Supreme Court of India
V. C. Shukla vs State (Delhi Administration) on 11 April, 1980
Equivalent citations: 1980 AIR 1382, 1980 SCR (3) 500
Author: S M Fazalali
Bench: Fazalali, Syed Murtaza

PETITIONER:
V. C. SHUKLA

Vs.

RESPONDENT:
STATE (DELHI ADMINISTRATION)

DATE OF JUDGMENT11/04/1980

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
KAILASAM, P.S.
KOSHAL, A.D.

CITATION:
1980 AIR 1382 1980 SCR (3) 500
1980 SCC (2) 665
CITATOR INFO :
RF 1981 SC 873 (52)
R 1982 SC 839 (25)
RF 1986 SC 791 (5)
R 1988 SC1531 (163)

ACT:
Criminal Conspiracy, ingredients of-Section 120B of the Indian Penal Code, evidence required to prove criminal conspiracy explained-Approver's evidence, value of.
Words and Phrases-"High Public or political Offices"-Meaning of.
Special Court's Act 1979, ss. 5, 7, 9 & 11-Constitutional validity of.

HEADNOTE:
Sri Amrit Nahata PW 1 was a member of Parliament and had produced a film titled "Kissa Kursi Ka" under the banner of Dhwani Prakash. The film according to the prosecution was a grotesque satire containing a scathing criticism of the functioning of the Central Government and was open to serious objections which were taken even by the Central Board of Film Censors. After the film was ready for release, PW 1, Amrit Nahata, applied for certification of the film on

the 19th of April 1975 before the Board. The film was viewed on April 24, 1975 by an Examining Committee of the Board and while three members were of the opinion that certificate for exhibition, with drastic cuts, should be given, another member and Mr. N. S. Thapa, Chairman, disagreed with the opinion of their colleagues and accordingly referred the matter to the Revising Committee. The Revising Committee after viewing the film agreed by a majority of 6 :1 for certification of the film, the dissent having been voiced by Mr. Thapa, the Chairman and accordingly under Rule 25(ii) of the Cinematograph (Censorship) Rules, 1958, a reference was made to the Central Government on 8-5-1975. In this connection, a letter was addressed to PW 6, Mr. S. M. Murshed, who was at the relevant period Director in the Ministry of Information & Broadcasting, Incharge of film and T.V. Projects and was appointed, Joint Secretary on 1st of May 1975. Before making his comments PW 6 saw the film some time in the middle of May, 1975. Meanwhile, PW 1, Amrit Nahata, was directed to deposit the positive print of the film comprising 14 reels of 35 mm with the Film Division Auditorium, situate at 1, Mahadev Road, New Delhi. In pursuance of these directions PW 1 deposited the positive print and an entry thereof (Ext. 17A) was made by the Librarian-cum-Projectionist of the Auditorium. PW 17, K. P. Sreedharam, who was a Technical Officer incharge also inspected the reels and found them in order.

Although Murshed, PW 6, after seeing the film agreed with the opinion of the Chairman of the Board that the film may be open to objection on the ground that it was full of sarcasm and contained criticism of the political functioning of the Governmental machinery yet he was personally of the opinion that certification for exhibition should not be refused. PW 6 accordingly recorded a note and submitted it to Mr. A. J. Kidwai, the then Secretary, Ministry of Information and Broadcasting. The matter was then examined by Mr. I. K. Gujral, the then Minister of Information and Broadcasting but

501

no final decision was taken. Meanwhile PW 1, Amrit Nahata, filed a writ petition (Ex. PW 1/D) in the Supreme Court. On the 23rd of the June 1975, a notice was issued by the Ministry of Information and Broadcasting to PW 1, Amrit Nahata, to show cause why certification to the film be not refused. The notice was made returnable by 9-7-75. Thus the Ministry of Information and Broadcasting had taken a tentative decision to refuse certification to the film because of its objectionable and offensive nature.

Emergency was proclaimed on the night of between 25th and 26th of June, 1975 and soon thereafter A 1 took charge as the Union Minister of Information and Broadcasting and he was of the opinion that the film should be banned. On July 5, 1975, in pursuance of the decision taken by the Central Government, the Coordination Committee directed seizure of

the film and that its negatives, positives and all other materials relating to it be taken in the custody of the Central Government vide Ex. PW 6/D. On July 10, 1975 A 1 directed that the film be banned for screening under the Defence of India Rules, vide Ext. PW 6/E-4. Finally, on the 11th of July 1975 PW 6 Murshed, passed an order that no certification was to be given to the film for public exhibition which was followed by a letter dated July 14, 1975, forfeiting the film to the Government. In pursuance of the decision taken by the Central Government PW 39, S. Ghosh Deputy Secretary, incharge of the films and T. V. Division wrote a letter to the Chief Secretary Government of Maharashtra for seizure of all the positives and negatives of the film as also other related materials. In pursuance of this order, the Bombay police seized the entire film on 1-8-1975 and deposited in the godown of the Board. As, however, a final order had been passed by the Government banning the film. PW, 1, Amrit Nahata filed a petition for special leave in the Supreme Court on 6-9-1975. This petition was heard on 29-10-75 and the Court directed the Government to screen the film on 17-11-75 in the Auditorium for being shown to the Judges constituting the Bench. In pursuance of the order of the Court, intimation was sent to the Ministry concerned and PW 62, Mr. S. M. H. Burney who was then Secretary Ministry of Information and Broadcasting directed that immediate action be taken to implement the orders of the Supreme Court and that arrangements should be made to book the Auditorium for 17-11-75. By a letter dated 5-11-75 (Ext. PW 2/A2) the Supreme Court was also informed regarding the steps taken. Sometime thereafter PW 2, L. Dayal took over as Joint Secretary (Films Division) in place of Mr. Murshed. The film, however, was not shown to the Judges of the Supreme Court on the ground that the films were not traceable.

After the general elections of March 1977, the new Government directed the Central Bureau of Investigation to investigate into the matter of disappearance of the films. The C.B.I. accordingly investigated the matter and found that A 1, V. C. Shukla and A 2 Sanjay Gandhi conspired together and ultimately burnt them in Maruti Complex. Therefore C.B.I. filed charge sheets against V. C. Shukla A 1 and Sanjay Gandhi A 2 under several provisions of Penal Code. The prosecution examined several witnesses to prove criminal conspiracy of A 1 and A 2 more particularly under three stages, namely, (i) the deposit of the positive print in the Auditorium and its alleged transfer to the personal custody of A 1; (ii) the arrival of thirteen trunks containing negatives and other material related to the film at New Delhi from Bombay in pursuance of the orders of A 1 and their transfer to 1, Safdarjung Road, then to the Maruti Complex; and (iii) the actual orders alleged to have been given

502

by A 2 for burning the film in the premises of Maruti

Complex which operation according to the prosecution was carried out by the approver PW 3, Khedkar and other witnesses between the 10th and 24th of November 1975.

The Sessions Judge, Delhi convicted V. C. Shukla (A-1) appellant in Criminal Appeal No. 494/79 under section 120B read with Ss. 409, 435, 411, 414 and 201 Indian Penal Code and also under section 409 Indian Penal Code in respect of the positive print and negative and other material of the film "Kissa Kursi Ka' under section 411 read with S. 109 I.P.C.; under section 414 read with section 109 I.P.C.; and under section 201 read with section 109 I.P.C. The appellant, Sanjay Gandhi (A 1) in Criminal Appeal No. 493/79 was convicted by the Sessions Judge, Delhi under section 120B read with Ss. 409, 435, 411, 414 and 201, Penal Code and further convicted under Ss. 435, 411, 414 and 201 Penal Code in regard to the negative and other materials of the film, as also under section 409 read with section 109 of the Penal Code.

Accused No. 1 was sentenced under s. 120B read with Ss. 409, 435, 411, 414 and 201 to two years rigorous imprisonment; under s. 409 regarding the negative and other materials to two years rigorous imprisonment and a fine of Rs. 20,000 and in default further 6 months rigorous imprisonment, under s. 409 regarding the positive print of the film to two years rigorous imprisonment and a fine of Rs 5000 and in case of default further rigorous imprisonment for three months; under s. 411 read with s. 109 to rigorous imprisonment for one year; under s. 414 read with s. 109 to rigorous imprisonment for one year; under s. 201 read with s. 109 to rigorous imprisonment for one year; under s. 435 read with s. 109 to rigorous imprisonment for one year and six months. Accused No. 2 was sentenced under s. 120 B read with ss. 409, 435, 411, 414 and 201 to rigorous imprisonment for two years; under s. 435 to rigorous imprisonment for one year and six months and a fine of Rs. 10,000 and in case of default further rigorous imprisonment for four months; under s. 411 to rigorous imprisonment for one year; under s. 414 to rigorous imprisonment for one year; under s. 201 in regard to the negative, etc., to rigorous imprisonment for one year; under s. 201 in regard to 13 trunks, etc., to rigorous imprisonment for one year and under s. 409 read with s. 109 to rigorous imprisonment for two years. The aforesaid sentences of imprisonment were ordered to run concurrently in the case of both the accused.

On being convicted by the Sessions Judge, Delhi, both the accused filed appeals before the Delhi High Court against their convictions and sentences, and were released on bail pending the hearing of the appeals. Meanwhile, the Special Courts Act of 1979 came into force and by virtue of a declaration made under section 7 of the said Act, the appeals stood transferred to the Supreme Court.

The appellants raised the following preliminary objections as to the constitutional validity of Sections 5,

7, 9 and 11 of the Act, apart from the plea that their conviction and sentence were not based on any evidence, legal or otherwise.

A. Even having regard to the principles laid down the Supreme Court in the Reference case, the Act fails to pass the tests laid down for a valid classifica-

503

tion under Art. 14. The decision given in the Reference case upheld the Bill and rejected the challenge that the Bill violated Art. 14 mainly on the ground that the Bill sought to put a certain class of persons, namely, persons holding high public or political offices who had committed offences only during the period of Emergency. In other words, the constitutionality of the Bill was upheld on the ground that the legislation was confined to select offences committed by a particular class of persons during the Emergency period. The impugned Act transgressed the limits imposed by the judgment in the Reference case by bringing within its fold offences committed prior and subsequent to the Emergency and thus was in direct conflict with the opinion of this Court rendered in the Reference case. In other words this Court struck down that part of the Bill which related to the period between February and June 1975 on the ground that persons having committed offences during that period could not be clubbed with those who had committed offences during the period of Emergency. Thus the Act, by clubbing together persons accused of offences committed during the Emergency with those alleged to be guilty of crimes pertaining to periods before and after the Emergency (i.e. by dealing with offences committed at any point of time whatsoever), has violated the guarantee under Art. 14 and the classification made by the Act is in direct contravention of the opinion given by this Court in the Reference Case.

B. Even if the classification was valid, as the procedure prescribed by the Act is extremely harsh and prejudicial to the accused, Articles 14 and 21 are clearly violated.

(a) Section 7 deprives a valuable right of appeal;

(b) Section 11(1) takes away the valuable right of revision against interlocutory orders;

(c) Section 9(3) of the Act prescribes the procedure for the trial of Warrant cases before the Magistrate in Sections 238 to 243 and 248 Crl. P.C., while treating the special Court as Court of Sessions.

C. Assuming the classification of persons holding high public or political offices to be justified, it suffers from a serious infirmity in that neither the terms "high public or political office" has been defined nor have the offences been delivered or defined so as to make the prosecution of such offenders a practical reality.

D. Even the nature and character of the offences have

not been defined in the Act which introduces an element of vagueness in the classification.

E. Parliament was not competent to pass a special Act and create Special Courts for a particular set of offenders.

F. The Act seeks to change the situs of the Court and virtually abrogates section 181 of the Code of Criminal Procedure.

G. The Act creates an invidious distinction in as much as persons holding high public or political offices would have the benefit of trial by such an experienced officer as a sitting judge of a High Court, while the appellants have been deprived of that right and were tried by a Special Judge who was only a Sessions Judge.

504

H. Section 5 of the Act suffers from several constitutional and legal infirmities, namely, (a) Section 5 (1) suffers from the vice of excessive delegation of powers so as to violate Article 14 in as much as the discretion conferred on the Central Government is absolute, naked and arbitrary and is clearly discriminatory as it is open to the Central Government to pick and choose persons to make declarations in respect of them while excluding others.

(b) The issuance of a declaration under section 5(1) of the Act depends purely on the subjective satisfaction of the Central Government and under sub-section (2) of section 5 such a declaration cannot be called into question by any court so that there would be an element of inherent bias or malice in an order which the Central Government may pass, for prosecuting persons who are political opponents and that the section is therefore invalid.

(c) As the Central Government in a democracy consists of the political party which has the majority in Parliament, declarations under section 5(1) of the Act could be used as an engine of oppression against members of parties who are opposed to the ideologies of the ruling party.

(d) the provisions about declaration contained in Section 5(1) are violative of the principle of natural justice in as much as they do not provide for any bearing being given to the accused before a declaration is made.

(e) in an instant case, the declaration dated June 22, 1979 made under section 5(1) of the Act per se shows that it had not resulted from any real application of the mind by the Central Government. Once the prosecution of the appellants had culminated in a conviction and an appeal therefrom there was no question of the existence of any "prima facie case" and that the use of such an expression could be intelligible only if the accused were facing criminal proceedings which had not culminated in a conviction; and

(f) the declaration made under section 5 of the Act is non est because it has not been laid before each House of Parliament as required by section 13 of the Act.

J. The appellant not having held any high public or

political office has been drawn into this case by virtue of a declaration and has therefore been singled out for a discriminatory treatment.

K. Section 5(1) of the Act has no application to the facts of the present case because under section 5(1) a declaration has to be made on the basis of the source indicated in the section, namely, inquiries conducted under the Commissions of Inquiry Act or investigations which become otiose and would have relevance only if the appellant had not been convicted.

L. Conviction being a finding of guilt cannot be said to fall within the situation contemplated by section 5(1) of the Act. Section 6 is an extension of the scheme contained in section 5, the former does not overrule the entire code of Criminal Procedure but in fact takes in only those cases which are pending at the trial stage when the declaration is made. Once the case ends in a conviction, section 5 spends itself out and there is no room for the application of section 5.

M. Section 7 would not apply to this case because its language embraces only those appeals which arise out of a prosecution which itself is pending at the time when a declaration is made.

505

N. By providing in section 7 for an automatic transfer of appeals from the High Court to the Supreme Court, the Legislature has exercised a judicial power which is vested in the Supreme Court alone under section 406 of the Code of Criminal Procedure and that the section is invalid as it conflicts with section 406 Crl. P.C.

Allowing the appeals, the Court

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HELD: (Regarding Constitutional validity of the Act)

1. In a diverse society and a large democracy such as ours where the expanding needs of the nation change with the temper of the times, it is extremely difficult for any legislature to make laws applicable to all persons alike. Some amount of classification is, therefore, necessary to administer various spheres of the activities of the State. [522 D-E]

2. It is well settled that in applying Art. 14 mathematical precision or nicety or perfect equanimity are not required. Similarity rather than identity of treatment is enough. The courts should not make a doctrinaire approach in construing Art. 14 so as to destroy or frustrate any beneficial legislation. What Art. 14 prohibits is hostile discrimination and not reasonable classification for the purpose of legislation. Furthermore, the Legislature which is in the best position to understand the needs and requirements of the people must be given sufficient latitude for making selection or differentiation and so long as such a selection is not arbitrary and has a rational basis having regard to the object of the Act, Art. 14 would not be

attracted. That is why this Court has laid down that presumption is always in favour of the constitutionality of an enactment and the onus lies upon the person who attacks the statute to show that there has been an infraction of the constitutional concept of equality. It has also been held that in order to sustain the presumption of constitutionality, the Court is entitled to take into consideration matters of common knowledge, common report, the history of the times and all other facts which may be existing at the time of the legislation. Similarly, it cannot be presumed that the administration of a particular law would be done with an "evil eye and an unequal hand". Finally, any person invoking Art. 14 of the Constitution must show that there has been discrimination against a person who is similarly situate or equally circumstanced. [522 E-H, 523 A]

State of U.P. v. Deoman Upadhyaya, [1961] 1 SCR 14, followed.

3. The classical tests laid down for the application of Art. 14 are the following:

1. The classification must be founded on an intelligible differentia which distinguishes persons who are placed in a group from others who are left out of the group.
2. Such differentiation must have a rational relation to the object sought to be achieved by the Act.
3. There must be a nexus between the differentiation which is the basis of the classification and the object of the Act. [523 D-F]

4. It cannot be gainsaid that this Court while dealing with the Reference case was not at all concerned with the provisions of the Act which is of much
506
wider application than the Bill considered by the Court in the Reference. It is no doubt true that the Bill contained provisions for punishing only those offenders who were accused of offences committed during a particular period, namely, the period of Emergency. It is also true that the period of Emergency was an extraordinary one in the history of our country and its features have been spelt out in the preamble of the Bill as also in the judgment given by this Court in the aforesaid case. But that by itself does not debar Parliament from passing a permanent Act to deal with a specified class of persons who occupy high public or political offices (which are offices of trust) and misuse or abuse them. It cannot be doubted that for the establishment and continuance of a Parliamentary democracy and to secure efficiency and purity of administration it is necessary that when such persons commit serious abuse of power and are guilty of a breach of the trust reposed in them, they would form a special class of offenders. [525 F-H, 526 A]

5. That Purity of life is a desired goal at all times itself is a sufficient justification for the classification made by the Act which widens its scope to include offenders of a particular type, whether before, during or after the Emergency. In fact, such persons would undoubtedly form a special class of offenders which would justify the legislative measure singling them out for an expeditious trial. To hold otherwise would be to say that persons bearing the aforesaid attributes would be immune from prosecution under any Special Act. Passing of such a Special Act is within the Legislative competence of Parliament.

[526 D-E, 527 G-H, 528 B]

6. The Act does not suffer from any infirmity and the circumstance that it applies to offences committed at any time by a particular set of persons possessing special characteristics does not render it unconstitutional; for, when it puts into a class a particular set of persons having special characteristics which distinguish them from others who are left out of that class and who are to be tried under the ordinary law, the classification is eminently reasonable. The classification made has a reasonable nexus with the object sought to be achieved. Separate grouping of holders of high offices for purposes of expeditious criminal action to be taken by superior courts is a reasonable and valid classification because it enhances confidence in the rule of law, strengthens the democratic system and ensures purity of public life and political conduct.

[528 E-G, 529 G-H, 530 A]

7. The opinion of the Supreme Court in Re. Special Act, in no way amounted to disapproval or condemnation of a permanent law in future bringing within its scope all holders of high public or political office. [530 G-H]

The Bill was challenged before the Supreme Court on the touch stone of Art. 14 on several groups. In the first place, it was argued that no rational basis for separately classifying Emergency offenders existed. The second ground of challenge was that assuming that there was a valid classification, the same was bad because it suffered from the vice of under-inclusion inasmuch as holders of high public or political offices were left out. This Court, however, repelled the argument of rational basis on the ground that the Emergency period, because of its special characteristics, afforded adequate basis for separate classification of Emergency offences. The Court was not at all at that time concerned expressly with the question as to whether classification of high public or political dignitaries without reference to any period during which they were alleged to have committed offences would be violative of Art. 14 of the Constitution. On

507

the other hand, this Court made clear observations that an Act providing for such a classification would be not only valid but also highly welcome. It is true that the provision

regarding a particular period before the Emergency was then struck down but that was so because the Bill was confined to offences committed only during the period of Emergency and the inclusion of another period meant bad classification for the reason that the period last mentioned could not be distinguished from either pre-or post-Emergency periods on any reasonable basis. This view of the Court could not be interpreted as laying down a law of universal application that no Special Act on a permanent basis classifying offenders possessing particular characteristics or attributes and providing for their prosecution under a special procedure would be invalid or violative of Art. 14. [530 A-G]

8. The expression "high public or political offices" is of well known significance and bears a clear connotation which admits of no vagueness or ambiguity. Persons holding high public or political offices mean persons holding top positions wielding large powers. [531 C-D, F]

Political office is an office which forms part of a Political Department of the Government or the Political Executive. This, therefore, clearly includes Cabinet Ministers, Ministers, Deputy Ministers and Parliamentary Secretaries who are running the Department formulating policies and are responsible to the Parliament. The word 'high' is indication of a top position and enabling the holders thereof to take major policy decisions. Thus, the term 'high public or political office' used in the Act contemplates only a special class of officers or politicians who may be categorised as follows:-

1. Officials wielding extraordinary powers entitling them to take major policy decisions and holding positions of trust and answerable and accountable for their wrongs.
2. Persons responsible for giving to the State a clean, stable and honest administration;
3. Persons occupying a very elevated status in whose hands lies the destiny of the nation. [534 C-E]

The rationale behind the classification of persons possessing the aforesaid characteristics is that they wield wide powers which, if exercised improperly by reason of corruption, nepotism or breach of trust, may mar or adversely mould the future of the country and tarnish its image. It cannot be said, therefore, with any conviction that persons who possess special attributes could be equated with ordinary criminals who have neither the power nor the resources to commit offences of the type described above. The term 'persons holding high public or political offices' is self-explanatory and admits of no difficulty and that mere absence of definition of the expression would not vitiate the classification made by the Act. Such persons are in a position to take major decisions regarding social, economic, financial aspects of the life of the community and

other far-reaching decisions on the home front as also regarding external affairs and if their actions are tainted by breach of trust, corruption or other extraneous consideration, they would damage the interests of the country. It is, therefore, not only proper but essential to bring such offenders to book at the earliest possible opportunity. [534 F-H, 535 A]

508

9. Clause 4 of the preamble to the Special Courts Act clearly indicates the nature of the offences that would be tried under the Act. [535 B]

The words 'power being a Trust' clearly indicate that any act which amounts to a breach of the trust or of the powers conferred on the person concerned would be an offence triable under the Act. Clause (4) is wide enough to include any offence committed by holders of high public or political offices which amounts to breach of trust or for which they are accountable in law and does not leave any room for doubt. Section 5 which confers powers on the Central Government to make a declaration clearly refers to the guidelines laid down in the preamble and no Central Government would ever think of prosecuting holders of high public or political offices for petty offences. [535 D-G]

10. Sections 7 and 11 of the Special Courts Act are within the legislative competence of the Parliament. That is to say Parliament has the competence to provide for the creation of Special Courts and to confer jurisdiction on the Supreme Court by providing that an appeal shall lie as of right from any judgment or order of Special Court to the Supreme Court both on fact and on law.

