

Bail Slip

The appellant herein/Accused viz M. Natarajan, S/o Marudappa, was directed to be released on bail, as per order of this court dated 11.08.2010 made in Crl.M.P. No 1 of 2010 in Crl.A. 476/2010.

Bail Slip

The appellant herein/Accused viz V. Bhaskaran S/o Vivekanandan, was directed to be released on bail as per order of this court dated 07.09.2010 made in Crl.M.P. No 1/2014 in Crl.A. No 541/2010.

Bail Slip

The appellants herein/Accused viz Yogesh Balakrishnan S/o Balakrishnan, and Sujaritha Sundararajan, S/o Sundararajan, were directed to be released on bail, as per order of this court dated 26.08.2010 made in crl.M.P. No 1 & 1 of 2010 in Crl.A. No 508/2010 & Crl.A. No 514/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.10.2017

PRONOUNCED ON: 17.11.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.476, 541, 508 and 514 of 2010

M.Natarajan
S/o Marudappa

.. Appellant in
Crl.A.No.476/2010/Accused No.1

V.Bhaskaran
S/o Vivekanandan

.. Appellant in
Crl.A.No.541/2010/Accused No.2

M.Yogesh Balakrishnan
S/o Balakrishnan

.. Appellant in
Crl.A.No.508/2010/Accused No.3

Sujaritha Sundararajan
W/o Sundararajan

.. Appellant in
Crl.A.No.514/2010/Accused No.4

Versus

State rep.by
Inspector of Police,
SPE/CBI/ACB, Chennai.

..Respondent/Complainant

Criminal Appeals filed under Section 374(2) of the Criminal Procedure Code seeking to set aside the conviction and sentence imposed by the learned Principal Special Judge for CBI Cases, Chennai, by the judgment in C.C.No.6 of 2004 dated 26.07.2010.

For Appellant
in CrI.A.No.476/2010 .. Mr.B.Kumar, Sr.Counsel for
Mr.S.Jayaseelan.

For Appellant
in CrI.A.No.514/2010 .. Mr.S.Dinakaran, Sr.Counsel for
Mr.S.Karthik.

For Appellant
in CrI.A.No.541/2010 .. Mr.V.Ramamurthy

For Appellant
in CrI.A.No.508/2010 ... Mr.S.Hariharan

For Respondent .. Mr.K.Raghavacharyulu
Spl.Public Prosecutor (CBI)
Assisted by K. Srinivasan
Spl. Public Prosecutor
(CBI Cases in all Appeals)

COMMON JUDGMENT

The subject matter of these appeal is a Luxury car manufactured by Toyoto Company at Japan in the trade name of LEXUS, sold at London and landed in India defying all the Regulations of the Importing Country. The persons involved in defying the Regulations are many, but few of them were caught in the dragnet of CBI and were prosecuted. The trial Court has held them all guilty. Hence, they are before this Court as appellants.

2.The role of each of the appellants as found proved by the trial court;(i)M.Natarajan(A-1): Managing Director of M/s.Tamilarasi Publications. He opened a Current Account bearing No.872 at Indian Bank, Abiramapuram, Chennai, in the name of M/s. Tamilarasi Publications, Chennai. Issued a letter to the Manager, Indian Bank, Abhiramapuram Branch authorising V.Bhaskaran(A-2), to operate his account on his behalf. From the said account Customs Duty for the import of LEXUS car was remitted by way of Bankers Pay Order. Though the Regulation says that Customs Duty remittance must be paid by way of Foreign Inward Remittance through Bankers Pay Order, the Indian Currency deposited into the Current Account of M/s. Tamilarasi

Publications was used for remittance of Customs Duty based on the letter of Natarajan(A-1) as if the said Current Account had enough Foreign Inward Remittance.

(ii) V.Bhaskaran(A-2) person found in possession of the LEXUS car claiming it to be his marriage gift by one Dr.S.Balakrishnan an absconding accused in this case and father of Yogesh Balakrishnan(A-3). Found privy to the cheating and forgery.

(iii) Yogesh Balakrishnan(A-3): Actively co-ordinated in the import of the LEXUS car by fabricating documents to circumvent the conditions imposed by the Government of India in the Transfer of Residence Provisions.

(iv) Smt.Sujaritha Sundararajan(A-4): The Branch Manager of Indian Bank, Abiramapuram Branch, Chennai, helped the other accused (A-1 to A-3) and the absconding accused Balakrishnan by issuing certificate as if enough Foreign Inward Remittance available in the account of M/s. Tamilarasi Publications. These above four accused along with the absconding accused Dr.S.Balakrishnan conspired to import the luxury Lexus Car forging document and thereby caused loss of Rs.1,06,20,471/- to the Government of India.

3. Based on the final report laid by the prosecution the trial Court has framed 5 charges against A1 to A4, that along with absconding accused Balakrishnan and the approver, they conspired among themselves to import luxury car in violation of Customs Regulations for fabricating and forging the import documents and misusing the Transfer of Residence Provisions for import of a passenger car. As a result of the said conspiracy they evaded import duty and cheated the Government of India to the tune of Rs.1,06,20,471/-. In the course of the said criminal conspiracy, fraudulently and dishonestly, under Transfer of Residence Provisions based on fabricated and forged documents imported LEXUS car and thereby committed offence of forgery of valuable security, used it as genuine and cheated the Government of India to the tune of Rs.1,06,20,471/-.

4. Though the car was manufactured in the year 1994, they fraudulently declared as if it was manufactured in the year 1993 and was used by Dr.Balakrishnan (absconding accused) for a period of more than one year before the said import. Though the Current Account No.872 stood in the name of M/s. Tamilarasi Publications, it had no Foreign Inward Remittance. Despite that V.Bhaskaran(A-2) in pursuance of the authorization given by M.Natarajan(A-1), had fraudulently got Bankers Pay Order with the connivance of the approver R.Bhavani and Sujaaritha Sundararajan(A-4) as if enough Foreign Inward Remittance available in the Current Account No.872 of M/s. Tamilarasi Publications.

5. Before the trial court on behalf of the prosecution 22 witnesses were examined and 92 documents were marked. On behalf

of the defence, 2 witnesses were examined and 12 documents were marked.

6. After analysing the oral and documentary evidence and the material placed before it, the trial Court held all the accused guilty of the charges and passed sentence as below:-

1st Accused-Natarajan:

(i) found guilty of offence u/s 120-B r/w 420, 467, 471 IPC and Section 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988 and sentenced to undergo R.I. for 2 years and to pay a fine of Rs.10,000/-;

(ii) found guilty of offence u/s 420 IPC and sentenced to undergo R.I. for 2 years and to pay a fine of Rs.10,000/-;

2nd Accused-V.Bhaskaran:

(i) found guilty of offence u/s 120-B r/w 420, 467, 471 IPC and Section 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988 and sentenced to undergo R.I. for 2 years and to pay a fine of Rs.10,000/-;

(ii) found guilty of offence u/s 420 IPC and sentenced to undergo R.I. for 2 years and to pay a fine of Rs.10,000/-.

3rd Accused-Yogesh Balakrishnan:

(i) found guilty of offence u/s 120-B r/w 420, 467, 471 IPC and Section 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988 and sentenced to undergo R.I. for 2 years and to pay a fine of Rs.10,000/-;

(ii) found guilty of offence u/s 420 IPC and sentenced to undergo R.I. for 2 years and to pay a fine of Rs.10,000/-;

(iii) found guilty of offence u/s 467 IPC and sentenced to undergo R.I. for 2 years and to pay a fine of Rs.10,000/-;

(iv) found guilty of offence u/s 467 r/w 471 IPC and sentenced to undergo R.I. for 2 years and to pay a fine of Rs.10,000/-;

4th Accused-Smt.Sujaritha Sundararajan:

(i) found guilty of offence u/s 120-B r/w 420, 467, 471 IPC and Section 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988 and sentenced to undergo R.I. for 2 years and to pay a fine of Rs.10,000/-;

(ii) found guilty of offence u/s 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and sentenced to undergo R.I. for 2 years and to pay a fine of Rs.10,000/-. The trial court has also ordered the period of sentence shall run concurrently.

All the four accused have filed appeal individually. So, for the sake of convenience they are referred as per the ranking in the trial court.

