

Supreme Court of India

State Of T.N vs T.Thulasingham on 13 May, 1994

Equivalent citations: 1995 AIR 1314, JT 1994 (4) 73

Author: Y Dayal

Bench: Yogeshwar Dayal (J)

PETITIONER:

STATE OF T.N.

Vs.

RESPONDENT:

T. THULASINGAM

DATE OF JUDGMENT 13/05/1994

BENCH:

YOGESHWAR DAYAL (J)

BENCH:

YOGESHWAR DAYAL (J)

KULDIP SINGH (J)

CITATION:

1995 AIR 1314 JT 1994 (4) 73

1994 SCALE (2) 1065

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by YOGESHWAR DAYAL, J.- These appeals arise from the judgment of the Madras High Court dated 9-8-1990 passed in Criminal Appeal Nos. 840 to 855 of 1978, 867 of 1978, 881 to 885 of 1978, 887 of 1978, 889 to 913 of 1978, 916 of 1978, 923 to 937 of 1978, 943 and 944 of 1978 and CA No. 156 of 1981 whereby the accused/appellants before the High Court were acquitted by the High Court.

2. All the accused, except accused 105 and 106 were either employed or associated with the Corporation of Madras; accused 2, 3, 4 and 5 were working as Engineers in Electrical Department besides the 1st accused, who died during the trial of the case; accused 6, 7, 8, 9, 10 and 12 were Electrical Supervisors; accused 11, 13, 14 and 15 were employed as Assistant Electrical Supervisors; accused 16 and 17 were Charge Engineers; accused 18 and 19 were Lighting Inspectors, accused 20, 23 and 24 were Temporary Timekeepers; accused 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 37 were Timekeepers; accused 34 and 35 were A.4 clerks; accused 36 and 37 were doing the work of A.4

clerks; accused 38, 39, 40 and 41 were clerks; accused 42 and 43 were Tax Collectors; accused 44 and 49 were Accountants; accused 45 was the Assistant Accounts Officer; accused 46 was the Section Manager; accused 47 was also the Section Manager, accused 48 was clerk in the C.A.D.; accused 50, 51, 52, 53 and 54 were employed as Assistant Cashiers in the Cash Department; accused 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 and 65 were employed as clerk in Cash Department, accused 66 was employed as clerk in Cash Department; accused 67, 68 and 69 were employed as Gollah in Cash Department; accused 70 was employed in the Revenue Department as Assistant Revenue Officer; accused 71 and 72 were clerks in Voucher Section of C.A.D.; accused 73 was the L.F. Auditor and accused 74 was the Audit Assistant; accused 75 to accused 104 were Councillors; accused 75 was the Chairman of the Taxation and Finance Committee; accused 76, 77, 78, 79, 80, 81, 82 and 83 were members of the Taxation and Finance Committee; accused 84 was the Chairman of the Accounts Committee; accused 85 and 86 were members of the Accounts Committee; accused 87, 88, 89, 90 and 91 were the members of the Works Committee; accused 92 was the Chairman of the Health Committee; accused 93 and 94 were the members of the Health Committee; accused 100, 101, 102, 103 and 104 were Councillors; accused 105 was the Bill Collector of Mylapore Hindu Permanent Nidhi Limited and accused 106 was a former labourer of the Corporation of Madras.

3. The case of the prosecution is that the appellants before the High Court along with the accused, who were acquitted by the Special Judge and the approvers PWs 1 to 6 and 60 and three others (who died during trial) were the members of the conspiracy between April 1969 and November 1973 and they caused wrongful loss to the Corporation of Madras by preparation of fully bogus muster-rolls and partially bogus muster-rolls in pursuance of the said conspiracy and had the muster-rolls passed for payment, obtained money from the treasury, misappropriated such amounts and did several acts of omission and commission in order to achieve the objects of conspiracy.

4. To unfold the prosecution case, the prosecution has examined 360 witnesses including 7 approvers. PWs 1 and 2 were A.4 clerks in charge of issuing blank muster-roll forms to the outdoor officials for the preparation of muster- rolls. Their predecessors were in A.4 seats, A-34 and A-35. A-36 and A-37 were assistants and were also doing the work of A.4 clerk. The blank muster-rolls issued by the A.4 clerk to the outdoor officials have to be filled up by the outdoor officials and have to be placed to the C.A.D. for being approved by the Engineer. The outdoor officials who process the muster-rolls, are the Supervisors, Assistant Supervisors, and Charge Engineers besides others, PW 5 (approver), A-6, 7, 8, 9, 10 and 23 were Electrical Supervisors; A-11, 13, 14 and 15 were Assistant Electrical Supervisors and PW 6 (approver), A-16 and A- 17 were Charge Engineers.

5. PW 3 was an Accountant in C.A.D. to which department the filled up or prepared muster-rolls will be sent after scrutiny by A.4 clerk and after being approved by the Electrical Engineer, for further processing. The muster- rolls are processed for order and placed before the officers for being passed by the Assistant Accounts Officer or Chief Accounts Officer. A-44 to 49 were from C.A.D. PW 3 has been taken as an approver to speak of the involvement of the staff of the Central Accounts Department besides other facts.

6. PW 4 and PW 60 were from the Cash Department. A-50 to 55, A-68 to 69 were from the Cash Department. PWs 4 and 60 have been taken as approvers to speak to the involvement of the

members of the staff of the Cash Department besides other facts. PWs 7 and 8 speak to the payments made to several persons out of the amounts fraudulently obtained by the fabricated muster-rolls.

7. PWs 9 and 10 were Assistant Engineers. PWs 52, 53, 59, 244 to 257, 259 to 269, 271, 275 and 284 to 293 have been examined to prove that there was free flow of money from A.4 clerk and that they were amongst the beneficiaries. PWs 63 to 235, 282, 295, 297, 334, 335 and 341 to 345 were examined to prove that some of the accused acquired properties during the relevant time and that they must have received share in the amounts obtained by the fraudulent muster-rolls.

8. PWs 299 to 313 and 315 speak about the forged fault notes sent to the Charge Engineer. PWs 314, 315, 316 to 328, 337 and 347 are Police Officers. PWs 329 and 330 are experts in fingerprint and handwriting respectively. PW 339 was an Assistant Revenue Officer. PW 340 was an Assistant Examiner of Local Funds who did the audit. PWs 346, 348 and 353 are Magistrates. PW 359 is the Commissioner of the Corporation of Madras. PW 360 has been examined to speak to the receipt of the first information report. PW 357 has been examined to speak to the accord of sanction. PW 358 is the investigating officer who headed the team of investigation.

9. The prosecution mainly relies upon the evidence of the approvers PWs 1, 2, 3, 4, 5, 6 and 60 besides the evidence of PWs 7 and 8 and certain facts and circumstances of the case and the 168 forged vouchers.

10. The procedure for incurring expenditure by each of the departments of the Corporation is generally as follows. We are mainly concerned with the expenditure relating to Electrical Department. Estimates are expected to be prepared in order to execute the work of maintenance, improvements, new work and for other contingencies. Estimates are prepared by the Electrical Supervisors and Charge Engineers who are called outdoor officials, at the instance and under the control of the Electrical Engineer. The Taxation and Finance Committee is charged with the duty of preparing a budget for income and expenditure. The Accounts Committee has to supervise the actual utilisation of the amount granted by the budget.

11. The Electrical Engineer is the head of the Electrical Department. It is his duty to see that proper estimates are drawn up. He has also to permit incurring of expenditure on being satisfied, following usual norms. The department is in charge of street lighting, its maintenance and extension and electrical sub-stations, laying of cable, attending the cable fault and fault report as well as maintenance of transformers. The Electrical Engineer is assisted by Assistant Electrical Engineers. The field officers usually engaged in the work are the Electrical Supervisors, Assistant Electrical Supervisors, Electricians, Jointers, Assistant Jointers, Timekeepers and permanent and temporary labourers.

12. Estimates are prepared by Electrical Supervisors and Charge Engineers. Work is carried out by permanent or temporary labourers. If any fault, either in the lamppost or in the cable is detected, a report known as fault report has to be sent to the Range Supervisor concerned for rectifying the defect mentioned in the report. On receipt of such a fault report, an estimate is drawn by the

Electrical Supervisor and sent to the Electrical Engineer for accord of sanction. On receipt of such sanction, work is carried out. But, if the nature of work is such that it cannot permit any delay, so, the Supervisor takes up the work by drawing necessary stores and utilising permanent labourers. If, however, the volume of work is more and it cannot be done with the permanent workers, temporary workers are employed and work carried out.

13. On completion of the work, wages payable to the labourers are to be claimed under the muster-rolls in the beginning of the following month. By that time, the estimate of work is likely to be sanctioned, whether the work is done by permanent labourers or temporary labourers or by both. Muster-rolls are prepared on monthly basis by the outdoor officials. The muster-rolls will be in the charge of the Electrical Engineer and will be obtained through A.4 clerk. The muster-rolls supplied by A.4 clerk are filled up by the Supervisors and sent to A.4 clerk, who is supposed to submit the muster-rolls before the Electrical Engineer or Assistant Electrical Engineer and the muster- rolls will be sent to C.A.D. Muster-rolls are usually prepared by Timekeepers.

14. The Central Accounts Department has to verify the budget allotment, account head, estimates etc. Thereafter the Accounts Officer or the Assistant Accounts Officer will pass the bill and issue cheque in favour of the Head Cashier. The amount in the cheque may also cover payment in respect of several departments. The cheque is cashed by one of the Assistant Cashiers on being authorised by the Head Cashier and amounts handed over to the Assistant Cashier in respect of the muster-rolls. The Senior Assistant Cashier will hand over the cash to the indoor cashier, Shroff, the Pension Cashier and to the Tax Collectors for disbursements to be made by the outdoor cashier. The vouchers and the amounts payable are handed over to the Tax Collectors and the Tax Collectors distribute the amount in the presence of the Field Officer at the outdoor payment centre. The vouchers of the unpaid balance, if any, are handed over to the Cash Section. The vouchers are then sent to the Voucher Section for safe custody.

15. The prosecution case is that respondents-accused along with the approvers PWs 1 to 6 and PW 60 viz. PW 1 E. Kannappan and PW 2 P. Ramachandran, Clerks who were working in A.4 seat, PW 3 S.E. Sundram who was working in the Central Accounts Department, PW 4 P. Ratinam and PW 60 who were in Cash Department as Assistant Cashiers, PW 5 K.N. Rajappan Nair who was working as Electrical Supervisor, and PW 6 Kalavathy who was working as Charge Engineer, along with the other accused viz. Corporation employees working in indoor and outdoor in the Electrical Department (A-2 to 8, 10, 11, 14, 16 to 26, 29 to 31, 33 to 39 and 41 to 44); the Corporation employees working in the Central Accounts Department (A-45 to A-49); the Corporation employees working in the Cash Department (A-50 to 55 and 66, 68, 69 and 72); and the Councillors i.e. Chairman and Members of the Taxation and the Finance Committee (A-75 to 80 and 82); Chairman and Members of the Accounts Committee (A-84 to 86) Members of Works Committee (A-87 and 89); Members of the Education Committee (A-94 to 96); Members Town Planning Committee (A-98 and 99) Councillors (A-102 and 104); and a private individual, former labourer Municipal Corporation of Madras (A-106); between April 1969 to November 1973 agreed to do or cause to be done illegal acts to wit:

(a) Fraudulently and dishonestly to obtain by fabricating or causing to be fabricated muster-rolls which are claims for the payment of money by the Corporation of Madras in respect of employment of temporary labourers in the Electrical Department.

(b) To negotiate the said fabricated muster- rolls through the various departments and sections of the said Corporation namely the Central Accounts Department, the Cash Department and Voucher Section of the Cash Department by willfully, dishonestly and fraudulently discarding the rules governing the presentation, passing, encasing and acquittance of such muster-rolls by various acts of omission and commission.

(c) Fraudulently and dishonestly to use such fabricated muster-rolls by cheating the Corporation to obtain from the Cash Section of the said Corporation sums of money to the tune of Rs 26 crores purporting to be money payable to the temporary labourers employed in the Electrical Department.

(d) To make incorrect records in respect of such payment with intent to facilitate the commission of the above-said illegal acts and cause loss to the Corporation of Madras.

(e) To obtain pecuniary advantage for themselves and others from out of the money so fraudulently and illegally got from the Corporation of Madras.

(f) To secret and cause the disappearance of evidence relating to the embezzlement of the funds of the Corporation of Madras by destroying the forged muster-rolls and the vouchers evidencing the payment obtained thereunder.

(g) To abet one another in the commission of such illegal acts; and the prosecution case further is that in pursuance of the above-said conspiracy the Timekeepers entered the name of fictitious persons in the muster-rolls and the other field officials of the Electrical Department namely Electrical Supervisors, Charge Engineers without verifying whether the central (sic) worked or not, passed them on the clerk working in A.4 seat, with fictitious estimate numbers and appropriation number entered on the muster-rolls and in turn A.4 clerk who has to verify and check the correct estimate numbers and appropriation numbers and other formalities, passed them on to the Electrical Engineer. The Electrical Engineer in turn without verifying the genuineness of the muster-rolls passed them. The outdoor officials and the Electrical Engineers received payments from A.4 clerk i.e. from A- 34 and A-35 till July 1972 and thereafter from PW 1 and PW 2 then A.4 clerks, sent them to Central Accounts Department along with the genuine musterrolls after separately docketing the forged muster-rolls.

16. The prosecution case further is that in pursuance of the conspiracy the employees in the Central Accounts Department passed, for payment of the forged muster-rolls without verifying and checking the correctness of the estimate numbers and appropriation numbers and other formalities and after informing the A.4 clerk over phone that the forged muster-rolls had been passed for payment sent them to the Cash Department along with the cheques after receiving monthly payments from A-34 and A-35 till July 1972 and afterwards from PW 1 and PW 2. The prosecution case further is that in pursuance of the conspiracy, instead of sending the muster-rolls and the cash through tax collectors for disbursement to the labourers in the presence of outdoor officials in the work spot, which is the rule as per the Corporation code, paid the cash and handed over the muster-rolls to A.4 clerk in the indoor counter itself, after taking 5% commission in the first stage of conspiracy and after taking 10% commission in the last stage of the conspiracy that is October 1973. The prosecution case further is that in pursuance of the conspiracy the Corporation Councillors, i.e., office-bearers of the Taxation and Finance Committee, and members of the other committees, obtaining pecuniary advantages for themselves and to others, from A-34 and 35 till July 1972 and afterwards from PW 1 and PW 2 by wilfully abstaining from discharging the statutory duties in regard to the administration of funds of the Corporation of Madras.

