Supreme Court of India
Central Bureau Of Investigation vs V.C. Shukla & Ors on 2 March, 1998
Author: M.K. Mukherjee
Bench: M.K. Mukherjee, S.P. Kurdukar, K.T. Thomas

PETITIONER:
CENTRAL BUREAU OF INVESTIGATION

Vs.

RESPONDENT:
V.C. SHUKLA & ORS.

DATE OF JUDGMENT: 02/03/1998

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T M.K. MUKHERJEE, J Leave granted.

On May, 3, 1991 the Central Bureau of Investigation (CBI), New Delhi, searched the premises of J.K. Jain at G-36 Saket, New Delhi to work out an information received while investigating RC Case No. 5(S)/91 SIU (B)/CBI/New Delhi. In course of the search they recovered, besides other articles and documents, two diaries, two small note books and two files containing details of receipts of various amounts from different sources recorded in abbreviated forms of ditties and initials and details of payments to various persons recorded in similar fashion. Preliminary investigation taken up by the Cbi to decode and comprehend those entries revealed payments amounting to Rs. 65.47 crores, out of which 53.5 crores had been illegally transferred from abroad through hawala channels, during the years 1988 to 1991 to 115 persons including politicians, some of whom were members of either Houses of parliament during the relevant period, officials of government and Public Sector Undertakings, and friends of S.K. Jain, B. R. Jain, and N.K. Jain, who are three brothers carrying on different businesses. It further revealed that the Jain brothers and J. K. Jain, who is their employee, had acted as middlemen in the award of certain big projects in the power sector of the Government of India to different bidders; that they had official dealings with politicians and public servants whose names were recorded in the diaries and the files; and that some of them had accepted illegal gratification other than legal remuneration from jains as a reward for giving them and the

companies they own and manage various contracts. On such revelation the CBI registered a case on march 4, 1995 under Sections 7 and 12 of the prevention of Corruption Act, 1988 and Section 56 read with Section 8(1) of the Foreign Exchange Regulation Act, 1973 against the Jains, some public servants and others being RC No. 1(A)/95 ACU (VI) and on completion of investigation filed 34 charge-sheets (challans) in the Court of the Special Judge, New Delhi against various politicians, Government servants and jains. In one of the above charge- sheets (C.S. No. 4 dated 16.1.1996) Shri Lal Krishna Advani, who at the material time was a member of the parliament, and the jains figure as accused and the another (C. S. No. 8 dated 23.1.1996), Shri V. C. Shukla, also a member of parliament, along with the Jains.

The common allegations made in the above two charge- sheets (from which these appeals stem) are that during the years 1988 to 1991 jains entered into a criminal conspiracy among themselves, the object of which was to receive unaccounted money and to disburse the same to their companies, friends, close relatives and other persons including public servants and political leaders of India. In pursuance of the said conspiracy S.K. Jain lobbied with various public servants and Government organisations in the power and steel sectors of the Government of India to persuade them to award contracts to different foreign bidders with the motive of getting illegal kickbacks from them. During the aforesaid period the jain brothers received Rs. 59,12, 11, 685/-, major portion of which came from foreign countries through hawala channels as kickbacks from the foreign bidders of certain projects of power sector undertakings and the balance from within the country. An account of receipts and disbursements of the monies was maintained by J.K. Jain in the diaries and files recovered from his house and jain brothers authenticated the same.

As against Shri Advani the specific allegation in the charge-sheet in which he and jains figure as accused) is that he received a sum of Rs. 25 lacs from jains during his tenure as a member of the parliament, (besides a sm of Rs. 35 lacs which was received by him while he was not a member of the parliament). In the other charge-sheet filed against Shri Shukla and Jains) it is alleged that during the period 1988 to 1991, while shri Shukla was a member of the parliament and for some time a Cabinet Minister of the Central Government he received Rs. 39 lacs (approximately) from Jains.

According to CBI the materials collected during investigation clearly disclosed that jains were in the habit of making payments to influential public servants and political leaders of high status expecting official favours from them and the above payments were made to Shri Shukla and Shri Advani with that oblique motive. Thereby, the Cbi averred, the above persons (the respondents in these appeals) committed offences under Section 120B I.B.C. and Section 13(2) read with Section 13(1) (d), 7 & 12 of the prevention of Corruption Act, 1988.

The special judge took cognisance upon the above two charge-sheets and issued processes against the respondents. After entering appearance they agitated various grounds (to which we will refer at the appropriate stage) to contend that there was no material whatsoever to frame charges against them. The Special Judge, however, the rejected all those contentions and passed separate orders deciding to frame charges and try the respondents. Pursuant to the order passed in Case No. 15 of 1996 (arising out of C.S. No. 8 dated 23.1.1996) the following charges were framed against Shri

Shukla:-

> " Firstly, that you, V. C. Shukla , during the period from Feb. 90 to Jan. 91 at Delhi agreed with other co-accused S.K. Jain, N.K. Jain, B. R. Jain, and J. K. Jain to do an illegal act, to wit, to obtain pecuniary advantage from the said Jains by abusing your official position as a public servant being Member of Parliament during the said period and also be Minister of External Affairs from 21.11.90 to Jan. 91 and in pursuance of the said agreement, you obtained the pecuniary advantage and accepted Rs. 38, 85,834/- as gratification other than legal remuneration from the said Jains for a general favour to them from you and you, thereby, committed an offence punishable U/s 120 -B IC r/w Sec. 7, 12 and 13(2) r/w 13(1)(d) of the prevention of Corruption Act, 1988 and within the cognizance of this Court. Secondly, that you during the aforesaid period at the aforesaid place in or aforesaid period at the aforesaid place in your aforesaid capacity being a public servant, accepted a sum of Rs. 38,85,834 from the above said co-accused persons, namely S.K. Jain, N.K. Jain, B. R. Jain and J. K. Jain as gratification other than legal remuneration for showing general favour to them and you, thereby, committed an offence punishable U/s 7 of the prevention of Corruption Act, 1988 and within the cognizance of this Court.
>
> Thirdly, that you during the aforesaid period and at the aforesaid place, in your aforesaid capacity being a public servant obtained pecuniary advantage amounting to Rs. 38,85,834/- from the co-accused persons namely, S.K. Jain, B. R. Jain, N.K. Jain and J.K. Jain by abusing your position as a public servant and also without any public interest and you, thereby committed an offence punishable U/S 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 and within the cognizance of this Court.

