(1991) 10 BOM CK 0067

Bombay High Court

Case No: Criminal Revision Application No. 123 of 1991

State of Maharashtra		APPELLANT
	Vs	
Dr. B.K. Subbarao and another		RESPONDENT

Date of Decision: Oct. 12, 1991

Acts Referred:

- ATOMIC ENERGY ACT, 1962 - Section 18, 19, 20, 24, 26
- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 13A
- Constitution of India, 1950 - Article 134, 21, 226, 227, 77
- Criminal Procedure Code, 1973 (CrPC) - Section 13, 197, 200, 202, 216
- Government of India Act, 1935 - Section 270
- Official Secrets Act, 1923 - Section 13, 3, 5, 6, 9
- Penal Code, 1860 (IPC) - Section 409, 477A

Citation: (1993) CriLJ 2984

Hon'ble Judges: M.F. Saldanha, J

Bench: Single Bench

Advocate: Mrs. Usha Purohit, P.R. Vakil and Mrs. Manjula Rao, Special Public Prosecutor, for the Appellant; Dr. B.K. Subbarao, (Party in person), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This petition/criminal revision application, presented by the State of Maharashtra, is directed against a judgment and order of the learned Additional Sessions Judge, Greater Bombay, dated 26-4-1991. Through this petition, the State of Maharashtra has assailed the correctness of the order of the learned Additional Sessions Judge whereby the respondent, whom I shall refer to as "the Accused", has been discharged of certain offences punishable under the Official Secrets Act, 1923 and the Atomic Energy Act, 1962 a few facts that are relevant for the decision of this criminal revision application are alone being recounted by me. I need to prefix this judgment with the observations that this particular litigation has been preceded by

a score of petitions addressed to the different Courts before which the prosecution was pending, to the High Court and, on more than one occasion, to the Supreme Court. The matter has been vigorously contested and it has been the contention of the Accused that the reason for this contest is because the Prosecution was motivated and that the viciousness with which the proceedings continued right up to the present stage was because of an element of personal vendetta. I shall have occasion to make my observations with regard to these aspects of the case in the course of the judgment because they are relevant. Normally, there would have been no reference to this aspect at the initial stage of the judgment, but there appears a degree of justification in this charge and it is for this reason that it is being referred to by me.

2. Coming first to the background and the relevant facts. The Accused before me, Dr. B. K. Subbarao, is a senior member of the Armed Forces having joined the Indian Navy on 15-7-1962 as a Sub-Lieutenant and having finally parted company with the Navy on 27-10-1987 when he opted for premature retirement, at which time he was holding the rank of a Captain. There are references on record to indicate that the Accused followed up a brilliant academic career with an even more distinguished service record in the course of which his talents and expertise and proficiency in the field of computers and sophisticated fields of communication were commended and it was for this reason that he came to be associated with certain prestigious and important assignments. The Accused opted for premature retirement, as indicated by me, and it appears from the record that he was thereafter doing certain assignments for CEAT Tyres India Ltd. and some other commercial organisations. On the night of 30th May, 1988, the Accused was leaving for New York by an Air India flight when it is alleged that the Customs Officers at the Airport decided to check his baggage. It is further alleged that in the course of the baggage check, certain documents are alleged to have been found in his possession and these documents are supposed to have had certain nothings on them that they were secret documents. According to the Prosecution a Panchnama was drawn up and the Inspector of Police, Sahar Airport Police Station, was requested to take over the matter because the Customs Authorities, prima facie, felt that the Accused ought not to have been in possession of these documents and that, consequently, the situation was actionable. The Police Authorities placed the Accused under arrest, and in the course of the investigations they are alleged to have searched the respondent-Accused and it is their case that several other documents of an equally confidential nature were found in the course of that search. The Investigating Officer thereupon obtained certain authorisation that were necessary from Central Government, completed the investigations and submitted a charge-sheet before the local Magistrate. The Investigating Officer also took note of the fact that the special statutes under which the Accused had been charged required a special procedure to be adopted and he, therefore, in compliance with the procedure, filed a complaint before the learned Magistrate. The learned Magistrate proceeded on the basis of

the complaint and the charge-sheet that had been filed was tagged to the complaint, but admittedly it on the basis of the complaint filed by the investigation Officer, Mr. Sawant, that the Court took cognizance of the offences. Since it was pointed out to the learned Magistrate that the charges against the Accused were under the Official Secrets Act and the Atomic Energy Act and involved several secret and confidential documents and aspects, the proceedings were held in camera and the leaned Magistrate thereafter committed the case to the Court of Session.

3. The Accused, when he was produced before the learned Magistrate on 31-5-1988 itself, made an application that he should be released on bail and it also appears that thereafter the Accused filed a detailed application before the Court on 13-6-1988 in which he contended that the authorities who had arrested him have wrongly proceeded against him on the assumption that he had committed infringements of the Official Secrets Act and the Atomic Energy Act; whereas, according to him whatever documents he is alleged to have been carrying, at their face value, could never justify such a charge. I need to mention one extremely curious aspect of this litigation which is that the documents, which I shall describe presently and which from the subject-matter of the charges, do bear a description which at first blush would give the impression that they are of an extremely secret and confidential nature connected with the Armed Forces and the Atomic Energy installations and that, consequently, ipso facto they would be covered by these two statues. It is unfortunate that in the course of the litigation which started on 31-5-1988 and after a lapse of three years and four months has still not been concluded that the Prosecution repeatedly get away by describing to the Court the titles of these documents and creating the unmistakable impression on every single Court that these were, in fact, secret documents, any disclosure or possession of which would be dangerous and prejudicial to the interest of the State and, furthermore, that if these documents fell into the hands of foreign agents or spies that the security of the State/country would have been endangered. It is, undoubtedly, easy to make these statements, but in a prosecution of the present type where a very distinguished and very senior member of the Armed Forces was placed on trial and where allegations of a very grave nature were levelled against him and were relentlessly pursued before every forum before which the case came, that the learned Judges at least of the subordinate Court ought to have been afforded the opportunity by the Prosecution to carefully scrutinize the original documents, in the light of what has been repeated by the Accused possibly more than hundred times in the course of these proceedings, that the accusations against him required serious judicial examination and not mere acceptance on the basis of descriptive allegations. To my mind, had this been done, the course of this litigation would have been different. It is, therefore, a matter of deep regret that this exercise had not been gone through because it is an elementary requirement of criminal law that when an accused is produced before a Court by the Investigating Authority who genuinely insists that serious offences relating to documents have been committed

and who is certainly entitled to justify the allegations; that the judicial authority which under the scheme of the Constitution of this country is the only safeguard for the liberty and fair enforcement for the citizen''s rights, must as a solemn legal duty scan and scrutinize the correctness of the charges on the basis of the material that is placed before it. Shockingly enough, neither the documents nor copies thereof where produced before the trial Court when the charges were framed. The ground given was that they were secret documents for which reason no copies were made and the originals were kept in a sealed cover, in which condition they continue to remain. That the Prosecution has got away with this is some achievement.

4. The Accused, as indicated by me, was arrested on 30-5-1988, and his application for bail was rejected on the ground that he is involved in very serious charges of espionage. This position continued from Court to Court. because on every occasion when the accused applied for bail, it was strongly opposed by the prosecuting authority on the ground that the offences are of a grave nature and that they are punishable with imprisonment for 14 years and, furthermore, that the very nature of the offences, which involved spying, were such that the Accused was disqualified from being released on bail. The record before me indicates that the Accused was refrained in custody in different jails, both within the city of Bombay and outside. After a couple of months, it appears that the health of the Accused broke down. It is his case that contrary to the directions of the Courts in this country, he had been handcuffed and was being transported in a van from Nashik to Bombay and that in the course of this he sustained serious back at one point of time it appeared that his life was in danger. Without going into the nature or gravity of the breakdown of his health, it needs to be pointed out that even when he was in this condition the release of the Accused on bail was still opposed by the Prosecution counsel, Ultimately, on 8-6-1989, my brother Suresh, J. (as he then was) passed a speaking order that the Accused be released on bail for a period of two months on medical grounds. The prosecution immediately rushed to the Supreme Court and an application was made before the Vacation Judge and an ex parte stay was obtained from the Supreme Court and the Accused was immediately taken into custody.

5. Digressing here, I feel it necessary to record that in the petition filed before the Supreme Court and in the arguments advanced by the Prosecution before that Court, a direct allegation was made against the learned Judge of this High Court, my brother Suresh, J. (as he then was), which was to the effect that in the face of an order dated 6-6-1989 passed by my brother Puranik, J. that on the very next day another application was made to another Court and Suresh, J. has virtually overruled his brother Judge''s order within less than 48 hours after it was passed. The Supreme Court, on the basis of these totally false and incorrect facts and submissions, had occasion not only to disapprove of what had happened and set aside the order of Suresh, J., but also went to the extent of passing strictures against the learned Judge of this Court, all of which would never have happened if the true facts had honestly been placed before that Court. Since one of the issues in the

present litigation is the question as to whether there is a breach of the provision of Art. 21 of the Constitution, it is essential to refer to these facts. I have gone through the judgment of Puranik, J. dated 6-6-1989 and the judgment of Suresh, J. dated 8-6-1989 as also the reported judgment of the Supreme Court delivered by Ahmedi, J. I have appointed out to learned Counsel appearing on behalf of the State of Maharashtra that the group of Petitions filed before Puranik, J. by the Accused raised different issues where by he had pointed out that the Prosecuting Authorities were in contempt. He had also made a prayer in the course of those petitions that he should be released on bail on merits. The Accused had been making this prayer for bail in every application filed by him from time to time. I do not see any fault on his part because if he seriously felt that the Court would at some time consider his plea he was certainly entitled to repeat his prayer for bail any number of times while he was in custody. Puranik, J. through a short order dated 6-6-1989 recorded the fact that statements had been made on behalf on the Prosecution by the learned Public Prosecutor and that a certain explanation had been tendered and that, consequently, no action for contempt etc. was warranted. Puranik, J. has also said in the order that having regard to what has been submitted by the Prosecution in respect of the merits of the case that he was not inclined to release the Accused on bail and, therefore, rejected his bail application. The group of petitions before Puranik J. was fully argued and adjourned c.a.v. on 6-3-1989 and it so happened that the learned Judge finally passed ordered only 6-6-1989. The condition of the Accused, who was in Jail, having taken a turn for the worse, he filed another petition in April, 1989 praying for release on medical grounds alone. These facts were totally suppressed by the State Counsel from the Supreme Court and a downright false allegation was made that the second petition was filed the disposal of the first set in June, 1989 and that Suresh, J. straightway allowed it.

6. What is of immense relevance is that in the month of April, 1989 the petition filed before Suresh J. praying for bail on medical grounds was exclusively confined to the fact that according to the Accused his physical condition was relatively bad, that he required specialised medical attention and that the treatment being afforded to him by the authorities was not of the type that could in any way assist his ailment and, therefore, it was absolutely essential that he should be afforded an opportunity of availing of specialised form of treatment, as he ran the risk otherwise of being paralysed. The Accused pointed out that one Dr. Dumgaonkar, who had examined him, was the doctor under whom he desired to avail specialised yogic treatment and it was on this ground that he had asked the Court to consider his bail application. Suresh, J. mentions in the order that the Prosecution had opposed the grant of bail even at this stage and the learned Judge spoke to the concerned doctor and even though the Court was of the view that the Accused should have at least been shifted to the G.T. Hospital that the Court was unable to pass such an order because the Prosecution contended that they were not agreeable to it. On 21-4-1989, Suresh, J. passed an order that Dr. Dumgaonkar should try and administer the treatment to

the Accused in the J.J. Hospital itself. It appears that attempts were made during the Summer Vacation and Dr. Dumgaonkar pointed out to the learned Judge in the month of June, 1989 that it was not possible for any such treatment to be given in the J.J. Hospital. All through this period, Suresh, J. had occasion not only to talk to the doctor but to do a first hand appraisal of the seriousness of the condition of the Accused. The Accused at the relevant time was suffering from a serious back ailment and he was virtually bed-ridden, and one of his complaints to the Court was that even in this condition he was being hand-cuffed. On a consideration of the record before him, Suresh J. came to the conclusion that the Accused ought to be released on bail on medical grounds for a period of two months and it was for this reason that the order dated 8-6-1989 came to be passed. This order had virtually nothing to do with the merits of any of the proceeding that were before Puranik J. and it was a mere coincidence that Puranik, J. had disposed of a group of petitions before him on 6-6-1989. I am not prepared to accept the explanation put forward before me by Mrs. Manjula Rao that the misstatements before the Supreme Court were inadvertent. When an initial attempt was made by her to deny the falsity of the statements, I had to confront her with the relevant pleadings and the fact that even in Delhi, it was she who had instructed the Counsel. The vehemence and the militancy with which the preceding was being conducted at that point of time leave no manner of doubt in my mind that deliberately false statements were made before the Supreme Court in the absence of the Accused and his Counsel for the purpose of staying the order of Suresh, J. if the Prosecution desired to be unfair to the Accused, they could have at least had the goods grace to spare the learned Judge of this High Court who had passed, to my mind, a perfectly correct and valid order in the circumstances.

