Supreme Court of India
R.S. Nayak vs A.R. Antulay & Anr on 17 April, 1986
Equivalent citations: 1986 AIR 2045, 1986 SCR (2) 621
Author: P Bhagwati
Bench: Bhagwati, P.N. (Cj)

PETITIONER:
R.S. NAYAK

Vs.

RESPONDENT:
A.R. ANTULAY & ANR.

DATE OF JUDGMENT17/04/1986

BENCH:
BHAGWATI, P.N. (CJ)
BENCH:
BHAGWATI, P.N. (CJ)
MISRA RANGNATH

CITATION:
1986 AIR 2045 1986 SCR (2) 621
1986 SCC (2) 716 1986 SCALE (1)745
CITATOR INFO :
RF 1988 SC1531 (143)
RF 1992 SC1701 (9)

ACT:
Criminal Procedure Code, 1973
Sections 245(1) and 246 - Whether a charge should be framed against the accused or not - Test of 'prima facie' case to be applied.
Sections 227, 239 and 245 - Comparison between.
Indian Penal Code, 1860
Sections 161 and 165 - Scope and difference between - Motive or reward for abuse of office - Relevancy of.
Sections 415 and 420 - Ingredients of Cheating explained.
Sections 383 and 384 - "extortion" - Ingredients of.
Prevention of Corruption Act, 1947, s. 4 - Presumption raised under s. 4 is a presumption of law - It will have to be drawn against an accused once acceptance of a valuable thing by him is proved.

HEADNOTE:
The respondent was at the relevant time Chief Minister of the State of Maharashtra. The appellant lodged a complaint on August 9, 1982 alleging commission of offences

by the respondent punishable under ss. 161, 165, 384 and 420 read with s. 120B, Indian Penal Ccie as also s. 5(2) read with s. 5(1)(d) of the Prevention of Corruption Act. It was alleged in the complaint that the respondent, as the Chief Minister of the State, had created seven Trusts, one of them being Indira Gandhi Pratishthan shown to be a Government Trust and that he extended favours to those who made donations to the said trusts. In all the trusts, except the Indira Gandhi Pratibha Pratishthan, the respondent, his wife, close relations and friends were associated as trustees.

622

The complaint was registered as Special Case No. 24/82 and was transferred to the High Court of Bombay for trial under an order of this Court dated Feb. 16, 1984. Fifty-seven witnesses for prosecution were examined before the Trial Judge and 43 draft charges were placed for his consideration. The prosecution examined specific witnesses with reference to the allegations supporting the draft charges and documents were also produced to support the allegations. The Trial Judge framed 21 charges against the respondent and discharged him in respect of the remaining 22 charges relating to the offence of cheating, extortion and conspiracy.

The appellant, aggrieved by the order refusing to frame charges on 22 heads by the Trial Judge, filed the present Criminal Appeal by Special Leave.

Allowing the appeal in part,

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HELD : (By the Court) 1.1 A prima facie case has been established by the prosecution in respect of the allegations for charges under ss. 120B , 161 and 165 and 420, IPC, as also under s. 5(1) read with s. 5(2) of the Act. So far as the three draft charges relating to the offence punishable under s. 384, IPC are concerned, the learned Trial Judge was right in holding that the prosecution failed to make out a prima facie case. Therefore, except in regard to the three draft charges under s. 384 , IPC, charges in respect of the remaining 19 items shall be framed. The appeal is allowed to that extent. [696 D-F]

1.2 It is still open to the Trial Judge to consider on the material available, if anyone has to be proceeded against as a co-conspirator when the charge of conspiracy punishable under s. 120-B, IPC is framed. Under s. 319 of the Code de novo trial would be necessary, but it is in the discretion of the Trial Court to take a decision as to whether keeping all aspects in view any other person should be brought in as an accused to be tried for any of the offences involved in the case. This is a matter in the discretion of the trial court. [697 F-H]

Per Ranganath Misra, J. (Bhagwati, C.J. Concurring)

2.1 The Code of Criminal Procedure contemplates

623

discharge of the accused by the Court of Sessions under s. 227 in a case triable by it, cases instituted upon a police report are covered by s. 239 and cases instituted otherwise than on police report are dealt with in s. 245. The three sections contain somewhat different provisions in regard to discharge of the accused. Under s. 227, the trial Judge is required to discharge the accused if he "considers that there is no sufficient ground for proceeding against the accused." Obligation to discharge the accused under s. 239 arises when "the Magistrate considers the charge against the accused to be groundless." The power to discharge is exercisable under s. 245(i) when "the Magistrate considers for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction." [677 B-E]

2.2 Sections 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under s. 245, on the other hand, is reached only after the evidence referred to in s. 244 has been taken. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under s. 245(1) is a preliminary one and that the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the Trial Court is satisfied that a prima facie case is made out, charge has to be framed. Therefore, in order to decide whether the order of discharge should be sustained or set aside, the Supreme Court has to consider whether on the material on record, a prima facie case has been made out on behalf of the prosecution. [677 E-G]

Mehant Abhey Dass v. S. Gurdial Singh & Ors., A.I.R. 1971 S.C. 834; State of Bihar v. Ramesh Singh, [1978] 1 S.C.R. 257; Nirmaljit Singh Hoon v. State of West Bengal & Anr., [1973] 2 S.C.R. 66; Chandra Deo Singh v. Prakash Chandra Bose, [1964] 3 S.C.R. 629; Union of India v. Prafulla Kumar Samal & Anr., [1979] 2 S.C.R. 229 and Superintendent and Remembrancer
624
of Legal Affairs, West Bengal v. Anil Kumar Bhunia & Ors ., [1979] 4 S.C.C. 274, relied upon.

In the instant case, the oral evidence is backed up by documentary evidence. Some of the relevant documents have interpolations and the inquiry relating to interpolation has not become final. It is indeed difficult at this stage to say that the evidence as a whole is inadequate to establish

the prima facie case. The learned Trial Judge, extracted at great length both the oral evidence as also the contents of documents but there was not much of analysis to justify rejection of the material. The learned Trial Judge adopted two different standards in the matter of weighing the same evidence when he agreed to frame 21 charges which were inter-linked and interconnected with the rest of the prosecution story with reference to which the draft charges had been given. If the evidence was accepted for half the number of charges relating to similar offences, there could hardly be any scope to reject the 22 draft charges. Similarly in regard to the charge of conspiracy the facts were inter-connected and there could be no justification to reject the charge even if the other persons implicated were not before the court. The reasoning given by the learned Trial Judge in support of his order of discharge in regard to the draft charges relating to ss. 161 and 165, IPC and s. 5(2) read with s. 5(1) of the Act, concerning these transactions cannot, therefore, be sustained. [683 D-H; 684 A-B]

3.1 Under s. 245(i) of the Code the requirement is that the evidence must be such which if not rebutted would warrant conviction of the accused. Under the law of evidence the concept of rebuttable presumption is well-known. Rebuttable presumptions of law are a result of the general experience of a connection between certain facts or things one being usually bound to be companion or effect of the other. The connection, however, in this class is not so intimate or so uniform as to be conclusively presumed to exist in every case; yet, it is so done that the law itself without the aid of a jury infers one fact from the crude existence of the other in the absence of opposing evidence. In this mode, the law advances the nature and amount of the evidence which is sufficient to establish a prima facie case and throws the burden of proof upon the other party; and if no opposing evidence is offered, the jury are bound to find in favour of the presumption. A contrary verdict
625
might be set aside as being against evidence. The rules in this class of presumptions as in the former have been adopted by common consent from motives of public policy and for the promotion of the general good; yet not as in the former (conclusive proof) class forbidding all further evidence but only dispensing with it till some proof is given on the other side to rebut the presumption raised. Thus, as men do not generally violate the Penal Code, the law presumes every man to be innocent; but some men do transgress it; and therefore, evidence is received to repel this presumption. [684 B-G]

3.2 The presumption raised under s. 4 of the Prevention of Corruption Act is a presumption of law which a court is bound to draw, once it is proved that the accused Government servant received or obtained a valuable thing in the

circumstances mentioned in that section. [685 E]

In the instant case, the learned Trial Judge should have proceeded to scan the evidence keeping in view the concept of rebuttable presumption. He also failed to take note of s. 4 of the Act while dealing with the charges under ss. 161 and 165, IPC as also s. 5(1)(a) and (b) of the Act. It is hoped that while dealing with the case after the framing of the charges, the learned Trial Judge will keep this legal position in mind and act accordingly. [685 F-G]

The State of Madras v. A. Vaidyanatha Iyer, [1958] S.C.R. 580 and K. Satwant Singh v. State of Punjab, [1960] 2 S.C.R. 592, referred to.

4.1 The main ingredients of the charge under s. 161, IPC are :

(i) that the accused was a public servant, (ii) that he must be shown to have obtained from any person any gratification other than legal remuneration; and (iii) that the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person. [685 H; 686 A-C]

Ordinarily, when the first two ingredients are established by evidence, a rebuttable presumption arises in respect of the third. [686 C]

626

4.2 For an offence under s. 165, IPC, the essential ingredients are : (i) the accused was a public servant ; (ii) he accepted or obtained or agreed to accept or obtain a valuable thing without consideration or for an inadequate consideration knowing it to be inadequate ; (iii) the person giving the thing must be a person concerned or interested in or related to the person concerned in any proceeding or business transacted or about to be transacted by the government servant or having any connection with the official of himself or of any public servant to whom he is subordinate; and (iv) the accused must have knowledge that the person giving the thing is so concerned or interested or related. [686 C-G]

4.3 Section 165 is so worded as to cover cases of corruption which do not come within ss. 161, 162 or 163. Indisputably the field under s. 165 is wider. If public servants are allowed to accept presents when they are prohibited under a penalty from accepting bribes, they would easily circumvent the prohibition by accepting the bribe in the shape of a present. The difference between the acceptance of a bribe made punishable under s. 161 and 165, IPC is that under the former section the present is taken as a motive or reward for abuse of office; under the latter section the question of motive or reward is wholly immaterial and the acceptance of a valuable thing without consideration or with inadequate consideration from a person who has or is likely to have any business to be transacted,

is forbidden because though not taken as a motive or reward for showing any official favour, it is likely to influence the public servant to show official favour to the person giving such valuable thing. [686 G-H; 687 A-C]

4.4 The provisions of ss. 161 and 165 IPC as also s. 5 of the Act are intended to keep the public servant free from corruption and thus ultimately ensure purity in public life. [687 C]

In the instant case, the evidence, therefore, should have been judged keeping these aspects in view. [687 C]

5. The main ingredients of the offence of extortion in s. 383, IPC are : (i) the accused must put any person in fear of injury to that person or any other person; (ii) the putting of a person in such fear must be intentional ; (iii) the

627

accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security; and (iv) such inducement must be done dishonestly. [690 E-H]

Before a person can be said to put any person to fear of any injury to that person, it must appear that he has held out some threat to do or omit to do what he is legally bound to do in future. If all that a man does is to promise to do a thing which he is not legally bound to do and says that if money is not paid to him he would not do that thing, such act would not amount to an offence of extortion. [691 A-B]

Habibul Razek v. King Emperor, A.I.R. 1924 All 197, relied upon.

In the instant case, there is no evidence at all to show that the managements of the sugar co-operatives had been put in any fear and the contributions had been paid in response to threats. Merely because the respondent was Chief Minister at the relevant time and the sugar co-operatives had some of their grievances pending consideration before the Government and pressure was brought about to make the donations promising consideration of such grievances, possibly by way of recipro-city, there is no justification that the ingredients of the offence of extortion have been made out. The evidence led by the prosecution falls short of the requirements of law in regard to the alleged offence of extortion. [691 C-D]

6.1 Cheating is defined in s. 415 of the IPC and the ingredients for that offence are : (i) there should be fraudulent or dishonest inducement of a person by deceiving him; (ii) the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or (iii) the person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and (iv) in cases covered by the

second part of the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property. [695 C-F]

6.2 Section 415 actually consists of two parts, each part dealing with one way of cheating -

628

(i) Where, by deception practised upon a person the accused dishonestly or fraudulently induced that person to deliver property to any person or to consent that any person shall retain any property;

(ii) Where, by deception practised upon a person, the accused intentionally induces that person to do or omit to do anything which he would not do or omit to do, if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. [695 G-H; 696 A]

In the instant case, the learned Trial Judge failed to analyse the evidence which he had at great length extracted keeping the proper angle of approach in view. Therefore, his conclusion is not made on a proper assessment and is not sustainable. The evidence, oral and documentary, taken together does justify the framing of a charge for the offence under s. 420, IPC. However, the position is a presumptive one open to rebuttal by the respondent. A charge under s. 420, IPC, should, therefore, be framed by the learned Trial Judge against the respondent. [696 B-D]

7. There must be an assumption that whatever is published in the Government owned paper correctly represents the actual state of affairs relating to Governmental business until the same is successfully challenged and the real state of affairs is shown to be different from what is stated in the Government publication. [693 B-C]

Harpal Singh & Anr. v. State of Himachal Pradesh, [1981] 1 S.C.C. 560, relied upon.

Per Bhagwati, C.J. (Ranganath Misra, J. concurring)

8.1 When the court is considering under s. 245 sub-s. (1) of the Code of Criminal Procedure whether any case has been made out against the accused which, if unrebutted, would warrant his conviction, it is difficult to understand as to how the court can brush aside the presumption under s. 4 of the Prevention of Corruption Act, 1947. Sub.s. (1) of s. 4 of that Act provides that where in any trial of an offence

629

punishable under 8. 161 or 165 of the Indian Penal Code or of A an offence referred to in cl. (a) or cl. (b) of sub-s. (1) of 8. 5 of that Act it is proved that an accused has accepted or obtained or has agreed to accept or admitted to obtain for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless

the contrary is proved, that he accepted or obtained or agreed to accept or admitted to obtain, that gratification or that valuable thing as a motive or reward such as is mentioned in s. 161 or as the case may be, without consideration or for a consideration which he knows to be inadequate. When the Court is called upon to consider whether a charge should be framed or not the question to which the Court has to address itself is whether the evidence led on behalf of the prosecution is such that, if unrebutted, it would justify the conviction of the accused and the court has, therefore, to examine the evidence as it stands without rebuttal and come to a conclusion whether on the basis of such evidence the court would convict the accused and where the offence charged against the accused is under s. 161 or s. 165 or cl. (a) or clause (b) or sub-s. (1) or 8. 5, the court must necessarily apply the presumption under 8. 4 while considering whether on the basis of the unrebutted evidence which is before it the court would convict the accused. Therefore, even for the purpose of considering whether a charge should be framed or not the presumption under 8. 4 must be taken into account. [632 A-G]

8.2 Sections 161 and 165 of the IPC have been enacted by the Legislature with a view to eradicating corruption in public life. The court must therefore interpret 8. 165 according to its plain language without in any manner being anxious or astute to narrow down its interpretation. Section 165 must be construed in a manner which would advance the remedy and suppress the mischief which is intended to be curbed. [634 D-E]

R.C. Jacob v. Union of India, [1963] 3 S.C.R. 800, relied upon.

8.3 Section 165 is wider than 8. 161 and an act of corruption not falling within s. 161 may yet come within the wide terms of s. 165. What 8. 161 envisages is that any
630
gratification other than legal remuneration should have been accepted or obtained or agreed to be accepted or attempted to be obtained by the accused for himself or for any other person as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, while s. 165 does not require taking of gratification as a motive or reward for any specific official action, favour or service but strikes at obtaining by a public servant of any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been or to be or likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant or having any connection with the official functions of himself or of any public servant to whom he is

subordinate or from whom any person whom he knows to be interested in or related to the person so concerned. Whereas under s. 161 it is necessary to establish that the taking of gratification must be connected with any specific official action, favour or service by way of motive or reward, no such connection is necessary to be proved in order to bring home an offence under s. 165 and all that is necessary to establish is that a valuable thing is accepted or obtained or agreed to be accepted or attempted to be obtained by a public servant from any person whom he knows to have been or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant or having any connection with the official function of such public servant and such valuable thing has been accepted or obtained without consideration or for a consideration which such public servant knows to be inadequate. [634 F-H; 635 A-E]

The reach of s. 165 is definitely wider than that of s. 161. Moreover, it is clear from illustration (c) to s. 165 that money or currency is regarded by the Legislature as a valuable thing and if it is accepted or obtained by a public servant without consideration or for inadequate consideration in the circumstances set out in s. 165, such public servant would be guilty of an offence under that section. [635 E-F]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION Criminal Appeal No. 658 of 1985.

From the Judgment and Order dated 23/24/29/30th April, 1985 of the Bombay High Court in Special Case No. 24 of 1982.

Ram Jethmalani, M.V. Katarke, Jai Singhani, Mahesh Jethmalani, K.N. Ma Madhusoodhanan Satish Maneshinde and Ms.Rani Jethmalani for the Appellants L.N. Sinha, P.P. Rao, S.B. Bhasme, R.D. Ovalekar, D.R. Gadgil, Miteen V. Pradhan, Rajendra S. Desai, V.M. Kanade, Mahesh Rajedhyaksha, P.P. Singh, A.S. Bhasme, A.M Khanwilkar and M.N. Shroff for the Respondents.

