Delhi High Court L.K. Advani vs Central Bureau Of Investigation on 1 April, 1997 Equivalent citations: 1997 IIIAD Delhi 53, 1997 CriLJ 2559, 1997 (4) Crimes 1, 66 (1997) DLT 618, 1997 (41) DRJ 274, (1997) 116 PLR 1, 1997 RLR 292 Author: M Shamim Bench: M Shamim JUDGMENT Mohd. Shamim, J. (1) "LET honesty be as the breath of thy soul; then shalt though reach the point of happiness, and independence shall be thy shield and buckler, thy helmet and crown ; then shall thy soul walk upright, nor stoop to the silken wretch because he had riches, nor pocket an abuse because the hand which offers it wears a ring set with diamonds." - Frannklin. "The whole of Government consists in the art of being honest." - Thomas Jefferson, Works Vi, 186. Thus realising the importance of honesty and probity in public life and to weed out the corruption rampant amongst the public servants, the legislators thought it fit and proper to frame a comprehensive legislation in the form of Prevention of Corruption Act, 1947 as the existing laws in the form of Sections 161 to 165A Indian Penal Code, they felt, had proved inadequate for dealing with the situation obtaining at that time on account of war and immediately thereafter. Subsequently in order to further strengthen the anti- corruption laws and to make them very effective the Prevention of Corruption Act, 1988 was passed which received the assent of the President of India on September 9,1988. (2) The present petitions relate to the corruption charges levelled against the petitioners under the Prevention of Corruption Act, 1988. (3) The petitioners herein, known as S/Shri L.K.Advani, V.C.ShukIa, J.K.Jain, N.K.Jain, S.K.Jain and B.R.Jain have taken exception through the present revision petitions bearing Nos. 124, 166, 167, 256, 257, 265, 328, 329, 330 and 331 of 1996, to the judgments and orders dated September 6, 1996 and May 8,1996 passed by the learned Special Judge in C.C. Nos.l7/96 in RC/1(A)/95-ACU-6 under Section 120B Indian Penal Code and Sections 7 & 13(2) read with Section 13(l)(d) of the Prevention of Corruption Act, 1988 and under Section 120B Indian Penal Code and Section 12 of Prevention of Corruption Act. The learned Special Judge through the said judgment and order came to the conclusion that there was a prima facie case against the above-named petitioners under Section 120B Indian Penal Code and Sections 7, 12 and 13(2) read with Section 13(l)(d) of the Prevention of Corruption Act against all the abovenamed persons i.e. S/Shri L.K.Advani, S.KJain, J.K.Jain, N.K.Jain and B.RJain. He further found that there existed a prima facie case for framing charges under Sections 7 & 13(2) read with Section 13(l)(d) of the Prevention of Corruption Act against Shri L.K.Advani. He further opined that there was a prima facie case for framing a charge under Section 12 of the Prevention of Corruption Act against S/Shri S.KJain, N.KJain, J.K.Jain and B.RJain. He thus ordered that charges be framed against them accordingly. (4) Similarly, the petitioners S/Shri V.C-Shukla, S.K.Jain, N.K.Jain, J.K.Jam and B.R.Jain have preferred the present revision petition against the judgment and order dated May 8,1996 passed by the learned Special Judge in C.C.No. 15/96 in RCI(A)/95- ACU(VI) under Section 120B Indian Penal Code and Section 13(2) read with Sections 13(l)(d), 7 and 12 of the Prevention of Corruption Act where through the learned Special Judge found that there existed a prima facie case under Section 120B Indian Penal Code and Section 13(2) read with Sections

13(l)(d), 7 & 12 of the Prevention of Corruption Act against Shri. V.C.Shukla. It was further ordered that charges under Section 12 of the Prevention of Corruption Act, 1988 be framed against S/Shri S.KJain, J.K.Jain, N.KJain and B.RJain. Accordingly the charges under' the said sections were framed against S/Shri S.KJain, J.KJam, N.KJain and B.RJain on May 24,1996 whereas the charges against Shri V.C.ShukIa were framed on August 19,1996. (5) Aggrieved and dis-satisfied with the said judgments and orders the petitioners have approached this Court for quashment of the said charges and the proceedings pending decision before the learned lower court. (6) All the above petitions are being taken up together for disposal as the questions of law and facts which are likely to arise while disposing them of would be the same. Hence it is proposed to dispose them of by one and the same judgment. (7) Relevant and material facts which led to the presentation of the petition pertaining to charge sheet No. RC/1(A)/95-ACU-6 and charge sheet No. RGI(A)/95- ACU(VI) are as under: that during the years 1988-9petitioners S/Shri S.KJain, J.K.Jain, B.RJain and N.KJain entered into a criminal conspiracy amongst themselves. The object of the said conspiracy was to receive un-accounted money and to disburse the same amongst themselves, friends, close relations and amongst different persons including the public servants and political leaders . With the said end in view petitioner Shri S.KJain lobbied with different public servants and government organisations in the power and steel sectors of the Government of India for the purposes of pursuing of award of various contracts to different foreign bidders with the motive of getting illegal kickbacks from them. The petitioners in connection therewith received Rs. 59,12,ll,685.00 during 1988-1991 by channelling some amount within the country and by receiving major portion of the same from foreign countries through hawala channels as kickbacks from the foreign bidders of certain projects of Nhpc and NTPC. The note books, diaries and Files seized from the residence of the petitiorier Shri J.KJain on May 3,1991 during the course of his house search which was conducted in case No. R.C.5(S)/91 -SIU(V) Sic (II) Cbi, New Delhi, disclosed the receipt of the amounts mentioned in the body of the charge sheet. A close scrutiny of the diary MR68 of 1991 and the file Mr 72/91 seized from the residence of the petitioner Shri J.KJain on May 3,1991 reveals that a total amount of Rs. 60 lacs was paid to Shri L.K.Advani as noted in the diaries during the period April 1988 - April 1991 and these expenses are under the heading of POE. A sum of Rs. 35 lacs was paid to him during the period from April 1988 - March 1990. Similarly, a sum of Rs. 25 lacs was paid to him on April 26,1991. The above- mentioned facts and circumstances disclosed that the Jains individually as well as collectively were in the habit of making payments to influential political leaders and public servants of high status and accepting official favours from them. Shri L.K.Advani was a well known political leader not only during the relevant period but much before as well as after the same. He has been holding high public offices, e.g., Member of Rajya Sabha, Member of Lok Sabha, as well as Union Cabinet Minister for a long period. He is still a Member of Lok Sabha and President of BJP. The above- mentioned payments of Rs. 60 lacs were made by Jains which amount to payment of illegal gratification other than legal remuneration. However, out

of this payment of Rs.60 lacs, the payment of a sum of Rs. 25 lacs pertains to the period when Shri L.K.Advani was not a 'public servant'in April 1991. It is thus clear from above that Shri L.K.Advani has committed an offence of criminal conspiracy and criminal misconduct punishable under Section 120B Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. Whereas the petitioners S/Shri S.K.Jain, N.K.Jain, B.R,Jain and J.K.Jain have committed offences punishable under Section 120B Indian Penal Code and Section 12 of the Prevention of Corruption Act. (8) A sum of Rs. 80,85,834.00 was paid to Shri V.C.Shukla, during July 1989 to April 1991. However, a sum of Rs. 38,85,834.00 is the only sum which was paid to him while he was a 'public servant'. Out of the said amount, a sum of Rs. 20 lacs was paid to him in February 1990 whereas Rs. 10 lacs are shown to have been paid to him in March 1990. A sum of Rs. 2,67,834.00 was paid to him in October, 1990, Rs. 5,30,000.00 paid to him in December 1990 (23.12.1990) and in January 1991 he was paid a sum of Rs. 88,000.00 . (9) Shri V.C.ShukIa, M.P.(Lok Sabha) was occupying a position of power in the Government of India for quite a long period and worked in various influential positions. He was a Member of Parliament (Lok Sabha) from December 31,1984 to July 26,1989 and from June 20,1991 onwards. He also worked as Union Minister for External Affairs from November 21,1990 to February 20,1991, as Union Minister for Water Resources from June 20,1991 to January 18,1993 and as Union Minister of Parliamentary Affairs from January 18,1993 to January 17, 1996. The abovementioned payments of Rs. 38,85,834.00 were made by Jains to Shri V.C.ShukIa while he was working as a 'public servant' with a motive which amounts to payment of illegal gratification other than legal remuneration to a public servant for favours shown and/or expected of him in the light of the fact that he was holding positions of power and was likely to be so. The said amounts were received by the petitioner Shri V.C.ShukIa without any public interest by abusing his position as a public servant during the period February 1990 to January 1991. The above said facts and circumstances constitute offences of criminal conspiracy and misconduct punishable under Section 120B Indian Penal Code and Section 13(2) read with Sections 13(l)(d), 7 and 12 of the Prevention of Corruption Act, 1988. (10) It has been urged for and on behalf of the petitioners by Messrs Ram Jethmalai, Rajeender Singh, Kapil Sibal and R.K.Anand, Senior Advocates, that the impugned orders passed by the learned Special Judge with regard to the framing of charges against the petitioners are illegal and invalid inasmuch as there is absolutely no material to show prima facie any case against the petitioners under the Sections mentioned therein. There is absolutely no evidence against the petitioners except the alleged diaries and the note books, the entries wherein are not even worth the paper on which the same have been recorded, as the same are inadmissible in evidence and thus could not have been taken into consideration by the learned lower court at the time of the framing of the charges. Learned counsel for the petitioners, S/Shri S.K.Jain, J.K.Jain, N.K.Jain and B.R.Jain i.e. Messrs. Rajeender Singh and Kapil Sibal, Senior Advocates, and learned counsel for Shri V.C.Shukla, Mr. R.K.Anand, have further contended that an M.P. is not a 'public servant', a fortiori, the proceedings

