

(1997) 09 DEL CK 0103

In the Delhi High Court

Case No : Criminal Revision Appeal No's. 194, 195, 197, 213, 214, 215, 218, 220, 231, 233, 234, 246, 249, 270, 284, 285, 305 and 308 of 1997

P.V. Narsimha Rao

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 12-09-1997

Acts Referred:

Constitution of India, 1950 — Article 105, 75(2)
Criminal Procedure Code, 1973 (CrPC) — Section 164
Evidence Act, 1872 — Section 10
Penal Code, 1860 (IPC) — Section 120B
Prevention of Corruption Act, 1988 — Section 2

Citation : (1997) 5 AD 265 : (1997) 68 DLT 553 : (1997) 43 DRJ 108 : (1997) RLR 567

Hon'ble Judges : Jaspal Singh, J

Bench : Single Bench

Advocate : R.K. Anand, Lavkesh Sawhney, Arun Birbal, Kanchan Singh, R.M. Ohri, A.K. Dutt and Atul Sreedharan, for the Appellant;

Judgement

Jaspal Singh, J.

(1) What is the best way to win political foes? Persuasion? Understanding? Love? Compassion? Dale Carnegie's sermons? The sordid facts giving rise to these revision petitions against framing of charges show that the secret of success lies, at least with regard to some, in mastering the art of transferring one's own bulging wallets into the eager pockets of others.

(2) More a little later.

(3) Narsimha Rao, one may recollect, was, not long time ago, the Prime Minister of India. In the General Elections in 1991 though his party, the Congress (I), had emerged as a single largest party, yet it needed the support of at least 14 more members of Lok Sabha for a simple majority. Lack of clear majority and need to win over at least 14 other members of Lok Sabha was felt more acutely when the

Government came to know of an impending "Motion of No Confidence", which, in fact, came to be moved on the 26th day of July in the fateful year of 1993. On July 28, 1993, the Motion was lost. How did it happen? Simple. The Prime Minister succeeded in mustering the support of fourteen more Members of Lok Sabha. And, how did he manage to win their support? Well, as we all know no bird soars too high if he soars with his own wings and Narsimha Rao had the wings of many others available at his elbow. The C.B.I. tells us that Captain Satish Sharma Buta Singh, V.Rajeshwara Rao, H.M.Revanna, Ramalinga Reddy, M.Veerappa Moily, D.K.Audikeshavalu, M.Thimmegowda and Bhajan Lal were some of the persons to lend their wings. And, how was the task accomplished? "Elementary !", tells the C.B.I. in the manner reminiscent of Sherlock Holmes. "With the applause of money indeed"!

(4) It is said that there is no more miserable being than one in whom nothing is habitual but indecision. But here with the news of impending No Confidence Motion, the time was running out and indecision could indeed spell doom. The stage was thus set and the assigned roles played and if C.B.I. is to be believed though the centre-stage remained to be Delhi, no mean role was to be played on the stage set in Bangalore. In Delhi the targets were the Jmm MPs and the MPs belonging to J.D. (A) led initially by Ajit Singh but later some of them hijacked by Ram Lakhan Singh Yadav. The first group was to be tackled by a Captain known by the name of Satish Sharma with Buta Singh, V.Rajeshwara Rao and others in the toe and the second by yet another hero of many a political battles Bhajan Lal though the Captain's shadow was to cast its own spell there too. As for Bangalore, it was principally there where money was to be largely collected to make the proverbial mare go.

(5) With the "No Confidence Motion" hanging over the head of the Government like the Sword of Damocles, the Jmm MPs scented blood. While Simon Marandi got in touch with Captain Satish Sharma and found him too willing to extend promises of reward in cash and kind, Bhajan Lal too was found as willing as David Copperfield's Barmes. But then Jmm MPs were in no mood to take chances, Shailendra Mahto met Ashok Rai Deshmukh and expressed his desire to meet the Supremo Narsimha Rao. On July 25 Deshmukh contacted Narsimha Rao and told him about his meeting with Mahto. Rao asked him to ascertain the demand of the Jmm MPs. Shailendra Mehto, however, insisted upon meeting Rao directly. When informed about it, Narsimha Rao advised Ashok Rai Deshmukh to take them to V.Rajeshwara Rao. So directed, Deshmukh took them on the 26th to V.Rajeshwara Rao. It appears that the meeting was not a success since the amount offered was felt to be not enough. The same night Buta Singh took the Jmm MPs to the residence of Prime Minister Narsimha Rao, who too, Realizing that it was time to do or die, promised with great alacrity reward in cash in exchange of help. The die was thus cast.

(6) In the meanwhile, Bhajan Lal, who was in constant touch with Narsimha Rao, had opened yet another front. His target was the Jd (Ajit Singh) and its MPs. On

July 24 he visited the house of Ajit Singh, the leader of the group, told him that he had been sent by Prime Minister Narsimha Rao for seeking his help, gave him rupees two crores and in return demanded not only his own but his group's support as well. It appears that though the booty was meant to be shared, Ajit Singh wanted to have the whole of it. It so happened that on July 26 when Ram Lakhan Singh yadav demanded his own share, Ajit Singh refused. He rather denied having received any amount from Bhajan Lal. However, Ram Lakhan Singh remained unconvinced and determined not to let the great opportunity pass by, formed a breakaway group of his own. In the meeting of that group on the 27th, Bhajan Lal assured them huge sums of money in cash, and Captain Satish Sharma assured allotment of Petrol Pumps either in their names or in the names of their relatives. The payment in cash was to be made in two installments of Rs.20 lacs each. The first before the voting and the second thereafter. And, honouring that commitment, all the seven MPs of the break-away group led by Ram Lakhan Singh Yadav received Rs.20 lacs each on the 28th and that too before leaving for the Parliament.

(7) The No Confidence Motion was lost on the 28th. The four Jmm MPs and seven MPs of the Ram Lakhan Singh Yadav group voted against the Motion. And, on the 29th and the 30th, the Jmm MPs received a part of the promised booty. For the rest, arrangements were being made in Bangalore.

(8) What was cooking at Bangalore? This is what the C.B.I. tells us.

(9) M. Veerappa Moily, the Chief Minister of Karnataka who had camped at Delhi and had been in touch with the Prime Minister and men like V. Rajeshwara Rao and Captain Satish Sharma, rushed back to Bangalore. He was followed by D.K.Audikeshavalu a close friend of Moily. On the 29th and the 30th D.K.Audikeshavalu collected a total sum of Rs.50,95,474 from the banks by means of three cheques. M.Thimmegowda, yet another close friend of Moily, was also not sitting idle. On the 30th of July he approached the Branch Manager of the Canara Bank, Sheshadari-puram Branch, Bangalore for an over-draft of rupees one crore for ten days and the same evening but after banking hours got the amount in cash. He also issued three cheques, one for Rs.60 lacs, the second for Rs.25 lacs and the third for Rs.15 lacs. The first was in favor of M/s.Ranganathan Group and the second in favor of M/s.Yellamma Group. The third was drawn in favor of self. The amounts were withdrawn in cash the same day. After having made the withdrawals, M.Thimmegowda put the money in two big V.I.P. suit cases and delivered the same to M.Veerappa Moily in the presence of H.M.Revanna and Ramalinga Reddy. The same evening H.M.Revanna and Ramalinga Reddy left the residence of M.Veerappa Moily with three suit cases and a handbag for Bangalore Airport. Those suit-cases included the two brought by M.Thimmegowda. D.K.Audikesvulu also reached there with one V.I.P. suit case and then all the three reached Delhi at 10.30 hours and went straight to Andhra Bhawan spending some time with V.Rajeshwara Rao. On the morning of 31st July D.K.Audikeshavalu, H.M.Revanna and Ramalinga Reddy Along with their suit

cases and the handbag went again to Andhra Bhawan in a taxi and a Maruti car accompanied by Vijay Handa and one Harsharan Lal and after having remained closeted with V.Rajeshwara Rao for about half-an-hour, delivered the precious cargo to Suraj Mandal, the Jmm MP.

(10) We are told that two days before the deliveries made by D.K.Audikeshavalu and H.M.Revanna, that is on the 29th, five suit cases and one bag had been delivered at the residence of Suraj Mandal and that on the 30th too he had received an assignment comprising of three gunny bags and one suit case. The same day Simon Marandi after having collected three of the said gunny bags and a suit case, rushed to the house of Shailendra Mahto. Out of the said gunny bags and suit cases, Simon Marandi collected three gunny bags and one suit case. This was on the 30th. The same day he also collected a sum of Rs.10 lacs from B.N.Safaya Additional Private Secretary of Capt. Satish Sharma. We are further told that the same evening Shibhu Soren too collected one bag and a suit case from the residence of Suraj Mandal.

(11) Confucius says that when prosperity comes, do not use all of it. Inspired, perhaps, by the advise of the Sage-philosopher, the Four Jmm MPs namely Suraj Mandal, Shibu Soren, Simon Marandi and Shailendra Mahto decided to keep a part of the booty in the safe lockers of a Bank. They thus went to the Punjab National Bank, Naroaji Nagar Branch, New Delhi on the 31st, where Suraj Mandal made a deposit of Rs.30 lacs in his own name in the S.F.Acctt. No. 17108. Shailendra Mahto got opened one Sugam F.D. account No.196 by making a deposit of Rs.39.80 lacs. It was joint in his own name and in the name of his wife Abha. Shibu Soren too got opened a joint F.D. account in his own name and in the names of his wife and two sons with a deposit of Rs.30 lacs. Simon Marandi too did not lag behind. While on the 1st of August he deposited Rs.12 lacs and had got opened a joint F.D. account in his own name and in the name of his wife, on the 2nd he deposited another sum of Rs.21 lacs in the F.D. account got opened by him a day earlier. All the four of them also got opened one joint Fixed Deposit Account No.195 for Rs.30 lacs besides one joint S.F. account with a deposit of Rs.10,000.00

(12) The sordid story of political corruption as unfolded above, led to the filing of three separate charge sheets by the C.B.I. and on May 6, 1997 the learned Special Judge ordered framing of charges against P.V.Narsimha Rao, Captain Satish Sharma, Buta Singh, V.Rajeshwara Rao, H.M.Revanna, Ramalinga Reddy, M.Veerappa Moily, D.K.Audikeshavalu, M.Thimmegowda and Bhajan Lal under sections 120B of the Indian Penal Code read with sections 7, 12 and 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 and so also u/s 12 of the Prevention of Corruption Act, 1988.

(13) The learned Special Judge also ordered framing of charges against Suraj Mandal, Shibu Soren, Simon Marandi, Ajit Singh, Ram Lakhan Singh yadav, Ram Saran yadav, Roshan Lal, Anandi Charan Das, Abhey Pratap Singh and Haji Mohd. Khan u/s 120B of the Indian Penal Code read with sections 7, 12, 13(2)

read with section 13(1)(d) as well as under sections 7 and 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988.

(14) As against Shibu Soren and Suraj Mandal charge was also ordered to be framed u/s 193 of the Indian Penal Code.

(15) The narrative that we find above, is shorn of details, some perhaps material. However, I thought it necessary to give a thumb-nail view of the case only with an idea to give a feel of the case and to prepare for what is to follow.

(16) Broadly speaking, the challenge to the impugned order was six-fold. The first ground of attack rested on Article 105 of the Constitution of India. My attention was particularly drawn to clauses (2) and (3) of Article 105 of the Constitution and it was contended that even if the allegations of the prosecution were accepted, the court would have no jurisdiction to fasten any criminal liability on the petitioners as whatever allegedly happened was in respect of the votes given by some of them in the Lok Sabha and that, in any case, whatever transpired, touched the privileges of House within the meaning of clause (3) of Article 105 of the Constitution. The second contention was that the members of Lok Sabha hold no office and as such are not public servants within the meaning of section 2(c) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the Act of 1988) and that for that reason the Act of 1988 would not apply to the alleged acts of omission and commission of the petitioners. Thirdly, it was argued that even if it be taken that members of Lok Sabha do fall within the definition of section 2(c) of the Act and are thus taken to be public servants, yet the Act would not apply for the simple reason that in the case of Lok Sabha members there is no authority competent to remove them from their office within the meaning of section 19(1)(c) of the Act. The next argument was that sanction was required u/s 197 of the Code of Criminal Procedure to prosecute P.V.Narsimha Rao. Fifthly it was contended that in case of P.V.Narsimha Rao, M.Thimmegowda, H.M.Revanna, Ramalinga Reddy and Moily there was nothing to show that they had conspired or were part of any conspiracy. Lastly, it was argued that even on facts no case was made out for framing of the charges.

(17) Since the first contention revolved around Article 105 of the Constitution of India, I think I would rather do well to reproduce it at this very stage. It reads as under: "105. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament. (2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings. (3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so

defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978. (4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament."

(18) Before the Constitution (44th Amendment) Act, 1978 in clause (3) instead of the words "shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978", the words were: "shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees at the commencement of this Constitution."

(19) It was contended that while clause (1) of the Article confers freedom of speech on members of Parliament independently of, and uncontrolled by, anything in Article 19(1)(a), Clause (2) goes one step further than Clause (1), in one respect, namely, legal immunity of Members of Parliament for anything said in the Parliament or in respect of any vote given by them in Parliament or in any Committee thereof. It was argued that in view of Clause (2) no action in a Court of law lies "in respect of" anything said or any vote given and that the immunity is complete and is based on the principle that it is of the essence of the Parliamentary system of Government that people's representatives should be free to express themselves and/or to vote without fear of legal consequences. Laying particular emphasis on the words "in respect of" it was contended that whatever happens even outside the precincts of the Parliament but in respect of any voting in Parliament would also be immune from legal consequences in a court of law. In other words, the contention was that even if the allegations of the prosecution were to be accepted, as the process of winning over the voters even by means of illegal gratification, was "in respect of" the voting in Parliament, the immunity extended to those acts as well and that any action taken under the Act of 1988 with regard to the same would be in violation of Article 105. In support my attention was drawn to certain authorities to which reference may be made.

(20) The first judgment on which reliance was placed is by a Full Bench of this Court in *Tej Kiran Jain and Others Vs. N. Sanjiva Reddy and Others*, wherein it was held that the words "anything said" in clause (2) of Article 105 were of the widest amplitude and it was not permissible to read any limitation therein and further that the object of the provision obviously was to secure absolute freedom of discussion in Parliament and to allay any apprehension of a legal proceeding in respect of anything said in Parliament by a member thereof.

(21) The second judgment is *Ex Parte Wason* 1869 Q.B. 573. In the said case the offence charged was that of conspiracy, by three persons, two of whom were members of the House of Lords, to deceive the House, and so to prevent the due

course of justice and injure and prejudice a third person, by making statements in the House which they knew to be false. It was held that the magistrate was right in refusing to take any proceeding as members of either House of Parliament were not civilly or criminally liable for any statements made in the House, nor for a conspiracy to make such statements.

(22) The third judgment is *A.G. of Ceylon v. De Livera* (1962) 3 All Er 1066. My attention was particularly drawn to the following observations made in the judgment: "They recognise that there are many things which a member may be invited to do because he is a member and enjoys as such a status and prestige which supply the motive of the invitation, but in doing which he would not be acting in his capacity as a member. But, with this recognition made, they are of opinion that the circumstances of any particular case may show that in the light of prevailing practices or conventions observed by members of the House some act for which an inducement has been offered is sufficiently closely bound up with and analogous to proceeding in the House as to be properly described as done by a member in his capacity as such."

(23) Reliance was also placed on *British Railways Board v. Pickin* (1974) All Er 609 wherein it was held that the courts have no power to disregard an Act of Parliament, whether public or private, nor have they any power to examine proceedings in Parliament in order to determine whether the passing of the Act had been obtained by means of any irregularity or fraud.

(24) Yet another judgment to which my attention was drawn is *Preble v. Television New Zealand Ltd.* (1994) 3 All Er 407 wherein it was held that if a suggestion in cross-examination or submission that a member or witness was lying to the House were to be allowed, that could lead to a conflict between the courts and Parliament which the principle of non-intervention by the courts was designed to avoid and that consequently the judge would be right to strike out those particulars of the defense which infringed Parliamentary privilege.