The following Judgments of the Court were delivered C BHAGWATI, C.J. I agree with the judgment about to be delivered by my learned brother Ranga Nath Misra, but there are some two or three charges in regard to which I should like to make more detailed observations since they have not been dealt fully by my learned brother and he has left it to me to consider them in some detail. Since the genesis of this appeal has been set out by my learned brother at length I do not propose to repeat what has been so ably said by him and I will confine myself only to the facts relating to the charges which are going to be dealt with by me But I may be permitted to say a few words in regard to two points which have been discussed by my learned brother in his judgment since they are of some importance and can without impropriety bear further discussion.

The first point arises out of a contention raised by the learned counsel appearing on behalf of the first respondent (hereinafter referred to as the 'respondent') that the presumption under Section 4 of the Prevention of Corruption Act 1947 applies only after a charge is framed against an accused and has no application at the stage when the court is considering the question whether a charge should be framed or not. It is said in geometry that a point has position but no magnitude, but we are constrained to observe that this point raised on behalf of the first respondent has not only no magnitude but has even no position. It is wholly without substance and indeed it is surprising that it should have been raised by the learned counsel appearing on behalf of the first respondent. When the court is considering under Section 245 sub-section (1) of the Code of Criminal Procedure whether any case has been made out against the accused which if unrebutted would warrant his conviction, it is difficult to understand as to how the court can brush aside the presumption under Section 4 of the Prevention of Corruption Act, 1947. Sub-section (1) of Section 4 of that Act provided that where in any trial of an offence punishable under Section 161 or Section 165 of the Indian Penal Code or of an offence referred to in clause (a) or clause (b) of sub- section (1) of Section 5 of that Act it is proved that an accused has accepted or obtained or has agreed to accept or admitted to obtain for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or submitted to obtain, that gratification or that valuable thing as a motive or reward such as is mentioned in Section 161 or as the case may be, without consideration or for a consideration which he knows to be inadequate. When the court is called upon to consider whether a charge should be framed or not the question to which the court has to address itself is whether the evidence led on behalf of the prosecution is such that if unrebutted it would justify the conviction of the accused and the Court has, therefore, to examine the evidence as it stands without rebuttal and come to a conclusion whether on the basis of such evidence the court would convict the accused and where the offence charged against the accused is under Section 161 or Section 165 or clause (a) or clause (b) of sub-section (1) of Section 5 the Court must necessarily apply the presumption under Section 4 while considering whether on the basis of the unrebutted evidence which is before it the court would convict the accused. We do not therefore see any substance in the contention raised on behalf of the first respondent and we must proceed to dispose of this appeal on the basis that even for the purpose of considering whether a charge should be framed or not the presumption under Section 4 must be taken into account.

The second point on which considerable controversy was raised before us related to the scope and ambit of Section 165 of the Indian Penal Code. I agree with my learned brother that it may not be desirable at this stage to define the precise ambit and coverage of Section 165 because that is a matter which will have to be considered by the Nigh Court in depth when the case goes back before the High Court and the first respondent is called upon to face his trial on the charges framed against him. But it is necessary to indicate the broad parameters of Section 165 and to emphasize the basic distinction which exists between that Section and Section

161. It may be pointed out straight away that these two sections have been enacted by the Legislature with a view to eradicating corruption in public life. We may usefully quote here the following pertinent observations made by this Court in Re Special Courts Bill which came by way of Presidential Reference and which is reported in 1979 (2) S.C.R. 476 "....As I read it, this measure is

the embryonic expression of a necessitous legislative project, which, if full-fledged, will work a relentless break-through towards catching, through the compulsive criminal process, the higher inhabitants of Indian public and political decks, who have in practice, remained 'untouchable' and 'unapproachable' to the rule of law. 'Operation Clean Up' is a 'consummation devoutly to be wished', although naive optimism cannot obfuscate the obnoxious experience that laws made in terrorem against those who belong to the top power bloc prove in action to be paper tigers. The pathology of our public law, with its class slant, is that an unmincing ombudsman or sentinel on the qui vive with power to act against those in power, now or before, and offering legal access to the informed citizen to complain with immunity does not exist, despite all the bruited umbrage of political performers against peculations and perversions by higher echelons. Law is what law says and the moral gap between word and deed menaces people's faith in life and law. And then, the tragedy - democracy becomes a casualty." "The impact of 'summit' crimes in the Third World setting is more terrible than the Watergate syndrome as perceptive social scientists have unmasked. Corruption and repression-cousins in such situations-hijack developmental processes. And, in the long run, lagging national progress means ebb ing peop1e's confidence in constitutional means to social justice. And so, to track down and give short shrift to these heavy-weight criminaloids who often mislead the people by public moral weight lifting and multipoint manifestoes is an urgent legislative mission partially undertaken by the Bill under discussion. To punish such super offenders in top positions, sealing off legalistic escape routes and dilutory strategies and bringing them to justice with high speed and early finality, is a desideratum voiced in vain by Commissions and Committees in the past and is a dimension of the dynamics of the Rule of Law..... "

The Court must therefore interpret Section 165 according to its plain language without in any manner being anxious or astute to narrow down its interpretation. Section 165 must be construed in a manner which would advance the remedy and suppress the mischief which is intended to be curbed. This was the canon of construction which was adopted by this Court in interpreting Section 165 in R.C. Jacob v. Union of India, [1963] 3 S.C.R. 800. There are a few decisions of ancient vintage which have dealt with the interpretation of Section 165 but since we are not finally laying down the true scope and ambit of Section 165 we do not propose to discuss these decisions. Suffice it to point out at the present stage that on its plain terms Section 165 is wider than Section 161 and that an act of corruption not falling within Section 161 may yet come within the wide terms of Section 165. What Section 161 envisages is that any gratification other than legal remuneration should have been accepted or obtained or agreed to be accepted or attempted to be obtained by the accused for himself or for any other person as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, while Section 165 does not require taking of gratification as a motive or reward for any specific official action, favour or service but strikes at obtaining by a public servant of any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been or to be or likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant or having any connection with the official functions of himself or of any public servant to whom he is subordinate or from whom any person whom he knows to be interested in or related to the person so concerned. Whereas under Section 161 it is necessary to establish that the taking of gratification must be connected with any specific official

action, favour or service by way of motive or reward, no such connection is necessary to be proved in order to bring whom an offence under Section 165 and all that is necessary to establish is that a valuable thing is accepted or obtained or agreed to be accepted or attempted to be obtained by a public servant from any person whom he knows to have been or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant or having any connection with the official function of such public servant and such valuable thing has been accepted or obtained or agreed to be accepted or attempted to be obtained without consideration or for a consideration which such public servant knows to be inadequate. The reach of Section 165 is definitely wider than that of Section 161. Moreover, it is clear from illustration (c) to Section 165 that money or currency is regarded by the Legislature as a valuable thing and if it is accepted or obtained by a public servant without consideration or for inadequate consideration in the circumstances set out in Section 165, such public servant would be guilty of an offence under that Section Having said this much on the interpretation of Section 165 we now proceed to examine the facts on the basis of which the High Court has declined to frame certain charges against the first respondent.

We will first deal with the 35th, 36th and 37th of the draft charges which were submitted by the learned counsel for the appellant before the High Court and on the basis of which the High Court was invited by him to frame charges against the first respondent These charges related to a transaction in which according to the appellant, a sum of Rs. 8 lakhs was paid by one Ramesh Merchant and his partners by way of contribution to Indira Gandhi Pratibha Pratishthan on 16th April 1981 as a motive for the granting of no objection certificate by the first respondent for letting out of certain premises by M/s Nanubhai Jewellers of which Ramesh Merchant and some others were partners to Indo-Suez Bank. The facts giving rise to these charges in so far as relevant may be briefly stated as follows.

There was a firm called M/s Nanubhai Jewellers which was in possession of certain ground floor premises situate at 113/ 115, Mahatma Gandhi Road, Fort, Bombay as a tenant. There were various changes in the constitution on this firm from time to time but we are not concerned with these changes in the present appeal. What is material to note is that at the relevant time this firm consisted of Mukesh Dadlani, Lal Chand Rohra, Ramesh Merchant his father and two other partners. The rent payable by this firm was originally Rs. 3000 per month but under a new agreement of lease dated 27th September 1979 the rent was raised to Rs. 15000 per month in consideration of the landlords giving to the tenant power to sub-let the premises. It seems that since 1979-80 this firm was incurring losses and was not in a position to make use of the premises for its own purposes and hence it decided to sub-let the entire premises barring about 500 sq. ft. to Indo-Suez Bank at a monthly rent of Rs. 1,24,120 and an agreement of lease was entered into between them on 12th December 1980. But it was not possible for this firm to sub- let the premises to Indo-Suez Bank without a no objection certificate from the Controller of Accommodation in view of the Bombay Land Requisition Act 1948. The partners of this firm therefore made an application to the Controller of Accommodation on 13th January 1981 pointing out that the Indo Suez Bank had approached them with a request to allow them to use the premises for the purpose of opening their branch office in Bombay and that it would be advantageous to the country to make it possible for the Indo-Suez Bank to open a branch office and requesting the Controller of Accommodation "to grant the necessary permission..... to permit the Bank to use the premises on sub-lease basis". Though

this application was dated 13th January 1981, it appears from the endorsement made on the application that it was received in the office of the Controller of Accommodation on 11th February 1981. Thereafter on 19th February 1981 an officer from the office of the Controller of Accommodation visited the premises and certain documents relating to the partnership of M/s Nanubhai Jewellers were handed over by Lal Chand Rohra and the father of Ramesh Merchant to such officer. They also handed over to such officer copies of the rent receipts for November, 1973 and November, 1980 as also a Xerox copy of the registration certificate of the firm under the Bombay Shops and Establishments Act. Ramesh Merchant several times went to the office of the Controller of Accommodation for no- objection certificate but he was told that the application was under process. Now the record shows that on 14th February, 1981 a noting was made in the file seeking a direction whether suppressed vacancy inquiry should be made to ascertain whether the premises could be requisitioned as a suppressed vacancy or whether the no objection certificate should be granted. Further inquiry was thereupon made for the purpose of determining whether there was a suppressed vacancy in respect of the premises and after such inquiry was completed a further noting was made on 2nd March 1981 recommending that in view of the facts set out in that noting "it is for orders whether we may consider the request and grant" the no objection certificate in this case. Shri Rawat, who was an Accommodation Officer, made an endorsement on the foot of his further noting pointing out that according to the inquiry made by the office no vacancy had actually occurred at any time in the premises and there was accordingly no suppressed vacancy and moreover only a part of the premises was proposed to be sub-let by the firm of M/s Nanubhai Jewellers and hence the premises could not be requisitioned as a suppressed vacancy and consequently no objection certificate might be granted. The file containing these notings thereafter went to the Additional Chief Secretary who also placed his signature below that of Shri Rawat indicating his agreement with the endorsement made by Shri Rawat. The date below the signature of the Additional Chief Secretary is a little doubtful but we can safely take it to be 2nd March F 1981 since there is an endorsement at the bottom of the page showing that the file was received in the Secretariat of the Additional Chief Secretary on 12th March 1981 and obviously it must have gone to the Secretariat to the Chief Minister after making of the endorsement by the Additional Chief Secretary. The page of the file containing the endorsement of Shri Rawat also contains in red ink an endorsement made by the first respondent and this endorsement reads "in view of "lA", "B" may be done" and below this endorsement is the signature of the first respondent and below that is the date which presently reads 16/3. We shall revert to this endorsement of the first respondent a little later when we examine the arguments urged on behalf of the parties.

Now according to the evidence of Ramesh Merchant he came to know from the staff of the office of the Controller of Accommodation in the first week of April, 1981 that file rebting to their application for no objection certificate had been forwarded to the first respondent. Ramesh Marchant knew the first respondent quite-well since he and his father had been stitching clothes for the first respondent. Ramesh Merchant therefore, after consulting his partners, went to the residence of the first respondent a day or two after he received the above information that the file had been forwarded to the first respondent. Ramesh Merchant stated in his evidence that he told the first respondent about the application for permission made on behalf of the firm of M/s Nanubhai Jewellers and requested the first respondent to sanction grant of no objection certificate stating that he and his father were partners in that firm. The first respondent stated that he knew that the file of

the firm of M/s Nanubhai Jewellers had been forwarded to him and that Lf the premises were to be given to a Bank there could be no objection to grant of a no objection certificate. The first respondent, however, asked Ramesh Merchant "to make a handsome donation to the Indira Gandhi Pratibha Pratishthan" and when Ramesh Merchant asked the first respondent as to how much he would like them to donate, the first respondent asked Ramesh Marchant to donate Rs. 10 lakhs. Ramesh Merchant thereupon pointed out to the first respondent that there was a registered agreement between the Government of India and the Government of France whereunder the Government of France had permitted the State Bank of India to open its Branch at Paris and the Government of India had consequently permitted Indo- Suez Bank to open its Branch at Bombay and he accordingly requested the first respondent "to name a reasonable amount for donation". The first respondent, according to the evidence of Ramesh Merchant considered his request sympathetically and asked him to donate Rs. 8 lakhs. Ramesh Merchant thereupon told the first respondent that he would consult his other partners and let him know. Ramesh Merchant thereafter contacted Lal Chand Pohra and other partners and told them that he had met the first respondent in connection with the grant of no objection certificate and the first respondent had demanded Rs. 10 lakhs for the no objection certificate but it was ultimately agreed that the firm of M/s Nanubhai Jewellers would pay Rs; 8 lakhs by way of donation to a Government Trust namely Indira Gandhi Pratibha Pratishthan. Lal Chand Rohra and other parties agreed to donate the amount of Rs. 8 lakhs to Indira Gandhi Pratibha Pratishthan and a cheque for Rs. 8 lakhs was accordingly issued by the partners of the firm of M/s Nanubhai Jewellers. Ramesh Merchant took this cheque to the first respondent at his residence on 16th April 1981 and on being informed that a cheque had been brought the first respondent called one of his secretaries and asked Ramesh Merchant to hand-over the cheque to him. Ramesh Merchant accordingly handed over the cheque for Rs. 8 lakhs to the Secretary. Ramesh Merchant was at this stage in his evidence asked the following question by the learned counsel appearing on behalf of the appellant.

What did the accused tell you about the NOC ? and to this question the following answer was given by Ramesh Merchant :

"The accused told me that the needful would be done in the matter."

Ramesh Merchant reiterated in cross-examination by the learned counsel appearing on behalf of the first respondent:

"After I handed over the cheque the accused stated that he will do the needful in the matter."

The no objection certificate was thereafter issued by the office of the Controller of Accommodation on 18th April 1981. On these facts the learned counsel appearing on behalf of the appellant submitted that offences under Section 161, 165 of the Indian Penal Code and Section 5(2) read with Section 5(1) (d) of the Prevention of Corruption Act 1947 were clearly made out on behalf of the prosecution so as to warrant the framing of charges for the said offences against the first respondent.

It is clear from the cross-examination of Ramesh Merchant by the learned counsel on behalf of the first respondent that the case of the first respondent was that Ramesh Merchant had not gone to visit the first respondent on either at the two occasions depose to by him nor had Ramesh Merchant offered the cheque of Rs. 8 lakhs to the Chief Minister but that the cheque of Rs. 8 lakhs was sent by the father of Ramesh Merchant directly to the Secretary, Indira Gandhi Pratibha Pratishthan along with a letter dated 16th April 1981. The learned counsel for the first respondent contended that the donation of Rs. 8 lakhs by the partners of the firm of M/s Nanubhai Jewellers to Indira Gandhi Pratibha Pratishthan had nothing to do with the grant of no objection certificate and that the two were totally distinct transactions not having any connection with each other. The order of grant of no objection certificate to the firm of M/s Nanubhai Jewellers had according to the learned counsel for the first respondent already been made by the first respondent on 16th March 1981 and for this purpose he relied on the endorsement in red ink made by the first respondent in the file relating to the grant of no objection certificate at the bottom of the page containing the endorsement of Shri Rawat. The argument of the learned counsel for the first respondent was that if the order for grant of no objection certificate had already been made by the first respondent on 16th March 1981 there could possibly be no connection between the grant of no objection certificate and the donation of Rs. 8 lakhs which came to be independently made on 16th April 1981. This argument is prima facie specious and does not appeal to us. We do not see any reason why for the purpose of considering whether a charge should be framed or not we should disbelieve the evidence of Ramesh Merchant and Lalchand Rohra. What we have to consider is whether the evidence led on behalf of the complainant in regard to this transaction is such that if unrebutted that would warrant the conviction of the first respondent. We are clearly of the view that a prima facie case has been made out on behalf of the prosecution and the evidence led before the court is such as to warrant the conviction of the first respondent unless satisfactorily rebutted.