17. The prosecution during investigation was able to secure 168 fully bogus vouchers and they were marked as exhibits. The accused were charged under Section 120-B IPC read with Sections 467, 471, 420, 406, 409, 465, 162, 163, 167, 201 and 109 of IPC and under Section 5(2) read with Section 5(1)(d) and 5(1)(a) and 5(3) of Prevention of Corruption Act, 1947. The trial court in its judgment in CC No. 20 of 1974 dated 30-11-1978 sentenced all the accused respondents under Section 120-B IPC on the strength of the evidence of approvers PWs 1 to 6, PW 60, PW 7 and PW 8 and on the strength of the documentary evidence namely the 168 muster- rolls marked by the prosecution and other connected documents and other witnesses, holding that the approvers' evidence have been materially corroborated. The lower court convicted the accused under Section 465 IPC on the strength of the evidence of PW 1, PW 2, PW 5, PW 6 and on evidence of fingerprint expert and handwriting expert i.e. PWs 329 and

330. The trial court convicted the accused in Central Accounts Department under Section 467 read with Section 471 IPC on the strength of the evidence of the approvers PWs 1, 2, 3, 4 and 60. The trial court convicted the accused under Section 5(2) read with Section 5(1)(a) and 5(1)(d) of the Prevention of Corruption Act on the strength of the evidence of the approvers PWs 1, 2, 4 and PW 60 and on the evidence of other independent witnesses PWs 63 to 235, 282, 295, 297, 334, 335 and 341 to 345 and also taking into consideration the acquisition of properties by the respondents-accused as a corroborative piece of evidence.

18. The trial court convicted the Councillors under Section 120-B IPC, Section 162 IPC and under Section 5(2) read with Section 5(1)(d) and 5(1)(a) of the Prevention of Corruption Act, 1947 on the evidence of the approvers and other independent witnesses evidencing that the Councillors are public servants and the Prevention of Corruption Act is applicable to them. The trial court has held that the sanction for prosecution of the accused accorded by the Government, a superior authority was valid in law.

19. The High Court delivering a common judgment on 9-4-1990 in all the appeals has acquitted all the accused against all the charges and properties seized from the respondents are ordered to be returned and the attachment effected in respect of the properties raised.

20. It may not be out of place to mention that accused 1, 83 and 103 died during trial and the charge against them had abated. Accused 2, 4, 44, 68 and 69 died during the pendency of the appeals before the High Court and accused 7, 19, 24, 25, 30, 39, 48, 75, 76, 78, 79, 89, 95 and 99 died during the pendency of the present appeals before this Court.

21. The Special Judge (trial court) acquitted accused 9, 12, 13, 15, 27, 28, 32, 40, 56 to 65, 67, 71, 73, 74, 81, 88, 90 to 93, 97, 1 00, 1 01 and 105.

22. The High Court on appeal by the convicted accused acquitted all of them. Learned counsel for the appellants before us submitted :

(i) The High Court has held that the prosecution was not able to produce direct evidence regarding the commencement of the conspiracy taking as if there are three different conspiracies first up to July 1972 when PW 1 was first inducted into the conspiracy by A-35 and instructing PW 1 in A-2's room as how to prepare bogus muster-rolls; and another from July 1972 to October 1973 when PW 1 was in A.4 seat; and the third from October 1973 till the end when PW 2 took over A.4 seat.

(ii)The High Court has held that the conspiracy has been made out from the Audit Report as spoken to by PW 340 ignoring that the prosecution has filed 168 vouchers for the period of April 1969 to November 1973 to prove the conspiracy as well as the specific offences of forgery and using the forged documents knowing them to be forged.

(iii)The High Court has not correctly applied the scope of Section 10 of the Evidence Act while dealing with the subject of the conspiracy and while considering the scope of the decision reported in *Kehar Singh v. State (Delhi Admn.)*¹.

(iv)The High Court has held that there is no independent corroboration for the evidence of the approvers, ignoring the fact that 168 vouchers relied on by 1 (1988) 3 SCC 609: 1988 SCC (Cri) 711: AIR 1988 SC 1883 the prosecution is the independent corroboration by way of documentary evidence.

(v) The High Court has held that one accomplice cannot corroborate another accomplice on the ground that all the 7 approvers in this case corroborate each other ignoring the fact that in the present case one approver has been taken from each department and he speaks with reference to the accused in his department. Regarding the evidence of fingerprints of the accused, they have been taken by the persons namely Head Constable and Constable and since the fingerprints were taken by the persons not empowered to take the fingerprints, they are not to be considered at all.

(vi) That the High Court while relying on Section 2(b) of the Identification of the Prisoners Act, 1920 has taken the view that the third category police officer mentioned in the section, namely "or any

other police officer not below the rank of sub-inspector" is the proper person to take the fingerprints ignoring the fact that the first category police officer, namely the police officer contemplated in the present case, and as per Section 2(o) of the Code of Criminal Procedure " officer in charge of police station' includes, when the officer in charge of the police station is absent from the station house or unable from illness or other cause to perform his duties the police officer present at the station house who is next in rank of such officer and is above the rank of constable or, when the State Government so directs, any police officer so present."

(vii) That the sanction accorded by the Government is not valid on the ground that the sanction should have been accorded by the Special Officer of the Corporation and not by the Government.

(viii) That the High Court should have held that the authority who had granted the sanction must be superior to the appointing authority and since the Corporation had been superseded, the Government was competent to grant the sanction.

(ix) That the High Court erred in holding that nobody speaks on oath that the work, as shown in the bogus vouchers, was actually not done.

(x) That regarding Councillors the High Court erred in holding that the Councillors are not public servants, and hence the Councillors cannot be punished for the offences under the Prevention of Corruption Act, 1947. It has not considered at all the evidence led by the prosecution regarding the offences under Sections 120-B Indian Penal Code and 467 read with Section 109 Indian Penal Code and Section 162 Indian Penal Code. The High Court has also acquitted all the Councillors charged under IPC offences without adverting to the evidence at all.

(xi) That the High Court held that there was no independent corroboration for the PW 1 approver's evidence regarding passing of the bogus vouchers whereas these bogus vouchers bear ample corroboration to the evidence of approver, PW 1.

(xii) That the High Court should have held that the Act of passing 54 fully bogus vouchers knowing them to be forged clearly established that he was a member of the conspiracy and in pursuance of the conspiracy the respondent passed these vouchers which contained so many defects.

(xiii) That the High Court should have convicted the non- employees accused persons under Section 120-B Indian Penal Code and should have held that the act of passing fully bogus vouchers was done only in pursuance of the conspiracy.

(xiv) That the High Court erred in holding that PW 1's evidence when he says he was paying to various accused, monthly, cannot be believed since the amounts alleged by him to have been received every month and the amounts alleged to have been paid to the various accused do not tally. The High Court should have ignored the minor discrepancies.

(xv) That the High Court has erred in holding that PW 4 the Assistant Cashier from the Cash Department comes into the picture only after the musterrolls are passed and cheque issued in favour

of the Head Cashier, and the cheque is cashed and brought to counter, and he does not claim to know as to how bogus muster-rolls were prepared or as to how the muster-rolls are processed in the Electrical Department or even as to how the muster-rolls are dealt with by the Central Accounts Department. The High Court has failed to see that as per the evidence on record, that PW 4 and the other accused from the Cash Department knowing that the muster-rolls are forged ones handed over the vouchers as well as the amount to the accused looking after A.4 seat which is illegal and prohibited, as per the Corporation Code.

(xvi) That the High Court has misunderstood the evidence of PW 1 when PW 1 says 5% commission was deducted by the Cash Department (A-50 to A-55) corroborated by the evidence of PW 4 and PW 60 for handing over the cash and the vouchers to A.4 clerks as if it was one of the objects of the conspiracy put forth by the prosecution and since the month-wise payment of cash to A.4 clerk after deducting 5% commission to them does not tally with the actual amount said to have been transacted in that particular month from the available vouchers, there is no conspiracy made out.

(xvii) The High Court following the decision reported in *Mohd Hussain Umar Kochra v. K.S. Dalipsinghji*² should have held: (SCC p. 436, para 15: Cri LJ p. 15, para 15) "The evil scheme may be promoted by a few, some may drop out and some may join at later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be a general plan to accomplish the common design by such means as may from time to time be found expedient. New techniques may be invented and new means may be devised for advancement of the common plan."

(xviii) The High Court should have held that the respondent as members of the Taxation and Finance Committee and being the custodian of the finances of the Corporation in spite of repeated deficit budget and intimation from the Government asking for utmost economy in the matter of expenditure had been giving increased grants to the Electrical Department and this act of willfully abstaining from discharging the statutory duties in regard to the administration of the funds of local authority, was done in pursuance of the conspiracy and should have convicted this respondent under Section 120-B IPC.

(xix) The High Court should have held the respondent as member of the Taxation and Finance Committee and thereafter as Mayor in Corporation of 2 (1969) 3 SCC 429: 1970 Cr LJ 9 Madras and being the custodian of the finances of the Corporation in spite of repeated deficit budgets and intimation from the Government asking for utmost economy in the matter of expenditure had been giving increased grants to the Electrical Department, and this act of willfully abstaining from discharging the statutory duties in regard to the administration of the funds of local authority, was done in pursuance of the conspiracy and should have convicted this respondent under Section 120-B IPC. (xx) The High Court should have held that the respondent as member of Education Committee has got a duty to call the attention of the proper authority to any neglect in the execution of municipal work, to any waste of municipal property as per Section 25 of the Corporation code, and this act of willfully abstaining from discharging the statutory duties in regard to the administration of the funds of the local authority, was done in pursuance of the conspiracy and should have convicted this respondent under Section 120-B IPC.

(xxi) The High Court should have held that the respondent as a member of the Planning and Improvements Committee has got a duty to call the attention of the proper authority to any neglect in the execution of municipal work, to any waste of municipal property as per Section 25 of the Corporation code and this act of willfully abstaining from discharging the statutory duties in regard to the administration of the funds of the local authority, was done in pursuance of the conspiracy and should have convicted this respondent under Section 120-B IPC.

(xxii) The High Court should have held that the respondent as a member of the Works Committee and as a Councillor he has got a duty to call the attention of the proper authority to any neglect in the execution of municipal work and to any waste of municipal property as per Section 25 of the Corporation code, and this act of willfully abstaining from discharging the statutory duties in regard to the administration of the funds of local authority, was done in pursuance of the conspiracy and should have convicted this respondent under Section 120-B IPC.

(xxiii) The High Court should have held that the respondent being Chairman of Accounts Standing Committee as such has got duties to conduct a monthly audit of monthly accounts and is bound to check the monthly abstract receipts and disbursements for the preceding month and this act of willfully abstaining from discharging the statutory duties in regard to the administration of the funds of local authority, was done in pursuance of the conspiracy and should have convicted this respondent under Section 120-B IPC.

(xxiv) The High Court should have held that the respondent as Chairman of Taxation and Finance Committee and being the custodian of the finances of the Corporation in spite of repeated deficit budgets and intimation from the Government asking for utmost economy in the matter of expenditure had been giving increased grants to the Electrical Department, and this act of wilfully abstaining from discharging the statutory duties in regard to the administration of the funds of local authority was done in pursuance of the conspiracy should have convicted this respondent under Section 120-B IPC.

23. The trial court dealt with the evidence in relation to

(a) conspiracy in A-2's room, (b) conspiracy at Kavita Hotel, (c) conspiracy at Ayyappa Lodge, (d) conspiracy at Rekha Lodge, (e) conspiracy at A-87's house and (f) conspiracy at Usman Road Electrical Sub-station and it will be useful to give the findings recorded by the trial court regarding various conspiracies noticed above separately.

(a) Conspiracy in A-2's room

24. Soon after taking over the A.4 seat in July 1972, PW 1 was summoned to A-2's room. According to him, he found A-2, A-6, A-35, A-39 and A-44 in the room. It was about 2.00 p.m. PW 1 has alleged that A-35 and A-44 had given him detailed instructions as to what he should do in the matter of bogus muster-rolls. He was apprised that by about the 25th of every month, the members of the field staff, viz., A-6, A-7, A-10, A-12, A-13, A-17, A-18 and PW 6 and others would approach him and ask for extra muster-roll forms which PW 1 should unhesitatingly give and that entries in the

