A

ABDUL KARIM

v.

STATE OF KARNATAKA AND ORS.

NOVEMBER 7, 2000

B [S.P. BHARUCHA, D.P. MOHAPATRA AND Y.K. SABHARWAL, JJ.]

Code of Criminal Procedure, 1973:

Section 321—Prosecution—Withdrawal from—Application of mind—
C *By court—Before grant of consent—Application of Public Prosecutor (PP)—Requirements of—Popular film actor kidnapped by Veerappan and his associates—State Government in panic yielding to Veerappan's demands to withdraw TADA charges against his associates in jail facing charges under various penal statutes so as to facilitate their release—Demand also included*
D *release of some of Veerappan's associates detained under National Security Act (NSA) for the release of the film actor—Accordingly, PP moved an application under S.321 for withdrawal of TADA charges—State Government also revoked detention order under NSA in respect of 4 detenues—No material to show PP applied his mind in good faith and in public interest—Court granted consent for withdrawal of TADA charges—Accused persons thereafter*
E *granted bail—Validity of—Held : PP must independently apply his mind to all the relevant material and, in good faith, to be satisfied that public interest will be served by his withdrawal from prosecution—This is despite any order or direction to the PP—PP must set out the materials considered by him briefly, but concisely, in his application or affidavit or place it before the*
F *court—Court's power is supervisory but grant of consent is not a matter of course—Court has to give an informed consent—It must be satisfied that the PP has considered the material and, in good faith, reached the conclusion that withdrawal from prosecution is in public interest—Court must consider whether grant of consent may thwart or stifle the course of law or result in manifest injustice—Upon such considerations only court has to accord*
G *informed consent for withdrawal from prosecution—On facts, order of consent does not meet requirements of S.321 and is bad in law—No materials, on the basis of which PP applied his mind in good faith; and in public interest, placed before court—Affidavit of PP shows complicity with the accused persons to secure their release on bail—Hence, bail order cancelled—Conduct of State Government and PP deprecated.*

H

The border between the States of Karnataka and Tamil Nadu runs through mountainous forest and on this forestland, half in Karnataka and half in Tamil Nadu, a man named Veerappan, a dreaded criminal, has held sway for more than 10 years. He was alleged to have poached elephants and smuggled out ivory and sandalwood in a very big way. He was alleged to be guilty of the most heinous crimes, including the murder of 119 persons, including Police and Forest Officers and kidnapping. Despite various attempts over a number of years Veerappan could not be apprehended. Cases were filed against Veerappan and his associates under Terrorist and Disruptive Activities Act (TADA) and other penal provisions, i.e. Indian Penal Code (IPC), Arms Act and Explosive Substances Act. On 30.7.2000 Veerappan abducted Rajkumar, a popular film actor, from his farmhouse along with three others. In order to release Rajkumar, Veerappan demanded withdrawal of charges under the TADA Act framed against some of his associates who were in judicial custody and withdrawal of detention order passed under the National Security Act against some of his other associates and their release. The State Government accepted these demands.

The arrangement was that once TADA charges were withdrawn, the accused in judicial custody would move bail applications in cases of offences under IPC and other penal enactments. The Public Prosecutor would concede and would not oppose the grant of bail. The court would grant the bail and, thus, accused would come out from judicial custody. Accordingly, the Special Public Prosecutor filed application under Section 321 of the Code of Criminal Procedure, 1973 seeking consent of the Designated Court at Mysore to withdraw the TADA charges. The application was made when the trial of the cases to which it related was in progress and evidence of 51 witnesses had been recorded.

The Special Public Prosecutor submitted that the trial regarding other offences were being continued and the charges under the Arms Act and Explosive Substances Act, to certain extent covered the provisions of Sections 3 and 4 of the TADA. Therefore, no injustice would be caused if the prosecutor withdrew the charges for the offences punishable under Sections 3, 4 and 5 of the TADA Act. It was also submitted by the Special Public Prosecutor that as a matter of policy, since the Central Government had already withdrawn the Central enactment no purpose would be served immediately by the prosecution for the offence punishable under Sections 3, 4 and 5 of the TADA Act.

The appellant opposed the Special Public Prosecutor's application. The

A appellant's son was a Sub-Inspector of Police and was allegedly killed by Veerappan and his associates. The appellant's statement of opposition referred to the abduction of Rajkumar and alleged that, consequent thereupon, the Government of Karnataka had yielded to the demands of Veerappan and had issued notifications that it would withdraw all cases against Veerappan and his associates, and this had been widely publicized by the media. The statement B of opposition submitted that no cogent reasons had been given for the decision to drop the TADA cases.

The Special Public Prosecutor rejoined to the statement of opposition by contending that all cases against Veerappan and his associates were not C being withdrawn, and they would be prosecuted. The Special Public Prosecutor, therefore, denied the submission in the statement of opposition that the Government of the State of Karnataka had yielded to the blackmail by Veerappan.

The Special Designated Judge, Mysore designated for the trial of TADA D offences stated in his order dated 19.8.2000 that he was satisfied that the Special Public Prosecutor had applied his mind in filing the application. In view of the grounds and circumstances mentioned by the Special Public Prosecutor, he was satisfied, on the materials placed before him, "that the grant of permission to withdraw, sub-served the administration of justice and E the permission had not been sought covertly with an ulterior purpose unconnected with the vindication of law, which the executive organs were in duty-bound to further and maintain." The Special Judge observed that the cases against the accused for other offences would be proceeded with. Accordingly, the Judge allowed the application, according consent to withdrawal of the charges relating to offences punishable under the TADA F Act against the accused. He ordered, "the accused in custody and on bail, facing trial for offences under TADA Act stand acquitted/discharged as the case may be." He transferred the cases to the court of the Principal District and Sessions Judge, Mysore for disposal in accordance with law of all charges other than under the TADA Act.

G

The accused who were in custody and were discharged by the Special Court in respect of the TADA charges against them immediately filed an application for bail before the Court of District and Sessions Judge, Mysore. On 28.8.2000, the Judge noted in his order that the counsel for the present appellant had informed him that the appellant had filed a petition for special H leave to appeal against the order on the Special Public Prosecutor's

application which was to be taken up for hearing on the next day and that the counsel had prayed that orders on the bail petition should not be pronounced until thereafter. But keeping in view "the urgency of the matter" and the change in the circumstances in view of the fact that the Designated Court had permitted the State to withdraw the TADA charges, the Judge held that no *prima facie* case was made out against the accused for the said offence and, therefore, having regard to the facts and circumstances, the social status of the accused and other relevant factors, the Judge allowed the bail petition. The accused were directed to be released on bail, on each of them executing a bond for Rs. 10,000 with one surety for the like sum or, in the alternative, on each furnishing cash security of Rs. 20,000, on the conditions that they would appear before the court regularly as and when required, and that they would not tamper with the prosecution witnesses and they would not commit any other offence.

On 14.8.2000 the Government of the State of Tamil Nadu issued a Government Order directing that charges against one R in respect of two cases registered against him under the provisions of the TADA Act be withdrawn "in the public interest". The Inspector General of Police Intelligence, Chennai was directed to take necessary action accordingly. On 16.8.2000 the Special Public Prosecutor before the Designated Court at Chennai made two applications under the provisions of Section 321 of the Code of Criminal Procedure, 1973 stating that R was charged before the Designated Court in cases arising under the TADA Act, the Explosive Substances Act, the Indian Penal Code and the Arms Act and the cases were pending for framing charges, and that the Special Public Prosecutor was satisfied that under the new change of circumstances and also in the public interest the charges under the TADA Act be withdrawn. The court granted permission to withdraw the TADA cases against the accused.

The Government of the State of Tamil Nadu also passed an order revoking the detention of four detenues under the National Security Act in public interest in view of the tense situation prevailing due to the kidnapping of Rajkumar and therebeing an apprehension that in case any harm was caused to him, there might be a backlash on Tamils in Karnataka.

The order dated 19.8.2000 on the Special Public Prosecutor's application was impugned in the appeal before this Court. The Government order of the State of Tamil Nadu dated 14.8.2000 and the order of the Designated Court, Chennai were also challenged in the two Public Interest

A Petitions filed before this Court. The revoking of the detention of the four detenues was also challenged in Public Interest Petition before this Court.

Allowing the appeals and the writ petitions, the Court

HELD : (Per Bharucha, J. for himself, and Mohapatra, J)

B

1.1. Though the Government may have ordered, directed or asked a Public prosecutor to withdraw from prosecution, it is for the Public Prosecutor to apply his mind to all the relevant material and, in good faith, to be satisfied thereon that the public interest will be served by his withdrawal from the C prosecution. In turn, the court has to be satisfied, after considering all that material, that the Public Prosecutor has applied his mind independently thereto, that the Public Prosecutor, acting in good faith, is of the opinion that his withdrawal from the prosecution is in the public interest, and that such withdrawal will not stifle or thwart the process of law or cause manifest injustice. [406-G-H]

D

1.2. An application under Section 321 of the Code of Criminal Procedure must aver that the Public Prosecutor is, in good faith, satisfied, on consideration of all relevant material, that his withdrawal from the prosecution is in the public interest and it will not stifle or thwart the process of law or E cause injustice. The material that the Public Prosecutor has considered must be set out, briefly but concisely, in the application or in an affidavit annexed to the application or, in a given case, placed before the court, with its permission, in a sealed envelope. The court has to give an informed consent. It must be satisfied that this material can reasonably lead to the conclusion that the withdrawal of the Public Prosecutor from the prosecution will serve F the public interest; but it is not for the court to weigh the material. The court must be satisfied that the Public Prosecutor has considered the material and, in good faith, reached the conclusion that his withdrawal from the prosecution will serve the public interest. The court must also consider whether the grant of consent may thwart or stifle the course of law or result in manifest G injustice. If, upon such consideration, the court accords consent, it must make such order on the application as will indicate to a higher court that it has done all that the law requires it to do before granting consent. [407-A-D]

Sheonandan Paswan v. *State of Bihar,* [1987] 1 SCC 288, relied on.