The first question that we must consider is whether the endorsement sanctioning the grant of no objection certificate to the firm of M/s Nanubhai Jewellers was made by the first respondent on 16th March 1981 or it was made on 16th April 1981 but the figure "16/4" below the endorsement of the first respondent was at some stage tempered with and altered to "16/3" by overwriting the figure "3" over the original figure "4". This is not the stage to come to any definite finding on this question because after the charges are framed, evidence may have to be led on behalf of the prosecution for the purpose of establishing overwriting of the figure "4" by the figure "3" and the first respondent may also lead the evidence to show that there is no overwriting and the original figure always was "3". But while we are considering the prima facie case made out against the first respondent we cannot help observing that it does appear from the original endorsement in red ink made by the first respondent at the bottom of the relevant page in the file (Ex. 815(D) that figure "3" has been thickly written over another figure which was presumably "4". The possibility cannot be ruled out that the original date below the endorsement was "16/4" and the figure "4" was overwritten by figure "3" with a view to showing as if the endorsement was made on 16th March 1981. This possibility does seem to receive support from the circumstance that, as appearing from the stamped endorsement on the last page of the file (Ex. 815(D), the file was received back in the office of the Controller of Accommodation on 18th April 1981. It is a little difficult to understand that, if the first respondent made his endorsement in red ink sanctioning the grant of no objection certificate on 16th March 1981, the file should not have gone back to the Controller of Accommodation until 18th April 1981. It

is perhaps more probable that the endorsement in red ink was made by the first respondent on 16th April 1981 and immediately thereafter the file was sent back and received in the office of the Controller of Accommodation on 18th April 1981. There is also one other endorsement at the bottom of the page (Ex. 815(D) which says "Secretary has seen it" and it bears the date "18/4". All these circumstances do go to indicate prima facie that the endorsement in red ink sanctioning the grant of no objection certificate was made by the first respondent on 16th April 1981. And, if that be so, it lends considerable support to the oral testimony of Ramesh Merchant and Lal Chand Rohra.

Ramesh Merchant clearly stated in his evidence that when he met the first respondent at his residence "Varsha" on 11th or 12th April 1981 - perhaps the date was 14th April 1981 - the first respondent stated that since the premises were to be sub-let to Indo-Suez Bank there should be no difficulty in granting no objection certificate but he asked Ramesh Merchant to make a handsome donation to Indira Gandhi Pratibha Pratishthan. The context in which the demand for a handsome donation was made by the first respondent left Ramesh Merchant in no doubt that a handsome donation would have to be given by his firm in consideration of getting the no objection certificate. When asked as to how much he would like the firm of Nanubhai Jewellers to donate, the first respondent asked Ramesh Merchant to donate Rs. 10 lakhs and when Ramesh Merchant pointed out that the Government of India have permitted the Indo-Suez Bank to open its branch in Bombay and the premises were being sub-let to Indo-Suez Bank and requested him to name a reasonable figure for the donation, the first respondent considered the request of Ramesh Merchant sympathetically and asked him to donate Rs. 8 lakhs. The circumstance that Ramesh Merchant had to request the first respondent to name a reasonable amount for the donation and that the first respondent considered this request reasonably, does go to show that pressure was exercised on Ramesh Merchant to make a handsome donation as consideration for the grant of no objection certificate and the ultimate figure demanded was Rs. 8 lakhs. If the donation was being made voluntarily why should any request have been made by Ramesh Merchant to the first respondent to name a reasonable amount and where could be the question of such a request being considered sympathetically by the first respondent. Moreover, when Ramesh Merchant contacted Lalchand Rohra and his other parterns after this meeting with the first respondent, he clearly told them that the first respondent had demanded Rs. 10 lakhs for the no objection certificate but it was ultimately agreed that the firm of M/s Nanubhai Jewellers would pay Rs. 8 lakhs by way of donation to Indira Gandhi Pratibha Pratisthan. There is no reason to disbelieve the evidence given by Lalchand Rohra to this effect. Since the rent which the firm of M/s. Nanubhai Jewellers was to get from Indo-Suez Bank was phenomenal and it was more than eight times the rent payable by it to the landlord, the partners of the firm of M/s. Nanubhai Jewellers obviously did not mind paying the donation of Rs. 8 lakhs for getting the no objection certificate. The cheque for Rs. 8 lakhs was made out and according to the evidence of Ramesh Merchant, he went to the residence of the first respondent "Varsha" on the same day, namely 16 April 1981 and handed over the cheque to the Secretary as directed by the first respondent. It is significant to note that the Order sanctioning the grant of no objection certificate was made by the first respondent on the file on 16th April 1981, i.e. on the same date on which the cheque for Rs. 8 lakhs was received from the firm of M/s. Nanubhai Jewellers and the no objection was issued within two days after the receipt of the cheque. These are tell-tale circumstances which prima facie go to show that the grant of no objection certificate and the donation of Rs. 8 lakhs were closely related transactions and that one was in fact the consideration

for the other. It may also be noted that the firm of M/s. Nanubhai Jewellers had been incurring losses for the last more than two years and if that be so, it is difficult to understand why the partners of this firm should have voluntarily decided to make a donation of Rs. 8 lakhs. What altruistic motive could have inspired them to have made such a handsome donation when they themselves were incurring losses. Prima Facie, the inference to be drawn from these circumstances is irresistible and unless the first respondent can rebut this evidence, it is difficult to reject the contention of the prosecution that a prima facie case has been made out against the first respondent in respect of this transaction. It is undoubtedly true that in cross-examination by the learned counsel for the first respondent Ramesh Merchant stated that no objection certificate has been granted on the merits of the application and not as a favour to the firm of M/s Nanubhai Jewellers but this statement cannot make any difference to the correct evaluation of the evidence because whatever be the view of Ramesh Merchant as to whether the no objection had been granted to him on merits or not, it is the totality of the evidence which has to be considered and even if the firm of M/s Nanubhai Jewellers were entitled to obtain no objection certificate on merits, still the first respondent could bargain for a handsome donation as quid pro quo for granting the no objection certificate which was entirely within his power to do so.

We are, therefore, of the view that a prima facie case was made out on behalf of the prosecution against the first respondent in respect of the transaction of no objection certificate and 35th, 36th and 37th charges should have been framed against the first respondent.

That takes us to draft charges 29, 30, and 31 arising out of the donations made by M/s Hira Nandani Builders and Hira Nandani Construction Private Limited to Indira Gandhi Pratibha Pratishthan. It is necessary to state briefly the facts relating to this transaction in order to be able to decide whether a prima facie case has been made out on behalf of the prosecution against the respondent in regard to this transaction and evidence led on behalf of the prosecution is such that if unrebutted it would warrant the conviction of the respondent on these charges. These draft charges are sought to be made good on the basis of the oral evidence of the sole witness Hira Nandani PW-28 and the documentary evidence produced in the course of his deposition. We will begin by first referring to the evidence of Hira Nandani and whilst we consider that evidence we shall refer to the various documents produced in the case.

Hira Nandani was known to the respondent for more than 15 years and in fact the respondent was a family friend of Hira Nandani, having been a patient of the father of Hira Nandani who is a leading Ear, Nose, and Throat specialist in Bombay. In 1974-75 Hira Nandani entered the construction business and started a limited company called Baf-Hira Builders Private Limited. We are not concerned with this company in the present appeal. There were also two other concerns started by Hira Nandani in 1979 in course of the construction business but these are also not relevant for our purpose except that we may state the names of these two concerns, namely, Hira Nandani Constructions and Hira Nagar Constructions. In January, 1981 Hira Nandani started a partership in the name of Hira Nandani Enterprises. It is this firm which figures prominently in the history of this case. There were also four other partnership firms started by Hira Nandani in the same year and these were Hira Nagar Developers, Hira Nandani Developers, Apex Constructions and Apex Builders. There was also a private limited company floated by Hira Nandani in the name of Hira

Nandani Constructions Private Limited. These various concerns of Hira Nandani undertook construction contracts which were started sometime in 1980 and 1981. One of the construction works undertaken by Hira Nandani was in the name of Hira Nandani Enterprises and this construction work was undertaken under an agreement with Udyogik Shramik Kamgar Housing Society. It appears that in respect of the construction work undertaken by the various concerns of Hira Nandani there was a stalemate in or about April 1981 and the construction works were held up for want of cement. The concerns of Hira Nandani had received some small quantities of cement but the quantities received were wholly inadequate and no further quantities of cement were available because cement was a controlled item and unless allotment of quota of cement was made by the State Government, it was not possible for any builder to obtain cement. Now the record shows that the entire control over allotment of quota of cement was retained by the respondent with himself in his capacity as Chief Minister and no allotment could be made without his sanction or approval. Since the concerns of Hira Nandani were starved of cement and they could not proceed with the construction works undertaken by them without cement they made applications to the respondent from time to time for allotment of quota of cement. We have on record four applications dated 28th April 1981, one being Ex. 355 and 355A made by Hira Nandani Construction Private Limited, the second being Ex. 356 and 356A addressed by Hira Nagar Developers, the third being Ex. 357 and 357A addressed by Hira Nagar Constructions and the fourth being Ex. 358 and 358A addressed by Hira Nagar Enterprises. All these applications were addressed to the respondent in his capacity as Chief Minister. The application of Hira Nandani Constructions Private Limited Ex. 355 and 355A pointed out that until the date of the application the company had been allotted only 30 metric tonns of cement and requested the respondent to allot at least 250 metric tonns of cement. Similarly the application of Hira Nagar Developers Ex. 356 and 356A complained that the firm had not received any supply of cement at all and requested the respondents to allot at least 250 metric tonns of cement. So also the application of Hira Nagar Constructions Ex. 357 and 357A stated that the firm had received until the date of the application only 50 metric tonns of cement and requested the respondent to allot at least 250 metric tonns of cement. And lastly the application of Hira Nandani Enterprises Ex. 358 and 358A also pointed out that no allotment of cement had been received by them and requested the respondent that at least 100 metric tonns of cement should be allotted to them. The record shows that pursuant to the application of Hira Nandani Construction Private Limited Ex. 355 and 355A allotment of 200 metric tonns was made to the company but this allotment lapsed and the company could not obtain delivery of any quantity of cement under this allotment. Subsequently, however, another order of allotment was made on 23rd July 1981 Ex. 693 under which 100 metric tonns of cement was allotted and the company could obtain delivery of 100 metric tonns of cement under this order of allotment. The allotment of 200 metric tonns of cement was also made on the application of Hira Nagar Developers Ex. 356 and 356A but the firm could obtain only 74 metric tonns of cement under this letter of allotment and the balance lapsed. Thereafter another order of allotment was made on 23rd July, 1981 granting 25 metric tonns of cement and this quantity of cement was lifted by the firm Hira Nagar Developers. Similarly 200 metric tonns of cement was lifted on the application of Hira Nagar Construction Ex. 357 and 357A but this allotment also lapsed and Hira Nagar Construction could not obtain the delivery of any quantity out of 200 metric tonns allotted to them but in this case also a subsequent order of allotment was made on 23rd July, 1981 alloting 50 metric tonns of cement and this quantity of 50 metric tonns was lifted by Hira Nagar Construction. The same position obtained in regard to Messrs

Hira Nandani Enterprises. In the case of this concern also allotment of 100 metric tonns was made on the application Ex. 358 and 358A but this allotment lapsed because it was made in such a manner that this concern could not obtain delivery of any quantity out of 100 metric tonns allotted to it. Subsequently on the same date as in the case of the other three concerns, that is, on 23rd July, 1981 an order was made alloting 50 metric tonns of cement to Hira Nandani Enterprises and delivery of 50 metric tonns of cement was taken by this concern pursuant to the order of allotment. It will thus be seen that in the case of these four concerns, namely, Hira Nandani Construction Private Limited, Hira Nagar Developers, Hira Nagar Construction and Hira Nandani Enterprises, only 74 metric tonns of cement could be obtained prior to 4th July, 1981 and it was admitted by Hira Nandani in the course of his evidence that it was correct that till 15th June, 1981, that he had not received more than 400 metric tonns of cement against the four applications dated 28th April, 1981 Exs. 355 and 355A to 358 and 358A. It was only when as a result of further representations made to the respondent, new orders of allotment were issued on 23rd July, 1981 that some quantities of cement could be obtained by these four concerns of Hira Nandani.

We have already referred to the fact that Hira Nandani Enterprises had undertaken construction work under the agreement with Udyogik Shramik Kamgar Housing Society. On account of want of cement this construction work had almost come to a stand-still in June, 1981. Hira Nandani Enterprises had also not been able to obtain any quantity of cement in respect of the other construction work undertaken by them at Villa Parle (East) despite the application dated 28th April, 1981 made by them to the respondent. The two applications were accordingly made to the respondent on 24th June, 1981, one by Hira Nandani Enterprises, marked as Ex. 354, pointing out that in respect of the construction work at Villa Parle (East) they had till then received only 50 metric tonns of cement and requesting the respondent to allot atleast a further quantity of 50 metric tonns and the other by Udyogic Shramik Kamgar Housing Society, marked as Ex. 353, pointing out that the Society had till then received only 478 metric tonns of cement and requesting the respondent to arrange to allot atleast another 250 metric tonns. It is not clear from the record whether 50 metric tonns of cement stated in the application of Hira Nandani Enterprises to have been received by them had in fact been received or that merely on the basis of the allotment made and the price paid, a statement was made that 50 metric tonns had been received. But it is not necessary for the purpose of the present appeal to come to a finding whether 50 metric tonns had in fact been actually received by Hira Nandani Enterprises before the application Ex. 354 was made by them. It is sufficient to state that both these applications Exs. 353 and 354 were granted by the respondent and two permits were issued on 4th July, 1981, one for 50 metric tonns in favour of Hira Nandani Enterprises and the other for 200 metric tonns in favour of Udyogic Shramik Kamgar Housing Society. Now it is common ground between the parties that one metric tonn of cement would comprise 20 bags and 50 metric tonns would be equivalent to 1000 bags while 200 metric tonns would be equivalent to 4000 bags. The record shows that on 4th July, 1981 being the same date on which the two permits were issued for 50 metric tonns and 200 metric tonns respectively, two donations were made to Indira Gandhi Pratibha Pratishthan, one for Rs. 30,000 made by Hira Nandani Constructions Private Limited and the other for Rs. 1,20,000 made by Hira Nandani Builders both being concerns of Hira Nandani. The donations of Rs. 30,000 by Hira Nandani Construction Private Limited was made by means of a cheque dated 22nd June, 1981 while the donation of Rs.1,20,000 by Hira Nandani Builders was made by a cheque dated 4th July, 1981. It

was admitted by Hira Nandani that though the cheque for Rs. 30,000 dated 22nd June, 1981 was given to Indira Gandhi Pratibha Pratishthan alongwith the cheque dated 4th July, 1981 for Rs. 1,20,000. On these facts the prosecution contended that by obtaining for the benefit of Indira Gandhi Pratibha Pratishthan the two donations of Rs. 30,000 and Rs. 1,20,000 in consideration of the grant of the two permits in favour of Hira Nandani Enterprises and Udyogik Shramik Kamgar Housing Society the first respondent had committed offences under sections 161 and 165 of the Indian Penal Code, sub-sections 1(d) and (2) of section 5 of the Prevention of Corruption Act, 1947.

We shall presently proceed to consider whether these charges could be said to have been prima facie made out on behalf of the prosecution. But at this stage, it is necessary to refer to two other applications made by Hira Nandani Builders and Apex Builders, both being concerns of Hira Nandani. It seems that Hira Nandani Builders has started a new project at Varsova in May, 1981 and they needed cement for this project and they accordingly made an application dated 15th June, 1981 Ex. 648 and 648A for allotment of at least 500 metric tonns of cement. Apex Builders also made another application dated 23rd June, 1981 Ex. 649 and 649A for allotment of at least 250 metric tonns of cement and though this application was in the name of Apex Builders it was in respect of the same Varsova project. Now according to the evidence of V.T. Chari PW-41 who was at the relevant time Secretary, Food and Civil Supplies Department, the respondent mentioned to him on 24th June 1981 that one Pesi Tata would be giving to him i.e. to V.T. Chari on 25th June 1981 a set of applications for cement indicating the quantity to be sanctioned and that these proposals had his approval and therefore the Department should take action on these cases and thereafter report to the first respondent for confirmation. On the next day i.e. 25th June 1981 Pesi Tata saw V.T. Chari and handed over to him three sets of applications each with a covering statement showing the quantity asked for and the quantity to be sanctioned and according to these statements the total quantity to be sanctioned came to 9700 metric tonns. V.T. Chari thereupon made a note in the file on the same day i.e. 25th June 1981 setting out the above facts and stating that "necessary action may be taken and thereafter the papers may be submitted to C.M. through Secy. F & C.S.D and Min. F &CS." This note made by V.T. Chari in the file is Ex. 420. The endorsement at the foot of this note shows that it was addressed to the Deputy Secretary with a copy to the Minister, Food and Civil Supplies for information. It was recorded there by V.T. Chari that he had also "submitted a note separately to C.M. for confirmation of the action being taken by the Department". A note addressed to the respondent was accordingly made by V.T. Chari simultaneously and it was in the following terms :

> "C.M. may kindly recall that he had mentioned to me yesterday (24th June 1981) that Shri P.D. Tata will be giving to me to-day applications for cement indicating the quantity to be sanctioned. C.M. observed that the cases had his approval and the Deptt. should take necessary action thereon and report to C.M. for confirmation.
>
> 2. Shri P.D. Tata saw me to-day (25/6/81) and gave me 3 sets of applications with statements indicating the quantity applied for and the quantity to be sanctioned. In all there are 58 applications and the total quantity to be sanctioned comes to 9,700 metric tonns.

> 3. A copy of the 3 statements is annexed to this note.
>
> 4. Necessary action is being taken separately on the applications. The main papers will be submitted to C.M. after issue of allotment orders. C.M. may kindly see for confirmation of action being taken by the Deptt."

