

[2010] 4 S.C.R. 334

A

LALU PRASAD YADAV

v.

STATE OF BIHAR & ANR.

(Criminal Appeal No. 662 of 2010)

B

APRIL 1, 2010

**[K.G. BALAKRISHNAN, CJI., R.M. LODHA AND DR. B.S. CHAUHAN, JJ.]**

C

*Code of Criminal Procedure, 1973 – s. 378(1) and (2) – Appeal against acquittal – Right of State Government to file – In a case where offence was investigated by Delhi Special Police Establishment (CBI) – Held: State Government is not the competent authority to file an appeal against acquittal in such cases – The opening words of s. 378(1) “save as otherwise provided in sub-section (2)” are intended to exclude the class of cases, mentioned in sub-section (2) out of the operation of the body of Sub-section (1) – Delhi Special Police Establishment Act, 1946 – Code of Criminal Procedure, 1898 – s. 417.*

E

*Interpretation of Statutes:*

F

*Changes in wordings and phrasing of statutory provision – Held: Such changes may be presumed to have been deliberate and with purpose to limit, qualify or enlarge the pre-existing law, as the changes of the words employ – Any construction which makes the exception clause, with which the Section opens, unnecessary and redundant, should be avoided.*

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*Construction of statute – Language of a statute should be read as it is – Any construction resulting in rejection of words has to be avoided – However, such rule of construction is not without exception.*

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*Precedent – The essence in a decision is its ratio and not every observation found therein – The observations in a judgment do not operate as a binding precedent.* A

*Words and Phrases: 'Save' – Meaning of, in the context of s. 378(1) Cr.P.C.* B

The question for consideration in the present appeals was whether the State Government has competence to file an appeal from the judgment passed by Special Judge, CBI (AHD) acquitting the accused persons as the case has been investigated by the Delhi Special Police Establishment (CBI). C

Appellant-accused and CBI contended that the cases are covered u/s. 378(2) Cr.P.C. and are excluded from the purview of s. 378(1) by virtue of the opening clause in sub-section (1) "Save as otherwise provided in sub-section (2)". D

Respondent-State Government contended that use of expressions "in any case" in sub-section (1) and "also" in sub-section (2) indicates that legislature intended that general rule would be that State Government may file an appeal in any and every case and Central Government may additionally file an appeal in a case covered by sub-section (2); and that ss. 377 and 378 Cr.P.C. are in *pari materia* and interpretation given to s. 377 in *Eknath Shankarrao Mukkawar* case, needs to be accorded to s. 378. E F

Allowing the appeals, the Court

HELD: 1.1. Legislature has maintained a mutually exclusive division in the matter of appeal from an order of acquittal inasmuch as the competent authority to appeal from an order of acquittal in two types of cases referred to in sub-section (2) is the Central Government H

A and the authority of the State Government in relation to  
 such cases has been excluded. As a necessary corollary,  
 it has to be held, that the State Government is not  
 competent to direct its public prosecutor to present  
 appeal from the judgment passed by the Special Judge,  
 B CBI (AHD), Patna. [Para 40] [369-D-E]

1.2. The opening words of Section 378(1) Cr.P.C. –  
 “Save as otherwise provided in sub-section (2)” – are in  
 the nature of exception intended to exclude the class of  
 cases mentioned in sub-section (2) out of operation of the  
 C body of sub-section (1). These words have no other  
 meaning in the context but to qualify the operation of  
 sub-section (1) and take out of its purview two types of  
 cases referred in sub-section (2), namely, (i) the cases in  
 D which offence has been investigated by the Delhi Special  
 Police Establishment constituted under Delhi Special  
 Police Establishment Act, 1946 and (ii) the cases in which  
 the offence has been investigated by any other agency  
 empowered to make investigation into an offence under  
 any Central Act other than Cr.P.C. [Para 27] [355-G-H]

E 1.3. By construing Section 378 in a manner that  
 permits appeal from an order of acquittal by the State  
 Government in every case, except two class of cases  
 mentioned in sub-section (2), full effect would be given  
 F to the exception (clause) articulated in the opening  
 words. The words – “save as otherwise provided in sub-  
 section (2)” – were added in 1973 Code; Section 417 of  
 1898 Code did not have these words. It is familiar rule of  
 construction that all changes in wording and phrasing  
 G may be presumed to have been deliberate and with the  
 purpose to limit, qualify or enlarge the pre-existing law as  
 the changes of the words employ. Any construction that  
 makes exception (clause) with which a Section opens  
 unnecessary and redundant should be avoided. If  
 H Section 378, sub-sections (1) and (2) is given the

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interpretation which the State Government claims, that would be rendering the exception (clause)-reflected in the opening words "save as otherwise provided in sub-section (2)" – redundant, meaningless and unnecessary. [Para 27] [356-B-F]

1.4. If the Legislature had intended to give the right of appeal u/s. 378(1) to the State Government in all cases of acquittal including the class of cases referred to in sub-section (2), it would not have been necessary to incorporate the exception (clause) in the opening words. This objective could have been achieved without use of these words as erstwhile Section 417 of 1898 Code enabled the State Government to appeal from all cases of acquittal while in two types of cases mentioned in sub-section (2) thereof, appeal from the order of acquittal could be filed under the direction of Central Government as well. [Para 27] [356-G-H]

1.5. If a latter statute repealing and re-enacting former statute does not use the same language as in the earlier one, the alteration must be taken to have been made deliberately. The Parliament in 1973 Code re-enacted the provision for appeal from order of acquittal with certain modifications. It changed the language by addition of words – "save as otherwise provided in sub-section (2)". The alteration in language by addition of these words gives rise to an inference that the Legislature made conscious changes in Section 378 (1973 Code). The addition of words in Section 378(1) by way of exception (clause) cannot be set at naught by giving same interpretation which has been given to Section 417 (1898 Code). [Paras 29 and 31] [357-D; 360-E-F]

*Khemraj vs. State of Madhya Pradesh* (1976) 1 SCC 385, held inapplicable.

A *Union of India and Anr. v. Hansoli Devi and Ors* (2002) 7 SCC 273; *The Bengal Immunity Company Limited v. The State of Bihar and Ors.* (1955) 2 SCR 603; *D.R. Fraser & Co. Ltd. v. The Minister of National Revenue* AIR 1949 PC 120, referred to.

B *Robert Mitchell v. Soren Torup* (1766) Parker 227; *Becke v. Smith* (1836) 2 Meeson and Welsby 191; *The Attorney-General v. Lockwood* (1842) 9 Meeson and Welsby 378; *The Sussex Peerage case* (1844) XI Clark & Fennelly 85; *Williams v. Milotin* 97 C.L.R.465, referred to.

