(2016) 05 KAR CK 0006

In the Karnataka High Court

Case No : Criminal Appeal Nos. 220 c/w 530 and 531 of 2012 (C), 1123 of 2013

Mohammed Razhur Rehaman alias Umesh Samsuddin and others APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 10-05-2016

Acts Referred:
Arms Act, 1959 — Section 2(d), 25, 26, 39
Evidence Act, 1872 — Section 25
Explosive Substances Act, 1908 — Section 5, 6
Penal Code, 1860 (IPC) — Section 120A, 120B, 121A, 153A, 153B
Unlawful Activities (Preventi

Citation : (2016) 3 AirKarR 37 : (2016) 5 KantLJ 15 : (2016) 4 KCCR 548

Hon'ble Judges : Mohan M. Shantanagoudar and K.N. Phaneendra, JJ.

Bench : Division Bench

Advocate : Hashmath Pasha, Advocate. in Criminal Appeal No. 220 of 2012, Sri P.M. Nawaz, SPP-I. in Criminal Appeal No. 530 of 2012, Sri P.M. Nawaz, SPP-I. in Criminal Appeal No. 531 of 2012, Sri Santosh B., Advocate, Amicus Curiae and Praveen C., Advocate. in Crimin

Final Decision : Partly Allowed

Judgement

K.N. Phaneendra, J.—Totally eight accused persons were charge-sheeted for the offences punishable under Sections 120-B. 121,121-A, 122, 124-A, 153-A, 153-B of IPC, under Sections 5 & 6 of Explosive Substances Act, 1908, under Sections 25, 26 & 28 of the Arms Act, 1959 and also under Sections 10, II, 13 of the Unlawful Activities (Prevention) Act, 1967.

2. The trial Court after due contest by the accused persons has found them guilty. A1 to A6 were convicted for the offence punishable under Sections 120-B, 121-A, 121 of IPC, Sections 5 & 6 of the Explosive Substances Act and also convicted A2, A3, A4 and A6 for the offence punishable under Sections 25 & 26 of the Arms Act. A-7 was acquitted of all the offences alleged against him. A1 to A6 were also acquitted of the offences punishable under sections 10 & 13 of the

Unlawful Activities (Prevention) Act and also under Section 153-A & 153-B of IPC.

3. The Trial Court has sentenced -

(1) A1 to A6 to undergo imprisonment for life for the offence punishable under Section 120-B of the IPC.

(2) A1 to A6 are sentenced to undergo simple imprisonment for 7 years with fine of Rs.5,000/- each, in default to undergo further simple imprisonment for a period of one year for the offence punishable under Section 121-A of IPC.

(3) A1 to A6 are sentenced to undergo imprisonment for life for the offence punishable under Section 121 of IPC.

(4) A2, A3, A4 and A6 are sentenced to undergo simple imprisonment for 7 years with fine of Rs.5,000/- each, in default to undergo further simple imprisonment for one year for the offence punishable under Section 5 of the Explosive Substances Act.

(5) A1 and A5 are sentenced to undergo simple imprisonment for 7 years and shall pay fine of Rs.5,000/- each, in default to undergo further simple imprisonment of one year for the offence punishable under Section 6 of the Explosive Substances Act, 1908.

(6) A2, A3, A4 and A6 are sentenced to undergo simple imprisonment for 5 years and shall pay fine of Rs.5,000/- each, in default to undergo further simple imprisonment for one year for the offence punishable under Section 25 of the Arms Act, 1959.

(7) Further, A2, A3, A4 and A6 are sentenced to undergo simple imprisonment tor 3 years for the offence punishable under Section 26 of the Arms Act, 1959.

4. Al, A2, A4, A5 and A6 have preferred Criminal Appeal No. 220/2012, whereas, A3 has preferred independent appeal in Criminal Appeal No. 1123/2013 questioning the judgment of the trial Court with regard to their conviction and sentence.

5. The State has preferred Criminal Appeal No. 530/2012 against A1 to A6 calling in question the inadequacy of the sentence passed and for enhancement of the sentence consequently sought for imposition of death penalty for the offence under section 121, I.P.C. and life sentence under section 121A of I.P.C. The State has also preferred Criminal Appeal No. 531/2012 against the judgment of acquittal of A1 to A6 for the offence punishable under Sections 10 & 13 of the Unlawful Activities (Prevention) Act, and u/Ss. 153-A, 153-B of IPC and further acquitting A7 for all the offences alleged against him.

6. Before adverting to the important aspects involved in these cases, it is just and necessary to have the brief factual matrix of the case.

7. The records disclose that one Mr. V.S. D?Souza, the Assistant Commissioner of Police, Frazer Town Sub-Division, Bengaluru City, took-up investigation on the

directions of the Police Commissioner in connection with Crime No. 110/2005 under Section 307 of IPC pertaining to a shoot-out incident at Indian Institute of Science in Bengaluru. During the course of investigation, the Investigating Officer found involvement of some of the accused for the offences invoked in this case. Subsequently, he also came to know about a banned Organization by name Lushkare-e-Taiba (hereinafter referred to as ?Let'' for short) has been activating terrorism in India and other places. It is also alleged by the said Investigating Officer that the Let has been making all its efforts to destabilise India by promoting terrorist activities like attacking vital sensitive institutions, assassinating important public personalities, by causing bomb explosions in public places, carrying shoot-outs, disrupting public peace and tranquility, causing communal disharmony. By way of doing all these activities the said organisation has been attempting to create social and economic imbalance in the country. It is further alleged that one Abu Mohammed alias Mohammed Irshad a Pakistani National is the Chief of Let organization, located himself in Soudi Arabia, other persons by name Abbu-Afzal, Abdul Maner and Zakria who were also Pakisthani Nationals have been helping Abu-Mohammed alias Mohammed Irshad in all Let Activities.

8. A1 - Mohammed Razhur Rehaman, a native of Nalagonda in Andhra Pradesh State, is a drop out in Diploma. He procured passport from Hydrabad with the help of his brother. He fled to Soudi Arabia and for some time worked there as driver and sales-man. When he was at Soudi Arabia, he came in contact with one Sheik Mehboob, Ahmed Moulana, an Let leader in a Sanaga Masjid. The said Sheik Mehboob, Ahmed Moulana motivated Abdul Rehaman to join Let in 1998. According. AI started actively participating in the activities conducted by Let. which are mainly concentrated in motivating people for ?Jihad? activities. A1-Mohammed Razhur Rehaman also said to have been mingled with other leaders of LeT and participated in motivating the people for ?Jihad? activities. Having trained and motivated in that manner, he came to India in the year 1999. After coming back to India, he started promoting and motivating the mohammadan community people for ?Jihad? activities in India also. In this background, it is alleged that in the year 2000, A2-Afsar Pasha and A3 - Mehboob Ibrahim of Bengaluru District have become friends to A1 - Mohammed Rehaman and they also became prominent persons in Let.

9. A1 and A2 intended to go to Pakishtan for training to handle explosives and arms for ?Jihadi? and for terrorist activities. In this background, they needed funds. In the year 2001, the persons by name Faisal, Abu Hamza, Sherief, Altaf, Anwar, Zakaria, Abdul Rehman and others, who are all Indian Nationals and working in Soudi Arabia have decided to collect funds and revenue for ?Jihadi? activities in India. In this context, in fact, A2-Afsar Pasha was invited to Bangladesh by Vali-ur-Rehaman, a resident of Bangladesh, Chief of Jamat-Ul-Mujauddin (JUM in Bangladesh). Accordingly, A2 had been to Bangladesh and taken training with regard to handling of the weapons, arms, explosives and even techniques of manufacturing bombs, explosives and fire arm weapons, etc.,

During this period, it is alleged that, A1 had sent money to A2 for the purpose of purchasing weapons and towards training expenses.

10. It is further alleged that A1 along with other associates of Let has conducted various religious programmes, from 2002 to attract Muslims to join the Let organization. Abdul Rehaman (A1) has been visiting Nalagonda in Andhra Pradesh frequently on the pretext of spending holidays, but in fact to conduct some illegal activities, he has been in close contact with A2 and A3 and they were conspiring with each other for planning, to carry-out Jihad and terrorist activities in India in general and particularly in the State of Karnataka. A3-Mehaboob Ibrahim of Bagalkote District was appointed for carrying out terrorist activities in Northern Karnataka and A2 Afzar Pasha of Bengaluru, was appointed for carrying out terrorist activities in Southern Karnataka. During the year 2003, A1 visited Chintamani in Kolar District of Karnataka State and met A2 and decided about setting up of a Mosque of Ahle-Hadis at Chintamani and also promised for financial assistance. The said Mosque was established for the purpose of carrying out the objectives of Let, by recruiting youths from Mohammadan community. In this context, A2 has introduced A1 to other accused persons by name Noor Ahmed (A4), Mohammed Irfan (A5), Nazamuddin alias Munna (A6) and others. A1 in turn motivated all of them to sacrifice themselves in Jihad and terrorist activities.

11. In order to achieve the objectives it is alleged that A1 has been sending money to A2 and A3 by way of havala transaction through one Chand Pasha (A-7).

12. In this context, A2 and A3, were in constant touch with A1. Though A1 was based himself in Saudi Arabia, he often coming to India. A1 has come to Nalagonda during relevant time and instructed A2 and A3 to manufacture or purchase bombs to damage vital institutions, multinational companies, etc. in Bengaluru and other places and also for causing large scale destruction of public property. They have also taken decision for mass attacks on innocent people and promote enmity among different groups on the ground of religion, race, for causing sabotage activities. In this context, Afsar Pasha (A-2) recruited 4 to 5 persons and trained them to conduct Let activities and taught them the concept of Jihad (Holy War) against non-Muslims.

13. For the purpose of achieving their goal, during second and third week of December, 2005, they held secret conspiracy meetings in Tamil Sangam, Cubbon Park and A2?s house in Bengaluru and other places in Karnataka and decided to cause bomb blasts in Bengaluru. For this purpose, they procured explosive materials, bombs, etc., and prepared themselves to use them to terrorise the citizens and create fear psychosis in the State by their terrorist activities.

14. Having come to know about these activities, the Investigating Officer Sri. V. S.D.Souza has filed suo motu complaint milking above allegations against the above said accused persons alleging that, the information received by him

constituted cognisable offences being committed by the accused persons under the provisions of IPC, Arms Act, Explosive Substances Act and also Unlawful Activities (Prevention) Act, 1967. Hence, he has lodged a report narrating the facts in detail on 14.01.2006. On the basis of which, a criminal case was registered against the accused persons in Crime No. 3/2006 under Sections 120-B, 121,121 A. 122, 124-A, 153-A, 153-B of IPC, Sections 5 & 6 of the Explosive Substances Act, 1908, Sections 25. 26 and 28 of the Arms Act, 1959 and Sections 10. 11 and 13, 16, 18, 19, 20, 27 of Unlawful Activities (Prevention) Act, 1967. After thorough investigation, a charge-sheet has been laid against eight accused persons for the above said offences.

15. During the course of investigation, the investigating agency arrested A-1 to A-7 on different dates and recovered lot of incriminating articles from them and based on the surrounding circumstance of such recovery from A-1 to A-7 and also based on the conduct and their antecedents, charge-sheet has been laid for the above said offences.

16. We would like to discuss in detail about recovery, conduct of the accused, conspiracy between themselves and as to how it would attract the relevant penal provisions as invoked by the police little later.

17. After securing the presence of A-1 to A-7, (who have been in custody) the court has framed charges against accused persons particularly, against all the accused persons. (1) For the offence punishable under Sections 10 and 13 of Unlawful Activities Prevention Act, 1967; (2) For the offence punishable under Sections 120B, 121A and 121, 153A, 153B of IPC., and (3) Specific charges have been framed against A-2, A-3 and A-6 for the offence punishable under Sections 5 & 6 of Explosive Substances Act and also u/Ss.25 and 26 of the Arms Act. As the accused persons pleaded not guilty, they were tried before the trial Court.

18. In order to prove the guilt of the accused, the prosecution in all examined 73 witnesses as PWs. 1 to 73 and marked Exhibits P-1 to P-278 documents and MOs. 1 to 38 have been marked and Exhibits D-1 to D-7 were also marked during the course of cross-examination of the witnesses. After analysing the entire oral and documentary evidence on record, the trial Court has come to the conclusion that no case has been made out against A-7 and consequently acquitted him. The court also held that offence u/S.153A and 153B of IPC are also not proved to the satisfaction of the court. Hence, acquitted the accused for the said offences. However, convicted A-1 to A-6 for the offences as detailed supra. Further the accused persons were also acquitted for the offences punishable under Section 10 and 13 of the Unlawful Activities (Prevention) Act. 1967. Against which, the above said appeals are preferred by the State.

19. Before adverting to the evidence on record and the judgment of the trial Court, it is just and necessary to bear in mind the submissions made on behalf of the accused and as well as the learned State Public Prosecutor.

20. Sri. Hasmath Pasha, who is appearing for A1. A2. A4 to A6 and Sri. Praveen

C for A3, the learned counsels have submitted the arguments in detail. They have categorically submitted that the prosecution has not established the case against the accused persons beyond all reasonable doubt. First of all, there is no proper sanction accorded by the competent authorities to prosecute the accused u/Ss.121-A and 121 of IPC and also under the Explosive Substances Act, Arms Act and Unlawful Activities (Prevention) Act, 1967. Therefore, the entire case falls to the ground on the ground of invalidity of sanction.

21. Even the recoveries alleged to be from the accused, have not been properly established The witnesses are interested, selected by the Investigating Officer and they were not selected from the locality where the alleged recoveries said to have been made. Therefore, such recovery is tainted with interestedness by the investigating agency. It is also further contended by the learned counsel that even if the recovery is shown to have been done at the instance of the accused, but there are no connecting materials in order to prove the guilt of the accused for the offences alleged against them. Mere conduct of the accused without proving all the ingredients of the provisions invoked against them to the satisfaction of the court, no conviction can be recorded for the above said serious offences invoked by the police. It is also contended that the trial Court has not properly appreciated the documentary evidence particularly Ex.P-92, Ex.P-27 and other relevant books which are alleged to have been seized at the instance of the accused persons but the trial Court has morally swayed away and convicted the accused persons without any sufficient material on record.

22. They also contended that the defence of the accused have not been taken into consideration at all. The explanation given by the accused that their signatures were forcibly taken to some of the documents, have not been properly appreciated by the court though it is stated in the course of 313 statement by the accused persons. Therefore, for all the above said reasons, the learned counsels contended that there is no material to convict A-1 to A-6 and the materials placed before the Court by the prosecution are insufficient and inadequate.

23. Per contra, Sri. P. M. Nawaz, learned State Public Prosecutor-I with equal force strenuously contended that the trial Court has right in convicting the accused persons for the offences for which they were convicted. Further added to that, though some of the witnesses have turned hostile to the prosecution, but the trial Court has rightly considered that their evidence cannot be out rightly rejected. The incriminating articles seized at the instance of the accused persons and also their connectivity with the alleged incident and particularly some books seized at the instance of the accused persons show the mind-set of the accused as to what they intended to do against the Government of India by creating communal disharmony in the State to enrage the people to commit offences against the State. The books which are seized at the instance of the accused persons clearly discloses that they are antisocial and they are preparing to wage war against the State by means of provoking, preaching and training the like-

minded people to do unlawful activities in order to destabilize the Indian Government.

24. It is also contended by the learned State Public Prosecutor that though there are sufficient materials to convict A-7 also; who is also conspired with other accused persons, the trial Court has wrongly acquitted A-7. Further, he contends that the trial Court has wrongly acquitted the accused persons for the offence punishable under Sections 153-A and 153-B of IPC and Sections 10 & 13 of the Unlawful Activities (Prevention) Act, 1967. The trial Court has wrongly concluded that there is no proper sanction in order to prosecute the accused persons for the offences punishable under Sections 10 & 13 of the Unlawful Activities (Prevention) Act, 1967. If the evidence of the witnesses is understood in their proper perspective, it clearly discloses that there is a proper and valid sanction to prosecute the accused persons u/Ss.10 and 13 of the Unlawful Activities (Prevention) Act, 1967 and also u/Ss.153A and 153B of the IPC. Therefore, the State has filed appeals seeking conviction of A-7 and also conviction of accused Nos. 1 to 6 for the offence punishable under Sections 10 & 13 of the Unlawful Activities (Prevention) Act, 1967 and u/S. 153-A and 153-B of IPC, as the offences are very serious in nature having potential to shake the integrity and sovereignty of the country, the accused persons have to be more severely punished in order to teach a lesson to the other like minded persons who are making arrangements or having mind set to prepare them to wage war against the State. Therefore, he pleaded that, death penalty is the adequate punishment to the said accused persons. For all these reasons, the learned State Public Prosecutor has contended that the judgment of conviction and sentence passed by the trial Court has to be confirmed and apart from that A-7 has also to be convicted and all the accused persons shall be penalised with death penalty.