This note was submitted to the respondent and it is marked Ex. 421. It is the evidence of V.T. Chari that the file containing this note was returned to him on the same day, that is, 25th June 1981 and when the file came back to him, this note bore the signature of the respondent and the date in his hand-writing and V.T. Chari thereupon noted on the reverse of the note "Please keep with papers dealing with these cases" and addressed this note to the Deputy Secretary. Now the note Ex. 421 as exhibited contained the following endorsement made by the respondent :

> "'A' - Is it ? Where is 'B' ? Secy. to withdraw action and F & CS Deptt. to decide on merit as usual. I am indeed surprised at such notings."

just above his signature and date. The evidence of V.T. Chari is that this endorsement which has been marked Ex. 421A was not there at the time when the file was received by V.T. Chari from the respondent on 25th June 1981 and it was for the first time in September 1982 when R.D. Pradhan, who was then Chief Secretary, called V.T. Chari to his office and showed him the note Ex. 421 along with another note Ex. 419A that he saw the above endorsement of the respondent. The suggestion therefore clearly was that this endorsement was made by the respondent some time between 25th June 1981 and September 1982, presumably when a writ petition was filed in the High Court of Bombay challenging the allotment of quotas for cement. It is not necessary for the purpose of deciding the present appeal to come to a definite finding on the question whether this endorsement was in fact made by the respondent on 25th June 1981 or it was subsequently interpolated by him. But we are constrained to make some observations in regard to this endorsement, since the learned Judge has adversely commented on V.T. Chari in regard to his role in this affair. We do not think the learned Judge was justified in making adverse comments against V.T. Chari. If the respondent had not mentioned to V.T. Chari that Pesi Tata would be giving him a set of applications for cement indicating the quantity to be sanctioned and that these proposals had his approval and therefore the Department should take action on these cases and thereafter report to the first respondent for confirmation, it is extremely difficult to believe that V.T. Chari would have made the note Ex. 420 on the file. It would be foolhardy on the part of V.T. Chari, a senior and experienced I.A.S. Officer, to make a false endorsement on the file attributing to the Chief Minister of the State something which he never said. The note made by V.T. Chari also proceeded to state that Pesi Tata had given him 3 sets of applications each with a covering statement showing the quantity asked for and the quantity to be sanctioned and that necessary action should be taken and thereafter the papers should be submitted to the first respondent through Secretary, Food and Civil Supplies Department and Minister, Food and Civil Supplies. If the first respondent had not given him the instructions set out in the note, would V.T. Chari, if he were in his senses, ever direct the Department that the papers should be submitted to the first respondent after taking necessary action. That would be the easiest way for him to secure his exposure. Then again, if no such instructions had been given to him by the first respondent, is it possible that he would have prepared the note Ex. 421 and submitted it to the

first respondent on the same day. If V.T. Chari had decided to allot 9700 metric conns of cement to different applicants on his own, presumably with a view to obliging these applicants for consideration or even otherwise, and to palm it off on the first respondent by falsely attributing the authority to do so to the first respondent, it passes one's comprehension as to why he should have on the same day submitted note Ex. 421 to the first respondent which would expose his deception and fraud and provide an opportunity to the respondent to immediately contradict and expose him. V.T. Chari would in that event be inviting his own ruination. It is indeed difficult to attribute such irrationality and foolishness to a senior I.A.S. Officer like V.T. Chari. Moreover, it is interesting to note that if the note Ex. 421 submitted by V.T. Chari to the respondent was wrong and the respondent had not given to V.T. Chari the instructions set out in that note, would the respondent have rested content with merely making an endorsement at the foot of the note saying that he was surprised at such notings. The first respondent would have been shocked at the statement contained in the note falsely involving the respondent and dishonestly attributing to him authority which he had not given and he would have immediately called upon V.T. Chari to explain his conduct in making the note and taken action against him besides stopping the allotments of cement referred to in the the statements accompanying the note. But nothing of this sort was done by the first respondent. It it also significant to note that on 1st July 1981 two allotments orders were issued and on 2nd July 1981 a third allotment order was made allotting in the aggregate the precise quantity of 9700 metric tonns referred to in the note Ex. 421. It is unfortunate that the statements which accompanied the note Ex. 421 were not available and could not be exhibited in evidence. The case of the prosecution was that the original of Ex. 421 and the three statements accompanying that note were abstracted at some stage by the first respondent or someone on his behalf and that is the reason why Ex. 421 as produced and exhibited in court was not the original but the photostat copy which had been taken out in the secretariat before the original was lost. It is not necessary for the purpose of the present appeal to resolve this controversy raised on behalf of the prosecution and to come to a definite finding upon it. But even on the material on record, there is reason to believe that the three statements which accompanied the note Ex. 421 must have formed the basis of the three allotment orders dated 1st July, 1981 and 2nd July, 1981 part of Ex. 421, because like the statements, the allotment orders were also three in number and the aggregate quantity allotted under the three allotment orders was 9,700 metric tonns which is the same as the aggregate quantity shown in the three statements. Moreover, the application dated 15th June, 1981 Ex. 648 and 648A made by Hira Nandani Builders and the application dated 23rd June, 1981 Ex. 649 and 649A made by Apex Builders figured in the first allotment order dated 1st July, 1981 and in respect of these two applications, it was stated in the allotment order that it had been decided to allot 300 metric tonns of cement to Hira Nandani Builders and 250 metric tonns of cement to Apex Builders.

Obviously, therefore these two applications formed part of the applications which were handed over by Pesi Tata to V.T. Chari, as mentioned in Exs. 420 and 421 and the fact when it was put to Hira Nandani that these two applications were in the possession of Pesi Tata, Hira Nandani found it difficult to deny it. Furthermore the record shows that in respect of these two applications, letters of allotment of 300 metric tonns of cement to Hira Nandani Builders and 250 metric tonns of cement to Apex Builders were issued on the same day, namely, 1st July, 1981 on which the first order of allotment, part of Ex. 421 in respect of 21 applicants, including Hira Nandani Builders and Apex Builders, was made by the Food and Civil Supplies Department. It would thus appear prima facie

that Hira Nandani Builders and Apex Builders obtained 300 metric tonns and 250 metric tonns respectively of cement on applications submitted by them through the intervention of Pesi Tata.

We may now revert to the dontions of Rs. 30,000 and Rs.1,20,000 made by Hira Nandani Construction Prviate Limited and Hira Nandani Builders respectively. The case of the prosecution was that these two donations were made by the two concerns of Hira Nandani in order to obtain allotment of cement which was badly needed for the construction works undertaken by the various concerns of Hira Nandani. This was disputed on behalf of the respondent who contended that these two donations had been made by Hira Nandani Construction Private Limited and Hira Nandani Builders voluntarily and they had nothing to do with the allotment of cement to the concerns of Hira Nandani. Now there are certain salient features in regard to this transaction which in our opinion go to show prima facie that these two donations were connected with the allotment of cement to the concerns of Hira Nandani. In the first place, there is no reason why any of the concerns of Hira Nandani should have made such large donations to Indira Gandhi Pratibha Pratishthan. It was admitted by Hira Nandani that none of his concerns had made any profit and in fact he conceded in evidence that the donations made by his two concerns to the Indira Gandhi Pratibha Pratishthan "had no connection with the profits of the two concerns or of any of his other concerns." He also admitted in evidence that Hira Nandani Construction Private Limited had made a donation of only Rs. 2,422 in the calander year 1980 and a donation of only Rs. 2, 251 in the calander year 1981 and so far as Hira Nandani Builders are concerned, they had not made any donation at all and apart from this the only donations made by Hira Nandani Construction Private Limited and Hira Nandani Builders were the donations of Rs. 30,000 and Rs. 1,20,000 to Indira Gandhi Pratibha Pratishthan. It is in these circumstances prima facie difficult to understand as to what prompted Hira Nandani Construction Private Limited and Hira Nandani Builders to make the donations of Rs. 30,000 and Rs. 1,20,000 respectively to Indira Gandhi Pratibha Pratishthan when they were not making any profits at all and they had not made any substantial donations to any other charities, despite large and frequent demands on the Hira Nandani family. Moreover it is not without significance that the two donations of Rs. 30,000 and Rs. 1,20,000 were handed over to Indira Gandhi Pratibha Pratishthan on the same day, namely, 4th July, 1981 on which the permits were issued by the authorities alloting 50 metric tonns to Hira Nandani Enterprises and 200 metric tonns to Udyogic Shramik Kamgar Housing Society. When Hira Nandani was asked as to how it happened that he paid the two cheques of Rs. 30,000 and Rs. 1,20,000 on 4th July, 1981 which was also the date of the two permits, the answer given by him was that it was purely coincidental. It is true that sometimes coincidences do happen but a coincidence of this kind is sufficient to prima facie support the inference that the two donations of Rs. 30,000 and Rs. 1,20,000 were connected with the grant of the two permits. It is interesting to note that prima facie one other correlation can also be perceived between the two donations of Rs. 30,000 and Rs. 1,20,000 made by Hira Nandani on behalf of his two concerns and the quota of cement allotted under the two permits. The donation of Rs.30,000 could be said to have been worked out at the rate of Rs. 30 per bag for the permit of 50 metric tonns, that is, 1000 bags of cement while the donation of Rs. 1,20,000 could be said to have been arrived at by applying the same rate of Rs. 30 per bag in respect of the permit of 200 metric tonns, that is, 4000 bags of cement. When Hira Nandani was asked to explain how it was that for the permit of 50 metric tonns, that is, 1000 bags, he made a payment of Rs. 30,000 which worked out to Rs. 30 per bag and for the permit of 200 metric tonns, that is, 4,000 bags he made payment

of Rs. 1,20,000 which worked out to the same rate of Rs. 30 per bag, the only answer which Hira Nandani could give was that it was a coincidence. It is indeed strange that coincidences should take place in this transaction. It may also be noted and this too is not a factor without significance that the cheque for Rs. 30,000 was made out on 22nd June, 1981 but it was retained by Hira Nandani until 4th July, 1981 and it was only on 4th July, 1981 when the two permits were issued alloting quota of cement that both the cheques of Rs. 30,000 and Rs. 1,20,000 were handed over by Hira Nandani.

We, therefore, reach the conclusion that on the evidence led on behalf of the prosecution a prima facie case must be held to have been made out against the respondent in respect of the transaction of the donations of Rs. 30,000 and Rs.1,20,000 and 29th, 30th and 31st charges ought in the circumstances to have been framed against the respondent.

Then we go on to consider 23rd, 24th, 25th, 41st, 42nd and 43rd of the draft charges relating to the transactions of the National Centre for the Performing Arts (hereinafter referred to as "NCPA"). NCPA was started sometime prior to 1968 as a Centre for promotion and engagement of the performing arts. The Government of Maharashtra granted land to NCPA from Block III Backbay Reclamation area in two phases on leasehold basis. First, an area admeasuring 5 acres, that is, 20,200 sq. metres was granted under Government resolution dated 10th May 1968 and then subsequently additional area admeasuring about 3 acres, that is, 10219.4 sq. metres was granted under Government resolution dated 15th May 1970. Both the grants were on the same terms and conditions and the ground rent payable by NCPA was Re.1 per annum in respect of each of these two areas of land. It was provided that NCPA will construct on the plot necessary buildings and structures for carrying out its performances including residential quarters for essential staff working in the Centre and for visiting artists and students provided the Centre would be at liberty to make available these facilities to outside parties at such compensation as it may deem fit so long as the income from the land and buildings was appropriated for the objects of the Centre and further a sum equal to 25% of the net annual profits of the Centre was credited to the Government of Maharashtra. The Government of Maharashtra was given a right to nominate two representatives on the Council of the Centre. Thus, a plot of about 8 acres in the Backbay Reclamation area was granted to NCPA for the purpose of carrying on its activities. The Minister of Culture and the Chief Secretary to the Government of Maharashtra were both nominated ex-officio Member on the Council of NCPA.

Subsequently, with a view to enabling it to meet its operating expenses NCPA made an application to the Government of Maharashtra by its letter dated 4th March 1971 requesting the Government for permission to utilise upto one-fourth of the area granted to it for the purpose of putting up high grade shops and offices. This request of NCPA was granted by the Government of Maharashtra. By a Government resolution dated 31st October 1972, the Government granted permission to NCPA to use one-fourth area of the land for putting up high grade shops and offices on condition that 50% of the net income accruing out of the commercial user of this area would be payable to the Government of Maharashtra subject to certain conditions which are not material for the purpose of the present appeal. But, since it would take sometime for high grade shops and offices to be put up on one-fourth area of the land, NCPA applied to the Government of India for a bridging loan of Rs. 3

crores and this loan was sanctioned by the Government of India in February 1974 on the security of mortgage of three-fourths of the plot and the buildings constructed thereon. This necessitated the sub-division of the plot approximately into one fourth and three fourth and the Government of Mahrashtra accordingly agreed to grant one lease in respect of 23689.90 sq. metres of area on which auditoriums and schools of NCPA were to be built and another lease in respect of 7892.59 sq. metres on which the commercial complex might be put up. NCPA thereafter drew the first instalment of loan of Rs. 80 lakhs from the Government of India in March 1976 and carried on construction of its building on three-fourth area of the plot.

The result was that NCPA could use three-fourth area of the plot for carrying out its own purposes subject to payment of 25% of the net income of the Centre to the Government of Maharashtra while one-fourth area of the plot could be developed by NCPA for the commercial complex with a view to generating income. Now, at this time F.S.I. was 3.5 and applying it to the entire plot of about 8 acres, NCPA was entitled to build with a fairly large rentable area and on this basis NCPA prepared plans of a commercial building with rentable area of 400,000 sq. ft. But, to the great dismay and consternation of the Directors of NCPA, a Government resolution was passed an 23rd March 1978 providing that since two separate leases were given to NCPA in respect of 7,892.59 sq. metres and 23,689.90 sq. metres, that is, approximately 1/4 and 3/4 area of the plot, the construction to be carried "on the land should be with reference to the F.S.I. permissible for each individual plot separately". The consequence of this Government resolution was that on the basis of F.S.I. of 3.5, NCPA could build a commercial building having a net rentable area of only 240,000 sq. ft. instead of 400,000 sq. ft. Moreover, prior to the issue of this Government resolution, a notification was issued by the Bombay Municipal Regional Development Authority (hereinafter referred to as "BMRDA") on 19th June, 1977 reducing the F.S.I. from 3.5 to 1.33. On the basis of this new F.S.I of 1.33, the net rentable area of the commercial building which could be put up by NCPA was still further reduced to 90,000 sq. ft. instead of the required 400,000 sq. ft. These developments which took place in 1977-1978 jeopardized the very existence of NCPA.

One J.J. Bhabha was at all material times Managing trustee of NCPA and apart from him there were ten other trustees including J.R.D. Tata. When NCPA found itself in this difficult situation where it would be almost impossible for it to carry out its activities, J.R.D. Tata addressed a letter dated 1st January 1979 to the then Chief Minister requesting him to permit NCPA to construct a commercial building with a rentable area of 400,000 sq.ft. This letter was followed by meetings with various officers in which J.J. Bhabha participated alongwith one Ajit Kerkar. Now, Ajit Kerkar was not in any way officially connected with NCPA. He was the Managing Director of Indian Hotels Co. Ltd. as also Chairman of the Board of Directors of PIEM Hotels Ltd. and Taj Trade and Transport Co. Ltd. which are admittedly Tata concerns. Though Ajit Kerkar did not hold any official position in NCPA, he took an active part in the negotiations with the various officers of the Government of Maharashtra in 1979 for the purpose of obtaining relaxation of the BMRDA notification dated 19th June 1977 and Government resolution dated 23rd March 1977 so as to enable NCPA to construct a commercial building of net rentable area of 400,000 sq.ft. The fact that Ajit Kerkar and J.J. Bhabha both participated in these negotiations is clearly established by the Note dated 20th July 1979 addressed by Ajit Kerkar to J.J. Bhabha (part of Ex. 247)and the letter dated 18th July 1979 addressed by J.J. Bhabha to Minister, Advani (part of Ex.

247). It is obvious that both of them acted in unison in carrying on the negotiations for the purpose of rescuing NCPA from the precarious position in which it found itself. But, their efforts did not succeed.