The charges framed against S.K. Jain, in that case read as under:

> " Firstly, that you, S.K. Jain, during the period from Feb. 90 to Jan. 91 at Delhi, agreed with other co-accused V.C. Shukla, N. K. Jain, B. R. Jain and J. K. Jain to do an illegal act, to wit, to make payment of Rs. 38,85,834/- to said Sh. V. C. Shukla, as a gratification other than legal remuneration as a motive or reward for getting general favour from said V. C. Shukla who was holding the post of a member of parliament during the said period and also was Minister for External Affairs during the period from 21.11.90 to Jan. 91 and in pursuance of the said agreement, the pecuniary advantage was obtained by said V. C. Shukla by abusing his official position and without any public interest and the payment was made by you as, aforesaid, gratification an you, thereby, committed an offence punishable U/s 120-b IPC r/w Sec. 7, 12, 13(2) r/w 13(1)(d) of the prevention of Corruption Act, 1988 and within the cognizance of this Court.
>
> Secondly, that you, S.K. Jain during the aforesaid period and at the aforesaid place abetted the commission of offence punishable U/S 7 of the P. C. Act, 1988 by offering

> bribe of Rs. 38,85834 to said V. C. Shukla, who was a public servant during the relevant period as a member of parliament and also as a minister of External Affairs during the period from 21.11.90 to Jan. 91 for getting general favour from him and you, thereby committed an offence punishable u/s 12 of the Prevention of Corruption Act, 1988 and within the cognizance of this Court."

Similar charges were also framed against the other Jains.

In the other case (c.c. No. 17 of 1996), in which Shri Advani figure as an accused with Jains no formal charge was framed (as by then the respondents had moved the High Court), but the special Judge decided to frame charges against them in similar lines as would be evident from the order dated September 6, 1996, the relevant portion of which reads as under:

> " So, after going through the entire material available on record, i.e. charge-sheet statements of the witnesses recorded U/s 161 Cr.P.C., documents placed on record prima facie, it cannot be said that the allegations made against all these accused are groundless or that there is no sufficient ground for proceeding against all the accused. Prima facie, it is clear that there are sufficient grounds for framing of charges against all these accused. Accordingly, I hereby order that the charges against all these accused. Accordingly, I hereby order that the charges for offences U/S 120b IPC and Sections 7, 12, 13(2) r/w 13(1) (d) of the P. C. Act, 1988 be framed against all the accused namely, L. K. Adavani, S.K. Jain, J.K. Jain, B.R . Jain and N.K. Jain.
>
> Further Charges for offence U.s. 7 and 13(2) read with 13(1)(d) of P.C. Act, 1988 be framed against accused L. K. Advani.
>
> Further charges for offence U/s 12 of P.C. Act, 1988 be framed against accused S.K. Jain, J.K. Jain, B.R. Jain and N. K. Jain."

Assailing the above order/charges the respondents moved the High court through petitions filed under Section 482 CR. P. C., which were allowed by a common order and the proceedings of the above two cases were quashed and the respondents were discharged. The above order of the High Court is under challenge in these appeals at the instance of the CBI.

From the above resume of facts it is manifest that the entire edifice of the prosecution case is built on the diaries and files - and for that matter the entries made therein - recovered from J. K. Jain. While the appellant claimed that the entries in the documents would be admissible under Sections 34,10 and 17 of the Evidence Act, ('Act' for short) the respondents contended that the nature and character of the documents inhibited their admissibility under all the above Sections. Needless to say, to delve into and decide this debatable point it will be necessary at this stage to look into the documents; the two spiral note books (marked MR 68/91 and MR 71/91), two small spiral pads (MR 69/91 and MR 70/91) and two files, each containing some loose sheets of papers (MR 72/91 and MR 73/91). Since according to the prosecution MR 71/91 is the main (mother) book we first take the same for scrutiny. Page 1 of the book begins with the heading "A/C given upto 31st January on

31.1.1998;" and then follows serially numbered entries of various figures multiplied by `some other figures on the left hand column and the product thereof on the next column for each month commencing from January, 1990 to April, 1991. The overleaf ('o' for short) of the page contains similar entries for the period from April, 1988 to December, 1989 and it ends with the words "2.77' we have to receive". In the subsequent pages the book records monthly receipts of monies/funds from inconspicuous persons/entities during the period commencing from the month of February, 1988 to April 1991 maintained on '2 columns' basis. The left hand column represents the receipts and the right hand column disbursements. In the column of receipts the source is indicated in abbreviated form on the left of the figure representing the sum received. On the right side of the said figures a number is mentioned which co-relates with the serial number of the account of receivers recorded on pages 1 and 1(o) of the diary for the period subsequent to 31.1.1988. So far as the names of the payees are concerned the same have also been recorded in abbreviated form, alphabets or words. The entries, however, do not give nay indication of any sale, purchase or trading and show only receipts of money from a set of persons and entities on one side and payments to another set of persons and entities on the other, both reckoned and kept monthly. As regards the actual amounts received and disbursed we notice that the figures which have been mentioned briefly against the respective names are not suffixed with any symbol, volume or unit so as to specifically indicate whether they are in lakhs, thousands or any other denomination. It is noticed that in most of the entries the figures against transactions extend to 2 places after decimal which seem to suggest that the figures in money column may be in thousands, but then in some of the months, namely, 11/88, 6/89, 10/90, 2/91, 3/91, 4/91, figures extend to 5 places after decimal point in money column. This gives an impression that the figures are in lakhs; and this impression gains ground from other transactions. For example, at page 9 of the book in the transactions relating to the month of September 80, a figure of 32,000 prefixed by (sterling pound symbol) indicates that it is 32,000 sterling pounds and the same has been multiplied by Rs. 40/- per pound which was possibly the conversion rate of pound according to Indian currency at that time) and the total has been indicated at 12.80 as against the product of Rs. 12,80,000/-. That necessarily means that the 2 places after decimal denotes that figures are in lakhs. The book further indicates that it was from time to time shown to some persons and they put their signatures in token thereof.

The other book (M.R. 68/91) contains, inter alia, entries relating to cash and fund received and disbursed in the months of February, March and April 1991 recorded in similar fashion as in M.R. 71/91 (some or all of which correspond with the entries in MR 71/91 for those months); expenses incurred in the month of March 91; and 'political expenses as on 26.4.91' with names of a number of persons mentioned thereunder through their initials or surnames and various amounts shown against their respective names in only figures running upto 2 points after decimal. The other entries in this book seem to be wholly unconnected to the entries earlier referred to. The two small spiral pads (M.R. 69/71 and M.R. 70/91) also contain some entries relating to similar receipt and disbursement on certain days and in certain months during the above period - all written in similar fashion. So far as the two files containing some loose sheets of paper are concerned (M. R. 72/91 and 71/91) we notice that in some of these papers accounts of money received and disbursed in one particular month or a period covering a number of months are written.

