

nor is it concerned as to in whom the shares are vested.

Therefore the order we propose to pass on this petition, reversing the order of Mr. Justice Shah, is that the order passed by the Custodian on March 28, 1950 and the notification issued by the Custodian on March 28, 1950, are bad and will be set aside to the extent that they affect the shares of the first petitioner. There will also be a declaration that the shares of the first petitioner have not vested in the Custodian as declared by him by the notification dated March 28, 1950.

Considering the fact that the petitioner made an attack on several fronts and has succeeded on one and a rather narrow front, we think the fairest order to make as regards costs, both of the petition and of the appeal, will be that there will be no order as to costs throughout.

Liberty to the petitioner to withdraw the amount deposited.

Attorneys for appellant: *Taher & Co.*

Attorneys for respondent: *Little & Co.*

Order reversed.

A. J. P.

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APPELLATE CRIMINAL

Before Mr. Justice Bhagwati and Mr. Justice Vyas.

STATE *v.* HARPRASAD GHASHIRAM GUPTA AND OTHERS (ORIGINAL ACCUSED Nos. 1-3).*

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High Denomination Bank Notes (Demonetisation) Ordinance (III of 1946), s. 7 (3)—Sanction to prosecute signed by appropriate officer—No mention that it was for and on behalf of Central Government—Validity of sanction—Indian Evidence Act (1 of 1872), ss. 133, 114, ill. (b), 3, 105—Evidence of accomplice witness—Rules for accepting such evidence—Burden of proving exception on accused—Benefit of doubt, when given.

The accused were prosecuted for an offence punishable under s. 7 (1) of the High Denomination Bank Notes (Demonetisation) Ordinance of 1946. The previous sanction of the Central Government to prosecute, which is required under s. 7 (3) of the Ordinance, was signed by an officer, who was described as "Deputy Secretary to the Government of

* Criminal Appeal No. 756 of 1950 (with Criminal Appeal No. 796 of 1950 and Criminal Revisional Applications Nos. 1425 and 1428 of 1951 with Review No. 1486 of 1950).

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India and Deputy Controller of Capital Issues". On a contention raised on behalf of the accused that the sanction was invalid on the ground that there was no proper authentication of the order of sanction inasmuch as it was not signed for and on behalf of the Governor General or the Central Government.

Held, (1) that in the circumstances of the case the order of sanction which was signed by the appropriate officer was the sanction of the Central Government itself; and

(2) that the failure to add the words "for and on behalf of the Central Government" to the signature of the officer constituted at the most a procedural irregularity which did not vitiate the sanction.

J. K. Gas Plant & Co. Ltd. v. Emperor,⁽¹⁾ followed.

Emperor v. J. K. Gas Plant & Co. Ltd.,⁽²⁾ and *Mahomed Yasin Nurie v. Shripat Amrit Dange*,⁽³⁾ referred to.

It is unsafe to act upon the evidence of an accomplice witness unless it is corroborated; the corroboration should be independent; it should be in respect of both the offence and the connection of the accused with the offence. The degree of corroboration depends upon the circumstances of each case.

Rex v. Baskerville,⁽⁴⁾ *Mahadeo v. King*,⁽⁵⁾ *Emperor v. Shankershet Uravane*,⁽⁶⁾ *J. M. Cohen v. The King*,⁽⁷⁾ *Emperor v. C. A. Mathews*,⁽⁸⁾ *The Queen v. Ramsodoy*,⁽⁹⁾ *Deo Nandan Pershad v. Emperor*,⁽¹⁰⁾ and *King Emperor v. Malhar*,⁽¹¹⁾ referred to.

In a criminal trial the degree of probability of guilt required is very much higher—almost amounting to a certainty—than in a civil proceeding, and if there is the slightest reasonable or probable chance of innocence of an accused, the benefit of it must be given to the accused. But that is quite a different thing from contending that even when the burden of proof, say of proving an exception, is on the accused, the term "proved" should be differently and more liberally construed than when the burden of proof is on the prosecution. The Indian Evidence Act, 1872, does not contemplate and does not lay down that the satisfaction which is required to be caused in the mind of a prudent man before acting on or accepting the prosecution story is to be of a different kind or degree from the satisfaction which is required when the accused has to discharge the burden which is cast upon him by law.

If the Court feels that the story of an accused does not necessarily seem to be true but appears reasonably true, it is really referring to a state of doubt, and the benefit of doubt has to be given to the accused. If the Court comes to the conclusion that the story of an accused person is definitely untrue, it cannot be reasonable in the circumstances of the case, and, therefore, the court cannot accept it on the ground of reasonableness.

⁽¹⁾ (1947) 49 Bom. L. R. 591, F. C. ⁽²⁾ (1947) 49 Bom. L. R. 352 at

⁽³⁾ (1948) 50 Bom. L. R. 471. p. 373.

p. 1105. P. C.

⁽⁴⁾ (1916) 2 K. B. 658.

⁽⁵⁾ (1936) 38 Bom. L. R. 1101, at

⁽⁶⁾ (1933) 35 Bom. L. R. 1040.

⁽⁷⁾ [1949] A. I. R. Cal. 594.

⁽⁸⁾ [1929] A. I. R. Cal. 822.

⁽⁹⁾ (1873) 20 W. R. (Cr.) 19.

⁽¹⁰⁾ (1906) 33 Cal. 649.

⁽¹¹⁾ (1901) 26 Bom. 193.

Government of Bombay v. Samuel,⁽¹⁾ followed.
Sodeman v. R.,⁽²⁾ and *Robert Stuart, Wanchope v. Emperor*⁽³⁾ distinguished.

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Criminal Appeal (by accused Nos. 1 and 2) against the convictions and sentences passed by C. B. Velkar, Presidency Magistrate, 5th Court, Bombay, with Appeal against acquittal of accused No. 3 and Criminal Revision for enhancement of sentences on Accused Nos. 1 and 2.