(25) To continue with the narrative of the points urged on behalf of the petitioners, I may mention that it was also argued that the Courts cannot look into the pattern of voting in the Lok Sabha nor can the courts use the same as evidence to support of the charge of corruption and in support reliance was placed on *Church of Scientology v. Johnson Smith* (1972) 1 All Er 378 and *R. v. Secretary of State* () 1983 2 All Er 233.

(26) In England the concept of "Parliamentary privilege" had begun to assume a coherent form by 1450 with an address by the Speaker to the Monarch claiming "the ancient rights and privileges of the Commons." Earlier analysis of privilege assumed the Commons and Lords were "superior courts" having exclusive power over all matters within their claimed jurisdiction. As expressed by Coke CJ (1 Inst. 15): "Every Court of Justice hath rules and customs for its directions.... It is lex et consuetudo parliamenti that all weighty matters in any parliament moved concerning the peers of the realm, or common in parliament assembled, ought to

be determined, adjudged, and discussed by the course of the parliament, not by the civil law nor yet by the common laws of this realm used in more inferior courts"

(27) COKE'S treatise, however, offers no clear guidance as to the legal status of the *lex et consuetudo* parliament vis-a-vis statute and common law. However, much before the Revolution was fought, three cases of great significance stood decided. They were Haxey's case (1397), Strode's case (1512) and Sir John Elliot's case (1629). In each of these cases the freedom of speech, debate and proceeding as the privilege of the House was established. Finally, and after having witnessed the saga of Peter Wentworth's defense of freedom of discussion in the Commons and the case of the Five Members (1641) which heard the courageous speaker say, while defying the King's direct command to reveal the whereabouts of the five Members: "May it please Your Majesty, I have neither eyes to see, nor tongue to speak in this place but as this House is pleased to direct, whose servant I am."

(28) Came the Revolution and with it came the Declaration of Right which stressed the Commons' "independence" from interference of the Crown and the Courts. This later came to be expressed in Article 9 of the Bill of Rights 1689 which expressed: "That the freedom of speech, and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament."

(29) Though it was felt by some that by enacting Article 9, the pre existing privileges enjoyed by the two Houses stood abolished, many feel that Article 9 was merely declaratory and not enacting (See: Erskine May, Parliamentary Practice).

(30) Just twelve years after the 1688 settlement, a legislation was enacted entitled: "An Act for preventing any inconveniences that may happen by privilege of Parliament". Its main provision, as restated in section 1 of the Parliamentary Privilege Act 1770, was that: "Any person may at any time commence and prosecute any action of suit against any Lord of Parliament or any.... (member) of the House of Commons... or any other person entitled to the privilege of Parliament... and no such action shall at any time be impeached, stayed or delayed by or under colour or pretence of any privilege of Parliament."

(31) This too raised doubts. Did it abolish all aspects of privilege in so far as they restricted access to the courts, including Article 9? The Privy Council in *Re Parliamentary Privilege Act, 1770* (1958) A.C. 331 held that the Act did not do away with the MPs' freedom of speech and that the 1700 Act and its successors reached only those legal actions whose origin did not lie in a "proceeding in Parliament" (See: Ian Loveland: *Constitutional Law: A Critical Introduction*. Butterworths. 1996). However, the fact remains that a number of privileges have been surrendered or modified over the years. For example, following the Parliamentary Privilege Act, 1770 the privilege of freedom from arrest previously

enjoyed by the servants of the Members was extinguished. Similarly, at the beginning of the Second World War, the Privileges Committee concluded that detention of a Member under Emergency Powers legislation should be regarded as akin to arrest under the criminal law, so that no breach of privilege was involved (see Erskine May: Parliamentary Practice)

(32) Despite all the ups and downs some of the privileges remain well-entrenched. The main privileges may be enumerated. They are as under: "(i) Freedom of the Members from civil arrest for a period of forty days before to forty days after the meeting of the Parliament. However, this protection was not available with regard to arrests made on criminal charges for an offence or where there was preventive detention by an order of the executive authorities under statutory powers. (ii) Freedom of speech, debate and proceeding. These freedoms could neither be impeached nor questioned in any court. (iii) Power and privilege to commit for contempt. As per Erskine May the main value of this power lay "in upholding the dignity of Parliament and defending it against disrespect and affronts which could not be brought or could only be brought by implication under the head of any of the specific privileges."

(33) As would be borne out from above immunities relate primarily to the exercise of parliamentary duties and endorse the principle of non-accountability. Some Constitutions do set limits to the principle of non-accountability with a view to prevent its abuse. For example, under the Constitution of the Federal Republic of Germany immunity does not cover defamation of character and insult even when committed in the course of Parliamentary duties. In Denmark and Iceland too members may be held accountable for their actions if the assembly to which they belong authorises. To some extent similar is the position in Finland and Sweden.

(34) In India, clause (3) of Article 105 protects and makes available to the members the same powers privileges and immunities as were enjoyed on the 26th day of January, 1950 by the British House of Commons. I have enumerated above those three main privileges. What is further to be noticed is that in view of clause (2) of Article 105 besides the powers, privileges and immunities enjoyed under clause (3), no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof.

(35) The argument advanced by Mr.R.K.Anand and others seems to suggest that besides non- accountability, clause (2) of Article 105 benefits the Members from "inviolability" (though this term was not put to use by any counsel) or protection from legal process which ensures that members of Parliament are protected against legal actions brought against them for acts committed outside the orbit of their office.

(36) The powers, privileges and immunities enjoyed both under clauses (2) and (3) proceed on the same ground, viz. the necessity that the Parliament and its

members should in no way be obstructed in the performance of their high office and important duties and that if there is any such obstruction caused either to the Parliament or to any Member, the remedy should be in the hands of the House. Undoubtedly, the powers, privileges and immunities as provided by clauses (2) and (3) of Article 105 are necessary for the protection of the Parliament and its members. But then "inviolability" has not met with unanimous approval in all Constitutions. Canada and Netherlands, for example, consider that members are well enough protected in criminal and civil matters by the ordinary law.

(37) The Members may enjoy all privileges and immunities which may be necessary to ensure freedom of speech and right of vote inside the parliament, but then in England there has never been any suggestion that "inviolability" could interfere ? with the working of the Penal law. It applies only in case of civil matters and that too to prevent the arrest of Members for a few days during and after the Session. I have no manner of doubt that with regard to the Penal law the position is no different in India.

(38) It is true that in Eliot's case (1629) 3 St. Tr. 294 the question whether or not the court could deal with the assault on the Speaker committed in the House of Commons was expressly left open when the judgment was declared illegal by both House but then, as observed by Wade and Phillips, while commenting on that case there is no authority showing the crimes committed in the precincts of the Parliament cannot be punished by the ordinary courts [See: Wade and Phillips: Constitutional Law (8th edn.) p.167]

(39) Undoubtedly, acceptance of a bribe by any Member of either House to influence him in his conduct as such Member is a breach of privilege and there have been cases where Members of the Commons found guilty of such offence have either been committed [CJ (169-97) 236] or expelled (CJ (1667-87)24], (CJ (1693-97) 274]. There is also no doubt that influencing or attempting to influence Members of Parliament may be considered contempt. In 1695 the House of Commons had resolved that "the offer of money, or other advantage, to any member of Parliament for the promoting of any matter whatsoever, depending or to be transacted in Parliament is a high crime and misdemeanour and tends to the subversion of the English Constitution [CJ (1693-97) 331]. Thus to offer bribe to a Member of Parliament to influence him in his conduct as a Member has been treated as a breach of privilege [CJ (1697-99) 528}. But then, merely treating the commission of a criminal offence as breach of privilege does not amount to ouster of jurisdiction of the ordinary courts to try penal offences. To claim that in such matters the courts would have no jurisdiction would amount to claiming a privilege to commit a crime. And, in this respect reference may be made to Rex v. Sir R.F.Graham- Campbell (1935) 1 K.B. 594. It was a case relating to sale of intoxicating liquor without license within the precincts of House of Commons. The applicant applied in the police court for summonses against certain members of the Kitchen Committee of the House of Commons and the

managers of the Refreshment Department of the House. Of course, the attempt to convict them failed but it was not because courts have no jurisdiction over criminal offences committed within the precincts of the Parliament but primarily on the ground of the right of the House to regulate its internal affairs.

(40) In *Edinburgh & Dalkeith Railway Co. v. Wallchope* (1842) 8 C&F 710, the House of Lord was asked, but refused to declare a private Act invalid on the ground that it had been passed without notice of intention to introduce having been given to interested parties as required by the Standing Orders of the House of Commons. In *Lee and Another v. Bude & Torrington Junction Railway Co.* (1884) 12 Qbd 271, the Court of Common Pleas refused to declare a private Act invalid on the ground that it had been obtained by fraudulent recitals. In *Bradlaugh v. Gossett* (1871) Lr 6 C.P. 577, Mr. Charles Bradlaugh, who had been excluded from the House of Commons and from taking the oath upon his election, challenged the order of the House on the ground, inter alia, that his position was regulated by the Parliamentary Oaths Act, 1899. The action did not meet with success. These cases and so also the cases referred to by Mr. Anand establish only the elementary proposition that the Houses of the British Parliament are privileged to be the exclusive arbiters of the regularity of their own proceedings. None of the authorities referred to lay down a proposition that ordinary courts can have no jurisdiction to try criminal offences committed by the Members of Parliament whether within or outside the precincts of the Parliament. And while I am on it, I may mention in some detail the history of the reference by the Commons to the Privy Council (*Re Parliamentary Privilege Act 1770* 1958) Ac 331. I am doing so only with a view to meet the argument of Mr. Anand that the British Parliament had accepted communications between members and ministers initiated with a view to placing a question as part of "proceeding in Parliament". The cause of Common's reference to the Privy Council was an episode involving Labour Mp George Strauss. Strauss had sent a letter to a minister criticising the London Electricity Board (LEB). The minister forwarded the letter to the Chairman of the LeB who considered the comments in the letter defamatory and threatened libel action. Strauss, claiming that the threat was a breach of privilege, referred the matter to the House. The Committee of Privileges felt that the letter was a "proceeding" but the House rejected the Committee's conclusion. Truly, there are still many "grey areas" as suggested by Griffith and Ryle but not, in my view, with regard to the jurisdiction of the courts to try criminal offences committed by Members as referred to above.

(41) It is true that in *Tej Kiran Jain's* case a Full Bench of this court had held that the words "anything said" are of wide amplitude. It is also true that the words "any proceeding" would cover within their sway civil and criminal action but then these words, as already noticed, only make the Parliament exclusive arbiter of the regularity of its proceedings. These words do not make the Members acquire a prescriptive right to commit a crime. Any such approach would start a thoroughly vicious and destructive process. The privileges of British Parliament do not apply to criminal matters and members of either House are subject to

ordinary course of criminal justice [See Halsbury's Laws of England, 2nd ed. vol. IX; p.25) and the English Courts have more than once intimated that a crime committed in the House of Commons or by its order would not thereby be considered outside their jurisdiction [See: Sir William Anson, The Law and Custom of the Constitution 5th ed., vol. I, p. 186). The position in India is no different.

(42) That jurisdiction of courts is not ousted is accepted by Lok Sabha also. It appears that on the 11th and 12th of March, 1996 notices of question of privilege were taken up by the Lok Sabha with regard to Jmm MPs and were disallowed. I am tempted to reproduce below what appears in The Journal of Parliamentary Information Volume XIII No.2, June, 1996, pp.186-187: "PRIVILEGE Lok Sabha "Alleged payment of large sums of money to some members of the Jharkhand Mukti Morcha in the Lok Sabha for voting against the Motion of No Confidence in the Council of Ministers in July 1993 Four notices of a question of privilege regarding the alleged payment of large sums of money to some members of the Jharkhand Mukti Morcha (JMM) in the Lok Sabha for voting against the Motion of No- confidence in the Council of Ministers in July 1993 were received from Sarvashri Jaswant Singh, Indrajit Gupta, Arjun Singh and Jagmeet Singh Brar, all members. The notices dated 26 and 27 February 1996, received from Shri Jaswant Singh and Shri Indrajit Gupta, respectively, were against their Prime Minister. The notice dated 27 February 1996, given by Shri Arjun Singh and Shri Jagmeet Singh Brar was against the Prime Minister and Sarvashri Shibu Soren, Suraj Mandal, Simon Marandi and Shailendra Mahto, all members belonging to the ? Jmm in the Lok Sabha (who were said to be the beneficiaries of the alleged pay-offs). All the said four notices, in support of the contention made therein, relied upon a Press statement issued by Shri Shailendra Mahto, a member. The statement, a copy of which was enclosed by Shri Jaswant Singh with his notice, stated that a meeting of the said four members of the Jmm in the Lok Sabha was held with the Prime Minister in the presence of Shri Buta Singh, a member, two days before the voting on the No- Confidence on 28 July,1993. On the basis of an agreement allegedly reached at the said meeting, the members had voted against the Motion of No- Confidence and large sums of money were subsequently paid into various bank accounts of the said members. The main contention of the members in their notices was that the Prime Minister was in contempt of the House by allegedly offering inducements to the said four members of the Jmm and by trying to influence them in their parliamentary conduct. Shri Arjun Singh further contended that the Prime Minister had aided and abetted the conduct of the said members. Shri Arjun Singh and Shri Jagmeet Singh Brar also contended that those members had committed a breach of privilege and contempt of the House by accepting the "improper gratification in matter of voting. Copies of the four notices were forwarded to the Prime Minister for his comments. Copies of the notices of Shri Arjun Singh and Shri Jagmeet Singh Brar were also forwarded to the said four members of the Jmm for their comments in the matter. The Prime Minister's comments on the notices of Shri

Jaswant Singh were received on 28 February 1996. In his comments, the Prime Minister, inter alias stated as follows: The news item appearing in a section of Press and the press release by Shri Shailendra Mahto, Mp are baseless and false. Neither any payments of money were made or arranged to be paid by me to any member of Parliament, nor was any member of Parliament influenced through improper means in his parliamentary conduct, nor was any member of Parliament offered any inducements, fee or reward on the occasion of the Motion of No-Confidence moved against the Council of Ministers in July 1993. It is also to submit further that no attempt whatsoever has been made to prevent the will of the House and never was there any question of violation of the oath of office under the Constitution. I would Therefore submit to the Hon''ble Speaker that no breach of privilege has been committed.

(43) The same day, comments of the Prime Minister on the notice of Shri Indrajit Gupta were also received. In his comments, the Prime Minister stated inter alias as follows: The allegations in the published statement of Shri Shailendra Mahto are false and baseless and hence denied. In view of this, the question of denigration of Parliament does not arise. I would, Therefore, submit to the Hon''ble Speaker that no breach of privilege has been committed.

(44) The comments of the Prime Minister on the notices of Shri Arjun Singh and Shri Jagmeet Singh Brar were received on 6 March 1996. The Prime Minister, in his comments, stated inter alias as under: The allegation that I have aided and abetted the alleged conduct of the MPs mentioned in the aforesaid notice is false and baseless and hence denied. I would Therefore submit to the Hon''ble Speaker that no breach of privilege or contempt of the House has been committed.

(45) Shri Buta Singh, member,also addressed a letter to the Speaker, Lok Sabha in which he denied the allegations, stating inter alias that "I totally deny the consideration of any financial dealing. At no stage any money was offered or given to anybody either by me or through me. He also made a personal Explanation in this regard during the debate in the House on 28 February 1996.

(46) Shri Suraj Mandal, member, while speaking in the House on 28 February 1996 during the discussion on Motion under Rule 184 regarding the Government's failure to answer charges relating to the "hawala" case and illegal pay-offs to some members of Parliament, also categorically denied the allegations.

(47) On 29 February 1996, Shri Shailendra Mahto, member, during his personal Explanation in the House, denied the allegation in respect of acceptance of improper gratification by him for not voting in favor of the No-Confidence Motion against the Council of Ministers on 28 July 1993.