[536 A-D]

In re. Special Courts Bill [1979] 2 SCR 476; applied.

11. The Act neither seeks to change the situs of the Court nor virtually abrogates Section 181 of the Code of Criminal Procedure. [536 E]

In re. Special Court Bill, [1979] 3 SCR; followed.

12. The question of the appellants being tried by the Special Judge appointed under the Special Courts Act could not arise because the said Special Court did not exist at all even when the trial of the appellant was concluded. The First Information report against the appellants was lodged on 13th April 1977 and the chargesheet was submitted before the Special Judge who convicted the appellants by his order dated February 27, 1979. The Act, however, came into force on May 16, 1979, that is to say, three months after the conviction and about two months after the appellants had filed their appeals before the High Court. The existence of such fortuitous circumstances cannot attract Article 14. [536 G-H, 537 A-B]

Khandige Sham Bhatt and Ors. v. The Agricultural Income Tax Officer, [1963] 3 SCR 809; Dantuluri Ram Raju and Ors. v. State of Andhra Pradesh and Anr., [1972] 1 SCR 421; applied.

13. Section 5(1) does not suffer from the vice of excessive delegation of powers so as to violate Article 14. No unguided or uncanalised power has been conferred on the Central Government. A basic condition imposed on the Central Government is that there must be a proper application of mind regarding the existence of prima facie evidence of the commission of an offence. Secondly, the discretion has to be exercised in accordance with the guidelines contained in the preamble. The various clauses of the preamble lay down clear guidelines and provide sufficient safe-guards against any abuse of power. Thirdly, clause (4) of the preamble clearly lays down that the power under s. 5 is exercisable only after the Commission of an offence by the holder of a high public or political office has been disclosed as a result of an inquiry conducted under the Commissions of Inquiry Act or of an investigation conducted by the Government through its agencies. It is well settled that discretionary power is not the same thing as power to discriminate nor
509
can the constitutional validity of a law be tested on the assumption that where a discretionary power is conferred on a high authority, the same may or would be exercised in a discriminatory manner. [538 E-H, 539 A]

The power conferred on the Central Government is controlled by the guidelines contained in the preamble which by virtue of the provisions of s. 5(1) becomes a part of that section. As the power has been conferred on the Central Government which is to make a declaration in accordance with the conditions laid down in s. 5(1) and, therefore, in conformity with the guidelines mentioned in the preamble, the attack based on discrimination is unfounded. [541 B-C]

Dr. N. B. Khare v. The State of Delhi, [1950] SCR 519, Kathi Raning Rawat v. The State of Saurashtra, [1952] SCR 435; Matajog Dubey v. H. C. Bhari , [1955] 2 SCR 925 In Re. The Kerala Education Bill, 1957, [1959] SCR 995 Jyoti Parshad v. The Administrator for the Union Territory of Delhi, [1968] 2 SCR 125; Moti Ram Dekha etc. v. General Manager, N.E.F., Railways, Maligaon, Pandu etc. [1964] 5 SCR 683; V. C. Shukla v. The State through C.B.I., [1980] 1 SCR 380; followed.

14. The power of the Central Government to issue a declaration is a statutory power circumscribed by certain conditions. Furthermore, as the power is vested in a very high authority, it cannot be assumed that it is likely to be abused. On the other hand, where the power is conferred on such a high authority as the Central Government, the presumption will be that the power will be exercised in a bona fide manner and according to law. [541 D-F]

Chinta Lingam and Ors. v. Government of India and Ors., [1971] 2 SCR 871; Budhan Chaudhary and Ors. v. The State of Bihar, [1955] 1 SCR 1045; referred to.

15. The contention that declarations under s. 5(1) of the Act could be used as an engine of oppression against

members of parties who are opposed to the ideologies of the ruling party is one arising out of fear and mistrust which, if accepted would invalidate practically all laws of the land; for, then even a prosecution under the ordinary law may be considered as politically motivated, which is absurd. Furthermore, prejudice, malice or taint is not a matter for presumption in the absence of evidence supporting it. It is well settled that burden lies on the parties alleging bias or malice to prove its existence, and if malice or bias is proved in a particular case, the courts would strike down the act vitiated by it, in exercise of its powers under Articles 226, 227 or 136. [542 A-D]

In Re. Special Courts Bill, [1979] 2 SCR 476 referred to.

16. At the stage when the declaration is sought to be made there is no list pending nor has any prosecution been launched against the accused. Section 5 deals only with the decision taken by the Central Government to prosecute and until that decision is notified, the prosecution does not start, and the question of an accused being heard at that stage, therefore, does not arise at all.

[542 F-G]

Cozons v. North Devon Hospital Management Committee and Anr., [1966] 2 Q.B. 330: quoted with approval.

17. Under section 5(1) of the Act the Government has to be satisfied on two counts before it could issue a declaration. It must be satisfied in the first

510

instance that there is prima facie evidence of the commission of an offence. Secondly, it must form the opinion in accordance with the guidelines contained in the preamble that such offence ought to be dealt with under the Act. The condition of the existence of prima facie evidence is fulfilled in the case of the present declaration though the trial in the first Court had ended in a conviction and an appeal therefrom, the reason being that if conviction is construed as evidence of the existence of something more than a mere prima facie case, that would not mean that a prima facie case cease to exist. That a prima facie case must be found to exist is only the minimum requirement for the satisfaction of the Central Government and it would be doubly made out if the evidence available is stronger than is needed to make out only a prima facie case. A conviction of an accused person cannot mean that there is no prima facie evidence against him. All that it spells out is that not only a prima facie case is made out against him but that the evidence available is even stronger and is sufficient for a conviction. However, as the Government, while acting under the section, is to satisfy itself only with the existence of prima facie evidence, the assertion by it in the declaration that such evidence was available to its satisfaction cannot, by any stretch of imagination, be held to be inapplicable to a case in which a conviction has been

recorded. In this view of the matter the use of the expression 'prima facie' evidence in the declaration is fully justified even though the trial had ended in a conviction which was under appeal on the date of the declaration. [544 A-G]

A perusal of the declaration reveals that it gives the history of the case from beginning to end which demonstrates that the Central Government was fully aware of the various stages through which the trial of the appellants passed. Thus, the formation of the opinion by the Government of the existence of a prima facie case cannot be held to be perfunctory or illusory. It has not been shown that the declaration was in any way irrational or mala fide or based on extraneous considerations. [546 F-G]

18. The provisions of Section 13 of the Special Courts Act are purely directory and not mandatory so that if the conditions mentioned in it are not fulfilled the declaration would not be vitiated. It is to be noted that the section does not say that until a declaration is placed before the two Houses of Parliament it shall not be deemed to be effective, nor does the section intend that any consequences would result from its non-compliance. On a true interpretation of section 13 of the Act, it is clear that it is a case of a simple laying of the declaration before each House of Parliament. [547 A-B, 548 B]

M/s Atlas Cycle Industries Ltd. and Ors. v. State of Haryana, [1979] 2 SCC 196; applied.

19. The doctrine of the violation of basic structure of the Constitution or its fundamental features applies not to the provisions of a law made by a State legislature or Parliament but comes into operation where an amendment made in the Constitution itself is said to affect its basic features like fundamental rights enshrined under Articles 14, 19, 31 or the power of amendment of the Constitution under Art. 368 and so on. The doctrine has no application to the provisions of a Central or State law because if the statute is violative of any provision of the Constitution it can be struck down on that ground and it is not necessary to enter into the question of basic structure of the Constitution at all.

[548 C-E]

511

20. It is true that section 6 of the Act does not contemplate a prosecution which is relatable to the declaration under section 5 but that does not debar the application of section 5 to other stages of a criminal case, especially those specifically dealt with under section 7 of the Act which fully covers the situation in hand. The limited field in which section 6 operates does not therefore exhaust the consequences flowing from the issuance of a declaration under section 5 of the Act. [549 A-B]

21. The words "whether pending or disposed of" are significant and qualify the immediately preceding clause "a

prosecution in respect of such offences". The legislature has thus taken care to expressly provide that an appeal or revision would be covered by section 7 and transferable to the Supreme Court for disposal if it is directed against a judgment or order made in prosecution which is either pending or has been disposed of, the only other requirement of the section being that such appeal or revision must itself be pending at the date of the declaration. Therefore to interpret section 7 in such a way as its applicability is limited to appeals or revisions arising from prosecutions pending at the trial stage at the date of the relevant declarations is possible only if the words "or disposed of" are treated as absent from section-a course which is not open to this Court in view of the express language used. [549 E-G]

22. There is no question of the exercise of any judicial power by the legislature in enacting section 7 of the Act which covers a well known legislative process. By enacting section 7, Parliament has merely provided a new forum for the appeals which were pending in the High Court and in respect of which a valid declaration, fully consistent with the provisions of the Act, was made-a course which involved no interference with the judicial functions of the court and was fully open to the legislature. [550 A, E-F]

Indira Nehru Gandhi v. Sri Raj Narain, [1976] 2 SCR 347; distinguished.

23. Since the classification made by the Act complies with the dual test laid down by the Supreme Court and therefore held to be a reasonable classifications, Article 14 would not be attracted even if the procedure is held to be harsher than that available under the ordinary law. Apart from that, the procedure prescribed by the Act is not harsh or onerous but is more liberal and advantageous to the accused who is assured of an expeditious and fair trial thereunder.

[550 G-H, 551 A]

24. An appeal being a creature of statute, an accused has no inherent right to appeal to a particular tribunal. The legislature may choose any tribunal for the purpose of giving a right of appeal. Moreover, an appeal to the High Court is less advantageous than an appeal to the Supreme Court for the following reason:

> "The right of appeal given to an accused from the order of a Session Judge or Special Judge to the High Court is not totally unrestricted. Section 384 of the Code of Criminal Procedure empowers an Appellate Court to dismiss an appeal summarily if it is satisfied that there is no sufficient ground for interference."

While an appeal to the High Court under the Code of Criminal Procedure is attended with the risk of being summarily dismissed under section 384, an appeal under section 11(1) of the Act which runs thus:

512

"11. (1) Notwithstanding anything in the Code an appeal shall lie as of right from any judgment sentence or order, not being interlocutory order, of a Special Court to the Supreme Court both on facts and on law."

is not so.

An appeal under s. 11(1) lies as of right and both on facts and on law. Thus, the right conferred on a convict by s. 11(1) is wider and less restricted than the right of appeal given by the Code of Criminal Procedure.

(2) If the appeal is filed before the Supreme Court or is transferred thereto, the accused becomes entitled to a hearing of his case by the highest court in the country both on facts and on law and thus gets a far greater advantage than a right to move the Court for grant of special leave which may or may not be granted, it being a matter of discretion to be exercised by the Supreme Court.

Therefore the procedure regarding the appeals under the Act is not harsher than that prescribed by the Code of Criminal Procedure.

C[552 D-H, 553 E-H, 554

Syed Quasim Razvi v. The State of Hyderabad and Ors. [1953] SCR 589; applied.

25. Even the Code of Criminal Procedure does not provide for any revision against an interlocutory order. Section 397(2) of the Criminal Procedure Code expressly bars revision against interlocutory orders. Inasmuch as there is no right of revision either under the Code of Criminal Procedure or under the Act, it cannot be said that section 11(1) of the Act creates a definite procedural disadvantage to the accused. In fact under the Act, the Special Court is presided over by no less a person who is a sitting judge of a High Court and the possibility of miscarriage of justice is reduced to the barest minimum. [555 C-D]

V. C. Shukla v. The State, through C.B.I., [1980] 1 SCR 380; Jagannath Sonu Parker v. State of Maharashtra , [1963] Suppl. 1 SCR 573; followed.

26. The procedure for trial of warrant cases gives a full opportunity to the accused to participate in the trial at all its stages and to rebut the case for the prosecution in every possible manner and it has not been pointed out how the adoption thereof for trials under the Act would be to the disadvantage of the accused. Therefore the provisions of sections 9(1) and (3) of the Act cannot be said to be harsh. [556 E-G]

State of West Bengal v. Anwal Ali Sarkar, [1952] SCR 284 explained and distinguished.

27. None of the sections of the Act are violative of Article 14 or Article 21or any other provision of the Constitution. The classification made in the Act is valid and reasonable and has a rational nexus with the object of

the Act and that the procedure prescribed is fair and advantageous to the accused. [561 E-F]

28. The appellant in Crl. Appeal 493/79 has not been singled out for a discriminatory treatment. It is true that he has never been the holder of any high public or political office but the first clause of the preamble
513
clearly includes within its ambit not only persons holding high public or political offices but also others. Section 8 thus incorporates the well known concept of joint trial of accused persons in respect of offences forming part of the same transaction. [551 C-E]

Further Held (on merits):

29. In order to prove a criminal conspiracy which is punishable under section 120B of the Indian Penal Code, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. This clearly envisages that there must be a meeting of the minds resulting in an ultimate decision taken by the conspirators regarding the ommission of an offence. [565 H, 566 A]

30. It is true that in most cases, it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement two or more persons to commit an offence. [566 A-B]

In the instant case, there is no acceptable evidence connecting either of the appellants with the existence of any conspiracy. Even taking the main part of the prosecution case at their face value, no connection has been proved with the destruction of the film 'Kissa Kursi Ka' and the two appellants. The evidence produced by the prosecution falls short of the standard of proof required in a criminal case. The prosecution failed to prove either there was any existence of any conspiracy between A 1 and A 2 to destroy the film 'Kissa Kursi Ka' by burning it or to commit any other offence in respect of the film. There is evidence to show that there was any meeting of minds between A 1 and A 2. Even on the first two parts of the prosecution case, the allegation of the prosecution that the positive prints were removed at the instance or to the knowledge of A 1 or that the negatives and other materials of the film were sent for by A 1 and kept in his personal custody has not been proved. The mere fact that A 1 decided to show the film and refused certification for public exhibition and passed orders for seizure of the film and its transfer to the custody of the Ministry of Information does not disclose any offence. The decision to ban the film was not taken by A 1 secretly or clandestinely but after a full fledged discussion in the coordination Committee meeting attended by senior officers of various ministries as deposed by Prasad PW 63. Further that part of the case which relates to the burning of film

material rests solely on the uncorroborated testimony of the approver and is negatived insofar as the role therein of A 1 is concerned. [566 C-D, 583 F-H, 584 A-B]

(i) Till 9-7-75 i.e. the date by which the notice to show cause why certification of the film 'Kissa Kursi Ka' was made returnable, neither A 1 nor A 2 was anywhere in the picture. The facts disclosed by the prosecution ex facie show that objection to certification of the film had been taken at the very initial stage and the ultimate order was passed during the time when A 1, Mr. Shukla had taken over as Minister, which was merely the final scene of a drama long in process; [564 C-E]

(ii) Even at the stage of proposed exhibition of the film to the Judges of the Supreme Court who constituted the Bench and heard the Special Leave Petition i.e. 17-11-75 there was absolutely no evidence to show that there
514
was any meeting of minds of A 1 and A 2 nor is there any material to indicate that A 2 played any role in the burning of the film. The decision to ban the film was taken by the Ministry headed by A 1, on the merits of the case. No motive is attributable to A 1 at this stage because even the Chairman of the Board, PW 8 Mr. Thapa who was an independent witness was of the view that the film should not be certificated for public exhibition. Similarly, the steps taken by the officers of the Ministry in persuance of the film at Bombay and its transfer to Delhi was in the nature of routine to see that the decision taken by the Government was implemented. As soon as the Ministry received the orders of the Supreme Court for screening the film on 17-11-1975, immediate steps were taken to comply with the orders of the Court. Admittedly between 17th November 1975 to 23rd November 1975, A 2 was either away to Hyderabad or Sikkim as proved by DW 3. This negatives the story of the approver connecting A 2 with the burning of the film. [565 E-H, 581 C-D, 582 A]

A lot of evidence has been produced by the prosecution to show:

(a) that the positive print of the film found its way into the luggage compartment of the car in which A 1 then travelled to the Prime Minister's house where the print was unloaded by someone in the absence of A 1; and

(b) that the negatives and other material relating to the film were taken in a tempo or two to the Prime Minister's residence and from there to the Maruti Complex where they were stored before their destruction. [584 B-D]

But the connection of A 1 or A 2 therewith remains unproved. Had these factors provided circumstantial evidence on the basis of which alone the charge against either A 1 or A 2 could be held established it would have been necessary for

the Court to sift the evidence produced in support thereof. But that is definitely not the case, for, if either or both of the factors are proved, the inference of guilt of either A 1 or A 2 does not necessarily follow. For circumstantial evidence to furnish evidence of guilt it has to be such as it cannot be explained on any other reasonable hypothesis except the guilt of the accused which is not the case here because appellants A 1 and A 2 could not be said to be the only persons interested in the destruction of the film if it was as obnoxious to the then Prime Minister or as critical of the functioning of the then Union Government as the prosecution would have the Court believe. The film and all the material relating to it no doubt appear to have vanished into thin air but then neither A 1 nor A 2 can be held responsible therefor, in the absence of proof in that behalf proof which would exclude all reasonable doubt. [594 D-G]

(iii) A mere identification by a witness of a person in the Court for the first time who was not known to the witness and who had only caught a glimpse of the person, long time before is valueless, in the absence of the operative witness being tested by a previously held Test Identification does not exclude possibility of mistakes in identification. [576 B-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 492, 493 and 494 of 1979.

Appeals under section 7 of the Special Courts Act, 1979 on transfer from the Delhi High Court at New Delhi from the Judgment and Order dated 27-2-1979 of the Sessions Court at Delhi in Sessions Case No. 340/1978.

J. S. Wasu, M. L. Nanda and M. N. Shroff for the Appellant in Crl. A. 492/79.

K. L. Arora, K. G. Bhagat, Harish Gulati, Madan Bhatia and D. Goburdhan for the Appellant in Crl. A. 493/79.

P. R. Mridul, Rajinder Singh, O. P. Sharma, R. C. Bhatia and Vivek Tankha for the Appellant in Crl. A. 494/79.

K. L. Arora, K. G. Bhatat, Harish Gulati and D. Goburdhan for the Respondent No. 1 in Crl. A. 492/79.

Rajinder Singh B. R. Handa and O. P. Sharma for the Respondent No. 2 in Crl. A. 492/79.

Soli J. Sorabjee, Sol. Genl. Ram Jethmalani, Grish Chandra, S. Markandeya and S. B. Jaisinghani for the Respondent in Crl. As. 493-494/79.

The following Judgments were delivered FAZAL ALI, J. These two criminal appeals are directed against a judgment dated 27th February 1979 of the Sessions Judge, Delhi by which the accused (hereinafter referred to as the appellants) have been convicted under various sections of the Penal Code and awarded sentences of various terms of imprisonment not exceeding two years (which have been ordered to run concurrently) in addition to fines.

Both the appeals were originally filed before the Delhi High Court and were admitted by it on the 21st March 1979 when the sentences of the appellants were suspended and they were released on bail. On the 17th May. 1979, the State also filed an appeal to the Delhi High Court for enhancement of the sentences. The Special Courts Act (No. 22 of 1979 and hereinafter to be referred to as the 'Act') was passed by Parliament and received the assent of the President on 16th May 1979. On the 27th June 1979, the Central Government made a declaration under s.5 (1) of the Act as a consequence of which the appeals stood transferred to this Court.

The appellants have raised a number of preliminary objections relating to the constitutional validity of the Act and various provisions thereof on several grounds including the contravention of Articles 14 and 21 of the Constitution of India. Alternatively, it was argued that some of the provisions of the Act did not at all apply to the appellants and the transfer of the appeals from the High Court to this Court was not legal. The State has appeared through Shri Soli J. Sorabjee who has countered all the objections raised by the appellants and has submitted that the Act is a valid piece of legislation and that there is no illegality in the transfer of the appeals from the High Court to this Court. In view of the nature of the preliminary objections raised by the appellants we decided to dispose them of before entering into the merits of the appeals. After hearing the parties at great length, by an order dated December 5, 1979 we overruled all the said objections and proceeded to hear the appeals on merits. We now proceed to set out the reasons given for the order rejecting those objections.

