

PETITIONER:  
CENTRAL BUREAU OF INVESTIGATION

Vs.

RESPONDENT:  
STATE OF RAJASTHAN AND ORS.

DATE OF JUDGMENT: 08/07/1996

BENCH:  
RAY, G.N. (J)  
BENCH:  
RAY, G.N. (J)  
HANSARIA B.L. (J)

CITATION:  
JT 1996 (6) 313 1996 SCALE (5)203

ACT:

HEADNOTE:

JUDGMENT:  
WITH  
WRIT PETITION (CIVIL) NO. 33 OF 1996  
Arvind Singh Mewar  
V.  
Union of India & Anr.

J U D G M E N T

G.N. RAY, J.

leave granted. Heard learned counsel for the parties.

This appeal is directed against the order of the High Court of Rajasthan (Jaipur Bench) dated July 6, 1993 in SB Crl. Misc. Petition No. 81 of 1992 under Section 482 of the code of criminal procedure, affirming the order dated October 22, 1991 passed by the learned Chief Judicial Magistrate (Economic Offences) Jaipur, arising out of CBI case No. RC 8(s)/91/SIU (IX), New Delhi.

Shri Om Prakash, Deputy Superintendent of Police, CBI/SIU (IX), New Delhi, made an application under Section 155 (2) of the Code of criminal procedure, before the Chief Judicial magistrate (Economic Offences), Jaipur for grant of permission to the said Deputy Superintendent of Police, CBI, to investigate case No. RC 8/91/STU/(IX)/CBI/New Delhi under Section 25(1) read with Section 56 of the Foreign exchange (regulating) Act, 1973 (hereinafter referred to as FERA) against respondent No.3 Shri Arvind Singh Mewar of Udaipur, Rajasthan. It was inter alia stated in the said application under Section 155 (2) of the code of Criminal Procedure that the aforesaid case was registered against Shri Arvind Singh Mewar on the allegation that Shri Mewar, an Indian National and a resident in India, had purchased three properties in United Kingdom and got them repaired and renovated involving total expenditure of Rs. 228 lakhs (782790 punds) approximately. The said Arvind Singh had also incurred heavy expenditure on the education of his daughter in U.K., journey expenditure to and fro United Kingdom and on the purchase of Rolls Royce Car etc. All such expenditure was incurred by Shri Mewar without any permission from Reserve

Bank of India or Government of India. Accordingly, the said shri Mewar had committed an offence under Section 25(2) read with Section 56 of FERA. It was further stated in the said application that as per Section 62 of FERA, the offences punishable under Section 56 of FERA were non-cognizable within the meaning of Code of Criminal procedure and it was submitted that in order to investigate the non-cognizable offence, the aforesaid application for permission was filed,

By the order dated October 22, 1991, the Chief judicial Magistrate (Economic Offences) Jaipur, dismissed the said application, inter alia, on the finding that under Section 5 of FERA, the State Government may by order and subject to such conditions and limitations as it thinks fit to impose, authorise any officer of Customs or any Central Excise such of the powers and discharge such of the duties of the Director Enforcement or any other officer of the Enforcement under FERA as may be specified in the order; but no notification could be produced before the said learned Chief Judicial Magistrate which had empowered CBI under Sections 4 and 5 of FERA to cause investigation in respect of the offence under FERA. The learned Chief Judicial Magistrate also noted that the Fir had been registered by the CBI under Section 154 (1) of the Code of the Criminal Procedure. The learned Chief Judicial Magistrate indicated that the offence alleged Against respondent NO. 3 was non-cognizable offence under Section 62 FERA and FIR under Section 154 (1) of the Code of Criminal Procedure could be registered for cognizable offences and not for non-cognizable offence. The learned Judicial Magistrate further observed that in the FIR under Section 154 (1) of the Code of Criminal Procedure could be registered for cognizable offences and not for non-cognizable offences. The learned Judicial Magistrate further observed that in the FIR it was alleged that the violation of the provisions of FERA had been committed in a foreign country. For investigation of offences foreign country. For investigation of offences committed in foreign countries, it was necessary to take permission of the Government of India Under Section 188 of the Code of Criminal Procedure, but permission from Central Government had not been taken, Accordingly, the learned Judicial Magistrate held that the permission to investigate the offences alleged against Shri Arvind Singh Mewar by the CBI could not be given and the said application was dismissed.