7.The learned Senior Counsel appearing for the 1st Accused apart from pointing out flaw in the factual finding of the trial court, had raised the following two legal issues:

- (i)The car which was alleged to have been imported in violation of Customs Act was handed over to V.Bhaskaran(A-2) on payment of arrears of tax by the importer Dr.S.Balakrishnan under Section 90(2) r/w 91 of Finance (No.2) Act, 1998 availing the immunity under the Kar Vivad Samadhan Scheme (KVS Scheme), 1998. While Section 91 of the Scheme provides immunity from prosecution for any offence, the prosecution against the 1st Accused after payment of Customs Duty under KVS Scheme is unsustainable. "Any other law time being in force" takes under its wing the Prevention of Corruption Act and IPC. Exs.D2 to D6 documents relate to Kar Vivad Samadhan Scheme (KVS Scheme), 1998 in respect of the LEXUS car wherein the duty dispute had been amicably settled by the Government of India represented through Customs Department. After payment of Rs.2,84,325/- towards payment of arrears of Customs Duty by Dr.S.Balakrishnan, on 18.3.1999 the said vehicle was handed over to V.Bhaskaran(A-2) by the Customs Department. Therefore, the charge of conspiracy to cheat the Government of India to the tune of Rs.1,06,20,471/- has no legs to stand, the entire exercise of prosecuting the 1st Accused and others is contrary to the KVS Scheme and a futile exercise.
- (ii)The prosecution had strongly relied upon the evidence of R.Bhavani(P.W.14), who was granted pardon and treated as approver. The procedure followed by the learned II Metropolitan Magistrate, Egmore, Chennai to grant pardon for the accused and to treat her as approver is contrary to Section 306 of the Code. The trial court even without perusing the previous statement of the approver had treated P.W.14 as an approver and had based conviction of the Accused relying upon her evidence. Without jurisdiction, the learned II Metropolitan Magistrate, Egmore, Chennai, has granted pardon in the case after the Special Court, constituted to deal with the offence under the Prevention of Corruption Act, 1988, has taken cognizance. Thus, the grant of pardon is in violation of law and the evidence of the approver P.W.14 is non-est in law and be totally eschewed.
- (iii)In addition to the above legal submissions the learned Senior Counsel appearing for the 1st Accused also submitted that the entire case of the prosecution is a verbatim repetition of the investigation made by DRI and they have virtually lifted the evidence and statements collected by DRI during the course of their investigation and had marked the statements recorded under Section 108 of the Customs Act in the present criminal proceedings initiated under the

Prevention of Corruption Act. Though the statement given to the Revenue Officials under the Customs Act may be admissible for adjudication under that Act, the same is not admissible in evidence for other crime. However, despite the objection for marking those statements as Exhibits, the trial court has permitted the prosecution to mark those statements as Exhibits and relied upon those Exhibits to prove the charges against the Accused.

- (iv) On facts, the learned Senior Counsel appearing for the 1st Accused contended that except being the account holder he is not the beneficiary of the LEXUS car imported. The Bankers Pay Order Ex.P6 for a sum of Rs.11,94,074/- was issued from the Foreign Inward Remittance in the account of No.872 M/s.Tamilarasi Publications. The prosecution has not placed any plausible evidence to prove that Account No.872 of M/s.Tamalarasi Publications Private Limited had no Foreign Inward Remittance at all. While so, the case of the prosecution against the 1st Accused that he conspired to import LEXUS car in violation of Customs Regulations and in the course of the said conspiracy he fabricated the documents to appear as genuine is baseless.
- (v) Ex.P-64-the alleged letter addressed to the Manager, Indian Bank, purported to have been written by the 1st Accused in the Letter Pad of 'Puthiya Parvai' authorising the 2nd Accused V.Bhaskaran to sign the cheques and other documents on his behalf is a concocted document by the prosecution to fix the 1st Accused. The said Exhibit ought not to have been relied on by the trial court since it is not the original but photo copy. Therefore, while the importer has settled tax arrears due to the Government through 'Kar Vivad Samadhan Scheme, 1998 and he was granted immunity from all other proceedings, when there is no evidence to show the involvement of the 1st Accused to the alleged criminal conspiracy, fabricating documents with fraudulent intention to cheat the Government of India, he cannot be convicted for the offence under Section 120-B of IPC. On the ground of want of evidence and infraction of legal proceedings the 1st Accused is entitled for acquittal.

8.The learned counsel appearing for the 2nd Accused-V.Bhaskaran apart from adopting the submissions of A-1 counsel in respect of the legal infirmity pointed out by the 1st Accused, also added that the alleged luxury car was gifted to the 2nd Accused as a marriage gift by Dr.S.Balakrishnan. Since the luxury car worth several lakhs have been gifted to him, he thought fit that he should pay the Duty and get the vehicle cleared from Customs. The alleged corrections in the Bill of Entry and other related documents were not carried out by him personally or at his instance. While the prosecution has failed to prove that Account No.872 in the name of M/s. Tamilarasi Publications, had no Foreign Inward Remittance, contrarily,

through P.W.5 it has been elucidated that in the said Account there was Foreign Inward Remittance of USD 2500 which is the subscription made by Foreign Readers of M/s.Tamalirasi Publications Private Limited "Puthiya Parvai". It is also contended by the learned Senior Counsel appearing for the 2nd Accused that the documents collected from the bank are not duly certified as per the Bankers Book Evidence Act to admit it in evidence and most of the documents are photo copy and had been admitted subject to objection but the trial court has not considered the objection in proper manner while appreciating the evidence. The original First Information Report was only against the officials of Customs Department and the Importer Dr.S.Balakrishnan. But for strange reason the prosecution has dropped the proceedings against the Customs Officials who have permitted to import the luxury car after collecting Customs Duty of Rs.11,94,074/-. But had prosecuted the 2nd Accused who was in possession of the luxury car given to him as gift during his marriage. The letter Ex.P-64 alleged to be the authorisation letter of 1st Accused in favour of the 2nd Accused is a make belief document created by the prosecution. The original of this document has not seen the light of the day. Based on the photo copy of Ex.P-64 it is alleged that 1st and 2nd Accused conspired to obtain Bankers Pay Order to the tune of Rs.11,94,074/- from the Current Account No.872 of M/s. Tamilarasi Publications purported to be against Foreign Inward Remittance. But the prosecution has not placed even single piece of evidence to show that based on the authorisation letter Ex.P-64 the 2nd Accused operated the account of 1st Accused. While so, when there is no evidence to correlate the 2nd Accused to that of the alleged fabrication of Import documents, the trial court ought to have honourably acquitted the 2nd Accused. Contrarily the trial court has convicted him alleging that he conspired to cheat the Central Government in connivance with the other accused while the fact remains that the Central Government has not incurred any loss but had collected Rs.11,94,074/- at the first instance before Customs Clearance and Rs.2,84,325/- at the second instance under 'Kar Vivad Samadhan Scheme, 1998' and also granted immunity from all other proceedings.

9.The learned counsel appearing for the 3rd Accused-Yogesh Balakrishnan apart from the attack on legal grounds raised by the other counsels contended that except the admitted fact that the accused is the son of the importer of the LEXUS Car, there is no piece of evidence to implicate him in the said crime. The Bill of Lading Ex.P1 was handed over to P.W.1-Clearing Agent for preparing Bill of Entry. The Invoice for the LEXUS car clearly indicates that it was raised on 13.7.1994. There is no manipulation or fabrication in the Invoice submitted by him to the Clearing Agent. While so, the charge that he conspired to fabricate the Invoice to show as if the vehicle was manufactured in the year 1993 and was used by Dr.S.Balakrishnan for more than

one year is baseless. The Custom Officials who scrutinized the Invoice and Bill of Lading found it to be in order and had permitted the importer to pay Customs Duty and take delivery of the car. While the Customs Officials who are mandated under statute to scrutinize the Bill of Lading and Import documents were satisfied and cleared the car and no prosecution has been launched against them for clearing the car it is improper to find fault with the son of the importer who had submitted the documents to the Customs authority and paid the Customs Duty as demanded by them.

10.The learned Senior Counsel appearing for the 4th Accused-Smt.Sujaritha Sundararajan, submitted that the prosecution case against the accused persons is that, they together conspired to import the Foreign Vehicle which does not fall within the definition of permissible goods for import. According to the prosecution the export and import policy of the Government of India relating to import of passenger cars and Automobile vehicle which is marked as Ex.P31, restricts import of car above 1600 CC by Indian Nationals or Foreign Nationals of Indian Origin coming to India for permanent settlement, unless the said importer have stayed abroad continuously for a period of at least two years prior to his coming to India for permanent settlement and had used the said car for at least one year before the date of import. Further the Custom Duty should be paid by the importer with Foreign Inward Remittance. The scheme also permits the importer to sell the car in the open market after his return to India without any restriction or recourse the period of retention of the vehicle. The conspiracy was executed at two places one at Customs House, Chennai and another at Indian Bank, Abiramapuram Branch, Chennai.

11.The LEXUS car sold by its dealer at London under Invoice dated 13.7.1994 was imported into India as if the vehicle was purchased before July 1993 and was Registered in London, bearing Registration Mark L166 GXP. The first date of registration is shown as 15.7.1993. Bill of Entry was accordingly fabricated and false affidavits were submitted in the name of Dr.S.Balakrishnan. The 4th Accused had no role or knowledge about the fabrication of documents which alleged to have taken place at the Custom House or at Clearing Agent's Office.

12.The second place, Indian Bank, Abiramapuram Branch it is alleged by the prosecution that A-4 called the approver (P.W.14) to issue a letter marked as Ex.P10 wherein the Bankers Pay Order No.120764 has been issued from the Foreign Inward Remittance received in the account No.872 of M/s.Tamalirasi Publications Private Limited for Dr.S.Balakrishnan. The trial court has turned a Nelson Eye to Ex.P11 which is signed by the 4th Accused where she has issued a letter dated 8.9.1994 under the caption "To Whom So Ever It May Concern" certifying that the Bankers

Pay Order No.120764 has been issued from the Foreign Remittance received. There is no reference in her letter about the Account number or for whom it is issued. If the case of the prosecution that based on the letter Ex.P.10 the luxury car was permitted to be cleared by Customs Department, it must be P.W.14 who issued the letter to be held responsible and not the 4th Accused. Admittedly, there were Foreign Remittance into the Current Account No.872 of M/s.Tamilarasi Publications, Bankers Pay Order No.120674 was issued from the said Foreign Inward Remittance. The letter of A-4 marked as Ex.P11 is not the certificate relied by the Customs Authorities to clear the vehicle. While so, the allegation against the 4th Accused that she conspired along with A-1 to A3 and the absconding Accused in the criminal act of illegality importing Foreign car by producing fabricated document as if it is genuine, is totally baseless. Further, without following the procedure laid under Section 306 of Criminal Procedure Code, the person who has issued the Foreign Inward Remittance Certificate Ex.P10 based on which the vehicle was cleared has been granted pardon. Whereas for no fault of her, Smt.Sujaritha Sundararajan had been arrayed as 4th Accused and held guilty solely based on the tainted evidence of P.W.14. The letter Ex.P10 admittedly had been issued by P.W.14 when the 4th Accused was not in the Bank. The evidence of P.W.14 that she was contacted by the 4th Accused over phone and instructed her to issue Ex.P10 does not carry any truth since P.W.15 Chandrasekar has deposed that P.W.14 consulted him regarding issuance of certificate adding the account number and name of Dr.S.Balakrishnan which were not found in Ex.P11 issued by the 4th Accused.