muster-rolls issue register should be suitably adjusted by increasing the issue in the case of persons who had not taken much and thereby balance the entries accordingly. Such entries, with a view to manipulation should be made only in pencil to start with and should be confirmed in ink only after these adjustments had been effected. PW 1 was further told that beside these accused who had been enumerated, he should also issue extra muster-roll forms to some others whose names would be indicated by any one of the persons mentioned above from time to time. Those who receive muster-roll forms would bring them back after filling them up which again PW 1 should accept without any hesitation. Although the function of A.4 clerk was to check these muster-roll forms before putting them up to the Electrical Engineer, PW 1 was instructed not to scrutinise such muster-rolls but to process them straight away and put them up to A-2. PW 1 was also assured that the officials of the Central Accounts Department and the Cash Section would cooperate with him in regard to the passing of these muster- rolls for payments and that he would not come across any kind of obstruction from any quarter. PW 1 would thereupon go to the Cash Section and collect the money payable thereunder and the vouchers, and out of the money so obtained, he should effect disbursements to various officials and non-officials as indicated hereunder : Assistant Cashier on duty known as Indoor Assistant Cashier who has to pay cash in respect of vouchers should be permitted to retain 5 per cent of the total amount of these vouchers and only the balance should be received by PW 1; A- 50 Head Cashier was to be paid Rs 4000 p.m.; A-51, A-52, A- 54 and approvers PW 4 and PW 60 who were the Assistant Cashiers were each to be paid Rs 1000 every month; A-55 was to be paid Rs 3000 every month; a sum of Rs 10,000 was to be paid in lump sum to be distributed among shroffs, gollahs, peons and others in the Cash Section in the Central Accounts Department; payments should be made similarly to the following officials: A-45 Rs 1500; A-46 Rs 1500; PW 3 Rs 1500; A-47 Rs 1000; A-48 Rs 5000; A-49 Rs 3000 and Gomez Accountant Rs 500; in the Electrical Department the following payments were to be made: A-2 Rs 3000; A-3 Rs 1000; A-4 Rs 1000; A-39 Rs 5000; A-40 Rs 1000; A-41 Rs 3000; A-38 Rs 5000; A-44 Rs 5000 Abdul Basheer Rs 2000; Abdul Jabbar Rs 500; Bothaguru Rs 500; Murugesan Rs 500; PW (sic) Rs 500; A-37 Rs 1000; A-43 Rs 3000; Chandrabagu Rs 200 and Panchanathan Rs 1000. In regard to the outdoor staff, the following payments were to be made : A-5, A-7, A-8, A-10, A- 12, A- 13, A- 16, A-17, A- 18, A- 19, A-22, A-23 and PW 6 were each to be paid 1/3 of the total value of the bogus muster-rolls prepared and presented for payment by them. A- 6 was to be paid half the value of the bogus muster-rolls prepared and presented for payment by him. A-15 was to be paid half the value of the bogus muster-rolls prepared and presented for payment by him. A- 21 was to be paid a flat rate of Rs 2000 p.m. A-20 was to be paid Rs 3000 for the muster-rolls taken by him and got prepared. A-29 was to be paid Rs 1500 p.m. M. Govindaswamy was to be paid Rs 1000; A.J. Thukkaram was to be paid Rs 2000. Madurai Muthu was to be paid Rs 2000 and Rangan was to be paid Rs 1000. A-35 and A-44 after setting out the details of disbursements as mentioned above, referred to the payments which have to be made to Chairman and members of the Taxation and Finance Committee, Accounts Committee and Works Committee and also party leaders and important Councillors of the Corporation. This was imperative because these influential persons were in a position to give trouble if they so desired. Therefore, substantial payments were to be made to them so that they did not give trouble. A-35 and A-44 in the end added that PW 1 could take the balance after making all these payments as stated above. PW 1 agreed to abide by these instructions. When A-35 and A-44 concluded, A-2 spoke to PW 1 and asked him to do as instructed by A-35 and A-44 and also assured that there would be no danger in following such a course. PW 1

took leave of A-2 along with A-35 and A-44. On coming out, both A-35 and A-44 warned PW 1 that he should keep all those things as a close secret but however as this racket was known to some of the labourers doing outdoor work and also to some unruly elements and some last grade servants, it was necessary that with a view to keep them under control, they should also be paid some amount out of the bogus muster-roll proceeds, A-35 and A-44 listed out the names of such elements and PW 1 assured them that he would bear that in mind. PW 1 bearing all these instructions in mind settled down to work as A-4 clerk in the Electrical Department by about the middle of July 1972.

25. It is the contention of the defence that firstly, such meeting in the A-2's room could not have been held. They further argued that inasmuch as PW 1 has admitted that he did not have any personal contact with A-2 previously, it is ununderstandable as to how A-2 could have allowed the discussion to take place in his room. It is to be said that the talks were not by A-2 alone and in fact, the bulk of the discussion was only in the form of instruction as to how the bogus muster-rolls should be fabricated, processed and negotiated through the various departments by A-35 and A-44. Under such circumstances, the mere fact that PW 1 did not have any personal contact with A-2 previously would not in any way affect the holding of the meeting in A-2's room. PW 1 has alleged that the meeting began at about 2.00 p.m. and it has taken about 45 minutes for its completion. It has been suggested on the defence side that at that time, normally A-2 would be very busy and so he could not have afforded to hold this meeting in his room. It is not uncommon that an officer, when such an important matter was being discussed, could easily ask the visitors to wait for his interview. PW 1 was just then posted to A-4 seat and in order to continue the conspiracy of the fabrication of the bogus muster-rolls he should be given the full instructions as to how it should be done. Therefore, A-2 would have spent some time and allowed his room for the discussion though it was a busy hour. It must be said that normally 2.00 p.m. will not be a busy hour for an office because it is the lunch interval period for the staff and as such it is probable that the meeting could have been held at that time in A-2's room. PW 1 has even stated that there was not even a typist or telephone operator in that room at that time. This supports the inference that it was the time best suited for holding such meeting.

26. One important factor that has been pointed by the learned defence counsel is that A-35 was on leave from 14-7- 1972 to 31-7-1972 and as such he could not have been present in the room of A-2 at the alleged meeting. Though it is stated that A-35 was on leave during that period, it does not prevent him from coming to the office. The mere fact that A-35 was on leave, even if it is true, will not go to show that he was not present in the meeting. It is also said that A-35 had not introduced the outdoor officials that he had mentioned to PW 1 as the persons who would be coming to him for receiving the blank muster-roll forms and so this is a strong circumstance to indicate that the alleged meeting could not have been taken place. I do not think that any significance could attach for this suggestion inasmuch as A-35 has introduced them to PW 1 when they came to get the blank muster-roll forms during the last week of July 1972. That was the most appropriate time when introduction should have been done. As otherwise if the outdoor staff had been summoned to the room of A-2, the purpose of the meeting would have been smelt by the persons outside.

27. One other important consideration is that PW 1 has not taken a note of those names who according to A-35 and A-44 would come to PW 1 for receiving the muster-roll forms or even the

names of the persons to whom amounts were to be paid. Might be that PW 1 was knowing those persons or that PW 1 did not consider it necessary at that time inasmuch as A-35 had been assisting him subsequently not only in the processing of the bogus muster-rolls but also in the matter of disbursements of the proceeds to various persons. The learned counsel has pointed out that normally a person new to the job, when he was apprised about certain things to be done in an illegal way would raise some objection and that admittedly PW 1 not having raised any such objection or expressed any shock would by itself go to prove that there was no such meeting in A-2's room. It must be observed that PW 1 was not in entire darkness about this fraud. According to him, he had an upholding of these things even as early as February or March 1971. Two or three months prior to that he started receiving the small amounts of Rs 50 and Rs 100 from A-36 and that when A-36 was questioned by PW 1 as to how he was able to give those amounts liberally without pressing for their return PW 1 was told that it was from out of the proceeds of the bogus muster-rolls. Under these circumstances, it is natural that PW 1 did not express any surprise or raise any objection when he was given instructions as to what he has to do with regard to the processing of the bogus muster-rolls. It has been suggested that if there was any meeting in the room of A-2 in July 1972 as alleged by the prosecution, A-48 could not have been referred to as Accountant as he was not an Accountant at that time. It must be observed that A-48 has been referred by PW 1 as an Accountant for the purpose of description and not in reference to the position that he was holding on the relevant date viz. July 1972. Under these circumstances, we could safely say that the meeting as alleged by PW 1 was held in the room of A-2 soon after his appointment as A.4 clerk in July 1972.

28. Bearing these instructions in mind PW 1 has settled down to work as A.4 clerk in the Electrical Department. By about 25-7-1972, the muster-roll forms were to be distributed. The accused who were working in the outdoor approached PW 1 and as already instructed, PW 1 gave muster- roll forms to them as desired. He gave muster-roll forms to A-5, A-6 and A-7 through A-22 and A-23 to A-4, A- 10, A-13 through A-26 to A- 1 2 and A- 1 5 through A-20 and to A-16, A-17, A-18, A-19, A-20, A-21 and A-29. A-35 introduced PW 1 to the outdoor staff as one who had come to A.4 seat and would continue the existing practice in regard to the various accused as stated above. A-35 suggested to PW 1 to give 10 more muster-roll forms to A-20 stating that he would prepare them and bring them back to A-2 without the signature of the outdoor officials. But PW 1 was not agreeable to this and suggested that A-20 might obtain the signatures of any outdoor official and bring the forms to him. A-20 assured that he would obtain the signatures of PW 5 and A-9 and so saying, took 10 musterroll forms from PW 1. A-35 gave PW 1 appropriate instructions as to the procedure to be followed in processing the genuine and the bogus muster-rolls. He advised PW 1 that he should himself take those muster-rolls to A-44 and after processing them there, obtain the signatures of A-2, separate the bogus muster-rolls from the genuine ones, docket them, and present them before A-46 and A-47. A-35 further advised PW 1 that PW 1 would be intimidated by A-46 or PW 3 as and when the vouchers were ready for payment; thereupon PW 1 should go to the Cash Section and collect the money and vouchers from there. The vouchers received from the Cash Section may be sent to the field officers concerned for getting the acquittances but there was no hurry in getting back these vouchers from the field officers. Even if they were not returned to Cash Section, those in that section would not very much mind it. It was also possible to get back these vouchers from the Voucher Section even after they were sent to that section and destroy them. The vouchers obtained from the Cash Section could again be used if there was need to utilise them once again for getting

more money. This could be done by just removing the last muster-roll which would contain the endorsement of passing and payment orders. After removing the last page of the muster-roll forms, the earlier pages could be used once again and money could be obtained repeatedly. In such of those muster-rolls where the Budget Estimate No., Appropriation No., Head of Account etc. were left blank such lapses could be repaired by PW 1 himself by mentioning some imaginary figures and particulars suitably. A-35 not only gave all such instructions as stated above but also was helping PW 1 in his work and also guiding him now and then. A-35 had been introducing PW 1 to the outdoor officials when they came to receive the blank muster-rolls. In their presence, PW 1 was told as to what he should do with regard to them and A-35 also informed those outdoor officials that PW 1 would be doing everything that he (A-35) was doing previously. From what is said to have been stated by A-35 and A-44, it is clear that this criminal conspiracy that its origin was not only in July 1972 but also very much earlier. According to the prosecution this conspiracy dates back from April 1969 and continued till November 1973. The evidence both oral and documentary produced by the prosecution makes it abundantly clear that during the year 1969-1973 quite a large number of muster-roll forms were procured by the outdoor staff of the Electrical Department by means which are not permitted under the rules and utilised for fabricating the claims in respect of the temporary labourers purporting to have been employed outdoor in connection with the works of the Electrical Department. The prosecution evidence as far as this period of criminal conspiracy is concerned, has been set in the evidence of PW 4 Rathinam (approver) who was one of the Assistant Cashiers working in the Cash Section of the Revenue Department of the Corporation. He joined service of Upper Division Clerk in November 1949 in the Corporation and after serving in the Central Accounts Department and Revenue Department for some time, was appointed as an Assistant Cashier in 1967. A-50, A-51 and A-54 and one C. Nagabushanam were the other Assistant Cashiers who were working with him at that time. It was then that A-34 was the clerk occupying the A.4 seat of the Electrical Department. PW 4 has stated that even at that time, he had seen A-34 coming to the Cash Section and making payments to A-50, A-51 and A-54 and when he asked A-34 as to why he was not given any money, he was advised not to worry himself about such matters as he was to come up in his career. It is clear from the evidence of PW 4 that even as early as in November 1967, the then A.4 clerk was associating himself with A-50, A-51 and A-54 and was making payments which were certainly not in the normal course of his work. PW 4 appears to have come closer to this circle for the first time in February 1968 when he got his indoor counter and took the vouchers relating to the Electrical Department from PW 4, sorted them out and retaining vouchers other than those intended to be paid at the outdoor handed them over to A-68 who passed them on to PW 4 and asked him to pay the money thereunder in a lump sum to A-34. A-68 was assisting PW 4 in the counter. PW 4 felt that this procedure was improper on which A-68 who was an experienced gollah assured him that it was the practice that has been followed by all the other Assistant Cashiers and it was only then that all of them would be profited. A-68 further told him that unless PW 4 did likewise, it would not be possible for him to get on in this seat. A-34 who was there at that time also underlined the advice tendered by A-68 to PW 4 and added that this affair was known to the Electrical Engineer and other higher-ups. A-34 assured PW 4 not to get frightened. Thereupon PW 4 paid the sum of Rs 20,000 as also the vouchers therefore, in the hands of A-68, who after retaining some portion of the money, handed over the balance to A-34. PW 4 made a note of the voucher particulars which were handed over to A-34 with a view to making entries in the indoor posting book. PW 4 also speaks to his having noticed that A-34 making payment to his colleagues and on

seeing this, when he asked A-34 as to why he was not paid, A-34 remarked that his (PW 4) share was included in the money retained by A-68. However, A-34 promised to make payment to PW 4 every month like any other Assistant Cashier. That month A-68 paid a sum of Rs 400 to PW 4 observing that it was his share for handing over the money and the vouchers to A-34. When PW 4 asked A-68 as to when the vouchers would come back, he assured him that he need not bother about these things as this affair was known to every one and that further the responsibility of sending the vouchers to the Voucher Section was that of the gollah. PW 4 also speaks about A-34 making payment of Rs 50 every month to him from the following month. He again got his indoor duty in July 1968 and in the meanwhile, he got himself sufficiently trained with regard to the deduction of 5 per cent of the total proceeds of the bogus muster-rolls paid to A-34. The amounts so retained were shared by the gollah assisting him in the counter, the Head Cashier, the other gollahs and the other Assistant Cashiers who were not on turn duty. The payment of Rs 50 was increased to Rs 100 during Deepawali month in 1968 by A-34. He was also receiving Rs 50 p.m. during the months when he was not in the indoor counter from the respective indoor duty Assistant Cashier. It is no doubt true that all this evidence relates to the period prior to April 1969. But it must be remembered that this is a case of criminal conspiracy and that as such, although the evidence relating to the period prior to the duration of the conspiracy should not be looked into in regard to the criminal conspiracy, itself, such factors are certainly necessary to explain or to introduce the criminal conspiracy which is the Fact in Issue in this case. In order to find out as to when exactly the conspiracy was hatched, it will be certainly necessary and also relevant to look into the background in which such a conspiracy took its route. This aspect of evidence relating to the activities of A-34, A-50, A-51, A-54 as also PW 4 becomes relevant under Section 9 of the Indian Evidence Act.