Being aggrieved by the said order of the learned Judicial Magistrate, the appellant made an application under Section 482 of the Code of Criminal Procedure being SB CrI. Misc. Petition No 81 of 1991. The Learned Single Bench of Rajasthan High Court (Jaipur Bench) by order dated July 6, 1993 dismissed observing that the reasonings given by the learned Chief Judicial Magistrate in the Impugned Order being justified, there was no occasion to interfere with the same.

Mr. Jayaram, learned Additional Solicitor General appearing for the appellant, has submitted that the learned Chief Judicial Magistrate and the High Court failed to appreciate that SECTION 5 of FERA clearly empowers the Central Government to entrust the functions of Director or other officer of Enforcement or any police Officer or any other officer of the General Government or of a State to exercise such powers and discharge such of the duties. Mr. Jayaram has further submitted that any officer who has been entrusted with the duties and function of the Directorate of Enforcement would be bound by the law which empowered them to be deemed as "Officers of Enforcement". Mr. Jayaram has also submitted that the contention that the provisions of

the Code of Criminal Procedure cannot apply to the offences under FERA is without any basis. By Section 62 of FERA, the contention that the provisions of the Code of Criminal Procedure cannot apply to the offences under FERA is without any basis. By Section 62 of FERA, the offences punishable under Section 56 of FERA have been made non-cognizable within the meaning of that Code. He has submitted that there cannot be any authority other than authority mentioned under Section 155 of the Code of Criminal Procedure to deal with the cases under FERA being not-cognizable offence. Mr. Jayaram has also submitted that where the operation of the Code has been kept in abeyance that has been specifically set out in FERA. By way of illustration he has referred to Section 56(6) of FERA wherein it has been specifically stated that "nothing in the first proviso to Section 188 of the Code of Criminal Procedure, 1898 (5 of 1898) shall apply to any offence punishable under this Section."

Mr. Jayaram has further submitted that the offences under FERA were notified for investigation by CBI in exercise of the powers conferred on the Central Government vide Sections 3 and 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (hereinafter referred to as DSPE Act). The Government of Rajasthan vide letter No. G.10(1) Home/XIV/74 dated November 10, 1975 addressed to the Government of India had conveyed its consent under Section 6 of the DSPE exercising power and jurisdiction in the whole of State of Rajasthan for investigation of offences punishable under FERA and attempt, abetments and conspiracies in relation to or in connection with the said offences. Mr. Jayaram has further submitted that the CBI, Special Police Establishment, is specialised Investigation Agency constituted under the DSPE Act for the investigation of special class of crimes having interest and international ramifications irrespective of the fact that the offences therein are covered by a special legislation. It has been contended by Mr. Jayaram that entrustment of an offence of a special nature to any of the reputed agencies for investigation is purely a "State subject" and the same is within the inherent powers of a State Government. Therefore, the consent given by the Government of Rajasthan is within the inherent powers and jurisdiction of the State Government and such exercise of power and jurisdiction are out of the scope of judicial interference.

Mr. Jayaram has contended that the State Government has the prime responsibility over the crime, law and order situation within its territory. It has also been contended by Mr. Jayaram that in view of the consent given by the Government of Rajasthan, Department of Personnel and Administrative Reforms of the Central Government vide Order No.228/2/74-AVD/II dated October 26, 1977, in Exercise of the powers conferred under section 5 the DSPE Act, notified the offences under FERA for investigation by DSPE in various States including the State of Rajasthan. Mr. Jayaram has submitted that a consolidated notification bearing No.228/8/89-AVD/II dated September 7, 1989 was issued under Section 3 of the DSPE Act in respect of the offences for which consent by all the State Governments has been given for the pursue of investigation by the CBI and the offences under FERA are at SL. No. 19 of the list of Central Acts notified investigation by the members of DSPE. Mr. Jayaram Magistrate and the High Court failed to appreciate the implication of the Special legislation which deals with all types of offences either to be departmentally dealt with in adjudication proceedings as well conviction by a court of law if so warranted. Mr. Jayaram has submitted that Section

5 of undoubtedly confers authority on Central Government to Enforcement or his subordinates to a Police Officer. Hence, the notification issued under Section 3 of DSPE Act authorising the officers of DSPE to investigate into the offences under FERA must be held to be a due authorisation under Section 5 of FERA.

