Major E. G. Barsay vs The State Of Bombay on 24 April, 1961

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Author: Raghubar Dayal

Bench: Raghubar Dayal

PETITIONER:
MAJOR E. G. BARSAY

Vs.

RESPONDENT:
THE STATE OF BOMBAY

DATE OF JUDGMENT:
24/04/1961

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
DAYAL, RAGHUBAR

CITATION:
1961 AIR 1762 1962 SCR (2) 195
CITATOR INFO :

R	1963 SC1850	(59)
R	1966 SC1273	(20)
R	1968 SC1323	(7)
RF	1971 SC 500	(17)
RF	1971 SC1120	(20)
R	1977 SC2433	(9)
D	1979 SC1255	(8)
RF	1982 SC1413	(39)
R	1986 SC1655	(7)
RF	1992 SC 604	(125)

ACT:
Criminal Trial-Criminal Misconduct-Army Officer tried by Special Judge-jurisdiction-Sanction for Prosecution given by Deputy Secretary-Validity-Investigation by Inspector of Police, Special Police Establishment, Delhi-Legality-Conspiracy-Public Servants charged with others-Legality of charge-Approver-Corroboration-Prevention of Corruption Act , 1947 (11 of 1947). ss. 5A, 5(2), 6(r)(a)-Army Act, 1950 (46 of 1950), ss. 52, 70, 125, 127-Criminal Law (Amendment) Act,

1952 (46 of 1952), ss. 6, 7, 8, 9-Constitution of India, Art. 77.

HEADNOTE:

The appellant and five other persons, three of Them not being public servants, were charged with criminal conspiracy to dishonestly or fraudulently misappropriate or convert to their own use military stores and with dishonestly and fraudulently misappropriating the same. Sanction for prosecution of the accused was given by a Deputy Secretary on behalf of the Central Government. The accused were tried by a Special judge. The main evidence led was that of one L, a security officer., who had been asked to join the conspiracy and who had joined it with a view to have the offenders apprehended. The Special judge convicted all the accused persons. On appeal the High Court confirmed the conviction of the appellant and one other accused now dead and acquitted the other four accused persons holding that the evidence of L was corroborated in material particulars in respect of the appellant and one other accused only. The appellant contended:- (i) that the appellant who was subject to the Army Act could only be tried by a Court Martial and the Special judge had no jurisdiction to try him, (ii) that the sanction to prosecute was void as it was not expressed to be

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made in the name of the President, (iii) that the investigation by the Inspector of Police, was illegal, (iv) that there could be no legal charge of conspiracy between accused who were public servants and accused who were not, and (v) that L was a wholly unreliable witness whose testimony ought to have been rejected totally and no question of its corroboration arose.

Held, that the Special judge had jurisdiction to try the appellant for the offences charged. The Army Act does not bar the jurisdiction of criminal courts in respect of acts or omissions which are punishable under the Army Act as well as under any other law in force. The offences charged were triable both by the Special judge and by a Court Martial. In such cases s. 125 of the Army Act provides that if the designated officer decides that the proceedings should be before a Court Martial he may direct the accused to be detained in military custody. But in the present case the designated officer bad not exercised his discretion and the Army Act was not in the way of the Special judge exercising his jurisdiction. Rule 3 made under s. 549, Code of Criminal Procedure for persons subject to military law was applicable only to magistrates and not to a Special judge who is not a magistrate within the meaning of r. 3. Besides, s. 7 of the Criminal Law (Amendment) Act, 952, provides that notwithstanding anything contained in the Code of Criminal

Procedure or in "any other law" the offences specified in s. 6(1) shall be triable by Special judges only. The words "any other law" included the Army Act also. The offences for which the appellant was convicted were offences specified in s. 6(1) and were exclusively triable by a Special judge.

Held, further, that the sanction for the prosecution of the appellant was a good and valid sanction. Article 77 of the Constitution which provides that all orders of the Central Government shall be expressed to be in the name of the President is only directory and not mandatory. Where an order was not issued in strict compliance with the provisions of Art. 77 it could be established by extraneous evidence that the order was made by the appropriate authority. In the present case there was uncontroverted evidence which established that the order of sanction was made by the Deputy Secretary on behalf of the Central Government in exercise of the power conferred on him under the rules delegating such power to him.

The State of Bombay v. Purushottam jog Naik, [1952] S.C.R. 674, Dattareya Moreshwar Pangarkar v. The State of Bombay, [1952] S.C.R. 612, J. K. Gas Plant Manufacturing Co., Ltd. v. The King Emperor, [1947] F.C.R. 141, P. Joseph John v. The State of Travancore-Cochin, [1955] 1 S.C.R. 1011 and Ghaio Mall & Sons v. The State of Delhi, [1959] S.C.R. 1424, applied.

Held, further, that though the conditions of investigation by the Inspector of Police as laid down in S. 5A, Prevention of Corruption Act were not complied with the trial. was not vitiated

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by the illegality as it did not result in any miscarriage of justice. The powers and jurisdiction of members of the Delhi Special Police Establishment for investigation of offences in the State of Bombay had been duly extended by a notification of the Government of Bombay dated August 13, 1949, giving a general consent in respect of all the members of the establishment. It was not necessary that the consent be given to every individual member of the Establishment.

H.N. Rishbud & Inder Singh v. State of Delhi, [1955] 1 S.C. R. 1150, followed,

Held, further, that there was no defect in the charges. It was not illegal to charge public servants and persons who were not public servants with the criminal conspiracy to do certain acts for which all of them could not be convicted separately. Though all the accused were not liable for the individual offences, they were all guilty of the offence of conspiracy to do illegal acts.

Held, further, that the evidence of L was reliable and that it was corroborated in material particulars so far as the appellant was concerned. Though L was not an accomplice, he was an interested witness and required corroboration. The evidence of an approver and the corroborating pieces of

evidence could not be treated in two different compartments; but had to be considered together. Though some parts of the evidence of L were not accepted, his version was broadly accepted in regard to the conspiracy and the manner in which articles were smuggled out.
Sarwan Singh v. The State of Punjab, [1957] S.C.R. 953, explained.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2 of 1958.

Appeal from the judgment and order dated July 27, 1957, of the Bombay High Court in Criminal Appeal No. 254 of 1957.

WITH Criminal Appeal No. 81 of 1960.

Appeal by special leave, from the judgment and order dated July 27, 1957, of the Bombay High Court, in Criminal Appeals Nos. 255 and 257 of 1957.

M.H. Chhatrapati, Ravindra Narain, O. C. Mathur and J. B. Dadachanji, for the appellant (in Criminal Appeal No. 2 of 1958).

B.K. Khanna and D. Gupta, for the respondent in Criminal Appeal 2 of 1958) and appellant (in Criminal Appeal No. 81 of 1960).

Ram Lal Anand and S. N. Anand, for respondent No. 1 (in Criminal Appeal No. 81 of 1960).

B.S. Gheba, for respondent No. 2 (in Criminal Appeal No. 81 of 1960).

1961. April 24. The Judgment of the Court was delivered by SUBBA RAO, J.-These two appeals-one filed by accused No. 1 by certificate and the other filed by the State of Maharashtra by special leave-against the judgment of the High Court of Bombay confirming the conviction and sentence of accused No. 1 and setting aside the convictions and sentences of accused Nos. 2 and 3.

The prosecution case may be briefly stated. There was a depot called the Dehu Vehicle Depot in which military stores were kept. In the year 1944 Col. Rao, the Chief Ordnance Officer, was in charge of the Depot; Col. Sindhi, the Station Commandant, and Brig. Wilson, the Brigadier, Ordnance, Southern Command, were his superior officers. Accused No. 1, Major Barsay, was second in command in the Depot and was in charge of stores section; he was subordi- nate to Col. Rao. Major Nag, another subordinate to Col. Rao, was in charge of the administration of the Depot. One Capt. Pratap Singh was the Security Officer in the Depot; but, during the period in question, one Lawrence was acting as the Security Officer in place of Capt. Pratap Singh. Kochhar, accused No. 2, who was on leave from October 25, 1954, was recalled to duty by accused No. 1 and was put in charge of kit

stores in the Depot. Avatar singh, accused No. 3, who was working in the Unfit Sub Park, was transferred to the Kit Stores by accused No. 1 during the absence on leave of Col. Rao. Accused No. 4, Saighal, was an Ex-Col. and was at one time the Station Commandant of the Depot; after retirement he had been staying in a bungalow at a short distance from mile No. 92/7 on the Poona-Bombay Road. Accused No. 5, Ramchand Gangwani, was a refugee from Sind and he was running a hotel at Lonnavala. Accused No. 6, Devichand, and one Khemchand, who is absconding, are sons of accused No. 5. Accused Nos. 4 and 5 were friends and they were also partners along with one Bhagwan Parshuram of Bombay in "The Bombay Lonavala Disposal Syndicate". There were large consignments of Kits in Shed No. 48 of Kit Stores which were unitemized and unaccounted for in the books of the Depot. The accused entered into a conspiracy to smuggle out some of the said stores and to make an illegal gain by selling them at Bombay through accused No. 4.