13.Per contra the learned Special Public Prosecutor representing the respondent/C.B.I. submitted that the appellants/Accused 1 to 4 who were found guilty of conspiracy for causing loss to the State should be looked differently from ordinary criminals since their act of crime undermine the economy of the State. Interference of the order of conviction imposed by the trial court shall be within the parameters of Section 374 and 465 of Criminal Procedure Code.

14.In support of his submissions, the learned Special Public Prosecutor has relied on the decision rendered by the Hon'ble Supreme Court in State of Gujarat vs. Mohanlal Jitmalji Porwal reported in (1987) 2 SCC 364, wherein the Hon'ble Supreme Court has observed that:

"Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The Community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the Community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The Community or the State is

not a person-non-grata whose cause may be treated with disdain. The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest."

15. With this prelude, the learned Special Public Prosecutor submitted that none of the pleas raised by the appellants counsels including legal issues deserve any merit for consideration. Regarding the settlement of duty under Kar Vivad Samadhan Scheme, 1998 the learned Special Public Prosecutor brought to the notice of this Court the intra party appeal disposed of by the Hon'ble Supreme Court in M. Natarajan v. State by Inspector of Police, SPE, CBI, ACB Chennai reported in (2008) 3 SCC (crl.) 507.

16. Regarding the objection of granting pardon to the approver, the learned Special Public Prosecutor submitted that under Section 306 of the Code pardon to accomplice can be tendered at any stage of the investigation on condition the accomplice undertook to make full and truth disclosure of the whole of the circumstances within his knowledge relating to the offence. In the present case the II Metropolitan Magistrate, Egmore, Chennai, has tendered pardon to the accomplice who was later examined by the prosecution as P.W.14 the order of tendering pardon is marked as Ex.P71. Pardon has been granted after considering the confession given by the accomplice before the X Metropolitan Magistrate, Egmore, Chennai and only after ascertaining that the statement was given voluntarily and knowing about the consequences of the said statement. Under such circumstances, when pardon has been granted after applying the judicious mind there is no need to eschew the evidence. Non-examination of the Magistrate who recorded the confession statement has no bearing in decision making since the maker of the statement has come before the trial court and had deposed as P.W.14.

17. The learned Special Public Prosecutor submitted that Ex.P31 is the Public Notice No.202/PN/92-93 dated 30.3.1994

issued by the Government of India, Ministry of Commerce, prohibiting the import of passenger car above 1600 CC by Indian Nationals or Foreign Nationals of Indian Origin coming to India for permanent settlement, unless the said importer have stayed abroad continuously for a period of at least two years prior to his coming to India for permanent settlement and had used the said car for at least one year before the date of import. The LEXUS car imported by the absconding accused Dr.S.Balakrishnan to gift V.Bhaskaran(A-2) for his marriage, was manufactured and sold by the Toyota Company at Japan only in the moth of March, 1994 and the same has been imported as a brand new car. However, to circumvent the restriction mentioned above they have altered the date of purchase as 17.7.1993 in the Bill of Entry Ex.P2. For the fraudulent import, A-1 has requested the Manager, Indian Bank, Abiramapuram, Chennai vide his letter dated 8.9.1994 seeking Foreign Inward Remittance Certificate for a sum of Rs.12.00 lakhs. Ex.P13 the letter of A-1 has been acted upon by A-4 the Manager of the Indian Bank, Abiramapuram, Chennai though the letter Ex.P13 does not mention any account number and been issued in the Letter Head of Tamlaras Publications (Tamil Weekly).

18.The non-mentioning of account number in his letter Ex.P13 is a deliberate omission since A-1 was operating three accounts in the Indian Bank, Abiramapuram Branch viz., (i) Overseas Account in the name of M/s.Tamlaras Publications Private Limited bearing Overseas Account No.OCC:11; (ii) in the name of M/s. Tamlaras Publications Private Limited Tamlaras Weekly bearing Current Account No.872 and (iii) Tamlaras Publications "Puthiya Parvai" Fortnight Magazine bearing Current Account No.879. Based on the bald requisition letter Ex.P13 given by A-1, knowing fully well that there was no Foreign Inward Remittance in the M/s. Tamlaras Publications Private Limited Current Account No.872, A-4 had instructed P.W.14, to issue Ex.P10 certificate as if the Bankers Pay Order No.120764 for a sum of Rs.11,94,074/- been issued from Foreign Inward Remittance received in the Current Account No.872 of M/s.Tamlaras for Dr.S.Balakrishnan. After the DRI seized the luxury car without any registration number. On 12.7.1996, enquiry in connection with that car was conducted by V.Ramu, Deputy Director of DRI with the first Secretary, High Commission of Indian at London, Mr.S.B.Singh, to collect information regarding the LEXUS car seized by them. In the course of their investigation it was found that the LEXUS Division of Toyota, London had sold the vehicle to Y.Balu of 3, Shelly Avenue, Manor Park, London E12 6SP and Dr.S.Balakrishnan is the consignee in India and the same was sold by the LEXUS Division of Toyota on 13.7.1994. Since the Government of India Regulation marked as Ex.P31 permits only old car used for more than one year if it is above 1600 C.C. there must be evidence to show that the car which was imported by the accused persons was registered at the exporting country

and plying on road for at least one year. Therefore, to show the car was first registered at London one year prior to the date of export the accused has fabricated a document as if the London Central Vehicle Registration Office has issued a letter confirming the registration mark L166 GXP which was assigned to LEXUS G.S 300 car Cylinder capacity 2954 was registered on 15.7.1993 and the registered owner of the car at that time was Swaminathan Balakrishnan. By producing this letter, along with fake sale invoice and false declaration Yogesh Balakrishnan(A-3) had cleared the vehicle using the Bankers Pay Order drawn at Indian Bank, Abiramapuram Branch at the behest of A1 and A2 from their account though no Foreign Inward Remittance was in the said account. Since the web of conspiracy which was hatched in secrecy has surfaced once the vehicle been used by V.Bhaskaran (A-2) and seized by DRI officials, the materials collected during the investigation conducted by DRI are admissible in evidence and there is no illegality in accepting the said document to hold the accused persons guilty.

19.The learned Special Public Prosecutor further submitted that to cap it all, the vehicle which was seized by DRI, later taking advantage of KVS scheme introduced by Government in the year 1998, Dr.S.Balakrishnan (later absconded) had submitted himself for settlement before the Commissioner of Customs furnished the original invoice admitting its year of manufacturing as 1994 and paid necessary Customs Duty and the same is relied by the accused and marked as Exs. D1, D2 and D3. After payment of Customs Duty under "Kar Vivad Samadhan Scheme" (KVS Scheme), 1998 on 6.4.1999 the said car was handed over to K.Ravi, Chartered Accountant, at the request of V.Bhaskaran(A-2) and the said letter of A-2 dated 19.4.1999, marked as Ex.D6.

20.With these sequence of events established through documents, the learned Special Public Prosecutor submitted that there is no scope to interfere with the well considered Judgment of the trial Court. Hence, all the appeals have to be dismissed.

21.The point for consideration is:

Whether the trial court judgment bristles with legal and factual infirmities as submitted by the counsels appearing for the appellants?

22.Going by the prosecution evidence, this Court finds that the Government of India under the Transfer of Residence Provisions, had issued Public Notice No.202/TN/92-97, dated 30.03.1994. The said Notification is marked as Ex.P31. The essence of this notice is as follows:-

"Passenger cars and automobile vehicles are included in Section-J, Part-II of the Negative List of Imports in Chapter-XV of the Export and

Import Policy April 1992 - March 1997 and their import is not permitted except against a licence or in accordance with a Public Notice issued in this behalf. This Public Notice specifies the conditions under which such vehicles can be imported.

2. Import of passenger cars and automobile vehicles may be made without a licence by the categories of eligible importers specified in this Public Notice subject to the following conditions:-

- (i) the payment for the vehicle is made abroad and such payment does not involve, directly or indirectly, any remittance except in the case of category 'I' Importers of foreign exchange from India;
- (ii) the payment of the customs duty is made in foreign exchange, unless expressly exempted in the case of any particular category of importer in this Public Notice.
- (iii) the conditions specified against each category of eligible importers in this Public Notice are fulfilled; and
- (iv) in the case of those importers returning to India for permanent settlement, a declaration to that effect is given to the Customs at the time of the clearance of the car.