Accused No. 1, Harprasad G. Gupta, was the manager of the Dhanraj Mills Ltd. and accused No. 2, Ardeshir Rustomji Mulphiroze was the secretary of the said mills and as such they were working at all material times under the orders and control of accused No. 3, Ramgopal Ganpatrai Ruia, who was director of the said mills, holding 60 per cent of the shares in the mills. The managing agency of the mills was with a private limited Company called Ramgopal Ganpatrai and Sons, Ltd. (hereinafter referred to as R. G. and Sons, Ltd.). The major portion of the shares in R. G. and Son, Ltd. was held by accused No. 3 and his family. The selling agency of the mills was with Ramrikhadas Balkisan and Sons, Ltd. (hereinafter referred to as R. B. and Sons, Ltd.) In that company also the major portion of the shares was held by accused No. 3 and his relatives. Accused No. 3 was the managing director of both these private limited companies, viz. R. G. and Sons, Ltd. and R. B. and Sons, Ltd. Accused No. 1 was the manager, not only of the mills, but also of the managing agency and the selling agency of the mills. Similarly accused No. 2 was the secretary, not only of the mills, but also of the managing agency and selling agency of the mills. Madhuvachan B. Bhat was a cashier of the mills, Chhotalal H. Oza was an accountant and cashier of the selling agents, R. B. and Sons, Ltd., and Chunilal M. Oza was an accountant and cashier of the managing agents, R. G. and Sons, Ltd.

On January 12, 1946, two Ordinances were published in the Gazette of India Extraordinary, viz. Ordinance No. II and Ordinance No. III of 1946. Ordinance No. II was issued in order to require Banks and Government Treasuries to furnish information concerning bank notes of certain denominational values held by them. Ordinance No. 3 was issued in order to provide for the demonetisation of certain high denomination bank notes.

⁽¹⁾ (1946) 48 Bom. L. R. 746, s. B. ⁽²⁾ (1936) 2 All. E. R. 1138.

⁽³⁾ (1933) 61 Cal. 168.

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On January 16, 1946, accused Nos. 1 and 2 went to the Bank of India, Ltd. with a declaration, which was made by both of them on behalf of the mills in pursuance of s. 6 of the Ordinance III of 1946. They took with them 276 currency notes of Rs. 1,000 each and a list of the said notes. The declaration was signed by accused Nos. 1 and 2 for the mills and presented to the Bank of India, Ltd.

Accused Nos. 1 and 2 were prosecuted for an offence punishable under s. 7 of the High Denomination Bank Notes (Demonetisation) Ordinance No. 3 of 1946 and accused No. 3 for abetment of the said offence. The case for the prosecution was that the declaration dated January 15, 1946, which was made on behalf of the Dhanraj Mills, Ltd. by accused Nos. 1 and 2, who were the Manager and Secretary respectively of the said mills, at the instigation of accused No. 3, who was the Director of the said mills, was false to the knowledge of the three accused in that the sums of Rs. 1,57,000 and Rs. 85,000 and Rs. 34,000 mentioned in cl. 16 of the declaration as belonging to the mills, did not in fact belong to the mills, and were not in possession of the mills on January, 11, 1946, but belonged to accused No. 3 and were in the personal safe of accused No. 3 and went directly from the said safe to the Bank of India, Ltd. on January 16, 1946. It was the case of the prosecution that in order to defeat the provisions of Ordinance No. III of 1946, falsification of the books of account of R. G. and Sons, Ltd., R. B. and Sons, Ltd., and Dhanraj Mills, Ltd., was made on January 11, 1946. The charge against accused Nos. 1 and 2 was that they did make a false declaration in respect of 276 currency notes of Rs. 1,000 each and thereby committed an offence punishable under s. 7 of Ordinance III of 1946. The charge against accused No. 3 was that he did abet accused Nos. 1 and 2 in the commission of the offence.

All the three accused pleaded not guilty to the charge against them and professed their innocence.

The trying Magistrate convicted accused Nos. 1 and 2 under s. 7 of Ordinance No. III of 1946 and sentenced them to one day's simple imprisonment and fines of Rs. 8,000 and Rs. 2,000 respectively. Accused No. 3 was given the benefit of doubt and was acquitted.

Accused Nos. 1 and 2 appealed to the High Court (Criminal Appeal No. 756 of 1950). The State of Bombay appealed against the acquittal of accused No. 3 (Criminal Appeal

No. 796 of 1950) and applied in Revision for the enhancement of sentences on accused Nos. 1 and 2 (Criminal Revisional Application No. 1428 of 1950).

M. P. Amin, S. A. Desai and P. P. Khambatta, with Pathare & Liladhar, for the accused.

B. D. Boovariwala, with B. G. Thakore, Additional Assistant Government Pleader, and N. K. Petigara, Public Prosecutor, for the State.

VIYAS J. [His Lordship, after setting out facts and dealing with points not material to the report, proceeded.] The second argument which Mr. Amin has pressed into service for contending that the sanction is invalid is that it is not a sanction given by the Central Government at all. For the purpose of supporting this argument a comparison is drawn by him between cl. (23) of the Cotton Cloth and Yarn Control Order, 1943, and sub-s. (3) of s. 7 of Ordinance III of 1946. Clause (23) of the Cotton Cloth and Yarn Control Order, 1943, provided as under:—

“No prosecution for contravention of any of the provisions of this order shall be instituted without the previous sanction of the Provincial Government or any such officer of the Provincial Government not below the rank of District Magistrate as the Provincial Government may, by general or special order in writing, authorise in this behalf.”

Sub-section (3) of s. 7 of Ordinance III of 1946 did not contemplate any delegation and did not provide for it. Now, turning to the sanction in this case, it is submitted by Mr. Amin that it is not a sanction granted by the Central Government at all, but is an order passed by Mr. K. A. Master in his individual capacity. The sanction bears the signature of Mr. K. A. Master, Deputy Secretary to the Government of India and the Deputy Controller of Capital Issues. Mr. Master did not sign it for and on behalf of the Central Government. From this an argument is made by Mr. Amin that this cannot be deemed to be a sanction given by the Central Government.

Our attention is invited by Mr. Amin to exh. Z-32, which is a Notification, dated August 19, 1947, of the Legislative Department of the Government of India (Reforms). It provided that the orders and other instruments made and executed in the name of the Governor General could be authenticated by the signature of a Secretary, Joint Secretary, Deputy Secretary, Under-Secretary, or Assistant Secretary to the Government of India, and, in the case of orders in the Ministry of Finance, the authentication could be done by the Finance Secretary, the