C *Concise Oxford English Dictionary* (Tenth Edition, Revised); *Webster Comprehensive Dictionary* (International Edition); 'A Dictionary of Modern Legal Usage' by Bryan A. Garner (1987); 'Principles of Statutory Interpretation' by G.P. Singh, 12th Edition, 2010 page 310, referred to.

2.1. One of the rules of construction of statutes is that language of the statute should be read as it is and any construction that results in rejection of words has to be avoided; the effort should be made to give meaning to each and every word used by the Legislature. However, such rule of construction of statutes is not without exceptions. [Para 32] [361-C]

F *Stone v. Yeovil Corp.* (1875-76) L.R. 1 CPD 691; *Salmon v. Duncombe and Ors.* (1886) 11 AC 627, referred to.

G 2.2. The main object and legislative intent by the opening words – “save as otherwise provided in sub-section (2)” – in sub-section (1) of Section 378 Cr.P.C, 1973 being clear i.e., to fetter the general power given to the State Government in filing appeal from the order of acquittal in two types of cases stated in sub-section (2), the use of word “also” in sub-section (2) does not make

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any sense. The word “also” in sub-section (2), if A  
 construed in the manner suggested by the State  
 Government, may result in reducing the opening words  
 in sub-section (1) a nullity and will deny these words their  
 full play. Since exception (clause) in the beginning of sub-  
 section (1) has been expressly added in Section 378 and B  
 it is not possible to harmonise the word “also” occurring  
 in sub-section (2) with that, it appears that no sensible  
 meaning can be given to the word “also” and the said  
 word has to be treated as immaterial. To declare “also”  
 enacted in sub-section (2) immaterial or insensible is not C  
 very satisfactory, but it is much more unsatisfactory to  
 deprive the words – “save as otherwise provided in sub-  
 section (2)” – of their true and plain meaning. In order that  
 the exception (clause) expressly stated in the opening  
 words of sub-section (1) might be preserved, it is D  
 necessary that word “also” in sub-section (2) is treated  
 as immaterial. [Para 34] [362-D-G; A]

3.1. The phrase “in any case” in sub-section (1) of  
 Section 378 means “in all cases”, but the opening words E  
 in the said Section put fetters on the State Government  
 in directing appeal to be filed in two types of cases  
 mentioned in sub-section (2). A perusal of Section 24  
 Cr.P.C. would show that the Central Government  
 appoints its public prosecutors for conducting  
 prosecution, appeal or other proceedings on its behalf F  
 and a State Government appoints its public prosecutors  
 in conducting prosecution, appeal or other proceedings  
 on its behalf. One has no control over the other. The  
 Central Government or the State Government, as the case  
 may be, may appoint a special public prosecutor for the G  
 purpose of any case or class of cases. Under Section  
 378(1) the State Government may direct its public  
 prosecutor to file an appeal from an order of acquittal  
 while under Section 378(2) the Central Government may

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A direct its public prosecutor to file an appeal from an order of acquittal. The public prosecutor, thus, has to be associated in an appeal from an order of acquittal. [Para 35, 37] [363-B; 365-F-H]

B 3.2. The 1946 Act provides for constitution of a special police establishment for investigation of certain offences or class of offences as notified under Section 3 of the 1946 Act. A close look to the provisions of 1946 Act would show that investigation thereunder is a central investigation and the officers concerned are under the  
C superintendence of the officer appointed by the Central Government. It is the Central Government that has the superintendence over Delhi Special Police Establishment. Therefore, it is the Central Government which is concerned with the investigation of the case by  
D Delhi Special Police Establishment and its ultimate result. It is for this reason that sub-section (2) of Section 378 provides for appeal against acquittal in two types of cases mentioned therein on the direction of the Central Government by its public prosecutor. The opening words  
E in sub-section (1), thus, qualify the general power given to the State Government in filing appeal from an order of acquittal so that the central agency, which is solely and intimately connected with the investigation of cases referred in sub-section (2), may approach the Central  
F Government for direction to appeal in appropriate cases. [Para 37] [366-A-E]

G 4. The essence in a decision is its ratio and not every observation found therein. The ratio of decision in *Eknath Shankarrao Mukkawar* case is that the Legislature has maintained a watertight dichotomy in the matter of appeal against inadequacy of sentence; the competent authority to appeal against inadequacy of sentence in two types of cases referred to in sub-section (2) of Section 377 is

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the Central Government. However, it is not correct to say A  
that in *Eknath Shankarrao Mukkawar* case in the absence  
of use of word “also” in sub-section (2) of Section 377, it  
was held by this Court that the State Government was  
incompetent to file an appeal in a case falling under  
Section 377(2) and that Parliament remedied the lacuna B  
by Act 45 of 1978 to include the word “also” therein and  
bring the same in pari materia with the provisions of  
Section 378(2) and that the Statement of Objects and  
Reasons for the said amendment makes it clear that the  
State Government is also competent to file an appeal in C  
a case falling under Section 377(2). In the first place, the  
observations in *Eknath Shankarrao Mukkawar* case in  
relation to Section 378 do not operate as binding  
precedent as construction of Section 378 was neither  
under consideration nor in issue in that case. Secondly, D  
and more importantly, although sub-section (2) of Section  
377 came to be amended by Act 45 of 1978 to include the  
word “also” therein, but the Statement of Objects and  
Reasons relating to that amendment is of no relevance  
insofar as construction of Section 378 (1) and (2) is E  
concerned. Insofar as Section 378 is concerned, the word  
“also” occurring in sub-section (2) cannot be accorded  
a meaning that would result in wiping out the effect of  
controlling words in sub-section (1) - “save as otherwise  
provided in sub-section (2)” – which are indicative of F  
legislative intent to exclude two types of cases mentioned  
in sub-section (2) out of operation of the body of sub-  
section (1). [Para 39] [368-D-H; 369-A-C]

*Eknath Shankarrao Mukkawar vs. State of Maharashtra*  
(1977) 3 SCC 25, explained and held inapplicable. G

*State of Orissa v. Sudhansu Sekhar Misra and Ors.* AIR  
1968 SC 647, relied on.