In order to understand the arguments advanced by learned counsel for the parties it will be necessary to state certain undisputed facts. The Act was preceded by a Bill (introduced by a Member of the Lok Sabha) which was adopted by the Government but in view of certain Constitutional objections the President made a reference to this Court for its opinion regarding the validity of the Bill and its provisions. The matter was heard by a Bench of seven Judges and in its report dated December 1, 1978, this Court upheld the validity of the Bill generally by a majority of six to one. Certain clauses of the Bill, however, were held to be violative of Art. 21 of the Constitution. This Court further held that Parliament had legislative competence to create Special Courts and to provide for appeals against judgments and orders of such Courts to the Supreme Court. This Court also upheld the Classification provided in clause 4(1) of the Bill which conferred power on the Central Government to make a declaration in respect of an offence alleged to have been committed during the operation of the Proclamation of Emergency dated 25th June 1975 by a person who held high public or political office in India. To the extent that the clause brought within the purview of the Act persons who had committed offences between February 27, 1975 and June 25, 1975 it was, however, held to be invalid. Similarly, the provisions of clause 7 of the Bill laying down that a retired Judge of a High Court could be appointed as a Judge of the Special Court and that this could be done by the Central Government in consultation with but without the concurrence of the Chief Justice of India were held to be bad. Furthermore, the Court observed that the absence of a

provision for the transfer of a case from one Special Court to another affected the fairness of the trial and, therefore, was violative of Art. 21 of the Constitution. Barring these infirmities, the constitutional validity of the Bill was upheld by this Court. It may be mentioned here that during the course of arguments learned counsel for the Union gave an express undertaking that the defects pointed out in the Bill would be suitably removed so as to bring the Bill in accord with the opinion expressed by the Court. Consequently, a fresh Bill was prepared and was introduced in the Lok Sabha on the 21st February 1979. This Bill incorporated the suggestions of this Court, deleted reference to the period prior to the 25th June 1975 in the preamble, made a provision for transfer of a case from one Special Judge to another by the Supreme Court and provided that a Special Court would consist of a sitting Judge of a High Court nominated by the Central Government with the concurrence of the Chief Justice of India. After some debate the Bill was passed by the Lok Sabha on the 9th March 1979. It was then sent to the Rajya Sabha where its various provisions were fully debated and certain important suggestions were made by the Members of the Rajya Sabha as a result of which the Bill was returned by the Rajya Sabha with certain amendments on 21st March 1979. Thereafter the Government accepted the amendments suggested by the Rajya Sabha and incorporated the same in the Bill which was then passed and ultimately received the assent of the President on 16th May, 1979.

Some of the substantial changes which have been incorporated in the Act may be summarised thus:

The Act is now a permanent Act and does not deal only with offences committed during the period of Emergency. Secondly, in the preamble an additional clause has been added to indicate the nature of the offences committed by persons holding high public or political office. Thirdly, it has been provided that a Special Court would consist of a sitting Judge of a High Court nominated by the Chief Justice of the High Court concerned with the concurrence of the Chief Justice of India. Thus, the Government has absolutely no hand either in the appointment of or any control over the Special Judge. This provision appears to ensure complete independence of the Special Judge who is to be appointed to decide cases of highly placed public or political officers, so that they may have complete confidence in the Judge who tries their case.

Another special feature of the Act is that the preamble and its various clauses are not merely intended to spell out the object of the Act but contain important guidelines and essential safeguards and by virtue of s. 5(1) of the Act the clauses of the preamble become a part of the Act itself.

As the Act has thus assumed a new complexion, it is necessary to analyse briefly its scheme before we deal with the contentions raised by learned counsel for the parties. The heading of the Act shows that its main object is to provide for the speedy trial of a certain class of offences (emphasis ours). There are as many as nine clauses of the preamble which run thus:

> "AN ACT to provide for the speedy trial of a certain class of offences.
>
> (1) WHEREAS Commissions of Inquiry appointed under the Commissions of Inquiry Act, 1952 have rendered reports disclosing the existence of prima facie evidence of offences committed by persons who held high public or political offices in the country

and others connected with the commission of such offences during the operation of the proclamation of Emergency dated the 25th June, 1975, issued under clause (1) of article 352 of the Constitution;

(2) AND WHEREAS investigations conducted by the Government through its agencies have also disclosed similar offences committed during the period aforesaid;
(3) AND WHEREAS the offences referred to in the recitals aforesaid were committed during the operation of the said Proclamation of Emergency, during which a grave emergency was clamped on the whole country, civil liberties were curtailed to a great extent, important fundamental rights of the people were suspended, strict censorship was imposed on the press, judicial powers were severely crippled and the parliamentary democratic system was emasculated;

(4) AND WHEREAS all powers being a trust, and holders of high public or political offices are accountable for the exercise of their powers in all cases where Commissions of Inquiry appointed under the Commissions of Inquiry Act, 1952 or investigations conducted by Government through its agencies disclose offences committed by such holders;

(5) AND WHEREAS it is the constitutional, legal and moral obligation of the State to prosecute persons involved in the said offences;

(6) AND WHEREAS the ordinary criminal courts due to congestion of work and other reasons cannot reasonably be expected to bring those prosecutions to a speedy termination;

(7) AND WHEREAS it is imperative for the efficient functioning of parliamentary democracy and the institutions created by or under the Constitution of India that the commission of offences referred to in the recitals aforesaid should be judicially determined with the utmost dispatch;

(8) AND WHEREAS it is necessary for the said purpose to establish additional courts presided over by sitting Judges of High Courts;

(9) AND WHEREAS it is expedient to make some procedural changes whereby avoidable delay in the final determination of the innocence or guilt of the persons to be tried is eliminated without interfering with the right to a fair trial."

(Numbering of the clauses by us to facilitate discussion) So far as clause (1) is concerned it refers to Commissions of Inquiry and the reports given by them disclosing the existence of prima facie evidence of offences committed by persons holding high public or political offices in the country and others connected with the commission of such offences during the operation of the Proclamation of Emergency dated June 25, 1975. Clauses (2) and (3) give the history of the special features of the Emergency and the result of the investigation conducted by the Government regarding offences

committed during the Emergency. Clause (4) makes the Act a permanent one. According to this clause, persons holding high public or political offices are actually trustees in regard to the powers vested in them and offences committed by them in breach of the trust or confidence reposed in them would also fall within the ambit of the Act, if either by the Commissions of Inquiry or investigations conducted by the Government such offences are disclosed. Clause (5) makes it clear that it is the constitutional, legal and moral obligation of the State to prosecute persons involved in the offences mentioned in the foregoing clauses. Clauses (6) and (7) deal with the main object of the Act which is to bring the prosecution of the offenders falling within the ambit of the Act to a speedy termination and to bring about a judicial determination of the offences said to have been committed by them with the utmost dispatch. Clause (3) provides for the establishment of additional courts presided over by sitting Judges of High Courts. Clause (9) refers to certain procedural changes brought about by the Act in the provisions of the Code of Criminal Procedure and intended to avoid delay in the final determination of the innocence or guilt of the persons to be tried. To sum up from the object of the various clauses of the preamble it is manifest that particular type of persons, namely, those who are holding high public or political offices by way of a trust have been put in a separate class along with those who have committed offences during the Emergency and who also bear the same characteristics as those indicated in clause (4). Section 2 of the Act defines "Code", "declaration" and "Special Court" and the residuary clause (d) thereof says that words and expressions not defined in the Act would have the same meaning as in the Code of Criminal Procedure. Section 3(1) gives power to the Central Government to establish an adequate number of Special Courts by notification in the Official Gazette. Section 3(1) enacts that a Special Court shall consist of a sitting Judge of a High Court nominated by the Chief Justice thereof with the concurrence of the Chief Justice of India. Section 4 empowers the Special Court to take cognizance and try such cases as are instituted before it or transferred to it in accordance with the manner provided by the Act. Section 5(1) is the pivotal provision which lays down the conditions under which the Central Government is empowered to make a declaration which is the starting point of the prosecution of the offenders falling within the ambit of the Act. It may be noticed that s.5(1) clearly states that the guidelines contained in the preamble are to be followed by the Central Government in determining whether an offence is to be dealt with under the Act. Section 5(2) provides that a declaration made by the Central Government shall not be called in question in any court. Section 6 provides that on a declaration made under section 5(1) in respect of any offence, any prosecution in respect of such offence shall be instituted only in a special Court designated by the Central Government and that where a prosecution is pending in any other court, the same shall stand transferred to the special Court. This would be in derogation of anything contained in the code of Criminal Procedure. Section 7 deals with the automatic transfer to the Supreme Court of appeals or revisions pending in any court of appeal or revision at the date of the declaration. Section 8 embodies the well-known provisions of the Code of Criminal Procedure relating to a joint trial of a number of accused persons who are charged with the offence of abetment or conspiracy. Section 9(1) provides that the Special Court would follow the procedure prescribed by the Code for the trial of warrant cases before a Magistrate, that is to say it makes applicable the provisions of ss. 238 to 243 and 248 of the Code to trials by a Special Court. Sub-section (3) of s.9 lays down that the provisions of the Code of Criminal Procedure shall apply, in so far as they are not inconsistent with those of the Act, no proceedings before a Special Court which shall be deemed to be a Court of Session and would have all the powers thereof, and that a person conducting a prosecution before a special Court shall be deemed to be a

public prosecutor. Sub-section (4) of s. 9 empowers a Special Court to pass upon any person convicted by it any sentence authorised by law for the punishment of the offence of which such person is convicted. Section 10(1) contains a provision for the transfer by the Supreme Court of a case from one Special Court to another where such an order is expedient in the ends of justice. In fact, in the opinion given by this Court on the Presidential Reference this aspect of the matter was particularly highlighted. Sub-section (2) of s. 10, however, lays down the norms under which an application for transfer could be made. Sub-section (3) of s.10 empowers the Supreme Court to grant compensation to any person who has opposed the application for the transfer of a case if the Court finds that such an application was frivolous or vexatious. Section 11(1) prescribes the forum of an appeal to the Supreme Court against a judgment, order or sentence passed by a Special Court but excludes interlocutory order, from its ambit. It may be noted that interlocutory orders have been excluded from the purview of s. 11(1) so as to eliminate unnecessary delays in the trial of a case by a Special Court. Even the code of Criminal Procedure has barred any revision against an interlocutory order by virtue of the provisions of s. 397(2) of the code of Criminal Procedure, 1973. Sub-section (2) of s. 11 provides that no appeal or revision shall lie to any court from any judgment, sentence or order of a Special Court except as provided for under section 11(1). Sub-section (3) provides the period of limitation for filing an appeal before the Supreme Court and the proviso thereto confers power on the Supreme Court to condone any delay if sufficient cause is shown, it may be noticed here that under s. 11 an appeal to the Supreme Court from an order of the Special Judge lies as a matter of right. Section 12 empowers the Supreme Court to frame rules for carrying out the purposes of the Act. Section 13 provides that every notification made under sub-section (1) of s. 3 and every declaration made under sub-section (1) of s. 5 shall be laid, as soon as may be after it is made, before each House of Parliament.

Thus, by and large, the Act contains almost the same provisions as were contained in the Bill which was sent to this Court for its opinion by the President. Clause (1) of the Bill is now s.1 (1) of the Act. Clause (2) is now s.3 of the Act. Clause (3) of the Bill is now s.4 of the Act. Clause (4) of the Bill is now section 5 of the Act. Clause (5) of the Bill is now s.6 of the Act. Clause 6 of the Bill is now s.7 of the Act. Clause (7) of the Bill is now s.3(2) of the Act, with an explanation added to it. Clause 8 of the Bill is now s.8 of the Act. Clause (9) of the Bill is now s.9(1) of the Act with sub-sections (2)(3) and (4) added to it. Clause (10) of the Bill is now s.11(1) of the Act. Thus, in so far as the arguments advanced before this Court in the Reference case are concerned, they are concluded by the decision given thereon and we do not propose to go behind the opinion given by this Court in that case or the reasons thereof with which we are in respectful agreement. Learned counsel for the appellants having realised the force of this position, confined their arguments to certain points which either did not arise at the Reference stage or were not argued before the Court and on which no decision was given, and in fact, relied on some of the findings given and the propositions of law adumbrated by this Court in the Reference case.

The main ground of attack regarding the constitutional validity of the Act is based on Articles 14 and 21 of the Constitution. Before dealing with the arguments we might mention certain important principles laid down by this Court in the Reference case.

In a diverse society and a large democracy such as ours where the expanding needs of the nation change with the temper of the times, it is extremely difficult for any legislature to make laws applicable to all persons alike. Some amount of classification is, therefore, necessary to administer various spheres of the activities of the State. It is well settled that in applying Art. 14 mathematical precision or nicety or perfect equanimity are not required. Similarity rather than identify of treatment is enough. The courts should not make a doctrinaire approach in construing Art. 14 so as to destroy or frustrate any beneficial legislation. What Art. 14 prohibits is hostile discrimination and not reasonable classification for the purpose of legislation. Furthermore, the Legislature which is in the best position to understand the needs and requirements of the people must be given sufficient latitude for making selection or differentiation and so long as such a selection is not arbitrary and has a rational basis having regard to the object of the Act, Art. 14 would not be attracted. That is why this Court has laid down that presumption is always in favour of the constitutionality of an enactment and the onus lies upon the person who attacks the statute to show that there has been an infraction of the constitutional concept of equality. It has also been held that in order to sustain the presumption of constitutionality, the Court is entitled to take into consideration matters of common knowledge, common report, the history of the times and all other facts which may be existing at the time of the legislation. Similarly, it cannot be presumed that the administration of a particular law would be done with an "evil eye and an unequal hand". Finally, any person invoking Art. 14 of the Constitution must show that there has been discrimination against a person who is similarly situate or equally circumstanced. In the case of State of U.P. v. Deoman Upadhyaya, Subba Rao, J., observed as follows:-

> "No discrimination can be made either in the privileges conferred or in the liabilities imposed. But these propositions conceived in the interests of the public, if logically stretched too far, may not achieve the high purpose behind them. In a society of unequal basic structure, it is well nigh impossible to make laws suitable in their application to all the persons alike. So, reasonable classification is not only permitted but is necessary if society should progress."

With this brief introduction, we now proceed to deal with the arguments of learned counsel for the appellants. In the first place, Mr. Bhatia, appearing for appellant Sanjay Gandhi submitted that even having regard to the principles laid down by this Court in the Reference case, the Act fails to pass the test laid down for a valid classification under Art. 14. Therefore, we might mention here that the classical tests laid down for the application of Art. 14 are the following:-

> (1) The classification must be founded on an intelligible differentia which distinguishes persons who are placed in a group from others who are left out of the group.
>
> (2) Such differentiation must have a rational relation to the object sought to be achieved by the Act.
>
> (3) There must be a nexus between the differentiation which is the basis of the classification and the object of the Act.

In applying the aforesaid tests, Mr. Bhatia contended that the decision given in the Reference Case upheld the Bill and rejected the challenge that the Bill violated Art. 14 mainly on the ground that the Bill sought to put a certain class of persons, namely, persons holding high public or political offices who had committed offences only during the period of Emergency. In other words, he argued that the constitutionality of the Bill was upheld on the ground that it was legislation confined to selected offences committed by a particular class of persons during the Emergency period. It was contended that the impugned Act transgressed the limits imposed by the judgment in the Reference case by bringing within its fold offences committed prior and subsequent to the Emergency and thus was in direct conflict with the opinion of this Court rendered in the Reference case. In amplification of this argument it was contended that this Court struck down that part of the Bill which related to the period between February and June 1975 on the ground that persons having committed offences during that period could not be clubbed with those who had committed offences during the period of Emergency. In other words, the argument was that the Act, by clubbing together persons accused of offences committed during the Emergency with those alleged to be guilty of crimes pertaining to periods before and after the Emergency (i.e., by dealing with offences committed at any point of time whatsoever), has violated the guarantee under Art. 14 and the classification made by the Act is n direct contravention of the opinion given by this Court in the Reference case. In support of his contention Mr. Bhatia relied on the following observations of this Court in the Reference case:-

> "The classification which section 4(1) thus makes is both of offences and offenders, the former in relation to the period mentioned in the preamble, that is to say, from February 27, 1975 until the expiry of the proclamation of emergency dated June 25, 1975 and in relation to the objective mentioned in the sixth paragraph of the preamble that it is imperative for the functioning of parliamentary democracy and the institutions created by or under the Constitution of India that the commission of such offences should be judicially determined with the utmost dispatch, and the latter in relation to their status, that is to say, in relation to the high public or political office held by them in India. It is only if both of these factors co- exist that the prosecution in respect of the offences committed by the particular offenders can be instituted in the Special Court.....
>
> We are not concerned with the truth or otherwise of the allegations, the narrow question before us being whether, in the first instance, the classification is based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out. The answer to that question can be one and one only, namely, that offences alleged to have been committed during the emergency by persons holding high public or political offices in India stand in a class apart. The cover of emergency, so it is alleged, provided a unique opportunity to the holders of such offices to subvert the rule of law and perpetrate political crimes on the society. Others left out of that group had neither the means nor the opportunity to do so, since they lacked the authority which comes from official position. Thus, persons who are singled out by the Bill for trial before Special Courts possess common characteristics and those who fall outside that group do not possess them..... The suppression of people's liberties facilitates easy commission of

> crimes. Public criticism is a potent deterrent to misbehaviour and when that is suppressed, there is no fear of detection. Secondly, crimes which are alleged to have been committed during extraordinary periods like the period of emergency are oblique in their design and selective in their object .... But those crimes are not woven out of the warp and woof of political motivations. Equal laws have to be applied to all in the same situation and legislature is free to recognise the degree of harm or evil."
>
> (Emphasis ours) Special stress was laid on the observations of this Court that the offences alleged to have been committed during the Emergency by persons holding high public or political offices were a class apart because such offences were committed under the cover of Emergency which provided a unique opportunity to the holders of the said offices to subvert the rule of law. It was urged that this cannot be said of the period either before or after the emergency when no such cover or opportunity was available to the offenders concerned to misuse or abuse their powers and commit offences. We find this argument to be without any substance.

To begin with, it cannot be gainsaid that this Court while dealing with the Reference case was not at all concerned with the provisions of the Act which is of much wider application than the Bill considered by the Court in the Reference. It is no doubt true that the Bill contained provisions for punishing only those offenders who were accused of offences committed during a particular period namely the period of Emergency. It is also true that the period of Emergency was an extraordinary one in the history of our country and its features have been spelt out in the preamble of the Bill as also in the judgment given by this Court in the aforesaid case. But that by itself does not debar Parliament from passing a permanent Act to deal with a specified class of persons who occupy high public or political offices (which are offices of trust) and misuse or abuse them. It cannot be doubted that for the establishment and continuance of a Parliamentary democracy and to secure efficiency and purity of administration it is necessary that when such persons commit serious abuse of power and are guilty of a breach of the trust reposed in them, they would form a special class of offenders. The simple answer to the argument of Mr. Bhatia is that this Court was not at all concerned with the broader aspect of the matter as envisaged by the Act at the time when the Bill was being considered. That this is so, is clear from the observations made by Chandrachud, C.J., and Krishna Iyer, J. The former observed:-

> "Parliamentary democracy will see its halycon days in India when law will provide for a speedy trial of all offenders who misuse the public offices held by them. Purity in public is a desired goal at all times and in all situations, emergency or no emergency. But, we cannot sit as a super legislature and strike down the instant classification on the ground of under- inclusion on the score that those others are left untouched, so long as there is no violation of constitutional restraints."
>
> (Emphasis ours) The observation that purity in public life is a desired goal at all times is a sufficient justification for the classification made by the Act which widens its scope to include offenders of a particular type to be punished for offences committed at any time, whether before, during or after the Emergency.

Similar observations were made by Krishna Iyer J. in his concurring Judgment:-

> 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..... And so, to track down and give short shrift to .....
>
> x x x x Where the proposed law excludes the pre-and post- emergency crime-doers in the higher brackets and picks out only 'emergency' offenders, its benign purpose perhaps be comes a crypto cover-up of like criminals before and after. An 'ephemeral' measure to meet a perennial menace is neither a logical step nor national fulfillment. The classification, if I may anticipate my conclusion, is on the brink of constitutional break- down at that point and becomes almost vulnerable to the attack of Art. 14.
>
> x x x The crucial test is 'All power is a trust', its holders are 'accountable for its exercise', for 'from the people and for the people, all springs, and all must exist'. By this high and only standard the Bill must fail morally if it exempts non-Emergency criminals about whom prior Commission Reports, now asleep in official pigeon holes, bear witness and future Commission Reports (who knows ?) may, in time, testify.....
>
> Nothing about Emergency period is adverted to there as a distinguishing mark. If at all, the clear clue is that all abuse of public authority by exalted public men, whatever the time of Commission, shall be punished without the tedious delay which ordinarily defeats justice in the case of top echelons whose crimes affect the credentials of democratic regimes. Assuming civil liberty was a casualty during the emergency, as it was, how did it obstruct trials of super-political criminals? if faith in democratic institutions is the victim in case there is undue delay in punishing high public and political offenders, that holds good, regardless Emergency.....The question, then, is whether there is constitutional rationale for keeping out of the reach of speedy justice non-emergency criminals in high public or Political Offices. Such a Bill, were it a permanent addition to the corpus juris and available as a jurisdiction for the public to compel government, if a prima facie case were made out even against a minister in office, to launch a prosecution before a sitting High Court Judge, would be a whole some corrective to the spreading evil of corruption in power pyramids."
>
> (Emphasis ours) It would thus appear from the observations quoted above that the majority judgment never meant to indicate that the passing of an Act covering all persons holding high public or political offices without reference to any period during which they are alleged to have committee the offences sought to be made the subject matter of their indictment, would be beyond the legislative competence of Parliament. In fact, such persons would undoubtedly form a special class of offenders which would justify the legislative measure singling them out for an expeditious trial. To hold otherwise would be to say that persons bearing the aforesaid attributes would

> be immune from prosecution under any Special Act. Reading the opinion rendered in the Reference case carefully we are unable to agree with Mr. Bhatia that this Court held that only Emergency offenders could be punished under a special Act and that any Act seeking to punish offenders of a special type unrelated to the Emergency would be hit by Art. 14. It is true that some of the observations made by the learned Chief Justice, if read out of context, may apparently lend some support to the arguments of Mr. Bhatia but taken as a whole (as they must be) they clearly indicate that the passing of a permanent legislation classifying the type of offenders mentioned in the Act, namely, persons holding high public or political offices would be valid and, in fact, would be an ideal achievement.

We may mention here that the various observations made by Chandrachud, C.J., and Krishna Iyer, J. in the Reference case were highlighted during the debates which followed the introduction of the bill in the Lok Sabha and the Rajya Sabha after the opinion of this Court was given. The Bill was returned to the Lok Sabha on March 21, 1979 with suggestions for its amendment so as to make it embrace offences without reference to a particular period, namely, the period of Emergency. The Lok Sabha accepted the suggestions and passed the Bill in the form of the Act which received the assent of the President on the 16th May 1979. Thus, the Act incorporates not only the above-extracted observations made by Chandrachud, C.J., and Krishna Iyer, J. but also the views expressed by the Hon'ble Members of the two Houses of Parliament.