While arguing their case for framing of charges against the respondents it was contended on behalf of the appellant before the trial Court that having regard to the fact that the documents unmistakably showed that accounts of business regarding receipt and payment of money during the period 1988 to 19991 were regularly maintained those documents would be admissible under Section 34 of the Act. Relying upon the statements of some of the witnesses recorded during investigation and report of the handwriting expert that the entries in the documents were in the handwriting of J.K. Jain, and that the three Jain brothers had signed those documents in token of their authenticity, it was contended that entries therein would be admissible also under Section 10 of the Act to prove that pursuant to a conspiracy hatched up by the Jains to obtain favours from politicians and other public servants payments were made to them from moneys received through hawala transactions. Section 17 and 21 were also pressed into service to contend that the entries would be 'admission of the Jains of such payments.

In refuting the above contentions it was submitted on behalf of the respondents that since those documents were not books of accounts nor were they maintained in regular course of business they would not be relevant under Section

34. It was next submitted that even it was assumed that those documents were relevant and admissible under Section 34 they could be, in view of the plain language of that Section, used only as corroborative evidence, but in absence of any independent evidence to prove the payments alleged therein the documents were of no avail to the prosecution. The admissibility of the documents under Section 10 was resisted by the respondents contending that there was not an iota of material to show even, prima facie, that there was a conspiracy. Similar was the contention regarding applicability of sections 17 and 21 in absence of any material to prove 'admission' of Jains. In support of their respective contentions they relied upon some decisions of this Court as also of different High Courts.

From the order of the trial Court we find that though it noted all the contentions of the parties and quoted in extensor from the judgments relied on by them it left the question regarding admissibility of the documents under Section 34 unanswered with the following observation:-

> "All the above cited case laws U/s 34 and other sections of Indian Evidence Act pertain to the stage where in those cases entire evidence has been recorded and the trial was concluded. There is not even a single judgment which has been referred to above which pertains to the stage of charge. In the instant case, the case is at the stage of charge. So these case laws are not applicable to the facts and circumstances of the present case, at this stage."

Then, proceeding on the assumption that those documents did not come within the purview of Section 34, the trial court posed the question as to their evidentlary value without first going into the question whether the documents were admissible in evidence) and held that being 'documents' under Section 3 of the Act they could be proved during trial under Sections 61 and 62 thereof. The trial Court then referred to the various entries in the diaries and after correlating them came to the conclusion that a prima facie case had been made out against the respondents. However, the appellant's contention that the entries made in the diaries were also admissible under Sections 17

and 21 as against the Jains did not find favour with the trial court as, according to it, prima facie there was no admission on behalf of the accused. As regards the admissibility of the entries in the documents under Section 10, the trial Court did not record any specific finding.

In setting aside the order of the trial court, the High Court accepted the contention of the respondents that the documents were not admissible in evidence under Section 34 with the following words:

> " An account presupposes the existence of two persons such as a seller and a purchaser, creditor and debtor. Admittedly, the alleged diaries in the present case are not records of the entries arising out of a contract. They do not contain the debts and credits. They can at the most be described as a memorandum kept by a person for his own benefit which will enable him to look into the same whenever the need arised to do for his future purpose. Admittedly the said diaries were not being maintained on day-to day basis in he course of business. There is no mention of the dates on which the alleged payment were made. In fact the entries there in are on monthly basis. Even the names of the persons whom the alleged payments were made do not find a mention in full. they have been shown in abreviated form. Only certain 'letters' have been written against their names which are within the knowledge of only the scribe of the said diaries as to what they stand for and whom they refer to."

After having held that the documents were neither books of account nor kept in the regular course of business the High Court observed that even if they were admissible under Section 34, they were not, in view of the plain language of the Section , sufficient enough to fasten the liability on the head of a person, against whom they were sought to be used. As, according to the High, the prosecution conceded that besides the alleged entries in the diaries and the loose sheets there was no other evidence it observed that the entires would not further the case of the prosecution. As regards the admissibility of the documents under Section 10 the High Court held that the materials collected during investigation did not raise a reasonable ground to believe that a conspiracy existed, far less, that the respondents were parties thereto and, therefore, those documents would not be admissible under Section 10 also. The High Court next took up the question as to whether those documents could be admitted under Section 17 and observed that the admissions, if any, therein could be used against Jains only and not against Shri Adavani and Shri Shukla. The High Court, however observed that the production and proof of the documents by themselves would not furnish evidence of the truth of their contents and that during investigation C.B.I. did not examine any witness or collect materials to prove the same. With the above findings and observations, the High Court arrived at the following conclusion:-

> " In the present case there is no evidence against the petitioners except the diaries, note books and the loose sheet with regard to the alleged payments (vide MR Nos. 68/91, 72/91 and 73/91). The said evidence is of such a nature which cannot be converted into a legal evidence against the petitioners, in view of my above discussion. There is no evidence in the instant case with regard to the monies which are alleged to have been, received by Jains for the purpose of disbursement. There is

> no evidence with regard to the disbursement of the amount . Then there is no evidence with regard to the disbursement of the amount. Then there is no evidence with regard to the fact to prove prima facie that the petitioners i.e. Shri L. K. Advani and Shri V. C. Shukla accepted the alleged amounts as a motive or reward for showing favour or disfavor to any person and that the said favours and disfavors were shown in the discharge of their duties as public servants as contemplated by 5.7 of the Act (Prevention of Corruption Act, 1988). Thus the court will have to presume all the above facts in the absence of any evidence in connection therewith to frame charges against the petitioners.

To appreciate the contentions raised before us by the learned counsel for the parties it will be necessary at this stage to refer to the material provisions of the Act. Section 3 declares that a fact a relevant to another when it is connected with the other in any of the ways referred to in the provisions of the Act relating to the relevancy of facts; and those provisions are to be found in sections 6 to 55 appearing in Chapter II. Section 5, with which Chapter Ii opens, expressly provides that evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and the facts declared relevant in the aforesaid section, and of no others. Section 34 of the Act reads as under:-

> " Entries in books of account when relevant - Entries in book of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire but such statements shall not alone be sufficient evidence to charge any person with liability."

From a plain reading of the Section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above Section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence, still, the statement made therein shall not along be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second park speaks, in a negative way, of its evidentiary value for charging a person with a liability. It will, therefore, be necessary for us to first ascertain whether the entries in the documents, with which we are concerned, fulfil the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed.