H 2. The application made by the Special Public Prosecutor before the

Designated Court at Mysore under Section 321 Cr. P.C. did not state why the Special Public Prosecutor apprehended a disturbance of the peace and normalcy of "the border area" or the "particular village," nor was any material in this behalf, or a summary thereof, set out. There was, therefore, no basis laid in the applications upon which the Judge presiding over the Designated Court could conclude that the Special Public Prosecutor had applied his mind to the relevant material and exercised discretion in good faith and that the withdrawal would not stifle or thwart the course of the law and cause manifest injustice. The order of the Judge did not note that the statement of opposition also said that, consequent upon the abduction of Rajkumar the State of Karnataka had yielded to the demands made by Veerappan and had issued notifications that it would withdraw all cases against Veerappan and his associates. No query in this regard was made by the Judge with the Special Public Prosecutor. The Judge said that he was satisfied on the material placed before him that grant of permission to withdraw subserved the administration of justice and it had not been sought covertly, but he did not state what those materials were. No materials were placed before the Judge upon the basis of which he could have been satisfied that the Special Public Prosecutor had applied his mind thereto and had reached, in good faith, the conclusion that the withdrawal he sought was necessary for the reasons he pleaded. The Judge placed on record, as he called it, the decision of this Court in the case of *Sheonandan Paswan,* but he did not appreciate what it required of a Public Prosecutor and of a court as regards Section 321, and he did not follow it. The order granting consent on the Special Public Prosecutor's application, therefore, does not meet the requirements of Section 321 and is bad in law. [407-E-H; 408-A-D]

3. As regards to the decision of the Government of the State of Karnataka in view of its apprehension of the unrest that would follow if any harm were to come to Rajkumar, that it was better to yield to Veerappan's demand and to withdraw the TADA charges against Veerappan and his associates, including the accused-respondents, the Special Public Prosecutor should have considered and answered the following questions for himself before he decided to exercise his discretion in favour of such withdrawal from prosecution of the TADA charges :- [410-F-G]

(a) Was there material to show that the police and intelligence authorities and the State Government had a reasonable apprehension of such civil disturbances as would justify the dropping of charges against Veerappan and others accused of TADA offences and the

A release on bail of those in custody in respect of the other offences they were charged with? [410-H]

(b) What was the assessment of the police and intelligence authorities and of the State Government of the risk of leaving Veerappan free to commit crimes in future, and how did it weigh against the risk to B Rajkumar's life and the likely consequent civil disturbances? [411-A-B]

(c) What was the likely effect on the morale of the law enforcement agencies? [411-B]

C (d) What was the likelihood of reprisals against the many witnesses who had already deposed against the accused-respondents? [411-C]

(e) Was there any material to suggest that Veerappan would release Rajkumar when some of Veerappan's demands were not to be met at all? [411-C]

D (f) When the demand was to release innocent persons languishing in Karnataka jails, was there any material to suggest that Veerappan would be satisfied with the release of only the accused-respondents? [411-D]

E (g) In any event, was there any material to suggest that after the accused-respondents had secured their discharge from the TADA charges and bail on the other charges, Veerappan would release Rajkumar? [411-E]

(h) Given that the Governments of the State of Karnataka, and Tamil F Nadu had not for 10 years apprehended Veerappan and brought him to justice, was this a ploy adopted by them to keep Veerappan out of the clutches of the law ? [411-F]

4. The affidavit of the Special Public Prosecutor reveals that he was "informed" that the Government of the State of Karnataka had intelligence G reports that if any harm were to be caused to Rajkumar, it would lead to problems between two linguistic communities. Clearly, he was not shown the intelligence reports. There is no statement therein which shows that the Special Public Prosecutor had the opportunity of assessing the situation for himself by reading primary material and deciding, upon the basis thereof, whether he should exercise his discretion in favour of the withdrawal of H TADA charges. Acting upon information, which he could not verify, the Special

Public Prosecutor could not be satisfied that such withdrawal was in the public interest and that it would not thwart or stifle the process of the law or cause manifest injustice. The Special Public Prosecutor, in fact, acted only upon the instructions of the Government of the State of Karnataka. He, therefore, did not follow the requirement of the law that he be satisfied and the consent he sought under Section 321 cannot, therefore, be granted. [413-F-H; 414-A] A B

5.1. The affidavit of the Special Public Prosecutor speaks of "withdrawal of the TADA charges which would enable the accused to file necessary bail applications and their consequent release on bail.....". It is, thus, clear that what was envisaged by the Government of the State of Karnataka and the Special Public Prosecutor was a package, which comprised of the withdrawal of the TADA charges against the accused-respondents and their release on bail on the applications filed by them. This indicates complicity with the accused-respondents. Stress was laid by the Special Public Prosecutor in his application under Section 321 on the fact that the prosecutions against the accused-respondents on charges other than under the TADA Act would continue, and this was noted in the order of the Designated Court. The Designated Court was not told either in the application or thereafter that the Government of the State of Karnataka and the Special Public Prosecutor had in mind that the accused-respondents would file bail applications subsequent to the order under Section 321, which would not be opposed. There can, in the circumstances, be little doubt that after their release on bail the accused-respondents were not expected to attend the court to answer the remaining charges against them and that the stress laid as aforesaid was intended to mislead the Designated Court. The conduct of the Government of the State of Karnataka and the Special Public Prosecutor in this behalf is deprecated. It is appropriate, in the facts and circumstances, to set aside the orders granting bail to the accused-respondents. [414-B-E] C D E F

5.2. Having set aside the order under Section 321 passed by the Designated Court at Chennai in the matter of R, the Government of the State of Tamil Nadu cannot comply with Veerappan's demand to release the five prisoners from its jails. It is appropriate in the circumstances to set aside the orders of the Government of the State of Tamil Nadu under the National Security Act releasing the other four persons from detention. [414-G] G

6. There is no material on record that could give rise to a reasonable apprehension of such civil disturbances as justifies the decision to drop TADA H

A charges against Veerappan and his associates, including the accused-respondents, and to release the latter on bail. There is nothing on the record, which suggests that, the possibility of reprisals against the witnesses who have already deposed against the accused-respondents or the effect on the morale of the law enforcing agencies were considered before it was decided to release the accused-respondents. There is also nothing to suggest that there was reason to proceed upon the basis that Veerappan would release Rajkumar when his demands were not being met in full. The Government of the State of Karnataka would appear to be unaware that once the accused-respondents were discharged from TADA charges, the deal was done; and that when they were released on bail they could not be detained further, whether or not Rajkumar was released in exchange. While it cannot be asserted that conceding to Veerappan's demands was a ploy of the Government of the State of Karnataka to keep him out of the clutches of the law, it acted in panic and haste and without thinking things through in doing so. That this is so, is clear from the fact that the demands were conceded overnight and also from the fact that the Government of the State of Karnataka did not ascertain the legal position that it was not for it but for the court to decide upon the release of persons facing criminal prosecutions. [415-A-D]

7. What causes the gravest disquiet is that when, not so very long back, as the record shows, his gang had been considerably reduced, Veerappan was not pursued and apprehended and now, as the statements in the affidavit filed on behalf of the State of Tamil Nadu show, Veerappan is operating in the forest that has been his hideout for 10 years or more along with secessionist Tamil elements. It is certain that Veerappan will continue with his life of crime and very likely that those crimes will have anti-national objectives. [415-E-F]

8. It would have been prudent in the circumstances, to post round the clock at Rajkumar's farmhouse one or two policemen who could inform their local station house of his arrival there and thus ensure his safety. [415-G]

9.1. The order under appeal, dated 19.8.2000, is set aside. The order dated 28.8.2000 passed by the Principal District and Sessions Judge, Mysore granting bail to the accused-respondents is also set aside. [416-C]

9.2. Further, the order of the Designated Court at Chennai dated 16.8.2000 is set aside. The orders of the Government of the State of Tamil Nadu passed on 14.8.2000 under the National Security Act in respect of the four detenues revoking the orders of their detention under the National

Security Act are also set aside. [416-D] A

Per Sabharwal, J (supplementing)

1. The Public Prosecutor has to be straight, forthright and honest and has to admit the arrangement and inform the court that the real arrangement is to ultimately facilitate the release of these accused from judicial custody B by not opposing the bail applications after the withdrawal of TADA charges. It is well established that the real purpose for withdrawal of TADA charges was to facilitate the grant of bail to the accused. In such circumstances why the camouflage. In fact, it is a deceit. These are the questions for which there is no plausible answer. No court of law can be a party to such a camouflage and deceit in judicial proceedings. The answer to these basic questions cannot C be that the Judge knew about it from the very nature of the case. Under these circumstances, it cannot be said that the application was made in good faith. [418-H; 419-A-C]

