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PUSHPADEVI M. JATIA

v.

M.L. WADHAVAN, ADDL. SECRETARY GOVERNMENT OF INDIA & ORS.

APRIL 29, 1987

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[A.P. SEN AND S. NATARAJAN, JJ.]

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974—s. 3(1)—Subjective satisfaction of the detaining authority—Court cannot consider propriety or sufficiency of grounds of
C *detention—Court can examine whether requisite satisfaction was arrived at by the authority.*

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974—s. 5A—The principle that even if one of the grounds which led to the subjective satisfaction of the detaining author-
D *rity is non-existent, etc., the order of detention would be invalid no longer holds good.*

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974—s. 3(1)—Power of detention being subject to the limitations imposed by the Constitution, Government must ensure that
E *safeguards provided in Art. 22(5) read with s. 3(1) are fully complied with.*

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974—S. 3(1)—Period of parole has to be excluded in reckoning the period of detention.

F

Foreign Exchange Regulation Act, 1973—s. 40(1)—'Gazetted Officer of Enforcement' means any person appointed to be an officer of Enforcement under s. 4 and holding a gazetted post.

Law of Evidence—If evidence is relevant, the Court is not con-
G *cerned with the method by which it was obtained.*

De facto Doctrine—Where an office exists under law, so far as validity of its acts are concerned it matters not how the appointment is made.

H **The Petitioner's husband, Mohan Lal Jatia, was detained by an**

order passed under sub-s. (1) of s. 3 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) by the Addditional Secretary to the Government of India, Ministry of Finance on being satisfied that it was necessary to detain him 'with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange'. A

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The residential premises of one Subhash Gadia, a very rich and prosperous businessman of Bombay, the brother-in-law of the detenu, were searched on the basis of intelligence gathered by the Directorate of Revenue Intelligence that he was under-invoicing imports of yarn from Japan and it resulted in seizure of certain documents. As the seized documents not only revealed violation of the provisions of the Customs Act but also indicated certain payments and transactions in violation of the Foreign Exchange Regulation Act, 1973 (FERA), the matter was referred to the Enforcement Directorate Investigation from the FERA angle. Subhash Gadia was summoned under s. 40 of the FERA and his statement was recorded by Shri R.C. Singh, an officer of the Enforcement Directorate. The incriminating documents seized from the residential premises of Subhash Gadia and the revelations made by him during his examination in relation to the documents seized which revealed that the detenu Mohan Lal Jatia was engaged in foreign exchange racketeering to the tune of several crores of rupees formed the basis of the aforesaid order of detention. C D

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The petitioner approached the High Court with petitions under Art. 226 of the Constitution seeking to challenge the impugned order of detention. Upon the dismissal of the first of these petitions by the High Court, the petitioner had approached this Court under Art. 136, and, the Court, while declining to grant special leave to appeal, had directed that the detenu should appear before the Commissioner of Police and, upon his doing so, he should immediately be released on parole for a period of ten days. Thereafter, the petitioner filed the second petition under Art. 226 with an application for extending the period of parole which was rejected by the High Court. The petition filed under Art. 136 against refusal of interim relief by the High Court was also rejected by this Court. Thereafter, the High Court dismissed the writ petition, against which, the petitioner sought special leave to appeal and also filed a petition under Art. 32 challenging the order of detention. While issuing notice on the petitioner, the Court directed the release of the detenu on parole for a week and by a subsequent order further extended the period of parole. Both the special leave petition and the writ petition were heard together. F G H

A In the writ petition filed before the High Court from which the petition for special leave petition arose, the petitioner had challenged the order of detention on two grounds: that there was no material on which the satisfaction of the detaining authority could be reached that the detention of the detenu was necessary; and, that there was total non-application of mind on the part of the detaining authority to the B material on record, and in particular, to the factual mis-statements contained in paragraph 44 of the grounds of detention as detailed in entries 'A' to 'F'. The writ petition filed before this Court was principally based on the ground that there was information of the Constitutional Safeguard Contained in Art. 22(5) of the Constitution inasmuch as there was failure on the part of the detaining authority to consider an C alleged representation made by the detenu under s. 8(b) read with s. 11 of the COFEPOSA against the order of detention addressed to the President of India which was presented through one Ashok Jain at the President's Secretariat. The other substantial question raised was that R.C. Singh was not a gazetted officer of Enforcement within the meaning of s. 40 of the FERA and therefore the statements recorded by him D could not be regarded as valid statements under the aforesaid s. 40 and thus could not form the basis upon which the satisfaction of the detaining authority could be reached. Alternatively, it was contended that the statements recorded by him could not be treated as statements recorded under s. 39.

E The respondents not only denied that the detenu had addressed any respresentation to the President of India but made an application under s. 340, Cr. P.C. for prosecution of persons responsible for forgoing the document purporting to be the alleged representation made by the detenu and for making certain interpolations in the Dak Ragister kept at the President's Secretariat. The respondents also placed on F record an order showing that R.C. Singh had been appointed an officer of enforcement on *ad hoc* basis three years before he had summoned Subhash Gadia for examination.

Dismissing both the petitions,

G HELD:1. (a) The expression 'officers of Enforcement' as defined in s. 3 of the Foreign Exchange Regulation Act, 1973, embraces within itself not only (a) a Director (b) Additional Director (c) Deputy Director and (d) Assistant Director of Enforcement but also (e) such other class of officers of Enforcement as may be appointed for the purpose of the Act. Obviously, R.C. Singh who was Assistant Enforcement Officer H having been appointed as an officer of Enforcement on an ad-hoc basis

in 1982 fell within the category 'such other class of officers' covered by s. 3(e). Sub-s. (1) of s. 4 provides that the Central Government may appoint such persons, as it thinks fit, to be officers of Enforcement. Sub-s. (2) thereof provides for delegation of such power of appointment by the Central Government to a Director of Enforcement or an Additional Director of Enforcement etc., to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement. Sub-s. (3) of s. 4 provides that subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under the Act. Undoubtedly R.C. Singh was discharging his duties and functions as a gazetted officer of Enforcement under s. 40(1) when he recorded the statements in question. The expression 'gazetted officer of Enforcement' appearing in s. 40(1) must take its colour from the context in which it appears and it means any person appointed to be an officer of Enforcement under s. 4 holding a gazetted post. There is no denying the fact that R.C. Singh answered that description. [69G-H; 70A-D]

(b) Even if the contention that R.C. Singh was not a gazetted officer of Enforcement within the meaning of s. 40(1) were to prevail, it would be of little consequence. If evidence is relevant the Court is not concerned with the method by which it was obtained. There is a long line of authority to support the opinion that the Court is not concerned with how evidence is obtained. The rule is however subject to an exception. The Judge has a discretion to exclude evidence procured, after the commencement of the alleged offence, which although technically admissible appears to the Judge to be unfair. This being the substantive law, it follows that the detaining authority was entitled to rely upon the statements recorded by R.C. Singh under s. 40(1). Even if R.C. Singh was not competent to record such statements under s. 40(1), the statements were clearly relatable to s. 39(b) of the Act. It cannot therefore be said that there was no material on which the detaining authority could have based his subjective satisfaction. [70E-H]

Barindra Kumar Ghose v. *Emperor,* ILR (1910) 37 Cal. 467; *Kuruma* v. *Reginam,* [1955] 1 All E.R. 236; *R.V. Sang,* [1979] 2 All E.R. 1222; *Magraj Patodia* v. *R.K. Birla & Ors.,* [1971] 2 S.C.R. 118; *R.M. Malkani* v. *State of Maharashtra,* [1973] 2 S.C.R. 417; and *Pooran Mal, etc.* v. *Director of Inspection,* [1974] 2 S.C.R. 704; referred to.

(c) Where an office exists under the law, it matters not how the appointment of the incumbent is made, so far as validity of its acts are

A concerned. It is enough that he is clothed with the insignia of the office, and exercises its powers and functions. The official acts of such persons are recognised as valid under the *de facto* doctrine, born of necessity and public policy to prevent needless confusion and endless mischief. [69B-C]

B *Gokaraju Rangaraju* v. *State of Andhra Pradesh,* [1981] 3 S.C.R. 474; *Pulin Behari* v. *King Emperor,* [1912] 15 Cal. ZJ 517; and *P.S. Menon* v. *State of Kerala & Ors.,* AIR (1970) Kerala 165; referred to.

2. (a) It has long been established that the subjective satisfaction of the detaining authority as regards the factual existence of the condi-
C tion on which the order of detention can be made, i.e., the grounds of detention constitutes the foundation for the exercise of the power of detention and the Court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. Nor can the Court, on a review of the grounds, substitute its own opinion for that of the authority. But this does not
D imply that the subjective satisfaction of the detaining authority is wholly immune from the power of judicial review. It inferentially follows that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the executive, the Court can always examine whether the requisite satisfaction was arrived at by the authority; if it is not, the condition precedent to the exercise of the
E power would not be fulfilled and the exercise of the power would be bad. The simplest case is where the authority has not applied its mind at all; in such a case, the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied. [66E-H]

F *Emperor* v. *Shibnath Banerjee & Ors.,* AIR (1943) FC 75 and *Khudi Ram Das* v. *State of West Bengal & Ors.,* [1975] 2 SCR 832, referred to.