(48) On 11 March 1996, Shri Arjun Singh raised the matter in the House with the permission of the Speaker, Lok Sabha, Shri Shivraj V. Patil. After a prolonged discussion, during which members of all parties expressed their views, the

Speaker, disallowing Shri Arjun Singh's notice of question of privilege, observed as follows: ...The matter is before the Court which may take a proper decision on the basis of evidence that may be produced before it. Three years back some allegation were voiced about the illegal payments. At that time itself, the House could have been asked to look into it. On the basis of other kinds of inducements, the matter could have been asked to be looked into the House. In view of these facts and the available evidence, I find it very difficult to give the consent.

(49) The notices of question of privilege given by Sarvashri Jaswant Singh, Indrajit Gupta and Shri Jagmeet Singh Brar were disallowed by the Speaker on 12 March 1996 in view of his ruling in the House on 11 March 1996.

(50) It was also contended that it is for the Parliament to decide as to whether the act complained of falls within the ambit and scope of the words "in respect of" and that the courts by embarking upon any enquiry on that aspect of the matter would be in contempt of the House.

(51) It is, indeed, true that the members of each House of Parliament are the sole Judges whether their privileges have been violated, and whether thereby any person has been guilty of a contempt of their authority [See *Stockdale v. Hansard*] But, then, the rights and privileges spoken of in clause (2) of Article 105 are the creation of the Constitution. Without clause (2), the Houses of Parliament would enjoy no greater privileges than those which fall under clause (3). Thus, clause (2), has to be interpreted by the courts independently of the Houses of Parliament. In other words, the question as to whether the act complained of falls within the ambit and scope of the words "in respect of anything said or any vote given by him in Parliament" would not be beyond the jurisdiction of the court. I am conscious of the French view that the ordinary courts cannot even question the validity of an Act of the legislature but then it is based on French history [See: Prof. A.T.Von Mehren: *The Judicial Process in the United States and France* 22 *Revista Juridical de La Universidad de Puerto Rica*, 1952] and legislation [See: Constitution of 1971, Ch.V, tit. Iii, Article 3: Article 127 of the Penal Code of 1810) and an extreme form of the doctrine of separation of powers [See: Prof. Max Radin, "Judicial Review of Statutes in Continental Europe" 41 *West Virginia Law Quarterly*, 112 at p.116] but then the position in India is different. It is the Constitution of India which carves the boundaries and the boundaries so carved are neither fluid, nor elusive, nor obscure.

(52) It is pre-eminently desirable that there should arise no dispute between the judiciary and the legislature and that if, unfortunately, it does arise, it should be resolved amicably. As observed by Gajendragadkar C.J. in *The President's Reference No.1 of 1964* (1965) 1 Scr 413: "These two august bodies as well as the Executive which is another constituent of a democratic state, must function not in antimony (sic) nor in a spirit of hostility, but rationally, harmoniously and in a spirit of understanding within their respective spheres." I must say, the Lok

Sabha, with all respect, did display that spirit of understanding in dealing with the privilege issue referred to above. Surely, one is not to define Parliamentary sovereignty in the formalistic Diceyan sense of blind obedience to statutory words, but in a much more functionalistic vein of giving effect to legislative i

(53) I need say no more.

(54) Are members of Lok Sabha public servants within the meaning of section 2(c) of the Act? This, then, is the next question.

(55) Section 2(c) of the Act defines "public servant" as follows: "2. (c) "public servant" means- (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty; (ii) any person in the service or pay of a local authority; (iii) any person in the service or pay of a Corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956); (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions; (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court; (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority; (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election; (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty; (ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956) (x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board; (xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations; (xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

(56) Before the coming into force of the Act of 1988, for determining the question as to whether a person was a public servant or not one had to look towards section 21 of the Indian Penal Code for an answer. Section 21 of the Indian Penal Code does not define what a "public servant" means but enumerates the various functionaries who will be designated as public servants. The section runs as under: "21. "Public Servant" The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:- First- [Repealed by A.O. 1950] Second- Every Commissioned Officer in the Military Naval or Air Forces of India; Third- Every judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions; Fourth:- Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties; Fifth- Every juryman, assessor, or member of a Panchayat assisting a Court of justice or public servant; Sixth- Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority; Seventh- Every person who holds any office by virtue of which he is, empowered to place or keep any person in confinement; Eighth.- Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice or to protect the public health, safety or convenience; Ninth- Every officer whose duty it is, as such officer, to take, receive or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; Tenth - Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate of tax for any secular common purpose of any village, town or district or to make, authenticate or keep any document for the ascertaining the rights of the people of any village, town or district; Eleventh - Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election; an electoral roll or to conduct an election or part of an election. Twelfth. - Every person- (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government; (b) in the service or pay of a local authority, a corporation established by or under a Central, provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956)

(57) In *R.S. Nayak Vs. A.R. Antulay*, a question arose as to whether an M.L.A. is a public servant or not within the meaning of section 21 of the Indian Penal Code. It was a case under the Prevention of Corruption Act, 1947. It was held by the Supreme Court that as an M.L.A. does not discharge any judicial function he is not covered by the Third Clause of section 21 and as an M.L.A. is also not empowered to place or keep any person in confinement, he does not fall within the Seventh clause as well. As regards the Twelfth Clause, it was held that the expression "Government" in section 21(12)(a) denotes the Executive and not the legislative and that even though an M.L.A. receives pay and allowances, he cannot be said to be in the pay of the Government i.e. the Executive and as such an M.L.A. would not be a public servant within the meaning of clause Twelfth also. In paragraph 23 of the judgment it was observed: "A public servant occupies office which renders him a public servant and occupying the office carries with it the powers conferred on the office. Power generally is not conferred on an individual person. In a society governed by rule of law power is conferred on office or acquired by statutory status and the individual occupying the office or on whose status is conferred enjoys the power of office or power flowing from the status. The holder of office alone would have opportunity to abuse or misuse the office. The sections codify a well-recognised Truism that power has the tendency to corrupt. It is the holding of the office which gives an opportunity to use it for corrupt motives. Therefore, the corrupt conduct is directly attributable and flows from the power conferred on the office. Each of the three clauses of sub-section (1) of Section 6 uses the expression "office" and the power to grant sanction is conferred on the authority competent to remove the public servant from his office and section 6 requires a sanction before taking cognizance of offences committed by public servants. The removal would bring about cessation of inter-relation between the office and abuse by the holder of the office.... The expression "office" in the three sub-clauses of Section 6(1) would clearly denote that office which the public servant misused or abused for corrupt motives for which he is to be prosecuted and in respect of which a sanction to prosecute him is necessary the competent authority entitled to remove him from that office which he has abused. The inter- relation between the office and its abuse if severed would render Section 6 devoid of any office."

(58) On the basis of the observations of the Supreme Court reproduced above and the findings arrived at in the judgment, it was contended by Mr.R.K.Anand, Senior Advocate appearing for P.V.Narsimha Rao that an Mp not being in the service or pay of the Government or in the service or pay of a local authority or of a corporation established by or under a Central, Provincial or State Act or an authority or a body owned or controlled or ordered by the Government or a Government Company as defined in section 617 of the Companies Act, 1956, he is not covered by clauses (i), (ii) and (iii) of Section 2(c) of the Act of 1988 and as he is neither a Judge nor a person empowered by law to discharge, whether by himself or as a member of any body of persons any adjudicatory functions and further as he is neither an arbitrator nor empowered to prepare, publish,

maintain or reverse an electoral roll or to conduct an election or part of an election, he is not covered even under clauses (iv), (v), (vi) and (vii), and further that clause (ix) which relates to an office-bearer of a registered co-operative society, clause (x) which relates to an employee of any Service Commission or Board, Clause (xi) which confines itself to a Vice- Chancellor etc. and Clause (xii) which relates to an office-bearer or an employee of an educational and certain other institutions established, receiving or having received financial assistance from the Central or any State Government etc., would also not be attracted.

(59) As would be noticed, I left out above any comment on clause (viii). I did it purposely for, while the State banked upon it, Mr.R.K.Anand directed much of the ammunition at it.

(60) Let us have another look at clause (viii). As per it: "2(c) "public servant" means - (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty."

(61) It must be said, in all fairness to Mr.R.K.Anand, that it was not disputed that an Mp is not only authorised but is required also to perform public duties. However, it was contended that despite the fact that an M.P. is authorised or required to perform certain public duties, he performs them not by virtue of any office. In other words, the contention was that an M.P. occupies no "office" and that as he holds no "office" and as, according to the Supreme Court in R.S. Nayak v. A.R.Antulay (supra) the corrupt conduct as delineated in the Prevention of Corruption Act, is directly attributable to, and flows from, the power conferred on the office and as there has to be an inter-relation between the office and abuse by the holder of the office, in the case of an M.P., these requirements are wanting thus taking the case out of the reach of the Act.

(62) Does an Mp hold an "office" within the meaning of Clause (viii) of section 2(c) of the Act?

(63) To show that an Mp was never meant or intended to be included within the definition of "public servant", I was taken through the history of legislation on the point and upon the Parliamentary debates relating to the Act of 1988.

(64) I need not dabble into the historical background as far as it relates to section 21 of the Indian Penal Code. The same stands noticed by the Supreme Court in R.S.Nayak v. A.R.Antulay (supra). The court, after noticing the historical evolution of section 21 and adopting it as an external aid to construction, held that an Mla is not a "public servant" within the meaning of the expression in any of the clauses of section 21 of the Indian Penal Code.

(65) It was contended that the Prevention of Corruption Act, 1988 had brought about no change in the position and that the definition of "public servant" as contained in clause (viii) of section 2(c) of the Act does not include MLAs or MPs and in support my attention was drawn to the following appearing in the Lok Sabha and the Rajya Sabha debates on the Bill which led to the passing of the

Act of 1988: Lok Sabha "Prevention of Corruption Bill, 1987 page 362 Shri E. Ayyapu Reddy Now, what are the changes this Bill is trying to bring about? Sir, I may submit that this Bill has merely compiled the various provisions of the Indian penal Code which were prevalent and the Prevention of Corruption Act and the Ordinance put together which as I could see, there is no doubt an enlargement of the definition of a "Public servant" I do not see what is the rationale behind this enlargement of the public servant. You were anxious to enlarge your jurisdiction. While the investigating agencies and the prosecuting agencies were not even able to meet the fringe of the problem with regard to the corruption that was prevalent among the public servants as defined previously u/s 21 of the Indian Penal Code, where was the necessity for you to expand it? Are you able to say that on account of this non-expansion, on account of the original definition which was prevailing previously, the agencies were prevented or were not able to get at the roots of corruption. It is not your case at all. Now in the expanded definition you have included elected presidents of cooperative societies. If I am not wrong, in this definition you have included also elected MLAs and MPs within the definition of public servant. You have not stated that elected MPs as well as MLAs also come within the meaning of this Bill. Is it your intention to include MLAs and MPs within the sphere of this Bill. Please make it clear because by reading the definition one gets the impression that if he is merely discharging his public duties whether he is appointed by a Government or not, he will be deemed to be a public servant. The definition is very sweeping: "Any person who holds an office by virtue of which he is authorised or required to perform any public duty" Explanation I says: " Persons falling under any of the above subclasses are public servants, whether appointed by the Government or not." Prevention of Corruption Bill, 1987 page 422-424 Shri P.CHIDAMBARAM You cannot do it in that manner. That kind of Code will take decades to pass. What we are trying to do is to make a penal law, a bill for a penal law which can only create offences and specify penalties and this Bill, I believe, does it. We have to supplement this with other laws. Sir, a number of questions have been raised about certain provisions of the Bill. Since Members by and large have accepted the provisions of the Bill, I do not want to dilate upon them. Let me point out one or two things. For example, a Minister is a public servant Therefore, there is no doubt about the fact that a Minister would certainly be covered by this Bill. A question has been raised what is the position of a Member of Parliament or a Member of a Legislative Assembly? We have not done anything different or contrary to the law as it stands today. Under the law, as it stands today, the Supreme Court has held in *Antulay's* case that a Member of the Legislative Assembly is not a public servant within the meaning of Section 21 of the Indian Penal Code. I personally think that it is very difficult to say when an Mla or an Mp becomes a public servant. I believe that when an Mp functions qua. Mp, perhaps he is not a public servant and Therefore, we are not attempting a definition which will lead to difficulties. We think that there could be situations when an Mp or an Mla does certain things which are really not part of his duties as an Mp or an MLA. We think that an Mp or an Mla could in certain circumstances hold an

office where he will be discharging certain public duties. These two situations are covered by this Act. If an Mp or an Mla does certain acts not qua-MP or qua-MLA, but as an individual, abusing his position. I am not using the word "Office". I think he will be covered like any other individual under Sections 8,9 and 12. When an Mp or an Mla holds an office, and by virtue of that office he has to discharge certain public duties, I think he will be covered u/s 2 clause (b) read with Section 2 clause (c) sub-clause (viii). I think these two situations are quite adequate to take care of defaulting Members of Parliament and defaulting Members of the Legislative Assemblies. If any other situation arises future, we shall certainly consider amending the Act at a suitable time. We are trying to fit this in with the pronouncement of the Supreme Court and at the same time taking note of the felt needs of the situation. Sir, a question has been asked who will be the competent authority to sanction such a prosecution. The question itself is wrongly addressed. Sanction for prosecution is required only in the case of public servant. In the case of a person other than a public servant and in the case of a person committing offenses u/s 8 or Section 9 or Section 12, no sanction is necessary. If you will kindly see the section which requires sanction, namely Section 19, it requires sanction only in respect of offenses punishable u/s 7, 10, 11, 13 and 15 committed by a public servant. The question may not arise in the case of an Mp or an MLA. Therefore, I do not think there is any problem. Rajya Sabha Prevention of Corruption Bill, 1987 page 252-254 Shri P.CHIDAMBARAM One of the hon. Members raised question about the position of the Ministers. I think the position is beyond doubt. Ministers are public servants. They have always been public servants and they are public servants under this law and Ministers will come under the purview of this Bill. An HON. Member : What about MPs? Shri P.CHIDAMBARAM : I am coming to that. A question was asked about the Members of Parliament and Members of Legislative Assembly. Madam, under the law declared by the Supreme Court a Member of Parliament or a Member of the Legislative Assembly per sec.. is not a public servant but there can be a number of situation where an Mp or an Mla holds an office and discharging other duties which brings him under this Bill. If he holds another office in a Coop. Society, if he holds another office in an public institution, if he discharges certain duties which will come under the defection of public duty clearly, then he would be within the definition of "public servant" under this Bill. But these are matters in which you cannot make a prior assumption. One has to look into the facts of each case and then the courts will decide on the facts of that case. It was also argued that the Constitution of India has made a marked distinction between the expressions "office" and "seat" and that as and when reference is made to an Mp the expression used is "seat" and not "office" and that wherever the expression "office" is used its duties are also invariably mentioned. In this respect my attention was particularly drawn to Articles 59(1), 67, 75, 84, 93, 94 and 99 which run as under: "59. Conditions of President's office (1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he

shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President." "67. Term of office of Vice-President The Vice- President shall hold office for a term of five years from the date on which he enters upon his office. Provided that - (a) (b) A Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days" notice has been given of the intention to move the resolution: (c) a Vice President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office." "75. Other provisions as to Ministers (1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister. (2) The Ministers shall hold office during the pleasure of the President. (3) (4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule. (5) (6) "84. Qualification for membership of Parliament A person shall not be qualified to be chosen to fill a seat in Parliament unless he- (a) is a citizen of India, and makes and subscribes before some person authorized in that behalf by the Election Commission on oath or affirmation according to the form set out for the purpose in the Third Schedule; (b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and "93. The Speaker and Deputy Speaker of the House of the People The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be." "94. Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker A member holding office as Speaker or Deputy Speaker of the House of the People- (a) shall vacate his office if he ceases to be a member of the House of the People; (b) may at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office, and (c) may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House. Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days" notice has been given of the intention to move the resolution; Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution." "99. Oath or affirmation by members- Every member of either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule."