'Book' ordinarily means a collection of sheets of paper or other material, blank, written, or printed, fastened or bound together so as to form a material whole. Loose sheets or scraps of paper cannot be termed as 'book' for they can be easily detached and replaced. In dealing with the work 'book' appearing in Section 34 in Mukundram vs. Dayaram [AIR 1914 Nagpur 44], a decision on which both sides have placed reliance, the Court observed:-

> " In its ordinary sense it signifies a collection of sheets of paper bound together in a manner which cannot be disturbed or altered except by tearing apart. The binding is

> of a kind which is not intended to the moveable in the sense of being undone and put together again. A collection of papers in a portfolio, or clip, or strung together on a piece of twine which is intended to be untied at will, would not, in ordinary English, be called a book..... .....I think the term "book" in S. 34 aforesaid may properly' be taken to signify, ordinarily, a collection of sheets of paper bound together with the intention that such binding shall be permanent and the papers used collectively in one volume. It is easier however to say what is not a book for the purposes of S. 34, and I have no hesitation in holding that unbound sheets of paper in whatever quantity, though filled up with one continuous account, are not a book of account within the purview of S. 34."

We must observe that the aforesaid approach is in accord with good reasoning and we are in full agreement with it. Applying the above tests it must be held that the two spiral note books (MR 68/91 and 71/91) and the two spiral pads (MR 69/91 and MR 70/91) are "books" within the meaning of Section 34, but not the loose sheets of papers contained in the two files (MR 72/91 and MR 73/91).

The next question is whether the above books fulfil the other requirements of Section 34 so as to be admissible in evidence. Mr. Altaf Ahmed, the learned Additional Solicitor General, appearing for the appellant submitted that the interpretation of the High Court that the expressions "books of account" and "business" appearing in the above section refer and relate to only such business as may exist between two persons such as a seller and purchaser, creditor and debtor, is anomalous for such a truncated view would disable law from dealing with illicit business and situations connected therewith, such as the case in hand, where a conspiracy was hatched up to receive money through hawala channels and other sources and to distribute it as bribes to politicians to influence favorable decisions from them. According to Mr. Altaf Ahmed, the expression "business" under Section 34 should receive the widest possible meaning and should be under stood and construed to mean and include all such efforts of people, which , by varied methods of dealing with each other are designed to improve their individual economic conditions and satisfy their desires. he submitted that any book in which monetary transactions are recorded and reckoned would answer the description of 'book of account' within the meaning of the aforesaid section. Relying upon the dictionary meanings of the above two words, namely, 'business' and 'account' and the interpretations given to those words by various Courts of law, he submitted that the book (MR 71/91) and the connected documents would clearly prove that they were books of account maintained in respect of the illegal business that the Jain were carrying. His last contention on this aspect of the matter was that the transactions contained in MR 71/91 and the connected documents were an inherently credible record of the business in question and the books were maintained with such regularity as was compatible with the nature of the business the Jain brothers were carrying and consequently those books would be admissible in evidence under Section 34.

Mr. Sibal, the learned counsel for the Jains, did not dispute that the spiral note books and the small pads are 'books' within the meaning of Section 34. He, however, strongly disputed the admissibility of those books in evidence under the aforesaid section on the ground that they were neither books of account nor they were regularly kept in the course of business. he submitted that at best it could be said that those books were memoranda kept by a person for his own benefit. According to Mr. Sibal,

in business parlance 'account' means a formal statement of money transactions between parties arising out of contractual or fiduciary relationship. Since the books in question did not reflect any such relationship and, on the contrary, only contained entries of monies received from one set of persons and payment thereof to another set of persons it could not be said, by any stretch of imagination that they were books of account, argued mr. Sibal. He next contended that even if it was assumed for argument's sake that the above books were books of account relating to a business still they would not be admissible under Section 34 as they were not regularly kept. It was urged by him that the words 'regularly kept' mean that the entries in the books were contemporaneously made at the time the transactions took place but a cursory glance of the books would show that the entries were made therein long after the purported transactions took place. In support of his contentions he also relied upon the dictionary meanings of the words 'account' and 'regularly kept'.

The word 'account' has been defined in Words and Phrases, permanent Edition, Volume IA at pages 336 to 338 to mean (i) a claim or demand by one person against another creating a debtor-creditor relation' (ii) a formal statement in detail of transactions between two parties arising out of contracts or some fiduciary relation. At page 343 of the same book the word has also been defined to mean the preparation of record or statement of transactions or the like; a statement and explanation of one's administration or conduct in money affairs; a statement of record of financial transactions, a reckoning or computation; a registry of pecuniary transactions or a reckoning of money transactions' a written or printed statement of business dealing or debts and credits; or a certain class of them. It is thus seen that while the former definitions give the word 'account' a restrictive meaning the latter give it a comprehensive meaning. Similarly is the above word defined, both expansively, in Black's Law Dictionary (Sixth Edition) to mean's detailed statement of the mutual demands in the nature of debit and credit between parties arising out of contracts or some fiduciary relation. A statement in writing, of debits and credits, or of receipts and payments; a list of items of debits and credits, with their respective dates. A statement of pecuniary transactions; a record or course of business dealings between parties; a list of statement of monetary transactions, such as payments, losses, sales, debits, credits, accounts payable, accounts receivable, etc., in most cases showing a balance or result of comparison between items of an opposite nature.' Mr. Altaf Ahmed relied upon the wider definition of the word 'account' as mentioned above to conned that MR 71/91 fulfills the requirements of 'account' as it records a statement of monetary transactions - such as receipts and payments - duly reckoned. Mr. Sibal on the other hand urged that business accounts must necessarily mean only those accounts which record transactions between two parties, arising out of a contract or some fiduciary relations (a meaning accepted by the High Court). He submitted, relying upon the definition of 'memorandum' as appearing in 'words and Phrases', that MR 71/91 could at best be described as a memorandum of some transactions kept by a person for his own benefit to look into same if and when the occasion would arise.

From the above definitions of 'account' it is evident that if it has to be narrowly construed to mean a formal statement of transactions between two parties including debtor-creditor relation and arising out of contract, or some fiduciary relations undoubtedly the book MR 71/91 would not come within the purview of Section 34. Conversely, if the word 'account' is to be given wider meaning to include a record of financial transactions properly reckoned the above book would attract the definition of 'book of account'.

It cannot be gainsaid that the words 'account', 'books of account', 'business' and 'regularly kept' appearing in Section 34 are of general import. necessarily, therefore, such words must receive a general construction unless there is something in the Act itself, such as the subject matter with which the Act is dealing, or the context in which the words are used, to show the intention of the legislature that they must be given a restrictive meaning.

Indubitably, the Act lays down the rules of evidence to be applied and followed in all judicial proceedings in or before any Court including some Courts - martial. Keep in view the purpose for which the Act was brought into the statute book and its sweep, the words appearing in Section 34 have got to be given their ordinary, natural and grammatical meaning, more so, when neither the context nor any principle of construction requires their restrictive meaning. While on this point we may refer to Section 209 of the Companies Act, 1956 which expressly lays down what 'books of account' to be maintained thereunder must contain and, therefore, the general meaning of the above words under the Act may not be applicable there.