When the respondent came to power as Chief Minister, efforts were renewed on behalf of NCPA to obtain the necessary relaxation which would enable it to put up a commercial complex which would generate sufficient income. Ajit Kerkar was obviously on very good terms with the respondent. He was appointed by the respondent as Chairman of a High Power Steering Committee to deal with the problem of slums and dilapidated houses and he was given an office in Mantralaya. He was also appointed a trustee of Indira Gandhi Pratibha Pratishthan on 18th October 1980. He started negotiations with the Government of Maharashtra in February- March 1981 and put forward a scheme under which the entire plot of 8 acres would be treated as covered by one lease so that the net rentable area available to NCPA for building purposes would be determinable by applying to the F.S.I. to the whole of the area of the plot instead of applying it separately to each of the two areas into which the plot was decided. The scheme provided that the commercial development of the plot would be confined to one-fourth of the area of the plot, the F.S.I. used for such development would not exceed 450,000 sq.ft., that is 1.33 for the entire plot and shops and office would be restricted to 50% of this area and the balance would be used for a hotel and the construction on the remaining three-fourth area though in excess of 1.33 for the whole plot, would be exempted from BMRDA Notification and would be "approximately 1.00 for the whole plot" so that the total F.S.I. used would be approximately 2.33 and the income of the Government of Maharashtra would be "restricted to 50% of the net income from the commercial-cum-hotel development after meeting all expenses of NCPA." The scheme also provided for making of donations to Indira Gandhi Pratibha Pratishthan. The discussions in this regard were carried on by Ajit Kerkar with Gavai (Chief Secretary), Prabhakar (Special Secretary Finance) Pradeep (Secretary, Finance) and Kapoor (Secretary, Urban Development) as also with the respondent. But, these discussions did not yield any positive results until 24th March 1981 when Ajit Kerkar prepared a Note (Ex. 229) and handed it over to Gavai in his chamber on the same day. This note set out the scheme proposed by Ajit Kerkar but it did not make any mention of the donations to be made to Indira Gandhi Pratibha Pratishthan. Some reliance was placed on behalf of the respondent on the fact that this note did not make any reference to donations to be made to Indira Gandhi Pratibha Pratishthan and it was sought to be argued that there was in fact no such talk prior to the date of this note. But this argument is futile because Ajit Kerkar clearly admitted in his evidence that in February 1981 he had discussed this scheme with the respondent, Gavai, Prabhakar, Pradeep and Kapoor and that he had made it clear to the respondent and these officers that the donee of the scheme was Indira Gandhi Pratibha Pratishthan. There can therefore be no doubt that in February 1981 the question of donations to be made to Indira Gandhi Pratibha Pratishthan was discussed between Ajit Kerkar on the one hand and the respondent and other officers on the other hand. Now as mentioned above the note Ex. 229 was handed over by Ajit Kerkar to Gavai on 24th March 1981 and following upon this note there was discussion between Ajit Kerkar and Gavai in the presence of Prabhakar on 25th March 1981 when the scheme put-forward by Ajit Kerkar was discussed. It was agreed between Ajit Kerkar on behalf of NCPA and Gavai on behalf of the Government of Maharashtra that the entire plot of 8 acres would be covered under one lease on condition that the mortgage in respect of 3/4th area of the plot is redeemed, the commercial development of the plot would be confined to 1/4th area of the plot and full FSI at the

rate of 1.33 in respect of the entire area of the plot would be available to NCPA and this would give almost 4,50,000 sq. ft. of floor space area for construction of buildings including the existing construction already made by NCPA to the extent of 95,000 sq. ft. Gavai and Prabhakar intimated to Ajit Kerkar that it may not be possible to override BMRDA Notification restricting FSI to 1.33, but that floor space area available on the basis of 1.33 FSI in respect of the entire area of the plot should be sufficient for NCPA for construction. Gavai and Prabhakar pointed out that on 1/4th area of the plot, NCPA could build a residential hotel in addition to high-grade shops and offices for which permission was already given. Ajit Kerkar agreed to this suggestion provided "not less than 50% of the area is allotted to be utilised for hotel and the balance for the purpose of shops and offices". This condition proposed by Ajit Kerkar was found acceptable to Gavai and Prabhakar. It was also agreed that the condition providing for payment of 25% of the net profit of the Centre to the Government of Maharashtra would remain unchanged and so also would the provision that 50% of the net income from the commercial complex should be paid by NCPA to the Government of Maharashtra.

Now at this meeting held on 25th March 1981 the question of making donations to Indira Gandhi Pratibha Pratishthan was also discussed as a part of the negotiations and Ajit Kerkar stated that the following donations would be made by NCPA either by itself or through others :

i) Initial donation of Rs. 1 crore within 6 months of Government's confirmation.

ii) After 3 years i.e. on completion and commissioning of the commercial complex - Rs. 25 lakhs per year.

iii) After 8 years i.e. 5 years after the completion of the commercial complex - Rs. 50 lakhs per year.

But he requested that these donations should be considered as deductible expenses while computing the net income so that 50% of the net income payable to the Government of Maharashtra should be arrived at after deducting the donations from the net income. But this request for deductibility of the donations in computation of the net income was not acceptable to Gavai and Prabhakar.

Immediately, after the aforesaid discussion between Ajit Kerkar on the one hand and Gavai and Prabhakar on the other, they all went to the respondent and informed him of the agreement arrived at with NCPA. The respondent approved and confirmed the agreement but it was made clear to Ajit Kerkar and it was agreed by him that the donations made to Indira Gandhi Pratibha Pratishthan would not be deductible as expenses of NCPA while computing its net income. Thus it was clearly agreed that donations would be made to Indira Gandhi Pratibha Pratishthan by NCPA by itself or through others but that they would not be deductible in computing the net income of the commercial complex of NCPA. The argument urged on behalf of the respondent which found favour with the learned Trial Judge was that when the respondent declined the request of Ajit Kerkar to permit deductibility of the donations made to Indira Gandhi Pratibha Pratishthan the entire scheme foundered and thereafter there was no question of making any donations to Indira Gandhi Pratibha Pratishthan. This contention of the respondent appears prima facie to be unsustainable for the following reasons.

In the first place there is a noting made by Prabhakar in the Government file relating to NCPA on 29th April 1981 part of Ex. 230 where it has been clearly recorded by him;

> "It needs to be recorded that in the meeting held first by C.S. with Shri Ajit Kerkar and latter when C.S. and Shri Ajit Kerkar explained the agreement reached to C.M. both on 25-3-81, it was clearly stated and agreed that the payments to the Indira Gandhi Pratibha Pratishthan would be after NCPA's net income was computed and were not to be considered as NCPA's expenses while computing net income."

This noting made at a time when no controversy had arisen at all must prima facie be accepted as correct. Moreover, its correctness was deposed to by Prabhakar when he was in the witness box. Ajit Kerkar of course disputed that any such agreement was arrived at between him on the one hand and Gavai Prabhakar and the respondent on the other but prima facie we are inclined to accept the testimony of Ajit Kerkar to this effect because we would prefer documentary evidence to oral evidence in case of conflict between the two. It is a trite saying that witnesses may lie but documents do not.

Secondly, it is significant to note that a donation of Rs. 1 crore was made by four Tata concerns to Nirmal Sethia Foundation which was a Foundation in which the respondent, his wife, Nirmal Sethia, his wife and Ajit Kerkar were trustees. This donation of Rs. 1 crore was made up of four cheques, one dated 31st July, 1981 for Rs. 30 lakhs issued by Indian Hotels Company Limited, the second also dated 31st July, 1981 for Rs.60 lakhs drawn by Lake Palace Hotel and Motel Private Limited, the third dated 17th August, 1981 for Rs. 50 lakhs drawn by Piem Hotel Company Limited and the fourth dated 1st September, 1981 for Rs. 10 lakhs drawn by Taj Trade and Transport Company Limited, all four being Tata concerns. It is interesting to note that these four cheques making up in the aggregate a donation of Rs. 1 crore were paid over to Nirmal Sethia Foundation within six months of the order dated 6th May, 1981 issued by the Government of Maharashtra granting relaxation asked for by NCPA, thus apparently complying with the scheme put forward by Ajit Kerkar under which the initial donation of Rs. 1 crore was to be made to Indira Gandhi Pratibha Pratishthan but, as admitted by Ajit Kerkar himself in paragraph 35 of his evidence, "NCPA did not make the proposed donation to the IGPP because the Government did not agree to exempt the entire amount as deductible expense..... We agree to pay the donations to the Nirmal Sethia Foundation because the trust agreed to exempt the entire amount under the Income Tax Act". It is thus obvious that the donation of Rs. 1 crore which was to be made to Indira Gandhi Pratibha Pratishthan within six months of the Government's confirmation under the agreement arrived at on 25th March, 1981 was diverted to Nirmal Sethia Foundation in which the respondent and his wife were trustees alongwith Nirmal Sethia and his wife and Ajit Kerkar. It is indeed difficult to understand as to why these four Tata concerns should have decided to make donations of an aggregate sum of Rs. 1 crore to Nirmal Sethia Foundation which was a newly set up Foundation without any charitable activity to its credit. It also strains one's credulity to believe that it was a mere co- incidence that the donation made to Nirmal Sethia Foundation was of Rs. 1 crore which was the identical figure of the donation agreed to be made to Indira Gandhi Pratibha Pratishthan. When Ajit Kerkar was asked as to how he happened to fix the figure of Rs. 1 crore for the donation made to Nirmal Sethia Foundation, his answer was : "I cannot say who suggested the figure of Rs. 1 crore.

There was no particular reason why the figure of Rs. 1 crore had been arived at." It is also strange that to make the figure of Rs. 1 crore a post-dated cheque for Rs. 10 lakhs was issued by Ta; Trade and Transport Company Limited. This cheque was sent to Nirmal Sethia Foundation on 23rd August, 1981 and it was dated 1st September, 1981. It is difficult to understand why Taj Trade and Transport Company Limited should have given a donation of Rs. 10 lakhs to Nirmal Sethia Foundation by a post-dated cheque when on the date of handing over of the cheque, it did not have sufficient funds in the bank. The only answer which Ajit Kerkar could give in explanation, which is rather strange conduct, was that Ta; Trade and Transport Company Limited "expected that sufficient funds would be deposited in its account by 1.9.1981". There is another circumstance which is of a baffling character - indeed it defies any rational conduct - and this circumstance is that the four cheques representing the aggregate donation of Rs. 1 crore were handed over by these four Tata concerns to Nirmal Sethia Foundation by way of donation without any resolution being passed by the Borad of Directors in that behalf and strangely enough these four cheques paid by way of donation were credited as deposits in the books of Nirmal Sethia Foundation. When examined on this point, Ajit Kerkar stated, "Initially all the four amounts were to be treated as deposits and were to be treated later as donations after obtaining the sanction of the Board of Directors". This is indeed a strange explanation which is prima facie difficult to believe. What would happen if the Board of Directors of any of these four Tata concerns were to refuse to sanction the donation. Nirmal Sethia Foundation would then have to return the amount of the donation but if this amount was already spent by Nirmal Sethia Foundation for purchasing land for the purpose of building a hospital, how would Nirmal Sethia Foundation be able to return the amount of the donation and even if the amount of the donation were returned, it would be without interest because there was admittedly no provision for payment of interest and a Tata concern making the donation would lose interest on the amount of the donation for the period during which the amount remained with Nirmal Sethia Foundation. Prima facie the entire episode relating to this donation of Rs. 1 crore to Nirmal Sethia Foundation appears to be bizarre. Obviously - and here again we are expressing our prima facie view this donation of Rs. 1 crore to Nirmal Sethia Foundation was co-related to the donation of Rs. 1 crore agreed to be made to Indira Gandhi Pratibha Pratishthan and lends support to the evidence of Prabhakar supported by his noting dated 29th April, 1981 part of Ex.

230. We would not on this material be unjustified in taking the view that it was in pursuance of the agreement arrived at on 25th March, 1981 that the donation of Rs. 1 crore was made and since income tax exemption was not available in case of donation to Indira Gandhi Pratibha Pratishthan, this donation of Rs. l crore was made to Nirmal Sethia Foundation.

It is therefore clear that though Gavai, Prabhakar and the respondent did not agree to the deductibility of the donations to be made to Indira Gandhi Pratibha Pratishthan in computing the net income of NCPA from its commercial complex, it was definitely agreed on 25th March, 1981 that donations, as stated above, would be made by NCPA by itself or through others to Indira Gandhi Pratibha Pratishthan. It appears that since the Government of Maharashtra was not agreeable to override BMRDA notification restricting FSI to 1.33 as also to permit the donations to Indira Gandhi Pratibha Pratishthan to be deducted in computing the income of NCPA, Ajit Kerkar informed J.J. Bhabha, as stated by him in paragraph 19 of his deposition that his scheme was not acceptable to the Government and that Bhabha should therefore move in the matter. J.J. Bhabha accordingly

addressed a letter dated 1st April, 1981 Ex. 216 to Gavai. mis letter was collected from J.J. Bhabha's office by Sen Gupta, Executive Assistant of Ajit Kerkar in order that Ajit Kerkar should be able to personally hand over to Gavai and pursue the matter with the Government. The letter dated 1st April, 1981 Ex. 216 was accompanied by a note prepared by J.J. Bhabha. When Ajit Kerkar got this letter dated 1st April, 1981 Ex. 216 alongwith the note, he dictated to Sen Gupta an endorsement to be made at the foot of the note and his endorsement was written out by Sen Gupta in his own handwriting as per the dictation of Ajit Kerkar. This endorsement was written down by Sen Gupta in the morning of 10th April, 1981 and it is marked 'B' at the foot of Ex. 216. It is significant to note what this endorsement said :

> "The NCPA by itself or through others, will arrange to make the following donations to Indira Pratibha Pratishthan, an allied organisation involved in giving similar support to the performing and non performing acts; one time within six months of Govt.'s confirmation Rs. 1 crore three years after i.e. On completion and commissioning of the commercial complex. RS. 25 lakhs per year eight years after five years after the completion of the commercial complex, RS. 50 lacs per year. The above donations may be considered as NCPA's expenses, while computing NCPA's net income."

Ajit Kerkar again tried to persuade the Government of Maharashtra that the above donations to be made to Indira Gandhi Pratibha Pratishthan should be considered as expenses of NCPA while computing its net income. But obviously this effort also did not succeed. Indeed it would have been difficult for the Government of Maharashtra to agree to allow the donations to Indira Gandhi Pratibha Pratishthan to be considered as expenses of NCPA while computing 50 per cent of the net income of NCPA payable to the Government for two very good reasons. Firstly, it would be a fraud on the Government because than 50 per cent of the donations to Indira Gandhi Pratibha Pratishthan would be really paid by the Government and secondly it would have to be expressly stated in the official documents that the donations were deductible in computing the net income of NCPA and that would have exposed the real nature of the transaction, namely, that the donations were paid for getting a favour from the respondent. Neither Gavai and Prabhakar nor the respondent therefore accepted this suggestion of Ajit Kerkar. But the other part of the agreement reached on 25th March, 1981 was placed before the Cabinet alongwith the Cabinet Note and it was approved by the Cabinet. The draft of the Government resolution embodying this agreement was submitted by the Under Secretary alongwith his note which was approved by Pengulkar, Deputy Secretary. This note which is dated 16th April, 1981 and which is part of Ex. 230 referred to the J.J. Bhabha's letter dated 1st April, 1981 Ex. 216 and apointed out that in that letter NCPA had undertaken that it would itself or through others arrange to make donations to Indira Gandhi Pratibha Pratishthan, as set out in the endorsement marked 'B' Ex. 216. It was stated in this note that NCPA had requested that these donations may be considered as expenses of NCPA while computing its net income. Obviously reference was made by Pengulkar in this note to the request made by NCPA in the letter of J.J. Bhabha dated 1st April, 1981 Ex. 216 because Pengulkar was seeking instructions of his superiors in regard to this request which was rejected on 25th March, 1981 but restored on 10th April, 1981. It was when this note of Pengulkar came to Prabhakar that he recorded the note dated 29th April, 1981 marked 'B' to which we have referred in some detail. The

note of Prabhakar dated 29th April, 1981 marked 'B' supported by the oral evidence of Prabhakar clearly establishes that NCPA had agreed to make donations set out in the endorsement marked 'B' in Ex. 216 to Indira Gandhi Pratibha Pratishthan and that it was agreed that the donations so made would not be treated as deductible expenses.

It seems that Sen Gupta and Shakur Khan, representatives of NCPA again made another effort to persuade Gavai and Prabhakar to agree that donations to be made to Indira Gandhi Pratibha Pratishthan should be allowed to be deducted as expenses before determining the net income of the commercial complex of NCPA. But as appears clearly from the note of Gavai dated 30th April, 1981 part of Ex. 230, Gavai and Prabhakar clearly pointed out to Sen Gupta and Shakur Khan that NCPA would have to pay these donations after 50 per cent of the net income was paid to the Government and that such donations cannot be treated as expenses. This note of Gavai also establishes beyond doubt that NCPA had agreed to pay donations to Indira Gandhi Pratibha Pratishthan and their request for treating the donations as deductible expenses was turned down by the Government of Maharashtra. The draft Government resolution for giving effect to the Cabinet decision of 10th April, 1981 was approved by the Chief Secretary and the Government resolution dated 6th May, 1981 was issued by the Government of Maharashtra directing that :

i) The entire plot of land admeasuring 30,419 sq. mtrs. should be covered under one single lease provided that the mortgage in respect of 3/4th of the plot is redeemed. National Centre for the Performing Arts will also have option to extend the existing mortgage with the Government of India to cover the entire property.

ii) The National Centre for the Performing Arts be allowed to utilise the F.S.I. at the currently permissible rate of 1.33 over the entire plot. The area so covered would, however be inclusive of the existing construction already made by the N.C.P.A. to the extent of about 95,000 sq.ft.

iii) The NCPA be permitted to build a hotel of international standard in the complex and offices and shops ancilary and germane to such Hotel Establishment only. They may by themselves or through any other parties develop and operate the commercial complex.

iv) The NCPA will be required to pay to Government 25% of the net annual profits of the Centre and also 50% of the net income from the properties put to commercial use, in terms of original Government Resolution. J.J. Bhabha had to admit in his evidence that by reason of this Government resolution the impediment in the way of NCPA was completely removed and according to the evidence of Prabhakar, the benefit which NCPA received by reason of this Government resolution could be estimated to be in the neighbourhood of several crores.