Mr. Jayaram has contended that the CBI having legal authority took up the case for investigation and made the application under Section 155(2) Cr.P.C. before the Chief Judicial Magistrate for permission to investigate a non-cognizable offence. Due to refusal of permission by the Chief Judicial Magistrate, no enquiry could be held by the CBI. It has been submitted by Mr. Jayaram that the primary requirement of law of the country should not be jeopardised by refusing to accord permission on untenable grounds. Mr. Jayaram has submitted that it was preeminently a fit case where permission should have been granted to the CBI to cause investigation in respect of the allegations of serious breach under FERA.

Mr. Jayaram has also submitted that the CBI has initiated the case by registration of Fir No. RC 8(S)/91-SIU.IX/CBI/New Delhi on September 17, 1991 which is much before any action taken by the Director of Enforcement. A copy of the FIR has also been sent to the Director of Enforcement, The Directorate of Enforcement is free to investigate the lapses under FERA other than the offences under Section 25(1) read with Section 56 of FERA. Such investigation of the CBI does not amount to parallel investigation, In any event, there is not question of double jeopardy unless the accused has been prosecuted for the same offence by two authorities. Mr. Jayaram has submitted that it is not necessary to give specific authority to officers of the CBI individually to cause investigation relating to the offences under FARA. A general notification authorising the officers of the DSPE to investigate the offences under FERA must be held to be proper authorisation to all the members of the CBI to cause investigation. In support of this Court in Major E.G. Barsay Vs. State of Bombay (Air 1961 SC 1762). Our attention has been drawn to the observation of this Court at page 1778 which is to the following effect:-

"It was contended before the High Court and it was repeated before us that the consent should have been given to every individual member of the Special Police Establishment and that a general consent would not be a good consent. We do not see any force in this argument. Under Section 6 of the Delhi Special Police Establishment Act, no member of the said Establishment can exercise powers and jurisdiction in any area in a State without the consent of the Government of the State. That section does not lay down that every member of the said Establishment should be specifically authorised to exercise jurisdiction in that area, though the State Government can do so. When a State Government can authorise a single officer to exercise the said jurisdiction,

we do not see any legal objection why it could not authorise the entire force operating in that area belonging to that Establishment to make such investigation. to make such investigation. The authorisation filed in this case sufficiently complies with the provisions of Section 6 of the Delhi Special Police Establishment Act, 1946, and there are no merits in this contention."

Mr. Jayaram has also submitted that Section 3 of the DSPE Act empowers the Central Government to specify the offences to be investigated by the members of DSPE. The offences under FERA have been mentioned in the notification empowering the members of the DSPE. The superintendence of DSPE vests in the Central Government and section 5 of DSPE Act empowers the Central Government to extend to any area in a State, not in a Union Territory, the powers and the jurisdiction of the members of the Establishment for investigation of any offences or classes of offences specified under Section 3. Subject to the orders of the Central Government, the members of such establishment exercising such extended powers and jurisdiction are to be deemed to be the members of the Police Force of that area for the purpose of powers, functions, privileges and liabilities; but the powers and jurisdiction of a member of DSPE in such State is to be Exercised only with the consent of the Government of the State concerned. Mr. Jayaram has submitted that the scheme of DSPE Act does not either expressly or by necessary implication divest the police authorities of their jurisdiction and powers under any other competent law. Mr. Jayaram has also submitted that DSPE Act is only permissive and empowers the members of DSPE also to investigate all the offences specified under Section 3 of DSPE Act. In support of this contention, Mr. Jayaram has relied on the observation at paragraph 12 in the decision of this Court in A.C. Sharma V. Delhi Administration (AIR 1973 so 913). Mr. Jayaram has submitted that by authorising the members of the CBI to cause investigations relating to the offences under FERA, the power conferred on the officers of the enforcement under FERA has not been taken away.

Mr. Jayaram has also contended that as the offence under FERA can be investigated by the members of the CBI in view of the specific notification issued by the Central Government under DSPE Act and as the jurisdiction of such Officers of CBI view of the specific notification issued by the Central Government under DSPE Act and as the jurisdiction of such Officers of CBI to cause investigation has been extended in the State of Rajasthan with due consent of Government of Rajasthan, there cannot be any impediment of the Officer of the CBI to cause investigation relating to the offences alleged to have been committed by Shri Arvind Singh Mewar. In the aforesaid circumstances, the permission sought for by the Dy. Superintendent of Police of the CBI before the learned Chief Judicial Magistrate, Jaipur, should have been granted and the High Court erred in not setting aside the order of rejection of such permission sought by the CBI.