- A Case Law Reference:**
- (1766) Parker 227 Referred to. Para 17
- (1836) 2 Meeson and Welsby 191 Referred to. Para 18
- B** (1842) 9 Meeson and Welsby 378 Referred to. Para 19
- (1844) XI Clark & Finnely 85 Referred to. Para 20
- C** (2002) 7 SCC 273 Referred to. Para 21
- 97 C.L.R. 465 Referred to. Para 25
- (1955) 2 SCR 603 Referred to. Para 28
- D** AIR 1949 PC 120 Referred to. Para 29
- (1976) 1 SCC 385 held inapplicable. Para 30
- (1875-76) L.R. 1 CPD 691 Referred to. Para 32
- E** (1886) 11 AC 627 Referred to. Para 33
- (1977) 3 SCC 25 Explained and held inapplicable. Para 39
- AIR 1968 SC 647 Relied on. Para 39
- F** CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 662 of 2010.
- From the Judgment & Order dated 20.9.2007 of the High Court of Judicature at Patna in Govt. Appeal No. 1 of 2007.
- G** WITH
- Crl.A. No. 670 of 2010.
- Ram Jethmalani, Pravin H. Parekh, Chitranjan Sinha, A.
- H** Mariarputham, L. Nageshwar Rao, Lata Krishnamurti, P.R.

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Mala, E.R. Kumar, Sameer, Parekh, Saurabh Ajay Gupta, A  
Somandari Gaud, Pranav Diesh (for Parekh & Co.) T.A. Khan,  
Devadatt Kamat, Arvind, K. Sharma, P.K. Dey (for B. Krishna  
Prasad), Vishwajit Singh, Veera Kaul Singh, Ritesh Agarwal,  
Siddharth Sengar, Abhindra Maheshwari for the appearing  
parties. B

The Judgment of the Court was delivered by

**R.M. LODHA, J.** 1. Leave granted.

2. Section 378 of Code of Criminal Procedure, 1973 (for C  
short, '1973 Code') enacts the provision for appeal from an  
order of acquittal. The said provision as it existed prior to 2005  
amendment reads:

"S.378. - *Appeal in case of acquittal.* - (1) Save as D  
otherwise provided in sub-section (2) and subject to the  
provisions of sub-sections (3) and (5), the State  
Government may, in any case, direct the Public Prosecutor  
to present an appeal to the High Court from an original or  
appellate order of acquittal passed by any Court other than E  
a High Court or an order of acquittal passed by the Court  
of Session in revision.

(2) If such an order of acquittal is passed in any case in F  
which the offence has been investigated by the Delhi  
Special Police Establishment constituted under the Delhi  
Special Police Establishment Act, 1946 (25 of 1946) or  
by any other agency empowered to make investigation  
into an offence under any Central Act other than this Code,  
the Central Government may also direct the Public G  
Prosecutor to present an appeal, subject to the provisions  
of sub-section (3), to the High Court from the order of  
acquittal.

(3) No appeal under sub-section (1) or sub-section (2) shall  
be entertained except with the leave of the High Court. H

A (4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

B (5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

C (6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2)."

D 3. The main question presented, in light of the aforesaid provision is, namely, as to whether the State Government (of Bihar) has competence to file an appeal from the judgment dated 18th December, 2006 passed by Special Judge, CBI (AHD), Patna, acquitting the accused persons when the case has been investigated by the Delhi Special Police Establishment (CBI).

E 4. Shri Lalu Prasad Yadav and Smt. Rabri Devi are husband and wife. Both of them have held the office of Chief Minister of the State of Bihar. These appeals concern the period from March 10, 1990 to March 28, 1995 and April 4, 1995 to July 25, 1997 when Shri Lalu Prasad Yadav was the Chief Minister, Bihar. Allegedly for acquisition of assets – both moveable and immovable – by corrupt or illegal means disproportionate to his known sources of income during the aforesaid period, a first information report (FIR) was lodged by CBI against Shri Lalu Prasad Yadav and also his wife. As a

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matter of fact, lodgement of FIR was sequel to direction by the Patna High Court to CBI to enquire and scrutinize all cases of excess drawls and expenditure in the Animal Husbandry Department, Government of Bihar during the period 1977-78 to 1995-96. CBI investigated into the matter and on August 19, 1998, a chargesheet was filed against Shri Lalul Prasad Yadav and Smt. Rabri Devi in the Court of Special Judge, CBI (AHD), Patna. The charges were framed against Shri Lalul Prasad Yadav under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 ('PC Act') that during the said period, he acquired assets which were disproportionate to his known sources of income and on 31st March, 1997 he had been in possession of pecuniary resources of property in his name and in the name of his wife and children to the extent of Rs. 46,26,827/- which he could not satisfactorily account for. Smt. Rabri Devi was charged under Section 109 of Indian Penal Code (IPC) read with Section 13(1)(e) and 13(2) of the PC Act for abetting her husband in the commission of the said offence. The Court of Special Judge, CBI (AHD), Patna, upon conclusion of trial, vide its judgment dated December 18, 2006 acquitted the accused holding that prosecution failed to prove the charges levelled against them.

5. It is pertinent to notice here that as per CBI, the central government after considering the conclusions and findings of the trial court took a conscious and considered decision that no ground whatsoever was made for filing an appeal against the judgment of the trial court.

6. On February 17, 2007 the state government, however, filed leave to appeal against the order of acquittal dated December 18, 2006 before the High Court of Judicature at Patna. The accused were arrayed as respondent nos. 1 and 2 respectively and the CBI was impleaded as respondent no. 3. The Single Judge of the High Court issued notice to the respondents to show cause as to why leave to appeal be not granted. In response thereto, on behalf of respondent nos. 1

A and 2, a preliminary objection was raised with regard to maintainability of appeal by the state government. The preliminary objection about the maintainability of appeal raised by respondent nos. 1 and 2 was supported by respondent no. 3 (CBI). The learned Single Judge heard the arguments on the question of maintainability of appeal and vide his order dated September 20, 2007 overruled the preliminary objection and held that appeal preferred by the state government was maintainable. It is from this order that two appeals by special leave have been preferred. One of the two appeals is by the accused and the other by CBI.

7. We heard Mr. Ram Jethmalani, learned senior counsel (for accused) and Mr. A. Mariarputham, learned senior counsel (for CBI) – appellants – and Mr. L. Nageshwar Rao, learned senior counsel for the state government.