29. PW 4 proceeds to say that he got his indoor turn duty in April 1969 and again in August 1969 and during these months it was A-34 who brought the bogus muster-rolls to him and got the money and the paid vouchers thereunder from him. PW 4 retained 5 per cent of the total proceedings for being distributed among the other Assistant Cashiers, gollahs and for himself. This evidence of PW 4 is also corroborated by unimpeachable documentary evidence. According to Exh. P- 3105, the indoor posting book, PW 4 is found to have made the entries of payments at the indoor counter in respect of Voucher Nos. 3307, 3308, 3698 and 3699. These entries have been marked as Exhs. P- 10800, 10804, 10807 and 10811. These vouchers are not available now and the case of the prosecution is that the paid vouchers which normally have to be retained in the safe custody of the Voucher Section on receipt from the Cash Section are missing. The significance of the fact of these vouchers missing will be dealt with later while dealing with the evidence of PW 1 in greater detail. It is also seen that PW 4 got his indoor turn duty in November 1969 when he was also assisted by A-68. Even on this occasion, it was A-34, who according to him, came and handed over the bogus muster-rolls and got the proceeds thereunder from him together with the paid vouchers. PW 4 has stated that the value of the bogus muster-rolls on this occasion would be about Rs 50,000 and he got a sum of Rs 1000 towards his share out of the usual 5 per cent deduction. A-68 had insisted that he should have an equal moiety as that of PW 4. The evidence of PW 4 which is confirmed by the documentary evidence Exh. P-1306 and the entries found herein, viz., Exhs. P-10839, 10845 and 10848 would show that PW 4 had made payments at the indoor counter in respect of Voucher Nos. 1672, 1673, 1677, 2418 and 4402. That A-68 was assisting him is also proved by the entries concerned relating to the dispatch of the vouchers made in Exh. P-1497, the dispatch book

maintained in the Cash Section. Even here, the vouchers concerned were missing and PW 4 had referred to these entries only with reference to the indoor posting book Exh. P-3106. PW 4 again got his indoor turn duty in February 1970. Even on this occasion, A734 brought the bogus muster-rolls to the tune of Rs 50,000 and got both the vouchers and money payable thereunder after the deduction of 5 per cent from PW 4. PW 4 distributed the 5 per cent amount as usual among his colleagues. Here again, the fact that PW 4 was on indoor duty and paid money in respect of the vouchers mentioned by him at the indoor counter is found from the entries Exh. P-10250 in Exh. P-1309. The voucher concerned is Exh. P-1585. The fact that PW 4 got the money that day from the Senior Assistant Cashier on duty is borne out by Exh. P-10251 an entry in Exh. P-1515 in the S.A.C. book. There are also other vouchers which are missing. They were paid by PW 4 during this month and they are Voucher Nos. 979, 2745 to 2748. The relative entries are Exhs. P-10859 and 10862 in Exh. P-1307 and P- 10864, 10868, 10871, 10874 and 10877 are in Exh. P-1308. It is, therefore, clear from the above evidence of PW 4 that during the years 1969-70 it was A-34 as the then A.4 clerk who was coming to the Cash Section and was getting money under the bogus muster-rolls from the indoor counter Assistant Cashier. This evidence of PW 4 is confirmed by unimpeachable and contemporaneous documentary evidence furnished in the form of entries found in the indoor posting book and in the Senior Assistant Cashier's posting book. It is no doubt true that there is nothing to show in the indoor Assistant Cashier's posting book that A-34 had actually taken the bogus muster-rolls and the money from the indoor counter.

30. Much emphasis has been laid by the learned counsel for the accused on this aspect. It is contended that the fact that A-34 came to the indoor counter and took money and the bogus vouchers rests solely on the oral testimony of PW 4 who is after all an approver, and therefore, his testimony as far as A-34 and the part played by him is concerned is not at all corroborated by any other independent witness. I have already indicated how testimony of PW 4 is borne out by the entries in the indoor posting book and in the Senior Assistant Cashier posting book. Therefore, it cannot be said that there was no corroboration at all as far as PW 4 is concerned. As regards the documentary proof to show that money have been paid to A-34, it must be remembered that these payments are in respect of bogus vouchers paid in a lump sum at the indoor counter, a course which is wholly unauthorised. The payments to labourers should be made only at the payment counters after proper identification with appropriate acquittance. Only those payments which have to be made to the labourers who have been left out at the payment centers are to be made to such labourers after proper identification and acquittance across the indoor counter. As the prosecution case is that A.4 clerk was obtaining money and vouchers only in pursuance of the criminal conspiracy it cannot be said or expected that such receipts by A.4 clerk would be evidenced by any documentary evidence as it is a procedure which is strictly unauthorised. As money are paid by the Senior Assistant Cashiers for disbursements at the payment centres in lump sum such payments would be evidenced by appropriate entries in the S.A.C. posting book and T.C. posting book under proper acknowledgments by the tax collectors. Such record is available because they were made in the proper and prescribed mode of procedure. As per the prescribed procedure, no lump sum payment could possibly be made at the indoor counter in respect of the temporary labourers. This fact is emphasised by PW 339, a responsible official of the Corporation. He has categorically stated that payments to temporary labourers could be and are made only at the outdoor payment centres and not in the indoor counter. While it is so, in the generality of the cases as far as payments at the

indoor counter are concerned, it is not as if there is no documentary evidence for A-34 having taken any payment himself, it is seen that in respect of Exh. P- 1587, which is according to the prosecution, a fully bogus voucher, A-34 has signed in the T.C. posting book at page 51 of Exh. P-1518 in token of his having taken the lump sum from the Senior Assistant Cashier. It is Exh. P-10283, A- 34, as A.4 clerk had no business normally to go to the Cash Section and take lump sum payment. This also made the evidence of PW 4 that A-34 was coming to the Cash Section and was taking money from there was highly probable.

(b) Conspiracy at Kavitha Hotel

31. PW 1 has referred to another incident that took place in May and June 1973 in which the Cash Section people started creating trouble and threatened to interfere materially with the smooth running of the racket. He was informed by A-35 that a meeting had been convened at the Kavitha Hotel, by A-50 in which the other Assistant Cashiers would also be participating for the purpose of discussing about the bogus muster-rolls. On invitation PW 1 attended this meeting which took place on 1-5-1973 at the Kavitha Hotel. A-35, A-50, A-51, A-54 and PW 4 were there. A-50 informed him and A-35 that the volume of bogus muster-rolls was on the increase and in view of the fact that large amounts were being realised therefrom they might be exposed to danger at any time and expressed a desire to put a stop to this. At this PW 1 and A-35 observed that as the higher- ups were also connected with this affair there was no possibility of danger and this made Assistant Cashiers agree to continue. On 3-6-1973 there was another conference in the same place which was attended by PW 1, A-35 and A-37. It was decided on the advice of A-50 that while taking the bogus muster-rolls from the Cash Section a despatch register should be opened and entries made of such bogus muster-rolls while taking them. PW 1, A-35 and A-37 agreed to this and A-37 was entrusted with this responsibility of maintaining the despatch book. That the Hotel Kavitha was being used on these two dates is spoken to by PW 32, the Receptionist attached to the Kavitha Hotel. According to him Room No. 9 was booked on 1-5-1973 by one Sriramulu. Exh. P-10211 is the entry in Exh. D-100 the register for arrival. He has also stated that only one person came while booking the room and that after a while three or four persons also came. The room was vacated at 5.30 p.m. as per Exh. P-10213. Again on 3-6-1973 Room No. 4 was booked by one E. Kannappan at about 11.00 a.m. Exh. P-10215 is the entry in Exh. D-100. Three or four persons came along with E. Kannappan. The room was vacated at 6.30 p.m. Exh. P-10217 is the entry in Exh. D-101 the departure register. The learned counsel for the accused has contended that evidence of this witness cannot be taken as corroboration of PW 1's testimony because PW 32 had admitted that he could not identify the persons who came to the hotel on 1-5-1973 and 3-6-1973 one should think that if PW 32 was to identify any of the occasion it would sound highly artificial because Kavitha Hotel is a public place which would be attended by a new person every day and to expect PW 32 to recognise some of those persons who had stayed in a particular room, some years back would be too much. It is only if PW 32 had identified particular accused his evidence would smack of artificiality. As such I must hold that this evidence of PW 32 affords corroboration of the evidence of PWs 1 and 4 in this regard.

32. It has been pointed out that the Kavitha Hotel episode should be falsehood inasmuch as PW 1 has not spoken anything about the same either in his statement under Section 161 CrPC or in his confession under Section 164 CrPC. In answer to this, it must be observed that the meetings at the

Kavitha Hotel were organised and held only by the Cash Section people. PW 1 did not organise it and he was only an invite and further these meetings were not of much importance as far as he was concerned. Therefore, the omission on his part to make a mention about these meetings in his Section 162 or 164 statement is not of much significance. It is not as if the incident at the Kavitha Hotel had been introduced for the first time only before the Court. PW 4 a member of the Cash Section has already spoken about these incidents in his Sections 162 and 164 statements.

(c) Conspiracy at Ayyappa Lodge

33. It is seen that although A-75, A-78, A-79, A-80, A-84 and A-94 were paid as much as Rs 30,000 by PW 1 and they have assured him that they would see to it that no trouble was cropped up in regard to the bogus muster-rolls, it is these very persons who continued to create trouble evidently to have upper hand in the matter and obtain as much money as possible out of this racket, and at the same time making it appear that they were quite earnest in discovering the source of this racket with a view to exposing it. This attitude is displayed by A-75 who along with A-79 and A-80 as Chairman and Members of the T & F Committee began inspecting the outdoor offices ostensibly for checking such establishments. One of these establishments inspected by these accused was the Usman Road Sub-station of which PW 5 was the Supervisor. A-75 accompanied by his personal clerk PW 56 and A-79 and A-80 looked into the records and the muster-rolls in particular those that were in use for the month of September 1973 and a similar list of blank muster- rolls that were kept unused. It was PW 56 who took down this dictation in his stenographer's notebook. After inspection A-75 called PW 5 aside and demanded a sum of Rs 1000 which he said should be paid every month thereafter. After some bargaining, the demand was reduced to Rs 500. A- 75 threatened PW 5 that should he not pay this money, he would have to face severe action, PW 5 had no other alternative except to agree. On this assurance, A-75 got the stenographer's notebook, tore off the notes dictated by him and handed them over to PW 5. Exh. P-13871 are the three sheets containing the notes. By this tactic A-75 assured himself of a regular payment of Rs 500 per month by PW 5 thereafter. This evidence of PW 5 as far as the inspection, the notes taken down and handing over of Exh. P-13871 by A-75 to PW 5 are concerned, has also been spoken to by PW 56 which affords striking corroboration to the testimony of PW 5. Further the fact that these accused did not take any further action as follow-up of the inspection is also in my opinion the further confirmation of the testimony of PW 6 in this regard. It is also noteworthy that Exh. P- 1 3871 which was handed over by A-75 to PW 5 was recovered in the course of the house search of the residence of f PW 5. This recovery also renders the testimony of PW 5 highly probable.

34. The evidence on record discloses that this inspection by A-75, A-78, A-79 and A-80 was not an isolated act unrelated to the criminal conspiracy nor was it done out of honest motives. There is abundant evidence to show that this was only a rule adopted by these accused as stated by me already to have the upper hand for the purpose of extorting money. There is also evidence to show that on 29- 9-1973 at a time when A-2 was on leave and PW 10 was holding charge as the Electrical Engineer, A-75 and the members of the T & F Committee called for the production of the muster-roll issue register. PW 10 was not inclined to produce the register without the order of the Commissioner. He, therefore, asked PW 2 to make out a note of the entries asked for by A-75 and hand it over to him. PW 2 prepared such a note and was having it ready with him. That evening A-3

called PW 2 and informed him that the Chairman and the Members of the T & F Committee had asked him to produce the register. PW 2 expressed his inability to do so and stated that he would produce the register if ordered by the Electrical Engineer in charge or if an Assistant Engineer accompanied him. A-3 was not quite pleased with the attitude of PW 2 and he advised him not to incur the displeasure of A-75 but to produce the muster-roll issue register. PW 2 refused. This evidence of PW 2 is also corroborated by PW 1. Some time later PW 10 took PW 2 along with the particulars noted down by PW 2 from the muster-roll issue register to A-75's room where he found A-75, A-78, A-79 and A-80. On seeing PW 10, A-75 asked him whether he had brought the muster-roll issue register and when PW 10 passed on the notes, A-75 got infuriated and demanded his explanation as to why when he was asked to produce the muster-roll issue register itself, he was handing over a piece of paper. PW 10 replied that he could not produce the register unless he was specifically ordered by the Commissioner. A-80 interjected whether PW 10 was aware of the powers of the T & F Committee which also empowered them to raid the Electrical Department and seize the muster-roll issue register. Unnerved by this exhibition of temper and also by the threats held out, PW 10 pacified them by promising to produce the register the following day. This incident spoken to by PW 2 is also corroborated by PW 10 in its entirety.

35. PW 10 presumably was inclined to apprise A-2 who was then on leave of this incident and seek his advice. He took A-4 also with him along with PW 2 to the house of A-2. A-2 sent for PW 9 and all of them conferred over the matter. A-2 observed that the contents of the muster-roll issue register were known to all of the Councillors and it only is out of the bogus muster-roll money were being paid to all of the Councillors. As such there is no harm in producing the muster-roll issue register. Thereupon it was decided to produce it. This incident is spoken to by PWs 9 and 10 in addition to PW 2. It has been suggested that all these persons went to the house of A-2 only as a courtesy call to enquire A-2 about his health. If it is for any such enquiry as suggested by the defence, they could have gone much earlier. A-2 was to join duty after the expiry of the leave only the next day. If at all A-2 was to be enquired about his health, it would be sufficient for PWs 9 and 10 to have gone there and they need not have taken PW 2 also. Under these circumstances, the suggestion of the accused's counsel cannot be given any weight.

36. A-2 rejoined duty on 1-10-1973 and he sent for PW 2 and asked him to go and meet A-75 to which PW 2 asked A-2 whether he was to take the musterroll issue register with him. A-2 advised him to meet A-75 in the first instance and produce the register if the same was required by A-75. PW 2 did so. It is contended by the learned counsel appearing for the accused that if in fact PW 2 along with other Assistant Engineers had met A-2 on the previous day and consulted him about the production of the muster-roll issue register to the Councillors, there would be no necessity for PW 2 to again ask for the permission of A-2 to take the muster-roll issue register to A-75 on 1-10-1973. According to them A-2 has already granted permission to produce the said register. PW 2 has explained that because A-2 directed him to go and meet A-75, he sought clarification from A-2 whether he should also take the musterroll issue register. It was not a question of seeking permission of A-2 for producing the register to the Councillors, but was only for the purpose of clarifying as to what for PW 2 should go and meet A-75. The suggestion of the learned counsel appearing for A-2 put to PW 2 during the cross-examination on this aspect would itself show that there was a meeting in the house of A-2 on 29-9-1973. The learned counsel has suggested to PW 2

that A-2, during the discussion in his house has simply gave permission to produce the said register to the Councillors and did not tell anything further. This would mean that A-2 himself had admitted the visit of these persons to his house on 29-9-1973 and also the discussion held about the production of the muster-roll register. Under the circumstances, there is no reason as to why the evidence of PW 2 should not be believed on this aspect.