In this case, it is quite apparent that the so-called factual mis-statements listed as items 'A' to 'F' in paragraph 44 of the grounds of
G detention are not mis-statements at all. The High Court rightly held that the alleged mistakes or infirmities pointed out were not so material or serious in nature as to vitiate the impugned order of detention and rightly observed that the facts stated in paragraph 44 of the grounds cannot be read in isolation and the grounds of detention have to be read as a whole with the accompanying documents and material. The
H grounds of dentention was only one, viz., that the detenu was engaged

in activities prejudicial to the augmentation of foreign exchange and therefore it became necessary in the public interest to place him under detention. It cannot be said on a perusal of the grounds that there was no material on which the detaining authority could have acted. [74E; 78A-B] A

(b) The contention that, even if one of the grounds or reasons which led to the subjective satisfaction of the detaining authority is non-existent or mis-conceived or irrelevant, the order of detention would be invalid since it is not possible to predicate as to whether the detaining authority would have made an order for detention even in the absence of non-existent or irrelevant ground, cannot be accepted. That principle was enunciated by this Court some 30 years ago. With the change in law brought about by the introduction of s. 5A of the COFEPOSA Act that though one or more of the grounds of detention were found to be vague, non-existent, not relevant, not connected, irrational or invalid for any other reason whatsoever, the detention could be sustained on the remaining grounds, that principle no longer holds goods. [63A-C] B C

Shibban Lal Saxena v. *State of Uttar Pradesh & Ors.*, [1954] S.C.R. 418; *Dr. Ram Manohar Lohia* v. *State of Bihar & Ors.*, [1966] 1 S.C.R. 709 and *Pushkar Mukherjee & Ors.* v. *State of West Bengal*, [1969] 2 S.C.R. 635; referred to. D

Mohd. Shakeel Wahid Ahmed v. *State of Maharashtra & Ors.*, [1983] 2 S.C.R. 614; *Asha Devi* v. *K. Shivraj, Additional Chief Secretary*, [1979] 2 S.C.R. 215 and *Kurjibhai Dhanjibhai Patel* v. *State of Gujarat*, [1985] 1 Scale 964; distinguished. E

(c) Sufficiency of grounds is not for the Court but for the detaining authority for the formation of his subjective satisfaction that the detention of a person under s. 3(1) of the COFEPOSA Act is necessary with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange. The Act is a law relating to preventive detention. That being so, the power of detention exercisable under sub-s. (1) of s. 3 of the Act is subject to the limitations imposed by the Constitution. When the liberty of the subject is involved, it is the bounden duty of the court to satisfy itself that all the safeguards provided by the law have been scrupulously observed and that the subject is not deprived of his personal liberty otherwise than in accordance with law. Nevertheless, the community has a vital interest in the proper enforcement of its laws, particularly in an area such as conservation of foreign exchange and prevention of smuggling activities in dealing effectively with persons engaged in such smuggling and foreign exchange F G H

A rackteering by ordering their preventive detention and at the same time, in assuring that the law is not used arbitrarily to suppress the citizen of his right to life and liberty. The Government must therefore ensure that the constitutional safeguards of Art. 22(5) read with sub-s.(1) of s. 3 of the Act are fully complied with. [65A-B]

B *Mangalbhai Motiram Patel* v. *State of Maharashtra,* [1980] 4 S.C.C. 470 and *Narendra Purshotam Umrao* v. *B.B. Gujral,* [1979] 2 S.C.R. 315; relied on.

In the instant case there was no failure on the part of the Government to discharge its obligation under Art. 22(5). The relevant records of the Enforcement Directorate placed before us clearly show that there C was sufficient material for the formation of the subjective satisfaction of the detaining authority under sub-s.(1) of s. 3 of the Act. They also show that the detenu was afforded a reasonable opportunity for making an effective representation against his detention. [66C-D]

D 3. (a) Preventive detention is an extraordinary measure resorted to by the State on account of compulsive factors pertaining to maintenance of public order, safety of public life and the welfare of the economy of the country. The need for this extraordinary measure was realised by the founding fathers of the Constitution as an inevitable necessity and hence a specific provision has been made in cl. (3) of Art. E 22 providing for preventive detention. Placing the interests of the nation above the individual liberty of the anti-social and dangerous elements who constitute a grave menace to society by their unlawful acts, the preventive detention laws have been made for effectively keeping out of circulation the detenus during a prescribed period by means of preventive detention. The underlying object cannot be achieved if the detenu is F granted parole and brought out of detention. Even if any conditions are imposed with a view to restrict the movements of the detenu while on parole, the observance of those conditions can never lead to an equation of the period of parole with the period of detention. Due to the spectacular achievements in modern communication system, a detenu, while on parole, can sit in a room in a house or hotel and have contracts with G all his relations, friends and confederates in any part of the country or even any part of the world and thereby pursue his unlawful activities if so inclined. It will, therefore, be futile to contend that the period of parole of a detenu has all the trappings of actual detention in prison and as such both the periods should find a natural merger and they stand denuded of their distinctive characteristics. It will not be out of place to H point out here that inspite of the Criminal Procedure Code providing

for release of the convicted offenders on probation of good conduct, it expressly provides, when it comes to a question of giving set-off to a convicted person in the period of sentence, that only the actual pre-trial detention period should count for set-off and not the period of bail even if bail had been granted subject to stringent conditions. In contrast, in so far as preventive detentions under the COFEPOSA Act are concerned, it has been specifically laid down in s. 12(6) that a person against whom an order of detention has been passed shall not be released on bail or bail bond or otherwise and that any revocation or modification of the order of detention can be made by the Government in exercise of its power under s. 11. [78E-H; 79G]

(b) The question whether the period of parole should be treated as part of the detention period itself was elaborately considered by this Court in *Smt. Poonam Lata* v. *M.L. Wadhawan & Ors.*, and it was held therein that the period of parole has to be excluded in reckoning the period of detention under sub-s. (1) of s. 3 of the COFEPOSA Act. [78C]

Smt. Poonam Lata v. *M.L. Wadhawan & Ors. J.T.*, [1987] 2 S.C. 204, relied on.

4. The respondents have placed sufficient material before the Court to show that the alleged representation addressed to the President of India was neither filed by the detenu nor was it received at the President's Secretariat. The attempt to assail the order of detention on the ground of violation of the constitutional safeguard enshrined in Art. 22(5) and the violation of s. 11 of the Act by the Central Government is a well planned and ingenuous move on the part of the detenu. The facts revealed not only warrant an inference that the detenu and his associates have gone to deplorable lengths to create evidence favourable to the detenu but arouse convulsive thoughts in our minds about the efficiency and integrity of the concerned sections of the President's Secretariat. The case with which and the fascile manner in which the detenu's agent Ashok Jain claims to have entered the President's Secretariat and delivered the Dak and obtained an endorsement of acknowledgement in a copy of the representation and the length to which the concerned Secretariat staff have gone to give credence to the version of Ashok Jain not only reveals the deep fall in standards but also lack of security and vigilance. We feel fully persuaded to hold that this is a fit case in which the detenu, the petitioner, Ashok Jain and all other persons responsible for the fabrication of false evidence should be prosecuted for the offences committed by them. We defer the passing of

final orders on the application filed under s. 340, Cr. P.C. till the investigation by the Central Bureau of Investigation is completed. [80E-F; 82F-H; 83A-B]

APPELLATE/ORIGINAL JURISDICTION: Special Leave Petition (CRL.) No. 1370 of 1986.

From the Judgment and Order dated 23.5.1986 of the Bombay High Court in Crl. W.P. No. 385 of 1986.

AND

WRIT PETITION NO. 363 OF 1986.

(Under Article 32 of the Constitution of India).

G.L. Sanghi, D. Canteenwala, V.B. Agarwala, B.R. Agarwala and Miss Vijay Lakshmi Mannen for the Petitioner.

K. Parasaran, Attorney General, C.V. Subba Rao and A. Subba Rao for the Respondent.

The following Judgment of the Court was delivered:

This petition for special leave directed against the judgment and order of the Bombay High Court dated May 3, 1986, and the connected petition under Art. 32 of the Constitution raise common questions and therefore they are disposed of by this common order. The petitioner by a petition under Art. 226 filed before the High Court prayed for the issuance of a writ of habeas corpus which is also the prayer before us, for the release of her husband Mohanlal Jatia, who has been detained by an order of the Additional Secretary to the Government of India, Ministry of Finance, Department of Revenue dated December 13, 1985 under sub-s. (1) of s. 3 of the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974 on being satisfied that it was necessary to detain him with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange.

Intelligence gathered by the Directorate of Revenue Intelligence, Bombay was that one Subhash Gadia, the brother-in-law of the detenu Mohanlal Jatia, a very rich and prosperous businessman of Bombay, was under-invoicing the imports of yarn from Japan. On the

basis of the said information the officers of the Directorate of Revenue Intelligence and officers the Customs, Bombay searched his residential premises at A-121, Sea Lord Cuffe Parade, Colaba, Bombay under the Customs Act, 1962 on June 27, 1985 which resulted in seizure of certain documents. As the seized documents not only revealed violation of the provisions of the Customs Act but also indicated certain payments and transactions in violation of the Foreign Exchange Regulation Act, 1973, the matter was referred to the office of the Enforcement Directorate for purposes of investigation from the angle of the Foreign Exchange Regulation Act on October 24, 1985. The aforesaid Subhash Gadia was summoned under s. 40 of the Foreign Exchange Regulation Act and his statement was recorded by R.C. Singh, an officer of the Enforcement Directorate, Bombay on November 5, 1985. In his statement of even date, Subhash Gadia stated that he went to Japan in 1970 seeking employment with a proprietory concern known as Messrs Greenland Corporation, Tolo Building, Osaka, Japan owned by a Nepali national and was engaged in exporting yarn, fibre, fabrics, chemicals etc. to India and Middle-East countries. Messrs J.M. Trading Corporation, 701, Tulsiani Chambers, 212 Nariman Point, Bombay (of which Mohanlal Jatia is a partner) are the sole-selling agents of Messrs Greenland Corporation for yarn and fibre. He further revealed that Satyanarayan Jatia, the elder brother of Mohanlal Jatia who is the partner of Messrs J.M. Trading Corporation, Bombay had been staying in Japan for some 35 years and was the sole representative of Messrs Greenland Corporation in Japan. While explaining the entries in the seized documents from his residence on June 27, 1985, Subhash Gadia admitted that the bunch marked S.G. 6 containing pages 1 to 94 are written by him in his own writing and that these contained accounts relating to his trade or business including imports and cash transactions and payments. He further confirmed that all the transactions reflected in these documents were his real business transaction dealings and some of which were not reflected in his regular account books. While explaining page 94 of the seized bunch S.G. 4, he stated that this page contained coded account in Indian rupees of his firm Messrs Piyush Corporation and that on the left side of this page credit entries were shown in Indian rupees with two zeros (00) missing and that while writing his account he had deleted two zeros in the credit side as well as debit side (right side) of the page. While decoding the codes he stated that the figure 8582/38 written on the right hand side was actually Rs.8,58,238 and this amount had been debited against A/S investment. Further, that A/S investment was his private investment abroad in US dollars which had been utilised by him for under-invoicing of several imports etc.