25. Having heard the arguments of the learned counsels, the points that would arise for consideration of this court are:

(1) Whether the trial Court has committed any error in convicting A1 to A6 for the offences punishable under sections 120-B, 121, 121-A of IPC., under sections 5 and 6 of the Explosive Substances Act and also under sections 25 and 26 of the Arms Act.

(2) Whether the trial Court has committed any error in convicting A1 to A6 for the offences punishable under Sections 153-A and 153-B of IPC, and under sections 10 and 13 of the Unlawful Activities (Prevention) Act,

(3) Whether the trial Court has committed any serious error in acquitting A-7 for the above said offences?

(4) Whether the State has made out any grounds for sentencing the accused persons under the Unlawful Activities (Prevention) Act, 1967 and also u/Ss. 153-A and 153-B of IPC?

(5) Whether the prosecution has established that the sentence passed by the

trial Court is inadequate and the accused are to be punished with death penalty ?

26. Before adverting to the other materials on record with reference to the provisions invoked by the prosecution, it is just and necessary to bear in mind whether the prosecution has obtained proper and valid sanction to prosecute the accused under various provisions of the law or not.

27. The provisions invoked by the appellants under IPC for the offences punishable under Sections 120, 120-B. 121, the Government has to accord sanction u/S. 196 of Cr.PC. Likewise in order to prosecute the accused under the Unlawful Activities (Prevention) Act, 1967, sanction is necessary u/S.45 of the said Act. Under the Arms Act, sanction is required u/S.39 of the Act and under the Explosive Substances Act, sanction is required u/S.7 of the Explosive Substances Act

28. As this is an important point which goes to the root of the prosecution itself, we would like to discuss this particular point as a preliminary point before adverting to the merits of the case.

29. Sanction :

The learned counsels primarily attacked the ?Sanction Order? issued by PW-64 as fortified by PW-73 contending that, the trial Court is not right in accepting the sanction order which is marked at Ex.P 224. As per Section 196 of Cr.PC. and u/S.45 of the Unlawful Activities (Prevention) Act. 1967, the court cannot take cognizance of any offence punishable under Chapter VI or u/S. 153-A or u/S. 153-B of IPC. u/S.45 of the Unlawful Activities (Prevention) Act. 1967, the court cannot take cognizance of any offence without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf There is no dispute that, the Central Government in fact has authorised the secretary to the State Government, Home Department to be competent authority to issue such sanction. Undoubtedly, it is the secretary to the State Government, who can issue sanction order u/S.45 of the Unlawful Activities (Prevention) Act, 1967. Except the previous sanction of the Central Government or of the State Government or of the District Magistrate and also court cannot take cognizance of the offence u/S.120B of IPC.

30. The prosecution has relied upon Ex.P-224 and also in support of the same examined PW-64, the under Secretary to the Home Department and also examined PW-73, the then Secretary to the Home Department. In fact, PW-64 has categorically stated that after receiving the entire records, she examined the documents and put up the note pertaining to the documents and noted that the materials prima facie establish the offences, the file was forwarded to the higher officials along with her note. Thereafter, the file went to the concerned Minister and also to the Chief Minister and after the Chief Minister approved the said file for issue of sanction, PW-64 has issued the sanction order on behalf of the Government. PW-73 has also deposed that he was working as Secretary to the Home Department during that time and has deposed that the file was processed

by the Deputy Director of Prosecution and he perused the documents, the FIR, Seizure Mahazar and property form, voluntary statement of accused, FSL report and the report of the Commissioner of Police, Report of the Deputy Comptroller of Explosives etc., and after scrutiny he sent the file to the Chief Minister for approval to accord sanction and in fact, the Chief Minister has approved the same and as well by the Home Minister as they are the sanctioning authority and as such, through Under Secretary, sanction order has been issued.

31. The learned State Public Prosecutor contended that in view of the above said processing of the material to the competent authority though Under Secretary has communicated sanction order as per Ex.P-224, it is deemed that the same has been issued by the Government. It complies the legal requirement u/S. 196 of Cr.PC. and under Section 45 of the Unlawful Activities (Prevention) Act.

32. In this regard, the learned counsel for the accused has relied upon a decision reported in (2011) 2 KCCR SN 90 (Crl.R.P No. 98/ 2006), wherein this court has observed in the following manner:

"From the extracted portion, it is seen that an Under Secretary is the junior most officer in the first rung of the Secretarial hierarchy authorised to issue order in the name of Governor of Karnataka vide Rule 19 Karnataka Government (Transaction of Business Rules, 1977) which defines the powers and duties of the Under Secretary. There is no reference to the powers delegated under Section 45 of the Act. By grant of sanction under Section 451 (i) by the competent authority names the Central Government or any officer authorised by it in this behalf. Since by virtue of item No. 221, the Central Government has named only the Secretary of the State Government in Home Department to be competent to issue such sanction, undoubtedly, it is only such officer who can issue sanction. Nowhere, the Under Secretary has been named as officer on whom such a power is delegated by the Central Government. Therefore, the impugned sanction issued by the Under Secretary does not meet the requirement of Sect ion 45. The Under Secretary performs the duties cast on him by virtue of Rule 19 of the Karnataka Government (Transaction of Business Rules 1977). He is the competent authority to issue orders in the name of the Government, but decision making is not conferred on him. Under the provisions of Section 45(i), it is the Central Government, which can authorise its officers to issue sanction by delegation of power. We are dealing with mandatory requirement of Section 45 of the Act, for grant of prior sanction to prosecute. If an officer is named in the statute, then it is only that officer who would be competent to issue sanction. No other provision comes into play and even if under any other provision, such an officer is entitled to exercise any power, it will not be in relation to Section 45(i) of the Act."

Of course, on reading the above decision, it is clear that, the decision making power vests with the Government and issuance of order also vests with the Government. In the said case, it is also observed that the Under Secretary to the Government is competent to issue orders in the name of the Government. But, he cannot take the decision to accord sanction. It is the Central Government which can authorise any officer to issue the sanction by delegation of power.

33. It is crystal clear from the above said provisions and also the decision relied upon by the learned counsels that ultimately the point involved boils down to, as to who has taken the decision to accord sanction. So far as Section 45 of the Unlawful Activities (Prevention) Act, 1967, the Secretary to the Home Department is the competent authority to issue sanction order, so far as other provisions are concerned, it is the Government who can issue the sanction order. The Government means the Minister and the Chief Minster. It is evident from the records and the evidence of PWs-64 and 73, that the Under Secretary himself has not taken the decision to accord sanction. He is only a person who processed the papers to the higher authorities and it is in fact, the Home Secretary to the Government of Karnataka, the portfolio Minister and the Chief Minister have perused the entire materials on record and thereafter, issued direction to the Under Secretary to communicate their decision to the police that the Government is consented for to prosecute the accused persons.

34. As per Section 45 of Unlawful Activities (Prevention) Act, 1967, the Central Government has named the Secretary of the State Government, Home Department to be the competent authority to issue sanction order. In this case, PW-73 Bipin Gopala Krishna Additional DGP has perused the entire materials on record and recommended for grant of sanction order to the State Government Home Minister and the Chief Minister and after it came back to him, he in fact, found sufficient materials and prima facie case to grant approval, that means he has taken the decision to accord sanction as under the provisions of IPC, the Government is the sanctioning authority. Perhaps that may be reason, he has sent the papers to the Government, but actually it is shown that he has taken the decision on finding Prima facie material that it is a fit case to grant sanction order and in fact, while file came back from the Chief Minister and the Home Minister?s office, consenting to accord sanction, he sent the same to the Under Secretary to communicate the decision taken by him and the Government order to the police that, it is a fit case to prosecute the accused. The Government and PW-73 have rightly accorded sanction under section 196 of Cr.PC. and Section 45 of the Unlawful Activities (Prevention) Act.

35. What is to be looked into from the evidence of these witnesses is that PW-73 Bipin Gopala Krishna, Addl. D.G.P., Internal Security, has deposed that while he was working as a Secretary, P.C.A.S., Home Department Bengaluru, on 1.4.2006, he received a request from the Commissioner of Police. Bangalore City, seeking sanction for prosecution from the Government and he is the competent authority to issue sanction order. The entire materials passed through him has been examined by him and decided to accord sanction and thereafter he obtained the ratification from the Government and then ordered to issue sanction order through the Under Secretary. We can understand if PW-73, who was the then Secretary to the Home Department has not at all come to the conclusion that, it

is a fit case to accord sanction, the things would have been different, but he has rightly applied his mind and taken a decision. The Under Secretary of the Home Department has only communicated the sanction order on behalf of the Government.

36. As could be seen from the entire records, we would say that it is the decision taken by PW-73 on behalf of the Government. Therefore, in our opinion, the sanction accorded to prosecute the case u/S section 120- B, 121, 121-A. 122, 124-A, 153-A and 153 and as well under the Unlawful Activities (Prevention) Act, 1967 are valid and correct. The trial Court has persuaded itself that it is only the Under Secretary who has taken the decision, and wrongly rejected the sanction order so far as it relates to the offence u/Ss. 10 and 13 of the Unlawful Activities (Prevention) Act, 1967. In our opinion, the said stand taken by the learned Trial Judge is not correct. The trial Court ought to have held that even the sanction accorded to prosecute the accused for the offence punishable under Sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 is also valid. We accordingly hold that the trial Court has committed a serious error in doing so. We hold that the prosecution has also proved that the sanction accorded by PW-73 though it is ratified by the Government or approved by the Government, it is virtually the decision taken by PW-73 is evident. Therefore, the sanction order so far it relates to Sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967 is also valid and correct.

37. So far as it relates to sanction under the Explosive Substances Act and u/ S.39 of the Arms Act, PW-70 Ajay Kumar Singh, the Commissioner of Police has accorded sanction, while he was working as Commissioner of Police, at Bengaluru. He has categorically stated in his evidence that he has issued the sanction order as per Ex.P-266. He has deposed that, on 1.4.2006, he has received a report from the Deputy Commissioner of Police, Central Division along with the report of the ACP, Yeshwanthpur and also the documents like FIR, FSL report etc., and after studying the report and the documents he has accorded sanction as per Ex.P-266 and he has stated that he has also issued sanction u/ S.7 of the Explosive Substances Act after going through the entire materials on record. Therefore, the Commissioner of Police, city of Bangalore has issued sanction order under Ex.P-266 and P-267 for the offence punishable under Arms Act and Explosive Substances Act.

38. Though some questions have been put during the course of cross-examination, nothing has been elicited with regard to the in-competency of this witness to issue such sanction order. It is however, suggested that he has not minutely examined the case papers to come to the conclusion about the existence of a prima facie case, it is stated by him that he has examined all the necessary documents and recoveries made at the instance of the accused persons and the property forms and as well as the FIR, statement of the witnesses and the mahazars etc., In fact, in the course of cross-examination, in detail it is elicited as to what are all the materials, weapons seized in this case

are examined by this witness before according sanction. It is true that the sanctioning authority has to evaluate the materials on record, to come to a conclusion that whether any prima facie material is there to accord sanction to prosecute the accused. The sanctioning authority cannot be expected to appreciate the materials on record to come to the conclusion whether those materials are sufficient to convict the accused, or not but sufficient to prosecute the accused. In that regard, it is not necessary for the sanctioning authority to give a detailed finding to each and every material on record as to how he has come to such a conclusion, but it would suffice that if the sanctioning authority says that on going through the entire materials on record specifically stating what are the materials he has perused and how he was convinced with regard to the existence of a prima facie case. If such act of the sanctioning authority is shown to the court, that would be sufficient to hold that the sanctioning authority has applied its mind to the materials on record and after satisfying itself ? Sanction Order? was issued.

39. In this case, as we have noticed that the Commissioner of Police (PW-70) has categorically stated that he has gone through the details of the materials produced by the investigating agency and after going through the same he was convinced that it is a fit case to accord sanction.

40. So far as the Arms Act is concerned, it reveals that there cannot be any prosecution under section 39 of the Act, against any person in respect of any offence, without the previous sanction of the District Magistrate. The similar provision which we find is u/S.7 of the Explosive Substances Act.

41. The learned counsel for the accused strenuously contended that the word District Magistrate? is used in both the provisions. Therefore, the sanction accorded by the Commissioner of Police is not valid. It is necessary to peruse Section 2(d) of the Arms Act, to understand the definition of "District Magistrate" -

"2(d). District Magistrate in relation to any area, for which the Commissioner of Police has been appointed, means the Commissioner of Police thereof and includes any such Deputy Commissioner of Police exercise of jurisdiction of the whole or any part of such area as may be specified by the State Government in this behalf in relation to such area or parts."

42. The Explosive Substances Act, 1908 itself says that, the Act is enacted further to amend the law relating to Explosive Substances. Section 4 of the Explosives Act also defines the word ?District Magistrate'' in the similar fashion, wherein it is also considered the Commissioner of Police is equivalent to the ? District Magistrate?. Section 7 of the Explosive Substances Act, 1908 also clarifies the same. Therefore, if the provisions are read in consonance with each other, it is the Deputy Commissioner or any equivalent Officer (Commissioner in certain areas) as defined under the Act are competent to issue sanction order.

43. In view of the above said definitions given to the ?District Magistrate?, the

argument of the learned counsel falls to the ground and the Commissioner of Police is competent to issue sanction order both under the Arms Act and also under the Explosive Substances Act.

44. Now, we will consider the merits of this case. The case of the prosecution revolves around three important segments which are:

(1) The recovery of incriminating articles at the instance of the accused persons;

(2) Connectivity of those articles to the conspiracy between the accused persons;

(3) The conduct of the accused persons with reference to such conspiracy to constitute the offence alleged against them."

45. Recovery:

The prosecution mainly relied upon the recovery of the incriminating articles at the instance of accused Nos. 1 to 7. We will in detail discuss about the recoveries and thereafter connect between the recovery of the incriminating articles with that of the crime alleged against the accused.

46. The learned counsels for the accused strenuously argued before the Court that the trial Court has not properly appreciated the evidence of the recovery witnesses along with the evidence of the Investigating Officers. Further, it is contended that the Panch Witnesses are not trust-worthy for acceptance as the Police Officers have not selected the Panch Witnesses from the locality from where alleged recoveries said have been made. It is also further contended that even the recovery is taken or presumed to be proved, the recovery itself is not sufficient to hold the accused persons guilty as the recovery is bereft of proof of other ingredients of the offences invoked against the accused. Therefore, it is contended that this Court has to re-look into the evidence on record in order to ascertain whether the trial Court has committed any error in holding the recovery as proved.

47. Per contra, the learned SPP-I submitted before the Court that in each and every case there will be some discrepancies in the evidence of the witnesses. But, in the absence of any material being elucidated in the evidence of the Investigating Officers that they are interested witnesses and deliberately involved the accused persons in to the crime and there was any hatred ness or ill-will on the part of the Investigating Officers against the accused. In the absence of any convincing materials the Investigating Officers and the police officials who are the public servants, their evidence cannot be easily brushed aside. Merely because some Panch Witnesses have turned hostile or the Panch Witnesses are not from the locality that itself is not sufficient to throw away the case of the prosecution.

48. Bearing in mind the above said submissions made on behalf of both the sides, now we will proceed to discuss the recovery of the articles at the instance of the accused persons.

Recovery From Accused No.1.

49. According to the prosecution, the accused No. 1 is the King Pin and he controlled and activated all the other accused persons in order to commit the offences alleged against the accused persons.

50. According to the prosecution, the accused No. 1 was arrested on 1-1-2006, (the arrest of the accused is not in dispute) on that day, under Ex.P-32 Mahazar, in the presence of panch witnesses PW-14 Surya Prakash, a pocket note book, marked at M.O. 1, containing some telephone numbers was recovered at the instance of accused No. 1. PW-50 H. Subbanna, Police Inspector and PW-37 J. Kumar and PW-43 Rizwan Pasha who are the police constables are the witnesses to this panchanama. After recording of the voluntary statement of accused No. 1 as per Ex.P-262, police have also recovered Nokia Mobile Phone MO-10, passport Ex.P-40, six slips Ex.P-41 to 46 and 3- passport size photos Ex.P-47 to 49 at the instance of accused No. 1 under a Mahazar Ex P.39 in presence of Witnesses PW. 18 S. Mothilal a panch witness, PW. 57 R. Vijay pal a police witness.