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Controller of Capital Issues, the Deputy Controller of Capital Issues, Joint Secretary, Deputy Secretary, Under Secretary, or Assistant Secretary in the Ministry of Finance (Communication Division). This Notification, exh. Z-32, was signed by Mountbatten of Burma, Governor-General of India. Now, for the meaning of the word "authenticate" Mr. Amin has drawn our attention to the "Shorter Oxford English Dictionary", Vol. I, according to which the term "authenticate" means to invest with authority, to establish the validity of. Our attention is also invited to "A New English Dictionary", edited by Sir James Murray, Ltd., Vol. I, at page 570 according to which the expression "authenticate" means to render authoritative or to invest with authority, to give legal validity to or to render valid; to establish a claim of anything to a particular character or authorship; to establish the genuineness of to certify the authorship of, to establish the title to credibility and acceptance. From all this a submission is advanced by Mr. Amin that if Mr. K. A. Master had signed the sanction for and on behalf of the Governor General or the Central Government, then only the sanction would be invested with authority which it would have if it were given by the Central Government. The words "for and on behalf of the Governor General or the Central Government" would have rendered the sanction authoritative, would have given legal validity to it and would have clothed it with the character of an order made by the Central Government. Those words would have certified that the authorship of the sanction was really of the Central Government. In these circumstances, it is contended by Mr. Amin that the absence of words "for and on behalf of the Governor General or the Central Government" in the sanction, which was signed by Mr. K. A. Master in his individual capacity, must invalidate the sanction. In short, the submission for the defence in respect of the sanction is that there was no proper authentication of it in so far as Mr. Master did not sign it for and on behalf of the Governor-General or the Central Government. In other words, the argument is that the sanction was not expressed to have been given in the name of the Governor General.

We have given anxious consideration to this argument of Mr. Amin, but have felt constrained to reject it as an argument with no substance in it. It is to be remembered that the Central Government, which is the expression used in sub-s. (3) of s. 7 of Ordinance III of 1946, has no individual personality

of its own. It acts, and can only act, through its officers and its functions, duties and responsibilities can only be done and discharged, and are done and discharged, through its officers. It is, therefore, necessary to see which officer it was to whom the duty of issuing such sanction was allocated by the Central Government. In this connection Mr. Boovariwala for the State of Bombay has drawn our attention to the Distribution of Work Order, exh. Z-31, dated January 6, 1948. This is how exh. Z-31, reads:—

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“No. D. 148-E. 1/48.

GOVERNMENT OF INDIA—MINISTRY OF FINANCE.
FINANCE DIVISION OFFICE ORDER NO. 2.

The following changes have been made in the existing distribution of work in the Finance Division:—

1.
 (i)
 (ii)
 (iv) Cases relating to the following items dealt with in F. 1, will be submitted to the Deputy Controller of Capital Issues and ex-officio Deputy Secretary (Mr. K. A. Master) instead of D. S. (I. F.) Mr. H. S. Negi.
 - (1) Cases arising out of the demonetisation of High Denomination notes.
 - (2) Inspection of Banks under the Banking Companies (Inspection) Ordinance, 1946.

2.
Sd.

(B. K. Nehru)

Joint Secretary to the Government of India.”

Another important document on this point is exh. Z-32, to which we have already referred. It is a Notification in the Legislative Department of the Government of India (Reforms), dated August 19, 1947.

This is how it reads :—

“LEGISLATIVE DEPARTMENT (INDIA)
(Reforms)

NOTIFICATION.

New Delhi, August 19, 1947.

No. F. 67/47-R.—The following rule made by the Governor General is published for general information:—

G. G. R. I.—In exercise of the powers conferred by sub-section (2) of s. 17 of the Government of India Act, 1935, as adapted by the India

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(Provisional Constitution) Order, 1947, the Governor-General is pleased to make the following Rule, namely:—

Orders and other instruments made and executed in the name of the Governor-General shall be authenticated by the signature of a Secretary, Joint Secretary, Deputy Secretary, Under Secretary, or Assistant Secretary to the Government of India, or

- (1)
 (2)
 (3)
 (4)

(5) in case of orders in the Ministry of Finance by the Finance Officer, the Controller of Capital Issues, the Deputy Controller of Capital Issues, Joint Secretary, Deputy Secretary, Under Secretary or Assistant Secretary in the Ministry of Finance (Communication Division).

Mountbatten of Burma,
Governor General."

While on this point, we may also with advantage refer to exh. Z-30, which is a notification appointing Mr. K. A. Master, Deputy Examiner of Capital Issues in the Finance Department, as Deputy Controller of Capital Issues in that Department with effect from April 1, 1947.

Then we turn to the sanction, which is exh. A, at p. 219 of the paper-book. This is how it reads:—

"No. F. 9 (8)-F-I/48

GOVERNMENT OF INDIA, MINISTRY OF FINANCE.

New Delhi, 20th February 1948.

ORDER.

In pursuance of sub-s. (3) of s. 7 of the High Denomination Bank Notes (Demonetisation) Ordinance (No. III of 1946) the Central Government is pleased to sanction the institution of prosecution proceedings against (1) Mr. Harprasad G. Gupta, Manager of Dhanraj Mills Ltd., Sun Mill Road, Lower Parel, Bombay 13, (2) Mr. A. R. Mullan Firoz, Secretary, Dhanraj Mills Ltd., Sun Mill Road, Lower Parel, Bombay 13, and (3) Mr. Ramgopal Ganpatrai Ruia, a Director of the Dhanraj Mills, Ltd., and Managing Director of Messrs. Ramgopal Ganpatrai and Sons, Ltd., and Ramrikdas Balkison & Sons Ltd., who are alleged to have contravened the said Ordinance in circumstances set out below constituting an offence punishable under s. 7 (1) and (2) read with s. 4 and s. 6 (5) of the said Ordinance and s. 109 of the Indian Penal Code.

That accused Nos. 1 and 2 did knowingly make on January 16, 1946, at Bombay, a declaration in respect of 276 G. C. Notes of the denomination of Rs. 1,000 each, declaring therein that the Dhanraj Mills, Ltd., Bombay were the owners of the said notes, which declaration was false and which they knew to be false or did not believe to be true. Accused No. 3 aided and abetted the accused Nos. 1 and 2 in the commission of the said act by doing the following acts on or about January 14, 1946:—

(a) Furnishing to the cashier of the Dhanraj Mills Ltd., named Mr. M. B. Bhat a slip in his (Mr. Ramgopal Ganpatrai Ruia's) own handwriting

containing directions in respect of the said 276 G. C. Notes of Rs. 1,000 each.

(b) By removing or causing the removal of the original pages from the Rough Cash Book of the Dhanraj Mills, Ltd., and substituting or causing to be substituted therefor pages in the said book: and

(c) Causing to be made false entries of Rs. 1,57,000 and Rs. 85,000 as on January 11, 1946, in the said substituted pages of the said Rough Cash Book.

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(Sd.) K. A. Master,

Deputy Secretary to the Government of India
and Deputy Controller of Capital Issues."