A B C D E F G H

Paragraph 44 of the grounds of detention revealed transactions relating to the detenu Mohanlal Jatia and it is extracted:

"44. When confronted with the documents seized from Subhash Gadia's residence even though you have denied any connection in respect of various unauthorised transactions between you, Greenland Corporation, Japan and others abroad, but the following documents clearly revealed that you have been indulging in various unauthorised transactions in violations of provisions of Foreign Exchange Regulation Act, 1973.

A.	*Page 338* S.G. 6	Trial Balance of Greenland Corporation entries of ML, GN, RN, R.G.T. and Gadia admits before that they are Jatia's account.	
B.	,,	M.L. Jatia's i.e. your account maintained in Japan, however, you admit receipt of Gifts by your children such as T.V., Video and M.V. Parts.	
C.	*Page 215* S.G. 6	Keeping U.S. $ 2 lakhs in fixed deposit on 2.6.83 in Kamal Account, also including 20 lakhs $ (dollars).	
D.	*Page 335* S.G. 6	American dollar account as on 31.1.1984.	
E.	*Page 318* S.G. 6	Account in Japanese Yen total of 141147.27.	Final position of Bombay.
		F.D.R. amount of Japanese Yen 10931471.16 to be equally divided between Yen, GN, SN and Laxmiji account/ Capital account.	

F. *Page 214-15* S.G. 6 U.S. $ 78000/- converted into Rs.9,16,500/- commission of." A

The Additional Secretary to the Government of India, Ministry of Finance, in exercise of his powers conferred by sub-s. (1) of s. 3 of the Conservation of Foreign Exchange and Prevention of Smuggling B Activities Act, 1974 ('COFEPOSA') ordered the detention of the aforesaid Mohanlal Jatia by an order dated December 13, 1985 on being satisfied that it was necessary to detain him "with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange". The petitioner thrice approached the High Court with petitions under Art. 226 of the Constitution seeking to C challenge the impugned order of detention. Immediately after the passing of the impugned order i.e. on December 16, 1985, she moved the first of these petitions being W.P. No. 2530/85 for an appropriate writ or direction to quash the impugned order of detention and applied for stay. The Writ Petition was admitted but stay was refused. On appeal, a Division Bench in Writ Appeal No. 1162/85 granted interim stay till D the disposal of the appeal. On February 28, 1986 the Division Bench dismissed the appeal as well as the Writ Petition. By its subsequent order dated March 4, 1986 the Division Bench granted stay of execution upto April 4, 1986 on certain terms and conditions. The petitioner filed a petition under Art. 136 in this Court for grant of special leave being SLP No. 3742/86. The Court by its order dated April 3, 1986 E dismissed the petition and ordered the detenu to appear before the Commissioner of Police, Bombay on the next day i.e. on April 4, 1986 when the impugned order of detention was to be served upon him and directed that the impugned order was to become effective. The further direction made by this Court was that the detenu should immediately be released on parole for a period of 10 days subject to certain terms F and conditions. On April 4, 1986 the detenu appeared before the Commissioner of Police, Bombay when he was served with the impugned order of detention together with the grounds of detention and the relevant documents. In compliance with the direction of this Court, the detenu was released on parole. On April 7, 1986 the petitioner filed second petition under Art. 226 of the Constitution G being WP No. 385/86 for quashing the impugned order of detention along with an application for extending the period of parole. On April 14, 1986 the parole period having expired, the detenu was taken into custody and lodged in the Central Prison, Bombay. The Writ Petition came up for hearing before the High Court on April 18, 1986 and admitted but the application for extending the period of parole was H

A rejected. Aggrieved by the refusal of interim relief, the petitioner again moved this Court under Art. 136 of the Constitution which was dismissed as withdrawn.

It appears that the impugned order of detention was mainly challenged on two grounds, namely: (1) There was no material on which B the satisfaction of the detaining authority could be reached that the detention of the detenu was necessary under s. 3(1) of the COFEPOSA with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange. And (2) There was total non-application of mind on the part of the detaining authority to the material on record, and in particular to the factual mis-C statements contained in paragraph 44 of the grounds of detention as detailed in entries 'A to F'. The Division Bench of the High Court did not feel impressed with any of these submissions and by its judgment and order dated May 2/3, 1986 dismissed the Writ Petition. Thereafter, on May 6, 1986 the petitioner filed the present petition under Art. 136 of the Consitution. On July 11, 1986 she also filed a petition under D Art. 32 challenging the continued detention of her husband. On July 18, 1986 the Court issued notice both on the Special Leave Petition as well as the Writ Petition and in the meanwhile directed that the petitioner's husband be released on parole for a week. The Court by its subsequent order dated July 25, 1986 extended the period of parole till August 20, 1986.

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The Writ Petition filed in this Court on July 11, 1986 is principally based on the ground that there was failure on the part of the detaining authority to consider the alleged representation dated April 11, 1986 made by the detenu against the impugned order of detention addressed to the President of India which was presented through one F Ashok Jain at the President's Secretariat on April 15, 1986 and there had thus been an infraction of the constitutional safeguards enshrined in Art. 22(5) and s. 11 of the COFEPOSA which rendered the continued detention of the detenu without the due process of law and thus illegal, unconstitutional and void. The other substantial question raised is that R.C. Singh was not a gazetted officer of Enforcement G within the meaning of s. 40 of the Act and therefore the statements recorded by him could not be regarded as valid statements under s. 40 and thus did not form the basis upon which the satisfaction of the detaining authority could be reached.

The respondents have filed a counter-affidavit sworn by S.K. H Chaudhary, Under Secretary to the Government of India, Ministry of

Finance, Department of Revenue controverting the allegation that the detenu addressed any such representation to the President of India or that the alleged representation was received at the President's Secretariat. It has been averred that the President's Secretariat has informed the Ministry of Finance, Department of Revenue that no such representation was received from the detenu. Along with the counter-affidavit, the respondents have filed copies of the letter of the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue dated August 4, 1986 addressed to the Under Secretary, President's Secretariat and of the reply of even date sent by the Under Secretary, President's Secretariat to him which shows that no such representation had been received in the President's Secretariat, as alleged. They have also filed a note explaining the manner in which the dak is acknowledged at the President's Secretariat. There is a further affidavit filed by K.C. Singh, Deputy Secretary to the President of India explaining the manner of handling the dak at the Rashtrapati Bhawan. The petitioner has filed an affidavit of Ashok Jain claiming to be a friend of the Jatia family supporting the assertion that he handed over the representation in person at the Rashtrapati Bhawan on April 15, 1986.

During the pendency of the proceedings, the Union Government has made an application under s. 340 of the Code of Criminal Procedure, 1973 for prosecution of the persons responsible for forging the document purporting to be the alleged representation made by the detenu under s. 8(b) of the COFEPOSA on April 15, 1986 as, in fact, no such representation was ever made, and for making certain interpolations in the dak register kept at the President's Secretariat. They have produced in a sealed envelope the original dak register maintained at the Rashtrapati Bhawan in which the alleged interpolations have been made. We are informed that the matter has been handed over to the Central Bureau of Investigation for investigation. We shall deal with the application under s. 340 of the Code later.

In support of these petitions, learned counsel has mainly advanced the following contentions, namely: (1) As is evident from the grounds of detention, the detaining authority relied upon the statements recorded by R.C. Singh on the assumption that they were valid statements under s. 40 of the Act although they were in reality not so, inasmuch as R.C. Singh was not a 'gazetted officer of Enforcement' within the meaning of s. 40 and therefore there was no material on which the satisfaction of the detaining authority could be reached. (2) In a habeas corpus petition, the burden was entirely upon the respon-

A dents to produce the relevant records and to substantiate that the detention was strictly according to law. The failure on the part of the respondents to produce the relevant notification showing that R.C. Singh was a gazetted officer of Enforcement within s. 40 of the FERA when he recorded the statements in question must necessarily lead to the inference that he was not a gazetted officer of Enforcement. (3) B The impugned order of detention was void *ab initio* and it could not be sustained by recourse to the *de facto* doctrine or any assumption that R.C. Singh was acting under the colour of his office as a gazetted officer of Enforcement or in treating the statements to be valid being relatable to s. 39(b) of the FERA. (4) It is not possible to predicate to what extent, and in what manner, the mind of the detaining authority C was influenced by his wrongful assumption that the statements recorded by R.C. Singh who was not a gazetted officer of Enforcement, were statements made under s. 40 of the FERA, and even assuming that the statements recorded by R.C. Singh could be treated to be statements relatable to s. 39(b) of the FERA, it is not possible to say whether the detaining authority would have based his satisfaction D upon such material. (5) There was non-application of mind on the part of the detaining authority as the grounds of detention are based on several factual misstatements. According to the learned counsel, the factual errors were self-evident as the entries relied upon in paragraph 4 of the grounds of detention, do not find place in the account books of Messrs Greenland Corporation. The failure of the Central Govern- E ment to place before the detaining authority, the original account books of Messrs Greenland Corporation, deprived the detaining authority to apply his mind to the correctness or otherwise of the facts stated therein. (6) There was infraction of the constitutional safeguards enshrined in Art. 22(5) inasmuch as there was failure on the part of the detaining authority to consider the representation filed by F the detenu under s. 8(b) of the COFEPOSA through one Ashok Jain and received at the President's Secretariat on April 15, 1986 and therefore the impugned order of detention was vitiated and the continued detention of the detenu was rendered illegal and void. Other subsidiary questions were also raised. Having given the matter our anxious consideration, we are of the considered opinion that none of the con- G tentions can prevail.