7. The situation was compounded thereafter because the Supreme Court desired to hear the Accused in this case and, therefore, notice was issued to him, at which time the Accused expressed his desire to appear before the Supreme Court and plead this case personally because, according to him, he was in no position either to brief a lawyer or afford a lawyer. The record indicates that it was recommended that the Accused to be taken to Delhi for the hearing, but since he had asked to be taken by air in view of the short time available, the matter was placed before the Supreme Court and the Supreme Court declined the application for bringing the Accused to Delhi by air. It appears that thereafter the Accused prayer that he should be taken to Delhi by any available means of transport, but this application was opposed by the Prosecution and ultimately it was directed that a Legal Aid Counsel should appear on behalf of the Accused. It is most unfortunate through obviously motivated that having made false statements before the Supreme Court and obtained a stay order that when the petition was coming up for final hearing, further steps were taken to ensure that the Accused could not remain present before that Court. A reading of the order of the Supreme Court indicates that obviously nothing could be pointed out on his behalf before the learned Judge and it was, therefore, most unfortunate

that at the end of the proceedings, Suresh J.''s order was set aside with certain structures against the learned Judge. Mrs. Rao who was in charge of the proceedings tried vainly to defend this un-pardonable state of affairs. It has been necessary for me to recount theses facts because thought the Accused, who has appeared before me in person has complained bitterly of what according to him constituted a total lack of fairness in the conduct of the proceedings against him, I am constrained to observe that the above is only one of the many such incidents of impropriety and being at the receiving end, he has, undoubtedly, suffered, as a result of these acts. I, therefore, consider it essential to illustrate a few of the glaring facts that have taken place in the course of these proceedings because propriety requires that they be conducted by State Counsel in a manner that passes Judicial scrutiny.

8. Pursuant to his being taken into custody, the Accused continued to be in jail for a total duration of one year and nine months. The Accused had made certain applications from time to time attacking the procedure that had been adopted and the justification of the charges. A Division Bench of this Court in one of such proceedings, after the charges had been framed, directed the learned Sessions Judge before whom the matter was pending to reconsider the charges and Judge Patel on a reconsideration of the materials before him dropped the charges u/s 3 of the Official Secrets Act and held that only a charge u/s 5 of the Official Secrets Act was maintainable. Against this order, the Prosecution came in revision before a single Judge of this High Court. The Accused at the Same time filed a composite petition u/s 482 of the Code of Criminal Procedure, 1973, wherein he once again substantially repeated what he had been pointing out again and again, namely that according to him there was no material that according to him there was no material on the basis of which any charge could be framed. Both the petitions came to be heard and disposed of by my brother Aggarwal, J. The learned single Judge, Aggarwal, J., upheld the Prosecution contention that the Court of Session did not have the jurisdiction to reconsider the charges that had earlier been framed on 24/27th February, 1989. A reading of Aggarwal, J.''s order indicates that whereas the learned Sessions Judges had reconsidered the charges on a direction of a Division Bench of this High Court, that the Aggarwal, J. that the State Counsel wrongly contended before the Aggarwal, J. that the Sessions court had acted without jurisdiction and illegally. One expects a higher sense of responsibility from Special Panel Counsel who are supposed to be handpicked for these assignments. Nothing can condone such acts where a court is misled on a question of fact. Aggarwal, J. thereupon directed that the original charges should be revived and an additional charges u/s 5 of the Official Secrets Act should be drafted on.

9. Before going further, I need to point out that a serious controversy has been raised with regard to the fact that the fact that the charges in the present case are under two special statutes and, therefore, that they require authorisation form the appropriate Government, which in this case is the Central Government, before a

Court cognisance of any of the charge. Unlike other offences under the Indian Penal Code, where a charge may be altered at any stage of the trial without creating legal complications, in this case a serious legal difficulty would arise if a charge under the Official Secrets Act were to be introduced long after cognizance has been taken, the case has been committed to the Court of Session, the charge framed and the plea of the Accused is recorded. The relevant statutory provisions prescribe for authorisation to prosecute from the appropriate Government which is a condition precedent, and, therefore, adding a new charge that was not covered by the authorisation would be impermissible. It is presumed that the two Special Counsel who represented the State knew their jobs and that they were there to assist the Court and not merely to justify the Police action. Moreover, when these Counsel were specially appointed on consideration of competence, thought the performance indicates otherwise, this Court may have to question the grounds of such appointment because it is the citizens and the Courts who are at the receiving end. It is this complication that I shall deal with subsequently in the course of my judgment, but I did ask Mr. Vakil, learned Counsel now appearing on behalf of the Prosecution, as to why this aspect of law was not specifically brought to the notice of the learned single Judge, Aggarwal, J. by his predecessors when the State got the charges altered. The reply given was the that the Prosecution had never asked for the addition of the charges u/s 5 of the Official Secrets Act and that the learned of the single Judge had directed the incorporation of this charge principally because at one stage Counsel on behalf of the Accused had himself contended that at the highest the charge may be one u/s 5, but under no circumstances could it be u/s 3 of the Official Secrets Act. This was a weak attempt to cover up for the earlier lapses of his colleagues and which is totally unacceptable. Even so, to my mind, after the order was passed, it was open at any stage for the Prosecution to have come back to the learned Judge and placed before him this difficulty and to have obtained appropriate modifications. However, for some reason, this was not done, even thought the Prosecution has an opportunity of doing so and, therefore, to-day it may not be open to the Prosecution to take shelter behind this lapse. Either the Prosecution could have appealed against the judgment or, as pointed out by me, appropriate directions could have been obtained from the learned single Judge, but neither course of action was pursued. The only sufferer of all this unholy mess was the poor Accused who was once again sent back to the trial Court.

10. The proceedings thereafter went back to the Sessions Court and Judge Ghare framed an additional charge u/s 5 of the Official Secrets Act. Thereupon the Accused came back to the High Court through a proceeding under Articles 226 and 227 of the Constitution and prayed for an order of quashing of the proceedings against him on a number of grounds as set out in that petition. The possible reason for his having invoked Article 227 of the Constitution was self-evident because the Accused had raised certain points of law on the basis of which he was invoking the supervisory jurisdiction of the High Court under Article 227 of the Constitution. A

notice was issued to the Prosecuting Authority and after hearing the parties, the petition came to be admitted. It was thereafter heard and disposed of through a lengthy judgment of the Division Bench of this court on 25/26th March 1991. The Division Bench, after a threadbare consideration of the points agitated, remanded the matter to the Sessions Court with a two fold direction. The Division Bench observed that the learned Sessions Judge should examine the two questions relating to sanction u/s 197 of the Code of Criminal Procedure, which in a pre-condition for prosecution of certain classes of offences and the question of authorization since the charges in the present case related to special statues which made special provision for such authorization. The Division Bench has made certain observations in the course of the judgment and it was at one time contented during the hearing before me that these are the findings of the Division Bench and were, therefore, binding not only on the learned Sessions Judge but also on this Court. From this point of view, I carefully re-read the relevant portions of the Division Bench Judgment wherein the learned Judge have expressed certain, prima facie, views with regard to these two questions, but, to my mind, these cannot be constructed as "findings" because the Divisional Bench itself remanded the matter to the Session Judge who was to record his findings on the basis of the material placed before him and after hearing arguments of the parties. That the learned Sessions Judge and for that matter this Court will be guided by the observations made by the learned Judges of the Division Bench is a matter that is not in dispute, but what needs to be emphasised is that the tenor of the judgment does indicate that the Division Bench was satisfied that both these issues were one of substance and that they require to be examined before trail could proceed any further. The learned Judge correctly observed that these are issues which go to the root of the matter and that, consequently, they had to be decided on a priority basis. On remand, the learned Sessions Judge, Ghare, J., after hearing the parties and examining the record before him, by his judgment dated 26th April, 1991, upheld the first contention which was to the effect that sanction u/s 197 of the Code of Criminal Procedure was condition precedent and in the absences of such sanction discharged the Accused. Ghare, J. has also examined a few of the incidental issues, in passing, and I shall deal with only such of those as are relevant for the purpose of this judgment. It is against this judgment that the present Criminal Revision Application has been filed.

11. My learned brother Shah, J., who admitted this Criminal Revision Application, directed that it should be peremptorily heard; whereupon the matter has been placed on board and taken up for hearing. Towards the conclusion of the hearing Dr. Subbarao presented another criminal application, being Criminal Application No. 2260 of 1991. Since the issues are closely interrelated and since this Court is examining the very same record and since, to my mind, the matter requires consideration, I issued rule on that application. On a prima facie reading, however, I found that since Dr. Subbarao has referred to various of extracts from different

orders in the course of this long-drawn out litigation that the Prosecution, which is represented by the State, should be given a fair opportunity of filing a reply to whatever had been pointed out by him, if it desired to controvert what had been pointed out. I had also very clearly indicated in my order that the Prosecution would be fully entitled even to agitate the aspect of maintainability of that application regardless of rule having been issued. Mr. P. R. Vakil, the learned Senior Counsel, has made his submissions on the maintainability and merits of that application and I shall pass separate orders on that application after the conclusion of this judgment.

12. Dr. Subbarao had raised one preliminary objection with regard to the maintainability of the present Criminal Revision Application. He contends that undisputedly the Prosecuting Authority in this case is the Central Government and that Inspector Sawant has been specially authorised and empowered by that Authority to investigate and take further steps. He, therefore, submits that if further steps. He, therefore, submits that if further independent proceedings are to be instituted in respect of such a prosecution that it is essential that the appropriate Government itself must authorise those proceedings and that the State of Maharashtra, which is conducting the prosecution under authority from the Central Government is not empowered to take a decision in such matters as instituting further or further proceedings. This submission has been strongly supported by Mrs. Usha Porohit, who contended that this Court must dismiss the present proceedings as not being maintainable on this ground alone and that the State of Maharashtra has no jurisdiction whatsoever to authorise the filing of this proceeding. There is a subsidiary challenge which has been canvassed and which is to the effect that the order of the learned Judge is dated 26-4-1991 and that an application was presented to the High Court on 29-4-1991 prior to 30-4-1991 which is the date when the State Government passed a resolution authorizing the filing of the present proceeding and that, consequently, the application for stay, which is Criminal Application No. 921 of 1991, ought to be dismissed for want of Jurisdiction.

13. Mr. Vakil, the learned Senior Counsel representing the State of Maharashtra, has pointed out to me that the State of Maharashtra is the authority which is invested with the function of the conduct of the prosecution and that this authority, according to Mr. Vakil, would include the authority to take further necessary steps in the proceedings. As regards the second objection, Mrs. Manjula Rao, the learned Special Public Prosecutor, has pointed out that the application was preferred on an urgent basis because the Prosecuting Authority genuinely felt that the documents were of such a type that they ought not to be returned and, therefore, urgent orders were prayed for after orally obtaining the sanction of the Law & Judiciary Department, which was ultimately put on paper on the very next day. She has pointed out that the present Criminal Revision Application, in any avent, was filed after the receipt of that resolution. To my mind, in prosecution of the present type, where the State of Maharashtra is the Prosecuting Authority, Mr. Vakil is both correct and justified when he points out that the power to conduct the proceedings

cannot be read as being circumscribed to the conduct of proceedings only before the Magistrate, in the first instance, or the Court of Session, but must reasonably be interpreted to mean that it would include the authority to take out subsequent and necessary proceeding that may be an off-shoot or extension of the original proceedings. One of the arguments canvassed Dr. Subbarao was that if the Law & Judiciary Department accorded sanction on 30th April, 1991 and the State of Maharashtra collected the judgment copy only on 10th May 1991 that it is obvious that the concerned officer of the State Government accorded sanction to proceed higher before this Court without so much as applying his mind to the judgment. This criticism, to my mind, is unjustified again because admittedly the State was also represented by the Investigating Officers and the learned Public Prosecutor before the Sessions Court and when the judgment was dictated in the Court, learned Counsel and the Investigating Officer concerned had ample opportunity of hearing the contents of the judgment and possibly of even making their notes and if on the basis of the opinion or recommendation conveyed by them in a case of urgent nature the Law & Judiciary Department accorded sanction to file the revision application, such procedure cannot be faulted. To this extent, the submissions made under this head stand rejected.