We must also refer to the donations aggregating to Rs. 26 lakhs made by Indian Hotels Company Limited on 31st March, 1981. These donations were made to three trusts floated by the respondent namely Mahasle Taluka Pratishthan, Ambet Pratishthan and Shri Verdhan Matadarsangh Pratishthan. Rs. 6 lakhs were donated to Ambet Pratishthan, Rs. 10 lakhs to Mahasala Taluka Pratishthan and Rs. 10 lakhs to Shri Verdhan Matadarsangh Pratishthan. There was also one other trust floated by the respondent namely Raigarh Pratishthan. These four trusts were drafted by

Sheroo Kanuga PW-16 and in all these four trusts the respondent, his wife and Sheroo Kanuga were the only trustees and it was provided in each of these four trusts that any vacancy arising the office of trustee would be filled up from the family of the respondent. It is the evidence of Sheroo Kanuga that the drafts of these four trust deeds were prepared by him on the basis of the trust deed of Indira Gandhi Pratibha Pratishthan and the respondent had not examined these four trust deeds but merely the broad features were explained to the respondent. Now the trust deeds in respect of these four trusts were executed by the trustees on 20th March 1981 and they were lodged with the Charity Commissioner on 23rd March 1981. On the application of Sheroo Kanuga compliance with Rule 7A of the Maharashtra Public Trusts Rules was dispensed with even though it was legally not permissible to do so. Sheroo Kanuga also obtained certificates from the Income-tax Authorities exempting donations made to these four trusts. Sheroo Kanuga explained in his evidence that all this had to be rushed through in order to enable donations to be taken from the potential donor companies before 31st March 1981. He admitted that Indian Hotels Company Limited was the company which was expected to give donations before 31st March 1981. He went on to say that the respondent had sent to him one Jadav who was a labour leader in the Taj Group of Companies in Bombay and he heard from Jadav that Indian Hotels Company Limited intended to make donations before 31st March 1981. Indian Hotels Company Limited accordingly by a Resolution of its Board of Directors dated 31st March 1981 approved of donation of Rs. 6 lakhs to Ambet Pratishthan, Rs. 10 lakhs to Mahasle Taluka Pratishthan and Rs. 10 lakhs to Shri Verdhan Matadarsangh Pratishthan and cheques were paid to Sheroo Kanuga on behalf of these three trusts.

Now it does appear prima facie that these 3 donations aggregating Rs. 26 lakhs were paid by Indian Hotels Company Limited pursuant to some understanding reached in the course of negotiations leading to the agreement dated 25th March 1981. We fail to appreciate what possible reason could have prompted Indian Hotels Company Limited to make these donations aggregating to a large figure of Rs. 26 lakhs to the three trusts of the respondent. It is significant to note that these three trusts along with the 4th trust of Raigarh Pratishthan were executed and registered and income-tax exemption certificates were obtained in the course of just 10 days before the donations came to be made to them by Indian Hotels Company Limited. The extra ordinary speed with which these four trusts were created followed immediately after the making of donations by Indian Hotels Company Limited clearly show prima facie of course, that there must have been some understanding between Ajit Kerkar and the respondent.

The only explanation offered by Ajit Kerkar for the making of these donations to the three trusts was that Jadav who was a labour leader in the Taj Group of Companies was pressing him to do something for improving the conditions in the Konkan Region. Ajit Kerkar also relied on a letter dated 15th January 1981 said to have been addressed to him by Jadav. The case of Ajit Kerkar was that it was on account of the pressure exerted by Jadav on behalf of over 600 employees working in the Taj Group of Hotels who hailed from Konkan Region that Indian Hotels Company Limited decided to make these donations to the three trusts of the respondent. This story put forward by Ajit Kerkar prima facie does not appear to be true. If Jadav was pressing on behalf of the employees of the Ta; Group of Hotels for doing something for the families of the employees in the Konkan Region it is difficult to see why no donations or contributions were made by Indian Hotels Company Limited to any other trusts such as Konkan Unnati Mitra Mandal prior to 25th March 1981.

Moreover we fail to appreciate why the employees in the Taj Group of Hotels should be so keen in securing development of the Konkan Region instead of demanding improvement in their own living conditions in Bombay. Moreover, the minutes of the meeting of the Board of Directors of Indian Hotels Company Limited held on 31st March 1981 do not bear out the story put forward by Ajit Kerkar that it was at the instance of Jadav that these donations came to be made. What is stated in the minutes of the meeting is as follows :

> "The Managing Director reported to the Board that over 600 employees working in Grades I to V in the Taj Mahal and Taj Mahal Intercontinental Hotels, Bombay, and who hail from the Konkan Region, had A approached the Managing Director to contribute amounts to certain public charitable trusts recently established for the purpose of undertaking programmes of rural development in the rural areas of the Konkan Region. The Managing Director further reported that the Trustees of the Trusts were very eminent public personalities and the trusts had been issued certificate of exemption of tax under Sec. 15CCA of the Income- tax Act, 1961, pursuant to which donations to the Trusts would be fully exempt from tax in the hands of the donors. The names of the Trusts are under :
>
> (i) Ambet Pratishthan
>
> (ii) Shrivardhan Matadarsangh Pratishthan
>
> (iii) Mhasale Taluk Pratishthan".

It is difficult to understand as to how over 600 employees working in the Ta; Group of Hotels suddenly came to know must a little prior to 31st March 1981 that three trusts had been floated by the respondent when they were executed and registered only a few days before that. How is it that within 4 or 5 days over 600 employees of the Ta; Group of Hotels came to know about the existence of these trusts and how did they come to know that these 3 trusts were established for the purpose of undertaking programmes of rural development in the rural areas of Konkan Region. It is also stated in the minutes that Ajit Kerkar in his capacity as the Managing Director reported that the trustees of these 3 trusts were very eminent public personalities. We wonder whether the respondent's wife and Sheroo Kanuga could be said to be "very eminent public personalities". It Is also strange that though a large sum of Rs. 26 lakhs was being paid by way of donations, J.J. Bhabha did not even bother to inquire as to who were the eminent public personalities who were trustees of these three trusts. It is prima facie difficult to accept the explanation offered by Ajit Kerkar. We do not think we would be unjustified, on the material on record, to take the prima facie view that these donations of Rs. 26 lakhs were also connected with the negotiations which took place on 25th March 1981 between Ajit Kerkar on the one hand and Gavai and the respondent on the other.

We must therefore hold that a prima facie case has been made out on behalf of the prosecution for framing 23rd, 24th, 25th, 41st, 42nd and 43rd draft charges against the respondent. The learned Trial Judge in our opinion fell into an error in discharging the respondent in respect of these charges.

Before we close we may make it clear that we have examined the evidence on record merely for the purpose of deciding whether the evidence is of such a nature that, if unrebutted, it would warrant the conviction of the respondent. It will be open to the respondent to rebut this evidence and to make out his defence when the trial proceeds against him on the charges already framed by the learned Trial Judge and the additional charges which we have directed to be framed against him.

RANGANATH MISRA, J. This appeal by special leave is directed against the order of a learned Single Judge of the Bombay High Court dated April 30, 1985, refusing to frame charges on 22 heads while framing charges under 21 other heads This litigation has had a chequered career. A short account of the events relevant for the disposal of this appeal may now be indicated.

The appellant, R.S. Nayak, filed a petition of complaint on September 11, 1981, in the Court of the Chief Metropolitan Magistrate, Esplanade, Bombay, alleging commission of several offences by the respondent and some other persons. The learned Chief Metropolitan Magistrate declined to take cognizance of the offences punishable under sections 161 and 165, I.P.C. and Section 5(2) of the Prevention of Corruption Act (II of 1947) ('Act' for short) without appropriate sanction as the respondent was, at the relevant time, holding the office of Chief Minister of the State of Maharashtra. Several legal proceedings were taken thereafter in regard to the necessity of sanction. Ultimately, however, the appellant lodged a fresh complaint on August 9, 1982, alleging commission of offences by the respondent punishable under ss. 161, 165, 384 and 420 read with s. 120B, I.P.C. as also s. 5(2) read with s. 5(1)(d) of the Act. This complaint came to be registered as Special Case No. 24/82 and was transferred to the High Court of Bombay for trial under an order made by a Constitution Bench of this Court on February 16, 1984, in R.S. Nayak v.A.R. Antulay, [1984] 2 S.C.C. 183. This Court directed :

> "Therefore, Special Case No. 24/82 and Special Case No. 3/83 (a similar complaint filed by one P.B. Samant against the respondent) pending in the Court of the Special Judge, Greater Bombay, Shri R.B.Sule, are withdrawn and transferred to the High Court of Bombay with a request to the learned Chief Justice to assign these two cases to a sitting Judge of the High Court"

This Court in a separate judgment delivered on the same day in A.R. Antulay v. Ramdas Sriniwas Nayak & Anr.,[1984] 2 S.C.C.500, held :

> "…. When cognizance is taken on a private complaint or to be precise, otherwise than on a police report, the Special Judge has to try the case according to the procedure prescribed for trial of warrant cases instituted otherwise than on police report by a Magistrate (sections 252 to 258 of 1898 Code of Criminal Procedure) Section 252 requires that when accused is brought before a Court, the Court shall proceed to hear the complainant and take all such evidence as may be produced in support of the prosecution. Accused has a right to cross-examine complainant and his witnesses. If upon considering the evidence so produced, the Court finds that no case against the accused has been made out, which, if unrebutted, would warrant his conviction, the Court shall discharge the accused (section 253 ibid). If, on the other hand, Court is of

> the opinion that there is ground for presuming that the accused has committed an offence, which the Court is competent to try, a charge shall be framed in writing against the accused..... "
>
> (emphasis supplied) Pursuant to these judgments the case was posted for trial before Khatri, J. of the Bombay High Court. The trial opened before Khatri, J. on April 9, 1984, and 16 witnesses were examined before him by July 27, 1984. Then followed the dispute relating to fabrication of the public records, produced in the Court. Khatri, J. ordered inspection of the files as also an inquiry into the allegations. By an order dated April 23, 1984, he found that the prosecution allegations against the respondent of tampering with the files by removing and interposing certain documents and interpolating endorsements on some other documents were not well-founded. The prosecution, thereupon, applied for transfer of the case to some other Judge. That was refused but on the request of Khatri, J. that he may be relieved of trying the case, the learned Chief Justice nominated Mehta, J., another Judge of that court as the trial Judge. Fortyone more witnesses were examined before Mehta, J. and after examination of 57 witnesses in all for the prosecution, the trial Judge was invited to consider the framing of charges.

Fortythree draft charges were placed for his consideration. By the impugned order the learned Trial Judge framed 21 charges and refused to frame the remaining 22 charges proposed by the prosecution and made an order of discharge in respect of those charges. It is this order of discharge relating to 22 charges which is assailed by the complainant in this appeal.

The respondent, a Barrister by profession, entered into politics and was for some time Minister of Law in the State of Maharashtra and following the general election in 1980, came to be the Chief Minister of that State up to January 20, 1982. The appellant in his complaint petition named the respondent as the 1st accused and mentioned "others known and unknown" as the remaining accused persons. He alleged in the petition of complaint that between August 1980 and September 1981 when respondent was functioning as Chief Minister, he retained to himself the power to deal with the following matters :

> (1) The allotment of cement quota and distribution of cement;
>
> (2) Supply and sale of industrial alcohol, issue of licenses for wholesalers and retailers dealing in country liquor and Indian made foreign liquor;
>
> (3) Control of co-operatives and in particular the sugar co-operatives;
>
> (4) Administration of urban land ceiling law, restriction of F.S.I. and exemptions therefrom and in fact he himself exercised these powers of the State.

During this period seven Trusts were created by the respondent as per the following particulars : Serial No. Name of the Trust Date of Registration

1. Indira Gandhi Pratibha Pratishthan(IGPP) 18.10.80

2. Nirmal Sethia Pratishthan (NSPP) 29.12.80

3. Konkan Unnati Mitra Mandal (KUMM) 17.03.81

4. Raigad Zila Pratishthan (RZP) 25.03.81

5. Srivardhan Matadhar Sangh Pratishthan 25.03.81 (SMSP)

6. Mhasale Taluka Pratishthan (MTP) 25.03.81

7. Ambet Pratishthan (AP) 25.03.81 It is the prosecution case - and there is no dispute that Srivardhan located in the District of Raigad was the Assembly Constituency of the respondent. Konkan is the region in which the District of Raigad is located. The respondent belonged to village Ambet which is part of Mhasale Taluka in Raigad District. The five Trusts appearing against items 3-7 above were thus intended to place ample funds at the disposal of the respondent and provide means and resources for his political aggrandisement. Nirmal Sethia Pratishthan was created in the name of a friend of the respondent. In all these six Trusts the respondent, his wife, close relations and friends were associated as Trustees. So far as IGPP is concerned, the respondent represented that the State Cabinet had taken a decision on October 6, 1980, to create the same. On October 7, 1980, the respondent at a Press Conference made a declaration to this effect and in official publications also this fact was duly publicised. It is the prosecution case that the late Smt. Indira Gandhi, the then Prime Minister, had never agreed to have her name associated with the Trust which came to be registered with the Charity Commissioner on October 18, 1980. Though it was not a Government Trust and Smt. Gandhi had not agreed to her name being associated with it, the respondent personally and through others gave a lot of publicity representing as if these were facts with a view to inducing people to believe that IGPP was a Government Trust and the late Prime Minister had agreed to associate her name with that Trust. These representations were made with a view to creating an appropriate impact on the mind of the people at large. According to the prosecution, as a fact, Mrs. Gandhi had not consented to associate her name with the Trust and that fact was disclosed on the floor of the Lok Sabha by the then Defence Minister on behalf of the Prime Minister. It is on record that her name was deleted and the Trust later came to be known only as Pratibha Pratishthan.

As already stated, 43 draft charges were placed before the learned Trial Judge on the basis of the evidence of 57 prosecution witnesses and a large volume of documents. 43 draft charges were divided into six groups for convenience of consideration by the learned Trial Judge. These six heads with reference to the specific allegations and the particulars of the draft charges are shown below: Serial No. Allegation Offence alleged Charge No.

1. Conspiracy 120B, IPC 1

2. With reference to Sugar Co-operatives :

(a) Shetkari Sahakar Sakhar Karkhana	165,384,420,IPC	2-4
(b) Warna	-do-	5-7
(c) Panjara	-do-	38-40
3. (a) National Centre for Performing Arts (NCPA)	161 & 165, IPC 5(2) read with 5(1) of the Prevention of Corruption Act	23-25
(b) Indian Hotel Co Ltd.	161IPC,165, 5(2) read with 5(1) of the Prevention of Corruption Act	41-43
4. Nanubhai Jewellers (F.S.I)	161IPC,165, 5(2) read with 5(1), of Corruption Act	33,35
5. Industrial Alcohol	-do-	32,34
6. Cement Allotments	-do-	8-22,
7.transactions		26-31.

The prosecution examined specific witnesses with reference to the allegations supporting the draft charges. Similarly, documents were also produced to support the allegations. The learned Trial Judge, who was required in law to state the reasons if he discharged the accused, in an unusually long order extracted the evidence of witnesses at length as also the contents of the documents and framed 21 charges while discharging the respondent in respect of the remaining 22. The prosecution filed an application on July 5, 1984, Ext. 214-A, disclosing the names of the other accused persons and those names were :

1. Mr. Ajit Kerkar, PW. 44;

2. Mr. P.G. Gavai, Chief Secretary to the Maharashtra Government at the relevant time and a Trustee of the IGPP;

3. All officers of the State Government of Maharashtra who participated in the issue of various Government orders knowing that the same were being issued for a consideration;

4. Officers of the Sugar Directorate who used official pressure for collection of money from the Sugar Co-operatives and Joint Stock Companies under instructions of the respondent;

5. Mr. Pessi Tata, since dead, who negotiated several transactions relating to alcohol

and cement allocations ;

6. Mr. N.M. Tidke, Minister of Co-operation.

Admittedly, by July 5, 1984, the trial had already begun and several witnesses for the prosecution had already been examined.

The learned Trial Judge did not accept the prosecution case regarding the offence of cheating and extortion. Similarly, the charge of conspiracy was not accepted. The learned Trial Judge framed 21 charges in respect of six transactions relating to cement and one relating to industrial alcohol for offences under ss. 161 and 165, IPC and s. 5(2) read with s. 5(1)(d) of the Act. For these 7 transactions, 21 charges in all were framed, 3 charges for each transaction.

As pointed out by the Constitution Bench in the judgment to which reference has been made, the relevant sections of the Code of Criminal Procedure ('Code' for short) for the trial of a case of this type are sections 244, 245 and 246. Section 245(1) provides :

> "If upon taking of the evidence referred to in s. 244, the Magistrate considers, for reasons to be recovered, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him."

While section 246(1), on the other hand, requires :

> "If when such evidence has been taken or at any previous stage of the case the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter which such Magistrate is competent to try and which in his opinion should be adequately punished by him, he shall frame in writing a charge against the accused."