51. The Investigating officer and the witnesses noted above have supported the case of the prosecution of course there are some discrepancies with regard to the selection of the witnesses not from the locality, and also in describing the materials recovered etc. The trial Court after detailed discussion held that the prosecution has proved the recovery of the above articles from accused No. 1.

52. However, the trial Court considering the evidence of the Investigating Officer PW. 72 came to the conclusion that the materials recovered at the instance of accused No. 1 are all not incriminating. It also observed no evidence to connect accused No. 1 to the offences alleged against him. Hence, the trial court has not made out any basis of the above said articles to record conviction against Accused Nos. 1. We have also perused the evidence of PW. 72 in this regard and we fortify the view taken by the trial Court.

53. In view of the above, we do not want to over burden this judgment in detail discussing the evidence pertaining to the recovery of the above articles at the instance of the Accused. However, we only say that the prosecution has established by sufficient materials and evidence that the above articles were recovered at the instance of the Accused No. 1.

Recovery From Accused No. 2.

54. As per the prosecution case, one Sri. V. Srinivas Murthy PW-41 and Sri. A. Gkaisar PW-52 Police Officers, on the instructions given by the Investigating Officer Pratap Singh PW-72, on 18-1-2006 they went in search of the accused Nos.2 and 5. According to their information, they went to Poonganur and they were waiting as per the information from the informants. Some persons came on motor bike and on intercepting them and inquiring them, they disclosed their names as Afsar Pasha Accused No. 2 and Mohammed Irfan Accused No. 5. PW-52 in presence of the panch witnesses has made a personal search of accused No. 2

and they found one mobile MO-17. two currency notes of Rs.50/- denominations MO-18 and motor bike MO-19, one diary of merun colour Ex.P- 130, DL Ex.P-131, STD Bill receipt Ex.P-132, Visiting Card Ex.P-133 and one estimation letter containing mobile phone on its back-page Ex. B-134 from accused No. 2. They also found one mobile MO-20 and one diary Ex.P-135 from accused No. 5. Those were seized under Mahazar Ex.P-129 in presence of panch witness PW-35 Chalapathy. As could be seen from the evidence of PW-35, he has not fully supported the case of the prosecution except his signature in Ex.P-129. However, he has stated that the police were not there near Madanpalli. Phis witness was proceeding from Mulabagil to Punganoorin a Bus and at about night 9-00 p.m., the police have requested him to put his signature on Ex.P-129 and he does not know anything about the contents of the said mahazar. Even during the course of cross-examination, it is suggested that he was present at the time of recovery of the above said articles but he denied the same. However, he identified all his signature on the materials recovered at that particular point of time. The police have taken care to take the signatures on the chits which were pasted on the articles seized on that particular day. Therefore, if the evidence of PW-35 is read in proper perspective, he admitted that he has put nearly 20-signatures on that particular day which discloses that he was present at the time of these articles being recovered. Perhaps, it may be the reason that he was not knowing accused No. 2 at any point oi time, he might have turned hostile to the prosecution. Merely because the witness turned hostile, his evidence cannot be totally dis-carded if it is supported by other evidence on record. The evidence of the Police Officers and other police witnesses who have supported the case of the prosecution so far as this mahazar Ex.P-129 is concerned particularly PW-41 and PW-52, their evidence cannot be easily brushed aside, merely because they are the police personals. Therefore, we are of the opinion that the trial Court has not committed any mistake in relying upon the evidence of PW-35 to the extent he supported the evidence of the other witnesses. The trial Court in fact relying upon various decisions has come to the conclusion that the Police Officers are public servants and they should not be dis-believed without any valid reason. In this regard, he relied upon the decision of the Hon''ble Apex Court reported in 2002 SCC CRIME 1028 as well as ILR 2004 Kar P-2531 : (2004 AIR Kant HCR 247). Therefore, we do not want to discuss in detail because the trial Court has done the same and accepted the version of the Investigating Officer?s so fat as recovery from accused No. 2 is concerned with respect to the above said properties.

55. The accused No. 2 has also given his voluntary statement as per Ex.P-273. Based on such voluntary statement, accused No. 2 has also took the Investigating Officer P.W. 72, the police and the panch witnesses to Kadumalleshwara Hill and produced 17- Detonators, 20-Gelatin sticks, 114-Iron Pilates, 3-Hand Granades hidden underneath the soil. A Panchanama was also drawn as per Ex.P-138. Those items were in a bag and a box. The said explosives are also marked as per MOs.2 to 5. PW-17 S. Mohan, the panch

witness supported the case of the prosecution. The learned counsels have raised a question before the trial Court as well before this Court that, the said boxes and other explosives were not properly sealed However, the records disclose that the Investigation Officer has produced those articles before the jurisdictional Magistrate and handed over the same to the concerned officers of the Bomb Squad for disposal. In this regard, prosecution also examined PW-60 N. Jagadish, is the Deputy Superintendent of Police (Bomb Squad), who has also fortified the said version of PW-72. Though the articles were not sealed with wax etc., but PW-17, a panchi has stated that police after seizure of Mos-2 to 5 have taken his signature on some paper chits and pasted them on the properties. Therefore, in our opinion, the seizure is fully supported by the panch witnesses and the trial Court has also considered the chits bearing signatures of the panchas. Though some safety measures were not properly taken but that itself is not sufficient to discard the evidence with regard to the recovery, it may be a procedural or investigation irregularities or lapses that will not enure to the benefit of the accused. It is the evidence of all the witnesses that the accused took the panch witnesses and the police to the Kadumalleshwara Bctta (Hillock) and he removed the mud at a place and took out the hidden articles Mos-2 to 5 underneath the earth and produced them Though PW-70 does not know the names of Mos-2 to 5 but he has categorically stated that some articles were removed from the mud, is kept in a box and that in a bag and produced before the police. This also clearly discloses that these articles were in the exclusive knowledge and possession of accused No. 2 not earlier known to anybody. Though there is some discrepancy with regard to the place from where the articles were recovered but it is in a hillock area. The said area cannot be easily described by means of putting specific boundaries. Therefore, such argument, in our opinion, is not tenable. Hence, the said recovery is also proved and the trial Court has properly appreciated the materials on record.

56. It is the further case of the prosecution that, the accused No. 2 has given his voluntary statement and the police have also seized under Ex.P-69 mahazar on 20-1-2006, one letter head Ex.P-70 and the postal cover Ex.P-71 and letter Ex.P-72 and one pass port Ex.P-73 and affidavit Ex.P-74. of course. PW-16 Shavarunnisa sister of A-2 has turned hostile but PW-21 has stated about the seizure mahazar. But, the trial Court has rightly held that these articles were not incriminating against the accused.

57. According to the voluntary statement of accused No. 2, on 22-1-2006, accused No. 2 took the police and the panch witnesses to his house which is situated at Lakkasandra, 15th Cross and 15th Main. Bengaluru and he produced certain incriminating articles i.e. certain Urdu pamphlets and Urdu books. The books seized in our opinion are incriminating. A book by name "Taqbeer" is marked at Ex.P-81 another book by name "Jihad" marked at Ex.P-82 and another book by name "Jamaat-e-Mujahiddin" marked at Ex.P-83 a book by name "Hazarath Mohammed Khajikar" marked at Ex.P-84 and another book by name "Warning" marked at Ex.P-85 one more book at Ex.P- 86, two more

monthly magazines by name "Albalaaq" marked at Exs.P-87 and 88 and another book marked at Ex.P-89 and one more book called "Yehoodiyonki Tarahim" marked at Ex.P-90 and collection of 40- pamphlets marked at Ex.P-91, a diary of Bangladesh is marked at Ex.P-92 and six video cassettes marked at MO-15. Apart from that he has also produced Driving License, Ration Card, Visiting Card of Haj, Out patient Card of Kolar Hospital, Election Identity Card, Registration Certificate, Delivery Note etc., and all the said documents were marked at Ex.P-93 to Ex.P-104. Those articles were seized under panchanama Ex.P- 105 in the presence of PW-25 a panch witness of course PW-25 is not a local person. It is admitted by him that he was proceeding to the house of his friend at Lakkasandra, at that time, he was called by the police and told him that they are conducting panchanama in the house of the accused. He categorically deposed that in the house of accused No. 2 a woman was there and accused No. 2 produced Exs.P- 81 to 92, MOs-15 and Exs.P-93 to 104 in his presence from a room of course Exs.P-93 to 104 are not incriminating materials in this case. But the other materials particularly Ex.P-92 a Diary of Bangladesh and some other books containing some anti-national recitals are the important materials to be considered by this Court.

58. We would like to discuss the connection of these items little later but so far as the recovery is concerned, the prosecution has established from the evidence of PW-25 and also from the evidence of PW-72 that these items were produced by accused No. 2 and they were in his exclusive knowledge and possession.

Recovery From Accused No. 3.

59. Now coming to the recovery at the instance of accused No. 3, it is the case of the prosecution that on 15-10-2006, accused No. 3 was arrested and his voluntary statement was recorded by the Investigating Officer as per Ex.P-272 and on 15-1-2006 Exs.P-51 to 59 and MOs-10 to 14 were recovered at the instance of accused No. 3 and also on 19-1-2006 under Ex.P-62 in presence of panch witnesses PW-31 G.E. Chinnanavar, one Passport seized was marked at Ex.P-63. On the same day under Ex.P-68. some documents Ex.P-64, Exs.P-65 to 67 were also recovered at the instance of accused No. 3 in presence of panch witnesses PW-26 Shafi, PW-27 Lukman Ahamed, PW 30 K.M. Vijaya Kumar and PW-31 G.E. Chinnanavar.

60. According to the prosecution, PW-53 H. Siddappa, a Police officer as per the directions of PW- 72, along with his staff went to different places and reached Almatti Dam and got confirmed about the existence of a shed belonging to accused No. 3 in the said area. Accused was apprehended in the said shed situated about 200 to 300 meters from Almatti dam. Though some discrepancy is there with regard to his arrest, but, PW-53 in his evidence consistently stated about the arrest of accused No. 3. On personal search of the accused No. 3 PW-53 has seized one pocket telephone diary, 3-telephone chits, one professional courier receipt and one receipt having some calculation of account, 3-photographs, shirt, cap, pant, 10-gelatin sticks and 2-detonators produced by

accused No. 3 which was recovered under a mahazar Ex.P-50. The telephone diary and 3-telephone chits and professional courier letter are respectively marked at Exs.P-51 to 53 and Ex.P-55. A telephone diary is marked at Ex.P-54. Another account chit is marked at Ex.P 56 and photographs marked at Exs.P-57 to 59. Shirt, pant and cap are marked at Exs.P-12 to 14 and bag is marked at MO-11.

61. PW-42 a police constable has also supported the case of the prosecution. PW-53 and PW-42 Mallikarjuna also consistently stated about the seizure of the above said articles in the presence of panch witnesses PWs-19 and 34. Though PW-19 Shankar and PW-34 Satheesh B. Hosamani, have not properly supported the case of the prosecution, though they turned hostile, they have admitted their signatures on the mahazars drawn at Almatti Dam in the morning at 7-00 a.m., and also admitted they had been to the said place to see the dam. There is no reason for PW-19 to simply without looking into the contents of the mahazar put his signature. His presence and presence of PW-34 at that time has not been denied and their signatures have been accepted. Therefore, the evidence of the Investigating Officer gains importance as far as this mahazar is concerned. Therefore, the I.O. has promptly investigated the matter and his evidence gains importance regarding recovery. There is no reason to disbelieve the version of Investigating Officer as we have said that the Investigating Officer as a public servant unmindful of the consequences, deposed before the court.

62. The evidence of PW-72 further discloses that he recorded the voluntary statement of accused No. 3 as per Ex.P-272. The accused No. 3 on 18-1-2006 took the police and the panch witnesses to a place called Guledgudda. The panch witnesses accompanied the Investigation Officer from Bengaluru. On 19-1-2006 in the morning, 9-00 a.m., accused took them to his house situated at Bhagavanpet and in presence of panch witnesses, he produced one passport from a trunk, in his house which is marked at Ex.P-53, the same was seized under mahazar Ex.P-62. PW-20 Prakash Murugod and PW-31 G.E. Chinnanavar, have in fact supported the case stating that they were called by the police on that particular day and time and they subscribed their signatures to the mahazar of course, there is some discrepancy with regard to the securing of the panch witnesses as PW-50 stated that he took the panch witnesses from Bengaluru itself but PWs-20 and 21 stated that they were secured at the place itself near Bhagavanpet when they were proceeding towards Gulab Theater. PWs-20 and 31 are the local persons. In fact they have supported the case of the prosecution. Ex.P-62 is the panchanama under which the above said articles were seized i.e. photograph Ex.P-53, which is not incriminating against accused No. 3.

63. Accused No. 3 further took the police to one more room in the said house which is situated at Hussainpet. In the presence of panch witnesses, accused produced 4-books which are marked at Exs.P- 64 to 67, which are named "Jadul Mujahiddin", "Albalaq", "Taqbeer" and "Biddat". Those articles were seized under mahazar Ex.P-68. PWs-20, 26, 30, 31 & 50 are the signatories to Ex.P-66.

However, PWs- 20 and 26 turned hostile and other witnesses supported the case of the prosecution. There is no reason to disbelieve the evidence of these witnesses.

64. PW-50 H. Subbanna and PW 51 Thimmappa, are the police witnesses. There is some discrepancy with regard to the measurement of the said room but small discrepancies would not come in the way of accepting the substantial evidence. PW-20 Prakash Murugod has deposed that, the police have kept all those boxes in a bag but nevertheless PWs-20 and 30 have consistently stated the seizure of the articles of course, there is some mistake in identifying PW-3 Mohammed Parvez before the Court but nevertheless at the time of drawing of mazhar, they have categorically stated about the recovery at the instance of accused No. 3. The trial Court has also observed when they were examined before the Court after lapse of 4-years, such wrong identification may not help the accused No. 3 because of the reason at the time of seizure this witness were very much present and they have identified accused No. 3 at that particular time. It is also observed that, all the accused persons are having similar beard. Therefore, there may be some confusion by the witnesses when PW-72 has exactly identified and stated about accused No. 3 and also seizure of the articles. A mistaken identification of accused may not be helpful to the accused. Therefore, we are of the opinion that the prosecution has also established the recovery of the above said articles at the instance of accused No. 3.

Recovery From Accused No. 4

65. Now coming to accused No. 4. According to the prosecution case, PW-54 Babu Narohna and PW- 61 S.B. Venkataswamy, have arrested accused No. 4 on 24-1-2006 along with accused No. 6. When accused No. 4 was arrested, on his personal search, he was found with a Reliance note book Ex.P-113 and paper chit Ex.P-114, visiting cards Ex.P-115 and leather purse Ex.P-116 and the same were seized under Ex.P-112 on 22-1-2006 in the presence of panch witnesses and PW-32 Ejaz. On the same day, a small diary was recovered at the instance of accused No. 6 which is marked at Ex.P-116 in the presence of panch witness PW-32.

66. We do not want to discuss in detail about recovery of the articles because the trial Court has categorically observed that these articles are not incriminating against the accused.

67. However, it is relevant to note that, after production of the accused before PW-72, he has recorded the voluntary statement of accused Nos.4 and 6 and according to the prosecution, accused No. 4 has given his voluntary statement as per Ex.P-275 and accused No. 6 as per Ex.P-276. As per the voluntary statement, accused No. 4 has stated that he has kept a Tin type bomb and Fuse given to him by accused No. 2, near Chikkabanavara of Hesaraghatta and also disclosed that he has got some Jihad books in his house and he would produce the same if the police accompany him. On the basis of such information, PW-72

also interrogated accused No. 6 who has also stated that he has also kept two Tin type bombs, detonators, revolvers and cartridges under the ground near Hesaraghatta. On the basis of the above said voluntary statements, the police and the investigation officer had left the police station with the accused Nos.4 and 6.