14. I shall, in passing, dispose of one more submission that was made in the course of the arguments because, to my mind, it does not require much of consideration. Dr. Subbarao has seriously canvassed the justification of the farming of the charges against him on the basis of material elicited through the investigation. The criticism has unfortunately devolved on the Investigating Officer wherein it is sought to be contended that the investigation has not been done in the manner that would justify the framing of charges. I have had occasion, in the course of these lengthy arguments, to go through all the material, namely, the statements and documents that from the subject-matter of the record. I have not opened the sealed envelopes containing the original document because, to my mind, that is unnecessary in the view that I propose to take. I would, however, like to record that the criticism against the Investigating Officer is without justification. One needs to take into account the fact that one of the documents in this case relates to the year 1971 and another document relates to the year 1986 and some of the other documents do not bear any specific date. These are documents relating to different departments, and after this long lapse of time, it would be extremely difficult for any investigating authority to be able to dig into the records and files and locate persons who might have personal knowledge of the facts and circumstances of the case. After scrutiny of the record, I am more than satisfied that Mr. Sawant has done a reasonably good job, having regard to the time factor and having regard to the resources at his control. He has contacted whichever of the officers or person he could do. He has tried to get whichever of the documents and records he could find and if in spite of this material the record is in a particular condition, the Investigating Officer cannot, under any circumstances, be held responsible for this.

15. Before dealing with some of the relevant issues that have been raised in the present petition, it is essential for me to record that it has been the consistent complaint of the Respondent-Accused that at all stages of the proceedings, certain unfairness has been displayed towards him by the Prosecution. This is not a mere evaluation of ethics, but it will have a relevant bearing on deciding certain important issues that have been raised and it is, therefore, necessary to record one more aspect that has transpired in the course of the proceedings before this Court. As indicated by me earlier, the Petitioner filed before the Division Bench Criminal Application No. 2445 of 1990, which came to be admitted and set down for expedited hearing. While the Petition was listed for final hearing before the Division Bench of this Court, the Accused made an application for permission to leave the country on a certain assignment. The Application having been considered and found to be reasonable, the Accused was directed by the Division Bench, to which I was a party, to prefer this Application to the trial Court before which the proceeding was pending. The trial Court, namely, the learned Additional Sessions Judge, after hearing the parties, passed an order granting the Accused permission to leave the country for a short duration of time, i.e., only 3 days. Against this order, the Prosecution approached the High Court once again. The main Petition, as indicated earlier, was pending before the Division Bench which had directed the Petitioner therein to move the Sessions Court and it may safely be assumed that if the Prosecution was aggrieved by the order passed by the Sessions Judge that nothing prevented them from approaching the Division Bench against that order. Instead of doing this, an application was made to the learned single Judge and an ex parte order obtained without any notice to the Accused. As a result of this order, the Accused, who was to leave the country on the very next day, was prevented from doing so and was unable to attend to whatever assignment he was going for. The Accused made a serious grievance of this fact and in response to the queries from the Court, an explanation was sought to be tendered by Mrs. Manjula Rao that the application was made is another Court because that Court was normally dealing with petitions u/s 482 of the Code of Criminal Procedure. Mrs. Rao was at a total loss when I requested her to put forward any valid justification for what had been done and, in particular, the type of petition that had been presented to the learned single Judge by Mrs. Rao who had herself appeared before the Division Bench when it had approved of the application made by the Accused. Counsel cannot be said to have acted honestly in suppressing this vital fact and instead relying on a series of false statements obviously with the intention of prejudicing the Court behind the back of the Accused and snatching an ex parte order. Technically, the Prosecution Counsel may attempt to cover up for what has been done, but that this was fraud on the Court, a sharp practice and one that ought not to have been indulged in is an understatement. It is unfortunate, but it is equally necessary to record some of these incidents because they will have a direct bearing on the decision of one aspect of this case, namely, the degree of fairness, or lack of it that has characterised the conduct of the Prosecution by State Counsel. In sharp contrast to the situation that

prevailed for the last over 3 years, it must be said to the full credit of Mr. P. R. Vakil, who has come into the picture for the first time at this stage that he conducted the proceeding with an admirable degree of skill, competence and fairness, barring one avoidable incident which again is attributable to those instructing him.

16. For purposes of appreciating the validity or otherwise of the submissions that have been raised in the course of the arguments before me, it is equally essential for me to advert to certain provisions of the two statutes under which the present prosecution has charged the Accused. The first of these is the Official Secrets Act, 1923. This is an Act that was placed on the statute book for purposes of dealing with cases relating to official secrets. A perusal of the provisions of the Act will indicate that it is essentially concerned with security of the country and for this purpose, therefore, lays down stringent provisions in relation to all matters that come within the compass of the definition of the Official Secrets Act. That the Act also takes into account the possession of documents or material that may be associated with matters of defence or other secrets of the State is self-evident and the Act also makes a very clear mention of the fact that if a person obtains such material for a purpose prejudicial to safety or interest of the State, or if a person discloses such material to persons or agents in such manner as the safety, interest or security of the State may be prejudiced, the law will deal with him very stringently as provided for in this Act. A general reference to the scheme of the Act has been adverted to by me for the reason that the gravamen of the charge against the Accused in this proceeding relates to his having allegedly obtained and allegedly having been found in possession of material that could and would conform to the definition of official secrets. This alone is insufficient for a charge under the Official Secrets Act because the law requires that such acts must necessarily be accompanied by attempts at disclosing or disseminating such material to unauthorised persons who, in the Act, have been referred to as "foreign agents". In short, it is very essential for the safety and security of any country that stringent provision be made in respect of any act or attempt that may endanger the safety or interest of the country. What follows, therefore, is that the basic ingredients for any charge under the Official Secrets Act is that the investigation must disclose from very cogent fact placed before the Court that the purpose for which the secret material was obtained or retained or carried or disposed of was directed or prompted by an objective that was prejudicial to the safety and interest of the State. In addition, where the charge is that such material was intended to be misused, this last aspect has to be borne out from material elicited in the course of investigation. Even in a criminal proceeding of the present type where the consequences to a person charged under the Official Secrets Act are extremely grave, it is condition precedent that a scrutiny of the totality of the material placed before the Court must justify all the aforesaid ingredients.

17. The second statute under which the present Accused stands charged is the Atomic Energy Act, 1962. This Act is basically concerned with different aspect of the production, development, use and disposal of atomic energy. There are, however,

areas of secrecy and confidentiality that are related to this field and there are also places that come within the definition of restricted areas and the same Act, therefore, does contain some provisions in respect of entry to such places and the Act also makes provision for punishment in respect of disclosure of restricted information. Section 18 of the Atomic Energy Act, which deals with these restrictions, does not and cannot lay down abstract propositions and Section 18, therefore, limits the offences to three categories of cases, all of which concern the existing or proposed plant or process. In other words, therefore, the objective of Section 18 is in order to maintain confidentiality in respect of those existing plants and processes which the country has in use or proposes to put into use. To my mind, an analysis of Section 18 of the Atomic Energy Act is necessary while examining the charge that has been framed against the Accused in this case as also while examining all other inter related issues that I am required to decide in these proceedings because the short question before the Court is as to whether from the material thrown up by the Investigating Authority an offence within the meaning of Section 18 of the Atomic Energy Act can be spelt out. I have adverted to this aspect of the necessary ingredients of a charge under the two statutes because the Prosecution has contended on the basis of a broad generalization that without so much as looking at the documents that are the subject-matter of the offences in this case, merely from their description, that the Court should not only assume that all necessary ingredients for the framing of the charge have been satisfied but, furthermore, as has happened in the course of the last over three years, that the gravity of the charges must also be taken to have been assessed.

18. The essential dispute is centred around the charges that have been framed against the present Accused on the 24th/27th June, 1989 and the 5th and alternative charge that was grafted on 6th August, 1990. Since everything hinges on the five charges that are before the Court, I am reproducing all the five charges in this judgment as it is essential.

"Firstly : That you, abovenamed Accused, joined Indian Navy in 1963 and was promoted as Acting Captain on 21st June, 1985 and you were selected during the course of your employment in Indian Navy to study the feasibility of nuclear power, propelled submarine vessel along with a team of Officers from BARC (Bhabha Atomic Research Centre) and that you joined the said project in 1976 and was associated with them till 1983 and that in 1984, you were placed an officer in charge of ''Defence Technology Adaptation Centre'' vide Naval Headquarter''s letter No. EE/1460 dt. 25-4-84 and that you proceeded on premature retirement with effect from 27-10-87 i.e. till then you have been in the course of employment of Indian Navy, which is part of the Ministry of Defence and during the course of this, you have been in communication with foreign agents within or without India and for a purpose prejudicial to the safety or interest of the State you obtained and collected top secret and secret official documents and informations in the form of (1) 90 MWT Nuclear Submarine Propulsion Plant Design (Salient features and design software), a

top secret document, (2) Multi Point Satellite Links in Navnet (System Design) a confidential document, (3) Copy No. 5 of Project Report on Nuclear Propulsion for Marine Application, prepared under the guidance of Director, BARC by the Reactor feasibility section and the Naval Group pertaining to Government of India, Ministry of Defence, a Secret document, (4) Weapon Control, Radar and Display System for ''Leander'' Type Frigates of the India Navy, another classified document and (5) various drawings of PEP Power Metrics of BARC, R-5 project and other various classified documents and the information contained in those documents relates to the matters of Defence and work of defence and Naval affairs of the Government of India, and Atomic affairs of the Govt. of India, relating to Ministry of Defence and other classified information which you obtained for the purpose of communicating the same to foreign agents and the same you were taking to USA on 30th May, 1988, when you were about to board Air India Flight No. AI-101, when you were going under ticket No. 0984406215159 and some of the documents abovementioned were seized from your possession vide panchanama dt. 30-5-88 and with the follow-up action, your residential premises mentioned at 35, Shravan, Navy Nagar, Colaba, Bombay were also searched on 31-5-88 and some of the documents recovered from there. The said information which you obtained and collected for the purpose of communicating to foreign agents was a classified information relating to Ministry of Defence, which is calculated to be or intended to be useful to the enemy and the disclosure of which was likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign states and thereby committed an offence punishable u/s 3(1) Part-I of the Official Secrets Act, and within the cognizance of this Court.

SECONDLY : That you during the said time and place attempted to commit the commission of an offence u/s 3(1)(c) Part I of the Official Secrets Act by trying to take out classified information out of this country for the purpose of communicating to foreign agents and thereby committed an offence u/s 9 of the Official Secrets Act and within the cognizance of this Court.

THIRDLY : You, for the purpose prejudicial to the safety of the State, retained your service Naval Identity Card, an official document, when you had no right to retain it and wilfully failed to comply with the directions issued by the Naval Department of the Govt. of India and by retaining the said Serving Identity Card, you were guilty of an offence punishable u/s 6(2)(a) of the Official Secret Act and within the Cognizance of this Court.

FOURTHLY : That by taking with you the information in the form of books mentioned above on 30-5-88 pertaining to Atomic Energy the information which you had obtained illegally and were taking to U.S.A. and the said information according to section 20(7) of Atomic Energy Act was the property of Central Government and the disclosure of which was restrained/restricted, which you tried to disclose by obtaining the said information in the form of books and which have been restricted

under sub-section (1) of Section 18 and by doing so, you contravened the order dt. 4-2-75 under sections 18(2) and 19 of Atomic Energy Act passed by the Central Government, and by doing so, you committed an offence punishable under sections 24(1)(d) and 24(2)(d) of the Atomic Energy Act and within the congnizance of this Court.

FIFTHLY & ALTERNATIVELY : That while working as Captain in the Navy and being on deputation with B.A.R.C. during 1976 to 1983 you were dealing with classified subjects and had control over Secret and Top Secret official documents which were likely to assist the enemy or the disclosure of which was likely to affect the sovereignty and integrity of India and wilfully communicated the documents or information to persons other than those to whom you were authorised to communicate and thereby committed an offence punishable u/s 5 of Official Secrets Act 1923 and within the cognizance of this Court."