2.1. The satisfaction for moving an application under Section 321 Cr.P.C. has to be of the Public Prosecutor which in the nature of the case in hand D has to be based on the material provided by the State. Grant of consent by the court is not a matter of course and when such an application is filed by the Public Prosecutor after taking into consideration the material before him, the court exercises its judicial discretion by considering such material and on such consideration either gives consent or declines consent. The E court has to see that the application is made in good faith, in the interest of public policy and justice and not thwart or stifle the process of law or suffers from such improprieties or illegalities as to cause manifest injustice if consent is given. [419-C-D-E]

Sheonandan Paswan v. *State of Bihar,* [1987] 1 SCC 288, relied on. F

2.2. True, the power of the court under Section 321 is supervisory but that does not mean that while exercising that power, the consent has to be granted on mere asking. The court has to examine that all relevant aspects have been taken into consideration by the Public Prosecutor and/or by the Government in exercise of its executive function. [419-F] G

3. Besides the eight questions noticed in the main judgment, the question and aspect of association of Veerappan with those having secessionist aspirations were also not considered. Further, though it may have been considered as to what happened immediately after the abduction of Rajkumar, but what does not seem to have been considered is that those were spontaneous H

A **outbursts and the authorities may have been taken unaware but what would be the ground realities when the law enforcing agencies have sufficient time to prepare for any apprehended contingency. [419-G-H]**

4. The application and order under Section 321 is a result of panic reaction by overzealous person without proper understanding of the problems
B **and consideration of the relevant material, though they may not have any personal motive. It does not appear that anybody considered that if democratically elected governments give an impression to the citizens of this country of being lawbreakers, it would breed contempt for law; it would invite citizens to become a law onto themselves. It may lead to anarchy. The**
C **Governments have to consider and balance the choice between maintenance of law and order and anarchy. It does not appear that anyone considered this aspect. It yielded to the pressure tactics of those who according to the Government are out to terrorise the Police force and to overawe the elected Governments. It does not appear that anyone considered that with their action people may lose faith in the democratic process, when they see public authority**
D **flouted and the helplessness of the Government. The aspect of paralysing and discrediting the democratic authority has to be taken into consideration. It is the executive function to decide in public interest to withdraw from prosecution as claimed. But it is also for the Government to maintain its existence. Self-preservation is the most pervasive aspect of sovereignty. To**
E **preserve its independence and territories is the highest duty of every nation and to attain these ends nearly all other considerations are to be subordinated. Of course, it is for the State to consider these aspects and take a conscious decision. In the present case, without consideration of these aspects the decision was taken to withdraw the TADA charges. It is evident from the material now placed on record before this Court that Veerappan was acting**
F **in consultation with secessionist organisations/groups, which had the object of liberation of Tamils from India. There is no serious challenge to this aspect. None of the aforesaid aspects were considered by the Government or the Public Prosecutors before having recourse to Section 321 Cr.P.C. [420-B-F]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos.
G 741-743 of 2000.

From the Judgment and Order dated 19.8.2000 of the Special Court Judge at Mysore (Designed under TADA Act) in Special Case Nos. 3/98, 11/ 97 and 44 of 1994.

H WITH

Writ Petition (Crl.) Nos. 271, 273, 283-315, 317-342, 343-372, 373-402 of 2000. A

Soli J. Sorabjee, Attorney General, Harish N. Salve, Solicitor General, K.N. Raval, Additional Solicitor General, K. Parasaran, V.R. Reddy, Gopal Subramaniam, Ms. Indira Jaising, Chava Badri Nath Babu, S. Umesh, S.K. Manjunath, Amarendra Sharan, Dr. B.L. Wadehra-in-person in W.P. No. 273/ B 2000, Adarsh Ganesh-in-person in W.P. No. 271/2000, R.C. Kaushik, Laxmi Narayan, Ms. Renu George,, A.N. Jayaram, General for Karnataka, Mohan Shankargowda, A.P. Joshi, Sanjay R. Hegde, Satya Mitra, Ms. Niti Dikshit, Samrat Nigam, Alok Sinha, Sanjeev Puri, N. Ganpathy, V.G. Pragasam, Anip Sachthey, Jaideep Gupta, B.K. Prasad, Sanjoy Ghosh, Ms. Manjula Gupta, C Girish Ananthamurthy, Venugopal, T.N. Rao, S.N. Bhat, N.P.S. Panwar, D.P. Chaturvedi, A.T.M. Sampath, V. Balaji, N.P. Midha, Ms. Anitha Shenoy, Ravikesh Sinha, D.K. Garg, K. Kiran, Bharat Sangal and Bhim Singh for the appearing parties.

The Judgment of the Court was delivered by D

BHARUCHA, J. The border between the States of Karnataka and Tamil Nadu runs through mountainous forest. On about 16,000 acres of this forestland, half in Karnataka and half in Tamil Nadu, a man named Veerappan has held sway for more than 10 years. He is alleged to have poached elephants and smuggled out ivory and sandalwood in a very big way. He is alleged to E be guilty of the most heinous crimes, including the murder of 119 persons, among them Police and Forest Officers, and kidnapping. Task forces set up by the States of Karnataka and Tamil Nadu for the purpose have been unable to apprehend him and bring him to justice for 10 years.

On the night of 30th July, 2000, between 20.45 and 21.10 hours, Veerappan F abducted from Gajanoor a film actor named Rajkumar, who is very popular in Karnataka, and three others, namely, Govindraj, who is a son-in-law of Rajkumar, Nagesh, who is a relative of Rajkumar, and Nagappa, who is an Assistant Film Director. As of today, Rajkumar and Nagesh remain in Veerappan's custody. Nagappa is said to have escaped and Govindraj was released by Veerappan. G Gajanoor is a town in Tamil Nadu close to the border with Karnataka.

On 8th July, 1999 the Director General of Police of the State of Karnataka had informed the Inspector General of Police of the State of Tamil Nadu that it had been reliably learnt that Veerappan intended to kidnap Rajkumar during the latter's visit to his farmhouse in Gajanoor and had requested adequate H

A security arrangements for Rajkumar whenever he visited Gajanoor. The record before us reveals that Rajkumar did not want police protection and considered the presence of the police a problem. He had visited Gajanoor on 22nd June, 2000, but no information in this behalf had been intimated to the police authorities at Gajanoor; however, they had come to know of his presence and had made security arrangements. No information had been received in regard B to the visit of Rajkumar to Gajanoor on 28th July, 2000, and they had not learnt of it until after the kidnap.

'At the time of the kidnapping, Veerappan handed over to Rajkumar's wife an audio cassette to be delivered to the Chief Minister of the State of Karnataka. The audio cassette required that he send an emissary to Veerappan. C On 31st July, 2000 the Chief Ministers of the States of Karnataka and Tamil Nadu met in Chennai and decided to send as an emissary one Gopal, he having served as an emissary when, on 12th July, 1997, Veerappan had kidnapped nine Forest Officers of the State of Karnataka and he had obtained their release thereafter. On 1st August, 2000 Gopal left on his first mission to D meet Veerappan in the forest along with two members of his staff and a videographer. On 5th August, 2000 Gopal sent an audio cassettee to Chennai which, in the voices of Veerappan and an associate, set out ten demands for the release of Rajkumar. On the next day, that is, 6th August, 2000, the Chief Ministers of the States of Karnataka and Tamil Nadu met in Chennai to discuss the demands and their responses were made public at a press E conference held on that very day.

The ten demands and the responses thereto, as released to the Press, are as follows :

"DEMAND :

F 1. Permanent solution for the Cauvery water issue and implementation of the interim orders of the Cauvery Tribunal.

RESPONSE :

For implementation of the interim orders, the Cauvery River Water Authority has been set up under the chairmanship of the Prime G Minister.

DEMAND :

2. Adequate compensation for Tamil victims of 1991 riots.

RESPONSE :

H Karnataka has constituted Cauvery Riots Relief Authority as directed

by the Supreme Court. About 10,000 claims have been received. The time limit for completion of the work has been extended up to 31.5.2001.

DEMAND :

3. Karnataka Government should accept Tamil as additional language of administration.

RESPONSE :

As per the G.O.I. instructions, Karnataka has issued orders on 20.5.99 that where linguistic minorities constitute more than 15 percent of the population, Government notices, orders and rules shall be issued in the language of the minorities as well.

DEMAND :

4. Unveiling of Tiruvalluvar statue at Bangalore.

RESPONSE :

Statues of Tiruvalluvar and Sarvajna will be installed and unveiled at Bangalore and Chennai respectively with the participation of both the Chief Ministers.

DEMAND :

5. Vacation of stay issued by High Court against Justice Sathasivam Commission to enquire into the atrocities by the Task Forces of the Two States. Compensation for victims and punishment for those held guilty by the Commission.

RESPONSE :

Karnataka Government will take steps to have the stay vacated.

DEMAND :

6. Innocent persons languishing in Karnataka Jails should be released.

RESPONSE :

TADA charges will be dropped immediately facilitating release of the prisoners.

DEMAND :

7. Compensation for the families of nine Dalits killed in Karnataka.

A RESPONSE :

Will be considered favourably after collecting particulars.

DEMAND :

8. Minimum procurement price of Rs. 15 per kg. for tea leaves
B grown in the Nilgiris.

RESPONSE :

A series of steps taken by the Central and the State Governments has already brought about substantial increase in the price of tea leaves
C from Rs. 4.50 to Rs. 9.50.

