singh, learned counsel representing the accused.

56. In view of the consideration recorded hereinabove, we are of the view, that the 'forum' for trial earlier vested in the Court of Metropolitan Magistrate (-or, Judicial Magistrate of the first class) was retrospectively amended, inasmuch as, the 'forum' of trial after 'the 2002 Amendment Act' was retrospectively changed to the Court of Session. In this view of the matter, the trials even in respect of offences allegedly committed before 29.10.2002 (-the date with effect from which, 'the 2002 Amendment Act' became operational), whether in respect whereof trial had or had not been initiated, would stand jurisdictionally vested in a Court of Session. And likewise, trials of offences under the SEBI Act, consequent upon 'the 2014 Amendment Act (which became operational, with effect from 18.07.2013) would stand jurisdictionally transferred for

trial to a Special Court, irrespective of whether the offence under the SEBI Act was committed before 29.10.2002 and/or before 18.07.2013 (-the date with effect from which 'the 2014 Amendment Act' became operational), and irrespective of the fact whether trial had or had not been initiated. Our above conclusion, affirms the determination recorded by the Delhi High Court in Mahender Singh v. High Court of Delhi (Writ Petition (C) No.141 of 2007, decided on 11.01.2008), but for the reasons recorded hereinabove. The impugned judgment rendered by the High Court of Bombay in M/s. Classic Credit Ltd. v. State of Maharashtra (Criminal Application No.1557 of 2007, decided on 16.01.2008), is liable to be set aside, and is accordingly hereby set aside.

57. The instant bunch of cases is disposed of in the above terms.

.....CJI.
(Jagdish Singh Khehar)

.....J.
(Arun Mishra)

Note: The emphases supplied in all the quotations in the instant judgment, are ours.

New Delhi
August 21, 2017.