As indicated earlier, these charges are confined to the Official Secrets Act and to the Atomic Energy Act. It is common ground that under the relevant provisions of these two statutes, a special authorisation is necessary for the action to be taken against an offender, and in view of such provision, it is the case of the prosecution that the necessary authorisation was obtained from the Central Government as also from the Attorney General of India, which is one of the requirements under the Atomic Energy Act. The Prosecution has contended that they have fully complied with this requirement, but the Accused seriously contested this position. Apart from this, the Accused also submitted that since admittedly he belonged to the Armed Forces that he possessed a separate and special status which conferred on him certain protection and immunity from prosecution in certain circumstances and that regardless of his having retired from the services of the Navy that the provisions of Section 197 of the Code of Criminal Procedure presented a complete and total bar to the taking of cognizance of any proceedings in a criminal Court against him without the sanction of the appropriate Government. It is this and another contention that were raised by the Accused in Criminal Application No. 2445 of 1990, decided by the Division Bench on 25/26th March 1991, to which judgment I have already made a reference. The Division Bench, after hearing the parties at great length, did find considerable substance in these contentions that valid authorisation was necessary which has not been disputed at all, but the Division Bench remanded the matter to the learned Sessions Judge for the purpose of ascertaining whether the sanction could pass the test of validity. The Division Bench made certain observations with regard to Section 197 of the Code of Criminal Procedure and remanded the matter to the Sessions Court to give a finding in the light of the material placed before it and in view of the requirements of sanction u/s 197 of the Code of Criminal Procedure. It is necessary for me to observe here that in the present proceedings, Mr. Vakil has produced before me the relevant authorisation orders and he has pointed out that the Investigating Officer, Mr. Sawant has complied with the requirements of law in obtaining the authorisation from the Central Government

and from the Attorney General. Dr. Subbarao''s contention essentially hinges around the two-fold legal submission, the first of them being that the order signed by a particular officer of the department is, according to him, not a valid authorisation of the Central Government and the second contention is that the authorisation issued by the concerned officer for offences under Ss. 3 and 6 and 6 of the Official Secrets Act and other cognate offences does not and cannot cover an offence u/s 5 of the Official Secrets Act. I shall, briefly, deal with these contentions that have been raised because the Division Bench itself in its directions had enjoined upon the learned Sessions Judge to record positive findings in relation to these heads and a review of the order of the Sessions Judge would necessarily require an examination of the correctness or otherwise of those findings.

Tuesday, October 8, 1991

19. Coming first to the issue with regard to the validity of the authorisation since, as indicated earlier and observed in the judgment, such valid authorisation in condition precedent for the institution of a valid complaint, it is of some consequence to re-examine this aspect of the case. Mr. Vakil, learned counsel appearing for the prosecution, submitted that the Under Secretary to the Government of India, Ministry of Home Affairs, has, by his order dated 18th August 1988, granted the requisite authorisation for proceeding under the provisions of the Official Secrets Act. Relying on a copy of the order in question, learned counsel contends that it is beyond question and he has further amplified his submission by pointing out that the concerned officer of the Government has recorded a prima facie satisfaction that offences under sections 3 and 6 of the Official Secrets Act have been committed and in the concluding paragraph of the authorisation order Mr. Sawant, the Senior Police Inspector, who is the Investigating Officer in this case, has been authorised to file the complaint before a Court of competent jurisdiction in respect of offences under sections 3 and 6 and "other cognate offences punishable under the said Act." It is in respect of this last aspect that considerable argument has been advanced by the respondent, who is the original accused, in so far as he contends that the clause "other cognate offences" does not and cannot cover an offence u/s 5 of the Act. Mr. Vakil has been at pains to justify the prosecution stand and he has even relied on the definition of the term "cognate" from the dictionary in order to submit that the term "cognate" encompasses all other similar offences to those covered by Sections 3 and 6 of the Act and, therefore, according to Mr. Vakil, it was unnecessary for the Under Secretary to spell out which the particular sections ought to be. Mr. Vakil''s argument proceeds on the assumption that the Official Secrets Act makes provision for a class of offences and, consequently, when there is authorisation in respect of some sections that the authorisation would cover the remaining sections in so far as they all come within the broad definition of offences under the Official Secrets Act. As against this, Dr. Subbarao has submitted that we have on record orders from judicial authorities of this Court and the Sessions Court drawing a specific distinction between the various forms or types of offences, all of which may be punishable

under this statute. He, therefore, submits that even if this authorisation were to be valid in respect of the offences under sections 3 and 6 of the Official Secrets Act, since it has been judicially held that the offence under S. 5 of the Official Secrets Act is an offence of a distinct and different type that it is not covered under the authorisation.

20. One does not require to test the validity of the argument of Mr. Vakil because I propose to accept it, but if one accepts the argument of Mr. Vakil, then necessarily the authorisation has to be restricted to offences that come within the definition of cognate or, in other words, offences of a similar type which by implication necessarily excludes offences under S. 5 of the Official Secrets Act. Furthermore, on an examination of the authorisation order, it is clear that the authority who issued this order did not authorise the filing of complaints in respect of all such offences as may be disclosed under the provisions of the Official Secrets Act. The authority confined the authorisation by referring to specific sections to Sections 3 and 6 of the Official Secrets Act, and used the words "other cognate offences" which is restrictive to offences similar to those and as indicated by me excludes offences that are not of a similar type.

21. I need to mention at this juncture that the entire prosecution hinges on a certain set of documents, all of which have been confined to a sealed envelope which for some mysterious reasons has never been opened. It has also come on record that because of the nature of those documents, no copies of those documents were prepared. Once again, we have the unfortunate situation of having to examine an authorisation order issued by the Under Secretary of the Home Department, who has authorised the filing of a complaint without so much as looking at the documents which from the gravamen of the prosecution charge. When I use the term "documents", it includes copies thereof which in this case were never made. Again, it is at the highest on the basis of reports or submissions put up or on the basis of the descriptive nature of the documents that the authorisation has been granted. I do not think such a procedure can be condoned when it comes to the extent of a serious prosecution of a citizen of this country and that too a senior retired Naval Officer on charges of such gravity.

22. Another head of challenge which is common to both the authorisation letters is that a reading of the relevant provisions of the Official Secrets Act requires that the appropriate Government, namely, the Central Government, is required to authorise the prosecution. An objection was raised by Dr. Subbarao, relying on the provisions of Art. 77 of the Constitution, that where an action requires sanction of the appropriate Government and if such authorisation is produced, it must prima facie disclose that it is that authorisation issued by that officer for and on behalf of the concerned Government. Dr. Subbarao seeks to draw a distinction between the authorisation issued by the officer of the department and between the authorisation of the aforesaid type because he contends that if the authorisation is merely signed

by the officer of a particular department that at the highest the Court would be justified in holding that he has granted the authorisation on his behalf or on behalf of the department which he represents. Unless it is made specific in the authorisation that it has been issued for and on behalf of the Government which the officer represents, according to Dr. Subbarao a Court would not be justified in holding that the authorisation has come from the Government. Countering this submission, Mr. Vakil pointed out that if one is to regard the head of the Central Government as the President of India, it would be absurd to expect that every authorisation letter will have to be signed by the President. He submitted that it is for this reason that under the rules of business, powers are delegated to different officers who, after obtaining the requisite Government approval, accord letters of sanction or authorisation. To this extent, the submission of Mr. Vakil is correct because both the Central Government and the State Government under the rules of business do function and are required to function in this manner. It is, however, necessary to take note of the fact that in all those cases where the officer is exercising the authority of the Government, it is specified in the order that it is done by virtue of the authority so vested in him and, furthermore, that he is acting for and on behalf of the Government concerned. In the absence of these two averments, neither of which is present in the authorisation letters, it would be impossible for me to hold that either of these two authorisation letters passes the test of legal validity.

23. The second letter of authorisation, to which I need call attention, is dated the 16th August, 1988. This letter has been issued in respect of charges under the Atomic Energy Act and has been signed by Shri S. K. Bhandarkar, Joint Secretary to the Government of India. In this case, the position is considerably worse. The letter itself states : "This is to convey the authorisation of the department of Atomic Energy of proceed against Capt. B. K. Subbarao .....". The letter further goes on to state that the necessary consent of the Attorney General of India has been taken as required by the provision of Section 26(2) of the Atomic Energy Act. I shall make my observations with regard to the letter of the learned Attorney General of India separately, but suffice it to say that without having to repeat and reiterate what has been indicated by me above that this letter of authorisation again suffers from the same infirmities which are even more explicit as in the letter from the Ministry of Home Affairs and, consequently, it cannot be relied upon by the prosecution as a valid authorisation under the Atomic Energy Act. Having said so, it may not be necessary for me to deal with the letter of the learned Attorney General, but I propose to make a passing reference to it because, to my mind, it is essential.

24. The provisions that we find under S. 26 of the Atomic Energy Act are unusual provisions in so far as it is rarely under any statute that one comes across a precondition that the authorisation of the Attorney General is necessary. The legislative intent is obvious in so far as it was considered condition precedent that before a person could be prosecuted for an offence under the provisions of this Act that it was necessary that the highest Law Officer of the Government should apply

his mind to the record of the case and find out whether a prosecution is justified. The learned Attorney General in this case has reproduced three categories of cases in which action can be taken in respect of information under this Act. He refers to the D.O. Letter from the authority who has issued the authorisation from the Department of Atomic Energy and to certain enclosures that were forwarded along with that letter. The learned Attorney General uses the term "I am satisfied that this is a fit case in which I should give my consent for the proposed prosecution of Shri. B. K. Subbarao ....." As the highest Law Officer of the Government, the learned Attorney General obviously looked at the correspondence that was placed before him, but what needs to be mentioned once again is that in a prosecution of the present type, where everything hinges on the nature and character of the documents in question without having forwarded the incrimination documents to the learned Attorney General, it is difficult to see how correct the authorisation letter can be regarded. The reason for it is that, to my mind, it was absolutely essential, particularly for a legal authority who was evaluating a serious question relating to prosecution, to have asked for the offending documents to have been produced before him and to have looked at them before according sanctions. It needs to be mentioned that the present order of consent issued by the learned Attorney General will have to be found fault with, as the procedure adopted in obtaining that order was not the correct procedure and, consequently, it was obviously an order passed on the basis of an incomplete record.

25. In view of what has been pointed out by me above, the irresistible conclusion is that the authorisation for the institution of the present prosecution which, through obtained by the Investigation Officer, does not pass the test of legal scrutiny, consequently, it cannot be said that the prosecution was instituted on the basis of a valid authorisation. One of the arguments advanced before me was that the entire challenge is premature in so far as if the accused desired to call into question the validity of the authorisation that it was essential for the prosecution to have been afforded a fair opportunity of tendering the documents and of examining the officer who had granted the authorisation after which it was certainly open to the accused to have cross-examined this authority and brought on record whatever infirmities he desired to point out. The stage at which the proceeding has come to me unfortunately does not allow for such a procedure because this point was raised before the Division Bench and the Division Bench directed the learned Additional Sessions Judge to go into the question of validity or otherwise of the various orders prior to the institution of the trial and the State, which is the prosecuting authority, accepted that position and did not go in appeal against the order of the Division Bench, which has now become final. In these circumstances, the learned Additional Sessions Judge, who considered the question of sanction under S. 197 of the Code of Criminal Procedure and who, through the better part of his judgment, detail with the respective arguments and came to the conclusion that such sanction was necessary for the present prosecution and that, therefor, it cannot proceed in the

absence of such sanction, did not examine in any detail the question of authorisation. There are some passing references in the judgment, but in Keeping with the directions of the Division Bench, Mr. Vakil, learned counsel representing the State, made his submissions with regard to this head also. They have been replied to and it is, therefor, essential for me to record my findings thereon.

26. Coming now to the main issue on which the Division Bench dealt at considerable length and to which point the greater part of the judgment of the learned Additional Sessions Judge is devoted, namely, the fundamental question as to whether sanction under S. 197 of the Code of Criminal Procedure was necessary for the institution of the present prosecution or not. I need to reiterate that a perusal of the Division Bench judgment, and in particular the concluding part of that judgment, conveys the unmistakable impression that after a very protracted, detailed and incisive examination of the law and the record, the Division Bench came to the prima facie conclusion that sanction was necessary for the prosecution of the accused in the present case. The paradoxical question arose as to why then did the Division Bench refer the matter to the learned Additional Sessions Judge ? It is obvious that the Division Bench did not treat these observations as findings and still left the matter open for a final decision to the learned Additional Sessions Judge because both the prosecution and the accused were represented before him and mainly because it is a mixed question of fact and law and, therefore, since the Division Bench had not examined the factual part of the case in detail, it remanded the case to the trial Court for this purpose. The learned Additional Sessions Judge has recorded the findings that the accused, who admittedly was a Naval Officer until the year 1987 and who undisputedly was not a Naval Officer in May, 1988 when the alleged incident took place, was entitled to the protection conferred by S. 197 of the Code of Criminal Procedure. This section, as it stands on the statute book, takes into account certain categories of persons and one of such categories is a person who is or has been a member of the Armed Forces. The section does contain a qualification that the act complained of is required to be an act whereby the accused was acting or purporting to act in discharge of his official duties. It does not have to be reiterated that if the act in question is so far or remote or so totally unconnected with the official duties of such a person that the provisions of S. 197 of the Code of Criminal Procedure cannot and will not apply to him.

27. Section 197(2) of the Code of Criminal Procedure reads as follows :-

"197(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government."