8. Mr. Ram Jethmalani submitted that the competence of the state government to file an appeal from the judgment and order of acquittal is to be determined by Section 378 of the 1973 Code as it existed prior to 2005; the law in force on the date of the chargesheet. He would submit that the key words in Section 378(1) are : “Save as otherwise provided in sub-section (2)” and by these words whatever is covered by sub-section (2) is left outside the purview of sub-section (1). According to him, the word “also” in sub-section (2) refers to the mode of exercising substantive right of appeal; the word “also” in the changed context means ‘likewise’ and that means that the central government can also instruct the public prosecutor to present an appeal; it does not have to file vakalatnama signed by the President of India or for the State by the Governor of the State. Learned senior counsel argued that the High Court by giving undue weight to the word “also” in sub-section (2) has made the opening key words in sub-section (1) of Section 378 wholly redundant and useless thereby defeating the intention of the Legislature. He would, thus, submit that the court has to adopt one of the two courses,

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namely, (i) assign to the word another of its meanings which the word does carry and harmonise it with the effect of the dominant words or (ii) reject the word as a useless surplusage. A

9. Mr. Ram Jethmalani, learned senior counsel, referred to the judgment of this Court in *Eknath Shankarrao Mukkawar v. State of Maharashtra*,<sup>1</sup> and submitted that the construction of Section 377 put by this Court where similar words occur, must apply to the construction of Section 378 as well. He argued that the reliance placed by the High Court upon the decision of this Court in the case of *Khemraj vs. State of Madhya Pradesh*<sup>2</sup> was misconceived as the said case has no application on construction of Section 378 as the controlling words "save as otherwise provided" did not exist in Section 417 of Code of Criminal Procedure (for short, '1898 Code') and the observations made in that case are neither *ratio decidendi* nor *obiter dicta*. B C D

10. Lastly, Mr. Ram Jethmalani contended that if there is a conflict of exercise of executive powers by the state government and the central government, by virtue of the proviso to Article 162 of the Constitution of India, the decision of the latter will prevail. E

11. Mr. A. Mariarputham, learned senior counsel for CBI, adopted the arguments of Mr. Ram Jethmalani. He further submitted that by addition of words "save as otherwise provided in sub-section (2)", in Section 378, the Legislature brought changes in erstwhile Section 417 of 1898 Code and made its intention clear to take class of cases covered by sub-section (2) out of purview of sub-section (1). F

12. On the other hand, Mr. L. Nageshwar Rao, learned senior counsel for the state government, vehemently supported the view of the High Court to sustain the maintainability of appeal filed by the state government. He submitted that right G

1. (1977) 3 SCC 25.

2. (1976) 1 SCC 385.

A of appeal is a creature of statute and the question whether there  
 is right of appeal or not will have to be considered on an  
 interpretation of the provision of the statute and not on the  
 ground of propriety or any other consideration. According to  
 him, when the language of statute is plain and unambiguous  
 B then literal rule of interpretation has to be applied and the court  
 must give effect to the words used in the statute and it would  
 not be open to the courts to adopt a hypothetical construction  
 on the ground that such construction is more consistent with the  
 alleged object and policy of the Act or to have consideration  
 C of equity, public interest or to seek the intention of the  
 Legislature. He would submit that the use of the expressions  
 "in any case" in sub-section (1) and "also" in sub-section (2)  
 clearly indicates that Legislature intended that the general rule  
 would be that the state government may file an appeal in any  
 and every case [including cases covered by sub-section (2)]  
 D and the central government may additionally file an appeal in  
 a case covered by sub-section (2). Mr. L. Nageshwar Rao  
 contended that the interpretation to the expression "save as  
 otherwise provided in sub-section (2)", sought to be placed by  
 the appellants, is not in accordance with the logic or the plain  
 E language of the provision and such interpretation would result  
 in rendering the expression "in any case" in sub-section (1) and  
 the word "also" in sub-section (2) redundant and otiose. He  
 emphasized that no word or expression used in any statute can  
 be said to be redundant or superfluous; that in matters of  
 F interpretation one should not concentrate too much on one word  
 and pay too little attention to other words and no provision in  
 the statute and no word in the section can be construed in  
 isolation and every provision and every word must be looked  
 at generally and in the context in which it is used.

G 13. Relying upon the case of Eknath Shankarrao  
 Mukkavar<sup>1</sup>, Mr. L. Nageshwar Rao submitted that this Court  
 has held that in the absence of use of the word "also" in sub-  
 section (2) of Section 377, as contained in sub-section (2) of  
 H Section 378, the state government was incompetent to file an

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appeal in a case falling under Section 377(2) and now in order to remedy the lacuna pointed out by this Court, Parliament amended Section 377(2) by Act No. 45 of 1978 to include the word "also" therein and bring the same in pari materia with the provisions of Section 378(2). He referred to the Statement of Objects and Reasons for the said amendment and argued that after the said amendment, the state government is also competent to file an appeal in a case falling under Section 377(2). Learned senior counsel urged that inasmuch as the provisions of Section 377 and Section 378 are now in pari materia and the same interpretation needs to be accorded to Section 378 as well.

14. Mr. L. Nageshwar Rao, learned senior counsel, strenuously urged that the interpretation sought to be placed by the appellants would lead to absurdity inasmuch as (i) even in a case where the state government requests and permits investigation under Section 6 of the Delhi Special Police Establishment Act, 1946 ('1946 Act', for short) and prosecution is conducted by the public prosecutor appointed by the state government, the state government would not be entitled to file an appeal in case of acquittal, but would have to approach the central government for the purpose (which has no role or connection with the investigation or the case); and (ii) in view of the express amendment to Section 377 of 1973 Code so as to enable the state government to file an appeal even where investigation was conducted by the CBI or central agency, the state government would be competent to file an appeal in case of award of inadequate sentence; but in a similar case that results in acquittal then the state government would not be able to file an appeal under Section 378.

15. In the Code of Criminal Procedure, 1861, Section 407 prohibited an appeal from acquittal. For the first time, the Code of Criminal Procedure, 1872 provided for an appeal by the government from an order of acquittal (Section 272). The said provision was re-enacted in Section 417 of the Code of



A Criminal Procedure, 1882. The provision concerning an appeal in case of acquittal was retained in Section 417 of 1898 Code. The provision relating to an appeal from order of acquittal in 1898 Code (as amended by Amendment Act 26 of 1955) reads as under:-

B “S. 417.- *Appeal in case of acquittal*.- (1) Subject to the provisions of sub-section (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

C (2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946, the Central Government may also direct the Public Prosecutor to present an appeal to the High Court from the order of acquittal.

E (3) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court.

F (4) No application under sub-section (3) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal.

G (5) If, in any case, the application under sub-section (3) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1).”