In view of the factors mentioned above, we are fully satisfied that the Act does not suffer from the infirmities pointed out by Mr. Bhatia and the circumstance that it applies to offences committed at any time by a particular set of persons possessing special characteristics does not render it unconstitutional, for, when it puts into a class a particular set of persons having special characteristics which distinguish them from others who are left out of that class and who are to be tried under the ordinary law, the classification is eminently reasonable. It may also be stated here that the classification made has a reasonable nexus with the object sought to be achieved, namely, quick despatch and speedy trials. In this connection, some observations of Chandrachud, C.J., in the Reference case may be adverted to:

> "If prosecutions which the Bill envisages are allowed to have their normal, leisurely span of anything between 5 to 10 years, no fruitful purpose will be served by launching them. Speedy termination of prosecutions under the Bill is the heart and soul of the Bill.....
>
> Thus, both the tests are fulfilled in the instant case namely, that (1) the classification is founded on an intelligible differentia which distinguishes those which are grouped together from others who are left out and (2) the said differentia has a rational relation with the object sought to be achieved by the Bill, namely, speedy termination of prosecutions initiated in pursuance of the declaration made under clause 4(1) of the Bill."
>
> The same, we hold, is true of the Act.

It was then submitted by Mr. Bhatia that even if the classification was valid, as the procedure prescribed by the Act is extremely harsh and prejudicial to the accused, Articles 14 and 21 are clearly violated. This aspect of the matter also has been expressly dealt with by Chandrachud, C.J., in the Reference case where he has pointed out that once the classification is held to be valid even if the procedure is harsher or disadvantageous that will not attract Art. 14. In this connection, he observed:-

> If the classification is valid and its basis bears a reasonable relationship with the object of the Bill, no grievance can be entertained under article 14 that the procedure prescribed by the Bill for the trial of offences which fall within its terms is harsher or more onerous as compared with the procedure which governs ordinary trials. Classification necessarily entails the subjection of those who fall within it to a different set of rules and procedure, which may conceivably be more disadvantageous than the procedure which generally applies to ordinary trials....But once a classification is upheld by the application of the dual test, subjection to harsher treatment or disadvantageous procedure loses its relevance, the reason being that for the purposes of article 14, unequals cannot complain of unequal treatment."

We shall, however, deal with the question whether or not the procedure is disadvantageous when we examine the argument of the learned counsel regarding sections 5, 6, 7 and 11 of the Act.

Thus, to sum up, the position so far as this part of the argument is concerned is as follows:-

> (1) Separate grouping of holders of high offices for purposes of expeditious criminal action to be taken by superior courts is a reasonable and valid classification because it enhances confidence on the rule of law, strengthens the democratic system and ensures purity of public life and political conduct.
>
> (2) The Bill was challenged before the Supreme Court on the touchstone of Art. 14 on several grounds. In the first place, it was argued that no rational basis for separately classifying Emergency offenders existed. The second ground of challenge was that assuming that there was a valid classification, the same was bad because it suffered from the vice of under-inclusion inasmuch as holders of high public or political offices were left out. This Court, however, repelled the argument of rational basis on the ground that the Emergency period, because of its special characteristics, afforded adequate basis for separate classification of Emergency offences. The Court was not at all at that time concerned expressly with the question as to whether classification of high public or political dignitaries without reference to any period during which they were alleged to have committed offences would be violative of Art. 14 of the Constitution. On the other hand, this Court made clear observations that an Act providing for such a classification would be not only valid but also highly welcome. It is true that the provision regarding a particular period before the Emergency was then struck down but that was so because the Bill was confined to offences committed only during the period of Emergency and the inclusion of that period meant bad

> classification for the reason that the period last mentioned could not be distinguished from other pre-or post-Emergency periods on any reasonable basis. This view of the Court could not be interpreted as laying down a law of universal application that no Special Act on a permanent basis classifying offenders possessing particular characteristics or attributes and providing for their prosecution under a special procedure would be invalid or violative of Art. 14. Thus, we do not think that the opinion of the Supreme Court in any way amounted to disapproval or condemnation of a permanent law in future bringing within its scope all holders of high public or political office.

It was then argued by Mr. Bhatia that assuming the classification of persons holding high public or political offices to be justified, it suff-

ers from a serions infirmity in that neither the term 'high public or political office' has been defined nor have the offences been delineated or defined so as to make the prosecution of such offenders a practical reality. Dealing with this argument, the learned Solicitor General pointed out that it was specifically raised when the Court was hearing the Reference and written submissions were filed by the parties but that, unfortunately, the opinion did not give any finding on it and urged that even in absence of any finding, the argument must be deemed to have been rejected. We find sufficient force in what the learned Solicitor General says but as we are hearing the appeals of persons who have been convicted and sentenced to various terms of imprisonment so that their liberty is involved, we feel that we should go into Mr. Bhatia's argument.

As regards the definition of 'high public or political offices' the expression is of well-known significance and bears a clear connotation which admits of no vagueness or ambiguity. Even during the debate in Parliament, it was not suggested that the expression suffered from any vagueness. Apart from that even in the Reference case, Krishna Iyer, J., referred to holders of such offices thus:-

> "heavy-weight criminaloids who often mislead the people by public moral weight-lifting and multipoint manifestoes.....
>
> .....such super-offenders in top positions..... .....No erudite pedantry can stand in the way of pragmatic grouping of high-placed office holders separately, for purposes of high-speed criminal action invested with early conclusiveness and inquired into by high-level courts."
>
> (Emphasis ours) It is manifest from the observations of Krishna Iyer, J. that persons holding high public or political offices mean persons holding top positions wielding large powers.

In American Jurisprudence 2d (Vol. 63, PP, 626, 627 &

637) the author describes persons holding public or political offices thus:

> "Public offices are cheated for the purpose of effecting the end for which government has been instituted, which is the common good, and not for the profit, honour, or private interest of any one man, family, or class of men....The powers and functions attached to a position manifest its character, and there is implied in every public office an authority to exercise some portion of the sovereign power of the 14- 289 SCI/80 state in making, executing, or administering the law.....Various positions, on the other hand, have been held not to be public offices, as, for examine, auditor of accounts appointed by railroad Commissioners...."

Similarly, Ferris in his thesis on 'Extraordinary Legal Remedies defines public or political offices thus:

> "A public office is the right, authority and duty created and conferred by law, by which an individual is vested with some portion of the sovereign functions of the Government to be exercised by him for the benefit of the public, for the term and by the tenure prescribed by law. It implies a delegation of a portion of the sovereign power. It is trust conferred by public authority for a public purpose, embracing the ideas of tenure, duration, emoluments and duties.....The determining factor, the test, is whether the office involves a delegation of some of the solemn functions of Government, either executive, legislative or judicial, to be exercised by the holder for the public benefit."

(72 Calcutta Weekly Notes, P.64, Vol.72) Similarly, Wade and Phillips in 'Constitutional Law' defines political offices thus:-

> The Cabinet is the body of principal Ministers with whom rests the real direction of policy. We speak of the Ministry or the Administration of a particular Prime Minister with reference to the full body of political office holders who from time to time hold the reins of Government, i.e., the Ministers of the Crown and their Parliamentary Secretaries."

O. Hood Phillips in 'Constitutional and Administrative Law' (4th Edition, p. 312 & 314) defines the hierarchy of Government Departments thus:

> "Ministers-At the head of each Department-except the "non-political" Departments, which are not important for present purposes-is the Minister, whether he is called Minister or Secretary of State or President of the Board. He is a member of the Government and changes with the Ministry of the day; and he may also be a member of the Cabinet. Parliamentary Secretaries-Under the Minister will be one or more Parliamentary Secretaries, or Parliamentary Under-Secretaries of State if the Minister himself is a Secretary of State. As their name implies, Parliamentary Secretaries are members of one or other of the Houses of Parliament, they are Junior Ministers who change with the Government of the day. They assist their Chief in the Parliamentary or political side of his work, as well as in the administration of his

> Department.....
>
> The detailed administration of the work of a Government Department is carried out by "permanent" civil servants. Although, like Ministers, they are servants of the Crown, civil servants are called "permanent" since their appointment is non-political and in practice lasts during good behaviour, as opposed to Ministers, Parliamentary Secretaries, etc., who are responsible to Parliament and change office with the Government."

So also, Ramsay Muir in his book 'How Britain is Governed' (3rd Ed. p. 81) states as follows:-

> "In this chapter we have to discuss the second element in the Government-that which changes with every change in the balance of power between parties in the country, which consists not of experts, but of politicians, and which works under the limelight of publicity.....This changing element is known as 'the Ministry'."

Asirvatham in his book 'Political Theory' (9th Ed p. 352) defines Political Executive thus :-

> "Turning from the nominal to the political executive, we find at least four distinct forms, viz., the English, the American, the Swiss, and the French. In England, the Prime Minister and the Cabinet constitute the political executive. They can remain in office only so long as they command the confidence of Parliament. They are members of one or the other house of the legislature and play a leading part in initiating legislation. They are also administrative heads of departments and, in that capacity, are responsible to Parliament not only for policy but also for the details of administration. They work together as a team and, in their relation to Parliament, stand or fall together."

In words and Phrases (Permanent Edition, Vol. 32 [(Suppl.] P. 226] the word 'Political' has been defined thus :-

> "The word "political" is defined as of or pertaining to policy, politics, or conduct of government....or pertaining to, or incidental to, exercise of functions vested in those charged with conduct of government, and relating to management of affairs of State".
>
> "The word 'political' is defined by Bouvier to be pertaining to policy or the administration of government. People v. Morgan, 90 III 558, 563.

The word "political" means that which pertains to government of a nation....."(P. 802) A perusal of the observations made in the various textbooks referred to above clearly shows that 'political office' is an office which forms part of a Political Department of the Government or the Political Executive. This, therefore, clearly includes Cabinet Ministers, Ministers, Deputy Ministers and Parliamentary Secretaries who are running the Department formulating policies and are responsible to the Parliament. The word 'high' is indication of a top position and enabling the holder

thereof to take major policy decisions. Thus, the term 'high public or political office' used in the Act contemplates only a special class of officers or politicians who may be categorised as follows:-

> (1) officials wielding extraordinary powers entitling them to take major policy decisions and holding positions of trust and answerable and accountable for their wrongs:
>
> (2) persons responsible for giving to the State a clean, stable and honest administration; (3) persons occupying a very elevated status in whose hands lies the destiny of the nation.

The rationale behind the classification of persons possessing the aforesaid characteristics is that they wield wide powers which, if exercised improperly by reason of corruption, nepotism or breach of trust, may mar or adversely mould the future of the country and tarnish its image. It cannot be said, therefore, with any conviction that persons who possess special attributes could be equated with ordinary criminals who have neither the power nor the resources to commit offences of the type described above. We are, therefore satisfied that the terms 'persons holding high public or political offices' is self-explanatory and admits of no difficulty and that mere absence of definition of the expression would not vitiate the classification made by the Act. Such persons are in a position to take major decisions regarding social, economic financial aspects of the life of the community and other far-reaching decisions on the home front as also regarding external affairs and if their actions are tainted by breach of trust, corruption or other extraneous considerations, they would damage the interests of the country. It is, therefore, not only proper but essential to bring such offenders to book at the earliest possible opportunity.

It was then contended that even the nature and character of the offences have not been defined in the Act which introduces an element of vagueness in the classification. We are, however, unable to agree with this contention because clause (4) of the preamble clearly indicates the nature of the offences that could be tried under the Act. Clause (4) of the preamble to the Act runs thus:

> "AND WHEREAS all powers being a trust, and holders of high public or political offices are accountable for the exercise of their powers in all cases where Commissions of Inquiry appointed under the Commissions of Inquiry Act, 1952 or investigations conducted by Government through its agencies disclose offences committed by such holders."

The words 'powers being, a trust' clearly indicate that any act which amounts to a breach of the trust or of the powers conferred on the person concerned would be an offence triable under the Act. Clause (4) is wide enough to include any offence committed by holders of high public or political offices which amounts to breach of trust or for which they are accountable in law and does not leave any room for doubt. Mr. Bhatia, however, submitted that even if the person concerned commits a petty offence like violation of municipal bye laws or traffic rules he would have to be prosecuted under the Act which will be seriously prejudicial to him. In our opinion, this argument is purely illusory and based on a misconception of the provisions of the Act. Section 5 which confers powers

on the Central Government to make a declaration clearly refers to the guidelines laid down in the preamble and no Central Government would ever third of prosecuting holders of high public or political offices for petty offences and the doubt expressed by the counsel for the appellant is, therefore, totally unfounded.

It was contended on behalf of the appellants that Parliament was not competent to pass a Special Act and create Special Courts for a particular set of offenders. This argument need not detain us because it has been effectively answered in the reference case which has held clearly that Parliament was fully competent to pass the Bill creating Special Courts.

Regarding the validity of sections 7 and 11 of the Act which correspond to clauses 6 and 10 of the Bill, Chandrachud, C.J., observed as follows:-

> "In view of our conclusion that Parliament has the legislative competence to enact clauses 6 and 10(1) of the Bill, it is unnecessary to consider the argument of the learn ed Solicitor General that, everything else failing, Parliament would have the competence to legislate upon the jurisdiction and powers of the Supreme Court by virtue of article 248(1) read with entry 97 of List I.....
>
> To sum up, we are of the opinion that clauses 2, 6 and 10(1) of the Bill are within the legislative competence of the Parliament. That is to say, Parliament has the competence to provide for the creation of Special Courts as clause 2 of the Bill provides, to empower the Supreme Court to dispose of pending appeals and revisions as provided for by clause 6 of the Bill and to confer jurisdiction on the Supreme Court by providing, as is done by clause 10(1), that an appeal shall lie as of right from any judgment or order of a Special Court to the Supreme Court both on fact and on law."

It was also contended for the appellants that the Act seeks to change the situs of the Court and virtually abrogates s. 181 of the Code of Criminal Procedure. This argument also does not merit any consideration because it was raised in the Reference case and rejected. Dealing with this aspect of the matter, Chandrachud, C.J observed :-

> "As regards situs of trial, it is unfair to make an assumption of mala fides and say that an inconvenient forum will be chosen deliberately. Besides, the provisions of chapter XII of the Code containing section 177 to 189, which deal with "Jurisdiction of the criminal courts in Inquiries and Trials", are not excluded by the Bill. Those provisions will govern the question as to the situs of trial."

Mr. Bhatia further submitted that the Act creates an invidious distinction inasmuch as persons holding high public or political offices would have the benefit of trial by such an experienced officer as a sitting Judge of a High Court while the appellants have been deprived of that right and were tried by a Special Judge who was only a Sessions Judge. This argument, in our opinion, is completely devoid of substance. The first information report against the appel-

lants was lodged on 13th April 1977 and the charge-sheet was submitted before the Special Judge who convicted the appellants by the order dated February 27, 1979. The Act, however, came into force on May 16, 1979, that is to say, three months after the conviction and about two months after the appellants had filed their appeals before the High Court. In these circumstances, the question of the appellants being tried by the Special Judge appointed under the Act could not arise because the said Special Court did not exist at all when the trial of the appellants was concluded. The existence of such fortuitous circumstances cannot attract Art. 14. This matter was considered in two decisions of this Court. In the case of Khandige Sham Bhat & Ors v. The Agricultural Income Tax Officer, Subba Rao J, observed as follows:-

> "If there is equality and uniformity within each group, the law will not be condemned as discriminative, though to some fortuitous circumstance arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment."

The same view was expressed thus in a later decision of his Court reported as Dantuluri Ram Raju Ors v. State of Andhra Pradesh Anr.

> "The facts that on account of topographical situation some landowners get greater benefit of the drainage scheme because of their lands being more prone to damage by floods is a fortuitous circumstance and the same would not be a valid ground for striking down the impugned legislation. It is well established that if there is equality and uniformity within each group, the law will not be condemned as discriminative though due to some fortuitous circumstances arising out of a peculiar situation, some included in a class get an advantage over others so long as they are not singled out for special treatment."

In view of these decisions, the argument of Mr. Bhatia must be overruled.

This, therefore, concludes the submissions made by Mr. Bhatia generally regarding the constitutionality of the Act.

Mr. Mridual adopted the above-noted arguments, advanced by Mr. Bhatia, but put forward contentions with respect to other aspects which we shall deal with at a later stage of the judgment.

It was next contended by Mr. Bhatia that s. 5 of the Act suffers from several constitutional and legal infirmities.

Sub-sections (t) and (2) thereof may be extracted here: "Declaration by Central Government of cases to be dealt with under this Act:

> 5.(1) If the Central Government is of opinion that there is prima facie evidence of the commission of a offence alleged to have been committed by a person who held high public or political office in India and that in accordance with the guidelines contained

> in the preamble hereto the said offence ought to be dealt with under this Act, the Central Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion.
>
> (2) Such declaration shall not be called in question in any court."

In the first place, it was contended that s. 5(1) suffers from the vice of excessive delegation of powers so as to violate Art. 14 in as much as the discretion conferred on the Central Government is absolute, naked and arbitrary and is clearly discriminatory as it is open to the Central Government to pick and choose persons and make declarations in respect of them while excluding others. In our opinion, this contention is based on a serious misconception of the p provisions of the Act. For one thing, no unguided or uncanalised power has been conferred on the Central Government. A basic condition imposed on the Central Government is that there must be a proper application of mind regarding the existence of prima facie evidence of the commission of an offence. Secondly, the discretion has to be exercised in accordance with the guidelines contained in the preamble. The various clauses of the preamble which have been set out in an earlier part of this judgment, lay down clear guidelines and provide sufficient safeguards against any abuse of power. Thirdly, clause (4) of the preamble clearly lays down that the power under s. 5 is exercisable only after the commission of an offence by the holder of a high public or political office bas been disclosed as a result of an inquiry conducted under the Commissions of Inquiry Act or of an investigation conducted by the Government through its agencies. It is well settled that discretionary power is not the same thing as power to discriminate nor can the constitutional validity of a law be tested on the assumption that where a discretionary power is conferred on a high authority, the same may or would be exercised in a discriminatory manner. In the case of Dr. N. B. Khare v. The State of Delhi, Kania, C. J., dealing with the same aspect of the matter observed as follows.

> "Moreover, this whole argument is based on the assumption that the Provincial Government when making the order ill not perform its duty and may abuse the provisions of the section. In my opinion, it is improper to start with such an assumption and decide the legality of an Act on that basis. Abuse of power given by a law sometimes occurs; but the validity of the law cannot be contested be cause of such an apprehension. In my opinion, therefore, this contention of the petitioner cannot be accepted."

In the case of Kathi Raning Rawat v. The State of Saurashtra this Court observed:

> "The discretion that is conferred on official agencies in such circumstances is not an unguided discretion, it has to be exercised in conformity with the policy to effectuate which the direction is given and it is in relation to that objective that the propriety of the classification would have to be tested."

The same view was taken in a later decision of this Court in the case of Matajog Dobey v. H. C. Bhart where the court observed as follows:-

> "It has to be borne in mind that a discretionary power is not necessarily a discriminatory power and that abuse of power is not to be easily assumed where the discretion is vested in the Government and not ill a minor official."

In the case of In Re The Kerala Education Bill, 1957, this Court said:

> "But all that we need say is that apart from laying down a policy for the guidance of the Government in the matter of the exercise of powers conferred on it under the different provisions of the Bill including cl. 36, the Kerala Legislature; has, by cl. 15 and cl. 37 provided further safeguards.
>
> In this connection, we must bear in mind what has been laid down by this Court in more decisions than one, namely, that discretionary power is not necessarily a discriminatory power and the abuse of power by the Government will not be lightly assumed."

Similarly, in the case of Jyoti Pershad v. The Administrator for the Union Territory of Delhi, Ayyangar J., speaking for the Court, observed :

> "So long therefore as the Legislature indicates, in the operative provisions of the statute with certainty, the policy and purpose of the enactment, the mere fact that the legislation is skeletal, or the fact that a discretion is left to those entrusted with administering the law, affords no basis either for the contention that there has been an excessive delegation of legislative power as to amount to an abdication of its functions, or that the discretion vested is uncanalised and unguided as to amount to a carte blanche to discriminate."

In the case of Moti Ram Deka etc. v. General Manager, N. E. F. Railway, Maligaon, Pandu, etc Shah J., speaking for the Court remarked-

> "Power to exercise discretion is not necessarily to be assumed to be a power to discriminate unlawfully, and possibility of abuse of power will not invalidate the conferment of power. Conferment of power has necessarily to be coupled with the duty to exercise it bona fide and for effectuating the purpose and policy underlying the rules which provide for the exercise of the power. If in the scheme of the rules, a clear policy relating to the circumstances in which the power, is to be exercised is discernible, the conferment of power must be regarded as made in furtherance of the scheme, and is not open to attack as infringing the equality clause."

In the case cf V. C. Shukla v. The State through C.B.I. this Court pointed out that where a discretion is conferred on a high authority such as the Central Government it must be presumed that the Government would act in accordance with law and in a bona fide manner, and said:

> "In fact, this Court has held in a number of cases that where a power is vested in a very high authority, the abuse of the power is reduced to the minimum."

In view of these decisions, it must be held that the power conferred on the Central Government is controlled by the guidelines contained in the preamble which by virtue of the provisions of s. 5(1) becomes a part of that section. As the power has been conferred on the Central Government which is to make a declaration in accordance with the conditions laid down in s. 5(1) and, therefore, in conformity will. the guidelines mentioned in the preamble, the attack based on discrimination is unfounded and is hereby repelled.

