and setting aside the purported co-option of Shrimati Taro respondent No. 3. As a result, respondent No. 1 will now proceed to fill the casual vacancy of the co-opted woman in the Panchayat Samiti of the block in question in accordance with the provisions of section 16 read with section 5(2)(c)(i) of the Act. I also agree that the parties should be left to bear their own costs of this case.

R.N.M.

APPELLATE CRIMINAL

Before R. S. Sarkaria, J.

MANMOHAN SINGH JOHAL, ETC.—*Appellants*

versus

THE STATE,—*Respondent*

Criminal Appeal No. 121 of 1965

August 19, 1968

Code of Criminal Procedure (V of 1898)—S. 196-A—Constitution of India (1950)—Article 166—"Government"—Meaning of—Order passed in the name of the Governor—Whether can be challenged on the ground of not having been passed by the Governor—Such orders—Whether can be challenged on any other ground—Business of the Punjab Government (Allocation) Rules (1953)—Rules 3—Scheduled under—item 5—Whether delegates power to Punjab Home Secretary to transact business without reference to the Minister—Consent under section 196-A(2)—Whether can be accorded by such Home Secretary himself—S. 196-A(1)—Object of conspiracy—Whether can be only one—"Object"—Meaning of.

Held, that the 'Government' spoken of in Section 196-A, Criminal Procedure Code, means the Governor acting on the advice of the Council of Ministers, or on the advice of the individual Minister to whom the Department concerned has been allocated under the Rules of Business framed by the Governor. In the ultimate analysis it may also mean a Secretary to the Government *to whom the transaction of that business has been delegated* by the Minister concerned by a standing order or otherwise in accordance with the rules of Business framed by the Governor under Clauses (2) and (3) of Article 166 of the Constitution. If an order according the consent for the purposes of sub-section (2) of section 196-A, Criminal Procedure Code, is passed by the Council of Ministers, authorised Minister, or the authorised Secretary, and is thereafter expressed in the name of

the Governor as required by Clause (1) of Article 166 and authenticated in accordance with the Rules of Business, then in view of the provisions of Clause (2) of Article 166, this order cannot be challenged on the ground that it was not passed or made by the Governor. (Para 22)

Held, that though an order, which is expressed in the name of the Governor and is authenticated in accordance with the Rules of Business, cannot be assailed on the ground mentioned in Clause (2) of Article 166 of the Constitution, viz., that it was not made by the Governor, yet it can be challenged on any other ground, for instance, that the person who made that order on behalf of the Governor had no authority under the Rules of Business or any other law to make that order or to take the decision on behalf of the Governor. The reason is that the Governor under our Constitution is a constitutional head. Only in few matters he has to act directly in his discretion. In all other matters, he has to act on the advice of the Council of Ministers or individual Minister concerned in accordance with the Rules. In the ultimate analysis the executive power, including the matter of granting sanctions, rests with the Council of Ministers or the Minister-in-charge of the Department concerned. (Para 24)

Held, that the word "through" immediately preceding 'the Home Secretary' in the heading under which item 5 of Schedule under Rule 3 of Business of Punjab Government (Allocation) Rules, 1953, is enumerated, and also elsewhere in the headings, indicates that while classfying the various Departments these Rules simply prescribe a channel through which the business would be carried on by the Ministers. The words "Administration of Justice—through Home Secretary" only mean that the Minister, who has been assigned by the Governor under Rule 3, the Department of the Administraion of Justice, shall be responsible for transacting *inter alia* the business enumerated as item No. 5, viz., 'Administration of Criminal Justice, through the Home Secretary'. It cannot, by any stretch of imagination, be construed as delegating the business of item No. 5 to the Home Secretary, empowering him to take all administrative decisions relating thereto without reference to the Minister-in-charge. (Para 28)

Held, that the Home Secretary of the Punjab Government cannot take the policy decision and cannot himself accord the necessary consent under Section 196-A(2) of the Code of Criminal Procedure on behalf of the Government without reference to the Minister-in-charge of the Department. (Para 33)

Held, that it is wrong to say that there can be only one object of conspiracy nor is it permissible to make a distinction between the primary and subsidiary object of conspiracy. The word 'object' in section 196-A(1) of the Code is of

very wide amplitude and is synonymous with 'aim', 'design', 'purpose' or 'view'. Conspiracy can, therefore, be hatched with a series of objects in view."

(Para 11)

Appeal from the order of Shri C. G. Suri, Additional Sessions Judge, Jullundur, dated 1st February, 1965.

H. L. SIBAL, SENIOR ADVOCATE AND S. S. SANHDAWALIA, ADVOCATE on 15th February, 1968, for the Appellant.

K. L. ARORA, ADVOCATE, for the Respondent.

JUDGMENT

SARKARIA, J.—Forty-four persons were committed for trial under section 120-B read with sections 465, 466 and 471, Indian Penal Code, to the Court of Session, Jullundur, on a charge of criminal conspiracy, having a plurality of objects, namely, to obtain fraudulently passports from persons at various places in the Punjab, to insert false and forged entries and photographs in them, and to use such forged passports and other travel documents for travelling to United Kingdom. Two of them, including Manmohan Singh Johal, were also charged for the substantive offence under Section 466, Indian Penal Code. They were tried by Shri C. G. Suri, *Ex-officio* Additional Sessions Judge, Jullundur. Thirty-six of these accused persons were passengers, hailing mostly from the Jullundur District of Punjab. Out of these passengers accused, the learned trial Judge has acquitted 15, and convicted the rest and sentenced each of them to imprisonment till the rising of the Court and a fine of Rs. 101. Out of the accused catalogued as "travel agents or their employees functioning in Jullundur in the year 1959," the learned trial Judge has acquitted accused Nos. 40, 41 and 43 and convicted the rest.

(2) Manmohan Singh Johal (Accused No. 37) has been convicted under Section 120-B read with Section 471 of the Penal Code, and sentenced to 5 years' rigorous imprisonment and a fine of Rs. 50,000 and in default of payment of fine, to undergo 2 years, further rigorous imprisonment. He has been further convicted under Section 466, Indian Penal Code, and sentenced to 5 years rigorous imprisonment, with the direction that the sentences on both the counts shall run concurrently.

(3) Amrit Lal Kapila (Accused No. 38), has been convicted under Section 120-B read with Section 471 of the Penal Code, and sentenced to 3 years' rigorous imprisonment and a fine of Rs. 10,000/- and, in default, to undergo further rigorous imprisonment for one year.

Kashmira Singh (Accused No. 44), has also been convicted.

(4) Harbhajan Singh Sanghera (Accused No. 39) has been convicted under Section 120-B read with Section 471, Indian Penal Code and sentenced to 3 years' rigorous imprisonment and a fine of Rs. 10,000/-, or, in default of payment of fine, to undergo further rigorous imprisonment of one year.

(5) A. Joseph Verghese (Accused No. 42), who has the Port Registration Officer at Cochin from where the passenger accused had sailed, has been convicted under Section 120-B read with Section 471, Indian Penal Code, and sentenced to 6 months' rigorous imprisonment.

(6) Out of the 26 convicts, only 4, namely, Manmohan Singh, Johal, Amrit Lal Kapila, Harbhajan Singh Sanghera, and A. Joseph Verghese have perferred Criminal Appeals 121, 119, 118 and 120 of 1965, respectively, against their conviction, to this Court. This judgment will dispose of all the four appeals.