In Mukundram (supra) after dealing with the word 'book' (to which we have earlier referred) the Court proceeded to consider what is meant by a 'book of account' under Section 34 and stated as under:

> " To account is to reckon, and I an unable to conceive any accounting which does not involve either addition or subtraction or both of these operations of arithmetic. A book which contains successive entries of items may be a good memorandum book; but until those entries are totalled or balanced, or both, as the case may be, there is no reckoning and no account. In the making of totals and striking of balances from time to time lies the chief safeguard under which books of account have been distinguished from other private records as capable of containing substantive evidence on which reliance may be placed."

(emphasis supplied) We have no hesitation in adopting the reasoning adumbrated in the above observations. The underlined portion of the above passage supports the contention of Mr. Altaf Ahmed and rebuts that of mr. Sibal that Mr 71/91 is only a memorandum for the entries made therein are totalled and balanced. We are, therefore, of the opinion that MR71/91 is a 'book of account' as it records monetary transactions duly reckoned.

Coming now to the word ' business' , we need not search for its meaning in Black's Law Dictionary, or words and Phrases for this Court has dealt with the word in a number of cases. In Narain Swadesh Weaving Mills vs. The Commissioner of Excess profits Tax [1955 (1) SCR 952], a five judge bench of this Court held that the word 'business' connotes some real, substantial and systematic or organised course of activity or conduct with a set purpose' and the above interpretation was quoted with approval in Mazagaon Dock Ltd. vs. The Commissioner of Income Tax and Excess Profits Tax [1959 SCR 848]. Again in Barendra Prasad Ray vs. I.T.O. [1981 92) SCC 693] this court observed that the word 'business' is one of wide import ad it means an activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. The activities of the Jain brothers, as sought to be projected by the prosecution now on the basis of

the materials collected during investigation (detailed earlier) would, therefore, be 'business' for they were being carried on continuously in an organised manner, with a set purpose (be it illegal) to augment their own resources. mr. 71/91 is, therefore, a book of account kept in the course of business.

That brings us to the question whether it was 'regularly kept' so as to satisfy the last requirement of Section 34 to be admissible in evidence as a relevant fact. Mr. Altaf Ahamed submitted that the above question has got to be answered keeping in view the nature of business the Jain brothers were carrying on and that when MR 71/91 is Scanned in that perspective it is obvious that it was regularly kept. In refuting the above contentions Mr. Sibal relied upon $ 1550 of American Jurisprudence, proof of Facts (Volume 34, Second Series) wherein it has been observed that not merely regularity is required; the entry must have been fairly contemporaneous with the transaction entered. he also referred to $ 1526 of the same book which reads as under:

> The entry should have been made at or near the time of the transaction recorded - not merely because this is necessary in order to assure a fairly accurate recollection of the of the matter, but because any trustworthy habit of making regular business records will ordinarily involve the making of the record contemporaneously. The rule fixes no precise time' each case must depend on its own circumstances."

(emphasis supplied) Mr. Sibal submitted that from a cursory glance of MR 71/91. It would be apparent that the entries therein were not contemporaneously made; and, on the contrary, they were made monthly which necessarily meant that those entries were made long after the dates the purported transactions of receipt and disbursement took place.

What is meant by the words 'regularly kept' in Section 34 came up for consideration before different high Courts; and we may profitable refer to some of those decisions cited at the Bar. In Ramchand Pitembhardar Vs. Emperor [19 Indian cases 534] it has been observed that the books are 'regularly kept in the corse of business' if they are kept in pursuance of some continuous and uniform practice in the current routine of the business of the particular person to whom they belong. In Kesheo Rao vs. Ganesh [AIR 1926 Nagpur 407] the court interpreted the above words as under:

> " The regularity of which S.34 speaks cannot possibly mean that there is not mistake in the accounts, as that would make the section a dead letter; no accounts could be admitted in evidence till they had been proved to be absolutely correct, which is in itself an impossible task and also cannot be begun till they have been admitted in evidence. Regularly or systematically means that the accounts are kept according to a set of rules or a system, whether the accountant has followed the rules or system closely or not. Nor is there any thing in the section that says the system must be an elaborate or reliable one. Both those matters, the degree of excellence of the system and the closeness with which it has been followed, affect the weight of the evidence of an entry, not it s admissibility. The roughest memoranda of accounts kept generally according to the most elementary system, though often departing from its, are admissible in evidence, but would of corse have no weight."

The view expressed by the Kerala High Court in Kunjamman Vs. Govinda Kurukkal [1960 kerala Law Times 184] in this regard is that the words 'regularly kept' do not necessarily mean kept in a technically correct manner for no particular set of rule or system of keeping accounts is prescribed under Section 34 of the Evidence Act and even memoranda of account kept by petty shopkeepers are admissible if they are authentic While dealing with the same question the Punjab & Haryana High Court observe in Hiralal Mahabir Pershad Vs. Mutsaddilal Jugal Kishore [(1967) 1 I. L. R P &: H 435] that the entries should not be a recital of past transactions but an account of transactions as they occur, of course, not necessarily to be made exactly at the time of occurrence and it is sufficient if they are made within a reasonable time when the memory could be considered recent.

In our considered opinion to ascertain whether a book of account has been regularly kept the nature of occupation is an eminent factor fr weighment. The test of regularity of keeping accounts by a shopkeeper who has dally transactions cannot be the same as that of a broker in real estates. Not only their systems of maintaining books of account will differ but also the yardstick of contemporaneity in making entries therein. We are, therefore, unable to subscribe to the view of Mr. Sibal that an entry must necessarily be made in the book of account at or about the time the related transaction takes place so as to enable the book to a pass the test of 'regularly kept'. Indeed the above Section ($ 1526) expressly lays down (emphasised earlier) that the rule fixed no precise time and each case must depend upon its own circumstances. Applying the above tests and the principles consistently laid down by the different High Court s(referred to above) we find that Mr 71/91 has been regularly and systematically maintained. Whether the system in which the book has been maintained guarantees its correctness or trustworthiness is a question of its probative value and not of its admissibility as a relevant fact under Section 34. The other three books, namely MR 68/91 and MR 70/91 would not however come within the purview of the above Section, for, even though some of the emonetary transactions entered therein appear to be related to those in MR 70/91, they (the three books) cannot be said to be books of account regularly kept. We need not, however, at this stage consider whether the entries in these three books will be relevant under any other provisions of Chapter II of the Act.