A. Indian nationals or foreign nationals of Indian origin coming to India for permanent settlement:

(a) Import of one passenger car with engine size not exceeding four cylinders and not exceeding 1600 c.c. is permitted, whether the car is new or old. Alternatively, import of one passenger car is also permitted provided the car has been in the use of the importer for more than a year prior to his return to India.

(b) The importer has stayed abroad continuously for a period of at least two years prior to his coming to India for permanent settlement.

(c) The payment for the car is made abroad before his return to India.

(d) The car should be imported into India within six months of the arrival of the importer in India for permanent settlement.

(e) If the importer transfers his residence out of India again, he will be entitled to import another car under this Policy only after a

minimum period of five years from the date of importation of the previous vehicle. Custom Authorities shall endorse on the passport of the Importer "Transfer of residence with car" at the time of clearance of the car.

(f) The importer is free to sell the car in the open market after his return to India without any restriction as regards the period of retention of the vehicle.

(g) Import of any other type of automobile vehicle may be permitted by the Director General of Foreign Trade on merits."

23.The officials of Directorate of Revenue Intelligence (DRI) based on the intelligence had intercepted the LEXUS car on 12.7.1996 at the junction of Cathedral Road and Binny Road at about 4.30 pm. V.Bhaskaran(A-2) has visited the DRI office thereafter and in his presence the LEXUS car was seized under Customs Act. This fact is spoken by P.W.11 Mr.K.P.H.Paul Mohammed, Senior Intelligence Officer of DRI. Thereafter the DRI has taken up the investigation and the file pertaining to their investigation is marked as Ex.P42. The relevant communications following the seizure are marked as Exs. P43 to P60. P.W.9, P.W.10 and P.W.11 the officials of DRI have deposed about the contents of the above documents besides P.W.13 Mr.S.B.Singh, the First Secretary Trade Department, Indian High Commission at UK to whom DRI officials sent communication to enquire about the LEXUS car seized by them. Thus, it is not disputed by any of the appellants the fact that the LEXUS car which was seized by DRI was imported by Dr.S.Balakrishnan. The year of manufacturing of the said car is 1994 and not 1993 as found in the Customs Bill of Lading presented by the importer through his Clearing Agent at the time of clearing the vehicle on 8.9.1994. It is also admitted fact that the Custom Duty for the import of the said car was paid from the Current Account No.872 of M/s. Tamilarasi Publications Private Limited which was opened and operated by A-1 in the Indian Bank, Abiramapuram Branch, Chennai. The Bankers Pay Order is marked as Ex.P6. This is also not disputed by the appellants. In a letter under KVS scheme the importer Dr.S.Balakrishnan has admitted the violation of Customs Regulations and had paid difference Custom Duty. This is evident through the defence document marked as Exs.D2 to D5. After settling the Customs Duty under KVS Scheme, the vehicle has been taken back by A-3 on 19.9.1994 under Ex.D6. Thus it is clear that the LEXUS car was imported in violation of Transfer of Residence Provisions for import of a passenger car.

24.According to Export and Import Policy communicated through Public Notice under Ex.P31, yet another condition mentioned in clause 2(ii) is that the payment of Customs Duty is to be made under Foreign Inward Remittance unless expressly

exempted. The importer in this case Dr.S.Balakrishnan does not fall under exempted category. Therefore, the Customs Duty for the said LEXUS car ought to have been paid through Foreign Inward Remittance. The evidence placed before this Court proves to show that the Customs Duty for the said LEXUS car was assessed at Rs.11,94,074/- and the same has been paid in favour of Collector of Customs in the account of Dr.S.Balakrishnan on 8.9.1994. The appellants admitted that a cheque was issued from the Current Account No.872 which stands in the name of M/s. Tamilarasi Publications Private Limited.

25.To prove that this this money was not from Foreign Inward Remittance but internal remittance made by the account holders the prosecution has relied upon Ex.P20 the statement of account maintained by Indian Bank, Abiramapuram Branch, in respect of M/s. Tamilarasi Publications Private Limited Current Account No.872 and the relevant entries in the statement of account marked as Ex.P22 and P.28. The objection for relying upon Exs. P20 and the entries in P22 and P28 is that they were not marked in accordance with the Bankers Book Evidence Act. Be it as it may, it is not the case of the appellants that Ex.P6 Bankers Pay Order was not drawn from the amount lying in the Current Account No.872 in the name of M/s. Tamilarasi Publications Private Limited. While the fact being so even without statement of account marked as Ex.P.20 and the relevant entries marked as Exs.P22 and P28 it is evident from the record that Customs Duty for import of the LEXUS car was paid by way of Bankers Pay Order Ex.P6 from the Current Account No.872 of M/s. Tamilarasi Publications Private Limited opened by A-1-Natarajan. In addition, the prosecution has also relied upon Ex.P64 a letter given by A-1-Natarajan authorising A-2-V.Bhaskaran to make draw and endorse and accept and otherwise sign any Bills of Exchange, promissory note or other negotiable instruments, discount the same with Indian Bank, Abiramapuram Branch, Chennai in respect of A-1's account. This Ex.P64 is dated 4.5.1994 signed by A-1, wherein A-2 has affixed his specimen signatures. This letter is issued in the Letter Pad of "Puthiya Parvai".

26.It is evident from the Exhibits relied by prosecution that A-1-Natarajan was operating two accounts with Indian Bank, Abiramapuram Branch, Chennai, in the name of Tamilarasi Publications Limited (i) Current Account No.879 for "Puthiya Parvai", Fortnight Magazine and (ii) Current Account No.872 for Tamilarasi Weekly Magazine and also a Overseas Account No.11 in the name of M/s. Tamilarasi Publications Private Limited. Ex.P64 does not specify whether A-1 has authorised A-2 to operate all the three accounts or "Puthiya Parvai" account alone since Ex.P64 letter has been issued in the Letter Head of "Puthiya Parvai". But the fact remains that the Bankers Pay Order bearing No.120764 for Rs.11,94,074/- was from the remittance in the Current Account No.872 of M/s. Tamilarasi Publications Private

Limited, that account does not have any Foreign Inward Remittance.

27. In this context it is essential to refer Ex.P13 dated 8.8.1994 issued by A-1 in the Letter Head of M/s. Tamilarasi Publications Private Limited, addressed to the Manager, Indian Bank, Abiramapuram Branch, Chennai, wherein he has stated that various remittances made by purchase creditors on 22.6.1994 into the account for a sum of Rs.12.00 lakhs are related to remittance made by his Foreign buyers of his weekly and Fortnightly Magazines (emphasis added). Ex.P13 which is issued in the Letter Head of Tamilarasi, a Tamil Weekly and Ex.P64 issued in the Letter Head of "Puthiya Parvai" a Tamil Fortnight Magazine indicates that A-1 was publishing two magazines one weekly by name Tamilarasi and another fortnight Magazine by name "Puthiya Parvai" and maintaining two different Bank Accounts. His letter dated 8.9.1994 marked as Ex.P13 is very vague as vagueness could be. He mentioned the remittances made by his Foreign Buyers for his weekly and fortnight magazines but in which account the remittance was deposited does not find place in his letter. However, based on this letter A-4 and the approver (P.W.14) had ventured to issue certificates marked as Ex.P10 and P.11 on the same day. Perusal of the letters issued by the approver which is marked as Ex.P10 indicates that she certifies that the Bankers Pay Order Ex.P6 was issued from the Foreign Inward Remittance received in the Current Account No.872 of M/s. Tamilarasi Publications Private Limited for Dr.S.Balakrishnan. How can such certificate could be issued by the approver (P.W.14) when there is no actual Foreign Inward Remittance into the Current Account No.872? It has been proved by the prosecution that this letter has been issued by the approver (P.W.14) at the instance of her Manager who had issued Ex.P11, without mentioning the account number and the name of the account holder few hours prior to the issuance of Ex.P10.

28. The learned Senior Counsel appearing for A-1 relying upon the admitted portion of evidence of P.W.5 that the collection schedule prepared by Overseas Branch to Abiramapuram Branch to USD 2500 remittance made into Overseas Account No.11 of Tamilarasi indicates Tamilarasi account had Foreign Inward Remittance. This statement found in the evidence of P.W.5 does not carry the case of the defence nowhere to prove that Current Account No.872 in the name of Tamilarasi Publications Limited had Foreign Inward Remittance to the tune of Rs.11,94,074/-.

29. P.W.1 Mr.S.Janakiraman, owner of Sambasivam and Company, Clearing and Forwarding Agent, in his evidence has stated that during the month of September 1994 the Additional Commissioner of Customs Mr.Gopinath called him over phone and requested him to meet at his office. In response to his request he met Gopinath at his office on the same day he was introduced

Mr.Yogesh (A-3) as son of Dr.S.Balakrishnan, the importer of the LEXUS car and sought his help to file papers in the Customs Office. A3 has gone to P.W.1 office on 7.9.1994 and handed over Bill of Lading Ex.P1. When P.W.1 asked for production of the original Bill of Lading, A-3 has promised that he will produce the original Bill of Lading later.