DEMAND :

9. Five persons now in Tamil Nadu prisons should be released.

RESPONSE :

D Will be considered favourably.

DEMAND :

10. Minimum daily wage of Rs. 150 for Coffee and Tea Estate Workers in Tamil Nadu and Karnataka.

E RESPONSE :

Estate workers in Tamil Nadu get a minimum wage of Rs. 74.62 inclusive of various allowances the wages add upto Rs. 139 per day. Further increase through negotiations would also be considered."

On 11th August, 2000 Gopal returned to Chennai with a written message
F and a video cassette that contained an elaboration of two earlier demands and two new demands. The elaboration related to the release of prisoners in the State of Karnataka, which was reiterated, and the payment of compensation based on the Sathasivam Commission Report. The new demands and the responses thereto were as follows:

G "DEMAND :

1. Tamil should be the compulsory medium of instruction till Standard 10 in Tamil Nadu. Tamil should be declared official language.

RESPONSE :

H The Government move to make Tamil the medium of instruction till

Standard 5 has been stayed by the High Court and an appeal has been preferred in the Supreme Court. A

DEMAND :

2. Compensation of Rs. 10 lakhs each for innocent rape victims of Vachathi and Chinnampathi in Tamil Nadu. B

RESPONSE :

Compensation has already been paid on rates determined by Court/ Commission".

On 10th August, 2000 an application was filed by the Special Public Prosecutor under the provisions of Section 321 of the Criminal Procedure Code in fourteen cases (Special Case Nos. 44/94, 63/94, 66/94, 67/94, 119/95, 11/97, 12/97, 13/97, 14/97, 3/98, 19/98, 20/98, 21/98 and 79/99) being heard by the Designated Court at Mysore. The cases were filed under the provisions of the Terrorist and Disruptive Activities Act and other penal enactments against Veerappan and a large number of his alleged associates. The application needs to be reproduced in extenso: C D

"It is submitted by the Special Public Prosecutor as follows :

A charge sheet has been filed against the accused for the offences punishable U/sec.143, 147, 148, 341, 342, 120B, 326, 307, 302, 396 R/w 149 IPC. And U/sec. 3, 4 and 5 of the Indian Explosives Act, and U/sec.3 and 25 of the Arms Act, and also for the offences pun.U/sec. 3, 4 and 5 of the TADA Act, alleging that on the afternoon of 14-8-92 Veerappan along with his associates attacked the then Supt. of Police, Mysore District, Sri. Harikrishna, and the then S.I. of Police of M.M. Hills, Sri. Shakeel Ahamed and other police personnel who had been to nab Veerappan on the information furnished by the informant Kamala Naika, who also died in the incident, and also had resulted killing of six police personnel and injuring others and damaging the vehicles and also removing of the weapons and wireless set belonging to police Department. E F G

There are in all 166 accused persons and out of which 30 accused are in custody and 48 accused are on bail.

It is submitted by the Prosecutor that the accused who are on bail have not repeated the offences and they have also not involved H

A themselves in any similar offences and terrorist activity have not been noticed recently in the area.

It is submitted by the Prosecutor that in order to restore the peace and normalcy in the border area and among the people living in the border area and to maintain peace among the public at general and B inhabitants of the particular village, the Prosecutor has decided to withdraw from the prosecution the charges under the offences of the provision punishable under Sec. 3,4 and 5 of the TADA.

It is submitted further by the Prosecutor that the trial regarding other offences are being continued and the charges under the Arms C Act and Explosive Substances Act, to certain extent cover the provisions of Sec. 3 and 4 of the TADA. Therefore, no injustice would be caused if the prosecutor withdraws the charges for the offences punishable U/sec. 3,4 and 5 of the TADA Act.

D It is further submitted by the Prosecutor that as a matter of policy, since the Central Government has already withdrawn Central enactment, no purpose would be served immediately the prosecution for the offences punishable U/sec. 3,4 and 5 of the TADA Act.

It is submitted by the Prosecutor that in the larger interest of the E State and in order to avoid any unpleasant situation in the border area, it is necessary to withdraw from prosecution of the charges under Section 3,4 and 5 of the TADA Act.

It is submitted by the Prosecutor that no injustice would be caused to the State by withdrawing from the prosecution, the offences F punishable under Sections 3, 4 and 5 of the TADA Act.

Therefore, it is submitted by the Prosecutor that the Hon'ble Court be pleased to accord consent to the prosecutor to withdraw the charges for the offences punishable U/s 3,4, and 5 of the TADA Act, against the accused and the case may be withdrawn from the G Designated Court and be transferred to the regular Sessions Court for the continuance of the trial for the other offences in the interest of justice."

The appellant in Criminal Appeal Nos. 741-743/2000 before us opposed the Special Public Prosecutor's application. He is the father of Shakeel Ahmed H who, as the application recites, had, allegedly, been killed by Veerappan and

his associates. The appellant's statement of opposition referred to the abduction of Rajkumar and alleged that, consequent thereupon, the Government of the State of Karnataka had yielded to the demands of Veerappan and had issued notifications that it would withdraw all cases against Veerappan and his associates, and this had been widely publicised by the media. The statement of opposition submitted that no cogent reasons had been given for the decision to drop the TADA cases. It submitted that it was the duty of the Special Public Prosecutor to inform the court of the reasons prompting him to withdraw the prosecution and of the court to apprise itself of these reasons. The Special Public Prosecutor rejoined to the statement of opposition by contending that all cases against Veerappan and his associates were not being withdrawn, and they would be prosecuted. He, therefore, denied the submission in the statement of opposition that the Government of the State of Karnataka had yielded to blackmail by Veerappan.

The Special Public Prosecutor's application was made when the trial of the cases to which it related was in progress and the evidence of 51 witnesses had been recorded. The trial had been going on until 30th July, 2000, on the night of which Rajkumar was abducted.

The Principal District and Sessions Judge, Mysore, was the Special Judge designated for the trial of TADA offences. (He is now referred to as "the learned Judge.") On 19th August, 2000 the learned Judge passed on the Special Public Prosecutor's application the order that is impugned in these appeals. He set out in paragraphs 2 to 6 the details of the cases before him, thus:

> " 2. The Special Cases in Nos .44/1994, 11/1997 and 3/1998 arise out of a charge sheet in Crime No. 70/1992 of Ramapura Police Station against Veerappan and others for offences under Sections 143, 147, 148, 341, 342, 120-B, 326, 307, 302, 396 r/w 149 of I.P.C., Sections 3, 4 and 5 of Indian Explosives Act, Sections 3 and 25 of the Arms Act and also under Sections 3, 4 and 5 of the Terrorist and Disruptive Activities Act, alleging that on the afternoon of 14-8-1992, Veerappan and Associates had attacked the then Superintendent of Police, Mysore, Sri Harikrishna and the then Sub-Inspector of Police Sri Shakeel Ahamed and other Police Personnel, who had been to nab Veerappan and in the encounter, six Police Personnel were killed and many of them were injured and vehicles were damaged and the weapons and wireless set belonging to the Police Department were taken away. The charge sheet had been laid against 168 persons, of them 30

A accused are in custody and 45 are on bail and rest of them are shown as absconding.

3. The Special Case Nos. 63/1994, 13/1997 and 20/1998 arise out of a charge sheet filed in Crime No. 41/1992 of Ramapura Police Station against Veerappan and 162 others alleging that on the night of 19/20-
B 5-1992, the accused had attacked Ramapura Police Station and caused death of five Police Personnel and caused injuries to other Police staff, thereby the accused are said to have committed offences punishable u/ss. 302, 307, 324, 326, 396 r/w 149 I.P.C., Sections 3 and 25 of Indian Arms Act, Sections 3, 4 and 5 of the Terrorist and
C Disruptive Activities Act. Of the said accused, 46 accused are on bail and 30 accused are in custody and rest of them have been shown to be absconding.

4. The Special Case Nos. 66/1994, 14/1997 and 21/1998 arise out of a charge sheet submitted by M.M. Hills Police in Cr.No. 12/1993 alleging
D that the accused had attacked Police Personnel on 24-5-1993 near Rangaswamy Voddu on M.M. Hills - Talabetta Road, near 18/28 S : Curve and in the attack the Superintendent of Police Sri Gopal Hosur and his driver Ravi were injured and six Police Personnel were killed and four Police Personnel were injured and thereby the accused are said to have committed offences punishable under Sections 143, 148,
E 120B, 341, 353, 395, 302, 109, 114 r/w 149 IPC, Sections 3, 4 and 5 of Indian Explosives Act, Sections 3 and 25 of Indian Arms Act and also U/S 3, 4 and 5 of the Terrorist and Disruptive Activities Act. The chargesheet has been submitted against 98 accused persons. Of them, 7 accused are on bail, 26 accused are in custody and others are shown
F to be absconding.