The facts of the prosecution case, in brief, are as follows:—

(7) On the 9th October, 1959, 'M. V. Neptunia' sailed from Cochin Port carrying 188 passengers for Genoa. Out of those passengers, 80 had been booked with the Shipping Agents Messrs Volkart Brothers of Cochin by the Ranjit Travel Agency', (hereinafter referred to as the R.T.A.) Jullundur, of which Manmohan Singh Johal. Accused No. 37, was the sole proprietor, Amrit Lal Kapila, Accused No. 38, was the Manager, and Tilak Ram, Accused No. 43, and Kashmira Singh, Accused No. 44, were employees. The last named was working as motor-driver to Manmohan Singh Johal, proprietor of the R.T.A 'M.V. Roma' belonging to Messrs Laura Lines sailed from Cochin Port on the 14th October, 1959. Jit Singh (Accused No. 36), who was also booked by the R.T.A. with Messrs Harrison and Cross-fields Shipping Agents, sailed by that ship.

(8) The passengers of both the aforesaid ships that sailed on the 9th and 14th October, 1959, were cleared at the port by Joseph Verghese (Accused No. 42). Accused Nos. 1 to 35 disembarked at Genoa on or about the 23rd October, 1959, and went by train to London where they were checked and found travelling with forged travel documents. Mr. K. R. Sood of the Indian High Commissioner

in London made enquiries from the passengers and recorded their statements in a set form. Therafter, these passenger-accused, including Jit Singh (Accused No. 36) were sent to India.

(9) After obtaining the consent of the Punjab Government under Section 196-A of the Code of Criminal Procedure (the validity of which is hotly disputed in this case), all the aforesaid 44 accused were challanged in the Court of a Magistrate at Jullundur, who, after making a preliminary judicial enquiry, charged and committed them for trial to the Court of Section with the aforesaid result.

(10) The first point of law raised by Mr. Chari, the learned counsel for Amrit Lal Kapila, Accused No. 38, is that the trial in this case was invalid because no complaint as contemplated by Section 196-A, Criminal Procedure Code, was made in this case. It is maintained that in Section 196-A(1), the use of the expression "the object of the conspiracy" indicates clearly the goal to be achieved. It means the ultimate object which is sought to be achieved by the conspiracy. The object in this case as disclosed by the charge-sheet, says Mr. Chari, was to send people to England, which by itself was not an offence or an illegal act, though it was sought to be achieved by illegal means, i.e., forgoing of pasports and other travel documents. According to the counsel, the expression 'illegal means' embraces both aspects of wrong, civil wrongs as well as criminal offences. It is urged that in these circumstances, sub-section (1) and not sub-section (2) of Section 196-A was applicable. Since the cognizance in this case was taken on a Police report and not on a complaint, the proceedings were null and void *ab initio*.

(11) Though this argument is ingenious and plausible, yet on a careful consideration, in the circumstances of the case, it will appear to be untenable. A glance at the charge-sheet would show that the conspiracy with which the accused were charged had a plurality of objects, including the commission of offences viz., to forge passports and other travel documents and to fraudulently or dishonestly use as genuine those forged documents. Thus, the salient intention and design of the conspirators was to prepare false documents for enabling the passengers to go abroad. It is wrong to say that there can be only one object of a conspiracy. Nor is it permissible, in my

opinion, to make a distinction between the primary or subsidiary object of a conspiracy. In its dictionary sense, the word 'object' is of very wide amplitude. It means "that about which any power or faculty is employed"; "that towards which the mind is directed in any of its states or activities"; "that for the attainment of which efforts are directed"; and "that which is aimed at or desired". The term "object" is synonymous with 'aim', 'end', 'design', 'purpose' or 'view'. Conspiracy, therefore, can be hatched with a series of objects in view.

(12) This argument was raised before Grover J. in *Sardul Singh*, v. *The State* (1), (Criminal Appeal No. 97-D of 1963). It was rejected with these observations:—

> "I find it difficult to accede to the contention of the learned counsel for the appellants that the prime object of the conspiracy was to send the passengers abroad. The dominant intention apparently was to make suprious documents .....The principal and main object was to forge and to use forged documents for enabling the passengers to go abroad ..... It can well be said that in the present case the object of the conspiracy was to do the various acts which have been stated in the charge or alternatively what was stated in the police report on which the cognizance of the offence was taken. Nevertheless the object was such as would attract the applicability of clause (2) of section 196-A and not clause (1)."

I am in respectful agreement with the above observations. The facts of *Sardul Singh's case* were similar. Indeed, Mr. H .L. Sibal, the learned counsel for Manmohan Singh Johal appellant has conceded that sub-section (2) and not sub-section (1) would apply.

The next legal objection which was raised in the alternative by Mr.. Chari and was convassed at length by Mr. H. L. Sibal, is, that sanction for prosecution, as contemplated by the Code of Criminal Procedure is not a routine, mechanical executive act, but is a decision of policy which has to be taken by the Minister, Council of Ministers, of the Governor. According to Mr. Chari, this power could not be delegated by the Minister to the Home Secretary. Mr. Sibal, however, is no rigid in his contention that this power to accord sanction or consent under sub-section (2) of Section 196-A,

(1) 1967 D.L.T. 344.

Criminal Procedure Code, could not be delegated by the Governor to the Home Secretary. He has laid stress on the fact that this power *had not* been delegated by the Governor or the Minister to the Home Secretary, who had consequently no authority to take a decision in the matter at his own level without reference to the Minister.

(14) It is emphasised that the recital in the consent, Exhibit P. 303, to the effect, that the Governor of Punjab was pleased to give his sanction to the initiation of these proceedings, had been shown to be factually wrong. Thus, the essential pre-requisite for prosecution of the accused persons in respect of an offence under Section 120-B read with Sections 465, 466 and 471 of the Indian Penal Code, was missing, and their trial on that charge was null and void. Mr. Sibal has referred to the Rules of Business framed by the Governor under Article 166 of the Constitution. He has stressed that the Rules in Part 1, Exhibit C.W. 1/1, framed by the Governor, concern only the *allocation* of business among the Ministers, while the Rules relating to the *transaction* of business are to be found in Part II. Mr. Sibal points out that there is nothing in the Rules of Business (Exhibits C.W. 1/1 and C.W. 1/2) giving specifically or by necessary implication, powers to the Home Secretary to give consent for initiation of proceedings under Section 196-A, Criminal Procedure Code, on behalf of the Government. The Rules in Part I (Exhibit C.W. 1/1) only classify the Departments and *prescribe a channel* through which the business of the Government is to be carried on by the Council of Minister or the Minister under whose charge the Department has been placed by the Governor. In the view of the learned counsel, these Rules do not delegate the various items of business enumerated therein to the Secretaries. On the contrary, Rule 18 (Exhibit C.W. 1/2) of the Rules of Business of the Punjab Government expressly says that case shall *ordinarily* be disposed of by or under the authority of the Minister-in-charge who may, by means of standing orders, give such directions as he thinks fit for the disposal of cases in the Department. No such standing order authorising the Home Secretary to accord sanction for prosecution under Section 196-A, Criminal Procedure Code, has been produced.

(15) In anticipation of the arguments of the learned counsel for the State, Mr. Sibal contends that he is not challenging the validity of the consent order, Exhibit P. 303, on the ground that it is not an order or instrument made or executed by the Governor, but

on the ground that it has not been made or executed *in accordance with law*, and that the recital in the order is wrong. It is urged that Clause (1) of Article 166 postulates that there should be a previously passed order of the Government, which means an order passed by the Minister-in-charge or the Council of Ministers, and, only *thereafter* the question of expressing that order or decision to have been taken in the name of the Governor would arise. According to the learned counsel, if there is no order of the Government passed in accordance with the Rules of Business of the Punjab Government, but of a Secretary not authorised by the Government its expression in the name of the Governor or its subsequent authentication under Clause (2) of Article 166 would not afford any immunity against an attack on the ground that the order was not in accordance with law.