30.P.W.2-Suresh in his evidence has deposed that while he was working as Import Clerk in Sambasivam Company run by P.W.1 he prepared the Bill of Entry Ex.P2 on behalf of Dr.S.Balakrishnan as per the instructions of P.W.1 based on Ex.P1 Bill of Lading. Declarations under Exs.P3 and P4 were also prepared by him and the same have been identified by him before the Court. The LEXUS car has been allowed to be imported based on these documents. Evidence of P.W.1 and P.W.2 indicates that Ex.P1 was given by A-3 and on the basis of Ex.P1 Bill of Lading, Ex.P2-Bill of Entry and Exs.P3 and P4-Custom Declarations were prepared by P.W.2. Perusal of Ex.P1 Bill of Lading furnished by A-3 to P.W.1 at the time of import and Ex.D1 which is relied on by the defence apparently expose the interpolation. In Ex.P.2, "second hand" (13.7.1993) is written in hand with a few other corrections regarding the value of the vehicle and tax assessable. Obviously the interpolation "second hand" (13.7.1993) has been made in Ex.P2 to circumvent the Regulations which restricts the import of new car over and above 1600 CC as seen from the Government of India Public Notice marked as Ex.P31.

31.P.W.9 Mr.Ramu the then Deputy Director, Directorate of Revenue Intelligence, Madras Zonal Unit, Madras, in his evidence has vividly explained how Dr.S.Balakrishnan has purchased LEXUS car GS300 from M/s. LEXUS Quadrangle, Redhill, Surrey which was manufactured by Toyota company in Japan during the month of March 1994. The invoice of the said car shows the value as £24,747 and the invoice is dated 13.7.1994. Whereas the Bill of Lading marked as Ex.P1 indicates the value of the car as £21,405. The communication of his predecessor Mr.S.S.Radhakrishnan with S.B.Singh, Trade Department, Indian High Commission at UK in this regard are part and parcel of prosecution Ex.P42.

32.The facts spoken by P.W.9 is corroborated by P.W.13 S.B.Singh, the Trade Department, Indian High Commission at UK who had collected information at London in his capacity as Trade Department, Indian High Commission at UK. In his cross-examination when he was confronted with Exs.P50 to P52, which does not contain any signature of the authority of LEXUS Company, he has explained that in United Kingdom such letters are not signed. It is not necessary to authenticate any document send from Foreign Country to India under Diplomatic Seal and Passport Act of India. P.W.13 further deposed that the

information collected by him indicate the LEXUS car and one BMW car was exported to India through Freight Forwarder ST Rent and accompanied under Invoice No.12144 dated 12.8.1994. The car was handed over by Balu to the Freight Forwarder.

33.P.W.20 Mr.Raja Manoharan, Appraising Officer at Customs House during the relevant point of time has clearly deposed that how the LEXUS car which is not otherwise eligible to be imported got customs clearance at the intervention of Hariharan, Assistant Collector of Customs and Senthilvel, Commissioner of Customs at that point of time. He has identified A-3-Yogesh Balakrishnan as a person who was with Hariharan at his Chamber on 8.9.1994. Hariharan has given a Bill of Entry and asked P.W.20 to clear the consignment within two hours. Though in the normal course imported car has to be first appraised before the assessment, Hariharan has insisted to assess the car based on the Bill of Lading first and then to appraise it. On instruction P.W.20 had prepared a note based on the Bill of Entry Ex.P2 and P12 along with declaration Ex.P3 and P4 and the affidavit Ex.P5.

34.A perusal of these Exhibits as spoken by P.W.20 one could easily seen that the importer has given a declaration to the Customs Department under Ex.P3 that the content of Invoice No.00077, dated 13.7.1994 of LEXUS Division are true to his knowledge and belief. The importer has also signed the Bill of Entry Ex.P4 wherein he has informed the invoice value as £21,405. He has further given an affidavit Ex.P5 wherein he has declared himself as Citizen of India, the payment to the vehicle was made abroad and it does not require any direct or indirect Foreign Inward Remittance from India. He being continuously residing abroad since 1973 had returned to India for permanent settlement on 4th September, 1994. He has given an undertaking that the car will be registered in his name after its clearance. Along with this affidavit he has also given a separate declaration to the same effect. The sales invoice furnished by the importer to the Customs Department and the first registration certificate alleged to have been issued by London Central Vehicle Registration Office dated 24.8.1994 were proved to be fabricated since the LEXUS car as described in the Bill of Lading Ex.P1 was sold only on 13.7.1994 even as per the declaration signed by the Custom House Agent. Whereas the invoice furnished by A3 to P.W.20 is dated 13.7.1993, valued at £21,405. When the invoice itself is dated 13.7.1994 the registration details alleged to have been furnished by London Central Vehicle Registration Office letter dated 24.8.1994 stating that the said vehicle was first registered on 15.7.1993 with registration mark L166 GXP for direct export clearly proves the fabrication. Besides the information collected by S.B.Singh-P.W.13 the First Secretary, Trade Department, Indian High Commission at UK and communicated to V.Ramu(P.W.9) the Deputy Director, Directorate of Revenue Intelligence, goes to show that

P.W.13 has ascertained from Her Majesty Customs and confirmed that the registration certificate furnished by the importer purported to have been issued by Central Vehicle Registration Office, London, signed by Fargihori MS is a forged document.

35.Ex.P58 is the letter of S.B.Singh regarding his information collected at London. It clarifies the fact that Registration No.L166 GXP was assigned to vehicles in London only from 1.8.1993 and it continued till 31.7.1994. Therefore, the certificate showing first registration as 15.7.1993 is a grave contradiction and proved to be forged document. Further the Toyota dealer at London after verifying the vehicle Chassis number and Engine number had informed that the car was manufactured in Japan during March 1994. Thus, the prosecution has proved that A-3 Y.Bala has furnished documents which are forged and fabricated to show as if the LEXUS car imported by his father Dr.S.Balakrishnan, was used by his father for more than one year in London. Whereas the evidence furnished by the prosecution establish the fact that the car itself was manufactured only in the month of March 1994 and sold directly for export by the LEXUS company at London on 13.7.1994 and it was never registered at Central Vehicle Registration Office, London.

36.The learned counsel appearing for A-3 pleads ignorance of all these forgery and fabrication. The very conduct of A-3, his presence at Customs House, production of all the forged documents to P.W.20, being identified by P.W.20 in the Court falsifies the submission made by the counsel appearing for A-3.

37.The learned counsel appearing for A-1 submitted that after settlement of dispute under KVS scheme the charge has to be quashed since the statute has promised immunity from all prosecution under all law. Hence the trial court ought not to have proceeded further after the Custom Department has collected the differential Customs Duty and returned the car to A-3. Relying upon Section 90, 91 and 95 of KVS Scheme, 1998, the learned Senior Counsel tried to impress upon this Court the proceedings in this case is a futile exercise.

38.The learned Special Public Prosecutor appearing for the respondent CBI, brought to the notice of this Court that the above contention is fallacious and already been agitated by the first accused and negatived by the Hon'ble Supreme Court as early as 2008. The judgment of the Supreme Court in M.Natarajan v. State by Inspector of Police, SPE, CBI, ACB Chennai reported in (2008) 3 SCC (crl.) 507 was relied by the learned Special Public Prosecutor. Since this judgment has discussed the extent of immunity given under the scheme and person who are entitled for the said immunity. The relevant portions of the judgment is extracted below:-

26. It will be, therefore, our task first to

examine the provisions of KVS Scheme and more particularly, Section 90, 91 and 95. Sections 88 to 98 which are included in Chapter IV of the Finance Act (No. 2) of 1998 cover the entire Kar vivad Samadhan Scheme. The basic object of the Scheme, undoubtedly, is to recover the taxes both direct as well as indirect. Section 87 (j) specifically brings into the fold of the Scheme the Customs Act, 1962, which is the concerned Act for the purpose of the present controversy. Section 87 (a) gives the definition of declarant as- "declarant means a person making a declaration under Section 88".

27. Section 88 provides that a declarant has to make the declaration during the period from 1.9.1998 to 31.12.1998. The said declaration has to be in respect to the tax payable either under direct tax enactment or indirect tax enactment or any other provision of any law. Section 88 then provides the modality for settlement of such tax. There is no dispute that in the present case, it was the third accused and not the appellant who actually gave a declaration statement under section 88, in respect of the tax liability which was attracted on account of the import of the car. There is also no dispute that on the basis of this declaration under Section 88, the authorities went on to decide the liability on the part of third accused and ultimately, the tax liability was satisfied and the car was allowed to be imported.

28. Section 90 provides for the time and manner of payment of tax arrear which have been settled on the basis of the declaration under Section 88. Indisputably, a certificate in the prescribed form was granted in favour of the third accused in which particulars of the tax arrear and the sum payable after such determination was mentioned being a full and final settlement of the tax arrears.

"Section 91 is the real crux of the matter. It provides immunity from prosecution and imposition of penalty in certain cases:

"91. Immunity from prosecution and imposition of penalty in certain cases- The designated authority shall, subject to the conditions provided in Section 90, grant immunity from instituting any proceeding for prosecution for any offence under any direct tax enactment or indirect tax enactment, or from the imposition of penalty under any of such enactments, in respect

of matters covered in the declaration under Section 88".

It is this Section 91, which has been relied upon by the appellant suggesting that the language is broad enough to cover not only the declarant but any other person and the prosecution not only under the direct tax enactment or indirect tax enactment but any and every other offence also. It is for this purpose, that the learned senior counsel, Shri K. Subramanian heavily relied upon the observations in paragraph 27 of Hiralal's case. The learned counsel also relied on the concurring and supplementing observations by Hon'ble Brijesh Kumar, J., in which, the learned Judge has made a specific reference to Section 95 after quoting that Section.

