PETITIONER:
A. R. ANTULAY

Vs.

RESPONDENT:
RAMDAS SRINIWAS NAYAK AND ANOTHER

DATE OF JUDGMENT16/02/1984

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
PATHAK, R.S.
REDDY, O. CHINNAPPA (J)
SEN, A.P. (J)
ERADI, V. BALAKRISHNA (J)

CITATION:
1984 AIR 718 1984 SCR (2) 914
1984 SCC (2) 500 1984 SCALE (1)239
CITATOR INFO :
R 1984 SC 991 (3,4)
RF 1986 SC2045 (36)
R 1987 SC 877 (14)
D 1988 SC1531 (192)
R 1992 SC 1 (62)
RF 1992 SC 248 (44)
RF 1992 SC 604 (121)
RF 1992 SC1701 (7,8,55)

ACT:
Interpretation of Statutes-Construction of Penal Laws-Rules for.
Criminal Procedure Code, 1973 (Act II of 1974) Sections 4, 6, 190, 200, 202, 238 to 250-Special Judge, taking cognizance of offence under the Prevention of Corruption Act, 1947 (Act 2 of 1947) on a private complaint in respect of the said offences committed by Public Servants, legality of-Criminal Law Amendment Act (XLVI of 1952) Section 6 to 8, Scope of-Court of Special Judge is a Court of Original Criminal Jurisdiction and shall have all powers except those specifically excluded. Legislation by in corporation, doctrine applied.

HEADNOTE:
Respondent Nayak filed a private complaint against the appellant, alleging that the appellant has, as a public servant committed certain offences under ss. 5, 5A and 7A of the Prevention of Corruption Act (Act II of 1947), and section 161-165 of the Indian Penal Code before the learned Special Judge, Shri P. S. Bhutta. The Special Judge took cognizance of the said offences and adjourned the case to October 12, 1982 on which date, the appellants' counsel moved an application questioning the jurisdiction of the court on two specific counts: (i) that the Court of special Judge act up under s. 6 of the Criminal Law Amendment Act, 1952 ('1952 Act' for short) cannot take cognizance of any of the offences enumerated in s. 6 (1) (a) & (b) upon a private complaint of facts constituting the offence and (ii) that where there are more special Judges than one for any area,

in the absence of a specification by the State Government in this behalf, specifying the local area over which each special Judge would have jurisdiction, the special Judge (Mr. Bhutta) had no jurisdiction to take cognizance of the offences and try the case. The learned special Judge rejected both the contentions. The appellant filed Criminal Revision Application No. 510 of 1982 in the Bombay High Court. On a reference made by the learned Single Judge, this revision application was heard by a Division Bench of the High Court. The learned Judges by two separate but concurring judgments held that special Judge is competent and is entitled to take cognizance of offences set out in s. 6 (1) (a) & (b) upon a private complaint of facts constituting the offence and consequently rejected the first contention. In reaching this conclusion the learned Judges held that a prior investigation under s. 5A of the Prevention of Corruption Act, 1947 ('1947 Act' for short) by a police officer of the designated rank is not a condition precedent to
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the special Judge taking cognizance of the offences under s. 8 (1) of 1952 Act, and taking notice of the Notification dated January 15, 1983 issued by the Maharashtra State under sub-s. (2) of s. 7 of 1952 Act, specifying Shri R B. Sule, Special Judge for Greater Bombay for trying the Special Case No. 24 of 1982 rejected the second contention and therefore, the revision petition as well. Hence this appeal by special leave.

Dismissing the appeal, the Court,

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HELD: 1. It is a well established cannon of construction that the court should read the section as it is and cannot rewrite it to suit its convenience; nor does any cannon of construction permit the court to read the section in such manner as to render it to some extent otiose. [936D-E]

2:1. A private complaint filed in respect of the offences committed by public servants as enumerated in s. 6 (1) and (b) of the Criminal Law (Amendment) Act, 1952 can be entertained by the special Judge and taken cognizance of. The same is perfectly legal. [936B]

State of Tamil Nadu v. V. Krishnaswami Naidu & Anr. [1979] 3 S.C.R. 928; Parasnath Pande & Anr. v. State, A.I.R. 1962 Bom 205; Jagdish Prasad Verma v. The State, A.I.R. 1966 Patna 15; referred to.

2:2. It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The Scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus Standi of the complaint is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complaint, by necessary implication the general principle gets excluded by such statutory provision. [923D-F]

While s. 190 of the Code of Criminal Procedure permits anyone to approach the Magistrate with complaint, it does not prescribe any qualification the complaint is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complaint is contemplated specific provisions have been made such as to be found in

ss. 195 & 199 of the Cr. P. C. These specific provisions clearly indicate that in the absence of any such statutory provisions, a locus standi of a complaint is a concept foreign to criminal jurisprudence. In other words the principle that anyone can set or put the criminal law in motion remains intact unless contraindicated by a statutory provision. [923G-H; 924A]

This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force (See s. 2 (n) Cr. P. C.) is not merely an offence committed in relation to the person who suffers harm but is also an offence
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against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the state representing the people which would exclude any element of private vendatta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straight jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception. To hold that such an exception exists that a private complaint for offences of corruption committed by public servant is not maintainable, the court would require an unambiguous statutory provision and a tengled web of argument for drawing a far fetched implication, cannot be a substitute for an express statutory provision. [924A-E]

It is no answer to this fairly well-established legal position that for the last 32 years no case has come to the notice of the court in which cognizance was taken by a special Judge in a private complaint for offences punishable under the 1947 Act. If something that did not happen in the past is to be the sole reliable guide so as to deny any such thing happening in the future, law would be rendered static and slowly whither away. [925C]

The Scheme underlying Code of Criminal Procedure clearly reveals that anyone who wants to give information of an offence may either approach the Magistrate or the officer in charge of a Police Station. If the offence complained of is a non-cognizable one, the Police Officer can either direct the complaint to approach the Magistrate or he may obtain permission of the Magistrate and investigate the offence. Similarly any one can approach the Magistrate with a complaint and even if the offence disclosed is a serious one, the Magistrate is competent to take cognizance of the offence and initiate proceedings. It is open to the Magistrate but not obligatory upon him to direct investigation by police. Thus two agencies have been set up for taking offences to court. One would therefore, require a cogent and explicit provision to hold that s. 5A displaces this scheme. [925D-F]

2:3. Section 8(1) of the 1952 Act which confers power on the special Judge to take cognizance of offences set out in s. 6(1) (a) (b) does not directly or indirectly, expressly or by necessary implication indicate that the only method of taking cognizance is the police report under s.

173(2) of the Code of Criminal Procedure submitted by a police officer of the designated rank or permissible rank as set out in s. 5A of the Prevention of Corruption Act, 1947. [932G-H]

2:4. In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure. In other words, Code of Criminal Procedure
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is the parent statute which provides for investigation, inquiring into and trial of cases by criminal courts of various designations. [935A-B]

2:5. If Court of special Judge is a criminal court, which atleast was not disputed, and jurisdiction is conferred upon the presiding officer of the Court of special Judge to take cognizance of offences simultaneously excluding one out of the four recognised modes of taking cognizance, namely, upon commitment of by a Magistrate as set out in s. 193, the only other method by which the Court of special Judge can take cognizance of an offence for the trial of which it was set up, is any one of the remaining three other methods known to law by which a criminal court would take cognizance of an offence not as an idle formality but with a view to initiating proceedings and ultimately to try the accused. If the language employed in s. 8(1) is read in this light and in the background that a special Judge may take cognizance of offence without the accused being committed to him for trial, it necessarily implies that the Court of special Judge is armed with power to take cognizance without commitment by the Magistrate. Thus the special Judge can take cognizance of offences enumerated in s. 6(1) (a) and (b) upon a complaint or upon a police report or upon his coming to know in some manner of the offence having been committed. The provisions of the Criminal Procedure Code have to be applied to the Court of special Judge in such manner and to such extent as to retain the separate identity of the Court of special Judge and not that he must either fulfil a role of a Magistrate or a Session Court. Section 8(1) of 1952 Act says that the special Judge shall take cognizance of an offence and shall not take it on commitment of the accused. The Legislature provided for both the positive and the negative. It positively conferred power on special Judge to take cognizance of offences and it negatively removed any concept of commitment. It is not possible there fore, to read s. 8(1) that cognizance can only be taken upon a police report and any other view will render the safeguard under s. 5A illusory. [935D-F; 936B; C; E]

2:6. Section 5A is a safeguard against investigation, by police officers lower in rank than designated officer, of offences against public servants. This has no hearing either directly or indirectly with the mode and method of taking cognizance or trial by the special Judge. Therefore, an investigation under s. 5A is not a condition precedent before cognizance can be taken of offences triable by a special Judge, who acquires power under s. 8(1) to take cognizance of offences enumerated in s. 6(1) (a) and (b) of the Prevention of Corruption Act, with this limitation alone that it shall not be upon commitment to him by the Magistrate. [941A-B]

2:7. Once s. 5A is out of the way in the matter of taking cognizance of offences committed by public servants

by a special Judge, the power of the special Judge to take cognizance of such offences conferred by s. 8(1) with only one limitation, in any one of the known methods of taking cognizance of offences by courts of original jurisdiction remains undented. One such statutorily recognised well-known method of taking cognizance of offences by a court competent to take cognizance is upon receiving a comp-
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laint of facts which constitutes the offence. And s. 8(1) says that the special Judges has the power to take cognizance of offences enumerated in s. 6(1) (a) & (b) and the only mode of taking cognizance excluded by the provision is upon commitment. It therefore, follows that the special Judge can take cognizance of offences committed by public servants upon receiving a complaint of facts constituting such offences [941F-H]

There is no warrant for an approach that on receipt of the complaint, the special Judge must direct an investigation under s. 5A. [942C]

H. N. Rishbud & Inder Singh v. State of Delhi, [1955] S.C.R. 1150; State of Madhya Pradesh v. Mubarak All; [1959] Supp. 2 S.C.R. 201; State of Uttar Pradesh v. Bhagwant Kishore Joshi; [1964] 3 S.C.R. 71; S. N. Bose v. State of Bihar; [1968] 3 S.C.R. 563; P. Sirajuddin etc. v. State of Madras etc.; [1976] 3 S.C.R. 931; Union of India v. Madhya Bhara; A.I.R. 1957 Madhya Bharat, 43 Taylor v. Taylor, (1875-76) 1 Ch. Divn. 426; Nazir Ahmed v. King Emperor; A. I. R. 1936 P. C. 253(2) Chettiam Vettil Ammad and Anr. v. Taluk Land Board & Others; [1979] 3 S.C.R. 839; referred to.