The Code contemplates discharge of the accused by the Court of Sessions under s. 227 in a case triable by it; cases instituted upon a police report are covered by s. 239 and cases instituted otherwise than on police report are dealt with in s. 245. The three sections contain some what different provisions in regard to discharge of the accused. Under s. 227, the trial Judge is required to discharge the accused if he 'considers that there is not sufficient ground for proceeding against the accused.' Obligation to discharge the accused under s. 239 arises when "the Magistrate considers the charge against the accused to be groundless." The power to discharge is exercisable under s. 245(1) when "the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction..." It is a fact that ss. 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under s. 245, on the other hand, is reached only after the evidence referred to in s. 244 has been taken. Not-withstanding this difference in the

position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under s. 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial Court is satisfied that a prima facie case is made out, charge has to be framed.

In Mahant Abhey Dass v. S. Gurdial Singh & Ors., A.I.R. 1971 S.C. 834, this Court in case instituted on complaint applied the prima facie test. In State of Bihar v. Ramesh Singh, [1978] 1 S.C.R. 257, this Court again pointed out that the standard of test and judgment which is to be finally applied before recording a finding regarding guilt or otherwise of the accused, is not to be applied at the stage of deciding the matter under s. 227. It was further observed :

> "If the evidence which the prosecution proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross- examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But, if on the other hand, it is so at the initial stage of making an order under s. 227 or s. 228, then in such a situation ordinarily and generally, the order which will have to be made will be one under s. 228 (charge to be framed) and not under s. 227 (of discharge)".

Untwalia, J. who spoke for the Court in that case, quoted with approval the view expressed by Shelat, J. in Nirmaljit Singh Hoon v. State of West Bengal & Anr., [1973] 2 S.C.R. 66, and what had been said in yet another earlier decision of the Court in Chandra Deo Singh v. Prakash Chandra Bose, [1964] 3 S.C.R. 629. In the case of Union of India v. Prafulla Kumar Samal & Anr., [1979] 2 S.C.R. 229, (a decision to which the trial Court referred), this Court was dealing with a case involving allegations relating to offences punishable under s. 5(2) read with s.5(1)(d) of the Act and s. 120-B, IPC as here. Fazal Ali, J. indicated that the Court has power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. In Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunia & Ors.,[1979] 4 S.C.C. 274, a three Judge Bench of this Court said:

> "At this stage, as was pointed out by this Court in State of Bihar v. Ramesh Singh, (supra), the truth, veracity and the effect of the evidence which the prosecution proposes to adduce are not to be metieulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied. At this stage, even a very strong suspicion founded upon materials before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged may justify the framing of charge.. "

The language of sub-s. (1) of s. 245 also places the matter beyond dispute by using the same test as suggested by Untwalia, J., in the case of Ramesh Singh, (supra).

The use of the words "if, upon taking of the evidence referred to in s. 244" in sub-s. (1) of s. 245 is suggestive of the statutory intention that until "all such evidence as may be produced in support of the prosecution" is taken, the stage for judicial consideration as to whether charge is to be framed is not reached. Now it is a fact that several witnesses named by the prosecution still remain to be examined in the instant case but no grievance was made before us by the appellant's counsel that the trial Judge had acted wrongly in taking up the question of framing of charges prematurely.Obviously this complaint could not be made since after 57 witnesses had been examined it was the prosecution itself which invited the learned Trial Judge to take up the matter of framing of charges.

Admittedly, the witnesses examined for the prosecution have been cross-examined and in the case of some, at great length. There is no scope for doubt that the rebuttal case envisaged in s. 245(1) of the Code is fairly clear from the cross-examination of prosecution witnesses as also from the documents exhibited before the Court, apart from direct evidence being led by the defence independently. Under the scheme of the Code there is no scope for the accused to lead defence evidence until the prosecution is closed and the examination of the accused under s. 313 of the Code is over. With the amendment of the Code of 1898 in 1955 and under the new Code of 1973 the procedure relating to all varieties of criminal trials, excepting warrant cases on private complaints, has been simplified. The procedure in respect of trials according to warrant procedure in private complaints, however, continues to be cumbersome and time-taking and it is for Parliament to simplify the procedure for such cases keeping all aspects in view.

Lengthy arguments were advanced both by Mr. Jethmalani for the appellant and Mr. P.P. Rao for the respondent with reference to the evidence. When an attempt was made by learned counsel on both sides to present an analysis of the evidence and criticism was advanced by Mr. Jethmalani against the reasons given by the trial Judge and support was indicated by Mr. Rao to such reasons, we indicated to Mr. Rao that if we went into the matter at length even for the prima facie purpose and indicated conclusions it might embarrass the respondent in, his defence even in respect of the charges framed by the trial Court. In view of these observations made in course of the hearing, a written statement on behalf of the respondent was filed on November 5, 1985, signed by the respondent and his counsel. The relevant portion of the said statement reads thus :

> "Since some charges have already been framed by learned Trial Judge with respect to offences under ss. 161 and 165, I.P.C. and s. 5(1)(d) read with s. 5(2) of the Prevention of Corruption Act and the ingredients of the offence under s. 165, I.P.C. have not been specifically adverted to in the main judgment and the respondent has in any event to argue before the trial Court regarding the scope as well as the ingredients of the offences under ss.161 and 165, I.P.C. On which there is not much of case law and it involves appreciation of the scheme of the relevant provisions of the I.P.C. as well as of the Prevention of Corruption Act, the respondent is willing to face trial straightaway in respect of A not only the charges already framed but also on the draft charges in so far as they involved the offences alleged under ss. 161 and 165,

I.P.C. and s. 5(1)(d) read with s. 5(2) of the Prevention of Corruption Act and the charge of conspiracy relating thereto..... "

When such a statement was filed, we pointed out to Mr. Rao that while in the trial Court on the basis of such a stand charges could straightaway be framed in regard to those offences named in the statement in the appeal unless the order 3 of discharge made by the trial Court is vacated and the reasons advanced by the trial Judge are set aside, it would not be proper for this Court in exercise of its appellate jurisdiction to direct that charges be framed. It was further pointed out that a direction to frame charges on the basis of the statement filed has to be on the footing that the prosecution evidence in support of the charges was such that unless rebutted, the respondent would liable to be convicted. This observation made by us was merely a restatement of the legal position and was not meant to prejudice the respondent in any manner. But it cannot be disputed that in order to decide whether the order of discharge should be sustained or set aside, we have to consider whether on the material on record, a prima facie case has been made out on behalf of the prosecution.

As hearing proceeded, at one stage we were inclined to lay down generally the para-metres of the provisions of s. 165, I.P.C. Mr. Rao for the respondent while making his submissions in regard to the actual scope of the offence covered by s. 165, I.P.C. pointed out on more than one occasion that the respondent might be prejudiced in his defence if while laying down the parametres of that offence, we indicated a straightjacket formula. He also suggested that the matter should be left to be argued and the learned Trial Judge should be free to come to his conclusion in law with reference to the facts of the case about the scope and ambit of that provision that if any party was aggrieved by the decision it would still be open to be corrected in the appellate forum. Taking these submissions into consideration and on further deliberation, we are inclined to accept the view that it may not be appropriate at this stage to lay down the ambit and scope of the offence under s. 165, I.P.C. at any great length. It would be sufficient in our view to generally point out the distinction between sections 161 and 165, I.P.C. and simultaneously deal with the provisions of s. 5(1) read with s. 5(2) of the Act. But before doing so, we would briefly refer to the evidence in support of the charges which the respondent has agreed to be framed for the purpose of showing that the learned Trial Judge had prima facie taken a wrong view and it was a fit case where these charges should have also been framed.

The complainant PW. 14 is a member of the Bhartiya Janata Party. He was elected as a State legislator in 1978 and from 1980 onwards he was General Secretary of the Bombay City unit of the said Party. He has supported the prosecution allegations in general. According to him, the IGPP was publicised as a Government Trust. A statement of the respondent at the Press Conference held immediately after the Cabinet decision and repetition of that in contemporaneous Government publications led people to believe that IGPP was a Government Trust. The Government publications have been exhibited. Though an attempt has been made while cross-examining the witness to bring out the position that what was published in the Government publications was not known to the respondent, that has yet to be established. PW. 1, a Cabinet colleague of the respondent and now a sitting Member of Parliament who has close association with one of the major sugar co-operatives as also Directors of the other sugar co-operatives, has spoken about the demand of contribution and the raising of contribution taking a bag of sugar produced as the unit. There is considerable evidence

in regard to allotment of cement under instructions of the respondent. Contemporaneous record prepared by responsible public officers prima facie supports the position that the respondent had directed allotments to be made in a manner said to be not strictly in accordance with the prevailing procedure. The persons to whom allotments of cement have been made have in many cases contributed large sums of money to the Trust funds. In regard to the NCPA there is contemporaneous documentary evidence as also oral evidence to show that certain concessions were extended by Government and payments had been received which have gone into the Trust funds. While the prosecution has alleged that the payments of money were a consideration for the favour shown to NCPA, the defence has A come out with the version that the payments made and stipulated were unconnected and the large sum of money agreed to be paid was for the purpose of improving the lot of the people of Konkan region. Similarly, in regard to the grant of 'No Objection Certificate' in respect of the premises of Nanubhai Jewellers, there is evidence from the side of the prosecution to support its allegation that the power of the State was exercised for a consideration while there is no denial regarding receipt of the payment but the link is denied and disputed. Similarly, in regard to industrial alcohol at least so far as Kolhapur Sugars are concerned, there is the evidence of PW. 50 and payment of Rs. 2,25,000 which has gone into the funds of the KUMM has been alleged and is claimed to have been proved. The record shows that the allotment of alcohol was restored.

The oral evidence in this case is backed up by documentary evidence. Some of the relevant documents have interpolations and the inquiry relating to interpolation has not become final. It is indeed difficult at this stage to say that the evidence as a whole is inadequate to establish the prima facie case. The learned Trial Judge, as already pointed out, extracted at great length both the oral evidence as also the contents of documents but there was not much of analysis to justify rejection of the material. It may be pointed out that there is substance in Mr. Jethmalani's submission that the learned Trial Judge adopted two different standards in the matter of weighing the same evidence, when he agreed to frame 21 charges which were inter-linked and inter-connected with the rest of the prosecution story with reference to which the 22 draft charges had been given. In fact it is this position which, when properly considered by his counsel, led the respondent to file his statement suggesting that charges for the other offences excepting under ss. 384 and 420, IPC, may also be framed. If the evidence was accepted for half the number of charges relating to similar offences, there could hardly be any scope to reject the 22 draft charges. Similarly, in regard to the charge of conspiracy the facts were interconnected and there could be no justification to reject the charge even if the other persons implicated were not before the Court. The reasoning given by the learned trial Judge in support of his order of discharge in regard to the draft charges relating to ss. 161 and 165, IPC and s. 5(2) read with s. 5(1) of the Act, concerning these transactions cannot, therefore, be sustained. We are, in the circumstances, inclined to take the view that the statement filed by the respondent was justified and the order of discharge made by the learned trial Judge is not sustainable.

It is appropriate at this stage to take note of the fact that under s. 245(1) of the Code the requirement is that the evidence must be such which if not rebutted would warrant conviction of the accused. Under the law of evidence the concept of rebuttable presumption is well-known. As pointed out by Taylor in his Treatise on Evidence, "rebuttable presumptions of law are a result of the general experience of a connection between certain facts or things one being usually bound to be the

companion or affect of the other. The connection, however, in this class is not so intimate or so uniform as to be conclusively presumed to exist in every case; yet, it is so done that the law itself without the aid of a jury infers one fact from the crude existence of the other in the absence of opposing evidence. In this mode, the law advances the nature and amount of the evidence which is sufficient to establish a prima facie case and throws the burden of proof upon the other pary; and if no opposing evidence is offered, the jury are bound to find in favour of the presumption. A contrary verdict might be set aside as being against evidence. The rules in this class of presumptions as in the former have been adopted by common consent from motives of public policy and for the promotion of the general good; yet, not as in the former (conclusive proof) class forbidding all further evidence but only dispensing with it till some proof is given on the other side to rebut the presumption raised. Thus, as men do not generally violate the Penal Code, the law presumes every man to be innocent; but some men do transgress it; and therefore, evidence is received to repel this presumption."

(emphasis supplied by us).

The learned trial Judge should have proceeded to scan the evidence keeping this aspect of the legal position in view which he has missed. There is another aspect which has also to be noticed here. One of the allegations against the respondent is the commission of offences punishable under s. 5(1) read with s. 5(2) of the Act. Section 4 of that Act provides :

> 'Where in any trial of an offence punishable under s. 161 or section 165 of the Indian Penal Code, or of an offence referred to in clause (a) or clause
>
> (b) of sub-s. (1) of s. 5 of this Act punishable under sub-section (2) thereof, it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or obtained or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

The presumption raised under s. 4 is a presumption of law which a Court is bound to draw, once it is proved that the accused Government servant received or obtained a valuable thing in the circumstances mentioned in the section (see The State of Madras v. A. Vaidyanatha Iyer, [1958] S.C.R. 580 and K. Satwant Singh v. The State of Punjab, [1960] 2 S.C.R. 592). The learned Judge failed to take note of this statutory provision while dealing with the charges under ss. 161 and 165, IPC as also s. 5(1)(a) and (b) of the Act. We do not intend to say anything more at this stage. But we do hope that while dealing with the case after the framing of the charges, the learned trial Judge will keep this legal position in mind and act accordingly.

In the face of the pronounced view of this Court that the Minister is a public servant, no attempt was made either before the High Court or before us to argue that to the Chief Minister, ss. 161 and 165 of the Indian Penal Code would not apply. The main ingredients of the charge under s. 161, IPC, are :

> (1) that the accused was a public servant; (2) that he must be shown to have obtained from any person any gratification other than legal remuneration; and (3) that the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person.

Ordinarily, when the first two ingredients are established by evidence, a rebuttable presumption arises in respect of the third. For the offence under s. 165, IPC the essential ingredients are :

> (i) the accused was a public servant;
>
> (ii) he accepted or obtained or agreed to accept or obtain a valuable thing without consideration or for an inadequate consideration knowing it to be inadequate;
>
> (iii) the person giving the thing must be a person concerned or interested in or related to the person concerned in any proceeding or business transacted or about to be transacted by the government servant or having any connection with the official of him self or of any public servant to whom he is subordinate; and
>
> (iv) the accused must have knowledge that the person giving the thing is so concerned or interested or related.

It has been pointed out by this Court in A. Vaidyanatha Iyer's case (Supra) that s. 165 is so worded as to cover cases of corruption which do not come within ss. 161, 162 or

163. Indisputably the field under s. 165 is wider. If public servants are allowed to accept presents when they are prohibited under a penalty from accepting bribes, they would easily circumvent the prohibition by accepting the bribe in the shape of a present. The difference between the acceptance of a bribe made punishable under s. 161 and 165, IPC, is this : under the former section the present is taken as a motive or reward for abuse of office, under the latter section the question of motive or reward is wholly immaterial and the acceptance of a valuable thing without consideration or with inadequate consideration from a person who has or is likely to have any business to be transacted, is forbidden because though not taken as a motive or reward for showing any official favour, it is likely to influence the public servant to show official favour to the person giving such valuable thing. The provisions of ss. 161 and 165, IPC as also s. 5 of the Act are intended to keep the public servant free from corruption and thus ultimately ensure purity in public life. The evidence in the case, therefore, should have been judged keeping these aspects in view.

We shall now proceed to consider the charge relating to extortion punishable under s. 384, IPC. The allegation in respect of this alleged offence is to be found in paragraph 18 of the petition of complaint which reads thus :

> "That on the facts mentioned above, the accused is also guilty of an offence under s. 384, I.P.C. When a Chief Minister demands moneys from persons officially

> transacting business with him or who are likely to transact business with him in the future, it is implicit in the situation that a veiled threat is conveyed that the request or demand will not be attended to and there will either be denial or delay in the matter of granting to them what they are entitled to or that they will be harassed by a large number of pink- pricks by which bureaucracy and the Government make anyone's life miserable if the Chief Minister's demands are not complied with. Moneys are, therefore, obtained by extortion and payments called donations are the direct result of fear of injury. The accused has thus been guilty of the offence under s. 384, I.P.C."

The learned Judge considered framing of charge relating to extortion, in paragraphs 97-107 of his order. According to him, the evidence of PW. 1 Shalinitai did not establish that the accused or anybody on his behalf held out any threat either personally to her or to the Sangli Karkhana. According to the learned counsel, the learned Judge fell into an error in confining his consideration of the issue by referring to the deposition of PW. 1 alone. The evidence of PW.51, Gilda, was equally relevant and germane to the issue of extortion according to him and should have been referred to and relied upon while dealing with the consideration of the charge. Mr. Jethmalani next contended that the following features which had been established should have led the learned Judge to hold that there was material for the view that a case in respect of the charge had been made out by the prosecution.

(i) The respondent had decided to raise Rs. 10 crores for the IGPP out of which a moiety was to be raised during the crushing season of 1980-81 and the remainder during the following season;

(ii) The IGPP between the date of its formation and 31.3.81 had been able to secure a very small amount compared to the target and bulk of that small amount had come from the Government of Maharashtra;

(iii) Considering the pomp and publicity with which IGPP had been brought into existence, the financial position appeared to be ridiculous for want of sufficient funds. The respondent had assured the Board of Trustees at the meeting of the 6th May 1981 that the sugar cooperatives at his instance had agreed to immediately make payment of their contribution;

(iv) The statement of the respondent was based upon the fact that at the meeting on 25th April, 1981, of the ministerial committee held in his Secretariat Chamber, he had extracted promises from the managements of the sugar co-operatives for payment of contributions to IGPP in lieu of an assurance to them of agreeing to their pending demands with Government;

(v) After obtaining the promise of donations, the respondent adjourned consideration of the demand of the industry to the next meeting to be held on the 28th May 1981 and insisted upon compliance of the promise of donations before their demands could be acceded to;

(vi) The entire official machinery, particularly of the Sugar Directorate, was utilised to bring about pressure on the Sugar Federation and its component members for extracting contributions. Pressure was, therefore, brought about of Marathe, P.W. 5, through Lulla, P.W.7, and the telegram under Ext.