under the Prevention of Corruption Act could not have been launched against the petitioners i.e. Shri L.K.Advani and Shri V.C.Shukla, It has been further urged on behalf of Shri V.C.Shukla by Mr. Anand and Mr.Sibal that even if it is presumed for the sake of arguments that an M.P. is a 'public servant' which Mr. Shukla was at the relevant time, in that eventuality no charge-sheet could have been filed against him without obtaining. sanction under Section 19(c) of the Prevention of Corruption Act from the authority competent to remove him. (11) Learned counsel for the respondent i.e. Central Bureau of Investigation, Messrs. Gopal Subramanium and Mr.R.Natarajan, Senior Advocates, have, on the other hand, contended with all the vehemence at their command that an M.P. is a 'public servant' within the meaning of Section 2(c)(viii) of the Prevention of Corruption Act. There is sufficient evidence on record to prima facie show that Shri L.K.Advani and Shri V.C.Shukla are guilty of accepting illegal gratification under Section 7 and criminal misconduct under section 13(l)(d) of the Prevention of Corruption Act. There was general conspiracy amongst the petitioners i.e. Jain brothers, namely, S/Shri N.K.Jain, B.R.Jain and S.K.Jain and their employee Shri J.K.Jain. During the period the said conspiracy was afoot a sum of Rs. 35 lacs was paid to Shri L.K.Advani whereas a sum of Rs. 38.85 lacs was paid to Shri V.C.Shukla on different dates by the aforementioned Jain brothers and they accepted the same as gratification other than legal remuneration as a motive and reward for showing favours in the discharge of their official functions. There is ample evidence in the form of diaries and note books to prima facie substantiate the said averments of the prosecution. (12) It is manifest from the facts canvassed above that the most polemical issue which arises for adjudication in the present case is as to whether an M.P. is a 'public servant'? This point was. not raised on behalf of Shri Advani by the learned counsel Mr. Jethmalani. He did not dispute the fact that an M.P. is a 'public servant' within the ambit of Section 2(c)(viii) of the Prevention of Corruption Act. However, learned counsel for other petitioners namely, S/Shri S.K.Jain, J.K.Jain, N.K.Jain, B.R.Jain (hereinafter referred to as 'Jains' in order to facilitate the reference) and V.C.Shukla i.e. Messrs. Kapil Sibal, Rajeender Singh and R.K.Anand have argued with great zeal and fervour that an M.P. is not a public servant. He is neither appointed as an M.P. nor he can be removed from the position which he holds. This is again one of the indicia to show that he is not a 'public servant'. In fact it was never the intention of the legislature to include an M.P. or an M.L.A. within the domain of Section 2(c) of the Prevention of Corruption Act. Had there been any such intention nothing was easier for them than to say so in the definition of 'public servant' i.e. Section 2(c) of the Prevention of Corruption Act,1988 ('hereinafter referred to as the 'Act' for the sake of brevity). Since it has not been said so it would be neither proper nor permissible on the part of this Court to read some thing which is not there. The same is to be interpreted as it is and not as the Court wishes it to be or as it ought to be. The same is beyond the forte of a Court of Law. The learned counsel in support of their contention have relied upon the observations of the Hon'ble Supreme Court as made in R.S.Naik v. A.R.Antulay, . The Hon'ble Supreme Court in the said case examined the question as to whether

an M.L.A. was a 'public servant within the meaning of Section 21(12)(a) of the Indian Penal Code and came to the conclusion that since an M.L.A. was neither the servant of the Government nor remunerated by fees or commission for the performance of any public duty by the Government, hence he cannot be held to be a public servant by any stretch of imagination. According to the Hon'ble Supreme Court the expression 'Government' in Section 21(12)(a) clearly denotes the Executive and not the Legislature since an M.L.A. is not in the pay of the executive, hence he cannot be held to be in the pay of the Government. The Members of the Legislative Assembly enjoy the power of the purse. There is an enactment whereunder the Members of the Legislative Assembly draw their salary and allowances. They have got the power to vote the grant and pay themselves. To illustrate the said point he has led me through certain lines of paras 56 & 57 of the judgment. ". . . . . Therefore, even though Mla receives pay and allowances, he is not in the pay of the State Government because Legislature of a State cannot be comprehended in the expression 'State Government'. . . " (pr.57) ". . . .. When all these aspects are pieced together, the expression '.Government' in Section 21(12(a) clearly denotes the Executive and not the Legislature. Mla is certainly not in the pay of the Executive. Therefore, the conclusion is inescapable that even though Mla receives pay and allowances, he cannot be said to be in the pay of the Government i.e. the Executive. This conclusion would govern also the third part of clause 12(a) i.e." remunerated by fees for performance of any public duty by the Government". In other words, Mla is not remunerated by fees paid by the Government i.e. the Executive." (13) Learned counsel thus contends that it is clear from above that an M.L.A. is not a public servant. It can be safely concluded from above on the basis of the same principles which are applicable to an M.L.A. that an M.P. is not a 'public servant'. However, there may be certain occasions when an M.P. is called upon to perform certain sovereign functions which are delegated to him by the Government, such as, when he is appointed as Chairman of some Corporation, then he would be holding an office and by virtue whereof he would become a 'public servant' within the ambit of Section 2(c)(viii). (14) The next limb of the argument advanced by the learned counsel for the petitioner is that no provision of the Constitution of India talks of an office which is to be held by a Member of the Parliament. Whereas in case of other dignitaries such as the President of India, the Vice President of India, the word 'office' has been used while referring to them throughout the Constitution in connection therewith (vide Articles 56, 59 & 67) . Article 56 relates to the office of the President. Article 67 refers to the office of the Vice President. Articles 80 & 81 relate to Members of Parliament. The architects of the Constitution have intentionally used the word 'seat' in connection with their appointment. The learned counsel thus argues that the founding fathers of the Constitution knew it very well that an M.P. does not hold an office and as such, have intentionally and purposely used the word 'seat' while adverting to them. (15) Learned counsel for Cbi, Messrs. N.Natrajan and Gopal Subramanium have urged to the contrary. According to them, the underlying idea while making amendment to the Prevention of Corruption Act, 1947 by the Prevention of Corruption Act, 1988 was

to make the anti corruption laws more effective by widening their coverage and by strengthening the provisions. The definition of 'public servant', as given in Section 2(c) of the Act, was widened and made more exhaustive with a view to bringing in its range almost all the persons who hold an office and are required to perform any public duty. Thus the intention of the Legislature was clear i.e. to bring Members of Parliament within the ambit of Section 2(c) of the Act since by virtue of their office they are required to perform multifarious public duties. (16) I have heard the learned counsel for parties at sufficient length and have very carefully examined their rival contentions and have given my anxious thoughts thereto. (17) Since we are concerned with the construction of Section 2(c) of the Act which defines 'public servant' it would be just and proper to examine the provisions of the said Section before proceeding further in the matter. It is in the following words:- "PUBLICservant' means (i) any person in the service or pay of the Government or remunerated by the Government for fees or commission for the performance of any public duty; (ii) any person in the service or pay of local authority; (iii) any person in the service or pay of a Corporation .... (iv) any Judge ..... (v) any person authorised by a Court of Justice .... (vi) Any arbitrator or other person .... (vii) any person who holds an office ..... (viii) any person who holds an office by virtue of which he is authorised or required to perform any pubic duty." (18) Section 2(c)(i) is the reproduction of Section 21, clause 12(a) of the Indian Penal Code. The said provision was the subject matter of construction before the Hon'ble Supreme Court in Antulay's case (supra). Hon'ble Mr.Justice D.A.Desai, as he then was, while animadverting on the said clause i.e. 21(12)(a) came to the conclusion that an Mla was not a 'public servant' within the meaning of Section 21(12)(a) as he was neither in the pay of the Government nor in the service of the Government nor remunerated by fees or commission for the performance of a public duty by the Government. In view of the above, the conclusion is inevitable that the case of an M.P. is beyond the ken of Section 2(c)(i) of the Act. Thus the only other relevant clause is 2(c)(viii) of the Prevention of Corruption Act which can embrace within its fold the case of an M.P. It lays down and provides that any person who holds an office by virtue of which he is authorised or required to perform any public duty would be a 'public servaknt'. The term 'public duty on the other hand has been defined in clause (b) of Section 2 of the Act. It envisages 'public duty' means a duty in the discharge of which the State, the public or the community at large has an interest. Learned counsel for the petitioners Mr. Sibal conceded with commendable fairness on his part that there is no dispute wh regard to the fact that an Mp discharges a duty wherein the public or community at large is interested. Thus the only question which crises for decision is as to whether an Mp holds an office or not? (19) Mr. Sibal, learned counsel for Jams in order to substantiate his contention that a Member of Parliament is not a 'public servant' and that is why the founding fathers of the Constitution have intentionally used the word 'seat' which is occupied by him at the time of his selection, to any of the seats in the Parliament. Thus learned counsel has urged that a Member of Parliament does not occupy an office as a result of his being elected to the Parliament. He has in this con-