Now that we have found (in disagreement with the High Court) that entries in MR 71/91 would be admissible under Section 34 of the Act we have to next ascertain there probative value. mr. Altaf Ahmed took great pains to decode and analyses the entries in the above book and, correlating them with the entries in the other three books and in some of the loose sheets found in the files, submitted that the intrinsic evidence furnished by their internal corroboration and inter-dependence unmistakably demonstrated their authenticity and trustworthiness. According to Mr. Altaf Ahmed the entries reflect such periodicity and regularity as was compatible with the modus operandi of the business of Jain brothers of corrupting public servant including Members of Parliament and Ministers in order to influence their decisions and seek their favours for promotion of their (Jain brothers') economic interests. Besides, he submitted, the external independent corroboration of those entries as required under Section 34 was also available to the prosecution from the statements made by Shri Jacob Mathai, Danial P. Rambal and P. Ghoshal and Ejaj Ilmi during investigation, in that, they have admitted receipts of the payments as shown against them in MR. 71/91. While on this point, he made a particular reference to those entries in MR 71/91 Which, according to him m if corresponded with the entries in the other books and the enclose sheets would prove the payments

to Shri Advani and Shri Shukla. As regard s the proof of authorship of the entries he drew our attention to the statements of Pawan Jain , A. V. Pathak and D.K. Guha who have stated that the entries were made by J. K. Jain and that the Jain Brothers had put their signatures against some of these entries in token of verification thereof. He also drew our attention to the written opinion given by the hand writing expert in this regard.

In response Mr. Sibal submitted that the evidence that has been collected during investigation only shows that the entries were made by J. K. Jain and that the Jain brothers had put certain signatures against some of those entries it there is o evidence whatsoever to prove that movies were actually paid by the Jains and received by the payees as shown in the entries, without proof of which no case, even prima facie, could be said to have ben made out against any of therm. According to Mr. Sibal and Mr. Jethmalani, learned Counsel for Shri Advani by more proof of a document the truth of the contents thereof is to proved and independent evidence for that purpose is required. In absence of any such evidence, they contended, no liability can be foisted under Section 34.

The rationale behind admissibility of parties' books of account as evidence is that the regularity of habit, the difficulty of falsification and the fair certainty of ultimate detection give them in a sufficient degree a probability of trustworthiness (wigmore on evidence $ 1546). Since, however, an element of self interest and partisanship of the entrant to make a person - behind whose back and without whose knowledge the entry is made - liable cannot be ruled out the additional safeguard of insistence upon other independent evidence to fasten him with such liability, aha been provided for in Section 34 by incorporating the words such statements shall not alone be sufficient to charge any person with liability.

The probative value of the liability created by an entry in books of account came up for consideration in Chandradhar vs. Gauhati Bank [1967 (1) S. C. R. 898]. That case arose out of a suit filed by Gauhati Bank against Chandradhar (the appellant therein) for recovery of a loan of Rs. 40,000/- . IN defence he contended, inter alia, that no loan was taken. To substantiate their claim the Bank solely relied upon certified copy of the accounts maintained by them under Section 4 of the Bankers' Book Evidence Act, 1891 and contended that certified copies became prima facie evidence of the existence of the original entries in the accounts and were admissible to prove the payment of loan given. The suit was decreed by the trial Court and the appeal preferred against it was dismissed by the High Court. In setting aside the decree this Court observed that in the face of the positive case made out by Chandradhar that he did not ever borrow any sum from the Bank, the Bank had to prove that fact of such payment and could not rely on mere entries in the books of account even if they were regularily kept in the corse of business in view of the clear language of Section 34 of the Act. This Court further observed that where the entries were not admitted it was the duty of the Bank, if it relied on such entries to charge any person with liability, to produce evidence in support of the entries to show that the money was advanced as indicated therein and thereafter the entries would be of use as corroborative evidence.

The same question came up for consideration before different High Court on a number of occasions but to eschew prolixity we would confine our attention to some of the judgements on which Mr. Sibal relied. In Yesuvadiyan Vs. Subba Naicker [A. I. R. 1919 Madras 132] one of the learned judges

constituting the Bench had this to say:

> S.34, Evidence Act, lays down that the entries in books of account, regularly kept in the course of business are relevant, but such a statement will not alone e be sufficient to charge any person with liability. That merely means that the plaintiff cannot obtain a decree by merely proving the existence of certain entries in his books of account even though those books are shown to be kept in the regular course of business. he will have to show further by some independent evidence that the entires represent real and honest transactions and that the moneys were paid in accordance with those entries. The legislature however does not require any particular form or kind of evidence in addition to entries in books of account, and I take it that any relevant fact s which can be treated as evidence within the meaning of the Evidence Act would be sufficient corroboration of the evidence furnished by entries in books of account if true."

While concurring with the above observations the other learned Judge stated as under:

> " If no other evidence besides the accounts were given, however strongly those accounts may be supported by the probabilities, and however strong may be the evidence as to the honesty of those who kept them, such consideration could not alone with reference to s.34, Evidence Act, be the basis of a decree."

(emphasis supplied) In Beni Vs. Bisan Dayal [A. I. R 1925 Nagpur 445] it was observed tat entries in book s of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate an din absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another. In Hira Lal Vs. Ram Rakha [A. I. R. 1953 Pepsu 113] the High Court, while negativing a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been prove, said that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business re relevant whenever they refer to a matter in which the court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that the were in accordance with facts.

The evidentiary value of entries relevant under Section 34 was also considered in Hiralal Mahabir Pershad (supra) I.D. Dua,]. (as he then was) speaking for the Court observed that such entries though relevant were only corroborative evidence and it is to be shown further by some independent evidence that the entries represent honest and real transactions and that monies were paid in accordance with those entries.

A conspectus of the above decisions makes it evident that even correct and authentic entries in books of account cannot without independent evidence of their trustworthiness, fix a liability upon a person. Keeping in view the above principles, even if we proceed on the assumption that the entries made in MR 71/91 are correct and the entries in the other books and loose sheets which we have already found to be not admissible in evidence under Section 34) are admissible under Section 9 of the Act to support an inference about the formers' correctness still those entries would not be sufficient to charge Shri Advani and Shri Shukla with the accusations levelled against them for there is not an iota of independent evidence in support thereof. In that view of the matter we need not discuss, deleve into or decide upon the contention raised by Mr. Altaf Ahmed in this regard. Suffice it to say that the statements of the for witnesses, who have admitted receipts of the payments as shown against them in MR 71/91, can at best be proof of reliability of the entries so far they are concerned and not others. In other words, the statements of the above witnesses cannot be independent evidence under Section 34 as against the above two respondents. So far as Shri Advani is concerned Section 34 would not come in aid of the prosecution for another reason also. According to the prosecution case itself his name finds place only in one of the loose sheets (sheet No. 8) and not in MR 71/91. Resultantly, in view of our earlier discussion, section 34 cannot at all be pressed into service against him.