H 16. In 1973 Code, appeal from an order of acquittal has been retained with some modifications. Section 378, sub-

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section (1) opens with the words, "save as otherwise provided in sub-section (2)". The main thrust of the arguments by the learned senior counsel centered around the opening words, "save as otherwise provided in sub-section (2)", the phrase "in any case" in sub-section (1) and the word "also" in sub-section (2). A  
B

17. Way back in 1766, Parker, C.B., in *Robert Mitchell v. Soren Torup*<sup>3</sup> recognized the rule that in expounding Acts of parliament, where words are express, plain and clear, the words ought to be understood according to their genuine and natural signification and import, unless by such exposition a contradiction or inconsistency would arise in the Act by reason of some subsequent clause, from whence it might be inferred the intent of the Parliament was otherwise; and this holds with respect to penal, as well as other Acts. C  
D

18. Parke, B. in *Becke v. Smith*,<sup>4</sup> stated the following rule:

"It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further." E  
F

19. In *The Attorney-General v. Lockwood*,<sup>5</sup> the rule regarding construction of statutes was expounded in the following words:

".....The rule of law, I take it, upon the construction of all statutes, and therefore applicable to the construction of this, is, whether they be penal or remedial, to construe G

3. (1766) Parker 227.

4. (1836) 2 Meeson and Welsby 191.

5. (1842) 9 Meeson and Welsby 378. H

A them according to the plain, literal, and grammatical meaning of the words in which they are expressed, unless that construction leads to a plain and clear contradiction of the apparent purpose of the act, or to some palpable and evident absurdity....”.

B 20. In *The Sussex Peerage*,<sup>6</sup> the House of Lords, through Lord Chief Justice Tindal, stated the rule for the construction of Acts of Parliament that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are of themselves precise and unambiguous, then  
C no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do, in such case, best declare the intention of the Legislature.

D 21. A Constitution Bench of this Court in *Union of India & Anr. v. Hansoli Devi and Others*,<sup>7</sup> approved the rule exposited by Lord Chief Justice Tindal in *The Sussex Peerage*’s case<sup>6</sup> and stated the legal position thus:

E “It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In *Kirkness v. John Hudson & Co. Ltd.*,  
F (1955) 2 All ER 345, Lord Reid pointed out as to what is the meaning of “ambiguous” and held that:

G “A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or

6. (1844) XI Clark & Fennelly 85.

H 7. (2002) 7 SCC 273.

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phrase which in that particular context is capable of A  
having more than one meaning.”

It is no doubt true that if on going through the plain meaning  
of the language of statutes, it leads to anomalies, injustices  
and absurdities, then the court may look into the purpose B  
for which the statute has been brought and would try to give  
a meaning, which would adhere to the purpose of the  
statute. Patanjali Sastri, C.J. in the case of *Aswini Kumar*  
*Ghose v. Arabinda Bose*, AIR 1952 SC 369, had held that  
it is not a sound principle of construction to brush aside C  
words in a statute as being inapposite surplusage, if they  
can have appropriate application in circumstances  
conceivably within the contemplation of the statute. In  
*Quebec Railway, Light Heat & Power Co. Ltd. v. Vandry*,  
AIR 1920 PC 181, it had been observed that the legislature D  
is deemed not to waste its words or to say anything in vain  
and a construction which attributes redundancy to the  
legislature will not be accepted except for compelling  
reasons. Similarly, it is not permissible to add words to a  
statute which are not there unless on a literal construction E  
being given a part of the statute becomes meaningless. But  
before any words are read to repair an omission in the Act,  
it should be possible to state with certainty that these words  
would have been inserted by the draftsman and approved  
by the legislature had their attention been drawn to the  
omission before the Bill had passed into a law. At times, F  
the intention of the legislature is found to be clear but the  
unskilfulness of the draftsman in introducing certain words  
in the statute results in apparent ineffectiveness of the  
language and in such a situation, it may be permissible for  
the court to reject the surplus words, so as to make the G  
statute effective.....”

22. As noticed above, Section 378, sub-section (1), opens  
with the words - “save as otherwise provided in sub-section (2)”.  
These words are not without significance. The immediate H

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- A question is as to what meaning should be ascribed to these words. In Concise Oxford English Dictionary (Tenth Edition, Revised), the word “save” is defined thus:

“save.- formal or poetic/literary except; other than....”

- B 23. In Webster Comprehensive Dictionary (International Edition), the word “save” is defined as follows:-

“save.- Except; but - 1. Except; but 2. Archaic Unless”.

- C 24. A Dictionary of Modern Legal Usage by Bryan A. Garner (1987) states that “save” is an ARCHAISM when used for “except”. It should be eschewed, although, as the examples following illustrate, it is still common in legal prose. e.g., ‘The law-of-the-circuit rule forbids one panel to overrule another save [read except] when a later statute or Supreme Court decision
- D has changed the applicable law’.

25. In *Williams v. Milotin*,<sup>8</sup> the High Court of Australia, while construing the words “save as otherwise provided in this Act” stated:-

- E “....In fact the words “save as otherwise provided in this Act” are a reflexion of the words “except” – or “save” – “as hereinafter excepted”.

- F 26. Section 378 is divided into six sub-sections. Sub-section (1) provides that the state government may direct the public prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any court other than High Court or an order of acquittal passed by the court of session in revision. It opens with the words “save as otherwise provided in sub-section (2)” followed by the words
- G “and subject to the provisions of sub-sections (3) and (5)”. Sub-section (2) refers to two class of cases, namely, (i) those cases where the offence has been investigated by the Delhi Special

H <sup>8.</sup> 97 C.L.R. 465.

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Police Establishment constituted under 1946 Act and (ii) those A  
cases where the offence has been investigated by any other  
agency empowered to make investigation into an offence under  
any Central Act other than 1973 Code and provides that the  
central government may also direct the public prosecutor to  
present an appeal to the High Court from an order of acquittal. B  
Such an appeal by the central government in the aforesaid two  
types of cases is subject to the provisions contained in sub-  
section (3). Sub-section (3) provides that an appeal under sub-  
sections (1) and (2) shall not be entertained without leave of the  
High Court. Where the order of acquittal has been passed in a C  
case instituted upon complaint, sub-section (4) provides that the  
complainant may apply for special leave to appeal from the  
order of acquittal and if such leave is granted, an appeal be  
presented by him to the High Court. The limitation is prescribed  
in sub-section (5). Insofar as the cases covered by sub-section D  
(4) are concerned, where the complainant is a public servant,  
limitation prescribed is six months from the date of an order of  
acquittal and in all other cases, including the cases covered by  
sub-sections (1) and (2), a period of sixty days from the date  
of the order of acquittal. Sub-section (6) makes a provision that E  
if an application under sub-section (4) for the grant of special  
leave to appeal from an order of acquittal is refused, no appeal  
from that order of acquittal shall lie under sub-section (1) or under  
sub-section (2). We have surveyed Section 378 in its entirety  
to have complete conspectus of the provision. F