nection led me through different provisions in the Constitution and has argued on the basis of the same that whenever the framers of the Constitution refer to a Member of Parliament they refer to his seat in the House and not to his office. Art. 84 deals with the qualifications for Members of Parliament. It talks of a seat in the Parliament. On the other hand, Art. 101 relates to vacation of seats by Members of Parliament. Third Schedule (B) of the Constitution of India deals with the form of oath or affirmation which is to be administered to a Member of Parliament. He is required to take oath in the following words: " That I having been elected (or nominated) a Member of the Council of State (or the House of the People) do swear in the name of God, that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter." (20) Whereas the architects of the Constitution in case of form of oath or affirmation to be administered to a Minister of the Union of India have used the word 'office'. The learned counsel has thus argued that had the Mp been also holding the office he would have also been administered the same type of oath which is administered to the holder of an office i.e. the Minister. There was no question of any distinction being made in between the two oaths. (21) The learned counsel has further argued that whenever the framers of the Constitution have referred to the President of India, Vice President of India, they have adverted to his office and not to 'seat'(vide Articles 59, 60, 65, 67 and 68 .....). Similarly, while dealing with the officers of Parliament they talk of their office (vide Articles 89,91,92 and 94). (22) The other contention of the learned counsel for the petitioners is that a Member of Parliament is neither appointed nor removed. He is disqualified from being a Member of either House of Parliament on the happening of certain contingencies which find a mention in Art. 102 of the Constitution of India. The learned counsel has further led me through Section 8(3) of the Representation of the People Act, 1961, which provides that a person who has been convicted for not less than two years shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release. Furthermore, conviction under the provisions of the Prevention of Corruption Act has not been shown as one of the grounds for disqualification of an M.P. The learned counsel on the basis of the above wants me to conclude therefrom that it shows in unequivocal terms that a Member of Parliament is not a 'public servant' and does not hold an office. Had it been otherwise he would not have been allowed to continue as an M.P. after his conviction for a period of less than two years. (23) The contention of the learned counsel is an ingenious one but can be brushed aside within an anon without much difficulty. 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' and it would not be proper to place reliance thereupon for the conclusion of the fact that an Mp is not a 'public servant'. It is true as it has been already observed above by this Court that in the Constitution of India a Member of Parliament has been referred to as one who holds a 'seat' in the House. However, a Member of Parliament has been

adverted to as a person having an 'office' in the Salary, Allowances and Pension of Members of Parliament Act, 1954 (Act No.30 of 1954). Section 2 (e) of the aforementioned Act is in the following words:- "TERM of office" means (a) in relation to a person who is a member at the commencement of this Act, the period beginning with such commencement and ending with the date on which his seat becomes vacant; (b) in relation to a new member,- (i) ..... (ii)..... (iii) where such new member is member of either House of Parliament elected in a bye-election to that House or a member nominated to the Huse of the People the period beginning with the date of his election referred to in Section 67A of the said Act or, as the case may be, the date of his nomination." (24) It would not be out of place to reproduce here Section 3 of the said Act which provides as under:- "3.Salaries and daily allowances.- A member shall be entitled to receive a salary at the rate of seven hundred and fifty rupees per mensem during the whole of his term of office and subject to any rules made under this Act an allowance at the rate of seventy five rupees for each day during any period of residence on duty." It thus can be concluded from above that the words 'seat' and 'office' are interchangeable terms and either one of them can be used while referring to a Member of Parliament. The term 'office' has been defined in the Oxford English Dictionary, IInd Edn., Vol.X (p. 729) in the following words:- " 2..... b. Duty attaching to one's station, position, or employment; a duty, service, or charge falling or assigned to one; a service or task to be performed; 4a.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. The word 'office' has got the following meaning as given to it in Stroud's Judicial Dictionary of Words & Phrases, Vth Edn. (page 1751) " 5. In any case, an office necessarily implies that there is some duty to be performed". The word 'office' has been defined in Black's Law Dictionary, page 1082, an"assigned duty" or "function" . Synonyms are "post", "appointment", "situation", "place", "position", and "office" commonly suggests a position of (especially public) trust or authority." The term 'office' has also been a subject matter of interpretation in American Jurisprudence, IInd Edn.Voi.63A, page I, ... Ordinarily and generally, a public office is defined to be the right , authority, and duty created and conferred by law, the tenure of which is not transient, occasional, or incidental, by which for a given period an individual is invested with power to perform a public function for the benefit of the public. The position is an office whether the incumbent is selected by appointment or by election, and whether he is appointed during the pleasure of the appointing power or is elected for a fixed term." "A public officer is such an officer as is required by law to be elected or appointed, who has a designation or title given him by law, and who exercises functions concerning the public, assigned to him by law." (25) Grahm Zellic in an article " Bribery of Members of Parliament and the Criminal Law published in Public Law, 1979, has cited the observations of Sir Issac J., which are in the following words:- "WHEN a man becomes a Member of Parliament, he undertakes high public duties. Those duties are inseparable from the position; he cannot retain

the honour and divest himself of the duties. The position, independent of the Member, is subsisting, permanent and substantive and will be filled by others after him; this is provided by law ; and it is certainly of a more, rather than less, public character. Erskin May in fact speaks of"Corruption in the Execution of their office as Members." There is nothing to stop a court, therefore, holding that membership of Parliament constitutes an office. . . . . " (26) Let us now see as to whether an M.P. holds an office? Admittedly, an M.P. enjoys a status and position. He is also required to perform public duties under the Constitution. Thus it can be safely concluded therefrom that a Member of Parliament is holder of an office. (27) The other contention of the learned counsel for the petitioners as put forward by Mr. R.K.Anand and Mr. Kapil Sibal is that since the legislators in their wisdom have not put an M.P. in the category of 'public servant' this Court would not be justified in doing so. According to them, the law is to be interpreted as it is and not as the Court wishes it to be or as it ought to be. This is none of the functions of a Court of Law. I am sorry I am unable to agree with the contention of the learned counsel. (28) A perusal of the statement of Objects and Reasons behind the enactment of the Prevention of Corruption Act, 1988 reveals that the legislators wanted to amend the existing anti corruption laws' with a view to making them more effective by extending the scope and ambit of the definition of 'public servant' and to bring within its sweep each and every person who held an office by virtue of which he was required to perform any public duty. (The Statement of Objects and Reasons accompanying the Prevention of Corruption Act, in 1988 Ccl 529). (29) Thus the underlying idea was to eradicate the corruption. The object of the Act is a very laudable one. Hence it cannot be so construed as to narrow down its scope. It is well known that when the words of a statute are wide and clear then a restrictive meaning cannot be given to them. The purpose of the Act is clear and unambiguous i.e. the eradication of the corruption. Hence a construction which would enhance the object of the Act and curb the mischief has to be put. The object of the Act is to serve as a beacon. If there are certain crevices and dark areas in the enactment they are to be illuminated with the help of the said object, nay it is the duty of the Court to put such construction which would illuminate the said areas. Thus this Court is of the view that having regard to the moral and commendable object of the Act a purposive interpretation should be put on the relevant provisions of law so as to fulfill the intention of the legislature and eschew an interpretation which defeats the object of the Act. If so construed an M.P. would be covered by the definition as given in Section 2(c)(viii) of the Act. (30) I am supported in my above view by the enthralling Commentary on Statutory Interpretation by F.A.R. Bennion, page 659: " Parliament is presumed to intend that in construing an Act the court, by advancing the remedy which is indicated by the words of the Act for the mischief being dealt with, and the implications arising from those words, should aim to further every aspect of the legislative purpose. A construction which promotes the remedy Parliament has provided to cure a particular mischief is now known as a purposive construction." (31) Furthermore, the Prevention of Corruption Act is an enactment which is meant for the benefit of the public. The main