5. The Special Cases Nos. 67/1994, 12/1997 and 19/1998 arise out of a chargesheet submitted by M.M. Hills Police against 143 accused persons alleging that on 9-4-1993 at Sorekayee Madu the accused had attacked and killed 22 persons belonging to both Police and Forest
G Department and their informants by planting bombs in the forest area of Palar and thereby the accused are said to have committed offences punishable u/s 143, 147, 148, 341, 342, 120B, 324, 326, 307, 302 and 396 r/w 149 of IPC, Sections 3 and 25 of the Arms Act, Sections 3, 4 and 5 of Indian Explosives Substances Act and also Sections 3, 4 and 5 of Terrorist and Disruptive Activities Act. Of the 143 accused persons,
H 17 accused are on bail, 33 accused are in custody and rest of them

are shown to be absconding. A

6. The Special Cases in Nos. 119/1995 and 79/1999 arise out of a charge sheet submitted by Ramapura Police in Cr. No. 5/1994 against 17 accused persons alleging that on 17-1-1994 at Changadi Forest, the accused had attacked staff of the Special Task Force and informants of the Police and Forest Department and killing one police personnel B and one Gunman and thereby the accused are said to have committed offences under Sections 143, 147, 148, 326, 307, 302 r/w 149 IPC, Sections 3 and 25 of the Indian Arms Act and also Sections 3,4 and 5 of Terrorist and Disruptive Activities Act.".

C

The learned Judge then noted that the trial had begun and many material witnesses had been examined. He referred to the pleadings in the application before him and the arguments of the Special Public Prosecutor; among them, "There is no terrorist activity in the area. The instant application has been filed with an intention to maintain peace and tranquility. He has not been directed by the State. It is the act of the Public Prosecutor only." The learned D Judge opined that the present appellant could not be said to be an aggrieved party who could be permitted to raise objections to the application. He then dealt with precedents relevant to the application and concluded that his power was limited. It was only a supervisory power over the action of the Special Public Prosecutor. The function of the court was to prevent abuse. E Its duty was to see, in furtherance of justice, that the permission was not sought on grounds extraneous to the interest of justice. Permission to withdraw could only be granted if the court was satisfied on the materials placed before it that its grant subserved the administration of justice and it was not being sought covertly, with an ulterior purpose unconnected with the vindication of the law, which the executive organs were duty-bound to further and F maintain. The learned Judge stated that it was seen from the material on record that terrorist activity had not been noticed recently in the area. The learned Judge did not accept the contention of the Special Public Prosecutor that, since the TADA Act had been withdrawn, the permission should be granted. The learned Judge noted that it had been mentioned in the statement G of objections that Rajkumar had been abducted by the prime accused before him; as such, he said that he would have to take notice of this aspect. He mentioned that the trial of one of the special cases involved in the application had been posted for hearing on 30th July, 2000 but, on account of the changed situation, he had felt "that there was a likelihood of danger to the person of accused, who are in custody, if they are insisted to be produced H

A before the court on the said hearing dates." The learned Judge stated that he was satisfied that the Special Public Prosecutor had applied his mind in filing the application. In view of the grounds and circumstances mentioned by the Special Public Prosecutor, he was satisfied, on the materials placed before him, "that the grant of permission to withdraw subserves the B administration of justice and the permission had not been sought covertly with a ulterior purpose unconnected with the vindication of law, which the executive organs are in duty-bound to further and maintain". The learned Judge observed that things could have been viewed from a different angle altogether if the Special Public Prosecutor had sought for blanket withdrawal of the cases against the accused; but this was not the situation in the case C on hand for the case against the accused for other offences would be proceeded with. Accordingly, the learned Judge allowed the application, according consent to withdrawal of the charges relating to offences punishable under the TADA Act against the accused. He ordered, "The accused in custody and on bail, facing trial for offences under TADA Act stand acquitted/discharged as the case may be." He transferred the cases to the court of the Principal District D and Sessions Judge, Mysore for disposal in accordance with law of all charges other than under the TADA Act.

The accused who were in custody and were discharged by the Special Court in respect of the TADA charges against them immediately filed an E application for bail before the Court of District and Sessions Judge, Mysore. On 28th August, 2000, the learned Judge, now as Principal District and Sessions Judge, noted in his order that learned counsel for the present appellant had informed him that the appellant had filed a petition for special leave to appeal against the order on the Special Public Prosecutor's application which was to be taken up for hearing on the next day and that learned counsel F had prayed that orders on the bail petition should not be pronounced until thereafter. The Special Public Prosecutor had submitted in reply that the special leave petition related only to the withdrawal of charges under the TADA Act and the passing of orders on the bail petitions would not be affected thereby. The learned Judge found that no order of stay had been G passed by this Court, and, therefore, he overruled the prayer and passed orders on the bail petitions. In the course thereof, the learned Judge referred to "the urgency of the matter". The learned Judge found force in the contention on behalf of the accused that there had been a change in the circumstances in view of the fact that the Designated Court had permitted the State to withdraw the TADA charges against them. Having carefully gone through the H material on record and the nature of the accusations made against the accused

and the evidence projected, it was the learned Judge's opinion that "there is no *prima facie* case made out against the accused for the said offence. Having regard to the facts and circumstances, the social status of the accused and other relevant factors, the Court is of the opinion that the bail petition will have to be allowed on the following terms in the ends of justice." The accused were directed to be released on bail on each of them executing a bond for Rs. 10,000 with one surety for the like sum or, in the alternative, on each furnishing cash security of Rs. 20,000, on the conditions that they would appear before the court regularly, as and when required, they would not tamper with the prosecution witnesses and they would not commit any other offence.

The order dated 19th August, 2000 on the Special Public Prosecutor's application is impugned in the appeals before us.

On 14th August, 2000 the Government of the State of Tamil Nadu issued a Government Order directing that charges against one Radio Venkatesan in respect of two cases registered against him under the provisions of the TADA (Prevention) Act be withdrawn "in the public interest". The Inspector General of Police Intelligence, Chennai was directed to take necessary action accordingly. On 16th August, 2000 the Special Public Prosecutor before the Designated Court (TADA Act) at Chennai made two applications to that court under the provisions of Section 321 of the Criminal Procedure Code. They stated that Radio Venkatesan was charged before the Designated Court in cases arising under the TADA Act, the Explosive Substances Act, the Indian Penal Code and the Arms Act and the cases were pending for framing charges. The applications added, "It is further submitted that after perusal of records I am satisfied that under the new change of circumstances and also in the Public Interest I hereby request this Hon'ble Court to permit me to withdraw the charges under Section 3(1), 3(3), 4(1) & 5 of Tamil Nadu Terrorist & Disruptive Activities Preventive Act, 1987 against the accused Venkatesan @ Radio Venkatesan and thus render justice". A copy of the Government Order of 14th August, 2000 was submitted with the applications. On 16th August, 2000, the Designated Court, Chennai passed an order on the applications. It noted, "The Government have passed an order stating that the TADA offences against the accused Venkatesan @ Radio Venkatesan is withdrawn in the public interest. There is no mention in the Government Order for withdrawal of cases against the said accused under IPC Offences and other laws". The court referred to the applications before it and the provisions of Section 321 which permitted withdrawal from prosecution of one or more

A offences when the accused was charged with more than one offence. It then stated, "So far as this case is concerned the Government have passed order to withdraw the TADA case alone as against the accused Venkatesan @ Radio Venkatesan, who is involved in Cr. No. 50/93 and Cr. No. 346/93. As this application has been filed by the learned Special Public Prosecutor on the basis of the Government Order referred above, permission is granted to withdraw the TADA case against the accused Venkatesan @ Radio Venkatesan and he has been discharged from the various offences of the TADA Act". The applications were allowed accordingly.

Insofar as four detenus under the National Security Act were concerned, C the Government of the State of Tamil Nadu passed orders on 14th August, 2000. As an example, that relating to Sathyamoorthy is reproduced below :

> "Kannada film actor Dr. Rajkumar and few others were kidnapped by sandalwood brigand Veerappan and his men in the night of 30.7.2000. He has made 10 demands to release them from hostage. One of the D demands is to release 5 prisoners from the various prisons in Tamil Nadu. Thiru Sathyamoorthy @ Sathya @ Kandasamy @ Neelan, is one among the NSA detenus mentioned above. A tense situation is prevailing due to the kidnapping of Kannada film actor Dr. Rajkumar. There is an apprehension that in case any harm is caused to him, there may be a backlash on Tamils in Karnataka. In order to avoid such a E situation and in the public interest, the Government have decided to revoke the order of detention passed by the Collector and District Magistrate, Erode District, in his proceedings first read above, under N.S.A. against Thiru Sathyamoorthy @ Sathya @ Kandasamy @ Neelan and to release him from detention under N.S.A.
>
> F
>
> 2. NOW THEREFORE in exercise of the powers conferred by clause (a) of sub section (1) of Section 14 of the National Security Act, 1980, the Governor of Tamil Nadu hereby revokes the order of detention made by the District Collector and District Magistrate, Erode District, against Thiru Sathyamoorthy @ Sathya @ Kandasamy @ G Neelan, s/o Thiru Nataraja Muthiraiyar, in the proceedings first read above and direct that the said Thiru Sathyamoorthy @ Sathya @ Kandasamy @ Neelan, be released from detention under the said Act forthwith. This order applies only in respect of detention under National Security Act".

H The aforesaid orders of the Government of the State of Tamil Nadu and

the order of the Designated Court, Chennai are challenged in the two public interest petitions before us. A

In the appeals aforementioned, this Court passed an order on 29th August, 2000 directing that none of the accused respondents therein should be released, on bail or otherwise, pending further orders. Observing the spirit of this order, those who are the beneficiaries of the aforesaid orders of the Government and the Designated Court of the State of Tamil Nadu have also not been released. B

Section 321 of the Criminal Procedure Code reads thus :

"321. *Withdrawal from prosecution* - The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal, - C

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences; D

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences; E

Provided that where such offence -

(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi Special Police Establishment Act, 1946 (25 of 1946), or F

(iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, G

and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according H

consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution".