27. The opening words – “save as otherwise provided in  
sub-section (2)” – are in the nature of exception intended to  
exclude the class of cases mentioned in sub-section (2) out of  
operation of the body of sub-section (1). These words have no  
other meaning in the context but to qualify the operation of sub- G  
section (1) and take out of its purview two types of cases  
referred in sub-section (2), namely, (i) the cases in which offence  
has been investigated by the Delhi Special Police Establishment  
constituted under 1946 Act and (ii) the cases in which the  
offence has been investigated by any other agency empowered H

- A to make investigation into an offence under any Central Act other than 1973 Code. By construing Section 378 in a manner that permits appeal from an order of acquittal by the state government in every case, except two class of cases mentioned in sub-section (2), full effect would be given to the
- B exception (clause) articulated in the opening words. As noticed above, the words – “save as otherwise provided in sub-section (2)” – were added in 1973 Code; Section 417 of 1898 Code did not have these words. It is familiar rule of construction that all changes in wording and phrasing may be presumed to have
- C been deliberate and with the purpose to limit, qualify or enlarge the pre-existing law as the changes of the words employ. Any construction that makes exception (clause) with which section opens unnecessary and redundant should be avoided. If we give to Section 378, sub-sections (1) and (2), the interpretation
- D which the state government claims; we would have to say that no matter that complaint was not lodged by the state government or its officers; that investigation was not done by its police establishment; that prosecution was neither commenced nor continued by the state government; that public prosecutor was not appointed by the state government; that the
- E state government had nothing to do with the criminal case; that all steps from launching of prosecution until its logical end were taken by the Delhi Police Special Establishment and yet the state government may file an appeal from an order of acquittal under Section 378(1). That would be rendering the exception
- F (clause) reflected in the opening words – “save as otherwise provided in sub-section (2)” – redundant, meaningless and unnecessary. If the Legislature had intended to give the right of appeal under Section 378(1) to the state government in all cases of acquittal including the class of cases referred to in sub-
- G section (2), it would not have been necessary to incorporate the exception (clause) in the opening words. This objective could have been achieved without use of these words as erstwhile Section 417 of 1898 Code enabled the state government to appeal from all cases of acquittal while in two
- H types of cases mentioned in sub-section (2) thereof, appeal

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from the order of acquittal could be filed under the direction of central government as well. A

28. In *The Bengal Immunity Company Limited v. The State of Bihar and others*<sup>9</sup> Venkatarama Ayyar, J. observed:

“.....It is a well-settled rule of construction that when a statute is repealed and re-enacted and words in the repealed statute are reproduced in the new statute, they should be interpreted in the sense which had been judicially put on them under the repealed Act, because the Legislature is presumed to be acquainted with the construction which the Courts have put upon the words, and when they repeat the same words, they must be taken to have accepted the interpretation put on them by the Court as correctly reflecting the legislative mind.....” B C

29. However, if the latter statute does not use the same language as in the earlier one, the alteration must be taken to have been made deliberately. In his classic work, *Principles of Statutory Interpretation* by G.P. Singh, 12th Edition, 2010 at page 310, the following statement of law has been made: D E

“Just as use of same language in a later statute as was used in an earlier one in *pari materia* is suggestive of the intention of the Legislature that the language so used in the later statute is used in the same sense as in the earlier one, change of language in a later statute in *pari materia* is suggestive that change of interpretation is intended.” F

The learned author also refers to the observations of Lord MacMillan in *D.R. Fraser & Co. Ltd. v. The Minister of National Revenue*.<sup>10</sup> “When an amending Act alters the language of the principal Statute, the alteration must be taken to have been made deliberately”. G

9. (1955) 2 SCR 603

10. AIR 1949 PC 120.



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A 30. It is important to bear in mind that this Court in Khemraj2 , has put the following construction to Section 417 of 1898 Code:

B “10. Section 417 Criminal Procedure Code, prior to the Amendment Act XXVI of 1955 provided for presentation of appeals by the Public Prosecutor on the direction of the State Government. The 1955 Amendment introduced several changes and provided for appeals at the instance of the complainant as also on the direction of the Central Government in cases investigated by the Delhi Special Police Establishment. Further changes were introduced in the matter of appeals against acquittal under Section 378 of the Code of Criminal Procedure, 1973, with which we are not concerned in this appeal in view of the repeal provisions under Section 484(1), CrPC.

D 11. The Delhi Special Police Establishment (briefly “the Establishment”), a central police force, is constituted under the Delhi Special Police Establishment Act, 1946 (Act XXV of 1946) (briefly the Delhi Act). Under Section 2 of the Act, the Central Government may constitute a special police force, called the Delhi Special Police Establishment, for investigation of certain offences or class of offences as notified under Section 3 of the Delhi Act. Under Section 4 of the Act the superintendence of the Delhi Special Police Establishment vests in the Central Government and administration of the Special Police Establishment vests in an officer appointed by the Central Government who exercises powers exercisable by an Inspector General of Police as the Central Government may specify. Under Section 5 the powers and the jurisdiction of the Establishment can be extended by the Central Government to other areas in a State although not a Union territory. Once there is an extension of the powers and jurisdiction of the members of the Establishment, the members thereof while discharging such functions are deemed to be

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members of the police force of the area and are vested with the powers, functions and privileges and are subject to the liabilities of a police officer belonging to that force. The police officer also subject to the orders of the Central Government exercises the powers of the officer-in-charge of a police station in the extended area. Under Section 6 consent of the State Government is necessary to enable the officer of the Establishment to exercise powers and jurisdiction in any area in the State not being a Union territory or railway area.

**12.** Investigation under the Delhi Act is, therefore, a central investigation and the officers concerned are under the superintendence of the officer appointed by the Central Government. The superintendence of the Establishment is also under the Central Government. The Central Government, therefore, is concerned with the investigation of the cases by the Establishment and its ultimate result. It is in that background that in 1955, Section 417 was amended by adding sub-section (2) to the section to provide for appeal against acquittal in cases investigated by the Establishment also on the direction of the Central Government. In view of the provisions of the Delhi Act it was necessary to introduce sub-section (2) in Section 417 so that this Central agency which is solely and intimately connected with the investigation of the specified offences may also approach the Central Government for direction to appeal in appropriate cases.

**13.** This, however, does not bar the jurisdiction of the State Government also to direct presentation of appeals when it is moved by the Establishment. The Establishment can move either the Central Government or the State Government. It will be purely a matter of procedure whether it moves the State Government directly or through the Central Government or in a given case moves the Central

A Government alone. It will again be a matter of procedure when the Central Government decides to appeal it requests the State Government to do the needful through the Public Prosecutor appointed under the Code.

