CASE NO.:
Appeal (crl.) 248 of 2003

PETITIONER:
The Government of N.C.T. of Delhi

RESPONDENT:
Jaspal Singh

DATE OF JUDGMENT: 08/08/2003

BENCH:
Doraiswamy Raju & H. K. Sema.

JUDGMENT:

J U D G M E N T

D. Raju, J.

Four persons, including the respondent Jaspal Singh, were proceeded against pursuant to an FIR bearing No.237/83 registered on 10.11.83 and after concluding the investigation, the following four persons stood charged for facing trial before the Addl. Sessions Judge, New Delhi, in sessions case No.33 of 1984:

1. Maj. Genl. (retd) F.D. Lerkins, New Delhi, s/o Late H.D. Larkins
2. A.V.M. (retd) K.M. Larkins, Lucknow (U.P.), s/o Late H.D. Larkins
3. Lt. Col. (retd) Jasbir Singh, New Delhi, s/o Shri Ranbir Singh
4. Jaspal Singh Gill @ Jassi Gill, New Delhi, s/o Late Kartar Singh

All of them stood charged for offences under Sections 3, 5 and 9 of the Official Secrets Act, 1923 (for short "the Act") and also under Section 120B of the Indian Penal Code (for short "IPC"). That apart, in sessions case No.31 of 1984 the accused No.1 above stood further charged under Section 61 of the Punjab Excise Act, as extended to Delhi, and in Sessions case No.32 of 1984 he was also charged under Section 25 of the Arms Act.

Since, the evidence in all the above cases were considered to be common they were tried together for recording evidence, too, though it was said to have been recorded in S.C. No.33 of 1984. On behalf of the prosecution, PWs 1 to 60 seem to have been examined besides, marking various documents as exhibits. On the side of the defence, six persons, in all seem to have been examined by the different accused. The accused were also examined under Section 313 Cr.P.C. After considering all the materials on record, the learned Trial Judge in an elaborate judgment dated 24.7.1985 convicted them and imposed sentence as hereunder:

Accused	Conviction U/s	Sentence imposed
Accused No.1	a) Sec.3 (c) of the Official Secrets Act, 1927. b) Sec.5(b) of the Official Secrets Act, 1927. c) Section 120B IPC d) Section 25 of the Arms Act e) Section 61(i) (a) of Punjab Excise Act, as extended to Delhi.	

10 years R.I.

2 years R.I.

2 years R.I. with fine of Rs.1000/- (3 months SI in default)
2 years R.I. with fine of Rs.2000/- (6 months S.I. in default)
1 years R.I. with fine of Rs.3000/- (5 months S.I. in default)
Accused No.2
a) Sec.3(c) of the Official Secrets Act, 1927.
b) Section 120B IPC
10 years R.I.
2 years S.I. with fine of Rs.1000/- (3 months SI in default)

Accused No.3
a) Sec.3 (c) of the Official Secrets Act, 1927.
b) Sec.5(3) of the Official Secrets Act, 1927.

c) Section 120B IPC

d) Section 6(1)(d) of the Official Secrets Act, 1927.

10 years R.I.

2 years R.I. with fine of Rs.1000/- (3 months S.I. in default)
2 years S.I. with fine of Rs.1000/- (3 months SI in default)
3 years R.I. with fine of Rs.1000/- (3 months S.I. in default)

Accused No.4
a) Sec.3 (c) of the Official Secrets Act, 1927.
b) Section 120B IPC

2 years R.I.

2 years S.I. with fine of Rs.1000/- (3 months SI in default)

(All substantive sentences were ordered to run concurrently)

The above accused filed appeals against the same in Crl. Appeal Nos. 185 of 1985, Crl. Appeal No.214 of 1985, Crl. Appeal No.202 of 1985 and Crl. Appeal No.175 of 1985, respectively. A learned Single Judge of the High Court of New Delhi, by his judgment dated 30.4.2001, while affirming the conviction and sentence imposed on accused No.1 and accused No.2, dismissed Crl.

Appeal Nos. 185 and 214 of 1985 respectively filed by them. So far as accused No.3 and accused No.4 are concerned, the learned single Judge, did not choose to agree with the decision of the learned Trial Judge and while allowing their appeals set aside their conviction and sentence imposed therefor and acquitted them. Not satisfied, the Government of National Capital Territory filed SLP Nos.3928-3929 of 2002 and after leave was granted the appeals were entertained as Crl. Appeal Nos.247 and 248 of 2003. The respondent in Crl. Appeal No.247 of 2003 (accused No.3) was reported dead on 26.2.2003 resulting in the abatement of the said appeal, leaving only the appeal filed in Crl. Appeal No.248 of 2003 in respect of the acquittal of accused No.4 by the High Court for consideration.