aim of the Act is eradication of the corruption which is permeating every nook and corner of the country. Hence it should be so interpreted which would serve the object of the Act. I am tempted here to cite a few lines from Sutherland's Statutory Construction, page 56, " Where a public interest is affected an interpretation is preferred which favours the public. A narrow construction should not be permitted to undermine the public policy sought to be served. This is especially so where a narrow construction discourages rather than encourages the specific action, the legislature has sought to foster and promulgate." The founding fathers of the Constitution envisioned the legislators as men of character, rectitude and moral uprightness whose sole object was to serve the public with dedication, to be open, truthful and legal. I am reminded here of the memorable words of H.G.Wells. He was of the view: "The true strength of rulers and empires lies not in armies or emotions, but in the belief of men that they are inflexibly open and truthful and legal. As soon as a government departs from that standard, it ceases to be anything more than"the gang in possession" and its days are numbered." (32) Mr. J.A.G.Griffith in' Parliament', Functions, Practice and Procedure, has cited Edmund Burke while commenting on the functions of the Members of Parliament. According to him, " It ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and the most unreserved communication, with his constituents. Their wishes ought to have great weight with him; their opinion, high respect; their business, unmerited attention. It is his duty to sacrifice his repose, his pleasures, his satisfactions to theirs, - and above all, ever, and in all cases, to prefer their interest to his own. But his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living.... Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion." (Speech to the electors of Bristol.) (33) Learned counsel for the petitioners Mr. Sibal and Mr. Anand have led me through the speech of Mr. P.Chidambram, Minister of State in the Ministry of Personnel, Public Grievance and Minister of State in the Ministry of Home Affairs, who piloted the bill for prevention of corruption in 1987, in order to show and prove that it was clever the intention to include MPs and MLAs within the definition of 'public servant'. On being asked as to whether the MPs were proposed to be included therein, he replied in the negative. To reproduce his exact words ".... Therefore, there is no doubt about the fact that a Minister would certainly be covered by this bill. A question has been raised as to what is the position of a Member of Parliament or a Member of a Legislative Assembly, we have not done any thing different or contrary to law as it stands toay. Under the law as it stands today, the Supreme Court has held in Anthulay'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. (34) I personally think that it is very difficult to say when an Mla or an Mp becomes a 'public servant'. (35) I believe that when an Mp functions qua Mp perhaps he is not a 'public servant' .... we think that there could be situation when an Mp or an Mla does certain things which are really not part of his duties as an Mp or as 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. ..... 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." (36) It is amply clear from above that the Minister on being asked conceded that there may be certain situations when an Mp or an Mla would be a 'public servant' within the meaning of this Act and as such would be liable for his actions like an ordinary citizen. Thus there was not a total denial on the part of the Minister on this question. A perusal of the speeches in the Parliament at the time of the debate on the bill reveals that the learned Members of the Parliament showed their anxiety, concern and worry with regard to the corruption not only amongst the government employees but they talked of even political corruption. To illustrate the point Shri Y.S.Mahajan from Jalgaon was of the view " Sir, political corruption is pervasive in character. It assumes multiplicity of forms which is astonishing. It is a syndrome and covers not only simple cases of bribery but also extends to misuse of political power for private gain, such as, nepotism, misappropriation, illegal appropriation of public resources and patronage which is often the basis of the formation of political groups dominated by individual politicians." (37) This is manifest from above that the legislators were aware of Political Corruption and wanted to eradicate' the same, this could have been done only by including the MPs within the ambit of a 'public servant'. This they did by enlarging the scope of Section 2(c) of the Act. (38) There is another aspect of the matter. The judgment in Antulay's case was given in the year 1984. The Hon'ble Supreme Court was called upon in the said judgment to pronounce on the question as to whether an Mla was a 'public servant' or not within the meaning of definition of 'public servant' as given in Section 21 of the Indian Penal Code. The Hon'ble Supreme Court after examining the historical evolution of the definition of 'public servant' and after taking into consideration the provisions of the Indian Penal Code i.e. Section 21, and Legislative Body Corrupt Practices Bill, 1925, the provisions of the Prevention of Corruption Act, 1947, Criminal Law Amendment Act, 1958 and the Santhanam Committee Report which was submitted in 1964, found that the Mla was not a 'public servant' within the ambit of Section 21(12)(a) of the Indian Penal Code. The Hon'ble Court observed that an Mla could not have been a 'public servant' as the Legislative Assemblies were not in existence in the year 1860 when the Indian Penal Code came into force on October 6,1860. So, howsoever far-sighed Lord Macaulay might have been but even then he would not have thought of in terms of an MLA. Thus an Mla could not have been contemplated to be a 'public servant' at the time when the Indian Penal Code was enacted. The Apex Court decided the case of an Mla on the anvil of the provisions of Section 21 of the Indian Penal Code and the definition of 'public servant' as given in the said Section i.e.clause 12(a) that an Mla was neither in the service of the Government nor in the pay of the Government nor remunerated by fees or commission for the performance of any public duty by the Government. To reproduce the exact words of the Apex Court (in para 60) in A.R.Antulay's case (supra) it was observed " If Mla is not in the pay of the Government in the sense of Exec-

utive Government or is not remunerated by fees for performance of any public duty by the Executive Government, certainly he would not be comprehended in the expression 'public servant' within the meaning of the expression in clause 12(a). He is thus not a 'public servant' within the meaning of the expression in clause 12(a). This conclusion reinforces the earlier conclusion reached by us after examining the historical evolution of clause 12(a)." (39) It is crystal clear from the above discussion that an Mla was not held to be a 'public servant' as it was found that he was neither in the service nor pay of the Government nor remunerated by fees or commission for the performance of any public duty by the Government. The above snags which came in the way of the Apex Court in coming to the conclusion that an Mla was not a 'public servant' have now been removed by the amendment of the definition vide clause 2(c)(viii). The scope of the said definition has been enlarged and widened by removing the said obstacles and hurdles to hold an Mla or an Mp to be a 'public servant'. Now each and every person who holds an office by virtue of which he is required to perform any public duty in the discharge of which the Stale, public or the community at large is interested would be deemed to be a 'public servant'. It is no more necessary that to be a 'public servant' the said person must be in the pay of the Government or remunerated for the performance of any public duty by the Government. Admittedly, the decision in Antulay's case (supra) was very much before the august Parliament at the time of the discussion on Prevention of Corruption Act. Mr. Chidambaram, Hon'ble Minister, who piloted the Bill even made a specific reference to Antulay's case. Thus it can be presumed that the Parliament while enacting the Prevention of Corruption Act, 1988 enlarged the definition of 'public servant' so as to embrace within its domain each and every person whosoever holds an office. (40) Admittedly as the law is today every member of the Executive, every member of the Judiciary is covered by the provisions of the Prevention of Corruption Act, 1988 as observed by the Hon'ble Supreme Court in K.Veeraswamy v. Union of India and others, . Thus there is no reason, whatsoever,as to why members of the legislature should be immune from the operation of the Act. The Members of Parliament should not have any quarrel on the said score. The view which is being taken by this Court was also taken by High Court of Australia in His Majesty the King v. Boston,33 Com.L.R. 386 (at page 402), "..... A member of Parliament is, therefore, in the highest sense, a servant of the State;- his duties are those appertaining to the position he fills, a position of no transient or temporary existence, a position forming a recognized place in the constitutional machinery of Government. Why, then, does he not hold an"office"?" In R. V. White,((1875) 13 S.C.R (N.S.W.) (L) 322), it was held, as a matter of course, that he does. That decision is sound. . . . . ."."Clearly a member of Parliament is a public officer in a very real sense, for he has, in the words of William J. in Faulkner v. Upper Boddington Overseers, (1857) 3 C.B.(N.S.), 412 at p.420). "duties to perform which would constitute in law an office". (41) A matter very much akin to the matter in hand also came up before their Lordships of the Privy Council in Attorney General of Ceylon v. D.Livera And Another, 1962 (3) All.E.R. 1066. It was observed at page 1073 " With all respect to this clear enunciation of prin-