2:8. In order to give full effect to s. 8(1), the only thing to do is to read special Judge in s. 238 to 250 wherever the expression 'Magistrate' occurs. This is what is called legislation by incorporation. Similarly, where the question of taking cognizance arises, it is futile to go in search of the fact whether for purposes of s. 190 which conferred power on the Magistrate to take cognizance of the offence, special Judge is a Magistrate? What is to be done is that one has to read the expression special in place of Magistrate, and the whole thing becomes crystal clear. [945E-F]

2:9. The Legislature wherever it found the grey area clarified it by making specific provision such as the one in sub-s. (1) of s.8 and to leave no one in doubt further provided in sub-s. (3) that all the provisions of the Code of Criminal Procedure shall so far as they are not inconsistent with the Act apply to the proceedings before a special Judge. At the time when the 1952 Act was enacted what was in operation was the code of Criminal Procedure, 1898. It did not envisage any Court of a special Judge and the Legislature never wanted to draw up an exhaustive Code of Procedure for this new criminal court which was being set up. Therefore, it conferred power (taking cognizance of offences), prescribed procedure (trial of warrant cases by a Magistrate), indicated authority to tender pardon (s.338) and then after declaring its status as comparable to a Court of Sessions proceeded to prescribe that all provisions of the Code of Criminal Procedure will apply in so far as they are not inconsistent with the provisions of the 1952 Act. The net outcome of this position is that a new court of original jurisdiction was set up and whenever a question arose as to what are its powers in respect of specific questions brought before it as court of original criminal Jurisdiction, it had to refer to the Code of Criminal Procedure undaunted by any designation clap-trap. When taking cognizance, a Court of special Judge enjoyed the

powers under s. 190. When trying cases, it is obligatory to follow the procedure for trial of warrant cases, by a Magistrate though as any by way of status it was equated with a Court of Sessions. [945F-H; 946A-D]
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2:10. The deeming fiction enacted in s.8 (3) is confined to the limits of its requirement in that the person conducting a prosecution before a special Judge is to be deemed to be a public prosecutor. On the contrary, conscious of the position that a private complaint may be filed before a special Judge who may take cognizance of the offences on such a complaint, the Legislature wanted to clothe the person in charge of the prosecution before a special Judge with the status of a public prosecutor for the purposes of the Code of Criminal Procedure. [949A-C]

Shwe Pru v. The King; A. I. R. 1941 Rangoon 209; Amlesh Chandra & Ors. v. The state, A.I.R. 1952 Cal. 481; Raj Kishore Rabidas v. The State; A.I.R. 1969 Cal 321; Re. Bhupalli Malliah and Ors. A.I.R. 1959 A.I.R. A.P.477; Medichetty Ramakistiah and Ors. v. State of Andhra Pradesh; A.I.R. 1955 A.P. 659; referred to.

2:11. It is not a condition precedent to the issue of process that the court of necessity must hold the inquiry as envisaged by s.202 or direct investigation as therein contemplated. The power to take cognizance without holding inquiry or directing investigation is implicit in s.202 of the Code. Therefore the matter is left to the judicial discretion of the Court whether on examining the complainant and the witnesses if any as contemplated by s.200 to issue process or to postpone the issue of process. This discretion which the court enjoys cannot be circumscribed or denied by making it mandatory upon the court either to hold the inquiry or direct investigation. Such an approach would be contrary to the statutory provision. Therefore, there is no merit in the contention that by entertaining a private complaint, the purpose of speedy trial would be thwarted or that a pre-process safeguard would be denied. Further when cognizance is taken on a private complaint or to be precise otherwise than on a police report, the special Judge has to try the case according to the procedure prescribed for trial of warrant cases instituted otherwise than on police report by a Magistrate (ss. 252 to 258 of 1898 Code of Criminal Procedure). This procedure provides more adequate safeguard than the investigation by police officer of designated rank and therefore, search for fresh or additional safeguard is irrelevant. [951A-F; H]

2:12. Prior to 1955, the procedure for trial of warrant cases instituted on a police report and otherwise than on police report was the same and the Act of 1952 set up the court of special Judge to try cases under the 1947 Act and the trial was to be held according to the procedure prescribed for trial of a warrant case. It necessarily follows that between 1952 to 1955, the Court of special Judge would have followed the same procedure for trial of a case instituted upon a police report or otherwise than on a police report. If in 1955, the Legislature prescribed two different procedures and left the one for trial of warrant cases instituted otherwise than on police report intact and the position remained unaltered even after the introduction of s.7A, it is not suggestive of such a grave consequence that a private complaint is not maintainable.[953A-C]

3:1. The entire argument inviting the court to specifically decide whether a court of a special Judge for a certain purpose is a court o Magis-
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trate or court of Sessions revolves round a mistaken belief that a special Judge has to be one or the other, and must fit in the slot of a Magistrate or a Court of Sessions. Such an approach would strangulate the functioning of the court and must be eschewed. Such of all embellishment, the Court of a special Judge is a Court of original criminal jurisdiction. As a court of original criminal jurisdiction in order to make it functionally oriented some powers were conferred by the statute setting up the court. Except those specifically conferred and specifically denied, it has to function as a court of original criminal jurisdiction not being hide bound by the terminological status description of Magistrate or a Court of Sessions. Under the Code it will enjoy all powers which a court of original criminal jurisdiction enjoys save and except the ones specifically denied. [946C-E]

3:2. The Court of a special Judge, once created by an independent statute, has been brought as a court of original criminal jurisdiction under the High Court because s. 9 confers on the High Court all the powers conferred by Chapter XXXI and XXXIII of the Code of Criminal Procedure, 1898 on a High Court as if the court of Special Judge were a Court of Sessions trying cases without a jury within the local limit of the jurisdiction of the High Court. Therefore is no gainsaying the fact that a new criminal court with a name, designation and qualification of the officer eligible to preside over it with powers specified and the particular procedure which it must follow has been set up under the 1952 Act. The Court has to be treated as a court of original criminal jurisdiction and shall have all the powers as any court of original criminal jurisdiction has under the Code of Criminal Procedure except those specifically excluded. [946G-H; 947A-B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : CRIMINAL APPEAL NO. 247 OF 1983

From the judgment and order dated 7.3. 83 of the Bombay High Court in Criminal Revision Application No. 510 of 1982.

Dr. L. M. Singhvi, Dalveer Bhandari, A. M. Singhvi, S. S. Parkar, H. Bhardwaj, U. N. Bhandari, H. M. Singh, Ranbir Singh, S. G. Hasnain, Shamrao Samant, and HA Sekhar, for the appellant.

Ram Jethmalani, PR Vakil, Ms. Rani Jethmalani, Mukesh Jethmalani, OP Malviya, Shailendra Bhardwaj, Harish Jagtlani for the respondents.

The Judgment of the court was delivered by

DESAI, J. This appeal by special leave is directed against the decision of a Division Bench of Bombay High Court in Criminal Revision Application No. 510 of 1982, which was preferred by the appellant against the rejection of his application by the learned special Judge as per his order dated October 20, 1982.

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The various stages through which Special Case No. 24 of 1982 progressed upto and inclusive of October 18, 1982 have been set out in our Judgment rendered today in cognate Criminal Appeal No. 356 of 1983 and they need not be recapitulated here. After the learned special Judge Shri P. S. Bhutta took cognizance of the offences upon a complaint of Ramdas Sriniwas Nayak, the first respondent (Original complainant), the case was adjourned to October 18, 1982 for recording the evidence of the complainant. On that day,

learned counsel appearing for the appellant in the trial court moved an application questioning the jurisdiction of the court on two specific counts; (i) that the Court of special Judge set up under Sec. 6 of the Criminal Law Amendment Act, 1952 ('1952 Act' for short) cannot take cognizance of any of the offences enumerated in Sec. 6 (1) (a) and (b) upon a private complaint of facts constituting the offence and (ii) that where there are more special Judges than one for any area, in the absence of a specification by the State Government in this behalf, specifying the local area over which each special Judge would have jurisdiction, the special Judge (Mr. Bhutta) had no jurisdiction to take cognizance of the offences and try the case. The learned special Judge rejected both the contentions. The appellant filed Criminal Revision Application No. 510 of 1982 in the Bombay High Court. On a reference made by the learned Single Judge, this revision application was heard by a Division Bench of the High Court. The learned Judges by two separate but concurring judgments held that special Judge is competent and is entitled to take cognizance of offences set out in Sec. 6 (1) (a) and (b) upon a private complaint of facts constituting the offence and consequently rejected the first contention. In reaching this conclusion the learned Judges held that a prior investigation under Sec. 5 A of the Prevention of Corruption Act, 1947 ('1947 Act' for short) by a police officer of the designated rank is not a condition precedent to the special Judge taking cognizance of the offences under Sec. 8 (1) of 1952 Act. The learned Judges also held that by the time the matter was heard by them, the Government of Maharashtra had issued a notification dated January 15, 1983, under sub-s. (2) of Sec. 7 of 1952 Act specifying Shri R. B. Sule, special Judge for Greater Bombay for trying Special Case No. 24 of 1982, After taking note of this notification and the statement of Shri P. R. Vakil, learned counsel for the respondent, the second contention of the learned counsel for the appellant was also rejected. The learned Judges accordingly rejected the revision petition. Hence this appeal by special leave.