Relying on all this documentary material, namely exhs. Z-30, Z-31 and Z-32 and the sanction itself, exh. A, more especially the words "the Central Government is pleased to sanction the institution of the prosecution proceedings" occurring in the sanction, Mr. Boovariwala for the State of Bombay has strenuously contended that the officer, namely Mr. K. A. Master, to whom the duty of attending to cases arising out of the demonetisation of high denomination notes was allocated by the office Order No. 2 of the Finance Department of the Government of India, Ministry of Finance, had signed the sanction, pursuant to the authority conferred upon him in that behalf by the order of the Governor-General contained in the Notification exh. Z-32, and therefore the order of sanction was invested with the authority of an order of the Governor-General himself. It had the character of an order of the Governor-General himself. The sanction itself stated that "the Central Government was pleased to sanction the institution of prosecution proceedings". These words cannot be put aside when we are considering the import of the signature of Mr. Master at the foot of the sanction. We have already seen that the duty of attending to sanction matters arising out of the breach of the Demonetisation of High Denomination Notes Ordinance was allocated to Mr. Master. We have also seen that at the material time Mr. Master was holding two offices, namely, the office of the Deputy Secretary in the Finance Department and also the office of a Deputy Controller of Capital Issues. We have also noticed that the authentication of the orders and other instruments made and executed in the name of the Governor-General could be done by the signature of a Deputy Secretary or a Deputy Controller of Capital Issues or certain other officers. It is, therefore, absolutely clear that Mr. Master had proper legal authority to authenticate the orders made and executed in the name of the Governor-General. He can do the

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said authentication by his signature. There is no doubt that in this particular case the signature of Mr. Master was made for and on behalf of the Governor-General although these actual words are not to be found along with Mr. Master's signature in the sanction. But the order itself makes it expressly clear that the Central Government was pleased to sanction the institution of prosecution. In these circumstances taking into careful consideration the language of the sanction itself and the other documents, exhs. Z-31 and Z-32, we have no doubt that the sanction which was signed by Mr. K. A. Master as Deputy Secretary to the Government of India and the Deputy Controller of Capital Issues was the sanction of the Central Government itself. We are satisfied that Mr. Master's signature at the foot of the sanction would establish a title to the acceptance of that order as the order of the Central Government.

Assuming for a moment that Mr. Amin's argument that Mr. Master should have signed the sanction for and on behalf of the Central Government has some substance, even so it is to be remembered that the absence of words "for and on behalf of the Central Government" along with the signature of Mr. Master would constitute at the most a procedural defect. In this connection it is pertinent to refer to a decision of this Court in *Emperor v. J. K. Gas Plant & Co. Ltd.*⁽¹⁾ In that case the question arose for the construction of s. 40 of the 9th schedule to the Government of India Act, 1935. The said s. 40 was in the following terms:—

"(1) All orders and other proceedings of the Governor-General in Council shall be expressed to be made by the Governor-General in Council, and shall be signed by a Secretary to the Government of India, or otherwise as the Governor-General in Council may direct, and, when so signed, shall not be called into question in any legal proceeding on the ground that they were not duly made by the Governor-General in Council."

Stone C. J. held that in his judgment s. 40, sub-s. (1), was a procedural section, which was not concerned with such important matters as the personnel of the Council or with what was to happen in the event of disagreement, or with the methods by which conclusions were to be arrived at. In his Lordship's opinion, s. 40, sub-s. (1), was concerned "only with the manner in which orders and other proceedings when made or have taken place are to be expressed, that is to say, to be represented in language, so that the order may be promulgated, in the sense

⁽¹⁾ (1947) 49 Bom. L. R. 352 at p. 373.

of being published". His Lordship went on to say that the orders were to be expressed to be made by the Governor-General in Council and they were to be signed by a Secretary to the Government of India "or otherwise as the Governor-General in Council may direct." When so signed, the orders and other proceedings were not to be called in question in any legal proceeding on the ground that they were not duly made by the Governor-General in Council. His Lordship observed that in his opinion there was no scope in sub-s. (1) of s. 40 for a construction which would vitiate an order actually made by the Governor-General in Council, but which was not expressed to be made according to the letter of the sub-section (p. 373): ".....the defect", said his Lordship,

"if defect it be, of describing these notifications as being made by the 'Central Government' is one of form only and not of substance; it is an irregularity and not a nullity".....

On that case going up to the Federal Court in appeal, it was held in *J. K. Gas Plant & Co., Ltd., v. Emperor*⁽¹⁾ that the provisions of s. 40, sub-s. (1), of the Government of India Act, 1935, 9th schedule, were not mandatory, but were merely directory. In the present case, Notification exh. Z-32 was issued by Mountbatten of Burma, Governor-General, in exercise of the powers conferred upon the Governor-General, by sub-s. (2) of s. 17 of the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947. Now, turning to sub-s. (2) of s. 17 of the Government of India Act, 1935, we find that although there is a direction in those provisions of the statute, it is not laid down what the result of non-compliance with that direction would be. Therefore, on the authority of *J. K. Gas Plant & Co., Ltd. v. Emperor*, it would appear that the failure to add the words "for and on behalf of the Central Government" would at the most be an irregularity and would not vitiate the sanction. As against these authorities, Mr. Amin for the appellants invited our attention to a decision of this Court in *Mahomed Yasin Nurie v. Shripat Amrit Dange*,⁽²⁾ the relevant observations being at page 475. The observations to which our attention was invited are these:—

".....Stone C. J. came to the conclusion that s. 40 (1) of the Ninth Schedule was a procedural section, and he, therefore, took the view that there was no scope in that section for a construction which would vitiate Orders actually made by the Governor-General-in-Council but not expressed to be made according to the letter of the sub-section. That is exactly the position here. If this order is actually made by the Governor exercising his individual judgment but if it is not expressed

⁽¹⁾ (1947) 49 Bom. L. R. 591, F. C. ⁽²⁾ (1948) 50 Bom. L. R. 471.

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to be so made in the order itself, that does not vitiate the notification. The Federal Court's judgment in the same case is reported in the same volume at page 591. Spence C. J. in his judgment on this point at first sounds a very salutary note of warning that the Constitution Act should be given a liberal construction. He then points out that when you find a direction in a provision of a statute and it is not suggested what the result would be of non-compliance with such a direction, then the proper canon of construction is to treat that provision as merely directory and not mandatory.....In my opinion, and with respect to the learned Judge below, it is not possible to distinguish the judgments in this case from the facts before us."