37. As per the direction of A-2, PW 2 went to see A-75, in his room. PW 7 has also corroborated PW 2 in regard to the latter's taking instructions from A-2 on 1-10-1973. On reaching the room of A-75, PW 2 saw A-75 to A-80 there. A-76 just came to the room of A-75 and went away. It has been stated by the learned counsel for the accused that the version of PW 2 with regard to the coming of A-76 to the room of A-75 is contrary to what he has stated under Section 162 CrPC. The learned counsel has suggested that PW 2 has stated under Section 162 CrPC that A-76 came into the room, sat, talked and then went away, I am not able to say any (sic) such version in the statement of PW 2 under Section 162 CrPC. Therefore, the evidence of PW 2 could not be said to be any improvement over what he has stated before the investigating officer. On seeing PW 2, A-75 asked him as to why he was refusing to revive the bogus musterrolls. PW 2 disclosed his determination not to put up bogus muster-rolls. He also said that A-2 was also refusing to sign the, bogus muster-rolls. Thereupon A-78 observed that while PW 2 was expected to put up bogus muster-rolls and pay money to them, it was strange that he was declining to do so. A-75 assured him that all of them would be with PW 2 and coaxed him to revive the bogus muster-roll racket. PW 2 was unmoved seeing this, A-78 insisted that he must put up bogus muster-rolls and as there was only a few days left, asked PW 2 to go over to the Room No. 23 MLAs' Hostel that evening to discuss the matter further. When PW 2 expressed his inability to go to Room No. 23 because it might get published, A-78 suggested that PW 2 would meet them at Ayyappa Lodge that night by about 9.30. It has been suggested that PW 2 could not have had any discussion with regard to this topic on 1-10-1973 with the said Councillors because all the Councillors would be coming to the Corporation especially to their party room on that day to receive their conveyance allowance. It is to be observed that PW 2 has met this group of Councillors only in the room of the Chairman of T & F Committee and not in the party room. Therefore, it is quite probable that such a crowd of Councillors, as suggested by the learned counsel, would not have been there.

38. PW 2 went to Ayyappa Lodge on the night of 1-10-1973. A-75 and A-78 to A-80 came in a car MS 8221 and went inside a room. They had instructed PW 15 to send PW 2 inside the room and accordingly PW 2 went inside the room. PW 2 has stated that he went to Ayyappa Lodge at about 9.30 p.m. on 1-10-1973. The learned counsel for these accused has pointed out that the evidence of PW 2 with regard to the time at which he went into the room was not exact and it is contrary to what he has stated before the police and the version in his confessional statement. In his statement under Section 162 CrPC he had stated that it was about 8.00 p.m. whereas in his statement under Section 164 CrPC he had stated that it was about 9.00 p.m. PW 2 has referred to the time everywhere only approximately and as such, the minor variation in the timings could not be taken very seriously. The evidence of PW 2 that he met A-75 and A-78 to A-80 at Ayyappa Lodge is corroborated by the evidence of PW 15 who has stated that A-75 and A-78 to A-80 went in a car along with him and he was asked to send PW 2 to the room occupied by them. The register of the said lodge also shows that A-75 has signed it on 1-10-1973. The owner of this lodge PW 24 has also spoken to A-75 having

stayed in a room. Exhs. P-13975 and 13976 are the entries in the arrival register, signed by A-

75. Further it is not disputed that these accused had stayed at the Ayyappa Lodge on 1-10-1973. As to what had taken place inside the room has been narrated by PW 2. According to him, A-75 told him that the bogus muster-rolls should be put up soon and assured PW 2 that he need have no fears about reviving the bogus muster-rolls as they would be in power for six more months. A-78 remarked that while PW 1 and A-35 had by putting up muster-rolls enriched themselves as also others, there was no need for PW 2 to feel nervous and that he could do likewise. A-79 instigated PW 2 expressing the same sentiments and asked him to revive the bogus muster-rolls. A-79 exhorted PW 2 to put up bogus muster-rolls stating that while A-76 and Munuswamy were receiving large sums of Rs 15,000 and Rs 10,000 the share of A-75, A-78, A-79 and A-80 was much less and it was PW 2 who should pay them well. PW 2 appeared to be unnerved and unwilling to follow their line. Seeing this A-80 threatened to remove him from service if he did not obey their instructions. This had the desired result and PW 2 apologetically, said that he was new to this post and was ignorant of the procedure to the putting up of the bogus muster-rolls and that was the reason why he was hesitating. On this A-78 assured him that PW 1 would render all the necessary help and asked him to get in touch with him. A-75 further told him that blank muster-rolls found at the outdoor offices would be returned by the said offices and PW 2 could make use of them for putting up of the bogus muster- rolls. He also advised him to work along with PW 1 in this matter. The fact that unused muster-rolls were returned by the field officials is borne out but the entries made by PW 2 in Ex. P-4 at pages 2, 25, 29, 31, 3-5, 36 and 37; in Ex. P-5 at pages 25, 27, 29, 31, 30, 35, 36 and 37; in Ex. P-6 at pages 23 and 24 and in Ex. P-7 at page 13. Thereupon A- 75 directed PW 15 to go in search of PW 1 and get him. PW 15 went in search of PW 1 to the Lakshmi Talkies, Aminjikarai, where the picture 'Vakkurudhi' was being screened thinking that PW 1 could be there. But as he was not there, PW 15 returned and informed A-75. This is spoken to by PW 15 also. A-78 informed PW 2 that he would send PW 1 to him somehow at which PW 2 promised to revive the bogus musterrolls. A-75 reminded PW 2 that merely reviving the bogus muster-rolls was no good. The point to be remembered was that all of them should be paid substantial amount out of the proceeds of the bogus muster-rolls. PW 2 agreed to do so. A-75 assured PW 2 that if he encountered any trouble, he could contact him for assistance.

39. The learned counsel appearing for these accused has contended that the evidence of PW 2 that he was coaxed to revive the bogus muster-roll racket once again cannot be accepted inasmuch as PW 2 was indulging in the fraud even earlier to 1- 10- 1973. According to him PW 2 got the idea of putting up of the bogus muster-rolls even prior to 1- 10- 1973. He has pointed out that PW 2 had issued blank muster- rolls even on 1-10-1973 and as such, it cannot be said that it was only at the instigation of these accused that PW 2 got the idea of reviving the bogus muster-roll scheme. Apart from the fact that this suggestion goes to infer that the bogus muster- roll scheme was in operation even after PW 2 came into the picture as A.4 clerk, it could not be said that PW 2 had revived the scheme even prior to 1- 10- 1973 simply because some blank musterrolls had been issued by him on 1- 10- 1973. PW 2 has explained that the persons to whom the blank muster-rolls had been issued on 1-10-1973 were those who had been left out in the last week of the previous month. It has been further contended that for Voucher No. 3378, PW 2 got the payment of Rs 1750 even as early as 17-9-1973. PW 2 has denied the receipt of this amount for this voucher. In the absence of any proof

that PW 2 has received this amount, there is no reason as to why his evidence that he got the idea of putting up of the bogus muster-rolls at the instigation of A-75 to A-78 or A-80 only after 1-10-1973 should not be accepted.

40. It has been suggested that if PW 2 was such a stout- hearted man as not to have revived the fraud without the instigation of A-75 and his group of Councillors, he would have consulted other Councillors viz. A-85, A-89, A-91 and one Sridharan because these Councillors are also closely known to PW 2. PW 2 has explained that he did not consult these Councillors as the group of A-75 was more powerful and so he was afraid of their threat.

41. By this time A-75 appears to have contacted A-2 also and informed him about the revival of the bogus muster- rolls. This is seen from the fact that when on 3-10-1973, PW 2 informed him that he had been forced by A-75 to revive the bogus muster-rolls and that he had succumbed to the pressure, A-2 told him that he was already aware of it. A-2 asked PW 2 to meet Thiru Munuswamy as the latter wanted to see him. PW 2 met Munuswamy and gave an account of what happened and stated that he had to yield to the pressure exerted by A-75.

42. In the absence of any such material, there is no reason as to why evidence of PW 2 that Munuswamy phoned up A-4 also should not be believed. He also assured PW 2 to phone up A- 45 that the bogus muster-rolls put up by PW 2 should be passed. This testimony of PW 2 of what took place during his meeting with Thiru Munuswamy is corroborated by PWs 9 and 10 who have spoken to Thiru Munuswamy over the phone on or about 3-10-1973 asking them to sign the muster-rolls put up by PW 2 assuring them that they need not have fears about it. Both of them, however, decided not to pay any heed to this direction. It appears from the evidence of these witnesses that PW 2 tried to get their signature on some muster-rolls stating that Thiru Munuswamy had asked them to do so and both of them declined to do so. Their testimony affords corroboration to the evidence of PW 2 that Thiru Munuswamy was directing PWs 9 and 10 to sign the bogus muster-rolls put up by PW 2.

(d) Conspiracy at Rekha Lodge on 4-10-1973 and 5-10-1973

43. The next phase of this conspiracy is spoken to by both PWs 1 and 2. PW 2 said that if money was paid out of the proceeds to everyone they need have no fears. PW 2 agreed to continue the monthly payment of Rs 12,000 to Thiru Munuswamy as was being done by PW (sic). PW 2 also informed Thiru Munuswamy that A-2 had already decided not to sign any bogus muster-rolls and expressed apprehensions whether he would pass the bogus muster-rolls if put up. On this, Thiru Munuswamy phoned up A-2 and directed him to pass all the bogus muster-rolls if put up by PW 2. He also phoned up Range Assistant Engineers, PWs 9 and 10. A-3 and A-4 also directed that all the bogus musterrolls brought by PW 2 should be signed.

44. As required by PW 2, PW 1 furnished a list of outdoor officials whose services could be utilised for putting up the bogus muster-rolls and the names of A-6 to A-8, A-10 to A-12, A-14, A-16 to A-21, A-22, A-23, A-26, A-27, A-29 and PW 6 were specified in this list. A-38 was also suggested by PW 1 for putting up of muster-rolls. In pursuance of this, steps were taken by PW 2 through A-38 for putting up the bogus muster-rolls. A room in the Rekha Lodge, Mylapore was fixed by A-23 and

A-38 to which the outdoor officials were summoned.

45. PW 2 brought as many muster-rolls as he could secure and these were handed over to A-16 for putting up bogus muster- rolls. PW 1 was also there at that time. He was informed that he had already issued blank muster rolls to other persons. This evidence of PW 2 that he had handed over the blank muster-rolls to A- 16 at Rekha Lodge is confirmed by the fact that A- 16 has associated himself in putting up the bogus muster-roll vouchers Exh. P-2206 wherein the names of labourers and letter 'P' are all in his hand. He has also initialed the footnote and put up the muster-rolls. He has admitted this in his examination under Section 313 Criminal Procedure Code.

46. On 4-10-1973, A-21, A-22 and A-18 came to the residence of PW 2 when the latter entrusted blank muster-rolls to these accused instructing them to fill them up and bring them after obtaining the signatures of their respective supervisors. Some more Timekeepers also met him to whom also he gave blank muster-rolls for a similar purpose.

47. On the same day sometime in the afternoon A-2 sent for PW 2 and informed him that a note has been received from C.A.D. wherein it was stated that as the days from 4-10-1973 to 7-10-1973 were holidays, disbursements to the Electrical Department labourers could not be made on 8-10-1973 and a later date might be fixed therefore. A-2 observed that if the labourers were not paid on 8-10-1973 the labourers would give trouble and so he asked PW 2 to meet Thiru Munuswamy and seek his help by arranging with A-45 for making the payment on 8-10-1973 itself.

48. PW 2 accordingly met Thiru Munuswamy and apprised him of the note. On being informed that the muster-rolls have been put up, Thiru Munuswamy phoned up A-45 and asked him to pass all the muster-rolls sent up by PW 2 and see that they were passed before 8-10-1973. PW 2 met A-75 and made a similar request. A-75 also phoned up A-45 and told PW 2 that A-45 had agreed to do so. PW 2 himself met A-45 and sought his help to which he observed that he need not have operated through Thiru Munuswamy and A-75 and he could have come to him directly. PW 2 replied that he would not have done so if they were related to genuine muster-rolls but because these were bogus muster-rolls, he had to be more careful. A-45 promised to see that the cheque was issued in respect of all the muster-rolls put up by PW 2 within 8-10- 1973. PW 2 informed A-2 of the arrangement made by him in this direction and A-2 asked PW 2 to meet him on 5-10-1973 the Ayudha Pooja Day at the Nungambakkam Sub-station and get his signatures. A-16 produced the bogus muster-rolls filled up by him.

(e) Conspiracy at A-87's house

49. The evidence of PWs 1 and 2 further discloses that on 6-10-1973 both of them A-22, A-38, A-48 and A-87 were in the house of A-87 in Dr Rangachari Road and A-22 was engaged in preparing the bogus muster-rolls. On seeing A-48, PW 1 asked him whether the genuine muster-rolls have been passed by him to which he replied that he was waiting the receipt of the bogus muster-rolls, so that both of them could be sent up together. The question as to who should be deputed for getting the money in respect of the bogus musterrolls put up was discussed. It was felt that if A-43 who had misbehaved during September 1973 in having absconded along with A-35 with the money, was again

deputed for this purpose in October 1973 also, it would lead to further commotion. It was, therefore, decided on the advice of PW 1 that A-42 could be entrusted with this work. By this time PW 2 had met Thiru Munuswamy and sought his help to contact the Assistant Engineer for signing the bogus musterrolls prepared already. Thiru Munuswamy phoned up A-3 directing him to sign the bogus muster-rolls and also to get the signatures of the supervisors. Thiru Munuswamy also promised to speak to A-4 likewise. PW 2 thereupon after taking A-48 with him, reached the house of A-87 in Dr Rangachari Road. On the instructions of PW 1 the bogus muster-rolls were arranged and the name of the work, estimate number and other details filled up arbitrarily. In short the work of preparing the bogus muster-rolls was completed in all its aspects. Thereupon A-48 who was present made the tick mark to indicate that they have been checked by him. He also suggested that the Head of Account should be mentioned as III as there may not be sufficient fund in No. 1 A/c. PW 1 also suggested that he would contact A-46 in this matter. Thereupon PW 1 instructed PW 2 to take all the bogus muster-rolls,, get the signatures of the outdoor officials and supervisors and also the Electrical Engineer and hand them over in the C.A.D. on 8-10-1973. PW 2 left the place thereafter. While leaving the place PW 1 instructed PW 2 to bring A-42 on 8-10-1973.