(66) Besides the provisions of the Constitution of India to which reference has been made above, my attention was drawn to certain judgments also which, it was felt, throw some light on the ambit and scope of the expression "office". The first such judgment is *The State of Gujarat Vs. Manshankar Prabhashankar Dwivedi and Vallabhdas Gordhandas Thakkar*, . It related to the Ninth Clause of Section 21 of the Indian Penal Code before its amendment by Act 40 of 1964. The Ninth Clause was in the following terms:- "Ninth- Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government and every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty."

(67) The High Court while dealing with this clause observed: .Is1 "The person to be an officer must hold some office. The holding of office implied charge of a duty attached to that office."

(68) The other judgment to which my attention was drawn is reported as *Srimati Kanta Kathuria Vs. Manak Chand Surana*, . In the said case an advocate was appointed as a Special Government Pleader to assist the Government Pleader in a particular case. Question arose as to whether he could be taken to be holding "any office of profit" incurring disqualification under Article 191 of the Constitution of India. The relevant portion of Article 191 of the Constitution of India reads as under: .Is1 "191. Disqualifications for membership (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State.- (a) if he hold any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder; (b) if he is of unsound mind and stands so declared by a competent court; (c) if he is an undischarged insolvent; (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgements of allegiance or adherence to a foreign State; (e) if he is so disqualified by or under any law made by Parliament. Explanation :For the purpose of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State. (2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule."

(69) The Supreme Court while observing that the word "office" had various meanings, held that the words "its holder" occurring in Article 191(1)(a)

indicated that there must be an office existing independently of the holder of the office and that in the case of the petitioner neither any "office" had been created nor the legislature had declared a legal practitioner like the petitioner to be attracted by Article 191(1)(a). As already noticed, while dealing with section 21 of the Indian Penal Code, the Supreme Court in *R.S. Nayak Vs. A.R. Antulay*, did hold an Mla to be not a public servant. But then, as we know, the Supreme Court was dealing with sub-clause (a) of the twelfth clause of section 21 which, if I may say so, was materially different from clause (viii) of section 2(c) of the Act of 1988. It is for this reason that I feel that Antulay's judgment can neither provide a cushion nor a bastion to the plea raised by Mr. Anand.

(70) Confirming myself to clause (viii) of section 2(c) of the Act of 1988, apparently two conditions must necessarily be satisfied to attract it. First that an Mp or for that matter an Mla must hold an office and second that by virtue of the office he must be authorised or required to perform any public duty. However, and as already noticed, as far as the second requirement is concerned I need not lose my breath for the simple reason that it was admitted that MPs do perform public duties on account of the "seat" they occupy. I am thus, for this reason, confining myself only to the first requirement.

(71) Does an Mp hold an office? But, then, before this question is answered, we shall have to know as to what precisely is meant by the word "office". What does it imply? What does it signify? Let us first have a look at the dictionaries. In Black's Law Dictionary, it is defined as an "assigned duty" or "function". Its synonyms are "post" "appointment", "situation", "place", "position". The Oxford English Dictionary, IInd Edn. Vol. X defines "office" as "duty attaching to one's station, position, or employment; a duty, service, charge falling or assigned to one; a service or task to be performed; A position or place to which certain duties are attached, especially one of a more or less public character; a position of trust, authority or service under constituted authority; a place in the administration of Government, the public service, the direction of a Corporation, company, society, etc.". And, as per Stroud's Dictionary of Words and Phrases, Vth Edn. an office "necessarily implies that there is some duty to be performed". This definition seems to have been lifted from what Cockburn C.J. said in *Heartley v. Banks* 5 C.B.N.S. 55.

(72) If we accept what the Dictionaries want us to accept then clearly an Mp holds an "office". But then, though the dictionaries do refer to various shades of meaning and provide many meanings in which a word has been used or may be used in different contexts and connections, we can ill afford to ignore the well-known canon of construction that the meaning of the words and expressions used in a statute ordinarily take their colour from the context in which they are used. As said by Krishna Iyer, J. in *The State Bank of India Vs. Shri N. Sundara Money*, , "dictionaries are not dictators of statutory construction where the benignant mood of a law may furnish a different denotation." But then the question is "Does the word "office" in clause (viii) of section 2(c) of the Act of

1988 furnish a different denotation?

(73) It is not that the word "office" is coming up for consideration for the first time. Rather, it has been under close judicial scrutiny in number of cases including those referred to above. For example in *Cham patal v. State of Madhya Pradesh* "office" was taken to mean "A position or station in which a person is employed to perform certain duty" The Constitution Bench in *Statesman (Private) Ltd. Vs. H.R. Deb and Others*, opined that "an office means no more than a position to which certain duties are attached". The word "office" is of indefinite content and its various meanings cover four columns of the New English Dictionary. But, then, which is the appropriate meaning to be ascribed to this word in the context? I think, when we examine the language employed in clause (viii) of section 2(c) for purposes of discerning the real meaning of the word "office", we need to look at Explanation 2 also which, to my mind, does throw some light on the point. It says: "Explanation 2. - Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation"

(74) Thus, in the Explanation the Legislature has, by using the word "situation", made it clear that the word "office" as used in clauses (vii) and (viii) means merely a position, or station or situation or place to which certain duties are attached of public character. This, then, is the meaning which, in the context, I attach to the word "office" as used in clause (viii) of section 2(c) of the Act of 1988, and if I am correct, then, surely, Members of Parliament would be taken as public servants within the meaning of section 2(c) of the Act of 1988. I shall be failing in my duty in not touching upon the argument advanced by Mr.R.K.Anand and enthusiastically adopted by others that the Constitution itself distinguishes between an "office" and a "seat". I find that this very argument was advanced before my brother Mohd. Shamim J. in *L.K.Advani v. Central Bureau of Investigation* 1997 3 Ad Del 53. The argument was rejected with the observation: "The mere fact that the position which an Mp occupies in the Parliament has been referred to as "seat" instead of "office" is not a sure indicium of the fact that an Mp is not a public servant."

(75) The Court noticed that in the Salary, Allowances and Pension of Members of Parliament Act, 1954 a Member of Parliament has been adverted to as a person having an "office" and, on its basis, observed that the words "seat" and "office" are interchangeable. With respect, I feel the terms "seat" and "office" have been used to distinguish legislators from the Executive and to approve the principle of holding two offices one of the legislator and the other of a ministerial post. Casell London in his *Parliaments* explains it as under : "[I]n Great Britain for many years members who were appointed ministers had to submit themselves for re-election in order that their position as a member should be confirmed. The point of this provision which was repealed in 1926 was that the electors were considered to be entitled to approve (or disapprove) the election of any member

of Parliament who was appointed to a ministerial post and so to bless officially the principle of holding both offices."

(76) Coming to the third contention, it was inspired by section 19(1)(c) of the Act of 1988 which reads as under: "19. Previous sanction necessary for prosecution:- (1) No Court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction:- (a)..... (b)..... (c) in the case of any other person, of the authority competent to remove him from his office."

(77) It was argued by Mr.R.K.Anand that section 2(c) has necessarily to be read in conjunction with section 19 and that even if a person is a "public servant" within the meaning of section 2(c) but there is no authority competent to remove him from his office within the meaning of section 19(1)(c) of the Act then, in such a case, such a person, despite being a public servant, cannot be prosecuted under the Act of 1988. The contention was that even if some of the petitioners be taken as public servants within the meaning of section 2(c) of the Act, as there is no authority competent to remove an Mp from his office, Therefore, for that reason the requirement of section 19(1)(c) of the Act of 1988 remains unfulfilled, and, if that be so, the Act of 1988 would have no application. In support my attention was drawn to a judgment of the Supreme Court in K. Veeraswami Vs. Union of India (UOI) and Others, .

(78) K.VEERASWAMI v. Union of India (supra) was a case under the Prevention of Corruption Act, 1947 and revolved mainly around section 6(1)(c) of the said Act which was as follows: "6(1) No Court shall take cognizance of an offence punishable u/s 161 or Section 164 or Section 165 of the Indian Penal Code (45 of 1860) under sub-section (3-A) of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction, (c) in the case of any other person, of the authority competent to remove him from office."

(79) It is not disputed that in case of Members of Parliament there is no authority competent to remove them from their office. In K. Veeraswami Vs. Union of India (UOI) and Others, it was observed by Verma J. (as his Lordship then was): "Clauses (a), (b) and (c) in sub-section (1) section 6 exhaustively provide for the competent authority to grant sanction for prosecution. Admittedly, such previous sanction is a condition precedent for taking cognizance of an offence punishable under the Act, of a public servant who is prosecuted during his continuance in the office. It follows that the public servant falling within the purview of the Act must invariably fall within one of the three clauses in sub-section (1) of Section 6. It follows that the holder of an office, even though a "public servant", according to the definition of the Act, who does not fall within any of the clauses (a), (b) or (c) of sub- section (1) of Section 6 must be held to be outside the purview of the Act since the special enactment was not enacted to cover that category of public servants in spite of the wide definition of "public servant" in the Act."

(80) AND: "The grant of previous sanction u/s 6 being a condition precedent for the prosecution of a public servant covered by the Act, it must follow that the holder of an office who may be a public servant according to the wide definition of the expression in the Act but whose category for the grant of sanction for prosecution is not envisaged by Section 6 of the Act, is outside the purview of the Act, not intended to be covered by the Act. This is the only manner in which a harmonious construction of the provisions of the Act can be made for the purpose of achieving the object of that enactment."

(81) And, further that: "The concept of sanction for prosecution by a superior is so inextricably woven into the fabric of the enactment that the pattern is incomplete without it. The clear legislative intent is that the enactment applies only to those in whose case sanction of this kind is contemplated and those to whom the provision of sanction cannot squarely apply are outside its ambit. The provision for sanction is like the keystone in the arch of the enactment. Remove the keystone of sanction and the arch crumbles." It was contended by Mr.R.K. Anand that since the other members of the Bench had neither touched the above-noted point nor had they disagreed with the view expressed by Verma J., Therefore, the said observations would be binding on me. I do not think Mr.Anand is very correct in his submission. The perusal of the judgments delivered by the other Hon"ble Judges of the Bench would go to show that they had before them the draft judgment prepared by Verma J. and yet they did not agree with that judgment and that is why Verma J. after going through the opinions of the other judges Constituting the majority, had to observe that his dissenting opinion was at best only academic. I think, and I say so with utmost respect, that the opinion of Verma J. in Veeraswami's case is no precedent for the following reasons: (i) It is a minority judgment. The majority has taken a contrary view (ii) It is a judgment under the Act of 1947 and not under the Act of 1988; (iii) There have been significant changes in the Act of 1988. For example, there was no provision like sub-section (3) of Section 19 in the Act of 1947. (iv) By taking the view that in the absence of any authority to remove, the Act would not apply we shall be condoning the offence of bribery and corruption by public servants. Such immunity from prosecution would lead to disturbing results.

(82) Coming to the charge framed u/s 120B of the Indian Penal Code it was argued on behalf of P.V.Narsimha Rao that the same cannot be sustained for want of sanction u/s 197 of the Code of Criminal Procedure. It was contended that as, in view of Article 75(2) of the Constitution it was the constitutional duty of P.V.Narsimha Rao as Prime Minister to defeat the No Confidence Motion, Therefore, whatever he did was covered by the words "while acting or purporting to act in discharge of his official duty" and that consequently sanction was required u/s 197 of the Code of Criminal Procedure.

(83) The entire dispute hinges upon the meaning and scope of the expression "any offence alleged to have been committed by him while acting or purporting

to act in the discharge of his official duty." What do these words mean? It was observed in *B. Saha and Others Vs. M.S. Kochar*, : "The words "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the Section will be rendered altogether sterile, for, "it is no part of an official duty to commit an offence, and never can be". In the wider sense, these words will take under their umbrella every act Constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of section 197(1), an act Constituting an offence directly and reasonably connected with his official duty will require sanction for prosecution under the said provision."

(84) In *P. Arulswami Vs. The State of Madras*, the Supreme Court after reviewing the earlier case law held: ".....It is not Therefore every offence committed by a public servant that requires sanction for prosecution u/s 197(1) of the Criminal Procedure Code; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary. It is the quality of the act that is important and if it falls within the scope and range of his official duties the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted. An offence may be entirely unconnected with the official duty as such or it may be committed within the scope of the official duty. Where it is unconnected with the official duty there can be no protection. It is only when it is either within the scope of the official duty or in excess of it that the protection is claimable."

(85) In *Matajog Dobey Vs. H.C. Bhari*, while explaining to what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official, the Supreme Court said: "(The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty... there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim) but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

(86) The legal position which emerges from above, has been summed up by the Supreme Court in *State of Maharashtra Vs. Dr. Budhikota Subbarao*, as under: "Use of the expression, "official duty" implies that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to

every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty." "It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty Therefore implied that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favor of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty then the bar u/s 197 of the Code is not attracted." "If on facts, Therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed."

(87) The law being as noticed above, let us have yet another look at the case set up by the C.B.I. against P.V.Narsimha Rao. He, with a view to save the Government headed by him, was prima facie a party to a conspiracy to bribe MPs and thereby to win over their support. He was also a party to actual bribing of the MPs. It is no job of a Prime Minister to hatch or be a party to such a criminal conspiracy. Power intoxicates the best hearts as wine the strongest heads but then no body can thrive on corruption. It is the froth on water - an inch deep and then the mud. A prime Minister must not sustain his power and position on the crutches of corruption. It is unfortunate that P.V.Narsimha Rao thinks he was justified under Article 75(2) of the Constitution. The plea demeans the provision. He is looking out for something which is not there. All ambitions, including the ambition to remain perennially in power, are lawful except those which climb upward by means unlawful. If the prosecution is to be believed, what P.V.Narsimha Rao did, cannot, to my mind, fall within the words "while acting or purporting to act in the discharge of his official duty."

(88) It was argued, not only by Mr.R.K.Anand but also by Mr.Murli Bhandare representing M.Thimmegowda, Mr.Santosh Hegde and Mr.B.V.Acharya

representing M.Moiley, and Mr.Arunachalam representing D.K.Audikeshavalu that there was no evidence to prove that any of their clients had entered into any conspiracy. Mr.R.K.Anand was of the view that the so-called incriminating evidence against P.V.Narsimha Rao was not admissible even u/s 10 of the Evidence Act.

(89) As we all know conspiracy consists simply in the agreement or confederacy to commit an offence. It is not an ingredient of the offence u/s 120B that all the parties should agree to do a single act. It may, in fact, comprise the commission of a number of acts. It is also not necessary that each member of the conspiracy must know all the details of conspiracy. As rightly pointed out by Mr.Murli Bhandare, and so also by Mr.Santosh Hegde, Mr.B.V.Acharya and Mr.Arunachalam the gist of the offence of conspiracy is an agreement to do an unlawful act, or to do a lawful act by unlawful means.

(90) How is a conspiracy to be proved? The moment we are faced with this question, what immediately comes to mind are the observations of Erle J. in Reg. v. Duffield (1851) 5 Cox 404. He said: "It does not happen once in a thousand times, when the offence of conspiracy is tried, that anybody comes before the jury to say - "I was present at the time when these parties did conspire together, and when they agreed to carry out their unlawful purpose"; that species of evidence is hardly ever to be adduced before a jury, but the unlawful combination and conspiracy is to be inferred from the conduct of the parties, and if you see several men taking several steps, all tending towards one obvious purpose, and you see them through a continued portion of time, taking steps that lead to an end, why it is for you to say whether persons had not combined together to bring about that end, which their conduct so obviously appears adapted to effectuate."

(91) Coleridge J. dealt with the question in Regina v. Murphy (1837) 8 Cvp 297 as follows: "Although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing, and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, and the other another part of the same act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object."

(92) In short thus, conspiracy is a matter of inference. It is not necessary to prove that the conspirators actually met; nor is it necessary to show that they communicated in any way. In fact the court may infer a conspiracy even though the conspirator may not have even known each other.