(16) In support of his contention, Mr. Sibal has relied upon *State* v. *Smt. Kartar Devi and another* (2); *Tara Chand Verma* v. *The State* (3); *Rachhpal Singh* v. *The State* (4), decided by a single Bench of this Court; *The State* v. *Shri Bishan Sarup Dalwala and another* (5), decided by a Division Bench of this Court: *Emperor* v. *Sibnath Banerjee and others* (6); *Emperor* v. *Sibnath Banerjee and others* (7); *The State of Bihar* v. *Rani Sonabati Kumari* (8); *Tulsi Ram and others* v. *The State of Uttar Pradesh* (9); *Parkash Chandra* v. *Union of India and another* (10); and *M/s. Bijoya Lakshmi Cotton Mills Ltd.* v. *State of West Bengal and others* (11).

(17) In reply, Mr. K. L. Arora, the learned counsel for the State, maintains that under Article 154 of the Constitution, the executive power of the State which vests in the Governor, can be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. The Rules of Business of the Punjab Government contained in Part I (Exhibit C.W. 1/1) have been framed by

(2) 1968 Curr. L.J. 18 (Pb.).
(3) I.L.R. (1962) 1 720=1961 P.L.R. 238.
(4) Crl. A. 388 of 1963 decided on 14th August, 1964.
(5) Crl. A 956 of 1964 decided on 29th November, 1965.
(6) A.I.R. 1943 F.C. 75.
(7) A.I.R. 1945 P.C. 156.
(8) A.I.R. 1961 S.C. 221.
(9) A.I.R. 1963 S.C. 666.
(10) A.I.R. 1965 Punj. 270 (D.B.).
(11) A.I.R. 1967 S.C. 1145.

the Governor not only under Clauses (2) and (3) of Article 166 of the Constitution, but also under Article 154(1) of the Constitution. In this connection, counsel has laid stress on the words "In exercise of ..... and all other powers enabling him in this behalf" occurring in the preamble of the Rules in Part I (Exhibit C.W. 1/1). Counsel has then referred to Rule 2 of the Rules of Business, Exhibit C.W. 1/1, which says 'that the business of the Government shall be transacted in the Departments specified in the Schedule annexed'. The Governor has, consequently, not only in exercise of his powers under Article 166, Clauses (1) and (2), but also under Article 154, directed by these Rules that the business of the Government shall be transacted in the Departments through such and such Secretary. According to Mr. Arora, the word 'through' occurring in this Rule is significant. In the annexed Schedule, referred to in Rule 2, there is item No. 5, which according to the learned counsel, delegates all the powers to the Home Secretary with regard to the administration of criminal justice, excluding some 18 matters enumerated therein. The accord of sanction or consent under Section 196-A, Criminal Procedure Code, says Mr. Arora, is a matter which the Home Secretary, by virtue of item No. 5, relating to the administration of criminal justice, was empowered to deal and decide.

(18) Mr. Arora has also referred to Rule 9, Clause 1, in Part II (Exhibit C.W. 1/2) which authorises the Secretary to the Government to sign every order or instrument of the State and further says 'such signature shall be deemed to be the proper authentication of such order or instrument'. Mr. Arora contends that in view of item No. 5, in the Schedule annexed to the Rules in C.W1/1 and Rule 9 in C.W. 1/2, the Home Secretary had duly passed the order or accorded the consent, Exhibit P. 303, on behalf of the Government. This order is expressed in the name of the Governor as is required by Clause (1) of Article 166, and Rule 8 of the Rules of Business, Exhibit C.W. 1/2; it has been duly authenticated in accordance with the Rules made by the Governor. Consequently, it cannot be called in question in this Court on the ground that it was not made by the Governor.

(19) According to Mr. Arora, the validity of the order, Exhibit P. 303 is, in substance, being challenged on that ground that this order though duly authenticated in accordance with the Rules and expressed in the name of the Governor, has not, in fact, been made

by the Governor. The defendants cannot, in view of Clause (2) of Article 166 of the Constitution, go behind that order and question its validity.

(20) Mr. Arora has controverted Mr. Chari's argument that the Governor or the Minister could not validly delegate the authority to grant consent under section 196-A, Criminal Procedure Code. The Constitution itself, says Mr. Arora, envisages such delegation of powers. The language of section 196-A, Criminal Procedure Code, also shows that the Government could delegate its function of according the consent even to a District Magistrate. The Home Secretary was a far higher officer of the Government. Mr. Arora has cautioned the Court not to follow the decisions which proceed on an interpretation of section 198-B, Criminal Procedure Code. Those provisions, says Mr. Arora, constitute a complete code in themselves, and different considerations apply to the accord of sanction under section 198-B, Criminal Procedure Code. Mr. Arora has cited *Dattatraya Moreshwar* v. *The State of Bombay and others* (12), and has endeavoured to distinguish the numerous rulings cited by Mr. H. L. Sibal.

Section 196-A, Criminal Procedure Code, reads as follows:—

"196-A. No Court shall take cognizance of the offence or criminal conspiracy punishable under section 120-B of the Indian Penal Code,

(1) In a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of section 196 apply, unless upon complaint made by order or under authority from the State Government or some officer empowered by the State in this behalf, or

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence. or a cognizable offence not punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the State Government has, by order in writing, consented to the initiation of the proceedings:

(12) A.I.R. 1952 S.C. 181.

Provided that where the criminal conspiracy is one to which the provisions of sub-section (4) of section 195 apply no such consent shall be necessary."

(21) Thus, the sole question for determination is, whether Exhibit P. 303 is a valid consent to the initiation of the proceedings for prosecution of the appellants and the other accused persons for the offence of criminal conspiracy, when the object of that conspiracy was to commit offences under sections 465, 466 and 471, Indian Penal Code.

(22) The 'Government' spoken of in section 196-A, Criminal Procedure Code, means the Governor acting on the advice of the Council of Ministers, or on the advice of the individual Minister to whom the Department concerned has been allocated under the Rules of Business framed by the Governor. In the ultimate analysis it may also mean a Secretary to the Government *to whom the transaction of that business has been delegated* by the Minister concerned by a standing order or otherwise in accordance with the Rules of Business framed by the Governor under Clauses (2) (3) of Article 166 of the Constitution. If an order according the consent for the purposes of sub-section (2) of section 196-A, Criminal Procedure Code, is passed by the Council of Ministers, authorised Minister, or the authorised Secretary, and is thereafter expressed in the name of the Governor as required by Clause (1) of Article 166 and authenticated in accordance with the rules of Business, then in view of the provisions of Clause (2) of Article 166, this order cannot be challenged on the ground that it was not passed or made by the Governor.

(23) There is also authority for the proposition that if the order is not expressed in the name of the Governor, and is no duly authenticated in the manner prescribed, evidence can be led to show that the order was, in fact, passed or made by the Governor. In the instant case, the consent in writing was expressed to have been made in the name of the Governor. It was further signed by the Home Secretary, who, under the Rules of Business, was competent to authenticate it. The immunity envisaged in Clause (2) of Article 166 of the Constitution, therefore, was available to this order. That is to say, its validity cannot be challenged on the ground that this order was not made by the Governor. But since two pages of this order, in which the names of certain accused were enumerated, were found missing, the trial Court examined Shri R. K. S. Sondhi, Supreintendent of the Home Secretary, C. W. 1, and Shri A. N.

Kashyap, then Home Secretary as C.W. 2, who had signed the order in question. The competency of Mr. Kashyap, the then Home Secretary, to accord this consent, Exhibits P. 303, was questioned at the earliest opportunity by the defence. Mr. A. N. Kashyap, C.W. 2, conceded that the case was not put up before the Minister, because *according to precedent,* the Home Secretary was entitled to grant sanction in such cases without reference to the Minister. Mr. Sondhi, C.W. 1, stated that the Home Secretary could, in his discretion decide whether the matter should be placed before the Minister in-charge or not.