It necessarily follows from the wording of this section that it is intended to cover all persons who are referred to in that section. In letter and spirit, therefore, what S. 197(2) of the Code of Criminal Procedure carves out is a special category of persons

and this has been done for good reason. It has been held by this Court and by the Supreme Court of India while considering the constitutional validity and vires of S. 13A-I of the Bombay Rent Act that persons belonging to the Armed Forces do belong to a separate class and that such classification is permissible and constitutionally valid. This section, therefore, confers special protection on persons belonging to that class by requiring that no Court shall be permitted to take a cognizance of an offence alleged such a person while acting or purporting to act in exercise of his official duties. While interpreting S. 197(2) of the Code of Criminal Procedure, therefore, one will have to bear in mind the legislative intent that this is a protection conferred for a special purpose and that the Court will not be justified in holding that the protection cannot be availed of by a person belonging to that category unless it is specifically demonstrated that the protection is not available. Mr. Vakil, learned counsel appearing on behalf of the State, submitted that the offences alleged against the accused in the present case relate to a set of documents which Mr. Vakil stated is of a classified category and which, according to him, could not have been taken away or retained by the accused even while he was a member of the Armed Forces and even if he was still a member of the Armed Forces. Mr. Vakil further submitted that the prosecution has not sought to proceed against the accused in relation to anything done by him during the period when he was a Naval Officer, but that the charge relates exclusively to what was discovered by the police authorities on 30-5-1988 and in their sub-sequent investigations. Mr. Vakil, therefore, submits that it could never be argued by the accused that the limited set of acts for which he has been placed on trial by the prosecuting authorities before the Court and which relates exclusively to want has transpired in May/June 1988 cannot come under the definition of the clause "purporting to act in the discharge of official duties". Mr. Vakil vehemently submits that taking a common place example if a member of the Armed Forces, such as the accused, was in the course of his duties entrusted with secret documents or planes or if in the course of his duties he gathers knowledge in respect of information relating to this class of material that he could never for a moment even argue before any authority that he has the right to convey this secret material to any third parties or for that matter attempt to take it out of the country and possibly hand it over to persons outsider India. I shall deal with these submissions along with what has been contended by and on behalf of the accused, but before doing that, I need to refer, in passing, to some factual aspects of the arguments of Mr. Vakil which do not appear to be correct. Having ascertained from the description in the record, from learned counsel and from the Investigating Officer about the exact nature and contents of the documents, I am constrained to record that they could never be rightly classified as secret. They are so obsolete, their contents so common place that no third party, leave alone a foreign agent, would either want them nor could they be of any use to them. Curiously enough, one of the offensive documents is Dr. Rao''s own Ph.D. thesis submitted to the I.I.T., Bombay. It is appalling that the crusade against a brilliant scientist has been carried to such distressing limits.

28. A perusal of the charge that has been framed against the accused in this case indicates that the charge itself refers to the period when the accused was functioning as a Naval Officer. It is the charge itself which spells out in black and white that the documents in question came in his possession or are alleged to have been received by him "in the course of his duties and assignments" during the period prior to 1987 when he was a Naval Officer. One does not require to go into a debate in the air with regard to these aspects when the prosecution''s own case is that the entire set of documents relate entirely and exclusively to the point of time when the accused was a Naval Officer, to the projects and assignments done by him at the time when he was a Naval Officer and the knowledge gathered by him at the time when he was functioning in that capacity. In the light of this background, the remaining submissions advanced by the prosecution will require some sort of detailed examination.

Wednesday, October 9, 1991

29. Going back once again to the heads of charge, I shall briefly deal with the factual aspect that is recounted in each of the five charges. The first charge, which consist of one continuous sentence which spans at least three pages, start with the statement regarding the accused having joined the Indian Navy in 1963 and recounts briefly his career until his premature retirement on 27-10-1987 and thereafter proceeds to state "till then you have been in the course of employment of the Indian Navy, which is part of the Ministry of Defence and during the course of this you have been in communication with foreign agents ....." At the end of this laborious narration, we have the operative part of the charge alleging offences u/s 3(1) of the Official Secrets Act. In substances, the charge unequivocally states that the accused obtained and collected top secrets and secret official documents and information of the description as set out in the charge. The prosecution, therefore, alleges that the accused was supposed to have been in communication with foreign agents during the time when he was a service officer and that it was for this purpose that he obtained and collected the documents in question. There is a degree of total confusion in the latter part of the charge which alleges that the accused for the same purpose of communicating the aforesaid to foreign agents was taking this material to the U.S.A. on 30-5-1988 when some of the documents are supposed to have been seized from his possession and some others from the residential premises. As indicated by me earlier, the first charge is a rambling charge, thought it is not perfectly intelligible. One is required to read it as a whole for the purpose of defining as to what exactly is the offence alleged and what exactly is the charge which the accused was asked to meet. In the course of his arguments, Mr. Vakil did observe that, perhaps, the charge is rather unhappily worded. In my opinion, Mr. Vakil was unduly kind and charitable to whoever was responsible for this, but there can be no two opinions about the fact that the framing of a charge of this type in a serious case was totally unpardonable. I gather from the submissions made before me and from the reference in the record that the draft charge was presented to the

Court by the State Counsel and was accepted in that form by the learned Judge. Even if the lawyers concerned were ignorant of the fact that there is a difference between the bio-data of the accused and the drafting of a criminal charge, the learned Sessions Judge ought to have not accepted it in this pathetic form. It is necessary to point this out because everything hinges on the charge for the purpose of deciding the applicability of S. 197 of the Code of Criminal Procedure. It is impermissible in criminal proceedings to present an accused with a charge that is vague or ambiguous because it is well settled law that the rules of natural justice apply to criminal trials in their most vigorous from to the extent that where the liberty of a citizen is involved and he is put on trail, it must be made known to him in specific and certain terms as to what exactly is the allegation.

30. Taking charge 1 at its face value, what is alleged is that the accused committed certain acts which constitute offences during the period when he was a Naval Officer. By necessary implication, therefore, and going by the prosecution''s own case the offences were committed and completed at that point of time. It is alleged that an extension of that offences or a continuation of the offences was attempted on 30-5-1988. There is no reference to an attempt to commit an offence, but I shall go by the wording of the charge and the reference to the allegations that the accused was leaving the country on 30-5-1988 with some of the documents. This then is the factual position with regard to the charge No. 1.

31. Coming to the second charge which reads that "You during the said time and place attempted to commit offences under S. 3(1)(c) of the Official Secrets Act "and are alleged to have committed offences under S. 9 of the Official Secrets Act. I take it that the unambiguous reference in charge No. 2 to the words" during the said time and place" denote a reproduction of charge No. 1 and it would therefore, have to follow that everything stated by me in respect of charge No. 1 would hold good as far as a charge No. 2 is concerned.

32. Charge No. 3 states that the accused is alleged to have retained his service naval identity card which is an official document, that he had no right to retain it and he wilfully failed to comply with the directions issued by the Naval Department of the Government of India in respect of the return of the identity card. This charge, therefore, once again dates back to the period when the accused was a Naval Officer, at which point of time the identity card was issued to him. It is the prosecution case that as a Naval officer, he was permitted to retain the identity card until such time as that statue continued and that the relevant regulations required of him to return the identity card when he was issued a new one or when he ceased to be a Captain. As far as this charge is concerned, there is little ambiguity about the time factor in so far as undisputedly the identity card was issued to the accused when he was a serving Naval Officer and the offences alleged against him was committed, according to the prosecution, at the point of time when he was required to return the identity card in question. I need to refer here to the statements on the

basis of which this charge has been framed because the record indicates that this was not the last identity card issued to the accused and it is the prosecution case that he had applied for issuance of another identity card in place of the original identity card and was, consequently, required to return the earlier identity card when the authorities issued the subsequent one to him. Undisputedly, therefore, the prosecution case is that this wrongful act was committed during his service tenure.

33. Charge No. 4 is a counterpart of charge No. 1 expect to the extent that this charge relates to the documents that pertained to offences punishable under the Atomic Energy Act. It is the prosecution case that while the accused was a Naval Officer, he had occasion to work for some time on an assignment at the Bhabha Atomic Research Center and that in the course of this assignment, the prosecution alleges, he was entrusted with documents which related to charge No. 4 indicated by me earlier, taking the prosecution case at its highest and at its face value, the offence that is alleged to have been committed by the accused in relation to this charge, consequently, falls within the period of his service tenure with the prefix that there is a further allegation that an attempt was made to commit an extension of this offence or a continuation of it on 30-5-1988.

34. If at all there existed the slightest shade of doubt or ambiguity, the prosecution has been good enough to remove all of these completely while framing charge No. 5. This charge starts with the wording that "While working as Captain in the Navy and begin on deputation with Bhabha Atomic Research Centre during 1976 to 1983, you were dealing with classified subjects ....." As far as this charge is concerned, the time period is specified as being between 1976 and 1983 and this charge, therefore, does not even remotely concern with the incident of 30-5-1988. Time factor-wise, therefore, charge No. 5 again confines itself exclusively to the period when the accused was a service officer. I have reproduced the relevant extracts from the five heads of charge because the consideration with regard to the applicability of S. 197 of the Code of Criminal Procedure is a mixed question of fact and law. At the point of time at which we are, namely, at the pre-trail stage, though the accused has made several sub-missions with regard to the factual position, I would prefer to consider S. 197 of the Code of Criminal Procedure exclusively from the prosecutions''s own evidence, material and documents. This would, perhaps, be a safer and more correct approach because Mr. Vakil did submit during the course of his arguments that the accused may have complete and valid explanations, but these are really to be taken into consideration in the course of the trail or when they are pleaded before the Court and not in the course of these arguments. Consequently, as far as the factual position was concerned, I have not so much as dealt with anything that has been adduced by the accused or on his behalf, but I have confined myself strictly to the prosecution''s own record.

35. The second head of consideration that is required to be done with regard to S. 197 of the Code of Criminal Procedure relates to more difficult consideration, namely, the question as to whether the accused can be said to have acted in the discharge of his official duties when he committed the acts that are alleged against him. Mr. Vakil commenced his submissions with the arguments that the commission of an offence can never form part of the official duty a public servant. The case law on the subject has examined these arguments on numerous occasions and the Court have observed repeatedly that, undoubtedly, the commission of a criminal offence can never constitute part of the official duty of a public servant. The Courts have, however, pointed out that numerous instances did arise when public servants in the course of their duties are alleged to have committed criminal offences. These cases are distinguishable from the offences committed by public servants when they are not on official duty, when they are for removed from their work station or when they are indulging in activities that are not even remotely connected with their official duty. The Courts have, therefore, been very clear about pointing out that where protection of S. 197 of the Code of Criminal procedure or its applicability is claimed that the first necessary ingredient that are the activity or the act or omission that are allied must be shown to have been performed in the course of official duty. The second category also deal with a set of border line cases when it uses the words "purporting to act in discharge of official duties" because there does exist a small class of cases where public servant may crate an unmistakable impression that he is acting in discharge of his official duty, even though he should not be doing so, but the framers of the law have preferred to include this class of cases in the restricted category covered by S. 197 of the Code of Criminal Procedure.

36. Mr. Vakil has supported his submissions by calling attention to certain authorities, the first of which is the decision of the Federal Court in the case of AIR 1939 43 (Federal Court) . Bench of three Judges laid down certain tests that are applicable in resolving this issue. Thought the Court was at that time concerned with Section 270 of the Government of India Act, 1935, the court observed as follows :-

"The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty ..... The section is not intended to apply to acts done purely in a private capacity by a public servant. It must have been ostensibly done by him in his official capacity in execution of his duty, which would not necessarily be the case merely because it was done at a time when he held such office, nor even necessarily because he was engaged in his official business at the time."

The Court in this case was dealing with two charge, the first of them was the offence of embezzlement under S. 409 of the Indian Penal Code and the second related to falsification of accounts under S. 477A of the Indian Penal Code. The Court held that on the facts of this case, the act of embezzlement did not require consent, but the

Judges at the same time held that as regards the offence under S. 477A of the Indian Penal Code was concerned, sanction was required because falsification of record had taken place in the course of the official duties performed by the accused. Mr. Vakil relies heavily on the first part of this judgment because it is his submission that the fact that the accused might have been a service officer and that he was a member of the Armed Forces at the relevant time are both irrelevant because the test laid down by the Court is as to whether factually the offences alleged are committed in the course of official duties.

Thursday, October 10, 1991.

37. Their Lordship had essentially held in this case that the facts will have no be dissected for purposes of conclusively establishing as to whether the acts that are complained of were done in the course of official duty or under colour thereof. Even if one were to apply this test to the facts of the present case, it is the allegation of the prosecution itself that the obtaining or retaining or alleged communication to foreign agents was done in the course of official duty and the examination is, therefore, not left to the Court because the charge itself is quite unambiguous. I may mention at this stage that in the course of the arguments which were rather protracted, the learned counsel Mr. Vakil as also Dr. Subbarao had occasion to refer in great detail to different parts of the record, namely, the statements of various witness that have been recorded by the Investigating Officer and some supportive documents that constitute the backbone of the prosecution case and this material again does not make out any different case on facts. On the other hand, as I will have occasion to observe while dealing with another legal aspect of the proceedings before me, a perusal of the statements indicates that the essential ingredients of all the charges are wrongfully and completely lacking and I am, therefore, rather surprised as to how and on what basis these charges came to be framed merely because of generalized allegations put forward on behalf of the prosecution. Had this been an application for quashing of the proceedings, the accused would have succeeded hands down.