68. The police have collected the panchas H.T. Paramesh and Anil Kumar and all of them were led by accused Nos. 4 and 6 to Hesargatta. First, accused No. 6 was kept in Soladevanahalli Police Station and then police and panchas went along with accused No. 4 towards a place called Kereguddadahalli. There they collected another panch by name Ravi Kumar and thereafter the accused No. 4 took them near pipeline road of Kereguddadahalli anti then they got down from the vehicle, went on foot towards Eucalyptus plantation and near the said plantation, accused No. 4 removed the mud with a stick and produced two bags in presence of panchas. PW-72 has seized one Tin type bomb from one bag and two wires and two tapes from another bag at the instance of accused No. 4. They were seized under mahazar Ex.P-169.

69. It is the further case of the prosecution that, the accused No. 4 was brought back to Soladevanahalli and there they kept the accused No. 4 in the police Station. Thereafter accused No. 6 took them towards Hesaraghatta. Accused No. 6 took them for a distance of about 1-kilometer and shown a place and removed the mud and produced 3-plastic bags in presence of panchas. Accused No. 6 produced one Tin type bomb from one bag, one fuse wire and two electric detonators from 2nd bag, one revolver and 5-cartridges of two different type from third bag. The revolver is marked at MO-23 and cartridges are marked at MOs-24 and 25. He has seized the said articles in presence of panchas by drawing a mahazar as per Ex.P-170. In fact, PW-40 GS. Ravikumar and PW-45 H.K. Paramesh are the panchas to the recovery i.e. panchanama Exs.P-169 and 170. In fact, PW-72 and PW-40 they have categorically stated about the seizure from accused Nos. 4 and 6. There are some discrepancies in evidence of PWs-72 and 40 with regard to the location of the drainage nearby the said place where they have parked the police vehicle. Except that, there is nothing to discard the evidence of PWs-72 and 40 are concerned. The trial Court in detail discussed about the evidence of PWs-40 to 45 and 72. P.W. 40 has supported the case and PW. 45 partly but substantially supported of course, there is some evidence to show that PW-40 belonging to some political party involved in politics and supporting Bharathiya Janatha Party and he has also admitted that he has spent considerable time with the police while drawing up the panchanama in this case. But, nothing is elicited as to why this witness has to be disbelieved so far as these panchanamas are concerned. Only on the ground that he belonged to a political party his evidence cannot be discarded of course, these witnesses does not know the exact names of the articles seized, nevertheless, they have stated that the police have seized such articles at the instance of accused Nos. 4 and 6 under the said mahazars and they have categorically stated that both the accused have hidden those articles underneath the earth and in the presence of

the police and panchas, recovered and produced those articles which also fortify the exclusive knowledge of A-4 Firoz alias Firoz Pasha and A-6 Ameer Khan so far as production of those articles are concerned.

70. It is the further case of the prosecution that, accused No. 4 also took PW-72 (I.O) to Keerthi Nagar, Chellur Road of Chintamani to his house along with panch witnesses Sri. S. Rajendra and Rajashekar and he produced one book which is marked at Ex.P- 165. The said book was seized under mahazar Ex.P-152. He has also produced another book marked at Ex.P-156. Accused No. 6 also produced certain documents from a box which were marked at Exs.P- 157 to 165 and mahazar was drawn as per Ex.P-152 with regard to seizure of Exs.P-157 to 165. Both the accused Nos. 4 and 6 took the panchas and the police to a place called Eshwaraiah Building situated at Bamboo Bazaar and pointed out in the first floor and produced a Urdu book which is marked at Ex.P-167 which was seized under mahazar Ex.P-134 by PW-72. PW-39 S. Rajendra is the panch witness, he turned hostile to the prosecution, nevertheless, the Investigating Officer PW- 72 has supported the case of the prosecution fully and he recovered the said articles at the instance of accused Nos.4 and 6.

71. As we have discussed above, about the recovery of articles, mainly the incriminating articles at the instance of accused Nos.4 and 6 have been substantially proved by the evidence of panch witnesses and the police witnesses. There is no need for us to refer to the said evidence, as the trial Court has done the same. We are of the opinion that the trial Court has not committed any error in appreciating the evidence of these witnesses.

Recovery From Accused Nos. 5

72. Accused No. 5 was arrested along with accused No. 2. We have discussed about the arrest of accused No. 5 by PWs 45 and 52 already. Accused No. 5 has also given his voluntary statement before PW-72 as per Ex.P-274. Accused No. 5 in his voluntary statement has stated that he has got some books which were given to him by accused No. 2. He took the police and the panch witnesses with him to his house situated at Kurupet on 20-1-2006. In the presence of panch witnesses PW-22 Shakthi Prasad and PW-24 Prakash, he produced certain books which were kept in a black colour suit case. He has produced a book on which it was written as "Kuwath". PW-72 has stated that the said book was named as "sunflower book". The accused No. 5 has also produced another book by name "Dastani Mujahiddin" and also some letter heads. The said two books are marked at Exs.P-76 and P-77. Two letter heads are marked at Exs.P-78 and 79. Under a panchanama Ix.P-75 books and those letterheads were seized. PWs-22 and 24 are the panch witnesses who supported about the seizure of Exs.P-76 to 79 under Ex.P-75. PWs-22 and 24 have stated that accused No. 5 in his house opened a box and produced some books and letter heads kept in a suit case. But, PW-24 has stated that he produced the said articles front a box. Such discrepancy, will not totally change the recovery itself. PWs-22 and 24 have staled that on that day at relevant time they were proceeding towards Kurupet

and they were called to Mulabagil police station and police called them in the evening at 5-00 to 5-30 p.m. There is some discrepancy with regard to the timings, one witness say that at about 4-30 to 5-45 p.m., and another witness say that between 5-00 to 5-30 p.m. they were called and they have signed panchanama in the police station. These two witnesses have wrongly identified accused No. 5. As the Court has already observed, all the accused persons were having similar type of beard. Therefore, there may be some discrepancy in identifying the accused. We have observed that at the time of drawing up of the mahazar, the presence of accused No. 5 has not been disputed. Therefore, the prosecution has also established the recovery'' of Exs.P-76 to 79 under mahazar Ex.P-75 from accused No. 5. The relevancy of which we are going to discuss little later. Admittedly, there is no recovery of any other incriminating articles from accused No. 5. The relevancy of Exs.P-76 to 79 has to be tested with other materials on record while considering the connection between all the accused persons whether they actually conspired with each other and preparing to do any other illegal acts against the Government.

Recovery From Accused Nos. 7

73. So far as it relates to accused No. 7 is concerned, it is the case of the prosecution that accused No. 7 was arrested on 28 1-2006. There is no dispute so far as this aspect is concerned. PW-58 has stated that he received information that accused No. 7 will be coming to a bus stand at Anwar Layout at 8-30 p.m., and he went to the bus stop and his informants shown accused No. 7 to PW-58 B. Ramachandrappa and on enquiry accused No. 7 has disclosed his name and after confirmation PW-58 has secured two panch witnesses and conducted personal search of accused No. 7. He found one purse, chits containing mobile numbers, visiting cards, lined paper chit, another paper chit containing names and mobile numbers, STD receipt containing mobile number and money transaction and a Nokia mobile. One purse was marked at MO-21 and other three items marked at Exs.P-138 to 142 and mobile marked at MO-22. By conducting panchanama 6-items were seized at the instance of accused No. 7.

74. PW-36 Sampangiram is the panch witness who has stated that while he was standing at Anwar Colony Bus Stop, police have taken his signature to the panchanama at that time accused No. 7 was not with the police. In fact, the prosecution has not examined any co-panch. PW-36 has totally turned hostile to the prosecution except admitting his signature in the mahazar. The articles seized at the instance of the accused were also found to be not relevant so far as this accused No. 7 is concerned by the trial Court.

75. Further, the Investigating Officer has recorded the voluntary statement of accused No. 7 as per Ex.P-277. The investigation officer has interrogated accused No. 7. In fact, it is the case that, the accused took them to his house situated at Anwar Layout in the presence of panchas H.K. Paramesh and Vijaya Kumar, accused No. 7 has produced certain documents from a wardrobe in the first floor of house. He has produced one book marked at Ex.P-147, two passport

size photos at Exs.P-145 and 146 and one small note book at Ex.P-148 and other chits at Exs.P-138 to 142. The said articles were seized under mahazar Ex.P-144. Though PW-38 Vijayakumar and PW-45 H.K. Paramesh panch witnesses have admitted their signatures in Ex.P-144 but they have not supported the case of the prosecution to any extent so far as the recovery of any articles at the instance of accused No. 7 is concerned. PW-45 however admitted that he saw accused No. 7 in the police station and the accused took them to his house at Anwar Layout and produced passport size photos and other records from a cup-board and the police have drawn the mahazar at Ex.P-144. The trial Court has disbelieved the evidence of PW 45 and PW-38 as they were unable to give correct description of the house of accused No. 7, as they have stated that the house of the accused is in the 2nd floor. PW-72 has staled that the house of the accused No. 7 is in the first floor. Therefore, the trial Court has disbelieved him considering the material discrepancies in the evidence of PW-45. However, the recovery'' of these articles at the instance of accused No. 7 is also to be verified by this Court considering the other materials on record.

76. Before adverting to the relationship in-terse between the accused persons and the connectivity of the recovered articles to the crime alleged against them, it is just and necessary to go through the evidence of PW-23 B. Krishna Sharma, who has furnished the call details as per the request of PW-72 pertaining to accused No. 7. The Investigation Officer has secured the call details pertaining to accused No. 7 in order to establish the link between the accused persons about the conspiracy. PW-23 is the Manager of BSNL, PW-28 Safeer Ahamed, Manager of Tata Tele Services and PW-33 Staneley Agnilo, Administrative Officer of Airtel and PW-47 J. Aswath Gowda, Police Sub-Inspector who went to Nelagonda to secure the call details.

77. The Investigation Officer PW-72 has admitted that there is no reference in the call details to show accused No. 7 has received any calls from any of the accused persons. Similarly other accused have received any phone calls from accused No. 7 at any point of time and accused No. 7 has participated in any meetings with other accused persons. There is no reference in the call details that at any point of time accused No. 3 has contacted the other accused over telephone. PW-72 has also admitted that (here is no telephone conversation between accused No. 7 and other accused persons. Therefore, there is no connection between the remaining accused persons with the accused No. 7. It is the case of the prosecution that the accused No. 3 and accused No. 7 contacting with each other over telephone and accused No. 1 has supplied the money to accused No. 2 through accused No. 7. But, as rightly observed by the trial Court, there is absolutely no connection between accused No. 7 with that of other accused persons. Perhaps, that may be the reason the trial Court has acquitted the accused No. 7. Even on careful evaluation of the materials, i.e. seizure of articles at the instance of accused No. 7, i.e. a passport from Riyad marked at Ex.P-45, Urdu book with picture of a gun Ex.P-147 and purse MO-21, Nokia Mobile MO-22, slip with phone number Ex.P-139, Ex.P-140, visiting card at

Ex.P-141 and Ex.P-142 and also a small diary at Ex.P-148 and one note book and 7-paper pieces with phone numbers Exs.P-149 to 151, though they are all incriminating materials and no where these items connect accused No. 7 with other accused persons nor this accused No. 7 has got any contact with other accused persons at any point of time. Therefore, the trial Court considering the above said factual aspects has come to the conclusion that there is no connecting material in order to hold the accused No. 7 guilty of the offences. Hence, rightly acquitted accused No. 7.

78. In this background, Court has to consider whether any materials are available to show the conspiracy between accused Nos. 1 to 6 who are convicted by the trial Court and find out whether the recovery of the incriminating articles at the instance of accused Nos.2 to 7, whether it establishes the conspiracy being held between accused Nos. 1 to 6 and that conspiracy is with regard to destabilize the Government of India and also create any communal disharmony amongst the people of India and whether they are anti-social elements and also their conduct coupled with recovery amounts to any offence committed by them as invoked by the police.

79. Having discussed the recovery of certain incriminating articles at the instance of the above said accused persons, now we have to consider whether the recovery of the incriminating articles has got any connection with this case. Though some of the recoveries and possession of certain articles are independently punishable under different enactments, nevertheless, the intention of the accused persons in possessing such incriminating articles has to be tested whether such possession also amounts to any other offence punishable under the penal laws.

Conspiracy

80. It is the case of the prosecution that the accused persons 1 to 6 have conspired in order to commit the offences with an intention to overawe by means of criminal force or the show of the criminal force to the Central Government or State Government and in that regard, they have intended to wage war against the Government of India or they have attempted or abetted to wage war. Therefore, they have collected themselves and conspired in such a manner that their conduct and activities are sufficient, according to the prosecution to come to the conclusion that they have committed the offence of conspiracy to commit the offence of waging war. It is also the case of the prosecution that the accused persons have held Criminal conspiracy continuously on different occasions to commit different offences which are punishable with death or imprisonment for life and they have agreed and subscribed each other to do illegal acts and design them, by way of such criminal conspiracy to commit the offences and that, they have mentally and physically agreed with each other in pursuance of such conspiracy to do certain offences.

81. In order to prove such conspiracy amongst the accused persons, the

prosecution has relied upon the evidence of PWs. 1 to 8 and 13. In fact, these witnesses are from the same community of the accused and they are independent witnesses. On perusal of the evidence of these witnesses, in fact, they did not fully and whole heartedly supported the case. It is argued before this Court that when once the witness turned hostile to the prosecution, the evidence of such witness has to be very carefully scrutinised by the courts and normally, an evidence of such witnesses should not be made basis for convicting the accused. However, it is a basic fundamental principle of criminal jurisprudence that Falsus in Uno, Falsus in Omnibus", the maxim is not applicable so far as Indian laws and courts are concerned, that means a person may lie or not fully support the case of the prosecution, but to some extent, in such an eventuality, the court has to separate the grain from the chaff in order to ascertain whether such witness is wholly reliable or wholly not reliable or partly reliable. It all depends upon the attitude of the witness and also the fairness before the court to depose the truth, though he has not supported the case of the prosecution fully. It is also to be borne in mind that in a case like this, where it is based on the circumstantial evidence, the evidence of the witnesses may not be directly supporting the case, but considering their evidence, the court has to consider whether there is any worth evidence which connect or prove the circumstance relied upon by the prosecution. It is a famous maxim which says that "a tongue can utter lie, but not the circumstances". Basing on the above said golden rules of interpretation, the court has to consider the evidence of these witnesses coupled with other circumstances and documentary evidence produced before the court.

82. It is the case of the prosecution that PWs.1 to 8 and 13 and accused persons have joined together in order to discuss and deliberate on future course of action to commit the offences against the State as noted supra. They formed into an unlawful assembly and particularly, the conspiracy began from 10.12.2003 itself in the house of one Firoz examined as PW-4 on the guise that they have formed a Trust under a Trust Deed Ex.P-27 for which some of the accused persons and the witnesses were all trustees and under the guise of holding a meeting of the said Trust, the accused persons and the witnesses who are cited as trustees have in fact held a conspiracy in order to discuss how to uproot the Government by creating disharmony in the country, etc., It is also the case of the prosecution that thereafter some of the accused continued the said conspiracy by holding different meetings and also taken decisions for the purpose of overawing the Government by creating dis harmony amongst Hindu and Muslims. Therefore, they have collected lot of books which contain anti-national contents and also some of the accused persons have in pursuance of and by persuading themselves by the version contained in those anti-national books have also prepared themselves by collecting arms, bombs, explosives etc., Therefore, in this background, the prosecution wants to establish that all the accused persons were involved in committing such offences for which they were convicted.

83. Let us consider the above said important aspects one by one Now, we will

take up various occasions of conspiracy held between the accused persons on different dates.

84. It is the case of the prosecution that on 10.12.2003, the accused persons and the so called trustees under Ex.P-27 have gathered in the house of PW-4 Firoz alias Firoz Pasha and they have conducted a meeting there, under the guise-that they are holding meetings pertaining to the Trust. In fact, they all gathered there for the purpose of discussing and deliberating, in order to achieve their objectives to overawe the Government and also creating lot of problems in India. They have specifically discussed about the demolishing of Dargas and also to take revenge for the demolishion of Babri Maszid and killings of Muslim in Gujarat and also how to declare Jihad and to take training and how to acquire weapons etc. Though PWs.4 to 8 who are also trustees of the said Trust have turned hostile to the prosecution, nevertheless, their evidence takes importance in ascertaining whether actually they were gathered there or not. In this regard, it is worth to note here, the cross-examination of the Investigating Officer before looking into the evidence of PWs.4 to 8. The Investigating Officer, in fact has secured the Trust Deed from the concerned Sub-Registrar which is marked at Ex.P-27.