The argument which Mr. Amin has advanced on the basis of this judgment is that where an order was actually made by the Governor-General or the Governor, it would be merely a procedural defect if the words "for and on behalf of" were omitted and were not to be found along with the signature of the authority signing the order. But, says Mr. Amin, where an order is not actually made by the Central Government or by the Governor-General, the defect which would arise from the omission of the words "for and on behalf of the Central Government" would not be merely a procedural defect but would go to the very root and would vitiate the order. We have examined this submission carefully, but have no hesitation in rejecting it. In the first place, as we have already pointed out above, the Central Government, which is the expression used in s. 7, sub-s. (3), of the Ordinance, has no personality of its own and therefore it would not be possible to speak in terms of an order actually made by the Central Government, as it would be to speak in terms of an order actually made by the Governor-General or Governor. In *Mahomed Yasin Nurie v. Shripat Amrit Dange*,⁽¹⁾ Chagla C. J. was dealing with an order which was signed by Mr. P. N. Moos, Secretary, Legal Department, by the order of the Governor of Bombay. In that case, it was possible for one to speak in terms of an order actually made by the Governor of Bombay. Moreover, even in *Mahomed Yasin Nurie v. Shripat Amrit Dange*,⁽¹⁾ Chagla C. J. did not go to the length of saying that if an order is not actually made by the Governor, mere addition of words "by the order of the Governor of Bombay" or "for and on behalf of the Governor of Bombay" would invest the order with the authority of an order, which is actually made by the Governor. What is really important in this context is whether an officer of the Central Government, to whom the duty of attending to and

⁽¹⁾ (1948) 50 Bom. L. R. 471.

issuing such sanctions was allocated by the Central Government, had applied his mind to the subject-matter of the sanction or not. If he had applied it, a mere failure to add the words "for and on behalf of the Central Government" along with his signature at the foot of the sanction would amount at the most to a mere irregularity and not illegality. In our opinion, that is the ratio of all the three decisions referred to above, namely, *Emperor v. J. K. Gas Plant Manufacturing Co. (Rampur), Ltd.*,⁽¹⁾ *J. K. Gas Plant & Co., Ltd. v. Emperor*,⁽²⁾ and *Mahomed Yasin Nurie v. Shripat Amrit Dange*.⁽³⁾ As it would presently be seen, we have no doubt that Mr. Master, to whom the duty of dealing with cases arising out of the demonetisation of high denomination notes was allocated by the Central Government, had applied his mind to the subject of this sanction. In our opinion, therefore the second contention of Mr. Amin also fails, namely, the contention based on the absence of words "for and on behalf of the Central Government" along with Mr. Master's signature at the foot of the sanction.

[His Lordship, after dealing with points not material to the report, proceeded.] The main attack which Mr. Amin has made on the evidence of Bhat and Chhotalal is that it is accomplice evidence and therefore unworthy of acceptance unless corroborated independently both in respect of the offence and in respect of the association of each accused with the offence. It is called accomplice evidence because on the admission of these witnesses themselves the manipulations in the cash books of the Dhanraj Mills, Ltd., and R. B. & Sons, Ltd., were made by them. The rewriting of the entries on the alleged substituted pages in the mills' rough cash book exh. L and the addition of the fresh credit entries exhs. P1 and Q1 relating to Rs. 1,57,000 and Rs. 85,000 was done by Bhat, and the manipulation in regard to the debit entry of Rs. 87,322-4-9, exh. S3, in the cash book of R. B. & Sons, Ltd. was done by Chhotalal. It is on this account that Mr. Amin has contended that their evidence would require independent corroboration both in respect of the offence and in respect of the accused before it could be accepted. On the other hand, while Mr. Boovariwala for the State concedes that the evidence of these witnesses would need corroboration, he contends that the degree of corroboration which would be required would be only slight, in view of the fact that they were unwilling accomplices and were not accomplices in their own cause. It is the submission of the State of Bombay that the alterations in the cash books were made by

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⁽¹⁾ (1947) 49 Bom. L. R. 352.

⁽²⁾ (1947) 49 Bom. L. R. 591, F. C.

⁽³⁾ (1948) 50 Bom. L. R. 471.

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these witnesses under duress and compulsion as they were in the employment of the concerns which were practically the concerns of accused No. 3 and were therefore not in a position to disobey the directions of accused No. 3, parts of which were communicated to them by accused No. 3 himself and parts by accused No. 1 or by accused No. 2. Now, there is no doubt whatever that before we could accept and act upon the evidence of both these witnesses Bhat and Chhotalal, we would have to satisfy ourselves thoroughly that their evidence is independently corroborated in material particulars and that the requisite corroboration is forthcoming both in respect of the offence and also the association of each accused with the offence. Although according to s. 133 of the Indian Evidence Act an accomplice is a competent witness and a conviction which proceeds from his uncorroborated evidence is not illegal, a rule of prudence which has acquired the reverence of law is that it is unsafe to act on uncorroborated testimony of an accomplice, and that before acting on such evidence Courts of law should be satisfied that it is independently corroborated both as to the offence and as to the connection of the various accused with the offence. Section 114, ill. (b), provides that a Court may presume that the evidence of an accomplice is unworthy of credit unless corroborated. In *Rex v. Baskerville*⁽¹⁾ it was observed that where on the trial of an accused person, evidence was given against him by an accomplice, the corroboration which the common law required was the corroboration in some material particular tending to show that the accused had committed the crime charged. It was held that it was not enough that the corroboration showed the witness to have told the truth in matters unconnected with the guilt of the accused. In the body of the judgment of the Court of Criminal Appeal which was delivered by Lord Reading C. J. it was observed by his Lordship as under (p. 665):—

“.....What is required is some additional evidence rendering it probable that the story of the accoplice is true and that it is reasonably safe to act upon it. If the only independent evidence relates to an incident in the commission of the crime which does not connect the accused with it, or if the only independent evidence relates to the identity of the accused without connecting him with the crime, is it corroborative evidence?”

His Lordship went on to examine the various authorities, viz. *Rex v. Birkett*,⁽²⁾ *Rex v. Atwood*,⁽³⁾ *Rex v. Jones*,⁽⁴⁾ *Rex v. Hast-*

⁽¹⁾ [1916] 2 K. B. 658.

⁽²⁾ (1813) R. & R. 251.

⁽³⁾ (1788) 1 Leach 464.