Mr. Jayaram has submitted that despite very serious allegations of violations of FERA by Shri Arvind Singh Mewar, investigation cannot be taken up for want of permission by the learned Judicial Magistrate. He has, therefore, submitted that in the facts of the case, the

impugned order of the learned Chief Judicial Magistrate in refusing the permission sought for by the CBI to make investigation relation to the allegations contained in the FIR, since upheld by the High Court, should be set aside and the permission should be given to the CBI to cause investigation in respect of the offences alleged in the FIR.

Mr. Ashok Sen, learned Senior counsel appearing for the respondent no. 3, namely, Shri Arvind Singh Mewar, has contended that it will be quite apparent from the combined reading of Sections 4,5 and 26 of the code of Criminal procedure that if there is special law prescribing the special procedure for investigation of the cases falling under that law, the provisions of the Code of Criminal Procedure are not applicable, It is only in the absence of any provision regulating investigation, inquiry and trial of non-IPC offence i.e. offence under any other law, investigation, inquiry or trial, shall be as per the Code Criminal Procedure, Under FERA Specific provisions have been made for the investigation, inquiry and recording of statement of witnesses and also of trial of offences under FERA. Therefore, the Provisions of the Code of Criminal Procedure do not govern the investigation etc. in respect of the offences under FERA. Mr. Sen has submitted that Section 33 (2) of the FERA empowers the Central Government or the Reserve Bank or any other Officer of Enforcement Directorate not below the rank of Chief Enforcement Officer to call for information, Section 34 of FERA powers any officer of the Enforcement Directorate so authorised by Central Government to search a suspected person and to seize document. Section 35 authorises an officer or Enforcement to arrest a person against whom the officer has reason to believe that any person in India or within the Indian customs waters has been quietly of an offence punishable under FERA. Section 30 authorises the officer of Enforcement to stop and search the conveyances. Section 37 confers power to search premises. Section 38 authorises the officers of Enforcement authorised by the Central Government to examine persons. Section 40 authorises the Gazetted Officer of Enforcement to summon persons to give evidence and produce documents. Section 41 authorises an officer of Enforcement to take into custody of the document, Section 42 authorises such officer to investigate the drafts, cheques and other instruments. Section 43 authorises the officer of Enforcement to inspect books of accounts and other documents. Other provisions of the Act provide various course of actions for implementation of the Act. the said contravention of Section 25 is punishable under Section 56. Section 62 of the Act makes the offence under FERA as no-cognizable. Mr. Sen has submitted that the aforesaid scheme of FERA clearly shows that FERA is a self contained code which is fully comprehensive specifying the various offences, prescribing the procedure for investigation or trial of such offences and the punishment to be awarded for such offences. These provisions of the Code are not applicable in respect of such matters governed by the special law i.e. FERA.

Mr. Sen has further submitted that the effect of Section 5 of code of Criminal Procedure is to render the provision of the Code inapplicable in respect of matters convert by special law, This Section clearly excludes the applicability of code in respect of investigation etc. under any special or local law. Therefore, only those officers who have been empowered to investigate under the special law i.e.FERA can do so and that to in accordance with the special law. Mr. Sen has submitted that the police therefore, does out of picture. Section 155 of the Code of

Criminal Procedure also cannot be invoked as on account of specific provisions in the special law, general provisions contained in the Code do not apply.

"Section 5 Criminal Procedure Code Provides that all offences under any law other than the Indian penal Code shall be investigated, Inquired into, Tried and otherwise dealt with according to the provisions contained in the Code or Criminal Procedure but 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. The Foreign Exchange Regulation Act is a Special Act and it Provides Under Section 19A for the necessary investigation into the alleged suspected commission of an offence under the Act, by the Director of Enforcement. The provisions of the Code of Criminal Procedure therefore will not apply to such investigation by him."

Mr. Sen has also referred to the decision of madras High Court in L.E. Mohammad Hussain vs. Dy. superintendent of Customs (AIR 197 Madras 464) has been observed in the said decision:-

"When there is a prohibition against taking cognizance by the Magistrate without a complaint by concerned authority and when procedure is laid down under the Foreign Exchange Regulation Act which is a special Act, the power of the police to investigate can only be confined to that conferred to them under Section 19--j (2) of the Act. So for as offence in the Special enactments area made Cognizable, the police. under the general power, may investigate. In the Foreign Exchange Regulation Act. the only offence that is made cognizable is the contravention of sub-section (1) of Section 4, and the police cannot investigate other offences except on the complaint of the officer concerned and with the order of the Magistrate. In investigating a cognizable offence with they are entitled to, it may be that certain facts which may amount to an offence under special Act may also be disclosed. But that would not deprive the police of their power to investigate a cognizable offence not falling under the special Statute."