30. We were taken extensively through this judgment by the learned counsel who was at pains to urge that the factual scenario in Hiralal's case is comparable to the present case, if not identical. There also, the High Court in a petition under Section 482 Cr.P.C. had refused to quash the FIR and the proceedings which were taken against the Director of Gujarat Cancer & Research Institute (for short "GCRI"), Secretary of Gujarat Cancer Society (GCS) and one Dr. Viral C. Shah. It was the case of the prosecution that the three had cheated the Government of India in terms of the evasion of customs duty and by concealment of facts obtained customs duty exemption certificate in respect of MRI and lithotripsy machines and by violating the provisions of "actual user" condition as per import-export policy and Customs Notification. In that case also, the customs duty had been paid by the appellant and was settled under the KVSS 1998. The charge against the appellant was that the machines were imported into India by the GCS who availed of the duty exemption on the basis of the exemption certificate issued in the name of the GCRI on a bona fide premise that since all the activities of the GCRI were funded by the GCS and all the operations of GCS were carried out through the GCRI, such imports could be made. The Customs Authority raided the premise of the GCRI and seized the machines on the ground that the exemption certificate was issued in the name of the GCRI and not in the name of GCS and, therefore, GCS was not entitled to the exemption and was, therefore, liable to pay customs duty.

The GCS was held liable to pay the customs duty, thus, denying the concessional duty benefit demanded from it under Section 28 of the Customs Act, 1962 read with the proviso to the said Section. Against the order imposing the duty by the Collector of Customs, the appeals were filed before Customs, Excise and God (Control) Appellate Tribunal, West Regional Branch, Bombay which confirmed the findings of the Collector of Customs. Against that, the GCS filed an appeal before this Court and while the matter was pending before this Court, the Government of India launched a Kar Vivad Samadhan Scheme, 1998, and in accordance thereof, the GCS had agreed to deposit a stipulated amount of over Rs.98 lakhs and also withdrew the civil appeal pending before this Court. On 19.7.1999, a certificate for full and final settlement of the tax arrears was issued to the GCS. The said certificate provided the final settlement of tax arrears and also granted the immunity to the GCS from any proceedings for prosecution for any offence under the Customs Act, 1962 or from the imposition of penalty under the concerned enactments. However, a case was registered against the appellants on the ground that the appellants in conspiracy with the Director of the GCRI, Secretary of the GCS and others had cheated the Government of India. The prosecution was for the offence under Section 120-B read with Section 420 of the IPC. It was this prosecution which was challenged and after the challenge, failed at the High Court level, and the party had successfully approached this Court the proceedings were ordered to be quashed.

31. In Hiralal's case heavy reliance seems to have been placed on the judgment of Sushila Rani (Smt.) Vs. Commissioner of Income Tax & Anr. and of Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta. The learned Judges in their separate but concurrent judgments upheld the challenge and had quashed the proceedings relying on the KVSS 1998. The learned Judges noted the various provisions of the Scheme from Sections 86 to 98. It was also noted that FIR in that case was filed on 6.1.1999, while the certificate under KVSS 1998 was issued on 19.7.1999. Hon'ble Lakshmanan, J. in paragraph 23 observed:

"23. It is thus crystal clear that the Commissioner of Customs (Adjudication) and Designated Authority (KVSS-98) granted immunity

from instituting any proceeding for prosecution for any offence under the Customs Act, 1962, or from the imposition of penalty under the said enactment, in respect of matters covered in the aforesaid declaration made by the declarant. After hearing the case of the GCS, as already noticed, the Collector of Customs, Bombay held that the GCS was liable to pay the customs duty but in view of the activities of the Society and the bona fides of the Society, and considering the charitable and philanthropic activities of the Society, no prosecution was recommended. Moreover, only a token redemption fine of Re.1 was imposed." (Emphasis supplied).

In paragraph 25, the learned Judge analyzed the judgment in Sushila Rani's case (supra), which was also under the KVSS 1998. Paragraph 6 and 8 of Sushila Rani's case were quoted by the learned Judge which suggested that once a certificate was granted under Section 90 (1), it was absolutely conclusive as to the matter stated and no matter covered could be reopened in any other proceeding under any law for the time being in force. It is probably on the basis of observations in paragraph 6 of Sushila Rani's case, that the learned Judge made the observation in paragraph 27 which we have already quoted in para 13 of this judgment. We may at this stage itself point out that the observations in paragraphs 6 and 8 in Sushila Rani's case seem to have been made only in the pursuance of tax laws. The question of prosecution under some other offences (not under the Indirect Tax Act or the Direct Tax Act) was not there.

32. A reference must be made, at this stage, to the judgment of this Court reported in Alpesh Navinchandra's case (cited supra) which was again decided by the Division Bench consisting of Hon'ble Lakshman and Kabir, JJ., the judgment was, however, authored by Hon'ble Lakshmanan, J. This was the case of immunity granted under Sections 127H of the Customs Act, 1962, however, the appellant and his brother were preventively detained under COFEPOSA. The detention was challenged on the ground that once the immunity under Section 127H of the Customs Act was granted in respect of customs offences, after settling the taxes finally by the Settlement Commissioner, the preventive detention could not have been ordered by the authorities for the same reasons. The case of Hiralal (cited

supra) was relied upon, which is clear from a reading of paras 17 and 46. This Court proceeded to hold in paras 46 and 47 of its judgment as under:

"46. At the time of hearing, learned counsel for the petitioner relied upon Hira Lal Bhagwati Vs. CBI. According to learned counsel for the respondent the said relied upon case was a case of duty evasion and the appellant therein was booked by Customs Authority and therefore, customs duty was paid under KVS Scheme and further in the criminal proceedings under Sections 120-B and 420 IPC initiated by CBI was quashed by this Court. Therefore, it is admitted that the above cited case is different from the present case as in the case in hand the detention order was issued under the COFEPOSA Act against the petitioner with objective to prevent the nefarious activities in future. Therefore, the immunity granted by the Settlement Commission from fine, penalty and prosecution under the provisions of the Customs Act and IPC have no bearing on the order of detention passed under the COFEPOSA Act. Therefore, it is contended that the detention order issued by the detaining authority is very much legal and the same needs to be upheld.

47. The Settlement Commission was constituted with the aim and objective of settling the tax evasion issues and by virtue of disclosure by tax offender, they gain immunity from fine/penalty which is otherwise mandatory under the provisions of tax laws. But, such opportunity is only extended to one-time tax offenders but not available to habitual smugglers. For the persons involved in smuggling activities, other than the provisions made for the prosecution under the Customs Act, 1962, an equal deterrent is emphasized under the provisions of the COFEPOSA Act, 1974 i.e. provisions for preventive detention. Such preventive detention prohibits smugglers from indulging in further smuggling activities. In the present case the investigation reveals the consistent involvement of the petitioner detenu and his brother, Kamlesh Navinchandra Shah in smuggling activities, therefore, the detaining authority on the basis of evidence placed before him felt it necessary to issue the detention orders in respect of both the detenus in order to prevent them from prejudicial activities in

future. Accordingly, the impugned order is justifiable in the eye of the law and the present writ petition deserves to be dismissed."

In our opinion, the rigour of the observations made in paragraph 27 in Hiralal's case is removed by the observations made in paragraphs 46 and 47 in Alpesh Navinchandra Shah's case. It was contended that the legislature had created a Settlement Commission for generating revenue and had also made provisions for release of the goods on payment of duty and had also made provisions for granting immunity from prosecution under the Customs Act, 1962 under the Penal Code and also under the other Central law and, therefore, it was clear that the intention of the legislature was more on revenue aspect rather than prosecution and punishment aspect or in continuing with multiple litigations. And, therefore, it would be unjust, unfair and unreasonable if a person is made to suffer preventive detention mainly after his application for settlement is allowed to be proceeded with, and after realization of the customs duties not only the goods are ordered to be released but on considering the cooperation extended by him in the settlement proceedings, the Settlement Commission had also granted to him immunity from prosecution under the Customs Act, 1962 as well as under IPC. The reliance there, however, was being made not on KVSS 1998, but on the Scheme under Section 127-H of the Customs Act, 1962 which provided the immunity not only from the Customs Act offences but also from the Indian Penal Code and other central enactments. We must hasten to point out that at this juncture itself, the immunity under the KVSS 1998 does not refer to the offences under the Penal Code or under any other central law, but restricts itself under Section 90 (1) only to the offences under the direct tax enactment or indirect tax enactment and as such Section 127H of the Customs Act is much broader than Section 90(1) of Finance Act in its operation.

34. It may be noted further that in Hiralal's case the learned Judge had specifically found that there was no prima facie material as regards the offences under Sections 120B and 420 of the Indian Penal Code and that was also the reason why the prosecution was quashed. Such is not the case here. It cannot again be forgotten that in Hiralal's case the

immunity was granted to the tax-payer whereas the appellant in the present case was neither an applicant under Section 90(1) nor was any immunity granted to him specifically. (emphasis added).