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On behalf of the appellant, the pivotal point canvassed was that a private complaint cannot be entertained by the special Judge in respect of all or any of the offences enumerated in Sec. 6 (1) (a) and (b) of the 1952 Act. In support of this submission, it was very vehemently urged that the provision contained in Sec. 5 A of the 1952 Act has been repeatedly held to be mandatory in character and if its non-compliance is brought to the notice of the superior court at a stage anterior to the conclusion of the trial the proceeding would be vitiated. It was urged that Sec. 5A incorporates a safe guard against frivolous, speculative and tendentious prosecutions and therefore, it must not only held to be mandatory but it must be so interpreted as to make an investigation under Sec. 5A a condition precedent to the taking of the cognizance of an offence or offences committed by a public servant by the special Judge. A number of subsidiary points were submitted in support of this principal contention which need not be enumerated, but would be dealt with in the course of the judgment.

On behalf of the respondent-complainant it was urged that it is one of the fundamental postulates of the administration of criminal justice that anyone can set the criminal law into motion unless the statute enacting the offence makes a special provision to the contrary both with regard to the locus standi of the complainant, the manner

and method of investigation and the person competent to investigate the offence, and the court competent to take cognizance. It was submitted that in Sec. 8 (1) which specifically confers power on the special Judge to take cognizance of an offence without commitment of the case to it there is nothing which would preclude a complainant from filing a private complaint or which would deny jurisdiction of the special Judge to take cognizance of the offences on such a private complaint. It was submitted that even if Sec. 5A is treated as mandatory and incorporates a safeguard, it is a safeguard against investigation of offences committed by a public servant by police officers of lower rank and nothing more. It was lastly urged that on a comprehensive view of the provisions of 1952 Act, it does not transpire that any of its provisions and more specifically Sec. 5A denies the power to the special Judge to take cognizance of offences enumerated in Sec. 6 (1) (a) and (b) upon a private complaint. It was also contended that before taking such a drastic view of blocking the access to justice by holding that a private complaint cannot be entertained by the special Judge, the court must insist on specific and positive provision of such incontrovertible character as to supplant the scheme of Code of Criminal Procedure which permits two
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parallel and independent agencies to take criminal offences to court. An incidental submission was that the Legislature clearly expresses itself when it requires a certain qualification for filing the complaint, and to specify a certain court competent to take cognizance and the method and manner of taking cognizance of those specified offences. To substantiate this submission our attention was drawn to a number of statutes which we will presently mention.

The contention put in the forefront was that Sec. 5A upon its true interpretation and keeping in view that it enacts a mandatory safeguard in favour of public servants, investigation therein contemplated is a condition precedent to taking cognizance of offences enumerated in Sec. 6 (1) (a) and (b) and as a corollary a private complaint would not lie and cannot be entertained by a special Judge under Sec. 8 (1) of 1952 Act. The contention may be examined on principle and precedent.

It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statue creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision Numerous statutory provisions, can be referred to in support of this legal position such as (i) Sec. 187 A of Sea Customs Act, 1878 (ii) Sec. 97 of Gold Control Act, 1968 (iii) Sec. 6 of Import and Export Control Act, 1947 (iv) Sec. 271 and Sec. 279 of the Income Tax Act, 1961 (v) Sec. 61 of the Foreign Exchange Regulation Act, 1973,(vi) Sec. 621 of the Companies Act, 1956 and (vii) Sec. 77 of the Electricity Supply Act. This list is only illustrative and not exhaustive. While Sec. 190 of the Code of Criminal Procedure permits anyone to approach the

Magistrate with a complaint, it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Secs. 195 to 199 of the Cr. P. C. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus

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standi of a complainant is a concept foreign to criminal jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i. e. an act or omission made punishable by any law for the time being in force (See Sec. 2 (n), Cr. P. C.) is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendatta or vengeance. If such is the public policy underlying penal statutes who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straight jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception. To hold that such an exception exists that a private complaint for offences of corruption committed by public servant is not maintainable, the court would require an unambiguous statutory provision and a tangled web of argument for drawing a far fetched implication, cannot be a substitute for an express statutory provision. In the matter of initiation of proceeding before a special Judge under Sec. 8 (1), the Legislature while conferring power to take cognizance had three opportunities to unambiguously state its mind whether the cognizance can be taken on a private complaint or not. The first one was an opportunity to provide in Sec. 8 (1) itself by merely stating that the special Judge may take cognizance of an offence on a police report submitted to it by an investigating officer conducting investigation as contemplated by Sec. 5A. While providing for investigation by designated police officers of superior rank, the Legislature did not fetter the power of special Judge to take cognizance in a manner otherwise than on police report. The second opportunity was when by Sec. 8 (3) a status of a deemed public prosecutor was conferred on a private complainant if he chooses to conduct the prosecution. The Legislature being aware of a provision like the one contained in Sec. 225 of the Cr. P. C., could have as well provided that in every trial before a special Judge the prosecution shall be conducted by a Public Prosecutor, though that

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itself would not have been decisive of the matter. And the third opportunity was when the Legislature while prescribing the procedure prescribed for warrant cases to be followed by special Judge did not exclude by a specific provision that

the only procedure which the special Judge can follow is the one prescribed for trial of warrant cases on a police report. The disinclination of the Legislature to so provide points to the contrary and no canon of construction permits the court to go in search of a hidden or implied limitation on the power of the special Judge to take cognizance unfettered by such requirement of its being done on a police report alone. In our opinion, it is no answer to this fairly well-established legal position that for the last 32 years no case has come to the notice of the court in which cognizance was taken by a special Judge in a private complaint for offences punishable under the 1947 Act. If something that did not happen in the past is to be the sole reliable guide so as to deny any such thing happening in the future, law would be rendered static and slowly whither away.

The scheme underlying Code of Criminal Procedure clearly reveals that anyone who wants to give information of an offence may either approach the Magistrate or the officer in charge of a Police Station. If the offence complained of is a non-cognizable one, the Police Officer can either direct the complainant to approach the Magistrate or he may obtain permission of the Magistrate and investigate the offence. Similarly anyone can approach the Magistrate with a complaint and even if the offence disclosed is a serious one, the Magistrate is competent to take cognizance of the offence and initiate proceedings. It is open to the Magistrate but not obligatory upon him to direct investigation by police. Thus two agencies have been set up for taking offences to court. One would therefore, require a cogent and explicit provision to hold that Sec. 5A displaces this scheme.

The Prevention of Corruption Act, 1947 ('1947 Act' for short) was put on the statute book in the year 1947. Sec. 5A did not form part of the statute in 1947. Sec. 5A was first introduced in the Act in the year 1952. Prior thereto, Sec. 3 of the 1947 Act which made the offences under Secs. 161 and 165 IPC cognizable had a proviso engrafted to it which precluded investigation of the offences under the Prevention of Corruption Act by a police officer below the rank of Deputy Superintendent of Police except without the order of a Magistrate of the first class. There was an identical provision in sub-s. (4) of Sec. 5 for investigation of
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the offence of criminal misconduct. Sec. 5A makes a provision for investigation by police officers of higher rank. Sec. 5A starts with a non-obstante clause that: 'Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no police officer below the rank... ' Assuming that Sec 5A did not make it obligatory to conduct investigation by police officer of a certain rank, what would have been the position in law.

Chapter XII of the Code of Criminal Procedure, 1973 bears the heading 'Information to the police and their powers to investigate.' Sec. 154 provides for information to police in cognizable cases. It casts a duty on the officer in charge of a police station to reduce to writing every information relating to commission of a cognizable offence given to him and the same will be read over to the informant and the same shall be signed by the informant and a copy thereof shall be given to him. If information given to an officer in charge of a Police Station disclosed a non-cognizable offence, he has to enter the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf

and to refer the informant to the Magistrate (Sec. 155 (1) Sub-s. (2) puts an embargo on the power of the police officer in charge of the police station to investigate a non-cognizable offence without the order of a Magistrate having power to try the case or commit the case for trial. Sec. 156 sets out the powers of the officer in charge of police station to investigate cognizable cases. Sub-s. (2) of Sec. 156 may be noticed. It says that 'no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under the section to investigated Sub-s. (3) confers power on the Magistrate empowered under Sec. 190 to take cognizance of an offence, to order an investigation as set out in sub-ss.(1) and (2) of Sec. 156. Sec 167 enables the Magistrate to remand the accused to Police custody in the circumstances therein mentioned. Sec. 173 provides that 'every investigation under Chapter XII shall be completed without unnecessary delay and as soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, setting out various things enumerated in the section. Sub-s. (8) of Sec. 173 provides that despite submission of the report on completion of the investigation, further investigation can be conducted in respect of the same offence and further evidence so collected has to be forwarded to the same Magistrate. The report
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of this further investigation shall by and large conform with the requirements of sub-ss. (2) to (6). Fasciculus of sections in Chapter XIV prescribed conditions requisite for initiation of proceedings. Sec. 190 provides that subject to the provisions of the Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-sec. (2), may take cognizance of any offence-(a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts; and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Sec. 191 obliges the Magistrate when he takes cognizance of an offence under clause (c) of sub-sec. (1) of Sec. 190, to inform the accused when he appears before him, that he is entitled to have the case inquired into or tried by another Magistrate, Sec. 193 provides that 'except as otherwise expressly provided in the Code or by any other law for the time being in force, no court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under the Code'

Cognizable offence has been defined in Sec. 2 (c) of the Cr. P. C. to mean 'an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any law for the time being in force, arrest without warrant.' Complaint is defined in Sec. 2 (d) to mean 'any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.' There is an explanation appended to the section which has some relevance. 'A report made by a police officer in a case which disclosed, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is

made shall be deemed to be the complainant.' Sec. 2 (e) defines 'non-cognizable offence' to mean 'an offence for which' and "non-cognizable" case means a case in which, a police officer, has no authority to arrest without warrant.' Police report is defined in Sec. 2 (r) to mean 'a report forwarded by a police officer to a Magistrate under sub-sec. (2) of Sec. 173.' 'Officer in charge of a police station' has been defined in Sec. 2 (o) to include any police officer present at the station house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present.'

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In other words, a Head-constable of Police that is one step higher from a constable can be in charge of a police station.