In order to deal with the rival contentions advanced, it is necessary to set out the relevant provisions of the Foreign Exchange Regulation Act, 1973. The Foreign Exchange Regulation Act, 1973 is an Act, as reflected in the long title, to consolidate and amend economic H development of the country. The legislation has been brought in to

implement the Government policy for conservation of foreign exchange and for removing the difficulties in implementing the same. The provisions of ss. 3, 4 and 5 deal with (i) classes of officers of Enforcement; (ii) appointment and powers of officers of Enforcement and (iii) entrustment of functions of Director or other officer of Enforcement. These provisions provide as follows:

"3. *Classes of officers of Enforcement*—There shall be the following classes of officers of Enforcement, namely:-

(a) Directors of Enforcement;

(b) Additional Directors of Enforcement;

(c) Deputy Directors of Enforcement;

(d) Assistant Directors of Enforcement; and

(e) Such other class of officers of Enforcement as may be appointed for the purposes of this Act."

"4. *Appointment and powers of officers of Enforcement.*:—(1)The Central Government may appoint such persons as it thinks fit to be officers of Enforcement.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise a Director of Enforcement or an Additional Director of Enforcement or a Deputy Director of Enforcement or an Assistant Director of Enforcement to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement.

(3) Subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act."

"5. *Entrustment of functions of Director of other officer of Enforcement:-* The Central Government may, by order and subject to such conditions and limitations as it thinks fit to impose, authorise any officer of customs or any Central Excise Officer or any police officer or any other officer of the Central Government or a State Government to exercise such of the powers and discharge such of the duties of the Director of Enforcement or any other officer of Enforce-

ment under this Act as may be specified in the order."

S. 39 deals with the power of the Director of any other officer of Enforcement to examine persons and provides:

> "39. *Power to examine persons*—The Director of Enforcement or any other officer of Enforcement authorised in this behalf by the Central Government, by general or special order, may, during the course of any investigation or proceeding under this Act,—
>
> (a) require any person to produce or deliver any document relevant to the investigation or proceeding;
>
> (b) examine any person acquainted with the facts and circumstances of the case."

Sub-s. (1) of s. 40 reads as follows:

> "40. *Power to summon persons to give evidence and produce documents*—(1) Any gazetted officer of Enforcement shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document during the course of any investigation or proceeding under this Act."

The main thrust of the argument of Shri G.L. Sanghi, learned counsel appearing for the petitioner revolves around mainly three aspects: (1) R.C. Singh was not a Gazetted Officer of Enforcement and therefore statements recorded by him had no evidentiary value and thus they could not form the basis upon which the satisfaction of the detaining authority could be reached. (2) There was total non-application of mind by the detaining authority to several factual mis-statements as detailed in entries 'A to F' in the grounds of detention which vitiated the impugned order of detention. And (3) The failure of the sponsoring authority to forward the account books seized during the course of search at the residential premises of Subhash Gadia shows that the detaining authority proceeded to make the impugned order of detention without due application of mind. According to the learned counsel, if there is one principle more firmly settled than any other in this field of jurisprudence relating to preventive detention, it is that even if one of the grounds or reasons which led to the subjective satisfaction of the detaining authority is non-existent or misconceived

or irrelevant, the order of detention would be invalid since it is not possible to predicate as to whether the detaining authority would have made an order for detention even in the absence of non-existent or irrelevant ground. His contention is that the principle enunciated by this Court some 30 years ago in *Shibban Lal Saksena* v. *The State of Uttar Pradesh & Ors.*, [1954] SCR 418 and in *Dr. Ram Manonar Lohia* v. *State of Bihar & Ors.*, [1966] 1 SCR 709 which it reiterated later in *Pushkar Mukherjee & Ors.* v. *The State of West Bengal,* [1969] 2 SCR 635 still holds good despite the change in the law brought about by the introduction of s. 5A of the Act that though one or more of the grounds of detention were found to be vague, non-existent, not relevant, not connected, irrational or invalid for any other reason whatsoever, the detention could be sustained on the remaining grounds. He seeks to draw sustenance from the decision of the Constitution Bench of this Court in *Mohd. Shakeel Wahid Ahmed* v. *State of Maharashtra & Ors.*, [1983] 2 SCR 614. We are afraid, the contention cannot prevail. The decision in *Mohd. Shakeel's* case is clearly distinguishable.

In *Mohd. Shakeel's* case, three of the four grounds of detention on which the appellant was detained were held by the High Court to be bad for one reason or another but it held that the remaining ground did not suffer from any defect and was enough to sustain the order of detention. On appeal, Shri Jethmalani, learned counsel for the detenu, sought to challenge the constitutional validity of s. 5A of the Act and the case was therefore referred to a Constitution Bench. At the hearing, Shri Jethmalani confined his submission to an altogether different point which ultimately prevailed, namely, that the remaining ground of detention was also bad for the reason that there was failure on the part of the State Government to place before the detaining authority the opinion which the Advisory Board had recorded in favour of another detenu Shamsi who was also detained for his involvement in the same transaction on an identical ground based on similar and identical facts. It was held that although the opinion of the Advisory Board that there was no sufficient cause for Shamsi's detention may not have been binding on the detaining authority which ordered the detention of the detenu, but the opinion of the Advisory Board in Shamsi case was an important consideration which should and ought to have been taken into account by the detaining authority before passing the order of detention in that case. It was observed that the Court could not exclude a reasonable probability that since the Advisory Board had not sustained Shamsi's detention on a ground which was common to him and the detenu, the detaining authority would have, if at all, passed the order of detention against the detenu

A on the three remaining grounds which had been held to be bad. The decision is Shamsi's case turned on its own facts and certainly is not an authority for the proposition contended for. So also in *Ashadevi* v. *K. Shiveraj, Addl. Chief Secretary to the Government of Gujarat & Anr.*, [1979] 2 SCR 215 on which reliance was placed, there was failure on the part of the State Government to apprise the detaining authority of the B fact that the detenu's request to have the presence of and consultation with his counsel had been refused, and that the confessional statement upon which the detaining authority had relied, had been retracted while he was in judicial custody, rendered the impugned order of detention invalid and illegal because there was complete non-application of mind by the detaining authority to the most material and vital C facts. The other decision in *Kurjibhai Dhanjibhai Patel* v. *State of Gujarat & Ors.*, [1985] 1 Scale 964 is also distinguishable. In that case, there was failure on the part of the sponsoring authority in not furnishing the relevant material to the detaining authority, namely, the reply of the detenu to the show cause notice issued in the adjudication proceedings undertaken by the Customs authorities which was held to D be the most relevant material which ought to have been placed before it. It was held that the question was not whether the material which was withheld from the detaining authority formed part of any separate or independent proceedings like the adjudication proceedings as held by the High Court, but the real question was whether the material was relevant and would have influenced the mind of the detaining autho- E rity. In the counter-affidavit filed by the Under Secretary to the Government of India, Ministry of Finance it had been averred that the representation of the detenu along with his reply to the show cause had been considered by the Advisory Board and after considering all the facts it was of the opinion that there was sufficient cause for detention. It was held that such *ex post facto* consideration of the detenu's reply F to the show cause could not fill up the lacuna of non-consideration thereof by the detaining authority before passing the order of detention. Both these decisions proceed on the well-settled principle that if material and vital facts which would influence the mind of the detaining authority one way or the other on the question whether or not to make the detention order are not placed, it would vitiate its subjective G satisfaction rendering the detention order illegal. We fail to see the relevance of these decisions to the present case.

Before touching upon the merits, we wish to make a few observations. It is not suggested at the bar that the grounds for detention do not set out the facts with sufficient degree of particularity or that they H do not furnish sufficient nexus for forming the subjective satisfaction

of the detaining authority. The impugned order of detention was therefore not challengned on the ground that the grounds furnished were not adequate or sufficient for the satisfaction of the detaining authority or for the making of an effective representation. Sufficiency of grounds is not for the Court but for the detaining authority for the formation of his subjective satisfaction that the detention of a person under s. 3(1) of the Act is necessary with a view to preventing him from acting in any manner prejudicial to the augmentation of foreign exchange. In *Mangalbhai Motiram Patel* v. *State of Maharashtra & Ors.*, [1980] 4 SCC 470, it was observed at p. 477 of the Report:

> "The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 is enacted to serve a laudable object. It is a measure to prevent smuggling of goods into or out of India and to check diversion of foreign exchange by immobilising the persons engaged in smuggling, foreign exchange racketeering and related activities by preventive detention of such persons. Violations of foreign exchange regulations and smuggling activities are having an increasingly deleterious effect on the national economy and thereby a serious adverse effect on the security of the State. Such economic offences disrupt the economic life of the community as a whole. It is necessary to protect the basic economic order of the nation. Nevertheless, the Act is a law relating to preventive detention. That being so, the power of detention exercisable under sub-s. (1) of s. 3 of the Act is subject to the limitations imposed by the Constitution. As observed by this Court in *Narendra Purshotam Umrao* v. *B.B. Gujral*, [1979] 2 SCR 315, when the liberty of the subject is involved, whether it is under the Preventive Detention Act or the Maintenance of Internal Security Act or the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act or any other law providing for preventive detention,"
>
> > "it is the bounden duty of the court to satisfy itself that all the safeguards provided by the law have been scrupulously observed and that the subject is not deprived of his personal liberty otherwise than in accordance with law."