37. In the above case, CBI Vs. Duncans Agro Industries Ltd. the question was whether the immunity granted under the KVSS 1998 could also cover proceedings under the Kerala Sales Tax Act in respect of the same assessee. The learned Judges again referred in paragraph 15 to Sushila Rani's case as also to Hiralal's case and more particularly to the observations made in paragraphs 18 and 27, which we have already quoted above. The learned Judges then proceeded to hold that Hiralal's case was distinguished in Sashi Balasubramanian's case (cited supra) and held that the transfer of application of Salex Tax Act would not be covered by the immunity under KVSS, 1998. This Court in paragraph 33 observed as under:

"33.....an immunity is granted only in respect of offences purported to have been committed under direct tax enactment or indirect tax enactment, but by no stretch of imagination, the same would be granted in respect of offences under the Prevention of Corruption Act. A person may commit several offences under different Acts; immunity granted in relation to one Act would not mean that immunity granted would automatically extend to others. By way of example, we may notice that a person may be prosecuted for commission of an offence in relation to property under the Penal Code as also under another Act, say for example, the Prevention of Corruption Act. Whereas charges under the Prevention of Corruption Act may fail, no sanction having been accorded therefore, the charges under the Penal Code would not."

Thus this Court accepted the principle that the immunity could not cover certain other offences than those covered in direct and indirect tax enactments. The Court also accepted that the immunity could not be granted to any other person automatically merely it was granted to a tax- payer who had made declaration under Section 88 of the Finance Act.

Thus it is clear as crystal that the settlement under KVS Scheme does not give any immunity to the appellants from prosecution under Section 120B, 420, 468 and 471 IPC and Prevention of Corruption Act.

39.The next contention of the learned counsel appearing for the appellants is that the evidenciary value of P.W.14 who was granted pardon and treated as prosecution witness is doubtful since tender of pardon was granted not in accordance with the statute. While sub-section (4) of Section 306 of Cr.P.C. mandates that every person accepting a tender of pardon made under sub-section (1) shall be examined as a witness in the court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any shall, unless he is already on bail, be detained in custody until the termination of the trial. The Magistrate who has examined the person tendered pardon shall without making any further enquiry commit it for trial to the court of Sessions or to the court of Special Judge appointed under Criminal Law Amendment Act if the offence is triable exclusively by that court and in all other cases shall make over the case to the Chief Judicial Magistrate who shall try the case himself. In this case the Magistrate who has tendered pardon has not passed reasoned order and further he was not examined as a witness. Therefore, the pardon proceedings in respect of P.W.14 is illegal and her evidence should be eschewed.

40.Whereas the learned Special Public Prosecutor contended that the pardon proceedings of the Magistrate is marked as EX.P71. The confession statement was recorded by X Metropolitan Magistrate had been put to the witness. He has forewarned about the consequence and only after ascertaining that the confession statement is voluntarily and true, pardon has been granted to the approver (P.W.14). Therefore, the evidence of P.W.14 cannot be eschewed as pleaded by the counsels for the appellants.

41.Ms.Bhavani, Manager of Indian Bank, Abiramapuram Branch, Chennai was examined as P.W.14. The evidence collected by the prosecution and the final report laid by the prosecution indicates that the 4th appellant and the approver had acute role in the said conspiracy and issuance of certificate Ex.P10 and P.11. While Ex.P10 is the certificate issued by P.W.14 on instructions by A-4, Ex.P11 is the certificate issued by A-4 and later scored off since it did not comply with the formate required for Customs Clearance. The approver Bhavani had given her confession statement before X Metropolitan Magistrate and the same is marked as Ex.P69 and P70. The X Metropolitan Magistrate Mr.R.Shanmugam has been examined as P.W.17. Therefore, the Magistrate having recorded the confession statement under Section 164 Cr.P.C. after giving due warning no illegality could be attributed in the proceedings of P.W.17, X Metropolitan Magistrate, Egmore, Chennai. Later on 30.10.2001, Mrs.Bhavani had been summoned by the II Metropolitan Magistrate, Chennai. On her appearance before the II Metropolitan Magistrate, the approver had been examined. Having satisfied that the approver can be granted pardon the II Metropolitan

Magistrate has tendered pardon in accordance with Section 306 (4) of the Cr.P.C. While granting pardon responsibility of the approver and consequences if she fails to breach had been properly explained to her and only after complying all the formalities, pardon has been granted. Non-examination of Magistrate who has granted pardon has no consequence at all. Subjective satisfaction of the judicial mind is reflected in the order, the same need not be testified under oath.

42.It is contended by the learned counsels for the appellants that the proceedings under DRI literally been lifted by the CBI and photo copy of the documents collected by DRI had been marked without abiding the Law of Evidence. In the said course the statements given by the accused persons in the DRI proceedings had been relied upon by the prosecution to hold the accused guilty.

43.In this regard, this Court is bound to refer the judgment rendered by the Hon'ble Supreme Court in K.T.M.S.Mohd. and another v. Union of India reported in AIR 1992 Supreme Court 1831 which is extracted hereunder:

22. Every investigation or proceeding under Section 40 is deemed to be a judicial proceeding by a legal fiction embodied in Sub-section 4 of that Section though the proceedings are neither in nor before any Court at that stage. But there is no such deeming provision under Section 39 of FERA bringing every investigation or proceeding in its ambit as "a judicial proceeding" within the meaning of Sections 193 and 228 of the Indian Penal Code. When it is so, as rightly pointed out by Mr. A.T.M. Sampath, the statements recorded under Exhs. P 39 and P 40 cannot be brought as having been recorded in 'a judicial proceeding' so as to make use of them as the basis for fastening the makers of those statements with the criminality of the offences under Sections 193 and/or 228 of the Indian Penal Code on the ground that the deponents of those statements have retracted from their earlier statements in a subsequent proceeding which is deemed to be 'a judicial proceeding'.

23. It is pertinent to note in this connection that in the manner of recording a statement under Section 40 of FERA there are no safeguards as in the case of recording a statement of an accused under Section 164 of the Criminal Procedure Code by a Magistrate. Nevertheless, before receiving that statement in evidence and making use of the same against the

maker, it must be scrutinised to find out whether that statement was made or obtained under inducement, coercion, threat, promise or by any other improper means or whether it was voluntarily made. There are a catena of decisions of this Court that the statements obtained from persons under the provisions of FERA or the Customs Act, should not be tainted with any illegality and they must be free from any vice. In the present case, we have to hold as pointed out *ibid* that the statements under Exhs. P 39 and P 40 were recorded only under Section 39 but not under Section 40 of the FERA.

24. Needless to emphasise that the FERA and the I.T. Act are two separate and independent special Acts operating in two different fields.

25. This Court in *Subha Rao I.T. Commr.*, AIR 1956 SC 604 = [1956] SCR 577 has pointed out: "The Indian Income-tax Act is a self-contained Code exhaustive of the matters dealt with therein, and its provisions shown an intention to depart from the common rule, *qui facit per alium facit per se*."

26. Further, in *M/s Pannalal Binjraj v. Union of India*, AIR 1957 SC 397 = [1957] SCR 233 it has been observed thus (para 27 of AIR): "It has to be remembered that the purpose of the Act is to levy Income-tax, assess and collect the same. The preamble of the Act does not say so in terms it being an Act to consolidate and amend the law relating to income-tax and super tax but that is the purpose of the Act as disclosed in the preamble of the First Indian Income tax Act of 1886 (Act II of 1886). It follows, therefore, that all the provisions contained in the Act have been designed with the object of achieving that purpose."

27. Coming to the FERA, it is a special law which prescribes a special procedure for investigation of breaches of foreign exchange regulations. Vide *Shanti Prasad Jain V. The Director of Enforcement*, [1963] 2 SCR 297. The proceedings under the FERA are quasi-criminal in character. It is pellucid that the ambit, scope and intendment of these two Acts are entirely different and dissimilar. (emphasis applied)

28. Therefore, the significance of a statement recorded under the provisions of FERA during the investigation or proceeding under said Act so as to bring them within the meaning of judicial proceeding must be examined only *quo the*

provisions of the FERA but not with reference to the provisions of any other alien Act or Acts such as I.T. Act.

29. If it is to be approved and held that the authorities under the I.T. Act can launch a prosecution for perjury on the basis of a statement recorded by the Enforcement Officer then on the same analogy the Enforcement authority can also in a given situation launch a prosecution for perjury on the basis of any inculpatory statement recorded by the Income tax Authority, if repudiated subsequently before the Enforcement authority. In our opinion, such a course cannot be and should not be legally permitted.

30. Leave apart, even if the officers of the Enforcement intend to take action against the deponent of a statement on the basis of his inculpatory statement which has been subsequently repudiated, the officer concerned must take both the statements together, give a finding about the nature of the repudiation and then act upon the earlier inculpatory one. If on the other hand, the officer concerned bisect the two statements and make use of the inculpatory statement alone conveniently bypassing the other such a stand cannot be a legally permissible because admissibility, reliability and the evidentiary value of the statement of the inculpatory statement depend on the bench mark of the provisions of the Evidence Act and the general criminal law.

44. It is now well settled that DRI, Income Tax and Customs Officials are not police officers and statement given to them are admissible in evidence. There is no bar in law to look at the statement of a person given to such officials when he is tried for offence under any other law. It is construed as previous statement given by him pertains to the offence tried subsequently. For instance if a person gives statement to an Income Tax official under IT Act which discloses a cognizable offence to be investigated by police under IPC such confession statement which is in the nature of extra-judicial confession cannot be thrown out as inadmissible. When one such a case came before the Supreme Court, Hon'ble Justice K.T. Thomas in Sasi and another v. State of Kerala reported in 2002 Supreme Court (Cri) 1080, has held that:

"4. Learned counsel for the appellants contended that PW1 was not authorised to conduct any search as per the provisions of the NDPS Act and hence, the search conducted

by him cannot be relied on as evidence in a case under the Act. We find some force in the said contention, but that is of no use for the appellant in this case, for no evidence of the search conducted by PW1 has been used against the accused. We also do not propose to use any such evidence against the accused. It may be pointed out that even the prosecution has not pitted such evidence against any one of them.