Another allied argument advanced by Mr. Bhatia was that the issuance of a declaration under s. 5(1) depends purely on the subjective satisfaction of the Central Government and under sub-section (2) of s. 5 such a declaration cannot be called into question by any court so that there would be an element of inherent bias or malice; in an order which the Central Government may pass, for prosecuting persons who are political opponents and that the section is therefore invalid. We are unable to agree with this argument. As already pointed out, the power of the Central Government to issue a declaration is a statutory power circumscribed by certain conditions. Further more, as the power is vested in a very high authority, it cannot be assumed that it is likely to be abused. On the other hand, where the power is conferred on such a high authority as the Central Government, the presumption will be that the power will be exercised in a bona fide manner and according to law. In the case of Chinta Lingam & Ors v. Government of India & Ors., this Court observed:

> "At any rate, it has been pointed out in more than one decision of this Court that when the power has to be exercised by one of the highest officers the fact that no appeal has been provided for is a matter of no moment.... It was said that though the power was discretionary but it was not necessarily discriminatory and abuse of power could not be easily assumed. There was moreover a presumption that public officials would discharge their duties honestly and in accordance with rules of law."

To the same effect is the decision of this Court in Budhan Choudhry & Ors. v. The State of Bihar. It was however suggested that as the Central Government in a democracy consists of the political Party which has the majority in Parliament, declarations under s. 5(1) lt the Act could be used as an engine of oppression against members of parties who are opposed to the ideologies of the ruling party. This is really an argument of fear and mistrust which, if accepted, would invalidate practically all laws of the land; for, then even a prosecution under the ordinary law may be considered as politically motivated, which is absurd. Furthermore, prejudice, malice or taint is not a matter for presumption in the absence of evidence supporting it. It is well settled that burden lies on the parties alleging bias or malice to prove its existence, and if malice or bias is proved in a particular case, the courts would strike down the act vitiated by it, in exercise of its powers under Arts. 226, 227 or 136. This aspect of the matter was dealt with in the reference case thus:-

> "Though the opinion which the Central Government has to form under clause 4(1) is subjective, we have no doubt that despite the provisions of sub-clause (2) it will be open to judicial review at least within the limits indicated by this Court in Khudaran

> Das Deo v. The State of West Bengal & Ors. (1975, 2, SCR 832,
>
> 845). It was observed in that case by one of us, Bhagwati J., while speaking for the Court. that in a Government of laws "there; is nothing like unfettered discretion remove from judicial reversibility". The opinion has to be formed by the Government, to set the least, rationally and in a bona fide manner."

Another limb of the argument of Mr. Bhatia regarding the provisions about declaration contained in s. 5 (1) was that they are violative of the principles of natural justice inasmuch as they do not provide for any hearing being given to the accused before a declaration is made. This argument, in our opinion, is also without substance. It is to be borne in mind that at the stage when the declaration is sought to be made there is no list pending nor has any prosecution been launched against the accused. Section 5 deals only with the decision taken by the Central Government to prosecute and until that decision is notified the prosecution does not start, and the question of an accused being heard at that stage, therefore, does not arise at all. A couple of instances in point may be cited here with advantage. In cases where law requires sanction to be given by the appointing authority before a prosecution can be launched against a Government servant, it has never been suggested that the accused must be heard before sanction, is accorded. The question of sanction arises at a point of time when there is no danger to the liberty of the subject and the accused at that stage is not in the picture at all. It is only after sanction is accorded that an accused is brought to trial or proceedings are started against him when he is to be heard and can challenge the validity of the sanction Similarly, when a first information report is filed before a police officer, the law does not require that the officer must hear the accused before recording it or submitting a charge-sheet to the Court. Another instance is to be found where a complaint is filed before a Magistrate who chooses to hold an inquiry under s. 202 of the Code of Criminal Procedure before issuing process or summons to the accused. lt has been held in several cases that at that stage the accused has got no locus to appear and file his objections to the inquiry. The right of the accused to be heard comes into existence only when an order summoning the accused is passed by the Magistrate under s. 204 of the Code of Criminal Procedure. In the case of Cozens v. North Devon Hospital Management Committee & Anr, Lord Salmon pithily observed:

> "No one suggests that it is unfair to launch a criminal prosecution without first hearing the accused."

The argument of Mr. Bhatia which is under examination is thus also found to be wholly untenable It was then contended that in the instant case the declaration dated June 22, 1979 made under s. 5(1) of the Act per se shows that it had not resulted from any real application of mind by the Central Government. The declaration is based, it is pointed out, on the existence of prima facie evidence of the commission of certain offences by Mr. Shukla and Mr. Sanjay Gandhi and proceeds to state that the said offences ought to be dealt with under the Act. It was vehemently argued that at the time when the declaration was made the appellants had already been convicted and had filed appeals in the High Court and that therefore for the Central Government to say that 'a prima facie case' was made out was to close its eyes to the realities of the situation. The argument, in other words, is that once the prosecution of the appellants had culminated in a conviction and an appeal therefrom,

there was no question of the existence of any 'prima facie case', and that the use of such an expression could be intelligible only if the accused were facing criminal proceedings which had not culminated in a conviction. The assertion about the existence of a prima facie case clearly shows, according to learned counsel, that the Central Government did not apply its mind at all to the factors relevant to the issuance of the declaration or that, at any rate, the application of its mind was perfunctory. We find ourselves, unable to accept of this argument which fails to consider certain fundamental aspects of the scope and ambit of s. 5(1) of the Act and is based on a misconstruction of the nature of the declaration which is to be made. Under the section the Government has to be satisfied on two counts before it could issue a declaration. It must be satisfied in the first instance that there is prima facie evidence of the commission of an offence. Secondly, it must form the opinion in accordance with the guidelines contained in the preamble that such offence ought to be dealt with under the Act. The argument under examination relates to the first limb of the satisfaction of the Central Government. So, the question arises whether the condition of the existence of prima facie evidence is not fulfilled in the case of the present declaration merely because the trial in the first court had ended in a conviction and an appeal therefrom. The answer to the question has to be an emphatic 'no', the reason being that if conviction is construed as evidence of the existence of something more than a mere prima facie case, that would not mean that a prima facie case ceases to exist. That a prima facie case must be found to exist is only the minimum requirement for the satisfaction of the Central Government and it would be doubly made out if the evidence available is stronger than is needed to make out only a prima facie case. A conviction of an accused person cannot mean that there is no prima facie evidence against him. All that it spells out is that not only a prima facie case is made out against him but that the evidence available is even stronger and is sufficient for a conviction. However, as the Government, while acting under the section, is to satisfy itself only with the existence of prima facie evidence, the assertion by it in the declaration that such evidence was available to its satisfaction cannot, by any stretch of imagination, be held to be inapplicable to a case in which a conviction has been recorded. In this view of the matter we find the use of the expression 'prima face' evidence in the declaration to be fully justified even though the trial had ended in a conviction which was under appeal on the date of the declaration. In this context, the contents of the declaration also deserve scrutiny. It reads:

> "WHEREAS the Central Bureau of Investigation recorded under section 154 of the Code of Criminal Procedure (2 of 1974) on the 13th April 1977 a first information report and registered a case being RC-2/77- CIU (1) for suspected offences of a conspiracy to commit theft and actual theft of the film materials of the film 'Kissa Kursi Kaa' pro-
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> duced by one Shri Amrit Nahata from the custody of the Ministry of Information and Broadcasting: AND WHEREAS investigations conducted by the Central Bureau of Investigation disclosed offences committed during the period while the proclamation of emergency dated the 25th June 1975, issued by the President under clause (i of Article 352 of the Constitution was in force:
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> AND WHEREAS after completion of investigation the Central Bureau of Investigation filed a charge-sheet on the 14th July 1977 in the court of the Chief

Metropolitan Magistrate, Delhi:

AND WHEREAS the facts mentioned in the said charge- sheet disclosed offences having been committed by Shri Vidya Charan Shukla, who was the Minister of Information and Broadcasting, Government of India, and Shri Sanjay Gandhi, son of late Shri Feroz Gandhi, under section 120-B of the Indian Penal Code, 1860 (45 of 1860) read with sections 409, 435, 411, 414 and 201 of the I.P.C. as well as substantive offences under section 409, 411, 414, 435 and 201 of the I.P.C. as also the said offences read with section 109 of the I.P.C.:

AND WHEREAS a case (RC/2/77-CIA-I) was filed in the court of the Chief Metropolitan Magistrate, Delhi, with respect to the said offences and the Chief Metropolitan Magistrate committed the case to the Court of Session for trial on 22-2-78:

AND WHEREAS the District and Sessions Judge having convicted the accused by his order dated 17-2-79 sentenced Shri Vidya Charan Shukla and Shri Sanjay Gandhi with imprisonment and also imposed fines on them as specified in the said order dated 27-2-79: AND WHEREAS Shri Vidya Charan Shukla and Shri Sanjay Gandhi filed appeals Nos. 71/79 and 72/79 respectively under Section 374(2) of the Code of Criminal Procedure, 1973 (2 of 1974) in the High Court of Delhi on 20-3-79 against the aforesaid conviction and that the said appeals were admitted by Delhi High Court on 21-3-79:

AND WHEREAS the State has also filed an appeal in the Delhi High Court on 18-5-79 under section 377, Code I of Criminal Procedure (No. 2 of 1974) for enhancement of the sentence with respect to the aforesaid accused persons:

AND WHEREAS the above-mentioned appeals are now pending in the High Court of Delhi:

AND WHEREAS the Central Government after fully and carefully examining the material placed before it in regard to the aforesaid offences is of opinion that there is prima facie evidence of the commission of the said offences by Shri Vidya Charan Shukla, who was the Minister of Information and Broadcasting, Government of India, at the relevant period and as such a person who held high public and political office, Shri Sanjay Gandhi and others and that in accordance with the guidelines contained in the preamble to the Special Courts Act 7 1979 (22 of 1979) the said offences ought to be dealt with under that Act.

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section S of the Special Courts Act 7 1979 (22 of 1979), the Central Government hereby declares that there is prima facie evidence of the commission of the aforesaid offences alleged to have been committed by 'Shri Vidya Charan Shukla, who was the Minister

> of Information and Broadcasting, Government of India, during the relevant period, and as such held a high public and political office in India during the relevant period, and Shri Sanjay Gandhi, son of late Shri Feroz Gandhi, and that in accordance with the guidelines contained in the Preamble to that Act, the said offences ought to be dealt with under that Act "

A perusal of the declaration reveals that it gives the history of the case from beginning to end which demonstrates that the Central Government was fully aware of the various stages through which the trial of the appellants, passed. Thus, the formation of the opinion by the Government of the existence of a prima facie case cannot be held to be perfunctory or illusory. It has not been shown that the declaration was in any way irrational or male fide or based on extraneous considerations. The argument advanced by Mr. Bhatia, therefore, must be overruled.

The last plank of attack on s. 5 of the Act is that the declaration is non est because it has not been laid before each House of Parliament as required by s. 13 of the Act. This argument merits some consideration. Section 13 runs thus:

> "13. Every notification made under sub-section (I) of section 3 and every declaration made under sub- section (1) of section 5 shall be laid, as soon as may be after it is made, before each House of Parliament."

As we read the section, we are clearly of the opinion that its provisions are purely directory and not mandatory so that if the conditions mentioned in it are not fulfilled the declaration would not be vitiated. It is to be noted that the section does not say that until a declaration is placed before the two Houses of Parliament it shall not be deemed to be effective, nor does the section intend that any consequence would result from its non-compliance. Moreover, the matter is no longer res integra and is concluded by several decisions of this Court, the most recent of them being M/s. Atlas Cycle Industries Ltd. & ors. v. The State of Haryana where this Court observed:

> "Thus two considerations for regarding a provision as directory are: (l) absence of any provision for the contingency of a particular provision not being complied with or followed, and (2) serious general inconvenience and prejudice that would result to the general public if the act of the Government or an instrumentality is declared invalid for non compliance with the particular provision *** *** *** In the instant case, it would be noticed that sub- section (6) of Section 3 of the Act merely provides that every order made under Section 3 by the Central Government or by any officer or authority of the Central Government shall be laid, before both Houses of Parliament, as soon as may be, after it is made. It does not provide that it shall be subject to the negative or the affirmative resolution by either House of Parliament. It also does not provide that it shall be open to the Parliament to approve or disapprove the order made under Section 3 of the Act. It does not even say that it shall be subject to any modification which either House of Parliament may in its wisdom think it necessary to provide. It does not even specify the period for which the order is to be laid before both Houses of Parliament nor does it provide any penalty for non-observance of or

> non-compliance with, the direction as to the laying of the order before both Houses of Parliament. It would also be noticed that the requirement as to the laying of the order before both the Houses of Parliament is not a condition precedent but subsequent to the making of the order. In other words, there is no prohi-
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> bition to the making of the orders without the approval of both Houses of Parliament. In these circumstances, we are clearly of the view that the requirement as to, laying contained in sub-section (6) of Section 3 of the Act falls within the first category, i.e., "simple laying" and is directory, not mandatory."

We fully agree with this view and hold that on a true interpretation of section 13 of the Act, it is a case of a simple laying of the declaration before each House of Parliament and the declaration cannot be struck down on he grounds suggested by the counsel.

It was then submitted that as the declaration is based on the result of an investigation held by a Central agency even though the' offences were alleged to have been committed in a State, it affects the s basic structure of the Constitution and is, therefore, void. This argument, in our opinion, is also misconceived. The doctrine of the violation of basic structure of the Constitution or its fundamental features applies not to the provisions of a law made by a State legislature or Parliament but comes into operation where an amendment made in the Constitution itself is said to affect its basic features like fundamental rights enshrined under Articles 14, 19, 31, or the power of amendment of the Constitution under Art. 368 and so on. The doctrine has no application to the provisions of a Central or State law because _ if the statute is violative of any provision of the Constitution it can be struck down on that ground and it is not necessary to enter into the question of basic structure of the Constitution at all.

Mr. Mridul, appearing for Mr. Shukla, apart from adopting the arguments of Mr. Bhatia, as discussed above, raised two additional points. In the first place, he submitted that s. 5(1) of the Act has no application to the facts of the present case because under s. 5(1) a declaration has to be made on the basis of the sources indicated in the section, namely, inquiries conducted under the Commissions of Inquiry Act or investigations which become otiose and would have relevance only if his client had not been convicted. This argument, in our opinion, appears to be the same as was put forward by Mr. Bhatia which we have already rejected.

It was next argued that conviction being a finding of guilt can not be said to fall within the situation contemplated by section 5(1) of the Act. Mr. Mridul contended that as section 6 is an extension of the scheme contained in section 5 the former does not overrule the entire Code of Criminal Procedure but in fact takes in only those cases which are pending at the trial stage when the declaration is made. Once the case ends in a conviction, section 6 spends itself out and there is no room for the application of section 5, according to learned counsel. It is true that section 6 does contemplate a prosecution which is relatable to the declaration under section 5 but that does not debar the application of section 5 to other states or a criminal case, especially those specifically dealt with under section 7 of the Act which, as we shall presently show, fully covers the situation in hand. The limited field in which section 6 operates doss not therefore exhaust the consequences flowing

from the issuance of a declaration under section 5 Mr. Mridul however contended that section 7 would not apply to this case because its language embraces only those appeals which arise out of a prosecution which itself is pending at the time when a declaration 'is made. The argument is devoid of force as, to accept it, would be to ignore an important part of section 7 which runs thus .

> "7. If at the date of the declaration in respect of any offence any appeal or revision against any judgment or order in a prosecution in respect of such offence, whether pending or disposed of is itself pending in any court of appeal or revision, the same shall stand transferred for disposal to the Supreme Court."

The words "whether pending or disposed of" are significant and qualify the immediately preceding clause "a prosecution in respect of such offence". The legislature has thus taken care to expressly provide that an appeal or revision would be covered by section 7 and transferable to the Supreme Court for disposal if it is directed against a Judgment or order made in a prosecution which is either pending has been disposed of, the only other requirement of the section being that such appeal or revision must itself be pending at the date of the declaration To interpret section 7 in such a way that its applicability is limited to appeals or revisions arising from prosecutions pending at the trial stage at the date of the relevant declarations is possible only if the words "or disposed of" are treated as absent from the section a course which is not open to this Court in view of the express language used. The argument is therefore repealed.

Finally, it was argued that by providing in s. 7 for an automatic transfer of appeals from the High Court to the Supreme Court the legislature has exercised a judicial power which is vested in the Supreme Court alone under s. 406 of the Code of Criminal Procedure and that the section is invalid as it conflicts with the said s. 406.

We are, however, unable to agree with this argument. There is no question of the exercise of any judicial power by the legislature in enacting s. 7 which covers a well-known legislative process. The decision of this Court in Smt. Indira Nehru Gandhi v. Shri Raj Narain relied upon by Mr. Mridul deals with quite a different situation and is wholly inapplicable to the present case. There what the legislature did was to disposed of two appeals on merits through an amendment to deprive the court of the opportunity to decide the appeals which are pending before it. The amendment was struck down by this Court in a judgment during the course of which Mathew, J. Observed:

> "At the time when the Amendment was passed, the appeal filed by the appellant and the cross appeal of the respondent were pending before the Supreme Court. Clause (4) was legislation ad hominem directed against the course of the hearing of the appeals on merits as the appeal and the cross appeal were to be disposed of in accordance with that clause and not by applying the law to the facts as ascertained by the court. This was a direct interference with the decision of these appeals by the Supreme Court on their merits by a legislative judgment."

Thus, in that case the legislation was ad hominem and was directed against the course of the hearing of the appeals on merits. In the instant case, however, the Parliament has done nothing of the sort.

By enacting s. 7, it has merely provided a new forum for they appeals which were pending in the High Court and in respect of which a valid declaration, fully consistent with the provisions of the Act, was made-a course which involved no interference with the P' judicial functions of the court and was fully open to the legislature. We are thus clearly of the opinion that the decision relied upon by Mr. Mridul is of no assistance to him and that his argument is without merit.

We now pass on to the next phase of the argument of Mr. Bhatia and Mr. Mridul which relates to the nature of the procedure provided for by the Act. According to the contention of learned counsel for the appellants, the procedure prescribed by the Act is harsher and more rigorous than that provided for in the Code of Criminal Procedure and causes serious prejudice to the accused and is, therefore. violative of Art. 14 of the Constitution. We might mention here that in view of our finding that the classification made by the Act complies with the dual test laid down by this Court and is a reasonable classification, Art. 14 would not be attracted even if the procedure is held to be harshar than that available under the ordinary law. Apart from that, however, we find that the procedure prescribed by the Act is not harsh or onerous as contended but is more liberal and' advantage to the accused who is assured of an expeditious and fair trial thereunder. Before, however, dealing with this aspect of the matter, we might dispose of an argument advanced by Mr. Bhatia that his client not having held any high public or political office has been drawn into this case by virtue of the declaration and has, therefore, been singled out for a discriminatory treatment. We are unable to accept this argument. It is true that Mr. Sanjay Gandhi has never been the holder of any high public or political office but the first clause of the preamble clearly includes within its ambit not only persons holding high public or political offices but also others as section 8 states .

> "8. A Special Court shall have jurisdiction to try any person concerned in the offence in respect of which a declaration has been made, either as principal, conspirator or abettor and all other offences and accused persons as can be jointly tried therewith at one trial in accordance with the Code."

Section 8 thus incorporates the well-known concept of joint trial accused persons in respect of offences forming part of the same transaction. In these circumstances no discrimination, as complained of by the appellants, results.

Coming now to the procedure prescribed by the Act, reliance was placed by learned counsel for both the appellants on a few cases decided by this Court to show that the procedure prescribed by the Act is harsh and unfavorable to the accused. As suggested by Mr. Bhatia we have tried to judge the harshness or otherwise of the procedure from the vision of an accused person but find ourselves unable to agree with the contention. We might mention here that in the Reference case, Chandrachud, C.J. pointed out the undernoted three infirmities appearing in the Bill which were violative of Art. 21 of the Constitution:

> (1) that there was no provision for transfer of a case;
>
> (2) that a retired Judge could be appointed as a special Judge; and (3) that the appointment of a Special Judge was controlled by the Government.

Shinghal, J., in his dissenting note observed that if jurisdiction ill the matter of appointing a Special Judge was given to the High Court concerned leaving its Chief Justice to designate one of the Judges of his Court as a Special Judge, the procedure may become very fair and unexceptionable. This view, however, was not shared by the majority of Judges though they did agree that if such a course was adopted that would be undoubtedly laudable. But then it is for the legislature to decide upon the procedure to be followed in the matter and it is significant for our purpose that the aforesaid infirmities have been removed by the Act, where under not only is the appointment of a Special Judge made free of control by the government as it now rests with the Chief Justice of the High Court concerned subject to the only condition that he must obtain the concurrence of the Chief Justice of India therefor. A provision for transfer of cases from one Special Court to another Special Court has also been inserted in 10(1). The challenge on the ground of violation of Art. 21 of the Constitution fails.