Nevertheless, as observed by the Court in *Mangalbhai Motiram Patel's* case:

A "The community has a vital interest in the proper enforcement of its laws, particularly in an area such as conservation of foreign exchange and prevention of smuggling activities in dealing effectively with persons engaged in such smuggling and foreign exchange rackteering by ordering their preventive detention and at the same time, in
B assuring that the law is not used arbitrarily to suppress the citizen of his right to life and liberty."

The Government must therefore ensure that the constitutional safeguards of Art. 22(5) read with sub-s. (1) of s. 3 of the Act are fully complied with. In the instant case, however, there was no infraction of
C the constitutional safeguards contained in Art. 22(5). We are satisfied that there was no failure on the part of the Government to discharge its obligation under Art. 22(5). The relevant records of the Enforcement Directorate have been placed before us. They clearly show that there was sufficient material for the formation of the subjective satisfaction
D of the detaining authority under sub-s. (1) of s. 3 of the Act. They also show that the detenu was afforded a reasonable opportunity for making an effective representation against his detention.

It has long been established that the subjective satisfaction of the detaining authority as regards the factual existence of the condition on
E which the order of detention can be made i.e. the grounds of detention constitutes the foundation for the exercise of the power of detention and the Court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is based. Nor can the Court, on a review of the grounds, substitute its own opinion for that of the authority. But this does not imply
F that the subjective satisfaction of the detaining authority is wholly immune from the power of judicial review. It inferentially follows that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the executive, the Court can always examine whether the requisite satisfaction was arrived at by the authority; if it is not, the condition precedent to the exercise of
G the power would not be fulfilled and the exercise of the power would be bad. The simplest case is where the authority has not applied its mind at all; in such a case, the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied. See: *Khudi Ram Das* v. *State of West Bengal & Ors.*, [1975] 2 SCR 832, following the case of *Emperor* v. *Shibnath Banerjee &*
H *Ors.*, AIR (1943) FC 75.

The substantive contention of learned counsel for the petitioner has therefore been that there was non-application of mind on the part of the detaining authority to the grounds of detention and that there was violation of the constitutional safeguards contained in Art. 22(5). In essence, three questions arise, namely: (1) Whether the impugned order of detention was based on no material inasmuch as R.C. Singh was not a gazetted officer of Enforcement and therefore the statements recorded by him had no evidentiary value and thus could not form the basis upon which his subjective satisfaction could be reached; and if not, whether the statements recorded by him could be treated to be statements relatable to s. 39(b) of the FERA and could still form the basis for such satisfaction. (2) Whether there was non-application of mind on the part of the detaining authority and therefore the impugned order of detention was bad as there were factual mis-statements detailed in items A to F of the grounds of the grounds of detention. And (3) Whether there was infraction of the constitutional safeguards contained in Art. 22(5) due to the failure on the part of the Central Government to consider the representation filed by the detenu under s. 8(b) read with s. 11 of the Act, alleged to have been presented through one Ashok Jain and received at the President's Secretariat on April 15, 1986 and therefore the continued detention of the petitioner was rendered invalid and unconstitutional. We wish to deal with these contentions in seriatim in the order in which they have been advanced.

On the first of these questions, we have no hesitation in repelling the contention that there was no material on which the detaining authority could have based the subjective satisfaction under sub-s. (1) of s. 3 of the Act. The argument of the learned counsel stems from the hypothesis that R.C. Singh was not a gazetted officer of Enforcement within the meaning of s. 40 of the FERA when he issued summons and recorded the statements and that even assuming that the statements recorded by R.C. Singh could be treated to be statements falling under s. 39(b) of the Act, it is not possible to say whether the detaining authority would have based his satisfaction upon such material. The learned counsel places emphasis on the word 'gazetted' in s. 40(1) and contends that R.C. Singh for the first time became a gazetted officer of Enforcement on January 13, 1986 when his appointment as such was notified. According to him, the detaining authority has relied upon the statements purporting to be under s. 40(1) though in reality they were not so. According to the learned counsel, there is a sanctity attached to statements recorded under s. 40(1) of the FERA. That is so, because every person summoned by a gazetted officer of Enforcement to make a statement under sub-s. (1) of s. 40 is under a compulsion to state the

truth on the pain of facing prosecution under sub-s. (3) thereof. Further, sub-s. (4) provides that every such investigation or proceeding as aforesaid, shall be deemed to be judicial proceeding within the meaning of ss. 193 and 224 of the Indian Penal Code, 1860. Such being the legal position, the learned counsel contends that while a statement recorded by a gazetted Enforcement Officer under s. 40(1) can furnish sufficient and adequate material on the basis of which the detaining authority can form his opinion, it may not be so with regard to statements recorded by an officer of Enforcement authorised in that behalf under s. 39(b) of the FERA.

On the other hand, learned counsel for the respondents contends that there is no basis for the assertion that there was no material on which the detaining authority could have formed the subjective satisfaction under sub-s. (1) of s. 3 of the Act or that there was any factual mis-statement in the grounds which showed that there was non-application of mind on his part. We may briefly summarise his submission. Factually, the statements were there and the detaining authority was entitled to act upon the statements. The question whether the statements could be acted upon or not is not for the Court. A person summoned to make a statement under s. 40(1) has the right to object to the power and authority of the officer issuing the summons. It must therefore logically follow that when the persons summoned like Subhash Gadia and Mohanlal Jatia were examined by R.C. Singh it was not open to others to raise objection that R.C. Singh was not competent to record the statements under s. 40(1). The statements made by them were not hit by s. 25 of the Evidence Act, 1872 and could be used against the detenu. There is no substance in the contention that R.C. Singh was not a gazetted officer of Enforcement. The word 'gazetted' does not imply that the appointment of such officer should be published in the official Gazette. All that is required by s. 40(1) of the FERA that such officer recording the statement must be holding a gazetted post of an officer of Enforcement, in contradistinction to that of an Assistant Officer of Enforcement which is a non-gazetted post. It cannot be disputed that R.C. Singh had been appointed as Enforcement Officer on an ad hoc basis on November 24, 1982 and he continued to function as such at the time when he recorded the statement under s. 40(1). The subsequent notification issued by the Enforcement Directorate on January 13, 1986 was for his appointment on a regular basis. What is of significance, it is said, is that at the time when R.C. Singh recorded the statements he was holding the gazetted post of an Enforcement Officer and discharging

the functions attached to the post. There is, in our opinion, consideration force in these submissions. A

In any event, the learned counsel further contends that R.C. Singh was clothed with the insignia of office and he was purporting to exercise the functions and duties of a gazetted officer of Enforcement under s. 40(1) of the FERA and therefore the *de facto* doctrine was attracted. He relies upon the decision of this Court in *Gokaraju Rangaraju* v. *State of Andhra Pradesh*, [1981] 3 SCR 474 enunciating the *de facto* doctrine, born of necessity and public policy to prevent needless confusion and endless mischief. In other words, he contends that where an officer acts under the law, it matters not how the appointment of the incumbent is made so far as the validity of his acts are concerned. B C

We are inclined to the view that in this jurisdiction there is a presumption of regularity in the acts of officials and that the evidential burden is upon him who asserts to the contrary. The contention that R.C. Singh was not a gazetted officer of Enforcement within the meaning of s. 40(1) of the FERA appears to be wholly misconceived besides being an afterthought. The validity of appointment of R.C. Singh to be an officer of Enforcement under this Act cannot be questioned. The Directorate of Enforcement have along with the counter-affidavit placed on record Establishment Order No. 87/82 dated November 24, 1982 which shows that R.C. Singh along with 25 others was appointed by the Director to be an officer of Enforcement on an ad-hoc basis against 30 per cent deputation quota. The subsequent Establishment Order No. 84/86 dated January 13, 1986 relied upon by the petitioner shows that R.C. Singh along with 29 others was appointed as an officer of Enforcement on an officiating basis. It is not suggested that these officers were not authorised by the Central Government to discharge the functions and duties of an officer of Enforcement. Under the scheme of the Foreign Exchange Regulation Act, the Directorate of Enforcement is primarily charged with the duty of administering the Act. S. 3 defines different classes of officers of Enforcement. The expression 'officers of Enforcement' as defined in s. 3 embraces within itself not only (a) a Director (b) Additional Director (c) Deputy Director and (d) Assistant Director of Enforcement but also (e) such other class of officers of Enforcement as may be appointed for the purpose of the Act. Obviously, R.C. Singh who was Assistant Enforcement Officer having been appointed as an officer of Enforcement on an ad-hoc basis in 1982 fell within the category 'such other class of officers' covered by s. 3(e). Sub-S.(1) of s. 4 provides that the D E F G H

A Central Government may appoint such persons, as it thinks fit, to be officers of Enforcement. Sub-s. (2) thereof provides for delegation of such power of appointment by the Central Government to a Director of Enforcement or an Additional Director of Enforcement etc. to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement. Sub-s. (3) of s. 4 of the FERA provides that B subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under the Act. Undoubtedly R.C. Singh was discharging his duties and functions as a gazetted officer of Enforcement under s. 40(1) of the FERA when he recorded the statements in question. In our opinion, the expression C 'gazetted officer of Enforcement' appearing in s. 40(1) must take its colour from the context in which it appears and it means any person appointed to be an officer of Enforcement under s. 4 holding a gazetted post. There is no denying the fact that R.C. Singh answered that description. The contention that there was no material on the basis of which the detaining authority could have based his subjective satis- D faction on the ground that R.C. Singh was not a gazetted officer of Enforcement within the meaning of s. 40(1) of the FERA cannot prevail.