(24) From the plethora of case law on the subject, the rule that can be deduced is that though an order, which is expressed in the name of the Governor and is authenticated in accordance with the Rules of Business, cannot be assailed on the ground mentioned in Clause (2) of Article 166 of the Constitution, viz., that it was not made by the Governor, yet it can be challenged on any other ground, for instance, that the person who made that order on behalf of the Governor had no authority under the Rules of Business or any other law to make that order or take the decision on behalf of the Governor. The reason is that the Governor under our Constitution is a constitutional head. Only in few matters he has to act directly in his discretion. In all other matters, he has to act on the advice of the Council of Ministers or individual Minister concerned in accordance with the Rules. It is true that under Article 154 of the Constitution, the executive power of the State vests in the Governor, but that executive power, is to be exercised, (excepting a few cases, where he has to act directly in his discretion) through officers subordinate to him. It is well settled that the word 'officer' in Article 154(1) of the Constitution includes the Ministers. Thus, in the ultimate analysis, this executive power, including the matter of granting sanctions, rests with the Council of Ministers or the Minister-in-charge of the Department concerned.

(25) Now let me advert to the Rules of Business framed by the Governor under Article 166 of the Constitution. Clause (3) of this Article says:—

> "(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State and for the allocation among Miniters of the said

business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion."

(26) This clause speaks of two distinct subjects in relation to business of the Government. Firstly, it speaks of the *allocation* of such business among Ministers. Secondly, it speaks of the *transaction* of such business. While in some States, such as West Bengal, consolidated rules relating both to the transaction and the allocation of such business among Ministers have been framed, in the State of Punjab, Rules relating to the *allocation* of the business among Ministers have been framed separately from the Rules relating to the *transaction* of such business. The Rules, Exhibit C.W. 1/1 (Part I) are captioned, 'Business of the Punjab Government (Allocation) Rules, 1953". The Rules in Exhibit C.W. 1/2 (Part II) are captioned, "The Rules of Business of the Government of Punjab, 1953". Though the Rules in Exhibit C.W. 1/1 and in Exhibit C.W. 1/2 are not to be read in isolation from each other, yet their division into two parts under somewhat different headings would help the Court in their construction. The Rules in Exhibit C.W. 1/1 (Part I) are 4 in number. Rule 1 only gives the name of the Rules. Rules 2 says:—

"2. The business of the Government shall be transacted in the Departments specified in this Schedule annexed, and shall be classified and distributed between those Departments as laid down therein."

Rule 3 provides:—

"3. The Governor shall, on the advice of the Chief Minister, allot among the Ministers the business of the Government by assigning one or more Departments to the charge of a Minister:—

Provided that nothing in this Rule shall prevent the assigning of one Department to the charge of more than one Minister."

In the instant case, it is not disputed that under Rule 3, the Governor had assigned the Department of Home Affairs to the charge of the Home Minister.

Rule 4 lays down:—

"4. Each Department of the Secretariat shall consist of the Secretary to the Government, who shall be the official head of that Department, and of such other officers and servants subordinate to him as the State Government may determine:

Provided that—

(a) More than one Department may be placed in charge of the same Secretary,

(b) the work of a Department may be divided between two or more Secretaries."

(27) Then there is the Schedule spoken of in Rule 3. It classifies the Departments, such as 'General Administration', 'Law and Order', 'Administration of Justice,' etc. Then, under these classified headings is written 'though Chief Secretary', 'though Home Secretary', etc. We are concerned only with the Department, 'Administration of Justice'. Under that caption it is written 'through Home Secretary'. Then thereafter are enumerated several items of business, which will be transacted in the Department of Administration of Justice through the Home Secretary. Items No. 5 reads as follows:—

"5. Administration of criminal justice including constitution, powers, maintenance and organisation of courts of criminal jurisdiction within the State, excluding:—

(1) Appeals against acquittals and Government applications for enhancement of sentences.

(2) Conduct of particular cases in criminal courts.

(3) * * *

(4) * * *

(5) * * *

(6) * * *

(7) Cases of conditional grants of pardon.

(8) * * *

(9) All cases under sections 401 and 402, Criminal Procedure Code, except cases regarding the grant of remission of sentences to prisoners by the Minister-in-charge, Jails on his visit to jails.

(10) All cases relating to grant of pardons, reprieves, respites or remission of punishment, or to suspend, remit or commute the sentence of any person except cases regarding the grant of remission of sentences to prisoners by the Minister-in-charge, Jails on his visit to jails.

(11) * * *

(12) * * *

(13) * * *

(14) * * *

(15) * * *

(16) * * *

(17) * * *

(18) * * *

(23) It cannot be disputed that giving of sanction or consent for prosecution under the Criminal Procedure Code would fall well-nigh within the ambit of 'Administration of criminal justice', an expression which is of very wide amplitude. But the real question is, whether the enumeration of this item No. 5 under the caption "Administration of Justice" (through the Home Secretary) amounts to delegation of the power to transact that business without reference to the Minister-in-charge of that Department. In my opinion, the answer to this question must be in the negative. The word 'through' immediately preceding 'the Home Secretary' in the heading under which item No. 5 is enumerated, and also elsewhere in the headings, indicates that while classifying the various Departments these Rules simply prescribe a channel through which the business would be carried on by the Ministers. The words "Administration of Justice—through Home Secretary" only mean that the Minister, who has been assigned by the Governor under Rule 3, the Department of the Administration of Justice, shall be responsible for transacting *inter alia* the business enumerated at item No. 5, viz., 'Administration

of Criminal Justice, through the Home Secretary'. It cannot, by any stretch of imagination, be construed as delegating the business of item No. 5 to the Home Secretary, empowering him to take all administrative decisions relating thereto without reference to the Minister-in-charge. Such a construction will be repugnant to our democratic polity; it will make the Ministers mere figureheads and the Secretaries, their masters. The Rules in Exhibit C.W. 1/1 read along with the orders passed by the Governor under Rule 3, will help determine as to which Minister of the Government is empowered under the Rules to do the business of the administration of criminal justice, as stated in aforesaid item No. 5 of the Schedule.

(29) So far as the delegated powers of the Secretaries and other officers are concerned, we have to advert to the Rules in Exhibit C.W. 1/2, which are further sub-divided under different headings. Rule 4 in Part I, captioned 'Disposal of Business', says:

> "4. The Council shall be collectively responsible for all executive orders issued in the name of the Governor in accordance with these Rules whether such orders are authorised by an individual Minister on a matter pertaining to his portfolio or as the result of discussion at a meeting of the Council, or howsoever otherwise."

(30) Mr. Arora has laid a good deal of stress on the words "or howsoever otherwise" occurring in the above Rule. This expression, according to the learned counsel, indicates that if a Secretary to Government issues an order in the name of the Governor even without reference to the individual Minister concerned or the Council, the Council shall be collectively responsible for the same. Thus, this Rule impliedly authorises the Secretaries to the Government to carry on the business of the executive Government as classified and enumerated in the Schedule in Exhibit C.W. 1/1, excepting where under a standing order of the Minister or otherwise, he is required to obtain the decision of the Minister.

(31) The contention of the learned counsel appears to be devoid of force. Firstly, the stress in these Rules is on the words "executive orders issued in accordance with these Rules" and the expression "or howsoever otherwise" is to be read as relating to those orders which are issued in accordance with the Rules. In any case, Rule 4 enjoins only the collective responsibility on the Council of

Ministers. It will not *ipso facto* validate orders issued by the Secretaries, in breach of these Rules, in the name of the Governor. Secondly, Rule 4 is not to be read independently of the other Rules in this Part. Rule 6 (Part I, Exhibit C.W. 1/2) provides:—

> "6. Without prejudice to the provisions Rule 4, the Minister-in-charge of a Department shall be primarily responsible for the disposal of the business pertaining to that Department."