On behalf of the appellant-State, it was contended that the reversal of the conviction of the respondent was under a gross misdirection on the part of the learned Single Judge in the High Court and misconstruction of the scope of Sections 10 and 30 of the Indian Evidence Act, 1872. It was also urged that the High Court in acquitting the respondent overlooked vital material firmly connecting the respondent with the other conspirators resulting in grave and manifest error and injustice and, therefore, this court must restore the judgment of the learned trial Judge, by setting aside the decision of the High Court. It was further contended that the materials on record, so far as the respondent (accused No.4) is concerned, themselves sufficiently substantiated the case against him and the High Court ought not to have interfered with the well merited conviction of the respondent. In support thereof, our attention has been invited to the judgments of the courts below in great detail and to the relevant materials on record.

Per contra, on behalf of the respondent (accused No.4), the learned senior counsel contended that the findings of acquittal recorded in favour of the respondent is based upon sound reasoning and correct understanding and appreciation of law and, therefore, no interference is warranted in this appeal filed under Article 136 of the Constitution of India. While elaborating those aspects, it was urged that the confession or admissions of a co-accused are not admissible as substantive evidence against the others, than the maker himself and in the light of doubts about the manner of recovery of the defence Telephone Directory (Ex.PW14/A) the acquittal was fully justified. According to the respondent, the necessary ingredients of Section 3(I)(c) of the Act have not been satisfactorily proved against him and as long as the conclusions of the High Court are equally reasonably possible and not found to be perverse or unreasonable, no interference is called for in this appeal. The conviction of the accused No.4-respondent was said to have been on mere suspicion and the charge under Section 120B also was said to have been not proved properly. Finally, it has been urged that out of the sentence of 2 years RI imposed the respondent having already served under custody 18 months and 24 days, there is no justification to send him back to prison and there is justification for consideration of the question relating to the quantum of sentence, in favour of the respondent.

We have carefully considered the submissions of the learned counsel appearing on either side. There is no such general rule as that, this court in an appeal cannot interfere with the opinion of the High Court, though the scope and reasons for such interference may vary from cases otherwise coming by way of a regular appeal. Though this Court does not convert itself into a court to review the evidence for a third time by grant of special leave, where the High Court is shown to have completely failed in appreciating the true effect of the materials brought on record and its findings are erroneous, perverse and result in miscarriage of justice, the Supreme Court will have no hesitation to interfere, all the more so when the High Court has chosen to reverse a verdict of conviction recorded by the learned Trial Judge, under a total misconception of the principles of law as well as the vital and essential facts proved.

So far as the scope of Section 3(1) (c) of the Act is concerned, it was urged for the respondent that unless the articles enumerated are shown to be ’secret’ document or material and that besides their collection they were published or communicated to any other person, the charge under the said

provision could not said to have been made out. Apparently, the inspiration for such a submission was the judgment of a learned Single Judge of the Bombay High Court reported in State of Maharashtra vs. B.K. Subba Rao & Another (1993 Crl.L. J. 2984). We are unable to agree with this extreme submission on behalf of the respondent. This Court in Sama Alana Abdulla vs. State of Gujarat [(1996) 1 SCC 427] had held: (a) that the word 'secret' in clause (c) of sub-section (1) of Section 3 qualified official code or password and not any sketch, plan, model, article or note or other document or information and (b) when the accused was found in conscious possession of the material (map â\200\223 in that case) and no plausible explanation has been given for its possession, it has to be presumed as required by Section 3(2) of the Act that the same was obtained or collected by the appellant for a purpose prejudicial to the safety or interests of the State. Further, each one of the several acts enumerated in clause (c) of sub-section (1) of Section 3 of the Act, by themselves will constitute, individually, an offending act to attract the said provision and it is not necessary that only one or more of them and particularly publishing or communication of the same need be conjointly proved for convicting one charged with the offence of obtaining or collecting records or secret official code or password or any sketch, plan, model, article or note or other document or information. Any such interpretation would not only amount to doing violence to the language, scheme underlying and the very object of the said provision besides rendering otiose or a dead letter the specific provision engrafted in sub-section (2) of Section 3 of the Act. In view of this, the decision of the Single Judge of the High Court in 1993 Crl. L. J. 2984 (supra) cannot be said to lay down the correct position of law on the scope of Section 3(1)(c) of the Act.