85. On careful perusal of the said Trust Deed Ex.P.27, which came to be executed on 10.12.2003. on which day itself, as per Ex.P.92 the first meeting was held in presence of the trustees and accused No. 1. The trustees are:

(1) Abdul Rehaman alias Pandu Rao S/o. Mohan Rao (PW-7).

(2) Afsar Pasha alias Basheeruddin S/o. Noor Ahamad (A-2).

(3)Nazmuddinalias Munna S/o. Tajuddin, (A-6).

(4) Noorulla Khan S/o.late Mehaboob Khan (A-4).

(5) Firoz alias Firoz Pasha (PW-4).

(6) Ameer Khan (PW-6).

(7) Roshan Jameer (PW-5).

(8) Syed Nayamath S/o. Amanulla (PW-8).

(9) Tazuddin S/o. Late Abdul Rasak.

It is the further case of the prosecution that A2, A4, A6, who are the Trustees have accepted to participate in the meeting and thereafter, they signed the said meeting and in fact they have put their signatures along with A1 and in fact A1 was introduced by A-2 in that meeting to all the other trustees.

86. On perusal of the evidence of PWs.4 to 8, though they turned hostile, but it is made clear that they never said that there was no meeting at all. Further, a suggestion has been made to the accused persons by the Investigating Officer PW-72 pertaining to Ex.P-92(a) to 92(h) and it is suggested to them that Ex.P-92

is the minute book of the Trust. In fact, the accused persons particularly A2, A4 and A6 have absolutely no dispute with regard to Ex.P-27 Trust Deed as well as Ex.P-92 diary. It is also suggested that Ex.P-27 contains only religious matters. These suggestions goes to show that the holding of meetings as per Ex.P-92 under the guise of the meetings of the Trust and the contents thereon are not in much dispute. In this background, the evidence of the witnesses has to be looked into.

87. PW-4 Firoz alias Firoz Pasha has admitted that A2, A4, A5 and A6 including A1 were all known to him and he knew A4 since childhood. He further deposed that there were two Masjids and this witness was also attending Masjid to offer Namaz. In fact, the accused Nos.2 to 6 were ousted from Masjid as their Namaz procedures were different. He has also stated admitting that A1 came to Chinthamani and A2 has introduced A1 to him on the ground that A1 and A2 had become friends at Saudi Arabia. Though, he denied that, in the said meeting they met each other at Chinthamani, A1 has given a provocative speech to other accused persons that the Muslims have to declare Jihad and he would supply money, bomb and also give training to destroy India. However, it clearly goes to show that A1 to A6 were known to each other and A-1 came to Chinthamani and he met all the other accused persons and had talk with them. In this background, one has to understand the contents of Ex.P-92.

88. PW-5 Roshan Jameer has admitted in his evidence that he knew the accused persons, Afsar Pasha alias Basheeruddin (A-2), Noorulla Khan (A-4), Firoz alias Firoz Pasha (PW-4), Ameer Khan (PW-6). He has also admitted (hat he was also one of the trustees to Ex.P-27 Trust Deed. They have taken a house and they were all meeting together for the purpose of doing Namaz. But in the course of cross-examination, he totally denied that they meet in the house of PW-4 Firoz alias Firoz Pasha at any point of time and A1 gave a provocative speech. Tin nigh, he denied the said suggestion, but he has admitted that they were all known to each other and meeting together in a house.

89. PW-6 Ameer Khan is also one of the trustees. He has also admitted that they were meeting together in order to discuss the trust deed and Afsar Pasha (A-2) was giving speeches as to how to do Namaz and etc., he also denied the other suggestions made. But particularly, he has admitted that he is a close friend of Afsar Pasha (A-2), Noorulla Khan (A-4), Nazmuddin alias Munna (A-6) who are till friends of Afsar Pasha (A-2) had been to Saudi Arabia and came back and he used to give speeches to the Muslim youngsters. But he denied that those speeches were given by A-2 by provoking the young Muslim boys to conduct ? Jihad?. It is suggested to him that, A-1 had come to Chinthamani and lie also gave provocative speeches etc., But he denied the said suggestion.

90. PW-7 Abdul Rehaman, is also one of the trustees. He has categorically stated that he knew A2 to A6. But he has denied the other case of the prosecution. However, he has admitted that A2 to A6 and himself were all doing Namaz in a room in Bamboo Bazaar in Chinthamani. In the course of cross-examination, he

has denied that Afsar Pasha (A-2) introduced Mohammed Razhur (A-1) and he gave provocative speech in the trust meeting as per Ex.P- 92.

91. PW-8 Syed Nayamath, has stated that he knew all the other accused persons except Mohammed Razhur (A-1). He has admitted that often A2 to A6 and this witness used to go to a room for the purpose of doing Namaz and they were meeting together weekly once. In the course of cross-examination, he has admitted that A2 was giving speeches to the young Muslim boys, but it is denied that he was giving provocative speeches for the purpose of encouraging the young Muslims to do ?Jihad?.

92. From the above said factual aspects, it is clear that A2 to A6 and PWs.4 to 8 were meeting for the purpose of discussions under the guise of trust and they were holding meetings, but according to them, they are only religious meetings. In this background, the court has to see what are the contents of Ex.P-92, whether it is only a religious meetings that were held or any meetings held for the purpose of conspiring themselves to do any illegal activities.

93. It is worth to extract the relevant portion of Kannada versions from Ex.P-92 diary of 2003. Ex.P- 92(d), are the signatures of A1, A2, A4 and A6. Though the names of the other Trustees are also mentioned as present, it is the case of the prosecution that the other trustees who did not accept for the resolution passed in the said meeting, they did not sign and left the meeting. Ex.P-92(c) and (d) which are in two pages, the contents of the meeting in Kannada language reads as follows:

"12.12.2003

I Meeting

Place: FaiRoz Residence Chintamani.

Present:

1. Abdulrehaman

2. Apsar Pasha

3. Munna

4. Noorulla

5. Zumeer

6. Ameer

7. Fairoz

VERNACULAR MATTER

94. The sum and substance of the recitals in Ex P. 92 (c) and (d) disclose that ?Jihad? meeting was held between the accused persons and other so called

trustees under the guise of a religious meeting. Abdul Rehaman (A-1) was introduced to the others by Afsar Pasha (A-2). A-1 addressed the meeting saying that in India Muslims are treated very badly (terribly/dreadfully) and Babri Masjid has been demolished. Muslims were killed in Gujarat and ail the Muslims have to fight against this. A-1 would supply money, guns, bombs and explosives etc., In the same meeting, it is also narrated that the other trustees Firoz, Jameer and Ameer who have not supported the speech of A-1, they were reluctant to participate by saying that if they do such illegal acts as preached by A-1, that, it would cause inconvenience to the Muslim community, in India and therefore, they all went away from the meeting. But other persons A2, A4 and A6 who have accepted the speech of A-1 subscribe their signatures to the said meeting including A-1 who has put his signature and the meeting was concluded at 8.00 p.m.

95. of course, there is some over-writing with regard to the date, which appears to have been over-written as 10 instead of 12 and there is over-writing with regard to the name of Firoz at item No. 7. But the evidence of the above said witnesses as already noted, it is their case that they are conducting meetings together for the benefit of the trust and that they admitted that Ex.P-92 is their meeting book. It is the responsibility of the accused to explain if there is any over-writing or any mistake in the said document, because even the signatures of A-1, A-2, A-4 and A-6 have also been sent to experts and the experts have also given opinion that it is the signature of A-1, A-2, A 4 and A-6.

96. While arguing the matter, the learned counsel Sri. Hashmath Pasha, for the accused has also not seriously disputed the signatures in Ex.P-92. It is his arguments that A-1, A-2, A-4 and A-6 does not know the language of Kannada and that they know only Arabic, Urdu and they are well versed in English. Therefore, there is no question of writing in Kannada. It is also further argued that signatures of the accused were taken to Ex.P-92 forcibly by the Investigating Officer. This also fortified that the signatures of the accused in Ex.P-92 are not much in dispute. Therefore, there is no reason to disbelieve the particular meetings,

97. Ex.P-92(e) gains no much importance because it is only noted by A-2 wherein, it says that he received Rs.20,000/- from Abdul Rehaman (A-1). However, it shows the active continuation of accused No. 2 in furtherance of first meeting.

98. The second meeting was held on 19.08.2005 as per Ex.P-92(1), which bears the signatures of A-2, A- 4, A-5 and A-6. The said meeting was held in the house of Nazmuddin alias Munna (A-6). Ex.P-92(f) which is in Kannada language, reads as follows:

VERNACULAR MATTER

Present:

1. Apsar Pasha

2. Munna

3. Noor

4. Irfan

VERNACULAR MATTER

1.

Apsar Pasha

(Q40)

2.

Munna

(Q 42)

3.

Noor Ulla

(Q 43)

4.

Irfan

(Q 41)

The meaning of the above said Kannada version is that - All the persons who participated in the meeting, they formed an institution by name ?Jamaath-Ul-Muzaahiddin? and they all agreed in the said meeting to co-operate in conducting the ?Jihad? training."

99. Ex.P-92(g) and (h) are also the contents of the meeting held on 18.12.20025 in the house of A-2 Afsar Pasha at Lakkasandra in Bengaluru, wherein A-2 A-4 to A-6 have participated in the said meeting. The contents of the said meeting which is in Kannada version reads as follows:

"18/12/2005

VERNACULAR MATTER

Present:

1. Apsar Pasha

2. Munna

3. Irfan

4. Noorulla

VERNACULAR MATTER

1.

Apsar Pasha

(Q40)

2.

Ifran

(Q 41)

3.

Munna

(Q 42)

4.

Noor Ulla

(Q 43)

100. The sum and substance of the Kannada version goes to show that A-5 addressed the said meeting by saying that Islam was sent in the hands of Paigambar, which is superior to all the other religions. The ?Jihad? has to be declared if anybody causes damage to it. A-6 also addressed the said meeting by saying that ?Jihad? has to be started by offering lunch (Davat) and if anybody opposes, ?Jihad? is to be declared at any time. Afsar Pasha (A-2) also addressed the said meeting saying ?Jihad? has to be declared in the name of God in case anybody is killed they will become ?Shahid?. A-2 also further addressed explaining what is meant by Kuwath, that "Kuwath" means "Power" and referring to the hand-writings of the book given by Tariqsahni and Bangladesh. A-2 told that the power is in Bombs. Bandooks and AK-47. A-2 instructed A-4 and A-6 to identify the Dargas and other important places for that they all agreed. Ex.P-92(g) also goes to show that the next meeting was fixed on 31.12.2016 by saying so the 3rd meeting was concluded at 8.00 p.m.,

101. Looking to the above-said Ex.P-92(c) to (h), it discloses and at any stretch of imagination, it cannot be said that they are all religious meetings pertaining to the Trust, that they have categorically admitted that this Ex.P-92 is the minutes book pertaining to the Trust, there is not even a mention of any objectives of the Trust and the policies. On the other hand, the entire meetings were held for the purpose of taking action of revenge, for demolishing of Babri Masjid and killing of Muslim in Gujarat and for that purpose they are taking training and collecting guns, bombs etc., In this background, the court has to understand the purpose of meeting of minds of A-1, A 2, A4 to A-6 who have actually participated in these meetings particularly A-1, A-2, A-4 and A-6 in the first meeting and A-2,

A-4 to A-6 in other meetings of course, conspicuously A-3 has not been participated in any of these three meetings.

Conduct of the Accused in Consequence of the Conspiracy.

102. Before adverting to what is meant by ?Jihad? and what is meant by ?waging war'' against the State and conspiracy for waging war, we would like to discuss the conduct of the accused, in pursuance of these meetings whether the accused persons have committed any illegal acts. In this regard, the evidence of PWs. 1 to 3 play an important role. Through these witnesses have also turned hostile, but it indicates in their cross-examination, that the accused 2 & 6 in pursuance of the said meetings have made some efforts to implement the decisions taken by them in the above said meetings.

103. PW-1 Javeel Raji, though turned hostile, has admitted that he has been doing the mobile service business since 10 to 12 years in the name and style of Ajantha Times in Ganganagar, Bengaluru. He knew CW-3 Mukthiyar Ahmad, CW-4 Mohammad Parveed and CW-5 Mohamad Javeed. He has identified Afsar Pasha (A-2) and Nazmuddin alias Munna (A-6). He has further stated that about 4 years back, at about 9.00 p.m., when he was in his shop, A-2 and A-6 came to his shop and stated that they came from Kolar. Thinking that they are known to PW-2 Mukthiyar Ahmad, who belonged to Kolar, residing at Bengaluru, he entertained them and they spoke about Muslim religion and they have forced this witness to do Namaz as many times as possible, to help the poor anti to start Madarasa a religious institution About 6-7 days later, they also came once again and they took this witness to Parveez. So, this witness, Mukthiyar and Parveez went to park along with A2 and A6. They were all talking about Khuran and they said that all the Dargas should be demolished and A-2 and A-6 would take care of all the expenditure for the demolition of Dargas etc., But this witness and others did not accept for the same and they went away and they did not meet A-2 and A-6 once again. In the course of cross examination, this witness has admitted that Dargas are the religious place for Muhammadan and they all afraid i1 hearing of A-2 and A-6 that Dargas have to be demolished and in fact, the witnesses were reluctant to accept the same. They also admitted that if Dargas are damaged, there are chances of group clashes in the places, These witnesses felt that A-2 and A-6 are doing some anti-national activities. Therefore, they did not continue their contact with them.

104. Particularly, PW-13 Mohammed Jahed Siddaq has stated in his evidence that at about 6.30 to 7.00 p.m., on one day, he received phone all from one Mukthiyar Ahmad PW-2. In turn, he went to the shop of PW-2. At that time, other witnesses Javeel Raji (PW-1) and Mohammed Parvez (PW-3) were also present. A-2 and A-6 have provoked these witnesses to demolish Dargas, but these witnesses have refuted the same. Again, they met in a park. Later on again A-2 and A-6 have attempted to persuade them to demolish Dargas. In the course of cross-examination, this witness has further admitted that A-2 and A-6 told these witnesses to open as many ?Madarasas? as possible and collect funds

for that.

105. Though these witnesses have denied the suggestions made to them that, A-2 and A-6 have also made attempts to convince and persuade these witnesses for ?waging war? against the Government of India and destroy the entire Hindusthan and cut Hindusthan into pieces and also suggested that A-1 and others would supply armories and finance for the purpose of demolishing Darga and declare ?Jihad? and also training will be given to young Muslim boys to declare ?Jihad? etc., Though they have denied all these suggestions but the attempt made by A-2 and A-6 has been fortified by the evidence of these witnesses.

106. In this background, the court has to as certain the conduct of A-2 to A-6 in keeping some incriminating contraband and anti-national articles with them. The above said meetings held by some of the accused persons particularly A-1, A-2, A-4 to A-6 and also the recovery of incriminating articles at the instance of some of the accused persons, and the contents of those materials gain importance to know the hidden agenda, intention and mindset of the accused.

107. It is evident as discussed by us that the prosecution has established that during the course of investigation, from A-2 some important incriminating articles have been seized under Ex.P-105. The important books and documents that have been seized from A-2 were marked at Exs.P-81 to P-90. The book ?Jamal-e-Mujahiddin? is marked as Ex.P-83. The book ?Hazarath Mohammed Zakikar? is marked as Ex.P-84. The book ?Warning? is marked as Ex.P-86. The weekly magazine Albalaaq is marked as Ex.P-87 and P-88. One book written by Raithullah Faruqui is marked as Ex.P-89 and 40 pamphlets are marked as Ex.P-90. The contents of these books were ascertained by the Investigating Officer PW-72 from the witness by name Shahnawaz Ahamed, who knew Urdu, and this witness is also a panch witness to the said mahazar who is examined as PW-29. Though this witness has turned hostile, but to some extent he has supported the case of the prosecution. He has stated that one Mohammed Anwar of Lakkasandra requested this witness to translate the seized Urdu books. PW-29 has also stated that he went to the house of one Anwar where the police were also present. He has also stated that the police asked him to translate Urdu books and he translated the books given to him. Though he has stated that he translated the said books in the house of one Mohammad Anwar, but it is evident from his deposition that it was the police who ascertained the contents of the said books. This particular evidence of PW-29 is also corroborated by the evidence of PW-72. From the evidence of these witnesses, what can be gathered is that the said Shahnawaz Ahamed has fortified the translation of the said books and told that, the said books Ex.P-81 contain the symbol of crossed rifle and sword, the contents of the said book reveal that, there is a phrase as "Bharath mit janewala hai" (Bharath is going to be wiped out). In the same book, in the 10th chapter, it is further mentioned that "Haath me gun utao" (it means, take out the gun in your hands). In the 14th Chapter, it is mentioned as LeT ("Lashkar-

e-Toiba").