50. On 7-10-1973, PW 2 took the bogus muster-rolls to A-3 at his residence and requested him to affix his signature. He secured PW 5 as per the direction of A-3 who asked PW 5 to sign in the bogus muster-rolls stating that Thiru Munuswamy had asked A-3 to sign them. When PW 5 hesitated for a while, A-3 himself started signing them. On seeing this PW 5 also affixed his signatures therein. A-3 demanded a sum of Rs 3000 from PW 2 for having signed the bogus muster-rolls to which PW 2 agreed. Thereupon PW 2 went to the house of A-4 taking with him the muster-rolls fabricated by A-16 and others. As there were no signatures of the supervisors in some of the muster-rolls A-4 after signing them, asked PW 2 to obtain the signatures of A-10 therein. PW 2 met A-10 and obtained the signatures. On 8-10-1973 PW 2 took these bogus musterrolls after having obtained the signatures of PW 5 and A-10, A-3 and A-4 therein met A-2 at the office and obtained his signatures on the genuine as well as the bogus muster-rolls while A-2 referred to the estimate register, appropriation register and muster-roll issue register while signing the genuine muster-rolls, he signed the bogus muster-rolls without making any such reference and ante-dated them as 5-10-1973. PW 2 handed over both these types of muster-rolls to A-48 in the C.A.D. and asked him to phone him up after the cheque was ready. On receipt of the phone message, he went to the Cash Section and collected the bogus vouchers six in number and came back to his seat. He then met A-42 and asked him to go over to the house of A-87 which he promised to do after 6.00 p.m. taking with him also the six fully bogus vouchers to the house of A-87 in Dr Rangachari Road. A-87, PW 1 and A-105 were there. PW 2 informed PW 1 that only one-half of the bogus muster-rolls had been signed by A-3, A-4, A-10, PW 5 and A-16 and these have been passed by A-2. These were the vouchers that had been passed by the C.A.D. which he had secured and were with him at that time. As for the other half of the vouchers, PW 2 stated that he had kept them in the office drawer as it did not contain the signatures of any of the persons concerned. PW 1 advised PW 2 to get the signatures on the other half also and get them passed. Addressing A-42, PW 1 asked him to take the vouchers that were with PW 2, encase them at the Cash Section and after paying to the Cash Section, bring the balance and pay it over to PW 2. A-42 demanded a sum of Rs 5000 for his services. PWs 1 and 2 promised to pay him a decent amount and A-42 agreed. The fully bogus vouchers relating to October 1973 produced by the prosecution afford a striking confirmation to the testimony of PWs 1 and 2 in regard to the

participation of the accused mentioned by them.

51. The evidence of PWs 1 and 2 that bogus muster-rolls were fabricated on 5-10-1973 and 6-10-1973 in the room of Rekha Lodge as well as in the house of A-87 in Dr Rangachari Road by A-22, A-38 and Venugopal a friend of A-87 is borne out by Ex. P-2217 wherein the names of labourers are by A-22 and the Exs. P-2223 to 2226, 2219, 2220 and 2221, 7018, 7028, 7038, 7047, 6982, 6991, 7000 and 7009, the letter 'P' by A-38, M.Rs. Ex. P-2223, 2224 and 2227, 7019, 7029 and 7056, the footnotes are by A-22 in M.Rs. P-2218 to 2222 Exs. P-6973, 6982, 6994, 7000 and 7009 the handwriting of outsider Venugopal in M.R. Exs. P-2223 and 2227, Exs. P- 20195 and 20197; the letter 'P' is by A-22 in Vr. Ex. P- 2228, Exs. P-7067, 7076, 7085, 7094 and 7103, the handwriting by the above-said outsider in M.Rs. Ex. P-2229 and 2232, Exs. P-20209 and 20212, the letters 'P' are by A- 22 in Vr. Ex. P-2234, Ex. P-7114, the letters 'P' are by A-38 in Exs. P-7023, 7123, 7141 and 7150 the handwriting by the above-said Venugopal in Ex. P-20213 and 20222 in M.R. Ex. P-2235 and 2239 the letters 'P' are by A-38 in Vr. Ex. P-2240 Ex. P-7161, 7191, 7200, the letters 'P' are by A-22 in Ex. P-7171 and 7181, the footnotes are by A-38 in Ex. P-7162, 7122 and 7182 and the handwriting is by the outsider Venugopal Exs. P-20225, 20231 in M.R. Ex. P-2244 and 2245.

52. The evidence of PW 2 that he handed over on 4-10-1973 in his house blank muster-rolls to A-21, A-22 and A-18 is borne out by Voucher No. 2246 dated 8-10-1973 wherein the names and letters 'P' are in the handwriting of A- 106 and by Vr. Ex. 2217 wherein the names and 'P' are by A- 106, A- 22 and the letter 'P' by A-38 and the footnote closed by A-

22. It is noteworthy that although A-106 is not one of those who had assembled either at the Rekha Lodge or at A- 87's house, he had participated in the muster-rolls fabricated by A-22. The above evidence of PW 2 that A-48 ticked these six fully bogus vouchers is borne out by the fact that all these six vouchers Exs. P-2206, 2217, 2228, 2240, (sic) and 2246 bear the initials of A-48 alone without the initials of any accountant. A-48 has admitted these initials. Although he would say he checked them in the usual course.

53. The evidence of PW 2 that he took a bundle of the bogus muster-rolls to the house of A-3 and obtained the signatures of A-3 and PW 5 therein is borne out by these signatures found in Exs. P-2218 to 2227 and 2247 to 2256, Exs. P-6976, 6985 etc. Both PW 5 and A-3 admit their signatures. PW 5 has also spoken to the same lines as PW 2.

54. PW 2 has stated that he obtained the signatures of A-4 and A-10 and this is home out by the following: M.Rs. 2207 to 2216 Signatures of A- 16 68 82, 6891 etc. Signatures of A-4 - P-6883, 6892 etc. M.Rs. 2229 to 2233 Signatures of A-10 - P-7069, 7077 etc. Signatures of A-4 - P-7070, 7078 etc. M.Rs. 2235 to 2239 Signatures of A-10 - P-7115, 7124 etc. Signatures of A-4 - P-7116, 7125 etc. M.Rs. 2241 to 2245 Signatures of A- 10 - P-7163, 7173 etc. Signatures of A-4 - P-7164, 7174 etc. A-4 and A-IO have admitted their signatures in these vouchers. The evidence of PW 2 that A-2 signed these vouchers and passed them is also admitted by A-2 himself. He would only say that he had not ante-dated his signatures. The fact that PW 2 was asked to bring as many of the blank muster-rolls as he could lay his hands on and he did accordingly is proved by the fact that in respect of the entire body of the muster-rolls comprising these six vouchers, there is absolutely no reference to bear their

issue in the muster-roll issue register. Again the evidence of PW 2 that he filled up the names of work, estimate number, appropriation number etc. in all these muster-rolls fictitiously, is borne out by the nature of the defects noticed in these six vouchers which have been sent out by PW 340 in his report and to which reference will be made infra while setting out the defects of these six vouchers encashed in October 1973. The names of the work, estimate number, appropriation number, etc., are in the handwriting of PW 2 himself in all these six vouchers. PW 2 has also spoken to this. Such particulars should be found in the muster-rolls even before they are received by the Electrical Department from the outdoor officials.

55. It is, therefore, seen that as far as the fabrication of the October 1973 vouchers are concerned, the testimony of PWs 1 and 2 has been amply corroborated by the vouchers themselves.

56. In the meantime PW 2 had contacted PW 4 and informed him of the commotion consequent upon the disappearance of A- 35 and A-43 with the proceeds of the bogus muster-rolls in September 1973 and that he could be putting up bogus muster- rolls to the tune of rupees one and half lakhs and sending them through A-42. He also requested PW 4 to arrange payment therefore. PW 4 was on indoor turn duty that month and suggested that the usual retention of percentage might be confined to one-half promising to pay the other half after the rest of the bogus muster-rolls was presented for payment. PW 4 consulted PW 60 as to whether the money could be paid to A-44. PW 60 informed him that this could be done provided there was the acquittance of the labourers, the all-paid certificates, etc. in these vouchers. PW 4 informed PW 2 that he would look into the matter.

57. On 9-10-1973 entrusted the six fully bogus vouchers Ex. P-2206, etc. to A-42 and instructed him to present them at the Cash Section and get the money after allowing the 5% deduction. PW 4 on receiving these vouchers presented by A-42, finding that they did not contain the acquittance, all-paid certificates and A.E.'s certificate, returned them to A-42 asking him to get them back after complying with these requirements. A-42 came and reported this to PW 2 who was upset over this and not knowing what to do was greatly confused. It has been suggested that if this is true, PW 2 would have rushed to the Cash Section to ask as to why they insisted like that. PW 2 has given an acceptable explanation. He said that he thought that he should do what the Cash Section wanted as otherwise money would not be forthcoming. Just at that moment PW 1 contacted PW 2 over the phone and PW 2 apprised him about the attitude of the Cash Section. PW 1 promised to contact him over the phone again, and met A-87 and sought his advice in this regard. The question appeared to be quite simple to A-87 who asked PW 1 to see that these bogus muster-rolls were brought to his house in Dr Rangachari Road where the acquittance, etc. could be complied with. PW 1 informed this to PW 2 who instructed A-42 to proceed to the house of A-87, meet PW 1 and await PW 2's arrival there. PW 2 also followed him after sometime. In the meantime A-87 brought the necessary revenue stamps and had them affixed against the fictitious names in the vouchers by A- 105 and asked those present namely PW 1, A-42 and A- 105 to affix their signatures or thumb impressions on these stamps. A-87 also affixed his signatures and thumb impressions on them. It was at this juncture that PW 2 also arrived on the scene. The acquittances were thus completed. This part of the evidence about the acquittances having been fabricated by A-87 with the help of PW 1, A-42 and A-105 is borne out by the six fully bogus vouchers wherein the part played by these persons is noticed.

Vr.Ex. P-2206 - Thumb impressions of A-87. P- 1 8264, etc. (4 F.Ps.) Handwriting of A-42 - P-20191, etc. (three) Vr. Ex. P-2217 -F.Ps. of A- 105 - Ex. P- 1 828 1. Handwriting of A-42 - P-20193 in P-2219 Vr. Ex. P-2228 - F.Ps. of A-42 - Ex. P- 18289 (one) Handwriting A-42 - P-20198 and P-20208 in P-2229 and 2233. Vr. Ex. P-2234 - F.Ps. of A-87 - Ex. P- 1 8296, etc. (1 9 prints) Vr. Ex. P-2240 - F.Ps. of PW 1 - Ex. P- 18364 (one) Handwriting A-42 - P-20223 and P-20224 in M.R.P-2244. Vr. Ex. P-2246 - F.P. by PW 1 Ex. P- 1 8372 (8 prints) Handwriting by A- 1 05 - P-20233 and P-20234 in M.R.P-2253 and 2254.

(f) Conspiracy at Usman Road Electrical Sub-station

58. It is in this background that we see the non-officials acting in two groups thereafter, Thiru Munuswamy, A-76 and A-77 on the one hand A-75, A-78, A-79, A-80 and A-84 and A- 94 on the other. It is also seen that the first of these two groups having been paid by PW 2 quite naturally were happy to render any assistance that might be needed by PWs 1 and 2. The second group on the other hand were in great temper and intent upon getting the entire Electrical Department into trouble. This explains the promptness with which A-75, A-78, A-84 and A-94 met PW 359 who had just then assumed charge of the Commissioner of the Corporation and expressed their desire to scrutinise the records relating to the Electrical Department because of certain irregularities in the disbursements of money in the department. It is significant that while the identical accused has inspected the outdoor establishment towards the end of September 1973, ostensibly to check the muster-rolls with PW 5, they utilised the opportunity and assured themselves of monthly payments by PW 5, putting up the bogus muster-rolls and nothing further was done by them and they had busied themselves in reviving this scrutiny on 19-10-1973. The reason is not far to seek. The assurance of payments and the steps taken in that direction by the person concerned together with the payments by PW 5 had lulled them in a belief that things would move smoothly and they were assured of regular payments. But when they found that such payments were not forthcoming and the officials like PWs 9 and 10 were not cooperating in putting up bogus muster-rolls they quite naturally started giving trouble. The information that Thiru Munuswamy and A-76 had been paid in preference to them kindled the instinct of revenge in them and they were not slow to take to this instance. It is in the evidence of PW 359 that he directed these accused to the Revenue Officer. The evidence further shows that from that time onwards these accused busied themselves in the scrutiny of records and preparation of report. It may be necessary at this stage to refer to the notice of resolution given by A- 82 wherein the Government was to be requested to depute a suitable officer to go into the affairs of the Electrical Department of the Corporation of Madras. The exact text of this resolution runs thus :

"That this Council resolves to request the Government to depute a suitable officer to investigate into the matter pertaining of false muster-rolls in the Electrical Department, Corporation of Madras which has resulted in loss to the Corporation to the tune of several lakhs of rupees and suggest suitable remedial measure."

The proceedings have been marked as Ex. P-14529. Quite naturally the accused connected with the muster-roll racket more particularly A-2 who was the head of the department were greatly alarmed and unnerved. It was with a view to find out ways and means of meeting this situation that A-2 decided to take some of the accused who were close to him into his confidence and decide upon the

course of action. As a first step, on 28-10-1973 A-2 went to the house of PW 2 and not finding him there picked up A-3 from his house and A-2 and A-3 went to the office of PW 5 at about 9.00 a.m. and informed him that the bogus muster-roll matter was likely to come up for discussion in the next Council meeting. They, therefore, asked him whether he knew any of the Councillors of the jurisdiction. PW 5 said that he knew a certain Bhaskaran, ADMK Councillor. A-2 and A-3 asked him to persuade this Councillor to see that the matter of bogus muster-rolls was not raised in the Council meeting. Thereupon A-2, A-3 and PW 5 proceeded to Adambakkam in a jeep and collected A-39 and with him went to Tondiarpet and met A-44. A-2 asked A-44 to meet A-81 and request him to see that the bogus muster-roll matter was not raised in the Council. A-44 met A-81 who suggested that A-82 should be met in this connection and the matter squared up. This evidence is corroborated by Ex. P-20647 the diary admittedly maintained by A-44 which was seized by PW 318 in the course of the house search of A-44's residence on 17-11-1973 wherein there is reference to the visit of A-2, A-3, PW 5 and A-39 and to his having met A-81 that day. The journey undertaken by A-2, A-3 and PW 5 to Adambakkam and Tondiarpet and other places are also spoken to by PW 283 the jeep driver who was driving the jeep.