Rule 9(1), which is also material, reads as follows:—

> "9(1). Every order or instrument of the Government of the State shall be signed either by a Secretary, an Additional Secretary, a Joint Secretary, a Deputy Secretary, an Under-Secretary or an Assistant Secretary or such other officer as may be specially empowered by the Governor in that behalf and such signature shall be deemed to be the proper authentication of such order or instrument."

The Rules in Part II in Exhibit C.W. 1/2 relate to the 'Procedure of the Council'.

The material Rules in Part III (Exhibit C.W. 1/2) are as follows:—

> "18. Except as otherwise provided by any other Rule, cases shall ordinarily be disposed of by or under the authority of the Minister-in-charge who may, by means of standing orders, give such directions as he thinks fit for the disposal of cases in the Department. Copies of such standing orders shall be sent to the Chief Minister and the Governor.
>
> 19. Each Minister shall, by means of standing orders, arrange with the Secretary of the Department what cases or classes of cases are to be brought to his personal notice. Copies of such standing orders shall be sent to the Chief Minister and the Governor.
>
> 20. Except as otherwise provided herein, a case shall be submitted by the Secretary in the Department to which the case belongs to the Minister-in-charge.

21. Every Monday, the Administrative Secretary shall submit to the Minister-in-charge, a statement showing particulars of cases disposed of in the Department by the Minister, and of cases, which he considers important, disposed of by the Administrative Secretary himself during the preceding week. A copy each of the said statements shall be submitted to the Chief Secretary, Chief Minister and the Governor.

25. If a question arises as to the Department to which a case properly belongs to the matters shall be referred for the decision of the Chief Secretary who will, if necessary, obtain the orders of the Chief Minister."

Rule 28 enumerates those classes of cases which shall be submitted to the Chief Minister before the issue of orders.

Rule 51 in Part IV (Exhibit C.W. 1/2) reads as follows:—

"These Rules may, to such extent, as necessary, be supplemented by Instructions to be issued by the Governor on the advice of the Chief Minister."

(32) From the scheme of these Rules, particularly the material Rules, quoted above, it is clear that ordinarily all business of the Government is to be disposed of in the Departments through the Secretaries, who are official heads of those Departments, by or under the authority of the Minister-in-charge of the Department. No standing orders or directions issued by the Minister-in-charge, i.e., Home Minister in this case, authorising the Home Secretary to accord sanction or consent for prosecution, have been referred to or produced by the learned counsel for the State. There is nothing in the Rules which directly delegates that power to the Home Secretary. Generally speaking, the Rules themselves do not delegate the power of transacting executive business to the Secretaries. They, however, envisage such delegation of authority by the Minister-in-charge of the Department. Only one instance of such delegation of a power to the Chief Secretary under Rule 25 (Exhibit C.W. 1/2) has been pointed out to me. Under that Rule, if a question arises as to whether a matter concerns a particular Department, it will be referred for decision to the Chief Secretary, who will, if necessary, obtain the orders of the Chief Minister.

(33) The conclusion is thus inescapable that the Home Secretary could not take this policy decision and accord the necessary consent under section 196-A(2) of the Code of Criminal Procedure on behalf of the Government without reference to the Minister-in-charge of the Department. Home Secretary's statement in the witness-box, that he was entitled on the basis of past practice and precedent, to issue the necessary order in question on behalf of the Government, only confirms the conclusion that there is nothing in the Rules or in any standing or other order of the Minister expressly authorising the Home Secretary to dispose of such matters without reference to the Minister-in-charge. There is ample authority for the proposition that in such a situation, the validity of the order, expressed and authenticated by the Secretary, can be questioned on the ground that the Secretary had, under the law, no authority to pass that order.

The leading case on the subject is *Emperor* v. *Sibnath Banerjee and others* (6). In that case 9 persons were detained in West Bengal under Rule 26 of the defence of India Rules. By a judgment (*Keshav Talpade* v. *Emperor* (13) pronounced on 22nd April, 1943, the Federal Court held Rule 26 of the Defence of India Rules to be *ultra vires* the Central Government. Immediately after this judgment was pronounced, the 9 detenus made applications under Section 491, Criminal Procedure Code, to the High Court, praying for their release on the ground that their detention was illegal. On 28th April, 1943, the Governor-General promulgated an Ordinance, whereby the rule-making power of the Central Government under the Defence of India Act was made wider so as to cover the terms of Rule 26 as it had all along stood. By another section of the Ordinance, it was provided that no order theretofore made against any person under Rule 26, Defence of India Rules, shall be deemed to be invalid or shall be called in question on the ground merely that the said Rule purported to confer powers in excess of the powers that might at the time the said Rule was made be lawfully conferred by a Rule made or deemed to have been made under Section 2, Defence of India Act, 1939.

(34) The validity of the Ordinance was also contested, but here I am not concerned with that point. However, one of the questions raised before the Federal Court was that the requirement of Rule 26

(13) A.I.R. 1943 F.C. 1.

of the Defence of India Rules had not been complied with in respect of the orders of detention. On behalf of the Crown, it was urged that the orders were in proper form and the presumption set out in illustration (e) to Section 114, Evidence Act, viz., that official acts have been regularly performed, attached to those orders. An affidavit, sworn by Mr. Porter, Additional Home Secretary to the Bengal Government, was furnished in which it was affirmed that he considered the materials placed before him, and in accordance with the general order of the Government, directed the issue of an order of detention. Mr. Porter was acting on the basis that the final order in each case had to be passed by the Governor or the Minister. The Federal Court held (by a majority) that everyone of these orders was bad in law as in no case did it appear that the matter was considered by the Governor at any stage, much less that at the time the order was made he was satisfied with regard to any of the matters set out in the order of detention.

(35) The matter went up in appeal before the Privy Council in *Emperor* v. *Sibnath Banerjee and others* (7). Though the Privy Council reversed the judgment of the Federal Court as to whether or not Rule 26 was *ultra vires* the Central Government, yet it upheld its decision that sub-section (2) of Section 59 of the Government of India Act, 1935, only relates to one specific ground of challenge, namely, the order or instrument made or executed by the Governor, and that it did not debar a person from questioning the accuracy of recital contained in a duly authenticated order, particularly where that recital purports to state as a fact the carrying out of a condition necessary to the valid making of that order. In a normal case, the existence of such a recital in a duly authenticated order, in the absence of any evidence as to its accuracy, be accepted by a Court as establishing that the necessary condition was fulfilled. The presence of the recital in the order will place a difficult burden on the detenue to produce admissible evidence sufficient to establish even a *prima facie* case that the recital is not correct. Hence the Court has jurisdiction to investigate the validity of the orders. In the result, it was held that since it did not appear that the matter was considered by the Governor at any stage, much less that at the time the order was made he was satisfied with regard to any of the matters with regard to the order of detention, the inaction of the Home Minister on the later submission of the fuller material to him could not cure the invalidity of the order.

(36) It may be noted that section 59 of the Government of India Act, 1935, corresponds to Article 166 of the Constitution, while section 49 of that Act corresponds to Article 154 of the Constitution. Consequently, the rule laid down by the Privy Council in *Emperor* v. *Sibnath Banerjee and others* (7) still holds the field.

Sibnath Banerjee's case was relied upon by the Supreme Court in *The State of Bihar* v. *Rani Sonabati Kumari* (8). The facts of *Rani Sonabati Kumari's case* were, that she instituted a suit on 20th November, 1950, against the State of Bihar, in the Court of the Subordinate Judge, Dumka, for a declaration that the Bihar Land Reforms Act, 1950, was *ultra vires* the Bihar Legislature, and was, therefore, illegal, void, unconstitutional, and inoperative, and that the defendant had no right to issue any notification under the said Act or to take possession or otherwise meddle or interfere with the management of her estate. She also claimed a permanent injunction restraining the defendant, its officers, servants, employees, and agents from issuing any notification under the said Act in respect of the plaintiff's estate, and from taking possession of the said estate. The Court issued an ex-parte *ad interim* injunction, which after hearing the defendant, was made absolute whereby the defendant was restrained from issuing any notification or taking over possession of the suit property under the said Act, and from interfering or disturbing in any manner the plaintiff's possession. The State did not prefer any appeal and the order became final. The State of Bihar issued on May 19, 1952, a notification under section 3(1) of the aforesaid Act declaring that the plaintiff's estate had passed to and became vested, in the State. The plaintiff moved the Subordinate Judge, alleging that action should be taken against the defendant for contempt of Court. The Subordinate Judge found that the defendant State was guilty of contempt of Court.