108. PW-29 in fact in his evidence explained the meaning of the relevant chapters. He has further stated that those articles are anti-national and provocative. The said witness Shahnawaz Ahamed also explains the meaning of other books. It is also referred to in the book ?Warning? wherein, it is written about the demolition of Babri Masjid and also about the wrong act committed by other communities on Dargas.

109. The above said books which were seized from A-2 which connect the activity of A-2 in pursuance of the meeting held as per Ex.P-92 which we have discussed supra. His intention is very much clear that in order to demolish the country, he wanted to preach the people to take gun in their hands and to declare ?Jihad?. Therefore, the intention of A-2 has been made very much clear.

110. So far as A-3 is concerned, Exs.P-64 to P-67 were seized from his house. The books which are referred to are Ex.P-64 ?Jadul Majahiddin?, Ex.P-65 is ? Albalaaq?, Ex.P-66 is ?Taqbir? and Ex.P-67 is ?Biddath?.

111. PW-50 H. Subbanna, the Police Official, who seized these articles at the instance of A-3 has deposed in his evidence that he got explained the said contents by one Rukman Ahamad, who knows Urdu. The said witness is examined as PW-27. But he has not supported the case of the prosecution. But, by looking to Ex.P-66, before the court, he has deposed that, the book ?Taqbir? (Ex.P-66) means ?Voice of Allah?. At page 166, it is also mentioned in the said book that "India will be destroyed" and also it is written that, ?to hold the gun?. It is also made clear by him that the said book was printed in Pakistan. He has also categorically explained by looking into page 64 of the book that there is a glorification of Jihad?.

112. PW-50 has further deposed in his evidence that PW-27 has examined the hook ?Taqbir? and informed about the said aspects and explained to the Investigating Officer the contents of the said book of course, it is very difficult to practically know about all the contents meticulously in the said book in a short span of time. However, in such anti-social or anti-national cases. Investigating Officers should take care to translate each and every material in the said book in order to show to the court the conduct of the accused of course, the other books which were seized from the custody of A-2 and A-3 were not completely translated.

113. It is an admitted fact by PW-50 and PW-72 that they got explained some of the important chapters in the said book. It is also seen from the records i.e. the evidence of these two witnesses that PW-72 has referred all the books to Sri. M. Nooruddin, the then Chairman of Urdu Academy for translation, who is examined as PW-65.

114. PW-65 Sri. M. Nooruddin, Chairman of the Urdu Academy has deposed that during the year 2006 he was working as Chairman at Urdu Academy and also he

has stated that he has obtained M.A., Ph.D., in Urdu language. He has also admitted that in the month of July and August 2006, A.C.P., of Yeshwanthpur Sub-Division has sent some Arabic and Urdu books which are seized from the custody of some of the accused persons. Those books named are: (1) Sunflower notebook ?Alballaq?, (2) weekly Magazines ?Biddat?,(3) ?Jadul Mujahiddin?, (4) ?Taqbir?, (5) ?Jihad?. (6) ?Jamal-e-Nyhaguddub?, (7) ?Warning''. (8) ?Kya Aurath Masjid ya Edga nahi ja sakthi ?, (9) Two weekly magazine of ?Albalaaq? Vol. 12 and Vol. 13,(10) ?Mujahid-ki-Ajam?, (li) ?Yehudiyon ki Jerayum?, (12) 40 Pamphlets of ?Jadul Mujahiddin? and (13) ?Vedon ki duniyon me?.

115. PW-65 Nooruddin has stated in his evidence that he has taken the assistance of his colleague. He has given the gist of all the books given to him in his report. It is worth to note here the report signed by PW-65 Nooruddin, Chairman of the Karnataka Urdu Academy which is marked at Ex.P-225. There is no reason for him to give any false evidence before the court. The report pertaining to certain books are as under:

(1) Sunflower Notebook: The manuscript appears to be a press copy of a translation of an Arabic book entitled "True faith for establishment of religion." Authored by Sheik Abdul Haleem Khareh, Jamia Islamia, Madeena (Saudi Arabia) and translated by Mufti Moulana Mohamed Ismail Nadvi, Lucknow prepared for the Publisher, Maktaba-e-Deen, 2/8/689, Bangala Bazar, Dhaka.

(2) The gist of the book is to wage war against a tyrannical rule even if the ruler is a Muslim and to strive to establish the Kingdom of the Almighty. The author has quoted profusely from the Holy Quran and Hadith and twisted the statements out of context to serve his point of view that war is an integral part of life. The book has been originally written in Arabic and has no anti-India stand as such but is quite provocative.

(3) Al-Balagh Monthly Magazine, Vol-12, Issue No. 4 November, 2001 published from Mumbai. It is a religious magazine and has no anti-national content.

(4) Book entitled Biddat: The book deals with deviations from the accepted or ordained path of Islam. It is a book of theology and has no anti-national content.

(5) Zaadul Mujahid - a xerox copy of a book. It is an account of warfare and an extremely provocative and dangerous book. It is full of concocted anecdotes and Chapter 26 contains false statements attributed to the Prophet glorifying war against India. Chapter 33 entitled "Faith strengthening encounters of Lashkar-e-Toiba in Kashmir" has twenty one episodes which give a strong impression to the reader that divine help is always at the corner for those engaged in war against India.

(6) Takbeer - It is a book of poems full of anti-India sentiments and giving a call to destroy India. The title of poem No. 9 is "Bharat is going to be wiped out". Title of poem No. 10 is: "Lift the guns by hands". Poem No. 14 is "Lashkar-e-Toiba" and it glorifies the achievements of Lashkar-e-Toiba". Poem No. 18 extolls

the virtues of one of the members of Lashkar-e-Toiba, Abdul Rehman of Uri who was slain in an encounter. All the other poems are similarly very provoking.

(7) Jehad - It is a booklet on the importance of holy war. It is actually a religious discourse and has no anti-national material.

(8) Jamaat-e-Mujahideen - It is biographical account of the Martyr Syed Ahmed Shaheed who waged a patriotic war against the British during 19th century.

(9) Warning - It is a small booklet giving a call to the Indian Muslims to unite against communal forces but it cannot be bracketed as anti-national.

(10) Kya aurat masjid ya eidgah nahin ja sakti? - It is a small booklet which discusses whether Muslim women can also congregate in mosques and edgabs for offering prayers.

(11) Al-Balagh Monthly Magazine, - Vol-12, Issue No. 9 April, 2002 published from Mumbai. It is a religious magazine and has no anti-national content.

(12) Al-Balagh Monthly Magazine, - Vol. 13, Issue No. 10 May 2003 published from Mumbai. It is a religious magazine and has no anti-national content

(13) Mujahid-ki-Azaan - It is a collection of Maulana Masood Azhar?s editorials and political commentaries published in a journal Sadaye Mujahid. Edited by Riyayutulla Farooqui.

(14) Yabudiyon ke jarayim - It is a small booklet which gives an account of the crimes perpetrated by Jews.

(15) 40 Xerox Sheets - on the topic of Jehad. These pages are actually a part of the Zaadul Mujahid listed above at item No. 4.

(16) Vedon ki Duniya Mein - It is a booklet which discusses that in Vedas idolatory has been banned. Nothing anti-Indian. "

116. Apart from giving the above said report, in fact, some of the seized books have been shown to him. After seeing Ex.P-76, which is named "Sunflower note book" as true, hand written by one Shaik Abdul, belonging to Saudi Arabia which was published in Bangladesh. The contents of the said document spoken to by PW-65 is that,-

"Democracy is not suitable to establish Islam religion find it is inevitable to kill to secure power".

He has also written in the said book at page 16, that "the Muslim community is suppressed by majority communities and the aim is not to awake Muslim community and the Muslim should not prepare with anus." The meaning is majority communities are attacking on the Muslims. PW-65 has further deposed that in the said book, it is also written that in a democratic system, the Muslims cannot secure power. The witness has also deposed by looking into Ex.P-81, the book ?Taqbir? which contain the quotations like "India will destroy", to take gun in the hands and LeT destroy the Kaphirs and ?Lashkar-e-Toiba? is fighting for good things. PW-65 on seeing Ex.P-64 a book by name ?Jadul Mujahid? book and its gist is ?Prophet has told to attack on India. Further, PW-65 has clarified that at no point of time, Prophet Mohammad has stated so. However, he states that the narration of the fact in such a manner in Ex.P-64 is provoking and it is very dangerous. He has stated that the book Ex.P-89 ?Mujahid-ke-Azad? is also provocative and anti-national. He has also admitted that the Kaphirs are those who deviate from the Islam path? and Ex.P-81 also says that ?waging war? against non-Muslims. It is admitted that some of the books contain about ? Jihad?. This witness has also stated that after looking into the books he has given such information he has also admitted that he has not read the entire books, but whatever the contents shown to him, he has actually disclosed the same to the court. On looking into the above said evidence of PWs.50, 72, 65 and 29 coupled with Ex.P- 92 as referred to above, we can safely hold that the accused persons 1, 2,4 to 6 have indulged in provocative and dangerous activities against India, though their acts have not been implemented, nevertheless, their mind set has been made very much clear. PW-65 is a responsible person has categorically stated that the books which were recovered at the instance of A-2, A-3 and A-5 have clearly disclose that they contain very dangerous articles and anti-India recitals particularly those books provoked for destruction of the Indian country.

117. PW-65 in fact has also referred the book ?Islam? and ?sex and violence'' written by Anwar Sheikh, who has explained the word ?Jihad? in the 7th Chapter as -

"Jihad is an Arabic word, which literally means ?endeavour?, but as an Islamic doctrine, it implies fighting in the way of Allah (the Arabic God) to establish His supremacy over unbelievers until they relinquish their faith to become Muslims or acknowledge their subordination by paying a humiliation-tax called ?Jazyia?."

The word ?Jihad? is also explained in the Wikipedia in the website in the following manner -

"According to the authoritative dictionary of Islam Jihad is defined as - A religious war with those who are unbelievers in the mission of Muhammad- enjoined especially for the purpose of advancing Islam and repelling evil from Muslims."

In many of the above quoted books. ''Jihad'' is mentioned. Further, as we have noted in Ex.P-92, A-1, A-2, A-4 to A-6 have categorically made speeches with reference to Jihad?. They have taken the oath that they have to declare ?Jihad? that means the persons who have no faith in the Islamic religion and who would not acknowledge the subordination to Islam and who will not relinquish their faiths in other religions and become Muslims, they are all called as repelling evils of Islams (Kaphirs). Therefore, there should be a religious war against those persons who are unbelievers in the name of Islam and such religious war is called as ?Jihad?. So the mind set of the accused persons made it aptly and abundantly clear that they wanted to provoke or preach ?Jihad? and in that direction, they began to make arrangements to preach Muslims and as well to provoke the young Muslim community to declare ?Jihad? with finance, weapons like bombs, grenades, guns etc. Hence, we are of the opinion that, the mind-set and conduct of the accused does fall within the definition of conspiracy for waging war against the State in order to uproot the Government of India and also destroy whole India and non-Muslims, by means of indulging in such destructive activities.

118. In this background, some of the important incriminating articles other than the above said provocative, persuasive books seized from some of the accused persons, some armoires and also incriminating weapons have been seized at the instance of the accused persons.

119. Now, let us discuss as to how the prosecution wants to connect these incriminating articles recovered at the instance of the accused persons.

Connectivity of Recovery with Offences.

120. We have already extensively discussed about recovery of some articles at the instance of the accused persons of course there is no incriminating articles recovered at the instance of accused No. 1. Though voluntary statement of accused No. 1 was recorded as per Ex P.262 and under Exs.P32 and P39 (mahazars), the police have recovered 1 pocket diary (MO.1), one mobile phone (MO. 10), 1 passport (Ex.P40), 6 chits containing phone numbers (Exs.P41 to P46) and 3 passport size photographs (Exs. P47 to P.49). In fact these articles are not incriminating, as the prosecution has not been able to establish any connectivity of these materials with accused No. 1 with other accused persons, though these materials recovered includes the mobile phone of accused No. 1.

121. It is evident from the records that, from A- 2, under Exs.P. 129 and P.69, the police have recovered 1 mobile phone (MO. 17), Re Book (MO.18), a small diary (Ex.P130), DL. (Ex.P131), STD Bill (Ex.P132), Visiting Card (Ex.P 133) and a bill with phone Nos. (Ex.P134) and also one letter head (Ex.P70), 1 postal cover (Ex.P71), letter (Ex.P72), 1 passport form (Ex.P.73), 1 Affidavit (Ex.P74). According to the Investigating Officer, he has not collected any material to connect the accused with these articles in the crime, therefore, they are also not relevant to be discussed. However, voluntary statement of A-2 was recorded under Ex.P273 and on 21.02.2016 MOs. 2 to 9 were recovered at the instance of A 2. which are very much important. In fact, these articles are incriminating and in fact they are dangerous articles i.e. electrical detonators, gelatin sticks, 114 metal pellets and 3 hand grenade and other articles. Though under Ex.P-105, some books have been recovered, we have discussed the connectivity of those books with the crime already in the afore noted paragraphs.

122. From A-3, on the basis of his voluntary statement (Ex.P.272) under a mahazar (Ex.P15), some chits containing phone numbers, small telephone diary,

courier receipts, small chit of accounts, three photographs were recovered, which are marked at Exs. P.51 to P.59. These are also not incriminating and no connectivity is established from these articles. However, as we have mentioned, the police have also recovered 10 gelatin sticks and detonators from these accused, which are incriminating and is gone without any explanation. Under Ex.P62, one passport was also recovered as per Ex.P63; From A-3 some books have also recovered under Ex.P68, which we have already discussed.

123. From A-4, under Ex.P112, the Police Officer has recovered one Reliance note book, paper with phone numbers, visiting card and a leather purse, which are marked at Exs.P113 to P116 under MO-56. According to the Investigating Officer, these things are also not incriminating materials and no connectivity has been established. However, under Ex.P-169, on the basis of voluntary statement (Ex.P.275), the Investigating Officer has recovered one tin bomb from this accused and also recovered under Ex.P152 some books which are incriminating and also recovered from A-4 and A-6 a book regarding ?Jihad? at Ex.P167, which we have already discussed.

124. From A5, as we have already discussed in detail, on the basis of his voluntary statement (Ex.274), the police have recovered one note book (Ex.P76) and other books, and also a small diary (Ex. 116), in respect of which no connectivity is established. Therefore, from A-5 no incriminating materials have been recovered except one note book (Ex.P276) under mahazar (Ex.P75).

125. From A-6, a small diary was recovered and under Ex. 160 (mahazar) some incriminating materials have been recovered i.e., 1 small tin bomb, 1 tiffin box bomb with wires, 2 electrical detonators, 2 wires, and country made revolvers marked at MO.23 and live bullets (Mos. 24 & 25) are also recovered under mahazars, which are marked at Ex.P56 to P. 166. Except the bombs, the connectivity of electrical detonators, the other materials recovered with the crime are not established.

126. From A-7, the police have recovered under Ex.P 137 one purse (MOs. 21), Nokia mobile (MOs. 22), telephone number slips, visiting cards and STD booth bills marked as Exs. P. 138 to P. 142 and also recovered one passport (Ex.P146), one book in Urdu with picture of crossed guns (Ex.P 147) and a small diary (Ex.P 148) and 07 paper pieces marked at Exs. P. 149 to P. 151)

127. Looking to the above said recoveries, there is no connectivity or whatsoever, sofar as A-1, A-5 and A-7 are concerned. Sofar as other accused persons are concerned, viz., A-2, A-3, A-4 and A-7, they were found to be in possession of explosives as well as revolvers, etc.