38. The second judgment on which Mr. Vakil, learned counsel appearing for the State, placed reliance was in the case of Shreekantiah Ramayya Munipalli Vs. The State of Bombay, . The Supreme Court, in this case, while dealing with the construction and scope of S. 197 of the Code of Criminal Procedure, had occasion to observe as follows :-

"If Section 197, Criminal P.C. is constructed to narrowly it can never be applied, for of course it is no part of an official''s duty to commit an offence and never can be. But it is not the duty which the court have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The sanction has content and its language must be given meaning. The Court have to concentrate on the word "offence" in the section. An offence seldom consist of a single act. It is usually composed of several elements and, as a

rule, a whole series of acts must be proved before it can be established."

The Supreme Court in this case had taken into account the fact that an offence invariably consist of a series of acts and if the offence in a case would be incomplete without proving the official act, then it will have to be held that the bar under S. 197 of the Code of Criminal Procedure becomes applicable. On the basis of the ratio in this case, Mr. Vakil contended that the facts before this Court in the present prosecution will have to be confined to what transpired in May 1988. Mr. Vakil stated that it was not to the Knowledge of the authorities prior to that point of time that the accused had committed any offences and that only after he was stopped at the airport and the Investigating Officer had occasion to dig into facts of the case and only after the seizure of certain documents that the activities of the accused come to light. Mr. Vakil, therefore, submits that the entire effort on the part of the accused to argue that because certain aspects of the case may date back to the period when he was a service officer that the Court should not lay any credence to those facts because the gravamen of the charge against him was that he was attempting to take out of the country certain classified documents and that this attempt gave rise to an investigation which revealed that it was part of a large and deeper operation. He, therefore, submitted that neither the point of time when the offending acts were discovered nor the nature of those acts could even remotely be connected with the official duties of the accused and that it was for this reason that the prosecution did not even require to apply for sanction at any time. Dr. Subbarao has also placed equal reliance on this judgment because it is his contention that the judgment very clearly state that the entire set of acts which constitutes the offence must be read as a whole and as the Supreme Court has very clearly observed in Shreekantiah Ramayya Munipalli Vs. The State of Bombay, , if even some of those acts relates to official duties, then Section 197 of the Code of Criminal Procedure would apply. To my mind, a clear reading of the judgment will indicate that a Court is required to apply one simple test for the purpose of arriving at the answer, namely, the question as to whether the acts which constitute the offence with which the accused is charged were or could have at all been possible but for his official position. If these acts could have been committed de hors the official position, then the Prosecution could certainly have argued that S. 197 of the Code of Criminal Procedure will not apply. If, as has happened in the present case, this offences even assuming it has been committed could never taken place but for the official position in which the accused was placed and the acts which he was performing in that capacity, then it will have to be held the bar under S. 197 of the Code of Criminal Procedure would clearly apply.

39. Mr. Vakil has relied on another decision of the Supreme Court reported in the case of P. Arulswami Vs. The State of Madras, . The Supreme Court in this case was dealing with a prosecution against the President of a Panchayat Board and the question that arose was whether sanction under S. 197 of the Code of Criminal Procedure was necessary if the act complained of is entirely unconnected with the

official duty. Mr. Vakil placed strong reliance on the observations of the Supreme Court wherein Their Lordships stated that it is the quality of the act that is important and if it falls within the scope and range of his official duties, the protection contemplated by S. 197 of the Code of Criminal Procedure will be attracted. The court had further observed that it is only when it is either within the scope of the official duty or in excess of it that the protection is claimable. Mr. Vakil''s submission, on the basis of this case, was that as of necessity, the accused was entrusted with and had access to all the documents in respect of which he is charged as of to-day. He contends, however, that the access or entrustment was limited to the performance of the projects or functions in connection with the official duties and the moment these documents were unlawfully retained or taken out of the place from where they ought not to have been removed, that it could never be contended that the action purported to be in connection with the official duties. To summarize Mr. Vakil''s argument, he stated that the accused was permitted the user of this material but not the possession or retention thereof and under no circumstances was he entitled to transmit this material to any third party. As far as the last aspect of the arguments is concerned, I need to observe, as I have done earlier, that I have had occasion to go through the entire set of statements that constitute the gamut of the prosecution case against the accused and the investigation has not revealed any offence with regard to the alleged transmission, the charge against him being according to the prosecution at the highest that if he had left with the documents that are alleged to have been found in his possession that he could have misused them, which is nothing but pure speculation. In any event, we are not concerned with the merits of the matter, but are concerned with applying the test laid down by the Supreme Court, and the ratio of this judgment again boils down to the question of whether the offence was connected or unconnected. That the alleged acts were connected I have already held and as regards the second aspect, namely, the test laid down in this case to the extent of examining the quality of the act, it is again a corollary to the first test because as observed by the Supreme Court in Shreekantiah Ramayya Munipalli Vs. The State of Bombay, even if in the course of official duties a person commits a breach of the law, he is certainly punishable for it; but all that is provided for in S. 197 of the Code of Criminal Procedure is that by virtue of his special statue he shall not be subjected to prosecution without the designated authority in the Government examining the material and satisfying itself that, in fact, a case for prosecution has been made out. Sanction to prosecute is not an empty formality and the Courts have been repeatedly at pains to drive home to the prosecution that it is virtually a pre-trial scrutiny which is required to be conducted by the designated authority of the Government. This authority is not required merely, as often happens, to issue a sanction order by stating that "Having gone through the submission put before me, I am satisfied ...." The consequences of such a prosecution being very grave, the law protects all public servants from the commencement of a prosecution in all cases other than those in which the sanctioning authority having judicially evaluated the material before him holds that

it is a fit case for prosecution. This principle becomes all the more relevant in this case because a judicious authority, on going through the investigation papers carefully and dispassionately, would never have accorded sanction to prosecute on such material. The sanction point is so elementary that it could not have been overlooked even by a notice, but we have a situation here of two experts who display ignorance of basics and carry on cursedly for 3 1/2 years regardless of consideration for precious judicial time and public funds.

40. The next case relied on by Mr. Vakil is again a decision of the Supreme Court in the case of B. Saha and Others Vs. M.S. Kochar, . It was not surprising that both sides placed equally strong reliance on this judgment. Mr. Vakil on behalf of the prosecution relied on this judgment heavily because he submitted that the learned Additional Sessions Judge was incorrect in holding that if the sanction under S. 197 of the Code of Criminal Procedure was required and had not been accorded that it was a virtual end of the prosecution before him. Mr. Vakil submitted that a correct reading of this judgment would indicate that the question regarding sanction under S. 197 of the Code of Criminal Procedure can be considered at any stage of the proceedings. The Supreme Court in this case was concerned with a charge against a Customs Officer who had been entrusted with certain property and head thereafter allegedly misappropriated it. In the course of the trail, the question of sanction was raised. The Supreme Court did uphold the proposition that this question can be raised at any stage of the trail, but the Court, on the facts of that case, came to the conclusion that the offence committed by the accused was in no way connected with his official duties and that, consequently, no sanction was necessary. Relying on this case, Mr. Vakil advanced two arguments, the first of them being that even if the question of sanction has been raised by the accused in this case at a point far remote from the date when cognizance has been taken that it is perfectly permissible for the Court to give its findings on the issue and that as sequitur if the Court were to hold that sanction was necessary that corrective action could be taken at this stage. The second arguments of Mr. Vakil was that the facts in B. Saha and Others Vs. M.S. Kochar, were identical to the present one in so far as the material which was in the possession of the accused and which which is the subject-matter of the offence relates to the charge that had absolutely nothing to do with and that are in no way linked to his official duties. Drawing a parallel with Saha''s case, Mr. Vakil submitted that even in the case before the Supreme Court the accused was a public servant, the property had been entrusted to him in his capacity as a Customs Officer, but in so far as he had acted dishonestly in relation to that property that the Court held that sanction in respect of the last part of the case, namely, the commission of the last part of the offence, was not required. Dr. Subbarao has contended that this is a total misreading of the judgment and that one will have to take both the ingredients, the first of them being the question as to whether the acts complained of were ones linked to one''s official duty and the offence that is complained of was intertwined or interconnected exclusively with the performance

of official duties, the status of the accused and whether as a public servant that position furnished him with an opportunity or occasion to commit the alleged criminal act. The applicability of this judgment to the facts of the present case is not disputed and it is, in fact, the very tests that have been laid down in this judgment that I have applied to the facts that have been presented from the record before me. What cannot be disputed in this case is that all the three ingredients enunciated by the Supreme Court, namely, the link in the first place, the status of the accused in the second and more importantly, whether it was that statues and the performance of the official duty that afforded him the opportunity to commit the acts complained of. Applying all the three tests, I have no hesitation in holding that the bar under S. 197 of the Code of Criminal Procedure would apply to the facts of the present case.

41. As regards the stage at which this question can be raised, there can be little dispute about the fact that since sanction under S. 197 of the Code of Criminal Procedure as S. 197 itself states is a precondition for a valid prosecution, if no prior sanction has been obtained it would amount to breach of a mandatory provision of law, the only result of such a situation being that the proceeding would be rendered void. In such a situation, I do not see the wisdom of the arguments that an accused is required to wait until the end of the trail nor the argument that then accused cannot raise legal objection with regard to the maintainability of the proceedings at any stage after the date on which cognizance has been taken. One grievance, and to my mind frivolous one, that was pleaded on behalf of the prosecution was that the accused who has been raising one legal plea after the other in multifarious applications from time to time is alleged to have kept this point as a trump-card up his sleeve and come out with it for the first time almost 40 months after the proceedings commenced. I am rather amazed at this grievance because as I have pointed out to the learned counsel appearing on behalf of the State that it is not for the accused to point out to the prosecuting authority as to what the requirements of law are. It is implicit that the prosecution is required to comply with all legal requirement. In the present case, the accused undisputedly was a retired service officer. There was no ambiguity with regard to this position. The investigation almost entirely concerned itself with various service authorities and aspects and it was, therefore very elementary and fundamental to any prosecuting authority that sanction in such a case is a necessary requirement. Instance of offence being registered against public servants are numerous, both under the Prevention of Corruption Act and under several other laws and it is almost a routine matter that the papers are put up to the appropriate Governmental authority for sanction. The fact that this was not done in the present case, therefore, is not something which the caused was required to point out to the Court. The prosecution cannot get away from its basic duty and to this extent, therefore, the submission that the accused should have reminded the prosecution what it was supposed to do is thoroughly misconceived and misplaced. The record indicates that at all stages, the State was represented by a senior an experienced Special Public Prosecutor, Mrs. Manjula Rao,

and a Senior Counsel from Delhi, Mr. Handa. Regardless of the accused pointing out the sanction question, the fact remains that abnormally large amounts of judicial time have been expended on over a dozen litigations for 40 months on a proceeding that was legally stillborn. This enormous waste is a matter of deep regret but certainly requires investigation.

Friday, October 11, 1991

42. At the commencement of the hearing of this proceeding, learned Advocate Mrs. Usha Purohit advanced a submission that she desires to be heard by the Court and further that she represented an organization by the name of People''s Union for Civil Liberties. Mr. Vakil, learned Senior Counsel appearing on behalf of the petitioner-State, objected to the appearance of any third party in these proceedings and he submitted that this was a matter essentially between the prosecution and the accused and, consequently, that no third party had any locus standi to address the Court. Mrs. Usha Purohit pointed out that she had appeared in this matter at the time of the admission and that the record indicates her appearance and, furthermore, that she had filed her Vakalatnama. Regardless of that position, Mr. Vakil still contended that the People''s Union for Civil Liberties, as represented by Mrs. Usha Purohit, had no locus standi to intervene in these proceedings. He desired that his objection be noted and he further submitted that the Court should not permit Mrs. Usha Purohit to address the Court as it was not legally permissible.

43. This is a case in which the accused is appearing in person. The record does indicates that at some earlier point of time he was represented by lawyers. He has stated that he was enable to engage lawyers after a certain stage in the proceedings and he has set out a number of reasons for this. The record of the case show that my learned brother Shah, J. did take on record the appearance filed by Mrs. Usha Purohit and it, therefore, follows that my learned brother was of the view that she should be permitted to address the Court. Regardless of that position, having regard to the fact that this is a case which involves legal intricacies, to my mind, the interests of justice would require that if an advocate is willing to assist the Court by making submissions on points of law that the Court should not refuse to hear such an advocate. There is no strict issue regarding locus standi involves in this case. As indicated by me, the predominant consideration is a just and fair decision. Towards this purpose, if the advocate desires to address the Court, to my mind, such permission must be granted and the advocate must be heard as amicus curias. It is for this reason that I have heard Mrs. Usha Purohit after hearing the respondent-accused.