ciple, their Lordships are of opinion that it puts too limited a construction on the words of the Act and might in some cases result in defeating the intention expressed by those words. To make the result depend on an inquiry into the range of the "exclusive" powers and duties of a member of Parliament is likely to hang it solely on the actual written provisions of the prevailing construction, and to do this may require a virtual ignoring of the plain facts of a particular case. Where the facts show clearly, as they do here, that a member of Parliament has come into or been brought into a matter of government action that affects his constituency, that his intervention is attributable to his membership and that it is the recognised and prevailing practice that the government department concerned should consult the local M.P. and invite his views, their Lordships think that the action that he takes in approaching the minister or his department is taken by him "in his capacity as such member" within the meaning of s. 14(a) of the Bribery Act." (42) To the same effect are the observations of a Division Bench as reported in Habibulla Khan v. State of Orissa & Another, 1993 Cr.L.J. 3604, (vide paras 9,10,26 & 29)..." An Mla does hold an "office" and performs "public duty" by virtue of holding that office as would appear from Chapter Iii, Part Vi of the Constitution. Therefore, though an Mla would come within the fold of the definition of 'public servant', as given in Section 2(c) of the Act, he is not the type of 'public servant' for whose prosecution under the Act, previous sanction as required by Section 19 is necessary." (43) Now the question as to whether a sanction was necessary in order to prosecute the petitioners namely Shri L.K.Advani and Shri V.C.Shukla under Section 19 of the Act which provides " 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) ..... in case of any other person by the authority competent to remove him from his office." (44) Learned counsel for the petitioner Mr. Ram Jethmalani, Senior Advocate, has not raised this point before this Court. He has not challenged the fact that an M.P. is a 'public servant'. Ergo he has not raised the point that a sanction was required to prosecute him. In view of the above, I need not go into the question that a sanction was necessary to prosecute Shri L.K.Advani. (45) Now the question which falls for determination is as to whether the prosecution was under an obligation to obtain a sanction before launching the prosecution against Shri V.C.ShukIa. Shri Shukla is being prosecuted in the present case for the offences which he is alleged to have committed during the period from February 1990 to January 1991 as per the charge framed against him on August 19,1996. Shri V.C.ShukIa was a member of Parliament from December 31,1984 to July 26,1989. Thereafter he was a member of Lok Sabha from December 2,1989 to March 13,1991. The Prliament was constituted on June 20,1991. Shri V.C.ShukIa was a member of Parliament on the date of the presentation of the charge sheet against him on January 23,1996. Thus the offences alleged against Shri V.C.ShukIa were in respect of acts of omission and commission between February 1990 and January 1991. The above said period fell within his tenure as a member of the Lok Sabha during the period from December 2,1989 to March 13,1991 i.e. 9th Lok Sabha. The said Lok Sabha was dissolved on March

13,1991. Thus the date on which the charge sheet was filed Shri Shukla was no more a member of the erstwhile Lok Sabha i.e. 9th Lok Sabha. He was a member of a newly constituted House. Hence it can be safely concluded therefrom that the acts of omission and- commission were committed by him in his capacity as a member of the earlier Lok Sabha i.e. the 9th Lok Sabha. I am therefore of the view that no sanction was required on the date of the charge sheet i.e. January 23,1996 for his prosecution in respect of the acts of omission and commission alleged to have been committed during the period from February 1990 to January 1991, as he was, now a member of newly constituted Lok Sabha (10th Lok Sabha). (46) I am fortified in my above view by the observations of their Lordships, of the Supreme Court as reported in K.Veeraswamy's case (supra), wherein it was observed by their Lordships of the Supreme Court (para 62) after relying on the observations in S.A. Venkataraman v. State, , that no sanction for prosecution of the appellant under Section 6 was necessary since he had retired from the service on attaining the age of superannuation and was not a public servant on the date of filing of the charge- sheet. To reproduce the exact words, their Lordships opined ". . . . The scope of Section 6 was first considered by this Court in S.A.Venkataraman case, where it was observed (at p.l048) that Section 6 of the Act must be considered with reference to the words used in the section independent of any construction which may have been placed by the decisions on the words used in Section 197 of the Criminal Procedure Code . The court after analysing the terms of the section further observed (at p. 1046) that" there is nothing in the words used in Section 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the court was asked to take cognizance, although he had been such a person at the time the offence was committed." (47) To the same effect are the observations in R.S.Naik v. A.R.Antulay, (1984) 3 Scc 194, and Habibullah Khan v. State of Orissa & Ors., 1995 Cr.L.J. 2071. (48) Learned counsel Mr. R.K.Anand has then contended that the petitioner Shri Shukla is being prosecuted for the offence of criminal conspiracy under Section 120B of the Indian Penal Code also. Hence the charge sheet against him for the alleged conspiracy could not have been filed without the prior sanction under Section 197 Criminal Procedure Code . (49) The answer to the above point raised is very simple. No sanction is required since Shri V.C.Shukla is not a 'public servant' within the meaning of Section 21 of the Indian Penal Code as held by the Hon'ble Supreme Court in Antulay's case (supra). Furthermore, it cannot be said by any stretch of imagination that the alleged act of taking of the bribe by the petitioner Shri Shukla was in the discharge of his official duty (vide H. H.B.Gill and another v. The King AIR (35) 1948 Privy Council 128) " A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act: nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself

may be such an act." (50) Now the question which arises for adjudication is as to whether the learned Special Judge was justified in ordering the framing of the charges against Shri L.K.Advani and Jains and in framing the charges against Shri V.C.ShukIa and Jains? The petitioners are being tried admittedly under the provisions of the Prevention of Corruption Act. A Special Judge under the Prevention of Corruption Act is under an obligation (vide Section 5) to follow the same procedure as is followed by a Magistrate for trial of warrant cases instituted on a police report. Sections 239 & 240 Cr.P.C. deal with the framing of charges in cases instituted on a police report under Chapter I of the Criminal Procedure Code . entitled " Trial of warrant cases by a Magistrate". Section 239 envisages" If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing." (51) Section 240 of the Criminal Procedure Code . provides " If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused." (52) It is manifest from above that the charges can be framed against an accused person only in those discerning, few cases where the Court comes to the conclusion that the prosecution has shown a prima facie case against the accused and there is evidence before the Court which is capable of being converted into legal evidence later on during the subsequent proceedings after the framing of the charges. The matter with regard to the framing of the charges came up for consideration in a catena of authorities wherein time and again it was observed that the prosecution must show a prima facie case against the accused in order to enable the Court to frame a charge against him. If the evidence before the Court is of such type which if un-rebutted and un-challenged by way of cross- examination would not be sufficient enough to convict the accused ultimately then the Court would not be justified in framing the charge against the accused. The Court at that stage is under no obligation to make an elaborate enquiry by sifting and weighing the material to find out a case against the accused beyond a reasonable doubt which it is required to do at the time of the final hearing. The Judge at that preliminary stage is simply required to find out that there was material which may lead to the inference that the accused has committed an offence. Thus the charge can be framed by the Court against an accused if the material placed before it raises a strong suspicion that the accused has committed an offence. In other words, the Court would be justified in framing the charges against an accused if the prosecution has sown the seed in the form of the incriminating material which has got the potential to develop itself into a full-fledged tree of conviction later on. (53) The above view was given vent to in State of Bihar Vs. Ramesh Singh, ".....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 S. 227 or S. 228 of the Code." ....." 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." ....." 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 under S.227 or S.228, then in such a situation ordinarily and generally the order which will have to be made will be one under S.228 and not under S. 227." (54) The above view was reiterated in different judgments of the Hon'ble Supreme Court as reported in Superintendent & Remembrancer of Legal Affairs West Bengal v. Anil KumarBhunjal, , Union of India v. Prafful Kumar Sammal, , and State of Himachal Pradesh v. Krishan Lal Pradhan, (55) With the above background it is to be seen now as to whether the learned lower court was justified in ordering the framing of the charges (vide impugned judgments and orders dated May 8,1996 and May 24,1996 and August 19,1996 respectively) under Section 120-B Indian Penal Code and Sections 7,12,13 read with Section 13)(d) of the Act against the petitioner Shri L.K.Advani and Jain, and under Sections 7 and 13(2) read with Section 13(l)(d) of the Act against Shri L.K.Advani only and under Section 12 of the Act against Jains, and in framing of the charges against Shri V.C.Shukla and Jains under Section 120-B Indian Penal Code read with Sections 7,12 and 13(2) and 13(l)(d) of the Act, (56) Since we are concerned with the construction of the said sections of the Act it would be just and proper to examine the provisions of the said sections in extenso before proceeding any further in the matter. Section 7 of the Act is in the following words: "Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine. Explanations. - (a)"Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section." (57) Section 12 of the Act deals with the abetment of offences defined in Sections 7 & 11 of

the Act. It lays down as under:- "Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine."