It may now be mentioned that offences under Secs. 161, 162, 163, 164, 165, 165A IPC and Sec. 5 (2) of the 1947 Act are cognizable offences. If they are cognizable offences, anyone can go to a police station under Sec. 154 IPC, give information of the offence and an officer of the level of a Head-constable of Police can start investigation to the chagrin and annoyance of a public servant who may be a highly placed officer. It must also be recalled that prior to 1947, offence under Sec. 161 IPC was a non-cognizable offence meaning thereby that a Magistrate under Sec. 190 of the Code of Criminal Procedure would take cognizance upon a private complaint and initiate a proceeding. By Sec. 3 of the 1947 Act, offences under Sec. 161 and 165 were made cognizable. Legislature being aware that once these two offences are made cognizable, a police officer of the rank of Head-constable would be entitled to initiate investigation against the public servant who may as well be highly placed officer in police, revenue, taxation or other departments. In order to guard against this invidious situation, while making offences under Secs. 161 and 165 cognizable by Sec. 3, as it stood in 1947, care was taken to introduce a proviso to Sec. 3 which reads as under:

> "Provided that a police officer below the rank of Deputy Superintendent of Police shall not investigate any such offences without the order of a Magistrate of the First Class or make any arrest therefor without a warrant."

While investigating a cognizable offence, the investigating officer who is an officer in charge of a police station has a right to arrest the accused without a warrant. On these offences being made cognizable, in order to protect public servant from being arrested by a petty police officer as well to avoid investigation of an offence of corruption being conducted by police officers below the specified rank the proviso was enacted thereby depriving low level police officers from exercising this drastic power. However, Legislature was aware that an officer of a rank of Deputy Superintendent of Police may not always be available and to guard against offences going, undetected, a further power was conferred that although ordinarily the offence by public servant under the aforementioned sections shall not be investigated by an officer below the rank of

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Deputy Superintendent of Police, the Magistrate of the first class can grant permission to an officer of the lower rank to investigate the offence in teeth of the statute. Therefore, two safeguards were sought to be incorporated in the predecessor provision of the present Sec. 5A, being the proviso to Sec. 3, namely, these offences having become

cognizable shall not be investigated by an officer of a rank below that of a Deputy Superintendent of Police but it if becomes so necessary, it shall not be done without the order of a Magistrate of the first class. Left to police, investigation by the designated officer of superior rank guaranteed a protection against frivolous investigation. In larger public interest non-availability of such higher officers was catered to by conferring power on the Magistrate of the first class to grant permission to an officer of the rank lower than the designated officer to investigate such offences. Two conclusions emerge from this situation, that investigation by a police officer of the higher rank on his own may tend to curb frivolous or speculative prosecution but even if an officer of a rank lower than the designated officer is to undertake the investigation for the reasons which he must convince the Magistrate of the first class, the Legislature considered courts' intervention as adequate safeguard against investigation by police officer of a lower rank. It may be mentioned that Sec. 5A was first introduced by the Prevention of Corruption (Second Amendment) Act, 1952 but was substituted by the present Sec 5A by Act 40 of 1964 which was enacted to give effect to the recommendations of the Santhanam Committee. Sec. 5A specifies the officers of superior rank in police force on whom the power to investigate offences under Secs. 161, 165, 165A IPC and Sec. 5 of the 1947 Act is conferred. Simultaneously power was conferred on the Presidency Magistrate or a Magistrate of the first class, as the case may be, to permit an officer inferior in rank to the designated officer to undertake investigation and to make an arrest without a warrant. The Legislative intention is further manifested by the proviso to Sec. 5A which enables the State Government to authorise police officer not below the rank of an Inspector of Police by general or special order to investigate the aforementioned offences without the order of the Presidency Magistrate or a Magistrate of the first class, and may make an arrest without a warrant. Again while specifying officers of higher rank in clauses (a) to (d) of Sec. 5A (1) who would, by virtue of office, be entitled to investigate the aforementioned offences as cognizable offences and could also make arrest without warrant power was conferred on the Presidency Magistrate or the Magistrate of the first class to remove this umbrella of protection by giving an authority to investigate such offences

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to a police officer of rank lower than the officers of designated rank, and the proviso makes a further dent in the safeguard in that the State Government by general or special order can bring down the designated rank to the level of Inspector of Police to investigate these offences.

The whole gamut of argument is that Sec. 5A of 1947 Act incorporates such a safeguard in favour of the accused that upon its true interpretation it is not open to the special Judge to take cognizance of an offence except upon a police report that may be submitted by officers of the designated rank or officers authorised by the Presidency Magistrate or the Magistrate of the first class or the Inspector of Police authorised by the State Government by a general or special order, and therefore a fortiori, it must exclude cognizance being taken by the special Judge upon a private complaint because that would completely render illusory the safeguard prescribed in Sec. 5A. It was said that where a person is threatened with the deprivation of his liberty and the procedure prescribed incorporates statutory safeguards, the

court should be very slow to dilute or do away with the safeguards or render the same ineffective. It was said that if the courts were to hold that a private complaint can be entertained by the special Judge and the latter is under no obligation to direct investigation of the same by an officer of the designated rank, the safeguard incorporated in Sec. 5A becomes illusory and that is impermissible.

Before we proceed further, it is now necessary to take notice of salient provisions of the Criminal Law Amendment Act, 1952. The Act was enacted as its long title shows to amend the Indian Penal Code and the Code of Criminal Procedure, 1898 and to provide for a more speedy trial of certain offences. Sec. 1A is the dictionary clause. Sec. 2, 3, 4 and 5 have been repealed by various amendments. Then comes Sec. 6. It reads as under:

> "6. (1) The State Government may, by notification in the official Gazette, appoint as many special Judges as may be necessary for such area as areas as may be specified in the notification to try the following offences, namely:-
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> (a) an offence punishable under Sec. 161, Sec. 162, Sec. 163, Sec. 164, Sec. 165 or Sec. 165-A of the Indian Penal Code or Sec. 5 of the Prevention of Corruption Act, 1947.

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> (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in Cl. (a).
>
> (2) A person shall not be qualified for appointment as special Judge under this Act unless he is, or has been, a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1898."

Sec.7 confers exclusive jurisdiction on the special Judge appointed under Sec. 6 to try the cases set out in Sec. 6 (1) (a) and 6 (1) (b). Sub-sec. (2) of Sec. 7 provides that "Every offence specified in sub-section (1) of Sec.6 shall be tried by the special Judge for the area within which it was committed, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the State Government." Subsec. (3) enlarges the jurisdiction of the special Judge not only to try offences set out in Sec. 6 (1) (a) and (b) but also to try offences other than those mentioned therein with which the accused may, under the Code of Criminal Procedure, be charged at the same trial. Three things emerge from Sec. 7. The special Judge has exclusive jurisdiction to try offences enumerated in Sec. 6 (1) (a) and (b). Where there are more than one special Judge for the same area, the State Government is under an obligation to specify the local jurisdiction of each special Judge, it may be case-wise, it may be area-wise. Sub-sec. (3) enlarges the jurisdiction to try other offences which have been committed in the course of the same transaction and for which the accused could be charged at the same trial. Then comes Sec. 8. It reads as under:

> "8 (1): A special Judge may take cognizance of offences without the accused being committed to him for trial, and in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by Magistrates.
>
> (2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an

offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commis-

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sion thereof; and any pardon so tendered shall, for the purposes of Secs. 339 and 339A of the Code of Criminal Procedure, 1898, be deemed to have been tendered under Sec. 338 of that Code.

(2) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1898, shall, so far as they are not consistent with this Act, apply to the proceedings before a special Judge; and for the purposes of the said provisions, the Court of the special Judges shall be deemed to be a Court of Session trying cases with out a jury or without the aid of assessors and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(3A) In particular, and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of the Code of Criminal Procedure, 1898 shall, so far as may be, apply to the proceedings before a special Judge, and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

(4) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted."

It may be mentioned that Sec. 8 does not apply to the State of West Bengal. This has some relevance to the understanding of some of the decisions bearing on the subject arising from the State of West Bengal. Sec. 9 provides for the subordination of the special Judge to the High Court of the State in the matter of appeal, revision and other incidental powers which the High Court exercises over subordinate courts. Sec. 10 provided for transfer of certain cases, which were pending at the commencement of the 1952 Act.

Before we undertake a detailed examination of the submission that Sec. 5A incorporates a condition precedent to the taking of the cognizance of an offence by a special Judge, it is necessary to state with clarity and precision that Sec. 8 (1) which confers power on the special Judge to take cognizance of offences set out in Sec. 6 (1) (a) and (b) does not directly or indirectly, expressly or by necessary implication indicate that the only method of taking cognizance is the police report under Sec. 173 (2) of the Code of Crimi-

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nal Procedure submitted by a police officer of the designated rank or permissible rank as set out in Secs. 5A. It merely says 'A special Judge may take cognizance of offences without the accused being committed to him for trial, and in trying the accused person, shall follow the procedure prescribed by the Code of Criminal Procedure, 1898 for the trial of warrant cases by Magistrates.' The Code of Criminal Procedure has prescribed four known methods of taking cognizance of offences by the courts competent to try the same. The court has to take cognizance of the offence before initiation of the proceeding can be contemplated The court called upon to take cognizance of the offence must apply its mind to the facts placed before it either upon a

police report or upon a complaint or in some other manner the court came to know about it and in the case of Court of Sessions upon commitment of the case by the Magistrate.