Even if the contention that R.C. Singh was not a gazetted officer of Enforcement within the meaning of s. 40(1) of the FERA were to E prevail, it would be of little consequence. In this case during the investigation statements were recorded by B.T. Gurusawhney, Assistant Director of Enforcement and R.C. Singh. There is no dispute regarding the competence of B.T. Gurusawhney to record statements under s. 40(1) of the FERA and the only question is as to whether the statements recorded by R.C. Singh under s. 40(1) could be acted upon. F If evidence is relevant the Court is not concerned with the method by which it was obtained. In *Barindra Kumar Ghose & Ors.* v. *Emperor*, ILR (1910) 37 Cal. 467 Sir Lawrence Jenkins repelling the contention that the Court must exclude relevant evidence on the ground that it was obtained by illegal search or seizure, said at p. 500 of the Report: "Mr. Das has attacked the searches and has urged that, even if there G was jurisdiction to direct the issue of search warrants, as I hold there was, still the provisions of the Criminal Procedure Code have been completely disregarded. On the assumption he has contended that the evidence discovered by the searches is not admissible, but to this view I cannot accede. For without in any way countenancing disregard of the provisions prescribed by the Code, I hold that what would other- H wise be relevant does not become irrelevant because it was discovered

in the course of a search in which those provisions were disregarded". The question arose before the Judicial Committee of the Privy Council in the well-known case of *Kuruma* v. *Reginam*, [1955] 1 All ER 236. In dealing with the question Lord Goddard, CJ. delivering the judgment of the Privy Council said:

> "The test to be applied, both in civil and in criminal cases, in considering whether evidence is admissible, is whether it is relevant to the matters in issue. If it is, it is admissible and the Court is not concerned with how it was obtained."

The learned CJ. further observed:

> "In their Lordships' opinion, when it is a question of the admission of evidence strictly it is not whether the method by which it was obtained is tortious but excusable, but whether what has been obtained is relevant to the issue being tried."

Again, the House of Lords in *R.V. Sang*, [1979] 2 All ER 1222 reiterated the same principle that if evidence was admissible it matters not, how it was obtained. Lord Diplock after considering various decisions on the point observed that however much the judge may dislike the way in which a particular piece of evidence was obtained before proceedings were commenced, if it is admissible evidence probative of the accused's guilt 'it is no part of his judicial function to exclude it for this reason' and added:

> "He has no discretion to refuse to admit relevant admissible evidence on the ground that it was obtained by improper or unfair means. The court is not concerned with how it was obtained."

There is a long line of authority to support the opinion that the Court is not concerned with how evidence is obtained. The rule is however subject to an exception. The Judge has a discretion to exclude evidence procured, after the commencement of the alleged offence, which although technically admissible appears to the Judge to be unfair. The classical example of such a case is where the prejudicial effect of such evidence would be out of proportion to its evidential value. Coming nearer home, this Court in *Magraj Patodia* v. *R.K. Birla & Ors.*, [1971] 2 SCR 118 held that the fact that a document which was procured by improper or even illegal means could not bar its admissibility

A provided its relevance and genuineness were proved. In *R.M. Malkani* v. *State of Maharashtra,* [1973] 2 SCR 417 the Court applying this principle allowed the tape-recorded conversation to be used as evidence in proof of a criminal charge. In *Pooran Mal etc.* v. *Director of Inspection (Investigation) of Income-Tax Mayur Bhavan, New Delhi & Ors.,* [1974] 2 SCR 704 the Court held that the income-tax authorities B can use as evidence any information gathered from the search and seizure of documents and accounts and articles seized. This being the substantive law, it follows that the detaining authority was entitled to rely upon the statements recorded by R.C. Singh under s. 40(1) of the FERA. Even if R.C. Singh was not competent to record such statements under s. 40(1) of the FERA, the statements were clearly relat- C able to s. 39(b) of the Act. It cannot therefore be said that there was no material on which the detaining authority could have based his subjective satisfaction under sub-s. (1) of s. 3 of the Act.

We are unable to accept the submission of the learned counsel for another reason. Where an office exists under the law, it matters not D how the appointment of the incumbent is made, so far as validity of its acts are concerned. It is enough that he is clothed with the insignia of the office, and exercises its powers and functions. The official acts of such persons are recognised as valid under the *de facto* doctrine, born of necessity and public policy to prevent needless confusion and endless mischief. In *Gokaraju Rangaraju's* case, supra, Chinnappa Reddy, E J. explained that this doctrine was engrafted as a matter of policy and necessity to protect the interest of the public. He quoted the following passage from the judgment of Sir Ashutosh Mukerjee J. in *Pulin Behari* v. *King Emperor*, [1912] 15 Cal. LJ 517 at p. 574:

> F "The substance of the matter is that the *de facto* doctrine was introduced into the law as a matter of policy and necessity, to protect the interest of the public and the individual where these interests were involved in the official acts of persons exercising the duties of an office without being lawful officers. The doctrine in fact is necessary to maintain the supremacy of the law and to preserve peace and order G in the community at large."

The learned Judge also relied upon the following passage from the judgment of P. Govindan Nair, J. in *P.S. Menon* v. *State of Kerala & Ors.,* AIR (1970) Kerala 165 at p. 170;

H "This doctrine was engrafted as a matter of policy and

necessity to protect the interest of the public and individual involved in the official acts of persons exercising the duty of an officer without actually being one in strict point of law. But although these officers are not officers *de jure* they are by virtue of the particular circumstances, officers, in fact, whose acts, public policy requires should be considered valid." A B

The next substantive contention of learned counsel for the petitioner is that the so-called factual mis-statements which occur in paragrah 44 of the grounds of detention show that there was non-application of mind on the part of the detaining authority and he relies on the observations made in *Khudiram Das'* case that the subjective satisfaction of the detaining authority is not wholly immune from the judicial review and the Court can always examine whether the requisite satisfaction was arrived at by the authority; if it is not, the condition precedent to the exercise of the power would be bad. According to the rule laid down in *Khudiram Das'* case which proceeds on well-settled principles, the simplest case is whether the authority has not applied its mind and that is sufficient to vitiate the order of detention. It is submitted that this was a case of mistaken identity and there was no material before the detaining authority to show that the initials 'ML' in the various entries in the accounts of Messrs Greenland Corporation, Japan and the relative telex messages related to the detenu Mohanlal Jatia and not to the other ML meaning ML Kedia, the brother-in-law of Subhash Gadia. We are afraid, we cannot accept this line of argument. There is no warrant for the submission that the initials 'ML' refer to ML Kedia and not the detenu Mohanlal Jatia or that a wrong person has been placed under detention. There is no dispute whatever that the initials 'ML' refer to the detenu Mohanlal Jatia. When confronted during the interrogation with the initials 'ML' in the books of Messrs Greenland Corporation and the telex messages, the detenu admitted that the initials 'ML' or 'MLJi' in the various entries as well as the telex messages stand for himself i.e. Mohanlal Jatia. C D E F

As to the co-called factual mis-statements, the argument proceeds on the wrongful assumption that the facts stated in paragraph 44 of the grounds of detention are the 'grounds' when they are in reality nothing but 'facts'. The High Court has rightly observed that the facts stated in paragraph 44 of the grounds cannot be read in isolation and the grounds of detention have to be read as a whole with the accompanying documents and material. As is quite apparent, the ground of deten- G H

A tion was only one viz. that the detenu was engaged in activities prejudicial to the augmentation of foreign exchange and therefore it became necessary in the public interest to place him under detention. Sufficiency of grounds is not for the Court but for the detaining authority for the performance of his subjective satisfaction that the detention of the detenu Mohanlal Jatia under s. 3(1) of the Act was necessary. It B was a matter of legal inference to be drawn from several facts which appear in the grounds and the facts are not merely in paragraph 44 but also in other paragraphs. It will be seen that paragraph 44 merely recites that when the detenu was confronted with the documents recovered from a search of Subhash Gadia's residential premises and elsewhere, he denied the various transactions entered into between C him and Messrs Greenland Corporation, Japan and others abroad. It then goes on to state that the documents clearly revealed that he had been engaged in various unauthorised transactions in violation of the provisions of the Foreign Exchange Regulation Act.