Mr. Sen has submitted that Section 62 of FERA makes all offences punishable under Section 56 non-cognizable, thereby excluding the jurisdiction of police officer to investigate

such offences. The provisions of Chapter XIV of the Code of Criminal Procedure, therefore, cannot apply to investigation of such offences. Mr Sen has also submitted that violation of Section 25 (restriction on purchase of properties abroad) is punishable under Section 56 of FERA. Section 62 has been enacted notwithstanding anything contained in the Criminal Procedure Code. the said Section 62 has been enacted to prevent police from initiating action in case of alleged FERA violations. The jurisdiction of police is normally excluded from several economic offences as they can be properly investigated by specialized agencies only. Mr. Sen has submitted that Section 45 of FARA is the only excepting where powers have been conferred upon police in case a person is guilty of illegally purchasing or buying foreign exchange in public place (Section 8(1) FARA). This is the only limited role of police under FARA.

Mr. Sen has also submitted that a member of DSPE has only jurisdiction to investigate the offence committed outside the country does not fall within the purview of the provisions of DSPE Act. He has submitted that even under Section 188 of the Code of Criminal Procedure, The Permission of the Central Government is necessary for investigation for an offence punishable out said the country. Therefore, in any event, investigation in respect of the offences alleged to have been committed by the respondent no. 3 outside India in violation of FARA cannot be done by any member of CBI.

Mr. Sen has also submitted that Sections 3 and 5 of the DSPE Act cannot be applicable for the offences said to have been committed outside the country. Mr. Sen has also submitted that Section 25 of FARA provides that no person resident in India shall, except with the general or special permission of the Reserve Bank of India Acquire or hold or transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise any immovable property situate outside India. The offence under Section 25 cannot be committed in India. Therefore, the powers by the Notification issued under DSPE Act purporting to authorise the officers of the DSPE to investigate in respect of the offences committed outside India under FARA is beyond the provisions of the DSPE act and such Notification is ex facie illegal. Mr Sen has , therefore, submitted that the learned Chief Judicial Magistrate has rightly rejected the application made under Section 155 of the code of Criminal Procedure and the High Court has rightly rejected the application under Section 482 of the Code of Criminal Procedure and the High Court has rightly rejected the application under Section 482 of the Code of Criminal Procedure to challenge the said decision of the learned Chief Judicial Magistrate. He has therefore, submitted that the appeal should be dismissed.

On a careful consideration of the facts and circumstances of the case and submissions made by the learned counsel for the parties, it appear to use that under Section 3 of DSPE Act, the Central Government May, by notification, specify the offences which are to be investigated by the members of DSPE. It is not disputed that notification under Section 3 of DSPE Act has been issued by the central Government specifying the offences under FARA to be investigated by the members of DSPE. It is also not in dispute the a notification dated October 26, 1977 by the Government of India. Ministry of Home Affairs, Department of Personal and Administrative Reforms, has been issued in exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of DSPE act. By the said

notification the Central Government. with , with consent of the various State Governments as mentioned in the said notification including the State Government of Rajasthan, has extended the powers and jurisdiction of the members of DSPE, inter alia, to the state of Rajasthan for the investigation of the offences specified in the Schedule under clause (a), offences punishable under FARA and under clause (b) attempts, abetments and conspiracies in relation to or in connection with any offence mentioned in clause (a) and any other offence committed in the course of the same transaction arising out of the same facts have been mentioned.

It is, however, to be noted that under Section 7 of DSPE act, the Central Government has been empowered to constitute a special police force to be called the DSPE for the investigation in any union Territory of offences notified under Section 3. Under Section 5 (1) of DSPE Act the Central Government may by order extend to any area including Railway areas in a State, not being Union Territory, the Powers and jurisdiction of the members of the DSPE for the investigation of any of the offence or classes of offences specified in a notification under Section 3. Under Section 5 (2), when by an order under sub-section (1), the powers and jurisdiction of the members of the said police establishment are extended to any such area, a member thereof may, subject to any order which the Central Government may make in this behalf discharge the functions of a police officer in that area and shall, while so discharging such functions, be deemed to be a member of a police force of that area and be vested with the powers, functions as and privileges and be subject to the liabilities of a police officer belonging to that police force.