We shall now deal with the contention that the procedure prescribed by the Act is harsh. In the first place, it was submitted that under s. 7 an appeal pending in the High Court stands transferred to the Supreme Court and that thus the appellant is deprived of a valuable right of having the appeal heard and decided by the High Court which is vested in him the moment he is convicted. Secondly, it was urged that if the appeal in the High Court was decided against the appellant, he would still have a right to move the Supreme Court Under Art. 136 of the Constitution against conviction but that by reason of the appeal having been transferred to the Supreme Court, that right also has been taken away. In our opinion, there is no substance in this grievance. To begin with, an appeal being a creature of statute, an accused has no inherent right to appeal to a particular tribunal. The legislature may choose any tribunal for the purpose of giving a right of appeal. Moreover, an appeal to the High Court is less advantageous than an appeal to the Supreme Court for the following reasons:

> (1) The right of appeal given to an accused from the order of a Session Judge or Special Judge to the High Court is not totally unrestricted. Section 384 of the Code of Criminal Procedure empowers an Appellate Court to dismiss an appeal summarily if it is satisfied that there is no sufficient ground for interference. The relevant portion of s. 384 runs thus: "384. (1) If upon examining the petition of appeal and copy of the judgment received under section 382 or section 383, the Appellate Court considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily;
>
> Provided that-
>
> (a) no appeal presented under section 382 shall be dismissed unless the appellant or his pleader has had a reason able opportunity of being heard in support of the same,
>
> (b) no appeal presented under section 383 shall be dismissed except after giving the appellant a reasonable opportunity of being heard in support of the same, unless the Appellate Court considers that the appeal is frivolous or that the production of the accused in custody before the Court would involve such inconvenience as would be

disproportionate in the circumstances of the case;

(c) no appeal presented under section 383 shall be dismissed summarily until the period allowed for preferring such appeal has expired.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case "

Thus, an appeal to the High Court under the Code of Criminal Procedure is attended with the risk of being summarily dismissed under s. 384. On the other hand, an appeal to the Supreme Court is governed by s. 11(1) of the Act which runs thus:-

"11. (1) Notwithstanding anything in the Code, an appeal shall lie as of right from any judgment, sentence or order, not being interlocutory order, of a Special Court to the Supreme Court both on facts and on law."

An appeal under s. 11(1) lies as of right and both on facts and on law. Thus, the right conferred on a convict by s. 11(1) is wider and less restricted than the right of appeal given by the Code of Criminal Procedure.

(2) If the appeal is filed before the Supreme Court or is transferred thereto, the accused becomes entitled to a hearing of his case by the highest court in the country both on facts and on law and thus gets a far greater advantage than a right to move the Court for grant of special leave which may or may not be granted, it being a matter of discretion to be exercised by the Supreme Court.

A similar view was expressed in Syed Qasim Razvi v. The State of Hyderabad & Ors where this Court made the following observations:-

"But in this present case the original trial was by the Special Tribunal which was invested with the powers of a sessions court and consequently only one appeal would lie to the High Court. It is said that the case could have been tried by the District Magistrate and in that case the accused could have one appeal to the Sessions Judge and a second one to the High Court under the Hyderabad law. This contention rests on a pure speculation and is hardly tenable."

In the above view of the matter, we are unable to agree with learned counsel for the appellants that the procedure regarding appeals is harsher than that prescribed by the Code of Criminal Procedure.

There is yet another aspect of the matter which was stressed by the learned Solicitor general. Under the provisions of s. 376 of the Code of Criminal Procedure no appeal by a convicted person would lie in any of the following cases:-

(1) where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees;

> (2) where a Court of session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees;
>
> (3) where a Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees;
>
> (4) where, in a case tried summarily, a Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding two hundred rupees.

Thus if the Sessions Judge were to try an accused and sentence him to fine or to imprisonment not exceeding three months, he would have no right of appeal at all. On the other hand, if a Special Judge imposes the same sentence, an appeal lies to the Supreme Court as of right both on facts and on law. Could it be reasonably argued in such circumstances that the right of appeal provided by the Act was harsher or less advantageous to the accused ? For the reasons given above, our answer to this question is in the negative.

It was then pointed out that the right of having matters decided in A revision by the High Court has been taken away from the accused by the procedure prescribed by the Act, under s. 11(1) under which no appeal also lies against an interlocutory order and it was contended that the section therefore entailed a definite procedural disadvantage to the accused. This argument also is based on a misconception of the provisions of the Act and those of the Code of Criminal Procedure, section 397(2) of which runs thus:-

> "397. (2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding."

Thus, even the Code of Criminal Procedure does not provide for any revision against an interlocutory order. As to what is the connotation of an interlocutory order is a matter with which we are not concerned in this case. What is material is that so far as interlocutory orders are concerned, there is no right of revision either under the code of Criminal Procedure or under the Act. In considering this aspect of the matter one must also bear in mind the fact that under the Act the Special Court is presided over by no less a person who is a sitting Judge of a High Court and the possibility of miscarriage of justice is reduced to the bare minimum. While adverting to this aspect of the case, this Court observed in the case of V. C. Shukla v. The State through C.B.I. (supra):

> That the Act makes a distinct departure from the trial of ordinary offences by criminal courts in that the trial of the offences is entrusted to a very high judicial dignitary who is a sitting Judge of the High Court to be appointed by the Chief Justice concerned on the recommendations of the Chief Justice of India. This contains a built-in safeguard and a safety valve for ensuring the independence of judiciary on the one hand and a complete fairness of trial on the other. In appointing the Special Judge, the Government has absolutely no hand or control so that the Special Judge is

> appointed on the recommendations of the highest judicial authority in the country, viz., the Chief Justice of India. This would naturally instil great confidence of the people in the Special Judge who is given a very elevated status."

We may mention here that in the case of Jagannath Sonu Parkar v. State of Maharashtra, the right of appeal, from an order of a Special Magistrate directly to the High Court (bypassing the Sessions Judge) was held to be more advantageous from the point of view of the accused In this connection, this Court said:

> "It is true that if the complaint was filed in the Court of Magistrate having jurisdiction over Deogad alone, as it could lawfully be filed, an appeal would against an order of conviction, lie to the Court of Session, Ratnagiri and an application in the exercise of revisional jurisdiction to the High Court from the order of the Court of Session. But it is difficult to hold that this amounts to any discrimination. Apart from the fact that the trial by a special Magistrate and an appeal directly to the High Court against the order of the Magistrate may be regarded normally as more advantageous to the accused persons, the distinction between Courts to which the appeal may lie arises out of the constitution of the Special Magistrate and not any special procedure evolved by the Notification."

What is true of an appeal to the High Court from the order of a Special Magistrate equally applies to an appeal to the Supreme Court from the order of a Special Court constituted under the Act. Thus, viewed from any angle, the procedure prescribed by the Act cannot be said to be prejudicial or less advantageous to the accused, much less harsher or more rigorous than the one provided in the Code of Criminal Procedure.

It was then argued that though the Special Court has been give the status of a Court of Session under s. 9(3) of the Act, yet it has to follow, under s. 9(1) thereof the procedure prescribed for the trial of warrant cases before a Magistrate in sections 238 to 243 and 248 of the Code of Criminal Procedure. We cannot conceive how any grievance can be made on this score that the provision is harsh. The procedure for trial of warrant cases gives a full opportunity to the accused to participate in the trial at all its stages and to rebut the case for the prosecution in every possible manner and it has not been pointed out how the adoption thereof for trials under the Act would be to the disadvantage of the accused. We find that the grievance put forward is unfounded.

Great reliance was placed by learned counsel on the judgment in the State of West Bengal v. Anwar Ali Sarkar in support of the proposition that the procedure prescribed by the Act was harsh and disadvantageous to the accused. Before referring to certain passages in that judgment (which has been fully considered in the Reference case) we consider it necessary to give the background and the special facts in the light of which the Judges of this Court made the relevant observations. The West Bengal legislature passed the West Bengal Special Courts Act (hereinafter to be referred to as the 'West Bengal Act') constituting Special Courts and empowering the State Government to refer cases or offences or classes of cases or classes of offences to such Courts but did not at all indicate any guidelines as to the nature of the cases to be so referred which was thus a matter left entirely to the

discretion of the Government. In other words, the Government was given a blanket power to refer any case of whatsoever nature to the Special Courts. Sub-sections (1) and (2) OF s. 5 of the West Bengal Act are extracted below:-

> "5(1) A Special Court shall try such offences or classes of offences or cases or classes of cases, as the State Government may by general or special order in writing, direct.
>
> (2) No direction shall be made under sub-section (1) for the trial of an offence for which an accused person was being tried at the commencement of this Act before any court, but, save as aforesaid, such direction may be made in respect of an offence, whether such offence was committed before or after the commencement of this Act."

A perusal of these provisions would show that the State Government was given an uncontrolled power to refer for trial offences or cases by a general or special order. Under s. 3, the Government was empowered by a notification in the official Gazette to constitute Special Courts and s. 4 provided for the appointment of Special Judges to preside over such Courts. Even though no conditions regulating the exercise of discretion by the State Government were laid, Sastri, C.J., upheld the validity of the law on the ground that the State in the exercise of its governmental power was entitled to make laws operating differently to different groups of classes of persons. Elaborating the point, Sastri, C.J., observed:

> "In the face of all these considerations, it seems to me difficult to condemn section 5(1) as violative of Article 14, If the discretion given to the State Government should be exercised improperly or arbitrarily, the administrative action may be challenged as discriminatory, but it cannot affect the constitutionality of the law. Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it .... On the contrary, it is to be presumed that a public authority will act honestly and reasonably in the exercise of its statutory powers, and that the State Government in the present case will, before directing a case to be tried by a Special Court, consider whether there are special features and circumstances which might unduly protract its trial under the ordinary procedure and mark it off for speedier trial under the Act.
>
> ... ...
>
> Even from the point of view of reasonable classification, I can see no reason why the validity of the Act should not be sustained. As already pointed out, wide latitude must be allowed to a legislature in classifying persons and things to be brought under the operation of a special law, and such classification need not be based on an exact or scientific exclusion or inclusion.

It might be noticed, therefore, that even though no guidelines at all were provided by the statute, yet Sastri, C.J., held that the classification was a reasonable one and sustained the validity of the law.

The other Judges, however, did not agree with the view of Sastri, C.J., and struck down the provisions of section 5 of the West Bengal Act. However, the judgment is wholly inapplicable to the present case in which the Act not only lays down clear, explicit and exhaustive guidelines but further requires the State Government to act only on the basis of certain specific conditions and after being satisfied on a fully application of the mind that a prima facie case was made out. We have already indicated that by enacting s. 5, the Act makes the various clauses of the preamble as a part of that section. Thus, any possibility of discrimination or absolute or arbitrary exercise of powers is excluded by the Act. The case of Anwar Ali Sarkar (supra), therefore cannot furnish any criterion for judging the validity of any of the provisions of the Act. It is in the light of this background that we have to examine Anwar Ali Sarkar's case. It may be mentioned that one of the grounds which appealed to Sastri, C.J., was that the object of the West Bengal Act was to provide for speedier trial by instituting a system of Special Courts with a simplified procedure which was sufficient, in his opinion, to justify the validity of that Act. Fazal Ali, J., (as he then was) laid stress on the fact that although a procedure ensuring a speedy trial was prescribed by the West Bengal Act yet that Act had not set out any principle of classification while laying down the new procedure. He held that in the absence of a reasonable classification a procedure which catered to a speedier trial was itself not sufficient to justify the constitutionally of the West Bengal Act. In the instant case, we have already pointed out that a reasonable classification of a particular set of persons or class of persons, viz., those holding high public and political offices, has already been made and that this classification is consistent with the object of the statute which is a rational one, viz., expeditious trial. This was not true of the West Bengal Act, s. 5 of which was held to be violative of Art. 14 by Mahajan, J., also on the ground that there was no basis for the differential treatment prescribed in the West Bengal Act. He observed:

> "Section 5 of the West Bengal Special Courts Act is hit by article 14 of the Constitution inasmuch as it mentions no basis for the differential treatment prescribed in the Act for trial of criminals in certain cases and for certain offences....
>
> By the process of classification the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject."

These observations can obviously have no application to the present case because, as already held by us, the Act makes not only a classification but a classification which fulfils the dual test laid down by this Court in several cases Reliance was placed by the counsel for the appellant on the following observations of Mahajan, J.:

> "The present statute suggests no reasonable basis or classification, either in respect of offences or in respect of cases. It has laid down no yardstick or measure for the grouping either of persons or of cases or of offences by which measure these groups could be distinguished from those who are outside the purview of the Special Act. The Act has left this matter entirely to the unregulated discretion of the provincial government."

These observations also do not apply to the facts of the present case because the Act in the present case has provided a rational basis for the classification and laid down specific yardsticks for grouping of special class of persons and has provided a different procedure which is not harsh (the position being different in the West Bengal Act) and which is undoubtedly favourable and advantageous to the accused.

Reliance was also placed on a few observations of Mukherjea, J., where he has pointed out that in making the classification the legislature cannot certainly be expected to provide absolute symmetry and has held that while recognising the degree of evil, the classification should not be arbitrary, artificial or evasive. He has stated:

> "It must rest always upon real and substantial distinction bearing a reasonable and just relation to the thing in respect to which the classification is made."

There can be no doubt that the present Act fulfils all the condition laid down by Mukherjea, J., who found that certain provisions of the West Bengal Act curtailed the rights of the accused in a substantial manner, thereby resulting in discrimination. Here we have already pointed out that no rights of the accused have been curtailed and that on the other hand, the procedure prescribed is more advantageous and fair to him than that available under the ordinary law of the land, namely, the Code of Criminal Procedure.

Finally, Mukherjea, J., pointed out that the language of s. 5(1) of the West Bengal Act vested an unrestricted discretion in the State Government in cases or classes of cases to be tried by the Special Court in accordance with the procedure laid down by that Act. This infirmity is not present in the provisions of the present Act which treats equally all persons who form part of the classification made by the Act, the same procedure being applicable to all. The ordinary law governs only those persons who are left out of the classification and do not fulfil the conditions of the persons constituting the class, namely, holders of high public and political offices. Thus, the observations of Mukherjea, J., are of no help to the appellants which is also true of passages appearing in the judgment of Das, J., (as he then was) and cited before us. In the first place, Das, J., deals with the conditions necessary for a valid classification, which have already been spelt out by us. There the learned Judge held that if the State Government classified offences arbitrarily, without any reasonable or rational basis having relation to the object of the Act, its action will amount to an abuse of its powers. We have already pointed out that there is no question of the classification made by the Act being arbitrary or unreasonable because the basis for the classification is undoubtedly a reasonable one and has a rational nexus with the object of the Act, namely, expeditious trial. We have pointed out that it will be in the public interest that the offenders sought to be tried under In the Act are either convicted or acquitted within the shortest possible time. Bose, J., conceded that though the procedure prescribed by the West Bengal Act may promote the ends of justice and would be welcome, yet he took serious exception to the differential treatment resulting therefrom. He observed:

> "What I have to determine is whether the differentiation made offends what I may call the social conscience of a sovereign democratic republic.. It is the differentiation

> which matters; the singling out of cases or groups of cases or even of offences or classes of offences, of a kind fraught with the most serious' consequences to the individuals concerned, for special, and what some would regard as peculiar, treatment."

All these observations have however, to be read in the light of the peculiar provisions of the West Bengal Act which contained no guidelines, no conditions, no safeguards but conferred uncontrolled and arbitrary powers on the Government to make the classification as it liked. This, however, is not the case here. We are, therefore, unable to agree with learned counsel that the observations of the Judges constituting the Bench in Anwar Ali Sarkar's case (supra) can be called into aid for the purpose of striking down the Act in the present case.

Thus, after a consideration of the provisions of the Act, the guidelines contained in the preamble, the procedural part of the Act and the classification made we are clearly of the opinion that none of the sections of the Act are violative of Art. 14 or Art. 21 or any other provision of the Constitution. We hold that the classification is valid and reasonable and has a rational nexus with the object of the Act and that the procedure prescribed is fair and advantageous to the accused. Accordingly, we declare that the Act and its provisions are constitutionally valid and over-rule preliminary objections taken on behalf of the appellants.

FAZAL ALI, J. The appellant, V. C. Shukla (hereinafter referred to as 'A-1') in criminal appeal No. 494 of 1979 has been convicted by the Sessions Judge, Delhi under s. 120 read with ss. 409, 435, 411, 414 and 201, Indian Penal Code and also under s. 409, Indian Penal Code in respect of the positive print and negative and other material of the film 'Kissa Kursi Kaa; under s. 411 read with s. 109, Indian Penal Code; under s. 414 read with s. 109, Indian Penal Code: under s. 435 read with s. 109 I.P.C. and under s. 201 read with s. 109, I.P.C. The appellant, Sanjay Gandhi (hereinafter referred to as 'A-2') in Criminal appeal No. 493 of 1979 has been convicted by the Sessions Judge, Delhi under s. 120 B read with ss 409, 435, 411, 414 and 201 of the Indian Penal Code and has been further convicted under ss. 435, 411 and 201, I.P.C. in regard to the negative and other material of the film 'Kissa Kursi Kaa' as also under s. 409 read with s. 109 of the Indian Penal Code. Accused No. 1 was sentenced under s. 120 read with ss. 409, 435, 411, 414 and 201 to two years rigorous imprisonment; under s. 409; regarding the negative and other materials to two years rigorous imprisonment and a fine of Rs. 20,000/- and in default further 6 months rigorous imprisonment; under s. 409 regarding the positive print of the film to two years rigorous imprisonment and fine of Rs. 5,000/- and in case of default further rigorous imprisonment for three months; under s. 411 read with s. 109 to rigorous imprisonment for one year; under s. 414 read with s. 109 to rigorous imprisonment for one year; under s. 201 read with s. 109 to rigorous imprisonment for one year; and under s. 435 read with s. 109 to rigorous imprisonment for one year and six months. Accused No. 2 was sentenced under s. 120 B read with ss. 409, 435, 411, 414 and 201 to rigorous imprisonment for two years; under s. 435 to rigorous imprisonment for one year and six months and a fine of Rs. 10,000/- and in case of default further rigorous imprisonment for four months; under s. 411 to rigorous imprisonment for one year; under s. 414 to rigorous imprisonment for one year; under s. 201 in regard to the negative etc., to rigorous imprisonment for one year; under s. 201 in regard to 13 trunks, etc., to rigorous imprisonment for one year and under s. 409 read with s. 109

to rigorous imprisonment for two years. The aforesaid sentences or imprisonment were ordered to run concurrently in the case of both the accused.

The learned Sessions Judge has given full and complete details of the prosecution case against the appellants and has divided the allegations against them in several parts. On being convicted by the Sessions Judge, Delhi, the accused filed appeals before the Delhi High Court against their convictions and sentences, indicated above, and were released on bail pending the hearing of the appeals. Meanwhile, the Special Courts Act of 1979 came into force and by virtue of a declaration made under s. 7 of the said Act., the appeals stood transferred to this Court and were placed for hearing before us. As the learned Sessions Judge has given all the necessary details of the prosecution case against the appellants, it is not necessary for us to give all the facts but we propose to give a bird's eye view of the sub-stratum of the allegations on the basis of which the appellants have been convicted, dwelling particularly on those aspects which merit serious consideration. We have heard learned counsel for the parties at great length both on the constitutional points involved in appeals and the facts. By an order dated December 5, 1979, we disposed of the constitutional points which were in the nature of preliminary objection to the maintainability of these appeals and overruled these objections. The reasons for the said order have been given by us which would form part of this judgment. Coming now to the facts, shorn of unnecessary details, the story begins with the production of a film called Kissa Kursi Kaa by Shri Amrit Nahata, PW 1, under the banner of Dhwani Prakash. PW 1 was a member of Parliament and had produced the film in the year 1975. The film, according to the prosecution, was a grotesque satire containing a scathing criticism of the functioning of the Central Government and was open to serious objections which were taken even by the Central Board of film Censors (hereinafter to be referred to as the 'Board'). After the film was ready for release, PW 1, Amrit Nahata, applied for certification of the film on the 19th of April 1975 before the Board. The film was viewed on April 24, 1975 be an Examining Committee of the Board and while three Members were of the opinion that certificate for exhibition, with drastic cuts should be given, another Member and Mr. N. S. Thapa, the Chairman disagreed with the opinion of their colleagues and accordingly referred the matter to the Revising Committee. The Revising Committee after viewing the film agreed by a majority of 6: 1 for certification of the film, the dissent having been voiced by Mr. Thapa, the Chairman and accordingly under rule 25(ii) of the Cinematograph (Censorship) Rules, 1958, a reference was made to the Central Government on 8-5-75. In this connection, a letter was addressed to PW 6, Mr. S.M. Murshed, who was at the relevant period Director in the Ministry of Information & Broadcasting, Incharge of film and T.V. Projects and was appointed Joint Secretary on, 1st May 1975. The correspondence in this regard is to be found in the file Ext. PW/6A. Before making his comments PW 6 saw the film time in the middle of May 1975. Meanwhile, PW 1, Amrit Nahata. was directed to deposit the positive print of the film comprising 14 reels of 35 mm with the Films Division Auditorium, situate at 1, Mahadev Road, New Delhi (hereinafter to be referred to as the 'Auditorium'). In pursuance of these directions, PW 1 deposited . the positive print and an entry thereof Was made by the Librarian-cum- Projectionist of the Auditorium which is Ext. PW 17/A. PW 17 K.P. Sreedharan, who was a Technical Officer Incharge also inspected the reels and found them in order.

Although Murshed, PW 6, after seeing the film agreed with the opinion of the Chairman of the Board that film may be open to objection on the ground that it was full of sarcasm and contained

criticism of the political functioning of the government machinery yet he was personally of the opinion that certification for exhibition should not be refused. The witness accordingly recorded a note and submitted it to Mr. A. J. Kidwai, the then Secretary, Ministry of information and Broadcasting. The matter was then examined by Mr. I.K. Gujaral, the then Minister of Information & Broadcasting but no final decision was taken. Meanwhile, PW 1, Amrit Nahata filed a writ petition in this Court which is Ext. PW 1/D. On the 23rd of June 1975, a notice was issued by the Ministry of Information & Broadcasting to PW 1, Amrit Nahata, to show cause why certification to the film be not refused. The notice was made returnable by 9-7-75. Thus, it appears that the Ministry of Information & Broadcasting had taken a tentative decision to refuse certification to the film because of its objectionable and offensive nature. We might state here that so far, neither A-1 nor A-2 was anywhere in the picture. In fact, the position is that the film faced rough weather even at the initial stage of consideration by the Board as a result of which the matter was referred to the Central Government where the question of refusal of certification was seriously considered and ultimately a notice was issued under the directions of the Ministry. We have particularly highlighted this aspect of the matter because the learned Sessions Judge was largely swayed by the consideration that A-1 took a very prominent part in banning the film and in getting the positive print and other material in his personal custody in order to destroy the same with the aid of A-2. On the other hand, the facts disclosed by the prosecution ex facie show that objections to certification of the film had been taken at the very initial stage and the ultimate order was passed during the time when A-1, Mr. Shukla had taken over as Minister, which was merely the final scene of a drama long in process.