According to the learned counsel, the mistakes which crept in the D proposal made by the initiating authority for the detention of the detenu recur in paragrah 44 of the grounds and it shows the casualness with which the grounds of detention were drawn which indicate non-application of mind. Although the argument at first blush appears to be attractive, but on deeper consideration does not stand to scrutiny. We wish to enumerate the so-called factual mis-statements listed as E Items A to F in paragraph 44 of the grounds and deal with them in seriatim. Item A at p. 338 of the seized bunch SG 6 is the trial balance-sheet of Messrs Greenland Corporation, Japan. On that page, there are various entries of ML, GN, RN and RG Jatia. It is mentioned by the detaining authority in paragraph 44 underneath Item A that Gadia 'admits' that they are Jatia's account. During interrogation Subhash F Gadia stated that bunch of documents SG 6 relates to Messrs Greenland Corporation, Japan and that these entries 'may be related to the Jatia family'. The detaining authority was not wrong in treating the words 'may be' in the context in which they appear as being an admission of fact made by the detenu. The detaining authority was entitled to make use of the decoding formula revealed by Subhash Gadia to G connect the detenu Mohanlal Jatia with the initials 'ML' appearing in various transactions, more so because the relative telex messages sent by Messrs Greenland Corporation were seized from the office premises of Messrs J.M. Trading Corporation, J.M. Textile Pvt. Ltd., Ramgopal Textile Pvt. Ltd., Ram Gopal & Sons, Ram Gopal Synthetics Pvt. Ltd., Kamal Trading Corporation, Kalpana Trading Corpora- H tion, Sudhir Trading Corporation, all situate at 701, Tulsiani Cham-

bers, 212, Nariman Point, Bombay and the detenu admittedly is closely connected with these concerns being Director or shareholder or a partner. The said documents disclose that the detenu Mohanlal Jatia with the initials 'ML' and his brothers GN, SN and RN, namely, Ganesh Narayan Jatia, Satya Narayan Jatia and Ram Niranjan Jatia are maintaining secret accounts with Messrs Greenland Corporation, Japan. They also clearly indicate that the detenu and his brothers were found to be engaged in transferring funds from or to India in an unauthorised manner on a very large scale. Subhash Gadia in his statement revealed that pp. 316, 317 and 318 of the seized document SG 6 are written in his handwriting and the account is in Yen. He further revealed that the said accounts relate to Satya Narayan Jatia, Ganesh Narayan Jatia and Mohanlal Jatia. The detenu was furnished a copy of the statement made by Subhash Gadia. As hereinbefore adumbrated, the detenu when confronted denied to have entered into the transaction. However, when confronted with the various entries appearing in the seized document SG 6 the detenu admitted that the initials 'ML' or 'MLJi' relate to him both in the accounts as well as in the telex messages. The various entries show transactions involving foreign exchange to the tune of several crores of rupees. For instance, at p. 318 of SG 6 appear the details of FDR account standing in the name of Satya Narayan, Ganesh Narayna and Mohanlal Jatia to be divided equally and the sum total of the amount shown is 1,09,37,471.16 Yen. The said figure also finds place at p. 278 of the file SG 6 which gives details how the figure 1,09,37,471.16 has been arrived at. In the telex message appearing at pp. 35 and 36 in the bunch of seized document SG 6 are given the details of the FDR account with instructions to work out the average rate of interest between the three brothers Satya Narayan, Ganesh Naryana and Mohanlal payable on the FDR for 1,09,37,471.16 Yen. Similarly, Laxmi Ji account with Messrs Greenland Corporation, Japan is a capital account of Satya Narayan, Ganesh Narayan and Mohanlal showing a capital investment of 48,62,96,325 Yen. We need not go into further details. The entries show the magnitude of the operation in foreign exchange carried on by the detenu.

We do not see any mistake of fact in Item B which relates to purchase of a TV 27" and a VCR. There is an entry at p. 338 of SG 6 showing that the detenu's account was debited with these items although the detenu in his statement asserted that they were gifted by his brother. That takes us to the effect of the mistake occurring in Item C at p. 215 of the seized documents that there is an entry showing that the detenu had a fixed deposit of US $ 2 lakhs. The entry reads: "ML 2

A lakhs A/S 11.75 dated 2.6.83". Even assuming that it was a mistake to have introduced the words "also including 20 lakhs $ (dollars)" in paragraph 44 of the grounds that would not by itself without more vitiate the impugned order of detention or necessarily show non-application of mind. Even so, the detaining authority was entitled to act upon the entry relating to US $ 2 lakhs for the formation of his B subjective satisfaction. Significance of these entries shows that the detenu was maintaining the secret account and had large sums of money in fixed deposits abroad. The detaining authority has charged the detenu with keeping US $ 2 lakhs in fixed deposit in Kamal Account which is the capital account of the detenu and his brothers in Messrs Greenland Corporation, Japan. The words "also including 20 C lakhs $ (dollars)" are no doubt not there in the books of accounts but they crept in the proposal and have been reproduced in paragraph 44 of the grounds. It is somewhat strange that these words should be introduced when they were not there in the books of accounts but the fact remains that there is a typographical error. The High Court rightly observes that a single typographical mistake about making a reference D to US $ 20 lakhs would not necessarily show the non-applicatin of mind when the entry of US $ 2 lakhs (dollars) is reflected in various places in the account such as ML Ji Khata P. 175 and Kamal Account P. 226, copies of which were furnished to the detenu. Even assuming that the words "also including 20 lakhs $ (dollars)" were introduced in paragraph 44 of the grounds that would not be a factor vitiating the im- E pugned order of detention. The detaining authority was still entitled to act upon the entry relating to fixed deposit of US $ 2 lakhs (dollars) for the formation of his subjective satisfaction.

As regards Items D and E, the contention of the petitioner is that reference to American Dollar account as on January 31, 1984 as per p. F 335 of SG 6 and Japanese Yen account: Final position at Bombay of 141147.27 set out at p. 318 thereof was totally unintelligible and was unconnected with the detenu nor had any relevance. The respondents have controverted this in the counter-affidavit filed by M.L. Wadhawan, Additional Secretary to the Government of India, Ministry of Finance. It is asserted that the aforesaid abstracts clearly indicate that G the detenu Mohanlal Jatia and his brothers were found to be engaged in transferring funds from or to India in an unauthorised manner on a very large scale. According to the statement of Subhash Gadia the American Dollar account is as per p. 335 of SG 6, the details whereof are given at p. 318 and the said amount is credited in the name of SN, GN and ML to be divided equally. The sum total of the amount shown H to be divided was 10937,471.16 Yen. This figure also appears at p. 278

of file SG 6 giving details as to how this figure 10937,471.16 Yen has been worked out. At p. 318 of SG 6 under the heading Laxmi Ji account, the sum total in Japanese Yen shown is 48,62,96,325 to be equally divided amongst SN, GN and ML. According to the statement of Subhash Gadia, the Laxmi Ji account was a capital account of SN, GN and ML with Messrs Greenland Corporation, Japan. The amount of 141147.27 apparently shown in Item E represents the detenu's share. However, the detenu expressed his inability to explain the said two accounts—American Dollar account and Laxmi Ji account and the telex messages. It appears that imports of yarn in India from Messrs Greenland Corporation, Japan were effected through Messrs J.M. Trading Company of which the detenu is a partner and there was either over-pricing of the goods in the invoices or some portion of commission was secretly kept with Messrs Greenland Corporation and was being utilised for differential treatment. It can hardly be asserted in view of the facts revealed in the counter-affidavit of the Additional Secretary, Ministry of Finance that the detenu was transferring funds either from or to India in a clandastine manner on a very large scale.

The remaining Item F at p. 315 of the bunch of documents marked SG 6 is a coded account maintained by the detenu under the name Kamal Account representing the capital investment of SN, GN and ML with Messrs Greenland Corporation. It relates to the entry "US $ 78,000 converted into Rs.9,16,500 commission of". At every place in the bunch of seized document SG 6 such as on the reverse of p. 215 there is an entry to the effect that US $ 78,000 were converted into Indian rupees @ Rs.11.75 equivalent to 9,16,500 and that the said amount was capitalised on 19.7.1983 in the name of GN. Paragraph 33 of the grounds involves the complicity of the detenu by making reference to a secret account maintained by SN, GN and ML to the effect: "It was found that all of you are engaged in transferring funds from or to India on a very large scale." In this coded account, the *modus operandi* adopted at every place is to delete two zeros from the converted Indian currency.

Learned counsel for the petitioner tried to spell out an argument that the use of the word 'or' shows that the ground was vague or indefinite. According to the learned counsel, it is quite apparent that the detaining authority was not definite as to the nature of payment i.e. whether the conversion of foreign exchange into rupees represented payments made or amounts received. Nothing really turns on this. The fact remains that the detneu had been admittedly keeping a secret account of foreign currency abroad without the permission of the Reserve Bank of India.

A It is quite apparent that the so-called factual mis-statements are not mis-statements at all. The High Court rightly held that the alleged mistakes or infirmities pointed out were not so material or serious in nature as to vitiate the impugned order of detention. As already indicated, sufficiency of the grounds is for the detaining authority and not for the Court. It cannot be said on a perusal of the grounds that there B was no material on which the detaining authority could have acted.

There still remains the further question whether the period of parole should be treated as part of the detention period itself. This question has been elaborately considered by this Court in *Smt. Poonam Lata* v. *M.L. Wadhawan & Ors.*, (J.T. 1987 (2) SC 204) to C which one of us (Sen, J.) was a party and it was held therein "that the period of parole has to be excluded in reckoning the period of detention under sub-section (1) of Section 3 of the Act" (Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974).