The brain behind the conspiracy was accused No. 1. The plan chalked out to implement the object of the conspiracy may be briefly stated. Col. Rao was to proceed on leave sometime in December 1954 and Maj. Barsay, being the next in command, was naturally to succeed him as Chief Ordnance Officer of the Depot during the absence on leave of Col. Rao. The smuggling of the goods out of the Depot was there- fore arranged to take place during the period when Maj. Barsay was acting as the Chief Ordnance Officer of the Depot. Col. Rao went on leave from December 11, 1954. Kochhar, the second accused, who was in charge of the Fit- Park, proceeded on two months' leave of absence with effect from October 25, 1954, but he was recalled by accused No. 1 and posted as officer in charge of Kit Stores on November 25, 1954. Accused No. 3, Avatarsingh, was working in the Unfit Sub Park, and he too was shifted from there to the Kit Stores on or about November 22, 1954. These two, postings were made by accused No. 1 without the consent or knowledge of Col. Rao when he had gone to Delhi on some temporary duty for ten days from November 20, 1954 to November 30, 1954. On the night of December 1, 1954, there was a theft of various articles in the Unfit Park of the Depot. Accused No. 1 called in Lawrence, the acting Security Officer, ostensibly to discuss with him certain matters regarding the theft. During the course of the conversation accused No. 1 suggested to Lawrence that valuable stores in Shed No. 48 might be smuggled out and the large amounts expected to be realized from their sale might be shared between the conspirators, including Lawrence. Presumably to put him in a suitable frame of mind to accept the suggestion to become a conspirator, he also hinted to Lawrence that Col. Rao suspected that he (Lawrence) had a hand in the theft. The scheme outlined by accused No. 1 was confirmed by accused No. 2 a few days later. According to the plan chalked out by Maj. Barsay, he was to appoint a board of officers for itemization of "Specialist Boxed Kits" in Shed No. 17 and once the board started functioning there would be shuttle of trucks moving from Shed No. 48 to Shed No. 17 and vice versa and during the movements of those trucks two or three trucks loaded with valuable stores were to be moved out through the main gate of the Depot on the pretext of being back-loaded to the Return Stores Sub-Depot. He was also to take Col. Rao to Shed No. 48 and explain to him that the boxes contained very few items so that he too, on his return from leave, would not be surprised at the final result of the itemization. It was also agreed that the scheme should be pushed through tentatively on December 16, 17 and 18, 1954. But, for one reason or other, it could not be pushed through during those days, as Capt. Kapoor was frequently visiting the scene of itemization.

On December 18, 1954, a meeting took place at Maj. Barsay's bungalow and accused Nos. 1 to 4 and Lawrence attended that meeting. At that meeting the details of working out the plan to be carried out on December 20, 1954, were finalized. Kochhar reported to the conspirators that he had briefed Jamadar Kundanlal, and Lawrence told them that, as per Kochhar's suggestion, he had already detailed Jamadar Kundanlal on day duty at the main gate during the next week. Maj. Barsay agreed to get a driver of his confidence detailed on one of the trucks to be allotted to the Kit Stores and he offered to give orders to Kochhar on the morning of December 20, 1954, in the presence of all, to transfer the itemized kits to Shed No. 26 ostensibly for the purpose of conditioning and preservation. That would enable accused No. 3, Avatar Singh, to load the stores from Shed No. 17. The first trip was to be of ordinary stores in which the conspirators were not interested and the second trip was to be of valuable stores which were to be smuggled out of the gate. Maj. Barsay also undertook to call Maj. Nag to his office on December 20, 1954 and issue orders in the presence of Maj. Nag to Lawrence to go to Dehu Ordnance Depot (D.O.D.) and get the fire hoses which were sent there for repairs. Kochhar agreed to prepare a bogus voucher on Monday (December 20, 1954) morning, and Lawrence undertook to provide a bogus gate-pass. Accused No. 4, Saighal, agreed to keep a lorry and some laborers present near his bungalow for transshipping the stores.

On the evening of December 19, 1954, Lawrence went to the house of Saighal and the latter showed him the spot where the stores were to be transshipped. Thereafter, after taking his dinner, Lawrence went to the Depot at 9 p.m. The Orderly Officer at the Depot, one Shrinivasan, informed Lawrence that Jamadar Kundanlal, who was to have been on duty at the main gate on December 20, 1954, was sick and had taken 3 days' leave of absence on medical grounds and that Maj. Barsay had sent a chit to him asking him to send Lawrence to the bungalow of Maj. Barsay. Lawrence went to the bungalow of Maj. Barsay, but could not meet him; and then Lawrence went to the residence of Jamadar Kundanlal and tried to persuade him to attend to his duty at the main gate on December 20, 1954.

On December 20, 1954, at about 9.15 a.m. Maj. Barsay called Havaldar Pillay to his office and asked him to allot a new vehicle to the Kit Stores and to detail driver Ramban on that vehicle. Havaldar Pillay did accordingly. At about 10 a.m., Maj. Barsay called Maj. Nag and Lawrence to his office and, in the presence of Maj. Nag, he issued orders to Lawrence to go to Dehu Ordnance Depot (D.O.D.) personally and get the fire hoses. After Maj. Nag left the place, Lawrence told Maj. Barsay that Jamadar Kundanlal had reported himself to be sick and had taken leave of absence and that one Godse was at the main gate. Maj. Barsay suggested to Lawrence that 26 Jamadar Jogendrasingh may be put at the main gate in place of Godse, and he informed him that he had fixed upon Ramban as the driver of the vehicle in which the stores were to be smuggled out. At about 11 a.m. Lawrence met Maj. Barsay and Kochhar near, Shed No. 48 and was told by Maj. Barsay that the scheme was to proceed according to schedule. Kochhar and Lawrence then went to Shed No. 17 where Avatarsingh, accused No. 3, was present. Kochhar told Avatarsingh that he had not prepared any voucher as it was not necessary. Lawrence had brought an old gate-pass with him and he handed over the same to Avatarsingh. Truck No. D. D. 5963 was, in the first instance, loaded with ordinary stores and was sent to Shed No. 26. In the meanwhile, Lawrence went to the Depot and asked Godse to take over at the Unfit Sub Park gate and he ordered Jamadar Jogendrasingh to take over from Godse at the main gate. As Jamadar Jogendrasingh refused to accept the gate-pass to be produced by the driver and

pass out the vehicle without making an entry regarding the same in the "Vehicles In and Out Register", Lawrence gave him a written order to that effect with instructions not to show or hand over that written order to anybody except himself on his return or to Maj. Nag. At about 1 p.m. Maj. Barsay told Lawrence that he had become apprehensive of the scheme succeeding, as he had seen the Station Commandant's car near the Barrack Office and, therefore, he told him not to take out the vehicle till that car had gone out. Lawrence agreed and went to Shed No. 17 where Avatarsingh was present, and Avatarsingh got the truck loaded and handed over the bogus gate-pass and the duty-slip of the vehicle to Ramban, and he also asked Lawrence to get into the truck there itself instead of near the main gate as per the plan. After Lawrence got into the truck, it proceeded towards the main gate at about 1.40 p.m. At the main gate, Ramban gave the duty-slip of the vehicle and also the bogus gate-pass to Jamadar Jogendrasingh and the latter told Lawrence that Maj. Barsay had left a message for him "not to do it on that day". Lawrence, ignoring the said directions, took the vehicle out of the gate. At a spot near Talegaon there was a civilian lorry bearing No. BYL 3289 kept ready by accused Nos. 4, 5 and 6 for transhipping the stores, and to that place the truck was driven. The two lorries were parked back to back, and accused No. 6. and the absconding accused Khemchand and two others started transhipping the stores from the military lorry to the civilian lorry. At that stage, the police officers appeared at the scene and prevented further fulfilment of the plan of the accused.

It is a further case of the prosecution that Lawrence ostensibly joined the conspiracy with a view to bring to book the culprits and was informing the superior officers and the police orally and in writing from time to time as and when the important events were taking place.

As some argument was made on the basis of the charges, it would be convenient at this stage to read the charges framed by the Special Judge, Poona. The charges are:

> (1) That you accused No. 1 Major E. G. Barsay, when officiating as Chief Ordnance Officer, D. U. V. and you accused No. 2, H. S. Kochhar, when posted as Civilian Group Officer, D. U. V., and you accused No. 3, Avatarsingh Seva Singh, then working as Civilian Stores Keeper, D. U. V., and you accused No. 4, W. S. Saighal, released Lt.

Col., and you, accused No. 5, Ramchand Pahlajrai Gangawani, and you accused No. 6, Deviprasad Ramchand Gangawani and the absconding accused Khemchand between about October 1954 and December 1954 were parties to a criminal conspiracy at Dehu Road area by agreeing to do certain illegal acts to wit:

> Firstly, dishonestly or fraudulently misappropriate or otherwise convert to your own use the Military Stores lying in the Vehicle Depot, Dehu Road and which was entrusted or was in-charge of Major E. G. Barsay, H. S. Kochhar, and Avatarsingh Seva Singh and which was also under their control, as public servants; Secondly, to obtain by corrupt or illegal means for yourselves or for any other persons such stores which amounts to abusing their position as public servants i.e., the co-conspirators; Thirdly, to commit illegal acts of committing theft or receiving of stolen property and the above said illegal acts were done in pursuance of the said agreement and that you

have thereby committed an offence punishable under Section 120-B of the Indian Penal Code and within my cognizance.

and another (Khemchand Ramchand Gangawani), between about October 1954 and December 1954 in pursuance of the abovesaid conspiracy jointly and in furtherance of the common intention of all of you, you accused No. 1, Major Barsay, Officiating Chief Ord. nance Officer, and you accused No. 2, H. S. Kochbar, Civilian Group Officer, D. U. V., and you accused No. 3, Avatarsingh Seva Singh, Civilian Store Keeper, and you accused No. 4, W. S. Saighal, released Lt. Col., and you accused No. 5, Ramchand Pahalajrai Gangawani, and you accused No. 6, Deviprasad Ramchand Gangawani, did on 20th of December 1954, dishonestly or fraudulently his. appropriate with a common intention or convert for your own use Government property in the form of Military Stores described in detail in Schedule 'A' appended herewith, entrusted to or under the control of the first three accused, namely, Major E. G. Barsay, H. S. Kochhar and Avatarsingh Seva Singh, who were public servants and thereby committed an offence under Section 5(1)(c), punishable under section 5(2), of the Prevention of Corruption Act, read with Section 34 of the Indian Penal Code and within my cognizance.

and the absconding accused Khemchand Ramchand Gangawani, in pursuance of the abovesaid conspiracy, jointly and in furtherance of the common intention of all of you, did by corrupt or illegal means by abusing their position as public servants, obtained for yourselves or for any other persons, the valuable things in the form of Military Stores detailed out in Schedule 'A' appended herewith, and this act constitutes an offence under Section 5(1)(d) of the Prevention of Corruption Act, punishable under Section 5(2) of the said Act read with Section 34 of the Indian Penal Code and within my cognizance.