(93) I have made a little sojourn into the realm of the law of conspiracy only with a few to show that while dealing with each of the petitioners I would be guided by the principles referred to above though I may not henceforth be making a specific reference to them.

(94) Since Mr.Anand was apprehensive that I may in my assessment of the material on record take note of section 10 of the evidence Act, I may mention that I have been constantly reminding myself that as a general rule some prima facie satisfactory evidence should in the first instance be on the record of there being reasonable grounds to believe in the existence of the conspiracy before evidence may be given of acts or declarations of the alleged conspirators in order to make them admissible against their fellows. And, while I am on it, I may mention that I do feel, and this feeling has stemmed out of repeated examination of the material on the record, that there is prima facie and satisfactory evidence to that effect. It is because of this that, to my mind, benefit can be availed of section 10 of the Evidence Act.

(95) MR.ANAND had, in support of his submissions, chiefly relied upon the well known English judgment in R. v. Blake (1844) 6 Q.B. 126. What in that case was held to be admissible against the conspirator was the evidence of entries made by the fellow conspirator contained in various documents actually used for carrying out the fraud. But a document not created in the course of carrying out the transaction, but made by one of the conspirators after the fraud was completed (although what it contained amounted to a statement evidencing what had been done) was held to be inadmissible against the other "on the principle that a mere statement, made by one conspirator to a third party, or any act of such conspirator not done in pursuance of the conspiracy, is not evidence for or against another conspirator" (per Lord Denman C.J.). Patterson J. de scribed it as "a statement made after the conspiracy was effected". Williams J. said that it merely related "to a conspiracy at that time completed". Coleridge J. said that it "did not relate to the furtherance of the common object". However, what needs to be kept in mind is that section 10 has a wider scope than the English law as u/s 10 anything said or done in reference to the common intention, although it may not be in support or in furtherance of the conspiracy, is relevant against the others, and that is why in R. v. Amiruddin 15 Wr Cr. 25, a letter containing an account of the conspiracy was admitted even though not written in support of or in furtherance of it. Yet, what more needs to be mentioned is, and it is borne out from the illustration to section 10, that whereas under the English law what is said or done by other conspirators after one terminates his connection with the conspiracy is not admissible against the latter, u/s 10 it is admissible against him. I am laying emphasis on it because, at one stage, it was emphasised by Mr.Bhandare that even if it be taken, for argument"s sake, that M.Thimmegowda was a co-conspirator, it terminated soon after his having handed over the bags at the residence of M.Moily and that what the other conspirators said or did thereafter could not be used against his client. The law being as noticed above, is there material on the record to show that P.V.Narsimha Rao, M.Thimmegowda,

H.M.Revanna, Ramalinga Reddy and M.Veerappa Moily were party to the conspiracy? I am confining myself to the above-noted persons because it was on their behalf that this question was specifically raised during arguments. Before I proceed to examine as to whether charge as against them u/s 120B is made out or not, I may mention that it was strenuously emphasised by the counsel representing the above petitioners excepting Mr. Anand representing P.V.Narsimha Rao, that since the names of the above petitioners did not figure in the first charge sheet and as, according to them, the first charge-sheet was complete in itself, the question of conspiracy or the above-named petitioners being a party to it, did not arise. I may say, at the outset, that I remain unconvinced. All the three charge-sheets have to be read and considered together. It was a conspiracy with different facets. The goal was the same though some of the players faded out after performing their roles. Thus, when we proceed to examine the conspiracy angle, the whole of the script has to be borne in mind. The three charge-sheets are intertwined and cannot be fragmented or separated. Each constitutes a part of the whole. Let us then, revert back to the question posed. P.V.Narsimha Rao was the Prime Minister but his party was not in majority. The threat of No Confidence Motion stood extended much before July 26, 1993 when it was actually moved. P.V.Narsimha Rao needed the support of at least 14 members for simple majority (See Public Witness 1 Ravinder Kumar, Public Witness 2 Ajoy Mukhopadhyay, Public Witness 3 Manoranjan Bhakta and Public Witness 144 Ashok Rao Deshmukh.) This created a situation of crisis and Narsimha Rao decided to win over Ajit Singh who was leading a faction of Janta Dal which had sixty members in the Lok Sabha (See PW-1 Ravinder Kumar). With that in view on 23rd July he offered ministership to Ajit Singh or in the alternative Chairmanship of a public Undertaking (See Public Witness 192 Captain Dilawar Singh). However, Ajit Singh refused. On the very next day, Bhajan Lal went to the house of Ajit Singh and told him "Chaudhary Sahib Narsimha Rao Ji ki kursi ab aapke haath mein hai. Chahe chhuda do ya bachha do aur ise bachhane ke liye hi Narsimha Rao Ji ne mujhe aap ki sewa mein bheja hai." (Chaudhary Sahib, Narsimha Rao Ji's remaining in power now depends upon you. It is up to you now whether you want him to remain in power or not. Narsimha Rao Ji has sent me to you to request you for your help). Thereafter Bhajan Lal delivered packets containing currency notes each of Rs.500.00 denomination as price for his support. Same Bhajan Lal with active support of Captain Satish Sharma, allegedly bribed Ram Lakhan Singh Yadav and his group and won support for P.V.Narsimha Rao's Government. [See Public Witness 240 Pradyuman Singh). However before that, on July 27, 1993 at about 4 p.m. while Bhajan Lal was with Ram Lakhan Singh Yadav, Prime Minister P.V.Narsimha Rao had a telephonic conversation with Ram Lakhan Singh Yadav. This is what Ram Lakhan Singh Yadav told P.V.Narsimha Rao.: Sir Nischint Rahiyega! Shamm Tak Split Ho Jayegi! Chaar Aa Gaye Hein! Munda Abhi Aane Wala Hai! Yeh Mera Vaida Hai Sir. Aapki Sarkar Nahin Jane Doonga! Baki Aap Dekh Lena! Achcha Sir Namaskar! Sir, Veh Dono Bhi Aa Gaye Hein! Namaskar Sir... Achcha Hai Pm Sahib Se Bhi Baat Ho Gayee". Soon, thereafter, there was yet another telephonic

call apparently from P.V.Narsimha Rao. It was meant for Bhajan Lal. It was at that moment that Ram Lakhan Singh Yadav told Captain Dilawar Singh while referring to Ajit Singh: "Yeh to theek hae bina paise politics nahin hoti, parantu Saathiyon kaa vishwas bhi to chahiye!" It appears that P.V.Narsimha Rao had been telephonically in touch with Ram Saran Yadav and on July 26, 1993 he had, for return of support, assured him Deputy Ministership. He was also offered bribe in cash through Bhajan Lal and Captain Satish Sharma. It is in evidence that both Bhajan Lal and Captain Satish Sharma were, during the relevant period, in constant touch with P.V.Narsimha Rao. Besides, what has been noticed above, P.V.Narsimha Rao was making efforts to win over the support of Jmm MPs also. Captain Satish Sharma, who, as already noticed above, was already in touch with Prime Minister P.V.Narsimha Rao and Bhajan Lal had lost no time in offering them bribes in return for voting for the Government (See Public Witness 75 Devinder kumar Mukhiya and Approver Shailendra Mahto). While all this was going on P.V. Narsimha Rao had been in touch with Public Witness 144 Ashok Anand Rao Deshmukh. When told by Deshmukh that Jmm MPs were keen in personally meeting him as they wanted some "conditions" to be met, P.V.Narsimha Rao asked him to ascertain the conditions and advised him to take them to Rajeshwara Rao. They were thus taken to Rajeshwara Rao but since the amount of money offered by V.Rajeshwara Rao was not considered to be sufficient, Buta Singh arranged their meeting with P.V.Narsimha Rao where terms including payment of money were settled. (See Statements of Public Witness 144 Deshmukh, Public Witness 93 Sunder Singh and the statement of Approver) and ultimately payments were made. Let us now have a look at what M.Veerappa Moily the then Chief Minister of Karnataka was doing. He was in Delhi from 25th July, 1993 to 29th July, 1993 (See S.K.Anand Rao Public Witness 183, Public Witness 177 Bhupinder Singh and Public Witness 176 P.Armugham). This was a period when he moved "at a very hectic speed". (See PW-176). He not only met P.V.Narsimharao but V.Rajeshwara Rao also. He was in Parliament on the day when voting had taken place on the No Confidence Motion (See Public Witness 176). Not only this he had made a significant remark in Kannada on that very day which when translated runs as under: "Had they given me sufficient time I would have done the work easily. Now what to do" He left for Bangalore on the 29th and was constantly in touch with the Prime Minister on telephone (See T.R.Suresh Public Witness 175) On the 30th and 31st he had talked to V.Rajeshwara Rao also. While in Bangalore he was in touch with his close confidants H.M.Ravanna, Ramalinga Reddy and M.Thimmegowda. On July 30, 1993 M.Thimmegowda went to the Branch Manager of Seshadipuram Branch of the Canara Bank where M/s Spr Group Holdings (P) Ltd. of which he is the Managing Director, maintains current Account and applied for a Temporary Over Draft of Rs.1 crore for ten days. The Branch Manager contacted the General Manager on telephone and the General Manager got in touch with the Chairman who, incidentally, was camping at Bombay. With the approval obtained, though after banking hours, M.Thimmegowda insisted upon having the cash and that too on the same day. It so happened that the Seshadipuram Branch did not have

sufficient funds. But then urgency being writ large, the Manager (cash) Along with two other officers visited the cash chest, withdrew an amount of Rs.95 lakhs and so met the demand of M.Thimmegowda. But then, M.Thimmegowda needed more money. He issued two cheques both dated July 30, 1993 one for Rs.60 lacs and the second for Rs.25 lacs in favor of M/s. Ranganatha Group and M/s. Yellama Enterprises respectively which were credited the same day by way of transfer and the amounts were withdrawn also the same day by M.S.Cheluvarajee Partna of M/s Ranganathal Group and T.Shivarama], Proprietor of M/s.Yellamma Enterprises. In the meanwhile N.Thimmegowda also withdrew a sum of Rs.15 lakhs against a self cheque drawn on account of M/s. Spr Group Holdings (P) Ltd. All the money so withdrawn then reached through a circuitous route, the hands of M.Thimmegowda which was later transferred into two big V.I.P. suitcases. With money safe into two big Vip suitcases Thimmegowda rushed to the house of Moily and delivered the same to him. H.M.Ravanna and Ramalinga Reddy were also there at the house of Moily. All of them had a half hour meeting and soon thereafter Ravanna and Ramalinga Reddy left for the airport with the four bags two of which had been earlier brought by Mr.Thimmegowda (See Public Witness 174 Nagaraju and Public Witness 173 Parmesh). Immediately on reaching Delhi H.M.Revanna and Ramalinga Reddy went straight to V.Rajeshwara Rao. On the 31st those very suitcases were delivered at the residence of Suraj Mandal. On 1st of August Ravanna was in touch with Moily on telephone. (See Public Witness 175 T.R.Suresh). Invariably, as Devlin J. pointed out in Roper v. Taylor's Central Garages (1951) 2 Tlr 284, it is impossible to prove the state of another man's mind, with the result that defendant's knowledge is generally inferred from the nature of the act done. There is of course ,nothing new in this doctrine which is sometimes expressed in the time-honoured maxim that a man is taken to intend the natural consequences of his own conduct. Its application in the realm of means read was well explained in Lee v. Taylor & Gill (1912) 77 J.P. 66 by Chaunel, J. who said: "In all cases where it is necessary to prove anything which depends upon the state of a man's mind, whether it is malice, whether it is intent, whether it is knowledge, whether it is suffering or conniving, which all depend upon what is in the man's mind, in any of those cases the way in which it certainly may be and generally must be proved is by inferring it from the facts." (at p.69) As already noticed above, though to establish charge of conspiracy, there must be agreement, there need not be proof of direct meeting or combination, nor need the parties be brought into each other's presence; the agreement may be inferred from circumstances raising a presumption of a common concerted design. It is in this context that the evidence is to be looked into and if we examine the material on record in the light of what is noticed above, none of the petitioners escape. However, since Mr.Murli Bhandare thought that there was absolutely nothing to rope in M.Thimmegowda, I have with special reference to him, detailed above some of the facts concerning him. Acting in unlikely haste, withdrawing money in an unlikely hour handing over the same to a man who was more than knee deep into the conspiracy, remaining closeted for half-an-hour

with other conspirators, seeing them off to the airport and their delivering the precious cargo, at the instance of Rajeshwara Rao, to Suraj Mandal, show that there was meeting of mind. In any case, this gentleman who ought to have known was shutting his eyes to what ought to have been known and was thereby conniving at what was going on. Somebody said: "When I see a bird that walks like a duck and swims like a duck and quacks like a duck, I call that bird a duck". The Judges have always been calling a duck a duck. ingredients of conspiracy being clear from the evidence I have no hesitation in prima facie proclaiming them the conspirators. It was also argued by Mr.R.K.Anand that the statement of the Approver recorded u/s 164 of the Code of Criminal Procedure cannot be looked into as it was recorded during the pendency of the trial and as such in violation of the provisions of sub-section (1) of section 164 of the Code. I may mention that this question has been raised in separate revision petitions as well in support of which the same argument was advanced. The discussion which follows shall dispose off those petitions too. Sub-section (1) of Section 164 of the Code of Criminal Procedure is as follows: "164. Recording of confessions and statements (1) Any Metropolitan Magistrate or Judicial Magistrate may whether or not he has jurisdiction in the case record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial; Provided that no confession shall be recorded by a Police officer on whom any power of a Magistrate has been conferred under any law for the time being force" Undoubtedly, the statement of the Approver was recorded during trial. What is more, it appears to have been recorded u/s 164 of the Code. Does it mean that the statement so recorded becomes inadmissible? It may be noticed that before recording the statement all the precautions as required u/s 164 of the Code, were taken. This being the position, I do not think that the statement purported to have been recorded u/s 164 would become inadmissible merely because it came to be recorded during trial. I do not think that a statement or a confession of an accused can be recorded only at the stage envisaged by section 164 of the Code. There is nothing in section 164 of the Code to warrant the proposition that if a statement or a confession is recorded during trial, the same becomes inadmissible. In any case it is not a defect of substance. There is yet another way of looking at the statement of the Approver. When I say so, I have in my mind sub-section (2) of Section 5 of the Prevention of Corruption Act, 1988. It runs as under: "5 (1)..... (2) A Special judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) and (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered u/s 307 of that Code." As would be borne out from the sub-section, it is enabling and wide enough. The powers of the Special Judge are not

circumscribed by any condition excepting that the person must be one who is supposed to have been directly or indirectly concerned in, or privy to, an offence. The power so conferred can be exercised at any time after the case is received and before its conclusion. But then, before the Special Judge acts or tenders pardon, he must know the nature of the evidence the person seeking conditional pardon is likely to give, the nature of his complicity and the degree of his culpability in relation to the offence and in relation to the co-accused (See: Andhra Sugars Ltd. and Another etc. Vs. State of Andhra Pradesh and Others,). After all, it is the duty of the Special Judge to be very cautious as to whom he admits to give evidence as an approver and should carefully inquire to what extent the approver is mixed up with the transaction, and if he be an accomplice, into the extent of his guilt. (See Reg. v. Robert Dunne 1851) 5 Cox Cr. Cas. 507. If that be so, I feel that while proceeding under sub section (2) of section 5 of the Act of 1988, the Special Judge may, by way of caution and to satisfy himself record the statement of the person concerned and if he does so, the statement so recorded shall be taken to be one recorded under sub-section (2) of section 5 of the Act though it may, by mistake, be mentioned that it was being recorded u/s 164 of the Code of Criminal Procedure. The statement so recorded shall be admissible in evidence. It was next contended that the Approver had been changing his colours and was Therefore totally unreliable. I think, this is no stage to firmly comment on it. I would rather leave it to the Special Judge, for after all, this is a stage to examine merely the question as to whether a case is made out for charge or not. Of course ,while assessing the statement of the approver, I have kept and will keep in view the observations made by the Supreme Court in Sarwan Singh Vs. The State of Punjab, and what has been said by the Apex Court in Saravanabhavan and Govindaswamy Vs. State of Madras, . I am mentioning this only to show that while assessing the worth of the statement of the Approver, I have been guided by what has been observed by the Supreme Court. Before I proceed to bring forth the facts concerning each of the other petitioners I do feel that I must spell out how I propose to look into the material on the record and what is going to be my approach. I am touching this aspect at the there should because I shall not be referring to the principles over and over again while dealing with each of the remaining petitioners. The discussion is meant only to give an inkling of the mental process. The primary consideration before me, of course, is whether the learned Special Judge was justified in ordering the framing of the charges and while considering the same I would keep in mind the warning given by the Supreme Court in the State of Karnataka Vs. L. Muniswamy and Others, that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. I am making myself conscious of this warning for it was time and again argued by Mr. D.C.Mathur, Senior Advocate, Mr.P.P.Malhotra, Senior Advocate and Mr.N.N.Aggarwal, Advocate, that the proceedings initiated at the instance of the C.B.I. were inspired by the political foes of the petitioners not only to harass and persecute them but also to tarnish their image and thereby herald their political death. Section 227 of the Code of Criminal Procedure which undoubtedly has a bearing