Sec. 6 of the Code of Criminal Procedure provides for setting up of criminal courts under the High Court in every State. They are (i) Courts of Session: (ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrate, (iii) Judicial Magistrates of the second class, and (iv) Executive Magistrates. These are to be the criminal courts in every State. The Code made detailed provision for powers of police officers entitled to investigate offences, procedure of investigation, powers of various courts to take cognizance of offences which that particular court is entitled to try under the Code. Sec. 190 Cr. P. C. confers power on the Magistrate to take cognizance of an offence in one of the manners therein prescribed. The expression 'Magistrate' in Sec. 190 is a compendious term which includes Judicial Magistrate of the first class, Metropolitan Magistrate, Judicial Magistrate of the second class and Executive Magistrate, All the three are comprehended in Sec. 190. But then there is another court of original jurisdiction, namely, Court of Session also being set up under Sec. 6. Can Court of Session take cognizance directly upon a complaint filed before it ? The answer is obviously in the negative. Sec. 193 provides that except as otherwise expressly provided by the Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate. In other words, Court of Session can take cognizance of an offence only upon an order of commitment made by the Magistrate and in no other manner. This necessitated conferring power on the Magistrate to commit cases to the Court of Session. Code of Criminal Procedure
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makes ample provisions specifying offences which are triable by Magistrate of the first class and Metropolitan Magistrate, those triable by a Judicial Magistrate of the second class and those exclusively triable by the Court of Session. Column 6 in the First Schedule annexed to the Code of Criminal Procedure specifies which court can try a particular offence under the Indian Penal Code. Accordingly, provision was made in Sec. 209 for commitment by the Magistrate of a case brought to him either upon a private complaint or upon a police report provided that the offence is exclusively triable by the Court of Session. If the Magistrate took cognizance of an offence upon a complaint, which appears to be exclusively triable by Court of Session he has to proceed according to Sections 202 (2), 208 and 209. Chapter XVIII incorporates provisions prescribing procedure for the trial before a Court of Session. Sec. 226 says that the case comes to the Court in pursuance of a commitment of the case under Sec. 209. Sec. 209 caters to a situation where the case was instituted before the Magistrate on a police report or otherwise. In both the cases, if it appears to him that the offence which is alleged against the accused is exclusively triable by the Court of Session there is no option but to commit the case to the Court of Session. The Court of Session thus takes cognizance of the offence upon commitment by the Magistrate. And any other mode of taking cognizance is specifically barred under Sec. 193.

Sec. 4 of the Code of Criminal Procedure provides as under:

"4 (1)-All offences under the Indian Penal Code

shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

Sec. 4 (1) provides for investigation, inquiry or trial for every offence under the Indian Penal Code according to the provisions of the Code. Sec. 4 (2) provides for offences under other law which may be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure but

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subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences. In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure. In other words, Code of Criminal Procedure is the parent statute which provides for investigation, inquiring into and trial of cases by criminal courts of various designations.

Now the Code of Criminal Procedure prescribed only four methods of taking cognizance of an offence whether it be a Magistrate or a Sessions Court is for the time being immaterial. The Code prescribes four methods for taking cognizance upon a complaint, or upon a report of the police officer or where the Magistrate himself comes to know of the commission of offence through some other source and in the case of Sessions Court upon a commitment by the Magistrate. There is no other known or recognised mode of taking cognizance of an offence by a criminal court. Now if Court of special Judge is a criminal court, which atleast was not disputed, and jurisdiction is conferred upon the presiding officer of the Court of special Judge to take cognizance of offences simultaneously excluding one of the four recognised modes of taking cognizance, namely, upon commitment by a Magistrate as set out in Sec 193, the only other method by which the Court of special Judge can take cognizance of an offence for the trial of which it was set up, is any one of the remaining three other methods known to law by which a criminal court would take cognizance of an offence, not as an idle formality but with a view to initiating proceedings and ultimately to try the accused. If the language employed in Sec. 8 (1) is read in this light and in this background that a special Judge may take cognizance of offence without the accused being committed to him for trial, it necessarily implies that the Court of special Judge is armed with power to take cognizance of offences but that it is denied the power to take cognizance on commitment by the Magistrate. This excludes the mode of taking cognizance under Sec. 193. Then remains only Sec. 190 which provides various methods of taking cognizance of offences by courts. It is idle to say that Sec. 190 is confined to Magistrate and special Judge is not a Magistrate. We shall deal with the position of a special Judge a little later. The fact however remains that the Court of the special Judge as the expression is used in sub-sec. (3) of Sec. 8 is a criminal court and in view of

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Sec. 9 it is under the appellate and administrative control of the High Court. It must take cognizance of offences with a view to trying the same but it shall not take it on commitment of the accused to the court. As a necessary corollary, it must appear that the special Judge can take cognizance of offences enumerated in Sec. 6 (1)(a) and (b) upon a complaint or upon a police report or upon his coming to know in some manner of the offence having been committed. With regard to the last of the modes of taking cognizance, it was urged that there is inherent evidence to show that Sec.190 (1)(c) cannot be availed off by special Judge because Sec. 191 is not available to him so as to transfer the case. A little while later, we shall point out that the provisions of the Court of special Judge in such manner and to such extent as to retain the separate identity of the Court of special Judge and not that he must either fulfil a role of a Magistrate or a Session Court.

It is a well-established canon of construction that the court should read the section as it is and cannot rewrite it to suit its convenience; nor does any canon of construction permit the court to read the section in such manner as to render it to some extent otiose. Sec. 8 (1) says that the special Judge shall take cognizance of an offence and shall not take it on commitment of the accused. The Legislature provided for both the positive and the negative. It positively conferred power on special Judge to take cognizance of offences and it negatively removed any concept of commitment. It is not possible therefore, to read Sec. 8 (1) as eanvassed on behalf of the appellant that cognizance can only be taken upon a police report and any other view will render the safeguard under Sec. 5A illusory.

It appears well-established that an investigation contemplated by Sec. 5A must ordinarily be undertaken by the police officers of the designated rank and except with the permission of the Magistrate bars investigation by police officers of lower rank. It may be that in a given case permission granted by the Magistrate for investigation by a police officer of a rank lower than the designated rank may be judicially reviewable. If in cases where any illegality or irregularity in the process of investigation under Sec. 5A has been brought to the notice of the court at an early stage, a direction has been given for a fresh investigation by a police officer of the designated rank. But this is subject to a well recognised legal position that the court would not attach any importance to any illegality in the matter of investigation if it is relied upon at the conclusion of a trial in the absence of prejudice pleaded and proved. The question is whether
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these aspects are sufficient to provide an exception to the well recognised general principle apart from the specific power conferred under Sec. 8(1) of the 1952 Act on the special Judge to take cognizance of the offences, the only exception being not upon a commitment to him that anyone can set the criminal law into motion ?

Let us therefore, turn to some of the decisions to which our attention was drawn to substantiate the submission that Sec. 5A incorporates a safeguard in favour of the accused. In fact, it is really not necessary to analyse these decisions in detail to arrive at the ratio of each of them because it is not controverted that Sec.5A does incorporate a safeguard but the parameters of the safeguard are against investigation by police officers of fairly lower rank once the offences enumerated in Sec. 6 (1) (a) and (b) were made cognizable. The limit of the safeguard is that

ordinarily investigation of such offences shall be undertaken only by officers of the designated rank save and except with the permission of the Magistrate or as per the first proviso to Sec. 5A The submission is that upon its true evaluation, the safeguard clearly points in the direction of a prior investigation before cognizance of the offences can be taken by the special Judge and any other view would dilute the safeguard or render it illusory. It was also submitted that if defective investigation can vitiate the proceedings a fortiori the total absence of and investigation whatsoever as contemplated by Sec. 5A, which would be the position if a private complaint can be directly entertained by the special Judge, would of necessity vitiate the proceeding.

The sheet anchor of the supmission was the decision of this Court in M.N. Rishbud & Inder Singh v. The State of Delhi.(') In that case the question posed was whether the provision Sec. 5A of the 1947 Act requiring that the investigation into the offences specified therein shall not be conducted by any police officer of a rank lower than a Deputy Superintendent of Police without the specific order of a Magistrate, is directory or mandatory ? The Court rendered the opinion that Sec. 5A is mandatory and not directory, and that an investigation conducted in violation thereof bears the stamp of illegality. Thus so far as investigation of a case is concerned, this Court has recorded a definite opinion that investigation by a police officer in contravention of the provision contained in Sec. 5A bears the stamp of illegality. What is the effect of this
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illegality on the outcome of a concluded trial does not arise for our consideration but there are certain observations which were relied upon to urge that a prior investigation under Sec. 5A being held to be mandatory and as a special Judge can take cognizance of an offence upon a police report submitted at the end of a valid and legal investigation in consonance with Sec. 5A, by necessary implication, taking cognizance of an offence by a special Judge under Sec. 8(1) of 1952 Act upon a private complaint is excluded. We must frankly say that we find nothing in this judgment even remotely to bear out the submission. Sec. 5A is a safeguard against investigation by police officers lower in rank than designated officers. In this connection at page 1159, the Court has observed as under:

> "The underlying policy in making these offences by public servants non-cognizable appears to be that public servants who have to discharge their functions-often enough in difficult circumstances-should not be exposed to the harassment of investigation against them on information levelled, possibly, by persons affected by their official acts, unless a Magistrate is satisfied that an investigation is called for, and on such satisfaction authorises the same. This is meant to ensure the diligent discharge of their official functions by public servants, without fear or favour. When, therefore, the Legislature thought fit to remove the protection from the public servants, in so far as it relates to the investigation of the offences of corruption comprised in the Act, by making then cognizable it was considered necessary to provide a substituted safeguard from undue harassment by requiring that the investigation is to be conducted normally by a police officer of a designated higher rank."