(4) That you accused Nos. 1, 2, 3, 4,5, 6, along with the absconding accused, Khemchand Ramchand Gangawani, did on 20th of December 1954, in pursuance of the abovesaid conspiracy jointly and in furtherance of the common intention of all of you, dishonestly or fraudulently remove the Military stores described in detail in Schedule 'A' appended herewith from the Dehu Road Depot and this act constitutes an offence punishable either under Section 381 or 411 of the Indian Penal Code, read with Section 34 of the Indian Penal Code and within my cognizance."

The main defence of the accused was that, in view of the thefts going on in the Depot, the reputation of Lawrence, the Security Officer, was at the lowest ebb, that in order to resurrect his reputation and to ingratiate himself into the good books of his superiors, he concocted the scheme of huge fraud and implicated therein the accused, including the Acting Chief Ordnance Officer of the Depot. Shortly stated, the defence was that all the accused were innocent and that it was Lawrence that "abducted" the truck with the stores, made false statements to the superior officers from time to time giving concocted versions to fit in with the theory of conspiracy.

The Special Judge, on a consideration of the evidence, held that all the charges were made out against the accused. He rejected the technical objections raised in regard to the framing of the charges, the validity of the investigation made by the investigating officer and the sanction given by the Central Government for the prosecution of the accused, and came to the conclusion that prima facie there was no good ground to discard the evidence of Lawrence, but he placed the said evidence in the category of interested evidence and required independent corroboration before acceptance. In the words of the learned Special Judge, "Shri Lawrence's evidence can, therefore, be accepted and relied upon, only if it is corroborated by other independent evidence and circumstances in the case." He found ample evidence and circumstances corroborating the evidence of Lawrence. After considering the entire evidence, he came to the following conclusion:

> "The above discussion of the evidence on record and the circumstances in the case makes it abundantly clear that the prosecution has been able to prove beyond a reasonable doubt that every one of these six accused did commit overt acts in furtherance of the criminal conspiracy alleged against them."

He held that accused Nos. 1 to 6 were guilty of the principal offence charged against them and convicted all of them under s. 120-B of the Indian Penal Code and s. 5(2) of the Prevention of Corruption Act, 1947, read with B. 34 of the Indian Penal Code. He gave varying sentences of imprisonment and fine to the accused. The accused preferred five appeals to the High Court against their convictions and sentences.

A division bench of the Bombay High Court which heard the appeals set aside the conviction of accused Nos. 2, 3, 5 and 6, but confirmed those of accused' Nos. 1 and 4. The High Court also rejected all the technical objections raised at the instance of the appellant-accused in regard to some parts of 2nd, 3rd and 4th charges. In regard to the 2nd and 3rd head sub-charges, tile High Court accepted the plea that accused Nos. 4, 5 and 6 could not be charged with having committed an offence under s. 5(1)(c) and s. 5(1)(d) of the Prevention of Corruption Act, as they were not public servants; but they held that it would be proper to frame a charge against them under s. 109 of the Indian Penal Code for having abetted the commission of the offence of criminal misconduct under s. 5(1)(c) and (d) of the Prevention of Corruption Act, committed by accused Nos. 1 to 3. As the High Court held that they were not prejudiced by the irregularity of the charge, it altered the charge to one under s. 109 of the Indian Penal Code, read with s. 5(1)(c) and (d) of the Prevention of Corruption Act. As regards the last head of the charge, it held that all the accused could not be charged with having committed an offence under s. 381 of the Indian Penal Code and that the charge under s. 411 of the Indian Penal Code would also appear to be improper so far as accused Nos. 1 to 3 were concerned; but it held that so far as accused Nos. 4, 5 and 6 were concerned, the charge under s. 411, read with s. 34, Indian Penal Code, would be quite proper.

Before the High Court, learned counsel appearing on behalf of the accused and the special counsel, Mr. Amin, appearing on behalf of the State, asked the Court to proceed to examine the evidence of Lawrence on the basis that he was a decoy and a trap witness. The High Court agreed with the learned Special Judge that the evidence of Lawrence would, have to be treated on par with that of a trap witness and that it would be inadvisable to rely upon the said evidence without independent

corroboration. It also pointed out that the corroboration required was not a corroboration of every particular in respect of which the accomplice or the approver gave his evidence, but the corroboration must be such as to make the court believe that the evidence of the accomplice was a truthful one and that it would be safe to act upon that evidence. Finally the High Court premised its discussion of the evidence in the following words:

> "In our opinion, all these decisions would clearly establish that it would not be safe to rely on the evidence of Lawrence who is admittedly a decoy or trap witness, without his testimony being corroborated from independent sources."

Then the learned Judges of the High Court considered the evidence of Lawrence minutely, discarded some parts of the evidence which were discrepant or inconsistent with other proved facts and accepted the broad story of conspiracy given by him as true to the extent it was corroborated by other unimpeachable pieces of evidence and circumstances. After elaborately considering the evidence of Lawrence, the learned Judges of the High Court came to the following con- clusion:

> "We, therefore, accept Lawrence's evidence, find that his story is probable and true and we also find that the evidence on the record justified the finding of the trial Court that there was a conspiracy as alleged by the prosecution to smuggle goods out of the Dehu Vehicles Depot."

Then the learned Judges considered the question as to which of the accused took part in the conspiracy. As regards accused No. 1, they came to the conclusion that there was cogent evidence to implicate him in the conspiracy, and in that view, they confirmed the finding of the trial court that he was a party to the conspiracy to smuggle military goods out of the Depot. As regards accused No. 2, they held that the evidence was not sufficient to establish that he was a member of the alleged conspiracy and that, as he could not be held to be a member of the conspiracy, he could not also be held to be guilty of committing criminal misconduct under s. 5(1)(c) and (d) of the Prevention of Corruption Act, 1947. As regards accused No. 3, they were of the opinion that the case against him was not established beyond reasonable doubt and that he could not be held to be guilty of criminal conspiracy as well as criminal misconduct. As regards accused No. 4, they accepted the finding of the learned Special Judge, as independent acceptable evidence corroborated the evidence of Lawrence in respect of this accused. So far as accused Nos. 5 and 6 were concerned, they found the evidence to be very weak and therefore set aside the convictions and sentences passed against them. In the result, they confirmed the convictions and sentences of accused Nos. 1 and 4, and set aside those of accused Nos. 2, 3, 5 and 6.

It appears that accused No. 4 died after the appeal was disposed of by the High Court. Accused No. 1 preferred Criminal Appeal No. 2 of 1958 against his conviction and sentence passed by the High Court and the State preferred Criminal Appeal No. 81 of 1960 challenging the correctness of the order of acquittal made in respect of accused Nos. 2 and 3.

We shall first take the appeal filed by accused No. 1.

Learned counsel for the appellant raised before us all the technical points which he unsuccessfully raised before the Special Judge as well as before the High Court. At the outset we shall deal with the said contentions before considering the arguments advanced on the merits of the case.

The first contention of learned counsel for the appellant is that the Special Judge, Poona, had no jurisdiction to take cognizance of the offences with which the accused were charged and that they should have been tried only by a court martial under the Army Act.

The argument of learned counsel for the appellant may be briefly stated thus: The Army Act, 1950 (46 of 1950) created new offences. Section 52 of the said Act created offences with which accused in the present case were charged, and provided a new machinery, namely, a court martial, to try persons committing the said offences. Therefore by necessary implication the trial of the said offences was excluded from the jurisdiction of ordinary criminal courts. This argument was sought to be reinforced by the provisions of s. 69 of the Army Act whereunder, it was said, by a fiction, offences committed by army personnel which were triable by ordinary courts were to be deemed to be offences committed against the said Act. That difference between offences against the Army Act and the offences deemed to be committed against the Army Act, the argument proceeded, was an unfailing clue for the true construction of the pro- visions of the Army Act in that the offences under the first category were exclusively triable by court martial and the offences; of the latter category were subject to concurrent jurisdiction of two courts. The logical conclusion from this premises, it was said, was that the provisions designed to resolve conflict of jurisdiction related only to the second category of offences. Assuming that the said contention was wrong, it was argued, s. 126 of the Army Act is peremptory in its language, namely, that a criminal court shall not have jurisdiction to try an offence defined under the Army Act, unless the conditions laid down therein were strictly complied with, that is, unless requisite notice is given to the officer referred to in s. 125 of the Act.