59. A-2, A-3, A-39 and PW 5 thereupon proceeded to T. Nagar picked up A-6, and proceeded to Mylapore in search of PW 1. PW 1 along with A-38 and A-41 were discussing about the situation at the Rajarajeswari Elementary School verandah in South Mada Street, Mylapore. On seeing the jeep with A-2 and others in it, PW 1 approached it and A-2 asked him to get into the jeep as there was some important work ahead and PW 1 did. According to the evidence of PW 1, A-87 was also talking with him and others when the jeep came.

60. All of them thereupon went to the house of A-6, where A-2 addressing the gathering spoke about the subject coming up before the Council on 30-10-1973. This meeting in the house of A-6 is also spoken to by PW 283 and PW 28. In the course of this talk, A-2 informed PW 1 that he having moved with the Councillors intimately had to tend his help on this occasion. PW 1 stated that he had already met A-75 and other members of the committees and also important party leaders and if only the remaining bogus muster-rolls had been signed by A-2 the matters would not have come to this stage. A-2 admitted his mistake and said that it was because of this A-75 and others could not be paid. PW 1 also said that he had paid Rs 5000 to A-82 through PW 8 and that if important Councillors were squared up by payment the situation in the Council meeting could be averted. A-2 thereupon suggested that funds could be raised among those indoor and outdoor officials who had partaken of the proceeds of the bogus muster-rolls and for that end all the outdoor officials could be asked to attend a conference on 29-10-1973 at 9.00 a.m. at Usman Road Sub-station and information to all concerned sent in this regard. A-2 also asked PW 1 to bring PW 8 to this conference. This part of the evidence of PW 1 is also spoken to by PW 5. As A-2, A-3, A-6, A-39 and PW 5 along with PW 1 were engaged as stated above on 29-10-1973 PW 2 who learnt of the search by A-2 for him on his return home, thought that there was no point in his meeting A-2, then, but decided to approach A-94 and seek his help. Accordingly he met him and requested him to use his good offices and persuade A-75 to see that PW 2 was not exposed any danger. Accordingly A-94 took PW 2 at about 6.30 p.m. to the old MLAs' Hostel where they saw in Room No. 23, A-75 and A-78 along with a certain Sridharan. When A-94 commended PW 2 to the protection of A-73, the latter lost his temper and observed that while he was responsible for the revival of the bogus muster-rolls

by PW 2 and had rendered all possible assistance in having them passed, PW 2 had the temerity to pay Thiru Munuswamy and A-76 alone and had completely ignored him. To this PW 2 replied that he had only disbursed money to those who were creating troubles and that he was quite sincere and hoped to pay A-75 and others out of the remaining bogus musterrolls but unfortunately it was A-2 and other Assistant Engineers that had prevented this. At this A-78 asked PW 2 to phone up to A-2 once again and ascertain from him as to why he had come in search of him that day. A-2 could not be contacted over phone as he was not available. By this time A-84 also joined A-75, A-78 and A-94 and all of them took a decision to go to Mahabalipuram and draw up a report about the Electrical Department. On this decision PW 2 got unnerved and implored all of them to save him. A-75 thereupon suggested that as there was no going back on their part, the only way to save himself was by PW 2 becoming an approver. The reaction of PW 2 was one of disgust. He promptly replied that if he were to figure as an approver, it might involve exposure of A-75 and others also. This perhaps set A-75 thinking and after a while, he assured PW 2 that he would try to exclude him from his report. So saying A-75 and others left for Mahabalipuram. PW 2 was thereupon taken by Sridharan on his motorcycle to his house in Kottur where PW 2 spent the night and also the following day which was a holiday, till about 8 or 8.30 p.m. A-75, A-78, A-84 and A-94 have admitted having been seen by PW 2 on 28-10- 1973 and of their having left for Mahabalipuram for preparing the report.

61. On the morning of 29-10-1973 the conference by A-2 at the Usman Road Sub-station commenced and continued till late that night. Among those that attended this conference were PWs 1 and 8, A-2, A-3, PW 5, A-6, A-10, A-11, A-12, A-14, A- 16, A-18, A-19, A-20, A-21, A-22, A-23, A-26, A-37, A-38, A- 39, A-40, A-41, A-44 and PW 6. The jeep driver PW 283 was also present. It was A-2 who addressed the gathering. After apprising those present about the dangers to which they stood exposed, he suggested that money should be paid to the T & F Committee, and the leaders of the political parties could be paid and silenced. He also asked A-3 to fix the contribution that each of them must pay. A-3 said that each Electrical Supervisor has to pay Rs 5000, Charge Engineer and Lighting Inspector to pay Rs 3000, A-44 Rs 2000, A-39 Rs 1000, A-38 and A-41 Rs 3000 and the balance by others according to their capacity. If any further money was required it should be contributed by PW 1 and A-37. At this PW 1 pleaded that he had no money at the moment to which A-2 replied that this could be considered after the collections from others are over. It was also decided that the collections should be made over to PW 5 before 12 noon on 30-10-1973. The members who attended this conference dispersed in the course of the day but A-2, A-3 and PW 5 remained there.

62. This conference and the deliberations therein has been spoken to by PWs 1, 5, 6, 8 and 283. In pursuance of the decision to make collections, PW 5 received various amounts from some of the accused which are as follows:

63. Rs 2000 from A-4, Rs 5000 from A-6, Rs 10,000 from A- 10, Rs 1010 from A- 16, Rs 800 from A- 18, Rs 500 from A- 19, Rs 500 from A-22, Rs 1000 from A-23, Rs 1000 from A-26, Rs 1000 from A-38, Rs 500 from A-39 and Rs 490 from PW 6, in all Rs 20,000 (sic). The fact that PW 6 was paid Rs 490 is also borne out by his evidence which is corroborated by PWs 43 and 47 who speak to their having raised the money by pledging the Citizen watch and a ring belonging to PW 6, PW 6 has also spoken to A-10 having attended the meeting. The collection amount of Rs 20,000 was with PW 5. As

per the direction of A-2 and A-3, PW 5 was having this money in his office till 7-11-1973. On that day A-87 approached PW 5 and asked him for the money. He evaded saying him and when he brought this to the notice of A-3, A-3 advised to keep the money in his house and produce it whenever required. As PW 5 did not have any facility to keep the large sums of money with him, he entrusted it to his brother-in-law PW 14. PW 14 in his evidence has stated that the money was entrusted by PW 5 stating that they have been collected from Corporation officials for some purpose. On 14-11-1973 PW 14 deposited a sum of Rs 9000 in his savings bank account of the T. Nagar Indian Bank Branch. He gave Rs 11,000 the balance to his friend PW 37 asking him to keep it safe which he did in his Godrej almirah. There is no reason to disbelieve PWs 14 and 37 who struck me as truthful witnesses. Ultimately PW 5 got these moneys from PWs 14 and 37 and produced it before PW 360, the Superintendent of Police, DVAC on coming to know of the arrest of A-2 and A-3 Ex. P-13908 is the report under which this money produced by PW 5 was seized PW 360 M.O. 7 series is the money. The evidence of PW 5 is thus materially corroborated not only by the testimony of PWs 14 and 37, but also by his production of M.O. 7 series under Ex. P-20651 before PW 360.

64. I shall now deal with the contentions raised by the learned counsel for the accused in regard to this conference convened by A-2 on 29-10-1973 while some of the accused like A-6 and A-39 would deny that there was no such conference, some others would admit that there was such a conference. But according to them it was a departmental conference convened by A-2. In the face of the evidence of PWs 1, 5, 6, 8 and 283 whose evidence, there is no reason to disbelieve, the contention of the accused that there was no such a conference cannot be countenanced. The fact that there was such a conference is implicit in the admission of A-39 that there was a conference although he would say that it was to discuss departmental affairs. I find that there was a conference convened by A-2 on 29-10-1973 at the Usman Road Sub-station and that the accused mentioned earlier did attend the conference. I also find that the conference was convened only for the purpose for which PWs 1 and 5 have stated it was convened. Admittedly 29-10-1973 was a public holiday and it was impossible to believe that any departmental or official conference would have been convened by A-2. It is equally impossible that when there was sufficient accommodation in the Ripon Buildings, A-2 should have chosen the Usman Road Sub-station as the venue for such a conference particularly when no special reason for holding such a conference in a place other than the Ripon Buildings has been suggested. Had there been such an official conference, one would expect a record of such a conference being available in the Corporation. No such record is forthcoming nor have any of the accused produced any record or taken steps to produce any such record. In the absence of such a record coupled with the improbabilities pointed out by me on other conclusion except that the conference was convened for the purpose and with the object mentioned by PWs 1 and 5 is possible.

65. The learned counsel for A-7 has contended that there was no need to convene such a conference on 29-10-1973 for collecting funds to pay the Councillors as muster-rolls could be fabricated as was the practice and the necessary funds raised. There is no force in this contention. By this time the events in the Corporation particularly as far as the non-official block namely A-75, A-78 etc. is concerned have taken such a turn that putting up of bogus muster-rolls had become impossible. In fact PW, 2 was not able to negotiate a portion of the bogus muster-rolls because PWs 9 and 10 had refused to sign them. A-2 also had displayed an attitude rightly or wrongly not to pass the bogus muster-rolls unless PWs 9 and 10 signed them. It was at this juncture on 18-10-1973 that A-75 had

his friends finding that A-2, PWs 9 and 10 were not cooperating and threatened PW 2 that Electrical Department people would be taught a lesson. They followed this up by meeting PW 359 and proceeded to inspect the vouchers of the Electrical Department. While this was going on the resolution was tabled by A-82 for an investigation into the muster-roll affairs. Further the resolution was to come off on 30-10-1973. As such there was no time to raise money even if A-2 and others were agreeable to put up bogus muster-rolls. Bogus muster-rolls could be put up only by the first week of November 1973. In view of the developments during the weeks preceding 30-10-1973 the only course open was the fact that there is no evidence as to how the accused are said to have attended the conference on 29-10-1973 were apprised of this meeting as the decision to convene it was taken only on the night of 28-10-1973. It is improbable that all the accused who are said to have attended would actually have done so. This contention overlooks the evidence of PW 1 who has specifically stated that on 28-10-1973 itself A-2 directed A-3 to inform all the indoor and outdoor officials and secure their presence at the Usman Road Sub-station on 29-10-1973. No further evidence can possibly be adduced in this regard as the only other person who can speak to this is A-3 who is an accused in this-case. That A-3 could have contacted the other accused over the phone is also possible inasmuch as he is having a phone at his residence. The fact that A-39 had admitted having attended the Usman Road Sub-station meeting on 29-10-1973 although he would say that it was normal official meeting for which there is no evidence is enough to show that the intimation had reached him sufficiently in time enabling him to be present at the meeting. It is not therefore unlikely the other accused who have attended the meeting might have similarly been apprised of the meeting on 29-10-1973.

66. In addition to this we have the evidence of PW 2 that such a conference did take place on 29-10-1973. This is what PW 2 has stated. While he was staying in the house of Sridharan at Kottur on the night of 29-10-1973 PW-34, an Electrician working at the Kasthurba Nagar Sub-station happened to see PW 2 there. He speaks to PW 2 coming to the Sub-station and contacting A-2 over the phone who was then at Usman Road Sub-station and found A-2, A-6, PW 5, A-44, A-39 and A-21 there. It was late in the night. On seeing him A-2 questioned him in a fit of temper as to why he did not turn up in spite of the fact that he had searched for him. PW 2 pacified him by stating that he also was engaged in similar mission meeting A-75 with a view to see that no action was taken against the Electrical Department. A-2 informed him that A-3 and PW 1 had gone to the MLAs' Hostel in search of A-75 to which PW 2 replied that A-75 was not there in the Hostel as he and his associates had proceeded to Mahabalipuram to draw up a report against the Electrical Department and that they were expected only on the morning of 30-10-1973. While the conference was in progress on 29-10-1973 at the instance of A-2 PW 1, A-3 and PW 8 left the meeting with a view to see A-75 and impress upon him about the efforts that were being taken by collecting money and requested him to defer taking action as threatened by him. A-75 could not be traced either at his residence or even at the MLAs' Hostel and consequently PWs 1 and 8 and A-3 returned. Their attempt to meet A-77 and A-81 and seek their help also were unsuccessful as they could not meet them. On being informed of this A-2 suggested that a further attempt might be made in the afternoon to which they agreed. Accordingly, PW 1 and A-3 along with PW 8 proceeded to the MLAs' Hostel but not finding A-75 there, proceeded to the house of A-81 as advised by A-3. A-3 conveyed the information to A-81 who assured him that he would not be putting any obstacles in their way. He also gave the hint that the troubles could be put an end to if A-82 was squared up. After they were assured by A-81 of all

possible help, PWs 1 and 8 and A-3 left his house and went to see A-87 in his house. But A-87 was not available. Thereupon they came back to the MLAs' Hostel and waited till late in the night but A-75 could not be seen. The visit of PWs 1 and 8 and A-2 in the morning in search of A-75, A-81 and A-77 is also spoken to by PW 283. It was in the jeep driven by this witness that these persons travelled on that occasion. The afternoon journey was made by them in a taxi and the services of the jeep were not availed of by them. Sometime before lunch that day A-3 also went to the house of A-34 in the jeep. This is confirmed by the evidence of PW 283. Besides the evidence of these persons that A-75 and his associates had left for Mahabalipuram to prepare the report against the Electrical Department, we have also the evidence of PWs 15 and 56 the peon and the personal clerk. These accused themselves have admitted having gone to Mahabalipuram with a view to preparing a report. Learned counsel for A-6 has pointed out that there is a discrepancy in the evidence of PWs 1, 8 and 283 about the mode of conveyance used by them on 29-10-1973. I see absolutely no contradiction in this regard. These witnesses have specifically stated that they undertook two trips on 29-10-1973. One was in the morning and for this journey, the services of the jeep driven by PW 283 were requisitioned. The other was in the afternoon which was made in a taxi. In fact PW 283 does not refer to the second trip by PW 1.