This observation will leave no room for doubt that the

safeguard incorporated in Sec. 5A is one against investigation by police officer of a rank lower than the designated rank and that the Magistrate con permit investigation by police officer of lower rank. It was however, urged that the three vital stages relevant to initiation of proceedings in respect of offences enumerated in Sec. 6(1) (a) and (b) have been clearly delineated in this judgment when at page 1162 it is observed; 'trial follows cognizance and cognizance is preceded by investigation.' This is the basic scheme of the Code in respect of cognizable offences but that too where in respect of a cognizable offence, the informant approaches an officer in charge
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of a police station. When in the case of a cognizable offence, a police officer on receipt of information of an offence proceeds under Chapter XII, he starts with investigation and then submits his report, called the police report, upon which cognizance is taken, and then follows the trial. And these three stages in that chronology are set out with regard to an investigation by an officer in charge of a police station or a police officer entitled to investigate any particular offence. This sentence cannot be read in isolation or torn out of the context to lend support to the submission that in no case cognizance can be taken without prior investigation under Sec. 5A. In fact the Court proceeded to make it abundantly clear that 'a defect or illegality in investigation however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial.' The Court examined the scheme of Secs 190, 193 and 195 to 199 of the Code of Criminal Procedure and observed: that 'the language of Sec. 190 is in marked contrast with that of the other sections of the group under the same heading i.e. Sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith, Section 190 does not.' The Court concluded by observing 'that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.' Having minutely read this judgment on which firm reliance was placed on behalf of the appellant, we find nothing in it to come to the conclusion that an investigation under Sec. 5A is a condition precedent before cognizance can be taken of offences triable by special Judge. Reliance next was placed upon the decision of this Court in The State of Madhya Pradesh v. Mubarak Ali (') This Court held that Sec 5A was inserted in the 1952 Act to protect the public servants against harassment and victimization. If it was in the interest of the public that corruption should be eradicated, it was equally in the interest of the public that honest public servants should be able to discharge their duties free from false, frivolous and malicious accusations. To achieve this object, Sections 5A and 6 introduced the following two safeguards; (1) no police officer below the rank of a designated police officer, shall investigate any offence punishable under Sec. 161, Sec. 165 or Sec. 165A of the Indian Penal Code or under sub-Sec. (2) of Sec. 5A of the 1947 Act without the order of a Presidency Magistrate and (2) no court shall take cognizance of offences hereinabove enumerated
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except with the previous sanction, of the appropriate Government. The Court held that these statutory safeguards

must be complied with, for they were conceived in public interest and were provided as a guarantee against frivolous and vexatious prosecutions. The Court further observed that the Legislature was prepared to believe an officer of an assured status implicity, and it prescribed an additional guarantee that in the case of police officers below the rank, the previous order of a Presidency Magistrate or a Magistrate of the first class as the case may be. Comes thereafter a pertinent observation 'that the Magistrate's status gives assurance to the bonafides of the investigation. 'This would rather show that Legislature while on the one hand conferred power on the police officers of the designated rank to take upon themselves the investigation of offences committed by public servants, it considered intervention of the Magistrate as the real safeguard when investigation was permitted by officers lower in rank then the designated officers. In other words, the Court was a safeguard and it ought to be so because the judicially trained mind is any day a better safeguard then any police officer or any rank. In State of Uttar Pradesh v. Bhagwant Kishore Joshi the observation of the Court in Mubarak Ali's case was affirmed. In S.N. Bose v. State of Bihar.(2) this Court held that the order of the Magistrate giving permission to the Inspector of Police to investigate the case did not give any reasons and there was thus a violation of Sec. 5A. Yet this illegality committed in the course of an investigation does not affect the competence and jurisdiction of the court for trial and where cognizance of the case has in fact been taken and the case has proceeded to termination the invalidity of the preceding investigation does not vitiate the result unless the miscarriage of justice has been caused thereby, and in reaching this conclusion reliance was placed on the case of M.N. Rishbud In P. Sirajuddin etc. v. State of Madras etc.(3) it was held that' the Code of Criminal Procedure is an enactment designed inter alia to ensure a fair investigation of the allegations against a person charged with criminal misconduct. This is undeniable but has hardly any relevance. Some guidance is given to the enquiry officer and the means to be adopted in investigation of offences. This has no bearing on the issue under discussion. Reference was also made to Union of India v. Mahesh Chandra Sharma(4) which does not advance the case at all. Having carefully examined

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these judgments in the light of the submissions made, the only conclusion that unquestionably emerges is that Sec. 5A is a safeguard against investigation of offences committed by public servants, by petty or lower rank police officer. It has nothing to do directly or indirectly with the mode and method of taking cognizance of offences by the court of special Judge. It also follows as a necessary corollary that provision of Sec. 5A is not a condition precedent to initiation of proceedings before the special Judge who acquires power under Sec. 8(1) to take cognizance of offences enumerated in Sec. 6(1) (a) and (b), with this limitation alone that is shall not be upon commitment to him by the Magistrate.

Once the contention on behalf of the appellant that investigation under Sec. 5A is a condition precedent to the initiation of proceedings before a special Judge and therefore cognizance of an offence cannot be taken except upon a police report, does not commend to us and has no foundation in law, it is unnecessary to refer to the long line of decisions commencing from Taylor v Taylor, (1) Nazir

Ahamad v. King Emperor (2) and ending with Chettiam Veettil Ahmad and Anr. v. Taluk Land Board and Ors., (3) laying down hitherto uncontroverted legal principle that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all Other methods of performance are necessarily forbidden.

Once Sec. 5A is out of the way in the matter of taking cognizance of offences committed by public servants by a special Judge, the power of the special Judge to take cognizance of such offences conferred by Sec. 8(1) with only one limitation, in any one of the known methods of taking cognizance of offences by courts of original jurisdiction remains undented. One such statutorily recognised well-known method of taking cognizance of offences by a court competent to take cognizance is upon receiving a complaint of facts which constitutes the offence. And Sec. 8(1) says that the special Judge has the power to take cognizance of offences enumerated in Sec. 6(1)(a) and (b) and the only mode of taking cognizance excluded by the provision is upon commitment. It therefore, follows that the special Judge can take cognizance of offences committed by
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public servants upon receiving a complaint of facts constituting such offences.

It was, however, submitted that even if it be held that the special Judge is entitled to entertain a private complaint, no further steps can be taken by him without directing an investigation under Sec 5A so that the safeguard of Sec. 5A is not whittled down. This is the self same argument under a different apparel. Accepting such a submission would tantamount to saying that on receipt of the complaint the special Judge must direct an investigation under Sec. 5A. There is no warrant for such an approach. Astounding as it appeared to us, in all solemnity it was submitted that investigation of an offence by a superior police officer affords a more solid safeguard compared to a court. Myopic as this is, it would topsy turvy the fundamental belief that to a person accused of an offence there is no better safeguard than a court. And this is constitutionally epitomised in Art. 22 that upon arrest by police, the arrested person must be produced before the nearest Magistrate within twenty-four hours of the arrest. Further, numerous provisions of the Code of Criminal procedure such as Sec. 161, Sec 164, and Sec. 25 of the Indian Evidence Act would show the Legislature's hesitation in placing confidence on police officers away from court's gaze. And the very fact that power is conferred on a Presidency Magistrate or Magistrate of the first class to permit police officers of lower rank to investigate these offences would speak for the mind of the Legislature that the court is a more reliable safeguard than even superior police officers.

It was urged that there is inherent evidence in other provisions of the 1952 Act and the Code of Criminal Procedure which would buttress the submission that the special Judge cannot take cognizance upon a private complaint. Even if Sec. 8(1) confers specific powers of taking cognizance of offences without the necessity of the accused being committed for trial and prescribes the procedure for trial of warrant cases by Magistrates to be adopted by a special Judge, it is necessary to determine with accuracy whether a special Judge is a Magistrate or a Sessions Judge. After referring to Sec. 8(3) which provides that save as provided in sub-sec. (1) or sub-sec. (2), the provisions of the Code of Criminal procedure, 1898 shall so

far as they are not inconsistent with the 1952 Act apply to the proceedings before a special Judge; and for the purposes of the said provisions, the Court of a special Judge shall be deemed to be a Court of Sessions trying cases without
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a jury or without the aid of assessors and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor; it was urged that for the purpose of procedure to be followed by a special Judge in the trial of the case before him, he is a Magistrate as provided in Sec. 8(1) but not a Sessions Judge because no Sessions Court can take cognizance of offences without commitment while a special Judge has to take cognizance of offences without accused being committed to him for trial yet the provisions of sub-Secs. (2) and (3) leave no one in doubt that for all other purposes he is to be treated as a Sessions Judge or a Court of Sessions. Proceeding along it was urged that if a special Judge has all the trappings of the Court of Sessions, he cannot take cognizance as provided by Sec. 190, Cr. P. C. because it confers power on Magistrate to take cognizance of any offence in any one of the three modes therein prescribed. Therefore, it was submitted that a private complaint cannot be entertained.

For more than one reason it is not possible to accept this submission. If Sec. 190 cannot be availed, we fail to see how a special Judge would be entitled to take cognizance on a police report. If Sec. 190 is not attracted all the three modalities of taking cognizance of offences would not be available. One cannot pick and choose as it suits one's convenience. Either all the three modalities are available or none. And Sec. 8(1) which confers power of taking cognizance does not show any preference. On this short ground, the submission must be rejected.

It is, however, necessary to decide with precision and accuracy the position of a special Judge and the Court over which he presides styled as the Court of a special Judge because unending confusions have arisen by either assimilating him with a Magistrate or with a Sessions Court. The Prevention of Corruption Act, 1947 was enacted for more effective prevention of bribery and corruption. Years rolled by and experience gathered showed that unless a special forum for the trial of such offences as enumerated in the 1947 Act is created, the object underlying the 1947 Act would remain a distant dream. This led to the enactment of the Criminal Law Amendment Act, 1952. The Statement of objects and Reasons accompanying the Bill refers to the recommendations of the Committee chaired by Dr. Bakshi Tek Chand appointed to review the working of the Special Police Establishment and to make recommendations for improvement of laws relating to bribery and corruption. To take the cases of corruption out of the maze of cases handled
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by Magistrates, it was decided to set up special courts. Sec. 6 conferred power on the State Government to appoint as many special Judges as may be necessary with power to try the offences set out in clauses (a) and (b). Now if at this stage a reference is made to Sec. 6 of the Code of Criminal Procedure which provides for constitution of criminal courts, it would become clear that a new court with a new designation was being set up and that it has to be under the administrative and judicial superintendence of the High Court. As already pointed out, there were four types of criminal courts functioning under the High Court. To this list was added the court of a special Judge. Now when a new court which is indisputably a criminal court because it was