The submissions on behalf of the parties on either side on either the relevance, efficacy and reliability of the confessional statements of the 1st Accused or principles underlying Sections 10 and 30 of the Indian Evidence Act 1872, next falls for consideration. No doubt, in law the confession of a co-accused cannot be treated as substantive evidence to convict, other than the maker of it, on the evidentiary value of it alone. But, it has often been reiterated that if on the basis of the consideration of other evidence on record the Court is inclined to accept the other evidence, but not prepared to act on such evidence alone, the confession of a co-accused can be pressed into service to fortify its belief to act on it also. Once there are sufficient materials to reasonably believe that there was concert and connexion between persons charged with a common design â\200\223 it is immaterial as to whether they were strangers to each other or ignorant of the actual role of each of them or that they did not perform any one or more of such acts by joint efforts in unison. Section 30 of the Indian Evidence Act envisages that when more than one person are being tried jointly for the same offence and a confession made by one of such persons is found to affect the maker and some other of such persons and stand sufficiently proved, the Court can take into consideration such confession as against such other person as well as against the person who made such confession. This is what exactly seems to have been done by the learned Trial Judge, particularly in the context of sufficient material available to also directly involve A-3 and A-4 in the common design of collecting materials relating to Army activities or defense secrets. The learned Judge in the High Court not only misconstrued the relevant principles of law but also is found to have gone amiss totally to the relevant and vital aspects of the materials and appears to have arrived at conclusions patently against weight of evidence, resulting in grave miscarriage of justice. The decision in Natwarlal Sakarlal Mody Vs. The State of Bombay [(1961) 65 Bom. L.R. 660 (SC)] was in the context of the need for joint trial claimed by the State of cases involving distinct acts/offences of criminal conspiracy against several accused and does not even otherwise in any manner lend support to the plea made on behalf of the respondent.

So far as the charge under Section 120-B, IPC, is concerned, it stands proved by showing that two or more persons have agreed to do or cause to do an illegal act or an act which is not illegal by illegal means and that some overt act was done by one of the accused in pursuance of the same. Where their common object or design is itself to do an unlawful act, the specification of such act itself which formed their common design would suffice and it would even be unnecessary or super flows to further substantiate the means adopted by all or

any of them to achieve such object. All the more so, when their common object or design appear to be to commit series of such serious crimes and proof of any overt act in such cases also is a mere surplus age and that mere proof that they or some of them were concerned in the overt acts alleged would, per se, go a long way to establish that there existed such agreement among them. It is well known and as observed by this Court in Baburao Bajirao Patil Vs. State of Mahrasthra [(1971) 3 SCC 432], "â\200¦â\200¦indeed it is seldom â\200\223 if ever â\200\223 that direct evidence of conspiracies can be forthcoming. Conspiracy of the present type from its very nature must be conceived and hatched in complete secrecy, for otherwise the whole purpose would fail." This Court further, after adverting to the decisions reported in Hari Charan Kurmi and Jogia Hajam Vs. State of Bihar [1964 (6) SCR 623] and Hanumant Vs. State of M.P. [1952 SCR 1091] heavily relied upon for the accused therein, observed as hereunder:-

"In a case of conspiracy in which only circumstantial evidence is forthcoming, when the broad features are proved by trustworthy evidence connecting all the links of a complete chain, then on isolated events the confessional statements of the co-accused lending assurance to the conclusions of the court can be considered as relevant material and the principle laid down in Haricharan Kurmi (supra) would not vitiate the proceedings."

This Court, in Mohamad Usman Mohamad Hussain Maniyar & Anr. Vs. State of Maharashtra [AIR 1981 SC 1062], held at page 1067 as follows:-

"It is true that there is no evidence of any express agreement between the appellants to do or cause to be done the illegal act. For an offence under Section 120-B the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary implication. In this case, the fact that the appellants were possessing and selling explosive substances without a valid licence for a pretty long time leads to the inference that they agreed to do and/or cause to be done the said illegal act, for, without such an agreement the act could not have been done for such a long time."