(58) Section 13 of the Act provides as under:- "13.(1). A public servant is said to commit the offence of criminal misconduct. (a)..... (b)..... (c)..... (d) if he, - (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (Hi) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or (e)..... (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

(59) A close scrutiny of Section 7 of the Act reveals that the prosecution must show, prima facie, the following for framing of a charge under Section 7 of the Act: (a) that a public servant accepted or obtained for himself or for any other person any gratification other than legal remuneration; (b) that the said acceptance or obtaining of the gratification must be as a motive or reward for doing or forbearing to do any official act; (c) that the alleged acceptance or obtaining of the gratification must be as a motive or reward for showing or forbearing to show, in the discharge of his official functions any favour or disfavour to any person; (d) that the act of acceptance or obtaining of the illegal gratification should be as motive or reward for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company adverted to in clause (c) of section 2, or with any public servant, whether named or otherwise.

(60) In view of the above, a duty has been cast on the shoulders of the prosecution, for framing of a charge under Section 7 of the Act, to prima facie show that a public servant accepted or obtained any gratification other than legal remuneration as a motive or reward for doing or forbearing to do any official act by way of favour or disfavour to any person in the discharge of his official duties.

(61) The meaning of the word "accept" as per Oxford English Dictionary, Vol.I, page 70 is "to take or receive (a thing offered) willingly, or with consenting mind; to take formally (what is offered) with contemplation of its consequences and obligations." On the other hand, the word "obtain" as per Oxford English Dictionary, Vol. X, page 669) would mean (a) " to come into possession or enjoyment of (something) by one's own effort, or by request; (b) to procure or gain, as the result of purpose and effort;

hence, generally, to acquire, get." Thus both the words "accept" and "obtain" signify an active conduct on the part of the person in accepting or obtaining a thing. Thus if some thing is thrust into the pocket of a person without his consent and without a request from his side it would not be an acceptance or obtainment of the said thing on the part of the person in whose pocket the same is inserted or thrust, within the meaning of Section 7 of the Act.

(62) Learned counsel for the petitioners on the basis of the above have contended that there is absolutely no evidence in order to prima facie show and prove that the petitioners Shri Advani and Shri Shukla have accepted or obtained any thing from Jains. The mere fact that certain amounts have been shown against their names in Mr 68/91 and Mr 71/91 against Shri Shukla (Rs 38.85 lacs), and in Mr 72/91 against Shri Advani (Rs.35 lacs) would not ipso facto be prima facie proof of acceptance against the petitioners for the framing of the charges under the sections alluded to above. The prosecution must show prima facie that entries in the said diaries and the loose sheets i.e. M.R. 68/91, Mr 71/91 and Mr 72/91 are capable of being converted at a later stage i.e. the time of the trial of the petitioners into legal evidence.

(63) An argument was advanced by the learned counsel for Cbi that the entries in the said diaries and loose sheets are relevant and as such would be admissible under Section 34 of the Evidence Act. Thus according to the learned counsel for Cbi the entries against the names of the petitioners are prima facie proof of their acceptance and obtainment of the illegal gratification from Jains.

(64) Learned counsel for the petitioners Messrs Ram Jethmalani, Kapil Sibal, R.K.Anand and Rajeender Singh, on the other hand, have urged to the contrary. According to them, the alleged entries are of no avail to the prosecution. They do not lead us anywhere. They cannot be said to be a prima facie proof of the acceptance or obtainment of the alleged illegal gratification on the part of the petitioners. The said entries are not even relevant under any of the provisions of the Evidence Act and as such, not admissible against the petitioners.

(65) Sections 5 to 55 of the Evidence Act deal with the relevancy of the facts under Part I, Chapter Ii of the Evidence Act. Part 2 - (Sections 56 to100) - deals with the proof. Part 3 - (Sections 101 to 167) - deals with the production and effect of evidence. Thus before evidence can be permitted to be led with regard to a particular fact it must be shown to be relevant under any of the sections referred to above i.e. Sections 5 to 55 of the Evidence Act.

(66) Let us now see as to whether the alleged entries in the diaries and the loose sheets are admissible under Section 34 of the Evidence Act as contended by the learned counsel for CBI?

(67) Section 34 of the Evidence Act deals with entries in books of account and when the same would be relevant. It envisages " Entries in books of account regularly kept in the course of business are relevant whenever they

refer to a matter into which the Court has to enquire but such statement shall not alone be sufficient evidence to charge any person with liability." Thus to make the entries relevant and admissible under Section 34 of the Evidence Act it must be shown : (a) that the said entries are in books of account; (b) the said books of account are being regularly kept in the course of business; (c) the said entries alone be not sufficient enough to charge any person with liability. Thus as per the requirement of law the prosecution in order to make the entries in the said diaries and the loose sheets admissible in evidence must show that the same fall within the ambit of an account book within the meaning of Section 34 of the Evidence Act.

(68) The term 'account' has been defined in Words & Phrases, Permanent Edition, Vol.1A, pages 336-338. The word 'account' means " (a) claim or demand by one person against another creating a debtor-creditor relation." (b) "Account" is a formal statement in detail of transactions between two parties made contemporaneously with the transactions themselves. It must be some thing which will furnish, to a person having a right thereto, information of a character which will enable him to make some reasonable test of its accuracy and honesty and it arises out of contract or some fiduciary relation."

(69) The term 'book of account' has been defined in Words & Phrases, Permanent Edn. Vol. Va at page 185. " A book of account is a record of sales or other transactions involving credits and debts, and a book containing minutes of cash paid, only, is not properly a book of account." " A diary is not admissible in evidence under the rule admitting books which are used in the regular course of business and kept by the party as 'books of account'."

(70) It is manifest from above that an account presupposes the existence of two persons such as a seller and a purchaser, creditor and debtor. Admittedly, the alleged diaries in the present case are not records of the entries arising out of a contract. They do not contain the debits and credits. They can at the most be described as a memorandum kept by a person for his own benefit which will enable him to look into the same whenever the need arises to do so for his future purposes. Admittedly the said diaries were not being maintained on day-to-day basis in the course of business. There is no mention of the dates on which the alleged payments were made. In fact the entries therein are on monthly basis. Even the names of the persons whom the alleged payments were made do not find a mention in full. They have been shown in abbreviated form. Only certain letters' have been written against their names which are within the knowledge of only the scribe of the said diaries as to what they stand for and whom they refer to? The prosecution in order to determine the exact nature of the said diaries referred the same to the Government Examiner of Questioned Documents, Government of India, Railway Board Building, Mall Road, Shimla. A photo copy of the said report is on the file of this Court (vide Ex.D-8). The fingerprint and handwriting expert after ex-

amining the said diaries was of the following view:- " From entries of the diaries, nature of trade or business is not ascertainable. The narration of money transaction, illegibly show receipts of money from inconspicuous persons/entities, coded letters of alphabets or unexplained names. Similarly, the payees have also been recorded in abbreviated forms of names, alphabets or words. The source of receipts of money and its destined payment/use appear to have been camouflaged. The transactions do not give indication of any sale, purchase, trading, manufacturing or service etc. business. Entries only suggest receipt of money from persons, entities on one side and its payment to other set of persons/entities on the other side. The purpose and nature of receipt and its subsequent payment is not revealed from these entries. No source or details of opening balance in 2/88 or closing balance in April, 1991 have been appearing in commercial manner. The diary entries do not give the complexion of proper books of account in strict sense of the term."

(71) The said report was filed before this Court at the instance of the prosecution. Hence the prosecution is bound by the same. Thus it can be said that the said diaries are not books of account within the ambit of Section 34 of the Evidence Act.

(72) There is another aspect of the matter. It has been observed above that the entries in the books of account by themselves are not sufficient enough to fasten the liability on the head of a person against whom they are produced. They are not a substantive piece of evidence. The said entries in the books of account can be used only by way of corroboration to other pieces of evidence which is led by a party. Admittedly there is no evidence with the prosecution besides the alleged entries in the diaries and in the loose sheets as conceded by the learned counsel for the C.B.I. Thus the alleged entries in the books of account by themselves are of no avail to the prosecution.

(73) I am fortified in my above view by the observations as reported in Mukundram and others v. Dayaram and others, Air 1914 Nagpur 44,. . . ." An entry to be admissible in evidence under S.34, Evidence Act, must be shown to be in book, that book must be a book of account, and that account must be one regularly kept in the course of business ..... I think the term "book" in S.34 aforesaid may properly be taken to signify, ordinarily, a collection of sheets of paper bound together with the intention that such binding shall be permanent and the papers used collectively in one volume."