⁽⁴⁾ (1809) 2 Camp. 131.

ings,⁽¹⁾ *Reg. v. Andrews*,⁽²⁾ *Reg. v. Avery*⁽³⁾ and *Reg. v. Stubbs*,⁽⁴⁾ and came to the conclusion that the better opinion of the law upon this point was that which was stated in *Reg. v. Stubbs*⁽⁴⁾, viz. that the evidence of an accomplice must be confirmed not only as to the circumstances of the crime, but also as to the identity of the prisoner. The judgment proceeded to say that it was not necessary that there must be confirmation of all the circumstances of the crime; it was sufficient if there was confirmation of the accomplice's evidence as to a material circumstance of the crime and as to the identity of the accused in relation to the crime. At page 667 we find the pertinent observations of his Lordship the Chief Justice in the following terms :

"We hold that evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him, that is, which confirms in some material particular not only the evidence that the crime has been committed, but also that the prisoner committed it."

It was laid down that the corroboration need not be direct evidence that the accused committed the crime; it is sufficient if it is merely circumstantial evidence of his connection with the crime.

Also in *Mahadeo v. King*,⁽⁵⁾ it was observed by Sir Sidney Rowlatt who delivered the judgment that it was well-settled that the evidence of an accessory must be corroborated in some material particular not only bearing upon the facts of the crime but upon the accused's implication in it, and further that the evidence of one accomplice was not available as corroboration of another. It was stated that this rule as to corroboration, which was a rule of practice, had virtually become a rule of law and was a rule of the greatest possible importance.

Mr. Amin drew our attention to *Emperor v. Shankarshet Uravane*,⁽⁶⁾ in which it was held that a circumstance could not furnish corroboration of the story of an accomplice against an individual accused if either it had no criminal significance apart from the details of the accomplice's story which were not themselves proved by independent evidence or if the circumstance was susceptible of an innocent explanation which the Court would accept as probable. It was observed in that case that the mere fact that the approver's story was a very

⁽¹⁾ (1835) 7 C & P. 152.

⁽²⁾ (1845) 1 Cox. 206.

⁽³⁾ (1936) 38 Bom. L. R. 1101,

at p. 1105, P. C.

⁽⁴⁾ (1845) 1 Cox. 183.

⁽⁵⁾ (1855) Dears. 555.

⁽⁶⁾ (1933) 35 Bom. L. R. 1040.

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probable one was no reason for dispensing with the rule that such evidence required independent corroboration. Our attention was also invited to *J. M. Cohen v. The King*,⁽¹⁾ wherein also it was decided that it was a rule of the Courts not to base a conviction upon the evidence of an accomplice unless such evidence was corroborated by independent evidence. Relying on these authorities it was contended by Mr. Amin that before the evidence of Bhat and Chhotalal could be accepted and acted upon, the Court should be satisfied that there was clear, cogent and convincing independent corroboration of it, not only as to the particulars of the offence but also as to the connection of the various accused with the offence.

While meeting Mr. Amin's submissions regarding corroboration of accomplice evidence Mr. Boovariwala for the State drew our attention in the first place to *Emperor v. C. A. Mathews*,⁽²⁾ in which it was observed that when a rule of practice or prudence or whatever else it might be called came in conflict with the law as laid down by the Legislature, the Court was obviously bound to follow the law. Section 114, ill. (b), of the Indian Evidence Act, was referred to and it was stated by their Lordships that "a Court may presume that the evidence of an accomplice is unworthy of credit unless corroborated"; "but", added their Lordships, "'may' is not 'must' and no decision of the Court can make it 'must'." The judgment went on to say that in spite of all that had been said to the contrary, in law the evidence of an accomplice stood on the same footing as any other evidence, and the Court was not obliged to hold that he was unworthy of credit and must be corroborated. Their Lordships went on to say (p. 824):

".....It is for the Court to consider after taking into consideration all the circumstances one of which being that he is an accomplice whether it does or does not rely on the evidence. To entirely rule out the uncorroborated evidence of an accomplice might in many cases lead to a miscarriage of justice."

It was pointed out in this case that there were many grades of accomplices and that they varied from the man who with his own hand committed a murder to the man who was alleged to have offered a bribe to another when the latter was being tried for taking the illegal gratification and to that extent aided the accused in committing an offence of taking an illegal gratification. The judgment proceeded to say (p. 824):

".....the evidence of an accomplice should be received on its own merits taking into consideration all the circumstances of the case and

⁽¹⁾ [1949] A. I. R. Cal. 594.

⁽²⁾ [1929] A. I. R. Cal. 822.

its truth or falsity tested by the usual tests which are applied. To hold otherwise is to hold something which is entirely contrary to the law. In India we have the Codes and by the Code, we are to be guided and it is not for the individual Judges or Courts to alter the express provisions of the Codes by what are termed rule of practice or prudence. That is for the Legislature and that the Legislature alone can do. As a very learned Judge of this Court the late Chief Justice Sir Lawrence Jenkins pointed out: 'Not one jot or one tittle can be taken away from or added to the plain and express provisions of the legislature by any decision of the Court: *In re, An attorney*'...⁽¹⁾.

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Mr. Boovariwala has referred us to this case *Emperor v. C. A. Mathews*,⁽²⁾ not so much for contending that the evidence of an accomplice needs no corroboration—indeed, he concedes that it does require corroboration—but for submitting that Bhat and Chhotalal are not really accomplice witnesses and in any case were not accomplices in their own cause. It is contended that Bhat and Chhotalal are not guilty of the offence for which accused Nos. 1, 2 and 3 are tried. They were not guilty associates in the crime of making a false declaration under s. 7 of Ordinance III of 1946 and did not sustain such a relation to the criminal act of making a false declaration that they could be jointly indicted with the accused. In this context our attention was drawn to the observations of Glover J. who said (p. 20):

...“I understand an accomplice-witness to be one who is either being jointly tried for the same offence, and makes admissions which may be taken as evidence against a co-prisoner, or who received a conditional pardon on the understanding that he is to tell all he knows, and who may at any moment be relegated to the dock.” *The Queen v. Ramsodoy*.⁽³⁾

It is argued by Mr. Boovariwala that judging from this conception of an accomplice, these witnesses Bhat and Chhotalal cannot be said to be accomplice witnesses, and it is then contended that even if they are to be deemed accomplices, their evidence would not need corroboration to the same extent to which, for example, the evidence of an accomplice who has committed a murder with his own hand would require. In short, Mr. Boovariwala's submission on this point of corroboration of accomplice evidence is that the degree of corroboration that a Court of law would look for would depend on the circumstances of each case, and that in some cases only a slight corroboration would suffice. In support of this submission our

⁽¹⁾ (1914) 41 Cal. 446 at p. 454. ⁽²⁾ [1929] A. I. R. Cal. 822.