on the matters in hand provides: "227. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing." Yet another provision which needs to be noticed is section 228 of the Code of Criminal Procedure. It reads as under: "228. Framing of charge (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which - (a) is not exclusively triable by the Court of Session, he may frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report; (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused. (2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried." Sections 227 and 228 of the Code interplay and interact. What is the scope of the said provisions? The Supreme Court has answered the question for us in *State of Bihar Vs. Ramesh Singh*, . While explaining the scope of the said sections it was observed: "Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defense of the accused. It is not obligatory for the Judge at that stage, of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under sections 227 or section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is pre used to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defense evidence, if any, cannot show that the

accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt, the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order u/s 227 or section 228, then in such a situation ordinarily and generally the order which will have to be made will be one u/s 228 and not u/s 227 State of Bihar Vs. Ramesh Singh, . In Union of India (UOI) Vs. Prafulla Kumar Samal and Another, the principles were summarised as under: "(1) That the Judge while considering the question of framing the charges u/s 227 of the Code has the undoubted power to sift and weight the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial. (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. (4) That in exercising his jurisdiction u/s 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the document produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the judge should make a roving enquiry into the pros and cons of the matter and weight the evidence as if he was conducting a trial." Dealing with the two decisions referred to above, the Supreme Court observed in Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia and Another, : "These two decisions do not lay down different principles. Prafulla Kumar Case has only reiterated what has been stated in Ramesh Singh case. In fact section 227 itself contains enough, guidance as to the scope of enquiry for the purpose of discharging an accused. It provides that "the judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused." The "ground" in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, Therefore, need not undertake an elaborate inquiry into sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into." I do not think anything more need be said. However, since, during arguments, it was time and again contended that the material on the

record was neither truthful nor its veracity could be vouchsafed and as I was urged repeatedly to meticulously judge the material I may, only by way of emphasis, and not because these points have not been met squarely in the judgments referred to above, make a mention to yet another judgment of the Supreme Court in *Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others*, wherein, while relying upon the judgment in *State of Bihar Vs. Ramesh Singh*, it was observed that at the time of the framing of the charge "the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of section 227 or 228 of the Code of Criminal procedure, 1973". To the same effect are the observations of the Supreme Court in *Mohd. Akbar Dar and Others Vs. State of Jammu and Kashmir and Others*, ; *Radhey Shyam Vs. Kunj Behari and Others*, . My entire approach has been, while dealing with P.V.Narsimha Rao, M.Thimmegowda, H.M.Revanna, Ramalinga Reddy and M.V.Moily, on the lines suggested above and the principles delineated above would guide me in the case of others too. With these observations, let me proceed to deal with the remaining petitioners. However, before I do so, I may mention by way of clarification that the observations made in the preceding paragraphs and those which I propose to make presently while dealing with the petitioners must, in no case, be taken to be any expression of opinion on the merits of the case. Rather they must be taken as merely a presumptive opinion as to the existence of the factual ingredients Constituting the offences alleged. D.K. Audikeshavalu Like M.Thimme Gowda, D.K.Audikeshavalu too is stated to be a liquor baron of Karnataka, and like him, he too figures neither in the first or the third charge sheet. However, as far as the second charge- sheet is concerned he is at the centre-stage, I mean, almost. He is not a politician but appears to have lot to do with them. it is said that business is like oil. It won't mix with anything but business. I do not know whether this particular businessman when mixing with politicians was actually mixing with business or not. What really does emerge out is that here was a business magnate who, believing perhaps in what Jesus said: he that cometh to me shall never hunger (John VI, 35), rather himself went to those who believe that power lies in other people's money, and proved to be a friend in need. There is material on the record to show that he is very close to V.Rajeshwara Rao and so also to M.V.Moily. After staying in Delhi from July 24 to July 29, 1993 he went back to Bangalore. On the 29th itself he issued a cheque for Rs.30 lacs and on the next day he issued three cheques one for Rs.6,17,349.00 , the second for Rs.14,78,125 and the third for Rs.30 lacs. Though all those cheques were in favor of different persons, the cash flowing from the withdrawal of those cheques came finally into the hands of none other but D.K.Audikeshavalu himself. With the cash in his pocket on the 30th itself, he too put the same in a V.I.P. suitcase and found himself at the Bangalore Airport. However, before leaving for Delhi, he had contacted K.Narayanan, Resident Manager of the Guest House of M/s. Mohan Breweries and Distilleries Ltd. at New Friends Colony, New Delhi and had asked

him to arrange Company's vehicle as well as one taxi as some V.I.P.s were to accompany him to Delhi. And, who were these VIPs? Well, none other but H.M.Revanna and Ramalinga Reddy who had collected three suitcases and one bag from the residence of M.Veerappa Moily, the then Chief Minister of Karnataka. Two of those suitcases had been delivered to Moily by his businessman friend M.Thimmegowda after having stuffed them with the withdrawals in cash from the Canara Bank. Coming back to the Bangalore Airport, D.K.Audikeshavalu Along with H.M.Revanna and Ramalinga Reddy boarded Indian Airlines flight no. K.404 . They were in Delhi at about 22.30 hrs. Bachan Singh, driver of the Company's Maruti car and one Darmayan Singh an attendant detailed by K.Narayanan of M/s. Mohan Breweries and Roop Ram, a taxi driver with his taxi received them at the Airport. It may be mentioned that Roop Ram too had been detailed by Naraynan. The three V.I.P suitcases and a handbag brought by H.M.Revanna and Ramalinga Reddy were loaded in the taxi of Roop Ram while the suit case brought D.K.Audikeshavalu was kept in the Maruti car of the Mohan Meaken Breweries with Bachan Singh on the wheel. On the instructions of D.K.Audikeshavalu the taxi and the Maruti car left for Andhra Bhawan. At the Andhra Bhawan D.K.Audikesavalu, H.M.Revanna and Ramalinga Reddy had a closed door meeting with V.Rajeshwara Rao. With the meeting over, all the three with the suit cases and the bag, left for Hotel Claridges. Leaving H.M.Revanna and Remalinga Reddy there Along with their three Vip Suit cases and one hand bag, D.K.Audikeshavalu left for the Company's Guest House at New Friends Colony. Lest I forget, I may mention that the Vip suitcase brought by D.K.Audikeshavalu from Bangalore remained with him. The next day, that is, July 31 he took that suit case in the same Maruti car with Bachan Singh again on the wheel, to Claridges Hotel. The time was about 0700 hours. In the meanwhile Roop Ram too reached there with his taxi. After about half-an-hour all the Vip suit cases and the handbag were loaded in the taxi. The visitors from Karnataka and their cargo then again left for Andhra Bhawan with two more persons. They were Vijay Handa and Harsharan Lal. Vijay Handa was in his white Maruti car. They remained at the Andhra Bhawan for an hour and when finally they did come out, V.Rajeshwara Rao was with them. At the instance of D.K.Audikeshavalu the handbag and one Vip suit case lying at the back seat of the taxi and the Vip suit case brought by him were loaded in the white Maruti car of Vijay Handa. With this done, H.M.Revanna made himself comfortable in the taxi of Roop Ram while Harsharan Lal and Ganga Singh sat down in the white Maruti car with Vijay Handa on the wheel. They left for the residence of Suraj Mandal, the Jmm Mp, and delivered to him the aforesaid Vip suitcases and the handbag brimming with currency notes. I am sorry, I forgot to mention that as per the prosecution after seeing off H.M.Revanna, Vijay Handa, Harsharan Lal and Ganga Singh, the three remaining persons namely D.K.Audikeshavalu, Ramalinga Reddy Along with V.Rajeshwara Rao were closeted again inside the Andhra Bhawan. It was argued by Mr.T.S.Anachalam that though D.K.Audikeshavalu was in Delhi from July 24 to July 29, 1993, the visit was in connection with a writ petition moved by him in the Supreme Court and that the learned Special Judge was not justified in saying

that on July 26 he was seen by Ashok Rao Deshmukh at the residence of V.Rajeshwara Rao. It was further contended by him that even if the entire version put up by the prosecution was accepted, it would not be sufficient to sustain the charge of criminal conspiracy or abetment and that consequently, the learned Special Judge was not justified in ordering the framing of charges u/s 120B of the Indian Penal Code read with Sections 7,12 and 13(2) read with section 13(1)(d) of the Act of 1988. Of course ,I will be failing in my duty by not mentioning that Mr.Arunachalam had also contended that as the conspiracy was complete with the first charge-sheet and as the Approver too had not named D.K.Audikeshavalu, there was absolutely no justification for invoking section 120B as against him. The same argument was adopted by Mr.Bhandare and Mr.Hegde also. I may mention that the order for framing of the charges was also challenged on the ground that as the Jmm MPs had allegedly already received full payment by the evening of the 30th. in terms of the understanding, any payment allegedly received on the morning of the 31st could not, Therefore, be either in terms of or in connection with the conspiracy. I have already discussed above the law of conspiracy and the requirements to prove its existence. I need not repeat the same again. However, what I do need to say is that the material on the record is sufficient enough to raise a strong suspicion that D.K.Audikeshavalu was a party to the conspiracy and rather had a significant role to play. I have also dealt with above the plea regarding persons like D.K.Audikeshavalu, Ramalinga Reddy and H.M.Revanna etc. not finding any mention in the first charge sheet. As already noticed, I find it to be of no consequence since all the three charge sheets constitute parts of one conspiracy with different facets. As regards the argument that payments made to Suraj Mandal on the 31st were of no consequence as, in terms of the conspiracy, entire payment stood already made on the 30th, I may merely refer to the statement of Public Witness 29 Vijay Kumar Handa which shows prima facie that payments made on the 31st were part of the same transaction. V.Rajeshwara Rao The role played by V.Rajeshwara Rao has already been dealt with in some detail in the introductory part of this judgment. However, even though it may appear to be repetitive, since I am at the moment, dealing specifically with his role I may recall what the prosecution alleges against him. The Jmm MPs were, it appears, seeing great opportunity in the No Confidence Motion and had come to realize that wealth is not the fruit of labour but the result of organized bribery and in pursuit of wealth Simon Marandi approached Captain Satish Sharma. Shailendra Mahto, on the other hand, requested Ashok Rao Deshmukh to arrange a direct meeting with Prime Minister P.V.Narsimha Rao making it clear at the same time that for support to the Government some conditions shall have to be met - a hint intelligent enough for an intelligent man and luckily for the Government of the day there was no dirth on its side of intelligent people. Getting the message, which, in fact, was clear and loud, P.V.Narsimha Rao advised Deshmukh to take the Jmm group to the residence of V.Rajeshwara Rao at Andhra Pradesh Bhawan. The very next day, that is 25th July, 1993 four of the Jmm MPs namely Shailendra Mahto, Suraj Mandal, Shibu Soren and Simon Marandi met

Rajeshwara Rao who confirmed having received a personal message from the Prime Minister. (See Ashok Rao Deshmukh and the Approver] The meeting, it appears, was not very fruitful because after having held a closed down dialogue with Rajeshwara Rao, Suraj Mandal informed his companions that since "they do not intend to give us sufficient amount of money, Therefore, we should meet the Prime Minister only" (See the statement of the Approver Shailendra Mahto). On the 26th, thanks to Buta Singh, the Jmm MPs met Prime Minister P.V.Narsimha Rao where the mystic bond of money made all of them one. Mandal told his colleagues: "ave a heart, money has also been settled" and on the morning of 29th of July Suraj Mandal told the approver in the presence of Rajeshwara Rao that Rs.50 lacs stood paid and that rest would come in a day or two. It was then left to V.Rajeshwara Rao to disclose that Rs.50 lacs, a petrol pump and a Huda plot were being given to Ram Lakhan Singh yadav and his group and that "you (JMM group) are also being given Rs.50 lacs each and it has been decided that Rs.30 lacs each shall be given to those who supported on the day of voting by abstaining or remaining silent" (See statement of the approver). On the evening of 29th Vijay Kumar Handa (Public Witness 140) was told by V.Rajeshwara Rao that efforts to fulfill the commitment made to Jmm MPs was being made. On the 30th H.M.Revanna, Ramaling Reddy and D.K.Audikesavulu who had brought money bags from Bangalore rushed to the residence of V.Rajeshwara Rao and had a meeting with him. The same night V.Rajeshwara Rao informed Vijay Kumar Handa that some arrangement had been made to please the persons who had helped the Government to survive. The next day, Vijay Kumar Handa and Harsharan Lal, at the instance of V.Rajeshwara Rao, went to Claridges Hotel, brought the visitors from Bangalore to the residence of V.Rajeshwara Rao with the suit cases and the handbag and from their, under the watchful eyes of V.Rajeshwara Rao, they left for the residence of Suraj Panday where the suitcases and the handbag bulging with currency notes were delivered. After having made the delivery, Vijay Handa (Public Witness 140) reported back to V.Rajeshwara Rao to inform about the deliveries made at the residence of Suraj Mandal. Besides all that has been noticed above, there is also material on the record that D.K.Audikesavulu, M.Veerappa Moily while in Delhi had been in touch with V.Rajeshwara Rao and that D.K.Audikesavulu and M.Thimmegowda had withdrawn moneys while in Bangalore which they had taken to the residence of M.Veerappa Moily and it was from there that the suitcases and the handbag containing currency notes were brought to Delhi on the 30th and delivered to Suraj Mandal on the 31st. Despite the overwhelming material on the record implicating V.Rajeshwara Rao, Mr.R.D.Rana appearing for him made a valiant effort to defend him. My compliments. It was perhaps Emerson who said: "What you do speaks so loud that I cannot hear what you say." What V.Rajeshwara Rao did do was surely so loud that it reduced the arguments of Mr.R.D.Rana to nothingness. However, I do need to mention one argument advanced by Mr.Rana. It was contended that Prime Minister P.V.Narsimha Rao was not so naive as to involve so many persons in the operation, more so when he could meet the situation alone. In politics, it was said by Napoleon Bonaparte, an absurdity is