81 was sent to the members of the Federation;

(vii) P.W.1, Shalinitai, rightly described the conduct of the respondent as one of pestering and in answer to such extortion to which she yielded, she advised the Sangli Karkhana to make the payment in the interest of the society. According to Mr. Jethmalani, the position came to this that if the factory had not paid, the legitimate demands pending consideration of Government would have suffered a setback:

(viii) The donations in the instant case were the outcome of pressure and were not voluntary in character. The fact that the Penzarakan Karkhana had issued a cheque of Rs. 2 Lakhs in spite of its strained financial circumstances and while it had a bank balance of less than Rs. 6,000 and the Sangli Karkhana had to arrange for a duplicate cheque as the original cheque had been left at Sangli and had not reached the respondent in time, were indicative of the volume of pressure that must have been brought about for collecting the donations;

(ix) Mr. Jethmalani pointed out that it was the respondent's own case that if the management had made payments which were illegal, they themselves abetted the offence of cheating. This suggestion had been put to three relevant prosecution witnesses. The fact that these witnesses closely connected with the sugar co-operatives had committed even a criminal offence goes to show that their act was not at all voluntary and the fiscal interest of the factories must have been their sole and primary consideration for such conduct.

On the basis of these facts and circumstances, learned counsel for the appellant argued that the three charges of extortion had been prima facie established and the learned trial Judge was, therefore, not justified in refusing to frame charges for the offence under s. 384, IPC.

Mr. Rao for the respondent relied upon the definition of 'extortion' in s. 383 in the Indian Penal Code and contended that the ingredients of the offence had not been prima facie established so as to justify framing of a charge for the said offence.

'Extortion' is thus defined in s. 383, I.P.C. : "whoever intentionally puts any person in fear of any injury to that person J or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits extortion."

The main ingredients of the offence are :

> (i) the accused must put any person in fear of injury to that person or any other person;
>
> (ii) the putting of a person in such fear must be intentional;
>
> (ii1) the accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be

converted into a valuable security; and

(iv) such inducement must be done dishonestly.

Before a person can be said to put any person to fear of any injury to that person, it must appear that he has held out some threat to do or omit to do what he is legally bound to do in future. If all that a man does is to promise to do a thing which he is not legally bound to do and says that if money is not paid to him he would not do that thing, such act would not amount to an offence of extortion. We agree with this view which has been indicated in Habibul Razak v. King Emperor, A.I.R. 1924 All 197. There is no evidence at all in this case that the managements of the sugar co- operatives had been put in any fear and the contributions had been paid in response to threats. Merely because the respondent was Chief Minister at the relevant time and the sugar co-operatives had some of their grievances pending consideration before the Government and pressure was brought about to make the donations promising consideration of such grievances, possibly by way of reciprocity, we do not think the appellant is justified in his contention that the ingredients of the offence of extortion have been made out. The evidence led by the prosecution falls short of the requirements of law in regard to the alleged offence of extortion. We see, therefore, no justification in the claim of Mr. Jethmalani that a charge for the offence of extortion should have been framed.

The only other allegation in respect of which there is an order of discharge is relating to cheating. In the petition of complaint detailed factual allegations were made in paragraphs 19 to 30 in regard to this aspect. The complaint alleged :

> "That in the specific cases of contributions received by the IGPP the accused is further guilty of committing an offence of cheating under s. 427 of the Indian Penal Code. The accused embarked upon a systematic campaign to associate the name of the Prime Minister of India, Mrs. Indira Gandhi with this Trust in order that the contributions to this Trust would be easily forthcoming. This was, in fact, intended to strengthen the impression that not only Mr. Antulay's Government but also Mrs. Indira Gandhi was actively involved in his operations. That such an impression was sought to be created is further borne out by the fact that for inaugurating the said trust, a function was held at the Raj Bhavan, in Bombay on 11th October 1980. The Prime Minister especially flew in to perform the inauguration ceremony. A picture of the Prime Minister and the accused standing by her side while the former is signing documents connected with the Trust appeared in most of the leading newspapers in their issues dated 12th October 1980."

The allegations in regard to this offence are two-

fold: (i) though IGPP was not a State Government Trust, publicity was given by the respondent himself and through his agents as also through news media owned by the State Government and the public press to the fact that IGPP was a Government trust; and (ii) though Mrs. Gandhi had never agreed to the Trust being named after her, the respondent associated her name for the purpose of creating an impression in the mind of the people at large that the then Prime Minister, Mrs. lndira

Gandhi had associated herself with the respondent's trust. The fact that Mrs. Gandhi had not consented was stated on the floor of the Parliament. The correct position was always known to the respondent and yet he either directly or through others misrepresented these two aspects with a view to making people part with money by way of contribution to this Trust.

The evidence in regard to these allegations is both oral and documentary. The Cabinet met on October 6, 1980, and it is the prosecution case that the respondent gave out a Press Conference on the following day that on the 6th October the Cabinet had decided to create a Trust by the name of IGPP. The news relating to the Press Conference was reported in several newspapers, a few among them being the Free Press Journal, Sakal, Lok Satta, Nav Shakti and the Indian Express. The report appearing in the Free Press Journal has been marked as Ext. 190. That was shown to PW. 10 Arya, the Secretary of the IGPP and on reading the Report he admitted it to be more or less correct. A reference to the newspaper publication shows that the respondent had announced that the creation of the Trust was the decision of the Government of Maharashtra. Exhibit 48 is the October-November 1980 issue of a Government publication titled 'Maharastra Shasana Che Nirnay" (decisions of the Government of Maharashtra). Therein there is reference to IGPP and a reading of it prima facie shows that the establishment of IGPP was the decision of the Government of Maharashtra. PW.8 the Director-General of Information and Public Relations of the Government of Maharashtra at the relevant time has accepted this publication. It is true that he has taken the stand that there is no ministerial approval at the pre-publication stage of the contents. That may not at all be material because there must be an assumption that whatever is published in the Government owned paper correctly represents the actual state of affairs relating to Governmental business until the same is successfully challenged and the real state of affairs is shown to be different from what is stated in the Government publication. mis position would get support from the decision of this Court in Harpal Singh & Anr. v. State of Himachal Pradesh,[1981] 1 S.C.C. 560. The prosecution has also relied on the Government of Maharashtra publication 'Lok Rajya'. The English and Marathi versions of this publication for October 1980 have been proved as Exts. 179-180 respectively. Similarly, there is another Government of Maharashtra publication known as "Maharashtra Marches Ahead," Ext. 181, which is a publication of December 1980. These documents, according to the prosecution, give an impression that IGPP was a Government created Trust. The Trust Deed of the IGPP is Ext. 208 and it clearly shows that it is not a Government Trust nor was it created by the Government. Even the respondent was not a Trustee qua Chief Minister. As a fact IGPP was registered as a public trust with the charity commissioner.

PW.1, an erstwhile Cabinet colleague of the respondent has deposed that on the 11th October, 1980, when she attended the function at the Raj Bhavan to which we shall presently advert, she came to know the actual state of affairs, viz., though the respondent was trying to create an impression that IGPP was a Government Trust, yet the same was not; but on account of her being in the Cabinet she did not dispute the position anywhere publicly. The Cabinet Resolution has not yet seen the light of the day. PW. 1 was specifically questioned as to whether there was a Cabinet decision in respect of creation of IGPP as a Govt. Trust. She declined to answer the question by saying that she was bound by the oath of secrecy and she would not be in a position to disclose that information. The prosecution attempted to cause production of the Cabinet decision but privilege was claimed and the claim has succeeded. Therefore, the document has not been produced before the learned trial Judge

and is not a part of the record. The propriety of the claim of privilege is subjudice before this Court and we do not intend to say anything more about it. The core of the prosecution allegation in regard to this part of the matter is with reference to the sugar co-operatives. Several witnesses have been examined to support this aspect of the prosecution case.

So far as the second aspect, i.e. relating to the association of the name of Mrs. Gandhi is concerned, Mr. Rao for the respondent has admitted the position that Mrs. Gandhi had at no stage given her consent to her name being associated with the Pratibha Pratisthan. It is not disputed that under the law, without appropriate sanction or authority, the name of the Prime Minister was not available to be associated. There has been a denial of any such consent having been given by the then Defence Minister on the floor of Lok Sabha. Respondent made a similar statement on the floor of the Maharashtra Legislature on September 9, 1981, wherein, apart from endorsing the statement in Parliament, he took the responsibility on himself of assuming Mrs. Gandhi's consent. Yet, on 16th October, 1980, in Lok Rajya - a Maharashtra Government publication - a picture of the accused standing by the side of the late Prime Minister was reproduced with the following inscription below the photograph :

> "Prime Minister Indira Gandhi affixing her signature on the documents giving her consent to name the Maharashtra Government's Trust for promoting talent in literature and fine arts as 'Indira Gandhi Pratibha Pratishthan' at Raj Bhavan on Saturday. Watching keenly is Chief Minister A.R. Antulay."

The learned trial Judge devoted a substantial part of the impugned order to deal with the charge under s. 420, IPC. He referred to the statement of PW 1 that she had actually known the real state of affairs before the contribution was made to the IGPP. He ultimately took the view that the material placed on record did not justify a charge under 8. 420 IPC being framed. We do not propose to refer to every item of evidence on record relating to the allegation of cheating. We are afraid that if we follow that procedure and express our opinion one way or the other with reference to each item of evidence, either party is likely to be prejudiced when the matter goes for trial notwithstanding our statement that we were doing so only for the purpose of finding out whether a prima facie case had been made out. We would, therefore, not refer to the evidence any further.

Cheating is defined in 8. 415 of the IPC and the ingredients for that offence are :

> (i) there should be fraudulent or dishonest inducement of a person by deceiving him;
>
> (ii) (a) the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or
>
> (b) the person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and
>
> (iii) in cases covered by the second part of (ii), the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body,

mind, reputation or property.

(See Dilbagh Rai Jarry v. Union of India & Ors., [1974] 2 F S.C.R. 178.) Section 415 actually consists of two parts, each part dealing with one way of cheating -

1. Where, by deception practised upon a person the accused dishonestly or fraudulently induces that person to deliver property to any person or to consent that any person shall retain any property ;

2. Where, by deception, practised upon a person, the accused intentionally induces that person to do or omit to do anything which he would not do or omit to do, if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

The question is whether these ingredients are satisfied by the prosecution evidence. We must point out that the learned trial Judge failed to analyse the evidence which he had at great length extracted keeping the proper angle of approach in view. Therefore, his conclusion is not made on a proper assessment and is not sustainable. We are inclined to agree with Mr. Jethmalani that the evidence, oral and documentary, taken together does justify the framing of a charge for the offence under s.420, IPC. Here again, we would like to reiterate that the position is a presumptive one open to rebuttal by the respondent. We are, therefore, of the view that a charge under s. 420, IPC, should be framed by the learned trial Judge against the respondent.

The net result of the aforesaid discussion, therefore, is that a prima facie case has been established by the prosecution in respect of the allegations for charges under ss.l20B, 161, and 165 and 420, IPC, as also under s.5(1) read with s.5(2) of the Act. So far as the three draft charges relating to the offence punishable under s. 384, IPC, are concerned, we agree with the learned trial Judge that the prosecution failed to make out a prima facie case. Therefore, except in regard to the three draft charges under s.384, IPC, charges in respect of the remaining 19 items shall be framed. The appeal is allowed to that extent.

Lot of argument has been made by Mr. Jethmalani that other persons who have been named in the application of the complainant Ext. 214-A, should also be proceeded against, particularly in regard to the charge of conspiracy punishable under s.l20-B, IPC. As we have already pointed out, Pessi Tata is dead. One of the other persons shown in Ext. 214-A is also dead as indicated therein. Excepting Tidke, the Minister of Co-operation, Gavai, PW. 13, and Ajit Kerkar, PW. 44, and a few other public officers who have been specifically named in Ext. 214-A, names of others were not disclosed and a prayer was made that all other officers who were involved in the matter may be proceeded against. It may be that some of these officers or outsiders have not behaved in an independent manner and have failed to act up to the expectation of the office they held. But that by itself may not be sufficient justification for prosecuting them criminally. Again, as pointed out by the learned trial Court, if that is to be done at this stage, the trial which has already been sufficiently protracted would have to be de novo and would required further time to be spent. It appears that some of these officers like Gavai have already retired and are no more in service. Almost five long

years have intervened between the events and now. These are relevant aspects to be taken into consideration. So far as Gavai is concerned, the learned trial Judge has examined his conduct with reference to the matter relating to NCPA and has come to the conclusion one which may not be immediately rejected that he was anxious to watch the interests of the Government and, therefore, did not agree with the concessions proposed by the NCPA. We are inclined, therefore, to take the view that so far as Gavai is concerned, the trial Judge was justified in holding that he was not liable to be proceeded against as a co-conspirator. While dealing with this aspect of the matter, the learned Judge indicated that superior's direction was a germane consideration. We agree with Mr. Jethmalani's submission that the superior's direction is no defence in respect of criminal acts, as every officer is bound to act according to law and is not entitled to protection of a superior's direction as a defence in the matter of commission of a crime. It is relevant to point out that the other persons alleged against were not before the Court as accused persons. There was, therefore, no question of discharging them. An application had been made to the trial Court and it is still open to the trial Judge to consider on the matterial available if anyone has to be proceeded against as a co-conspirator when the charge of conspiracy punishable under s. 120-B, IPC is framed. It is true that under s. 319 of the code de novo trial would be necessary. It is in the discretion of the trial Court to take a decision as to whether keeping all aspects in view any other person should be brought in as an accused to be tried for any of the offences involved in the case. We do not express any definite view in this regard and we consider it sufficient to indicate that this is a matter in the discretion of the trial court.

There is one other aspect which required to be dealt with. The learned trial Judge while dealing with Chari, PW. 41, in paragraph 653 observed.

> "There appears to be no doubt that Chari is a disgruntled subordinate. The manner in which he came out with the suggestion of substituting his note, Exhibit 421, the manner in which Chari volunteered his answers, would indicate that he had harboured an animus against Gavai. mis aspect of Chari's evidence, therefore, cannot be said to be reliable evidence against Gavai."

These observations against Chari appear to be totally unwarranted and the learned trial Judge should not have, on the facts before him, come to this conclusion and castigated the public officer in the manner referred to above. We are somewhat surprised that the learned trial Judge did not even refer to the contents of the document, Ext. 421, with reference to which considerable evidence had been led. In this connection the evidence of PWs. 46, 47 and 49 should also have been considered by the learned trial Judge. These observations must, therefore, be expunged. The learned trial Judge will consider the entire evidence in its proper perspective when he finally disposes of the case.

We have no intention to make anything final at this stage except that the prosecution for the offence under 8. 384, IPC, must fail. Any observation made by us in any part of our Judgment is confined to the question as to whether charges should be framed and/or the order of discharge should be upheld. Even where we have said that a charge is to be framed the position is that a frime facie case has been made out which is open to be rebutted by the 1st respondent. The learned trial Judge is, therefore, free to come to his own conclusions on the basis of the evidence which is already on

record and which may be led before him by the parties when the trial proceeds after the framing of the charges and he will decide whether the charges against the 1st respondent are made out or not on the basis of the entire evidence.

At the hearing Mr. Jethmalani for the appellant had prayed that we should give a direction to the learned Chief Justice to nominate a Judge other than Mehta, J. to take up A the further trial of the case and this prayer has been opposed by Mr. Rao for the respondent. It is too well settled that litigants can have no say in regard to the choice of the judge before whom their lis must be heard. We have no doubt that Mehta, J. had dealt with the matter in a fair way and there is no warrant on the facts of the case for shifting the case from him to another learned Judge for trial. Recording of the prosecution evidence is almost over and but for a few more witnesses and some documents which might come, the prosecution has already laid its entire cards before the Court and Mehta, J. has, with reference to all this material, taken a view which we have reversed. Though we have no doubt in our mind that Mehta, J. acted fairly and impartially in disposing of the case in the manner he did, it cannot be said that there is no scope for apprehension in the appellant's mind that his complaint may not receive adequate and proper treatment at the hands of the same learned Judge who has already expressed himself one way. In these circumstances, while reiterating our opinion that we have no doubt that Mehta, J. acted fairly and impartially and without casting any reflection whatsoever on the learned Judge, we would, following the well known dictum that justice should not only be done but must also appear to be done, request the learned Chief Justice of the High Court to nominate another learned Judge to take up the matter from the stage at which Mehta, J. made the impugned order. We hope the learned Chief Justice will take prompt steps to nominate a learned Judge to take up the trial and once such nomination is made, the learned trial Judge will proceed expeditiously to dispose of the case finally.

M.L.A. Appeal allowed in part.