Continuing the thread from where we left it, Emergency was proclaimed 911 the night between 25th and 26th of June 1975 and soon thereafter A-1 took charge as the Union Minister of Information & Broadcasting and he was of the opinion that the film should be banned. On July 5, 1975, in pursuance of the decision taken by the Central Government, the Coordination Committee directed seizure of the film and that its negatives, positives and all other materials relating to it be taken in the custody of the Central Government vide Ext. PW 6/D. On July 10, 1975, A-1 directed that the film be banned from screening under the Defence of India Rules, vide Ext. PW 6/E-4. Finally, on the 11th of July 1975, PW 6, Murshed, passed an order that no certification was to be given to the film for public exhibition which was followed by a letter dated July 11, 1975, forfeiting the film to the Government. In pursuance of the decision taken by the Central Government, PW 39, S. Ghose, Deputy Secretary, Incharge of the Films Division, wrote a letter to the Chief Secretary, Government of Maharashtra for seizure of all the positives and negatives of the film as also other related materials. In pursuance of this order, the Bombay police seized the entire film on 1-8-1975 and deposited the same in the godown of the Board. As, however, a final order had been passed by the Government banning the film, PW 1, Amrit Nahata, filed a petition for special leave in the Supreme Court on 6-9-1975. This petition was heard on 29-10-75 and this Court directed the Government to screen the film on 17-11-1975 in the Auditorium for being shown to the Judges constituting the Bench. In pursuance of the order of this Court, intimation was sent to the Ministry concerned and PW 62, Mr. S.M.H. Burney, who was then Secretary, Ministry of Information & Broadcasting, directed that immediate action be taken to implement the orders of the Supreme Court, and that arrangements should be made to book the Auditorium for 17- 11-1975. By a letter dated 5-11-1975, Ext. PW 2/A-2, the Supreme Court was also informed regarding the steps taken which, according to the prosecution were the prelude to the conspiracy between the two appellants leading to the

seizure, disposal and destruction of the film.

Sometime thereafter, PW 2, L. Dayal, took over as Joint Secretary (Films Division) in place of Mr. Murshed.

We might emphasise at this stage that there is absolutely no evidence to show that there was any meeting of minds between A-1 and A-2 nor is there any material to indicate that A-2 played any role in the banning of the film. The decision to ban the film appears to have been taken by the Ministry headed by A-1, on the merits of the case. No motive is attributable to A-1 at this stage because even the Chairman of the Board, PW 8, Mr. Thapa, who was an independent witness, was of the view that the film should not be certificated for public exhibition. Similarly, the steps taken by the officers of the Ministry in pursuance of the banning of the film, namely, the seizure of the film at Bombay and its transfer to Delhi appear to be in the nature of routine to see that the decision taken by the Government was implemented. As no stay had been obtained by PW 1, Amrit Nahata, from the Supreme Court, the Government was not bound to stay its hands. On the other hand, as soon as the Ministry received the orders of this Court for screening the film on 17-11-1975, immediate steps were taken to comply with the orders of this Court.

Before we proceed further, we might indicate that it is well settled that in order to prove a criminal conspiracy which is punishable under s. 120 B of the Indian Penal Code, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. This clearly envisages that there must be a meeting of minds resulting in an ultimate decision taken by the conspirators regarding the commission of an offence. It is true that in most case it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. After having gone through the entire evidence, with the able assistance of Mr. Rajinder Singh, learned counsel for A-1 and of learned counsel for the State, we are unable to find any acceptable evidence connecting either of the appellants with the existence of any conspiracy. We are further of the opinion that even taking the main parts of the prosecution case at their face value, no connection has been proved with the destruction of the film and the two appellants. The prosecution has, of course, produced some witnesses to show the existence of the alleged conspiracy or some sort of connection of the appellants with the destruction, of the film but that evidence, as we shall show, falls short of the standard of proof required in a criminal case. We realise that the prosecution was seriously handicapped because the investigation started only after the Janata Government came into power in March 1977, that is to say, about a year and a half after the offences in question were allegedly committed, by when naturally much of the evidence would have been lost and even some of the important witnesses examined by the prosecution had turned hostile and refused to support its case. Despite these difficulties, the prosecution has to discharge its onus of providing the case against the accused beyond reasonable doubt. We, therefore, propose to deal only with that part of the evidence led by the prosecution which has been relied upon to prove some sort of a connection of the appellants with the alleged destruction of the film In this connection, we propose to deal with the evidence in three separate parts-

(1) the deposit of the positive print in the Auditorium and its alleged transfer to the personal custody of A-1 ;

(2) the arrival of thirteen trunks containing negative and other material related to the film at New Delhi from Bombay in pursuance of the orders of A-1 and their transfer to 1, Safdarjung Road, then to the Maruti Complex; and (3) the actual orders alleged to have been given by A-2 for burning the film in the premises of the Maruti Complex which operation, according to the prosecution was carried out by the approver, PW 3, Kherkar, and other witnesses between the 10th and 24th of November 1975.

Although there are other elements on which prosecution has adduced evidence which is by no means very convincing or consistent but even if we assume those elements to be proved, if the three aspects indicated above, are not proved the prosecution is bound to fail.

We now proceed to deal with the first part of the case. (1) The deposit of the prints at the Auditorium and its alleged transfer to the personal custody of A-1.

In the Auditorium, PW 17, Sreedharan screened the film in order to show the same to PW 6, Murshed, on the 22nd May 1975 and again on the next day at the instance of the Ministry of Information & Broadcasting. Some private shows were also screened at the instance of PW 1, Amrit Nahata, though this was not permissible under the Rules. It was also the prosecution case that PW 39, Ghose and PW 61, C. K. Sharma met PW 17, Sreedharan and PW 18, Bhawani Singh and examined the prints which were then kept in the green room. Ghose then rang up Sreedharan and told him that he was coming to the Auditorium to take delivery of the prints. Accordingly, PW 39, Ghose is said to have arrived at the Auditorium and the fourteen reels contained in cans were put on the back seat of his car. PW 39, Ghose then went to Shastri Bhavan and put the cans in the dicky of the staff car of A-1 in the presence of the driver, Babu Ram, PW 33. Thereafter, when A-1 came, Babu Ram took the car to 1, Safdarjung Road where the cans were unloaded and kept in the office of R. K. Dhavan, Additional Private Secretary to the then Prime Minister. In support of this part of the case, the prosecution examined PW 18, Bhawani Singh, PW 33, Babu Ram; PW 61, C.K. Sharma; PW 57, V.S. Tripathi, PW 60, R. L. Bandish and PW 39, Ghose. So far as PWs 39, 57, 60 and 61 are concerned, they did not support the prosecution case regarding the transfer of the prints to the custody of A-1 as alleged by the prosecution. So the only witnesses to prove the factum of transfer were PWs 17 and 33. The prosecution also examined some other witnesses PW 1, Amrit Nahata, PW 2, L. Dayal and PW 62, Burney to show that the transfer of the positives of the film to the custody of A-1 was carried out at the oral instruction of A-1. PW 62, however, did not support the prosecution and thus, on this point, the only witnesses worth considering are PWs 1 and 2.

We would first refer to the evidence of PW 1, Amrit Nahata. He stated that he was directed to deposit the positive print of the Films to Films Division Auditorium at Mahadev Road and consequently he complied with the direction on 17-5-1975, and obtained a receipt. The witness goes on to state that one of the factors which weighed with him in withdrawing the writ petition he had filed in the Supreme Court was that he was persuaded and pressurised and threatened by A-1 to withdraw the writ petition. He, however, admitted in his cross-examination that the process of

persuasion and pressurisation and threats was carried out not on one but on several occasions. He then went to the extent of saying that the Minister (A-1) used to talk to him in this connection in Parliament, in his office and sometimes even at Shastri Bhavan. He further stated that even in the Central Hall of Parliament he did not hesitate from threatening him. The witness admitted that he never filed any written application before the Supreme Court alleging the threats given to him by A-1. He further admits that after the Janata Government took over in March 1977 while he had written to Mr. L. K. Advani, who succeeded A-1. regarding the film, he made no mention of any such conversation between him and A-1 about the threats, etc. Finally, he admitted that no one was present in the office when he talked to, Mr. Shukla. In view of these statements, we find it difficult to believe the witness. The entire version given by him is inherently improbable, firstly, because of his failure to draw the attention of the Supreme Court to the threats, etc. Secondly, it is impossible to believe that after the Janata Government came to power and he wrote a letter to Mr. Advani regarding the film, he would not mention that he had been pressurised or threatened by A-1 when he was undoubtedly very much interested in his film being exhibited and bore a serious grouse and animus against A-1 because he had refused certification for exhibition of his film. In these circumstances, we are unable to place any reliance of the testimony of this witness so far as the allegation of threats, pressurisation, etc., made by A-1 is concerned. Thus, if his evidence is rejected on this point, then excepting the testimony of PWs 2 and 63, there is no evidence to show that A-1 had any connection or link with the transfer of the positive print of the film.

This brings us to the consideration of an important witness PW 2, L. Dayal, on whom great reliance has been placed by the learned Sessions Judge. So far as PW 2 is concerned, he states that sometime in the first week of November, A-1 called him and said that he had decided to keep all material relating to the film in his personal custody and that detailed arrangements for the delivery of the material would be made by his personal staff and the work would be done by a respectable officer. The witness further states that PW 57, V. S. Tripathi, was also present at the time when this conversation between the witness and A-1 took place. He further states that he had apprised PW 62, Burney, the Secretary, of the talk he had with A-1. Both PW 57 and PW 62 have not supported the witness on these points and have denied the same. The witness had also stated that he had called PW 39, Ghose and apprised him of the instructions of the Minister for carefully and confidentially putting all material in the personal custody of the Minister. Ghose, however, in his evidence does not support the story of instructions by the Minister and denies having been told anything of the kind by the witness. Of course, all The three witnesses, namely, Tripathi. Burney and Ghose, had been declared hostile. The witness further goes on to state that he had called PW 4, Khandpur, who happened to be in Delhi and had told him that all the film material pertaining to the film 'Kissa Kursi Kaa' Lying at Bombay had to be carefully and confidentially collected and sent to Delhi. PW 4, however, clearly admits in his evidence that the instruction which he had received was to send the material to the Ministry of Information & Broadcasting. As we shall show, PW 2 appears to be deeply interested in the prosecution. In these circumstances, even Mr. Jethmalani, appearing for the State, frankly conceded that he would not ask the Court to rely on this witness unless he was corroborated by some other independent evidence. In fact, far from there being any independent evidence to corroborate the version of the witness in regard to the instruction given by A-1, the persons to whom the witness mentioned these facts, viz., Tripathi, Burney and Ghose, have not supported him. Thus, so far as the role played by A-1 on the first part of the case is concerned, this is

all the evidence produced by the prosecution and is this evidence is rejected, Then it is not proved at whose instruction the film cans were transferred from the Auditorium to 1, Safdarjung Road nor has it been established that this was done with the knowledge of A-1.

Coming back now to the evidence of the transfer of the positive print from the Auditorium into the car of Ghose and therefrom to the staff car of A-1 at Shastri Bhavan and finally to 1, Safdarjung Road, the evidence led by the prosecution consists of PWs 17 and 33. The other witnesses examined on this point have not supported the prosecution case. From the evidence of PW 17, it appears that PWs Ghose, C. K. Sharma and Bhawani Singh met him and examined the prints and then the prints were kept in the green room. Later, the same day Ghose rang up the witness to inform him that he was coming to take the positive print of the film which should be kept ready. Thereafter, Ghose arrived and the prints were brought from the green room and placed in the back seat of car of Ghose. Ghose thereafter drove the car but gave no receipt for taking the film. Half an hour later, according to the witness, there was a telephone call from Tripathi to enquire if the film had been delivered to Ghose. The witness informed him that this had been done. I was also stated by the witness that a letter (Ext. PW 17/E and E-1) was got written by Ghose before he took the film in his car. . It may be noticed here that prior to the filing of the FIR an inquiry had been held by PW 40, Narayanan, into the manner how the prints of the film were missing and in that inquiry PW 17, Sreedharan, did not say at all that Ghose had taken away the film. In this connection, the witness deposed as follows:-

> "Q. You did not tell Shri Narayanan that S. Ghose had come to you in his car and you had delivered the film to him in his car and he had taken it away? Ans. No. I did not tell him like this (Voltd:-It was so as S. Ghose had asked me to say differently to Shri Narayanan and I stated as advised by S. Ghose.) Q. You know that enquiry had been ordered by Shri L. K. Advani, Minister for Information & Broadcasting ? Ans. Yes.
>
> Q. And yet you deliberately told a lie before Shri Narayanan?
>
> Ans. Yes, because of S. Ghose."

Thus, the witness admitted that he spoke a lie before Narayanan merely because of Ghose. Further, even in his statement before the police, the witness did not state that Ghose had come to him for taking away the film on the same day, i.e., the day on which Ghose had telephoned that he would be coming to take the film. So far as PW 39, Ghose is concerned, he has totally denied having told the witness to keep the positive prints ready or that he ever took delivery of the prints from the witness and put the same in his car. Thus, even the prosecution case relating to the transfer of the positive prints through PW 39, Ghose, to 1, Safdarjung Road becomes doubtful.

Even so, assuming that Ghose did take delivery of the positive prints that does not conclude the matter because the prosecution has further to prove that the prints were taken away from the Auditorium at the instruction of A-1 and then kept in the staff car of A-1 and taken to 1, Safdarjung Road with the knowledge of A-1. On this print, the evidence of PW 17 is absolutely silent and he says nothing about it nor was he competent to say the same. The only other witness PW 33, Babu Ram,

states that sometimes in the winter of 1975 PW 61, C.K. Sharma, called him and told him that there was some luggage (saaman) of Minister Saheb which was to be kept in his car and asked him to bring the Minister's car close to where Ghose's car was parked. The witness found 10 to 12 round boxes which were transferred to the dicky of the staff car. Thereafter, according to the witness, PW 60, Bandlish, had a talk with Ghose and after the Minister had come, the car was driven to 1, Safdarjung Road. On reaching 1, Safdarjung Road, the Minister went out of the car and a person came and took, away the saaman. Thereafter, the witness drove A-1 to other places. In his statement before the police, the witness did not state that PW 61, C. K. Sharma had told him that the saaman of Minister Saheb (emphasis being on Minister Saheb) was to be transferred to the dicky of the staff car. Both Bandlish and C. K. Sharma have not supported the version of this witness and have denied everything. Even taking the version of this witness at its face value, there is nothing to show that when A-1 boarded the staff car at Shastri Bhavan he was told either by the driver or by anybody that the film cans had been placed in the dicky and were to be taken to 1, Safdarjung Road or that they had been brought from the Auditorium. Even when the car reached 1, Safdarjung Road. Babu Ram never informed the Minister about the boxes having been kept in the dicky nor is there any evidence to show that the boxes were unloaded from the dicky of the Minister's car either in his presence or to his knowledge. Thus, all that has been proved is that the cans were transferred from the Auditorium to 1, Safdarjung, Road. Taking the evidence of PW 17 and PW 33 as also PW 18, Bhawani Singh at its face value, no connection between A-1 and the transfer of the film has, been established. Thus, the prosecution has failed to prove that the positive prints of the film were transferred from the Auditorium to the personal custody of A-1 or that the said transfer was done in accordance with his instruction or to his knowledge.

(2) The transfer of negatives and other material related to the film from Bombay to Delhi and to 1, Safdarjung Road and from there to Maruti Complex at the order of A-1 So far as this part of the prosecution case Is concerned, the evidence is wholly insufficient to attribute any knowledge or ulterior motive tn A-1 in directing the negatives to be sent from Bombay to Delhi. Some evidence has no doubt been adduced be the prosecution to show some amount of criminality on the part of A-1 but that evidence, as we shall show, is not very reliable.

To begin with, according to PW 6, Murshed, A-1 said that there was some sort of an informal discussion between A-1, Mr. A. J. Kidwai, the then Secretary in the Ministry of Information & Broadcasting and the witness when A-1 directed that the film be banned and seized, but that no action was taken by the witness until the file reached him. The witness added that on July 7, 1975 there was another meeting attended by Sarin and other officers which was presided over by A-1 and in this meeting a final decision was taken that the film should be taken over and mention was made that the Defence of India Rules should be pressed into service. The witness further stated that ultimately in the Coordination Committee meeting which was held on July 10, 1975, and was also presided over by A-1, the earlier decision taken by the Government was reiterated. The witness then goes on to state that he passed the order Ext. PW 6/A-9 on July 11, 1975 which directed that the certificate for public exhibition was refused and the said order was communicated to PW 1, Amrit Nahata. This was followed by another order Ext. PW 6/A-10 which forfeited the film Kissa Kursi Kaa. Both these orders were approved by the Minister which had to be done in consequence of the decision taken by the Government. After the film had been banned and forfeited, the seizure of the

film material at Bombay became a necessary consequence and accordingly a letter dated July 14, 1975 was issued under the signatures of PW 39, Ghose to The Chief Secretary. Government of Maharashtra for seizure of the film material relating to the film and requiring him to deposit the same with the Board.

The next question that arises is as to why the negatives and other material of the film were directed to be sent to Delhi. It is obvious that once the film was banned and forfeited and action under the Defence of India Rules had to be taken, it was in the. nature of a routine operation that the negatives and other material of the film should be placed in the custody of the Ministry of Information & Broadcasting. This appears to US to be the main reason why A-l 11 directed that these materials may be sent from Bombay to Delhi. In order to incriminate the Minister the prosecution urges that this was done by A-l to get the. negatives, etc., in his personal custody so that he would be in a position to destroy the same. On this, there does not appear to be any clear evidence and even the Sessions Judge has based his findings largely on speculation.

To begin with, L. Dayal, PW 2, who was then attached to A-1 as Joint Secretary (Films) states that on 6-11-1975 A-1 told him in the presence of Tripathi, PW 57, that A-1 had decided to keep all material relating to the film in his (A- 1's) personal custody, that detailed arrangements for the delivery of the material would be made by A-1's personal staff and that the work had to be done by a responsible officer. The witness adds that he conveyed the decision to the Secretary and to S. Ghose, PW 39, and then called PW 4, Khandpur, Chief Producer, Films Division, Bombay who happened to be in Delhi and asked him that all the material pertaining to the film 'Kissa Kursi Kaa' lying at Bombay had to be carefully and confidentially collected and sent to Delhi. At the time when this talk took place Ghose and Tripathi were present, according to PW 2, who then rang up Vyas (Chairman of the Board) and gave him similar instructions in the presence of Ghose and Tripathi. However, neither Tripathi nor Ghose supports PW 2 on the point that he had asked Khandpur to collect the. material of the film 'carefully and confidentially which particular words were attributed to A-1 to show his criminal intent. In this connection, Ghose, PW 39, who was declared hostile to the prosecution, stated:

> "As I was coming out of the room of Shri Burney, I dropped in Shri Dayal's room which was in the same corridor with a view to inform him that had gone to the Auditorium and checked the film and had found the film intact. I also told him that I had informed Shri Burney accordingly. I found Shri K. L. Khandpur also sitting in the room of Shri Dayal. Shri Dayal asked me to take my seat. After a few moments I found Shri V.S. Tripathi walking into the room of Shri Dayal. He also took his seat. When I entered the room Shri Dayal was already conversing with Shri Khandpur. Looking at us, namely, myself and V. S. Tripathi and Shri Khandpur, Shri Dayal generally enquired where. filmic material was lying at Bombay. Shri Dayal also gave direction to Shri Khandpur for collecting the filmic material at Bombay with a view to transporting it from Bombay to Delhi. I do not recall Shri Dayal taking the name of the Minister or the Secretary at the time of the discussion. I also do not recall whether he mentioned word secretly during this discussion. My feeling was that the entire responsibility for the collection and transportation of the filmic material from

Bombay to Delhi was left with Shri K. L. Khandpur."

The stand of Tripathi, PW 57, who was also allowed to be cross examined by the prosecution was as follows:-

"Shri Dayal gave instructions to Shri K.L. Khandpur in my presence and that of Shri S. Ghose to shift the negative material of film Kissa Kursi Kaa from Bombay to Delhi. At the request of Shri Khandpur, Shri Dayal also spoke to late Shri V. D. Vyas about this matter and told him on telephone that the negative material was to be shifted from Bombay to Delhi and that the transportation arrangement would be explained by Shri Khandpur to hi on his return to Bombay. Roughly this is all that I re member and in addition that it was early in the afternoon."

The witness was specifically asked whether in his presence A-1 gave instructions to L. Dayal, PW 2, that he (A-1) wanted the positives and negatives of the film in his own custody immediately and confidentially. He denied the correctness of the assertion and was con fronted with the following portion ('E' to 'E') of his statement made on the 25th April 1977, to K. N. Gupta, Deputy Superintendent of Police, C.I.A., New Delhi:

"Later, some time in the afternoon, the Minister called me inside his room. Shri Dayal was also inside and I noted that discussion was going on about the film 'Kissa Kursi Kaa . The then Minister of I & B, gave instructions to Shri L. Dayal, Jt. Secy. (Information) in my presence that he wanted the positives & negatives etc. of the film, "Kissa Kursi Kaa" to be handed over to him, in his custody immediately & confidentially. The Minister also said that the arrangements for transportation will be made by him and Shri Dayal should get in touch with the personal staff for this."