5. Learned counsel next contended that the confession relied upon by the two courts attributed to the 1st accused has no probative value inasmuch as PW1 was not authorised to receive such confession. Alternatively, he contended that as a matter of fact the confession was made not to PW1 but to an IFS Probation Officer who has not been examined in this case.

6. Both the said arguments are fallacious. There is no legal requirement that a confession should be made to an authorised officer. Any person can give evidence in a court regarding a confession made by an accused to him. In such confession was made to a Magistrate the law requires the same to be recorded in the manner prescribed by law. If a confession is made to any other person, the court has to consider whether the evidence of that person can be believed which depends upon the credibility of the witness giving such evidence in Court."

45. Therefore, the contention of the learned counsels for the appellants to reject the documents relied by the prosecution which was collected by DRI and the statements of the accused persons to DRI officials is not sustainable. It is the credibility of the person to whom the confession made matters and not the act under which the statement made when there is no statutory bar, as in case of Statement to Police u/s 161 Cr.P.C. In any event de hors of those statements there is ample evidence placed before the court by the prosecution to show that these accused persons have involved in cheating the Government by producing forged documents and by issuing false certificate enabling A-1 and A-2 to clear brand new LEXUS car Cubic Capacity of 3000 CC. which is not in compliance with the Residence Transfer Provision.

46. In this connection this Court is of the opinion that though the appellants counsel tried to pick holes in the prosecution case alleging that the prosecution has not proved

beyond doubt that they all joined together and conspired to cheat the State, it is essential to remember that if the allegations made by the prosecution is incorrect and contrarily, if the car which was imported by Dr.S.Balakrishnan is not a brand new car, if it was registered at England on 15.7.1993 and used by Dr.S.Balakrishnan for more than one year, if the Bill of Lading, affidavits and other documents were all genuine and the content of Ex.P10 issued by the approver P.W.14 at the instance of A-4 was true, then what prevent them from producing the original invoice to show the vehicle was sold to Dr.S.Balakrishnan on 13.7.1993. They could have produced the Vehicle Registration Certificate issued by the London Authority that the said vehicle was first registered on 15.7.1993. They could have produced the source of Foreign Inward Remittance into the Current Account No.872 of M/s. Tamilarasi Publications Private Limited. They have not attempted to produce any of these documents which are supposed to be with them. If the transaction as projected by the accused persons were genuine they could have produced the above said documents. Contrarily the importer Dr.S.Balakrishnan, (later absconding from the clutches of law) had submitted himself for KVS scheme admitting the forgery, cheating and had paid the differential Custom Duty.

47.In this context it is also relevant to mention about the principle of Reverse Burden as explained by the Hon'ble Supreme Court in Mohanlal vs. State of Punjab (2008) 16 SCC 471 in the following line:-

"40.The provision for reverse burden is not only provided for under the special acts like the present one but also under the general statutes like the Indian Penal Code. The Indian Evidence Act provides for such a burden on an accused in certain matters, as, for example, under Section 113A and 113B thereof. Even otherwise, this Court, having regard to the factual scenario involved in cases, e.g., where husband is said to have killed his wife when both were in the same room, burden is shifted to the accused. Enforcement of law, on the one hand and protection of citizen from operation of injustice in the hands of the law enforcement machinery, on the other, is, thus, required to be balanced. The constitutionality of a penal provision placing burden of proof on an accused, thus, must be tested on the anvil of the State's responsibility to protect innocent citizens. The court must assess the importance of the right being limited to our society and this must be weighed against the purpose of the limitation. The purpose of the limitation is the reason for the law or conduct which limits the right.

42.The presumption raised in a case of this nature is one for shifting the burden subject to fulfillment of the conditions precedent therefor.
43.The issue of reverse burden vis-à-vis the human rights regime must also be noticed. The approach of the Common Law is that it is the duty of the prosecution to prove a person guilty. Indisputably this common law principle was subject to parliamentary legislation to the contrary. The concern now shown worldwide is that the Parliaments had frequently been making inroads on the basic presumption of innocence. Unfortunately unlike other countries no systematic study has been made in India as to how many offences are triable in the Court, where the legal burden is on the accused. In the United Kingdom it is stated that about 40% of the offences triable in the Crown Court appear to violate the presumption. (See - The Presumption of Innocence in English Criminal Law, 1996 Crim.L.R. 306, at 309)."

In this case, the prosecution has proved the charges positively whereas though the accused persons had opportunity to discharge the burden has not availed it, obviously they had no material.

48.To sum up the material placed before the prosecution undoubtedly proves that the brand new LEXUS car 3000 CC capacity had been imported to India totally in violation of the Customs Regulations. The Custom Duty had not been paid from out of Foreign Inward Remittance but with the Indian Currency remitted into the account of A-1 and operated by A-2. A-3 Yogesh Bala has furnished forged first Registration Certificate, Invoice and false affidavit on behalf of the absconding accused Dr.S.Balakrishnan. A-4 has aided the other accused to clear the car by instructing the approver P.W.14 to issue a false certificate as if the Custom Duty is paid out of the Foreign Inward Remittance of A1 account. All these actions is manifestation of criminal conspiracy which has been unravelled through the evidence of approver P.W.14 and other prosecution witnesses who have seen the accused persons executing the said conspiracy at Customs house as well as at Indian bank, Abiramapuram Branch. It is unfortunate that the Senior Customs Officers who were members of the conspiracy team were not prosecuted since the prosecution agency were refused sanction by the competent authority to prosecute the team. This cannot be the reason to allow the other conspirators go scotch free. Further, this Court opines that it is high time to revisit the law on this point. Like sanction order under Section 19 of the Prevention of Corruption Act is subjected to judicial scrutiny, refusal to accord sanction should also be subjected to judicial scrutiny so that improper exercise of power by unscrupulous

person, shielding his subordinate shall be averted.

49. In respect of the plea raised by the learned Senior Counsel for the 4th accused that the 4th accused was not aware of the happenings took place at Customs House or in the Office of the Clearing Agent (P.W.1), it is suffice to reproduce the illustration in the wise words of Hon'ble Justice Ramaswamy in Ajay Agarwal case reported in (1993) 3 SCC 609:-

"Thus, an agreement between two or more persons to do an illegal act or legal acts by illegal means is criminal conspiracy. If the agreement is not an agreement to commit an offence, it does not amount to conspiracy unless it is followed up by an overt act done by one or more persons in furtherance of the agreement. The offence is complete as soon as there is meeting of minds and unity of purpose between the conspirators to do that illegal act or legal act by illegal means. Conspiracy itself is a substantive offence and is distinct from the offence to commit which the conspiracy is entered into. It is undoubted that the general conspiracy is distinct from number of separate offences committed while executing the offence of conspiracy. Each act constitutes separate offence punishable, independent of the conspiracy. The law had developed several or different models or technics to broach the scope of conspiracy. One such model is that of a chain, where each party performs even without knowledge of other a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. An illustration, of a single conspiracy, its parts bound together as links in a chain, is the process of procuring and distributing narcotics or an illegal foreign drug for sale in different parts of the (globe. In such a case, smugglers, middlemen and retailers are privies to a single conspiracy to smuggle and distribute narcotics. The smugglers knew that the middlemen must sell to retailers-, and the retailers knew that the middlemen must buy of importers of someone or another. Thus the conspirators at one end of the chain knew that the unlawful business would not, and could not, stop with their buyers, and those at the other end knew that it had not begun with their settlers. The accused embarked upon a venture in all parts of which each was a participant and an abettor in the sense that, the success of the part with which he was immediately concerned, was dependent upon the success of the whole. It

should also be considered as a spoke in the hub. There is a rim to bind all the spokes to gather in a single conspiracy."

And the rule laid down by Hon'ble Supreme Court in Yashpal v. State of Punjab [1977] (4) SCC 540, as follows:-

"There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or over-shooting by some of the conspirators".

50. In the result, all these appeals are dismissed. The conviction and sentence imposed by the learned Principal Special Judge for CBI Cases, Chennai, by the judgment in C.C.No.6 of 2004 dated 26.07.2010 is confirmed. The learned trial court is directed to secure the accused and remand them to judicial custody to undergo the remaining period of sentence, if any.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

सत्यमेव जयते

Copy to:-

1. The Principal Special Judge for CBI Cases, Chennai,
2. The Special Public Prosecutor (CBI) cases, High Court, Madras.
3. The Inspector of Police, SPL/CBI/ACB Chennai
4. The Chief Metropolitan Magistrate, Egmore, Chennai.
5. The Xth Metropolitan Magistrate, Egmore, Chennai.
6. The II Metropolitan Magistrate, Egmore, Chennai.

+1 CC to Mr.S. Karthikeyan, Advocate sr 81937.
+1 Cc to Mr.V. Ramamurthy, Advocate sr 81906.
+1 CC to Mr.S. Hariharan, Advocate sr 81904.
+2 Ccs to Mr.R. Jayasekar, Advocate sr 81915.

CRL.A.Nos. 476, 541, 508
and 514 of 2010

MR (CO)
SP (29/11/2017)



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