The law as it stands today in relation to the applications under Section 321 is laid down by the majority judgment delivered by Khalid, J. in the Constitution Bench decision of this Court in *Sheonandan Paswan* v. *State of Bihar & Ors.*, [1987] 1 SCC 288. It is held therein that when an application under Section 321 is made, it is not necessary for the court to assess the evidence to discover whether the case would end in conviction or acquittal. What the court has to see is whether the application is made in good faith, in the interest of public policy and justice and not to thwart or stifle the process of law. The court, after considering the facts of the case, has to see whether the application suffers from such improprieties or illegalities as would cause manifest injustice if consent was given. When the Public Prosecutor makes an application for withdrawal after taking into consideration all the material before him, the court must exercise its judicial discretion by considering such material and, on such consideration, must either give consent or decline consent. The section should not be construed to mean that the court has to give a detailed reasoned order when it gives consent. If, on a reading of the order giving consent, a higher court is satisfied that such consent was given on an over all consideration of the material available, the order giving consent has necessarily to be upheld. Section 321 contemplates consent by the court in a supervisory and not an adjudicatory manner. What the court must ensure is that the application for withdrawal has been properly made, after independent consideration by the Public Prosecutor and in furtherance of the public interest. Section 321 enables the Public Prosecutor to withdraw from the prosecution of any accused. The discretion exercisable under Section 321 is fettered only by a consent from the court on a consideration of the material before it. What is necessary to satisfy the section is to see that the Public Prosecutor has acted in good faith and the exercise of discretion by him is proper.

The law, therefore, is that though the Government may have ordered, directed or asked a Public Prosecutor to withdraw from a prosecution, it is for the Public Prosecutor to apply his mind to all the relevant material and, in good faith, to be satisfied thereon that the public interest will be served by his withdrawal from the prosecution. In turn, the court has to be satisfied, after considering all that material, that the Public Prosecutor has applied his mind independently thereto, that the Public Prosecutor, acting in good faith, is of the opinion that his withdrawal from the prosecution is in the public interest, and that such withdrawal will not stifle or thwart the process of law

or cause manifest injustice. A

It must follow that the application under Section 321 must aver that the Public Prosecutor is, in good faith, satisfied, on consideration of all relevant material, that his withdrawal from the prosecution is in the public interest and it will not stifle or thwart the process of law or cause injustice. The material that the Public Prosecutor has considered must be set out, briefly but concisely, B in the application or in an affidavit annexed to the application or, in a given case, placed before the court, with its permission, in a sealed envelope. The court has to give an informed consent. It must be satisfied that this material can reasonably lead to the conclusion that the withdrawal of the Public Prosecutor from the prosecution will serve the public interest; but it is not C for the court to weigh the material. The court must be satisfied that the Public Prosecutor has considered the material and, in good faith, reached the conclusion that his withdrawal from the prosecution will serve the public interest. The court must also consider whether the grant of consent may thwart or stifle the course of law or result in manifest injustice. If, upon such consideration, the court accords consent, it must make such order on the D application as will indicate to a higher court that it has done all that the law requires it to do before granting consent.

The applications under Section 321 made by the Special Public Prosecutor before the Designated Court at Mysore submitted that the Special Public E Prosecutor had decided to withdraw from prosecution the charges under the T.A.D.A. Act "in order to restore the peace and normalcy in the border area and among the people living in the border area and to maintain peace among the public at general and inhabitants of the particular village" and that such withdrawal from prosecution was necessary "in the larger interest of the State and in order to avoid any unpleasant situation in the border area". The F applications did not state why the Special Public Prosecutor apprehended a disturbance of the peace and normalcy of "the border area" or the "particular village", nor was any material in this behalf, or a summary thereof, set out. There was, therefore, no basis laid in the applications upon which the learned Judge presiding over the Designated Court could conclude that the Special G Public Prosecutor had applied his mind to the relevant material and exercised discretion in good faith and that the withdrawal would not stifle or thwart the course of the law and cause manifest injustice. The order of the learned Judge noted that the statement of opposition filed by the present appellant averred that Rajkumar had been abducted by Veerappan and it said that he would have to take notice of this aspect. The order did not note that the statement H

A of opposition also said that, consequent upon such abduction, the State of Karnataka had yielded to the demands made by Veerappan and had issued notifications that it would withdraw all cases against Veerappan and his associates. No query in this regard was made by the learned Judge with the Special Public Prosecutor. The learned Judge said that he was satisfied on the material placed before him that the grant of permission to withdraw subserved B the administration of justice and it had not been sought covertly, but he did not state what those materials were. It is not the case of anybody that any materials were placed before the learned Judge upon the basis of which he could have been satisfied that the Special Public Prosecutor had applied his mind thereto and had reached, in good faith, the conclusion that the withdrawal C he sought was necessary for the reasons he pleaded. The learned Judge placed on record, as he called it, the decision of this Court in the case of *Sheonandan Paswan*, referred to above, but he did not appreciate what it required of a Public Prosecutor and of a court in regard of Section 321, and he did not follow it. The order granting consent on the Special Public Prosecutor's application, therefore, does not meet the requirements of Section D 321 and is bad in law.

The applications under Section 321 filed before the Designated Court at Chennai sought consent to the withdrawal from the TADA prosecution against Venkatesan @ Radio Venkatesan after "perusal of records" by the E Special Public Prosecutor, and they submitted that "under the new change of circumstances and also in the public interest the permission was sought." What the record was that the Special Public Prosecutor had perused was not set out nor was it annexed nor a summary thereof recited. What the changed circumstances were was not set out. The order on the applications was founded only upon the relevant Government Order, thus: "So far as this case F is concerned the Government have passed order to withdraw the TADA case alone as against the accused Venkatesan @ Radio Venkatesan, who is involved in Cr.No. 50/93 and Cr. No. 346/93. As this application has been filed by the learned Special Public Prosecutor on the basis of the Government Order referred above, permission is granted to withdraw the TADA case against the G accused Venkatesan @ Radio Venkatesan ....." The order, therefore, was not passed after meeting the requirements of Section 321, and it is bad in law.

It was submitted by the learned Solicitor General, appearing for the State of Karnataka, that we, sitting in appeal, should consider the grant of consent under Section 321 based upon the state of knowledge of the Special H Public Prosecutor on the date on which he made the application before the

Designated Court at Mysore. In this behalf, two affidavits, both dated 19th October, 2000, were filed. One affidavit is made by the Minister of Law and Parliamentary Affairs of the State of Karnataka and the other by the Special Public Prosecutor.

The affidavit of the Minister of Law states:

1. xxxxxxx.

2. That I have been party to most of the decisions which have been taken in this matter, which has culminated in the issuance of the Government order dated 8th August, 2000 requesting the Special Public Prosecutor, in charge of the TADA cases pending before the Designated Court at Mysore against Veerappan and his associates, to withdraw the charges under TADA.

3. I also held a meeting with the Special Public Prosecutor in charge of the cases, on the 5th August, 2000 in my office in Vidhan Sabha, Bangalore. The discussions held during the meeting and the persons present have already been stated in the affidavit of Shri Ashwini Kumar Joshi which I confirm.

4. Prior to this meeting, the problems arising out of the abduction of Dr. Rajkumar, the options available to the State Government to deal with this crisis and the responses of the Government publicly announced to Veerappan's demands, have all been discussed at various levels including in informal meetings held between me, the Home Minister and the Chief Minister as well as the Cabinet meetings which have been held frequently during the period 1st August to 8th August, 2000.

5. I submit that one option, which the Government had always considered relates to the use of force for the release of Dr. Rajkumar. While considering this option and evaluation of the risk factors, as advised by the senior officials at the level of Home Secretary, and the Chief Secretary as well as our own experience in the past were also considered. After detailed discussions on more than one occasion, the option of use of force in the present circumstances and as at present advised was ruled out in favour of acceding to some of his demands.

6. The demands made by Veerappan were discussed informally at various levels of the Secretaries, at the level of the Ministers and

A also informally in the Cabinet.

7. I submit that the Government made public its response to Veerappan's demands in which it indicated, *inter alia*, that only TADA charges (and not all cases) against the 51 accused would be withdrawn.

B

8. I submit that the matter of withdrawal of TADA charges had been informally discussed in the Cabinet on 3rd August and the final decision taken between 4-5th August, 2000 between myself, the Home Minister and the Chief Minister of Karnataka.

9. I respectfully state that it was after considering the options and the likely repercussions in future of succumbing to his demands (i.e. the signals sent by agreeing to such demands, and the fact that it may encourage further such acts) and after weighing it against the problems apprehended if any harm were to be caused to Dr. Rajkumar, that this decision to withdraw TADA charges were taken.

C

D

10. xxxxxx

11. xxxxxx

12. In the informal Cabinet meeting held on 3rd August, 2000, the Cabinet had authorized the Chief Minister, the Home Minister and myself as well as the Chief Secretary to take a final decision in this matter and pursuant to this, we took a final decision between 4-5th August, 2000."

E

The decision of the Government of the State of Karnataka, therefore, was that, in view of its apprehension of the unrest that would follow if any harm were to come to Rajkumar, it was better to yield to Veerappan's demand and to withdraw the TADA charges against Veerappan and his associates, including the accused respondents. In this context, the Special Public Prosecutor should have considered and answered the following questions for himself before he decided to exercise his discretion in favour of such withdrawal from prosecution of the TADA charges.