The witness also denied the correctness of the assertion that in his presence later on Shri Dayal, PW 2,1 had told Shri Khandpur, PW 4 that the film should be brought from Bombay to Delhi "very carefully without telling anybody about it". He was confronted with portion 'F to F' of his said statement to the police where the assertion appears.

Even Khandpur, PW 4, who has fully supported the prosecution has not said anything in his evidence to indicate that PW2 had said that the materials should be 'carefully and confidentially" collected and sent to Delhi. On the other hand, PW 4 says thus:-

"I was called by L. Dayal, the Joint Secretary in his office. I was asked to make arrangements for collecting all material pertaining to film Kissa Kursi Kaa available at Bombay and to send the same to Delhi. I have seen file CFD/51 shown to me, Ex. PW 4/E. It is named "Confidential Material Received from C.B.F'.C. and sent to Ministry of 1 & B in November 1975". This file pertains to Films Division Bombay. This file pertains to the film materials of Kissa Kursi Kaa. Another file pertaining to this film is the one which contains Exts. PW 4/A to PW 4/C."

The file Ext. PW 4/E was labelled as 'Confidential' and shows that the film material was sent to the ministry of information & Broadcasting in November 1975. But there was nothing to indicate in the files or in the evidence of PW 4 that the materials and negatives, etc., were to be sent to the personal custody of the Minister. As the film was banned and forfeited, there was nothing incongruous about the transfer of the materials to Delhi being treated as an official and confidential matter and even if PW2 had told PW 4 that the film material should be dispatched "carefully and confidentially" that would not show any criminal intent on the part of A-l.

In order to show that A-1 took a somewhat unusual interest in the dispatch of the negatives and other material of the film from Bombay to Delhi it is further the case of the prosecution that Tripathi who was Special Assistant to A-1 was sent expressly to receive the materials at New Delhi Railway station and make arrangements for their transport But Tripathi categorically stated that he never went to the Railway Station for the purpose of receiving the film material, etc. On the other hand, PW2 states that on 9-11- 1975 PW4, Khandpur informed him on telephone from Bombay that the film material was being sent from Bombay to Delhi by Western Express and would be reaching Delhi on the next day and that two officers, one of them being Kane, PW 5, were accompanying the material. PW 2 adds that he then, rang up Ghose and asked him to get in touch with Tripathi for making the necessary arrangements for transport and delivery of the material. The witness goes on to state that on the 10th November 1975, PW 39. Ghose. came to him and reported that the film material had arrived and had been brought in tempos arranged by A-l. Ghose, however, has not supported this witness on this aspect of the matter. Reliance was.

therefore, placed on the evidence of PW 5, Kane to show that when he reached Delhi along with the film material, Tripathi was there to receive the same. It is not disputed that Tripathi was not known to PW S, Kane, before the 10th and that by the time the witness saw him at the New Delhi Railway Station he had seen him only once in Bombay. The witness doles state that his pointed attention was drawn to Tripathi because he had asked him to settle the payment of charges to the coolies and that but for this his attention would not have been drawn to Tripathi. He, however, admits that he his statement before the Central Bureau of Investigation, he did not mention the fact that Tripathi had asked him to settle the matter of the payment of charges to the coolies. Thus, the existence of the only circumstance on the basis of which the witness could have identified Tripathi becomes doubtful and in view of the categorical statement of Tripathi that he never went to New Delhi Railway Station on the 10th of November to receive the film, it is difficult to accept the evidence of PW 5 that Tripathi was the person present at the station. The possibility that the witness committed some mistake in identifying cannot be ruled out. Moreover, the identification of Tripathi by the witness for the first Lime in the court without being tested by a prior test identification parade was valueless. Besides, the witness admits that in the note Ext. PW 4/E-2 he did not mention Tripathi or any other person along with Ghose to have been present at the New Delhi Railway Station. Thus, even on the question of the arrival of the material of the film at New Delhi no direct connection with A-1 has been established by the prosecution. In time, it is not proved by the prosecution that Tripathi was present at the Railway Station to receive the film and hence it cannot be said that A-l took an unusual interest in seeing that the film is properly brought from Bombay to Delhi and placed in his custody.

Coming back to the evidence of PW2, there is yet another circumstance which he proves and which merits some consideration. According to the witness, in the special leave petition filed by PW 1, 12th March 1976 was fixed for screening the film. The witness adds that he took instruction from A-1 as to what should be done when A-l asked him to inform the Supreme Court through an affidavit that efforts had been made to trace the prints of the film at Bombay as also at Delhi but that there were no chances of their becoming available. The witness says that he was also directed to mention in the affidavit that such misplacements had often occurred in the past, and that he passed on this information to the Secretary, Mr. Burney who suggested that the orders of the Minister should be carried out. In consonance with the instruction, Ghose filed an affidavit before the Supreme Court on the 22nd March 1976 but the Hon'ble Chief Justice emphasised the importance of making the film available for viewing by the Judges. The witness recorded a note Ext. PW 2/A-17 to, bring the matter to the notice of the Minister. Ultimately, however, as PW 1, Amrit Nahata, withdrew the petition nothing further happened. It appears that while . the petition was pending in the Supreme Court, contempt proceedings ,, were taken against some of the officers including PW 2 who also filed four affidavits, one of them on the 28th November 1977 and the other three on the 28th February 1978. These affidavits are Ext. PW 2/B-1 to B-4. In these affidavits he wanted to prove that as the film had been mixed up with lot other films received in connection with Fifth International Film Festival, the material of the film Kissa Kursi Kaa was misplaced, and that is a stand which comes into direct conflict with the testimony of the witness in court in which the entire blame is shifted to A-l but which again runs counter to are assertion made earlier by the witness in his own hand. That assertion appears in the form of an amendment to a draft of a letter (Ext. PW 2/DE) to be sent to Mr. V. P. Raman. Additional Solicitor General and reads: in spite of efforts the film has not been found'. The witness admits clearly that this statement was false to his knowledge. A witness who could go to the extent of making intentionally false statement cannot be relied upon for the purpose of convicting the appellant. On his own showing, he was fully collaborating with A-1 in a criminal design and was therefore, no better than an accomplice whose testimony cannot be accepted in any material particular in the absence. Of corroboration from reliable sources. Even Mr. Jethmalani, the erstwhile senior counsel for the prosecution conceded the correctness of this proposition. On an appreciation of the evidence of PW 2 and other factors, discussed above, his evidence has-not only not been corroborated but definitely contradicted by other witnesses, circumstances and documents.

PW 63, K. N. Prasad was the Additional Secretary hl the Ministry of Information & Broadcasting. He stated that in March 1977, A. K. Verma, the then Joint Secretary wanted to know whether the Government had any inherent power to destroy property which had been seized or forfeited, and also disclosed that the enquiry was made in connection with the film 'Kissa Kursi Kaa'. The witness further stated that after two or three days Verma and PW 39, Ghose came to his room and asked the same question. The witness further goes on to state that he was informed by his P.A. that he was required to attend a meeting at the residence of the Minister (A-l), that when he enters the office at the residence of A-l, he found PW 62 Mr. Burney, Secretary to the Ministry of information &: Broadcasting, sitting there and that ML'. Burney (PW 62) asked the witness what the legal position was about the right of the Government to destroy forfeited property. At that time, according to the witness, Tripathi, Mr. Burney and A-l were present. He, however, admits that A-] did not ask any particular question.

From the testimony of PW 63 the prosecution seeks to draw an inference that it was A-1 at whose instance Verma, Ghose and Burney had asked for the advice! of the former (PW

63). Now A. K. Verma has not been examined as a witness and his statement (seeking, the advice of PW (63) is not, therefore, admissible in evidence? while both Ghose and Burney have denied that any such conservation as has been deposed to by PW 63 took place between the latter and the witnesses in the presence af A-1. In fact, a specific suggestion was put to Burney (PW 62) in the following terms:

> "Q. When Shri Nahata asked for the return of the film material, did it happen that you discussed the matter regarding availability and return of the film material with Shri Shukla at his official residence and during that discussion Shri K. N. Prasad and Shri A. K. Verma had also come there and Shri V. S. Tripathi, Special Asstt. to the Minister was also present ?" His answer was an emphatic no.

Besides, the story given out by the witness does not appear to be very plausible, for it does not stand to reason that A-1 would depute no less than three officers (Verma, Ghose and Burney), one after the other, to obtain advice of PW 63 when A-1 could have had no difficulty in obtaining the advice himself. And then how was PW 63 selected as a Specialist in the concerned branch of law over the head of superior officers, even if it was considered hazardous to enlist the services of a competent lawyer ? We are, therefore unable to place reliance on the evidence of this witness on this point. From a discussion of the circumstances mentioned above, we conclude that the prosecution has failed to prove that the film materials brought from Bombay to Delhi were placed in the personal custody of A-1 or that A-1 had them transferred to No. l, Safdarjung Road or to the Maruti Complex.

Another link in the chain of prosecution evidence (the existence of which seems to have been accepted by the learned Sessions Judge) was that two tempos belonging to the Maruti (Company were sent to the New Delhi Railway Station where the thirteen trunks which arrived by the Western Express were loaded therein and were taken to l, Safdarjung Road before being transported to Maruti Complex where they were unloaded? kept and later on. destroyed. It was also alleged by the prosecution. that a raid of the Maruti Complex carried out in 1977 A led to the recovery of the lid of a trunk, an empty can which earlier contained part of the film material and a gunny bag to the inside of which were found sticking scraps of paper. The investigators also claimed that a few miles away from the Maruti Complex some round cans were recovered from a nallah. The learned counsel for the defence submitted that the allegations about the trunks being taken to Maruti Complex and the recoveries being made were false and addressed to the court lengthy arguments in this behalf. It is, however, not necessary for us to go into these details at this stage because assuming for the purpose or argument that the trunks were brought to the Maruti Complex, and that the film material was destroyed unless A-l or A-2 were shown to be connected with the transport or destruction of the material, the charge against the appellants cannot be held to be proved.

(3) The burning of the film `Kissa Kursi Kaa' in, November 1975, at Maruti Complex at the orders/instructions of A-2 In support of this part of the prosecution story, reliance was placed mainly on the testimony of Khedkar (PW

3) who is the approver. The effort of the prosecution was to establish that on instructions given by A-2 the film material was burnt inside the Maruti Complex on two consecutive nights and that the fact was reported to A-2 an each of the two following mornings. The approver was the Security officer in the Maruti Limited at the relevant time and the assertions made by him in this behalf may be split, up as follows:

> (a) In the middle of November 1975, A-2 sent for the approver and told him that some boxes containing films were lying in the stores, that the films were to be destroyed when the workers were away and that the approver would get the keys of the locks on the boxes on the next day.
>
> (b) On the next day one of the security guards who used to accompany A-2 handed over a sealed packet of paper wrapped in cloth to the approver. On the same day the approver directed his assistant named Kanwar Singh Yadav, PW 32 to meet the approver (in the Maruti Complex) at 9.00 p.m. along with watchman . Om Prakash, PW 31. Kanwar Singh Yadav, PW 32 met the approver at 9.30 p.m. They reached the factory gate where watchman om Prakash PW 31 was waiting for them. The approver signed the key register and obtained the key of the General Store. The party of three opened the store and found lying therein the thirteen boxes containing the film material. The boxes were opened with the keys which were taken out of the sealed packet mentioned earlier. Each box was found to contain 10 or 12 cans having film spools inside them. Each can bore a label with the legend 'Kissa Kursi Kaa'. The first lot of the films was removed to a nearby pit and was burnt there, the operation lasting from 10.30 p.m. to 2.30 p.m. watchman Om Parkash PW 31 however left the place at about 11.00 p.m. because he felt giddy.
>
> (c) Next morning the approver reported to A-2 that the work had been carried out in part only and that it would be completed on the night following, which was done from 10.00 p.m. to, 2.00 a.m.
>
> (d) Next morning the approver again made a report to A-2 telling him that the job had been completed.

Learned counsel for the defence contended that the stand taken by the approver could not be accepted at its, face value and had to be rejected lock stock and barrel. On a thorough consideration of the evidence we find that the contention well-based as we shall presently show.

The film material, according to the case of the prosecution, is said to have reached Maruti Complex on the 10th of November 1975. After the 23rd November, 1975, Khedkar PW 3, on his showing, went away on leave. The period during which the film is said to have been burnt thus lies between the 10th, and the 23rd of November 1975. Further- more Khedkar, PW 3 has firmly asserted that on the first of the two nights on which the burning operations were carried out, watchman Om Prakash, PW 31 was on duty from 2.00 p.m. to 10.00 p.m. He was examined at length in relation to duty rosters P-22 and PW 32/2 which were admittedly prepared by him. Duty roster exhibit P-22 covers

the entire month of November 1975, and according to the entries appearing therein watchman Om Prakash, PW 31 was to be on duty during the whole of that month in the third shift only, i.e., daily from 10.00 p.m. to 6.00 a.m. The approver however explained that the roster could be changed from time to time according to the exigencies of the situation. He averred that on the 15th of November 1975, which was a Saturday and therefore an off-day for watchman Om Prakash, PW 31, the latter took over duty from 2.00 p.m. to 10.00 p.m. as a substitute for watchman Tarachand. A similar arrangement was made on the 18th of November 1975, when watchman Om Prakash, PW 31 changed places with watchman Ramdular and went over from A the 3rd to the 2nd shift (2.00 p.m. to 10.00 p.m.). As it is, the 15th and the 18th of November 1975, were the only two days in the month on which watchman Om Prakash, PW 31 was on duty during the second shift as a special arrangement. For the rest of the days during the month he was admittedly never on duty in that shift. The period during which the film was destroyed is thus further narrowed B down so that the first operation. Of burning could have taken place on the night of the 15th of November or on that of the 18th of November 1975, and on no other date.

Here we may refer to another aspect of the matter. Evidence has been produced to show that A-2 left Delhi by air at 7.50 a.m. On the 17th of November 1975 for Hyderabad, and arrived back at Delhi at 8.30 p.m. the same day. He again took off at 6.40 a.m. On the 19th of November 1975, for Sikkim and returned to Delhi not earlier than 11.10 a.m. On the 23rd of November 1975. On both occasions he travelled as a member of the party of the then Prime Minister, his own mother, namely, Shrimati Indira Gandhi. The evidence of Dr. K. P. Mathur, DW 3, is categorical in this behalf and is supported by the passenger manifests (Ext. DW-3/A and DW- 5/A) prepared in relation to the journeys which contain the name of A-2, and other documents which need not be mentioned here. We regard his testimony as conclusive as was done not only by the learned Sessions Judge but also by the Special Public Prosecutor who made a statement at the trial that testimony be accepted by the prosecution in toto. In this view of the matter the prosecution has to prove that a period of four days in between the 14th and the 18th of November 1975, was such as A-2 was available in Delhi during day time on the first, third and fourth of such days.

Now, as pointed out already, the burning could have taken place only on the 15th or the 18th of November 1975, if the approver and the duty rosters prepared by him are to be believed. The 18th of November 1975, has to be excluded for the reason that on the two days following A-2 had to be shown to have been in Delhi (for receiving the report about the destruction of the material from the approver) which he definitely was not. The 15th of November 1975, as the first night of the burning operation also does not click with the prosecution case because, although the report about it could have been made to A-2 on the next morning (inspite of the fact that it was a Sunday and therefore a closed day for the factory), A-2 was not in Delhi or anywhere near it throughout the 17th so that the story of the report made to him by the approver about the second part of the burning operations loses weight. No other dates being in point, the story propounded by the approver is negatived by reference to unimpeachable documentary and circumstantial evidence, although it may be further noted that neither Kanwar Singh Yadav, PW 32 nor watchman Om Prakash, PW 31 supports the approver's version and each one of them was declared hostile to the prosecution.

The recoveries said to have been made during investigation have also not impressed us. As stated earlier the incriminating articles said to have been seized are a lid of a trunk, an empty can, a gunny bag- all from inside the Maruti Complex-and a few cans from inside a nala lying a few miles away. These recoveries are sought to be connected with the destruction of the film on the basis of the following averments forming part of the testimony of the approver:

> "It was after the elections held in March 1977, that Sanjay Gandhi who was then Director met me in the factory hall. Kanwar Singh Yadav was also there. Vijay Sharma, Bus Body Manager, was called there. Sanjay Gandhi asked us to collect all the damaged trunks with the contractors and to deposit them in Bus Body Store. We could collect 12 out of 13 trunks mentioned above along with four or five other big trunks. These were deposited in Bus Body Store. Later on I found them shifted to Press shop store. A couple of days thereafter, Kanwar Singh Yadav, Sanjay Gandhi and I went inside the General Store. We walked down to Bus Body Store. There Sanjay Gandhi asked Panna Lal, Bus Body Supervisor and in charge Bus Body Store, to collect all the damaged locks available with them. Panna Lal passed on the order to Om Prakash who was Bus Body Clerk Incharge Stores. About 25 damaged locks were collected. These is included Harrison, Tiger and Godrej Locks. Godrej locks were 4 or 5 . Sanjay Gandhi asked me to get all those collected locks melted in a foundry and I got them melted.... Ram Lakhan was Incharge of the foundry and I handed over the collected locks to him.. Thereafter, scrapping of the trunks and their removal was performed by my Asstt. Kanwar Singh Yadav and he told me about that. Kanwar Singh Yadav told me that Sanjay Gandhi had asked him to scrap the trunks and cans and to dispose them off. He told me that he cut the trunks into pieces and threw them into the iron scraps which were sold to different contractors. As regards the cans, he told me that he had damaged the cans and thrown them at different places on Rajasthan Highway and Rajasthan Bye-
>
> pass....He told me that the trunks had been cut into pieces and cans had been damaged in the Press Shop."

This story is inherently improbable. The thirteen trunks which admittedly had no marks of identification on them and were of the ordinary type available in any market are said to have been shredded and the locks-which again are available in plenty everywhere-are alleged to have been melted in the foundry but, strangely enough, the cans which had on them labels carrying the legend 'Kissa Kursi Kaa' were subjected to a much milder treatment and were merely pressed and then thrown away at various places on the Rajasthan Highway and Rajasthan Bypass to which Kanwar Singh Yadav, PW 32 had to make journeys off and on. It is not disputed that if the cans were to be shredded or melted the operation would not have presented any difficulty whatsoever in view of the facilities available at the Maruti factory. And, if that be so, surely any person who wanted to obliterate evidence of the commission of a serious offence would see to it that the material of the cans was so transformed as to be impossible of identification. There is no reason why all of them should not have been melted into lumps, or in any case shredded beyond recognition. And we also do not see how just one can would be left intact when so much care was bestowed on operations

obliteration. In fact, it may have been much easier for the cans to be shredded or melted than for them to be first pressed and then transported to far off places and thrown away there. In this view of the matter we need not pursue this part of the case any further.

Thus, on a complete and careful examination of the circumstances and the evidence, mentioned above, even taking the sub-stratum of the prosecution case at its face value, the prosecution has not been able to prove either that there was any existence of any conspiracy between A-1 and A-2 to destroy the film 'Kissa Kursi Kaa' by burning it or to commit any other offence in respect of the film. There is no evidence to show that there was any meeting of minds between A-l and A-2. We have also found that even on the first two parts of the prosecution case, the allegation of the prosecution that the positive prints were removed at the instance or to the knowledge of A-l or that the negatives and other materials of the film were sent for by A-1 and kept in his personal custody has not been proved. The mere fact that A-1 decided to ban the film and refused certification for public exhibition and passed orders for seizure of the film and its transfer to the custody of the Ministry of Information & Broadcasting does not disclose any offence. We have already shown that the decision to ban the film was not taken by A-1 secretely or clandestinely but after a full-fledged discussion in the Coordination Committee meeting and it is proved that such meetings are usually attended by senior officers of various Ministries, as deposed to by K. N. Prasad, PW 63. Further, that part of the case which relates to the burning of film material rests solely on the uncorroborated testimony of the approver and is negatived in so far as the role therein of A-l is concerned.

We may mention here that a lot of evidence has been produced by the prosecution to show:-

> (a) that the positive print of the film found its way into the luggage compartment of the car in which A-1 then travelled to the Prime Minister's house where the print was unloaded by someone in the absence of A-1; and
>
> (b) that the negatives and other material relating to the film were taken in a tempo or two to the Prime Minister's residence and from there to the Maruti Complex where they were stored before their destruction.

We have considered it purposeless to go into these factors for the reasons that the connection of A-1 or A-2 therewith remains unproved as discussed above. Had these factors provided circumstantial evidence oh the basis of which alone the charge against either A-1 or A-2 could be held established it would have been necessary for the court to sift the evidence produced in support thereof. But that is definitely not the case, for, if either or both of the factors are proved, the inference of guilt of either A-l or A-2 does not necessarily follow. For circumstantial evidence to furnish evidence of guilt it has to be such as it cannot be explained on any other reasonable hypothesis except the guilt of the accused which is not the case here because appellants A-l and A-2 could not be said to be the only persons interested in the destruction of the film if it was as obnoxious to the then Prime Minister or as critical of the functioning of the then Union Government as the prosecution would have us believe. The film and all the material relating to it no doubt appear to have vanished into thin air but then neither A-1 nor A-2 can be held responsible therefor, in the absence of proof in that behalf-proof which would exclude all reasonable doubt.

The prosecution having thus failed to prove the case against the appellants, their appeals are allowed, the convictions recorded against and the sentences imposed on the appellants are set aside and they are acquitted of all the charges framed against them. Both the appel-

lants who are on bail shall now be discharged from their bail-bonds. In view of the acquittal of appellant No 1, Shukla in Criminal appeal No. 494 of 1979 and appellant No. 2, Sanjay Gandhi in Criminal appeal No. 493 of 1979, Criminal appeal No. 492 of 1979, filed by the State is dismissed. In view of the fact that we have made no comments on the conduct of the investigation or on Mr. N. K. Singh, no order need be passed on the application filed by him.

S.R. Cvl. App. 493 & 494/7g allowed.
Cvl. App. 492/79 dismissed