To appreciate the said argument it is necessary to scrutinize the provisions of the Army Act in some detail. Section 2 describes the different categories of army personnel who are subject to the Army Act. Section 3(ii) defines "civil offence" to mean "an offence which is triable by a criminal court"; a. 3(vii) defines "court-martial" to mean "a court-martial held under this Act"; s. 3(viii) defines "criminal court" to mean "a court of ordinary criminal justice in any part of India, other than the State of Jammu and Kashmir"; s. 3(xvii) defines "offence" to mean "any act or omission punishable under this Act and includes a civil offence"; and s. 3(xxv) declares that "all words and expressions used but not defined in this Act and defined in the Indian Penal Code shall be deemed to have the meanings assigned to them in that Code." Chapter VI is comprised of ss. 34 to 70. The heading of the Chapter is "Offences". As we have already noticed, the word "offence" is defined to mean not only any act or omission punishable under the Army Act, but also a civil offence. Sections 34 to 68 define the offences against the Act triable by court-martial and also

-give the punishments for the said offences. Section 69 says that any person subject to the Act who at any Place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against the Act and, if charged therewith under this section, shall be liable to be tried by a court-martial and, on conviction, be punishable as provided for the offence under any law in force in India or such less punishment as is in the Act mentioned. Under s. 70, " A person subject to this Act

who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a Court martial."

There are three exceptions to this section with which we are not concerned now. Shortly stated, under this Chapter there are three categories of offences, namely, (1) offences committed by a person subject to the Act triable by a court- martial in respect whereof specific punishments have been assigned; (2) civil offences committed by the said person at any place in or beyond India, but deemed to be offences committed under the Act and, if charged under s. 69 of the Act, triable by a court-martial; and (3) offences of murder and culpable homicide not amounting to murder or rape committed by a person subject to the Act against a person not subject to the military law. Subject to a few exceptions, they are not triable by court-martial, but are triable only by ordinary criminal courts. The said categorisation of offences and tribunals necessarily bring about a conflict of jurisdiction. Where an offence is for the first time created by the Army Act, such as those created by ss. 34, 35, 36, 37 etc., it would be exclusively triable by a courtmartial; but where a civil offence is also an offence under the Act or deemed to be an offence under the Act, both an ordinary criminal court as well as a court- martial would have jurisdiction to try the person committing the offence. Such a situation is visualized and provided for by as. 125 and 126 of the Act. Under s. 125, "When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a court-

martial, to direct that the accused person shall be detained in military custody."

Under a. 126(1) of the Act, "When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 125 at his option, either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government."

Clause (2) of that section says that, "In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Central Government, whose order upon such reference shall be final." Section 125 presupposes that in respect of an offence both a criminal court as well as a court-martial have each concurrent jurisdiction. Such a situation can arise in a case of an act or omission punishable both under the Army Act. as well as under any law in force in India. It may also arise in the case of an offence deemed to be an offence under the Act. Under the scheme of the said two provisions, in the first instance,, it is left to the discretion of the officer mentioned in s. 125 to decide before which court the proceedings shall be instituted, and, if the officer decides that they should be instituted before a court-martial, the accused person is to be detained in military custody; but if a criminal court is of opinion that the

said offence shall be tried before itself, he may issue the requisite notice under s. 126 either to deliver over the offender to the nearest magistrate or to postpone the proceedings pending a reference to the Central Government. On receipt of the said requisition, the officer may either deliver over the offender to the said court or refer the question of proper court for the determination of the Central Government whose order shall be final. These two sections provide a satisfactory machinery to resolve the conflict of jurisdiction, having regard to the exigencies of the situation.

What is more, s. 127 of the Army Act provides for successive trials by court-martial and by criminal court in respect of the same offence. Under sub-s. (1) of that section, "A person convicted or acquitted by a court-martial may, with the previous sanction of the Central Government, be tried again by a criminal court for the same offence, or on the same facts." But sub-s. (2) thereof imposes a limitation in the matters of punishment; for, under that sub-section, the criminal court shall, in awarding punishment, have regard to the punishment the offender may already have undergone for the said offence. The scheme of the Act, therefore, is self-evident. It applies to offences committed by army personnel described in s. 2 of the Act; it creates new offences with specified punishments, imposes higher punishments to pre-existing offences, and enables civil offences by a fiction to be treated as offences under the Act; it provides a satisfactory machinery for resolving the conflict of jurisdiction. Further it enables, subject to certain conditions, an accused to be tried successively both by court-martial and by a criminal court. It does not expressly bar the jurisdiction of criminal courts in respect of acts or omissions punishable under the Act, if they are also punishable under any other law in force in India; nor is it possible to infer any prohibition by necessary implication. Sections 125, 126 and 127 exclude any such inference, for they in express terms provide not only for resolving conflict of jurisdiction between a criminal court and a court-martial in respect of a same offence, but also provide for successive trials of an accused in respect of the same offence.

Now let us apply this legal position to the facts of the case. Under s. 52 of the Act, any person subject to the Act who commits theft of any property belonging to Government or to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law, or dishonestly misappropriates or converts to his own use any such property, or commits criminal breach of trust in respect of any such property, or does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person shall, on conviction by court-martial, be liable to suffer im- prisonment for a term which may extend to ten years or such less punishment as is in the act mentioned. Section 2 (xxv) says that all words and expressions used but not defined in the Army Act and defined in the Indian Penal Code shall be deemed to have the meanings assigned to them in that Code. The section does not create new offences, but prescribes higher punishments if the said offences are tried by a court-martial. The appellant and the other accused were charged in the present case, among others, for having been parties to a criminal conspiracy to dishonestly or fraudulently misappropriate or otherwise convert to their own use the military stores and also for dishonestly or fraudulently misappropriating the same. The said acts constitute offences under the Indian Penal Code and under the Prevention of Corruption Act. They are also offences under s. 52 of the Army Act. Though the offence of conspiracy does not fall under s. 52 of the Act, it, being a civil offence, shall be deemed to be an offence against the Act by the. force of s. 69 of the Act. With the result that the offences are triable both by an ordinary criminal court having jurisdiction to try the said offences and a court- martial. To such a situation ss. 125 and 126

are clearly intended to apply. But the designated officer in s. 125 has not chosen to exercise his discretion to decide before which court the proceedings shall be instituted. As he has not exercised the discretion, there is no occasion for the criminal court to invoke the provisions of s. 126 of the Act, for the second part of s. 126(1), which enables the criminal court to issue a notice to the officer designated in s. 125 of the Act to deliver over the offender to the nearest magistrate or to postpone the proceedings pending a reference to the Central Government, indicates that the said subsection presuppose,% that the designated officer has decided that the proceedings shall be instituted before a court-martial and directed that the accused person shall be detained in military custody. If no such decision was arrived at, the Army Act could not obviously be in the way of a criminal court exercising its ordinary jurisdiction in the manner provided by law.

The correct approach to the problem may be stated thus: The appellant and the other accused have committed offences under the Indian Penal Code and the Prevention of Corruption Act. By reason of s. 7 of the Criminal Law (Amendment) Act, 1952, the said offences are triable by a special judge appointed under that Act. The special judge so appointed would have jurisdiction to try the said offences unless the Army Act expressly, or by necessary implication, excluded the offences alleged to have been committed by the appellant and others from the jurisdiction of that court. The aforesaid discussion of the provisions of the Army Act indicates that there is not only no such exclusion but also that there is clear and unambiguous indication to the contrary.

An argument advanced by learned counsel for the appellant in this context may conveniently be noticed at this stage. The second branch of the argument of learned counsel for the appellant under this head is based upon s. 549 of the Code of Criminal Procedure. Under that section, "The Central Government may make rules, consistent with this Code and the Army Act..... as to the cases in which persons subject to military, naval or air-force law shall be tried by a court to which this Code applies, or by Court- martial ..... . The Central Government made rules in exercise of the power conferred on it under this section. No rule was made prescribing that the offences with which we are now concerned shall be tried only by a court-martial. But reliance is made on r. 3 which reads:

> "Where a person subject to military, naval or air-force law is brought before a Magistrate and charged with an offence for which he is liable to be tried-by a Court-martial, such Magistrate shall not proceed to try such person or to inquire with a view to his commitment for trial by the Court of Sessions or the High Court for any offence triable by such Court, unless,
>
> (a) he is of opinion, for reasons to be recorded, that he should so proceed without being moved thereto by competent military, naval or air-force authority; or
>
> (b) he is moved thereto by such authority."

This rule obviously cannot apply unless the Special Judge constituted under the Criminal Law (Amendment) Act, 1952, is a magistrate within the meaning of that rule. A special judge is appointed under s. 6(1) of the Criminal Law (Amendment) Act to try the offences specified therein. Section

6(2), of that Act lays down that "A person shall not be qualified for appointment as a special judge under this Act unless he is, or has been, a sessions Judge or an additional sessions Judge or an assistant sessions Judge under the Code of Criminal Procedure, 1898 (V of 1898)."

Section 8(1) of the said Act says, "A Special Judge may take cognizance of offences without the accused being committed to him for trial, and in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1898 (Act V of 1898), for the trial of warrant cases by magistrates."

Under sub-s. (3) thereof, "Save as provided in sub-section (1) or sub- section (2), the provisions of the Code of Criminal Procedure, 1898, shall, so far as they are not inconsistent with this Act, apply to the proceedings before a Special Judge; and for the purpose of the said provisions, the Court of the Special Judge shall be deemed to be a Court of session trying cases without a jury or without the aid of assessors and the person conducting a prosecution before a special judge shall be deemed to be a public prosecutor." Under s. 9 of the said Act, "The High Court may exercise, so far as they may be applicable, all the powers conferred by Chapters XXXI and XXXII of the Code of Crimi- nal Procedure, 1898 (Act V of 1898), on a High Court as if the Court of a Special Judge were a Court of session trying cases without a jury within the local limits of the jurisdiction of the High Court."