44. Mr. Vakil desired that the correct position with regard to what happened at the admission stage should be recorded. He stated that even though Mrs. Usha Purohit tendered her Vakalatnama that she was not heard by my brother Shah, J. and he further stated that on the point of admission, Shah, J. had also not heard the respondent-accused. Mr. Vakil, therefore, submitted that merely having tendered

the Vakalatnama before that Court would not confer any right on Mrs. Usha Purohit to address this Court and to treat herself or the organization she represents as a party to the proceedings. Mr. Vakil clarified that if Mrs. Usha Purohit were to appear on behalf of the accused as she is free to do, then the complexion of the matter is entirely different. Further, he stated that if Mrs. Usha Purohit has appeared during the earlier proceedings on behalf of the accused that she ought not to be permitted to appear an amucus curiae. Dr. Subbarao, who is present in Court, states that it was the Peoples'' Union for Civil Liberties who had filed a habeas corpus petition on his behalf and that Mrs. Usha Purohit had appeared in that petition. He states that he had not briefed her as his advocate. Mrs. Usha Purohit has clarified that at one point of time during the proceeding, namely, when the matter was placed before the Division Bench of Their Lordships Jahagirdar and Chavan, JJ. for speaking to the minutes that she had represented the accused to the limited extent of seeking a clarification of the order. Frankly, even if Mrs. Usha Purohit had, at any earlier stage, appeared on behalf of the accused or some organization which had taken up an issue on his behalf, I do not see any bar with regard to her appearing as amicus curiae in this proceeding.

45. I need to record that due to the pressure of work and the fact that the day-to-day admissions and part-heard appeals could not be allowed to pile up while the present judgment was dictated, that I set apart one or two hours each afternoon for purposes of completion of this dictation. This afternoon, before the dictation commenced, Mr. Vakil, learned Senior Counsel representing the State, who was not present in Court during the earlier days, requested me to hear him on certain aspects of the case. Normally such intrusions would not have been permitted, but I allowed it is a courtesy to Counsel. First of all, it was his contention that if the petition were to fail, the interim orders regarding the return of the documents, etc., should be kept alive for some time and he further desired that the stay granted by this Court should continue as the State was desirous of going higher in the matter. I did indicate to the learned Counsel that this Court would most certainly consider the aspects regarding the documents, but that the question of continuing the interim orders was something which may not be permissible except for a very limited period of time because no Court would be justified in binding down a person who has been set free from criminal proceedings. The accused being a professional person and the Sessions Court having held in his favour some months back, if that order were to be confirmed, he would be justified in pointing out that there was virtually no sanction for imposing restrictions on his movements thereafter. Unfortunately, the arguments got involved, they got heated and took a turn of the most unpleasant type. A charge was levelled against the Court that if such orders were not passed and the accused were to abscond that "Your Lordship would be responsible for it." It become necessary for me to point out to learned Counsel that not only were such statements intimidatory and impertinent, but that no litigant or Counsel could get away with such accusations if they were seriously urged. An attempt was thereafter

made to clarify that what was meant was something else and no disrespect or brow-beating was intended.

46. What aggravated the situation further was a bald statement that at the highest the sanction question was a procedural lapse and that regardless of what order the Court passes the State would "re-arrest" the Accused outside the Court Room immediately after the judgment." This statement was not surprising and was eloquently indicative of the manner in which this proceeding has been conducted from its very inception, that the action wreaks with vengeance and that there is much more to it than meets the eye. I was required to point out that if anything is done in defiance of the orders passed by this High Court or to frustrate or nullify them or in contempt thereof that this Court would come down with all firmness and take action of as strong a type as was required to deal with everyone of the persons who was responsible for such contemptuous conduct. I had to remind the persons concerned that there exists a Rule of Law in this country, that it is not a police state and the threat to subvert the Judgment was per se contempt. It is true that thereafter some explanations were tendered to once again water down the statement, but it was more unfortunate that it was made in the first instance.

Saturday, October 12, 1991.

47. Before I commenced with the dictation of the judgment to-day, Dr. Subbarao advanced a submission in Court insisting that appropriate orders be passed on his application. His submission was to the effect that while the judgment was part-delivered yesterday, a statement was made by Counsel appearing on behalf of the State that no matter what order is passed by the Court that the Government would re-arrest the accused immediately in so far as sanction is only required at the stage when the complaint has to be filed and, therefore, that the Government would be within its rights to take the accused into custody even pending the grant of such sanction, thereby signifying that it was an emptyformality. Dr. Subbarao submitted that this statement constituted contempt in the face of the Court and he insisted that this Court should take suo motu action for contempt. In the interests of propriety and for purposes of upholding the dignity and status of this High court and the Judiciary, I was inclined to issue notice of contempt. At this stage, Mrs. Rao assured me to-day that there was no disrespect intended to the Court and, in any event, that the Government will observe the requisite procedure prescribed by law and that, consequently, this Court should not act on the basis of the application. I do not desire to divert this judgment into another proceeding as the Government and its lawyers have already burdened this Court enough in this case on all the dozen and more earlier occasions. Moreover, Mr. Vakil is one of our very competent and very Senior Counsel who is well respected, a sentiment I share, and therefore the incident may be condoned as a momentary lapse. Also, such action would still not reform the persons who had instructed learned Counsel to make the statement and are the real culprits. It is necessary for me to record that these incidents were most

unfortunate and I do not at all approve of them. I did not also approve of the manner in which these statements were made, but regardless of this position, I do not propose to divert from the main issue, though this is not all.

48. I would, in particular, like to record my displeasure at the charge made against this Court that it is only before "this Court" that allegations have been made by the accused and by Mrs. Usha Purohit. This Court, and every Court for that matter, is required as of duty to look seriously into complaints where human rights are transgressed upon, particularly in cases such as this where the accused has been pursued to sadistic levels.

This remarks was made in the context of Mrs. Usha Purohit having made a very serious grievance to the effect that when she, as an advocate, was appearing in a proceeding relating to Dr. Subbarao that certain Police Officers had been following her and that she had been threatened of serious consequences if she had anything to do with this case. This statement was once again reiterated by the learned Counsel who offered to put it on affidavit, at which time there was an unnecessary altercation in the Court Room which, to my mind, was avoidable. The dignity, sanctity and decorum of this Court and the proceedings must be maintained by everybody, Counsel included.

49. The learned Additional Sessions Judge has, in the course of his judgment, made a reference to a submission advanced before him which was to the effect that under the provision of S. 216(5) of the Code of Criminal Procedure that the prosecution is entitled to apply for time for obtaining requisite sanction from the appropriate authority and that, consequently, the proceedings should not be concluded, even if it is held that sanction is required. The learned Additional Sessions Judge has relied on the decision in the case of Ram Kumar Vs. State of Haryana, , and recorded the finding that sanction being condition precedent if the sanction being condition precedent if the sanction had not been accorded, as is the situation in the present case, that the proceedings itself was legally stillborn and, therefore, there can be no curative process or procedure permissible and, consequently, proceeded to discharge the accused. Mr. Vakil, learned Senior Counsel representing the State, did not desire to advance any submissions with regard to this aspect of the matter because Mr. Vakil submitted that it is his case that sanction is not required and the view taken by the learned Additional Sessions Judge was incorrect. He submitted that if this Court were to take the view that sanction is required that in his considered opinion, it may not be possible to get over what has been pointed out by the Supreme Court in Ram Kumar''s case. Mr. Vakil has very correctly based his argument entirely on the legal position which, to my mind, is exactly as indicated by him. I, however, need to add that, perhaps, the submissions advanced before the learned Additional Sessions Judge on this point may not have even justified because Section 216(5) of the Code of Criminal Procedure would contemplate a situation akin to that which had come up in several cases before the Court to which I have called

reference, where in the course of the trial a submission is advanced that in respect of one of the charges alone sanction may be required. In such a situation, the prosecution could validly continue on the remaining charges and it is only in respect of that charge which requires sanction that the Court may have to wait for sanction. The present case is not one such case, as on an examination of all the charges framed against the accused I am of the view that sanction was condition precedent and, therefore, S. 216(5) of the Code of Criminal Procedure cannot have any application.

50. There is another head of arguments which I shall briefly refer to, but not in much detail because, to my mind, thought some of the points are of some consequences, they do not require any elaborate consideration. Dr. Subbarao submitted with a degree of vehemence that it was not for the first time when he filed the previous petition before the Division Bench that he pointed out the requirements of law relating to sanction, I have already observed in the earlier part of the judgment that it is certainly not for the accused in a criminal trial to point out to the prosecution that it should observe the law of the land. Dr. Subbarao''s basic charge under this heard, however, is substantially wider in so far as he advanced the contention that there has been breach of the provisions of Article 21 of the Constitution, according to him, at all stages right from the very inception of the proceeding. It is his grievance that the ingredients of the offences with which he is charged and the specific requirements of law under those statues and under the Code of Criminal Procedure have been by-passed and that the multifarious applications filed by him in the course of the last over three years were eloquent testimony of the fact that according to him the safeguards embodied in Article 21 of the Constitution has been transgressed at every stage. This is a generalized submission and a sweeping one, but having, in the course of the last over two weeks, taken the trouble to personally check the voluminous record before me, I am constrained to observe that the charge is not unjustified. To my mind, the first procedure that ought to have been adopted in this unusual case was that each of the authorities starting from the authority to whom an application for authorisation was made, to the learned Magistrate before whom the accused was produced, the learned Additional Sessions Judge before whom he was placed on trial, that trouble should have been taken to very carefully analyse the material placed before the Court and the special requirements of the sections under which the accused stood charged. The first of these would require that the documents themselves should be scrutinized by the authority or the Court concerned because it may be that even where the prosecution alleges or feels that certain provisions of law applied that those provisions may not apply to the documents or the facts of the case. One of the situations in which this could arise is where a document which at a particular point of time may be regarded as confidential, classified or secret may have become absolute by virtue of change of circumstances and it, therefore, would not have been pointed out by the prosecution that possession or retention or use of such a

document could not constitute an offence at the time when the person is being charged. Undoubtedly, it is of immense importance that the law should very stringently safeguard any attempt at espionage and that the law should heavily come down on situations where secret or confidential material relating to the armed forces or classified installations of a protected nature is sought to be either leaked out or clandestinely used. A perusal of the Official Secrete Act and the Atomic Energy Act will indicate that it is for this reason that we have in-built provisions incorporated in to those statues which require a rigorous scrutiny to ascertain whether or not material or documents come within these very limited categories and what one way categories as classified material. It is not that every scarp of paper or every documents relating to those departments and authorities that is to be classified, and even if a classification is put down, such classification may not hold that for all times. Furthermore, having analysed the provisions of these Acts, I need to observe that it is the basic duty of the prosecution to point out to the Court through cogent material as to what precisely do the documents in question contain and how and in what manner in respect of those documents, a disclosure thereof would be a threat to the security of the country. A mere averment by a clerk connected with the establishment, which is mechanically reproduced in a couple of statements, that disclosure of these documents would constitute a threat to the security of the nation, is insufficient because, to my mind, the requirements of law are that the servant or officer concerned must substantiate this conclusion. Where a citizen is put on trial for so grave an offence of this category, one cannot proceed on the basis of loose statements of this type, but it will be absolutely essential if the procedure prescribed by law is to be adhered to that the investigative agency places before the trial Court at the time when it asks for a charge, the material from which these cardinal ingredients of the section can be said to have been completely made out. In the course of the arguments, Counsel for the State has taken me through the statements and documents relied on and on a threadbare examination thereof, I have no hesitation in observing that had this been an application u/s 482 of the Code of Criminal Procedure before me, I would have been duty bound to quash the proceedings, being totally devoid of substance and once that could never result in a conviction.