(74) It was observed by the Hon'ble Supreme Court as reported in Chandradhar Goswami & Ors. v. The Gauhati Bank Ltd., ,. . . " Section 4 of the Bankers' Books Evidence Act (18 of 1891) certainly gives a special privilege to banks and allows certified copies of their accounts to be produced by them and those certified copies become prima facie evidence of the existence of the original entries in the accounts and are admitted as evidence of matters, transactions, and accounts therein. But such admission is only where and to the extent as the original entry itself would be admissible by

law and not further or otherwise. Original entries alone under S.34 of the Evidence Act would not be sufficient to charge any person with liability and as such, copies produced under s.4 of the Bankers' Books Evidence Act could not charge any person with liability."

(75) The above view was again expressed in Zenna Sorabji and others Vs. Mirabelle Hotel Co.(Pvt.) Ltd. and others, , ……."In order that a document could be relied upon as a book of account, it must have the characteristic of being fool-proof. A bundle of sheets detachable and replaceable at a moment's pleasure can hardly be characterised as a book of account. Moreover what Section 34 demands is a book of account regularly maintained in the course of business. A ledger by itself could not be a book of account of the character contemplated by Section 34."

(76) The same view was again reiterated in Dwarka Doss v. Baboo Jankee Doss, 6 M.I.A. 88.

(77) It has been urged for and on behalf of the prosecution by Messrs Natarajan and Gopal Subramanium that the said diaries and loose sheets (vide Mr 68/91, Mr 72/91 and Mr 73/91) are also admissible in evidence under Section 10 of the Evidence Act. Learned counsel for the petitioners, on the other hand, have argued to the contrary.

(78) Section 10 of the Evidence Act reads as under:- "Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

(79) Section 10 of the Evidence Act is an exception to the rule of hearsay as is Section 21 of the Evidence Act. The said section is based on the principle of agency. However, to make a piece of evidence admissible under the said section it must be prima facie shown that : (a) there was a conspiracy; (b) if the conspiracy is shown to be in existence in that,eventuality anything said, done or written by any of the persons who are members of the said conspiracy would be admissible against any one of the co-conspirators; (c) the said thing done or written by any of such co-conspirators must be in reference to their common intention in order to be made admissible in evidence; and (d) the said piece of evidence would also be relevant for the said purpose against any other co- conspirator who entered the conspiracy irrespective of the fact whether the said thing was done or written before he entered the conspiracy or after he left it. The earliest law on the above point was laid down by their Lordships of the Privy Council in The Queen v. Blake, 6 Qb 126. It was observed …. "Where several persons are proved to have combined together for the same illegal purpose, any act done by one of the party, in pursuance of the original concerted plan, and with reference to the common object, is in the contemplation of law the act of the whole party, and therefore, the proof of such act would be evidence

against any of the others who were engaged in the same conspiracy; and, further, any declarations, made by one of the party at the time of doing such illegal act, seem not only to be evidence against himself, as tending to determine the quality of the act, but to be evidence also against the rest of the party, who are as much responsible as if they had themselves done the act. But what one of the party may have been heard to say at some other time, as to the share which some of the others had in the execution of the common design, or as to the object of the conspiracy, cannot, it is conceived, be admitted. . . . . " It was observed by Patterson J, " I entirely agree on both points. As to the first, it is laid down that you must establish the fact of a conspiracy before you can make the act, of one the act of all. But you are not bound to bring the parties into each other's presence; the concert may be shewn by either direct or indirect evidence. The day book here was evidence of what was done towards the very acting in concert which was to be proved. It was receivable as a step in the proof of the conspiracy. As to the counterfoil, it seems to me to have nothing to do with the conspiracy. What is the charge? A conspiracy to defraud the Customs. That appears to have been done before the cheque was drawn; the cheque had nothing to do with carrying the conspiracy into effect. The principle in Rex v. Watson (2 Stark. N.P.C. 140), is quite in analogy with this decision; and the same distinction was taken in Regina v. Murphy (S.C.& P. 305), where my brother Coleridge rejected evidence of what was said after the transaction. Here the evidence offered is of a statement made after the conspiracy was affected."

(80) It was observed by the Hon'ble Supreme court in Natwarlal Sakarlal Mody v. The State of Bombay, Vol. LXV-1963 Bombay Law Reporter 660 (at page 667), "This section lays down a rule of evidence and its application is strictly conditioned by the existence of reasonable ground to believe that two or more persons have conspired together to commit an offence. The opening words of the section laying down a condition and the qualification laid down in the body of the section in regard to admissible acts, that is, they should be in reference to their common intention and also should have been committed, after the time when such intention was first entertained, indicate that the existence of a conspiracy must be established by prima facie evidence before the acts done or things written by any of the persons can be used as evidence against the others or for the purpose of proving the existence of the conspiracy. . . . . Shortly stated, before the section can be invoked, as a general rule, some prima facie evidence should be placed before the Court to enable it to form an opinion that there is reasonable ground to believe that two or more persons have conspired together; and if that condition is fulfillled the acts and declarations of a conspirator against his fellow conspirators may be admitted as evidence."

(81) A matter very much akin to the matter in hand came up for consideration before Sind Chief Court as reported in Seth Chandrattan Moondra and others v. Emperor, Air (32) 1945 Sind 188, "Now, the question to be considered is how far these entries can be used against Israni and D'Cruz

and indeed any of the other accused for the purpose of showing their complicity in this conspiracy. As evidence of the payments of bribes to D'Cruz and Israni or of the abetment of the payment of bribes to D'Cruz and Israni by other accused, the tribunal has found that it must be rejected for they have acquitted the accused on the charges of bribery & abetment and it appears to me this evidence can only be used against the one person who made the account, Liladhar. It can be used against the other accused only if S. 10, Evidence Act, applies. But the application of S.10, Evidence Act, follows and does not precede the finding that there is reasonable ground to believe a conspiracy exists and certain persons are conspirators.

(82) There is, in my opinion, upon the record, no sufficient evidence in this case to attract the application of S.10. It cannot be said that the evidence of entries made in Liladhar's handwriting implicating Israni and D'Cruz can implicate them unless it is shown that they were made with their knowledge and consent or that they are involved by reason of the application of S.10, Evidence Act, which they are not. The alleged payments bear the date 30th January 1942, some months after the beginning of the alleged conspiracy."

(83) The same view was again reiterated by the Hon'ble Supreme Court in Shivanarayan Laxminarayan Joshi & Ors v. State of Maharashtra and others, .

(84) To the same effect are the observations in Shamsher Bahadar Saxena and others v. The State of Bihar, .

(85) In view of the above the prosecution for the application of Section 10 of the Evidence Act must show the following: that there was a conspiracy in between Shri Advani and Jains on the one hand, and on the other hand a conspiracy in between Shri Shukla and Jains to commit certain actionable wrongs or offences. Admittedly there is no evidence on record except the alleged entries in the said diaries and in the loose sheets, to prima facie prove the factum of conspiracy. There is also no evidence to prima facie suggest that the said entries were made in reference to the common intention of the conspirators after it was first entertained.

(86) Shri J.K.Jain made the entries in his own handwriting with regard to the receipt of certain amounts and disbursement thereof and the same were shown to other Jains also. There is no averment in the charge-sheet that the said entries in the books of account came into being in execution of the conspiracy and the same were in furtherance of the common intention of Shri Advani and Jains, and Shri Shukla & Jains. The alleged accounts were maintained by Shri J.K.Jain for the benefit of his employers to let them know as to what were the amounts received and disbursed by them. It can thus be safely inferred therefrom that the payees of the said amounts were not at all interested in the maintenance of the alleged accounts.

(87) There is another aspect of the matter. The prosecution must prove the factum of the conspiracy by evidence other than the disputed evidence i.e. the diaries and the loose sheets which have been placed on the record of this Court. It has been observed above that there is no such evidence.

The alleged entries relate to past facts. The alleged entries must have been made after the disbursement. Hence they cannot be said to have been made in execution of the common intention of the conspiracy.

(88) The next contention raised for and on behalf of the prosecution is that the impugned diaries and loose sheets (MR 68/91,MR 72/91 and Mr 73/91) are admissible in evidence against the petitioners under Sections 17 & 21 of the Evidence Act. According to the learned counsel for the State, the same can be used against all the petitioners under Section 21 of the Evidence Act. The contention of the learned counsel, I feel, does not hold any water.