(37) One of the points for consideration before the Supreme Court was, whether the publication of the notification under Section 3(1) of the said Act, which was treated by the Subordinate Judge to be the disobedience, had been established to be "the act of the State". It was urged on behalf of the Court that the publication of the notification was 'an executive act—an exercise of the executive power of the State—, and since such a power could be exercised either by the Governor directly or through some officer subordinate to him, it could not be predicated from the mere fact that the notification was purported to be made in the name of the Governor in

conformity with the provisions of Article 166(1) of the Constitution, that it was the Governor who was responsible for the notification and not some officer subordinate to him. On this reasoning the further contention was, that unless the respondent proved that the Governor himself had authorised the issue of the notification, the State or the State Government could not be fixed with liability therefor so as to be held guilty of disobedience of the order of injunction. Ayyangar, J., who delivered the judgment of the Supreme Court, observed:—

> "The submission of the learned counsel is correct to this extent that the process of making an order precedes and is different from the expression of it, and that while Article 166(1) merely prescribes how orders are to be made, the authentication referred to in Article 166(2) indicates the manner in which a previously made order should be embodied. As observed by the Privy Council in *Emperor* v. *Sibnath Banerjee* (7), with reference to the term "executive power" in Chapter 2 of Part 3 of the Government of India Act, 1935 (corresponding to Part VI, Chapter II, of the Constitution)—"the term 'executive' is used in the broader sense as including both a decision as to action and the carrying out of the decision".
>
> "Section 3(1) of the Act confers the power of issuing notifications under it, not on any officer but on the State Government as such though the exercise of that power would be governed by the rules of business framed by the Governor under Article 166(3) of the Constitution. But this does not afford any assistance to the appellant. The order of Government in the present case is expressed to be made "in the name of the Governor" and is authenticated as prescribed by Article 166(2), and consequently "the validity of the order or instrument cannot be called in question on the ground that it is not an order or instrument made or executed by the Governor."

(38) It may be observed that in that case the order of the Government was not being impugned on the ground that the Additional Secretary to Government, who had signed that order of the Governor, had no authority under the Rules of Business to pass it. In the instant case, however, the authority of the Home Secretary to pass

the impugned order is being hotly contested. Their Lordships of the Supreme Court in para 41 of the judgment made it clear that they were not laying down any rule to the effect that an order expressed in the name of the Governor and duly authenticated as prescribed in Article 166(2) could not be challenged on any ground whatever. This is what they have said in para 41 of the judgment:—

> "Authorities have, no doubt, laid down that the validity of the order may be questioned on grounds other than those set out in the Article, but we do not have here a case where the order of the Government is impugned on the ground that it was not passed by the proper authority. Its validity as an order of Government is not in controversy at all."

(39) The next case worthy of note is *Major E. G. Barsay* v. *State of Bombay* (14). *In Barsay's case,* the order granting the sanction under Section 6(1) of the Prevention of Corruption Act for prosecution of Major Barsay was signed by the Deputy Secretary to the Government of India. It was issued in the name of the Central Government and it was not expressed in the name of the President as is required by Article 77(1) of the Constitution. It was held by the Supreme Court that the provisions of Article 77 were directory, and evidence could be led to show that it had been passed by the proper authority. Dharam Vir, an Assistant in the Ministry of Home Affairs, gave evidence before the Court that the papers relating to Major Barsay's case were submitted to the Home Ministry by the Inspector-General of Police for obtaining the necessary sanction, and that the papers were put up before the Deputy Secretary in that Ministry who gave the said sanction under his signature. It was clearly established that the Deputy Secretary was competent to accord sanction on behalf of the President in exercise of the powers conferred on him, presumably under the Rules framed by the President in this behalf.

The facts of the case before me are different. Here, the evidence brought on the record does not show that the Home Secretary was authorised under the Rules of Business to accord the sanction without reference to the Minister-in-charge of the Department.

(40) Mr. Sibal next referred to *Tulsi Ram and others* v. *The State of Uttar Pradesh* (9). In that case, the charge against the appellants was of criminal conspiracy under Section 120-B read with

(14) A.I.R. 1961 S.C. 1762.

Sections 467, 468, 471 and 420, Indian Penal Code. One of the points raised on behalf of the appellants before the Supreme Court was that no sanction as required by Section 196-A of the Criminal Procedure Code was on the record of the case, and, therefore, the entire proceedings were void *ab initio*. There was, however, on record a letter from the Under-Secretary to the State Government in its Home Department, addressed to the District Magistrate, informing that the Governor had been pleased to grant sanction for prosecution of the appellants. It was argued that this communication could not be treated either as a valid sanction or its equivalent. The Supreme Court refusing permission to raise this plea for the first time before them, observed:—

> "It is not his (Mr. Mulla's) contention that there was no sanction at all but the gravamen of his complaint is that there is no proper proof of the fact that sanction was given by the authority concerned after considering all the relevant facts and by following the Procedure as laid down in Article 166 of the Constitution. Had the point been raised by the appellant in the trial court, the prosecution would have been able to lead evidence to establish that the Governor had in fact before him all the relevant material, that he considered the material, and after considering it he accorded the sanction and that that sanction was expressed in the manner in which an act of the Governor is required to be expressed..... There would have been good deal of force in the argument of learned counsel had Ex. P. 1560 not been placed on record. Though that document is not the original order made by the Governor or even its copy, it recites a fact and that fact is that the Governor has been pleased to grant sanction to the prosecution of the appellants for certain offences as required by Section 196A of the Code of Criminal Procedure. The document is an official communication emanating from the Home Department and addressed to the District Magistrate at Kanpur. A presumption would, therefore, arise that sanction to which reference has been made in the document, had in fact been accorded. Further, since the communication is an official one, a presumption would also arise that the official act to which reference has been made in the document was regularly performed. In our opinion, therefore, the document placed on record *prima*

facie meets the requirements of Section 196A of the Code of Criminal Procedure and, therefore, it is not now open to the appellants to contend that there was no evidence of the grant of valid sanction. We, therefore, overrule the contention raised by learned counsel."

In the present case, however, the objection with regard to the validity of the sanction or consent was raised in the trial Court at the first available opportunity. The principle discernible in *Tulsi Ram's case*, however, is that if the objection had been taken at the proper time, evidence could be led to show whether or not the Governor had accorded the sanction after considering all the relevant material.

(41) The law on the point was recently considered by their Lordships of the Supreme Court in *M/s. Bijoya Lakshmi Cotton Mills Ltd.* v. *State of West Bengal and others* (11). In that case, the Society of Farmers and Rural Industrialists requested the State of West Bengal to acquire, compulsorily, certain lands for the establishment of an Agricultural Colony. The State issued a notification on February 4, 1955, under Section 4 of the West Bengal Land Development and Planning Act, 1948, stating that an extent of about 28.59 acres of lands, situated in the named villages, was likely to be needed for a public purpose. The notification was published in the Calcutta Gazette on February 17, 1955. It was signed by the Assistant Secretary, Land and Revenue Department of the Government of West Bengal.