51. The essence of the charges in the present proceeding flows from the fact that matters which are State Secrets and are of a confidential nature should not fall into the hands of "foreign agents". One does not need to go into an elaborate discussion to conclude that indulgence in activities that could come under the broad head of espionage or contact with persons or institutions, which could be said in normal course or could be suspected in normal course to be dealing in such material, can come under this head, where a person is sought to be charged with offences under the Official Secrets Act and the Atomic Energy Act, the elementary requirement is that the prosecution establish contacts with such foreign agents and that these contests were for the purpose of channelising such information or material. From

the material that is placed before the Court in the course of the investigation, what is alleged against the present accused is, in the first instance, that he attached a particular party which was hasted by the Consul General for the U.S.A. in Bombay for a visiting high-tech trade delegation, of which he was sent an invitation as an expert in the computer field. Even though the Naval Authorities told him that he should not attend, he is alleged to have attended this party in civilian dress and that he had travelled in a car belonging to the Tata Company. Nothing more is alleged. The next head of offence under this category is that a visiting-card of the American Consul General was found with the accused. The last head of material is that he is alleged to have made a series of phone-calls to one Mr. A. V. B. Millard, who was a Naval Attache to the American Embassy in Delhi and that the Investigating Officer has been able, from statements, to find out that these phone-calls were made on certain dates from a particular office after the accused had retired. It is also pointed out by the prosecution that he said Mr. A. V. B. Millard left India very shortly, i.e. about three weeks after the date of arrest of the accused. I do not desire to weigh this evidence because the witnesses have not come in the witness-box nor have they have been cross-examined, but the limited purpose of referring to this material is because one of the essential ingredients of the charges against the accused is that the material before the Court must disclose that the purpose for which he acted was related to the transmission of material to a foreign agent and, to my mind, the aforesaid material, even taken at face value, would fall very much short of that basic requirement. It has been the grievance of the accused from time to time that if he were to be placed on trial it could only be done if material existed to justify his detention in custody and if material existed to frame a charge against him. There is a serious handicap in my way regarding this aspect of the case in so far as at different points of time the earlier respective parties have agitated these issues before the Court of Sessions, before this Court and on the occasion, I am told, before the Supreme Court and different orders have been passed and, consequently, one cannot at this stage go behind those orders.

52. Mrs. Usha Purohit, in the course of her submissions, raised a point of law with regard to the interpretation of S. 13 of the Official Secrets Act, she stated that under the provisions of S. 13(1) of the Official Secrets Act, a provision has been made with regard to the forum before which offences under this Act can be complained of and can be tried. Relying on the clause "specially empowered in this behalf by the appropriate Government", Mrs. Usha Purohit submitted that the section requires that a Court before which such a proceeding can be commenced must be a specially designated Court. She submitted that there are a class of offences for which the law makes provision that it shall be open to the Government to designate the authority before whom the trial shall take place. Under the provisions of the Prevention of Corruption Act and under the provisions of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) and several other statutes, the law does make such provision. It is on this basis that Mrs. Usha Purohit advanced the submission that it

is only such a specially designated Court that can take cognizance of and try offences under this Act. To this extent, Mrs. Usha Purohit questioned the jurisdiction of the learned Special Judge, Greater Bombay, to have proceeded with the present trial up to the stage of framing of the charges and she submitted that if the requirements of Section 13(1) of the Official Secrets Act have not been complied with, that the proceedings are bad for want of jurisdiction. A plain reading of this section would indicate that this is a correct view and a proper interpretation of the section for the added reason that offences under this Act fall in to a very special category. That the offences are serious is undisputed. That they deal with a type of material that is removed from and different from the type of evidence which would normally come before the Courts is also to be noted. Apparently for this reason, it was left to the choice of the appropriate Government to designate the Court before which such trials should take place. In this view of the matter, the submission will have to be upheld in so far as the inevitable result would be that the proceedings before the Court of Session, which admittedly has not been specially empowered, would be without jurisdiction.

53. In the course of his arguments, Dr. Subbarao advanced a detailed submission with regard to the procedure that is required to be followed in cases instituted on complaint. The provisions of the Official Secrets Act require that a complaint is required to be filed in respect of offences under this act. Such a complaint was, in fact, filed by the Investigating Officer, though he had earlier filed a report in the nature of a charge-sheet which the learned Magistrate tagged on to the complaint. As indicated by me earlier, however, the learned Magistrate proceeded to take cognizance of the complaint having regard to the provisions of the Official Secrets Act. Dr. Subbarao has attacked the validity of the subsequent procedure on the ground that, according to him, it is a mandatory requirement under the relevant provisions of the Code of Criminal Procedure, namely, Sections 200 and 202 that the complainant and the witnesses must be examined before process is issued. Dr. Subbarao submitted that there can be let-up with regard to this procedure and for this purpose he relied on a decision of the Calcutta High Court in the case of Shyama Prasanna Das Gupta Vs. The State, . In this particular decision, the learned Judges of the Calcutta High Court had taken the view that where there is a legal requirement that a complaint and not a charge-sheet be filed, the public servant filing such a complaint does so in the capacity of a private complainant and not in his capacity of a public servant. The extension of this argument was that if the complainant in the present case was, in fact, acting in a private capacity, then the recording of his statement and the statements of the witnesses could not have been dispensed with. It is Dr. Subbarao''s further submission that there is a difference of opinion between the Kerala High Court and this High Court with regard to the issue as to whether the examination of witnesses at this stage is mandatory or not. Whereas the Kerala High Court has taken the view that such examination is mandatory, this High Court has taken the view that it is not so, though Dr. Subbarao pointed out that one of the

Division Benches has taken his view which he is canvassing. To my mind, even though Dr. Subbarao submits that this is an issue which goes to the root of the matter. I am not inclined to go into a detailed examination of the submission made and record my findings because the complainant in the present case was undisputedly also a public servant. Since the section does empower the Magistrate to dispense with the requirements of examination of the complainant and of the witnesses in a complaint instituted by a public servant, the argument advanced would virtually involve a lot of legal hair-splitting. Having regard to the fact that there are other more important grounds on which the proceedings have been held to be bad in law, the examination of this issue in that context would really be academic and, to my mind, unnecessary at the present juncture. Prima facie, Dr. Subbarao appears to be right in his interpretation.

54. Concluding his submissions under this head and relying on certain observations from the earlier Division Bench judgment of this Court, Dr. Subbarao stated that if he is justified in his grievance that the procedure prescribed by law has not been followed that his retention in custody for 21 months and his having been subjected to the protracted legal proceedings is not justified and, consequently, that this Court must award compensation to him. In this regard, he was strongly supported by Mrs. Usha Purohit, who stated that this Court must look at the record of the case and very fairly decide as to what, in the mind of the Court, would constitute fair compensation. She has suggested a figure a Rs. 2,00,000/-.

55. Mr. Vakil, learned Senior Counsel appearing on behalf of the State, submitted that the points of law on which the accused has been discharged by the Sessions Court were required to be elaborately argued before the Division Bench and before more than one Court and if an accused person comes to be discharged or acquitted by a Court purely on the basis of an interpretation of a section or a point of law that there can be no question whatsoever of his putting forward a grievance of wrongful detention or wrongful trial. Mr. Vakil pointed out that the law takes cognizance of wrongful or malicious arrest and the law takes cognizance of a situation where the Court has come to the conclusion that the proceeding was lacking in bona fide or that the proceeding was instituted and prompted by malicious motive. He submitted that none of these ingredients are present in this case and, therefore, such claims ought not to be considered at all. When I asked Mr. Vakil what his clients had to say about all that the accused has been subjected to, he tried hard to convince me that the accused has only been prosecuted and not persecuted. He has failed to do so. This proceeding has all the makings of an inquisition.

56. In the view that I have taken and in the view of the Division Bench Judgment that has preceded me, there can be no dispute about the fact that the procedure prescribed by law has been breached and that the rights of the accused have been transgressed. Unfortunately, the application that has been made to this Court by the accused is an oral application, and it is not as though such applications cannot be

taken cognizance of. However, if a Court were to award compensation and if a Court were to award a particular quantum of compensation, it necessary follows that this can be done only after evaluating all the material on the basis of which such an order is justified. I am unable to arrive at any such conclusions merely on the basis of oral applications that are made and I am, therefore, not inclined in this proceeding to expand the scope and to award any such compensation. It is, however, clarified that it is open to the accused, if he so desired, to adopt appropriate proceedings. Mrs. Usha Purohit persisted in her plea that having evaluated the record, this Court must, in the interests of fairness and propriety, award compensation as the Supreme Court has done in numerous cases, a list of which she referred to. It is precisely on these grounds that even though the award of heavy compensation is justified, I have deferred the issue because such compensation will have to be commensurate with the damage and may have to be directed against certain individuals apart from the State, all of whom will have to be heard.

57. The last question that I need to consider is with regard to the order passed by the learned Additional Sessions Judge. At the conclusion of his judgment, the learned Additional Sessions Judge has held that in the view which he has taken that the accused is required to be discharged. A submission was convassed by Dr. Subbarao and by learned Counsel Mrs. Usha Purohit that order of the learned Additional Sessions Judge discharging the accused is not a correct order in law. It is their submission that the scheme of the Code of Criminal Procedure requires that a Court can exercise the powers of the discharge of an accused at any stage prior to the framing of the charge. It is, therefore, their contention that it is not permissible for a Court, and that too for a trial Court, to do anything that is outside the specific provisions of law as set out in the Code of Criminal Procedure. Regardless of the fact that the trial Courts are not invested with any inherent powers, there is no dispute about the fact that the procedure in a criminal trial is strictly circumscribed to the provisions of the Code of Criminal Procedure. It is equally correct that under the provisions relating to trials before a Court of Session that the Court can discharge the accused prior to the framing of the charge if there is insufficient material or if on any ground of law the Court finds that it is not permissible to frame a charge. After the stage of framing of the charge, the Code of Criminal Procedure prescribes that there can be only one of the two conclusions to the trial, either the accused is convicted or he is acquitted. If, for any reason, the trial has proceeded beyond the stage of framing of the charge and the plea has been taken, an order of discharge will not be permissible. No evidence has been led in the present case on the basis of which the Court could have convicted the accused. The learned Additional Sessions Judge came to the conclusion that the law did not permit him to proceed with the trial from the stage at which he was and the learned Additional Sessions Judge, therefore, recorded the conclusion that the accused stands discharged. To my mind, this conclusion was incorrect in so far as the only order that the learned Additional

Sessions Judge could have passed was an order of acquittal. Under these circumstances, the order of the learned Additional Sessions Judge requires to be modified to the extent that the accused stands acquitted and not discharged.

58. In the result, for the reasons indicated by me, in this judgment, the Criminal Revision Application filed by the State fails and, accordingly, stands dismissed. The rule to stand discharged.

59. Mr. Vakil, learned Senior Counsel appearing on behalf of the State, submitted that the State desires to make an application for leave to appeal to the Supreme Court under the provisions of Article 134(1)(c) of the Constitution of India. Mr. Vakil submitted that this is a case which does involve points of law of some consequence and that, therefore, this is a fit case in which this Court should grant leave to appeal to the Supreme Court. In arriving at the conclusions at which I have done, I have to a large extent been guided by cases that have preceded me, the majority of them being the decisions of the Supreme Court itself. Furthermore, I need to record that this is a case where the Court was required to carefully scrutinise the facts of the record before the Court and, consequently, I do not consider this to be a fit case within the provisions of Article 134(1)(c) of the Constitution of India wherein I should grant leave to the State Government to appeal to the Supreme Court. This application is, accordingly, rejected.

60. Mr. Vakil, learned Senior Counsel appearing on behalf of the State, pointed out to me that it would undoubtedly take a little time before a copy of this judgment, which is relatively long, is obtained by the authorities concerned. He stated that the authority would thereafter be required to examine the judgment and to decide on the future course of action and to this extent it was his submission that the Government should be granted reasonable time for taking such further steps as the Government may desire and he submitted that during that period this Court should maintain the present status quo ante. This submission of Mr. Vakil is well-founded in so far as it will definitely take some time for even an ordinary copy of the judgment to be obtained by the authorities. The Government is certainly entitled to a reasonable time for the purpose of considering the judgment and deciding on its future course of action. To this extent, the Government is also justified in its request that the present status quo ante should be maintained and in the submission of Mr. Vakil the period requested for by him in 6 (six) weeks. This application is granted and it is directed that the present status qua ante shall be maintained for a period of 6 (six) weeks from the date on which a certified copy is ready. Liberty to the parties to apply. By directing status qua ante, it is clarified that the undertaking that has been given by Dr. Subbarao to the Court at the time of admission of this petition would continue until the expiry of this period.

61. As regards the documents that are the subject-matter of the present prosecution, Dr. Subbarao advanced a submission that like all other cases when the Court finally disposes of the matter that the consequential order should be to the

effect that the documents be returned to the party from whom they were seized. Having regard to the fact that in the course of the arguments there was a lot of dispute with regard to the manner in which or the places from where the documents are alleged to have been seized or recovered, no such consequential orders are being made. It shall be open to the respective parties to apply to the trial Court for appropriate orders. As regards the documents in respect of which the learned Additional Sessions Judge has passed an order that the same be returned to the accused forthwith, the interim order passed by this Court will continue to operate in respect of those documents for a period of 6 (six) weeks. After the appeal period is over and if no other Court is by then seized of the matter, it shall be open to the parties to apply to the trial Court for appropriate orders in respect of those documents. Until that time, the documents which, I am informed, are in safe custody shall continue to be retained in that condition.

62. Order accordingly.