These provisions equate a special judge with a sessions judge, and the provisions of the Code of Criminal Procedure applicable to a sessions judge, in so far as they are not inconsistent with the Act, are made applicable to a special judge. But it is said that s. 8(1) of the Act puts him on par with a magistrate and therefore r. (3) of the rules framed under s. 549 which applies to a magistrate equally applies to a special judge. This argument overlooks the limited purpose for which s. 8(1) is enacted. Section 8 of the Criminal Law (Amendment) Act makes a distinction between the power of a special judge to take cognizance of an offence and the procedure to be followed by him in trying the case. In trying accused persons, he is enjoined to follow the procedure prescribed by the Code of Criminal Procedure for the trial of warrant cases by magistrates. The warrant procedure is incorporated in the Act by reference to the Code of Criminal Procedure. Chapter XXI of the Code of Criminal Procedure provides the procedure for the trial of warrant cases; and s. 549 is not one of the sections in that Chapter. Nor does it empower the Central Government to make rules modifying the warrant procedure. That apart, can it be said that, by reason of the procedure to be followed by the special judge, he would be a magistrate empowered to try such a person within the meaning of r. (3)? Section 8(1) of the Criminal Law (Amendment) Act maintains a clear distinction between jurisdiction and the procedure. It is, therefore, not possible to hold that a special judge is a magistrate within the meaning of r. (3). If so, it follows that r. (3) has no application to the trial of an army personnel by a special judge.

There is a more formidable obstacle in the way of learned counsel's argument. Section 7 of the Criminal Law (Amendment) Act, 1952, reads:

> "Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898) or in any other law the offences specified in subsection (1) of section 6 shall be triable by special Judges only."

Doubtless the Army Act is comprehended by the words "any other law". The offences with which we are now concerned are certainly offences specified in sub-s. (1) of s. 6 of the Criminal Law (Amendment) Act. The non obstante clause in s. 7 clearly confers jurisdiction to try persons committing the said offences on a special judge. But it is contended that the Army Act is a special Act and therefore s. 7 found in the general Act cannot take away the jurisdiction conferred on a court- martial in respect of the said offences. That proposition of law may have some bearing when there is conflict of jurisdiction arising out of a general Act and a special Act, without any specific exclusion of the jurisdiction in the general Act of that conferred under the special Act. But that principle may not have any relevance to a case where the general Act in express terms confers jurisdiction on a particular tribunal in respect of specified offences to the exclusion of anything contained in any other law. In such a situation, the intention of the Legislature is clear and unambiguous, and no question of applying any rule of interpretation would arise, for the rules of interpretation are evolved only to ascertain the intention of the Legislature.

It is contended that s. 7 confers an exclusive jurisdiction on a special judge only in regard to offences specified in sub-s. (1) of s. 6 and that the said subsection does not comprise offences under s. 52 of the Army Act. There is a fallacy underlying this argument. Certain acts committed or omissions made by a person constitute offences under s. 6(1) of the Criminal Law (Amendment) Act, 1952. Under s. 7 of the said Act, the said offences are exclusively triable by a special judge. In the present case the accused were charged with having committed offences expressly falling under B. 6 of the said Act and, therefore, the special judge had clearly jurisdiction to try the accused in respect of the said offences. The mere fact that the said acts or omissions might also constitute an offence under s. 52 of the Army Act would not be of any relevance, as jurisdiction was exclusively conferred on the special judge notwithstanding anything contained in any other law. If that be so, the special judge had exclusive jurisdiction to try offences covered by s. 6 of the Criminal Law (Amendment) Act, 1952.

At this stage, another argument of learned counsel may be adverted to. He says that some of the offences with which the accused are charged in the present case are not those enumerated in s. 6 of the Criminal Law (Amendment) Act, 1952. This objection is clearly answered by s. 7(b) of the said Act which says, "When trying any case, a special judge may also try any offence other than an offence specified in section 6 with which the accused may, under the Code of Criminal Procedure, 1898, be charged at the same trial."

It is then argued that the prosecution has failed to establish that the Central Government accorded sanction to prosecute the appellant under s. 6(1) of the Prevention of Corruption Act. Under s. 6(1)(a) of the Prevention of Corruption Act, "No Court shall take cognizance of an offence punishable under section 161 or section 164 or section 165 of the Indian Penal Code, or under subsection (2) of section 5 of this Act, alleged to have been commuted by a public servant, except with the previous sanction-(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of the Central Government.....

It is common case that the appellant was a public servant within the meaning of the said sub-section and, therefore, he cannot be prosecuted without the sanction of the Central. Government. The sanction given in this case for the prosecution of the appellant reads thus:

> " . . . . . .
>
> NOW, THEREFORE, THE CENTRAL GOVERNMENT doth hereby accord sanction under section 197 of the Criminal Procedure Code (Act V of 1898) and section 6(1)(a) of the Prevention of Corruption Act, 1947 (II of 1947) to the initiation of proceedings to prosecute in a Court of competent jurisdiction the said Major E. G. Barsay and Shri H. S. Kochhar in respect of the aforesaid offences and other cognate offences punishable under other provisions of law. Sd. M. Gopala Menon, Deputy Secretary to the Govt. of India."

Ex facie the said order giving the requisite sanction purports to have been issued in the name of the Central Government and is signed by the Deputy Secretary to the Government of India in the Ministry of Home Affairs. P.W. 36, Dharambir, an Assistant in the Minstry of Home Affairs, New Delhi, has given evidence in respect of this document. He says that the papers relating to the present case were submitted to the Home Ministry by the Inspector General of Police, Special Police Establishment, New Delhi, for obtaining the necessary sanction, that the papers were put up before the Deputy Secretary in that Ministry, that the Deputy Secretary was competent to accord sanction on behalf of the President, and that he gave the said sanction under his signature. In the cross-examination, this witness says that he cannot say whether the Deputy Secretary's signature was in his own right or by way of authentication of the President's order. This uncontradicted evidence clearly established that the Deputy Secretary was competent to accord sanction on behalf of the President and that he gave the sanction in exercise of the power conferred on him, presumably, under the rules framed by the President in this behalf The statement made by this witness in the cross- examination is not inconsistent with that made by him in the examination-in-chief. The Deputy Secretary may have power to make some orders in his own right and also may have power to authenticate other orders issued in the name of the President. But in this case, this witness has clearly deposed that the Deputy Secretary had power to accord sanction in his own right and when the order giving the sanction ex facie shows that he did not authenticate it by order of the President, we must hold that he gave the sanction in his own right. In this context, an argument based upon Art. 77 of the Constitution may be noticed. Under el. (1) of Art. 77, all executive actions of the Government of India shall be expressed to be taken in the name of the President; and under cl. (2) thereof, orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President. Under the General Clauses Act, the expression "President" means the Central Government. It is, therefore, argued that as the order issuing the sanction was not expressed to be made in the name of the President, the sanction was void. This Article and the corresponding Article viz., Art. 166, were subject to judicial scrutiny by this Court. The validity of an order of detention made by the Bombay Government under s. 3 of the Preventive Detention Act, 1950, was considered in The State of

Bombay v. Puru- shottam Jog Naik (1). There, in the body of the order the "satisfaction" was shown to be that of the Government of Bombay; at the bottom of the order the Secretary to the Government of Bombay, Home Department, signed it under the words "By order of the Governor of Bombay". It was contended that the order was defective as it was not expressed to be in the name of the Governor within the meaning of Art. 166(1) of the Constitution and accordingly was not protected by cl. (2) of the said Article. Adverting to this contention, Bose, J., speaking for the Court, said at p. 678:

> "In our opinion, the Constitution does not require a magic incantation which can only be expressed in a set formula of words. What we have to see is whether the substance of the requirements is there."

This judgment lays down that we must look at the substance of the order. On a construction of the order that was in question in that case, having regard to the definition of "State Government" in the General Clauses Act and the concluding words "By order of the Governor of Bombay", the Court came to the conclusion that the order was expressed to have been taken in the name of the Governor. In Dattatreya Moreshwar Pangarkar v. The State of Bombay (2), an (1) [1952] S.C.R. 674.

(2) [1952] S.C.R. 612.

order made under the Preventive Detention Act, 1950, was questioned on the ground that it did not comply with the provisions of Art. 166(1) of the Constitution. There the order was made in the name of the Government and was signed by one Kharkar for the Secretary to the Government of Bombay, Home Department. Das, J., as he then was, after referring to the decision of the Federal Court in J. K. Gas Plant Manufacturing Co., (Rampur) Ltd. v. The King-Emperor (1) observed at p. 625 thus:

> "Strict compliance with the requirements of article 166 gives an immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that article are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order it- self."

The learned Judge came to the above conclusion on the ground that the provisions of the said article are only directory and not mandatory. This decision was followed by this Court in P. Joseph John v. The State of Travancore-Cochin (2). There the "show cause notice" issued under Art. 311 of the Constitution was impugned on the ground that it was contrary to the provisions of Art. 166 thereof. The notice was issued on behalf of the Government and was signed by the Chief Secretary to the Government, who had under the rules of business framed by the Rajpramukh the charge of the portfolio of "service and appointments" at the Secretariat level in the State. This Court held that the said notice was issued in substantial compliance with the directory provisions of Art. 166 of the Constitution. The latest decision on the point is that in Ghaio Mall & Sons v. The State of Delhi(1). There the question was whether the com- munication issued by the Under Secretary, Finance, Government of Delhi State, had complied with the provisions of Art. 166 of the Constitution. This Court held that it did not comply with the provisions of (1) (1947) F.C.R. 141. (2) [1935] 1 S.C.R.