The respondent State then directed the Society to prepare a development scheme and submit the same to the Collector, to enable him to hear objections as per the rules framed under the Act. On or about March 21, 1955, the Society submitted a development scheme and the Collector issued notice, under Rule 5(2) of the West Bengal Land Development and Planning Rules, 1948, inviting objections to the scheme being sanctioned. The Mills, whose land was being taken away, filed objections, which were overruled by the Collector. On February 10, 1956, the Land Planning Committee, which is the prescribed authority under the Act, recommended acceptance of the scheme, and for issue of a declaration by the Government under section 6 of the Act. On July 21, 1956, the Government issued the declaration, which was published in the State Gazette on August 9, 1956. This declaration was signed by the Deputy Secretary, Land

and Revenue Department, Government of West Bengal. On August 28, 1956, notice of the intention to take possession of the lands was issued under Rule 8 of the Rules.

(42) On September 13, 1956, the Mills moved the Calcutta High Court by a writ petition under Article 226 of the Constitution. The stand taken by the Mills was that the proceedings had been initiated by the Assistant Secretary of the Department, and orders issued either by him or by the Deputy Secretary and hence actions taken by them, though in the name of the State Government, were not valid inasmuch as they were not in conformity with the Act. The argument was that under the Rules of Business framed by the Governor under Article 166(3) of the Constitution, the business pertaining to the department of Land Revenue, to which those proceedings related, was to be dealt with personally by the Minister-in-charge, and proceedings to be taken under the Act. Since the orders were issued by the Assistant Secretary or the Deputy Secretary of the Department without reference to the Minister-in-charge, the entire proceedings were illegal and void.

(43) On behalf of the State, it was urged that as the notification issued under Section 4, and the declaration made under Section 6 of the Act, had been authenticated in the manner specified in the rules made by the Governor under Article 166(2) of the Constitution, it was not open to the appellant to go behind and question the validity of either the notification or the declaration, which contained a recital that the Governor was of the opinion that the lands were needed for a public purpose.

(44) The writ petition was heard by a Single Judge of that High Court, who accepted the contentions of the Mills and held that the impugned order was illegal and void. The State went in appeal to the Division Bench, which also held that Article 166(2) is only to the effect that, when authentication is made in the manner mentioned therein, what is made conclusive is that the order has been made by the Governor, but, whether in making the order, the Governor has acted in accordance with the law, still remains open to adjudication. The Division Bench also held that by virtue of the power conferred under the Rules of Business issued by the Governor, it is open to a Minister, by making proper Standing Orders, to delegate his functions and authorise disposal of such functions to his subordinates. After considering the

Rules of Business and other relevant provisions, the Division Bench held that inasmuch as the Minister had admittedly not dealt with those proceedings, the notification issued subsequent to the stage of the issue of the notification under Section 4 of the Act, must be set aside as void. In view of the fact that the Division Bench held that the issue of notification under Section 4 is not a matter which has to be dealt with by a Minister, and as the exercise of the functions in that regard has been delegated under the Standing Order, that notification was allowed to stand. In consequence, the learned Judges modified the order of the Single Judge.

(45) The Mills appealed to the Supreme Court. The Supreme Court dismissed the appeal and upheld the decision of the Division Bench with these observations—

> "The learned Judges are perfectly correct in their view that what the authentication makes conclusive under Article 166(2), is, that the order has been made by the Governor. But the further question, as to whether in making the order, the Governor has acted in accordance with law, remains open for adjudication."

In *B. L. Cotton Mill's case,* their Lordships of the Supreme Court were concerned with the interpretation of the Rules of Business framed by the Governor of West Bengal on August 25, 1951. Rules 4 and 5 of the West Bengal Rules are almost identical with Rules 2 and 3 of Rules of Business of the Punjab Government (Exhibit C. W. 1/1). West Bengal Rule 19 is excepting the proviso, in *pari materia* with Rule 18 of the Punjab Rules (Exhibit C.W. 1/2). West Bengal Rule 22 corresponds to Rule 19 of the Punjab Rules (Exhibit C.W. 1/2). The Supreme Court approved the construction placed by the Calcutta High Court on the said Rules of Business. On this point, Vaidialingam, J., observed as follows—

> "We are also in agreement with the views expressed by the High Court that the Governor s personal satisfaction was not necessary in this case as, this is not an item of business, with respect to which, the Governor is, by or under the Constitution, required to act in his discretion. Although the executive Government of a State is vested in the Governor, actually it is carried on by Ministers; and, in this particular case, under Rules 4 and 5 of the Rules of Business, referred to above, the business of Government is to

be transacted in the various departments specified in the First Schedule thereof. Item 5 therein is the Department of Land Revenue and the Governor has allotted the business of that Department to a Minister. We are further in agreement with the views of the High Court that the said Minister-in-charge, has got power to make Standing Orders regarding the disposal of cases, in his Department, under the Rules of Business issued by the Governor, on August 25, 1951, under Article 166(3) of the Constitution. In this case, there is no controversy that the Minister-in-charge of the Department of Land and Revenue, has made Standing Orders on November 29, 1951, by virtue of powers given to him under Rules 19 and 20 of the Rules of Business.'

In the case before me, however, no Standing or other Order, issued by the Minister-in-charge under Rules 18 and 19 of the Rules of Business, has been produced. The conclusion, therefore, is inescapable that the Minister-in-charge never authorised the Home Secretary under Rules 18 and 19 to dispose of cases relating to the grant of sanction under the Code of Criminal Procedure, for prosecution at his own level, without prior reference to him (Minister-in-charge).

(46) *Dattatraya Moreshwar's case* (12), does not advance the case of Mr. Arora. The main rule laid down in that case was that the provisions of Article 166(1) of the Constitution are merely directory, an omission to comply with those provisions does not render an executive action a nullity. If it is shown that the decision required by law to be taken by the appropriate Government was, in fact, taken by that Government, there is no breach of the procedure established by law.

(47) The contention of the petitioner in that case was that the order or the executive action of the Government had not been expressed and authenticated in the manner provided in Article 166. On behalf of the State, it was pointed out that there was a distinction between the taking of an executive decision and giving formal expression to the decision so taken. Usually executive decision is taken on the office files by way of notings or endorsements made by the appropriate Minister officer. If every executive decision has to be given a formal expression the whole Governmental machinery

will be brought to a standstill. S. R. Das, J., (as he then was) accepted the contention of the Attorney-General and observed:—

> "I agree that every executive decision need not be formally expressed and this is particularly so when one superior officer directs his subordinate to act or for bear from acting in a particular way, but when the executive decision affects an outsider or is required to be officially notified or to be communicated it should normally be expressed in the form mentioned in Article 166(1), i.e., in the name of the Governor."

(48) In *Dattatraya Moreshwar's case*, it had been amply proved on the record that the decision under Section 11(1) of the Preventive Detention Act had, in fact, been taken by the appropriate Government. In the case before me, however, the evidence that has come on the record shows that the matter never went up to the Government, i.e., Minister-in-charge of the Department, or the Council of Ministers, but the decision was taken by the Home Secretary at his own level.

(49) It will not be out of place to refer here to some decisions of this Court in the matter of sanctions accorded under Section 198-B of the Code of Criminal Procedure.