It is quite evident that members of DSPE are members of special police force constituted under Section 2 of DSPE Act by the Central Government. The question that arises for decision in this case is whether or not a member of DSPE, which is also a member of special police force constituted by the Central Government, even if authorised under Section 3 and Section 5 of DSPE Act to investigate in respect of offences under FERA in a particular state other than the Union Territory, with the consent of such State Government, can investigate the offences for violation of FERA, more so, when the offence is alleged to have been committed outside Indian Territory. It will be apposite at this stage to refer to the provisions of Section 3, 4 and 5 of FERA:

Section 3: Classes of Officers of Enforcement-

There shall be the following classes of officers of Enforcement, namely:

- (a) Directors of Enforcement;
- (b) Additional Directors of Enforcement;
- (c) Deputy Directors of Enforcement;
- (d) Assistant Directors of Enforcement;

(e) such other class of officers of Enforcement as may be appointed for the purposes of this Act.

Section 4- Appointment and powers of officers of enforcement:-

- (1) The Central Government may appoint such persons as it thinks

fit to be officers of enforcement.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise a Director of Enforcement or an Additional Director of Enforcement or a Deputy Director of Enforcement or an Assistants Director of Enforcement to appointed officers of Enforcement below the rank of an Assistant Director of Enforcement.

(3) Subject to such conditions and limitations as the Central Government may impose, and officer of impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act.

Section 5- Entrustment of functions of Director or other officer of Enforcement:

The Central Government may, by order and subject to such conditions and limitation as it thinks fit to impose, authorise any officer of customs or any Central Excise Officer or any police officer or any other officer of the Central Government or a State Government to Exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of Enforcement under this Act as may be specified in the order.

The aforesaid Sections of FERA indicate that for implementing enforcement of the provisions of FERA different classes of officers of Enforcement have been constituted in Section 3. Under Section 4(1) of FERA, the Central Government may authorise some of the senior officials of the Directorate of Enforcement, as mentioned in that sub-section (3) of Section 4 authorises the Central Government to impose conditions and limitations in the exercise of powers and discharge of duties under Fera by an officer of Enforcement. Section 5 authorises the Central Government to entrust the functions of Director or other officers of the Enforcement, with such conditions and limitations as it thinks fit, to any officer of the customs or any Central Excise Officer or any police officer or any other officer of the Central Government or a State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement of any other officer of the Enforcement under FERA as may be specified in the order to be issued by the Central Government.

In our view, a combined reading of Sections 3, 4 and 5 of FERA makes it quite evident that primarily the officer of Enforcement Directorate as mentioned in Section 3 and 4 have been empowered to exercise the powers and discharge the duties conferred or imposed on such officers of the Enforcement Directorate under FERA. As it may be expedient in some cases to confer powers and duties under FERA to persons outside the Enforcement Directorate, the Legislature in its wisdom has given authority to the Central Government under Section 5 of FARA to authorise any officer or any officer of Central Government or State Government to

exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of Enforcement under FERA as may be specified subject to such conditions and limitations as deemed fit by the Central Government.

The member of DSPE is a member of police force constituted under DSPE Act by the Central Government. Under DSPE Act, a member of DSPE can Exercise the power of investigation in the offence or offences as specified in Section 3 DSPE act within Union Territory. For exercising power of investigation outside Union Territory, even in respect of offences specified under Section 3 of DSPE Act, a notification extending jurisdiction in the State or States outside Union Territory is required to be issued by the Central Government with the consent of such state Government or Governments. Unless such notification under Section 5 of DSPE Act is issued, a member of DSPE cannot investigate and exercise jurisdiction under DSPE act in respect of offence or offences specified in Section 3 in a State outside the Union Territory. It has already been indicated that notifications under Section 3 and 5 have been issued by the Central Government authorising members of DSPE to investigate various offences including offences under FERA in number of States outside Union Territory including the State of Rajasthan.