1011.

Art. 166 of the Constitution and also found that the said order was not, as a matter of fact, made by the Chief Commissioner. When the decision in Dattatreya Moreshwar Pangarkar's case (1) was cited this Court observed at p. 1439 thus:

> "In that case there was ample evidence on the record to prove that a decision had in fact been taken by the appropriate authority and the infirmity in the form of the authentication did not vitiate the order but only meant that the presumption could not be availed of by the State."

The foregoing decisions authoritatively settled the true interpretation of the provisions of Art. 166 of the Constitution. Shortly stated, the legal position is this:

> Art. 166(1) is only directory. Though an impugned order was not issued in strict compliance with the provisions of Art. 166(1), it can be established by evidence aliunde that the order was made by the appropriate authority. If an order is issued in the name of the Governor and is duly authenticated in the manner prescribed in r. (2) of the said Article, there is an irrebuttable presumption that the order or instrument is made or executed by the Governor. Any non- compliance with the provisions of the said rule does not invalidate the order, but it precludes the drawing of any such irrebuttable presumption. This does not prevent any party from proving by other evidence that as a matter of fact the order has been made by the appropriate authority. Article 77 which relates to conduct of business of the Government of India is couched in terms similar to those in Art. 166 and the same principles must govern the interpretation of that provision. If that be the legal position, in the instant case the impugned order does not comply with the provisions of Art. 77(2) of the Constitution and, therefore, it is open to the appellant to question the validity of the order on the ground that it was not an order made by the President and to prove that it was not made by the Central Government. But this legal position does (1) [1952] S.C.R. 612.

not help the appellant, for as we have pointed out, the uncontroverted evidence of P. W. 36, an Assistant in the Home Ministry, which was accepted by the High Court and the Special Judge, establishes that the order was made by the Deputy Secretary on behalf of the Central Government in exercise of the power conferred on him under the rules delegating such power to him.

The next contention challenges the legal competence of Jog, an Inspector of Police in the Delhi Special Police Establishment, to make the investigation. In his evidence Jog stated that the Inspector General of Police, Special Police Establishment, New Delhi, empowered him under s. 5A of the Prevention of Corruption Act to investigate the offences mentioned therein without the sanction of any magistrate. The question is whether he can make an investigation in regard to the offences alleged to have been committed by the accused in the present case. Section 5A of the Prevention of Corruption Act, 1950, on which reliance is placed reads:

"Notwithstanding anything contained in the Code of Criminal Procedure., 1898, no police officer below the rank-

(a) in the presidency towns of Madras and Calcutta, of an assistant commissioner of police,

(b)in the presidency town of Bombay, of a superintendent of police, and

(c) elsewhere, of a deputy superintendent of police, shall investigate any offence punishable under section 161, section 165 or section 165A of the Indian Penal Code or under sub-section (2) of section 5 of this Act, without the order of a presidency magistrate or a magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that a police officer of the Delhi Special Police Establishment, not below the rank of an Inspector of police, who is specially authorized by the Inspector-General of Police of that Establishment may, if he has reasons to believe that, on account of the delay involved in obtaining the order of a magistrate of the first class, any valuable evidence relating to such offence is likely to be destroyed or concealed, investigate the offence without such order; but in every case where he makes such investigation, the police officer shall, as soon as may be, send a report of the same to a magistrate of the first class, together with the circumstances in which the investigation was made."

The proviso governs the present case. Jog, who was specially authorized by the Inspector-General of Police under s. 5A of the Prevention of Corruption Act to investigate the offences mentioned therein being an Inspector of Police, was certainly empowered to make an investigation within the meaning of that proviso. But what is contended is that the power to investigate under that proviso is hedged in by two conditions, namely, that the said officer should have reasons to believe that on account of delay involved in obtaining the order of a magistrate of the first class, any valuable evidence relating to such offence is likely to be destroyed or concealed, and subsequently he should have sent a report of the same to a magistrate of the first class together with the circumstances in which the investigation was made. The High Court on a consideration of the evidence found that the said two conditions have not been complied with by Jog. On that finding, the question arises whether the trial of the accused by the Special Judge was vitiated by the non- compliance with the aforesaid two conditions. This Court in H. N. Rishbud & Inder Singh v. The State of Delhi (1) held that s. 5(4) and proviso to s. 3 of the Prevention of Corruption Act, 1947, and the corresponding s. 5A of the Prevention of Corruption (Second Amendment) Act, 1952 (LIX of 1952) are mandatory and not directory and that an investigation conducted in violation thereof is illegal. In the same decision this Court also pointed out that the illegality committed in the course of investigation did not affect the competence and jurisdiction of the court for trial and where cognizance of the case had in fact (1) [1955] 1 S.C.R. 1150.

been taken and the case had proceeded to termination the validity of the preceding investigation did not vitiate the result unless miscarriage of justice of been caused thereby. The question is whether in the present case the investigation made by the Inspector duly authorized by the Inspector-General of Police to investigate under s. 5A of the Prevention of Corruption Act, without complying with the two conditions laid down in the proviso to that section, had caused any prejudice to the accused. The High Court, after considering the entire evidence, found that the alleged irregularity would not justify the conclusion that the non- observance of the conditions prescribed in the proviso to s. 5A of the Prevention of Corruption Act had occasioned any failure of justice. Learned counsel has taken us through different steps in the investigation made by the said officer, and we have no reason to differ from the conclusion arrived at by the High Court.

The validity of the investigation made by Jog was questioned yet on another ground. It was said that he had not obtained the requisite permission of the State Government under s. 6 of the Delhi Special Police Establishment Act, 1946, before he started the investigation. Section 5 of that Act authorizes the Central Government to extend to any area the powers and jurisdiction of members of the Delhi Special Police Establishment for the investigation of any offences or classes of offences specified in a notification under s. 3 thereof. But s. 6 of that Act says that nothing contained in s. 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railways area, without the consent of the Government of that State. The Government of Bombay, Home Department, addressed a letter to the Government of India, dated August 13,1949 and it was stated therein, ".....I am directed to state that this Government re-affirms, with reference to section 6 of the Delhi Special Police Establishment Act, 1946, the consent given for an indefinite period under its letter No. 5042/4-D, dated the 6th November 1946, to the members of the Delhi Special Police Establishment exercising powers and jurisdiction in the area of the not province of Bombay."

It was contended before the High Court and it was repeated before us that the consent should have been given to every individual member of the Special Police Establishment and that a general consent would not be a good consent. We do not see any force in this argument. Under a. 6 of the Delhi Special Police Establishment Act, no member of the said Establishment can exercise powers and jurisdiction in any area in a State without the consent of the Government of that State. That section does not lay down that every member of the said Establishment should be specifically authorized to exercise jurisdiction in that area, though the State Government can do so. When a State Government can authorize a single officer to exercise the said jurisdiction, we do not see any legal objection why it could not authorize the entire force operating in that area belonging to that Establishment to make such investigation. The authorization filed in this case sufficiently complies with the provisions of s. 6 of the Delhi Special Police Establishment Act, 1946, and there are no merits in this contention.

The next contention centres round the framing of charges. The charges framed in this case have been fully extracted in the earlier part of the judgment. The first objection is that the Special Judge had no jurisdiction to try the accused on charges involving offences other than those mentioned in s. 6(1) of the Criminal Law (Amendment) Act, 1952. This argument ignores s. 7(2)(b) of the Act which says, "When trying any case, a special judge may also try any offence other than an offence specified

in section 6 with which the accused may, under the Code of Criminal Procedure, 1898, be charged at the same trial." The objection, therefore, has no force.

The next criticism is that there can be no legal charge of a conspiracy between accused Nos. 1 to 3, who are public servants, and accused Nos. 4 to 6, who are not public servants, in respect of offences under the Prevention of Corruption Act for the reason that they can only be committed by public servants. But this contention ignores the scope of the offence of criminal conspiracy. Section 120A of the Indian Penal Code defines "criminal conspiracy" and under that definition, "When two or more persons agree to do, or cause to be done, an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy." The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal con- spiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under s. 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.

The second objection is in regard to the second charge. It is said that accused Nos. 4, 5 and 6 could not be charged with having committed an offence under s. 5(1)(c) and 5(1)(d) of the Prevention of Corruption Act, as they are not public servants. The learned Judges of the High Court accepted the said legal position as correct, but held that they could be convicted under s. 109 of the Indian Penal Code, read with cls. (c) and (d) of s. 5(1) of the Prevention of Corruption Act. But on the merits they convicted accused No. 1 under s. 5(2) of the Prevention of Corruption Act, instead of under the said section read with s. 34 of the Indian Penal Code, and they convicted accused No. 4 under s. 109 of the Indian Penal Code, read with s. 5(1)(c) and (d) of the Prevention of Corruption Act, instead of under s. 5(2) of the said Act, read with s. 34 of the Indian Penal Code. As accused No. 4 was dead before the appeal was filed in this Court, nothing need be said about the legality of his conviction. The only outstanding question, therefore, is whether the High Court was justified in convicting accused No. 1 under s. 5(2) of the Prevention of Corruption Act instead of under the said section read with s. 34 of the Indian Penal Code. To such a situation, s. 537 of the Criminal Procedure Code applies and under that section, no sentence passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the charge, including any misjoinder of charges, unless such error, omission, irregularity or misdirection has in fact occasioned a failure of justice. This Court in W. Slaney v. State of M. P. (1) held that in adjudging a question of prejudice the concern of the court should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the im- pugned facts sought to be established against him were explained to him clearly and fairly and whether he was given a full and fair chance to defend himself. Judged by the said test it is manifest that accused No. I cannot be said to have been prejudiced by his conviction under s. 5(2) of the Prevention of Corruption Act, for accused No. I had clear knowledge from the inception that the prosecution case against him was that he committed an offence under s. 5(2) of the Prevention of Corruption Act and

that he had every opportunity, and indeed he made a sustained effort throughout the trial to defend himself against the said accusation. It is not possible to hold in this case that there was any failure of justice by reason of the High Court convicting him for a substantive offence under s. 5(2) of the said Act.