128. The Investigating Officer (PW.72)-Pratap Singh in his evidence deposed that, some explosive substances, arms and ammunition''s were recovered at the instance of accused persons and in fact he obtained permission from the jurisdictional Magistrate and handed over the explosive substances to the Deputy Superintendent of Police of Bomb Squad (PW.60- N. Jagadish) to defuse and

destroy the said articles. PW-60, in his evidence also deposed before the court that, as per the requisition received from the Investigating Officer, he received 114 iron pellets, Grenades, tin bomb, tiffin box bomb, detonators and gelatin sticks. He further deposed that, grenades and bombs were alive when he received them and he defused the same by taking those into a safety place. He further deposed that, iron pellets can be used for effective explosion of bombs. Further, he deposed that these articles are also very helpful in preparing the bombs. After defusing the grenades and bombs, PW- 60 has collected some substances and also chemicals from the place where the bombs and explosives were defused and he handed over the same to the Investigating Officer. In turn the Investigating Officer has deposed that, he has sent the same to FSL for opinion of the expert. It is also worth to mention here the evidence of PW.66, who has examined the said articles. He has deposed that, the chemical substances found in the articles which were alleged to have been seized from the custody of the accused marked at MO Nos.6, 7,7A, 8, 8A, 26 to 29,32,31. 36 and 37, are all very sensitive to friction, pressure and flame and heat. It is also there in his evidence that, in case the chemical of the decomposed nitroglycerin stick which falls on the floor, it can explode and cause lot of damage to life and property. In support of his evidence before the court, he has also furnished his report, which is marked at Ex.P-226.

129. It is also there in the evidence of the Investigating Officer (PW.22) that he has also sent the arms recovered viz., an old pistol (MO.23) and live cartridges (MOs.24 & 25) to the ballistic expert for opinion, which were seized from A-6. PW.63 examined before the court was the Deputy Director of FSE. Bengaluru, who examined the said articles and issued certificates as per Ex.P221. He has clearly opined that MO.23 is the fire-arm manufactured illegally and MO.25 is the live cartridge. Though there are some minor discrepancies in the evidence of these witnesses, nevertheless the fact remains that the Investigating Officer has taken care to collect the report from the experts. So it is clear from their reports that, the explosives were all legally destroyed by the competent person. Therefore, they were not brought before the court. The evidence of experts clearly establishes that, the articles which were seized at the instance of the above said accused persons, specifically found to be very dangerous articles and if they explode, they were capable of causing heavy damage to the life and property. A-6 has also not given any explanation for having possession of the articles-Mos.23, 24 & 25 along with other incriminating articles with him.

130. On careful perusal of the statement of these accused persons recorded under Section 313 of Cr.PC., there is no sufficient acceptable explanation by them as to why they were possessing these contraband articles, which are sufficient to cause damage to life and property of the public at large, if they explode. It is also not explained as to the reason for them to keep all these articles. According to the learned counsel for the accused, the accused persons are law-abiding citizens. If they are really law-abiding citizens, why they have to keep such dangerous articles with them. When there is no reason or explanation

by the accused persons for possessing the said incriminating articles with them, then it can be safely inferred that, the said articles were kept by them for the purpose of doing some illegal acts in furtherance of their conspiracy, as detailed supra.

131. Recovery of the above said articles have to be tested with other materials on record. As we have already discussed, these articles have some connection with the conspiracy that has been occurred between some of these accused persons of course, there is no material to show that A-3 and A-7 in any manner participated in the conspiracy, as we have already discussed. At the cost of repetition, we may say that in Ex.P92 dated 10.12.2003, 19.08.2005 and 18.12.2005, the accused persons, who have participated in these meetings, have taken oath to take revenge for the demolition of Babri Masjid and killing of Mohhammadans at Gujarath. They have decided to join their hands for ?Jihad? by taking training. That means, they have to possess bombs, guns and other things and use them whenever instructed by their superiors. Particularly in the meeting held on 18.12.2005, the accused persons had also discussed with regard to declaration of ?Jihad? against the persons, who have no belief in Islam and they have also decided to possess bombs, rifles, AK-47 etc.

132. When the prosecution is able to establish such conspiracy as per Ex.P92(c) to 92(h) and that some of the accused persons have participated in such conspiracy and thereafter as we have discussed, A-2 and A-6, in furtherance of their conspiracy, have made attempts to persuade PWs. 1 to 8 and 13 to join the accused in conspiracy. Subsequently after the arrest of these accused persons, the above said incriminating articles have been seized. Therefore, if the accused persons are ordinary citizens and if they have belief in the Government and they are harmony liking people, why they have not explained as to why they should conspire in such a manner and possess such incriminating articles including books, which containing anti-national materials. This in fact persuaded us that they must have possessed these articles, books, weapons in order to cause damage to the property and to the people and in turn create lot of havoc in the country so as to destabilize the Government, if possible by creating national and international disharmony and also causing heavy damage to the country people and their property. Therefore, we are of the opinion that the prosecution, on facts, has placed sufficient materials to come to the conclusion that the accused persons have collected these materials for the purpose of committing the unlawful offences as alleged against them.

133. of course, the police have also seized certain articles as we have discussed above i.e., mobile phones and some chits containing telephone numbers and also note books containing telephone numbers of various accused persons separately. Though it is argued by the learned SPP-I that these records also shown the meeting of minds by the accused persons. The records disclose chat the Investigating Officer has secured the call-details and produced before the court, which are marked at Exs.P. 109, 172, 173. 174 and examined PW.23- Krishna

Sharrna, the Manager of BSNL, PW.28-Safeer Ahmed, the Senior Manager of Tata Tele Service Ltd., PW.33-Stanli Agnilo, the Administrative Officer of Airtel Company Ltd. and PW.47-Ashwatha Gowda, PSI, who went to Nelagunda to secure the call-details in this context.

134. On careful perusal of the evidence of PW.72-Pratap singh (I.O) reveals that he has categorically admitted that there is no reference in call-details to show the connectivity between the accused persons. He has also admitted that there is no reference in the call-details to show that who accused persons have interacted or talked with each other over phone including A-1. There is no proof about the accused persons having interacted and conspired with each other over phone at any point of time. Therefore, all those articles which are seized containing telephone numbers, call-details, etc. are of no avail to the prosecution. However, as we have said, the other articles which were seized have some bearing with regard to the offences alleged against the accused persons.

135. The prosecution in fact has also relied upon the confession statements of some of the accused persons. Though it is not so relevant to be discussed, but as it was argued by the learned SPP-I, we would like to discuss few aspects in this regard. A-4, A-6 and A-7 were, in fact, produced before the learned Magistrate and their confession statements were recorded by the jurisdictional Magistrate. The confession statements of A- 4 & A-6 is at Ex.P269 and confession statement of A-7 is at Ex.P270. The learned counsel appearing for the said accused persons, particularly for A-4 and A-6, has argued that the confession statement recorded by the learned Magistrate is not proper and in accordance with law and those confession statements were recorded by the Magistrate and there was no need of recording of the confession statement etc. of course, the confession statements disclose that the learned Magistrate has explained to the accused that they are not bound to make any confession statements and their confession statements may be used as evidence against them. It is not necessary for us to go in detail with regard to the contents of confession statements, as the accused persons have rescinded their statements. Therefore, retraction from their statements puts the prosecution to prove its case against them, otherwise than that of confession statements. The learned trial Judge has come to the conclusion that in the confession statement itself, the said accused persons have stated that they were forced by the Investigating Officer to depose some falsity in order to implicate A-1. Though there is no irregularity in recording the statements of the accused, but the contents of the said confession statements cannot be taken into consideration, because, the prosecution has to prove otherwise than the confession statements. The learned trial Judge has extensively considered the confession statements in his judgment and ultimately he was of the opinion that the confession statements cannot be relied upon. We also do not want to deviate from the said opinion.

136. From the above facts we are of the opinion that, the prosecution has placed convincing facts to draw an inference about the commission of some of the

offences alleged against the accused. Now we would like to discuss as to what exactly the offences committed by the accused,

What Offences the Accused have Committed.

137. Learned counsel for the accused have relied upon various decisions in order to convince this court that, though the prosecution has relied upon some facts and some of the provisions of IPC and other enactments, the ingredients of those provisions have not been made-out. In the above said background, the court has to consider what exactly the offences committed by the accused persons. As we are of the opinion that the prosecution has proved the conspiracy between some of the accused persons and in furtherance of the conspiracy, some of them have made efforts to implement the resolution passed by them in their conspiracy under Ex.P92, which we have already discussed. Accepting the above said factual aspects, the court has to consider what offences the accused persons have committed, particularly when some of the accused who have not participated in the conspiracy meetings.

138. The charges have been framed against the accused persons for the offences under Sections 10 & 13 of the Unlawful Activities (Prevention) Act, 1967. Sections 120-B, 121-A, 153-A, 153-B of IPC, Sections 5 & 6 of the Explosive Substances Act, Sections 3 & 5 of the Aims Act punishable under Sections 25 and 26 of the Arms Act. Though the trial Court has acquitted the accused persons for the offence punishable under Sections 10 & 13 of Unlawful Activities (Prevention) Act, 1967 and for the offences under Sections 153-A. 153-B of IPC, however, convicted A-1 to A-6 for the offences punishable under Sections 120-B, 121-A, 121, Sections 5 & 6 of the Explosive Substance Act and Sections 25 & 26 of the Arms Act. However, the trial Court has acquitted A7.

139. As both the accused persons and the State have preferred appeals to find-out whether the offences alleged are established before the court, as discussed earlier, it is the duty of this court to find-out whether the offences alleged are established before the court.

140. Sofar as the Unlawful Activities (Prevention) Act, 1967 Sections 10 & 13 are concerned, they are invoked by the prosecution, as such, the prosecution has to prove the ingredients of the said provisions. Sections 10 & 13 of the said Act read as under:-

"Sec-10 : Penalty for being member of an unlawful association, etc. -

Where an association is declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section ,-

(a) a person, who-

(i) is and continues to be a member of such association; or

(ii) takes part in meetings of such association; or

(iii) contributes to, or receives or solicits any contribution for the purpose of, such association; or

(iv) in any way assists the operations of such association, shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine; and

(b) a person, who is or continues to be a member of such association, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,-

(i) and if such act has resulted in the death of any person, shall be punishable with death or imprisonment for life, and shall also be liable to fine;

(ii) in any other case, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Xxx xxx xxx xxx

Sec. 13- Punishment for unlawful activities.

(1) Whoever-

(a) takes part in or commits, or

(b) advocates, abets, advises or incites the commission of, any unlawful activity, shall he punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association declared unlawful under Section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply treaty, agreement or convention entered into between the Government of India and the Government of any other country- or to any negotiations thereof carried on by any person authorised in this behalf by the Government of India.

141. Applying the materials available on record sofar as these offences are concerned, admittedly the Investigating Officer in his evidence has admitted during the course of the cross-examination that, except the voluntary statement of accused persons stating that they are working for an Association which is declared as ULF i.e., Let and that A-1 is working as leader for South India pertaining to the said ULF Association. The also admitted that, there is no other material before the court and he has not collected any materials to show that

any of the accused persons are either members or taken any part in meeting of such Association or contributed or received any contribution for the purpose of such association or assisted the said association in any manner. He has also stated that he has received some factual information from his informants that the accused persons are connected to Let, which is an unlawful banned Association. Admittedly, the voluntary statement of the accused persons cannot be relied upon by the court which incriminates the accused, as the same is hit by Section 25 of the Indian Evidence Act. The prosecution has to prove the said allegations independently. None of the witnesses have deposed anything about any of the accused persons taking part or committing, advocating, abetting, and instigating the commission of any unlawful activities as per the provisions under Sections 10 & 13 of the Unlawful Activities (Prevention) Act. Though we came to the conclusion that sanction accorded by the competent authority to prosecute the accused persons for the offences under Sections 10 & 13 of the said Act, but the evidence placed before the court does not establish any of the said offences either under Sections 10 & 13 of the Act. Therefore, we do not find any strong reasons to interfere with the judgment of the trial court in sofar as acquitting the accused for the offences under Sections 10, 11 & 13 of the said Act. Hence, there is no need for this court to discuss the decisions cited by either of the parties to the proceedings.

142. In fact, it is necessary to gainfully extract the provisions of 153-A and 153-B of IPC.

"Section -153A.: Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.-

(1) Whoever-

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility,(or)

(c) organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community mid such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,] shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc.- (2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine. Section 153-B:. Imputations, assertions prejudicial to national-integration.-

(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,-

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1), in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine".

143-144. In order to prove these provisions, the prosecution has to clearly establish or prove that the accused persons either by words spoken to or written or by hand signs or visible representation or otherwise, permitted or admitted to promote disharmony or feelings of incriminating hatred or ill-will between different religions or committed any act which is prejudicial to the maintenance of harmony between different religions, races etc. or organised any movement particularly or other similar activity or used criminal force for any violence which likely to cause fear or alarm or feeling of insecurity amongst the members of different religions etc. The accused persons also not shown to have committed and acts, which are prejudicial to national integration. That means by their act, i.e., publishing any imputations, asserts, counsels or advises prorogates any class of persons to deny or deprive their rights etc.. or by any act likely to cause disharmony or feelings of enmity etc.

145. On perusal of the evidence adduced before the court, the prosecution has relied upon the evidence of PWs. 1 to 8 and 13 sofar as to prove the said provisions that these accused persons particularly A-2 and A-6 in furtherance of their conspiracy, wanted to indulge PW section 1 to 8 & 13 to join their hands for the purpose of destroying peace and create unlawful disharmony in the society etc. But, as we have discussed, the above said witnesses have turned totally hostile to the case of the prosecution and they never stated anything about the conspiracy hatched between the accused, nor they have stated that A-2 and A-6 have provoked them in such a manner which amounts to any act prejudicial to national integrity or attempt to promoting enmity between different caste, creed, religions, races, place of birth, residence, etc. In this manner also we have absolutely no difference of opinion to that of the opinion of the learned Sessions Judge. We affirm the judgment by saying that the prosecution has also proved the ingredients of Sections 153-A and 153-B of IPC in order to establish the link between the accused and the offices alleged. Hence, acquittal of the accused persons for the said offences under Sections-153-A and 153-B of IPC also does not deserve to he interfered with by this court.

146. The main arguments submitted by the learned counsel for the accused is that, the trial Court has committed serious error in law holding that the accused persons were conspired themselves for waging war against the State, though the ingredients of the said provision have not been properly established. So far as this conspiracy is concerned, as we have observed, the accused persons have conspired with each other and some of the accused persons, particularly in the meetings from 10.12.2003 to 18.12.2005 as per Ex.P92(a) to (h). A-1, A-2, A-4 to A-6 have joined their hands and conspired as detailed by us in the earlier part of this judgment. Sofar, A-3 and A-7 are concerned, there is absolutely no material to establish that at any point of time, they conspired with accused persons and in furtherance of the same, they have committed any offence. Therefore, the trial Court has rightly acquitted A-7. But this court found no material sofar as A-3 is concerned.

147. Section 120-B of IPC. deals with punishment for criminal conspiracy. Section 120-A deals with the offence of criminal conspiracy. This particular provision should be referred to in consonance with Sections- 121 and 121-A of IPC in order to understand easily the ingredients of the said provisions. Therefore, it is necessary to reproduce the provisions of Sections 120-A, 120-B, 121 & 121-A, which read as under:-

" Section 120A - Definition of criminal conspiracy,- When two or more persons agree to do, or cause to be done,-

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

Provided that no agreement except an agreement to commit an offense shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance of thereof.

Explanation - It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Section 120B

120-B. Punishment of criminal conspiracy. -

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, (imprisonment for life) or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy

other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

Sec. 121. Waging, or attempting to wage war, or abetting waging of war, against the Government of India.-Whoever, wages war against the (Government of India), or attempts to wage such war, or abets the waging of such war, shall be punished with death, or (imprisonment for life) (and shall also be liable to fine).

Sec.121 A. Conspiracy to commit offences punishable by section 121.- Whoever within or without (India) conspires to commit any of the offences punishable by section 121, or conspires to overawe, by means of criminal force or the show of criminal force, (the Central Government or any (State) Government shall be punished with (imprisonment for life), or with imprisonment of either description which may extend to ten years, (and shall also be liable to fine).

Explanation.-To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall make place in pursuance thereof.]

148. As could be seen from the above said provisions, under Section 121-A, conspiracy to commit offence punishable under Section 121 itself is punishable even for any activity in pursuance or in consonance with such conspiracy. Therefore, Section 121 need not be fully established that the accused persons have waged war against the Government or attempted to wage war or abetted to wage war. Even mere conspiracy to wage war or attempt to wage war or abet to wage war, is punishable under Section 121 and if the conspiracy is to overawe the Government, by means of criminal force or the showing of criminal force shall be punished with imprisonment for life or with imprisonment which may

extend to 10 years and fine.

149. Section 120-B says that, when two or more persons agree to do any illegal act or an act which is not by illegal means, such an agreement is designated a criminal conspiracy and if any such conspiracy to commit an offence is punishable with death or imprisonment for life. Then such persons are liable to punishment for a term of two years or more.