F

G

1. Was there material to show that the police and intelligence authorities and the State Government had a reasonable apprehension of such civil disturbances as would justify the dropping of charges against Veerappan and others accused of TADA offences and the release on bail of those in custody in

H

respect of the other offences they were charged with? A

2. What was the assessment of the police and intelligence authorities and of the State Government of the risk of leaving Veerappan free to commit crimes in future, and how did it weigh against the risk to Rajkumar's life and the likely consequent civil disturbances? B

3. What was the likely effect on the morale of the law enforcement agencies?

4. What was the likelihood of reprisals against the many witnesses who had already deposed against the accused respondents? C

5. Was there any material to suggest that Veerappan would release Rajkumar when some of Veerappan's demands were not to be met at all?

6. When the demand was to release innocent persons languishing in Karnataka jails, was there any material to suggest that Veerappan would be satisfied with the release of only the accused respondents? D

7. In any event, was there any material to suggest that after the accused respondents had secured their discharge from the TADA charges and bail on the other charges Veerappan would release Rajkumar? E

8. Given that the Governments of the States of Karnataka and Tamil Nadu had not for 10 years apprehended Veerappan and brought him to justice, was this a ploy adopted by them to keep Veerappan out of the clutches of the law? F

The affidavit of the Special Public Prosecutor states:

6. On 5th August, 2000, I was called by the Office of the Hon'ble Law Minister for a meeting in his chamber in Vidhan Soudha, Bangalore.

G

7. When I went to the meeting, the Special Secretary (Law) and the Director of Prosecutions as well as the Additional Director General of Police (Intelligence) were present. We discussed the matter relating to withdrawal of TADA charges against these 51 accused at considerable length for over 2 hours. In the course of the discussion, I recall that I was informed, *inter alia*, that the H

A negotiations had reached a point where it was felt that withdrawal of TADA charges against these 51 accused would secure the release of Dr. Rajkumar. I was informed that the Government had intelligence reports and that if any harm were to be caused to Dr. Rajkumar, it would lead to problems between the two linguistic communities in the State. I was informed that apprehending trouble, schools and colleges had been declared closed immediately in the whole State and they were closed upto 5th August, 2000. I was informed of the incidents, which had occurred in Bangalore City on 31st July, 2000 as an aftermath of this incident of kidnapping also showed that the abduction was being construed by the people as an issue between two communities. The character of the incident showed that these people were ready to indulge in acts of violence. I was also informed that acting on intelligence reports, the Government had taken steps to arrange for deployment of Central Forces, such as the Rapid Action Force, Armed Reserve Police, and Para Military Force from the neighbouring States and some steps had already been taken and others were likely to be taken.

8. I was informed by the Hon'ble Law Minister that the Cabinet had also informally discussed this matter in its urgent meeting held on 3.8.2000 and that a decision had been taken to take appropriate steps and on that basis the Government would formally request me to take appropriate steps to withdraw the TADA charges.

9. On 8th August, 2000, the G.O. issued by the Government along with its covering letter was duly forwarded to me through the Law Department. A copy of the said G.O. and the connected documents are collectively annexed hereto and marked as Annexure A.

10. Based on my understanding of the situation, which in turn, was based on the aforesaid material, and the information which had been given to me which I believed to be true, I decided that it would be in the interest of public peace and maintenance of law and order in the State to withdraw the charges against the 51 TADA detenus.

11. I respectfully submit that the information which had been provided to me by the Additional Director General of Police (Intelligence),

the Hon'ble Law Minister and others present in the meeting as well as my own knowledge of local events (being a resident of Mysore for 27 years and having witnessed the problems which had resulted after the Cauvery riots), I felt there was substance in the Government's request that any such step which could secure the release of Dr. Rajkumar would be a step to protect public peace. I felt that if withdrawal of the TADA charges which would enable the accused to file necessary bail applications and their consequent release on bail could preserve amity between the two communities, it would outweigh the likely problems which would arise on the release of these 51. In arriving at this decision that I was influenced by the fact that the 73 co-accused who had already been enlarged on bail (by the Court) had complied with the bail conditions which suggested that they had not gone back to their old ways. There were 12 women, 3 old persons of 70 years age and 3 persons aged between 55-60 amongst the TADA accused. I also considered the fact that they had been in the jail for six to seven years.

12. xxx xxx xxx

13. xxx xxx xxx

14. I was also informed in the course of the aforesaid meetings that in other districts also some incidents have been reported. I believed the statement as I had no reason to doubt its credibility. I have subsequently ascertained the particulars of the cases which are hereto annexed and marked as Annexure C."

The affidavit of the Special Public Prosecutor reveals that he was "informed" that the Government of the State of Karnataka had intelligence reports that if any harm were to be caused to Rajkumar, it would lead to problems between two linguistic communities. Clearly, he was not shown the intelligence reports. Throughout the affidavit the phrase "I was informed" recurs. There is no statement therein which shows that the Special Public Prosecutor had the opportunity of assessing the situation for himself by reading primary material and deciding, upon the basis thereof, whether he should exercise his discretion in favour of the withdrawal of TADA charges. Acting upon information, which he could not verify, the Special Public Prosecutor could not be satisfied that such withdrawal was in the public interest and that it would not thwart or stifle the process of the law or cause manifest injustice. The Special Public Prosecutor, in fact, acted only upon the

A instructions of the Government of the State of Karnataka. He, therefore, did not follow the requirement of the law that he be satisfied and the consent he sought under Section 321 cannot be granted by this Court.

The affidavit of the Special Public Prosecutor speaks of "withdrawal of the TADA charges which would enable the accused to file necessary bail B applications and their consequent release on bail .....". It is, thus, clear that what was envisaged by the Government of the State of Karnataka and the Special Public Prosecutor was a package which comprised of the withdrawal of the TADA charges against the accused respondents and their release on bail on applications filed by them. This indicates complicity C with the accused respondents. It will have been noticed that stress was laid by the Special Public Prosecutor in his application under Section 321 on the fact that the prosecutions against the accused respondents on charges other than under the TADA Act would continue, and this was noted in the order of the Designated Court. The Designated Court was not told either in the application or thereafter that the Government of the State of Karnataka and D the Special Public Prosecutor had in mind that the accused respondents would file bail applications subsequent to the order under Section 321 which would not be opposed. There can, in the circumstances, be little doubt that after their release on bail the accused respondents were not expected to attend the court to answer the remaining charges against them and that the E stress laid as aforesaid was intended to mislead the Designated Court. We deprecate the conduct of the Government of the State of Karnataka and the Special Public Prosecutor in this behalf. We deem it appropriate, in the facts and circumstances, to set aside the orders granting bail to the accused respondents.

F Having set aside the order under Section 321 passed by the Designated Court at Chennai in the matter of Radio Venkatesan, the Government of the State of Tamil Nadu cannot comply with Veerappan's demand to release the five prisoners from its jails. It is appropriate in the circumstances to set aside the orders of the Government of the State of Tamil Nadu under the National G Security Act releasing the other four persons from detention.

The questions that we have posed above were put to learned counsel for the State of Karnataka in the context of the State Government's decision to concede to the demand of Veerappan that prisoners in Karnataka jails should be released. The answers do not satisfy us. We do not find on the H record, including that placed before us in sealed covers, material that could

give rise to a reasonable apprehension of such civil disturbances as justifies the decision to drop TADA charges against Veerappan and his associates, including the accused respondents, and to release the latter on bail. There is nothing on the record which suggests that the possibility of reprisals against the witnesses who have already deposed against the accused respondents or the effect on the morale of the law enforcement agencies were considered before it was decided to release the accused respondents. There is also nothing to suggest that there was reason to proceed upon the basis that Veerappan would release Rajkumar when his demands were not being met in full. The Government of the State of Karnataka would appear to be unaware that once the accused respondents were discharged from TADA charges, the deal was done; and that when they were released on bail they could not be detained further, whether or not Rajkumar was released in exchange. While we cannot assert that conceding to Veerappan's demands was a ploy of the Government of the State of Karnataka to keep him out of the clutches of the law, we do find that it acted in panic and haste and without thinking things through in doing so. That this is so is clear from the fact that the demands were conceded overnight and also from the fact that the Government of the State of Karnataka did not ascertain the legal position that it was not for it but for the court to decide upon the release of persons facing criminal prosecutions.

What causes us the gravest disquiet is that when, not so very long back, as the record shows, his gang had been considerably reduced, Veerappan was not pursued and apprehended and now, as the statements in the affidavit filed on behalf of the State of Tamil Nadu show, Veerappan is operating in the forest that has been his hideout for 10 years or more along with secessionist Tamil elements. It seems to us certain that Veerappan will continue with his life of crime and very likely that those crimes will have anti national objectives.

The Government of the State of Tamil Nadu had been apprised that Rajkumar faced the risk of being kidnapped by Veerappan when he visited his farmhouse at Gajanoor. It knew that Rajkumar was unlikely to give advance intimation of his visits: he had visited Gajanoor for the house-warming ceremony of his new farmhouse in June, 2000 without prior notice. To put it mildly, it would have been prudent, in the circumstances, to post round the clock at Rajkumar's farmhouse in Gajanoor one or two policemen who could inform their local station house of his arrival there and thus ensure his safety.