So far as the third head of the charge is concerned, the High Court held that it was bad in regard to accused No. 1. Accused No. 1, therefore, cannot obviously have any grievance with that finding. For the foregoing reasons, we hold that there are no merits (1)[1955] 2 S.C.R. 1140.

in the contentions raised by learned counsel on the basis of the charges framed in this case.

Now we come to the merits of the case. So far as the appellant is concerned, both the Special Judge and, on appeal the High Court accepted the evidence of Lawrence, as it was corroborated in material particulars by other acceptable evidence. They concurrently found that the appellant was a party to the conspiracy. The finding is one of fact, and the practice of this Court is not to interfere with such finding except under exceptional circumstances. Learned counsel for the appellant made a serious and sustained attempt to have the said finding reopened by advancing arguments under the following three heads: (1) The High Court has failed to draw correct inferences from the facts found by it and has also drawn wrong conclusion ignoring probabilities arising in a given situation; (2) the High Court has ignored the distinction between an untruthful witness and a truthful witness, whose evidence under the rule of prudence could be accepted only in so far as it is corroborated in material particulars, and the High Court, having disbelieved Lawrence's evidence in regard to important incidents in his narration, should have rejected his evidence in toto; and if it had done so, the question of corroboration would not arise for consideration; and (3) the independent pieces of evidence accepted by the High Court did not corroborate the evidence of Lawrence in material particulars implicating him in the crime. The first argument is a direct attack on the correctness of the finding of fact arrived at by the High Court. As we have said, the practice of this Court in an appeal under Art. 136 of the Constitution is not to allow such an attack except in exceptional circumstances. Learned counsel addressed at some length on this aspect of the case, and after hearing him, we were satisfied that there were no such exceptional circumstances present in this case. Our reluctance to depart from the usual practice is hightened by the fact that in the present case, so far as the appellant is concerned, there are concurrent findings of fact by both the courts.

The second argument is a subtle attempt to reopen the findings of fact from a different perspective. This argument is based upon a decision of this Court in Sarwan Singh v. The State of Punjab (1). In that case, Gajendragadkar, J., speaking for the Court, observed at p. 959 thus:

> "But it must never be forgotten that before the Court reaches the stage of considering the question of corroboration and its adequacy or otherwise, the first initial and essential question to consider is whether even as an accomplice the approver is a reliable witness. If the answer to this question is against the approver then there is an end of the matter, and no question as to whether his evidence is corroborated or not falls to be considered. In other words, the appreciation of an approver's evidence has to satisfy a double test."

Then the learned Judge proceeded to state, "We have carefully read the judgment delivered by the High Court but we find no indication in the whole of the judgment that the learned Judges considered the character of the approver's evidence and reached the conclusion that it was the evidence given by a reliable witness."

Later on the learned Judge further stated, "..... the evidence of the approver is so thoroughly discrepant that it would be difficult to resist the conclusion that the approver in the present case is a wholly unreliable witness."

Relying upon these observations, learned counsel contends that in the present case the High Court did not accept the evidence of the approver in regard to important events and therefore the High Court should have rejected his evidence without further attempting to see whether there was any corroboration in material particulars in other evidence. Before we consider this argument in the context of the facts of the present case, we would like at the outset to make some general observations. This Court could not have intended to lay down that the evidence (1) [1957] S.C.R. 953·

of an approver and the corroborating pieces of evidence should be treated in two different compartments, that is to say, the Court shall have first to consider the evidence of the approver dehors the corroborated pieces of evidence and reject it if it comes to the conclusion that his evidence is unreliable; but if it comes to the conclusion that it is reliable then it will have to consider whether that evidence is corroborated by any other evidence. This Court did not lay down any such proposition. In that case it happened that the evidence of the approver was so thoroughly discrepant that the Court thought that he was a wholly unreliable witness. But in most of the cases the said two aspects would be so interconnected that it would not be possible to give a separate treatment, for as often as not the reliability of an approver's evidence, though not exclusively, would mostly depend upon the corroborative support it derives from other unimpeachable pieces of evidence. We must also make it clear that we are not equating the evidence of Lawrence with that of an approver; nor did the Special Judge or the High Court put him exactly on that footing. The learned Special Judge in his judgment observed thus:

> "He (Lawrence) is obviously decoy or spy and agent provocateur and his evidence will have, therefore, to be approached with great caution and much weight cannot be attached to it unless it is corroborated by other independent evidence and circumstances in the case..... Not being tainted evidence, it would not suffer from a disability of being unworthy of acceptance without independent corroboration. But being interested evidence, caution requires that there should be corroboration from an independent source before its acceptance. To convict an accused on the tainted evidence of an accomplice is not illegal but it is imprudent; to convict an accused upon the partisan evidence of a person at whose instance a trap is laid by the police is neither illegal nor imprudent but inadvisable therefore, be accepted and relied upon, only if it is corroborated by other independent evidence and circumstances in the case."

The learned Judges of the High Court practically adopted the same attitude in the manner of their approach to the evidence of Lawrence. The learned Judges observed:

> "To convict an accused upon the partisan evidence of a person at whose instance a trap is laid by the police is neither illegal nor imprudent, because it is just possible that in some cases an accomplice may give evidence because he may have a feeling in his own mind that it is a condition of his pardon to give that evidence, but no such consideration obtains in the case of the evidence of a person who is not a guilty associate in crime but who invites the police to lay a trap. All the same, as the person who lodges information with the police for the purpose of laying a trap for another is a partisan witness interested in seeing that the trap succeeds, it would be necessary and advisable to look for corroboration to his evidence before accepting it. But the degree of corroboration in the case of a tainted evidence of an accomplice would be higher than that in the case of a partisan witness. In our opinion, all these decisions would clearly establish that it would not be safe to rely on the evidence of Lawrence who is admittedly a decoy or trap witness, without his testimony being corroborated from independent sources."

Even Mr. Amin, learned special counsel on behalf of the State asked the courts to proced to examine the evidence of Lawrence on the basis that he was a decoy or trap witness. We are definitely of opinion that both the courts had approached the evidence of Lawrence from a correct standpoint. Though Lawrence was not an approver, he was certainly an interested witness in the sense that he was interested to see that the trap laid by him succeeded. He could at least be equated with a partisan witness and it would not be admissible to rely upon such evidence without corroboration. It would be equally clear that his evidence was not a tainted one, but it would only make a difference in the 30 degree of corroboration required rather than the necessity for it.

Approaching the case from this perspective-in our view that is a correct one-the learned Special Judge came to the following conclusion:

> "There was no compelling necessity for Shri Lawrence to concoct a false story against Major Barsay and the other accused. It is, therefore, clear that prima facie there is no good ground to discard the evidence of Shri Lawrence."

Then the learned Special Judge considered the corroborative pieces of evidence and finally held that Lawrence's evidence had been corroborated in material particulars in respect of the appellant. Likewise, the learned Judges of the High Court considered the evidence of Lawrence along with that of other acceptable witnesses. Though the learned Judges of the High Court rejected the evidence of Lawrence in regard to some events either because that part of the evidence was not consistent with the other parts of his evidence or with the evidence of some disinterested witnesses, they did not see any reason to reject the story given by Lawrence as a myth or a concoction. After considering the evidence, the learned Judges concluded, "We, therefore, accept Lawrence's evidence, find that his story is probable and true and we also find that the evidence on the record justifies the finding of the trial Court that there was a conspiracy as alleged by the prosecution to smuggle goods out of the

Dehu Vehicles Depot."

Having accepted broadly the version given by Lawrence, the High Court took the case of each of the accused and held that in the case of accused Nos. 1 to 4 Lawrence's evidence had been amply corroborated by other evidence in all material particulars. In these circumstances, we cannot accept the contention of learned counsel for the appellant that the High Court had rejected the evidence of Lawrence. As we have said, the High Court did not accept some parts of the evidence of Lawrence, but it had broadly accepted the version given by Lawrence in regard to the conspiracy and the manner in which the articles were smuggled out of the Depot. If some of the accused were acquitted it was because there were some discrepancies in the evidence of Lawrence in respect of them and particularly because that part of his evidence was not corroborated in material particulars by other evidence. But in the case of the appellant the High Court accepted the evidence given by Lawrence and convicted the appellant because that version was corroborated in all material particulars by the evidence of other disinterested witnesses. We, therefore, reject this contention.

This leads us to the consideration of the only remaining question, namely, whether Lawrence's evidence is corroborated in material particulars implicating the appellant by other acceptable evidence. The corroboration must be by independent testimony confirming in some material particulars not only that the crime was committed but also that the appellant committed it. It is not necessary to have corroboration of all the circumstances of the case or every detail of the crime. It would be sufficient if there was corroboration as to the material circumstances of the crime and of the identity of the accused in relation to the crime. These principles have been settled in R. v. Baskerville, (1) which has rightly been considered as the locus classicus of the law of approver's evidence and has been followed by courts in India. Looking from that aspect, both the courts have found corroboration from disinterested witnesses in material particulars implicating the appellant in the crime. Lawrence gave a detailed account of the unfurling of the scheme of fraud from the date he met Major Barsay on December 2, 1954, upto December 20, 1954, when the offending truck was obstructed by the police from proceeding further on its onward journey.