150. So, in order to attract Section 120-B, it is clear from die above said provisions that, the prosecution has to establish that the accused persons are more than two in number and they have entered into an agreement and that agreement is designed for the purpose of commission of an illegal act or doing an act by illegal means and such illegal acts amounts to commission of offences under the provisions of IPC and other laws. So far as section 121 of IPC is concerned, the prosecution has to prove that, the accused persons have actually waged war against the Government or attempted to wage war against the Government.

151. From the above provisions, it is abundantly clear that, if the conspiracy relied upon by the prosecution is with reference to section 121 of I.P.C., then the said conspiracy is exclusively and specifically punishable under section 121-A. Under such circumstances Section 120-A and 120-B of I.P.C cannot be invoked. If it is done, the same amounts to imposing double punishment. Hence, we are of the opinion that, the conviction and sentence under section 120-B is not sustainable.

152. It is abundantly clear that, if the conspiracy relied upon by the prosecution is with reference to Section 121 of IPC, the said conspiracy is exclusively and specifically punishable under Section 121-A, but under such circumstances, Sections 120-A and 120-B cannot be invoked.

153. Before adverting to the factual matrix of this case, so far as these provisions are concerned, we would like to discuss some of the decisions cited by the learned counsels. First of all, Sri. Hashmathpasha, learned counsel drawn our attention to famous decision reported in 2005 SCC (Cri.) 1715 between the State (NCT) of Delhi v. Navjot Sandhu alias Afsan Guru, wherein the Hon''ble Apex Court has held as under:-

"The court must be cautious in adopting an approach which has the effect of bringing within the fold of Section 121 all acts of lawless and violent acts resulting in destruction of public properties, etc., and all acts of violent resistance to the armed personnel to achieve certain political objectives. The moment it is found that the object sought to be attained is of a general public nature or has a political hue, the offensive violent acts targeted against the armed forces and public officials should not be branded as acts of waging war. The expression "waging war" should not be stretched too far to hold that all the acts of disrupting public order and peace irrespective of their magnitude and repercussions could be reckoned as acts of waging war against the Government.

A balanced and realistic approach is called for in construing the expression "waging war" irrespective of how it was viewed in the long past. An organised movement attended with violence and attacks against the public officials and armed forces while agitating for the repeal of an unpopular law or for preventing burdensome taxes were viewed as acts of treason in the form of levying war.

An aspect on which a clarification is called for is in regard to the observation made in the old decisions that neither the number engaged, nor the force employed, nor the species of weapons with which they may be armed" is really material to prove the offence of levying/waging war. These are not irrelevant factors. They will certainly help the court in forming an idea whether the intention and design to wage war against the established Government exists or the offence falls short of it. For instance, the firepower or the devastating potential of the arms and explosives that may be carried by a group of persons - may be large or small, as in the present case, and the scale of violence that follows may at times become useful indicators of the nature and dimension of the action resorted to. These, coupled with the other factors, may give rise to an inference of waging war. However, a settled proposition is that there need not be the pomp and pageantry'' usually associated with war such as the offenders forming themselves in battle line and arraying in a warlike manner. Even a stealthy operation to overwhelm the armed or other personnel deployed by the Government and to attain a commanding position by which terms could be dictated to the Government might very well be an act of waging war."

(Emphasis supplied)

154-155. On perusal of the above said decision, the case has been considered by the Court on the basis of the activities that have been carried-out by the accused persons. There is no mention with regard to the nature of conspiracy the accused had and also in what manner, the court has to consider the conspiracy between the accused persons of course, there must be an indication in the material on record that, the accused persons have intended to fight war against the Government or destabilize the Government and in that regard, they have to conspire to do some illegal activities later. It all depends upon the facts and circumstances of each case. Hence, in our opinion, the ingredients of Section 121 of IPC i.e., waging war or attempting or abetting to wage war are absent in this case. Nevertheless, the court has to consider that the accused persons have conspired to resolve or to declare to take action to wage war against the Government or to destabilize the central Government or the State Government. Even when any act in furtherance of conspiracy is done and any act done in continuation to that conspiracy is sufficient to establish the mind-set and intention of the accused to wage war against the Government. Therefore, the court has to see whether there are any material to show the intention and mind set of the accused to wage war against the State.

156. Now coming to another decision reported in 2003 SCC (Cri.) 2033 between Nazir Khan and others v. State of Delhi, wherein the Hon''ble Apex Court at Paras

31 to 36 has in detail discussed about what is meant by waging war. The above said case has been dealt with under the TADA Act and other provisions under IPC. The Hon''ble Apex Court has observed that,

?The word ?Wages? has the same meaning as levying? used in the English statute. Mere collection of men, ai ms and ammunition does not amount to waging war. The expression ?waging war" means and can only mean waging war in the manner usual in war. In order to support a conviction on such a charge, it is not enough to show that the persons charged have contrived to obtain possession of an armoury and have, when called upon to surrender it, used the rifles and ammunition so obtained against the Government troops. It must also be shown that the seizure of the armory was part and parcel of a planned operation and that their intention in resisting the troops of the Government was to overwhelm and defeat these troops and then to go on and crush any further opposition with which they might meet until either the leaders of the movement succeeded in obtaining the possession of the machinery of Government or until those in possession of it yielded to the demands of their leaders. An assembly armed and arrayed in a warlike manner for any reasonable purpose is helium levatum, though not bellum percussum. Lifting and marching are sufficient overt acts without coming to a battle or action."

(Emphasis supplied)

157. On reading of the above said judgments it is clear that, the court has considered the activities of the accused persons like collection of arms, using of the arms, the strength, potentiality of the accused persons in order to declare war and whether that amounts to waging war against the State. As we have clearly observed in this case, there is no such activity of the accused, as such, in order to attract Section 121, of IPC there is no waging of war actually taken place. But, irrespective of that, they have conspired themselves in order to take a decision to wage war against the Government. There is no hard and fast rule for applying the above said principles, irrespective of the factual matrix of the case, it all depends upon the facts and circumstances of each case. The mere conduct of the accused persons and circumstances, in taking such decision irrespective of any further activity in order to cause damage to the Government even without any benefit, would amounts to conspiracy in order to wage war against the Government.

158. We once again refer ourselves back to Ex.P92 and other conduct of the accused-A1, A2 and A-4 to A6 in consonance with the decision taken by them. Ex.P92 (a) to (h) disclose that, the accused noted above in order to conspire themselves had conducted several meetings for specific purpose. ?Why & What is the Purpose? would play a dominant role. The accused persons have taken decision that in India Mohammadans were treated very badly and there is a lot of discrimination and India has demolished the Babri Masjid and there was lot of killings of Mohammadans at Gujarat. Therefore, the above named accused persons have taken a decision that they have to light against such activities and

declare ?Jihad and then to take training to use guns, activate bombs and other things for the purpose of taking revenge against the Government. It goes without saying that the Government has not been taking so much of action in order to safeguard the interest of Muslims and their properties in the Country. The Government has allowed some people to demolish the Babri Masjid and also not safeguarded the Muslims being killed in Gujarat etc. Hence it is clear that, tire target of the accused is the Government of India only.

159. The accused persons have also discussed with regard to the funding for ? Jihad? by means of an association and also they have taken a decision to prepare themselves with the weapons in order to fight against such activities. These activities of the accused clearly disclose that, they wanted to take action against the Government etc.

160. As we have also observed that some of the books which were seized from the custody of the accused persons, it also discloses that those books must have been persuaded the accused persons to pass such resolution under Ex.P92. Those books contained anti-national recitals which says that India will be destroyed and Mohammadans should take guns and fight against India, etc. So the court has to couple the entire material on record to draw an inference as to what exactly the intention of the accused persons in holding such meetings. Though we are of the opinion that no damage has been done, no activities have been taken place in consonance with their conspiracy and there is no heavy magnitude of any damage or loss to the country, nevertheless their prime intention is to cause heavy damage to the people and the country. We are able to understand this intention and mind set of the accused coupled with they joining together and conspire to execute such an intention. In our opinion, their intention and mindset are sufficient to attract the provision under Section 121. A though not under section 121 of IPC, though not the provisions of Section-121 of IPC.

161. We would also like to mention here that some of the accused persons noted above have gone further and have collected Electrical Detonators, Gelatin sticks and bombs. This Conduct shows that they have decided to implement the decision taken by them, slowly and gradually and for that purpose only started collecting the materials of such magnitude sufficient to destroy India. But they were caught at the initial stage of conspiracy while planning as to how to execute their decision. It is not necessary for the courts to wait for till such time, allowing the accused persons to collect so much of materials and only after causing damage to the country, countrymen and the property of the country men, and then take action. In our sincere and honest opinion, such activities even at the stage of conspiracy itself should be nipped at the bud. Otherwise, it may end up in causing irreversible damage. Therefore, we are of the considered opinion that the trial court has not committed any mistake in convicting the accused persons and sentencing them for life. However, the trial Court instead of sentencing the accused under section 121-A for life, inadvertently by mistaken notion invoked

Section 120-B of I.P.C., which needs to be corrected.

162. We are of the opinion that when the court has come to the conclusion that some of the accused persons specified supra, have decided to conspire with each other to wage war against the State and found possessing incriminating articles with them, the trial court ought to have sentenced the accused persons to undergo imprisonment for life for the offence under Section 121-A of IPC. Accordingly, we modify the said sentence.

163. Now coming to the offence under Section 5 of the Explosive Substances Act, it is a proven fact that A-2, A-3, A-4, & A-6 were found possessing explosives with them. As could be seen from the evidence already dealt with by us in detail. A-1 and A-5 are not found with any explosives with him. According to the prosecution, they are only conspirators. There is no evidence to show that A1 and A5 had any knowledge of other accused collecting any materials. Therefore, there is no question of punishing A-1 and A-5 for the offences under Sections 6 of the Explosives Act.

164. Section 5 of the said Act discloses that if any person, who makes or knowing has in his possession or under his control any explosive substances or special category of explosive substances, under such circumstances, as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for possession or under his control for a lawful object, then such person is liable for imprisonment for a term which may extend to 10 years and shall also be liable to fine. In case of possession of any explosive substance or special category of explosive substance without there being any explanation by the accused that they are keeping them or possessing them for the purpose of lawful object, then in the absence of such explanation, they are caught under the said provision. A-2, A-3, A-4, & A-6 have in fact possessed these explosives and the ex-pert who has destroyed the said explosive substances has clearly deposed that, they are having heavy potential and if they are used in proper manner they would cause heavy damage to the people and property. When such an opinion has been expressed by the expert, it is the burden on the said accused to show that they were law abiding citizens and they had collected those Gelatin Sticks, Electrical Detonators, hand bombs, hand grenade, tin bombs, Tiffin box bomb, etc. for any legal purpose. In the absence of such explanation, the court has to draw an inference that the accused have committed such an offence and possessed those articles, for some illegal act. The suspicion created in the mind of the court has not been eradicated by any other evidence by the accused. Therefore, we are of the opinion that the conviction and sentence passed by the trial court sofar as it relates to A-2, A-3, A-4, & A-6 for the offence under the Explosives Substances Act, 1908 is proper and correct. However, there is no material to show that A-1 and A-5 in any manner have abetted these accused persons to collect the explosives like bombs, grenades, etc. and in pursuance of the same, they have done it. Therefore, A-1 and A-5 deserves to be acquitted for the offence under Section-6 of the Explosive

Substances Act.

165. However, we would like to make it clear that A-3 and A-7 at no point of time participated in the conspiracy with other accused persons. Therefore, though, A-3 was found with some incriminating articles, i.e., explosive substances, he is not liable to be punished under Sections 120-B, 121-A and 121 of IPC. Hence, Al, A-2, A-4 to A-6 are to be convicted and sentenced to life for the offence under Sections and 121-A of IPC.

166. It is seen from the records and also as discussed by us that the revolver and live cartridges were recovered at the instance of A-6 only. However, the trial Court has convicted A-2, A-3, A-4 & A-6 for the offences under Sections 25 and 26 of the Arms Act. It is the case of the prosecution that A-6 was possessing MO-23 (country made revolver) and MO.24 (life bullets). Section-25 says that, whoever possesses, manufactures, sells, transfers, converts, repairs, tests or proves, or exposes or offers for sale or transfer, or has in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of Section-5, then he is punishable under the said provision. If any such acts are in contravention of any of the provisions of Sections 3, 4, 10 or 12 in such manner as to indicate an intention that such act may not be known to any public servant, then he is also punishable under Section 26 of the Arms Act, Section-5 of the said Act indicates that no person shall use, manufacture, sell, transfer, convert, repair, test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, text or proof, any fire-arms or any other arms of such class is deemed to have violated Section 5 of the Act. It is clear from the evidence of the expert and also the Investigating Officer in this case that A-6 possessed fire-arm and live cartridges without any license. Further, he has kept them illegally underneath the earth. That intention indicates that, his act may not be known to any public servant or any person. Therefore, in our opinion, A-6 is alone has committed the offence under Sections 25 and 26 of the Arms Act and there is no material to show that A-6 has done this act to the knowledge of other accused and that, in any manner A-2, A-3 & A-4 have abetted A-6 for committing such an offence. Therefore, the sentence passed by the trial Court sofar as A-2, A-3 & A-4 are concerned, for the offence under the Anns Act is liable to be set aside and A-2. A-3 & A-4 have to be acquitted of the above said offences.

167. In view the above said observations, though the learned SPP has strenuously argued before us, that all the above acts of the Accused persons in hatching conspiracy against the State to wage war. Hence, it is a fit case to sentence the accused to death. But, as we have observed that the offence under Section 121 of IPC has not been specifically made-out, as such, question of imposition of death sentence does not arise. However, we modify the sentence passed by the trial Court for the offence under Section 121-A of IPC enhancing and sentencing the accused 1. 2, 4 to 6 to undergo imprisonment for life, is sufficient and no further imposition of sentence is required.

168. In view of the above detailed discussion we proceed to pass the following:-

Order

The appeal filed by A1. A2, and A4 to A6 in Cri A.No 220/2012 and the Appeal filed by the State in Cri. A. No 530/2012 and the Appeal filed by Accused No. 3, in Cri. A. No. 1123/2013 are hereby partly allowed. The Appeal filed by the State in Crl. A. No. 531/2012 is hereby dismissed. The Judgment of conviction and sentence passed by the trial Court is modified. Consequently,

(i) A-1, A-2 & A-4 to A-6 are hereby convicted for the offence under Section 121-A of IPC. Sentence passed by the trial Court is enhanced, the Accused shall undergo rigorous imprisonment for life for the offence under Section 121-A of IPC and to pay fine of Rs.5,000/- and in default, to undergo S.I. for a period of one year. (Impugned judgment of conviction is confirmed to that extent and sentence is enhanced). However, A1 to A6 are acquitted of the charge under Sections 121 and 120B of IPC. Accused No. 3 is acquitted also of the charges under section 121 A of I.P.C. (to that extent conviction and sentence is sot aside).

(ii) A2, A3, A4 and A6 are hereby sentenced to undergo S.I. for 7 years and shall pay fine of Rs. 5,000/- and in default to undergo S.I. for 1 year for the offences under section 5 of the Explosive Substances Act 1908. (to that extent impugned judgment is confirmed). However, Accused Nos. 1 and 5 are acquitted of the Charges under section 6 of the said Act. (to that extent the impugned conviction and sentence is set aside).

(iii) Accused No. 6 is convicted for the offence under sections 25 and 26 of the Arms Act and sentenced to undergo S.I. tor a period of 5 years and shall pay a fine of Rs. 5000/- in default to undergo S.I. for one year for the offence under section 25 of the Arms Act. He is also sentenced to undergo S.I. for 3 years for the offence under section 26 of the Act. (to that extent, impugned conviction and sentence is confirmed). However A2,3 and 4 are acquitted for the offence under section 25 and 26 of the Arms Act. (to that extent judgment of conviction and sentence is set - aside).

(iv) The judgment of Acquittal passed by the Trial Court so far it relates to Accused No. 7 is not disturbed (confirmed).

(v) Sentences of imprisonment shall run concurrently. Set off for the period of imprisonment already undergone by the Accused persons shall be given under section 428 of Criminal Procedure Code.

(vi) As we found that A3 has already undergone the period of imprisonment imposed upon him, he shall be released forthwith, if he is not required in any other case.

(vii) Registry is hereby directed to communicate the operative portion of the judgment to the concerned Jail authorities for appropriate action.