Following conclusion of our discussion on Section 34 of the Act we may now turn to the principle and scope of Section 10 of the Act and its applicability to the entries in question. This section reads as under:-

" Things said or done by conspirator in reference to common design. - where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, any thing said, done or written by any one of such persons in reference to their common intention, after the time when such intention was firs t entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

In dealing with this Section in Sardul Singh vs. State of Bombay [AIR 1957 S. C. 747], this court observed that it is recognised on well established authority that the principle under lining the reception of evidence of the statements, acts and writings of one co-conspirator as against the other is on the theory of agency. Ordinarily, a person cannot be made responsible for the acts of other unless they have been instigated by him or done with his knowledge or consent. This section provides an exception to that rule, by laying down that an overt act committed by any one of the conspirators is sufficient, (on the general principles of agency) to make it the act of all. But then, the opening of words of the Section makes in abundantly clear that such concept of agency can be availed of, only after the Court is satisfied that there is reasonable ground to believe that they have conspired to commit an offence or an actionable wrong. In other words, only when such a reasonable ground exists, any thing said, done or written by any one of then in reference to their common intention thereafter is relevant against the others, not only for the propose of proving the existence of the conspiracy but also for proving the existence of the conspiracy but also for proving that the other person was a party to it. In Bhagwan Swarup vs. State of Maharashtra [A. I. R 1965 S.

C. 682], this court analysed the section as follows:-

> " (1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, any thing said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) any thing said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said , done or written before the entered the conspiracy or after the left it' and (5) it can only be used against a co-conspirator and not in his favour."

In the light of the above principles we may now consider the arguments canvassed by Mr. Altaf Ahmed to made the entries in the books and the enclose sheets admissible under the above section as relevant evidence. He submitted that the materials collected during investigation and placed on record clearly establish the existence of a general conspiracy amongst jains to promote their economic interest by corrupting public servant. He next contended that the materials further disclosed that in order to accomplish the design of the general conspiracy, a number of separate conspiracles with similar purpose had been hatched up between jains and different public servants.

At the outset we may point out that no charge was framed against the Jains from having entered into a criminal conspiracy amongst themselves (even though such was the allegation in the charge sheet). We need not, therefore, consider the materials collected during investigation from that perspective. Indeed , according to the charges of conspiracy all the respondents were parties thereto and the conspiracy existed for the period from February, 1990 to January, 1991. Therefore we have to ascertain whether there is Prima facie evidence affording a reasonable ground for us to believe about its such existence.

To persuade us to give an affirmative answer to the above question mr. Altaf Ahmed drew our attention to the statements of Jacob Mathai (L. W. 4), Dr. P.K. Magu (L.W.

14), Vijay Kumar Verma (L. W. 15), Bharat Singh (L. W. 16) C. D.D Reddy (L. W. 17), S.R. Choudhary (L. W. 18), Ram Prasad (L. W. 19), H. P. Guha Roy (L. W. 20) and Narendra Singh (L. W. 21). On perusal of their statements we find that some of them are irrelevant to the charges of conspiracy with which we are now concerned while others, to the extent they can be translated into legally admissible evidence, only indicate that Shri Shukla was known to the jain Brothers and had gone to their residence on formal occasions. The above statements cannot be made a reasonable ground to believe that all of them have conspired together. So far as Shri Advani is concerned, we find that no one has even spoke about him in their statements. Since the first requirement of Section 10 is not fulfilled the entired in the documents cannot be pressed into service under its latter part .

Lastly, comes the questions whether the entries are 'admissions' within the meaning of Section 17 of the Act so as to be admissible as relevant evidence under Section 21; and if so, as against whom can the entries be prove. IN Section 17 admission has been defended to be a statement, oral or

documentary, which suggests any inference as to any fact in issue or relevant fact and which is made by any of the persons, and under the circumstances, mentioned in the subsequent Sections (Section 18 to 21). Section 18, so far as it is relevant for our present purposes, provides that statements made by apart to the proceeding or by an agent to any such party, whom the Court regards under the circumstances of the case, has expressly or impliedly authorised by him to make them are admissions. Section 21 reads as under:

> Proof of admissions against persons making them and by or on their behalf - admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but hey cannot be proved by or on behalf of the person who makes them or by his representative in interest except in the following cases:- (1) An admission may be proved by or on behalf of the person making it, when it is of such a nature, that if the person making it were dead, it would be relevant as between third persons under Section 32. (2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.
>
> (3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission."

From a combined reading of the above Sections it is manifest that an oral or documentary statement made by a party or his authorised agent, suggesting any inference as to any fact in issue or relevant fact may be proved against a party t the proceeding or his authorised agent as 'admission' but, apart form exceptional cases (as contained in Section 21), such a statement cannot be proved by or on their behalf. While on this point the distinction between 'admission' and concession' needs to be appreciated. In absence of any definition of 'confession' in the Act judicial opinion, as to its exact meaning, was not unanimous until the judicial Committee made an authoritative pronouncement about the same in Pakala Narayana vs Emperor [AIR 1939 privy Council 47] with these words:-

> " .... a confession must either admit in terms the offence, or at any rate substantially all the facts which constitutes the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession, eg. An admission that the accused is the owner of an was in recent possession of the knife or revolver which caused a death ....
>
> have a general term for use in the three following articles, confession secured by inducement, made upon oath, made under a promise of secrecy. The definition is not contained in the Evidence Act, 1872, and in that Act it would not be consistent with the natural use of language to construe confession as a statement by an accused 'suggesting the inference that he committed the crime".

The above statement of law has been approved and consistently followed by this Court. [Palvinder Kaur vs. State of Punjab (1953) S.C.R. 94, Om Parkash vs. State of U.P. A.I.R. 1960 SC 409 and Veera Ibrahim vs. State of Maharashtra (1976) 3 S.C.R. 692].

It is thus seen that only voluntary and direct acknowledgement of guilt is a confession but when a confession falls short of actual admission guilt it may nevertheless be used as evidence against the person who made it or his authorised agent as an 'admission' under section

21. The law in this regard has been clearly - and in our considered view correctly - explained in Monir's law of Evidence (New Edition at pages 205 and 206), on which mr. Jethmalani relied to bring home his contention that even if the entries are treated as 'admission' of jains still they cannot be used against Shri Advani. The relevant passage reads as under:-

> " The distinction between admissions and confessions is of considerable importance for two reasons. Firstly, a statement made by an accused person, if it is an admission, is admissible in evidence under Section 21 of the evidence Act, unless the Statement amounts to a confession and was made to a person in authority in consequence of some improper inducement, threat or promise, or was made at a time when the accused was in custody of a police officer. If a statement was made by the accused in the circumstance just mentioned it s admissibility will depend upon the determination of the question whether it does not does not amount to a confession. If it amounts to a confession, it will be inadmissible, but if it does not amount to a confession. If it amounts to a confession. If it amounts to a confession, it will be inadmissible, but if it does not amount to a confession, it will be admissible under Section 21 of the Act as an admission, provided that it suggests an inference as to a fact which is in issue in, or relevant to, the case and was not made to a police officer in the course of an investigation under Chapter XIV of the Code of criminal procedure. Secondly, a statement made by an accused person is admissible against others who are being jointly tried with him only if the statement amounts to a confession. Where the statement falls short of a confession, it is admissible only against its maker as an admission and not against those who are being jointly tried with him. Therefore, from the point of view of Section 30 of the Evidence Act also the distinction between and admission and a confession is of fundamental importance."