Lawrence stated in his evidence that on December 3, 1954, Major Barsay told him, inter alia, that he had chalked out a detailed scheme in consultation with Kochhar to transfer all the valuable parts lying in Shed No. 48 to Shed No. 17 for the purpose of itemization, that he had 'already recalled Kochhar from (1) [1916] 2 K.B. 658.

leave of absence prior to its expiry and posted him in the Kit Stores, and that he had also posted Avatarsingh from Unfit Sub Park to the Kit Stores. The prosecution has established by clear evidence that Major Barsay was instrumental in posting Kochhar, accused No. 2, to the Kit Stores after asking him to cut short his leave which was for, a period of two months. It was also established by evidence that Major Barsay brought Avatarsingh to the Kit Stores. Though these facts might not have implicated Kochhar and Avatarsingh, they certainly corroborate the evidence of Lawrence that Major Barsay told him that these transfers were made to facilitate the implementation of the scheme.

Lawrence stated in his evidence that Major Barsay told him on December 3, 1954, that he had chalked out a detailed scheme in consultation with Kochhar to transfer all the valuable parts lying in Shed No. 48 to Shed No. 17 for the purpose of itemization, and that as soon as the Board of Officers was appointed there would be a shuttle of trucks moving from Shed No. 48 to Shed No. 17 and vice versa and nobody's suspicion would be roused if one or two trucks were taken away out of the main gate during the course of these movements of the trucks between these two sheds. There is evidence to show that a Board of Officers was appointed to do the work of itemization and that one Captain Mehendiratta was appointed the President of that Board. Lawrence said that Major Barsay told him that he would show certain boxes from Shed No. 48 to Col. Rao and tell him that they did not contain many of the articles which they were said to contain, so that Col. Rao also would not be surprised at the final result of the itemization. It has been established by other evidence that on December 8, 1954, Major Barsay went to Col. Rao and took him to Shed No. 48 and showed him the military stores that were lying there awaiting itemization.

At about midday on December 18, 1954, Lawrence stated, Major Barsay met him at the Depot and told him that he and other conspirators would meet at his residence to discuss about the scheme. It is in evidence that on the 18th the meeting was held as deposed to by Lawrence. Evidence of Col. Sindhi and Capt. Sharma, which was accepted by both the courts, establishes this fact. The same evidence also establishes that at that meeting Major Barsay, Saighal, Lawrence and two Sikhs were present, and though the two Sikhs were not identified to be accused Nos. 2 and 3, the presence of accused Nos. 1 and 4 and two Sikhs corroborates the evidence of Lawrence.

Lawrence stated that at that meeting Major Barsay undertook to do certain things. According to Lawrence Major Barsay told the conspirators that he would detail a driver of his confidence in a vehicle for executing the plan, that he would send Kochhar to Shed No. 17, order Kochhar to transfer the itemized goods from Shed No. 17 to Shed No. 26 ostensibly for the purpose of preservation, that he would call Major Nag on Monday (December 20) and in his presence he would order Lawrence to go to the D.O.D. to bring the fire hoses. The evidence of Havaldar Pillay, Godse, Suryawanshi and G. K. Pillay establishes the fact that Barsay secured one truck and a driver for shifting of the stores from Shed No. 17 to Shed No. 26. The evidence of Jamadar Lachmansing proves that Major Barsay went to Shed No. 17 and ordered the shifting of stores from there to Shed No. 26 for conditioning and preservation. The evidence of Major Nag establishes that in his presence Major Barsay sent for Lawrence and asked the latter to go to the D.O.D. and expedite the return of the fire hoses. These established facts certainly corroborate the evidence of Lawrence as to what took place on the 18th and also his evidence that Major Barsay gave the said instructions to him in the presence of Major Nag.

The evidence of Lawrence that Major Barsay told him and the other conspirators that there should be two loadings of the trucks at Shed No. 17, the first loading to carry innocuous articles and the second the articles intended to be smuggled out of the Depot, was also corroborated by disinterested evidence. Both the courts accepted that evidence.

Then there is evidence of the movements of Major Barsay during the crucial time when the smuggling out of the goods was scheduled to take place. The evidence of Jogendrasingh, Rambhan

and Wagh shows that at about 1-10 p.m. on December 20, 1954, Major Barsay was rather worried and was moving to and fro near the main gate because he was suspecting that somebody was watching their movements. Jamadar Jogendrasingh deposed that Major Barsay asked him to tell Lawrence, "not to do it as there was something suspicious about it." Major Nag also supported this version. These nervous movements of Major Barsay certainly corroborate the evidence of Lawrence that he was the moving spirit in the conspiracy.

The evidence of Lawrence that the duty of going along with the truck was allotted to his part in the conspiracy is corroborated by the circumstances establisbed by the evidence that Lawrence got into the truck near Shed No. 17 and went in the truck to its destination.

The evidence of Lawrence regarding how Major Barsay directed the smuggling of the goods out of the Depot was corroborated by other independent evidence. There is evidence of Jog and Diwate to show that on December 19, in the morning, Saighal showed the spot where the transshipment was to take place to Lawrence. There is the evidence of Darekar to show that a truck was arranged and that he was asked by Yakubsaheb to take his truck to Talegaon for the transport of iron goods. There is also the evidence of Darekar and Hatnolkar to establish that accused No. 4 was waiting near the cemetry on the Talegaon-Dabhade Road and that Darekar was also instructed by Saighal to park the lorry in a particular way. Then there is the evidence of the police officers that the goods brought in the military lorry were being transported into the civilian truck when they came on the scene. All this evidence supports the version of Lawrence when he said that Major Barsay gave the necessary instructions as to the manner of transport of the military goods to the civilian truck.

The said facts found by both the courts below implicate accused No. 1 in the matter of the preparation, laying down of the details of implementation and the actual carrying out of the scheme of smuggling the goods out of the Depot through all the stages and thereby establish that the appellant was the main conspirator and the brain behind the conspiracy. We cannot, therefore, say that the version given by Lawrence implicating accused No. 1 is not corrobo- rated by other independent evidence. It follows that the conviction of the appellant by the High Court is correct. This leads us to the appeal filed by the State against the judgment of the High Court acquitting accused Nos. 2 and 3 on the ground that the evidence of Lawrence implicating them in the offence was not corroborated in material particulars by independent evidence. In this appeal also we have not allowed learned counsel for the State to canvass the correctness of the finding arrived at by the High Court on the appreciation of the evidence in the case. Taking the findings arrived at by the High Court, we find it difficult to take a different view from that taken by the High Court. In regard to accused No. 2 the High Court arrived at the following findings: (1) There is no evidence or allegation on the record to show that there was any understanding between him and Major Barsay before he left on two months leave. (2) There is no evidence that Kochhar, accused No. 2, met Lawrence on December 6, 1954. (3) Accused No. 2 moved Major Barsay by his letter (Ex. 151) to convene the itemization board. (4) Prior to the appointment of the board and its constitution, accused No. 2 ordered the shifting of the "specialist boxed kits" from Shed No. 48 to Shed No. 17, but this was done under Major Barsay's instructions. (5) Accused No. 2 was present when Fernandez was ordered by Major Barsay to complete the identification of the first set before December 13, even by working on Sunday the 12th December, and in that connection a written order was issued by him

on December 11. (6) On December 12 Lawrence persuaded accused No. 2 to go in for two insurance policies. (7) Though according to Lawrence, Kochhar undertook to prepare a bogus voucher and to be at the Depot at the opening hours on Monday the 20th to prepare that voucher in the office of Lawrence, it is admitted that Kochhar refused to issue the voucher. (8) Accused No. 2 was present at Shed No. 17 when Major Barsay issued orders to shift the stores to Shed No. 26. And (9) Accused No. 2 accompanied Major Barsay to Shed No. 19 in the morning and lie was present when the truck was being loaded for the second trip at Shed No. 17. The High Court found that the said circumstances, though some of them might raise a suspicion, did not implicate accused No. 2 in the offence and they are consistent also with his innocence. Though some of the facts give rise to a suspicion, we cannot say that the High Court was wrong in holding that the said facts did not corroborate the evidence of Lawrence in implicating the said accused in the offence.

Now coming to accused No. 3, the High Court found the following facts based on the evidence other than that of Lawrence: (1) Avatarsing, accused No. 3, was transferred from Unfit Sub Park to Kit Stores. (2) Accused No. 3 was a party to the shifting of stores from Shed No. 48 to Shed No. 17 even before the appointment of the board of itemization. (3) Though Lawrence stated that Avatarsing expressed his inability to push the scheme on account of Capt. Kapoor's constant vigilance and visits to Shed No. 17, Lawrence had admitted that his first contact with Avatarsing was in the noon of 18th December. (4) There is no evidence that Avatarsing attended the meeting at Major Barsay's on the 18th. (5) Avatarsing loaded the truck for the first trip and also for the second trip, and in loading the second trip he used the usual laborers and two outside workers. (6) After the truck was loaded, he asked Rambhan to take the truck to D. 0. D. under instructions from the superior officers. (7) The words "D. O. D." in Ex. 42, the duty slip, were not entered by Avatarsing. The High Court held that the said facts found on independent evidence did not implicate the said accused in the offence and they were all consistent with his innocence. Though some of the findings give rise to suspicion we cannot say that the High Court was wrong in holding that the said facts found did not corroborate the evidence of Lawrence in implicating the accused in the offence. We, therefore, accept the finding of the High Court in regard to accused Nos. 2 and 3. In the result both the appeals fail and are dismissed. Appeals dismissed.