not even whispered that the Court of special Judge is not a criminal court, is set up, to make it effective and functionally oriented, it becomes necessary to prescribe its powers, procedure, status and all ancillary provisions. While setting up a court of a special Judge keeping in view the fact that the high dignitaries in public life are likely to be tried by such a court, the qualification prescribed was that the person to be appointed as special Judge has to be either a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge. These three dignitaries are above the level of a Magistrate. After prescribing the qualification, the Legislature proceeded to confer power upon a special Judge to take cognizance of offences for the trial of which a special court with exclusive jurisdiction was being set up. If a special Judge has to take cognizance of offences, ipso facto the procedure for trial of such offences has to be prescribed. Now the Code prescribes different procedures for trial of cases by different courts. Procedure for trial of a cases by different courts. Procedure for trial of a case before a Court of Sessions is set out in Chapter XVIII, trial of warrant cases by Magistrates is set out in Chapter XIX and the provisions therein included catered to both the types of cases coming before the Magistrate, namely, upon police report or otherwise than on a police report. Chapter XX prescribes the procedure for trial of summons cases by Magistrates and Chapter XXI prescribes the procedure for summary trial. Now that a new criminal court was being set up, the Legislature took the first step of providing its comparative position in the hierarchy of courts under Sec. 6 Cr. P.C. by bringing it on level more or less comparable to the Court of Sessions, but in order to avoid any confusion arising out of comparison by level, it was made explicit in Sec. 8 (1) itself that it is not a Court of Sessions because it can take cognizance of offences without commitment as contemplated by Sec. 193 Cr. P. C. Undoubtedly in Sec. 8 (3) it was clearly laid down that subject to the provi-
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sions of sub-Sec. (1) and (2) of Sec. 8, the Court of special Judge shall be deemed to be a Court of Sessions trying cases without a jury or without the aid of assessors. In contra-distinction to the Sessions Court this new court was to be a court of original jurisdiction. The Legislature then proceeded to specify which out of the various procedures set out in the Code, this new court shall follow for trial of offences before it. Sec 1 (1) specifically says that a special Judge in trial of offences before him shall follow the procedure prescribed in the Code of Criminal Procedure for trial of warrant cases by Magistrates. The provisions for trial of warrant cases by the Magistrate are to be found in Chapter XXI of 1898 Code. A glance through the provisions will show that the provisions therein included catered to both the situations namely, trial of a case initiated upon police report (Sec. 251A) and trial of cases instituted otherwise than on police report (Sec 252 to 257). If a special Judge is enjoined with a duty to try cases according to the procedure prescribed in foregoing provisions he will have to first decide whether the case was instituted upon a police report or otherwise than on police report and follow the procedure in the relevant group of sections. Each of the Secs. 251A to 257 of 1898 Code which are in pari materia with Secs 238 to 250 of 1973 Code refers to what the Magistrate should do. Does the special Judge in Secs 238 to 250 wherever the expression 'Magistrate' occurs. This is what is called legislation by the incorporation.

Similarly, whether the question of taking congnizane arises, it is futile to go in search of question of taking congnizance arises, it is futile to go in search of the Magistrate to take cognizance of the offence, special Judge is a Magistrate? What is to be done is that one has to read the expression 'special Judge' in place of Magistrate, and the whole thing becomes crystal clear. The Legislature wherever it found the grey area clarified it by making specific provision such as the one in sub-s (2) of Sec. 8 and to leave no one in doubt further provided in sub-s. (3) that all the provisions of the Code of Criminal Procedure shall so far as they are not inconsistent with the Act apply to the proceedings before a special Judge. At the time when the 1952 Act was enacted what was in operation was the Code of Criminal Procedure, 1898. It did not envisage any Court of a special Judge and the Legislature never wanted to draw up an exhaustive Code of Procedure for this new criminal court which was being set up. Therefore, it conferred power (taking cognizance of offences), prescribed procedure (trial of warrant cases by a Magistrate), indicated authority to tender pardon (Sec 338) and then after declaring is status as comparable to a Court of Sessions proceeded to pres-
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cribe that all provisions of the Code of Criminal Procedure will apply in so far as they are not inconsistent with the provisions of the 1952 Act. The net outcome of this position is that a new court of original jurisdiction was set up and whenever a question arose as to what are its powers in respect of specific questions brought before it as court of original criminal jurisdiction, it had to refer to the Code of Criminal Procedure undaunted by any designation claptrap. When taking cognizance, a Court of special Judge enjoyed the powers under Sec. 190. When trying cases, it is obligatory to follow the procedure for trial of warrant cases by a Magistrate though as and by way of status it was equated with a Court of Sessions. The entire argument inviting us to specifically decide whether a court of a special Judge for a certain purpose is a Court of Magistrate or a Court of Sessions revolves round a mistaken belief that a special Judge has to be one or the other, and must fit in the slot of a Magistrate or a Court of Sessions. Such an approach would strangulate the functioning of the court and must be eschewed. Shorn of all embellishment, the court or a special Judge is a court of original criminal jurisdiction. As a court of original criminal jurisdiction in order to make it functionally oriented some powers were conferred by the statute setting up the court. Except those specifically conferred and specifically denied, it has to function as a court of original criminal jurisdiction not being hide bound by the terminological status description of Magistrate or a Court of Sessions. Under the Code it will enjoy all powers which a court of original criminal jurisdiction enjoys save and except the ones specifically denied.

Sec 9 of the 1952 Act would equally be helpful in this behalf. Once court of a special Judge is a court of original criminal jurisdiction, it became necessary to provide whether it is subordinate to the High Court, whether appeal and revision against its judgments and orders would lie to the High Court and whether the High Court would have general superintendence over a Court of special Judge as it has over all criminal courts as enumerated in Sec. 6 of the Code of Criminal Procedure. The court of a special Judge, once created by an independent statute, has been brought as a court of original criminal jurisdiction under the High Court because Sec. 9 confers on the High Court all the powers

conferred by Chapters XXXI and XXXIII of the Code of Criminal Procedure, 1898 on a High Court as if the court of special Judge were a court of Sessions trying cases without a jury within the local limits of the jurisdiction of the High Court. Therefore, there is no gainsaying the fact that
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a new criminal court with a name, designation and qualification of the officer eligible to preside over it with powers specified and the particular procedure which it must follow has been set up under the 1952 Act. The court has to be treated as a court of original criminal jurisdiction and shall have all the powers as any court of original criminal jurisdiction has under the Code of Criminal Procedure, except those specifically excluded.

Once the position and power of the Court of a special Judge in the hierarchy of criminal courts under the High Court is clearly and unambiguously established, it is unnecessary to roam into an enquiry examining large number of decisions laying down in the context of each case that the Court of a special Judge is a Court of Sessions and the contrary view taken in some other decisions. Reference to those judgments would be merely adding to the length of this judgment without achieving any useful purpose.

It was submitted that there is further internal evidence pointing in the direction that a private complaint cannot be entertained by a special Judge. Sec. 225 in Chapter XVIII containing provisions prescribing procedure of trial before a Court of Sessions provides that 'in every trial before a Court of Sessions' the prosecution shall be conducted by a Public Prosecutor.' Last part of Sec. 8 (3) of the 1952 Act provides that'.... the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor. It was urged that public prosecutions are ordinarily launched in the name of the State because in matters of serious offences the society is interested in punishing the anti-social elements who may be a menace to society and that such prosecution is not for satisfying private lust or sense of vengeance. Proceeding along, it was stated that the scheme of Criminal Procedure Code clearly shows that serious offences are exclusively triable by a Court of Sessions and that even if a commitment to the Court of Sessions is made upon an inquiry held by a Magistrate taking cognizance of the offence on a private complaint, once the case is committed to a Court of Sessions, the role of the private complainant becomes insignificant. The State takes over the prosecution and the public prosecutor shall necessarily be in charge of the prosecution. And it was pointed out that public prosecutor is appointed by the Central or the State Government. It was urged that appointment of a public prosecutor under Sec. 24 of the Code of Criminal Procedure is a solemn duty to be performed by the Central or the State Government, as the case may be, and that too after consultation with the High Court.
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And it is such public prosecutor who shall alone be entitled to conduct the trial before Court of Sessions. In order to acquaint us with the role, the dignity and the responsibility of a public prosecutor, attention was drawn to Shwe Pru v. The King(1) Amlesh Ceandra & Ors. v. The State, (1) Raj Kishore Rabidas v. The State.(2) In Re Bhupalli Malliah and Ors (3) and Medichetty Ramakistiah and Ors. v. The State of Andhra Pradesh (4) These decisions purport to indicate the objectivity and the fairness with which a public prosecutor in charge of the case shall conduct the prosecution and it is no part of his duty to

attempt to obtain a conviction at all costs. His duty is to fairly analyse the evidence for and against the accused and that he should not withheld any evidence which has a bearing on the issues before the court. In other words, he must be fair and objective in his approach to the case animated by a desire to vindicate justice and no more. It was urged that if this be the well-recognised role of a public prosecutor, how horrendous it would appear if a private complainant motivated by a desire to wreck vengeance against the accused is to be deemed to be a public prosecutor. It was said that such a private complainant cannot be elevated to the status of a public prosecutor but the deeming fiction enacted in latter part of Sec. 8 (3) would clothe him with such a status of a public prosecutor which he was hardly qualified to enjoy. As a second string to the bow, it was said that Sec. 321 of the Code of Criminal Procedure generally confers power on a public prosecutor to withdraw the prosecution subject to limitations therein prescribed. The submission is that if a private complainant who chooses to conduct his case and thereby enjoys the status of a deemed public prosecutor he would be able to poute the fountain of justice by initiating some frivolous prosecution and then withdraw it if his palms are greased. It was also said that the accused may put up a bogus complainant and make a pretence of trial and escape a serious prosecution upon high level investigation. These are wild imaginings, irrelevant for the purpose of construction of a provision in a statute. Further this submission overlooks the vital role that the court has to play before any prosecution can be withdrawn at the instance of a public prosecutor. That a public prosecutor may abuse his office is not determinative as to who should be a public
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prosecutor. The deeming fiction enabled in Sec. 8 (3) is confined to the limits of its requirement in that the person conducting a prosecution before a special Judge is to be deemed to be a public prosecutor. In fact, this fiction created by Sec. 8 (3) would rather negative the argument of the appellant that a private complaint is not maintainable, inasmuch as the Legislature could have inserted a provision analogous to Sec. 225 that a prosecution before a special Judge shall be conducted by a public prosecutor. On the contrary, conscious of the position that a private complaint may be filed before a special Judge who may take cognizance of the offences on such a complaint, the Legislature wanted to clothe the person in charge of the prosecution before a special Judge with the status of a public prosecutor for the purposes of the Code of Criminal Procedure. This is an additional reason why the contention of the appellant that a private complaint is not maintainable cannot be entertained.