The *locus standi* of the present appellant has not been contested before this Court. Had it not been for his appeal, a miscarriage of justice

A would have become a fait accompli.

The accused respondents may have individual grounds for challenging the continued prosecution of the TADA charges against them or for bail. They shall be free to adopt proceedings in that regard, if so advised. Such proceedings shall be decided on their merits and nothing that we have said B in this judgment shall stand in the way.

The appeals are allowed and the order under appeal, dated 19th August, 2000, is set aside. The order dated 28th August, 2000 passed by the Principal District and Sessions Judge, Mysore granting bail to the accused respondents C is also set aside.

Further, the order of the Designated Court at Chennai dated 16th August, 2000 is set aside. The orders of the Government of the State of Tamil Nadu passed on 14th August, 2000 under the National Security Act in respect of Sathyamoorthy and three others revoking the orders of their detention under D the National Security Act are also set aside. The writ petitions are made absolute accordingly.

Y.K. SABHARWAL, J. I have gone through the elaborate and learned judgment prepared by my brother Justice S.P. Bharucha. I respectfully agree that the orders granting consent on the Special Public Prosecutor's Applications E do not meet the requirements of Section 321 of the Code of Criminal Procedure (for short, 'Cr.P.C.') and the orders are bad in law. The questions raised in these matters have wide ranging repercussions regarding the scope of Section 321 Cr.P.C. and what is required to be considered by the Public Prosecutor before consent of court is sought under Section 321 to withdraw from the prosecution of any person. I record these additional reasons for concurring F with decision arrived at by Justice Bharucha and Justice Mohapatra.

The facts in detail have been set out in the judgment of Justice Bharucha and it is unnecessary to repeat them except to briefly notice the broad admitted and/or well established facts for appreciating the points involved. They are as under : G

(A) Veerappan is a dreaded criminal and despite various attempts over a number of years could not be apprehended.

(B) Veerappan and his associates are alleged to be responsible for killing of a large number of people (over 100) including Police H personnel, Forest personnel and others besides being responsible

for causing injuries to a large number of people and loss of property to the tune of crores of rupees. A

(C) Veerappan and his gang members hatched a conspiracy to kill Superintendent of Police, Mysore District, Shri Harikrishna and Sub-Inspector of Police of MM Hills Shri Shakeel Ahmed and other Police personnel who had been to nab Veerappan with a view to terrorise the Police force and to put fear of death into the minds of Policemen who were performing duty in attempting to arrest the wanted persons. Various charges relating to murder, ambush, attempt to overawe the Government of Karnataka, killing of elephants, smuggling of Sandal wood etc. from the forest, possession of arms and ammunition, opening of fire on task force personnel, have been framed against accused who are said to be the associates of Veerappan. Cases filed against them are under the provisions of Terrorist and Disruptive Activities Act (TADA) and other penal provisions, i.e., Indian Penal Code, Arms Act and Explosive Substances Act. B C D

(D) from their source information police authorities had learnt that Veerappan intended to.kidnap Rajkumar during his visit to his farmhouse in Gajanoor. More than a year back, Director General of Police of the State of Karnataka had informed the Inspector General of Police of the State of Tamil Nadu requesting for adequate security arrangements being made for Rajkumar whenever he visited the said farm house. E

(E) Rajkumar is a very popular film actor of Karnataka. In case any harm is caused to Rajkumar, there may be backlash on Tamils in Karnataka and it may lead to problems between the two linguistic communities in the States. The people may indulge in acts of violence. F

(F) On 30th July, 2000, Veerappan abducted Rajkumar from his farm house along with three others. As of today, Rajkumar and one Nagesh are still in Veerappan's custody. G

(G) No Police protection or security was provided when Rajkumar visited the farm house.

(H) Soon after the abduction of Rajkumar and others, the two State Governments decided to accept the demands of Veerappan to release those in respect of whom TADA charges and detention H

A orders under the National Security Act have been withdrawn. The decision was taken in the meeting held on 4/5th August, 2000 between the Chief Ministers of the two States.

(I) Applications under Section 321 Cr.P.C. seeking consent of court to withdraw TADA charges were filed to facilitate ultimately the B release of accused persons from judicial custody so as to meet Veerappan's demand. The arrangement was that once TADA charges are withdrawn, the accused in judicial custody will move bail applications in cases of offences under IPC and other penal enactments. The Public Prosecutor will concede and will not oppose the grant of bail. The court will grant the bail and, thus, C accused will come out from judicial custody and, thus, this demand of Veerappan would be met.

Keeping in view the aforesaid facts, let me now revert to application filed under Section 321 Cr.P.C.

D

The application filed under Section 321 has been reproduced in extenso in the judgment of Justice Bharucha. The application makes no reference whatsoever to any such arrangement as mentioned at (I) above. The main ground stated in the application is that in order to restore the peace and normalcy in the border area and among the people living in the border area E and to maintain peace among the public at general and inhabitants of the particular village, the Prosecutor has decided to withdraw from the prosecution the accused charged of the offences punishable under Sections 3, 4 and 5 of the TADA. Abdul Karim, father of Shakeel Ahmed, opposed the application on various grounds, *inter alia*, stating in the objection petition that if the cases against the hardcore criminals are withdrawn or if they are released on F bail that may expose the families of the victims to terror unleashed by the TADA detenus, who may unleash terror and jeopardize public order and cause detriment to the general public interest. In reply to the said objections, instead of admitting that TADA charges are being withdrawn to facilitate grant of bail, the stand taken by the Public Prosecutor, *inter alia*, is that G Veerappan and his associates will not be let out freely as they will be facing prosecution for other offences and, therefore, the submission that the State Government has yielded to blackmail tactics of outlaw Veerappan is not correct.

The Public Prosecutor has to be straight, forthright and honest and has H to admit the arrangement and inform the court that the real arrangement is to

ultimately facilitate the release of these accused from judicial custody by not opposing the bail applications after the withdrawal of TADA charges. The arrangement as set out above has neither been disputed nor is it capable of being disputed. It is well established that real purpose for withdrawal of TADA charges was to facilitate the grant of bail to the accused. In such circumstances, why the camouflage? Why it is not so stated in the application filed under Section 321? In fact, it is a deceit. These are the questions for which there is no plausible answer. No court of law can be a party to such a camouflage and deceit in judicial proceedings. The answer to these basic questions cannot be that the judge knew about it from the very nature of the case. Under these circumstances, it cannot be said that the application was made in good faith.

The satisfaction for moving an application under Section 321 Cr.P.C. has to be of the Public Prosecutor which in the nature of the case in hand has to be based on the material provided by the State. The nature of the power to be exercised by the Court while deciding application under Section 321 is delineated by the decision of this Court in *Sheonandan Paswan* v. *State of Bihar & Ors.*, [1987] 1 SCC 288. This decision holds that grant of consent by the court is not a matter of course and when such an application is filed by the Public Prosecutor after taking into consideration the material before him, the court exercises its judicial discretion by considering such material and on such consideration either gives consent or declines consent. It also lays down that the court has to see that the application is made in good faith, in the interest of public policy and justice and not to thwart or stifle the process of law or suffers from such improprieties or illegalities as to cause manifest injustice if consent is given.

True, the power of the court under Section 321 is supervisory but that does not mean that while exercising that power, the consent has to be granted on mere asking. The court has to examine that all relevant aspects have been taken into consideration by the Public Prosecutor and/or by the Government in exercise of its executive function.

Besides the eight questions noticed in the main judgment, the question and aspect of association of Veerappan with those having secessionist aspirations were also not considered. Further though it may have been considered as to what happened on 1st August, immediately after the abduction of Rajkumar, but what does not seem to have been considered is that those were spontaneous outburst and the authorities may have been taken unaware but what would be the ground realities when the law enforcing agencies have

A sufficient time to prepare for any apprehended contingency.

The application and order under Section 321 is a result of panic reaction by overzealous persons without proper understanding of the problem and consideration of the relevant material, though they may not have any personal motive. It does not appear that anybody considered that if democratically B elected governments give an impression to the citizens of this country of being lawbreakers, would it not breed contempt for law; would it not invite citizens to become a law onto themselves. It may lead to anarchy. The Governments have to consider and balance the choice between maintenance of law and order and anarchy. It does not appear that anyone considered this C aspect. It yielded to the pressure tactics of those who according to the Government are out to terrorise the Police force and to overawe the elected Governments. It does not appear that anyone considered that with their action people may lose faith in the democratic process, when they see public authority flouted and the helplessness of the Government. The aspect of paralysing and discrediting the democratic authority had to be taken into D consideration. It is the executive function to decide in public interest to withdraw from prosecution as claimed. But it is also for the Government to maintain its existence. The self-preservation is the most pervasive aspect of sovereignty. To preserve its independence and territories is the highest duty of every nation and to attain these ends nearly all other considerations are E to be subordinated. Of course, it is for the State to consider these aspects and take a conscious decision. In the present case, without consideration of these aspects the decision was taken to withdraw the TADA charges. It is evident from material now placed on record before this Court that Veerappan was acting in consultation with secessionist organisations/groups which had the object of liberation of Tamil from India. There is no serious challenge to F this aspect. None of the aforesaid aspects were considered by the Government or the Public Prosecutors before having recourse to Section 321 Cr.P.C.

With these additional reasons, I am in complete respectful agreement with the conclusion and opinion of my senior colleague Hon'ble Mr.Justice S.P. Bharucha.

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V.S.S. Appeals and Petitions allowed.