⁽³⁾ (1873) 20 W. R. (Cr.) 19. Bom. L. R. 694.

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attention was invited to *Deo Nandan Pershad v. Emperor*.⁽¹⁾ In that case the complainant did not willingly offer the bribe, but the accused, a police-officer, demanded it before taking up the charge lodged by the complainant and made use of his official position to enforce his demand. It was held by Mr. Justice Brett and Mr. Justice Stephen that the circumstances were such as would justify a conviction on the testimony of accomplices with a much slighter degree of corroboration than would be the case if the accomplices were entirely voluntary accomplices. Also in *King-Emperor v. Malhari*,⁽²⁾ it was held by Mr. Justice Fulton and Mr. Justice Crowe that it was generally unsafe to convict a person on the evidence of accomplices unless corroborated in material particulars. But, in considering whether this general maxim did or did not apply to a particular case, it must be remembered, said their Lordships, that all persons coming technically within the category of accomplices could not be treated as on precisely the same footing. The nature of the offence and the circumstances in which the accomplices made their statements must always be considered. No general rule on the subject could be laid down. It was observed by their Lordships that a person who gave bribes was an accomplice of the person who received them, and while it was usually unsafe to convict a public servant of receiving bribes on the uncorroborated evidence of persons who said that they had given bribes to him, the question as to the amount of corroboration depended upon the circumstances of each case.

Having referred us to the above authorities, Mr. Boovariwala has submitted that in this case both the witnesses Bhat and Chhotalal were unwilling accomplices, that they were not accomplices in their own cause, that they did not stand to gain any benefit whatsoever by the manipulation of accounts which they did under orders of accused No. 3 conveyed to them through accused No. 1 or accused No. 2, and that therefore corroboration of their evidence which should be expected would not be the same as in the case of the evidence of perfectly voluntary accomplices. In this connection our attention is invited to Bhat's evidence at page 51 of the paper-book where he has said as follows :—

"I did this because of the order. I was employed by accused No. 3 and I was under him. I say that I had to do whatever I was ordered to do

⁽¹⁾ (1906) 33 Cal. 649.

⁽²⁾ (1901) 26 Bom. 193, s. c. 3 Bom. L. R. 694.

by accused No. 3 or be prepared to lose my job. It is true that in July 1947 I was asked to make a false statement and I refused to state so and was prepared to lose my service."

Actually, as the result of refusing to make a false statement he was dismissed from the service of the mills on July 11, 1947. Relying on the above evidence and natural probabilities, it is contended by Mr. Boovariwala that these witnesses committed manipulations in the cash books of the mills and R. B. & Sons, Ltd., not of their own volition, but under compulsion as they were in service of accused No. 3. That being so, it is submitted by him that even a slight degree of corroboration of their evidence should be sufficient to satisfy the Court about the truth thereof.

The net result of the examination of the various authorities discussed above is that it is unsafe to act upon the evidence of an accomplice witness unless it is corroborated, that the corroboration should be independent, that it should be in respect of both the offence and the connection of the accused with the offence, and that the degree of corroboration would depend upon the circumstances of each case.

[His Lordship, after dealing with points not material to the report, proceeded.] Having thus prepared his ground that difference in lining or spacing, i.e. difference in columns in the rupee space, on pages 180 right onward in the cash book, exh. L. may be an innocent circumstance, Mr. Amin has next drawn our attention to *Sodeman v. R.*,⁽¹⁾ and contended that although the expression 'onus of proof' in reference to prosecution is to be construed strictly, the said expression, when used in reference to defence, is to be construed leniently or liberally and the story of the accused has to be judged only in the light of probabilities and reasonableness of it. Our attention is also invited to *Robert Stuart Wauchope v. Emperor*⁽²⁾ in support of another contention which Mr. Amin has made, namely a contention that although a Court may not find the story of the defence to be necessarily true, it must still be accepted if it is a reasonable story. Now, in *Sodeman v. R.*⁽¹⁾ Viscount Hailsham L. C., during the course of his judgment, observed as under (p. 1140):—

".....The other point is that the trial judge in directing the jury as to the burden of proof, having stated that it was for the Crown to establish its case beyond reasonable doubt, went on to say that the burden

⁽¹⁾ [1936] 2 All. E. R. 1138.

⁽²⁾ (1933) 61 Cal. 168.

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of proof in a case of insanity rested upon the accused, and the suggestion made by the petitioner was that the jury may have been misled by the Judge's language into the impression that the burden of proof resting upon an accused to prove insanity is as heavy as the burden of proof resting upon the prosecution to prove the facts which they have to establish. In fact there is no doubt that the burden of proof for the defence is not so onerous. It has not been very definitely defined. The Canadian case of *R. v. Clark*⁽¹⁾ was referred to, but even there the Judges were not able to find a very satisfactory definition, but it is certainly plain that the burden in cases in which an accused has to prove insanity may fairly be stated as not being higher than the burden which rests upon a plaintiff or defendant in civil proceedings. That this is the law is not challenged, and no Court in Australia has decided otherwise."

These observations were relied upon by Mr. Amin for contending that if the explanation given by the accused in regard to pages 187 right onward of the cash book, exh. L, seems probable, it should be accepted. Now, with very great respect to the decision in *Sodeman v. R.*,⁽²⁾ it must be stated that here we are not dealing with the Canadian or Australian statute on evidence. We are concerned with 'proof' as defined in the Indian Evidence Act, and the law on the subject was carefully examined and laid down by the full bench of this Court in *Government of Bombay v. Samuel*,⁽³⁾ and the view taken by their Lordships was based on the consideration of the fact that the Indian Evidence Act did not recognise any differential treatment between prosecution and defence on the question of onus of proof. It is of course a perfectly correct and salutary principle of criminal jurisprudence that 99 guilty persons may escape, but one innocent person must not suffer. But all that the above maxim means is that in a criminal trial the degree of probability (of guilt) has got to be very much higher—almost amounting to a certainty—than in a civil proceeding, and if there is a slightest reasonable or probable chance of innocence of an accused, the benefit of it must be given to the accused. But that is quite a different thing from contending that even where the burden of proof, say of proving an exception, is on the accused, the term 'proved' should be differently and more liberally construed than when the burden of proof is on the prosecution. Indian Evidence Act does not contemplate and does not lay down that the satisfaction which is required to be caused in the mind of a prudent man before acting on or accepting the prosecution story is to be of a different kind or degree from the satisfaction which is required when the accused has to discharge the burden which is cast upon him by law.