It was then submitted that if the object underlying 1952 Act was to provide for a more speedy trial of offences of corruption by a public servant, this laudable object would be thwarted if it is ever held that a private complaint can be entertained by a special Judge. Developing the argument it was pointed out that assuming that a private complaint is maintainable before taking cognizance, a special Judge will have to examine the complainant and all the witnesses present as enjoined by Sec. 200. The Judge thereafter ordinarily will have to postpone issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer and in cases under the 1947 Act by police officers of designated rank for the purpose of deciding whether or not there is sufficient ground for proceeding. (Sec.

202(1)). If the Judge proceeds to hold the inquiry himself, he is obliged to take evidence on oath but it was said that if the Court of special Judge is a Court of Sessions, the case would be governed by proviso to sub-s (2) of Sec. 202, Cr P.C. and that therefore, he will have to call upon the complainant to produce all his witnesses and examine them on oath. This would certainly thwart a speedy trial was the apprehension disclosed and therefore, it was said that there is internal contra-indication that a private complaint is not maintainable. We find no merit in the submissions. As has been distinctly made clear that a Court of special Judge is a court of original criminal jurisdiction and that it can take cognizance of an offence in the manner hereinbefore indicated, it may be that in order to test whether the complaint disclosed a serious offence or that there is any frivolity involved in it, the Judge may insist upon holding an

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inquiry by postponing the issue of process. When a private complaint is filed, the court has to examine the complainant on oath save in the cases set out in the proviso to Sec. 200 Cr.P.C. After examining the complainant on oath and examining the witnesses present, if any, meaning thereby that the witnesses not present need not be examined, it would open to the court to judicially determine whether a case is made out for issuing process. When it is said that court issues process, it means the court has taken cognizance of the offence and has decided to initiate the proceeding and as a visible manifestation of taking cognizance, process is issued which means that the accused is called upon to appear before the court. This may either take the from of a summons or a warrant, as the case may be. It may be that after examining the complainant and his witnesses, the court in order to doubly assure itself may postpone the issue of process, and call upon the complainant to keep his witnesses present. The other option open to the court is to direct investigation to be made by a police officer. And if the offence is one covered by the 1947 Act, the investigation, if directed, shall be according to the provision contained in Sec. 5A But it must be made distinctly clear that it is neither obligatory to hold the inquiry before issuing process to direct the investigation of the offence by police. The matter is in the judicial discretion of the court and is judicially reviewable depending upon the material disclosed by the complainant in his statement under oath under Sec. 200, called in the parlance of criminal courts verification of the complaint and evidence of witnesses if any. It was however, urged that if Sec. 5A can be dispensed with by holding that a private complaint is maintainable, the court atleast should ensure pre-process safeguard by insisting upon the examination of all witnesses that the complainant seeks to examine and this will be counter-productive as far as the object of a speedy trial is concerned. Viewed from either angle, there is no merit in this submission. Primarily, examination of witnesses even at a preprocess stage by special Judge is not no the footing that case is exclusively triable by a Court of Sessions as contemplated by Sec. 202(2) proviso. There is no commitment and therefore, Sec. 202(2) proviso is not attracted. Similarly, till the process is issued, the accused does not come into the picture He may physically attend but is not entitled to take part in the proceeding. (See Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Ors. (1)) Upon a complaint being received and the court records the verification, it is open to

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the court to apply its mind to the facts disclosed and to judicially determine whether process should or should not be issued. It is not a condition precedent to the issue of process that the court of necessity must hold the inquiry as envisaged by Sec. 202 or direct investigation as therein contemplated. The power to take cognizance without holding inquiry or directing investigation is implicit in Sec. 202 when it says that the Magistrate may if he thinks fit, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer..... for the purpose of deciding whether or not there is sufficient ground for proceeding.' Therefore, the matter is left to the judicial discretion of the court whether on examining the complainant and the witnesses if any as contemplated by Sec. 200 to issue process or to postpone the issue of process. This discretion which the court enjoys cannot be circumscribed or denied by making it mandatory upon the court either to hold the inquiry or direct investigation. Such an approach would be contrary to the statutory provision. Therefore, there is no merit in the contention that by entertaining a private complaint, the purpose of speedy trial would be towarted or that a pre-process safeguard would be denied.

Further when cognizance is taken on a private complaint or to be precise otherwise than on a police report, the special Judge has to try the case according to the procedure prescribed for trial of warrant cases instituted otherwise than on police report by a Magistrate (Sec. 252 to 258 of 1898 Code of Criminal Procedure). Sec. 252 requires that when accused is brought before a court, the court shall proceed to hear the complainant and take all such evidence as may be produced in support of the prosecution. Accused has a right to cross examine complainant and his witnesses. If upon considering the evidence so produced, the court finds that no case against the accused has been made out which, if undebutted, would warrant his conviction, the court shall discharge the accused (Sec. 253 ibid). If, on the other hand, the court is of the opinion that there is ground for presuming that the accused has committed an offence, which the court is competent to try, a charge shall be framed in writing against the accused (Sec. 254 ibid). After the accused pleads not guilty to the charge, all prosection witnesses examined before the charge shall be recalled for further cross examination. Prosecution may examine additional witnesses whom the accused would be entitled to cross examine. Thereafter the accused may enter on his defence and may examine witness in defence. This procedure provides more adequate safeguard than the investigation
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by police officer of designated rank and therefore, search for fresh or additional safeguard is irrelevant.

It was however urged that while making the provisions of the Code of Criminal Procedure, 1898 applicable to an Proceeding in relation to an offence punishable under Secs. 161, 165 and 165 IPC and under Sec. 5 of the 1947 Act, modification was considered necessary in sub-s. (8) of Sec. 251A which prescribed procedure for trial of warrant cases instituted upon a police report while no corresponding amendment was made in any of the provisions contained in the same Chapter which prescribed procedure for warrant cases instituted otherwise than on police report and that this wold show that a private complainant which will be required to be tried according to the procedure prescribed for trial

of warrant cases instituted otherwise than on a police report was not within the contemplation of the Legislature. The modification made in sub-s. (8) of Sec. 251A is marginal and minimal. It is to the effect that instead of the words 'the accused shall then be called upon' the words 'the accused shall then be required to give in writing at once or within such time as the Magistrate may allow, a list of persons (if any) whom he proposes to examined as his witnesses and all the documents (if any) on which he proposes to rely, and he shall then be called upon to enter his defence' shall be substituted. It was urged that no corresponding amendment was made in Sec. 256 of the Code of Criminal Procedure, 1898 and that this glaring omission would clearly indicate that the procedure prescribed for trial of warrant cases otherwise than on police report was not within the contemplation for the trial of offences under the 1947 Act. Sec. 251A came to be introduced in the Code of Criminal Procedure, 1898 in 1955. Prior thereto there was uniform procedure for trial of warrant cases by Magistrate irrespective of whether the case was instituted on a police report or otherwise than on a police report. By the Amending Act, 1955, two different procedures came to be prescribed for trial of warrant cases (i) under Sec. 251A in respect of cases instituted on a police report and (ii) Sec. 252 to 258 in cases instituted otherwise than on a police report. This distinction with some modification has been retained in the Code of Criminal Procedure, 1973. The Legislature made certain modifications in the procedure applicable to warrant cases instituted otherwise than on police report, but left the other provisions applicable to trial of warrant cases instituted otherwise that on police report intact. The Legislature in its wisdom may have considered it necessary to make changes in one procedure and not in the other. It should not be
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forgotten that prior to 1955, the procedure for trial of warrant cases instituted on a police report and otherwise than on police report was the same and the Act of 1952 set up the Court of special Judge to try cases under the 1947 Act and the trial was to be held according to the procedure prescribed for trial of warrant case. It necessarily follows that between 1952 to 1955, the Court of special Judge would have followed the same procedure for trial of a case instituted upon a police report or otherwise than on a police report. If in 1955, the Legislature prescribed two different procedures and left the one for trial of warrant cases instituted otherwise than on police report intact and the position remained unaltered even after the introduction of Sec 7A. it is not suggestive of such a grave consequence that a private complaint is not maintainable. Therefore, this additional limb does not advance the case any further.

The learned Judges composing the Division Bench of the High Court by their separate judgments negatived the contention of the appellant holding that for the purpose of taking cognizance of an offence under the 1947 Act, special Judge was a Magistrate and can take cognizance as provided by Sec, 190 of the Code of Criminal Procedure. In reaching this conclusion, the learned Judges were largely influenced by the decision in State of Tamil Nadu v. V. Krishnnaswami Naidu & Anr., (1) in which this Court held that the special Judge functioning under Sec. 8 (1) is a Magistrate for the purposes of Sec. 167 of the Code of Criminal Procedure. They also relied upon the decision in Parasnath Pande and Anr. v. State(2) wherein a Division Bench of the Bombay High Court held that a report submitted upon an investigation, which is

found to be defective, can be treated as a private complaint of the police officer submitting the report and if congnizance is taken on such complaint, it would not be invalid. It was said that these decisions run counter to some decisions of this Court. It is not necessary to examine this aspect because as pointed out by us, a court of special Judge is a court of original criminal jurisdiction and it is not necessary to treat him either a Magistrate or a Court of Sessions save and except in respect of specific provision wherein it is so provided. There is the third decision in this context, which may be briefly referred to here. In Jagdish Prasad Verma v. The State, (3) a Division Bench of the
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Patna High Court held that the special Judge can take cognizance upon receiving a complaint of facts which constitute the offence or even upon information received from any person other than a police officer or upon his own knowledge of suspicion that the offence has been committed. This was treated as so obvious by the court that there is no discussion in support of the conclusion. However, we are satisfied that these decisions lay down the correct law on the point of maintainability of private complaint.

Having examined the matter from all the different angles, we are satisfied that the conclusion reached both by the learned special Judge and Division Bench of the Bombay High Court that a private complaint filed by the complainant was clearly maintainable and that the cognizance, was properly taken, is correct. Accordingly, this appeal fails and is dismissed.

S.R. Appeal dismissed
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