In addition to the reasons given therein we may add the follow- D ing by way of supplementary material. Though the element of detention is a common factor in cases of preventive detention as well as punitive detention, there is a vast difference in their objective. Punitive detention follows a sentence awarded to an offender for proven charges in a trial by way of punishment and has in it the elements of retribution, deterrence, correctional factor and institutional treatment E in varying degrees. On the contrary preventive detention is an extraordinary measure resorted to by the State on account of compulsive factors pertaining to maintenance of public order, safety of public life and the welfare of the economy of the country. The need for this extraordinary measure i.e. detention without trial was realised by the founding fathers of the Constitution as an inevitable necessity for safe- F guarding the interests of the public and the country and hence a specific provision has been made in clause (3) of Article 22 providing for preventive detention being imposed in appropriate cases notwithstanding the fundamental right of freedom and liberty guaranteed to the citizens by the Constitution. The entire scheme of preventive detention is based on the bounden duty of the State to safeguard the G interests of the country and the welfare of the people from the canker of anti-national activities by anti-social elements affecting the maintenance of public order or the economic welfare of the country. Placing the interests of the nation above the individual liberty of the anti-social and dangerous elements who constitute a grave menace to society by their unlawful acts, the preventive detention laws have been made for H effectively keeping out of circulation the detenus during a prescribed

period by means of preventive detention. The objective underlying preventive detention cannot be achieved or fulfilled if the detenu is granted parole and brought out of detention. Even if any conditions are imposed with a view to restrict the movements of the detenu while on parole, the observance of those conditions can never lead to an equation of the period of parole with the period of detention. One need not look far off to see the reason because the observance of the conditions of parole, wherever imposed, such as reporting daily or periodically before a designated authority, residing in a particular town or city, travelling within prescribed limits alone and not going beyond etc. will not prevent the detenu from moving and acting as a free agent during the rest of the time or within the circumscribed limits of travel and having full scope and opportunity to meet people of his choice and have dealings with them, to correspond with one and all and to have easy and effective communication with whomsoever he likes through telephone, telex etc. Due to the spectacular achievements in modern communication system, a detenu, while on parole, can sit in a room in a house or hotel and have contacts with all his relations, friends and confederates in any part of the country or even any part of the world and thereby pursue his unlawful activities if so inclined. It will, therefore, be futile to contend that the period of parole of a detenu has all the trappings of actual detention in prison and as such both the periods should find a natural merger and they stand denuded of their distinctive characteristics. Any view to the contrary would not only be opposed to realities but would defeat the very purpose of preventive detention and would also lead to making a mockery of the preventive detention laws enacted by the Centre or the States. It will not be out of place to point out here that in spite of the Criminal Procedure Code providing for release of the convicted offenders on probation of good conduct, it expressly provides, when it comes to a question of giving set-off to a convicted person in the period of sentence, that only the actual pre-trial detention period should count for set-off and not the period of bail even if bail had been granted subject to stringent conditions. In contrast, in so far as preventive detentions under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, are concerned, the Act specifically lays down that a person against whom an order of detention has been passed shall not be released on bail or bail bond or otherwise (vide Section 12 (6) of the Act) and that any revocation or modification of the order of detention can be made only by the Government in exercise of its powers under Section 11. Incidentally, it may be pointed out that by reason of sub-s. (6) of section 12 of the Act placing an embargo on the grant of bail to a detenu there was no

necessity for the Legislature to make a provision similar to sub-section (4) of Section 389 of the Code of Criminal Procedure, 1973 (corresponding to sub-section (3) of Section 426 of the old Code) for excluding the period of bail from the term of detention period. For these reasons the plea for treating the period of parole as part of the detention period has to necessarily fail.

One last point remains. Besides refuting the contention of the petitioner that the detenu had made a written representation addressed to the President of India on April 15, 1986 and that there has been an infraction of the Constitutional safeguard embodied in Article 22(5" of the Constitution and Section 11 of the Act due to the failure of the Central Government to consider the said Representation, the respondents have preferred an application under Section 340 of the Code of Criminal Procedure, 1973 for prosecution of the persons responsible for forging the document purporting to be the alleged Representation made by the detenu under Section 8(4" of the Act and for making certain interpolations in the Dak Register kept at the Rashtrapati Bhavan. The respondents have placed sufficient material before the Court to show that the alleged Representation addressed to the President of India was neither filed by the detenu nor was it received at the President's Secretariat on April, 15, 1986. The respondent have placed on record the correspondence that passed between the Ministry of Finance, Department of Revenue and the President's Secretariat. They have also produced for our perusal the original Dak Register kept at the Rashtrapati Bhawan. On a careful scrutiny of the correspondence and the entries in the Dak Register we are more than satisfied that no such Representation was ever made by the detenu and that the attempt to assail the order of detention on the ground of violation of the constitutional safeguard enshrined in Article 22(5) and the violation of Section 11 of the Act by the Central Government is a well planned and ingenuous move on the part of the detenu. We are not only deeply shocked by the daring attempt of the detenu to fabricate a document styled as a representation addressed to the President of India but feel much more perturbed and even alarmed that there should have been willing hands at the President's Secretariat to lend their services to the alleged agent of the detenu to give a colour of truth and reality to the nefarious scheme.

We may now set out the highlights of the disquieting features noticed by us in the case set up by the detenu about a representation being delivered at the President's Secretariat on 15.4.1986. Before enumerating the suspicious features it has to be borne in mind that the

detenu is not a rustic or an uneducated person or a man of no means. On the other hand he is a man of great affluence, having dealings in this country as well as in countries overseas and, therefore, having the means to secure the services of astute and enlightened counsel in the country. He cannot, therefore, take umbrage for his actions on grounds such as lack of knowledge or want of funds or ignorance of law. Now coming to the details. The representation said to have been made was not addressed to the Government of India which is the authority to consider the representation but to the President. Be that as it may, the representation signed in Bombay could have been sent by registered post/acknowledgement due to the President's Secretariat but instead it is said to have been brought by a messenger from Bombay to New Delhi. The said messenger does not present the representation at the President's Secretariat but he is said to have handed it over to one Ashok Jain and the said Ashok Jain is said to have delivered the representation at the President's Secretariat. As per the affidavit filed by Shri K.C. Singh, Deputy Secretary to the President, President's Secretariat, a visitor coming with a petition to the Rashtrapati Bhavan has first to approach the Reception and then he is given a printed pass and sent with an escort to the Central Registry and after he delivers the letter he will be escorted back to the Reception to return his pass and then leave the building. Ashok Jain in his affidavit has categorically stated that he went to the Rashtrapati Bhavan at "roughly about 6.00 P.M." and a person at the Reception directed a peon to show him the Central Registry, that no one enquired him about his name or issued him any pass and that he went to the Central Registry as pointed out by the peon and delivered a sealed envelope and obtained an endorsement of acknowledgement on the xerox copy of the representation. In view of the conflicting affidavit, there is room for inference that either Ashok Jain did not personally go and deliver the sealed envelope at the President's Secretariat or that he was able to wield influence to such an extent as to be taken to the Central Registry without the procedural requirement of every visitor being issued a pass being observed in his case. It also surpasses our comprehension how an endorsement of acknowledgement could have been made on a xerox copy of the alleged representation when the original of the representation is said to have been given in a sealed envelope. There are several other intrinsic features in the endorsement itself evoking grave suspicion. The rubber stamp seal affixed on the xerox copy does not correspond to the facsimiles of the two rubber stamps used in the President's Secretariat as described by Shri K.C. Singh, Deputy Secretary in his affidavit. The endorsement of acknowledgement does not contain the signature or

initials of the Receiving Officer, but strangely it contains a Dak Number, "Dy. No. 20 date 15.4.1986". Shri K.C. Singh has set out in his affidavit the procedure to be followed when letters and open petitions are received at the President's Secretariat but the procedure set out therein has not been followed in this case. Over and above all these things, a scrutiny of the relevant page in the Dak Register kept in the President's Secretariat, which was produced before us in a sealed cover, contains tell-tale features of a startling nature revealing a planned attempt, but very clumsily executed, to somehow interpolate an entry in the Dak Register to make it appear that an envelope containing the alleged representation had been presented at the President's Secretariat. For our present purposes, it is not necessary to give a graphic account of the manipulations made in the Register and it will suffice if we refer only to the broad features. The bottom portion of the page has been torn off, obviously with a view to obliterate some entry made therein. The entry relating to the alleged representation of the detenu has been interpolated between one entry dated 15.4 and another entry dated 16.4. but in order to fit in the serial number, the entry relating to the representation has first been noted as 20(A), then the letter A has been smudged and the entry dated 16.4 has been made 20(A) instead of 20. The entry pertaining to the representation is in different handwriting and ink. Shri K.C. Singh in his affidavit has stated that "this office is enquiring into the circumstances under which the entry came to be inserted in the Dak Register meant only for unopened letters addressed to the President by name."

All these things not only warrant an inference that the detenu and his associates have gone to deplorable lengths to create evidence favourable to the detenu but arouse convulsive thoughts in our minds about the efficiency and integrity of the concerned sections of the President's Secretariat. We are constrained to give expression to our feelings of anguish by means of these observations because at the level of the President's Secretariat every section of the Secretariat is expected to observe the highest standards of morality, integrity and efficiency. The ease with which and the fascile manner in which the detenu's agent Ashok Jain claims to have entered the President's Secretariat and delivered the Dak and obtained an endorsement of acknowledgement in a copy of the representation and the length to which the concerned Secretariat staff have gone to give credence to the version of Ashok Jain not only reveals the deep fall in standards but also the lack of security and vigilance.

We feel fully persuaded to hold that this is a fit case in which the

detenu, his wife (petitioner herein), Ashok Jain and all other persons responsible for the fabrication of false evidence should be prosecuted for the offences committed by them. Nevertheless we wish to defer the passing of final orders on the application made under Section 340 of the Code of Criminal Procedure, 1973 by the Union of India at this stage because of the fact the Central Bureau of Investigation is said to be engaged in making a thorough investigation of the matter so that suitable action could be taken against all the perpetrators of the fraudulent acts and the offences. As such the launching of any prosecution against the detenu and his set of people at this stage forthwith may lead to a premature closure of the investigation resulting in the Central Bureau of Investigation being unable to unearth the full extent of the conspiracy. Such a situation should not come to pass because the manipulations of the detenu and his agents on the one hand and the connivance of staff in the President's Secretariat on the other cannot be treated as innocuous features or mere coincidence and cannot therefore, be taken lightly or viewed leniently. On the contrary they are matters which have to be taken serious note of and dealt with a high degree of vigilance, care and concern. Consequently, while making known our opinion of the matter for action being taken under Section 340 of the Code of the Criminal Procedure we defer the passing of final orders on the application under Section 340 till the investigation by the Central Bureau of Investigation is completed. The respondents are permitted to move the Court for final orders in accordance with our directions.

A B C D E

Accordingly, the special leave petition and the writ petition are dismissed with costs.

H.L.C. Petitions dismissed.