B **14.** The word 'also' in sub-section (2) of Section 417 is very significant. This word seems not to bar the jurisdiction of the State Government to direct the Public Prosecutor to present an appeal even in cases investigated by the Establishment. Sub-section (1) of Section 417 is in general terms and would take in its purview all types of cases since the expression used in that sub-section is "in any case". We do not see any limitation on the power of the State Government to direct institution of appeal with regard to any particular type of cases. Sub-section (1) of Section 417 being in general terms is as such of wider amplitude. Sub-section (2) advisedly uses the word 'also' when power is given to the Central Government in addition to direct the Public Prosecutor to appeal."

E **31.** The Parliament in 1973 Code re-enacted the provision for appeal from order of acquittal with certain modifications. It changed the language by addition of words – "save as otherwise provided in sub-section (2)". The alteration in language by addition of these words gives rise to an inference that the Legislature made conscious changes in Section 378 (1973 Code). We are afraid, the addition of words in Section 378(1) by way of exception (clause) cannot be set at naught by giving same interpretation which has been given to Section 417 (1898 Code). As a matter of fact, in *Khemraj*<sup>2</sup> this Court did notice that changes have been introduced in the matter of appeals against acquittal under Section 378 of the 1973 Code, but the Court did not deal with these changes as it was not concerned with that provision. In our opinion, the decision of this Court in *Khemraj*<sup>2</sup> cannot be applied as the language used in Section 417 (1898 Code) and Section 378 (1973 Code) is not in *pari materia*.

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32. Much emphasis, however, has been placed on the word “also” in sub-section (2) of Section 378 by learned senior counsel for the state government. It has been urged that by use of the word “also”, competence of the state government in directing the public prosecutor to file an appeal from an order of acquittal in the two types of cases covered by sub-section (2) is not taken away and rather the word “also” suggests that central government may also direct the public prosecutor to file an appeal from an order of acquittal in the class of cases mentioned in sub-section (2). Does the word “also” carry the meaning as contended by the learned senior counsel for the state government? One of the rules of construction of statutes is that language of the statute should be read as it is and any construction that results in rejection of words has to be avoided; the effort should be made to give meaning to each and every word used by the Legislature. However, such rule of construction of statutes is not without exceptions. In *Stone v. Yeovil Corp.*,<sup>11</sup> Brett J. observed :

“The word “such” in the second branch of that clause would seem at first sight to apply to lands purchased or taken; but, if so read, it is insensible. It is a canon of construction that, if it be possible, effect must be given to every word of an Act of Parliament or other document; but that, if there be a word or a phrase therein to which no sensible meaning can be given, it must be eliminated. It seems to me, therefore, that the word “such” must be eliminated from this part of the clause.”

Archibald, J. concurred with Brett J. thus :

“But I agree with my Brother Brett that it is a true canon of construction, that, where a word is found in a statute or in any other instrument or document which cannot possibly have a sensible meaning, we not only may, but must, eliminate it in order that the intention may be carried out.”

11. (1875-76) L.R. 1 CPD 691.

A 33. In *Salmon v. Duncombe and Others*,<sup>12</sup> Privy Council speaking through Lord Hobhouse stated :

B “It is, however, a very serious matter to hold that when the  
main object of a statute is clear, it shall be reduced to a  
nullity by the draftsman’s unskilfulness or ignorance of law.  
C It may be necessary for a Court of Justice to come to such  
a conclusion, but their Lordships hold that nothing can justify  
it except necessity or the absolute intractability of the  
language used. And they have set themselves to consider,  
first, whether any substantial doubt can be suggested as  
to the main object of the legislature; and, secondly, whether  
the last nine words of sect. 1 are so cogent and so limit  
the rest of the statute as to nullify its effect either entirely  
or in a very important particular.”

D 34. The main object and legislative intent by the opening  
words – “save as otherwise provided in sub-section (2)” – in  
sub-section (1) of Section 378 being clear i.e., to fetter the  
general power given to the state government in filing appeal  
from the order of acquittal in two types of cases stated in sub-  
E section (2), the use of word “also” in sub-section (2) does not  
make any sense. The word “also” in sub-section (2), if construed  
in the manner suggested by the state government, may result  
in reducing the opening words in sub-section (1) a nullity and  
will deny these words their full play. Since exception (clause)  
F in the beginning of sub-section (1) has been expressly added  
in Section 378 and it is not possible to harmonise the word  
“also” occurring in sub-section (2) with that, it appears to us that  
no sensible meaning can be given to the word “also” and the  
said word has to be treated as immaterial. We are not oblivious  
G of the fact that to declare “also” enacted in sub-section (2)  
immaterial or insensible is not very satisfactory, but it is much  
more unsatisfactory to deprive the words – “save as otherwise  
provided in sub-section (2)” – of their true and plain meaning.  
In order that the exception (clause) expressly stated in the

H <sup>12</sup>. (1886) 11 AC 627.

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opening words of sub-section (1) might be preserved, it is necessary that word "also" in sub-section (2) is treated as immaterial and we hold accordingly. A

35. The phrase "in any case" in sub-section (1) of Section 378, without hesitation, means "in all cases", but the opening words in the said Section put fetters on the state government in directing appeal to be filed in two types of cases mentioned in sub-section (2). B

36. Section 2(u) of 1973 Code defines "public prosecutor" which means any person appointed under Section 24 and includes any person acting under the directions of a public prosecutor. Section 24 reads as follows: C

"S.24. - *Public Prosecutors.*-(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be. D E

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district, or local area. F

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district: G

Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district. H

(4) The District Magistrate shall, in consultation with the

A Sessions Judge, prepare a panel of names of persons, who are, in his opinion, fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

B (5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4).

C (6) Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

D Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government, may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).

E Explanation.—For the purpose of this sub-section,—

F (a) “regular Cadre of Prosecuting Officers” means a Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post;

G (b) “Prosecuting Officer” means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, an Additional Public Prosecutor or an Assistant Public Prosecutor under this Code.]