In our view, such notifications under Section 3 and 5 of DSPE of Act are necessary for the purpose of exercising powers by a member of DSPE in respect of offence or offences and in respect of areas outside the Union Territory. It may however be noted here that by a general notification, members of DSPE may be authorise to exercise power of investigation in respect of offence or offences and in areas as specified in the notification under Sections 3 and 5. as As already indicated, although officers of Enforcement Directorate are clothed with the powers and duties to enforce implementation of the provisions or FERA, the Central Government has been authorised to impose on other officers including a police officer, powers and authority to discharge such of the duties and functions as may be specified by it. It is nobody's case that any notification has been issued under FERA authorising the member of dspe to discharge the duties and functions and officer of Enforcement Directorate. In our view, in the absence of such notification under FERA, a member of DSPE, the foresaid notifications under Sections 3 and 5 of DSPE Act, cannot be held to be an officer under FERA and therefore is not competent to investigate into the offences under FERA.

FERA is a special legislation relating to regulation of foreign exchange. FERA is also a central legislation enacted at a later point of time than the DSPE Act which was enacted in 1946. In our view, Section 4 and 5 of the code or Criminal Procedure will not come in aid of the investigation of the Officer of DSPE in accordance of the Criminal Procedure Code. Section 4 and 5 of the Code of Criminal Procedure provide that in the absence of any provisions regulating investigation, inquiry or trial of non-I.P.C. offences i.e. offences under any other law, the investigation, inquiry and trial shall be in accordance with the Code of Criminal Producer. But FERA is a self contained code containing comprehensive provisions of investigation, inquiry and trial for the offences under that Act. The provisions under FERA gives power to the officers of the Directorate of Enforcement or other officers duly authorised by the Central Government under FERA to search, conspire, recover, arrest, record statements of witnesses, etc., FARA

contains provisions for trial of the offences under FARA and imposition of punishment for such offences. FARA, being a special law, containing provisions for investigation, enquiry, search, Seizure, trial and imposition of punishment for offences under FARA, Section 5 of the Code of Criminal Procedure is not applicable in respect of offences under FARA. In the decision of Nil Ratan Sircar's case (supra), this Court has considered the import of the provisions of FARA and has held:-

"It was also urged for the appellant that the provisions of Section 5(2) of the code apply to the present case in matters which are not provided by the Act. This contention too has no basis. Section 5 provides that all offences under any law other than the Indian Penal code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Code of Criminal Procedure, 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, The Act is a special Act and it provides under Section 19-A for the necessary investigation into the alleged suspected commission of an offence under the Act, by the Director of Enforcement. The provisions of the Code of Criminal Procedure therefore will not apply to such investigation by him, assuming that the expression 'investigation' includes the retaining of the documents for the purposes of the investigation."

The position is same under the FERA of 1973 as it would appear from its various provisions noted above. the aforesaid case was concerned with FERA of 1947. similar view has been expressed by this Court in Ajmer Singh's case (supra) by indicating that the Army Act, Navy Act and Air Force Act embody a completely self contained and comprehensive Code and therefore constitute a special law in force providing for special jurisdiction and powers on court material and prescribing a special form of procedure for trial of the offences under the said Acts. Hence, Section 5 of the Code of Criminal Procedure was not applicable.

It may also be noted that the allegations in the FIR in question, Indicate commission of offences under FERA outside India. DSPE Act has been enacted "to make provision for constitution of special police fore in Delhi for the investigation of certain offences in the Union Territory, for the superintendence and administration of the said force and for extension to other of the powers and jurisdiction of the members of the said force in regard to the investigation of the said offences". Under Section 1 and 2 of DSPE Act, the authority under the said Act is to investigate the offences committed in the Union Territory or in such other States where the Jurisdiction of the member of DSPE has been extended under Section 5 of the Act. The member of

DSPE, therefore, is not clothed with the authority to investigate offences committed outside India. Even under Section 188 of Code of Criminal Procedure, investigation of an offence committed outside Indian territory may be made only with permission of the Central Government. Of Course, if permission is granted, offences committed outside India can also be investigated.

In the aforesaid facts, we do not find any person to interfere with the impugned order and the appeal is, therefore, dismissed.

WRIT PETITION (CIVIL) NO. 33 OF 1996

This Writ Petition has been filed for quashing Order No.228/2/74-AVD-II dated October 26, 1977 issued by the government of India under Section 5 read with Section 6 of DSPE Act and letter/Circular dated July passed in the appeal, indicating the scope and effect of notification issued on October 26, 1977 under Section 5 and 6 of the DSPE Act, no further order need be passed on this Writ Petition and the same Stands disposed of.