not a handicap. In any case, in the Executive ability lies in deciding quickly and getting somebody else to do the work. Narsimha Rao, having decided, was getting the work done through men like V.Rajeshwara Rao. The material against V.Rajeshwara Rao is so overwhelming and his role in the entire episode is so pronounced that I find no fault with the impugned order. Buta Singh The role assigned to Buta Singh reminds of a sprint. Quick in finish but full of bursting energy. Admittedly ,and I am saying so because it was not disputed, he had met the then Prime Minister P.V. Narsimha Rao on 25th of July, 1993. What transpired at that meeting, we know not. Admittedly again, the Jmm MPs had gone to the residence of Buta Singh on the evening of the 26th from where all the four Jmm MPs accompanied Buta Singh to the residence of P.V.Narsimha Rao. Why? Well, as per the statement of the Approver when they went to the residence of Buta Singh they found him waiting for them. After they had settled down in the Drawing Room, Buta Singh told them that the Prime Minister was "remembering" them. On this Suraj Mandal retorted: "How does it matter if the Prime Minister is remembering us; Our Jharkhand issue is still pending and he has not solved it so far." Buta Singh's reply was "O.K. we'll talk to the Prime Minister on it straight away". Thereafter, the Jmm MPs accompanied by Buta Singh went to the residence of the Prime Minister Narsimha Rao. What happened thereafter needs to be described in the words of the Approver himself. This is how he describes the meeting: "After a while we were called inside the Prime Minister's room, where he (the Prime Minister) was sitting alone in a contemplative mood. Buta Singh broke the ice and appraised the Prime Minister that talks on Jharkhand matter had begun and a Committee was formed when he was the Home Minister and that Committee had submitted its report also but its decision was reversed. At this, Suraj Mandal said, "So far you have not done anything on Jharkhand issue, how can we help you." The Prime Minister said "O.K. I'll send for all the files regarding Jharkhand issue and shall myself finalise the matter. After this Mr.Mandal and Mr. Singh went to a separate room Along with the Prime Minister. They came back after a while and then the Prime Minister told us: "At present you help me and I shall help you." The Prime Minister also said that he had held separate talks with Suraj Mandal also and those will also be honoured. After this we walked down up to the gate from where Buta Singh went of his own while we four MPs also went back. On our way back I asked Suraj Mandal "What transpired amongst three of you?" Mandal replied: "The talks were for your benefit and I shall let you know later on." At this Simon Marandi interjected: "Suraj, say clearly, what happened? Or else we shall not vote." At this Mandal said: "Have a heart, money has also been settled though the exact amount has not been decided." This then is the direct evidence against Buta Singh. It was contended by Mr.N.N.Aggarwal and Mr.Rajiv Aswasthi, the learned counsel for Buta Singh, that barring the solitary bald statement of the Approver, there was nothing to corroborate the same and that even if the statement was accepted it merely showed that Buta Singh had arranged the meeting with Prime Minister P.V.Narsimha Rao only to plead for their demand for Jharkhand and that as after the said meeting Buta Singh was not shown to have played any role, he could

not be said to be a party to any conspiracy. The argument advanced by Mr. Aggarwal tends to see the role played by Buta Singh in total isolation. This, I feel, would not be the correct approach. We have to look at the case in its totality and then see as to where and to what extent the role played by Buta Singh fits into the scenario. The Approver is silent on the point as to how the meeting was fixed with Buta Singh and when. However, his statement does show that Suraj Mandal had played some role in it as it was he who had told others that they were to go to the House of Buta Singh. The very fact that Buta Singh was found "waiting" for them shows that it was a pre-arranged meeting. Similarly, the fact that during tea, Buta Singh had said: "The Prime Minister is remembering you" shows that meeting with the Prime Minister had been fixed earlier in time. It is important to note that much before the 26th of July Simon Marandi had held a meeting with Captain Satish Sharma who had assured: "If we support the Government, then we will be given money and petrol pump." and that on the 25th Shailendra Mahto too had met Ashok Rao Anand Rao Deshmukh and had asked him to arrange a meeting with prime Minister P.V. Narsimha Rao and that the meeting was to be with respect to Jmm MPs support to the Government in the No Confidence Motion. It appears that when Deshmukh talked to Narsimha Rao about it, he (Narsimha Rao) told him to discuss the matter in detail with him after knowing their (JMM MPs) stand and ascertaining the conditions which they wanted to be fulfilled and that the same day at about 5 p.m. when Deshmukh met Shailendra Mahto and another Jmm Mp, and told them about his talk with the Prime Minister, "they maintained their stand that they would like to meet the Prime Minister directly." Deshmukh tells us that thereupon when he again contacted the Prime Minister and told him that the Jmm MPs "were insisting upon meeting him to discuss their conditions," the Prime Minister said that he was busy with some other matter and that the MPs should be taken to the residence of Rajeshwara Rao. It appears that on the morning of the 26th the Jmm MPs had met Rajeshwara Rao through the good offices of Deshmukh and after the meeting Suraj Mandal who had held closed-door talks with Rajeshwara Rao, had declared that he (Rajeshwara Rao) was not intending "to give us sufficient amount of money and Therefore we should meet the Prime Minister only". It is in this sequence of events that we have to look at the meeting with Buta Singh on the evening of the 26th. And, the events narrated above show that it was the anxiety to strike a deal with the Prime Minister over the No Confidence Motion which was the driving force and that Jharkhand was nowhere in their mind. That the Jmm MPs met Buta Singh not to canvass for Jharkhand but to satiate their thirst for money is further borne out from the tenor of the talk which took place at Buta Singh's residence. Let us recapture the scene. Jmm MPs and Buta Singh are having tea. Buta Singh says: "The Prime Minister is remembering you". This invites a retort from Suraj Mandal. "How does it matter if the Prime Minister is remembering us; our Jharkhand issue is still pending and he has not solved it so far." Had the meeting been arranged to discuss the Jharkhand issue would Suraj Mandal have reacted in that manner? Surely not. The reaction was sudden, unpremeditated and that

is why Buta Singh replied: "O.K. We'll talk to the Prime Minister on it straight away." Had the meeting been arranged for discussing the Jharkhand issue, the response of Buta Singh would have been to the effect; "Well, we are meeting him for that very purpose." No, the response was not to that effect. Rather, as noticed, it was "O.K. we'll talk to the Prime Minister on it straightaway." Does it not show that the purpose of meeting was different or very different? True, Buta Singh did initiate the meeting with a reference to Jharkhand issue but then let us look at what Suraj Mandal abruptly told the Prime Minister. "So far", he said "you have not done anything on Jharkhand issue. How can we help you?" Let us pause on the words: "How can we help you?" If the meeting was for discussing the Jharkhand issue and that issue alone, where was the occasion for Suraj Mandal to say: "How can we help you?" And then, help him over what? No, this is not all. The Prime Minister gives an assurance to finalise the Jharkhand issue. So far, so good. But then why a separate meeting in a separate room with Suraj Mandal and Buta Singh only? What else was left after the assurance already given? Well, the proverbial cat jumps out of the bag just soon after the meeting. The Prime Minister, who only a few minutes earlier was found in a pensive mood and all to himself, was altogether a changed man. He announced to his captive audience that the promises made to Suraj Mandal in the separate meeting would be honoured. With a promise already made earlier in the open, what was this promise in the secret? Surely it could not be the same promise again. And, indeed it was not. When Suraj Mandal was asked by his companions to spell out the promise, he said: "These talks were for our benefit and I shall let you know later." But then, it seems, his companions were too anxious to know and that too only there and then. Suraj Mandal then had to say: "Have a heart, money has also been settled. How much has not been decided." Was it all? No. The Approver tells us that on the day of voting, that is, the 28th of July Sita Ram Kesari (only C.B.I. knows why he has been left out) called the four of the Jmm MPs and said: "Look here Shibu. I have known you and Suraj for the past 15 to 20 years. At present the Government is in trouble. Each and every vote matters. We have settled a lot. You give your votes so that the Government is saved and all the talks with the Prime Minister shall be honoured". And, we are told, the day after the voting the first Installment of bags brimming with money had been delivered. The role of Buta Singh is to be looked into in that perspective and once we look at it that way, order for framing charges appears to be pre-eminently justified.

Ajit Singh In the opening lines of Henry V, using the humble voice of the narrator, Shakespeare cajoles the audience to suspend disbelief. It's a bit much to ask, he admits, but might we transform "This unworthy scaffold" of the stage into the vasty fields of France? Or may be cram/Within this Wooden O the very casques That did affright the air at Agnicourt ?" The house of Ajit Singh may be no replica of Shakespeare's "Wooden O" but we are told, it did provide a stage with Ajit Singh at the centre playing such a role "That did affright the air" though obviously not at Agnicourt but certainly at the headquarters of P.V.Narsimha Rao and Bhajan Lal, if not others. Ajit Singh was a leader of a group of 60 MPs and was thus targeted by Bhajan Lal who, at that time, was the Chief Minister of

Haryana. We are told by Captain Dilawar Singh (Public Witness 191) allegedly a long-time associate and confidante of Ajit Singh that on July 24, 1993 Bhajan Lal called on Ajit Singh at the latter's residence at about 8.00 a.m. and that after about five minutes of formal talk about health and family welfare, Bhajan Lal switched on to the No Confidence Motion and said: "Chaudhary Sahib, Narsimha Rao Ji Ki Kursi ab aapke haath mein hai ! Chaho Chuda do ya bacha do aur isse bachaane ke liye hi Narsimha Rao Ji ne mujhe aapki sewa mein bheja hai" (Chaudhary Sahib, Narsimha Rao Ji remaining in power now depends upon you. It is up to you now whether you want him to remain in power or not. Narsimha Rao Ji has sent me to you to request you for your help). Dilawar Singh tells us that after the above- quoted conversation, Ajit Singh and Bhajan Lal went into the dining room for their breakfast. After about 40 minutes Ajit Singh accompanied by Bhajan Lal, went to the car of Bhajan Lal and asked Dilawar Singh to take out from it the three packets. The packets, being too heavy could be taken inside the bed room only with the help of the person who had come with Bhajan Lal but had remained seated in the car. However, what is significant to note is that while the first packet which weighed about 20-25 Kgs. was being lifted, Ajit Singh jokingly remarked: "Bhajan Lal Ji Harshad Mehta ke suitcase ke muqable main yeh packets chote hein inke andar ka maal to sahi hai? " (Bhajan Lal Ji these packets are smaller in size than Harshad Mehta's suit case. Are their contents all right?). On this Bhajan Lal replied: "Chaudhary Sahib mein puce businessman hoon - jiski sabhi deals pucci hoti hein ! Yeh Harshad Mehta ke nahin Bhajan Lal ke packets hein jo 500 rupees ke noton ki wajah se chhote hein." (Chaudhary Sahib I am a solid businessman. My all deals are solid. These are my packets and not of Harshad Mehta. They are small in size because they contain currency notes of the denomination of Rs.500/ each.) After the departure of Bhajan Lal Ajit Singh came inside his bed room, gave Dilawar Singh a cutter and directed him to cut open one of the packets. Dilawar Singh did so and to Ajit Singh's relief, it was found to contain 200 wads of currency notes with each currency note of the denomination of Rs.500.00 It appears from the statement of Dilawar Singh that Ajit Singh had left for Mirzapur on the night of the 24th and had returned to Delhi on the morning of 26th. According to Dilawar Singh on the 26th at about 9 a.m. Ram Lakhan Singh Yadav who too is an accused and was an MP belonging to Ajit Singh group came to meet Ajit Singh. What transpired at the meeting? Well, let us know it in Dilawar Singh's own words: "They both met in the personal office Chamber of Sh. Ajit Singh. After about 5 minutes there was some heated and loud exchanges between the two. I went near the chamber door which was closed and I heard the name of Sh.Bhajan Lal being abused by Sh.Ajit Singh repeatedly saying among others "Bhajan Lal Saala khud Beiman hai aur doosron ko beiman banaata hai, mujhe koi kissi ka paisa nahin de gaya" and Sh. Yadav was demanding Rs.15 lacs from Sh.Ajit Singh as his share. I immediately asked two other visitors to vacate the sitting room for some time. After about 2 minutes Sh. Ram Lakhan Yadav came out fuming with anger and left in a huff saying "Pichhali bar ke tarhan paisa hazam nahin karne doonga". Sh. Ajit Singh also came out and went to his residence. Sh. Ajit Singh was so

furious and tensed up at that time that he even tore up an application and pushed aside one old man from Madhya Pradesh who had come to seek his help for transfer of his son serving in BSF. While going he asked me to get Sh.Bhajan Lal on phone which I did and connected the call to Sh.Ajit Singh in his residence. The phone talk lasted for about 2 minutes. Sh.Ajit Singh then asked me to call Sh.Surya Narain yadav, Sh. Sonkar Shastri, Rasheed Masood, all MPs and Sh.Sunil Shastri, General Secretary of Jd (A) immediately for a meeting. They all came by 10.00 Am and Sh.Ajit Singh told them that JD(A) will go in the favor of the No Confidence Motion and asked Shri Surya Narain Yadav to call a meeting of all other Party MPs next day i.e. 27th July at 10.00 Am in Party office at 15 Windsor Place and till then hold announcement of the decision officially." Dilawar Singh also tells us something about his meeting with Ajit Singh the same day at about 7 p.m. This is what he says: "In the evening, I met Sh. Ajit Singh at about 7.00 Pm and requested him about the morning episode between him and Sh.Ram Lakhan Yadav. He told me, "that idiot pimp Bhajan Lal disclosed to all the sundry indulging Ram Lakhan Yadav about the monetary transaction between us on 24th July, 1993 morning and Ram Lakhan tried to show me down on the issue by asking for his share." I advised Sh. Ajit Singh that he should not fight with his colleagues on this matter to which he replied that he couldn't care less as there is no proof." He further says: "The Congress circles were highly demoralised by this shocking development and Sh.Karunakaran and Sh. Vidya Charan Shukla made two attempts to persuade Sh.Ajit Singh to reconsider his decision but he remained unmoved. He was bitter and extremely annoyed with Sh.Bhajan Lal who had disclosed to various people including Sh.Ram Lakhan Yadav the fact of money having been paid to Sh.Ajit Singh by Sh.Bhajan Lal and thus lowered him in the eyes of his colleagues. The volte-face was a natural reaction and logically the one and only one solution for him to save his honour, respect and political standing and this was what he had to perforce do and thus he decided for voting in favor of the no confidence motion along with other opposition parties." This, however, is still not the end of the matter. Finding Ajit Singh bent upon voting for the No Confidence Motion, Ram Lakhan Singh Yadav decided to have his own splinter group. Realizing the gravity of situation, Dilawar Singh requested Ajit Singh to save the situation. Ajit Singh then sent Dilawar Singh to the residence of Ram Lakhan Singh yadav. To his surprise he found Bhajan lal also there and when he asked Bhajan Lal to talk to Ajit Singh on telephone, Bhajan Lal said: "Isko ek C.M. se baat karne ki tameez to honi chahiye! Aakhir main us se umar main bhi bara hoon! Paise ki kami thi aur maang leta, Gaali galoch aur dhamki se bolna kaun bardasht karega! Paise usne liye the, maine nahin." (At least he should know how to talk to a C.M. After all I am elder to him in age also. if he was short of money he could ask for more. Who will tolerate abuses and threats. Money had been taken by him, not by me). That Bhajan Lal was present at the meeting finds support and corroboration from the statements of Public Witness 210 R.K.Jain, Public Witness 237 Gopi Krishan Yadav and Public Witness 240 Pradyuman Kumar. It was contended by Mr.R.K.Jain, Senior Advocate for Ajit Singh that barring the bald statement of