H (7) A person shall be eligible to be appointed as a Public

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Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6), only if he has been in practice as an advocate for not less than seven years. A

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor. B

Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section. C

(9) For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate." D E

37. A perusal of Section 24 would show that the central government appoints its public prosecutors for conducting prosecution, appeal or other proceedings on its behalf and a state government appoints its public prosecutors in conducting prosecution, appeal or other proceedings on its behalf. One has no control over the other. The central government or the state government, as the case may be, may appoint a special public prosecutor for the purpose of any case or class of cases. Under Section 378(1) the state government may direct its public prosecutor to file an appeal from an order of acquittal while under Section 378(2) the central government may direct its public prosecutor to file an appeal from an order of acquittal. The public prosecutor, thus, has to be associated in an appeal F G

H



A from an order of acquittal. The 1946 Act provides for  
 constitution of a special police establishment for investigation  
 of certain offences or class of offences as notified under  
 Section 3 of the 1946 Act. A close look to the provisions of  
 1946 Act would show that investigation thereunder is a central  
 B investigation and the officers concerned are under the  
 superintendence of the officer appointed by the central  
 government. It is the central government that has the  
 superintendence over Delhi Special Police Establishment.  
 What is, therefore, important to notice is that it is the central  
 C government which is concerned with the investigation of the  
 case by Delhi Special Police Establishment and its ultimate  
 result. It is for this reason that sub-section (2) of Section 378  
 provides for appeal against acquittal in two types of cases  
 mentioned therein on the direction of the central government  
 D by its public prosecutor. The opening words in sub-section (1),  
 thus, qualify the general power given to the state government  
 in filing appeal from an order of acquittal so that the central  
 agency, which is solely and intimately connected with the  
 investigation of cases referred in sub-section (2), may approach  
 the central government for direction to appeal in appropriate  
 E cases.

38. The decision of this Court in Eknath Shankarrao  
 Mukkawar<sup>1</sup>, has been referred to and relied upon by Mr. Ram  
 Jethmalani as well as Mr. L. Nageshwar Rao. We may  
 F appropriately consider the said decision now. In Eknath  
 Shankarrao Mukkawar<sup>1</sup>, the construction of Section 377  
 (appeal against inadequacy of sentence) fell for consideration.  
 Section 377 (1) and (2) of 1973 Code with which this Court was  
 concerned in Eknath Shankarrao Mukkawar<sup>1</sup>, reads as follows:-

G "S.- 377.- *Appeal by the State Government against*  
*sentence.*- (1) Save as otherwise provided in sub-section  
 (2), the State Government may, in any case of conviction  
 on a trial held by any court other than a High Court, direct  
 H the Public Prosecutor to present an appeal to the High

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Court against the sentence on the ground of its inadequacy. A

(2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy." B C

This Court with reference to the aforesaid provision held:

"10. It is true that Section 378(2) follows the pattern of Section 417(2) of the old Code and the right to appeal is conferred upon both the State Government and the Central Government in express terms in Section 378(2). It is clear that the legislature has maintained a water-tight dichotomy while dealing with the matter of appeal against inadequacy of sentence. We agree that in the absence of a similar word "also" in Section 377(2) it is not possible for the court to supply a casus omissus. The two sections, Section 377 and Section 378 CrPC being situated in such close proximity, it is not possible to hold that omission of the word "also" in Section 377(2) is due to oversight or per incuriam. D E F

11. Section 377 CrPC introduces a new right of appeal which was not earlier available under the old Code. Under sub-section (1) of Section 377 CrPC the State Government has a right to appeal against inadequacy of sentence in all cases other than those referred to in sub-section (2) of that section. This is made clear under Section 377(1) by its opening clause "save as otherwise provided in sub-section (2)". Sub-section (2) of Section 377, on the other hand, confers a right of appeal on the Central Government G H

A against a sentence on the ground of its inadequacy in two types of cases:

B (1) Those cases where investigation is conducted by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946.

(2) Those other cases which are investigated by any other agency empowered to make investigation under any Central Act not being the Code of Criminal Procedure.

C 12. There is no difficulty about the first type of cases which are investigated by the Delhi Special Police Establishment where, certainly, the Central Government is the competent authority to appeal against inadequacy of sentence."

D 39. The essence in a decision is its ratio and not every observation found therein, as stated by this Court in *State of Orissa v. Sudhansu Sekhar Misra and others*<sup>13</sup>. The ratio of decision in *Eknath Shankarrao Mukkawat*<sup>1</sup> is that the Legislature has maintained a watertight dichotomy in the matter of appeal against inadequacy of sentence; the competent authority to appeal against inadequacy of sentence in two types of cases referred to in sub-section (2) of Section 377 is the central government. However, Mr. L. Nageshwar Rao submitted that in *Eknath Shankarrao Mukkawat*<sup>1</sup>, in the absence of use of word "also" in sub-section (2) of Section 377, it was held by this Court that the state government was incompetent to file an appeal in a case falling under Section 377(2). But now the lacuna pointed out by this Court has been remedied; Parliament amended by Act 45 of 1978 to include the word "also" therein and bring the same in pari materia with the provisions of Section 378(2) and the Statement of Objects and Reasons for the said amendment makes it clear that the state government is also competent to file an appeal in a case falling under Section 377(2). We are not persuaded by the submission of Mr. L. Nageshwar Rao for more than one reason. In the first place,

H <sup>13</sup>. AIR 1968 SC 647.

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the observations in Eknath Shankarrao Mukkawar<sup>1</sup>, in relation A  
to Section 378 do not operate as binding precedent as  
construction of Section 378 was neither under consideration nor  
in issue in that case. Secondly, and more importantly, although  
sub-section (2) of Section 377 came to be amended by Act B  
45 of 1978 to include the word "also" therein, but the Statement  
of Objects and Reasons relating to that amendment is of no  
relevance insofar as construction of Section 378 (1) and (2) is  
concerned. Insofar as Section 378 is concerned, the word "also"  
occurring in sub-section (2) cannot be accorded a meaning that C  
would result in wiping out the effect of controlling words in sub-  
section (1) - "save as otherwise provided in sub-section (2)" –  
which are indicative of legislative intent to exclude two types  
of cases mentioned in sub-section (2) out of operation of the  
body of sub-section (1).

40. In our opinion, the Legislature has maintained a D  
mutually exclusive division in the matter of appeal from an order  
of acquittal inasmuch as the competent authority to appeal from  
an order of acquittal in two types of cases referred to in sub-  
section (2) is the central government and the authority of the E  
state government in relation to such cases has been excluded.  
As a necessary corollary, it has to be held, and we hold, that  
the State Government (of Bihar) is not competent to direct its  
public prosecutor to present appeal from the judgment dated  
December 18, 2006 passed by the Special Judge, CBI (AHD), F  
Patna.

41. In view of what we have discussed above, it is not  
necessary to consider the contention of Mr. Ram Jethmalani  
founded on the proviso to Article 162 of the Constitution that in  
case of conflict of exercise of executive powers by the state G  
government and the central government, the decision of the  
latter shall prevail.

42. For the aforesaid conclusions, the reasons given by  
the High Court are not correct and the impugned order cannot H  
be sustained.

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A 43. The result is, both appeals are allowed, the order dated September 20, 2007 passed by the High Court is set aside and the Govt. Appeal No. 1 of 2007 – *State of Bihar v. Lalu Prasad and others* – presented before the High Court of Judicature at Patna is rejected as not maintainable.

B K.K.T. Appeals allowed.