67. After having noticed the findings of the trial court in various stages of the conspiracy, we may notice the recovery made from accused 3 on 17-11-1993 during his house search. FIR itself was recorded on 15-11-1973 and the house search of accused 3 was conducted on 17-11-1973 which resulted in the recovery of two very material documents viz. Exhs. P- 3120 and P-8406. The documents were seized from A-3 by PW

325. The recovery of the documents were admitted by A-3. In spite of it, the High Court made a grievance that the attesting witnesses to the list, by whom these documents were seized, Exh. P-14995 were not examined. These documents give the list of various accused persons, who were to receive payments regularly and the approximate amounts which were being paid by PW 1. As explained by PW 1 this list was prepared to have some idea about the collections which may be required to be made in future for keeping the various accused persons satisfied about their share as a result of various bogus vouchers being prepared in future.

68. After having noticed the findings of the trial court to various stages of conspiracy we are in complete agreement with both the reasoning as well as the findings arrived at by the trial court and the High Court was not justified in holding that the prosecution was not able to produce direct evidence from the commencement of the conspiracy till its end when PW 2 took over A-4's seat. The finding of conspiracy is fully corroborated by two sets of documentary evidence one set consists of the alleged 168 bogus vouchers and the second is the recovery of lists from the residence of A-3, namely Exhs. P-3120 and P-8404. The finding of the High Court that the bogus nature of the muster-rolls has not been established since the police officers who took fingerprints were not covered by Section 2(b) of the Identification of Prisoners Act, 1920 is erroneous. Section 2(b) of the Identification of Prisoners Act defines "police officer" as " 'Police officer' means an officer in charge of a police station, a police officer making an investigation under Chapter XIV of the Code of Criminal Procedure, 1898, or any other police officer not below the rank of sub-inspector". "Officer in charge of a police station" under Section 2(o) of the Code of Criminal Procedure is defined as

under-

"officer in charge of a police station' includes, when the officer in charge of the police station is absent from the station- house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present;"

69. The two police officers who took the fingerprints were Head Constables, PWs 351 and 352. These witnesses were never cross-examined. The taking of fingerprints is an act which is ministerial in nature. The question is of identity of the accused persons. It appears from the judgment of the trial court that the accused persons admitted their fingerprints. Had there been any cross-examination, it would have come out as to how they were authorised to take the fingerprints. Since the taking of fingerprints by the two PWs was never questioned before the trial court, the reliance by the High Court on Section 2(b) of the Identification of Prisoners Act, 1920 is erroneous. This was the main reason given by the High Court in holding that the bogus nature of 168 vouchers has not been established. It is clear that all these vouchers were not paid at the outdoor counter; the vouchers issued were utilised in the same month; there had been abnormal increase in missing of vouchers and all the vouchers were paid indoor, contrary to the procedure laid down for it. The acquittance portion of the disputed vouchers bear the fingerprints of accused 22, 23, 24, 26, 30, 31, 42, 68, 69, 87 and PW 1 and all the payments were made indoor. These vouchers relate to the period 3-9-1969 to 8-10-1973.

70. In a large number of muster-rolls, there were even thumb impressions made by certain accused persons. These accused were literate persons and putting thumb impressions by them was a very strong circumstance to show (a) that the muster-rolls were forged and (b) that there existed a conspiracy. The two reasons given by the High Court for rejecting the forged nature of musterrolls were (a) that the head constables like PWs 351 and 352, who had taken thumb impressions, were not competent officers. This aspect we have already dealt with. The entire evidence of the handwriting expert has been summarily dealt with in paragraph 358, page 397 (Vol. IV) by the High Court. The musterrolls have been written by many persons and in order to show the identity of these persons, it was necessary to consider the evidence of the handwriting expert. The identity of the handwriting would show that the persons who had nothing to do with the muster-rolls had made various entries in the muster-rolls either by way of marking the presence of workers or on different portions of the muster- rolls. Again on Exhs. P-3120 and P-8406 the High Court unnecessarily doubted the seizure when accused 3 himself had admitted the same. These two documents show the names of various persons who had been paid out of the muster-roll conspiracy and all that evidence lends substantial corroboration to the evidence of PW 1. The seizure of such a document of which PW 1 is the author from the custody of accused 3 is substantial corroboration to the conspiracy. The High Court should not have, therefore, excluded 168 fully bogus muster-rolls. The entire reasoning of the High Court in rejecting the bogus nature of the muster-rolls is thus erroneous.

71. The case of the prosecution was that the muster-rolls were entirely fabricated and there had been fictitious payments to workers and the musterrolls had been prepared only to withdraw money from

the Municipal Corporation and whenever the conspirators desired to raise money, they had fabricated the muster-rolls. There has been an evidence to show that the musterrolls were even prepared in Rekha Lodge. It is implicit that no work was done, but nevertheless the muster-rolls had been fabricated to support the claim for withdrawal of money. When there is a large scale of fabrication of proved 168 fully bogus muster-rolls, besides numerous destroyed muster-rolls, over a period of 4 years and this fact is shown from the evidence of seven approvers, a large number of persons had taken benefit of the conspiracy on account of the payments being made to them, which accounts for unexplained assets being acquired by large number of accused persons. In the conspiracy at different stages, different persons had participated and taken benefits. There is also an evidence of some of the members contributing the money so as to make payments to people who were likely to create trouble. All this conclusively show that the trial court's finding about the conspiracy was right and the High Court acted rather hastily in coming to the contrary conclusion.

72. The trial court exhaustively dealt with the evidence against each accused. From amongst 75 accused convicted in the trial court only 4 were convicted under Section 120-B IPC. All 71 other accused were convicted not only under Section 120-B but also under various other substantive charges. This obviously shows that against each one of the 71 accused there was also further corroborative evidence of substantially new facts. All this has been dealt with by the trial court in Vol. III, pp. II 33-1648 of its judgment. The High Court has not considered the matter from this angle at all. The High Court has only considered individual cases of only accused 70 and 82. It is submitted rightly that the approach of the trial court was relevant because that approach alone would show material corroborative evidence which will support the other evidence in the case.

73. PW 1, no doubt is a major witness in this case, but he is not the only witness. PW 1 came on the A.4 seat in July 1972 and was there till August 1973 when he took leave. Then he was busy with his cinema business. After him accused 35 came on the A.4 seat and from September 1973 PW 2 came on the A.4 seat. PW 1's demeanour has been marked at pp. 794, 795, Vol. II of the trial court judgment. The volume of evidence which he gives of all the details is in its nature is such that evidence cannot be the result of tutoring. PW 1 was a young man of 23/24 and he was an ordinary clerk. He was made instrumental in the conspiracy by accused 2 and others. From his evidence it has not been shown that he has got any particular animus or ill-will against any accused which would motivate him towards false implication. It has also not been shown that his evidence suffers from any material contradiction or improvements. In the very nature of things PW 1 who was an ordinary clerk could not have functioned on A.4 seat and participated in a huge conspiracy unless all the other departments were co- conspirators with him and unless he had the blessings of his co-conspirators as well as of responsible higher-ups of the Municipal Corporation. PW 1's evidence is corroborated on account of the assets which he readily made and went to the extent of even producing a film within a span of about one year after he entered the conspiracy. There is independent evidence about his cinema partnership agreements and his acquisition of other assets. In the same manner, there is corroborative evidence to show that when the conspiracy came in trouble he was required to liquidate his assets. On this score also there is evidence of his financier. PW 1 was introduced into the conspiracy in a meeting in the chamber of accused' 2 sometime in July 1972. The instructions, which he got there, got reflected in the manner in which he distributed the muster-rolls to some of the people named in that chamber meeting and his initial pencil markings in

P-4 and P-5 which are adverted to at pp. 796, 797 of the trial court judgment, Vol. II, also show the existence of such a meeting. It is also to be noted that the entire subsequent conduct of PW 1 and the subsequent operation of the conspiracy is consistent only with the fact that there was a meeting in accused 2's chamber. Even the accused, as a part of their defence, have not disputed that PW 1 functioned on A.4 seat. Neither they have disputed that while functioning there, PW 1 made a lot of money. This indirectly supports the claim made by PW 1 about his having entered into the conspiracy and subsequently participated in it. One of the main criticism against PW 1 was that the Office Order shows that he joined A.4 seat only in November 1972. The prosecution evidence is that though a formal order came later on, PW 1 started working on the A.4 seat and started his participation in the racket right since July 1972. Pages 530 and 537 of the trial court judgment, Vol. I, would show that he worked on A.4 seat even in July and August 1972. Pages 796 and 797 markings at P-1 and P-5 also show a similar thing. Page 588, Vol. II, the trial court judgment evidence of PW 293 shows that till July 1972 he took payment from PW 1. These are only some of the instances shown to falsify the criticism that PW 1 only joined the conspiracy in November 1972. It is also submitted that in substance the point when he joined the conspiracy is not really very much material. Even supposing he joined in November 1972 the period from 1972 onwards would involve all the accused and it will be so if the portion of the evidence from 1972 onwards contain similar evidence that they previously manufactured 138 bogus vouchers.

74. The High Court has erred in discarding the evidence of PW 8. This witness has given material evidence at various stages of the conspiracy and important developments therein. He was the person who was acquainted with many corporate, and whenever occasion arose he has helped the conspirators particularly PW 1 and PW 2 in getting introduced to the corporators in getting certain things done by the corporators to help the conspiracy. The High Court described the witness as an "unapproved approver". This witness has not got any benefit from out of the conspiracy. The observation of the High Court that this witness might have pocketed the money to be given to A-82 was very much an artificial and unreasonable surmise. It may be mentioned that no such case was made in the trial court. The evidence of this witness corroborates and is in its turn corroborated by other evidence in the case.

75. The rejecting of the evidence of this witness by High Court only shows the unreasonable approach of the High Court. To illustrate, the High Court rejects seven approvers, and then rejects the evidence of persons who took the benefit of conspiracy as accomplice evidence, and further rejected the evidence of PW 8 and PW 7 as "unapproved approver", for same reason the High Court was wrong in rejecting the evidence of PW 7.

76. The High Court was, however, right in acquitting various Councillors of the charge under the Prevention of Corruption Act as they are not public servants, in view of the decision of this Court in *Ramesh Balkrishna Kulkarni v. State of Maharashtra*. The acquittal of the Councillors (A-75 to A-80 and A-82); Chairman and Member of the Accounts Committee (A-84 to A-86); Members of the Works Committee (A-87); Members of the Education Committee (A-94 to A-96); Member of the Town Planning Committee (A-98) and Councillors (A-102 and A-104) under the provisions of the Prevention of Corruption Act is thus upheld. However, there respective convictions and sentences for other charges as found by the trial court are upheld and their acquittal by the High Court for

those other charges was not justified. All the public dignitaries themselves had become the kingpin of the criminal conspiracy to defraud the Corporation of Madras.

77. The last finding of the High Court in reversing the decision of the trial court so far as it upheld the sanction for prosecution of the employees is again erroneous. The High Court was in error in its view that only the special officer appointed by the Corporation, when it was superseded, was competent to grant the sanction. It will be noticed that here the sanction had been given by the superior authority, namely the Government itself which appointed the special officer. Once the sanction is granted by the superior authority it does not get invalidated. It could be invalid if the sanction had been granted by the authority subordinate to the authority who had to grant the sanction and in that case would have been subject to challenge. We thus find that the trial court was right in holding that the sanction was validly granted by the competent authority.

78. Some of the learned counsel for some of the respondents tried to generally argue against the finding of conspiracy recorded by the trial court. For that the argument of learned counsel is common. Mr Francis Jullian argued particularly for accused 102; Mr Murlidharan for accused 38; Mr N. Ranganathan for accused 37; Mr Krishnan for quite a few accused persons as well as Mr Krishnaraj for accused 28, who was Leader of the Opposition. We are in complete agreement with the seasonings of the trial court in convicting the employees. We are also in agreement with the trial court in convicting accused 82 except for the charge under the Prevention of Corruption Act mentioned by us earlier.

79. In the presence of seven approvers and the mass of corroborated evidence, there was no reason for the High Court to disbelieve the approvers. They had not only corroborated each other but their material statements had been corroborated sufficiently by 168 bogus muster-roll vouchers coupled with Exhs. P-3120 and P-8406.

80. So far as the acquittal of the employees of the Corporation are concerned, we are thus constrained to set aside the judgment of the High Court and restore the judgment of the trial court both in relation to their conviction as well as sentences of various charges.

81. Except to the extent indicated above in relation to the acquittal by the High Court of public men for offences under the Prevention of Corruption Act only, we are in complete agreement with the reasoning and conclusion arrived at by the Special Judge (trial court) in relation to all the charges and sentences in that behalf respectively in respect of all the accused persons convicted by the trial court. 3 (1985) 3 SCC 606: 1985 SCC (Cri) 407: AIR 1985 SC 1655

82. The appeals against accused 7, 24, 25, 30, 39, 48, 75, 76, 78, 79, 89, 95 and 99 who died during the pendency of the appeals before this Court are dismissed as having abated. The appeals against other accused are allowed.

83. Before parting with this judgment, we may deal with the claim of arrears of wages by the legal heirs of those accused-employees of the Corporation, who have died during the pendency of these appeals. It is no doubt correct that the appeals against them have abated and their acquittal by the

High Court cannot be technically interfered, but having allowed these appeals and convicting the respondents even on the charge of conspiracy, it would not be in the interest of justice to permit the legal heirs of deceased-accused persons to claim arrears of wages on the ground that their acquittal has not been set aside because of the abatement of the appeals. The charge of conspiracy against accused- respondents and the deceased-accused was common. The same evidence which we have believed qua the respondents is also directed against the deceased-accused. Under these circumstances it would be wholly unjust to permit the legal heirs of the deceased-accused to take advantage of their acquittal by the High Court and claim huge amount of arrears of wages from the Corporation. In order to do complete justice between the parties, we direct that the legal heirs of the deceased-accused whose acquittal could not be set aside due to the intervention of death shall not be entitled to claim any arrears of wages and/or any service benefits.