Captain Dilawar Singh there was nothing on the record to substantiate the allegation that Bhajan Lal had brought money to the residence of Ajit Singh and that Ajit Singh in turn, had accepted the same. He drew my attention to the fact that as per Captain Dilawar Singh, Bhajan Lal had come to the residence of Ajit Singh in a vehicle driven by another person and that it was allegedly with the help of that person that the packets allegedly containing currency notes had been taken out of the vehicle and kept inside the house of Ajit Singh. It was contended that the said driver would have been the best witness to lend support to the version of Captain Dilawar Singh but strangely he had not only been left out but his identity too had not been disclosed and this in itself was sufficient to cast grave doubts on the integrity of the investigation. Mr.Jain emphasised that since Bhajan Lal had been provided with Z category of security and as the security officials were supposed to keep a close vigil, it could not escape their sharp eyes that heavy packets were being loaded and unloaded and that the fact that none of those security personnel had come forward to support the prosecution version regarding the packets was sufficient to cast grave doubts on the veracity of the statement of Capt. Dilawar Singh. It was further argued that the facts and circumstances around the alleged involvement of Ajit Singh rather showed that despite pulls and pressures Ajit Singh stood by his conviction and voted for the No Confidence Motion and that had Ajit Singh taken the bribe money as alleged, he would not have abused and insulted Bhajan Lal on telephone nor would he have said: "Bhajan Lal Saala khud beiman hai aur doosron ko beiman banaata hai. Mujhe koi kisi ka paisa nahin de gaya". Undoubtedly, excepting the solitary statement of Captain Dilawar Singh, there is nothing on the record to show that Ajit Singh took money from Bhajan Lal. It is also true that the C.B.I. has failed to trace the person who had allegedly helped Captain Dilawar Singh in taking out the packets containing currency notes from Bhajan Lal's vehicle. Unfortunately, the C.B.I. has also failed to gather any incriminating evidence from the security personnel of both Bhajan Lal and Ajit Singh. We are not even told as to from where those packets came and from where they were loaded. One really feels sad about these obvious lapses. It, surely, is not a job well done. But then, the fact remains that Captain Dilawar Singh is there and he says all which is enough to invite an order of framing of charge, for, after all, his statement does raise a strong suspicion with regard to Ajit Singh's complicity. Bhajan Lal Carl Sandburg who was Whitman's disciple said: "Money buys everything except love, personality, freedom, immortality, silence, peace. Therefore, men fight for money. Therefore, men steal, kill, swindle Walk as hypocrites and whited sepulchres, Therefore men speak softly carrying plans, prisons, weapons, each in the design; The words of his mouth were Butter but war was in his heart." If the prosecution is to be believed, Bhajan Lal is one man who knows what money can do. At the relevant time, he was the Chief Minister of Haryana and was heading there a Congress(I) Government. His anxiety to save his party's Government at the Centre was thus natural. He camped at Delhi from July 23, 1993 to July 25 and then from July 27 to August 2, 1993. During this period he was often having long meetings with

Captain Satish Sharma (See PWs 73, 74, 190, 193 and 194 Rakesh Kumar, B.N.Safaya, Shiv Narayan, Ram Kumar and Ashok Jolly respectively). During this very period he met Prime Minister P.V.Narsimha Rao (See Public Witness 190 Shiv Narain) and several other Congress leaders including Buta Singh. On the 23rd he had met Jmm MPs at Hotel Holiday Inn, New Delhi with a view to win their support and on July 24 he was at the house of Ajit Singh at about 8 am. (See Public Witness 191 Dilawar Singh, Public Witness 192 Constable Onkar Prasad and Public Witness 193 Ram Kumar) What transpired at the house of Ajit Singh has already been mentioned by me in sufficient detail while dealing with the case of Ajit Singh. I need not repeat it again. Suffice to say that at that meeting Bhajan Lal made it known to Ajit Singh that he had been sent by Narsimha Rao, that it was up to Ajit Singh to either save the Government of Narsimha Rao or to topple it and that ultimately packets containing wads of currency notes of the denomination of Rs.500.00 each were delivered to Ajit Singh. The conversation between the two has already been reproduced by me in my description of role played by Ajit Singh. However, I do feel tempted to reproduce the same for it throws light on how their minds were working. Bhajan Lal to Ajit Singh "Chaudhary Sahib, Narsimha Rao Ji ki kursi ab aapke haath mein hai ! Chaho Chhuda do ya bacha do aur isse bachaane ke liye hi Narsimha Rao Ji ne mujhe aapki sewa mein bheja hai" (Choudhary Sahib, Narsimha Rao Ji remaining in power now depends upon you. It is up to you now whether you want to remain him in power or not. narsimha Rao Ji has sent me to you to request you for your help)" Ajit Singh to Bhajan Lal while the packets were being taken out of Bhajan Lal's car "Bhajan Lal Ji Harshad Mehta ke suitcase ke muqable main yeh packets chhote hain inke undar kaa maal to sahi hai?" (Bhajan Lal Ji these packets are smaller in size as compared to Harshad Mehta's suitcase. Are their contents all right?) Reply by Bhajan Lal "Chaudhary Sahib main puce businessman hoon jiski sabhi deals pucci hoti hein! Yeh Harshad Mehta ke nahin Bhajan Lal ke packets hein jo 500 rupees ke noton ki wajah se chhote hein" (Chaudhary Sahib I am a puce businessman. All my deals are solid. These are my packets and not of Harshad Mehta. They are small in size because they contain currency notes of the denomination of Rs.500.00 each) As detailed by me while dealing with Ajit Singh, the media came to know of the meeting. Rumours spread about the deal and Ajit Singh became panicky. Things came to a head when Ram Lakhan Singh asked for a share in the booty. Ajit Singh took it that it was Bhajan Lal who had leaked out the proceedings, and in order to save his face, had a somersault and decided to vote for the No Confidence Motion. He even abused Bhajan Lal on telephone (See Public Witness 191 Dilawar Singh). This was a shocking development for the Congress. But then, as per the prosecution Bhajan Lal was in no mood to drop the hat. He met Prime Minister P.V. Narsimha Rao at the unearthly hour of 2.30 a.m. on the 27th and (see Public Witness 190 Shiv Narain) later targeted Ram Lakhan Singh and his supporters. Before I come to deal with what transpired with Ram Lakhan Singh and his supporters, I may reproduce yet another dialogue of Bhajan Lal which he delivered with obvious anguish at the residence of Ram Lakhan Singh on being

requested by Captain Dilawar Singh to get in touch with Ajit Singh on telephone. Said Bhajan Lal while referring to Ajit Singh: "Isko ek C.M. se baat karne ki tameez to honi chahiye! Aakhir main us se umar main bhi bara hoon! Paise ki kami thi aur maang leta, Gaali galoch aur dhamki se bolna kaun bardasht karega! Paise usne liye the, maine nahin." (At least he should know how to talk to a C.M. After all I am elder to him in age also. if he was short of money he could ask for more. Who will tolerate abuses and threats. Money had been taken by him, not by me)." Coming back to Ram Lakhan Singh Yadav, a meeting of the breakaway group took place on the 27th at the residence of Ram Lakhan Singh Yadav. During this very meeting Bhajan Lal had a talk with Ramlakhan Singh Yadav. This was followed by a telephonic conversation with Prime Minister P.V.Narsimha Rao. During this very meeting Bhajan Lal assured the seven MPs of the breakaway group of large sums of money in cash. Captain Satish Sharma, who too was present at the meeting, assured them allotment of petrol pumps (See Public Witness 191, Public Witness 237, Public Witness 210 and PW240 Captain Dilawar Singh, Gopi Krishan Yadav, R.K.Jain and Pradyuman Kumar). The voting on the No Confidence Motion was to take place on the 28th of July, 1973. On the morning Bhajan Lal asked R.S.Yadav on phone to reach the house of Ram Lakhan Singh Yadav (See Public Witness 240 Pradyuman Kumar) Besides R.S.Yadav, the other MPs of the breakaway group also collected at the residence of Ram Lakhan Singh. They were not only met there by Bhajan Lal and Captain Satish Sharma but were also delivered suitcases brought by Bhajan Lal on which Prakash Chandra Yadav son of Ram Lakhan Singh Yadav informed the gathering that Bhajan Lal had fulfilled his promise. Not only this, Bhajan Lal and Captain Satish Sharma assured the MPs collected there that they would be allotted petrol pumps and would also be paid Rs.20 lakhs each before voting and Rs.20 lakhs each after the voting. Thereupon, each one of the said MPs were delivered one suitcase each (See PWs 191, 210, 212, 226, 237, 240, 244 Captain Dilawar Singh, R.K.Jain, Manoj Rana, Om Prakash, Gopi Krishan Yadav, Pradyuman Kumar and R.K.Dayal respectively besides documents D 750 and 751) Long after the voting Haji Gulam Mohd. Khan and R.S.Yadav of the breakaway group admitted before Captain Dilawar Singh that each of them had received Rs. 20 lacs in cash from Bhajan Lal and that there was a promise to allot Petrol Pumps too. What is more to be noticed is that on August 11, 1993 Bhajan Lal claimed in a public meeting in Hissar that it was he who had engineered the defection of seven MPs within 48 hours and had thereby saved the Government at the centre. (See Public Witness 199, Varinder Singh and Video cassette D-684) This, then is the material against Bhajan Lal. It was argued by Mr.D.C.Mathur, Senior Advocate that Bhajan Lal being the Chief Minister and being of the same political party which was ruling at the Centre, it was expected of him to save his party's Government at the Centre and that consequently even if it be assumed that he had met the Prime Minister at an odd hour of the day or had met certain MPs to win their support, no fault could be found with the same. However, he dismissed the evidence regarding payments made in cash and promises made orally as totally unworthy of reliance. He argued that on the basis of the material on

record no order for framing of charges could legally be passed. Of course, he too adopted the arguments advanced by Mr.R.K.Anand on Article 105 of the Constitution and on other points including want of sanction which already stand discussed. The role allegedly played by Bhajan Lal has been referred already by me above in some detail. On the basis of the material collected it cannot be said that the C.B.I. has tried to churn out an epic out of a shoe- string. The material on the record speaks of the conspiracy hatched, of the abetment and so also of the payments in cash and of the promises made. The role allegedly played is clear and unambiguous and speaks for itself. Keeping the same in view and so also the law with regard to the framing of charges as noticed above, I find no infirmity factual or legal in the impugned order. Captain Satish Sharma The prosecution alleges that Captain Satish Sharma who, at the relevant time, was a Union Minister of State for Petroleum and Natural Gas, had the dubious distinction of being one of those who were in the forefront to bribe some of the MPs of different political parties so as to defeat the No Confidence Motion. As already noticed, while some of the leading lights of the Congress party were chalking out their game plan, the Jmm MPs were also seeing in the No Confidence Motion an opportunity to enrich their coffers. Simon Marandi got in touch with Captain Satish Chandra who lost no time in assuring cash payments and allotment of petrol pumps (See the statement of the Approver Shailendra Mahto and of Public Witness 75 Devendu Mukhiya). In the meantime Bhajan Lal who was to play no less a role in this sinister game of power politics was constantly in touch with Captain Satish Sharma (See PWs Rakesh Kumar, B.N.Safaya, Shiv Narayan, Ram Sumer and Ashok Jolly PWs 73, 73, 190, 193 and 194 respectively). Significantly M.Veerappa Moily the then Chief Minister of Karnataka was also in touch with Captain Satish Chandra and others. At a later stage Moily was destined to play no mean a role. Going back to the offer made by Captain Satish Sharma to Simon Marandi, the Captain, on the same day i.e. July 22, 1993 had a meeting with Ram Lakhan Singh Yadav, Roshan Lal, Haji Gulam Mohd. and late G.C.Munda and they too were promised money, petrol pumps and housing plots for voting against the Motion. On the morning of 24th Bhajan Lal had delivered hefty packets of currency notes of the denomination of Rs.500.00 each to win Ajit Singh's support and the same evening Captain Satish Sharma had hosted a party with Ajit Singh as one of the guests. The same evening the personal driver of Captain Satish Sharma brought suit cases and delivered the same at the venue of the party (See Public Witness 73 Const. Rakesh Kumar). On the morning of the 25th Captain Satish was given an audience by Prime Minister Narsimha Rao. (See PWs Haridas, Rajmal, Constable Rakesh Kumar and Rojnamcha D-502). As already noticed Ajit Singh, even after having allegedly accepted the bribe money paid by Bhajan Lal, declared his intention to support the Motion sending shock waves in the Congress camp. Consequently Bhajan Lal and Captain Satish Sharma directed their energies towards the breakaway group of Ram Lakhan Singh Yadav. On the 27th they were present at the meeting called by Ram Lakhan Singh at his residence. During that meeting while Bhajan Lal assured large sums of money in cash in

return for their support, Captain Satish Sharma assured allotment of petrol pumps to them or their family members (See Captain Dilawar Singh, Gopi Krishan Yadav, R.K.Jain and Pradyuman Kumar PWs 191, 237, 210 and 240 respectively). The voting on the No Confidence Motion was to take place on the 28th day of July, 1993. On the morning of that day the six MPs of the breakaway group of JD(A) namely Ram Lakhan Singh Yadav, R.S.Yadav, Roshan Lal, Anandi Charan Das, Abhay Pratap Sin Fgh and late G.C.Munda assembled at the residence of Captain Satish Sharma. While they were still there Bhajan Lal brought suitcases and soon thereafter Prakash Chandra Yadav son of Ram Lakhan Singh Yadav happily proclaimed to the breakaway group that Bhajan Lal had fulfilled his promise. Obviously, the suitcases did not contain pornographic material though the contents were sufficient to prostitute politics. Anyhow, in the same meeting six of our worthy representatives in the Lok Sabha were once again assured by Captain Satish Sharma and Bhajan Lal that (being men of honour ?) they would honour their commitment of allotment of petrol pumps, payment of Rs.20 lacs to each one of them before voting and Rs.20 lacs to each one of them after the voting. Each one of the six of them got their prized suitcases. All the six of them being themselves no less honourable, honoured their commitment. The No Confidence Motion was defeated with their support. This, in short, is the story of how a Captain with the help of his crew, saved the sinking ship of P.V.Narsimha Rao. However, one thing more before I close the narrative. On the 30th (or was it 31st?) of July, 1993 Simon Marandi had contacted B.N.Safaya, the confidant of Captain Satish Sharma, and Safaya aft receiving Rs.10 lacs from the Captain, had handed over the same to Marandi. Thus yet another promise stood honoured. Mr.P.P.Malhotra, Senior Advocate for Captain Satish Sharma while adopting the arguments advanced by Mr.R.K.Anand on the law points involved regarding the scope of Article 105 of the Constitution and whether MPs are to be taken as public servants or not and if so whether any sanction is required u/s 197 of the Code of Criminal procedure, assailed the prosecution version as a "cock and bull" story invented to tarnish what he called "the great image" of his client. However, I see no "Cock" in the prosecution story, though, if the prosecution is to be believed, then, proverbially speaking, a "Bull" of course, was there but in the China shop of the Opposition hitting at the No Confidence Motion with the aid of money bags and promises a la galore. The law points referred to above have already been dealt with by me above. I need say no more on them. Suraj Mandal and other Jmm MPs Ram Lakhan Singh Yadav and his break-away group. What these gentlemen allegedly did need not be repeated ad nauseam. What has already been highlighted with regard to others highlights the roles played by these gentlemen as well. The Jmm MPs, as already noticed above, found in the No Confidence Motion, a great opportunity to make what the Americans call, a quick buck. They contacted Captain Satish Sharma and secured promises from him. They approached Deshmukh. They approached V.Rajeshwara Rao also. Not content, they came in contact with Buta Singh and ultimately reached the Supremo, P.V.Narsimha Rao. Politics is not for the novices and as for them they used the chessboard of peff, power and money like

Grandmasters and ultimately succeeded (or is it nearly?) in filling their coffers. As for Ram Lakhan Singh Yadav and his break- away group, the very foundation of that group was allegedly laid with greed. Finding that Ajit Singh was not willing to share what he had allegedly got from Bhajan Lal, he lost no time in breaking away from his political mentor. Bhajan Lal and Captain Satish Sharma were already prowling for a kill. So was P.V.Narsimha Rao. Assurances were made and later honoured though only with regard to payments in cash. It was allegedly a game where each player exploited the weakness of the other and where ultimately all the players collected their respective "winnings" but at the cost of the game which, unfortunately, was never played in the spirit of the game. Epilogue: A word or two before dropping the curtain. While a long line of senior and seasoned Advocates representing the petitioners argued for days together, the C.B.I. Prosecutor took a little over ninety minutes to conclude his reply. I must say he did his best but then in a case of corruption and bribery raising number of legal and Constitutional issues and involving a former Prime Minister, Cabinet Ministers, a Minister of State, two Chief Ministers, two State Ministers and number of Members of Parliament, could not the C.B.I. engage a lawyer to meet the legal challenges thrown by some of the best legal brains and to be of some assistance to the Court? But then, who dare investigate the Investigator? The petitions are dismissed. Trial court record be sent back forthwith. The parties are directed to appear before the learned Special Judge on 19th September 1997.