(emphasis supplied) In the light of the preceding discussion we proceed to consider the validity of the arguments canvassed by Shri Altaf Ahmed in this regard. mr. Altaf Ahmed urged that it being a settled principle of law that statements in account books of a person are 'admissions' and can be used against him even though those statements were never communicated to any other person, the entries would be admissible as admission of J. K. Jain, who made them that apart, he contended, they would be admissible against jain brothers also as they were made under their authority as would be evident from their endorsements/signatures appearing against below some of those entries. In support of his first contention he relied upon the following passage from the judgment of his Court in Bhogilal Chunilal pandya vs. State of Bombay [(1959) Supp. (1) SCR 310]:

" The first group of sections in the Act in which the word ' statement ' occurs, are ss. 17 to 21, which deal with admissions. Section 17 defines the word 'admission', ss. 18 to 21 lay down what statements are admissions, and s. 21 deals with the proof of admissions against persons making them. The word s used in ss. 18 to 21 in this connection are 'statements made by.'. It is not disputed that statements made by persons may be used as admissions against them even though they may not have been communicated to any other person. For example. Statements in the account books of a person showing that he was indebted to another person are admissions which can be used against him even though these statements were never communicated to any other person. illustration

(b) of s. 231 also shows that the word 'statement' used in these sections does not necessarily imply that they must have been communicated to any other person. In the Illustration in question entries made in the book kept by a ship's captain in the ordinary corse of business are called statements, though these entries are not communicated to any other person. An examination, therefore, of these sections show that in this part of the Act the word 'statement' has been used in its primary meaning namely, 'something that is stated' communication is not necessary in order that it may be a statement.".

Even if we are to accept the above contentions of Mr. Altaf Ahmed the entries, [which re statements' as held by this Court in Bhogilal chunilal (supra) and hereinafter will be so referred to], being 'admissions' - and not t' confession'- cannot be used as against Shri Advani or Shri Shukla. however, as against jains the statements may be proved as admissions under Section 18 read with Section 21 of the Act provided they relate to ' any fact in issue or relevant fact.' Needless to say, what will be 'facts in issue' or 'relevant facts' in a criminal trial will depend upon, and will be delineated by, the nature of accusations made or charges levelled against the person indicated. In the two case with which were are concerned in these appeals, the gravamen of the charges which were framed against Jains in one of them (quoted earlier) and were to be framed in the other pursuant to the order of the trial Court (quoted earlier) is that they entered into two separate agreements; one with Shri Shukla and the other with Shri Advani, in terms of which they were to make certain payments to them as a gratification other than legal remuneration as a motive or reward for getting their favour while they were 'public servants' and in pursuance of the said agreements payments were actually made to them thereby the Jains committed the offence of conspiracy under Section 120 b of the Indian Penal code; and under Section 12 of the prevention of Corruption Act, 1988 (P.C. Act for short), in that, they abetted the commission of offences under Section 7 of the Act by Shri Shukla and Shri Advani.

It is thus seen that the prosecution sought to prove that there were tow separate conspiracies, in both of which Jains together figured as the common party and Shri Advani or Shri Shukla, as the other . Since we have already found that the prosecution has not been able to made out a prima facie case to prove that Shri Advani and Shri shukla were parties to such conspiracies, the charges of conspiracy, as framed/sought to be framed, cannot stand also against the Jains, for the simple reason that in a conspiracy there must be two parties. Resultantly , the statements cannot be proved as admission of Jains of such conspiracy. We hasten to add hat the case the prosecution intended to

project now was not that there was a conspiracy amongst the Jains to offer illegal gratification to Shri Advani and shri Shukla and that pursuant thereto the latter accepted the Same. We need not, therefore, dilate of the question whether, if such was the case of the prosecution, the statements could be proved against the Jains as their admission.

Thus said we may now turn our attention to Section 12 of the P. C. Act. That Section reads as under:-

> " Punishment for abetment of offences defined in section 7 or
>
> 11... Whoever abets any offence punishable under Section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine."

Undoubtedly for a person to be guilty thereunder it is not necessary that the offences mentioned therein should have been committed prusuan to the abetment. Since 'abetment' has not been defined under the P.C. Act we may profitable y refer to its exhaustible definition in Section 107 of the Indian Penal Code. As per that Section a person abets the doing of a thing when he does any of the acts mentioned in the following three clauses;

> (i) instigates any person to do that thing, or
>
> (ii) engages with one or more other person or persons in any conspiracy for the doing of that thing ....., or
>
> (iii) intentionally aids, by any act or illegal omission, the doing of that things.

So far as the first two clauses are concerned it is not necessary that the offence instigated should have been committed. For under standing the scope of the word " aid" in the third clause it would be advantageous to see Explanation 2 in Section 107 I.P.C. which reads thus:

> " whoever, either prior to or t the time of the commission of an act, does any thing in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

It is thus clear that under the third clause when a person abets by aiding, the act so aided should have been committed in order to make such aiding an offence. In other words, unlike the first tow clauses the third clause applies to a case where the offence is committed.

Since in the instant case the prosecution intended to prove the abetment of a Jains by aiding (and not by any act falling under the first two clauses adverted to above) and since we have earlier found that no prima facie case has been made out against Shri Advani and Shri Shukla of their having committed the offence under Section 7 of the P.C. Act, the question of Jains' committing the offence under Section 12 and , for that matter, their admission in respect thereof - does not arise.

Incidentally, we may mention that the abetment by conspiracy would not also arise here in view of our earlier discussion.

Before we conclude it need be mentioned that another question of considerable importance that came up for consideration in these appeals was whether members of parliament come within the definition of 'public servant' in the P.C. Act so as to make the respondents liable for prosecution for alleged commission of offences there under. We did not deem it necessary to go into that question as we found, proceeding on the assumption that they could be so prosecuted, that no prima facie case was made out against any of the respondents to justify the changes that were framed against the Jains and Shri Shukla (in one case) ; and were to be framed against Jains and Shri Advani (in the other) pursuant to the order of the trial Court. Accordingly, we dismiss these appeals keeping this question of law open .