The learned Judge in the High Court seems to have committed grave error in completely overlooking such well settled principles and omitting to draw the necessary and reasonable conclusions flowing from the clinching and trustworthy evidence produced which sufficiently proved the guilt of the respondent, as rightly concluded by the learned trial Judge. As against the elaborate consideration of the roles of each one of the accused, operating as well knit group aimed at collecting vital data relating to militancy affairs and defence matters pertaining to the Government of India and communicating and passing on of such documents/information to the foreign U.S. Intelligent â\200\223 60 operators working at New Delhi, during the period between January 1978 and November 1983, the consideration by the High Court was summary and perfunctory as well. So far as respondent-A4 is concerned, the Defence Telephone Director (Ex.PW.14), a classified document restricted for use, was recovered from the premises No.82, Sunder Nagar, which admittedly was being used by A-4 for his residence and business in running M/s Emge International. There is sufficient evidence on record to prove that this Directory was issued to PW-14 in the year 1981 and A-3 used to now and then visit and use the same with the permission of PW-14, that thereafter it was missing from PW-14 and ultimately found in the wooden Almirah in the House of A-4. That apart, PW-49 seems to have deposed that A-4 himself opened the wooden Almirah with a key and therefrom took out Ext.PW.14/A from inside. This was found to be corroborated by the evidence of PWs-25, 57 and 56 as well. The other documents, which were also recovered from the wooden Almirah such as Invitation and Visiting Cards detailed in Ext.PW.25/D, were

found to be indicative of his contact and communion with foreign agents in India. Though, the respondent would deny all such, there is no reason to doubt the clinching, truthful and cogent evidence of all such persons and such materials in the context of his links with the other accused were found to sufficiently prove that A-4 was also a party to the common design of A-1 and A-2, who stood not only convicted by the Trial Court but whose conviction was also affirmed by the very learned Judge in the High Court. The decision reported in Maharaj Prithvisinghji Bhimsinghji Vs. State of Bombay [1960 Crl. L. J. 672], as to possession and knowledge of existence, has no relevance or application to the facts of the case, since in the present case it has been proved not only to have been recovered from the house of A-4 but it was he who opened the Almirah with a key and made available the Directory and other Cards and invitation from out of it. It is too much for the learned Judge in the High Court to expect that each one of them should have played identical roles and been parties to all events and happenings, at all stages and times. In such circumstances, there can be no impediment for the Court to reinforce its satisfaction of guilt of A-4 by referring to the confession of other co-accused as well. It is this misdirection as to the required legal norms and extent of proof that misled the High Court in the ultimate conclusions to be drawn.

When so much of solid proof was available as to his possession, a restricted document prohibited for the general use of others and the information contained therein is not to be communicated directly or indirectly to the press or to any person not holding any official position in the Government for the reason that it contained the names, number of fields formation and units of each individual officer they being also sensitive information from the defence point of view of the country, no further proof is required and his possession sufficiently substantiates that he or somebody on his behalf obtained or collected it for him. The mode of consideration and method of proof in a case like this, cannot be on the lines of a crime under the provisions of IPC inasmuch as sub-section (2) of Section 3 and Section 4 of the Act engrafts the statutory presumptions to be drawn from the facts and that this would make all the difference in the nature of consideration required in respect of offences committed under the Official Secrets Act, 1923 and the criminal conspiracies relating to such offences, be it punishable under Section 120-B, IPC. For all the reasons stated above, we are satisfied that the Verdict of Acquittal recorded by the High Court in favour of A-4, by way of reversal, suffers patent error of law and perversity of approach and consequently require to be set aside. We, accordingly, set aside the judgment of the High Court, so far as the acquittal of respondent A-4, by allowing Crl. Appeal No.248 of 2003 and restore the judgment of learned Additional Sessions Judge, New Delhi, convicting him for offences under Section 3(1) (c) of Official Secrets Act, 1923 and Section 120-B, IPC.

So far as the quantum of punishment is concerned, though having regard to the nature and character of the offences, stringent punishment is required, we consider it unnecessary to send the respondent A-4 once again to suffer imprisonment having been set at large already and taking into account the period already spent by him under custody. Though, on behalf of the respondent it is claimed that he was under custody for one year, 6 months and 24 days, keeping in view the sentence of two years R.I. imposed by the learned Trial Judge and the fact that even as per the memo filed by the appellant-State the period spent already under custody was one year, six months and 20 days, we modify the sentence of two years each already imposed by the Trial Court under Section 3(1) (c) of the Official Secrets Act, 1923 and Section 120-B, IPC, to the sentence already undergone by him. The fine imposed remains unaltered. Appeal allowed, subject to the modification of the sentence of imprisonment alone, as above.