(50) In *Master Girdhari Lal* v. *The State* (15), decided by Capoor, J., the allegation was that Master Girdhari Lal had published a news-item in the issue of 'Naya Bharat', dated 27th June, 1961, which was defamatory of Deputy Superintendent of Police, Tarn Taran (Shri Ajaipal Singh). In the other case, the allegation was that Master Girdhari Lal had published in the issue of his paper, dated 25th January, 1962, defamatory matter in respect of the conduct of Ghanshyam Das, Head Clerk of the office of the Settlement Officer, Gurdaspur. The conduct impugned in each case was pertaining to the discharge of the official duties of the respective officers. The objection raised on behalf of Master Girdhari Lal was, that the saction purporting to have been accorded under Section 198-B of the Code of Criminal Procedure, was not given by the State Government. The sanction orders were issued in each of the two cases

(15) Crl. A. 89 of 1963 decided on 30th March, 1964.

under the signature of Shri J. D. Khanna, Deputy Secretary to Government, Punjab, Home Department, and those orders recited that the Governor of the Punjab was satisfied that the respective issues of the 'Naye Bharat' contained matters defamatory to Shri Ajaipal Singh in one case, and Ghanshyam Das in another. It was pointed out that on the evidence of the prosecution itself, it was clear that the matter was never considered by the Governor of the Punjab or the Punjab Government, but only by the Deputy Secretary, Home. It stood established from the evidence of Shri B. K. Gurtu, Superintendent of the Punjab Civil Secretariat, that neither of the cases went up beyond the level of the Deputy Secretary, Home, and in actual fact, it was he who applied his mind to the cases and sanctioned prosecution. Thus, the question for determination before the learned Judge was:—

> "Whether in these circumstances it can be held that the sanction for the prosecution in each case was that of the State Government."

(51) Without inviting the attention of the learned Judge to any Rules of Business, it was urged on behalf of the State that it should be presumed that the Deputy Secretary, Home was, under the Rules of Business framed by the Punjab Government, authorised to discharge the functions of the State Government under clause (c) of sub-section (3) of Section 198-B of the Code of Criminal Procedure. Repelling the contention, Capoor, J., observed:—

> "It does not appear that any such delegation of the powers under section 198-B(3) (c) woud be legal as that provision does not speak of any further power to delegate."

The learned Judge further observed:—

> "Though in the case before me it is clause (c) of sub-section (3) of Section 198-B which is applicable, the same principle should apply and it must be held that the sanction which is given after examination at the Deputy Secretary's level only and not at Government's level, was not a sanction of the Government. In *Tara Chand Verma* v. *The State* (3), the learned Chief Justice while discussing the difference in the forms of sanction required in sub-sections (3) (b) and (c) observed..... " The idea appears to be that if a Minister is defamed, it should be

left to a responsible civil servant to decide whether the special procedure should be sanctioned, and if a civil servant is defamed, it is left to the Government, that is, the Governor acting on the advice of his Council of Ministers, to decide whether the case is fit one for sanction."

(52) In the result, the learned Judge accepted the contention of Master Girdhari Lal and held that the sanction order having been issued by the Deputy Secretary at his own level was bad in law.

In *Smt. Kartar Devi and another* v. *The State* (2), a Division Bench of this Court considered a converse case.

(53) *Master Girdhari Lal's case* was cited before the learned trial Judge also. The learned trial Judge declined to follow the rule in *Master Girdhari Lal's case* with these observations:—

"In the interpretation of section 190-B(198-B), Criminal Procedure Code, absolutely different considerations have prevailed and the interpretation of Section 196-A, Criminal Procedure Code, would involve absolutely different consideration ..... In Criminal Appeal No. 388 of 1963 the question of validity of section was mainly decided by relying on Criminal Appeal No. 89 of 1963. It appears to have been represented to the Hon'ble Judge that the State felt satisfied with the decision in Criminal Appeal No. 89 of 1963, and had not filed any appeal against the order o acquittal. The P. P. informs me that an appeal has actually been filed and is pending in the Supreme Court. Be that as it may, I find that the two decisions of Single Bench in Criminal Appeals Nos. 89 and 388 of 1963 involve the interpretation of a different section and different considerations had prevailed. The Rules of Business framed under clauses (2) and (3) of Article 166 of the Constitution of India and the precedent and the old standing practice had not been proved in those two cases."

(54) I have been informed by the learned counsel on both sides that no appeal against the decision of Capoor, J., in *Master Girdhari Lal's case* is pending in the Supreme Court or elsewhere.

(55) It may, however, be noted that the provisions of Section 198-B, Criminal Procedure Code, constitute a complete code in themselves. The ratio of the said cases which proceed on an interpretation of Section 198B, is that the Government cannot delegate its power of granting sanction under that section to any Secretary to the Government. To that extent, the *ratio* of *Master Girdhari Lal's case* cannot apply to the accord of sanction or consent under Section 196-A(2), which expressly provides that this power can be delegated by the Government even to the District Magistrate. A *fortiori* Government could delegate this power to the Home Secretary who is a far senior officer of the Government. But in the instant case, as observed already, it has not been shown that this power had been delegated by the Government to the Home Secretary. The Government under our democratic policy, in the ultimate analysis, for the purpose of according sanction, means the Council of Ministers, or the Minister under whose charge the Department of Criminal Justice is placed by the Governor. The Home Secretary has not been authorised by the Minister in accordance with the rules to accord the sanction or consent. To that exent, the *ratio* of *Master Girdhari Lal's case* is a sure guide.

(56) In short, the principle that emerges from the above discussion is, that though, an order giving consent under Section 196-A(2) of the Code of Criminal Procedure. which is made and expressed in strict compliance with clauses (1) and (2) of Article 166 of the Constitution, cannot be impugned on the ground that it was not made by the Governor, its validity can be challenged on the ground that it was not made by the Governor *in accordance with law*. In other words, evidence can be led to show that the Government servant, who purportedly expressed it in the name of the Governor, did not have, under the law or the Rules of Business, the necessary authority to make it In view of the Rules of Business, Exhibit C.W. 1/1 and C.W. 1/2, and in the absence of any Standing Order issued under Rules 18 and 19 of the Rules of Business, Exhibit C.W. 1/2, by the Minister-in-charge (Home Minister) delegating the disposal of this business to the Home Secretary, the latter could not, without reference to the Home Minister or the Council of Ministers, dispose of the matter and accord the necessary sanction at his own level. Wrong precedents could not be invoked to override the letter of the Rules of Business. I have, therefoer, no hesitation in holding that there was no valid sanction or consent in writing by the Government under Section 196-A(2) of the Code of Criminal Procedure with

regard to the charge of criminal conspiracy under Section 120-B, Indian Penal Code. On this short ground, the appeals preferred by Amrit Lal Kapila, Harbhajan Singh Sanghera and Joseph Verghese appellants must succeed. There was no separate substantive charge under Section 466, Indian Penal Code, against these three appellants. I would, therefore, allow their appeals, set aside their convictions, and acquit them.

(His Lordship then decided the case of Manmohan Singh Johal, on facts Edito).

K.S.K.

FULL BENCH

Before D. K. Mahajan, Shamsher Bahadur and R. S. Narula, JJ.

GURDEV SINGH AND OTHERS,—*Appellant*

versus

MOHNA RAM AND OTHERS,—*Respondents*

Regular Second Appeal No. 1503 of 1965

March 18, 1969

Punjab Security of Land Tenures Act (X of 1953)—S. 19-A—Punjab Pre-emption Act (I of 1913)—Ss. 4, 5, 8, 9, and 23—Land owner holding maximum permissible area—Whether can institute and obtain a pre-emption decree— S. 19-A Whether a bar to the entertainment of such a suit by Civil Courts.

Held, that the right to claim property by pre-emption is conferred by section 4 of the Punjab Pre-emption Act, subject to the exceptions contained in sections, 5, 8, 9 and 23—S. 19-A of Punjab Security of Land Tenures Act does not fall in the category of exceptions to the right of pre-emption. The title of the pre-emptor is deemed to accrue to the land which is the subject-matter of the pre-empted sale from the date of payment of the pre-emption money in Court, and neither from the date of the original sale nor from the date of the suit; nor even from the date of the decree. Section 19-A does not deprive a big land woner holding maximum permissible area either of his primary or inherent right to the offer of agricultural land which is intended to be sold, nor of the secondary or remedial right to follow the thing sold. It is only the third part of the right of pre-emption, i.e., his right of substitution in place of the vendee that has been effected