⁽¹⁾ (1921) 61 S. C. R. 608.⁽²⁾ (1933) 61 Cal. 168.⁽³⁾ (1946) 48 Bom. L. R. 746, F. B.

In *Government of Bombay v. Samuel* the learned Sessions Judge, in his charge to the jury, had given the following direction:

"As a direction in law, therefore, I would ask you to proceed upon the basis that if accused No. 1 in this case seeks the benefit of the exception of the right of private defence, then it would be sufficient for him if he makes out a prima facie case which, on the conclusion of the evidence, leads the jury to entertain a reasonable doubt about the guilt of the accused."

He had then gone on to say:

"But you must remember that the burden of bringing himself within the exception is on the accused, and to that extent he is bound by s. 105 to establish the existence of circumstances, whether they have been proved beyond reasonable doubt or not, which would after the whole evidence is recorded leave a doubt in the minds of the jury about the guilt of the accused."

In appeal their Lordships examined the case of *Woolmington v. The Director of Public Prosecution*,⁽¹⁾ and also *Robert Stuart Wauchope v. Emperor*,⁽²⁾ *King-Emperor v. U. Damapala*,⁽³⁾ and *Emperor v. Parbhoo*,⁽⁴⁾ and came to the conclusion that cases decided in England on the basis of the English law ought not to be applied rigidly to the construction of an Indian statute unless there was a corresponding statute in England, and pointed out that what they were dealing with was not the common law of England but the combined effect of ss. 3 and 105 of the Indian Evidence Act, where proof receives a statutory definition and where it is stated that a Court shall presume the absence of circumstances bringing a case within the exceptions unless the accused discharges the burden of proving the existence of such circumstances. Their Lordships went on to say (p. 749):

"...When you have, as we have here a statute which is perfectly plain in its terms, it is not, we think legitimate to construe it by reading into it a basis derived from the English law which may not necessarily have been its basis at all (at any rate not the English law as at present understood) and which is not in accordance with the plain meaning of the statute. The words of the statute are that an accused person has to prove that his case falls within one of the exceptions and in the absence of such proof the Court is bound to presume the absence of such circumstances."

Their Lordships referred to the definition of "proved" which is (p. 750):

"A fact is said to be proved when, after considering the matters before it, the Court believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists".

⁽¹⁾ [1935] A. C. 462.

⁽²⁾ (1933) 61 Cal. 168.

⁽³⁾ (1936) 14 Ran. 666, F. B.

⁽⁴⁾ [1941] All. 843, F. B.

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and proceeded to observe that strictly speaking the test was not the absence of reasonable doubt, though that was often a convenient way of expressing what was meant by 'proof'. The test is really the estimate which a prudent man makes of the probabilities, having regard to what must be his duty as a result of his estimate. In each case, whether proof of the case for the prosecution or proof of the defence set up by the accused, it is the estimate of probabilities arrived at from this practical standpoint by a prudent man. The question, therefore, before us is really whether, on an estimate of probabilities which a prudent man may make, the explanation of the defence in regard to pages 180 right onward of the cash book, exh. L, can be accepted. We have already seen, for reasons stated at considerable length, that the said explanation or suggestion is entirely improbable and unreasonable and is, in our opinion, absolutely false. We do not think any prudent man will consider that it was merely an innocent series of coincidences that from page 180 right began a series of consecutive 14 sides which were dissimilar to the general design of the remaining pages (in regard to number of columns in the rupee space), that in the cash book, exh. L, also pages 178 right to 190 left were missing, that pages 180 right onward of the cash book, exh. K, should be similar to pages in the cash book, exh. K, that out of the pages 178 right to 190 left which were torn from the cash book, exh. K four sides at one end and four sides at the other end should be discarded and that page 187 right in the cash book, exh. L, should be found securely gummed to the cover.

Then as to the decision in *Robert Stuart Wauchope v. Emperor*,⁽¹⁾ to which our attention was invited by Mr. Amin for the appellants, it was laid down by their Lordships that even when the Legislature had put upon the accused the burden of proving certain matter he was in a much more favourable position than the prosecution, because he was not in general called upon to prove them beyond a reasonable doubt, but it was sufficient if he succeeded in proving a prima facie case. It is to be remembered that this decision did not and could not lay down that even if the Court came to the conclusion that the story of an accused person was definitely untrue, it should be accepted on the ground of reasonableness. As a matter of fact, if the story is positively false, it cannot be reasonable in the circumstances of the case. The decision merely lays down, in another form, the principle of benefit of doubt. If the Court feels that the story of an accused does not necessarily seem to be true but

⁽¹⁾ (1933) 61 Cal. 168.

appears reasonably true, it is really referring to a state of doubt, and, of course, the benefit of doubt has to be given to the accused. In this case it is not the position that the explanation of the accused in regard to pages 180 right onward of the cash book, exh. L, does not merely appear to be true. The position is that the explanation of the accused is definitely false. There cannot, therefore, be any reasonableness about it. There cannot be any question of the said explanation being even prima facie sensible or probable. In these circumstances none of the two cases cited by Mr. Amin for the appellants really helps the appellants.

Order accordingly.

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APPELLATE CRIMINAL

*Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Gajendragadkar.
Gajendragadkar.*

YUSUF ABDUL AJIZ (ORIGINAL ACCUSED), PETITIONER v. THE
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Penal Code (Act XLV of 1860), s. 497—Adultery—Wife not punishable as abettor—Whether discrimination on the ground of sex alone—Constitution of India, arts. 13, 14, 15, 228—Whether s. 497 contravenes a fundamental right—Whether a non-citizen can challenge the validity of any law as contravening a fundamental right.

The petitioner, who was being prosecuted in the Court of a Presidency Magistrate for adultery under s. 497 of the Indian Penal Code, 1860, approached the High Court under art. 228 of the Constitution. His contention was that as s. 497 makes the man who commits adultery punishable but declares that the wife shall not be punishable as an abettor, the section was in contravention of arts. 14 and 15 (1) of the Constitution.

Held, s. 497 of the Indian Penal Code, 1860, did not contravene arts. 14 and 15 (1) of the Constitution.

If religion, race, caste, sex, place of birth or any of them is merely one of the facts which the Legislature has taken into consideration, it would not be discrimination only on the ground of that fact; but if the Legislature has discriminated only on one of those grounds and no other factor could possibly have been present, then the law would offend against art. 15 (1). Looking to the historical background of s. 497, it is apparent that what led to the discrimination in this country, is not the

* Criminal Application No. 345 of 1951.