(89) Section 21 of the Evidence Act is an exception to the rule of hearsay evidence. It deals with the proof of admission against persons making them and by or on their behalf. Section 21 of the Evidence Act provides that admissions are relevant and may be proved as against the persons who makes, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest. The rule is based on the principle that when a statement is made in self serving form the same is not admissible in evidence. However, when it is made in the self hanging form it becomes admissible in evidence as nobody would like to make a statement which would be detrimental to his own interest. Thus it lends assurance to the correctness and authenticity of the said statement. However, as is manifest from above an admission cannot be used against a co-accused person. Though the confession of a co-accused can be used against an accused person under Section 30 of the Evidence Act. Admittedly it is not a confession of a co-accused. Hence it is not admissible under Section 30 of the Evidence Act. The statement of a co-accused cannot be subjected to the test of cross-examination, hence such a statement would fall within the purview of rule of written hearsay evidence. Hence it cannot be held to be admissible in evidence. The rationale behind the said rule is that any statement which can not be subjected to the test of cross examination can not be read in evidence against a person it has been made. I am tempted here to cite a few lines from Murphy on Evidence, page 180 " At common law, an admission made by one party is evidence against the maker of the statement, but not against any other party implicated by it. This principle is of considerable practical importance in relation to confessions in criminal cases, and is further considered in 8.14.1. In civil cases, admissions made by other parties may now be admissible under S. 2 of the Civil Evidence Act, 1968. The common law rule has the logical, though curious, result that if A and B are jointly charged with the offence of conspiracy, which cannot be committed by one person alone, A may be convicted upon his admission that he and B were guilty of the conspiracy, while B may have to be acquitted because of the lack of admissible evidence against him, As admission being of no evidential value against B." Thus the said admission, if any, can be used against Jains and not against the other petitioners namely, Shri L.K.Advani and Shri V.C.Shukla.

(90) There is another side of the picture. The entries in the said diaries and loose sheets, assuming arguendo, even if they are considered as a piece of evidence admissible under the Evidence Act, the same are of little help to the prosecution. The entries therein can at the most be said to be a document within the meaning of Section 3 of the Evidence Act. However, mere production of the said documents does not lead us anywhere unless the contents of the said documents are proved by proper evidence. A document can be proved either by examining the writer of the said document or by a person who is well versed with the handwriting of the maker of the said document or by a Fingerprint and handwriting expert. However, even then the contents of the said document have to be proved still by a separate evidence like any other relevant fact.

(91) I am fortified in my above view by the observations of the Hon'ble Supreme Court in Ramji Dayawala & Sons (P) Ltd. v. Invest Import, , ... " Undoubtedly, mere proof of the handwriting of a document would not tantamount to a proof of all the contents or the facts stated in the document, if the truth of the facts stated in a document is in issue mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence i.e. by the evidence of those persons who can vouchsafe for the truth of the facts in issue."

(92) The above view was also reiterated by a Division Bench of the Bombay High Court as reported in Sir Mohammed Yusuf and another v. D and another, " The reason on which the decision of Bhagwati J. is based is not far to seek. The evidence of the contents contained in the document is hearsay evidence unless the writer thereof is examined before the Court. We therefore hold that the attempt to prove the contents of the document by proving the signature of the handwriting of the author thereof is to set at nought the well recognised rule that hearsay evidence cannot be admitted. This question has been discussed by Halsbury at paragraph 533 at page 294 (Halsbury's Law of England, 3rd Edn. Vol. 15) under the heading "Hearsay". Says Halsbury: ". . . .STATEMENTSin document may also be hearsay. So, if A had taken counsel's opinion before acting, the contents of the opinion would be admissible for the same purpose, but not to prove the truth of any statement of fact therein."

(93) The same view was also expressed in Om Prakash Berlia and another v. Unit Trust of India and others, .

(94) Admittedly there is no evidence with the prosecution to prove the contents and the truth of the entries in the said diaries and loose sheets, except the report of the fingerprint and handwriting expert and the statement of certain witnesses namely Pawan Jain, A.B.Pathak and D.K.Gupta which would simply prove the handwriting of Shri J.K. Jain and signatures of Shri S.KJain.

(95) The present case admittedly is based on circumstantial evidence. It is a well established principle of criminal law that in case of circumstantial

evidence it should be of such a nature that it is incapable of explanation on any other hypothesis except the guilt of the accused. It must be a complete chain and no link of the said chain should be missing. In other words it can be said that the facts brought in the form of circumstantial evidence must be incompatible with the innocence of the accused. I am tempted here to cite a few lines in support of my above view from the observations of the Hon'ble Supreme Court in Bakshish Singh v. The State of Punjab, , " The law relating to circumstantial evidence has been stated by this Court in numerous decisions. It is needless to refer to them as the law on the point is well settled. In a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

(96) The same opinion was also expressed in Gambhir v. State of Maharasthra, , " When a case rests upon circumstantial eidence, such evidence must satisfy three tests: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

(97) In the present case there is no evidence against the petitioners except the diaries, note books and the loose sheet with regard to the alleged payments (vide Mr Nos.68/91, 72/91 and 73/91). The said evidence is of such a nature which cannot be converted into a legal evidence against the petitioners, in view of my above discussion.

(98) There is no evidence in the instant case with regard to the monies which are alleged to have been received by Jains for the purpose of disbursement. There is no evidence with regard to the disbursement of the amount. Then there is no evidence with regard to the fact to prove prima facie that the petitioners i.e. Shri L.K.Advani and Shri V.C. Shukla accepted the alleged amounts as a motive or reward for showing favour or disfavour to any person and that the said favours and disfavours were shown in the discharge of their duties as public servants as contemplated by S.7 of the Act. Thus the Court will have to presume all the above facts in the

absence of any evidence in connection therewith to frame charges against the petitioners.

(99) It is a well recognised principle of criminal jurisprudence that there can not be any presumption in favour of the proseuction. There is only one presumption and that is a sine qua,non of the criminal jurisprudence and it is with regard to the innocence of the accused. The onus to prove the guilt of the accused beyond any shadow of doubt is always on the prosecution. However, in a case under the present Act the onus would shift to the accused only in those discerning few cases where the accused accepts gratification other than legal remuneration under Section 20 of the Act. The said burden would shift on the accused only when it is shown that the accused has accepted or obtained or agreed to accept or obtain as a gratification other than legal remuneration as a motive or reward, any valuable thing from a person in that eventuality it shall be presumed, unless contrary is proved, that he accepted or obtained or agreed to accept or obtain that gratification or valuable thing, as the case may be, as a motive or reward, such as mentioned in Section 7. Admittedly in the present case there is no such prima facie acceptance on the part of the petitioners namely, Shri L.K.Advani and Shri V.C.ShukIa.

(100) Learned counsel for Cbi, Mr. Gopal Subramanium has contended that it is in the statement of Public Witness 2 Shri Jacob Mathai that he received a sum of Rs. one lac from Shri S.K. Jain who came to his residence. The learned counsel contends on the basis of the same that it goes to show that in fact the payments were made. According to the learned counsel the said statement probablises the prosecution case that payments were made to the other petitioners also and the entries in the diaries are correct. To my mind, the contention of the learned counsel, to say the least, is puerile. It is a well established principle of law that the criminal cases are not decided on the basis of probabilities. They are unlike a civil case which is decided on the basis of preponderance of evidence. The prosecution in order to bring home the guilt to the accused is to prove its case beyond any reasonable doubt.

(101) Mr. Jethmalani, learned counsel for the petitioner Shri L.K.Advani has strenuously argued that in the instant case the case of the prosecution is that the petitioner Shri L.K.Advani accepted a sum of Rs. 35 lacs from Jains as per the entries in Mr No. 72/91 page 8 during the period from April 1988 to March 1990. No specific date has been given in the charge sheet with regard to the said payment. Objection with regard to the said defect was taken in the very beginning i.e. immediately after the presentation of the charge sheet. Thus the charge sheet in the instant case is a vague one and is not sustainable in the eye of law and the cognizance taken is a bad one under Section 191(b) of the Code of Criminal Procedure. According to the learned counsel this is not the case of the prosecution that during the aforesaid period the monies were accepted on each and every date of the said period and thus the offence was committed continuously during the said period. Had it been the case, the cognizance would not

have been bad. However, in the present case no specific date is given. Hence the cognizance is bad. Admittedly, Shri L.K.Advani was not a public servant as per the prosecution case for a period of five months i.e. during the period from April 1988 to September 8,1988. Thus the possibility of his not accepting the impugned amounts during the said period has not been ruled out by the prosecution. I agree.

(102) However, during the course of arguments before the lower court the learned Public Prosecutor specified that the alleged payment of Rs. 35 lac was accepted by Shri Advani during the month of November 1989. Mr 71/91 covers the period of November 1989. Curiously enough the name of Shri L.K.Advani does not appear anywhere in the said month. Thus the contention of the learned senior counsel that the payment was made during the said month falls to the ground and does not show prima facie that the payment had been made during the said month.

(103) I thus conclude that there is no evidence against the petitioners which can be converted into legal evidence.

(104) In the circumstances stated above the petitioners are entitled to succeed. The petitions are allowed. The order dated September 6,1996 in C.C. No. 17/96, and orders dated May 8,1996, May 24,1996 and August 19,1996 in C.C. No.l5/96 are hereby set aside and the proceedings pending decision before the learned Special Judge in the above said petitions are hereby quashed.